

Status of Judgment: Draft

Appeal No. VA96/4/039

VA97/5/016 & VA97/5/017

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988**

University College Cork

APPELLANT

and

Commissioner of Valuation

RESPONDENT

B E F O R E

Henry Abbott - Senior Counsel

Chairman

DIRECTION OF CHAIRMAN:-

Issued on the 26th day of October 2001

THE APPLICATION:-

This application arises out of a request for a case stated by the Respondent and the finalising of the details of such case stated. The case stated has been substantially agreed in relation to all matters except the inclusion in the case stated of findings and a question in relation to a direction of the Chairman of the Valuation Tribunal issued on the 31st July 2000 in relation to the appeals.

On the 16th March 2000 this Tribunal read verbally its judgment on the substantive points raised in the appeals before us. On the 27th March 2000 the written judgment issued and was copied to both parties on that day. The request for the case stated was dated and lodged 17th April 2000. The issue on the application for the direction of the Chairman issued on the 31st July 2000 was whether the 21 day requirement should run from the 27th of March the date on which the written judgment issued or alternatively should run from the earlier date namely the 16th March the date on which the judgment was read in open session of the Tribunal.

The Chairman by direction dated the 31st of July 2000 gave his opinion that the relevant date for the purposes of completing the 21 day period was the date on which the written judgment issued,

namely the 27th March and not the date on which it was read at a sitting of the Tribunal. Consequently the Tribunal was satisfied that the application for a case stated was within time.

The respondent submitted the draft case stated to the Tribunal on the 2nd day of October 2001 a copy thereof is annexed in schedule 1 of this judgment. The appellant submitted a draft case stated a copy thereof is annexed in schedule 2 of this judgment. The appellant's draft case stated differs from the respondent's draft in the following respects:-

Firstly additional facts are set out in paragraph 8 (x) thereof dealing with the directions of the 31st July 2000 as follows:

8. (x) The Tribunal having made the aforesaid findings of facts notified the parties that its Judgement would be read to the parties on the 16th March 2000. Upon that date in the presence of the legal representatives of the parties the Chairman of the Tribunal read the Judgement of the Tribunal. The Counsel on behalf of the Commissioner of Valuation then expressed his dissatisfaction with the Judgement. Counsel on behalf of the University sought costs and the Tribunal awarded costs to the College on the basis that the three Appeals would be treated as one for costs purposes. The Judgement of the Valuation Tribunal was then issued in written form on the 27th day of March, 2000. By letter of the 17th of April, 2000 the Commissioners requested the tribunal to state a case to the High court in accordance with the provisions of Section 5 (2) of the Valuation Act, 1988. Counsel on behalf of the University College Cork objected to the statement of the case on the basis that the Notice in writing requesting a case stated ought to have been made within twenty one days of the written Judgement becoming available on the 27th March, 2000. The Tribunal had determined that the request for a case stated was in accordance with Section 5 (2) and could be made within twenty one days after the 27th March, 2000 and ruled that the written issuance of the Judgement on the 27th of March, 2000 constituted the determination of the appeal rather than the reading of the said Judgement on the 16th day of March 2000.

And secondly paragraph 9 (i) of the appellant's draft sets out a question arising from the directions of the 31st July 2000 as follows:

9 (i) That the notice in writing requesting the case stated was made in accordance with the provisions of Section 5(2) and that the High Court could determine the case stated.

The issue to be determined by the Tribunal on an application for directions was whether paragraphs 8 (x) and 9.(i), as quoted, ought to be included in the case stated.

The matter came on for hearing before the Chairman on the 17th day of October 2001 at Dublin and the appellant was represented by John Lucy BL instructed by Mr. James O'Sullivan of Ronan Daly Jermyn and the Respondent was represented by Brendan Conway BL instructed by Ms Ciara Walsh, Chief State Solicitor.

From the outset Mr. Conway intimated to the Tribunal that the parties had discussed their differences and that there might be no difficulty in relation to the inclusion of a paragraph in the terms of 8. (x) or in similar terms if the parties were given some time to agree same but that an important issue of principle remained outstanding between the parties in relation to the inclusion of the question at 9. (i). Mr. Conway submitted that the issue as presented by the question 9. (i) ought properly to be dealt with as a preliminary objection to the High Court prior to the High

Court hearing the case stated arising on the appeal and not by way of question arising on the case stated by the Tribunal arising from the decision of the Tribunal on the exemption issue.

Mr. Conway relied on provisions of section 5 of the Valuation Act 1988 and in particular drew the attention of the Tribunal to the provisions of Section 5 (6) requiring the High Court to hear and determine any question or questions of law "arising on the case" and submitted that this provision pointed to the lack of jurisdiction of the Tribunal to include in the case stated any question arising other than that which arose in the substantive appeal. He referred the Tribunal to the case O'Dwyer (Inspector of Taxes) and the Revenue Commissioners v Irish Exporters and Importers Ltd. (In Liquidation) Irish Tax Reports Volume 1 page 629, in which it was held that the failure to sign a case stated under the taxation appeals procedure could be raised as a preliminary objection in the High Court. The fact that a preliminary point was taken before Davitt P. in relation to a case stated from the District Court was dealt with in Prendergast v Coleman Porter 1961 IR page 440. The case Irish Refining plc v the Commissioner of Valuation and Judge Sean MacD. Fawsitt and Cork County Council 1990 IIR 568 was also mentioned.

Mr. Lucy on behalf of the appellant responded that the Tribunal retained the jurisdiction to state a question in relation to the outcome of the direction of the 31st of July 2000 and relied on the statement in O'Reillys book "Civil Proceedings and the State" set out at page 34 as follows

"if an appellant is dissatisfied with the contents of a case stated, he may proceed by way of motion in the High Court to have it sent back for amendment, and not by way of judicial review"

The Law

Section 5. of the Valuation Act 1988 provides as follows

- 5.-(1)** Immediately after the determination of an appeal by the Tribunal, any party to the appeal, if dissatisfied with the determination as being erroneous in point of law, may declare his dissatisfaction to the Tribunal.
- (2)** The party having declared his dissatisfaction, may, within twenty-one days after the determination, by notice in writing addressed to the Chairman of the Tribunal, require the Tribunal to state and sign a case for the opinion of the High Court thereon within three months of the date of receipt of such notice.
- (3)** The party requiring the case shall pay to the Tribunal such fee as the Minister for Finance may by regulations prescribe for and in respect of the case, before he is entitled to have the case stated.
- (4)** The case shall set forth the facts and the determination of the Tribunal and the party requiring it shall transmit the case, when stated and signed, to the High Court within seven days after receiving it.
- (5)** At or before the time when he transmits the case to the High Court, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.
- (6)** The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Tribunal with the opinion of the Court thereon, or may make such other order in relation to the matter as the Court thinks fit.

(7) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

(8) An appeal shall lie to the Supreme Court from the decision of the High Court.

Section 2. (1) (b) of the Valuation Act 1988 provides as follows:

(b) the provisions of the *First Schedule* to this Act shall have effect in relation to the Tribunal.

Section 8. of the First Schedule of the Valuation Act 1988 provides as follows:

8. The Chairman of the Tribunal may -

(c) Give any other directions for the purpose of an appeal that appear to him reasonable and just.

Findings of the Tribunal

1. The parties may agree a statement in the case stated along the lines of paragraph 8. (x) regardless of the outcome in relation to any other question.

2. The parties are not in agreement in relation to question 9. (1) and require the direction of the Chairman in relation thereto.

Determination on the Direction

We are of the opinion that the direction issued on the 31st July 2000 was in fact part of the appeal within the meaning of the provisions of the Act cited above. We are influenced by the fact that the Tribunal may refer the case stated back to the Tribunal for amendment and consider that if a preliminary point were made to the High Court without the case stated being amended the High Court might be constrained to consider such preliminary application based on the high point of the case of the party making it rather than on the basis of any decision of facts of the Tribunal. The purpose of the provisions of the 1988 Act is to ensure, through the process of the case stated procedure and the facility for directions of the Chairman dealing with outstanding administrative matters, a fair and efficient system of putting all relevant facts for decision before the High Court and avoid more expensive judicial review type procedures. While we do not contest the right of a party to make a preliminary point before the High Court, we are of the view that the Tribunal should take every step to ensure that its jurisdiction to deal with any issue which may arise on a preliminary point ought to be exhausted by way of dealing with same in a case stated. Accordingly our decision is that paragraph 9.(1) in the draft contained in the second schedule hereto may be put in the case stated and the signing of the case stated is adjourned to enable the parties to agree on the form of paragraph 8.(x) and any further or consequential amendments necessary to be made to the case stated arising from this direction.

SIGNED:

**Henry Abbott SC.
Chairman**