

Appeal No. VA04/2/069

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

D.S.P.C.A.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s), Kennels, Store 7 Land at Lot No. 23Ba24Ab, Mount Venus Road, Newtown, Bohernabreena, Tallaght West, County Dublin

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

Maurice Ahern - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF DECEMBER, 2004

By Notice of Appeal dated the 14th day of June, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €225.00 on the above described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:

"Property not rateable under Schedule 4 Valuation Act 2001. The property is owned and occupied by the Dublin Society for the Prevention of Cruelty to Animals and is excluded by virtue of the provisions of Schedule 4, paragraph 16(a) of Valuation Act 2001. The DSPCA is an incorporated registered charity, which complies with the provisions of Section 3(1)(a)(iii), (vii) and (ix) and also complies with Section 3(1)(b). The property is used exclusively for charitable

purposes and otherwise than for private profit and complies with paragraph 16 (a) of Schedule 4 referable to Section 15 of the Act."

INTRODUCTION:

The DSPCA was assessed for rates and a Valuation Certificate issued on the 8th December 2003 valuing the property referred to above at €225. This was appealed to the Valuation Office. However a Valuation Certificate issued on the 3rd June 2004 confirming the rateable valuation at €225.

REPRESENTATION:

ON BEHALF OF THE APPELLANT, MR. DAVID FREEMAN AND MR. AONGUS O'BROLCHAIN SC (INSTRUCTED BY, MR. RICHARD LOVEGROVE, JOYNT & CRAWFORD SOLICITORS).

ON BEHALF OF THE RESPONDENT, MR. COLM MacEOCHAIDH (INSTRUCTED BY THE CHIEF STATE SOLICITOR'S OFFICE)

THE HEARING:

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin on the 14th September 2004. Further submissions were made on the 29th November 2004. However it was agreed at the outset that the issue between the parties was a legal one and there was no requirement for viva voce evidence. Both parties furnished written submissions in relation to the property and also written legal submissions.

THE ISSUE:

The issue for the Tribunal to determine is whether the DSPCA is entitled to an exemption from the payment of rates having regard to the provisions of the Valuation Act, 2001 and the schedules thereto.

THE APPELLANT'S SUBMISSIONS:

On behalf of the appellant it was contended that the DSPCA was a venerable organisation which had been in existence since 1760. It became a society in 1840 and was subsequently incorporated. It had however never been rated prior to this point in time and had always been exempted by the Valuation Office as being an organisation established “*for charitable purposes*”. The lands in question comprise an animal shelter, administration offices, meeting room and veterinary facilities. The cost of the purchase was funded entirely by the sale of its former premises in Rathfarnham. The corporate entity behind the DSPCA is a company limited by guarantee.

“Charitable Purposes”:

It was submitted that although the activities carried out are of obvious benefit to the animals in question the activities in fact relate to humans. They are carried out for the benefit of animals but also for the benefit of humans. For example, the clinic provides a service in disadvantaged areas to people who would otherwise not be able to afford such veterinary services. Animals are brought to the DSPCA and cared for there. Occasionally new homes can be found for them. There is a neutering and spaying service provided. Veterinary services are provided for people on low income. It was submitted that in particular where services are being provided for little or nothing the primary benefit is in fact to the owner of the animal given that the animal has no idea that the service being provided for him is being provided at a reduced cost.

Mr. Freeman briefly called Mr. Jimmy Cahill, General Manager of the DSPCA to confirm the nature of the activities carried out by the DSPCA.

Mr. Freeman referred to Schedule 4 of the Valuation Act, 2001 and in particular Clause 16 thereof. This provides that a property which is not rateable includes “*Any land, building or part of a building which is occupied by a body, being either –*

(a) a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit...”

While “*charitable organisation*” is defined in the Act (at Section 3) “*charitable purposes*” is not so defined. On behalf of the appellant however, it was contended that charitable purposes should be given the same meaning as it was given in **Barrington’s Hospital, The Committee of Management of and City of Limerick Infirmary v The Commissioner of Valuation**. It was contended that the wording of Section 63 of the 1838 is not so radically different from the wording of the 2001 Act. In the alternative if the Tribunal felt that **Barrington’s** was not of assistance it was submitted that it should look at the case of **Special Commissioners of Income Tax v Pemsel**. (Pemsel’s case)

It was also argued by the appellant that insofar as the Commissioner for Valuation had previously exempted the DSPCA from rates it could not now change its mind without first indicating an intention to the DSPCA to do so. It was suggested that in effect the exemption stated by the Commissioner for Valuation amounted to the creation of a legitimate expectation on the part of the DSPCA that it would remain exempt unless and until it got adequate warning of any change in this regard. This would be especially so having regard to the fact that the DSPCA had expended considerable sums of money on its new premises at a time when it did not believe it would be rated.

The Memorandum and Articles of Association:

The appellant accepted that in order to come within the scope of Clause 16 of Schedule 4 for these purposes, the organisation had to be a “*charitable organisation within the meaning of that phrase as defined in Section 3 of the Act.*” Section 3 of the Act lays down strict rules in relation to the contents of the Memorandum and Articles of Association. In particular, such Memorandum and Articles of Association must state:

“as its main object or objects, a charitable purpose and specify the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects.”

It was not suggested by the appellant that there was an express demarcation between main objects and secondary objects since the Act did not require specification of “*main*” and “*secondary*”. It was submitted that the “*main*” nature of the objects set out in Clause 3(a) of the Articles of Association was easily discernible as being the main object and likewise the “*secondary*” nature of the other objects set out in Clause 3(b) to 3(l) was easily discernible as being secondary. It was accepted there was no express breakdown in this regard. It was likewise submitted that it was implicit that the purpose of these secondary objects was to attain the main object though it was not the case that there was any express specification in this regard.

THE RESPONDENT’S SUBMISSIONS:

Charitable Purposes:

On behalf of the respondent it was submitted that any activity could establish itself and call itself a charity provided it does not make a profit. It was submitted that there should be some restriction on the meaning of “*charitable purpose*”. Mr. MacEochaidh submitted that a consideration of Schedule 4 of the Act made it clear that the Oireachtas had listed certain organisations to which it wished to grant exemption. The Valuation Tribunal should only add to those organisations if to do so would come within the spirit of Schedule 4. Since all of the organisations in question were organisations which gave a benefit in a direct way to humans and to society, it would be inconsistent to add the DSPCA to that list. While the DSPCA might be regarded in the vernacular as a “charity” the definition of “charitable purposes” has a rather more technical meaning.

In this sense, a charity must be of benefit to the community generally. The largest possible number of members of the community must benefit from the activity in question. It was submitted that the principal purpose of the charity in question was to prevent cruelty to animals. While there were secondary benefits to humans these were of indirect or incidental effect; one cannot use the concept of “*charitable purposes*” to write what would in effect be a blank cheque

to other organisations within the community. Mr. MacEochaidh also referred us to **VA04/1/008 Clones Community Forum Limited –v- The Commissioner of Valuation**. In that case the organisation the subject matter of consideration clearly conferred a very considerable benefit on a sizeable section of the community of persons in the area.

The respondent submitted that no case in relation to “*legitimate expectation*” could be made out or indeed had been made out and it had not been listed amongst the grounds of appeal. Without prejudice to that it was, in the submission of the respondent, wrong to suggest that the Valuation Office were bound by its history of dealings with parties in the past. It would be meaningless to say that the Valuation Office could not at some stage change its mind. It was always open to the Valuation Office to examine a new provision of a new Act in new circumstances, which it was doing in this case.

Mr. MacEochaidh contended that the “*charitable purpose*” in the 2001 Act should be given a more limited meaning than in **Pemsel’s** case and should really be confined to the meaning given in **Barrington’s Hospital**. The respondent contended that it was entitled to look at the provisions of Section 3 and Schedule 4; however it was conceded that there were no obvious changes in the law effected by the provisions of the Valuation Act, 2001 as to what “*charitable purposes*” meant.

The Memorandum and Articles of Association:

The respondent submitted that there was a clear breach of the requirement of Section 3 of the Act. No main object was identified. There was no distinction between the main objects and secondary objects. There was no specification or express statement of the purpose of the secondary object as being the attainment of the main or primary object. Mr. MacEochaidh pointed out that even the main object clause appeared to seek to achieve not one but two main objects. He also contended that the charitable purposes referred to in Schedule 4, Clause 16 of the Act must be the same charitable purposes as are identified in the main object clause of the Articles of Association.

THE LAW:**Charitable Purpose:**

In **Special Commissioners of Income Tax –v- Pemsel [1891] AC 531** Lord MacNaghten indicated (at page 538) that there were in effect four heads of charity:

- (i) The relief of poverty
- (ii) The advancement of education.
- (iii) The advancement of religion.
- (iv) Other purposes beneficial to the community.

In **Barrington’s Hospital –v- The Commissioner of Valuation [1957] I.R. 299** Kingsmill Moore J indicated (at page 333):

“Charitable purposes” in section 63 [of the Poor Relief Act, 1838] has a meaning less extensive than the meaning given to those words in Pemsel’s case.”

How much less extensive has never been decided but at least there must be excluded from the denotation of “charitable purposes” in the section any charitable purpose which is mentioned expressly in this section. The concept of “other purposes beneficial to the community” under the Pemsel heading is of course one of considerable elasticity. However it is clear that a number of “charities” (in the everyday sense) have been regarded as being charities falling under this rubric. Gifts acquiring charitable status have historically included gifts for the benefit of animals. While originally the reasoning for extending charitable status to gifts for animals may have originated in the expediency of costs for animal care being borne by private (charitable) donations rather than by public funds, there has been a shift in emphasis. The fostering of public morality and the encouragement of philanthropic attitudes are now viewed as the primary justification for regarding gifts to animals as charitable. This argument was advanced by Swiffen Eady L.J. in **Re Wedgwood [1915] 1 Ch 113**, at 122 as follows:

“A gift for the benefit and protection of animals tends to promote and encourage kindness towards them, to discourage cruelty and to ameliorate the conditions of the brute condition, and thus to stimulate humane and generous sentiments in man towards the lower animals, and by these means promote feelings of humanity and morality generally, repress brutality and thus elevate the human race.”

Similar sentiments had previously been expressed in Ireland by Holmes J in **Re Cranston, deceased, Webb v Oldfield [1898] 1 I.R. 431**, at 457:

“If it is beneficial to the community to promote virtue and to discourage vice, it must be beneficial to teach the duty of justice and fair treatment to the brute creation, and to repress one of the most revolting kinds of cruelty.”

In our view the purpose of the DSPCA must be regarded as charitable. The activities of the DSPCA undoubtedly promote morality and have the effect of checking any innate tendency to cruelty. They are thus of considerable benefit to humanity. We have no difficulty in accepting that a significant portion of the community receives a benefit from the carrying out of these activities. We are also of the view that the ongoing work of the DSPCA does encourage and indeed promote humanity, kindness and consideration to animals generally within the community. The fact that it is not humans but animals who are found new homes or cured from illness or sheltered in a human and caring way is not the issue, since it is these activities which confer the benefits described above on the community in general.

We therefore hold that the DSPCA occupies the lands the subject matter of the application “*for charitable purposes and otherwise than for private profit*” within the meaning of Clause 16 of Schedule 4 of the 2001 Act.

The Memorandum and Articles of Association:

We note the submissions made by the appellant in relation to the issue of legitimate expectation and estoppel. We note also the decision by the Commissioner for Valuation to exempt the

society from rates for many, many years. The comments of Kingsmill Moore J in **Barrington's Hospital –v- Commissioner of Valuation [1957] I.R. 299** at 316 are apposite.

“A mistake – if it be a mistake - on the part of an executive official cannot affect the law, but it is of some significance to note that over so long a period – from the passing of the Poor Relief Act, 1838, to 1950 – it was either accepted or decided that hospitals were exempt from payment of rates, although a portion of their income was derived from payments by patients who could afford to make a contribution.”

We do not believe however that the doctrine of legitimate expectation or estoppel operates in the particular circumstances. There is no suggestion that the DSCPA would have abandoned their acquisition of the property in question had they known of the change of heart of the Commissioner of Valuation. There was clearly no express representation by the Valuation Office to the effect that it would never look for rates from the DSPCA and we would be reluctant to imply such a representation from the circumstances as set out before us. While one cannot but have sympathy for the plight of the appellant and many other charitable organisations, they are now forced to scrutinise carefully their Memorandum and Articles of Association in the light of the provisions of Section 3 of the Valuation Act, 2001. The fact remains that persons are presumed to know these provisions: *ignorantia juris neminem excusat*. In addition the issue had been raised in **VA/04/1/008 - Clones Community Forum Limited** in which Judgment was delivered on the 15th June 2004.

In the circumstances it is our view that although the DSPCA uses the land the subject matter of the appeal exclusively for charitable purposes and otherwise than for private profit, it is not “*a charitable organisation*” within the meaning of that phrase as set out in Section 3 of the Act having regard to its failure to comply with the provisions of Section 3(a)(iii). In this regard we note that no other objection is made by the respondent to the Memorandum and Articles of Association.

DETERMINATION:

The appellant is not a “*charitable organisation*” within the meaning of Section 3 of the Valuation Act, 2001 by reason of its failure to comply with the provisions of Section 3(a)(iii).

And the Tribunal so determines.