

Appeal No. VA89/0/204

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Bacquar Hussain

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Unit No: 44 Ballymun Shopping Centre, Co. Dublin

B E F O R E
Mary Devins

Solicitor (Acting Chairman)

Paul Butler

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF NOVEMBER, 1989

By notice of appeal dated the 16th day of August 1989, the appellant appealed against the determination of the respondent fixing the rateable valuation of the above described hereditaments at £48.

The subject property, Amber Fashions, a clothes shop, is located on the ground floor in the South Mall of the Ballymun Shopping Centre. It consists of 806 sq. ft. of retail space and is held on a 42 year lease from December 1969 with provision for a 7 year rent review. The rent was

reviewed in December 1986 and was fixed at £5,750. The tenant is liable for rates, repairs and insurance.

It is accepted by both sides that trading conditions in the Ballymun Shopping Centre are poor due to competition from other centres, unemployment in the area, a high vacancy rate in the adjoining flats and the problem with drug pushing and vandalism in the vicinity of the shopping centre.

In a written submission received in the Tribunal on the 11th October, 1989 Mr Hussain says that his shop is situated adjacent to the car park where bollards are erected to stop cars. These bollards are used as seats by both drug users and pushers. They congregate there continuously and customers are afraid to come near the shop. He states that the centre is now 20 years in existence and has not been revamped. It is unattractive and sloppy and makes customers feel uncomfortable. He states that other units had their valuations reduced from £60 to £37. Mr Hussain claimed that he has been trading at a loss for the past four years.

In his written submission received on the 11th October, 1989 Mr James F. Gormley B.Agr.Sc. ARICS, a Chartered Valuation Surveyor and a Valuer with 15 years experience in the Valuation Office, outlines the valuation history of the premises. He says that the arguments regarding the poor trading conditions in Ballymun Shopping Centre were taken on board by the Commissioner in reaching his determination of £48 rateable valuation. He says that the South Mall is the best part of the Shopping Centre with the highest pedestrian traffic flow due to its proximity to what is now the main car park. He states that the net annual value of the premises as agreed with the appellant's agent in November 1989 was £9,600 and that it was agreed with the appellant's agent at first appeal stage that the rateable valuations on the centre should be assessed on the basis of 1/200 of net annual value. This, applied to the subject property, yielded a rateable valuation of £48.

At the oral hearing which took place on the 13th October, 1989. Mr Hussain was accompanied by Mr Cyril Perry, a fellow tenant in the shopping centre. Mr Gormley represented the Commissioner.

Mr Perry said that at first appeal stage there was an average reduction in the rateable valuation of about 23% covering 27 premises in the Centre. A reduction of £2 in Mr Hussain's appeal was very much out of line with the general reduction and he felt some unintentional error was made in Mr Hussain's case. Mr Hussain gave evidence of the trading conditions and in particular of the groups of drug addicts and pushers that congregate outside and in the doorway of his premises. He said that the internal security was afraid to move them as he was himself and any such attempt would be responded to by beating on his windows resulting in these being broken on one occasion. The Gardaí had informed him that they could not move these people from in front of his shop. He said that customers were afraid to pass by these groups and enter the shop. Mr Hussain said that because of the particular difficulties involved a proper net annual value would be in the region of £2,500.

Mr Perry said that traders had been promised that a significant amount of money would be spent on updating the centre including some form of perimeter fencing which would make it easier to exclude undesirables. However, no work has yet taken place and the starting date is constantly being moved back.

In his evidence Mr Gormley outlined the history of the revision of the shopping centre. He said that at first appeal stage the Commissioner had accepted that the centre was rated highly in comparison to other centres, given the run-down condition of the centre and the other problems already outlined. On this basis significant reductions were given and these were agreed to by Hamilton Osborne King who acted as agents for the traders in the centre including Mr Hussain.

This general revision of the centre had taken a long time and a lot of careful consideration. A change in any one of these would upset this relationship.

A net annual value of £9,600 was agreed by Hamilton Osborne King on behalf of Mr Hussain and it was on this basis that the rateable valuation of £48 was agreed.

Mr Perry said that he accepted that a conscientious effort was made by Mr Gormley and Hamilton Osborne King to arrive at equitable valuations in the centre and he said that all the other traders including himself were very satisfied with the reductions granted. However, in comparison to the units 42 and 43 adjoining Mr Hussain's shop, (each of 1,000 sq. ft. and each of which had received a reduction of £15 from £65 to £50) he felt that if a comparison was to be made on a rate per sq. ft. Mr Hussain's rateable valuation was considerably out of line even with his immediate neighbours.

The Tribunal commends Mr Gormley and Mr O'Neill of Hamilton Osborne King on the industry they showed in revaluing the entire shopping centre. Their conclusions in relation to each of the units in the centre were submitted by Mr Gormley.

The Tribunal has always laid great emphasis on agreements reached between parties and would attach particular importance to agreements concluded as recently as November 1988, as in this case. The Tribunal would feel that it would have to have very good reasons to revise a rateable valuation where such recent agreement existed.

In this case the Tribunal finds that agreement was reached at once for 27 different units in the centre. At the time agreement was reached on behalf of Mr Hussain he was not fully aware of the size of the reductions in other rateable valuations. By comparison with Mr Hussain's nearest neighbours on a square foot basis there would seem to be a significant difference and there

seemed to be reasonable grounds to dispute the agreed net annual value which is considerably in excess of the actual rent.

The Tribunal is at pains to point out that it feels the efforts made by Mr Gormley and the agent on behalf of the traders was a genuine one based on what they perceived to be net annual value. In another shopping centre Mr Hussain's location may well be perceived to offer a significant advantage. However, the Tribunal accepts that in the conditions which apply in this shopping centre, this particular location is disadvantageous and would have a negative impact on the net annual value of the unit. The Tribunal is also aware that the rent was reviewed relatively recently and given the unusual conditions that exist in and around Mr Hussain's shop feel that this would have increased very little in the intervening period.

Taking the above into consideration and taking into consideration comparison with other units the Tribunal feels that the rateable valuation should be reduced from £48 to £38.