

Appeal No. VA88/0/127

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

Sister Sally Mounsey
Sisters of Mercy, Birr

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Convent (part of), meeting rooms, offs, yard and grounds Birr Co. Offaly

B E F O R E

Hugh J O'Flaherty

S.C. Chairman

Mary Devins

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF NOVEMBER, 1988

By notice of appeal dated 17th day of August, 1988, the appellant appealed against the respondents determination of the rateable valuation of the above described premises at £37 on the grounds that the valuation "is excessive and inequitable and furthermore, the said premises are exempt".

Mr James O'Brien of James O'Brien & Co., Solicitors, 24 Castle Street, Nenagh, Co Tipperary made a written submission dated 2nd November, 1988 in which he said that "it is accepted that

the valuation is fair and reasonable" and in which he outlined the grounds on which his clients were claiming exemption from rates as follows:

1. This is a public building used as a community hall and the public are allowed to use it free of charge.
2. The Hall is used for the benefit of the public at large.
3. Bible study groups, etc. use the building on a regular basis.
4. No profit is made from the building.
5. The Sisters of Mercy pay all the outgoings on the building themselves.
6. No group is refused access to the building provided they are a voluntary organisation.

Mr Frank Gregg who is a District Valuer with 20 years experience in the Valuation Office made a written submission of 2nd November 1988.

The valuation history is as follows:-

The premises were constructed as a girls orphanage in early 1900's and used as such until 1962. The rateable valuation struck was £45 exempt. The hereditament was listed for revision in 1966 to value a new secondary school. The valuation was increased on 1966 revision to £70 as a result of adaption for use as a secondary school. This valuation was reduced as a result of an appeal to the Circuit Court in 1966 to £62 and the description was amended to include convent (pt of) at 1st April, 1966.

The valuation was apportioned on 1987 revision because of change of user and the rateable valuation was fixed at £37 on Convent (pt of), meeting rooms, offs, yard and grounds. The appellants, being aggrieved lodged an appeal and Mr Gregg was deputed to inspect and report back to the Commissioner. Having considered Mr Gregg's report the Commissioner made no change.

Mr Michael J Hennigan of Hennigan & Co Valuation Consultants and Valuers of 23 Upper Mount Street, Dublin 2 on behalf of the appellants submitted a summary of evidence on the 7th November in which he outlined the grounds for exemption as follows:-

- "1. These premises were open as meeting rooms, etc. in 1983 and are used for the furtherance and promotion of the objectives of

voluntary charitable organisations such as The Apostolic Society, the Alcoholic Anonymous Group, the Saint Vincent de Paul Society, an inter-denominational Prayer Group and a Play/Share Group for 7-14 year olds. The Adult Education Centre on the ground floor at the front of the building provides for a Bible Study Discussion Group for members of all religious denominations interested in the promotion of the Ecumenical movement. The Order, in conjunction with the Midland Health Board, facilitates the running of courses in Home Cooking and Management for people of low income. The Order also supervises the distribution of second hand clothing to the poor from a room on the subject premises. It should be noted that no group is refused the use of the facilities available therein provided it constitutes a voluntary charitable organisation.

2. The above charitable organisations use the accommodation provided in the hereditament for charitable purposes of a public and inter-denominational nature which is of a direct social benefit to the community and in accordance with the provisions of Section 63 of the Poor Relief (Ireland) Act 1838, Section 2 of the Valuation (Ireland) Amendment Act 1854 and Section 1 of the Local Government (Financial Provisions) Act 1978.

3. It was held by Lord McNaghten in the case of *The Commissioners for Special Purposes of Income Tax V. Pemsel* (1891) that the legal meaning of "charitable purposes" in Ireland and England is comprised of four principal divisions known as The McNaghten Rules for Charity
 - (a) Trusts for the relief of poverty.
 - (b) Trusts for the advancement of education.
 - (c) Trusts for the advancement of religion.
 - (d) Trusts for other purposes beneficial to the Community not falling under any of the preceding heads.

4. While no charges are sought from some of the Groups using the facilities, any charges made by the Order are solely to cover heating,

lighting and general maintenance.

5. The Order/Promoters/Directors/Group Members have no personal gain whatsoever from the activities carried on in these premises." (An Income and Expenditure Account showing a loss of £219.46 for the period from the 1st August 1987 to the 31st July 1988 is attached as Appendix A).

The oral hearing took place on 7th November 1988 when Mr Michael McGrath, Barrister, instructed by Mr James O'Brien represented the appellants and when the evidence of Sister Sally Mounsey, Sisters of Mercy, Birr who is in charge of the Convent was heard. Mr Michael J Hennigan also attended.

During the course of examination of Sister Sally Mounsey by Mr McGrath the following usage of the premises was established.

The accommodation consists of a series of meeting rooms together with reception, counselling, kitchen and toilet facilities at ground floor level. There were additional meeting rooms on the upper floor together with a room used for storage and the distribution of second-hand clothing to the poor, two store rooms, two disused rooms and a toilet. The balance of this floor is used to provide part of the domestic accommodation for the Order.

The large meeting room on the ground floor is used all nights of the week except Saturday night (purely because there is no demand for the room on Saturdays). An Alcoholics Anonymous Group uses the hall on Sunday nights. On Monday nights there is an Apostolic Group meeting. The purpose of this group is to make vestments etc. for the Missions. Other activities carried on are prayer group meetings and a womens group. This is run by Sister Brenda of the Sisters of Mercy who provides her services free of charge. It is a developmental group. The remaining portion of the ground floor is devoted to an Adult Religious Education Centre. The word religious was added to the title so as not to confuse it with other adult education courses. It is non-denominational and deals with such topics as personal development, parenting, dealing with unemployment and inter denominational bible studies. Any fees charged from time to time are only to cover costs such as lighting, heating etc. There is another small room which is used for counselling purposes. On the first floor there is a small meeting room which is used by the Al Anon group on Tuesday nights. Again a small donation of £3 or £4 is made to cover lighting, heating etc. This is the only group using the first floor. The rest of the upstairs accommodation

consists of bedrooms and bathrooms, for use by the nuns, and 6 other rooms four of which are vacant and two are used as furniture store rooms.

Sister Mounsey said that Birr offered very little by way of meeting rooms to voluntary bodies. The only option to the convent rooms was a large parish hall which was generally unsuitable as most groups wanted a smaller, more intimate room. She also pointed out that Home Management courses are carried in conjunction with the Midland Health Board in the premises. In response to cross examination by Mr O Caoimh, Sister Mounsey said that an application for the use of a room from any organisation would be considered provided the organisation was not disapproved of by the State.

She also said that the activities of the play and share group consisted of playing games and group activities to help the socially deprived. Booksales involved selling books of interest to the particular groups and these took place within the premises.

The question for the Tribunal is whether the uses to which the building are put entitle them to exemption from rating as opposed to the grant of relief under the Local Government (Financial Provisions) Act, 1978.

In this regard, the Tribunal does not regard the fact that certain of the upstairs rooms are used as sleeping accommodation by the Sisters; this despite the High Court decision of Brendan v. Commissioner of Valuation (1969) I.R. 202; the fact that use of premises for domestic purposes entitles the occupier to relief under the 1978 Act renders that use of the premises irrelevant to what the Tribunal has to consider.

The single question, for resolution, appears to be whether the premises are used exclusively for charitable purposes. The Tribunal has no doubt that the premises are being used for very worthy and social purposes to serve the local community and what would be regarded as charitable in the ordinary sense of the expression; however, the Tribunal is conscious that "charitable purposes" in the valuation code has received a restricted interpretation in the courts through the years.

The Valuation (Ireland) Act 1854 Section 2 provides that in making out the lists or tables of valuation mentioned in the Valuation (Ireland) Act 1852, the Commissioner of Valuation shall distinguish all hereditaments and tenements or portions of the same of a public nature or used for charitable purposes or for the purposes of science, literature and the fine arts as specified in 5 and 6 Vict., c. 36, and that all such hereditaments or tenements or portions of the same, so

distinguished, shall as long as they shall continue to be of a public nature and occupied for the public service or used for the purposes of the aforesaid, be deemed exempt from all assessment for the relief of the destitute poor in Ireland and for grand jury and county rates.

The grounds for exemption from rates (as the Supreme Court has held in the cases of McGahon and Ryan v. Commissioner of Valuation (1934) I.R. 76 and Barrington's Hospital v. Commissioner of Valuation (1957) I.R. 299 are to be found in the proviso to S. 63 of the Poor Relief (Ireland) Act 1838 -

'Provided also, that no church, chapel, or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground or cemetery, nor infirmary, hospital, or charity school or other building exclusively used for charitable purposes, nor any building, land, or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use.'

As Mr Justice O Dalaigh (as he then was) pointed out in the Barringtons's Hospital Case (at p. 340) the proviso is divided into four categories by the use of the conjunction, 'nor'.

Aside from that proviso to that section of that Act, if one were to rely on Section 2 of the Valuation (Ireland) Act 1854, the Tribunal would not doubt that the hereditaments in question should be regard as 'of public nature or used for charitable purposes'.

Mr. Justice Kingsmill Moore said that the following propositions would appear to be warranted by the Irish authorities on the wording of the proviso to S. 63.

- "1, Apart from specific exceptions to be found in other statutes (such as Marsh's Library, Armagh Observatory, and buildings belonging to certain societies instituted for purposes of science, literature, or fine arts) the grounds for exemption from rates must be found in the proviso to s. 63 of the Act of 1838 (McGahan and Ryan's Case (2)).
- 2, "Charitable purposes" in s. 63 has a meaning less extensive than the meaning given to those words in Pemsel's Case (3). How much less extensive has never been decided, but at least there must be excluded from the denotation of charitable purposes" in the section of any charitable purpose which is mentioned expressly in the section (O'Neill's Case (4) and Scott's Case (5) as applied to s. 63).

- 3, Neither the wording of s. 63 nor any authority leads to the conclusion that "charitable purposes" means, or is confined to, "charitable purposes devoted exclusively to the benefit of the poor."
- 4, The word "exclusively," in no way alters or modifies the meaning of charitable purpose." It does ensure that, in order to qualify for exemption, a building must be used for charitable purposes only. Where a building is used for mixed purposes, some charitable, some non-charitable, it is not exempt, though if the purposes are carried on in different buildings or in different parts of the same building s. 2 of the Valuation Act, 1854, gives power to the Commissioner to distinguish as exempt the buildings or portions of buildings which are exclusively used for charitable purposes.
(O'Connell's Case (1), Clancy's Case (2), case of the Good Sheperd Nuns (3)).
 - (1) 49 I.L.T.R. 103.
 - (2) [1934] I.R. 736.
 - (3) [1891] A.C. 531.
 - (4) [1914] 2 I.R. 447
 - (5) [1892] 2 Q.B. 152.
- 5, Although, where a building is used for education, in order to secure exemption, it must, on the express wording of s. 63 be used "exclusively for the education of the poor," yet, even in the case of educational charities, the receipt of fees or income is not necessarily a bar to exemption if the fees are incidental to such user (Gibson J. in *O'Neill's Case (4)*.) When the fees or income are subject to a trust which requires them to be applied for the charitable purpose their receipt does not make the user any the less "exclusively for charitable purposes." (Suggested by Palles C.B. in the *Waterford Case (5)* adopted by all members of the Court in the *Pembroke Case (6)* and two members of the Court in *University College, Cork Case (7)* and further endorsed by Palles C.B. in *Clancy's Case (S)*.)
- 6, By parity of reasoning, even if the section required hospitals to be used exclusively for the treatment of the poor, the receipt of fees would not be a bar to exemption if such fees were subject to a trust to be applied to the use of the hospital and such hospital predominantly treated poor patients. As there is no such limitation to the treatment of poor patients in the section, the charging of fees in a hospital, where by the nature of the trust such fees must be applied to the use of the hospital, cannot affect the right to exemption.
- 7, Neither schools (*O'Neill's Case (4)*) nor hospitals (*Royal Victoria Hospital Case (9)*) are used for charitable purposes if they are carried on exclusively, or predominantly, for the well-to-do.
- 8, The payment of masters or doctors to carry-on the charitable work does not prevent the building in which the work is carried on from being used exclusively for charitable purposes.

Mr McGrath for the appellants suggested in the first instance that these premises were used for 'public purposes' within the meaning of the proviso to s. 63 of the 1838 Act. Mr O Caoimh relied, in answer to this point, on the Supreme Court decision Kerry County Council v. Commissioner of Valuation (1934) I.R. 527. Mr. McGrath contended that the buildings were used exclusively for charitable purposes and, in reply Mr O Caoimh relied upon the decision of the High Court in Elliot v. Commissioner of Valuation (1935) I.R. 607. The Tribunal is of the opinion that the law is now well established that before a building can be regarded as used for public purposes it must either belong to the government or each member of the public must have an interest in the property; cf. Kerry County Council case.

As to whether the buildings are used exclusively for public purposes, the Tribunal, as has been said, puts to one side the fact that part of the premises are used for domestic purposes and asks whether, aside from that, the buildings can be said to be used exclusively for charitable purposes. The Tribunal is impressed with the importance of the public benefit that is conferred on the local community by the making available of the buildings for various groups which have been described in evidence. As was pointed out by Justice Kingsmill Moore in the Barrington's Hospital case while the meaning of "charitable purposes" has a meaning less extensive than the meaning given to those words in Pemsel's case (1891) A.C. 531 how much less extensive has never been decided.

The Tribunal has come to the conclusion that it is governed by the decision of the High Court in the Elliott case. The facts of that case were as follows:-

The premises, the subject of this appeal, consisted of a hall constructed in the year 1932 at a cost of £1,000 raised by voluntary subscriptions. It adjoined the Methodist Church at Ringsend, being built against one wall of the Church and upon a plot of ground held under the same lease. Both Church and hall were vested in Trustees upon the statutory trust contained in the Schedule to the Methodist Church Act, 1914.

The Hall was valued at £10 as appeared from the List of Valuations made out pursuant to sect. 17 of the Valuation (Ir.) Act, 1852. Notice of objection was lodged but the Commissioner of Valuation refused to alter the said valuation. Accordingly in the lists of revised valuations for the City of Dublin, dated the 18th September 1933, the valuation of the hall was stated to be £10.

Against this valuation the plaintiffs, the Rev. Robert J. Elliott and the Trustees, appealed to the Judge of the Circuit Court.

Evidence was given at the hearing before the Circuit Court Judge by the Rev.

William Loftus Coad, Minister of the Ringsend Church, that the hall was constructed in 1932 and that it was used on Sundays for morning Sunday School attended by about 30 children, and in the afternoon for religious instruction called "Junior Christian Endeavour," attended by about 30 children, and "Intermediate Christian Endeavour," at both of which the education was entirely religious, consisting of Bible Study and the Methodist Catechism. During the week the Girls' Brigade held their meetings there; each meeting began with a Bible class. The Boys' Brigade used it as a drill hall. All such meetings opened and closed with prayer. The members of the congregation who used the hall were all of the working class. Social meetings, jumble sales and concerts, were also occasionally held in it. The proceeds were applied to meet the expenses of the hall and the reduction of debt incurred in its construction. A credit balance of £15 realised in 1933 was given to foreign missions. No private profits was derived from the use of the hall.

In the course of his judgment, Mr Justice Hanna said (p. 614 of the report) that each of the categories in the proviso to s. 63 is self-contained and he went on -

'..... and in my opinion the words "other Buildings" in the fourth category must be read as eiusdem generis with the buildings in that category, such as hospitals etc., specified in that category. There is nothing in the evidence to suggest that this hall falls into this category. Even if I accepted the view that the words "other building" were restricted and meant "any building", I would have to consider the meaning of the words "charitable purposes". I agree with the President that the words must now be given the narrowed and limited meaning, and that they do not bear the meaning in Courts of Equity. This is the result of the decisions referred to.'

The Tribunal has come to the conclusion, therefore, that while certain of the uses to which the hereditaments are put are "charitable" on any view, nonetheless, the buildings cannot be said to be used "exclusively" for charitable purposes.

The Tribunal would draw attention to the the definition of "community hall" contained in the Local Government (Financial Provisions) Act 1978 which means "any hereditament, other than an hereditament exempted from rating under either S. 63 of the Act of 1838 or S. 2 of the Valuation (Ireland) Act 1854, which consists wholly or partly of a hall or similar building, is not mainly used for profit or gain and is occupied by a person who ordinarily uses it, or ordinarily permits it to be used, for purposes which both involve participation by inhabitants of the locality generally and are recreational or otherwise of a social nature".

The effect of this judgment is to decide that the buildings are not exempted from rating under s. 63 of the Act of 1838 or s. 2 of the Act of 1854, but to leave open the appellants' entitlement to apply for relief under the 1978 Act.

In the circumstances the Tribunal affirms the decision of the respondent.