Neutral Citation Number: [2010] IEHC 56

THE HIGH COURT

JUDICIAL REVIEW

2009 723 JR

BETWEEN

MENNOLLY HOMES LIMITED

APPLICANT

AND

THE APPEAL COMMISSIONERS AND

THE REVENUE COMMISSIONERS

RESPONDENTS

JUDGMENT of Mr. Justice Charleton delivered on 9th day of March, 2010

1. This judgment is a supplement to my judgment of 26th February, 2010. In that case I found against the applicants in respect of all of the arguments that were advanced in this judicial review proceeding. The applicant persuasively argues that only a portion of the costs should be awarded to the Revenue Commissioners, who argued the case on behalf of the respondents, the Appeal Commissioners taking no part as is customary. The argument is eloquently advanced on the basis that the judgment of the court clarifies the law on important issues as to the jurisdiction of the appeal commissioners when hearing a V.A.T. appeal, and other forms of taxation appeal. For the Revenue Commissioners it is argued that this is a large commercial judicial review case, not a case brought on in the general interests of the public, and that in consequence costs must follow the event. Whereas other points were also raised by the respondent in relation to the lateness of issues argued before the appeal commissioners, and whether judicial review of the initial tax assessment should properly have been taken six years ago, these arguments were merely supplemental.

2. I feel that I am bound to follow the decision of Clarke J. in *Veolia Water v. Fingal County Council*, [2006] IEHC 240. As is the case in relation to asylum law applications, an attempt should be made by judges hearing the same kinds of issues to adopt similar principles. This is particularly so if points of law have been previously argued and are the subject of a relevant written decision. There can be a reason to depart from such a decision, but in doing so I would have to state why I find a prior decision unpersuasive. Here, there is no doubt that the complex issues involved in this difficult case were aided markedly by the argument advanced on behalf of the applicant and answered in detail by the respondent. It is attractive to suppose that, in those circumstances, the public interest has been advanced through the judgment which I have delivered. What, however, if the situation were reversed? The applicant would be rightly surprised by an argument by the Revenue Commissioners that a full award of costs should not be made against it, had it lost, because the law had been clarified. Of course, the respondents are branches of the administration of the State, but the motivation of neither party had to do with the clarification of points of public law. Rather, the Revenue Commissioners were defending arguments advanced essentially to protect the property of the applicant against a claim of tax liability.

3. In a judicial review proceeding where the argument advanced by each side is put forward, essentially, in their own specific interests, absent a potential residual discretion in relation to cases that cause truly serious development of the fundamental laws of the State, I really can see no basis for departing from the principles underlying the decision of Clarke J. in *Veolia Water*. Therefore the costs are awarded in full to the revenue commissioners, including any reserved costs.