Neutral Citation [2013] IEHC 180

THE HIGH COURT

Judicial Review

Record Number: 2012 No. 694JR

Between:

Celtic Roads Group (Portlaoise) Limited

And

Celtic Roads Group (Waterford) Limited

Applicants

And

The Valuation Tribunal

Respondent

And

The Commissioner of Valuation

Notice Party

Judgment of Mr Justice Michael Peart delivered on the 29th day of April 2013:

1. A single issue arises for determination in this case, namely whether the Valuation Tribunal when hearing an appeal to it against a decision of the Commissioner of Valuation has power to stay or adjourn the appeal when to do so inevitably results in the Tribunal's decision being made more than 6 months after the date on which the appeal is lodged, in view of the provisions of Section 37 (2) of the Valuation Act, 2001 ("the Act of 2001") which provides:

> *"37 (2) – The Tribunal shall make a decision on an appeal made to it under section 34 within 6 months from the date of its having received the appeal."*

The applicants contend that it does not, and seek an order that the decision of the Tribunal made to do so on the 11th June 2012 in respect of two appeals against Certificates of Valuation in respect of their property, particularly perhaps in the face of their objection, are ultra vires, and must be quashed.

2. The reason why the Tribunal decided to adjourn or stay (expressions used interchangeably by the Chairman in his decision) these appeals was broadly speaking because in his view the appeal involved the same point of law as was the subject of a Case Stated to the High Court (Ashley Lodge case) and in respect of which a hearing was anticipated within a reasonably short period of time, and he felt that it was desirable to await the outcome of that Case Stated. A decision in the Ashley Lodge case has been given by Charleton J. by the time the present case came on for hearing and a date for the determination of the present appeals was given the Tribunal. In those circumstances one of the arguments by the Notice Party before me is that these proceedings are now moot and ought not to be decided by this Court. The applicants agree that the point of law which was the subject of Ashley Lodge has been determined, but submit that nevertheless the issue in the present proceedings ought to be decided as it is an issue that has arisen subsequently. In that regard, it appears from an affidavit of Ryan Ferry sworn on the 21st February 2013 herein that when the present appeals were listed for mention before the Tribunal on the 21st January 2013 the Commissioner of Valuation applied for a further stay or adjournment in order to await the outcome of two appeals listed before the Supreme Court in April 2013. It appears that a party to one of those appeals is a company related to the present applicants (Celtic Roads Group (Dundalk) Limited). It is submitted therefore that this issue is likely to continue to arise before the Tribunal, and the public interest would be well served if the jurisdiction of the Tribunal to adjourn an appeal beyond the period permitted by Section 37 (2) of the Act of 2001 was clarified by a decision of this Court.

Mootness:

3. I should deal with mootness first. The Notice Party has pointed to the fact that by the time this case came on for hearing before this Court a new date had been allocated and directions given for the exchange of expert reports and legal submissions, following the determination of the Ashley Lodge case. Hugh Mohan SC has referred to a number of authorities in support of his submission that these proceedings ought not now be decided in these circumstances.

4. He has referred to the judgment of Henchy J. in *Doyle v. Carr* [1971] IR 87. Those proceedings were commenced arising from an alleged frailty in the hearing which led to the granting of an Ad Interim Transfer of an intoxicating liquor licence by the respondent District Justice, since neither the nominee nor any person was examined on oath at the hearing of the application, and this had already been held by the Supreme Court to be a requirement. The impugned Ad Interim Transfer was by nature only temporary, and endured only until the next Annual Licensing District Court in the normal way later that same year when an application was made in the usual way for confirmation of the transfer of the licence to the new owner. By the time the judicial review proceedings came on for hearing therefore, the Ad Interim Transfer was spent and had been replaced by the confirmed transfer order. No issue as to statutory interpretation arose for determination in the proceedings. It was simply an issue as to whether the legal requirements for a proper hearing of such an application had been complied with in that case.

5. It is easy to see why in these circumstances Henchy J. decided that no useful purpose would be served by determining whether the hearing which had resulted in the making of the Ad Interim Transfer Order was in accordance with law. He concluded by saying:

> *"Since I am satisfied that no good would be done to the public by quashing the interim-transfer order -- indeed it would be pointless to do so now -- I allow the cause shown and discharge the conditional order".*

6. Mr Mohan has referred also to the judgment of Hardiman J. in *G. v. Collins* [2004] IESC 38; [2005] 1 I.L.R.M.1. In that case the applicant had been prosecuted for certain alleged breaches of a protection order, but by the time the case was heard the said order had by consent of all parties been discharged following agreement between them. Again, it is easy to appreciate the good sense of not proceeding to determine issues in relation to the validity of that protection order since it too was no longer in force, having been discharged by consent of all parties. It is clear that no wider public interest would be served by determining the controversy which was relevant solely to the parties to the controversy.

7. Finally, Mr Mohan referred to the judgment of Mr Justice Clarke in *P.V. v. Courts Service* [2009] 4 IR. 264. That was a case where the mother of the applicant had sought to move an *ex parte* application in the District Court seeking the surrender to her of the applicant's passport which was in the possession of the child's father. However, the District Court registrar apparently refused to list the application and told her that her application would not be heard as it was not a proper application under the Guardianship of Infants Act, 1964. Subsequently, however, the High Court granted an injunction restraining the father from removing the applicant child from the jurisdiction and ordered that the passport be returned to the child's mother. Nevertheless, the applicant sought to pursue a judicial review of the decision by the District Court registrar to refuse to accept the mother's application to the District Court. Clarke J. concluded that the proceedings were by that stage moot.

8. In so concluding, Clarke J. stated:

> *"The question of the applicant's undoubted entitlement of access to the courts in the sense of his entitlement to make the application then sought to be made to the District Court is now purely hypothetical. The applicant has had access to this Court and has, in practice, obtained the relief which was the purpose for the attempted application to the District Court in the first place. Whether the applicant … had the right to apply to the District Court as well has now become an entirely hypothetical issue by reason of the fact that this court entertained proceedings in respect of the passport concerned and has finally determined them."*

9. Once again, it is easy to appreciate why Clarke J. concluded that there was no longer a live issue as to whether or not the applicant had been unlawfully denied access to the District Court. Again, the facts were specific to that applicant, and clearly no wider public interest would be served by proceeding to determine the issue which no longer had any relevance to the applicant once the passport was returned to the mother as directed by the High Court in other proceedings.

10. In the present case Mr Mohan submits that similarly the issue as to whether the Tribunal Chairman acted *ultra vires* his powers in adjourning or staying the appeals in question to await the outcome of the Case Stated in the Ashley Lodge case is now hypothetical and therefore moot, given that the Ashley Lodge case has now been decided, and an early date for the hearing of the appeals in question has been given. He submits that there is no live controversy between the parties, that no further benefit can be gained by the applicant, and that in so far as the applicant seeks an order of mandamus directing the Tribunal to hear and make a decision on the appeals in question in addition to an order quashing the decision to adjourn the appeals, that such an order would now be futile and ought not be made by this Court in circumstances where a date was allocated already by the time this case was heard before me.

11. In such circumstances, he has submitted that policy requires that the scarce resource of court time should not be expended needlessly, and that this Court should therefore not engage upon the giving of an advisory opinion on what is now a hypothetical matter or at least is no longer an issue the resolution of which can yield any benefit to any of the parties. It is submitted that there are no exceptional circumstances whereby it is desirable in the public interest to decide the issue.

12. Maurice Collins SC for the applicant has pointed to the fact that the effect of having adjourned these appeals to await the determination of the Ashley Lodge Case Stated was to delay the hearing of the appeals to 18 months after the appeals were lodged, making it impossible for the applicant to benefit from the requirement in Section 37 (2) of the Act of 2001 that a decision be made within six months. While Mr Collins did not go on to contemplate what delay would result if an appeal against the decision of Charleton J. was taken to the Supreme Court, some years' further delay could ensue, but clearly that is not an unimaginable scenario under present circumstances. He referred to the evidence of Ryan Ferry already referred to, and which stands uncontradicted, that when these appeals were listed before the Tribunal for mention in January 2013 an application was made to the Tribunal (chaired by a different Chairman) by the Commissioner of Valuation to adjourn these appeals further pending the outcome of two appeals to the Supreme Court in other cases. That application was refused, as it turned out, but when so refusing on the basis that no exceptional circumstances had been established, the Chairman in her ruling apparently confirmed the Tribunal's view that it has jurisdiction to adjourn to a date beyond the 6 month period referred to in Section 37 (2) of the Act of 2001. In these circumstances, Mr Collins submits that the issue is still live and in controversy and therefore one upon which this Court should pronounce in these proceedings as it is likely to continue to arise.

13. Mr Collins has sought support from the judgment of Murray C.J. (as he then was) in *Irwin v. Deasy* [2010] IESC 35. That is a case where the issue concerned the operation of a judgment mortgage against the interest of a co-owner in the property, and where the appellant (the Revenue Commissioners) sought to have the appeal heard and determined even though the proceedings in question had been settled between the parties beforehand. The reason urged against a finding that the proceedings were by then moot was that the issue the subject of the appeal could have relevance in about twenty other cases involving the Revenue Commissioners. In the event, the Supreme Court decided that the appeal should be determined. In his judgment, the learned Chief Justice (as he then was) stated:

> *"In the present application before the Court, despite the fact that the question is no longer a live issue between the parties themselves, it remains a live issue in the context of the continued exercise by the Revenue Commissioners of their statutory powers to seek to recover outstanding taxes, and the appellant therefore has a real, and not merely hypothetical interest in the determination of this appeal.*
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> *The appellant indicates in his submissions that the Revenue Commissioners have under their care and management an estimated minimum of 20 similar cases in which this issue arises, and also states his understanding from Counsel dealing with other cases that a number of actions which raise the same issue have either come before the High Court but have not yet been determined, or have been deferred pending the outcome of the present appeal before this Court.*
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> *It must also be noted that the issues raised in this appeal have also important implications for the property rights of co-owners of registered land in a similar position to the second named defendant in these proceedings, whose cases are*

pending before the courts."

14. It seems to me that the issue in play in the present proceedings, namely the issue of the Tribunal's power to adjourn an appeal beyond the period of six months stipulated in Section 37(2) of the Act of 2001, while no longer relevant in the present case because a hearing date has now been given, is one which is going to continue to arise and which at some stage at the suit of some other applicant is going to have to be decided, since it is apparent from evidence before me that the view of the Tribunal is that it has such a power even where the adjournment or stay is not by consent and where it may be even years before the appeal is eventually determined. It is probable that the issue will arise again, and since the resolution of the issue is a matter of statutory interpretation and not particularly dependent on the particular facts of the present case, it ought to be decided now, as there is a wider benefit to other property owners, the Commissioner of Valuation and indeed the Tribunal itself. It seems to me that the statement of Murray C.J. (as he then was) in *Irwin v. Deasy* [supra] which I have set forth above is apposite, and sufficient to provide authority for a finding that the present proceedings are not moot in this understood sense, even though moot as between these particular parties. The wider interest in the clarification of the issue is one which is sufficient to justify this Court proceeding to determine the question. The cases to which Mr Mohan referred in his submissions and which I have referred to above seem to me to cases where it is clear that the relevance of the issue did not extend beyond the case in question and was fact specific. The issues did not relate to statutory interpretation simpliciter as it does in the present case. They are to be distinguished in that respect, since no wider public interest would have been served by proceeding to determine the issue which gave rise to the proceedings.

The issue:
15. I have already described what issue arises for determination, namely the jurisdiction of the Tribunal to adjourn an appeal beyond the period of six month limit referred to in the section. The question also arises whether that requirement is mandatory or simply directory, and if the latter whether that is sufficient to give the Tribunal the jurisdiction to ignore it in the circumstances of this case or in other similar circumstances where the adjournment will inevitably lead to a lengthy period of time passing before the ultimate determination of the appeal.

16. I will again set forth the provisions of Section 37 (2) of the Act of 2002 for convenience:

> *"37 (2) – The Tribunal shall make a decision on an appeal made to it under section 34 within 6 months from the date of its having received the appeal."*

Worth noting also is the fact that Rule 28 of the Valuation Act 2001 (Appeals) Rules, 2008 ("the Rules") reiterates that obligation specifically by providing:

> *"The Tribunal shall, in compliance with Section 37(2) of the Act make a decision on an appeal within 6 months from the date of having received the appeal".*

17. It would appear from the ruling of the Tribunal Chairman in relation to the adjournment/stay that he placed some reliance upon Rule 23 of the Rules when finding a jurisdiction to adjourn beyond the period specified in both the section and Rule 28, and that he also relied upon the judgment of Dunne J. in Cork County Council v. Valuation Tribunal [2010] 1 IR 57. Mr Collins for the applicants submits that neither Rule 23 nor that judgment provides any lawful basis for such a jurisdiction.

18. Rule 23 of the Rules provides:

> *"The Tribunal may postpone or adjourn the hearing of an appeal from time to time where exceptional situations arise. Applications from parties for adjournment of an appeal will be considered only in exceptional circumstances consistent with the obligations imposed on the Tribunal by the provisions of the Act."*

19. Mr Collins submits that there is nothing within this Rule, whether read in conjunction with the Scheme of the Act or otherwise to confer or even suggest any jurisdiction to adjourn a case, whether in exceptional circumstances or not, beyond the 6 month period specified in Section 37 (2) of the Act of 2001. He submits that what the rule does is enable a party to apply for an adjournment of an appeal in some exceptional circumstance. But he emphasises the words "*consistent with the obligations imposed on the Tribunal by the provisions of the Act*" which, it is submitted, means that the 6 month limit is to be adhered to even where in some exceptional circumstances an adjournment is granted. In other words, that the limit must not be exceeded, even where within that period an adjournment is granted. He submits that is the proper meaning of the rule, particularly when read in the light of the section. It is further submitted that it could not possibly be interpreted so loosely as to give a jurisdiction to the Tribunal chairman to adjourn the appeal indefinitely until some other cases or appeal is decided in the High Court or the Supreme Court, causing the limit to be exceeded by many months and even years.

20. In so far as the Tribunal Chairman placed reliance on the said judgment of Dunne J, Mr Collins submits that such reliance was misplaced, as the judgment did not address the question of what if any jurisdiction the Tribunal has to adjourn beyond the limit of 6 months, but was a case rather where the applicant rating authority sought to argue that because an appeal decision had been given outside the 6 month period it should be quashed as an invalid decision. That submission was rejected by Dunne J. He distinguishes the present case from that decision since in the present case there is no issue arising as to whether a decision made outside six months from the date of receipt of the appeal is valid or not. The present issue is a different issue entirely. In concluding that the decision in question was not invalidated by the having been made outside the period allowed, Dunne J. stated as follows:

> *"It seems to me that that in this regard the provisions of s. 37(2) are directory rather than mandatory. One only has to consider what would happen if a decision was not furnished within six months. Does that mean that all such appeals are automatically invalid or liable to be struck down? That cannot be the purpose of the provision. Rather it seems to me that the legislature was setting a time limit within which such decisions should be furnished and providing some certainty to parties as to when they are entitled to require or compel the Valuation Tribunal to furnish a decision."*

I agree with the submission made by Mr Collins that the above reference to the statutory provision being directory rather than mandatory is stated in the context of the consequence of the limit being exceeded. That is a different context to the issue in the within proceedings, namely whether or not the Tribunal has a jurisdiction to adjourn to a date which is outside the limit, or in what circumstances it can do so.

21. Mr Collins also makes the point that in the present case the adjournment was not dictated or required because of any lack of staff or pressure on the list because of the volume of appeals, or illness of any party or member of the Tribunal. It was solely because the Chairman considered it sensible to await the outcome of a Case Stated on a point that to him seemed similar to the issue in those appeals.

22. It has been submitted that to adjourn in such circumstances flies in the face of the clear wording of the Act and the Rules made thereunder, and that those are intended to ensure that decisions are made speedily and within an outer limit of six months from the date on which the appeal is received. Even Rule 23 specifies that a party to the appeal may only apply for an adjournment in exceptional circumstances. It would seem to me that the intention of the Oireachtas was clearly stated to be that these appeals should be disposed of with a degree of expedition, and that in exceptional circumstances only should appeals be adjourned, and even then only for periods consistent with the Act. Mr Collins points to the sense of this, given that even when a Certification of Valuation is being appealed, the ratepayer is obliged to pay the rates in question pending the determination of the appeal, and therefore it is necessary that the appeal be determined expeditiously in order to minimise any prejudice to the ratepayer in the event that the appeal is successful.

23. Mr Mohan for the Notice Party has submitted that the Tribunal must be entitled to regulate its own procedures, and that where, as is the case here, the applicants, as part of their appeal against the Certificates of Valuation, had raised the very issue that was the subject of the Case Stated in the Ashley Lodge case, namely whether the decision of the Commissioner of Valuation was invalid because it was issued outside a six month time limit for such certificates to issue, it must have jurisdiction to decide at its discretion that these appeals should await the outcome of that Case Stated, even where the applicant was not consenting to the adjournment or stay.

24. He submits that the Act is directory only despite the use of the word "shall", and that Dunne J. has already so found. He submits that in order to give the Act and the general scheme for the issue of certificates of valuation, and the efficient disposal of appeals therefrom, proper efficacy so that it works efficiently and smoothly, one should read section 37 and Rule 23 in the light of the whole Act and give it a generous and purposive interpretation so that the powers of the Tribunal are not unnecessarily restricted by a strict interpretation. He submits that the adjournment of these appeals until after the Case Stated in Ashley Lodge was decided was sensible, and that it was within the power of the Tribunal to do so when the section and the Rule are considered in the context of the whole Act. He submits that it cannot have been the intention of the Oireachtas that there would be a proliferation of Cases Stated to the High Court on the same point, and that the Tribunal was correct to deal with the matter in the way it did.

25. I can readily see the sense and pragmatism of what the Chairman of the Tribunal decided to do. However, that is an insufficient basis for doing so, no matter how commendable from the point of view of efficiency. The Tribunal has no inherent jurisdiction. The Tribunal has only such powers as are conferred upon it by the Oireachtas. The words used by the Oireachtas are the best source for determining the intention of the Oireachtas when enacting legislation. If those words are clear and unambiguous, then one does no more that read the words and give to them the ordinary meaning of the words used. The same is equally applicable to the words of the Rules made thereunder. Of course, in the case of ambiguity or obscurity as to the meaning of the words used, the normal canons of construction can be resorted to, or indeed Section 5 of the Interpretation Act, 2005 which gives guidance as to what to do where a provision is obscure or ambiguous. But in the present case, the meaning of Section 37(2) of the Act of 2001 is not in the least obscure. In fact it is crystal clear. It means simply what it says. I agree that it should be read as being directory in nature rather than mandatory in the sense that a decision made outside that period specified should not be regarded as invalid. But it is another matter altogether to read it as conferring a jurisdiction on the Tribunal to voluntarily ignore the provision where there is no exceptional circumstance which would make that necessary.

26. It seems to me that the words of Rule 23 also support this. An appellant for many reasons may seek to have his/her appeal adjourned. It happens all the time that applications to adjourn are made. In order to prevent the wholesale adjournment of appeals the rule, consistent with the intention and aspiration expressed in Section 37 (2), specifically provides that the Tribunal may adjourn or postpone an appeal in exceptional circumstances. In addition, a party may seek an adjournment only where some exceptional circumstances exist. To impute a further jurisdiction in the Tribunal in the face of such a provision and such a Rule so that an appeal could be adjourned sine die, and potentially for several years, seems to me to be going further than giving sensible efficacy to the statutory code. It would amount to changing the legislation and the Court cannot do that. It is for the Oireachtas to legislate, and for the Courts to interpret that legislation, but not to alter it.

27. Given the provisions of Section 37(2) and the wording of Rule 23, I believe that the Act would need to express in clear terms any situation in which the provision of the Act is not to apply. It is silent in that regard.

28. Given that a day for resumption of the appeals had been given by the time this matter came before me, and given in all likelihood that by now the appeals have been determined, I will not grant any of the reliefs by way of certiorari or mandamus as sought in the Statement of Grounds. But I grant a declaration that the Tribunal acted ultra vires by adjourning these appeals to a date which was outside the period specified in Section 37 (2) of the Act of 2001 in order to await the outcome of the Case Stated in the Ashley Lodge case. That declaration suffices for present purposes. However, I will hear the parties in the event that either or both parties consider that the declaration should be differently worded.