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## SUPREME COURT OF VICTORIA

**CITY of HEIDELBERG v THE BAPTIST UNION of VICTORIA and ANOR****Pape J — 31 May 1974 — [1974] LGRA 328**

**LOCAL GOVERNMENT – RATING EXEMPTION – CHARITABLE PURPOSES – PREMISES DESIGNED TO ACCOMMODATE ELDERLY PERSONS IN NECESSITOUS CIRCUMSTANCES – "IN THE EXCLUSIVE OCCUPATION OF ANY PERSON" – MEANING OF – FINDING BY MAGISTRATE THAT LAND DEEMED TO BE USED FOR CHARITABLE PURPOSES – COMPLAINTS SEEKING TO RECOVER RATES AND INTEREST DISMISSED – WHETHER MAGISTRATE IN ERROR: LOCAL GOVERNMENT (RATING EXEMPTION) ACT 1969, S251(4)(b).**

Complaints seeking to recover rates and interest against the defendants concerning properties owned by them were dismissed. Upon the subject properties were erected a number of buildings divided into self-contained flats or units designed to accommodate elderly persons in necessitous circumstances.

The main issue was whether the respective properties were not rateable because they were used exclusively for charitable purposes and that none of the residents in the flats or units was in exclusive occupation thereof – so as to attract the operation of s251(4)(b) of the *Local Government Act* 1958 as amended by the *Local Government (Rating Exemption) Act* 1969 (No. 7847).

Even though it was conceded that the rated lands were used exclusively for charitable purposes, by s251(4)(b) 'land shall be deemed not to be used for charitable purposes if ... it is land upon which is situated a house or flat used for residential purposes which is in the exclusive occupation of any person ... residing therein'.

[A number of earlier English and Victorian authorities on the meaning of the words 'in the exclusive occupation' were considered at length by Mr Justice Pape in his judgment. Those cases are listed hereunder:-

*Holywell Union & Halkyn Parish v Halkyn Drainage Co* [1895] AC 117;  
*Westminster City Council v Southern Railways Co* [1936] AC 511; [1936] 2 All ER 322;  
*Soldiers', Sailors' and Airmen's Families Association v Merton London Borough Council* [1966] 1 WLR 736; [1966] 2 All ER 31 and on appeal *Families Association v Merton London BC* [1967] 1 WLR 127; [1966] 3 All ER 780;  
*Gibbins v Griffiths* [1967] VicRp 27; [1967] VR 247; (1966) 13 LGRA 258;  
*Electric Telegraph Co v Overseers of Salford* [1855] EngR 552; 156 ER 795; (1855) 11 Exch 181 11 Ex. 181.]

Briefly, in one case involving the Baptist Union of Victoria the flats and cottages were held not to be in the exclusive occupation of the residents. The flats formed part of a complex including workshops, recreation rooms, infirmary, communal dining rooms etc. The Matron had keys to all units, the nursing staff patrolled the area and staff and nurses entered the units at any time. In addition, residents were moved to other accommodation or to the infirmary where necessary.

In the other case involving the Roman Catholic Trust Corporation the residents were held to be in the exclusive occupation of the accommodation. Most of the buildings were intended for single residents, the remainder for married couples. There was no provision for supervision or other facilities. The Manager who did not reside on the premises, had a key to each unit, and residents could be moved from one unit to another.

**HELD:**

**1. In relation to the premises operated by the Baptist Union of Victoria in Macleod the order nisi was discharged.**

**2. In relation to the premises operated by the Roman Catholic Trust corporation, the order nisi was made absolute.**