

BUTTERLY

1984 - 9593 P 128

THE HIGH COURT

BETWEEN:

EAMONN BUTTERLY AND THE SILVER SWAN LIMITED

PLAINTIFFS

-

AND

THE LORD MAYOR, ALDERMEN AND BURGESSES
OF THE CITY OF DUBLIN, AINDREAS O DONNACHADA
AND THE ATTORNEY GENERAL

DEFENDANTS

Judgment of Mr. Justice Lardner delivered the 14th day of
May 1986

In this Action the Plaintiffs claim in respect of the premises No.3B Kilmore Road, Artane, Dublin, a declaration that the rate struck for the financial year 1981 by the first Defendants was invalid and of no effect on the ground (a) that the valuation upon which the alleged rate was calculated was made in disregard of the provisions of Section 11 of the Valuation (Ireland) Act 1852 and a further declaration that this rate was invalid and of no effect in that it was not made in compliance with Section 29 of the Local Government Act 1946 and (b) that Section 1 of the Local Government (Financial Provisions) Act 1983 is repugnant to the Constitution. At the trial Counsel for the Defendants objected that in the absence of the appropriate legitimis contradictor, the Commissioner of Valuation, the claim that the provisions of

Section 11 of the Valuation (Ireland) Act 1852 had not been complied with could not properly be made in these proceedings and Counsel for the Plaintiffs thereafter confined his submission to the other claims and as I understand it did not pursue this part of the claim.

The first Plaintiff is Managing Director and a shareholder of the second Plaintiff. The second Plaintiff is the rated occupier of the premises. The second Defendant is the rate collector of the first Defendant.

The Plaintiffs' claim arises in the following circumstance. On the 29th March 1981 a Municipal Rate of £12.08p in the pound was made by the first Defendants in respect of the area in which these premises are situated. On the 7th October 1981 the second Defendants received a demand for £10,268.00 for rates in respect of the year 1981 for the premises, No. 3B Kilmore Road, Artane, Dublin. This was followed by a six day notice demanding rates, dated the 19th October, 1981 and on the 25th of February 1982 a District Court Summons was issued by the second Defendants claiming these rates and was heard in the District Court and a decree for £10,268.00 rates was given against the second Plaintiff who thereupon brought an appeal to the Circuit Court which came on for hearing on the 2nd of December, 1982. After hearing evidence and submissions including a submission that the rate relied on had not been made within the provision of Section 29 of the Local Government Act 1946 the case was adjourned with the consent of the parties by the Circuit Court

Judge to the 16th of December, 1982 and then to the 3rd of February, 1983 and to the 12th of May, 1983. On the 12th of May, 1983 the learned Circuit Court Judge, having simply intimated that he was deciding in favour of the Defendant, Silver Swan Limited, ~~he~~ was then and before completion of his Judgment informed by Counsel for the second Defendant that in the interval since the hearing on the 2nd of December, 1982 the Local Government (Financial Provisions) Act 1983 had been enacted by the Oireachtas and had become law on the 11th of May, 1983. Thereupon the second Plaintiffs by their Counsel intimated that they wished to challenge the constitutionality of this statute and the case was then adjourned to the 7th of July, 1983.

The Plaintiffs' first contention is that the rate for the local financial year 1981 for which it is sought to charge the Plaintiffs having been made on the 26th of March, 1981 was not made in accordance with law and was ultra vires and of no effect. This contention is based on Section 29 of the Local Government Act 1946 which provides that

"A rating authority shall, either immediately prior to or at the beginning of each local financial year, make one rate for the whole local financial year and shall collect such rate in equal moieties, one such moiety for each half year of such local financial year."

It is said that a rate made on the 26th of March, 1981 was not made either immediately prior to or at the beginning of that

local financial year and is consequently ultra vires and of no effect.

Is this contention well founded? The wording of the section appears to me to lack clarity and precision. Do the words "immediately prior to or at the beginning of each local financial year" refer to a point in time or a period of the year? It does not seem likely that "at the beginning" is intended to mean at the instant when a new financial year begins immediately after midnight of the last day of the previous financial year and that that is the only time when a rating authority may under the section make a rate. Then if the words are read as referring to a period, namely the beginning of the local financial year, for how long is the beginning of the year to be construed as lasting? Does it extend to the 26th of March. I do not find it necessary to determine these questions simply from a consideration of Section 29 because I am satisfied that Section 29 of the Local Government Act 1946 must be interpreted in conjunction with a number of other statutory provisions which are in pari materia.

The making of a rate by a rating authority is the ultimate step in a process in which two separate preliminary matters must logically and as a matter of law first be accomplished. Firstly the rateable valuations of the rateable hereditaments within the area of the rating authority must be determined. This function is entirely a matter for the Commissioner of Valuation and not of the rating authority. The only requirement relevant to the issue raised in the present case which I need

mention here is that the valuation list must be received at the latest by the 1st of December in the year before the local financial year for which the rate is to be made.

Secondly, a rate for a local financial year cannot be made without a county or county borough first adopting estimates of expenditure for that year and for this purpose such a county or county borough is obliged to follow a procedure prescribed by statute. I now refer briefly to these statutory provisions.

Section 9(1) of the City and County Management (Amendment) Act 1955 provides

"In each local financial year, there shall be prepared during the prescribed period and in the prescribed form an estimate (in this Act referred to as an estimate of expenses) showing the amounts estimated as necessary to meet the expenses and provide for the liabilities and requirements of a local authority during the local financial year then next ensuing...."

Section 10 (1) provides

"An estimate of expenses shall be considered by the local authority at a meeting (in this Act referred to as an estimates meeting) of the local authority at which the manager shall be present and which shall be held during the prescribed period and of which not less than seven days' notice shall have been given to every person who is a member of the local authority when such notice is given."

Section 10 (4) provides:

"At an estimates meeting of a local authority or at an adjournment thereof, the local authority-

- (a) may by resolution amend, whether by addition, omission or variation, the estimate of expenses,
- (b) shall by resolution adopt the estimate of expenses either (as the case may require) without amendment or with the amendments made therein under paragraph (a) of this subsection, and
- (c) shall by resolution determine, in accordance with the estimate of expenses as so adopted, the rates in the pound to be levied for the several purposes specified in the estimate or, in the case of an elective body which is not a rating authority, prepare and by resolution adopt, in accordance with the estimate of expenses as so adopted, the demand or other instrument whereby the money to meet the expense of the elective body in the local financial year then next ensuing is to be obtained."

The "prescribed period" referred to in these sections is to be found in the Public Bodies (Amendment) Number 2 Order, Statutory Instrument 271/1979. Section 53(2) of this Statutory Instrument provides:

"The 1st day of February to the 31st day of March in each local financial year shall be the prescribed period for the preparation of the estimate of expenses and the holding of the estimates meeting by a council of a

- 7 -

county borough or by an urban authority."

This Order was made under powers conferred on the Minister by the Local Government Act 1925. Section 86 provided

"The Minister may make regulations respecting the procedure of local authorities in connection with the business imposed on them."

Statutory Instrument No. 271/1979 to which I have referred had been preceded by Statutory Instrument 273/1946, Sections 53 to 56. Section 55(1) of the latter provided

"The prescribed period for the preparation of the estimate of the expenses for a local financial year of a county council shall be the period from the 1st of January to the 8th of February in the previous local financial year."

So it is clear that the date of the estimates as prescribed by Statutory Instrument 273/1946 was revised by Statutory Instrument 271/1979.

Here I should also refer to Sections 13 and 14 of the Local Government (Financial Provisions) Act 1978 which amended Section 9 of the City and County Managers Act 1955. Section 14 provided

"Notwithstanding Section 9(1) of the Act of 1955 a local authority may prepare an estimate of expenses after the beginning of the local financial year to which the estimate relates."

From a consideration of these statutory provisions and Statutory Instruments I am satisfied that the making of a

rate must follow upon observance by a rating authority of the requirements in relation to the preparation and adoption of estimates of expenditure within the prescribed period. In my judgment Section 29 of the Local Government Act 1946 upon which the Plaintiffs' case is founded must be read as having been explained or amended by necessary implication by Section 14(1) of the Local Government (Financial Provisions) Act 1978 and the other statutory provisions to which I have referred. For this reason I do not accept the Plaintiffs' contention that the rate which has been impugned was ultra vires and of no effect because it was made on the 26th of March, 1981.

There is, however, another ground upon which I find the Plaintiffs' contention is not well founded. In effect Mr. Mackey for the Plaintiffs submitted that the time prescribed by Section 29 of the Local Government Act 1946 for a rating authority to make a rate was a mandatory requirement to do so within that time and that outside that prescribed time the first Defendants had no power at all to make a rate. In my judgment there is no doubt that Section 29 imposes a duty on a rating authority to make one rate for the whole financial year and to do this either immediately prior to or at the beginning of each local financial year. The question which seems to me to arise is whether these latter words are mandatory or directory in intent. I think the answer to this question depends on the intention of the Oireachtas to be ascertained by looking at the whole scope of the statute and by considering and estimating the importance of this provision in regard to the time for making

a rate in relation to the general object to be secured by the section. The section imposes a public duty to make a rate for the whole financial year. The performance of that public duty is the general object intended to be secured by the Oireachtas. I find it difficult to conceive that the Oireachtas intended that if the prescribed time was for some reason exceeded, the duty to make a rate for the year should not or could not be performed. I think the provision with regard to time in this section is properly regarded as directory and as not intended to be mandatory in the sense of being a condition of the valid performance of the duty.

The Plaintiffs' claim for relief in this case depended (a) upon the invalidity of the rate made on the 26th of March, 1981 by reason of the non-observance of the time for making a rate prescribed by Section 29 of the Local Government Act 1946 and (b) upon a submission that the provision contained in Section 1 of the Local Government (Financial Provisions) Act 198 was necessary to validate a rate which was otherwise defective. This latter provision was expressed in the following terms:-

"For the avoidance of doubt, it is hereby declared that, notwithstanding anything in section 29 of the Local Government Act, 1946, the power of a local authority to determine and make a rate, or a rate in the pound, shall be validly and effectually exercisable at any time in the local financial year to which the rate, or the rate in the pound, so determined or made relates."

Subsection (2) provides

"As well as applying to a rate, or a rate in the pound, determined and made after the passing of this Act, subsection (1) of this section also applies, and shall be deemed always to have applied, to rates determined and made before such passing and on or after the passing of the Local Government (Financial Provisions) Act 1978.

Counsel for the Plaintiff devoted a great part of his submissions and a considerable time to the proposition that Sections 1 and 2 of the Local Government (Financial Provisions) Act 1983 were repugnant to the Constitution as constituting an unconstitutional interference by the legislature in justiciable issues which were before the Courts and as being an invasion of the Plaintiffs' property rights.

In view of the conclusions I have come to, it does not become necessary to have recourse to or place any reliance upon the provisions of the Local Government (Financial Provisions) Act 1983 in deciding upon the validity of the impugned rates which the first Defendant has sought to recover from the second Plaintiff. Nor, is it necessary in these circumstances for me to consider the constitutionality of these provisions.

Approved
G. Lawrence
→