

DUBLIN Corp. v. MacGINLEY

1985 No. 653SP  
Court 5.

THE HIGH COURT

BETWEEN:-

THE RIGHT HONOURABLE THE LORD MAYOR ALDERMAN  
AND BURGESSES OF DUBLIN

Plaintiff

and

FLANN MacGINLEY AND JOHN R. SHACKLETON

Defendants

Judgment of Mr. Justice Murphy delivered the 22nd day of January  
1986

This is a claim by the Plaintiffs (the Corporation) for an Order pursuant to Section 35 of the Arbitration Act 1954 directing the secondly named Defendant (the Property Arbitrator) to state in the form of a special case for the opinion of the Court certain questions of law set out in the summons herein.

The first named Defendant, Mr. Flann MacGinley, (the Developer) is the registered owner of the lands comprised in Folio 15768F of the Register of Freeholders City of Dublin being the premises known as "Lisin", Finlas Bridge, in the City of Dublin. I shall refer to the said lands as "the site".

On the 14th day of May, 1982 an application was made on behalf of the Developer for outline planning permission for the erection on the site of 36 flats in three storey blocks. The outline permission ultimately granted by An Bord Pleanála on appeal and dated the 21st day of December, 1983 was subject

to two conditions, the second of which was in the following terms:-

"(2) Vehicular access to the site shall be located along the northern boundary of the site onto Ballyboggan road. There shall be no opening along the Eastern boundary. No development shall take place in the area of the site indicated on Dublin Corporation Road Design Divisions Drawing No. RD 3022/14 as being affected by the Ballyboggan road improvement scheme, save as may be necessary to create vehicular access to the site".

The reason given for that condition was:-

"(2) To prevent the creation of a traffic hazard and to facilitate the implementation of the development plans objective to widen Ballyboggan road".

On the 23rd day of May, 1984 a claim for compensation was made on behalf of the Developer to the Corporation under Sections 29 and 55 of the Local Government (Planning and Development) Act, 1963. Section 55 aforesaid so far as material provides as follows:-

"If, on a claim made to the planning authority, it is shown that, as a result of a decision under Part IV of this Act involving a refusal of permission to develop land or a grant of such permission subject to conditions ... the value of an interest of any person existing in the land to which the decision relates at the time of the decision is reduced, such person shall, subject to the provisions of this Part of this Act, be entitled to be paid by the planning authority by way of compensation the amount of such reduction in value ...".

The Property Arbitrator having been nominated by the Land Values Reference Committee to arbitrate between the Developer and the Corporation as to the compensation (if any) payable by the Corporation heard evidence and arguments presented by the parties in the months of May, June and July of this year. In essence the case made by the experts called on behalf of the Developer was that, as a result of the condition imposed in the outline planning permission and quoted above, it would be possible to erect on the site 15 apartments only instead of the 36 apartments which had been envisaged. The evidence of the valuer was to the effect that the site with 36 apartments would have been value for £208,800 and with the 15 apartments will be value for £67,500 only giving a reduction or diminution in value of £141,300. On behalf of the Corporation it was contended that that (or any other diminution in value) was attributable to the road widening plans of the Dublin Corporation under the Ballyboggan road improvement scheme and that accordingly the Property Arbitrator was precluded by Rule 11 of Section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919 inserted by Section 69 of the Local Government (Planning and Development) Act 1963 and the Fourth Schedule thereof.

Rule 11 aforesaid provides as follows:-

"Regard shall not be had to any depreciation or increase in value attributable to:-

- (a) The land, or any land in the vicinity thereof, being reserved for any particular purpose in a development plan, or

- (b) inclusion of the land in a special amenity area Order".

It was in these circumstances that the Corporation invited the Property Arbitrator to state a case for the decision of the High Court raising the question whether Rule 11 aforesaid precluded the Property Arbitrator from allowing compensation in respect of the restriction on development imposed by Condition 2 of the planning permission granted by An Bord Pleanála.

The amendments to the rules regulating compensation made by the 1963 Act have been considered in a number of cases including Deansrath Investments Limited 1974 I.R. 228; Holiday Motor Inns Limited and Dublin County Council (an unreported decision of McWilliam J. delivered on the 20th December, 1977); Dublin County Council and Shortt 1983 I.L.R.M. 377 and Dublin County Council and Healy (an unreported decision of Mr. Justice Barrington delivered on the 3rd day of March, 1984). What these decisions and indeed Rule 11 itself make absolutely clear is that no regard can be had to alterations in value as a result of land being reserved for a particular purpose in a development plan. It is agreed between the parties that the road widening plans of the Dublin Corporation under the Ballyboggan road improvement scheme is indeed a reservation under Rule 11 aforesaid. However, the Developer denies emphatically that the evidence given on his behalf in relation to the value of the site has regard to any such reservation. Effectively what is said on his behalf is that the land is valued solely by reference to the effect of the condition imposed on the outline planning permission which condition prevents the full proper and appropriate development of the land. Effectively the Corporation argue that the condition results from and accordingly that the diminution in value is attributable to the reservation for road widening purposes. Indeed it seems to

me that what the Corporation is saying is that the condition annexed to the planning permission is a non-compensatable condition having regard to its origin and purpose.

The Property Arbitrator rejected the Corporation's argument and refused to state a case for the Court on the basis that no further guidance was required by him in relation to the point of law which arose. Whilst I recognise that ordinarily an arbitrator should state a case and the High Court will direct a case to be stated where a point of law arises in the course of an arbitration which is real and substantial and one which is appropriate in its substance and in its form for the decision by the High Court (see the decision in Hogan & Ors, in St. Kevins Company & Anor. delivered on the 22nd day of January 1986) on the other hand both the arbitrator and the Court in the exercise of their respective discretions would properly refuse to state a case or direct the statement of a case on a point of law which was either without substance or adequately covered by authority. In the present case the Property Arbitrator refused to state a case on the basis that he did not require the further guidance of the Courts and in my view he was correct in taking that view.

Whilst I believe the Court in other circumstances would decline to express any view on a question of law which it refused to have brought before it, the particular basis on which I decline to direct a case to be stated necessarily involves accepting that as a matter of law the developer is clearly entitled to claim compensation on the basis of the reduction in value of the site due to the condition imposed by An Bord Pleanála and that notwithstanding the fact that the condition has its origin in a reservation made in respect of the land by the planning authority. As I say it seems to me to be clear that

reservations themselves are not matters to be taken into account in assessing the value of land under the compensation rules but when such reservations crystallise into or result in the imposition of a specific condition affecting the use of the property of an owner regard must then be had to such a condition. It seems to me that the decision of McWilliam J. in the Holiday Motor Inns case (see above) provides a useful parallel. In that case Mr. Justice McWilliam recognised that a reservation for road widening purposes qua reservation was excluded by Rule 11 from consideration when determining compensation but when the roadway in respect of which a reservation had been made was in fact constructed (or substantially completed) that regard could and should be had to its existence in determining the amount of compensation payable.

In these circumstances I believe the claim for a case stated should be rejected.

*Approved*

*James D. Walsh*

*27/1/86*

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In these circumstances I believe the claim for a case stated should be rejected.

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*Thomas A. Mackay*

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