Michigan Law Review

Volume 35 | Issue 1

1936

EMINENT DOMAIN - SLUM CLEARANCE AND LOW-COST HOUSING PROGRAM AS PUBLIC USE

EMINENT DOMAIN — SLUM CLEARANCE AND LOW-COST HOUSING PROGRAM AS PUBLIC USE — A New York statute set up a public corporation with power to investigate and study housing conditions in the city, and to plan and carry out projects for the clearance of slums and the providing of housing accommodations for persons of low income.[1] The corporation sought to condemn certain property owned by the defendant, who resisted the proceeding on the ground that the taking was not for a public use and therefore violative of the Fourteenth Amendment and a similar provision in the state constitution. *Held*, that the taking was for a public benefit and that therefore the constitutional limitation of "public use" was not violated. *New York City Housing Authority v. Muller*, 270 N. Y. 333, 1 N. E. (2d) 153 (1936).

The term "public use" in the law of eminent domain,[2] like its counterpart "public purpose" in the field of taxation,[3] has acquired legal meaning only

[1] N. Y. Laws (1934), c. 4, Municipal Housing Authorities Law, comprising sections 60-78 of the State Housing Law, being Laws (1926), c. 823.

[2] See 1 NICHOLS, EMINENT DOMAIN, 2d ed., c. 4 (1917).

[3] An example of the exercise of the taxing power by a state to appropriate money for a housing program may be found in Green v. Frazier, 253 U. S. 233, 40 S. Ct. 499 (1920).

by the slow process of judicial exclusion and inclusion. While no court has attempted to give a definition that would cover every situation, the decisions do furnish at least two different modes of approaching the problem in a given case.[4] According to one view "public use" means "use by the public" in the sense that the public in general must be entitled as of right to use or enjoy the property taken.[5] Other courts take the more liberal view that "public use" is to be regarded as synonymous with "public advantage or benefit" so that anything which materially contributes to the general welfare may be included within the meaning of the term.[6] The one test places the emphasis upon the number of persons in the public who may potentially use or enjoy the property taken, while the other merely addresses itself to the question: Will the taking of the property serve a public benefit? In practical operation the "public benefit" doctrine sustains many an exercise of the power of eminent domain that would have failed under the test of "use by the public." The instant case brings out the importance of this distinction quite clearly. Had the court followed the latter doctrine in this case, a contrary result would undoubtedly have been reached inasmuch as the taking of the property would benefit only a limited class designated as "persons of low income."[7] However, in view of the evils that are admittedly traceable to slum areas and the fact that such evils are particularly prevalent in New York City,[8] it is believed that in espousing

[4] See annotation in 54 A. L. R. 7 (1928) for a collection of state cases taking up both points of view.

[5] Although the inadequacy of this test has been repeatedly asserted, it is apparently supported by the weight of authority. See 54 A. L. R. 7 at 15 (1928).

[6] "No court, it is believed, would commit itself to the doctrine that public use and public benefit are always equivalent or synonymous under the law of eminent domain, so that a taking of the property of another under this power could be sustained in all cases where a benefit to the general public is shown. The question is partly one of degree of public benefit, but it is more especially one of necessity for the development of the resources of a community or of a state. . . ." 54 A. L. R. 7 at 12 (1928).

[7] See United States v. Certain Lands in City of Louisville, (C. C. A. 6th, 1935) 78 F. (2d) 684, where the court held that a slum clearance project undertaken by the Federal Government was beyond the scope of the Government's power, recognizing, however, that such a project might be within the state's power of eminent domain. For a discussion of the problems involved in the federal case see 3 U. S. LAW WEEK, index p. 562 (1936). This case was dismissed on motion of the Government's counsel before the Supreme Court of the United States had an opportunity to pass upon it. See 3 U. S. LAW WEEK, index p. 614 (1936).

[8] "The public evils, social and economic, of such conditions, are unquestioned and unquestionable. Slum areas are the breeding places of disease. . . . Juvenile delinquency, crime and immorality are there born, find protection and flourish. Enormous economic loss results directly from the necessary expenditure of public funds to maintain health and hospital services for afflicted slum dwellers and to war against crime and immorality. . . . Time and again, in familiar cases needing no citation, the use by the Legislature of the power of taxation and of the police power in dealing with the evils of the slums, has been upheld by the courts. Now, in continuation of a battle, which if not entirely lost, is far from won, the Legislature has resorted to the last of the trinity of sovereign powers by giving to a city agency the power of eminent domain." Crouch, J., in New York City Housing Authority v. Muller, 270 N. Y. 333 at 339, 1 N. E. (2d) 153 (1936).

the "public benefit" doctrine in this instance to sustain the slum clearance legislation the New York Court of Appeals has achieved a result that will at least be gratifying to the legal realists.

J. H. J.