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Constitutional Law - Public Use Requirement and the Power of Eminent Domain

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CONSTITUTIONAL LAW—PUBLIC USE REQUIREMENT AND THE POWER OF EMINENT DOMAIN—Under the District of Columbia Redevelopment Act,[1] an agency was created to redevelop blighted and slum areas. Pursuant to the mode of operation prescribed in the statute, the agency intended to purchase or take by eminent domain all the property in the vicinity of appellant's property. After getting title to all the property the agency was to lease or sell it to private enterprisers to redevelop the area according to the agency's comprehensive plan, which specified definite boundaries for various uses. Appellant brought this action to enjoin the condemnation of his business property, claiming that the statute was unconstitutional because it authorized condemnation of private property for other than a public use. The district court refused to enjoin the condemnation, construing the act to authorize condemnation only to remove or prevent conditions injurious to the public health, safety, morals, and welfare. *Held,* affirmed. The act authorizes condemnation not only for the purposes named by the district court but even in aid of developing a more balanced and attractive community. The courts' role in deciding if land is condemned for a public purpose is a limited one, being restricted to an inquiry whether it is taken for an object within the regulatory power of the government. *Berman v. Parker,* 348 U.S. 26, 75 S.Ct. 98 (1954).

The clause of the Fifth Amendment to the Constitution dealing with the power of eminent domain was first construed to be a two-fold limitation upon the power: just compensation must be paid, and property can not be taken unless it is taken for public use.[2] Some federal cases have interpreted the public use requirement to mean use by a substantial portion of the public,[3] but the majority of cases have neither adopted this restrictive rule nor laid down any broad

[1] D.C. Code (1951) §§5-701–5-709.

[2] U.S. CONST., amend. V, provides as follows: ". . . nor shall private property be taken for public use, without just compensation." Note that the court in the principal case talks of public purpose rather than public use. See 2 NICHOLS, EMINENT DOMAIN, 3d ed., §7.31 (1950).

[3] Shasta Power Co. v. Walker, (D.C. Cal. 1906) 149 F. 568, affd. (9th Cir. 1908) 160 F. 856; West River Bridge Co. v. Dix, 6 How. (47 U.S.) 507 (1848); United States v. Certain Lands in Louisville, (D.C. Ky. 1935) 9 F. Supp. 137 (condemnation for slum clearance held unconstitutional). A corollary to this interpretation is the rule that only the amount of property which will actually be used by the public may be taken by eminent domain. Pennsylvania Mutual Life Ins. Co. v. Philadelphia, 242 Pa. 47, 88 A. 904 (1913); Richmond v. Carneal, 129 Va. 388, 106 S.E. 403 (1921). See also 46 COL. L. REV. 108 (1946); 20 SO. CAL. L. REV. 99 (1946).

test of public benefit.[4] Instead, most of the cases were decided on an individual basis, the movement always being toward a more liberal interpretation of "public use."[5] Thus, approval was given for condemnation to provide a spur track to benefit a single manufacturer,[6] and to provide irrigation to benefit a single farmer.[7] The Supreme Court has upheld condemnation where there was to be no use at all by the public,[8] and one court has even talked in terms of Congress' constitutional power to legislate in the area, with little or no concern about the public use limitation.[9] In a 1945 opinion, the Supreme Court seemingly abdicated to Congress the power to determine whether a taking by the federal government was for a public *use*.[10] The principal case reasserts the intention of the Court to determine for itself whether a condemnation is for a public *purpose*, but the Court indicates that its role here is an extremely limited one. The Court states that if the object is within the powers delegated to the federal government, Congress has the power to realize it through the power of eminent domain. Improving the living conditions in, and increasing the beauty of, the District of Columbia are no doubt objects within the power of Congress by virtue of its authority to legislate for the district. Thus it is clear that the requirement of public use no longer exists[11] and the only limits upon the federal government's power of eminent domain are the requirements that just compensation be paid[12] and that the object falls within one of the enumerated powers.

The Fourteenth Amendment to the Constitution imposes the same limitations upon the states' power of eminent domain as the Fifth Amendment imposes upon the federal government.[13] Restrictions on the power of eminent domain in state constitutions may be interpreted less liberally than the federal restric-

[4] Clark v. Nash, 198 U.S. 361, 25 S.Ct. 676 (1905); Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co., 240 U.S. 30, 36 S.Ct. 234 (1906); Strickley v. Highland Boy Gold Mining Co., 200 U.S. 527, 26 S.Ct. 301 (1906).

[5] See 2 NICHOLS, EMINENT DOMAIN, 3d ed., §7.2 (1950).

[6] Hairston v. Danville & W. Ry. Co., 208 U.S. 598, 28 S.Ct. 331 (1908).

[7] Clark v. Nash, note 4 supra.

[8] United States v. Gettysburg Electric Ry. Co., 160 U.S. 668, 16 S.Ct. 427 (1896); Brown v. United States, 263 U.S. 78, 44 S.Ct. 92 (1923); Old Dominion Land Co. v. United States, 269 U.S. 55, 46 S.Ct. 39 (1925).

[9] Barnidge v. United States, (8th Cir. 1939) 101 F. (2d) 295 at 298.

[10] "We think it is the function of Congress to decide what type of taking is for a public use. . . ." United States ex rel. T.V.A. v. Welch, 327 U.S. 546 at 551, 66 S.Ct. 715 (1946). Two justices disagreed with the statement that only Congress could decide what was a public use, but they agreed with the decision. One justice interpreted the majority opinion not to deny the power of the court to decide what was a public use.

[11] See 58 YALE L.J. 599 (1949).

[12] In view of this result it is interesting to note the dissenting opinion of Justice Holmes in Madisonville Traction Co. v. Saint Bernard Mining Co., 196 U.S. 239 at 260, 25 S.Ct. 251 (1905): ". . . I am not aware of any limitations in the Constitution of the United States upon a State's power to condemn land within its borders, except the requirements as to compensation."

[13] Missouri Pacific Ry. Co. v. Nebraska, 164 U.S. 403, 17 S.Ct. 130 (1896); Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226, 17 S.Ct. 581 (1897).

tions.[14] The decision in the principal case should be of aid to those state courts which have not yet reviewed the constitutionality, under the state constitution, of state redevelopment statutes making liberal use of the power of eminent domain.

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[14] See Mandelker, "Public Purpose in Urban Redevelopment," 28 TULANE L. REV. 96 (1953), for a discussion of this problem. Mandelker reports that state statutes similar to the statute in the principal case have been upheld in some twelve states and have been held unconstitutional in two states.