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Constitutional Law—Emergency Rent Control Law Amendment of 1962 Upheld as No Denial Of Due Process Or Equal Protection

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dangers are realized before he can curtail petitioner's rights, the security of the correctional institution will be jeopardized. The right to freedom of religion, which is a qualified right at best, is expressly limited by section 610 just to avoid such a possibility. The dissent stated that "the warden is not required to supply clergymen of every conceivable denomination or sect under all circumstances." Obviously, if the selection is found to be contrary to the intent of section 610, the warden need not allow that clergyman to communicate with the inmates. However, this statement by the dissent implies that a prisoner may be denied ministration solely because he is the member of a small denomination. This principle cannot be gleaned from section 610. The Court, by attempting to determine whether the Commissioner had complied with the requirements of section 610, has implicitly held that the Black Muslims are a religious group. However, the interesting question of whether the Commissioner has denied the prisoner his religious freedom will be answered at Special Term.[15]

Bd.

EMERGENCY RENT CONTROL LAW AMENDMENT OF 1962 UPHELD AS NO DENIAL OF DUE PROCESS OR EQUAL PROTECTION

After the institution of "most recent years" equalization rates in 1961, the State Legislature made a complete reversal and reinstated the use of the 1954 equalization rate for computation of six per cent returns on rent-controlled residential property. Appellants, two landlords and a tenant, brought a direct appeal questioning the constitutionality of the statute,[1] specifically section four of the Emergency Housing Rent Control Law as amended in 1962.[2] The Court *held*: affirmed, two justices dissenting, that the statute was not an unconstitutional denial of due process, as producing a confiscatory result or as an unreasonable exercise of the police power, nor did it deny landlords or tenants equal protection of the law. *Bucho Holding Co. v. Temporary State Housing Rent Comm'n*, 11 N.Y.2d 469, 184 N.E.2d 569, 230 N.Y.S.2d 977 (1962).

When the Legislature has found an emergency to exist as a condition precedent, it has the right to institute rent controls in the exercise of its police power. Once enacted, no "vested interest" exists in the statute entitling a person to have the rates remain unaltered.[3] Rent control statutes enacted to meet emergencies and not contemplating the taking of property are not an arbitrary

15. Discussion of the Black Muslim problem as it is being treated in the federal court system can be found in: Pierce v. La Valle, 293 F.2d 233 (2d Cir. 1961); Sevell v. Pegelow, 291 F.2d 196 (4th Cir. 1961); 60 Mich. L. Rev. 643 (1962); and 75 Harv. L. Rev. 837 (1962).

1. N.Y. Civ. Prac. Act § 588(4); N.Y. C.P.L.R. § 5601(b)(2), eff. Sept. 1963.
2. N.Y. Unconsol. Laws § 8584(4)(a) (McKinney 1962); This provision is not applicable to New York City since that city has enacted its own rent control law pursuant to authority granted by the Legislature.
3. In the Matter of the Estate of West, 289 N.Y. 423, 46 N.E.2d 501 (1943).

use of police power, though they may occasionally result in the operation of realty at a loss.[4]

The first emergency rent control laws were passed in New York in the 1920's. They were re-enacted in 1946, and then in 1950, at which time the state embarked on a full-scale rent control program. The laws were enacted as a consequence of a legislative finding that an emergency existed, this emergency stemming from the recent war and a shortage of dwelling houses.[5] These rent control measures were adopted in order to prevent abnormal increases in rent, acute shortages in dwelling houses, and serious ill effects upon public health, safety, and general welfare.[6] When revising the statute in issue, which provided for use of the "most recent year" equalization rate, it was thought the new rate would be fair and equitable to all concerned. Upon realization of the unfairness of this measure, however, the Legislature reversed itself and reinstituted the 1954 rate.[7]

The Court in the instant case upheld the statute as a reasonable exercise of legislative power. In the opinion, Judge Fuld reiterated the rule that the state does not have to use a particular "fair return formula,"[8] therefore appellants are not denied equal protection of the laws on this ground. The appellants were equally unsuccessful with their due process contention since they could not effectively show that this rate was confiscatory, that is, that the instituted rate was so low as to preclude a reasonable rate of return.[9] This legislation was not an unreasonable exercise of the police power because it bore a "reasonable relationship" to a *legitimate legislative purpose*, that purpose being to prevent the exaction of unreasonable, unjust, and oppressive rents which result in uncertainty, hardship and dislocation.[10] When the purpose of legislation of this nature is to prevent an evil, it is a valid legislative purpose.[11] The Court found that the return to the 1954 rates was not to promote a political advantage, as the dissent urged, but rather to prevent oppressive rents. A standard was reinstituted which had not been discredited, but discarded, since at that time the Legislature believed that it had found a more reasonable and fair method of determining profit rates of return. Upon a finding that this was not the case,

4. Teeval Co. v. Stern, 301 N.Y. 346, 93 N.E.2d 884, cert. den., 340 U.S. 876 (1950).
5. N.Y. Leg. Doc. No. 15 (1962); N.Y. Leg. Doc. No. 23 (1961).
6. N.Y. Unconsol. Laws § 8581.
7. Leg. Docs., supra at note 5. The Commission that proposed the "most recent year" rate intended that it would be fair to all parties.
8. I.L.F.Y. Co. v. Temporary State Housing Rent Comm'n, 11 N.Y.2d 259, 183 N.E.2d 220, 228 N.Y.S.2d 814 (1962); I.L.F.Y. v. Temporary State Housing Rent Comm'n, 10 N.Y.2d 263, 176 N.E.2d 822, 219 N.Y.S.2d 249 (1961).
9. In Teeval Co. v. McGoldrick, 304 N.Y. 859, 109 N.E.2d 720 (1952), a four percent return on residential property was found not to offend against constitutional guarantees or requirements.
10. Bucho Holding Company v. Temporary State Housing Rent Comm'n, 11 N.Y.2d 469, 184 N.E.2d 569, 230 N.Y.S.2d 977 (1962).
11. Bowles v. Willingham, 321 U.S. 503 (1944) (where during an emergency Congress passed the Emergency Price Control Act of 1942); Block v. Hirch, 256 U.S. 135 (1921) (where legislation was enacted fixing "reasonable and fair" rents for the District of Columbia).

a return to the old standard was proper, if not because it was a good standard, then because of an absence of a better one. This legislation was presumed to be constitutional, that is, presumed to be supported by facts known to the Legislature, and "while this presumption is rebuttable, unconstitutionality would have to be demonstrated beyond a reasonable doubt.[12] This could not be done. Appellants argued that there was inequality as between landlords and tenants in the statute. Their argument was that in different assessing units the ratio between using the 1954 rate and using the "most recent" equalization rate would not be uniform, and that in some parts of the state landlords would be receiving large profits while in others they would not be receiving a fair rate of return. This argument was answered by the Court in two ways: first, "the fact that the 1954 equalization acts do not reflect the full underassessments in certain areas is unfortunate, but it had to be viewed by the Legislature in the light of the effect on tenants generally if the revised acts were used,"[13] and second, the precedent of the recent *Abromo* case which foreshadowed this decision.

In *Four Maples Drive Realty Corp. v. Abromo*,[14] the Court held that the mere fact that the particular legislation under consideration did not affect all areas uniformly does not render it unconstitutional upon equal protection grounds "since the fact that the legislation does not affect all areas uniformly may furnish the necessary means of giving equal protection to all persons." Under these considerations, this court, cognizant of its own obligation toward legislative enactments, upheld the constitutionality of this statute. Appellants' arguments, although well conceived, fell short of rebutting the presumption of constitutionality. The 1954 rate is not the best, but it is as the Court states, simple, objective, and readily ascertainable, making it therefore practical and feasible.[15] If a different and perhaps more complicated rate was desired, the Legislature could have turned to the method used in condemnation or tax certiorari proceedings, but this was intentionally avoided. It remains for the Legislature to turn again to this problem, and establish a rate which cannot be said to be archaic,[16] and yet will be reasonable and fair.

B. B. F.

MOTORIST DENIED RIGHT TO COUNSEL PRIOR TO SOBRIETY TEST

A motorist, placed under arrest for driving while intoxicated, was asked by police to submit to a sobriety test. By provision of the Vehicle and Traffic Law, refusal to take the test is cause for the administrative revocation of an

12. Wiggins v. Town of Somers, 4 N.Y.2d 215, at 218, 149 N.E.2d 869, at 871, 173 N.Y.S.2d 579, at 582 (1958).
13. Bucho, supra note 10, at 477, 184 N.E.2d at 573, 230 N.Y.S.2d at 983.
14. 2 A.D.2d 753, 153 N.Y.S.2d 747 (2d Dep't 1955); motion for leave to appeal denied, 2 N.Y.2d 707, 138 N.E.2d 345, 163 N.Y.S.2d xc; appeal dismissed, 2 N.Y.2d 837, 140 N.E.2d 870, 159 N.Y.S.2d 976 (1957), appeal dismissed, 355 U.S. 14 (1956).
15. Bucho, supra note 10, at 477, 184 N.E.2d at 573, 230 N.Y.S.2d at 983.
16. Bucho, supra note 10, at 479, 184 N.E.2d at 574, 230 N.Y.S.2d at 984.