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Eminent Domain - Health - Statutes

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CASE COMMENTS

EMINENT DOMAIN – HEALTH – STATUTES

Petitioners owned property in an area which had been designated as slum and blighted by the Denver Urban Renewal Authority. The Authority proposed to acquire much of the area by either condemnation or purchase and then resell the acquired properties to private interests to redevelop for commercial, residential or industrial use, in accordance with the Urban Renewal Law.[1] In an original proceeding, the Colorado Supreme Court held that the Urban Renewal Law was constitutional and did not authorize the acquisition of private property for private use. *Rabinoff v. District Court,* 360 P. 2d 114 (Colo. 1961).

The holding in the principal case is in accord with the overwhelming weight of authority. Urban redevelopment laws[2] have been enacted in over half the states, and have been upheld in one form or another, in all but two states.[3]

Urban redevelopment has been most frequently attacked on the ground that it permits the taking of private property for private use and is, therefore, unconstitutional. The courts have had little difficulty in disposing of this argument. It has been repeatedly held that the primary purpose of urban redevelopment is the elimination of slum and blight.[4] The property is, therefore, being acquired for public use, and the subsequent transfer of the property to private interests is ancillary and does not defeat the public use involved.[5]

It has been urged that slum clearance can be achieved through measures less drastic than eminent domain, such as zoning, building and health laws. The courts have rejected this argument, saying that the determination of whether a public use is involved is a judicial question, but the selection of the means by which slum clearance is to be accomplished is strictly within the province of the legislature.[6]

Once it has been determined that the taking of the property is for public use, the argument that urban redevelopment allows public funds to be used for private purposes obviously falls.[7]

Another popular and equally unavailing attack on urban redevelopment has been that it constitutes an unlawful delegation of authority from the legislature to the redevelopment agency. This argument has rarely been upheld.[8] If the statute lays down basic standards for the determination of slum and blighted areas and a reasonably definite policy for the administration of the law, it generally will not be declared to be an unlawful delegation of

1 Colo. Sess. Laws 1958, ch. 58 at 289.

2 Urban redevelopment has been described as "a plan for the redevelopment, for all types of uses, of areas suffering from blight or decay, through a program of co-operation between government and private enterprise. The former contributes its power of eminent domain to assemble the needed parcels of land. . . . The actual redevelopment is performed by private enterprise." Brown, *Urban Redevelopment,* 29 B.U.L. Rev. 321 (1949).

3 Rabinoff v. District Court, 360 P.2d 114, 120 (Colo. 1961).

4 Schneider v. District of Columbia, 117 F. Supp. 705 (D.D.C. 1953), *aff'd,* Berman v. Parker, 348 U.S. 26 (1954); Gohld Realty Co. v. City of Hartford, 141 Conn. 135, 104 A.2d 365 (1954); Foeller v. Housing of Portland, 198 Ore. 205, 256 P.2d 752 (1953).

5 *Ibid.*

6 Hunter v. Norfolk Redevelopment and Housing Agency, 195 Va. 326, 98 S.E.2d 893 (1953).

7 See 44 A.L.R.2d 1431 (1955).

8 *Id.* at 1427.

authority.[9] The courts, in construing these statutes, have taken into consideration the fact that it is impossible to set up standards for slum and blighted areas with mathematical preciseness.[10] Also, the courts have been less strict in requiring specific standards in these laws since they are closely related to public welfare.[11] The result is that the typical urban redevelopment law is rather broad and general, and the finding of the agency as to what areas may be selected for redevelopment is conclusive, unless clearly fraudulent or capricious.

There is little agreement among the courts as to the nature and conditions of the areas which may properly be the subject of redevolpment. Some courts have held that only slum or blighted areas, insofar as they affect the public health and welfare, may be taken.[12] Other decisions have allowed the acquisition of lands that threaten to become slums or blighted.[13] Areas characterized by obsolete platting, faulty lot layout, deterioration of site and diversity of ownership may legally be the subject of redevelopment.[14] An area consisting of eighty-five percent vacant land was allowed to be taken on the basis of "compelling economic need."[15] In short, the courts have run the gamut on this particular aspect of urban redevelopment.

However, the courts are agreed upon the fact that urban redevelopment is to be conducted on an area basis. Thus, it generally makes little difference that an area slated for redevelopment includes several structures which are not substandard.[16] It is the area as a whole that governs the decision.

In only four states has the attack on urban redevelopment met with any appreciable degree of success. South Carolina has flatly declared urban redevelopment unconstitutional in that it permits the taking of private property for private use.[17] Georgia has held it invalid for the same reason.[18] Subsequently, however, the Georgia constitution was amended so as to allow such legislation.[19] Washington declared unconstitutional an act authorizing a port authority to create industrial development districts by condemnation of marginal lands which were being utilized for residential and agricultural purposes.[20] Involved here was not the typical urban redevelopment law designed to eliminate slum and blight. Rather, the law was enacted to create attractive industrial sites. Florida has indicated that urban redevelopment statutes and their proposed applications are to be carefully analyzed. Where the area is only *blighted* and is to be redeveloped for industrial use, and there is little evidence that it is a menace to public health and welfare, there is not sufficient public use involved to justify eminent domain proceedings. The defects can be adequately cured through

9 Velishka v. City of Nashua, 99 N.H. 161, 106 A.2d 571, 44 A.L.R.2d 1406 (1954).
10 Opinion to Governor, 76 R.I. 249, 69 A.2d 531 (1949).
11 Alanel Corp. v. Indiana Redevelopment Comm'n, 154 N.E.2d 515 (Ind. 1958).
12 Crommett v. City of Portland, 150 Me. 217, 107 A.2d 841 (1954).
13 People ex rel. Gutknecht v. City of Chicago, 3 Ill.2d 593, 121 N.E.2d 791 (1954).
14 Oliver v. City of Clairton, 374 Pa. 333, 98 A.2d 47 (1953). *Contra*, Randolph v. Wilmington Housing Authority, 139 A.2d 476 (Del. 1958).
15 Redevelopment Agency v. Hayes, 122 Cal.App.2d 777, 266 P.2d 105 (1954). *But See* Beebe Improvement Co. v. City of New York, 129 N.Y.S.2d 263 (1954).
16 Kaskel v. Impelliteri, 306 N.Y. 73, 115 N.E.2d 659 (1953).
17 Edens v. City of Columbia, 228 S.C. 563, 91 S.E.2d 280 (1956).
18 Housing Authority v. Johnson, 209 Ga. 560, 74 S.E.2d 891 (1953).
19 Bailey v. Housing Authority, 214 Ga. 790, 107 S.E.2d 812 (1959).
20 Hogue v. Port of Seattle, 54 Wash.2d 799, 341 P.2d 171 (1959).

the use of existing health, building and zoning laws.[21] But where the area is clearly a slum and is to be converted into a residential area, the use of eminent domain is justified.[22]

There is little doubt that desirable results have been achieved by the judicial decisions declaring urban redevelopment to be valid. The need for it is great, and it can be a very useful tool if used wisely. The application of these laws is fraught with obvious difficulties. Especially difficult is the determination of what areas may properly be redeveloped. It is impossible to set up rigid points of demarcation in regard to this particular problem, and the existing decisions indicate that, in most instances, any doubts are to be resolved in favor of the redevelopment agency, not the property owner. There is a constant danger that needless harm and suffering will be wrought by an abuse of authority or a lenient court.

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21 Adams v. Housing Authority, 60 So.2d 663 (Fla. 1952).
22 Grubstein v. Urban Renewal Agency, 115 So.2d 745 (Fla. 1959).