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CONSTITUTIONAL LAW/ARBITRATION/STATUTE OF LIMITATIONS-DOMESTIC RELATIONS

LEGISLATION

CONSTITUTIONAL LAW—POWER OF LEGISLATURE TO AUTHORIZE CONDEMNATION OF NON-RESIDENTIAL "BLIGHTED" AREAS FOR SUBSEQUENT SALE TO PRIVATE DEVELOPERS.—The United States Supreme Court has upheld the power of Congress to authorize the condemnation of property in a "blighted" area in the District of Columbia, in furtherance of an urban redevelopment program, even though not all the condemned property is substandard, and even though the property seized is subsequently transferred to private interests for redevelopment.[1]

Plaintiffs brought suit to enjoin condemnation of their property, a department store, under the District of Columbia Redevelopment Act of 1945.[2] The theory of the suit was that the act was unconstitutional in that it authorized the sale or lease of private property taken by eminent domain to other private persons for private use, and authorized condemnation of property in "blighted" areas without sufficient definition of that term to meet constitutional standards. Plaintiff also argued that the statute was unconstitutional in its application to their property, which was commercial, and not slum housing. From a partially adverse judgment of the District Court,[3] plaintiffs appealed directly to the Supreme Court on constitutional grounds.[4]

Modifying the judgment of the District Court, which upheld the validity of the act only as applied to the reasonable necessities of slum clearance and prevention, the Supreme Court held that Congress had the power to authorize the seizure of private property in the District of Columbia not only for purposes of slum clearance and prevention, but also for the comprehensive redevelopment of an entire "blighted" area, with provision not only for new homes, but also for adequate schools, churches, parks, streets and shopping centers. In a forcefully worded opinion, Justice Douglas declared that, subject to specific constitutional limitations, it is up to Congress, which has all of the powers over the District of Columbia which a state exercises over its own affairs,[5] to determine which public needs are to be served by social legislation,[6] and that the object of the act was within the authority of Congress under the police power.

Refusing to disturb the congressional finding that "the acquisition of and the assembly of real property and the leasing and sale thereof for redevelopment pursuant to a project area redevelopment plan [is] a public use"[7] the court declared that redevelopment of an entire "blighted" area "is plainly relevant to the maintenance of the desired housing standards and therefore within congressional power." Thus, "property may . . . be taken

[1] Berman v. Parker, 348 U. S. 26, 75 S. Ct. 98, 99 L. Ed. 63 (1954).

[2] 60 STAT. 790 (1945), D. C. CODE 1951 §§ 5-701—5-719.

[3] Schneider v. District of Columbia, 117 F. Supp. 705 (D. D. C. 1953).

[4] 28 U. S. C. § 1253 (1952).

[5] District of Columbia v. Thompson Co., 346 U. S. 100, 73 S. Ct. 1007, 97 L. Ed. 1480 (1953).

[6] Block v. Hirsh, 256 U. S. 135, 41 S. Ct. 458, 65 L. Ed. 865 (1920).

[7] See note 2, *supra*.

for this development which, standing by itself, is innocuous and unoffending."[8] Nor does the fact that the property could be sold or leased to private interests, subsequent to seizure, for redevelopment in accordance with approved plans, affect the constitutionality of the act, for "the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established."[9] Holding that the standards contained in the act are sufficiently definite to authorize the administrative agencies to execute approved plans to eliminate not only slums, but also the blighted areas which tend to produce slums, the court concluded that the "rights of property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of the taking."[10]

The power of eminent domain applies only to the taking of property for a "public use," which the courts originally defined very narrowly.[11] It is only thirty-three years since a Massachusetts statute providing for the use of public funds to provide homes for wage earners away from congested areas was held to be unconstitutional on the grounds that the use proposed was not a public use.[12] But with the continued growth and overcrowding of our cities, the increasing complexity of urban living and changing attitudes toward the role of government, the concept of "public use" has been greatly expanded to the point where today the taking of property itself, as distinguished from the subsequent use of that property, may be required in the public interest.[13]

Even before the great depression of the nineteen-thirties, the creation of a municipal housing commission, with authority to use eminent domain in providing homes for those who might otherwise live in unhealthy slums, was held to be for a public purpose, and therefore valid.[14] Projects for the clearance and reconstruction of slum areas and for low-cost housing involving the use of eminent domain were held to be public uses in New York in 1936.[15] Following passage of the United States Housing Act of 1937,[16] under which the federal government furnished financial assistance to state and local housing authorities, many states passed slum clearance enabling acts authorizing the use of eminent domain, practically all of which were upheld by the courts.[17] These statutes provided for construction of low cost housing upon the property taken, which was to be managed by public agencies. A new question was introduced when legislation was later enacted in a large number of states authorizing the sale or lease of property in slum

[8] See note 1, *supra*, at 35.

[9] *Id.* at 33.

[10] *Id.* at 36.

[11] See Redevelopment Agency of City and County of San Francisco v. Hayes, 122 Cal. App. 2d 777, 266 P. 2d 105 (1954).

[12] Opinion of Justices, 211 Mass. 624, 98 N. E. 611 (1912).

[13] See note 11, *supra*.

[14] Willmon v. Powell, 91 Cal. App. 1, 266 P. 1029 (1928).

[15] New York City Housing Authority v. Muller, 270 N. Y. 333, 1 N. E. 2d 153 (1936).

[16] 50 STAT. 888 (1937), 42 U. S. C. § 1401 (1952).

[17] Krause v. Peoria Housing Authority, 370 Ill. 356, 19 N. E. 2d 193 (1939); Edwards v. Housing Authority, 215 Ind. 33, 19 N. E. 2d 741 (1939).

areas obtained through eminent domain to private interests for redevelopment. Such legislation, however, also has been almost always upheld.[18] Thus, in a case involving the Stuyvesant Town project in New York City, it was held that condemnation of private property was for a public use, even though the property was to be transferred to a private corporation which expected to reap a profit, and even though the housing to be constructed was not low cost.[19] But in two cases, statutes authorizing the sale of condemned property to private interests for industrial use have been struck down as unconstitutional.[20]

In the light of these prior cases which dealt with the use of eminent domain in urban redevelopment projects, the Supreme Court's decision in the *Berman* case[21] is significant for its consideration of this problem: what type of area may be subject to condemnation for purposes of rehabilitation? Formerly, most of the statutes on the subject spoke only of slum areas, although in recent years a few statutes have referred to "blighted areas" or "slum and blighted areas," and the District of Columbia Act in issue in the instant case, mentions "substandard housing and blighted areas."

Until this decision, most courts have held that these statutes are valid only as applied to projects involving slum clearance and prevention, as did the United States District Court in the instant case.[22] The New York Court of Appeals has held that the New York statute under which the Columbus Circle area in New York City is being redeveloped can only be applied if the project is primarily for slum clearance purposes.[23] In a recent decision in Maine, it was held that the taking of property for the purpose of correcting faulty lot layout and deterioration of sites, and for a mixture of incompatible land uses, which produced a condition impairing the sound growth of a municipality and constituted an economic and social liability, was not a public use.[24]

However, some courts have recognized that property may be taken for other than purely slum clearance purposes, provided that a compelling community economic need is being met.[25] In Pennsylvania a project providing for the seizure of a blighted commercial and industrial area, which was to be developed for non-residential purposes, was approved,[26] as was a

[18] Zinn v. City of Chicago, 389 Ill. 114, 59 N. E. 2d 118 (1945); Belousky v. Redevelopment Authority, 357 Pa. 329, 54 A. 2d 277 (1947); In re Slum Clearance in City of Detroit, 331 Mich. 714, 50 N. W. 2d 340 (1951); Hunter v. Norfolk Development and Housing Authority, 195 Va. 326, 78 S. E. 2d 893 (1953); Williamson v. Housing Authority, 186 Ga. 673, 199 S. E. 43 (1938); Housing Authority v. Dockweiler, 14 Cal. 2d 437, 94 P. 2d 794 (1939); Lennox v. Housing Authority, 137 Neb. 582, 290 N. W. 451 (1940).

[19] Murray v. La Guardia, 291 N. Y. 320, 52 N. E. 2d 884 (1943), *cert. denied*, 321 U. S. 771, 64 S. Ct. 530, 88 L. Ed. 1066 (1944).

[20] Adams v. Housing Authority of Daytona Beach, 60 So. 2d 663 (Fla. 1952).

[21] See note 1, *supra;* Housing Authority of Atlanta v. Johnson, 290 Ga. 56, 74 S. E. 2d 891 (1950).

[22] See note 3, *supra.*

[23] Kaskel v. Impellitteri, 306 N. Y. 73, 115 N. E. 2d 659 (1953).

[24] Crommet v. City of Portland, 115 Me. 217, 107 A. 2d (1954).

[25] See note 11, *supra.*

[26] Schenck v. City of Pittsburgh, 364 Pa. 31, 70 A. 2d 612 (1950).

project in Illinois involving the condemnation and development of vacant blighted land for residential purposes.[27]

In the *Berman* case the Supreme Court appears to have adopted a broad view of what constitutes a public use and public purpose. "The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. If those who govern the District of Columbia decide that the Nation's capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."[28]

ARBITRATION—WAIVER OF RIGHT TO COUNSEL AT ARBITRATION PROCEEDINGS NOT EFFECTIVE UNLESS IN WRITING WHICH REFERS TO SPECIFIC EXISTING CONTROVERSY, AND SIGNED BY WAIVING PARTY.—Section 1454, subdivision 1 of the New York Civil Practice Act has been amended to read as follows, effective September 1, 1953.—"No waiver of the right to be represented by an attorney in any proceeding before an arbitrator shall be effective unless evidenced by a writing expressly so providing in connection with an existing controversy signed by the party sought to be charged therewith."[1]

The issue of whether or not parties to an arbitration proceeding have a right to counsel during the proceedings has troubled the courts for many years. It has been held that, in the absence of a stipulation in the agreement of submission, the parties have no absolute right to the assistance of counsel in hearings before arbitrators.[2] In England, a judge has stated, "in point of law, I think an arbitrator has a right to refuse to hear counsel, in his discretion. At the same time, there are undoubtedly many cases where an arbitrator, who is anxious to do his duties impartially, would be wrong in refusing a party the privilege of appearing by counsel."[3] In North Carolina, the parties to an arbitration do not have a right to the assistance of counsel in hearings before arbitrators if they make no request for counsel.[4] Illinois has held that either party has a right to be represented before arbitrators by counsel.[5] In 1909, a New York Appellate Division case held that "while arbitrations are frequently and very properly conducted without the presence of counsel, it constitutes misconduct for the arbitrators to permit one party to be represented and assisted by counsel,

[27] People ex rel. Gutknecht v. City of Chicago, 414 Ill. 600, 111 N. E. 2d 626 (1953).

[28] See note 1, *supra*, at 33, 75 S. Ct. 98, 105, 99 L. Ed. 63, 70 (1954).

[1] N. Y. L. 1953, c. 556.

[2] Gardner v. Newman, 135 Ala. 522, 33 So. 179 (1902).

[3] William, J., in 1942 REPRINT 312.

[4] P. Zell & Sons v. Johnson, 76 N. C. 302 (1877).

[5] Wechsler v. Gidwitz, 250 Ill. App. 136 (1939); Stone v. Baldwin, 226 Ill. 338, 80 N. E. 890 (1907).

and to refuse to the other party a reasonable opportunity to avail himself of the same assistance."[6] California has followed the negative approach of Massachusetts in *Blodgett* v. *Prince*,[7] in holding that the momentary presence of counsel for one of the parties only does not vitiate the award.[8] A 1948 New York case held that arbitrators, although entitled under their rules to exclude any member of the legal profession from a hearing, had no right to prevent the stenographer of one of the parties from taking the minutes of the hearing for that party's use.[9]

After complaints had been made to the Judicial Council of New York that counsel had been denied the right to represent and advise their clients at hearings under the prevailing rules of some arbitration associations, the Council determined to study the matter. It was discovered that such a denial of the right to counsel often surprised parties who, in contracting, had incorporated by reference the trade rules of some association, unaware that one of the rules not only made arbitration the only method of enforcing the contract, but often limited or wholly denied the right to counsel.[10]

It would seem that the right to be represented by counsel was implicit in the statute, because subdivision 1 of section 1454 before amendment, stated that the time fixed for rendering the award might be extended by consent of the parties or their attorneys. The Judicial Council recommended, however, in each report from 1949 to 1952 that the legislature amend section 1454 so as to assure expressly the party's right to be represented by an attorney.[11] The present amendment accomplishes this end.

STATUTE OF LIMITATIONS—DOMESTIC RELATIONS—ACTION TO ANNUL MARRIAGE ON GROUND OF FRAUD MUST NOW BE BROUGHT WITHIN THREE YEARS OF DISCOVERY OF FRAUD.—The New York State Legislature has adopted a three-year statute of limitations in actions to annul a marriage on the ground of fraud, running from the moment of discovery. This statute of limitation, effective September 1, 1955, is contained in the new subdivision nine of Section 49 of the New York Civil Practice Act, which section enumerates the actions that must be commenced within three years of accrual. Such actions now include:

"An action to annul a marriage on the ground of fraud. The cause of action in such a case, is not deemed to have accrued until the discovery by the plaintiff of the facts constituting the fraud, provided that if the person is a person other than the party to the marriage whose consent was ob-

[6] Matter of Picken, 130 App. Div. 88, 92, 114 N. Y. Supp. 290, 293 (1st Dept. 1900).

[7] 109 Mass. 44 (1871).

[8] Ricconini v. Pierucci, 54 Cal. App. 606, 202 P. 344 (1921).

[9] Leo Benjamin, Inc. v. McPhail Candy Corp., 81 N. Y. S. 2d 547 (Spec. T. N. Y. Co. 1948).

[10] For a discussion of the problems raised by this procedure, see Note, 1 N. Y. L. F. 478 (1955).

[11] 18 N. Y. JUD. COUNCIL ANN. REP. (1952).

tained by fraud the cause of action is deemed to have accrued upon the discovery either by such plaintiff or by such party to the marriage of the facts constituting the fraud."[1]

This statutory limitation is in addition to the previous requirement that the parties, with full knowledge of the facts constituting the fraud, have not voluntarily cohabited as husband and wife, before the commencement of the action.[2]

Before the amendent (as is still the rule where force or duress are the grounds) an immediate complete separation upon discovery was the sole statutory condition under the Civil Practice Act[3] to the bringing of an action to annul for fraud. No statutory time limitation was fixed. So, in *Campbell* v. *Campbell*,[4] where a husband sought to annul a marriage on the ground of false representations by his wife of premarital chastity, the Court of Appeals affirmed an order of the Appellate Division which had reversed an order of Special Term denying the husband's motion to strike the defenses of gross laches and six and ten-year statutes of limitations, which the wife had interposed in her amended answer.

Presumably, the six-year period alluded to was applicable in an action to procure a judgment on the ground of fraud,[5] while the ten-year period was applicable to all actions where no other time limitation is prescribed.[6] In the *Campbell* case, the Court of Appeals held that neither of these statutory limitations was applicable.

The state legislature now has expressly abolished the old "no time limitation rule" by providing in the body of § 1139 of the Civil Practice Act that an action to annul for fraud is subject to the three-year statute of limitations provided for in § 49 of the Civil Practice Act.[7]

[1] N. Y. L. 1955, c. 257, eff. Sept. 1, 1955, Int. A 1358, Pr. A 1877.
[2] Jacobson v. Jacobson, 207 App. Div. 238, 202 N. Y. Supp. 96 (2d Dep't 1923).
[3] N. Y. Civ. Prac. Act § 1139 (1921).
[4] 264 N. Y. 616, 191 N. E. 480 (1934).
[5] N. Y. Civ. Prac. Act § 48(5) (1939).
[6] *Id.*, § 53 (1921).
[7] See note 1, *supra*.