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# LEGISLATION

## IS THE POWER OF EMINENT DOMAIN DANGEROUS UNDER THE URBAN REDEVELOPMENT ACT?

By

JUDGE SAMUEL A. WEISS\*

Our early and accepted method whereby title is transferred without the voluntary act or consent of the owner is the taking of property under the power of eminent domain. The power of eminent domain is the right of the state to take private property for public use. It is one of several fundamental powers that are inherent in sovereignty, such as police power, taxation, war powers, etc.

The taking, however, *must* be for a public purpose. *The state has no power to take property for private use* even upon its willingness to pay more than reasonable compensation therefor. It is a fundamental right contained in the federal and state Constitutions and going back to the Magna Charta in England that no man may "be deprived of property without due process of law." And a taking for any other than a public purpose has always been considered as a violation of "due process." There is no constitutional or legislative definition of what is a public purpose and the question depends *somewhat upon changing social and economic conditions and theory*. Cooley<sup>1</sup> sets forth the public necessity, government need, etc. It has been held that the United States Government<sup>2</sup> had no right to condemn and take several properties when only one was finally to be selected and used.

The power of eminent domain may be exercised by the federal or state governments, or by any public or private corporation upon whom *Congress* or the *Legislature* confers the powers.

Your writer recognized the inherent dangers of the *Urban Redevelopment Act*<sup>3</sup> when thirty-two appeals were argued before a court *en banc*, composed of Judges Soffel, Smart, and Weiss, in the now famous "Gateway Center" cases<sup>4</sup> which arose out of the major redevelopment program in the city of Pittsburgh. Your writer wrote a fifty-eight page opinion, concurred in by his able colleagues and affirmed by the Pennsylvania Supreme Court,<sup>4</sup> in which the divisible issues created by the authority and the several property and leasehold interests were set forth; *the legislative grant to an authority to take private property and sell it on lease it to a private corporate redeveloper*,<sup>5</sup> all created great controversy and doubt in the minds of many learned and able scholars familiar with the law of eminent

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<sup>1</sup> Cooley, Const. Limitations 533.

<sup>2</sup> *Darlington v. U.S.*, 82 Pa. 382.

<sup>3</sup> Act of May 24, 1945 P.L. 991.

<sup>4</sup> *Robbins v. Redevelopment et al.*, 1665 July Term, 1950. Affirmed, 370 Pa. 248.

<sup>5</sup> Equitable Life Insurance Society of New York.

domain. I must confess it was with a strained conviction that the opinion was written but with the results that have electrified city managers, engineers and experts all over America, I feel that "what is a *public purpose* (governs) and the *question depends upon changing social and economic conditions.*"

Because of the novelty and magnitude of redevelopment projects and the power delegated to condemn private property (if we compare or use Pittsburgh as a guidepost) the courts must construe the act strictly and see that its provisions are fully complied with. For what principally concerns Pittsburgh could very aptly apply to Erie, Harrisburg, Allentown, Reading, Wilkes-Barre, Scranton—in fact, any metropolitan area in our Commonwealth.

If changing social and economic conditions can permit the taking of private property and the giving of it to a private redeveloper for his or its use, let us then review the early history of this *Redevelopment Act*<sup>6</sup>. The first appeal was the *Belovsky* case<sup>7</sup> in which the future pattern of condemnation was declared by Mr. Justice Horace Stern, now Chief Justice, who said at page 333:

"The Urban Redevelopment law determines and declares as a matter of legislative finding, (a) 'That there exists in urban communities in this Commonwealth areas, which have become *blighted* because of the unsafe, unsanitary, inadequate or overcrowded condition of the dwellings therein, or because of inadequate planning of the area, or excessive land coverage by the building thereon, or the lack of proper light and air and open space or because of the defective design and arrangement of the buildings thereon, or faulty street or lot layout or economically or socially undesirable land uses; (b) That such conditions or a combination of some or all of them have and will continue to result in making such areas economic or social liabilities, harmful to the social and economic well being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values; (c) That the foregoing conditions are beyond remedy or control by regulatory processes'." (Emphasis mine.)

The opinion then recites that the *Redevelopment Act* declares it to be the "policy of the Commonwealth of Pennsylvania to promote the health, safety and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as the Redevelopment Authorities."

The early attack upon the constitutionality of the *Urban Redevelopment Law* centered largely upon the grant therein made to the redevelopment authorities of the power to "exercise the right of eminent domain."

One of the most vigorous objections advanced in the early cases against the constitutionality of the *Urban Redevelopment Act* was the feature of the 'redevelopment project,' which contemplates the sale by the authority of the property involved in the redevelopment, *it being claimed that the final result of the operation was to take private property from one or more individuals and give it to pri-*

<sup>6</sup> Act of 1945, n. 3, supra.

<sup>7</sup> *Belovsky v. Redevelopment Authority of Phila.*, 357 Pa. 329.

*vate interests, corporate or individual, for development.* It is hornbook law, fundamental with lawyers and basic in our constitutional history that property cannot be taken by government without the owner's consent for the mere purpose of devoting it to the private use of another, even though there be involved in the transaction an incidental benefit to the public.

In all the early cases all the plaintiffs *misconceived the nature and extent of the public purpose which was the primary object of this legislation.* That purpose, as pointed out in the test cases on the *Housing Authority Law*<sup>8</sup> and in the *Schenk case*,<sup>9</sup> was not requiring a continuing ownership of the property as it is in the case of the *Housing Authority Law* in order to carry out the full purpose of that act, but is directed *solely to the clearance, reconstruction, and rehabilitation of the blighted areas, and after that is accomplished the public purpose is completely realized.*

These important factors were very extensively reviewed in the *Belovsky* and *Schenk* cases<sup>10</sup> cited, *supra*.

It appears clear from these cases that the court intended and did "give wide scope to municipalities in redesigning and rebuilding such areas within their limits as by reason of the passage of years and the enormous changes in traffic conditions and types of building construction, *no longer meet the economic and social needs of modern city life and progress.*"

It might be contended that there is danger where a project may be clandestinely conceived and carried out for the benefit of some private person. The act<sup>11</sup> distinctly provides that where any individual or individuals act in such a manner the courts will readily enjoin such capricious or arbitrary act or acts. The act, in conferring power on an authority, requires strict compliance with the planning commission, city council and full and adequate notice to all affected property owners in order to avoid circumventing existing law or fraudulent attempts to deceive property owner objectors. Everyone is entitled to voice an objection and to his day in court. This was clearly evident in the case of *Duffs Iron City College*<sup>12</sup> wherein the property owner, in a serious argument before the court *en banc*,<sup>13</sup> charged the authority with capricious and arbitrary conduct which was clearly refuted by plaintiff's own exhibits attached to its bill which revealed the fact that this act of eminent domain had been preceded by more elaborate and careful investigations than have probably accompanied any act of eminent domain, which has been discussed in the history of the courts of this Commonwealth. No contention was made that the authority had not followed, strictly, the provisions of the law. The court, however, found that the college itself was *dilatory* in failing

<sup>8</sup> Act of May 28, 1937 P.L. 955 *Dornan v. Phila. Housing Authority*, 331 Pa. 209.

<sup>9</sup> *Schenk v. Pittsburgh et al.*, 364 Pa. 31 (1950).

<sup>10</sup> 357 Pa. 329, n. 7, *supra*, and 364 Pa. 31, n. 9, *supra*.

<sup>11</sup> Act of May 24, 1945 P.L. 991.

<sup>12</sup> *Duffs Iron City College v. City of Pgh. Urban Redevelopment et al.*, No. 265, July Term 1950 (Allegheny County).

<sup>13</sup> Judges Thompson, Weiss, and O'Brien.

to join many others in a petition to intervene in a prompt appeal to the Pennsylvania Supreme Court.<sup>14</sup>

We fully realize that private citizens are entitled to be protected against arbitrary and illegal acts of government authorities and it is one of the functions of all Common Pleas Courts of this Commonwealth to see that adequate protection is given under such circumstances. It should be noted that all parties, whose properties are *taken, injured or destroyed* by any *redevelopment*, are *guaranteed* under the Constitution full, fair and adequate compensation and opportunity to be heard before a board of viewers and by a jury trial in this court. They also may appeal to the appropriate appellate courts.

*That is due process*, guaranteed by the Constitution itself. We in the great Pittsburgh industrial area have felt the real impact of "redevelopment" under the existing *Urban Redevelopment Act*. The famous "Gateway Center" is now a reality. The Equitable Life Insurance Company, private redeveloper, has just completed three beautiful modern office buildings unparalleled anywhere in the nation. A state park is now being built at the "Point" just off the "Gateway Center" with a modern cloverleaf to connect with the \$50,000,000 Parkway being built by the state to speed traffic through busy Pittsburgh. "Redevelopment" has resulted in Pittsburgh's receiving national acclaim for its new vast building program. A new modern forty-four story United States Steel Building is connected with the largest bank in America, Mellon's. Now being completed is the new Alcoa building, a structure of new design at Sixth Avenue, a public park, and an underground parking garage connecting the U. S. Steel and Alcoa Buildings. There have been completed several ultra-modern parking garages to relieve traffic congestion in the city as well as several others contemplated. Other large buildings and apartments are now under construction, which together constitute the greatest development in this community in the lifetime of any citizen of the present generation.

Your writer, having participated in several of the major redevelopment arguments,<sup>15</sup> is now assigned to try all the *Urban Redevelopment* cases in the "Gateway Center" area. He believes the hope for many metropolitan areas lies with the enactment of ordinances to comply with the *Urban Redevelopment Act*. I have fully recognized the hardships and inconveniences imposed upon the many property owners within the condemned area as a result of any defendant's comprehensive constructions usually in accordance with the *Urban Redevelopment Law*, *but such individual or personal inconvenience must yield to the ever growing social and economic progress of the greater Pittsburgh community*. Such must it be, whether *Erie, Scranton, Wilkes-Barre, Harrisburg, Lancaster*, or any other community that refuses to lie dormant. This is the atomic and hydrogen age and communities must grow with the law.

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<sup>14</sup> Schenk case, 364 Pa. 31 (January 5, 1950).

<sup>15</sup> No. 265, July Term, 1950; Robbins et al., 370 Pa.—.