The Inside Edge

Eminent Domain: Round Three

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Columbia's proposed campus

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This is part of a series of CHPC briefings examining current issues of importance to the NYC housing and community development industries.

Government's authority to condemn private property through its powers of eminent domain for the use of another private entity has come under attack, yet in three key court decisions that authority has in fact been upheld. Beginning with the debate that had arisen in the wake of the US Supreme Court's decision in *Kelo vs. City of New London*, many observers might have missed the fact that the Supreme Court actually ruled for the City of New London. On June 24, 2010 *In the Matter of Parminder Kaur, et. al., v. New York State Urban Development Corporation*, another lengthy and well publicized case, the Court of Appeals reinforced its prior decision in the Atlantic Yards case (*In the Matter of Daniel Goldstein, et al., v. New York State Urban Development Corporation, d/b/a Empire State Development Corporation*.) that approved the use of eminent domain and accords great deference to the findings of blight made by the executive agency.

Now the New York State Court of Appeals has put New York firmly in the camp of states with a generous view of the ability of the state to use eminent domain for projects planned for private ownership. In *Matter of Kaur*, the Court found that the Empire State Development Corporation (ESDC) could use its powers of eminent domain to assist Columbia University in acquiring land for its planned campus expansion. The decision rejected the First Department Appellate Division's narrow view of this authority set forth in the lower court's decision.

Finding of Blight

The main argument made by the plaintiffs in the case was that the condemnation was not made for a public purpose since the finding of blight was unwarranted and thus there was no authority to condemn the property.

On the this point the Court found that, in general, it is not the role of the courts to second guess the administrative agency on findings of blight. Quoting their decision in *Matter of Goldstein* they said:

> It is only where there is no room for reasonable difference of opinion as to whether an area is blighted, that judges may substitute their views as to the adequacy with which the public purpose of blight removal has been made out for that of the legislatively designated agencies.

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Therefore, if a reasonable record is made by an agency to support a finding of blight, New York State courts are bound to accept the finding. Thus the finding of blight was proper and ESDC had the authority to take the property as part of a "land use improvement project" to remove blight.

Bad Faith

The Court of Appeals also rejected a "bad faith" argument made by the plaintiffs and accepted by the Appellate Division. This argument said that the finding of blight should be struck down since ESDC had hired the consulting firm of Allee King Rosen & Fleming (AKRF) to conduct the blight study even though AKRF had previously been employed by Columbia University to prepare an Environmental Impact Statement for the same project.

Although the Court stated that there had been no problem with the hiring of AKRF, the Court also pointed to the fact that ESDC hired another firm, Earth Tech, to redo the blight study. Despite their apparent approval of the AKRF study it's not clear whether the Court would have had a problem if ESDC had relied solely on the AKRF study.

Was Blight Caused by Columbia University?

The Court also rejected the argument that Columbia University itself had caused the blight by purchasing properties and keeping them empty. The Court pointed to a study done by Urbitran in 2003 that found blight at a time when Columbia University had just started to buy properties in the area. It also noted that the Earth Tech study had found that since 1961, the neighborhood had suffered from a "long-standing lack of investment interest". This was enough evidence for the Court to determine that Columbia was not the cause of the blight in the neighborhood.

Blight Not Needed

The Court also adopted ESDC's argument that a finding of blight was not even necessary in this case (although one judge criticized this part of the decision). Under the Urban Development Corporation Act, eminent domain can be utilized if a project is a "civic project". A "civic project" is "[a] project or that portion of a multi-purpose project designed and intended for the purpose of providing facilities for educational, cultural, recreational, community, municipal, public service or other civic purposes". The Court made clear that Columbia's status as a private university did not prevent the project from being a "civic project" within the meaning of the statute.

Eminent Domain Authority Reaffirmed

The Court of Appeals has, in this case, unanimously reaffirmed a liberal interpretation of the eminent domain statute which extends back to at least 1936 when it approved the use of eminent domain to eliminate blight and to create public housing. Whatever doubt may have been cast by the Appellate Division in its decision of this case has now been removed. While these cases may not stem public debate, or future litigation, it is clear that in three key cases, two in New York State, the courts have squarely reaffirmed government's eminent domain authority.

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