

MATTER OF N.Y. CITY H. AUTHORITY V. MULLER

PAD4331 Term Paper

Albert Diaz

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In the 19th century, cities in the United States, specially New York, experienced an influx of immigration from people seeking a better life. New York's population doubled in size every decade for eight decades spanning 1800-1880. This huge increase in population combined with a lack of planning for appropriate living space, resulted in Tenements. Tenements were low-rise narrow apartment buildings that usually lacked proper lighting, plumbing and basic human living standards. By 1900 more than two thirds of the city lived in these small, cramped living quarters. The city knew this was a problem and it sought to fix it. They did so programs that strived to condemn all tenement properties that did not meet basic health regulations for it's dwellers and rebuilding them to provide affordable adequate housing.

One of the main contributors to the rebranding of the city's image was the New York Housing Authority, which was created by Charles Abrams, a Polish-American lawyer and urbanist. In 1936, the US Supreme Court ruled in favor of Abrams with "New York City Housing Authority v. Muller". The Court established the right of the authorities to be able to use eminent domain in order to remove slums and/or improve the city's beauty. This is deemed a landmark case decision within the urban planning community. Due to the simple fact that eminent domain was understood to be a city's right to expropriate private property for *public use* and that alone. The argument arises when we try to establish what is considered to be a public use in our ever changing society.

The Petitioner (the NYC Housing Authority) intended to confiscate property consisting of two old-law tenement houses owned by Andrew Muller. The reason for their intent to condemn

the premise is based on a petition, that stated plans for “the clearance, replanning and reconstruction of part of an area of the city of New York, State of New York wherein there exist, and, the petitioner has found to exist, unsanitary and sub standard housing conditions.”. As part of this renovation project, the petitioner had acquired properties adjoining the premises in question on both sides, making it necessary to also acquire Mr.Muller’s property for the project to continue. The slums have had a history of public concern however. For seventy years past, there have been numerous attempts to fix the area or at least check up on it. The goal would be to finally eliminate the inherent evil residing in the slums of New York and to provide low income housing. Mr.Muller however, argued this by stating that the Housing Authority is violating the State Constitution & the Federal Constitution, because it allows for them to practice eminent domain for a purpose other than public use.

The question at hand now is, what is the line between public & private use? When enacting the statute, the Legislature performed a thorough investigation that resulted in creating a basis that determined, and affirmed the level of public need of a certain provision. In other words, it set guidelines to what determined was "public uses and purposes for which public money may be spent and private property acquired." (§ 61.) The findings showed how environments with unsanitary or sub-standard living circumstances due to an excessive concentration of residents can be harmful to the general public. It was determined by the Legislature that areas like these without proper lighting, lack of basic air & space needs, and absence of proper sanitation, are a menace to the comfort and welfare of the public. They cause an increased spread of disease and crime, and therefore need government intervention. The NYC Housing Authority’s argument was that the slum area was the heart of disease, crime, and

immorality. The Petitioner quoted the court in *Board of Black River Regulating District v. Ogsbury*, (203 App. Div. 43; *affd.*, 235 N.Y. 600) "To take," said the court, "for the maintenance and promotion of the public health, is a public purpose." On multiple occasions the court has tried to effectively establish the concept of a public use. However, doing so would result to be futile, since our society and our way of planning is constantly changing, as are our laws. *Accordingly*, seeking action towards removing these slums, would be considered a public service. The court understood that this argument was cutting it very close, and took it with a grain of salt. However this resonated strongly within the court, since the matter at hand is related to public conditions that concerned legislature enough to conduct a thorough investigation.

Andrew Muller, responded to the petitioner's argument and exclaimed unconstitutionality. He retaliated with two direct points: one, that the act would grant permission to take a private property for a private use, and that two, it is class legislation. Since the taking of this area will result in providing apartments to persons of low income, or to be sold to "limited dividend corporations", Mr.Muller argues that this use is private and not public. That if his land were to be taken, it would not be used for housing the sick of the slums, but to house the well and prevent them from becoming sick. Brining to light the lack of attention given to the dwellers of the premise during this trial. The defendant cried injustice when it came to this act of class legislation. It was explained how if the tables were turned, and there was a property that needed to be condemned for the benefit of those of lower income, the court would never rule in favor of condemning the premise. This case becomes more complex when considering the idea of this ruling not providing a public use or an accessible space for the public, but to be used by the *individuals* to benefit the people.

The Petitioner, reciprocated by simply stating the fact that in many other court cases, use of a facility or service by everybody and anybody is a universal understanding of a public use. The NYC Housing Authority re iterated the fact that those who would benefit from this situation would be those who already dwell within the premise. The new housing units that would come out of this petitioned project target those with an income of less than \$2,500 a year (for it's time this consisted of 2/3 of the city's population.) But the main reason this argument has risen is not for the goal of undermining persons of low-income, or any class for that manner, but to diminish the unnecessary and curable menace that protruded from the slums of New York. The Petitioner understood that the private property of another individual cannot be taken to be used privately for someone else, specially if its taken without consent. But that is not the case here. The Petitioner simply had too many strong points that made it difficult to overlook how necessary, and evident it was to repair the slums. In this case, the matter was so important that it triggered public-concern. If this project were to be executed, it would be labeled a public benefit for many reasons, so in the context of this case, this action is considered a public use.

Affordable, accessible public housing is without a doubt is a beneficial public act. However it is clear that housing, especially housing under these conditions, should not be left to a private entity to handle. When an area falls under conditions harmful enough to alert the general public, it is the perfect situation for governmental intervention. It is not a secret that the land covered by this petition is set to directly benefit only a portion of the public (2/3 residing in slums) and not the entirety of the city. The court still saw that there was a public use, to eradicate the city of the unsanitary, evil breeding slums, for the benefit of *all*. "The people of the State of New York have the right to take back their land for such a purpose."

This was a wise decision taken by the supreme court. This outcome changed the meaning of eminent domain within the planning community in the United States. It increased the city's power to be able to remove blight, and improve the community to the needs and wants of its citizens. This case has been the basis of many legal arguments since then regarding to shifting property ownership from one party to the other. Arguments that bring to light the abuse of eminent domain by municipalities and now even, private entities. The New York City Housing Authority v. Muller decision, as justified as it was, broke the strict boundaries placed on eminent domain, and has let it become corrupt. This new meaning given to the term made it easier for private parties to get by the legal system and practice eminent domain for their own economic gain, or simply just to establish a public use which is not needed. Taking someone's hard earned property isn't something that should be taken lightly. This particular court case, was just in its decision because in the end, the outcome did benefit the the public in many ways. However this also lead to the problems we face with eminent domain now. The line is moved from "exclusively only public uses that are needed", to "removal of slums and improving the city's look", to present day where it is being used as a middle man process to transfer properties from one private owner to the next. Where does it end?

It should still be understood that the citizens who lived within the tenement houses were most likely immigrants who came through ellis island to live a better life. Wether it be escaping famine in Ireland or revolution in Germany all these people strived for greater. It was a result of poor planning and an odd chain of events that filled the island of manhattan as much as it did at the time. All the programs and petitions that were created to rebuild the slums of New York and repurpose tenement buildings for safer housing, were simply just trying to fix what was already

broken. According to the Yale Law Journal “disease, moral degeneracy, and crime, products of the slum environment, jeopardize the health and welfare of entire communities and entail the expenditure of public funds far in excess of tax revenues from the blighted areas.” This alone can explain how important it was for the city to be protected from slum areas, and how the supreme court was just in its decision. Keep in mind however, that the complicated mess that was New York’s concentrated living situation during the 19th and early 20th century, was a historic time of reconstruction and eminent domain was simply a tool that needed to be used. It is a tool that has evolved far beyond it’s need today. Eminent domain is now being used within communities that don’t possess any immediate danger and have no blight, but are simply places which a developer might covet to build something that pays more than what already exists. It has become no more than a ploy to let the rich become richer and the poor become poorer. What is baffling about this though, is how the court continues to support the condemnation of many properties without just cause to be changed in any manner.

In 2005, the United States went through one of the biggest Supreme Court cases involving eminent domain, *Kelo v. City of New London*. In this 5-4 vote the Supreme Court ruled that the transfer of property from one private entity to another private entity which furthered economic development was legal, and satisfied the criteria in which eminent domain could be used. Their justification for this was, that the general benefits a community enjoys from the economic growth that results from this transaction qualifies these plans as a “public use”. Justice John Paul Stevens wrote the case decision, saying “The City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, including— but by no means limited to — new jobs an increased tax revenue... Because that

plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment”. However if what Judge Paul Stevens writes is correct and eminent domain can be used for any public purpose, then all property is assumed to be at risk also, specially those of the poor who have no say in the matter. The simple fact is that the Supreme Court has made a terrible joke out of eminent domain. It is simply too easy to be able to use it, and in the wrong hands it could really ruin many peoples’ lives.

One would say that this case was a victory for city planners, being able to upgrade cities and properties with such ease is certainly a dream for anyone passionate about planning. However the question at hand is not whether our jobs become easier, it is the ethical wrongdoings municipalities and private corporations are doing all over the country. One of the Supreme Court justices who opposed the decision, Justice Sandra Day O’Connor wrote: “Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded... nothing is to prevent the state from replacing any Motel 6 with a Ritz Carlton, any home with a shopping mall, or any farm with a factory.” The thought of someone having the power of seizing your hard earned property for their own financial gain can be terrifying. Eminent domain needs to be controlled and contained with stricter laws and regulations applied to it. The result of this decision will be working families and lower class citizens seeing their properties turned over for corporate interests and wealthy developers. Everyone involved in the mess that has come out of this eminent domain controversy needs to understand that this tool was not taken lightly back during the time of NYC Housing Authority v. Muller. Our government is set up with a purpose to maintain a stable society and work together to try to give our citizens the best quality of life that we can. When a government



deliberately sees the damage it does to families, and individual citizens for the personal gain of someone who is already wealthy, it makes our government look plain foolish.

It's at least relieving to see that some politicians today believe that the radical use of eminent domain needs to be regulated to benefit society and not simply the wealthy. The first step to this regulation would begin by creating a nation-wide consensus as to what we all as a country, agree to be a public use vs a private use, and establish a strict understanding of eminent domain being solely for public use. As mentioned earlier, Legislature has previously tried and failed since our society, laws and way of planning are constantly changing. However there should be limits as to what eminent domain is allowed to do. It is already a very unjust and broken system, and keeping this up would only turn it into a monster. The outcome of the NYC housing authority v. Muller, was simply a step forward into municipalities and private entities being able to twist the law to their advantage, regardless of the people's say in the matter. It is right that slums and blight cannot be removed by free enterprise alone, that's why Eminent domain is vital and necessary for our country to run. However it should be done within the *right* circumstances.

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