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Taxation—Statute Assessing Trailers to Owners of Real Property Upheld

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property in question had, up to the time of taking, been undeveloped by the landowners due to an apparent lack of immediate funds. The city appraiser had apparently used the value of the property in the lesser valued of the two zones in reaching a figure for the parcel of land in question. There is also evidence in the record to indicate that the appraiser's figure was partially based upon the fact that the claimants herein had failed to develop the property, and thus concluded that the property was worthless. The Appellate Division affirmed an order of Special Term setting the value of the property at $710,000.[93] Claimant, on appeal, urged that there was some question as to whether or not the judgment of the Appellate Division was supported by substantial evidence, and whether due consideration was given to the evidence presented. Normally, where the opinion of an expert is supported by actual sales, this will be considered as substantial evidence and accepted by the court.

The Court of Appeals ruled that where there was an indication that an appraiser had failed to take into consideration the difference in value between two separate zones and had not afforded the landowners the fair potential value of their property because they had failed to exploit it fully, this value as set must be rejected and a new determination made.

The rule in New York as to the diversion by the State of a highway abutting on a piece of property was reviewed in *Selig v. State*.[94] When the highway fronting on the claimants' property was converted into the New York State Thruway, and the Thruway was raised approximately eight feet, the main stream of traffic was thereby diverted. The claimants' property was not taken nor used for the construction, and the only claim herein was for the loss of value as a result of the change of the grade in the highway. Further, the claimant was not deprived of access or egress from the property, as access roads were provided. The courts below allowed damages to the extent of $40,000, basing the award on the diversion of traffic and the circuity of access.[95] The Court of Appeals held that the rule in New York had been and shall continue to be, that to be compensable, damages must result from a change in grade, and that damages resulting from the diversion of traffic and from the circuity of access may not be recovered.[96]

Bd.

TAXATION

Statute Assessing Trailers to Owners of Real Property Upheld

The house trailer or mobile home has become more and more a part of the American scene. The families residing in these homes have presented a

93. 9 A.D.2d 949, 195 N.Y.S.2d 704 (2d Dep't 1959).
94. Supra note 89.
95. 12 A.D.2d 688, 207 N.Y.S.2d 886 (3d Dep't 1960).
96. See McKale v. State, 278 App. Div. 886, 104 N.Y.S.2d 981 (4th Dep't 1951).

peculiar problem in that they demand community resources, such as fire and police protection, education for their children in community schools, and use of the highways, courts and governmental resources, while until quite recently they maintained an immunity from any taxation, due to a traditional view of these homes as personality.[1]

An attempt to classify the mobile home as realty was made in 1952 by the Assessors of the Town of Vestal, but the assessment was held void by a court[2] which recognized the problem, but felt that legislation was the proper recourse to pursue.

The legislature responded in 1954 by declaring that the house trailer shall be included in the terms "land," "real estate," and "real property."[3] Although repealed, the latter statute has been re-enacted in the present Real Property Tax Law with only minor modifications.[4]

The instant case, *New York Mobile Homes Ass'n v. Steckel*,[5] is the first test of the constitutionality of this statutory classification of the house trailer as realty. Appellants, a group of trailer park owners, sought a judgment declaring the statute unconstitutional on the ground that it deprives them of their property without due process of law. The Supreme Court, although dismissing the complaint on the basis that the appellants lacked standing to challenge the constitutionality of the statute, declared the latter to be constitutional.[6] The Appellate Division, which felt that appellants had the requisite standing, reversed so much of the judgment below as dismissed the complaint, while unanimously affirming the determination on the merits.[7]

The present litigation arises under the 1954 statute (statute applicable at the commencement of this action), which provided that the trailer or mobile home "shall be assessed to the owners of the real property on which they are located."[8] The present statute directs the assessment against the land itself,[9] but as this Court points out, reading the old statute in conjunction with Section 304 of the Real Property Law,[10] it is clear that the legislature intended the original statute to be read as re-enacted.

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1. See Memorandum of Senator Warren M. Anderson, N.Y. Legis. Ann. 1954, p. 306.
2. Stewart v. Carrington, 203 Misc. 543, 119 N.Y.S.2d 778 (Sup. Ct. 1953).
3. N.Y. Sess. Laws 1954, ch. 726, § 1:
In addition to their meaning as provided in subdivision six, the terms "land," "real estate," and "real property" . . . include all the forms of housing . . . commonly called and hereafter referred to as "trailers"; except (1) transient trailers which have been located within the boundaries of a tax district for less than sixty days and (2) trailers which are for sale and which are not occupied.
4. N.Y. Real Prop. Tax Law § 102(12)(g).
5. 9 N.Y.2d 533, 215 N.Y.S.2d 487 (1961).
6. 12 Misc. 2d 761, 176 N.Y.S.2d 482 (Sup. Ct. 1958).
7. 11 A.D.2d 751, 201 N.Y.S.2d 595 (4th Dep't 1960).
8. Supra note 3.
9. Supra note 4.
10. Section 304 of the Real Property Law, which was formerly Tax Law, Section 9, reads now virtually as it did then: "All assessments shall be against the real property itself."

Appellants argue on this appeal, that the classification itself is improper, that the statute is ambiguous and unconstitutional, and that it is so indefinite as to be incapable of equitable and proper enforcement.

The Court of Appeals upholds the statute in an opinion written by Judge Froessel. As to the first contention of appellants, *evidence introduced at the trial* supported a finding that the classification was reasonable and justified and not merely an arbitrary or capricious use of the States' authority to tax. That the state has a broad power to classify cannot be disputed. The United States Supreme Court has said:

> They [previously cited cases] illustrate the power of the legislature of the State over the subjects of taxation and the range of discrimination which may be exercised in classifying those subjects when not obviously exercised in a spirit of prejudice and favoritism. . . . Granting the power of classification, we must grant Government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous.[11]

Without the statutory classification, it is conceded that the mobile home would ordinarily be considered personality. But other decisions involving what has ordinarily been considered personality have been upheld when a taxing statute has altered their classification. In *People ex rel. Holmes Elec. Protective Co. v. Chambers* switchboards, wiring and associated equipment, though mobile and removable without damage to the structure, were held to be realty by virtue of the taxing statute.[12]

Appellants attempt to distinguish the latter case on the basis that the articles involved were attached to the freehold. Their distinction is not well taken, for as the Court here points out, the trailer, which is connected to water, sewage, gas, electric and telephone lines, has as much, if not more, attachment to the land.

The substance of the appellants' contention that the statute is unconstitutional involves an attack upon the propriety of levying the assessment against the real property upon which the trailers, which are individually owned, are located.

The Court notes first that this is by no means an unusual or novel situation as improvements made by a lessee for his own benefits invariably increase the assessment against the real property owner, who then has the means at his disposal, by way of increased rent, to place the burden where it rightfully should fall, that is, on the lessee. A separate assessment may be made, but there is no statutory requirement forcing the taxing authority to follow the internal arrangement between lessor and lessee.[13]

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11. Citizens Telephone Co. v. Fuller, 229 U.S. 322, 331 (1913).
12. 1 N.Y.2d 760, 152 N.Y.S.2d 304 (1956).
13. Doughty v. Loomis, 9 A.D.2d 574, 189 N.Y.S.2d 413 (3d Dep't 1959), aff'd, 8 N.Y.2d 722, 201 N.Y.S.2d 100 (1960).

The Court finds little merit in the case of *Hoeper v. Tax Comm.*,[14] which is relied on by appellants. Factually, the case involved an income tax statute which sought to tax a husband upon the combined total of his and his wife's income. The Court observed that in the *Hoeper* case, the husband, "—unlike the trailer park owner—would have no means of recouping the additional tax resulting from the value of another's property."[15]

As to the final contention regarding possible inequities in enforcement, the Court answers simply that the problems presented are all hypothetical, and the record discloses no material inequities at this point. If they should develop, the appellants may then obtain relief. "One cannot invoke to defeat a law an apprehension of what might be done under it and, which if done, might not receive judicial approval."[16]

The judgment of the Appellate Division is thereby affirmed. To the writer the case appears correctly decided. The statute is reasonable and corrects a serious problem. It appears not only expedient but a necessity to levy the tax and place the burden of its collection on those who most readily and efficiently may accomplish this end.

P. C. B.

INCIDENTAL NON-RELIGIOUS USE OF REAL PROPERTY INSUFFICIENT TO DEFEAT TAX EXEMPTION

The New York Tax Law, Section 4 (6), provides that "the real property of a corporation or association organized exclusively for . . . religious, bible, tract, charitable . . . purposes . . . and used *exclusively* for carrying out *there upon* one or more of such purposes . . ." shall be exempt from taxation. (Emphasis added.) It appears to be within the constitutional powers of the states to tax religious and charitable organizations; so any exemption which may be granted is the result of a desire on the part of the states to foster and financially aid these institutions.[17] These exemptions are ingrained in our way of life, being in force in every state.[18]

The question of what is considered to be a charitable application of property in order to qualify for an exemption was raised in the recent case of *People ex rel. Watchtower Bible and Tract Society v. Haring*[19] which involved an 800 acre farm owned by the Jehovah's Witnesses. Approximately 95% of the farm's produce was used to feed members of the sect who worked either on the farm or at a headquarters and printing plant located in Brooklyn. Religious leaflets produced in Brooklyn and the 5% farm surplus not consumed by the sect were sold for income. The tax assessor, on the theory that the sale

14. 284 U.S. 206 (1931).
15. Supra note 5 at 540, 215 N.Y.S.2d at 492.
16. Lehon v. City of Atlanta, 242 U.S. 53, 56 (1916).
17. Van Alstyn, Tax Exemption of Church Property, 20 Ohio St. L.J. 461 (1959).
18. Id. at 462.
19. 8 N.Y.2d 350, 207 N.Y.S.2d 673 (1960).