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CONSTITUTIONAL LAW

DEPRIVATION OF PROPERTY: ESTABLISHING BUS STOP NOT A "TAKING"

In *Cities Service Oil Co. v. City of New York*,[1] the Court of Appeals affirmed a Special Term determination that maintaining a bus stop at a busy intersection of Brooklyn making ingress and egress to plaintiff's gasoline station extremely difficult during rush hours, did not constitute a taking of its property without due process of law since it was performed in the proper exercise of governmental powers and therefore had to be shouldered by plaintiff as one of the inconveniences to be borne by the individual for the larger benefit of the community and the public in general.

An abutting owner has a property right of ingress and egress to and from his property, including a reasonable use for business purposes which may not be taken away by the government without compensation.[2] The right, however, is subject to the right of the state to reasonably regulate and control the public highways for the benefit of the travelling public, the abutter or his predecessor in title being presumed to have been compensated for the servitude upon the street.[3] The question in each case is whether there is a proper street use and whether the interference is reasonable under the circumstances. In the present case, there is no serious argument that the maintenance of bus stops by a city transit authority represents an improper street use, the attack being levelled at the reasonableness of the particular stop in question under the circumstances. Plaintiff claims that this is such a restriction of access as to amount to a "substantial obstruction to the property" and as such is forbidden on the authority of *Waldorf Astoria Hotel Co. v. City of New York*,[4] which held a city maintained hack stand, in front of a hotel to be illegal. Special Term found, however, that the interference was "slight," lasting only during rush hours. Once the determination has been made that the interference is "slight," it follows inevitably that it is reasonable. Looking to interferences which have been upheld as reasonable both in New York and elsewhere, it is apparent that the conclusion of the referee at Special Term was supported by the evidence. In *Transportation Co. v. Chicago*,[5] the city was engaged in constructing a tunnel under the Chicago River for street purposes, temporarily impeding plaintiff's access to his wharf. Although it suffered damages thereby, no recovery was allowed, the rationale being that as long as the work was a valid exercise of government power and was done with reasonable dispatch, the impediment to access was not a taking within the meaning of the constitutional prohibition. Of similar import is *Farrel v. Rose*,[6] a New York case, where

1. 5 N.Y.2d 110, 180 N.Y.S.2d 769 (1958).
2. MCQUILLAN, MUNICIPAL CORPORATIONS § 30.56; Greely Sightseeing Co. v. Riegelmann, 119 Misc. 84, 195 N.Y.S. 845 (Sup. Ct. 1922).
3. Sauer v. City of New York, 180 N.Y. 27, 72 N.E. 579, *aff'd* 206 U.S. 536 (1906); Jones Beach Boulevard Estate v. Moses, 268 N.Y. 362, 197 N.E.2d 313 (1935).
4. 212 N.Y. 97, 105 N.E. 803 (1911).
5. 99 U.S. 635 (1878).
6. 253 N.Y. 73, 170 N.E. 498 (1930).

plaintiff had garages for rent, the access to which was cut off for a number of months longer than originally anticipated by street repair contractors. Recovery was denied, the court concerning itself only with the question of reasonableness in the light of the extension of time.

Abutting owners have initiated a good deal of litigation concerning parking meters as an obstruction to access, but the question has become settled in most jurisdictions, the interference being construed as reasonable provided the meters are placed primarily to control traffic[7] and not primarily for revenue.[8]

In affirming the determination of a "slight" interference with access in the present case, the Court compares the situation with that in *Jones Beach Boulevard Estate v. Moses*.[9] There, plaintiff's predecessor in title had sold land to a state park commission for use as a parkway, reserving land for driveways to permit him access to the proposed parkway. After it was built, the use of left turns was so limited by traffic regulations that in order to enter the parkway from plaintiff's property to travel north, it was necessary to drive five miles in the opposite direction before a turn around was permitted. The regulation was upheld as one which, although inconvenient to the abutter, being adopted to benefit the travelling public, would have to be borne by the abutter. As pointed out in the present case, this was a great deal more inconvenient than the interference suffered by the gas station owners. Unfortunately, the Court does not make clear how much, or what kind of interference is necessary to amount to such a substantial obstruction as to overcome the benefit to the travelling public. Apparently the threshhold lies quantitatively someplace between a few hours a day as here, and twenty-four hours a day as in the taxi stand case;[10] qualitatively, it is apparently between inconvenient traffic regulations[11] and a permanent cab stand.[12]

CONSTITUTIONALITY OF HOSPITAL LICENSING REGULATIONS

The Board of Hospitals of the City of New York, had denied petitioner's application for a license to operate a private proprietary hospital since he had not complied with new regulations of the City Hospital Code governing the maintenance and operation of private proprietary hospitals. In a proceeding to review and annul the order of the Board to discontinue operation of the hospital, the Supreme Court, Special Term, denied the application to review. Petitioner appealed to the Court of Appeals upon constitutional grounds, from an order of the Supreme Court, Appellate Division, affirming the order of the Special Term.

The regulations in question became effective October 1, 1956. While pro-

7. Cassidy v. City of Waterbury, 130 Conn. 237, 33 A.2d 142 (1943); Gilsey Buildings v. Incorporated Village of Great Neck Plaza, 170 Misc. 945, 11 N.Y.S.2d 694, *aff'd* 258 App. Div. 901, 16 N.Y.S.2d 832 (2d Dep't 1939) (*mem.*).
8. Monsour v. City of Shreveport, 194 La. 625, 194 So. 569 (1939).
9. 268 N.Y. 362, 197 N.E.2d 313 (1935).
10. *Supra* note 4.
11. *Supra* note 9.
12. *Supra* note 4.