Buffalo Law Review

Volume 9 | Number 1 Article 103

10-1-1959

Municipal Corporations—Property Benefited by Public Improvement

Buffalo Law Review

In the second series of cases, the courts proceed on the theory that although the legislative branch has discretion to determine the necessity of closing a street, the courts shall determine whether the purpose is in fact a public one.[8] New York has traditionally followed the former view.[9]

Under the former view, it has been held that a vacation is not void on its face because it appears that it was granted on petition of an abutter in circumstances similar to those present in the instant case.[10] "Even though the [resolution] did not so state, it is implicit in the action taken by the [council] that it considered the vacation would be for the public good and secondarily beneficial to the abutting property owner."[11]

The difficulty with the position of the majority in the instant case is that it does not distinguish between "purpose" and "motive." As was said in a leading New York case on the subject,

> Nor does it seem material that the vacation is made with a view or intention of vesting the adjoining proprietors with the ownership of the lands embraced within the street. That merely goes to the *motive* by which the act of vacation is performed, and in that as in all legislative acts, the motives by which the legislative body is activated is immaterial and cannot be inquired into.[12]

It is unfortunate that the City officials reporting to the Board used the word "purpose." It is more unfortunate that this decision permits the plaintiff to make use of the semantic error to clog up the courts with harassing litigation. On trial, it will be a relatively easy matter for the City to show a public benefit (*e.g.* the land goes back on the tax rolls) thereby defeating plaintiff's contention that the purpose was for a solely private benefit. It is submitted that the Court has acted outside of its traditional interstitial area of operation.

PROPERTY BENEFITED BY PUBLIC IMPROVEMENT

In *Buff v. Board of Trustees of Incorporated Village of Greenwood Lake,*[13] the Court of Appeals reversed the order of the Special Term, affirmed by the Appellate Division,[14] that annulled a special assessment levied by the defendants for construction of a water main on a private road, under an easement, abutting the plaintiff's property.

In construing section 224 of the Village Law,[15] the Court of Appeals

Ill. 236, 86 N.E. 238 (1908); MacDonald v. Board of Street Comm'rs, 268 Mass. 288, 167 N.E. 417 (1929).

8. *E.g.,* People v. City of Los Angeles, 62 Cal. App. 781, 218 Pac. 63 (1923); Teacher Bldg. Co. v. Las Vegas, 68 Nev. 307, 232 P.2d 119 (1951).

9. In re Mayor of City of New York (Deering), 28 App. Div. 143, 52 N.Y. Supp. 588 (1st Dep't 1898) *aff'd* 157 N.Y. 409, 52 N.E. 1126 (1898) citing Meyer v. Village of Teutopolis, 131 Ill. 552, 23 N.E. 651 (1890).

10. City of Rock Hill v. Cothran, 209 S.C. 357, 40 S.E.2d 239 (1946).

11. *Ibid.*

12. *Supra* note 9.

13. 5 N.Y.2d 602, 186 N.Y.S.2d 619 (1959).

14. 6 A.D.2d 836, 176 N.Y.S.2d 244 (1958).

15. The board of water commissioners may determine that the cost of extending the mains or distributing pipes, as herein provided, shall be

disagreed with the construction of the Special Term that held that before the village could validly make an assessment it must prove that the benefited property is also property abutting on a public street, and held that "or" as used between "benefited" and "abutting" in the statute is not used in the sense of "and," hence the only test under the statute is whether property is in fact benefited.[16]

Benefited property, under the statute, is thus classified as either; (1) property which abuts on the improvement, since it seems clear that property abutting on the street in which mains are laid is thereby benefited, or, (2) property which benefits from the improvement, though not abutting, either one being the proper subject of a special assessment.

Under this construction it would seem that the burden of proving benefit by the assessing agent is somewhat less in the case of abutting property than proving benefit when the property does not abut. The fact that property does abut on the street where mains are laid may support an inference of benefit to the property, but since benefit in this instance was denied by the property owner the issue was remitted to Special Term for determination.

NEW YORK STATE THRUWAY AUTHORITY HELD TO BE A SEPARATE ENTITY

Section 135 of the New York Finance Law states:

> Every officer, board, department, or commission charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction or alterations of buildings, for the state, when the entire cost of such work shall exceed $25,000, must have prepared separate specifications for each of the following three subdivisions of the work to be performed:
>
> 1. Plumbing and gas fitting
> 2. Steam heating, hot water heating, and air conditioning apparatus[17]
> 3. Electric wiring and standard illuminating fixtures.
>
> Such specifications must be so drawn as to permit separate and independent bidding upon each of the three subdivisions of work.

The case of *Plumbing, Heating, Piping and Air Conditioning Contractors Assoc., Inc. v. New York State Thruway Authority* raised the single issue of whether Section 135 of the State Finance Law applies to and is binding upon the New York State Thruway Authority.

The New York State Thruway Authority advertised for bids receivable in January of 1957 for the construction of six buildings at various locations along the Thruway. The specifications for the work provided for the con-

> borne wholly by the village, or wholly by the owners of land benefited or abutting on the streets on which said work is done, or partly at the expense of each.

16. The claim that property must also abut on a public street was abandoned on appeal since the statute permits such construction anywhere within the village limits.

17. Plumbing, Heating, Piping and Air Conditioning Contractors Association Inc. v. New York State Thruway Authority, 4 A.D.2d 541, 167 N.Y.S.2d 756 (3d Dep't 1957), *aff'd* 5 N.Y.2d 420, 185 N.Y.S.2d 534 (1959).