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CONSTITUTIONAL LAW

Sale of Land to Denominational School for Redevelopment Project by Municipality Not Unconstitutional

In *64th St. Residences v. City of New York*¹ plaintiffs² sought to enjoin the City's sale³ of property in the proposed Lincoln Square Project to Fordham University, a Roman Catholic institution, at a price (\$7 per sq. ft.) less than that paid by the City in acquiring the property (\$16 per sq. ft.). Plaintiffs contended that the sale to Fordham was an aid or grant to a religious corporation constitutionally prohibited⁴ as an act in aid of the establishment of religion.

Plaintiffs conceded that the City could effect this transaction with a non-sectarian private college, and that the City could ordinarily contract with Fordham,⁵ but argued that *this* sale was unconstitutional because Fordham was getting the property at such a low price only because the City sustained a financial loss, which loss was but a gift to Fordham.

The City contended that since Fordham was paying in excess of the "re-use" value⁶ for the property it was not giving something away for less than its worth, nor was Fordham receiving any aid or grant or gift, but in fact was paying more for the property than it was worth.⁷ There was no "loss,"⁸ the City

1. 4 N.Y.2d 268, 174 N.Y.S.2d 1 (1958).

2. Plaintiffs, as owners of the property subsequently condemned and sold to Fordham, brought a restraining action as property owners and as taxpayers. Plaintiffs' status on appeal was that of taxpayers only, their restraining action having failed.

3. The City's authority to enact urban redevelopment programs is established in Section 1, Article 18 of the New York State Constitution and Section 72(k) of the N. Y. General Municipal Law. The standardized statutory procedure has been for the City to contract with sponsors who agree to bid a minimum price at public auction for the parceled property in a projected area, and if the sponsor is the purchaser the sponsor agrees to relocate the tenants, raze the property, and redevelop it only for the use designated by the City. The City then acquires the property by condemnation proceedings and sells it at public auction. Fordham, a sponsor, purchased a parcel of the planned area, to use only for campus and collegiate purposes.

4. Plaintiffs alleged that the sale violated Section 7, Article 1, and Section 4, Article 11, of the New York State Constitution, and the First and Fourteenth Amendments of the United States Constitution.

5. The sale was concededly not forbidden simply because Fordham was a Roman Catholic institution.

6. The value of the property, encumbered by the obligations and limitations set out in footnote 3, is its "re-use" value.

7. The "re-use" value of the property was estimated to be less than \$7 per sq. ft. by the highest of submitted independent appraisals.

8. The City contended that the financial liability incurred because of the resale at a lesser price was not a proper reflection of loss, but that loss could result only if the City's payment of consideration for the property were greater than the consideration received in selling the property. Since there was a difference in the kind of consideration, and not in amount, the City contended, there was no loss.

argued, there merely was a substitution of consideration in the resale—the exchanging of money for urban improvement.

The Court unanimously held that the sale was not unconstitutional, even though Fordham realized a financial benefit⁹ by the transaction, because the City did not sustain a loss on the sale, but received more than the “re-use” valuation price for the property.

In the area of education, where both the Church and the State have an interest, the line of separation between Church and State can be a difficult one to draw.¹⁰ In this area of mutual interest, at least,¹¹ a financial expenditure by a state or its subdivision which results in a religious organization¹² or its believers¹³ acquiring a financial benefit is not necessarily unconstitutional as an act in aid of the establishment of religion.

To sustain the expenditure, however, there must be a valid public purpose for expending the funds.¹⁴ Moreover, the expenditure must not constitute an endorsement of a particular religious belief, nor can it give preferential aid to one or more religious groups at the expense of others.¹⁵

In the instant case, the Court, by viewing the sale from the vantage point of the City, and in taking a broad approach to the definition of “loss,” finds that the expenditure is not only not an aid in violation of the New York Constitution, but is not visited with a preference for Catholicism.

Free Transcript Required for Appeal by Indigent Prisoner

In *People v. Pride*,¹⁶ the Courts held that a defendant may not be deprived of his right to appeal solely because of financial inability to procure the necessary transcripts of the trial. The defendant had been convicted of assault in the third degree in the City Court of Buffalo. He appealed to the Supreme Court¹⁷ claiming the prejudicial error had been committed by the trial court, the ap-

9. The benefit was obtaining the property at a low price otherwise unavailable, since plaintiffs would not have voluntarily sold the property to Fordham at \$7 per sq. ft.

10. Compare *Zorach v. Clauson*, 343 U.S. 306 (1952), with *McCullum v. Board of Education*, 333 U.S. 203 (1948).

11. Whether the State may expend public money on a non-preferential basis in a subject area where the Church and State do not have a mutual interest, whereby the Church acquires a financial benefit, raises problems beyond the scope of this note.

12. *Zorach v. Clauson*, *supra* note 10.

13. *Everson v. Board of Education*, 330 U.S. 1 (1947).

14. A classic example is the “child benefit theory” underlying *Everson v. Board of Education*, *supra* note 13.

15. KAUPER, *FRONTIERS OF CONSTITUTIONAL LIBERTY* 110-114, esp. 113 (1956).

16. 3 N.Y.2d 545, 170 N.Y.S.2d 321 (1958).

17. Buffalo City Court Act §76 (1909) as amended 1951.