Buffalo Law Review

Volume 6 | Number 2 Article 57

1-1-1957

Real Property—Fair and Reasonable Rental

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and other buildings used for religious purposes upon neighboring property would be an insufficient basis to deny an application for a building permit since such buildings would have the same effect in any residential area.

It has been held that an administrative board may not apply any standards which are not declared by the statutes authorizing their existence, hence an increase in traffic in the area would not be a valid basis for denial of a building permit.[30] The state has declared a policy of encouraging religious organizations by exempting from taxation all property used exclusively for such purposes[31] and thus has demonstrated its preference for religious organizations over potential taxes. It would be somewhat illogical, therefore, to base a denial of a building permit upon the grounds of loss of tax revenue.

It has been generally considered that the term church or religious building includes all buildings connected with the general religious purpose.[32] This would include meeting halls, schools and the like. As pointed out in the opinions, a church is more than a place of worship — it is a meeting place for members of a religious faith and a place of education in the dogma of the particular denomination. Therefore a denial of the right to provide for these purposes is no more justified than a denial of permission to build the church itself.

The Court was undoubtedly correct in its holdings. Since the denials of the applications were based upon a rationale which has been demonstrated as not being within the discretion of a zoning board, the decisions can not be said to be a substitution of the Court's opinion for that of the administrative body.[33]

Fair and Reasonable Rental

Under the Emergency Business Space Rent Control Law[34] in force in New York City, a landlord who is not receiving a reasonable return on his investment may proceed to have his tenant's rent increased by applying to the Supreme Court or submitting to arbitration.[35]. A reasonable return is pre-

30. *Small v. Moss*, 279 N. Y. 288, 18 N. E. 2d 281 (1938).

31. N. Y. TAX LAW §4 The following property shall be exempt from taxation: (6) The real property of a corporation or association organized exclusively for . . . religious . . . purposes . . . .

32. *Young Women's Christian Assn. v. City of New York*, 217 App. Div. 406, 216 N. Y. Supp. 248 (1926), *aff'd.*, 245 N. Y. 562, 157 N. E. 858 (1927).

33. The dissent in both cases was to the effect that the decision was premature in that the better procedure would be to attack the constitutionality of the statutes in a separate proceeding. While this might be more "orderly" and was the procedure used in *Concordia Collegiate Inst. v. Miller*, 301 N. Y. 189, 93 N. E. 2d 632 (1950), it does not seem that it is a matter of crucial importance.

34. MCKINNEY'S UNCONSOL LAWS, §§8551 et seq.

35. MCKINNEY'S UNCONSOL LAWS, §8554.

sumed to be eight per cent of the "fair value of the entire property". In order to determine whether a net of eight per cent is being earned, the landlord must serve on his tenant a verified bill of particulars setting forth, *inter alia,* the gross rental received for the preceding year and the expenses incurred for that same year.

In *In Re Trustees of Masonic Hall and Asylum Fund,*[36] the question arose as to whether the court could properly consider savings in expenses accruing before the trial but after the filing of the application or whether the figures of the preceding year were the sole consideration in determining whether a reasonable return was being received. Here, the saving was the result of a conversion to public utility electric current for heating the premises rather than generating their own electricity, as had been done previously.

The Court of Appeals, adopting the reasoning of *Matter of Alibel Corp.,*[37] held that although the fair rental is to be fixed as of the date of the application, the court may properly consider changes in expense or income where they are "fixed in amount and determined as to obligation or liability prior to the filing of the petition" even where their effect would be felt only after the date of the application. As the conversion was conceived and initiated before the filing of the application, it was proper to take the contemplated saving (estimated to be over one hundred thousand dollars annually) into account in determining the net return. The further holding exclusive of changes arising after filing of the application was felt necessary to prevent possible unveiling of complex issues of evaluation at the last moment.

The holding is in line with the general judicial preference for dealing with things as they exist at the time of trial rather than giving a decision on an obsolete set of facts.[38] To have decided otherwise would have given the landlord a greater rate of return than the court had determined to be his due.

Leases—Covenants

Weiss v. Mayflower Doughnut Corp.[39] was an action by a tenant who conducted a drug store and luncheonette business under a lease containing a restrictive covenant. In a previous action by this tenant against his landlord,[40] the Court interpreted the covenant as prohibiting the landlord from

36. 1 N. Y. 2d 616, 136 N. E. 2d 889 (1956).
37. 285 App. Div. 140, 136 N. Y. S. 2d 344 (1st Dep't 1954).
38. *Cf. Doyle v. Chatham & Phenix National Bank,* 219 App. Div. 522, 220 N. Y. Supp. 231 (2d Dep't 1927), construing N. Y. Civ. Prac. Act §245-b.
39. *Weiss v. Mayflower Doughnut Corp.* 1 N. Y. 2d 310, 135 N. E. 2d 208 (1956).
40. *Weiss v. Maidmen,* 308 N. Y. 840, 126 N. E. 2d 178 (1955).