United States Court of Appeals for the Second Circuit

Goldstein v. Pataki

Argued: Oct. 9, 2007.
Decided: Feb. 1, 2008.

KATZMANN, Circuit Judge:

Few powers of government have as immediate and intrusive an impact on the lives of citizens as the power of eminent domain. For affected property owners, monetary compensation may understandably seem an imperfect substitute for the hardships of dislocation and the loss of a home or business. But federal judges may not intervene in such matters simply on the basis of our sympathies. Just as eminent domain has its costs, it has its benefits, and in all but the most extreme cases, Supreme Court precedent requires us to leave questions of how to balance the two to the elected representatives of government, notwithstanding the hardships felt by those whose property is slated for condemnation.

Against this backdrop, we must decide if a complaint has sufficiently alleged that an eminent domain action violates the Public Use Clause of the Fifth Amendment. In our view, the plaintiffs-appellants effectively acknowledge, albeit reluctantly, that the well-publicized, multibillion dollar development project they challenge would result, *inter alia,* in a new stadium for the New Jersey Nets, a public open space, the creation of affordable housing units and the redevelopment of an area in downtown Brooklyn afflicted for decades with substantial blight. They contend, however, that the project's public benefits are serving as a "pretext" that masks its actual raison d'être: enriching the private individual who proposed it and stands to profit most from its completion. Following Supreme Court precedent, we conclude that the plaintiffs have not mounted a viable Fifth Amendment challenge. The judgment of the district court is affirmed.

I.

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The Atlantic Yards Arena and Redevelopment Project (the "Atlantic Yards Project" or the "Project") is a publicly subsidized development project set to cover twenty-two acres in and around the Metropolitan Transit Authority's Vanderbilt Yards, an area in the heart of downtown Brooklyn, New York. The plan for the Project, which will be designed in part by the architect Frank Gehry, includes the construction of a sports arena that will play home to the National Basketball Association franchise currently known as the New Jersey Nets, no fewer than sixteen high-rise apartment towers, and several office towers. The Project site is bounded generally by Dean Street, Atlantic Avenue, Fourth Avenue, and Vanderbilt Avenue.

Announced to the public in December 2003, the Project is being carried out, in part, through the assistance of the New York State Urban Development Corporation, which also operates as the Empire State Development Corporation ("ESDC"), a public-benefit corporation and political subdivision of New York State. The involvement of the ESDC is critical. Although approximately half the proposed footprint for the Project lies within the Atlantic Terminal Urban Renewal Area ("Renewal Area"), a heavily blighted area owned in part by the Metropolitan

Transit Authority ("MTA"), the Project site also includes an adjacent parcel of land with less blight (referred to in the complaint as the "Takings Area") that is currently held by private parties. Under the plan for the Project, the ESDC, if necessary, will acquire the rest of the privately held land in the Takings Area through the use of eminent domain.

* * *

II.

Plaintiffs-appellants are fifteen property owners whose homes and businesses in the Takings Area are slated for condemnation to make way for the Project. . . .

. . . The original complaint raised three federal-law claims, asserting that the use of eminent domain in furtherance of the Project would violate the "Public Use" Clause of the Fifth Amendment, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Thereafter, the plaintiffs amended the complaint, asserting the same three federal-law causes of action against all defendants, and adding a cause of action under New York state law against defendant ESDC.

. . . The heart of the complaint, however, and the centerpiece of the instant appeal, is its far-reaching allegation that the Project, from its very inception, has not been driven by legitimate concern for the public benefit on the part of the relevant government officials. . . . In short, the plaintiffs argue that all of the "public uses" the defendants have advanced for the Project are pretexts for a private taking that violates the Fifth Amendment.

* * *

With respect to the claim made under the Public Use Clause, the district court concluded, after a thorough and careful analysis, that no such claim was available. By the plaintiffs' own admission, the court noted, the Project here would serve several well-established public uses such as the redress of blight, the construction of a sporting arena, and the creation of new housing, including 2,250 new units of affordable housing. The district court additionally held that a "pretext" argument provided a valid basis for a public-use challenge under the Supreme Court's decision in *Kelo v. City of New London,* 545 U.S. 469 (2005), but was not available here because "even if Plaintiffs could prove every allegation in the Amended Complaint, a reasonable juror would not be able to conclude that the public purposes offered in support of the Project [were] 'mere pretexts' within the meaning of *Kelo.*" . . .

III.

. . . The following passage from the appellants' brief captures the essence of their argument:

> Defendants' decision to take Plaintiffs' properties serves only one purpose: it allows Ratner to build a Project of unprecedented size, and thus reap a profit that Defendants, tellingly, have attempted to conceal at every turn. This is not merely favoritism of a particular developer. . . .

* * *

V.

We have recognized that the power of eminent domain is “a fundamental and necessary attribute of sovereignty, superior to all private property rights.” But as the Fifth Amendment ensures, this power is not without limits, among them what has come to be known as the public-use requirement. Among its crucial protections, the Fifth Amendment provides, “nor shall private property be taken for public use, without just compensation.” This language has long been understood to guarantee that “one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid.”

But both in doctrine and in practice, the primary mechanism for enforcing the public-use requirement has been the accountability of political officials to the electorate, not the scrutiny of the federal courts. Over the last century, reflecting the direction of Supreme Court case law, federal courts have had a much greater role in addressing what type of governmental action constitutes a taking and what level of compensation is just, leaving to legislatures to determine, in all but the most extreme cases, whether a taking fulfills the public-use requirement. . . .

Speaking for a unanimous Supreme Court in *Midkiff,* Justice O'Connor explained the rationale behind the very limited scope of federal judicial review in this area:

> Judicial deference is required because, in our system of government, legislatures are better able to assess what public purposes should be advanced by an exercise of the taking power. State legislatures are as capable as Congress of making such determinations within their respective spheres of authority. Thus, if a legislature, state or federal, determines there are substantial reasons for an exercise of the taking power, courts must defer to its determination that the taking will serve a public use.

. . . To that end, we have said that our review of a legislature's public-use determination is limited such that "‘where the exercise of the eminent domain power is rationally related to a conceivable public purpose,’ . . . the compensated taking of private property for urban renewal or community redevelopment is not proscribed by the Constitution.”

*  *  *

In other words, the appellants have effectively conceded what *Rosenthal* found to have been a complete defense to a public-use challenge: that viewed objectively, the Project bears at least a rational relationship to several well-established categories of public uses, among them the redress of blight, the creation of affordable housing, the creation of a public open space, and various mass-transit improvements. But the plaintiffs then expend considerable effort explaining why these proffered public uses should nonetheless be rejected as “pretextual,” not because they are false, but because they are not the real reason for the Project's approval.

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We need not go further. As *Berman* and *Rosenthal* illustrate, the redevelopment of a blighted area, even standing alone, represents a “classic example of a taking for a public use.” Nor does it matter that New York has enlisted the services of a private developer to execute such

improvements and implement its development plan. Once we discern a valid public use to which the project is rationally related, it "makes no difference that the property will be transferred to private developers, for the power of eminent domain is merely the means to the end."

Similarly, we are without authority to provide the appellants the relief they seek based on the fact that their individual lots are not blighted, notwithstanding the understandable frustration this must cause them. The appellants do not dispute the presence of significant blight in the Takings Area and even greater blight in the adjacent Renewal Area."[O]nce it has been shown that the surrounding area is blighted, the state may condemn unblighted parcels as part of an overall plan to improve a blighted area." This is "because 'community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis-lot by lot, building by building.'" The public-use requirement will be satisfied as long as the purpose involves "developing [a blighted] area to create conditions that would prevent a reversion to blight in the future."

Lastly on this point, we must reject the argument that the ESDC is undeserving of such deference because it is merely a state agency deputized by the legislature. The Supreme Court has expressly extended deference in such matters to both "Congress and its authorized agencies." In this context, "State legislatures are as capable as Congress of making such determinations within their respective spheres of authority." . . .

VI.

Because it correctly rejected, on the basis of the complaint and the documents referenced therein, the argument that the Project was not rationally related to a public use, the district court concluded that the appellant's claim would have necessarily failed under the precedents established in *Berman* and *Midkiff.* But the district court's analysis did not end there because it determined that *Kelo* opened up a separate avenue for a takings challenge under which a plaintiff could claim a taking had been effectuated "'under the mere pretext of a public purpose, when [the] actual purpose was to bestow a private benefit.'"

Primarily underlying this claim is a passing reference to "pretext" in the *Kelo* majority opinion in a single sentence. *See* [*Kelo*] ("Nor would the City be allowed to take property under the mere pretext of a public purpose when its actual purpose was to bestow a private benefit."). Fortunately, the Supreme Court's guidance in *Kelo* need not be interpreted in a vacuum. *Kelo* posed a novel question of law precisely because the City of New London had "not [been] confronted with the need to remove blight." The Supreme Court granted certiorari on the limited question of "whether a city's decision to take property for the purpose of economic development satisfies the 'public use' requirement of the Fifth Amendment." Accordingly, the issue of pretext must be understood in light of both the holding of the case, which, in permitting a taking solely on the basis of an economic development rationale, reaffirmed the "longstanding policy of deference to legislative judgments in this field," as well as the decision's self-identification with a tradition of public use jurisprudence that "[f]or more than a century ... has wisely eschewed rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power."

Prior to *Kelo,* no Supreme Court decision had endorsed the notion of a "pretext" claim, although a few lower court cases contained language suggesting that a pretextual public use may be invalid. Tellingly, it appears that in each of these district court cases, the plaintiff had contested whether *any* public use would be served by the taking.

In contrast, the particular kind of "pretext" claim the plaintiffs in this case advance bears

an especially dubious jurisprudential pedigree: The plaintiffs have effectively acknowledged the Project's rational relationship to numerous well-established public uses, but contend that it is constitutionally impermissible nonetheless because one or more of the government officials who approved it was actually-and improperly-motivated by a desire to confer a private benefit on Mr. Ratner. The allegations in support of this claim primarily involve purported excesses in the costs of the plan as measured against its benefits. The appellants seek to use these alleged failings to gain discovery into the process by which the ESDC approved this Project. Among other things, as was made clear at oral argument, they seek depositions of pertinent government officials, along with their emails, confidential communications, and other pre-decisional documents. They also dispute various plausible assumptions underlying the Project's budget.

Allowing such a claim to go forward, founded only on mere suspicion, would add an unprecedented level of intrusion into the process. . . .

Accordingly, we must reject the notion that, in a single sentence, the *Kelo* majority sought *sub silentio* to overrule *Berman, Midkiff*, and over a century of precedent and to require federal courts in all cases to give close scrutiny to the mechanics of a taking rationally related to a classic public use as a means to gauge the purity of the motives of the various government officials who approved it.

We do not read *Kelo*'s reference to "pretext" as demanding, as the appellants would apparently have it, a full judicial inquiry into the subjective motivation of every official who supported the Project, an exercise as fraught with conceptual and practical difficulties as with state-sovereignty and separation-of-power concerns. . . .

Thus, while "a legislature may juggle many policy considerations in deciding whether to condemn private property," the task of a federal court reviewing the constitutionality of such a taking should be one of "patrolling the borders" of this decision, viewed objectively, not second-guessing every detail in search of some illicit improper motivation.

We reach this conclusion preserving the possibility that a fact pattern may one day arise in which the circumstances of the approval process so greatly undermine the basic legitimacy of the outcome reached that a closer *objective* scrutiny of the justification being offered is required. In this area, "hypothetical cases ... can be confronted if and when they arise." But we hold today that where, as here, a redevelopment plan is justified in reference to several classic public uses whose objective basis is not in doubt, we must continue to adhere to the *Midkiff* standard, *i.e.,* that the Atlantic Yards Project:

> may not be successful in achieving its intended goals. But 'whether *in fact* the [Project] will accomplish its objectives is not the question: the [constitutional requirement] is satisfied if . . . the . . . [state] *rationally could have believed* that the [taking] would promote its objective.

* * *

This case has been very well litigated on both sides. At the end of the day, we are left with the distinct impression that the lawsuit is animated by concerns about the wisdom of the Atlantic Yards Project and its effect on the community. While we can well understand why the affected property owners would take this opportunity to air their complaints, such matters of policy are the province of the elected branches, not this Court.