

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

FILED

DISTRICT OF COLUMBIA)
REDEVELOPMENT LAND AGENCY)
and BRESLER & REINER, INC.,)

Petitioners)

v.)

DISTRICT OF COLUMBIA,)
WALTER E. WASHINGTON,)
KENNETH BACK and)
EDWARD S. BARAN,)

Respondents)

OCT 15 1975

Superior Court of the
District of Columbia
Tax Division

Docket No. 2283

MEMORANDUM ORDER

This case comes before the Court on the Motion to Dismiss filed by the respondents.

Briefly, the facts as set forth in the Petition are as follows: The real property involved is located at 801 M St., S.W. and is more fully described as Lot 88, Square 542. The property has been improved by buildings.

The property was assessed for Fiscal Year 1975 in the amount of \$947,177.00. The date of that assessment was July 1, 1974. A tax bill for the first half of the fiscal year was rendered and paid in the amount of \$15,723.64. Thereafter, a Notice of Reassessment, retroactive, for the same fiscal year was made increasing the assessment from \$947,177.00 to \$3,049,387.00. The petitioners contend that the alleged "reassessment" is void in that it was not made pursuant to any statute. On the date the Petition was filed, the second half taxes were not yet due and payable.

The petitioners now seek to have the court enjoin the re-assessment in the amount of \$3,049,387.00; enter a mandatory injunction requiring respondents to reinstate the original assessment, enter a declaratory judgment that the assessment is "void and invalid", and order the respondents to repay the petitioners any taxes paid on any assessment which was in excess of \$947,177.00 for Fiscal Year 1975.

I

The Court concludes that injunctive relief does not lie in this case in view of the clear statutory prohibition contained in D. C. Code 1973, §47-2410. See also D. C. Transit v. Pearson, 102 U.S. App. D.C. 102, 250 F.2d 765 (1967). The petitioners have an adequate remedy at law; they can pay the tax and thereafter challenge the validity of the second assessment. Moreover, the petitioners do not allege special or extraordinary circumstances which would remove this case from the statutory prohibition. See Enochs v. Williams Packing & Nav. Co., 370 U.S. 1, 82 S. Ct. 1125, 8 L.Ed. 2d 293 (1962); Miller v. Standard Nut Margarine Co., 284 U.S. 498, 52 S. Ct. 260, 76 L.Ed. 422 (1932); District of Columbia v. Green, 310 A.2d 848 (D.C. App. 1973); Kelly v. District of Columbia, 102 Wash. L. Rep. 2081 (Super. Ct. 1974).

II

Petitioners also seek to have the court enter a declaratory judgment. It is not entirely clear that this court has authority to do so since no local statute specifically gives the court

that power. . It can be argued that Congress, at least indirectly, conferred that power under D. C. Code 1973, §11-946 in which it is provided that the Superior Court shall conduct its business according to the Federal Rules of Civil Procedure. Federal Rule 57 provides for declaratory judgment based on the authority granted to the federal courts under 28 U.S.C. 2201. Our rules have incorporated that rule almost verbatim. D. C. Super. Ct. Civ. R. 57. Our Court of Appeals, however, has not passed on the precise question concerning this court's power to render such judgments. Smith v. Smith, 310 A.2d 229, 231 (D.C. App. 1973); Spock v. District of Columbia, 283 A.2d 14, 20-21 (D.C. App. 1971).

Assuming for the moment that this court has the power to enter a declaratory judgment, that power is discretionary, and in this case, should not be entered where the taxpayer has another adequate remedy at law. Moreover, if the basis for the entry of declaratory judgment rests on Rule 57 and thereby on 28 U.S.C. 2201, it cannot be overlooked that that statute specifically prohibits the entry of such judgments in matters involving federal taxes. That statute is consistent with Section 7421 of the Internal Revenue Code of 1954 (26 U.S.C. 7421) which, like our Section 47-2410, prohibits the enjoining of tax assessments and collections. Presumably, had Congress specifically provided for declaratory judgment, our statute would have contained the same prohibition as Section 2201 in order to make it

consistent with Section 47-2410. All of the above tends to dictate against the entry of declaratory judgments in all but the most unusual or extraordinary cases. Accordingly, ~~respondents'~~ ^{petitioners'} request for declaratory judgment must be denied.

III

Last, it is noted that the full tax for Fiscal Year 1975 had not been paid at the time this action was filed. Under such circumstances, this Court is without jurisdiction to hear this case. District of Columbia v. Berenter, 151 U.S. App. D.C. 196, 466 F.2d 367 (1972); George Hyman Constr. Co. v. District of Columbia, 315 A.2d 175 (D.C. App. 1974).

In view of the above, it is hereby

ORDERED that the Petition in this case is dismissed.

Dated: October 15, 1975.


JOHN GARRETT PENN
Judge