

Opinion
No. 1181

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA.

TAX DIVISION

THE CATHOLIC UNIVERSITY OF AMERICA)
and SMC - UNIVERSITY PARK, INC.,)

Petitioners)

v.)

DISTRICT OF COLUMBIA,)

Respondent)

MAY 7 1979

FILED

Docket No. 2600

MEMORANDUM ORDER

This comes before the Court on a motion for a preliminary injunction filed by petitioners. ^{1/}

I

This is an appeal from real property tax assessments made against property referred to as Parcel I (legally described as Parcel 135/86) and Parcel II (legally described as Parcel 135/83). Petitioner, Catholic University of America, hereinafter the University, has owned the subject property for a number of years. The University does not pay real property taxes on buildings and land belonging to it since, as a University, it is entitled to an exemption of real property taxes pursuant to D. C. Code 1973, §47-801a(j).

^{1/} The parties have attempted to negotiate a disposition or settlement of the issues raised by the motion, however, their efforts in this regard have been unsuccessful. They continued to explore a disposition of the issues raised by the request for injunctive relief even after the hearing on the present motion but are still unable to resolve their differences.

The University contends that the subject property is exempt under Section 47-801a(r)(1), which exempts "[g]rounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes" of the school and the District concedes that the property was exempt under Section 47-801a(r)(2) as being "[a]dditional grounds belonging and forming a part of" the University's property.

The appeal resulted from the University's sale of Parcels I and II to the petitioner, Stanley Martin Communities, Inc., hereinafter SMC, so that SMC can develop the area for middle income housing. The District refused to accept SMC's application for street dedication and subdivisions unless all taxes "due and payable" were paid. The District relies on D. C. Code 1973. §§47-713 and 47-714 in support of its contention. Those sections require the payment of all general tax due and payable whenever there is to be a subdivision of property before the subdivision can be recorded. The District contends that the tax "due and payable" is that imposed under Section 47-801a(r)(2) on the "additional grounds" which were sold for profit and in which case the tax should not exceed 50 percent of the profit.

The District would not record the subdivision plat and street dedication until the University paid the tax on Parcel I and it has not recorded the subdivision and dedication as respects Parcel II because neither the University nor SMC has paid the tax.

II

The Court makes the following findings of facts based upon the affidavit filed in support of the motion.

1. On December 9, 1977, Parcel I, being approximately 3.5727 acres, was deeded to petitioner, SMC, by the University.
2. During the months of December, 1977 and January, 1978, Stanley S. Halle, President of SMC attempted to record certain street dedication plats and subdivision plats for Parcel I with the District of Columbia, in order that SMC might begin the process of developing a community of middle-income homes on Parcel I.
3. Officers or employees of the District of Columbia refused to accept SMC's applications for street dedications and subdivision of Parcel I.
4. The only reason given for the refusal of the District of Columbia to record SMC's street dedication and subdivision plats was that real property taxes which had been assessed on the properties had not been paid.
5. The only taxes referred to by the District of Columbia as taxes required to be paid before the District would accept SMC's street dedication and subdivision plats were certain taxes alleged to be due under §47-801a(r)(2).
6. Counsel for the University directly advised officers of the District of Columbia's Division of Finance and Assessments that such taxes would be appealed immediately upon receipt of a bill therefor. Counsel told respondent's agents

that the appeal would be taken pursuant to §47-801e. The instant action is the appeal referred to which has been taken pursuant to §47-801e.

7. On January 30, 1978, taxes of \$65,305.42 (as set forth in a tax bill dated January 24, 1978) were paid to the District by the petitioners because the District refused to record the street dedication and subdivision plats submitted to it by SMC unless the taxes were paid on Parcel I. At no time was it suggested or indicated by the District that the documents SMC sought to file were in and of themselves inadequate or improper in form or substance.

8. On June 7, 1978, Parcel II, being 3.5404 acres, was deeded to SMC by the University.

9. In September of 1978, SMC sought to record with the Office of the Surveyor, District of Columbia, certain applications for street dedication for Parcel II in order that SMC might begin developing a community of middle-income homes on Parcel II.

10. A representative of the Tax Assessor's Office refused to allow the recordation of SMC's application for street dedication and stated that the only basis for his refusal was that taxes were allegedly owing on Parcel II.

11. The only taxes allegedly owing on Parcel II are taxes alleged to be based upon the provisions of §47-801a(r)(2).

12. As with Parcel I, the respondent did not state or suggest that the documents SMC sought to file were in and of themselves improper or inadequate in substance or form.

13. SMC has already been harmed and will continue to be harmed by the refusal of the District to record its street dedication and subdivision plats because construction development has been and will continue to be delayed. Construction financing obtained by SMC is expensive and is available for a specified term only. Further, time is being lost - a true economic injury in construction. SMC will continue to suffer irreparable damage unless the District of Columbia is enjoined to permit the filing of all plats and other paper required for the development of Parcel II.

14. SMC has no adequate remedy at law for the injuries it is suffering because of the District's refusal to record street dedications and subdivision plats. The losses occasioned by such refusal are not immediately quantifiable and may not be ascertainable in their entirety until some further time. In the interim, the success of the project is placed in jeopardy and no monetary remedy could suffice to make SMC whole if it is unable to proceed with the project.

15. The University, as a direct result of respondent's refusal to record SMC's subdivision plats and documents, has suffered irreparable economic loss by reason of its inability to have the unrestricted use, growth and benefit of the monies paid to the District for the contested taxes for Parcel I.

16. The University will suffer the same irreparable damage with respect to pre-payment of taxes on Parcel II as those suffered with respect to Parcel I if required to pay those taxes prior to appeal.

III

Although the District concedes that the subject property was exempt under Section 47-801a(r)(2), the University appeals based upon its contention that the property was exempt under Section 47-801a(r)(1) as "reasonably required and actually used" by the school. If exempt only under the former provision then the University would be required to pay the 50 percent tax imposed under that section but if exempt under the latter provision, there would be no tax due for past years even though the property was sold for profit.

The University's primary argument in support of its motion for a preliminary injunction is that, as an exempt organization under Section 47-801a, it is not required to pay the tax before taking an appeal. See D. C. Code 1973, §47-801e. For that reason, it seeks to have the Court to require the District to return the tax already paid on Parcel I and to enjoin the District from collecting the tax on Parcel II prior to recording the subdivision and dedication.. The District argues also that the petitioners are requesting injunctive relief which is prohibited in matters of tax by D. C. Code 1973, §47-2410.

Section 47-2410 prohibits any suit to enjoin the assessment and collection of taxes on the theory that taxpayers should pay first and litigate later. There are exceptional circumstances, however, when injunctive relief may be granted. Miller v. Standard Nut Margerine Co., 284 U.S. 498 (1932);

District of Columbia v. Green, 310 A.2d 848 (D.C. App. 1973).

In such cases the taxpayer must demonstrate that he is otherwise entitled to injunctive relief and that under no circumstances can the government prevail. Enochs v. Williams Packing Co., 370 U.S. 1 (1962); Committee for Fair Taxation of Professionals v. District of Columbia, 104 Wash. L. Rptr. 749 (D.C. Super. Ct. 1976).

IV

Turning first to Parcel II, the Court concludes that there is no requirement that the tax be paid since Section 47-713 has been repealed by the District of Columbia Real Property Tax Act of 1974, Pub. L. No. 93-407, Section 474(e), 88 Stat. 1065 (1974). The District argues that only the first paragraph of Section 47-713 was repealed but this Court disagrees. The above statute specifically repealed the first paragraph of Section 5 of the Act of July 1, 1902 (32 Stat. 616, Ch. 1352, §5). That statute was later codified as D. C. Code 1973 §47-713. The first paragraph of the Act of July 1902 was amended in 1921 by the Act of March 31, 1921 (41 Stat. 1195, Ch. 95) which deleted a portion of the first paragraph of the earlier Act and added an amendment to the first paragraph, the language which is now found in the second paragraph of Section 47-713. Thus, the first paragraph of Section 5 of the Act of 1902, as amended by the Act of 1921 and two later amendments which are not relevant here, included what is now the first and second paragraphs of Section 47-713. The 1974 Act repealed the first paragraph of Section 5 of the 1902 Act

as amended, not the first paragraph of Section 47-713. The result is that the 1974 Act effectively repealed the entire Section 47-713. While it appears that it was not the intent to repeal the entire section, it has nevertheless been repealed.

The District and the petitioner agree that any requirement to pay any taxes before the filing of the street dedication and subdivision plats would have been required by Section 47-713. In view of the above, there is no requirement that the petitioners pay any portion of the tax before the District recorded the subdivision plats. Additionally, it is conceded by the District that Section 47-801e permits the appeal of the assessment without the pre-payment of the tax. This is true even in the case of a tax imposed pursuant to Section 47-801a(r)(2). This being the case, and the Court being satisfied that petitioners are otherwise entitled to injunctive relief and do not have an adequate remedy at law, the District would not be able to ultimately prevail on this issue and therefore petitioners are entitled to injunctive relief with respect to Parcel II.

In addition, the Court observes that the theory behind Section 47-2410, that the taxpayer pay first and then litigate the tax, is not applicable here since Congress itself has specifically provided that an exempt organization may litigate the tax first and then pay if not exempt. Section 47-801e. That is all the University seeks to do by this appeal.

With respect to Parcel I, the petitioners have already paid the tax in question and moreover, the Court understands that the payment of that tax was made pursuant to D. C. Code 1973, §47-714 which has not been repealed. In any event, the Court is satisfied that there was no requirement that the University pay the tax prior to filing the appeal or that the tax be paid pursuant to Section 47-714 because the tax is one imposed upon the University for property sold at profit under Section 47-801a(r)(2) and Congress has decided that an exempt organization is not required to pay the tax before any appeal. The tax here is imposed upon the University and not upon SMC. In the event the tax is not paid, the District would look to the University and not to SMC. Under these circumstances it seems clear that Section 47-801e is applicable and that there is no requirement for pre-payment of the tax under either Section 47-801a(r)(2) or Section 47-714.

The Court also concludes that Section 47-801e is applicable rather than Section 47-714 and Section 47-414 is a general statute which was passed prior to Section 47-801e, the latter being applicable only to a small class of exempt organizations. Finally, the payment of the tax pursuant to Section 47-714 is consistent with the requirement that any tax be prepaid before a taxpayer can take an appeal. In the case of exempt organizations, Congress has decided that the tax need not be paid prior to appeal, Section 47-801e, and if prepayment is not required under those circumstances

then what amounts to pre-payment is not required under the circumstances of Section 47-713 or Section 47-714.

This Court is satisfied that pre-payment under either Section 47-713 or Section 47-714 was not required.

VI

The Court will grant injunctive relief with respect to Parcel II since this Court is satisfied that pre-payment was not required under Section 47-713 or Section 47-714, and in any event, the applicable provision, namely Section 47-713, has been repealed by Congress. With respect to Parcel I, the petitioners have paid that tax and that being the case, and the Court not being satisfied that with respect to that parcel they do not have an adequate remedy at law, the Court will not grant injunctive relief but will provide that any hearing with respect to the appeal of the tax may be on an expedited basis.

ORDER

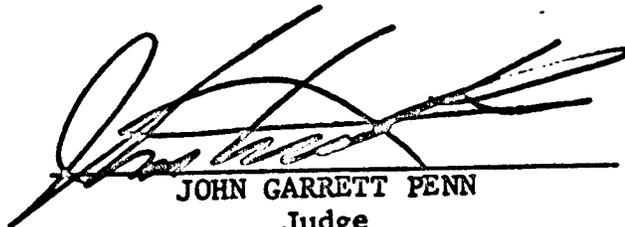
It is hereby

ORDERED that the respondent, its employees or agents are preliminary enjoined from requiring the pre-payment of any tax assessed by the respondent on Parcel II as a condition to respondent's acceptance, recordation, processing, review consideration, approval or any other necessary action upon any site plans, subdivision plats, development plans, building permits, licenses or any other documents relating or pertaining to the ability of SRC to develop or sell Parcel II, and it is further

ORDERED in the case of Parcel I injunctive relief is denied, the taxes in question having been paid by the petitioner and the Court not being satisfied that the petitioners do not now have an adequate remedy at law, that remedy being an appeal and expedited hearing, and it is further

ORDERED that this case is set down for a status hearing on May 25, 1979, at 10:00 a.m. for further consideration of an expedited hearing and appeal.

May 4, 1979
3:35 PM



JOHN GARRETT PENN
Judge

Daly D. E. Temchine, Esq.
Counsel for Petitioners

Richard Tardy, Esq.
Counsel for Respondent

*Copies picked up
in Chambers*

JK

*and to Kenneth Back
Finance Office, DC.*

*R. Stanfield
5/7/79*