

Opinion
No. 1144

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. BURTON
CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

APR 20 1977

FILED

DISTRICT OF COLUMBIA)
REDEVELOPMENT LAND AGENCY)
and L'ENFANT PLAZA, INC.)

Petitioners)

v.)

DISTRICT OF COLUMBIA and)
ROBERT KLUGEL,)

Respondents)

Docket No. 2421

MEMORANDUM ORDER

The petitioners filed this Petition for Injunctive Relief in which they seek to have the Court permanently enjoin the respondents and their agents from reassessing the building located on Lot 61, Square 435 in the District of Columbia, in the amount of \$36,826,849 for the second half of Fiscal Year 1977. The first half assessment for the same property was \$25,000,000. The case is now before the Court on petitioners' motion for preliminary injunction in which they seek to enjoin the respondents from taking any action for the second half of Fiscal Year 1977 pending a final hearing and determination of the merits of their claim.

The land is owned by the District of Columbia Redevelopment Land Agency (DCRLA) and is leased to L'Enfant Plaza Properties, Inc. (L'Enfant Plaza).

In order to fully understand the allegations made by the petitioners, it is necessary to briefly review the litigation involving this property. Petitioners filed an appeal from the assessment made for Fiscal Year 1975. A trial was held before

this Court in 1976 during which both sides presented expert witnesses to testify as to valuation. The petitioners' expert was Curt Mack and the expert for the District was Robert Klugel, who had made the assessment on the property. During the course of the trial the petitioners succeeded in having Klugel admit that he had misrepresented his qualifications in testimony in this case and in two previous cases. Although the Court did not disqualify Klugel, the District withdrew him as a witness and the case was presented to the Court solely on the evidence offered by the petitioners. The Court ruled in favor of the petitioners. District of Columbia Redevelopment Land Agency and L'Enfant Plaza v. District of Columbia, No. 2290 (D.C. Super. Ct. 3/26/78).^{1/}

Subsequent to the decision in 2290, an anonymous complaint was filed against Mr. Mack resulting from his report and testimony in that case. Petitioners sought to discover the name of the complainant by taking depositions of officials of the Department of Finance and Revenue, however, the Court granted respondents' motion to quash the subpoenas since there was no connection between the facts sought to be discovered (the name of the

^{1/} Klugel was only identified as "Mr. A" in that opinion. He has since been identified in a story published in the Washington Star, March 23, 1977 at 1, Col. 5.

complainant) and the then pending case. The complaint was filed with the American Institute of Real Estate Appraisers and the institute subsequently exonerated Mr. Mack. During the course of the hearing on the motion for preliminary injunction, Mr. Briden, the supervisor of Mr. Klugel, testified that he had filed the complaint against Mack.^{2/}

Respondents reassessed the building for the second half of Fiscal Year 1975 and increased the value from \$20,548,000 to \$25,000,000. The petitioners did not appeal that assessment. That valuation remained for Fiscal Years 1976 and 1977. The value for Fiscal Year 1977 was determined as of January 1, 1976. Respondents sought to increase the assessed value for Fiscal Year 1978 to \$36,827,849 on the building, however, that increase was rejected by this Court on motion by the petitioners.

District of Columbia Redevelopment Land Agency and L'Enfant Plaza v. District of Columbia, No. 2370 (D.C. Super. Ct., Dec. 10, 1976). The increase in the regular assessment for Fiscal Year 1978 was rejected in view of this Court's decision in Kelly v. District of Columbia, 102 Wash. L. Rptr. 2093 (D.C. Super. Ct. July 25, 1974), in which the Court held that all real properties were to be divided into two groups, Group A and Group B, and each group was to be reassessed only once every two years until

^{2/} This Court found nothing improper about Mr. Mack's report or his testimony in 2290.

such time as the District had sufficient manpower and resources to reassess all properties in a single year. The property was properly subject to reassessment only for Fiscal Years 1975, 1977 and 1979,^{3/} accordingly, the assessment for Fiscal Year 1978 would necessarily be the same as for Fiscal Year 1977.^{4/} The assessment for Fiscal Year 1977 remained at \$25,000,000.

On January 11, 1977, the District sent notice to the petitioners that the assessed value on the building was being increased to \$36,827,849 pursuant to D. C. Code 1973, §47-710. This Petition was filed on January 19, 1977 and on or about January 25, 1977, the petitioners received a "Notice of Clarification" advising them that the increase in the assessment for the second half of Fiscal Year 1977 was made pursuant to Section 47-711 and not pursuant to Section 47-710. Section 47-711

3/ Except for assessments made pursuant to D.C. Code 1973, §§47-710 and 47-711.

4/ The District has appealed from case No. 2370, however, the appeal would appear to be moot in view of the Court's decision in Kelly v. District of Columbia, 105 Wash. L. Rptr. 577 (D.C. Super. Ct., Feb. 23, 1977) (Kelly II) which held that the District could not reassess Group A properties for Fiscal Year 1978 but could reassess all properties for Fiscal Year 1979. The District has publicly announced that it will not appeal that decision and has allegedly published notices in the local newspapers to that effect advising Group A taxpayers that Group A properties would be assessed at the same value for Fiscal Year 1978 as for Fiscal Year 1977. Moreover, the District has advised the Court that it will administratively correct any assessment of Group A properties which were assessed for Fiscal Year 1978 and given a different value than for Fiscal Year 1977, except with respect to assessments made under Sections 47-710 and 47-711.

pertains to second half assessments for "new buildings under roof". After the Court questioned the sufficiency of the "Notice of Clarification"^{5/}, the respondents issued a standard notice form which stated that the increase in assessment was made pursuant to Section 47-711.

The petitioners argue that the increased assessment was not properly made under Section 47-711 and that it was only made by the respondents in order to circumvent this Court's rulings under Kelly v. District of Columbia. They also argue that the second half 1977 assessment is "void, illegal and unconstitutional", that the actions of the respondents "exhibit malice, harassment, and personal vindictiveness against the petitioners" and that the respondents are using their "official position to vindicate personal grievances". Petitioners contend that they are without an adequate legal remedy and that they will suffer irreparable injury unless the respondents are enjoined. They traced the respondents actions back to their effective cross-examination of Mr. Klugel's qualifications in case No. 2290.

I

The petitioners recognize that in order to maintain this action for injunctive relief they must be able to bring themselves within some recognized exception to the anti-injunction

^{5/} See D. C. Code 1973, §47-645 (Supp. III 1976).

statute, D. C. Code 1973, §47-2410, which provides that: "No suit shall be filed to enjoin the assessment or collection by the District of Columbia or any of its officers, agents, or employees of any tax". That statute is similar to Section 7421 of the Internal Revenue Code of 1974 (26 U.S.C. §7421) and as such is subject to the same interpretation. See, District of Columbia v. Green, 310 A.2d 848, 852 (D.C. App. 1973).

In Miller v. Standard Nut Margarine Co., 284 U.S. 498, 510 (1932), the Supreme Court held that the anti-injunction statute would not prohibit an action to enjoin an exaction which was only in the guise of a tax. The decision in Standard Nut Margarine Co. was somewhat limited by the court in Enochs v. Williams Packing Co., 370 U.S. 1, 7 (1962), where the court stated that the taxpayer must demonstrate, based upon the record before the court, that under no circumstances can the Government ultimately prevail and must also demonstrate that he is otherwise entitled to equitable relief.

Here, the petitioners in challenging the assessment under Section 47-711 are really arguing that there is no basis for that assessment. They point out that the building was certified as completed in 1973 and that nothing was done between July 1, 1976 and December 31, 1976, which would lead to an increase in the assessment for the second half of Fiscal Year 1977 pursuant to the above section. But these are questions of fact which are properly submitted to a court of law for its determination. If the petitioners are entitled to maintain this action then there is no reason why any taxpayer should not be able to

request injunctive relief where he argues that the assessment was improperly made, the valuation improperly increased or the statute improperly applied. Section 47-2410 is designed to allow the District to assess and collect its taxes "without judicial intervention and to require that the legal right to the disputed sums be determined in a suit for refund". 370 U.S. at 7.

The petitioners have a legal remedy. They can file an appeal to the Board of Equalization and Review and thereafter appeal to this court, all pursuant to Section 47-711. While it is true that the Board would probably not entertain an appeal challenging the validity of the assessment itself, it is also true that the petitioners will have an opportunity to argue the value assigned to the property. Once they have completed their administrative appeal, they will have a right, after payment of the taxes in question, to file an appeal to this court and attack the assessment itself as well as the valuation.

II

Petitioners have also failed to demonstrate that, under no circumstances can the District ultimately prevail. Certainly, they have raised many serious questions concerning the method by which the assessment was made and the reasons for making it for the second half of Fiscal Year 1977. For example, at least one official in charge of the assessment program seemed confused when asked to distinguish between assessments made under Sections 47-710, 47-711 and the regular annual assessment. In this connection, it cannot be overlooked that the original

notice given the petitioners for the second half of Fiscal Year 1977, gave as authority for the increased assessment, 47-710 and not 47-711. In court, counsel for the respondents agreed that a 47-710 assessment under the circumstances and facts of this case would have been improper. Another question is raised by the testimony of the assessor who testified that he may have been able to make an increased assessment for all of Fiscal Year 1977 with an effective date of January 1, 1976, but suggested that the District was giving the petitioners a break in waiting until the second half of the fiscal year before increasing the amount of the assessment. Such statements are entirely without merit since all taxpayers in the District have a right to expect all taxes to be assessed and collected when due and in accordance with the statute. Moreover, respondents have presented no authority which would give the assessor such extraordinary discretion. All taxpayers are fully entitled to rely upon the statute and not upon the discretion of a single assessor.

Based upon the testimony offered by the parties, this Court cannot find that the allegations made by the petitioners are without merit. However, the Court, while recognizing the seriousness of the allegations, cannot say based upon the present record that under no circumstances can the District ultimately prevail. In this latter connection, it must be borne in mind that the last issue is addressed to whether there was a valid 47-711 assessment and not whether the value determined pursuant to that assessment was correctly set at

\$38,827,849. In short, the petitioners have not demonstrated that the respondents cannot ultimately prevail.

III

The petitioners have also argued that they have no adequate legal remedy because they will lose their Kelly rights. See, Kelly v. District of Columbia, 102 Wash. L. Rptr. 2093 (Kelly I) and Kelly v. District of Columbia, 105 Wash. L. Rptr. 577 (Kelly II). By this they mean that absent the questioned second half assessment for Fiscal Year 1977, they would have been able to have the property assessed at the same value for Fiscal Year 1978 as for Fiscal Year 1977. The 1977 assessment on the building was \$25,000,000 and the second half assessment for 1977 increased that assessment by over \$11,000,000. Thus, if the District made a proper assessment under Section 47-711 (second half of 1977), the correct assessment for Fiscal Year 1978 would be the amount of the last assessment for Fiscal Year 1977 or in an amount in excess of \$36,000,000. In order to protect their rights for both the second half of Fiscal Year 1977 and for Fiscal Year 1978, the petitioners would now be required to appeal from both assessments. They argue that once the appeal is taken from the Fiscal Year 1978 assessment, which appeal would not have been necessary but for the questioned second half 1977 assessment, the respondents may attempt to establish even a higher assessment than that made by the assessor. Moreover, they are concerned that even if they should prevail on their appeal from the second half Fiscal Year 1977 assessment, that they will have jeopardized their position with respect to Fiscal Year 1978 by placing that assessment in issue.

While it is true that the second half Fiscal Year 1977 assessment opens up the Fiscal Year 1978 assessment, the fact remains that the petitioners have an adequate remedy; to appeal both assessments. Petitioners must be left to their legal remedies under the statute.

IV

To summarize, the Court concludes that the petitioners have an adequate legal remedy with respect to the assessment made pursuant to Section 47-711, that they have been unable to demonstrate that under no circumstances can the District ultimately prevail and that there has been no showing of special or extraordinary circumstances so as to bring this case within the exceptions set forth in Williams Packing Co., Green or Kelly. Under these circumstances, the issuance of a preliminary injunction is barred by D. C. Code 1973, §47-2410. Moreover, the Court concludes, that since the petitioners have an adequate remedy at law, that the action itself is barred by the same statute and that the Court accordingly lacks jurisdiction to entertain the petition. Such being the case, the Petition as filed must be dismissed.^{6/}

^{6/} Petitioners were advised that the injunction would be denied on March 30, 1977, so as to allow them time to file their administrative appeal on or before March 31, 1977.

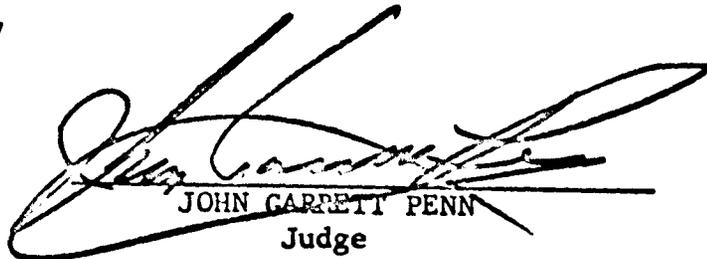
ORDER

It is hereby

ORDERED that petitioners Motion for a Preliminary Injunction
is denied, and it is further

ORDERED sua sponte, that the Petition for Injunctive Relief
is dismissed for want of jurisdiction.

Dated: April 19, 1977



JOHN GARRETT PENN
Judge

Gilbert Hahn, Esq.
Attorney for Petitioners

Melvin Washington, Esq.
Attorney for Respondents

Copies mailed postage prepaid
to parties indicated above on
4/20, 1977.

Jean Senerius

And to Finance Officer, Dr.

R. Stanfield
4/20/77