Opinion
No. 1191

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Tax Division

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

SEP 14 1979

FILED

Apartment and Office Building Association of Metropolitan Washington, et al.,	:	
Petitioners	:	
v.	:	Docket No. 2467
District of Columbia,	:	
Respondent	:	

OPINION

This cause came on for hearing on the petitioners' Motion for Preliminary and Permanent Injunction and respondent's opposition thereto. The Court, having considered the evidence submitted by the parties and the oral argument thereon, has determined that permanent injunctive and declaratory relief should be granted to the petitioners. Specifically, the Court has determined and declares that the statutory scheme embraced by D.C. Law 1-124, § 301(a) and D.C. Law 2-73 is invalid, as it constitutes an action by the Council of the District of Columbia beyond its statutory authority, in that it denies to petitioners the equal protection of the laws in violation of the Fifth Amendment to the United States Constitution. The Court finds further that there is no adequate legal remedy available to the petitioners, that the petitioners would suffer irreparable harm if injunctive relief were not granted, that such hardship to them would be greater than that which respondent will suffer as a result of the injunction, and that the public interest will not be disserved by injunctive relief. See Don't Tear It Down, Inc. v. D.C., 395 A.2d 393 (D.C. App. 1978). For these reasons, the Court orders that a permanent injunction shall issue, enjoining the respondent, the District of Columbia, from enforcement of D.C. Law 1-124, § 301(a), and D.C. Law 2-73, § 2(b).

D.C. Law 1-124, enacted on December 17, 1976, and approved by the Mayor on January 25, 1977, was originally to become effective on April 19, 1977. Section 301(a) of D.C. Law 1-124 provides that real estate taxpayers whose tax bill is $100,000 or more must pay the full amount in one installment on or before September 15 of each tax year, while taxpayers whose real estate tax bills are less than $100,000 may pay in two installments, one-half being due on September 15 and the balance being due by the following March 31. Should a taxpayer default, a ten percent penalty, with interest at one percent per month on the unpaid amount is provided. Although § 301(a) was to become effective on April 19, 1977, D.C. Law 2-73, enacted by the Council of the District of Columbia on January 10, 1978, took effect on April 18, 1978, providing that D.C. Law 1-124, § 301(a) would apply only for tax years subsequent to June 30, 1979. D.C. Law 2-73, § 2(b).

This case commenced on August 31, 1977, with the filing of a complaint for declaratory and injunctive relief. It came on for trial on May 31, 1979. The Court denied petitioners' claim for injunctive relief on June 11, 1979, and ordered the complaint dismissed on June 14, 1979. Petitioners appealed on June 20, 1979, to the D.C. Court of Appeals, which on August 30, 1979, summarily reversed the trial court's denial of injunctive relief. The case was then remanded for reinstatement and expedited consideration of the complaint on its merits.

Having considered the evidence and arguments thereon, the Court makes the following findings of fact and conclusions of law:

D.C. LAW 1-124, § 301(a) IS INVALID AS IT REPRESENTS ACTION OF THE COUNCIL OF THE DISTRICT OF COLUMBIA BEYOND ITS STATUTORY AUTHORITY, WHICH DENIES TO THE PETITIONERS AND OTHERS SIMILARLY SITUATED THE EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

D.C. Law 1-124, § 301(a) reveals an effort by the Council of the District of Columbia to make a classification of taxpayers, based solely on the value of the tax bills that must be paid. The classification is based on whether the taxpayer owes a sum equal to or greater than $100,000 or a sum less than $100,000. It cannot be contended that

the classification is also based on use or type of property, for the $100,000 or greater classification includes several types of properties, including industrial buildings, office buildings, hotels, residential buildings, shopping centers, and a hospital.

According to the D.C. Code, the City Council is permitted to make classifications based on the use or type of real properties. D.C. Code, § 47-632a (Supp. V, 1978). No provision has been found authorizing the Council to make a classification according to the value of the property. Respondent's argument that Council Emergency Act 2-265 and Council Act 2-268 have revised §§ 47-632a(a) and (b) so as to allow the Council authority to classify by value without limitation are found without merit. Thus, the Court finds that the Council, in enacting D.C. Law 1-124, § 301(a), based solely on a value classification, acted outside its statutory authority and that § 301(a) is thus invalid.

Furthermore, the Court concludes that this action constitutes a denial of equal protection of the laws in violation of the due process clause of the Fifth Amendment, which applies to the District of Columbia. See Bolling v. Sharpe, 347 U.S. 497 (1954). It reveals a situation in which a taxpayer paying taxes on property of a certain type or use may face different payment requirements than another taxpayer paying taxes on property of the same type or use. As the D.C. Court of Appeals has stated, ". . . equal treatment within a class [of taxpayers] is fundamental to an equitable administration of the laws." Washington Theatre Club, Inc. v. D.C., 311 A.2d 492, 495 (D.C. App. 1973). The Council of the District of Columbia cannot treat in different manners taxpayers who are similarly situated, without having a rational basis and reasonable justification for such discrimination. "[T]he ground of difference upon which the discrimination is rested . . ." must, to be sustained have a " . . . fair or substantial relation to the proper object sought to be accomplished by the legislation." F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 - 416 (1920); see also Allied Stores of Ohio v. Bowers, 358 U.S. 522, 527 (1959), D.C. v. Green, 310 A.2d 848 (1973).

The possible justifications for the discriminatory treatment here at issue are that early payment in full of the taxes of taxpayers owing $100,000 or more would generate increased revenue needed by the District of Columbia government, and that it would increase administrative convenience for the District. The Court finds that first potential justification to be without merit. To increase revenues by $16,200,000 to $20,500,000 cannot have been the objective in the enactment of D.C. Law 1-124, § 301(a), when within five months after its final passage and amendment, the City Council enacted two other laws, the result of which was to reduce revenue by an estimated $24,048,306. See D.C. Law EA 2-138, Real Property Tax Rate Emergency Act of Tax Year 1979, effective August 10, 1978, and D.C. Law EA 2-139, District of Columbia Renters and Homeowners Tax Reduction Act of 1978, effective August 30, 1978. Even if that could have been the purpose, it does not adequately explain the discriminatory treatment accorded these petitioners. The discrimination has no "fair or substantial relation" to that objective. See F.S. Royster Guano Co. v. Virginia, supra.

The Court also finds that, although administrative convenience may have been a purpose of § 301(a), the discrimination here bears no reasonable relation to that purpose. Only 147 taxpayers would be affected by the requirement for early payment in full by September. The elimination of 147 additional tax bills, no longer necessary to prepare, send and process for the March 31 deadline would not result in a saving of time, effort and money sufficient to justify this particular discrimination.

Thus the classification violates the requirements of the Fifth Amendment.

INJUNCTIVE RELIEF IS APPROPRIATE AS NO ADEQUATE LEGAL REMEDY EXISTS.

Respondent has continually alleged that petitioners would have an adequate legal remedy upon successful challenge of D.C. Law 1-124, § 301(a). Originally, it claimed that D.C. Code 1973, § 47-2413 would provide that remedy. It alleged that early payment in full of taxes on September 15 could be classified as an "overpayment," and that a refund

could be sought under that provision. The D.C. Court of Appeals, however, determined that subsections (a) and (b) of § 47-2413 are not applicable to this situation. A.O.B.A. v. D.C., D.C. App. No. 79-700, August 30, 1979.

Respondent still claims that § 47-2413(c) is available as a legal remedy. It asserts that petitioners, having first pre-paid the tax in question, may file a suit in the Tax Division of the Superior Court, alleging constitutional infirmities. If the Tax Division "determines that an overpayment has been made," the respondent alleges that "interest would be awarded at 4% under the terms of 47 D.C. Code § 2413(c)." Supplement to Respondent's Opposition to Motion for Preliminary Injunction, 2. Although the D.C. Court of Appeals, in summarily reversing the previous decision of the Superior Court Tax Division, A.O.B.A. v. D.C., Sup. Ct. D.C. No. T-2467, June 11, 1979, said only that any "overpayment" problem found on the facts at issue could not be remedied by §47-2413(a) or (b), A.O.B.A. v. D.C. (D.C.C.A.), supra, this Court finds additionally that § 47-2413(c) cannot apply either. Were the petitioners to pay and then contest in this Court, they would not be awarded interest, for their payment would not fit the definition of "overpayment," as stated in Jones v. Liberty Glass Co., 332 U.S. 524 (1947). As the Supreme Court there stated, "overpayment" means

> . . . any payment in excess of that which is properly due. Such an excess payment may be traced to an error in mathematics or in judgment or in interpretation of facts or law. And the error may be committed by the taxpayer or by the revenue agents. Whatever the reason, the payment of more than is rightfully due is what characterizes an overpayment. Id. at 531.

Here no error as to mathematics, facts, or law exists. The petitioners owe $100,000 or more, and the law has been as stated in D.C. Law 1-124, § 301(a). Thus, were petitioners to prepay by September, they would be paying what is properly due according to law and nothing in excess. Therefore, payment would not be overpayment, § 47-2413(c) cannot apply, and there is no merit to respondent's claim that such a pay-first-contest-later scheme provides an appropriate and adequate legal remedy.

Respondents also claim, though, that D.C. Code 1973, § 646(i) (Supp. V, 1978), as amended by D.C. Law 2-130, 25 D.C. Register 8669, provides an adequate legal remedy. That provision states that

> Any person aggrieved by an assessment, classification, equalization, or valuation . . . may . . . appeal . . . in the same manner and to the same extent as provided in sections 47-2403 and 47-2404 . . . .

This statute is thus only available as a legal remedy if petitioner wishes to challenge the assessment, classification, equalization, or valuation, which has been made.

The Court finds that § 646(i) is not an appropriate or adequate legal remedy in this situation. Petitioners here are challenging neither the assessment of the tax on, nor the valuation of, their individual properties. Nor are they challenging any equalization relating to their properties. It is true that they are challenging the classification, based solely on the value of property, made in D.C. Law 1-124, § 301(a). Nevertheless, the petitioners are not aggrieved by this classification per se, for the classification merely distinguishes between taxpayers owing $100,000 or more in taxes and those owing less than $100,000. Were the statute to delineate specifically between those who had to pay taxes in full by September and those who did not, petitioners would be aggrieved by the classification itself. But as it stands, the classification itself in § 301(a) does not hurt them. Rather, the taxpayers are aggrieved by the discriminatory manner in which that classification is used, to require full payment by September by those owing $100,000 or more. It is the discriminatory use to which the classification is put, not the classification itself, which aggrieves the petitioners. Because D.C. Code 1973, § 47-646(i) (Supp. V, 1978) (as amended by D.C. Law 2-130, 25 D.C. Register 8669), specifically applies only to persons "aggrieved by an assessment, classification, equalization, or valuation . . ." and because the petitioners are aggrieved by none of these, but have merely challenged a classification, the respondent's use of which may aggrieve them, this Court finds that § 646(i) provides no appropriate or adequate remedy at law.

AS THERE IS NO ADEQUATE REMEDY AT LAW, INJUNCTIVE RELIEF SHOULD BE GRANTED AS THE COURT ALSO FINDS THAT PETITIONERS WILL SUFFER IRREPARABLE HARM IF INJUNCTIVE RELIEF IS NOT GRANTED, THAT SUCH HARDSHIP WOULD BE GREATER THAN THAT WHICH RESPONDENT WILL SUFFER AS A RESULT OF THE INJUNCTION, AND THAT THE PUBLIC INTEREST WILL NOT BE DISSERVED BY INJUNCTIVE RELIEF.

PETITIONERS WILL SUFFER IRREPARABLE HARM IF INJUNCTIVE RELIEF IS NOT GRANTED.

As has been discussed, no adequate legal remedy exists to aid petitioners, should they be forced, as they would be without injunctive relief, to pay their real estate taxes in full by September. If they pay by that date and then D.C. Law 1-124, § 301(a) is later finally determined to be invalid, they will thus suffer irreparable harm, being without a means to regain one-half of the sum paid, plus interest for the loss of the use of that money during the six and one-half month period between September 15(17) and March 31.

Petitioners also allege that they will suffer irreparable harm if they fail to pay the full amount of their taxes by September 17. They claim that when they pay the balance of their tax in March, plus the penalty and interest required by § 301(a), they will be without means "to recover the illegal penalty and interest." Further, they claim that if they fail to pay, they "will be in default under the terms of instruments securing loans and thus be threatened with foreclosure and loss of their real estate." Respondent contends, however, that

> . . . petitioners' answers to respondent's interrogatories . . . indicate . . . that their present financial status is sound enough that there would be no default in payment of the tax which would result in assessment of penalty and interest and/or threatened foreclosure and loss of real estate.

Respondent thus asserts that petitioners' allegation, as to irreparable harm which would occur upon default, is purely speculative.

While that allegation may be speculative, this Court finds the allegation of harm which would occur if payment were made, as required, by September 17, to be a sufficient showing of irreparable injury to support the granting of injunctive relief.

THE HARM TO PETITIONERS IF INJUNCTIVE RELIEF WERE DENIED WOULD EXCEED THE HARDSHIP TO RESPONDENT TO BE SUFFERED IF INJUNCTIVE RELIEF IS GRANTED.

If injunctive relief were denied, petitioners would suffer irreparable harm, as has been discussed, supra. Ignoring the speculative losses of property to be incurred upon nonpayment of taxes in full by September 17, 1979, it is clear that petitioners would lose six and one-half months' interest on sums equal to or even far exceeding $50,000. As has been stated, payment of the taxes by September would not be an overpayment, and no legal means would be available to recover interest. Even if there were such a remedy, only four percent interest could be earned, under D.C. Code 1973, § 47-2413(c), as opposed to the 11 percent which could have been earned in a commercial lending institution. However viewed, substantial sums in interest would be irretrievably lost by petitioners upon payment in full by September 17.

The Court must weigh against this substantial loss the hardship to the District if an injunction is ordered. Part of that hardship would be the loss of $16,200,000 to $20,500,000 in tax revenues. The Court finds the respondent's need for this money insubstantial when it realizes that the District has forgiven, since the enactment of D.C. Law 1-124, § 301(a), approximately $24,048,306 in revenues for tax year 1979, through the effects of D.C. Law EA 2-138, the Real Property Tax Rate Emergency Act of tax year 1979, and D.C. Law EA 2-139, the D.C. Renters and Homeowners Reduction Act of 1978.

The other part of respondent's hardship would be the increase in administrative work in preparing, sending, and processing a greater number of tax bills for payment in March 1980. The additional tax bills would be those of taxpayers owing $100,000 or more, who, but for the injunction, would have paid in full by September 17, 1979. As only 147 additional bills would be involved, the administrative inconvenience to the District is deemed negligible.

The Court thus concludes that petitioners' loss upon denial of injunctive relief would be far more painfully crucial than would be

respondent's upon the granting of relief, and that the balance of the hardships weighs in petitioners' favor.

THE PUBLIC INTEREST WILL NOT BE DISSERVED BY THE GRANTING OF INJUNCTIVE RELIEF.

Based upon the foregoing, it is clear to the Court that the District of Columbia is not in immediate need of the $16,200,000 to $20,500,000, which would be raised by D.C. Law 1-124, § 301(a), for tax year 1979. As the District found it possible to forgive $24,048,306 for that tax year, it must be able to wait until March, 1980, when it will receive the revenues which, but for injunctive relief, would be due on September 17, 1979. The Court also finds that the negligible increase in administrative work, due to the preparing, sending, and processing of 147 additional tax bills for payment by March, 1980, is not sufficient to cause real harm. Thus, the public interest will not suffer by an injunction against enforcement of D.C. Law 1-124, § 301(a).

Paul F. McArdle
Judge

September 14, 1979

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JUDGMENT

Based upon the foregoing findings of fact and conclusions of law entered this day, it is this 14th day of September, 1979,

ORDERED that the petitioners' Motion for Preliminary and Permanent Injunction be and the same is hereby granted; and that the District of Columbia is permanently enjoined from enforcing D.C. Law 1-124, § 301(a), and D.C. Law 2-73, § 2(b).

Paul F. McArdle
Judge

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