

1977

# Salt Lake County v. Teresa Jean Ramoselli : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

SALT LAKE COUNTY, a body  
corporate and politic of  
the State of Utah

Plaintiff and Appellant

vs.

TERESA JEAN RAMOSELLI

Defendant and Respondent

Case No. 14726

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BRIEF OF APPELLANT

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STATEMENT OF THE NATURE  
OF THE CASE

The case being appealed is a condemnation suit which was initiated by plaintiff Salt Lake County to acquire property for park and recreation purposes in the vicinity of 900 East 6400 South in Salt Lake County, Utah, owned by defendant Teresa Jean Ramoselli.

Defendant, in answering plaintiff's Complaint, denied there was a public necessity for the acquisition, denied that the contemplated use of the property being condemned was public in nature as defined by law, and also, denied that the proposed project was located in a manner consistent with the greatest public good and the least private injury. (R. 10-11)

## DISPOSITION BELOW

The District Court of Salt Lake County, the Honorable Stewart M. Hanson, Sr., District Judge presiding, decreed that Salt Lake County was unentitled to condemn, denied immediate occupancy although a Motion for an Order of Immediate Occupancy was not even before the Court for determination at the trial, and also, dismissed plaintiff's Complaint in condemnation.

## RELIEF SOUGHT ON APPEAL

Reversal of the District Court's Order dismissing plaintiff's Complaint in condemnation and a remand of the case to the District Court for trial on the issue of just condemnation.

## STATEMENT OF FACTS

Salt Lake County filed its Complaint in condemnation with the District Court of Salt Lake County on March 4, 1974. The purpose was to acquire by eminent domain approximately 11.63 acres more or less of property owned by defendant Ramoselli in the vicinity of 900 East and 6400 South in Salt Lake County, Utah, for a park and recreation area. (R. 2-3) The Complaint in condemnation was initiated pursuant to a Resolution of Condemnation passed unanimously by the Board of Commissioners of Salt Lake County on December 24, 1973. (R. 5-6)

Defendant Ramoselli answered plaintiff's Complaint by among other things denying plaintiff's entitlement to condemn, denying there was a public necessity for the acquisition, denying that the con-

templated use was public in nature, as defined in law, and also, denying that the proposed park and recreation area project was located in a manner consistent with the greatest public good and the least private injury. (R. 10-12)

By stipulation, the case was bifurcated for separate trial on the issue of plaintiff's entitlement to condemn and the issue of just compensation. (R. 34) The trial was held July 26-27, 1976, as a non-jury trial presided over by the Honorable Stewart M. Hanson Sr., District Judge. Both oral testimony and documentary evidence was adduced. At the conclusion of the trial the Court took the matter under advisement. That very day, July 27, 1976, the Court made and entered its Memorandum Decision. It recites in the second paragraph thereof as follows: "This was a proceeding by the County requesting the Court to determine that the plaintiff was entitled to the immediate use and occupancy of the defendant's property." However, as indicated above and as evidenced by the Findings of Fact and Conclusions of Law which were prepared by counsel for defendant, the question of immediate occupancy was not even before the Court. (R. 34) In its Memorandum Decision the District Court also found and concluded: "...there did not and does not exist as of March, 1974, when the action was filed, a genuine need for the condemnation of the defendant that a specific use of the property was

not and still has not been defined by the governing board of Salt Lake County and that funds have not been budgeted for the construction of any public project on the condemned lands, and there is no showing what the County intends to use the property for in the immediate, foreseeable future." The Court concluded by stating in the last sentence of its Memorandum Decision: "...that public necessity does not require or entitle the County to condemn and its motion for immediate occupancy is hereby denied." (R. 29-30)

The Findings of Fact and Conclusions of Law as well as the Order On Entitlement Of Plaintiff To Condemn and Order of Dismissal were subsequently signed and entered of record on July 29, 1976. (R. 31-38)

It is the Order decreeing that Salt Lake County was unentitled to condemn and dismissing plaintiff's Complaint in condemnation which is the subject matter of this appeal.

#### ARGUMENT

#### POINT I

#### THE ACQUISITION AND USE OF PROPERTY FOR PARK AND RECREATION PURPOSES IS UNQUESTIONABLY PUBLIC IN NATURE AS DEFINED BY LAW

In challenging Salt Lake County's entitlement to condemn

defendant Ramoselli asserted in her Answer that the contemplated use of the property for park and recreation purposes was not: "...public in nature as defined by law..." (R. 10) There is no question but that under the Utah Eminent Domain Statute, Chapter 34 of Title 78, U.C.A. 1953 as amended, the use to which property being acquired under eminent domain is put must be a use authorized by law. Defendant apparently abandoned this shot gun challenge to Salt Lake County's entitlement to condemn because nothing more was said about this in either the Court's Memorandum Decision or in the subsequent Findings, Conclusion and Order. There should be no doubt that the use of property for a public park and recreation area is in fact a public use authorized by law.

78-34-1 U.C.A. 1953 as amended provides in part:

78-34-1 Uses for which right may be exercised.  
--Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses;

(3) Public buildings and grounds for the use of any county, city or incorporated town.."

The Utah Legislature expressly authorized counties to acquire property for playgrounds and recreational facilities. Chapter 2, Title 11, U.C.A. 1953 as amended provides in part:

"11-2-1 Local authorities may designate and acquire property for playgrounds and recreational facilities. --The governing body of any city, town, school district or county may designate and set apart for use as playgrounds, athletic

fields, gymnasiums, public baths, swimming pools, camps, indoor recreation centers, television transmission and relay facilities, or other recreational facilities, any lands, buildings or personal property owned by such cities, towns, counties or school districts that may be suitable for such purposes; and may, in such manner as may be authorized and provided by law for the acquisition of lands or buildings for public purposes in such cities, towns, counties and school districts, acquire lands, buildings, and personal property therein for such use; and may equip, maintain, operate and supervise the same, employing such play leaders, recreation directors, supervisors and other employees as it may deem proper."

Also, among the other powers conferred upon County Commissioners, the Utah Legislature provided in 17-5-49 U.C.A. 1953 as amended that: "They may make such provision for the preservation of health in the county... as they may deem necessary...". And, in 17-5-50 U.C.A. 1953 as amended that: "They may do and perform all other acts and things required by law not in this title enumerated which may be necessary to the full discharge of the duties of the board."

The general rule is set forth in 26 Am. Jur. 2d - Eminent Domain, Sec. 60 at page 717. This section reads in part as follows:

"...Indeed, public parks in the densely populated section of large cities are so essential to the health and comfort of the people that they may unquestionably be established by the aid of eminent domain..."

See also Nichols on Eminent Domain, 3rd Ed. Sec. 5.5151 Parks.

There was and is no merit to defendant Ramoselli's challenge that the park and recreational use to which Salt Lake County intended devoting her property to be acquired

by eminent domain was a use public in nature as defined by law.

## POINT II

THE DISTRICT COURT ERRED IN DECREERING THAT SALT LAKE COUNTY WAS UNENTITLED TO CONDEMN DEFENDANT'S PROPERTY FOR PARK AND RECREATION USES AND IN DISMISSING PLAINTIFF'S COMPLAINT

It is well established that the scope of judicial review of administrative determinations in eminent domain proceedings is extremely narrow. While there are obvious differences between the acquisition by eminent domain of property for public roads and for public parks the analogy is nevertheless rather close. In this connection in the case of Tom of Perry vs Thomas, 82 Utah 159, 22 P 2d 343 (1933) this Honorable Court ruled as follows at page 165 of the Utah Reports, 22 P 2d page 345:

"...We are satisfied that under our statutes the public necessity or expediency for the opening of a street is a question for determination by the governing board of a municipality and that its conclusion in that respect properly expressed by ordinance or resolution is conclusive."

\* \* \* \* \*

Under powers thus delegated to municipal boards the necessity, expediency, or propriety of opening a public street or way is a political question, and in the absence of fraud, bad faith, or abuse of discretion the action of such board will not be disturbed by the courts..."

The Supreme Court of the United States has the same opinion that judicial review of administrative decisions to condemn a particular property or property interest

obtains only when it is alleged that the administrative decision is arbitrary, capricious or in bad faith. See in this connection United States v. Carmack, 329 U.S. 230, 243-244, 67 S. Ct. 252, 91 L. Ed. 209 (1946)

Nichols on Eminent Domain, Third Edition, in Vol 1, Sec. 411 (2) at pages 164-5 states:

"...Even when judicial review of the question of necessity is based upon alleged arbitrariness or excessiveness of the taking, it has been held that by virtue of the delegation of the power of eminent domain by the State to the condemnor there is necessarily left largely to the latter's discretion the location and area of the land to be taken. And one seeking to show that the taking has been arbitrary or excessive shoulders a heavy burden of proof in the attempt to persuade the Court to over-rule the condemnor's judgment."

The Resolution of Condemnation passed unanimously by the Board of Commissioners of Salt Lake County upon which the Complaint in condemnation was based was certainly not fraudulent nor done in bad faith nor was it an abuse of discretion. Perhaps the best way to demonstrate that the District Court erred in decreeing that Salt Lake County was unentitled to condemn defendant Ramoselli's property for park and recreation uses is to invite attention to the events in chronological sequence, all of which are documented in the record, which preceded and gave rise to the Resolution of Condemnation.

First, a Master Plan for Salt Lake County was designed in February of 1965 by Williams, Cook and Macine (City and Regional Planning Consultants), as a general guide to the long-range future development of Salt Lake Valley. (See Exhibit 2-P) The red cross on Exhibit 2-P delineates the general location of defendant Ramoselli's property which is the very property Salt Lake County seeks to condemn. The green color symbol on the Exhibit indicates that this parcel is suggested as a park and/or recreation and open space area.

Second, on July 9, 1965, by unanimous official action, the Planning Commission of Salt Lake County passed a Resolution adopting the Master Plan referred to above. (See Exhibit 3-P) The concluding paragraph of the Resolution reads:

"NOW, THEREFORE BE IT RESOLVED: (1) that the Salt Lake County Planning Commission does adopt said Master Plan, consisting of the Master Plan Report, "Salt Lake Valley 1985" and its accompanying map as the official guide to planning the physical development of Salt Lake County, and directs that full use be made of the Plan toward this end, as provided by State and local laws; (2) that this Plan be given annual review for the purpose of amending it to reflect changing conditions in the County as they occur."

Third, on July 13, 1965, the County Commission ratified and concurred in the foregoing action of the Planning Commission. The letter of July 15, 1965, from the County Clerk to the County Planning Director, which is attached to Exhibit 3-P provides in part:

"The Board of County Commissioners, at its meeting held on Tuesday, July 13, 1965, ratified and concurred in the Salt Lake County Planning Commission's recent action of July 9, 1965, wherein they approved a Resolution Adopting Salt Lake County Master Plan."

Fourth, there is a design map of the Salt Lake County Recreation and Parks Department dated July 13,

1965. (See Exhibit 14-D) The Ramoselli property which is the subject matter of the condemnation proceeding is in the lower left hand corner of the map.

There is delineated on the Ramoselli property an area for court games, an area for parking and a swimming pool.

Fifth, there is another map entitled "Traverse for Proposed Park" dated December 3, 1970, drawn by the Salt Lake County Surveyor-Engineer. (See Exhibit 11-D)

On this map the Ramoselli property is circled in blue.

With reference to the Ramoselli property, Mr. Davis, Advance Planner for the Salt Lake County Recreation and Parks Department, testified that the Department plans were to develop it as a community park. His testimony in part is:

"Our imminent plans would be to develop that particular piece of property as a community park for the Cottonwood community. This means our plans would be to put tennis courts, picnic pavilions and the traditional types of other popular recreation park facilities you would see in other places in the County." (R. 64)

Sixth, in 1972, the Salt Lake County Recreation and

Parks Master Plan was promulgated. (See Exhibit 4-P) Page 69 of this Exhibit sets forth the needs of a community park and page 70 indicates that the South Cottonwood Community needs a community park, other park and tennis courts. On page 109 of this Exhibit the Ramoselli property is outlined in red and the legend indicates that this is the very site for a community park site.

Seventh, by December 15, 1972, the Big Cottonwood District Development Plan came into being. (See Exhibit 6-P) This is a further refinement of the Master Plan of 1969 and the Cottonwood District Development Plan of 1972. This plan was also drawn up by Williams & Moline, City and Regional Planning experts of San Francisco, California, shows the Ramoselli property circled in red. The legend indicates that the green coloring of the Ramoselli property delineates this property as a proposed park.

Eighth, on May 29, 1973, there was a special Planning Commission Meeting held to review the Cottonwood District Plan which had been prepared after three years of study by Williams & Moline, Planning Consultants. The minutes of this special meeting read in part as follows:

"Mr. Barnes explained that in 1965 Salt Lake County adopted a master plan for Salt Lake Valley. The master plan was of a general nature and to make it manageable the County

was divided into seven Planning Districts. It was the intention from the beginning to undertake future detailed studies of the Planning Districts with first emphasis on the more urbanized districts. The Big Cottonwood District is the first of these district plans and the first official amendment to the original plan..."

Ninth, on September 12, 1973, the Board of Commissioners of Salt Lake County after notice of the hearing as prescribed by law and with little objection thereto officially adopted the Big Cottonwood District Development Plan. The Resolution by which the Plan was officially adopted reads in part as follows:

"~~Now~~, THEREFORE, BE IT RESOLVED by the Board of County Commissioners (and) that said Big Cottonwood Planning District Development Plan be and the same is adopted as an amendment to the general Salt Lake County Master Plan as a part of the official guide to planning the physical development and growth within the Big Cottonwood Planning District. And the Salt Lake County Commission directs that use of the plan be carried forward within the area as provided under the state and local laws and that this development plan may hereafter be amended and/or changed upon review, due notice after hearing and adoption by the County Commission to reflect the changing conditions in the Big Cottonwood Planning District as they may occur."

(See Exhibit 9-P)

Finally, on December 24, 1973, in culmination of all of the preceding events and zeroing in on the exact parameters of the Ramoselli property, the Board of County Commissioners of Salt Lake County adopted the Resolution of Condemnation which was the basis of Salt Lake County's Complaint in condemnation. The Resolution of Condemnation reads in part that:

"The public interest and necessity require the acquisition and completion by Salt Lake County, acting through its County Commissioners, of a public improvement to be used as a park and recreation area."

While, by clever cross-examination, every effort was made to twist and torture the testimony to infer that the only reason for acquiring the Ramosellis property was for parking space and to use the home thereon as a visitor's center for the adjoining Wheeler Historical Farm property which was acquired by negotiation and not by eminent domain, the message nevertheless came through loud and clear that the Ramosellis property was the suitable site for a community park. An example of the cross-examination referred to appears on pages 92-93 of the Record.

(By Mr. Campbell) Just the fact that I take it from your testimony on direct examination it is the position of the County Board that the property of the Ramosellis is needed in conjunction with the development of the Wheeler Historical Ranch, is that your testimony?

A. That it also-- There was another indication. In other words, that was part.

Q. I recall your testimony to be, in answer to your counsel in which he said, "Would you generally describe what purpose the property of the Ramosellis would be used for?" and your response was, "As part of the Wheeler Living Historical Farm." Then you went on also to say there would be a parking lot there, a visitors' center, and there maybe some tennis courts and other things. Is that right?

A. Yes, that is right.

Q. I take it then from your testimony that the purpose for or if the Wheeler Historical Living Farm

concept were not there, and if that property wasn't going to be developed for that purpose the Ramoselli property would not be needed by Salt Lake County, is that correct?

A. No, that is not correct.

Later on the questions and answers showed that the primary purpose for acquiring the Ramoselli property

was for a park. On page 112 of the Record it reads:

Q. The use you need is primarily one of access?

A. The use would be primarily for Cottonwood Park facilities.

The testimony and documentary evidence in the record will not support the proposition that there was fraud,

and faith, or abuse of discretion on the part of the

County Commissioners in adopting the Resolution of Con-

demnation. Nor will the testimony and documentary

evidence in the record support the language in para-

graph 14 of the Findings of Fact that: "...the attempted

condemnation by Salt Lake County...is plainly and palpably

unreasonable and unsupported and constitutes a clear abuse

of legislative discretion.

### POINT III

THE LAW DOES NOT REQUIRE A POLITICAL SUBDIVISION TO HAVE ALL DEVELOPMENT MONEY APPROPRIATED AND COMPLETE PLANS AND SPECIFICATIONS FOR THE DEVELOPMENT PREPARED AND APPROVED PRIOR TO CONDEMNATION

The District Court's Decree that Salt Lake County was unentitled to condemn the Ramoselli property for park and recreation uses was based in part on the proposition that development funds had not been budgeted and

that complete plans and specifications for the develop-

ment on the property being condemned had not been prepared and approved.

The testimony of Ronald J. Day, Supervisor of the General Accounting Department in the Auditor's Office (R. 123-135) and Exhibit 15-P evidenced that funds for the acquisition of the Ramoselli property had in fact been budgeted.

As to development funds the practice of Salt Lake County has been not to budget development funds until such time as the property is acquired. The testimony of Charles Clawson Baugh detailed the practice in this regard. His testimony was in part as follows:

Q. Has the Parks and Recreation Department asked for any development funds for a Ramoselli Park?

A. No.

Q. Can you tell us why not?

A. Because we don't have the property and we haven't asked for any funds. We don't ask for funds unless we have the property, or have reason to believe we will very soon.

Q. Suppose the Court should see a great need for the acquisition of the land, is there any request for funds?

A. We would request in the next budget year, which would be for next year.

Q. When would that be?

A. The Auditor sends out forms in about August.

Q. August of which year?

A. Next month.

Q. That would be a request for next year?

A. Next year. (R. 151)

The applicable rule of law is set forth in 26 Am.

Jur. 2d - Eminent Domain, Sec. 117, at page 776:

"It is held not to be necessary that a political subdivision have money on hand, plans and specifications prepared, and have made all other preparations necessary for immediate construction before it can determine the necessity for taking private property for a public use."

See also *Carlson Co. v. Miami* (Fla) 62 So. 2nd 897, cert. den 346 U. S. 821, 98 L. ed 347, 74 S. Ct. 37 and,

*Chicago use of Schools v. Albert J. Schorsch Realty Co.*

127 Ill. App. 2d 51, 261 N.E. 2d 711, cert. den. 402

U.S. 908, 28 L. Ed 2d 649, 91 S. Ct. 1381.

A case which addresses itself to the exact point of not having funds budgeted for construction where property is being condemned is *State Road Department of Florida v. Southland Inc.*, 117 So. 2d 512 (Fla. 1960)

The Court in the *Southland* case stated:

"This court takes judicial notice of the fact that funds for the construction of the interstate highway system are budgeted, received and expended on an annual basis. Roads to be constructed in any given year are selected on a priority basis, dependent upon demonstrated need and the completion status of engineering plans, construction drawings and specifications. Long range planning of a coordinated system of interstate highways has been recognized as an economic necessity by the legislature in the adoption of the highway code, and the duty of intelligently formulating and putting into effect such long range plans has been specifically delegated to the Road Department. The lack of funds in any given fiscal year to commence immediate construction of a segment of the interstate highway system which has been surveyed, located and duly designed, should not be a bar to the Department's authority to acquire by eminent domain the rights-of-way necessary for such highways,

even though for financial reasons construction must necessarily be deferred to a future date within the time limits of the overall interstate highway program...

We find nothing in the statutory law of this state which requires that the Road Department have money on hand, plans and specifications prepared and all other preparations necessary for immediate construction before it is lawfully authorized to determine the necessity for taking by eminent domain private property for a public purpose." pp 516-517

Like the situation in Florida, there is nothing in the Utah Statutes which requires Salt Lake County to have money on hand, plans and specifications prepared and all other preparations necessary for immediate development of the park before it is authorized to determine the necessity for taking by eminent domain the Ramoselli property for use as a public park and recreation.

#### POINT IV

#### A CONDEMNING AGENCY MAY ACQUIRE PROPERTY FOR FUTURE USE

It is clear that a condemning agency may not acquire property by eminent domain based solely on the proposition that sometime in the future it may want to construct a public facility on the acquired property. In this case the testimony was uncontradicted that development of the park would take place almost as soon as the Ramoselli property was acquired. Nevertheless, the law does allow acquisition for future needs. In 26 Am. Jur. 2d - Eminent Domain,

follows:

"In the determination of whether the taking of property is necessary for public use, not only present demands of the public, but those which may be fairly anticipated in the future may be considered..." (Cases cited)

In the case of Los Angeles County Flood Control Dist. v. Jan., 1954 P.2d 25 at page 28, the California Supreme Court stated:

"...a condemner is not necessarily limited to the property which will barely suffice for the immediate requirements. Properly, the condemner has the right to condemn for future needs."

In Adams vs. Greenwich Water Company, 83 A. 2d 177 (Conn. 1952) it was held that a water company could condemn to satisfy future needs, up to fifteen or twenty years in the future. In U.S. v. Certain Parcels of Land, 99 F. Supp. 714 (E.D. Penn. 1951), the court indicated it was within the discretion of the condemner to acquire land five years in advance of putting it to a public use.

#### CONCLUSION

In view of the testimony and documentary evidence which was adduced, the District Court of Salt Lake County was clearly in error in decreeing that Salt Lake County was unentitled to condemn the Ramoselli property for park and recreation uses. There is simply no evidence to indicate fraud, bad faith or abuse of discretion by the Board of Commissioners of Salt Lake County. The case should be reversed and remanded for trial on the issue of just com-

sation.

Respectfully submitted,

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