1953

State of Utah et al v. Cooperative Security Corporation of Church of Jesus Christ of Latter Day Saints et al : Brief of Respondents

Utah Supreme Court

E. R. Callister; Walter L. Budge; Attorneys for Respondent;

IN THE SUPREME COURT
of the
STATE OF UTAH

STATE OF UTAH, by and through its ROAD COMMISSION, D. H. WHITTENBURG, Chairman, H. J. CORLEISSEN and LAYTON MAXFIELD, Members of the State Road Commission,

Respondent,

-vs-

COOPERATIVE SECURITY CORPORATION OF CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a nonprofit corporation of the State of Utah, and WASATCH STAKE OF CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, H. CLAY CUMMINGS, Trustee, and President of Wasatch Stake, a corporation sole of the State of Utah,

Appellants.

Civil No. 8016

RESPONDENT'S BRIEF

E. R. CALLISTER
Attorney General

WALTER L. BUDGE
Assistant Attorney General
Attorneys for Respondent

INDEX

AUTHORITIES CITED

IN THE SUPREME COURT
of the
STATE OF UTAH

STATE OF UTAH, by and through its ROAD COMMISSION, D. H. WHITTENBURG, Chairman, H. J. CORLEISSEN and LAYTON MAXFIELD, Members of the State Road Commission,

Respondent,

-vs-

COOPERATIVE SECURITY CORPORATION OF CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a nonprofit corporation of the State of Utah, and WASATCH STAKE OF CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, H. CLAY CUMMINGS, Trustee, and President of Wasatch Stake, a corporation sole of the State of Utah,

Appellants.

Civil No. 8016

RESPONDENT'S BRIEF

STATEMENT OF FACTS

We point to error in appellant's Statement of Facts; the statement made to the effect that, "The Attorney General had prepared a proposed Order and Judgment

which he handed up to the Court * * * " on the hearing of March 13, 1953, is not the fact. The official court reporter certified as follows:

> This is to certify that I, R. Dean Seely, am one of the Official Court Reporters of the Fourth Judicial District Court of Utah; that on March 13, 1953, I was present in Court in Heber City, Utah in the aforementioned matter, No. 1822 Civil; that before proceedings were commenced the Court asked respective counsel if they wanted a record made of same, and was informed that it would not be necessary. For that reason no stenographic report was taken of the proceedings on that day.
>
> Dated at Provo, Utah, this 26th day of May, 1953.
>
> /s/ R. Dean Seely, CSR
> Official Court Reporter

And, the minute entry made as follows:

> This matter came on to be set for trial, the Supreme Court having heard an appeal and sent the case back to the District Court for settlement. Mr. Budge of the Attorney General's Office represented the Plaintiffs, and Mr. Arthur Woolley represented the Defendants, and they argued matters pertaining to the Supreme Court ruling and possibilities of a settlement. The Court requested that Plaintiff prepare an order of settlement and submit to the Court, and furnish a copy to defendants, in the event this order is not approved by the Court. The date of trial was set for May 4, 1953, at ten o'clock A.M. Court will rule on the Order on March 27, the next law and motion day.
>
> /s/ Joseph E. Nelson
> JOSEPH E. NELSON—JUDGE

The fact is, as the record shows, counsel for respondent had made certain computations as to damages such as were in line with the argument to be presented. Counsel for appellant was afforded an opportunity to, and did, reply to respondent's argument. Thereafter, the Court took the matter under advisement and at the same time directed counsel for respondent to prepare and submit a Judgment and Order which, in the event the Court held for respondent, he would sign; otherwise, the cause would be set for further hearing on March 27, 1953. In compliance with the Court's direction, the Office of the Attorney General prepared and submitted on March 18, 1953, the Order and Judgement which the Court subsequently signed. Counsel for appellant was furnished by letter mail, under date of March 18, 1953, a copy of the Order and Judgment submitted to the Court.

This slight and possibly insignificant difference as to the facts is here remarked upon merely for the purpose of reviewing the regularity of the proceedings. Respondent never has, and does not now, contend the law to be that the Attorney General may prepare a judgment and have it adopted laissez faire.

STATEMENT OF POINTS

POINT I

THE JUDGEMENT COMPLIES WITH THE DECISION OF THE SUPREME COURT; THE AWARD WAS ARRIVED AT IN ACCORDANCE WITH SAID DECISION; THE AWARD CONFORMS TO THE PROOF; JUST COMPENSATION FOR THE TAKING WAS AWARDED; AND THE JUDGMENT IS NOT AGAINST LAW.

ARGUMENT

POINT I

THE JUDGMENT COMPLIES WITH THE DECISION OF THE SUPREME COURT; THE AWARD WAS ARRIVED AT IN ACCORDANCE WITH SAID DECISION; THE AWARD CONFORMS TO THE PROOF; JUST COMPENSATION FOR THE TAKING WAS AWARDED; AND THE JUDGMENT IS NOT AGAINST LAW.

We think appellant's Point I through V are so interrelated as to best be considered one and altogether. We ask the Court's indulgence in our so doing.

This Court held in the case of State of Utah, et al., v. Cooperative Security Corporation of Church of Jesus Christ of L. D. S., et al., ...Utah....., 247 P. 2d 209, that:

> Since the evidence shows that this property could have been replaced, there was no basis for the award of severance damage except as to the two small tracts.

Therefore, respondent contends that it was not necessary for the court below on reassessment of damages to consider, or pass upon, or determine the comparative value of the land taken with the value of the land which could have been purchased, but was not purchased, for replacement purposes. True, as appellant alleges, this Court went on to say:

> It becomes necessary for the court to reassess the damage for the taking, on a basis of the replacement cost * * *.

Respondent interprets that to mean the replacement cost of the 7.89 acres actually taken. This the judgment of the lower court does, and does at a value per acre

established at the trial to be the value of the land taken in place at the time of the service of summons. It was also sufficiently determined at the trial by the witnesses of appellant herein that $400.00 per acre was the value of comparable land within that area at that time.

If, as appellant contends proper, the Court had made the measure of damages the replacement cost as appellant interprets the meaning thereof, the result would be the mere saying: "You cannot have severance damages but you can secure equal relief as you might have had by severance by arriving at your damages in an entirely different manner. You cannot go down A. street, but, B Street will get you to the same destination." For example, were it to be determined that the 7.89 acres taken could only be compensated for by the determination that to restore the value thereof, it would take fifty or one hundred acres of adjoining land such as that owned by the Berg holdings, damages then could be assessed at $20,000 or even $40,000; and yet, this Court held there was not basis for the award of severance damage. Appellant, if he cannot go overland, purposes to go round the horn by sea.

This Court, concluding its opinion and with respect to the two small tracts, comprising in the aggregate 4.49 acres, went on to say:

> * * * as well as to assess damages, if any, to the two small tracts which are severed.

thus adjudging that here if there were damages by reason of severance, such should be assessed.

The transcript of the original hearing elicits testimony to the effect that this land depreciated in value $100.00 per acre for resale purposes by reason of the severance; (Tr. 58) and further testimony to the effect that it was no longer of a size to be of any consequence and practically worthless; (Tr. 135,167) also, as to the 3.28 acres, that it was depreciated in value from forty to fifty per cent (Tr. 167), from $425.00 per acre to something over $200.00 per acre (Tr. 177), on interrogatories by the trial judge himself. There was much more additional testimony as to the damage to, and value of, these tracts. All of which is significant here, if at all, only to show that the trier of facts was well informed on this question of severance damage. Respondent now submits that the award made in the amount of $743.63 and the percentum arrived at of fifty per cent was reasonable and in no way arbitrary. Respondent feels that it cannot be rightfully alleged that the court below "adopted" the Attorney General's figure; we contend that it might more correctly be said that the Court, having heard the evidence, and the Attorney General, having read the transcript, reached a similar result from the evidence adduced.

We think appellant's contention that the judgment is against law is entirely without basis. Since beginning with the commencement of this action and continuing throughout its long litigation, the record speaks for itself to the effect that appellant has been fully heard.

CONCLUSION

The judgment of the court below should be affirmed. Respondent asks his costs on appeal.

Respectfully submitted,

E. R. CALLISTER

Attorney General

WALTER L. BUDGE

Assistant Attorney General

Attorneys for Respondent