2007

Kennecott Copper Corporation v. Salt Lake County, a political subdivision of the State of Utah, State Tax Commission of Utah : Petition for Rehearing

Utah Supreme Court

...SUPREME COURT

BRIEF

IN THE SUPREME COURT

of the

STATE OF UTAH

PETITION FOR REHEARING

KENNECOTT COPPER CORPORATION,

Plaintiff and Appellant,

— vs. —

SALT LAKE COUNTY, a political subdivision of the State of Utah,

Defendant and Respondent,

STATE TAX COMMISSION OF UTAH,

Intervenor and Respondent.

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KENNECOTT COPPER CORPORATION,
Plaintiff and Appellant,

— vs. —

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STATE TAX COMMISSION OF UTAH,
Intervenor and Respondent.

Case No. 7639

PETITION FOR REHEARING

Comes now appellant and petitions the court for a rehearing herein for the following reasons:

1. The majority has erred in failing to apply the provisions of Section 80-5-56, Utah Code Annotated.

2. The court has erred in failing to apply as the alternative the provisions of Section 80-3-1 (5), Utah

Code Annotated, and instead has substituted its own concept of value for tax purposes.

C. C. PARSONS
A. D. MOFFAT
CALVIN A. BEHLE
Attorneys for Appellant and Plaintiff.

BRIEF IN SUPPORT OF PETITION FOR REHEARING

Having conceded Kennecott's point that there is no "market value" for appellant's tailings pond lands, this court was confronted with an election between the two applicable legislative mandates: (a) the assessment must be nominal under Section 80-3-1 (5); or (b) the $5.00 per acre rule for mines under Section 80-5-56 should be held to apply.

The latter, which counsel still submits was intended to apply in such cases, was peremptorily dismissed on the authority of the Tenth Circuit opinion. Reference is made to appellant's brief on this point, to which we can add nothing further.

However, rather than face the dilemma as would the District Judge, and logically grant the tax reduction as required by the only other applicable legislative mandate, the majority appears to plunge into the realm of judicial legislation and speculation in order to sustain the tax.

a. It is said that should this land be condemned, its value to Kennecott would be more than nominal. This assumption cannot bear scrutiny, for ready reference to the law of condemnation confronts such reasoning with the elementary rule that if the fair market value of the land taken was nominal, such is the measure of the award. The majority opinion, it is respectfully submitted, confuses the value of the land itself with the severance damages and consequential damages which would result if all or part of the tailings pond were to be taken under the exercise of the power of eminent domain.

b. Then it is said that since it would not be fair to Kennecott to condemn the land at nominal market value, the *land* must be valued to include the severance damage. But such damage as a part of the over-all requirement of "just compensation" is entirely apart from the element of just compensation which is the value of the land taken.

c. And in any event, on what basis would the majority justify the substitution for the legislative mandate of "market value," its own concept of "just compensation"? Certainly it should not be because of any argument that neither market value — here nominal, nor $5.00 per acre — likewise rejected, is proper for Kennecott because of its "multi-million dollar business." Tax legislation of course applies to all taxpayers alike, but counsel respectfully submits that the result in this case is to apply to this taxpayer alone a standard other than

that prescribed by either of the legislative mandates cited above, the only two applicable statutes.

d. Finally, we invite the court's attention to the following elementary principle as it was recently expressed in the Arizona case of State Tax Commission v. Miami Copper Co., 246 P. 2d 871, which here should be the guide:

> In this jurisdiction we are firmly committed to the doctrine that doubtful tax statutes should be given a strict construction against the taxing power, giving due regard to the expression of the legislative intent; and that the courts will not "strain, stretch and struggle " to uncover hidden taxable items. See Alvord v. State Tax Commission, 69 Ariz. 287, 213 P. 2d 363.

It is respectfully submitted that rather than to invoke this principle, the very reverse has here been applied to the taxpayer.

We urge the court not to place its record of such action on the books until a rehearing has afforded it the opportunity to reconcile the law to the facts in this case. In a delay of nearly two years since oral argument it is suggested that the majority has made an unfortunate and transparent error which in justice should be corrected when the matter is called to attention.

Respectfully submitted,

C. C. PARSONS
A. D. MOFFAT
CALVIN A. BEHLE
Attorneys for Appellant and Plaintiff.