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State of Utah v. Denver and Rio Grande Western Railroad Company : Brief of Respondent

Utah Supreme Court

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In the Supreme Court of the State of Utah

FILED
STATE OF UTAH, by and through its
ROAD COMMISSION, MAY 7 - 1939

Plaintiff and Respondent,

Clerk, Supreme Court, Utah

VS.

Case No. 9079

THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY,
a Delaware corporation,

Defendant and Appellant.

BRIEF OF RESPONDENT

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ROAD COMMISSION,

Plaintiff and Respondent,

vs.

THE DENVER AND RIO GRANDE
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a Delaware corporation,

Defendant and Appellant.

Case No. 9079

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

This appeal has been brought by the Denver and Rio Grande Western Railroad Company, hereinafter referred to as Rio Grande, from a judgment of condemnation of the

District Court of the Third Judicial District, wherein title to real property over which Rio Grande maintained a branch line, otherwise known as Little Cottonwood Branch, was vested in the Road Commission of the State of Utah, hereinafter referred to as Road Commission. The facts surrounding the case are not specifically at issue nor do we disagree with Appellant's statement. However, in order to meet and properly refute the allegations of Rio Grande, we do deem it of importance to set forth the nature of the case along with the basic facts which made it requisite for the Road Commission to condemn the subject property.

STATEMENT OF FACTS

The Road Commission, pursuant to the Federal Aid Highway Act of 1956, after comprehensive surveys and research, drew and projected plans for the construction and establishment of a public improvement, to wit, a state highway, it being designated as a portion of the Federal Aid Interstate Highway, Route 1 and technically identified as Project No. I-01-7(3).

With few exceptions, the location and termini of the interstate freeway were identified and settled through the Salt Lake Valley as early as the year 1950. As the freeway enters the valley at the Jordan Narrows, it proceeds generally in a northerly direction, passing without the main business districts of municipalities. This highway, with its multiple lanes and complex interchanges is subject in construction and design to strict standards, pursuant to the Federal Aid Highway Act and the regulations of the

Federal Bureau of Public Roads. One such standard incumbent on the Road Commission provides that no other structure, road or avenue, inclusive of railroad tracks, shall cross the interstate freeway at grade level. A further maxim calls for the complete control of access to and from the freeway. Such freeway, as it extends through the City of Midvale, is immediately adjacent and to the east of the mainline tracks of Rio Grande. (R. 18) A small spur line of Rio Grande, known as Little Cottonwood Branch, crosses the alignment of the interstate freeway and progresses in an easterly direction for approximately 1.75 mile, (R. 24) where it services two customers on the east side of State Street. Little Cottonwood Branch is contiguous to Center Street in Midvale and due to a limited amount of traffic on the branch, the right of way was used for vehicular traffic also.

It was initially proposed to improve and widen Center Street, leaving the branch trackage in place. Since the right of way of the Little Cottonwood crossed over the projected course of the freeway, a grade separation of some nature was mandatory. Road Commission authorities quickly rejected a proposal to construct a freeway overpass above Little Cottonwood Branch and Center Street for several cogent and outstanding reasons:

- (1) The anticipated cost of an overpass structure exceeded \$200,000, which was admittedly several times the value of Little Cottonwood Branch; (R. 19)
- (2) The overhead structure would obliterate sight vis-

ibility for vehicular traffic proceeding along Center Street in a westerly direction, prohibiting a safe approach to the Rio Grande mainline and thus creating a dangerous and hazardous intersection; (R. 20)

(3) Center Street, a part of the state highway system and under the jurisdiction of the Road Commission, was in dire need of improvement and widening in order to facilitate present and future vehicular traffic, and the right of way of Little Cottonwood was within the area of the proposed improvement. (R. 14)

Using this rational as a basis, it was determined, in order to eliminate the expense and hazardous conditions of a freeway overpass and to provide for the improvement of Center Street, that Little Cottonwood Branch should be acquired by purchase or otherwise and that an underpass should be realized on Center Street beneath the interstate freeway and the mainline of Rio Grande. Such determination was effectuated by a condemnation resolution of the Road Commission subsequent to unsuccessful negotiations between the interested parties. Such resolution provides in part:

“RESOLVED by the State Road Commission of Utah that it finds and determines and hereby declares that:

“The public interest and necessity require the acquisition, construction and completion by the State Road Commission, of a public improvement, namely a State Highway * * *

"That portion of proposed highway contained within a strip of land approximately 270 feet wide adjacent to the easterly right of way line of the main line track of the Denver & Rio Grande Western Railroad, being designated as a portion of the Federal Aid Interstate Highway, Route 1, and identified as Project No. I-01-7 (3), is planned and located in a manner which will be most compatible with the greatest public good and the least private injury and has been heretofore designated as a limited-access facility, as provided by Chapter 63, Laws of Utah 1945; the balance being the improvement and widening of Center Street in Midvale City, Salt Lake County, identified as State Project 1580.

* * *

"All of the right of way of the Little Cottonwood Branch of the Denver and Rio Grande Western Railroad, * * *."

STATEMENT OF POINTS

POINT I

ACQUISITION OF LITTLE COTTONWOOD BRANCH OF RIO GRANDE IS FOR A PUBLIC PURPOSE.

POINT II

THE RESOLUTION OF THE ROAD COMMISSION TO ACQUIRE THE SUBJECT PROPERTY CARRIES A PRESUMPTION OF VALIDITY AND IS PRIMA FACIE EVIDENCE OF THE FACTS THEREIN CONTAINED.

POINT III

ACQUISITION BY THE ROAD COMMISSION OF THE SUBJECT PROPERTY QUALIFIES AS A PUBLIC USE MORE NECESSARY THAN ITS FORMER PUBLIC USE AS A PART OF A RAILROAD.

POINT IV

ACQUISITION BY THE ROAD COMMISSION OF THE SUBJECT PROPERTY IS NOT FOR A POSSIBLE FUTURE USE.

POINT V

ACQUISITION BY THE ROAD COMMISSION OF LITTLE COTTONWOOD BRANCH IS NOT FOR AN UNLAWFUL INTERFERENCE WITH COMMERCE.

POINT VI

ALL PARTIES INDISPENSABLE TO THE COMPLETE DETERMINATION OF THE ACTION HAVE BEEN JOINED IN THE CAUSE.

ARGUMENT

POINT I

ACQUISITION OF LITTLE COTTONWOOD BRANCH OF RIO GRANDE IS FOR A PUBLIC PURPOSE.

The rule is well settled in substantially all jurisdictions in this country that private property may not be taken involuntarily unless the use for which the property is acquired is public in nature. *Basset v. Swenson*, 51 Ida.

256, 5 P.2d 722; *City of Menlo Park v. Artino*, 151 Cal. App.2d 261, 311 P.2d 135; *City and County of San Francisco v. Ross*, 44 Cal.2d 52, 270 P.2d 488; *Gravelly Ford Canal Co. v. Pope and Talbot Land Co.*, 36 Cal. App.2d 556, 178 P. 150; *Gilpin v. Mutual Life Ins. Co. of New York*, 64 N.Y.S.2d 436.

The Constitution of the State of Utah negatively limits the power of eminent domain to those instances where public purposes are involved. Article I, Section 22, provides:

“Private property shall not be taken or damaged for public use without just compensation.”

Legislative authorization in Utah spells out those uses which are to be considered *public* uses. See 78-34-1, Utah Code Annotated 1953, as amended, and 78-34-3 and 4, Utah Code Annotated 1953. Although the Legislature may initially declare a particular use to be public, the question is, in the final analysis, one for the judiciary. *University of Southern Calif. v. Robbins*, 1 Cal. App.2d 523, 37 P.2d 163. Though there are several tests which have been used by the courts in arriving at a public use determination, we are in agreement with Rio Grande's statement, contained in its brief, that in the case at bar a discussion of the divergent theories is of no import:

“* * * for no better example of a public use can be found than that of a highway, * * *.” Appellant's Brief, page 12.

The procurement of property in order to construct

public highways has been traditionally considered a public use. *State v. Fourth Judicial District Court*, 94 Ut. 384, 78 P.2d 502; *Barnes v. Wade*, 90 Ut. 1, 58 P.2d 297. As to the question of what constitutes a public use under the eminent domain statute, the Utah Supreme Court has allowed for a broad interpretation. *Town of Perry v. Thomas*, 82 Ut. 159, 22 P.2d. 343.

The interstate freeway, as it passes through the Salt Lake Valley, performs the vital function of providing ready, quick and safe mode for vehicular traffic. It serves not only residents of Salt Lake County and Utah but also citizens of other states and the public in general. In the design and construction of this facility, the safety and security that must be afforded to traffic, not only on the freeway itself but also on any connecting or adjoining avenues, is a primary consideration. The Road Commission has an obligation in seeing that the interstate freeway is so constructed and maintained that dangerous overpasses and interchanges are reduced to a minimum.

There is abundance of testimony in the record that a freeway overpass was not considered advisable due to restricted sight distance that would result relative to traffic along Center Street in approaching the main tracks of Rio Grande. (R. 36, 37, 38.) The appellant, while admitting the right of the Road Commission to condemn, alleges that only that part of Little Cottonwood which immediately crosses the path and termini of the interstate freeway is required and that, therefore, the Road Commission has exceeded constitutional limitations in acquiring the entire

branch, for the remainder is not related to a public use. Appellant overlooks the fact that the resolution of the Road Commission cites that the property to be acquired through condemnation was to be utilized not only for the Federal Aid Interstate Highway but also for the improvement and widening of Center Street in Midvale City, which is part of the state system of highways. Thus, it is seen that the subject property was acquired for the dual purposes of the interstate freeway and Center Street in Midvale City, both admittedly public improvements and uses.

POINT II

THE RESOLUTION OF THE ROAD COMMISSION TO ACQUIRE THE SUBJECT PROPERTY CARRIES A PRESUMPTION OF VALIDITY AND IS PRIMA FACIE EVIDENCE OF THE FACTS THEREIN CONTAINED.

Point I and Point III of Rio Grande's brief allege that the Road Commission had no authority to condemn the Little Cottonwood Branch on the ground that there was no public purpose connected therewith. The resolution of the Road Commission in turn states that the real property is essential for public improvements, that the project has been located and planned in a manner that is most compatible with the greatest public good and the least private injury, and that the public interest and necessity demand that such property be acquired. We believe it to be the law in this jurisdiction that a decision of an administrative body is entitled to a presumption of correctness and validity, is prima facie evidence of the facts

therein contained, and must be accepted unless such is unreasonable or unless the body is arbitrary or capricious, in which case the burden of showing such rests with that individual who seeks to set the decision aside. *Hotel Utah Co. v. Industrial Comm.*, 116 Ut. 443, 211 P.2d 200; *Park Utah Cons. Mines Co. v. Industrial Comm.*, 84 Ut. 481, 36 P.2d 979.

Latimer, J., in writing for this Court in the case of *Goodrich v. Public Service Comm.*, 114 Ut. 296, 198 P.2d 975, had this to say:

“We have repeatedly held that in reviewing cases certified to this court from the Public Service Commission on a statement of error that the Commission’s report, findings, conclusions and order are unlawful, we are limited in our review to ascertaining whether or not the Commission had before it substantial evidence upon which to base its decision. Only in the event that we find the Commission acted arbitrarily, capriciously or unreasonably in denying applicant’s petition can we set aside the order.”

The effect of a decision of the Public Service Commission would not be greater in any event, than a decision of the Road Commission. Rio Grande has adduced no argument which indicates or in any way evidences that the resolution of the Road Commission to acquire Little Cottonwood Branch was arbitrary, capricious or unreasonable.

POINT III

ACQUISITION BY THE ROAD COMMISSION OF THE SUBJECT PROPERTY QUALIFIES AS

A PUBLIC USE MORE NECESSARY THAN ITS FORMER PUBLIC USE AS A PART OF A RAILROAD.

If the law announced in this state is that private property may not be acquired by the condemnor unless such property be placed to a public use, it is equally settled that property initially devoted to a public use may be acquired under the eminent domain statute for a purpose which is of a more public nature. *North Salt Lake v. St. Joseph Water and Irr. Co.*, 118 Ut. 600, 223 P.2d 577. This principle is a matter subject to the wisdom of the Legislature. *Beth Medrosh Hagodol v. City of Aurora*, (Colo.) 248 P.2d 732. In this connection, 78-34-3, Utah Code Annotated 1953, states in part:

"The private property which may be taken under this chapter includes:

* * *

"(3) Property appropriated to public use; provided, that such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated."

See also 78-34-4, U.C.A. 1953. Railroad property has been subjected to acquisition for another public use more necessary. *Elberton Southern Ry Co. v. Georgia State Highway Dept.*, 211 Ga. 838, 89 S.E.2d 645; *Syracuse Grade Crossing Comm. v. Delaware L. & W. R. Co.*, 197 Misc. 192, 97 N.Y. 5. 2d 279.

It is beyond argument that the use of the right of way of Little Cottonwood Branch for the construction of the

interstate freeway and the improvement and widening of Center Street in Midvale constitutes a public use more vital and necessary than the previous employment as a branch of Rio Grande. Traffic analyses reveal that more than 8,000 vehicles cross the Cottonwood Branch tracks on Center Street daily and the projected estimate of future vehicular traffic along said street will greatly exceed such sum. (R. 23.) This is to be compared with the small rail traffic which Rio Grande conducts on Little Cottonwood.

POINT IV

ACQUISITION BY THE ROAD COMMISSION OF THE SUBJECT PROPERTY IS NOT FOR A POSSIBLE FUTURE USE.

Point II of Rio Grande's brief sets forth that the Road Commission is not empowered to condemn for possible future use. (Appellant's Brief, p. 14.) No authority is cited for such argument nor is any reasoning put forward to substantiated this contention. It could be said without reservation that the word "*future*" is relative in scope and theoretically might apply to any situation wherein the Road Commission did not utilize the property for highway purposes at the precise moment that it sought to acquire the parcel. Such an interpretation is, of course, hardly predicated upon the genuine administration of justice. Even were we to assume that a future use were involved in the case at bar, 27-9-4, U.C.A. 1953, provides an effective answer, for it declares that with respect to limited access facilities, the highway authorities of the state may acquire land even though the property is not immediately

needed for the right of way proper if the interests of the public will be best served. Be that as it may, the instant situation does not involve the acquisition of property for future purposes.

It takes not an expert to realize that the planning, construction, improvement and maintenance of modern-day highways is not an overnight operation. The surveys, public hearings, plans and designs, purchase or acquisition of right of way leading up to the construction phase is an intricate and complicated process, requiring years of time and large outlays of public monies. The plans and specifications of the interstate freeway have been on the drawing boards and in the conference rooms for ten years. It would be rash to advocate that acquisition of property, in order that final and conclusive plans and specifications might be accomplished and in order that bids might be received and contracts let, constitutes a future use.

In the absence of procuring Little Cottonwood Branch, the Road Commission was at a deadend in respect to the ultimate reconstruction and improvement of Center Street and initial construction of the interstate freeway. A present use was involved.

Although it is not clear, it appears that Rio Grande asserts that the course of the interstate freeway is dependent upon the routing of a collateral spur line of Rio Grande, known as the Bingham-Garfield Branch, and that Little Cottonwood Branch may not, consequently, be necessary for freeway usage. (Appellant's Brief, p. 14.) This we believe to be a self-molded conclusion, unwarranted

and unsupported by the record now on appeal. No testimony was brought out at any hearing which indicated that the condemnation resolution of the Road Commission was a tentative proposal, subject to change at a later time.

POINT V

ACQUISITION BY THE ROAD COMMISSION OF LITTLE COTTONWOOD BRANCH IS NOT AN UNLAWFUL INTERFERENCE WITH COMMERCE.

Article I, Section 8, of the Federal Constitution provides that the Congress of the United States shall regulate commerce among the several states. This clause has been interpreted to mean that no state may interfere substantially with the flow of interstate commerce. *Gibbons v. Ogden*, 9 Wheat 1, 6 L.Ed. 23; *Brown v. Houston*, 114 U.S. 622, 5 S. Ct. 1091, 29 L.Ed. 257. Rio Grande maintains in this action that the acquisition of the Road Commission of Little Cottonwood Branch establishes an unlawful interference with commerce.

The constitutional prohibition invalidates only those acts of the state which substantially and unreasonably impede and interfere with the conduct of Rio Grande's business. *S. C. Highway Dept. v. Barnwell Bros.*, 303 U.S. 177, 58 S.Ct. 510, 82 L.Ed. 734. Mr. Chief Justice Stone, in a case which Rio Grande cites, declared that:

"When the regulation of matters of local concern is local in character and effect, and its impact on the national commerce does not seriously inter-

fere with its operation, and the consequent incentive to deal with them nationally is slight, such regulation has been generally held to be within state authority." *Southern Pac. Co. v. State of Ariz.*, 325 U.S. 761, 65 S.Ct. 1515.

The acquisition by the Road Commission of Little Cottonwood is of small consequence when rated against the total volume of business enacted by Rio Grande in Utah and in neighboring states. So also is the amount of railroad traffic on the branch minute when paralleled to the public necessity of well-built, safely designed and maintained highways. The case of *Kansas Southern Ry. v. Kaw Valley Drainage District*, 233 U.S. 75 cited by Rio Grande, is to be distinguished from the immediate situation. In that case Kaw Valley, under the guise of the police power, ordered the Railroad to raise the elevation of its bridges and to remove old bridges. Such case did not involve the right of the state of Kansas to condemn a railroad branch line serving but two customers, but rather centered around an order to remove, without compensation, railroad facilities. The Supreme Court of the United States held, and we think justifiably so, that such order constituted a direct interference with interstate commerce. The Kaw Valley case is to be further distinguished from the instant situation on the basis that the bridges required to be removed therein were the connecting link of the interstate artery of the Kansas Southern Railroad, while the Little Cottonwood Branch is exhausted less than two miles after it leaves the mainline trackage of Rio Grande.

In *Elberton Southern Ry. v. Georgia State Highway Dept.*, 211 Ga. 838, 89 S.E.2d 645, the highway department

acquired by condemnation property formerly devoted to railroad purposes. In answer to the railroad's plea that the eminent domain action brought by the state destroyed the former's power to perform its public duty as a public carrier in interstate commerce, the Georgia court held that there was no direct and substantial interference with the conduct of the railroad's operations. The Elberton case is persuasive authority. The *Bd. of Hudson River Regulating District v. Fonda, J. & G. Ry. Co.*, 249 N.Y. 445, 164 N.E. 541, is likewise to the effect that the condemnation of railroad property for the benefit of a river regulating district is not an unlawful interference with interstate commerce. The acquisition by the Road Commission of Utah of Little Cottonwood Branch must be deemed an incidental interruption of commerce.

POINT VI

ALL PARTIES INDISPENSABLE TO THE COMPLETE DETERMINATION OF THE AC- TION HAVE BEEN JOINED IN THE CAUSE.

Rio Grande has maintained that its customers whom it services on the Little Cottonwood Branch and with whom contracts are negotiated, are indispensable parties to this action and obtain a compensable interest in the subject real property. It would be unjustified to dignify this assertion by an extended discussion. It is sufficient to say that the constitution and statutes of the State of Utah contemplate that the right of eminent domain shall be exercised as to all recognized interests in the real property acquired. Rio Grande is the sole and exclusive owner

of the right of way under consideration. We have yet to find a case wherein an individual holding nothing more than a business contract with the condemnee was held to possess a compensable and cognizable interest in a condemnation action, and if such were the law, then, quite naturally, the costs of acquiring any property for highway purposes would be prohibitive.

CONCLUSION

The judgment of condemnation of the District Court of the Third Judicial District should be affirmed.

Respectfully submitted,

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