

1960

Gayland v. Salt Lake County et al : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

GAYLAND, a Utah Corporation,

Respondent,

—vs.—

SALT LAKE COUNTY, STATE OF
UTAH; LAMONT B. GUNDERSEN,
EDWIN Q. CANNON, SR., and
WILLIAM G. LARSON, Individually
and as members of the Board of
County Commissioners of Salt Lake
County,

Appellants.

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Clerk, Supreme Court, Utah

Case No.
9280

BRIEF OF APPELLANTS

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Case No.
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BRIEF OF APPELLANTS

STATEMENT OF FACTS

This is an action, filed March 18, 1960, in the Third District Court, brought by Gayland, a Utah Corporation, against Salt Lake County and individual commissioners for a declaratory judgment declaring Title 8 of the Salt Lake County Ordinance unlawful, illegal and

of no force and effect, or for an order directing the members of the Board of County Commissioners of Salt Lake County to approve the zoning amendment designed to effectuate a change in zoning classification of the property at 1300 East and 5600 South from Residential R-2 to Commercial C-2. A recommendation for said change had previously been denied by the District Zoning Committee and had been approved by the Planning Commission. The Salt Lake County Commission denied the proposed amendment by a 2-1 vote on May 14, 1960.

The trial court ruled that Salt Lake County had failed to establish a master plan but found that the evidence submitted does not establish that such failure prejudiced the substantial rights of the Plaintiff.

The court determined, however that the Board of County Commissioners should have approved and adopted the amendment to the zoning ordinance of Salt Lake County and directed said commissioners to approve and adopt said amendment.

Under date of April 26, 1960, over the signature of Ray Van Cott Jr., Judge of the District Court, a Decree was issued ordering that the individual defendants above named as members of the Board of County Commissioners of Salt Lake County, Utah be and they were thereby required and directed to forthwith approve and adopt an amendment to the zoning ordinances of Salt Lake County, State of Utah as recommended by the Salt Lake County Planning Commission rezoning from zoning classification Residential R-2 to Commercial

C-2 the following described tract of land in Salt Lake County, State of Utah, to wit:

“Beginning at the point of intersection of the center lines of 5600 South and 1300 East street; thence North following along the center line of 1300 East street 813 feet; thence West parallel to 5600 South street 650 feet; thence South parallel to 1300 East street to the center line of 5600 South street; thence East following along the center line of last said street to the point of beginning. All above described property located in Section 17, Township 2 South, Range 1 East, Salt Lake Base and Meridian, containing approximately 10 acres.

STATEMENT OF POINTS

POINT I.

THE TRIAL COURT COMMITTED ERROR IN ISSUING ITS ORDER SINCE IT LACKS JURISDICTION TO ORDER THE BOARD OF COUNTY COMMISSIONERS TO PERFORM A LEGISLATIVE AND DISCRETIONARY ACT.

POINT II.

THE SALT LAKE COUNTY COMMISSION, IN AMENDING OR REFUSING TO AMEND ITS ORDINANCES, ACTS IN A LEGISLATIVE CAPACITY AND AS SUCH THE MOTIVES PROMPTING ITS ACTION CANNOT BE INQUIRED INTO. THE TRIAL COURT ERRED, THEREFORE, IN HAVING MAKE FINDINGS UPON SAID MOTIVES AND BASING ITS DECISION THEREON.

POINT III.

THE DENIAL BY THE BOARD OF COUNTY COMMISSIONERS TO ADOPT THE ZONING AMENDMENT WAS

NOT AN ARBITRARY OR UNREASONABLE ACT, NOR WAS IT AN ABUSE OF DISCRETION. THERE IS NO EVIDENCE DENYING THE REASONABLE EXERCISE OF THE POLICE POWER ON THE PART OF THE COUNTY COMMISSIONERS.

ARGUMENT

POINT I.

THE TRIAL COURT COMMITTED ERROR IN ISSUING ITS ORDER SINCE IT LACKS JURISDICTION TO ORDER THE BOARD OF COUNTY COMMISSIONERS TO PERFORM A LEGISLATIVE AND DISCRETIONARY ACT.

The order of the trial court, directing the appellant board to adopt an amendment re-zoning the land in question sounds in the nature of a writ of mandate (R-30). Although the historical pleadings for a writ of mandamus have been abolished by the Utah rules of civil procedure, 65B (a) the methods of obtaining the same type of relief as was formerly given by the writ is now possible under present day pleadings as defined by the Utah rules.

Rule 65 B(b)(3) of the Utah Rules of Civil Procedure, provides that relief will be granted:

“Where the relief sought is to compel any . . . board or person to perform an act which the law specifically enjoins as a duty resulting from an office, trust or station.”

The jurisdiction of the trial court to issue this decree must be founded upon a showing by respondent the respondent has a clear legal right to have the area

in question re-zoned, and that there has been a violation of a legal duty resting upon the appellant board to adopt the proposed ordinance. Without this showing, the remedy sought must be withheld, and granting the remedy without this showing constitutes error.

In the case of *State ex rel Bishop v. Moorehouse*, 38 Utah 234, 112 P. 169, 171, the Utah Supreme Court, defining in what instances mandamus will issue, said:

“ . . . To warrant the court, in granting a writ against a public officer, such a state of facts must be presented as to show that the relator has a clear right to the performance of the thing demanded, and that a corresponding duty rests upon the officer to perform that particular thing. And when substantial doubt exists as to the duty whose performance it is sought to coerce, or as to the right or power of the officer to perform such duty, the relief will be withheld.’ Where there is a discretion vested in the officer, the rule generally applied is stated by the author in section 41 of Merrill, on Mandamus, in the following words: ‘But the action of an officer in a matter which calls for the exercise of his discretion or judgment will not be reviewed by the writ of mandamus unless he has been guilty of a clear and wilful disregard of his duty, or such action is shown to be extremely wrong or flagrantly improper and unjust, so that the decision can only be explained as the result of caprice, passion or partiality.’ In speaking of the general rule which is ordinarily applied by the courts in passing on the question whether the writ should be granted or withheld, Wood on Mandamus, etc., at page 51 of his work, says: ‘And generally it may be said that a mandamus will not be issued unless the

duty it is sought to enforce is a legal duty, clear and free from doubt, and the right of the party seeking redress through this summary remedy is equally clear.' ” (Page 171)

The same rule should apply under the new Utah Rules of Civil Procedure, since the remedy and relief sought is the same, although the technical titles for the relief have been abolished.

The appellant board, acting within its discretion, by a two to one vote refused to adopt the proposed amendment. (R-17) For the court now to order the board to adopt legislation it has once refused is beyond the power of the court. Appellant submits that it is a fundamental proposition of government that the court may not legislate. The judicial process is to interpret the law, not to make the law. (See Conley, State's attorney, ex rel. Rowell v. Boyle et al., 115 Conn. 406, 162 A. 26.)

Lacking the power to issue such an order the court is lacking in jurisdiction and thus erred in issuing its decree.

POINT II.

THE SALT LAKE COUNTY COMMISSION, IN AMENDING OR REFUSING TO AMEND ITS ORDINANCES, ACTS IN A LEGISLATIVE CAPACITY AND AS SUCH THE MOTIVES PROMPTING ITS ACTION CANNOT BE INQUIRED INTO. THE TRIAL COURT ERRED, THEREFORE, IN HAVING MAKE FINDINGS UPON SAID MOTIVES AND BASING ITS DECISION THEREON.

Utah Code Annotated, 1953, Title 17, Chapter 27, Section 1, provides that the county commissioners of each

county are authorized and empowered to zone all or any part of the unincorporated territory of said county. Utah Code Annotated, 1953, Title 17, Chapter 27, Section 14, authorizes the amendment of said zoning ordinances and provides procedures to be followed to accomplish said amendments. Its language is as follows:

“The board of county commissioners may from time to time amend the number, shape, boundaries or area of any district or districts, or any regulation of or within such district or districts, or any other provisions of the zoning resolution, but any such amendment shall not be made or become effective unless the same shall have been proposed by or be first submitted for the approval, disapproval or suggestions of the county planning commission; and if disapproved by such commission within thirty days after such submission, such amendment, to become effective, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. Before finally adopting any such amendment, the board of county commissioners shall hold a public hearing thereon, at least thirty day's notice of the time and place of which shall be given by at least one publication in a newspaper of general circulation in the county.”

That the adoption and amendment of zoning ordinances is a legislative function was decided by this court in the case of *Walton v. Tracy Loan and Trust Co., et al.*, 97 Utah 249, 92 Pac. 2nd, 724, 726, wherein it said, (after pointing out that the terms of the statutes themselves described the power to zone as a legislative function) as follows:

“Independent of the statutory provisions referred to above, no one could doubt that the exercise of the zoning power is definitely a legislative function and activity.”

That zoning is a legislative function was not decided but simply assumed in the later cases of *Phi Kappa Iota Fraternity v. Salt Lake City, et al.*, 116 Utah 536, 212 Pac. 2nd 177, and *Dowse v. Salt Lake City Corporation*, 123 Utah 107, 255 Pac. 2nd, 723.

Being a legislative and therefore discretionary function, the motives of the Salt Lake County Commission should not have been inquired into according to the view of this court expressed in the case of *City of Ogden v. Crossman*, 17 Utah, 66, 53 Pac. 985, 988, wherein the validity of an act of the Ogden City council was involved, this court said:

“It is apparent that the ordinance in question was passed by virtue of the express power and authority of the state as authorized by the constitution. Under such circumstances it was not competent to prove the unreasonableness of an ordinance by virtue of the conclusion of witnesses. The regulation of the matter was left by law to the discretion of the city council and not to the defendants. By granting the power the legislature imposed upon the city council the discretion to determine just how far they could go within the limits imposed and there is every presumption that the council were actuated by pure motives and that they were so familiar with the mischief sought to be guarded against and the needs of the city as to be the best judges of the necessities for the enactment of the ordinance and the extent

to which it was advisable or necessary to exercise the power granted. In such cases the council and not the court is the proper repository of this public trust; and it should be a plain case to justify the court in interfering with the determination of the council or questioning their motives in enacting the ordinance. Under the circumstances, the court ought not to interfere on the ground that the ordinance was unreasonable, but is restricted to the constitutionality of the act granting the power. The ordinance itself proves the exigency which existed which required its enactment."

That this is the general and almost unanimous attitude of the courts in this country is indicated in an annotation entitled "Validity of Municipal Ordinances as Affected by Motives of Members of Council which Adopted It," 32 ALR 1517. The author of that annotation begins with the following statement:

"It is generally held that the motive of the legislative body of a municipal corporation, in adopting an ordinance, is not the subject of judicial inquiry."

Then following are citations quoting that rule from most jurisdictions in this country, including Utah.

The finding of the trial court as expressed in paragraph 11 of its "Findings of Fact" was clearly an invasion by the trial court into the motives of the County Commission. Said finding is as follows:

"11. The action of the board of county commissioners of Salt Lake County in denying said zoning amendment was unreasonable, arbitrary

and an abuse of sound executive and administrative discretion in the following particulars: (a) the denial was based wholly upon the premise that such a denial would protect an economic advantage already obtained by owners of other land zoned commercially in the general marketing area in which the land in question is located; (b) The planning and zoning commission, after investigation, determined the amendment was necessary to best serve the population of the area in question; (c) At the public hearing in the matter no evidence of any kind was presented in opposition to the proposed amendment except the testimony and statements of competing, yet remote commercial users who opposed the zoning amendment in order to protect their own economic advantage acquired by prior commercial zoning." (R-29, 30)

The assumption by the trial court that the denial of the commission was based wholly upon any one premise, and that said premise was one on which they were not justified in acting demonstrates the hazards of attempting to ascribe motives to the action of legislative bodies. It is submitted that no one knows and no one can know on what basis the county commission made their decision.

The conclusion of the lower court that the amendment requested by plaintiffs should have been granted, having been based largely on the above conclusion concerning the motives of the commission, is therefore in error and should be reversed.

POINT III.

THE DENIAL BY THE BOARD OF COUNTY COMMISSIONERS TO ADOPT THE ZONING AMENDMENT WAS NOT AN ARBITRARY OR UNREASONABLE ACT, NOR WAS IT AN ABUSE OF DISCRETION. THERE IS NO EVIDENCE DENYING THE REASONABLE EXERCISE OF THE POLICE POWER ON THE PART OF THE COUNTY COMMISSIONERS.

The question of zoning authority and the authorized use of the police power by the governing municipal bodies, arose in Utah in the case of *Marshall v. Salt Lake City*, 105 Utah 111, 141 Pac. 2nd, 704. In that case Salt Lake City appealed from a decision of the District Court which ruled that the Mayor and City council had acted arbitrarily in the enforcement of its zoning ordinances. The Supreme Court reversed the trial court which had held against the city. Part of the language in that case is as follows: (141 Pac. 2nd 709, 710)

“The wisdom of the plan, the necessity for zoning, the number and nature of the districts to be created, the boundaries thereof, and the uses therein permitted, are matters which lie in the discretion of the governing body of the city. Unless the action of such body is arbitrary, discriminatory or unreasonable, or clearly offends some provision of the constitution or statute, the court must uphold it, if within the grant of power to the municipality.”

The court cites four cases in support of this point of law. The case states further:

It is primarily the duty of the city to make the classifications. If a classification is reasonably

doubtful, the judgment of the court will not be substituted for the judgment of the city," and further, "As to what restrictions and limitations should be imposed upon property, and what uses thereof should be permitted, has been by the legislature, committed to the judgment and discretion of the governing body of the city. As long as that body stays within the grant, and purposes fixed by the legislature, the courts will not gainsay (its) judgment.

In the case of Phi Kappa Iota Fraternity v. Salt Lake City 116 Utah 536, 212 Pac. 2d 177, the fraternity sought to determine the constitutionality of a City Ordinance confining the use of premises in a restricted residential area, for a fraternity or a sorority, to an area not more than 600 feet from the institution to which the fraternity or sorority is an incident. The court advanced several legal principals in the determination of the decision in that case which are in point and support the contentions of Salt Lake County even though they were construing the validity of an ordinance rather than the refusal to amend. The following principles of law were announced:

Exercise of statutory discretionary power to district and zone cities for various purposes that are to the public interest will not be interfered with by the courts unless the discretion is abused; and further The selection of one method of solving the zoning problem in preference to another is entirely within the discretion of the city commission and does not, in and of itself, evidence an abuse of discretion.

The most recent cases in point in Utah appears to

be *Dowse v. Salt Lake City, et al*, 123, Utah 107, 255 Pac. 2d 723, decided in April of 1953. This was a case brought to declare a zoning ordinance of Salt Lake City unconstitutional as it applied to the lots involved. Plaintiff's complaint alleged that his land was unsuitable for residential property; that it was located in a potential industrial or commercial zone; that the zoning ordinance as applied to his property, served no beneficial use, and in no manner promoted the health, safety, morals or general welfare of the community, that the value of his property would be greatly enhanced if it could be used for industrial purposes; and that under these circumstances the zoning ordinance was so oppressive as to be confiscatory and unlawful. The request to re-zone plaintiff's land was denied by Salt Lake City. Accordingly, a consistency was established on the Utah application of the Doctrine of Judicial Review, with the Marshall case, the Phi Kappa Iota Fraternity case and the Walton case with the advancement of the following principles:

The wisdom of a plan, necessity, number, nature, and boundaries of zoning districts are matters which lie in the discretion of City authorities.

Only if action of city authorities in creating zoning districts is confiscatory, or arbitrarily may court set aside their action.

Complaint containing allegations that landowner's property might have been more profitably used for commercial than for residential purposes, that his property had become unsuit-

able for residential purposes and that much of property in other blocks in neighborhood was zoned for commercial purposes did not show confiscatory, discriminatory or arbitrary action of city authorities which would justify judicial alteration of zoned boundaries.

The character of zoning district as a whole must be kept in mind determining whether health, safety, morals or general welfare of district and hence community would be promoted by permitting encroachment into residential area of commercial or industrial establishments.

At the hearing held in the Salt Lake County Commission chambers on the 4th day of November, 1959, for the purpose of having the public express their views to the commission there appeared some fifteen persons supporting the proposed change and some fourteen persons objecting to the proposed change. The ordinances of Salt Lake County enacted pursuant to Title 17, Chapter 27, Paragraph 14, Utah Code Annotated 1953, provide for a public hearing prior to a zoning amendment. Such hearings is for the purpose of having the views of the public aired before the Commission in order to give them the benefit of thinking of persons who are interested in the problem. The number of persons who appear are in no way indicative of a cross section of the public for or against the zoning amendment, nor is it material. The board is empowered to make its decision regardless of the recommendations of the District Zoning Committee, the Planning Commission, or the views of the members of the public who attend the hearing, provided their decision is not in conflict with

the best interests of the health, safety, morals and general welfare of the public.

The evidence introduced at the hearing was clearly conflicting. There is no showing that those who opposed the proposed zoning changes were interested directly or indirectly in competitive business ventures, nor would that be material in a determination of this case. The only competent evidence which touches upon the reasonableness of commission action is that dealing with the traffic problem. It was stated that a commercial area at the intersection of 56th South and 13th East would create a bottleneck which should not exist. The commercial area already established on 9th East and on Hyland Drive will have the effect of deterring north-south traffic, and the proposed 13th East expressway should be left open to facilitate said flow of traffic without interference. (Testimony of Mrs. Rippe, page 60) There is no evidence denying the reasonable exercise of the police power on the part of the county commission. The court did not have before it any facts indicating the views of the commissioners and was completely in the dark as to what reasoning processes were used in order to arrive at the decision reached.

CONCLUSION

For all the foregoing Reasons, appellant maintains that the trial court erred in overruling the County Commission and in ordering them to amend the Zoning Ordinances of Salt Lake County. Appellant respectfully

requests that this court reverse the summary judgment of District Court and allow this matter to be tried on the merits.

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