

Bond Case Briefs

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EMINENT DOMAIN - CALIFORNIA

Property Reserve, Inc. v. Superior Court

Supreme Court of California - July 21, 2016 - P.3d - 2016 WL 3924221 - 16 Cal. Daily Op. Serv. 7780

State petitioned for orders to enter private properties and conduct environmental and geological studies of their suitability for construction of water tunnel.

The Superior Court granted the petition as to the environmental studies but denied it as to the geological studies.

State and landowners appealed, and landowners petitioned for writs of mandate, prohibition, or other appropriate relief. The Court of Appeal denied the petitions, but the Supreme Court granted review and directed the Court of Appeal to issue an order to show cause.

The Court of Appeal affirmed in part, reversed in part, and granted petitions. State petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Precondemnation entry and testing statutes authorized the Department of Water Resources to petition to enter privately owned land to conduct environmental studies and geological activities such as drilling test holes;
- Procedure established by the precondemnation entry and testing statutes is reasonable, certain, and adequate under the federal takings clause;
- Environmental studies pursuant to precondemnation entry and testing procedure would not violate California takings clause;
- Supreme Court would reform precondemnation entry and testing scheme so as to afford a jury trial on damages;
- Geological activities such as drilling test holes pursuant to precondemnation entry and testing procedure would not violate California takings clause; and
- Geological activities such as drilling test holes would not violate federal takings clause.

The precondemnation entry and testing statutes authorized the Department of Water Resources to petition to enter privately owned land to conduct both environmental studies and geological activities such as drilling test holes, for a project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, even if the Department's activities would amount to more than "innocuous" entries and "superficial" examinations.

Most typically, although damage to property adjacent to a public improvement caused by the construction or operation of the improvement constitutes a compensable taking or damaging of property for purposes of the state takings clause, a public entity is not considered to have violated the state takings clause simply because the public entity has not commenced a judicial proceeding under the Eminent Domain Law or paid or deposited in court just compensation as ascertained by a jury before inflicting such damage.

Assuming that environmental studies requiring entry onto landowners' property, for a Department of Water Resources project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, amounted to a taking or damaging of property requiring compensation under the California takings clause, the procedure established by the precondemnation entry and testing statutes satisfied the requirements of the California takings clause when the procedure was reformed to comply with the jury trial requirement of that clause, where the environmental order did not grant the Department exclusive possession of any portion of a landowner's property for a significant period of time.

The state takings clause does not preclude the Legislature, in the precondemnation entry and testing context, from authorizing a public entity to proceed pursuant to an expedited precondemnation procedure rather than through a more elaborate classic condemnation proceeding.

The precondemnation entry and testing statutes do not violate the state takings clause in authorizing a public entity to enter private property to conduct substantial precondemnation activities without the owner's consent or the commencement of a classic condemnation action, so long as (1) the public entity obtains a court order specifying the activities that may be conducted on the property and first deposits in court an amount that the trial court determines is sufficient to cover the probable compensation to which the property owner may be entitled for losses sustained as a result of the entry and testing activities, and (2) the property owner is entitled to recover damages for any injury to the property and any substantial interference with its possession or use of the property resulting from the public entity's activities.

The statute providing that no public entity "shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property" is not directed at precondemnation entry and testing activities, and that statute cannot reasonably be interpreted as intended to limit or displace the precondemnation entry and testing statutes.

The statutory damages that a property owner is entitled to obtain under the precondemnation entry and testing statute are a constitutionally adequate measure of just compensation under the state takings clause for the precondemnation activities authorized by the statutory scheme.

The compensation provision of the precondemnation entry and testing statutory scheme, as written, violates the state takings clause by failing to afford a property owner the right to have a jury determine the amount of compensation within the precondemnation proceeding itself.

Supreme Court would reform the precondemnation entry and testing statutory scheme so as to afford the property owner the option of obtaining a jury trial on damages at the proceeding prescribed by precondemnation compensation statute, as a remedy for the violation of the state takings clause in the statutory scheme's failure to afford the right to have a jury determine the amount of compensation within the precondemnation proceeding itself, since it was possible to reform the statute in a manner that closely effectuated policy judgments clearly articulated by the Legislature, and the Legislature would prefer such reformation to invalidation of the statute.

Assuming that geological activities such as drilling test holes, for a Department of Water Resources project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, amounted to a taking or damaging of property requiring compensation under the California takings clause, the procedure established by the precondemnation entry and testing statutes satisfied the requirements of the California takings clause when the procedure was reformed to comply with the jury trial requirement of that clause, since the Department would retain no continuing interest in the grout that it used to refill the test holes, the trial court would be authorized to limit the geological activities to protect the landowners, and landowners would be authorized to recover damages for

any actual injury or substantial interference with their possession or use of the property.

Assuming that geological activities such as drilling test holes, for a Department of Water Resources project to investigate the feasibility of constructing a new tunnel or canal to deliver fresh water, amounted to a permanent physical occupation and thus a per se taking of property requiring compensation under the federal takings clause, the procedure established by the precondemnation entry and testing statutes satisfied the requirements of the takings clause, since the landowners could recover damages for any actual injury or substantial interference with their possession or use of the property caused by the continued presence of grout in the test holes.