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EMINENT DOMAIN - CALIFORNIA

Rutgard v. City of Los Angeles

Court of Appeal, Second District, Division 2, California - July 30, 2020 - Cal.Rptr.3d - 2020 WL 4361069 - 20 Cal. Daily Op. Serv. 7657 - 2020 Daily Journal D.A.R. 7993

Former owner of historic property that charter city acquired in eminent domain proceedings filed petition for writ of mandate after city, having allegedly failed to timely reauthorize taking, failed to offer former owner right of first refusal to purchase property.

The Superior Court granted owner's petition. City appealed.

The Court of Appeal held that city failed to adopt resolution reauthorizing taking within 10 years of final adoption of resolution of necessity.

The Eminent Domain Law does not permit a public entity to fail to put property acquired through eminent domain to public use or to timely reauthorize its necessity for public use, then to adopt a new, "original" resolution of necessity at any time; allowing a public entity to do so would permit an end-run around the 10-year time limit for putting a property to public use or adopting a reauthorization resolution, in contravention of the legislative intent to prevent such gamesmanship and to prohibit public entities from holding condemned property indefinitely.

The term "adopt," in the statute setting forth a 10-year time limit, starting from the date of adoption of a resolution of necessity for a taking, within which a public entity seeking to retain a property previously acquired by eminent domain but not put to public use must adopt a resolution reauthorizing that use, refers to the date a resolution is finally adopted, not when it is initially adopted or when it becomes effective; the Legislature deliberately chose to look to the date of "adoption" rather than the "effective date" as a common point of reference throughout the Eminent Domain Law, and the date of final adoption of a resolution is more meaningful, as a definite action by a public entity, than an intermediate point in the enactment process with no effect in and of itself.

The statute in the Eminent Domain Law setting forth a 10-year time limit for a public entity that has acquired property by eminent domain to either put the property to public use or adopt a resolution reauthorizing its public use defines the date of final adoption a resolution by incorporating the local law governing the public entity; the time limit statute does not purport to define "adoption," and the statute and the broader Eminent Domain Law elsewhere look to local charters and ordinances governing the process by which a public entity "adopts" resolutions, which allows chartered public entities such as home rule cities to experiment with procedures for adopting resolutions.

Charter city failed to adopt resolution reauthorizing taking of historic property for public use within 10 years of final adoption of resolution of necessity for taking, and, thus, city had a ministerial duty to sell property and allow former property owner right of first refusal in purchasing it, where date of final adoption of resolution of necessity, under city charter, was date when resolution had passed city council and either been approved by mayor or, if not approved, passed second override vote of city council, and city adopted reauthorizing resolution more than 10 years after date of final adoption of resolution of necessity.

