

Bond Case Briefs

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ANNEXATION - NEW YORK

Wagschal v. Szegedin

Supreme Court, Appellate Division, Second Department, New York - April 12, 2023 - N.Y.S.3d - 2023 WL 2904405 - 2023 N.Y. Slip Op. 01899

Petitioners brought article 78 proceeding against town and existing village to prohibit town from exercising jurisdiction over certain proposals for annexation of certain territories of existing village.

The Supreme Court, Orange County, denied existing village's motion to dismiss, granted portion of petition prohibiting town officials from exercising jurisdiction over annexation proposals until town considered proposed village's incorporation petition, and dismissed petition to extent it sought to permanently prohibit town from considering annexation proposals. Town and existing village appealed.

The Supreme Court, Appellate Division, held that:

- Order was ripe for appellate review, and
- Prior jurisdiction rule required town to determine proposed village's petition of incorporation before considering proposals to annex certain territories of existing village.

Trial court's order in article 78 proceedings denying village's motion to dismiss petition of prohibition to prohibit town and its officials to annex certain territories of village was ripe for appellate review, where village sought determination of whether town and its officials were about to proceed without or in excess of jurisdiction.

Prior jurisdiction rule required town to determine proposed village's petition of incorporation before considering proposals to annex certain territories of existing village, where incorporation petition was filed before existing village filed any complete and formal annexation petition for same land, and incorporation petition superseded prior petitions filed for incorporation of proposed village.