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EMINENT DOMAIN - NEW YORK

Penney Property Sub Holdings LLC v. Town of Amherst

Supreme Court, Appellate Division, Fourth Department, New York - October 6, 2023 - N.Y.S.3d - 2023 WL 6528859 - 2023 N.Y. Slip Op. 05058

Property owner sought judicial review of town's decision to authorize condemnation of property that included owner's land, which was leased and operating as a fully-functional department store.

The Supreme Court, Appellate Division, held that:

- Notice to property owner satisfied procedural due process;
- Town's decision was rationally related to a conceivable public purpose;
- Evidence supported town's decision regardless of whether owner's property was blighted; and
- Possibility that condemned land would be sold to private developer did not render town's decision unconstitutional.

Notice to property owner of town hearing on condemnation of land satisfied requirements of procedural due process, even though owner did not actually receive notice until after hearing, absent evidence that town was, or should have been, aware that mailed notice had not reached owner on time.

Town's decision to exercise eminent domain power to condemn around two acres of commercial land on which there was a fully-functional department store was rationally related to a conceivable public purpose, where condemnation would foster redevelopment to eliminate urban blight by allowing town to hold complete title to the entire 62 acre area.

Evidence supported town's decision to condemn property owner's commercial land as part of redevelopment plan to combat urban blight, regardless or whether owner's particular property was blighted, where record showed that overall area was economically underdeveloped and stagnant and that condemnation and subsequent improvement would be of benefit.

Possibility that town would sell property owner's land to a private developer after condemning it did not render town's decision to authorize condemnation constitutionally infirm under the Fifth Amendment.

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