

Welch Vs. Swasey

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Court : US Supreme Court

Decided On : May-17-1909

Appeal No. : 214 U.S. 91

Appellant : Welch

Respondent : Swasey

Judgement :

Welch v. Swasey - 214 U.S. 91 (1909)

U.S. Supreme Court Welch v. Swasey, 214 U.S. 91 (1909)

Welch v. Swasey

No. 153

Argued April 15, 16, 1909

Decided May 17, 1909

214 U.S. 91

ERROR TO THE SUPREME JUDICIAL COURT

OF THE STATE OF MASSACHUSETTS

SYLLABUS

Whether a state statute is illegal because it delegates legislative power to a commission does not raise a federal question.

A statute limiting the height of buildings cannot be justified under the police power unless it has some fair tendency to accomplish, or aid in the accomplishment of, some purpose for which that power can be used; if the means employed, pursuant to the statute, have no real substantial relation to such purpose, or if the statute is arbitrary, unreasonable, and beyond the necessities of the case, it is invalid as taking property without due process of law.

In determining the validity of a state statute affecting height of buildings, local conditions must be considered, and, while the judgment of the highest court may not be conclusive, it is entitled to the greatest respect, and will not be interfered with unless clearly wrong.

Where the highest court of the state has held that there is reasonable ground for classification between the commercial and residential portions of a city as to the height of buildings, based on practical and not esthetic grounds, and that the police power is not to be exercised for merely esthetic purposes, this Court will not hold that such a statute, upheld by the state court, prescribing different heights in different sections of the city, is unconstitutional as discriminating against, and denying equal protection of the law to, the owners of property in the district where the lower height is prescribed.

Where there is justification for the enactment of a police statute limiting the height of buildings in a particular district, an owner of property in that district is not entitled to compensation for the reasonable interference with his property by the statute.

Chapters 333 of the acts of 1904 and 33 of the acts of 1905 of Massachusetts, limiting the heights of buildings in Boston and prescribing different heights in different sections of the city are, in view of the decision of the highest court of Massachusetts holding that the discrimination is based upon reasonable grounds, a proper exercise of the police power of the state, and are not unconstitutional

under the equal protection and due process clauses of the Fourteenth Amendment.

193 Mass. 364 affirmed.

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The plaintiff in error duly applied to the Justices of the Supreme Judicial Court of the State of Massachusetts for a mandamus against the defendants, who constitute a board of appeal from the Building Commissioner of the City of Boston, to compel the defendants to issue a permit to him to build on his lot on the corner of Arlington and Marlborough Streets in that city. The application was referred by the justice presiding to the full court, and was by it denied (193 Mass. 364), and the plaintiff has brought the case here by writ of error.

The action of defendants in refusing the permit was based on the statutes of Massachusetts, c. 333 of the Acts of 1904, and c. 383 of the Acts of 1905. The two acts are set forth in the margin. [*](#) The reason for the refusal to grant the building

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permit was because the building site for the proposed building was situated in one of the districts B, as created under the provisions of the acts mentioned, in which districts the height of

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the buildings is limited to eighty, or, in some cases, to one hundred feet, while the height of buildings in Districts A is limited to one hundred twenty-five feet. The height of the building which plaintiff in error proposed to build and for which he asked the building permit was stated by him in his application therefor to be one hundred twenty-four feet, six inches.

The designation of what parts in Districts B and upon what conditions a building could be therein erected more than eighty while not more than one hundred feet

high was to be made by a commission, as provided for in the act of 1905, and the commission duly carried out the provisions of the act in that respect. The sole reason for refusing the permit was on

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account of the proposed height of the building being greater than the law allowed.

The plaintiff in error contended that the defendants were not justified in their refusal to grant the permit, because the statutes upon which their refusal was based were unconstitutional and void; but he conceded that, if they were valid, the defendants were justified in their refusal.

The court, while deciding that mandamus was a proper remedy, held that the statutes and the reports of the commissions thereunder were constitutional.

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MR. JUSTICE PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The ground of objection of plaintiff in error to this legislation is that the statutes unduly and unreasonably infringe upon his constitutional rights (a) as to taking of property without compensation; (b) as to denial of equal protection of the laws.

Plaintiff in error refers to the existence of a general law in Massachusetts, applicable to every city therein, limiting the height of all buildings to one hundred twenty-five feet above the grade of the street (acts of 1891, c. 355), and states that he does not attack the validity of that act in any respect, but concedes that it is constitutional and valid. See *also* on same subject, acts of 1892, c. 419, 25, making such limitation as to the City of Boston. His objection is directed to the particular statutes because they provide for a much lower limit in certain parts of the City of Boston, to be designated by a commission, and because a general restriction of height as low as eighty or one hundred feet over any substantial portion of the city is, as he contends, an unreasonable infringement upon his rights

of property; also that the application of those limits to Districts B, which comprise the greater part of the City of Boston, leaving the general one hundred twenty-five feet limit in force in those portions of the city which

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the commission should designate (being the commercial districts), is an unreasonable and arbitrary denial of equal rights to the plaintiff in error and others in like situation

Stating his objections more in detail, the plaintiff in error contends that the purposes of the acts are not such as justify the exercise of what is termed the police power, because, in fact, their real purpose was of an esthetic nature, designed purely to preserve architectural symmetry and regular sky lines, and that such power cannot be exercised for such a purpose. It is further objected that the infringement upon property rights by these acts is unreasonable and disproportioned to any public necessity, and also that the distinction between one hundred twenty-five feet for the height of buildings in the commercial districts described in the acts, and eighty to one hundred feet in certain other or so-called residential districts, is wholly unjustifiable and arbitrary, having no well founded reason for such distinction, and is without the least reference to the public safety, as from fire, and inefficient as means to any appropriate end to be attained by such laws.

In relation to these objections the counsel for the plaintiff in error, in presenting his case at bar, made a very clear and able argument.

Under the concession of counsel that the law limiting the height of buildings to one hundred twenty-five feet is valid, we have to deal only with the question of the validity of the provisions stated in these statutes and in the conditions provided for by the commissions limiting the height in Districts B between eighty and one hundred feet.

We do not understand that the plaintiff in error makes the objection of illegality arising from an alleged delegation of legislative power to the commissions

provided for by the statutes. At all events, it does not raise a federal question. The state court holds that kind of legislation to be valid under the state constitution, and this Court will follow its determination upon that question

We come, then, to an examination of the question whether

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these statutes with reference to limitations on height between eighty and one hundred feet, and in no case greater than one hundred feet, are valid. There is here a discrimination or classification between sections of the city, one of which, the business or commercial part, has a limitation of one hundred twenty-five feet, and the other, used for residential purposes, has a permitted height of buildings from eighty to one hundred feet.

The statutes have been passed under the exercise of so-called police power, and they must have some fair tendency to accomplish, or aid in the accomplishment of, some purpose for which the legislature may use the power. If the statutes are not of that kind, then their passage cannot be justified under that power. These principles have been so frequently decided as not to require the citation of many authorities. If the means employed pursuant to the statute have no real, substantial relation to a public object which government can accomplish, if the statutes are arbitrary and unreasonable, and beyond the necessities of the case, the courts will declare their invalidity. The following are a few of the many cases upon this subject: *Mugler v. Kansas*, [123 U. S. 623](#) , [123 U. S. 661](#) ; *Minnesota v. Barber*, [136 U. S. 313](#) , [136 U. S. 320](#) ; *Jacobson v. Massachusetts*, [197 U. S. 11](#) , [197 U. S. 28](#) ; *Lochner v. New York*, [198 U. S. 45](#) , [198 U. S. 57](#) ; *Chicago Railway Company v. Drainage Commissioners*, [200 U. S. 561](#) , [200 U. S. 593](#) .

In passing upon questions of this character as to the validity and reasonableness of a discrimination or classification in relation to limitations as to height of buildings in a large city, the matter of locality assumes an important aspect. The particular circumstances prevailing at the place or in the state where the law is to become

operative, whether the statute is really adapted, regard being had to all the different and material facts, to bring about the results desired from its passage; whether it is well calculated to promote the general and public welfare -- are all matters which the state court is familiar with, but a like familiarity cannot be ascribed to this Court, assuming

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judicial notice may be taken of what is or ought to be generally known. For such reason this Court, in cases of this kind, feels the greatest reluctance in interfering with the well considered judgments of the courts of a state whose people are to be affected by the operation of the law. The highest court of the state in which statutes of the kind under consideration are passed is more familiar with the particular causes which led to their passage (although they may be of a public nature) and with the general situation surrounding the subject matter of the legislation than this Court can possibly be. We do not, of course, intend to say that, under such circumstances, the judgment of the state court upon the question will be regarded as conclusive, but simply that it is entitled to the very greatest respect, and will only be interfered with, in cases of this kind, where the decision is, in our judgment, plainly wrong. In this case, the Supreme Judicial Court of the state holds the legislation valid, and that there is a fair reason for the discrimination between the height of buildings in the residential, as compared with the commercial, districts. That court has also held that regulations in regard to the height of buildings, and in regard to their mode of construction in cities, made by legislative enactments for the safety, comfort, or convenience of the people and for the benefit of property owners generally, are valid. *Attorney General v. Williams*, 174 Mass. 476. We concur in that view, assuming, of course, that the height and conditions provided for can be plainly seen to be not unreasonable or inappropriate.

In relation to the discrimination or classification made between the commercial and the residential portion of the city, the state court holds in this case that there is reasonable ground therefor in the very great value of the land and the demand for space in those parts of Boston where a greater number of buildings are used for

the purposes of business or commercially than where the buildings are situated in the residential portion of the city, and where no such reasons exist for high buildings. While so deciding, the court cited, with

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approval, *Commonwealth v. Boston Advertising Co.*, 188 Mass. 348, which holds that the police power cannot be exercised for a merely esthetic purpose. The court distinguishes between the two cases, and sustains the present statutes. As to the condition adopted by the commission for permitting the erection, in either of the Districts B, that is, the residential portion, of buildings of over eighty feet, but never more than one hundred, that the width on each and every public street on which the building stands shall be at least one-half its height, the court refuses to hold that such condition was entirely for esthetic reasons. The Chief Justice said:

"We conceive that the safety of adjoining buildings, in view of the risk of the falling of walls after a fire, may have entered into the purpose of the commissioners. We are of opinion that the statutes and the orders of the commissioners are constitutional"

We are not prepared to hold that this limitation of eighty to one hundred feet, while in fact a discrimination or classification, is so unreasonable that it deprives the owner of the property of its profitable use without justification, and that he is therefore entitled under the Constitution to compensation for such invasion of his rights. The discrimination thus made is, as we think, reasonable, and is justified by the police power.

It might well be supposed that taller buildings in the commercial section of the city might be less dangerous in case of fire than in the residential portion. This Court is not familiar with the actual facts, but it may be that, in this limited commercial area, the high buildings are generally of fireproof construction; that the fire engines are more numerous and much closer together than in the residential portion, and that an unlimited supply of salt water can be more readily introduced from the harbor into the pipes, and that few women or children are found there in the daytime, and

very few people sleep there at night. And there may, in the residential part, be more wooden buildings, the fire apparatus may be more widely scattered, and so situated that it would be more difficult to obtain the necessary amount of water, as the residence

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quarters are more remote from the waterfront, and that many women and children spend the day in that section, and the opinion is not strained that an undiscovered fire at night might cause great loss of life in a very high apartment house in that district. These are matters which, it must be presumed, were known by the legislature, and whether or not such were the facts was a question, among others, for the legislature to determine. They are asserted as facts in the brief of the counsel for the City of Boston. If they are, it would seem that ample justification is therein found for the passage of the statutes, and that the plaintiff in error is not entitled to compensation for the reasonable interference with his property rights by the statutes. That, in addition to these sufficient facts, considerations of an esthetic nature also entered into the reasons for their passage would not invalidate them. Under these circumstances, there is no unreasonable interference with the rights of property of the plaintiff in error, nor do the statutes deprive him of the equal protection of the laws. The reasons contained in the opinion of the state court are, in our view, sufficient to justify their enactment. The judgment is therefore

Affirmed.

* Acts of 1904, Chapter 333.

" *An Act Relative to the Height of Buildings in the City of Boston*"

" *Be it enacted, etc., as follows:* "

"SECTION 1. The City of Boston shall be divided into districts of two classes, to be designated districts A and B. The boundaries of the said districts, established as hereinafter provided, shall continue for a period of fifteen years, and shall be determined in such manner that those parts of the city in which all or the greater

part of the buildings situate therein are at the time of such determination, used for business or commercial purposes, shall be included in the district or districts designated A, and those parts of the city in which all or the greater part of the buildings situate therein are at the said time, used for residential purposes or for other purposes not business or commercial, shall be in the district or districts designated B."

"SEC. 2. Upon the passage of this act, the mayor of the city shall appoint a commission of three members, to be called 'Commission on Height of Buildings in the City of Boston.' The commission shall, immediately upon its appointment, give notice and public hearings, and shall make an order establishing the boundaries of the districts aforesaid, and within one month after its appointment shall cause the same to be recorded in the registry of deeds for the County of Suffolk. The boundaries so established shall continue for a period of fifteen years from the date of the said recording. Any person who is aggrieved by the said order may, within thirty days after the recording thereof, appeal to the commission for a revision, and the commission may, within six months after its appointment, revise such order, and the revision shall be recorded in the Registry of Deeds for the County of Suffolk, and shall date back to the original date of recording. The members of the commission shall serve until the districts have been established as aforesaid, and any vacancy in the commission caused by resignation, death, or inability to act shall be filled by the mayor, on written application by the remaining members of the commission or of ten inhabitants of the city. The members of the commission shall receive such compensation as the mayor shall determine."

"SEC. 3. In the City of Boston, no building shall be erected to a height of more than one hundred twenty-five feet above the grade of the street in any district designated A, and no building shall be erected to a height of more than eighty feet above the grade of the street in any district designated B. These restrictions shall not apply to grain or coal elevators or sugar refineries in any district designated A, nor to steeples, domes, towers, or cupolas erected for strictly ornamental purposes, of fireproof material, on buildings of the above height or less in any district. The Supreme Judicial Court and the superior court shall each have

jurisdiction in equity to enforce the provisions of this act, and to restrain the violation thereof."

"SEC. 4. This act shall take effect upon its passage. (Approved May 13, 1904.)"

" *Acts of 1905, Chapter 383*"

" *An Act Relative to the Height of Buildings in the City of Boston*"

" *Be it enacted, etc., as follows:* "

"SECTION 1. Within thirty days after the passage of this act, the Mayor of the City of Boston shall appoint a commission of three members to determine, in accordance with the conditions hereinafter provided, the height of buildings within the district designated by the commission on height of buildings in the City of Boston as District B, in accordance with chapter three hundred thirty-three of the acts of the year nineteen hundred and four."

"SEC. 2. Said commission shall, immediately upon its appointment, give notice and public hearings, and shall make an order establishing the boundaries of or otherwise pointing out such parts, if any, of said District B, as it may designate, in which buildings may be erected to a height exceeding eighty feet, but not exceeding one hundred feet, and the height between eighty feet and one hundred feet to which buildings may so be erected, and the conditions under which buildings may be erected to said height, except that such order may provide for the erection of buildings as aforesaid to a height not exceeding one hundred twenty-five feet in that portion of said District B which lies within fifty feet from the boundary line separating said District B from the District designated by the commission on height of buildings in the City of Boston as District A, in accordance with said chapter three hundred thirty-three, provided said boundary line divides the premises affected by such order from other adjoining premises, both owned by the same person or persons, and within sixty days after its appointment shall cause the same to be recorded in the registry of deeds for the County of Suffolk. Any person who is aggrieved by such order may, within sixty days after the recording thereof, appeal to the commission for a revision, and the commission

may, previous to the first day of January in the year nineteen hundred and six, revise such order, and the revision shall be recorded in the registry of deeds for the County of Suffolk, and shall date back to the original date of recording. The boundaries so established shall continue for a period of fifteen years from the date of the recording of the order made by the commission on height of buildings in the City of Boston under chapter three hundred thirty-three of the acts of the year nineteen hundred and four. The members of the commission shall receive such compensation as the mayor shall determine."

"SEC. 3. Within such parts of District B as may be designated by the commission as aforesaid (which may, except as hereinafter provided, include any parts of said District B affected by prior acts limiting the height of buildings), buildings may be erected to the height fixed by the commission as aforesaid, exceeding eighty feet, but not exceeding one hundred feet, or one hundred twenty-five feet, as hereinbefore provided, and subject to such conditions as may be fixed as aforesaid by the commission, but within the following-described territory, to-wit: beginning at the corner of Beacon Street and Hancock Avenue, thence continuing westerly on Beacon Street to Joy Street, thence continuing northerly on Joy Street to Myrtle Street, thence continuing easterly on Myrtle Street to Hancock Street, thence continuing southerly on Hancock Street and Hancock Avenue to the point of beginning, no building shall be erected to a height greater than seventy feet, measured on its principal front, and no building shall be erected on a parkway, boulevard, or public way on which a building line has been established by the board of park commissioners or by the board of street commissioners, acting under any general or special statute, to a greater height than that allowed by the order of said boards, and no building upon land any owner of which has received and retained compensation in damages for any limitation of height, or who retains any claim for such damages, shall be erected to a height greater than that fixed by the limitation for which such damages were received or claimed."

"SEC. 4. No limitations of the height of buildings in the City of Boston shall apply to churches, steeples, towers, domes, cupolas, belfries, or statuary not used for purposes of habitation, nor to chimneys, gas holders, coal or grain elevators, open

balustrades, skylights, ventilators, flagstaffs, railings, weather vanes, soil pipes, steam exhausts, signs, roof houses not exceeding twelve feet square and twelve feet high, nor to other similar constructions such as are usually erected above the roof line of buildings."

"SEC. 5. This act shall take effect upon its passage. (Approved May 8, 1905.)"

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