

Mcgovern Vs. New York

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Appeal No. : 229 U.S. 363

Appellant : Mcgovern

Respondent : New York

Judgement :

McGovern v. New York - 229 U.S. 363 (1913)

U.S. Supreme Court McGovern v. New York, 229 U.S. 363 (1913)

McGovern v. New York

No. 15

Argued November 8, 1912

Decided June 9, 1913

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ERROR TO THE SUPREME COURT

OF THE STATE OF NEW YORK

SYLLABUS

Where the state statute requires condemnation Commissioners to determine the just and equitable compensation, any wrong done, so far as amount is concerned, is due not to the statute, but to errors of the court as to evidence or measure of damages.

A judgment by which an owner of condemned property gets less than he ought, and in that sense is deprived of his property, cannot come to this Court on the constitutional question unless there is something more than an ordinary honest mistake of law in the proceedings. *Backus v. Fort Street Depot*, [169 U. S. 557](#) .

The final judgment of a state court in condemnation proceedings should not be held to violate the due process provision of the Fourteenth Amendment unless the rulings of law prevented the owner from obtaining substantially any compensation. *Appleby v. Buffalo*, [221 U. S. 524](#) .

Enhanced value of property as a part of a great public work depends upon the whole land necessary being taken therefor. The chance that all the property necessary can be acquired without the exercise of eminent domain is too remote and speculative to be allowed. *C., B. & Q. Ry. v. Chicago*, [166 U. S. 226](#) .

The owner of property taken in eminent domain proceedings is entitled to be paid only for what is taken as the title stands, *Chamber of Commerce v. Boston*, [217 U. S. 189](#) ; hypothetical possibilities of change cannot be considered. *United States v. Chandler-Dunbar Water Co.*, *ante*, p. [229 U. S. 53](#) , followed, and *Boom Co. v. Patterson*, [98 U. S. 403](#) , distinguished.

A wide discretion is allowed the trial court in regard to admission of evidence as to the value of property taken by eminent domain, and this Court will not interfere on the ground of denial of due process of law where there was no plain disregard of the owner's rights.

195 N.Y. 573 affirmed.

The facts, which involve the validity of an award in a proceeding for condemnation of land for the water supply system of New York City, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a proceeding for the taking of land to be used for a reservoir to secure an additional supply of water for the City of New York. Commissioners were appointed, as provided by the constitution of the state, to ascertain the compensation to be paid. Land belonging to the plaintiff in error, McGovern, was among the many parcels taken, and the question brought here arises on the refusal of the Commissioners to admit certain evidence as to the exceptional value of the land for a reservoir site, the exclusion of which, it was alleged, had the effect of depriving McGovern of his property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States. The offer of proof as first made embraced many facts and covers six octavo pages of the record. This was rejected, the Commissioners, as we understand their ruling, considering it only as a unit, and as containing inadmissible elements, which probably it

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did. The offer then was made

"to prove the fair and reasonable market value of this piece of property, taking into consideration that element of value which gives it an enhanced value because it is part of a natural reservoir site;"

also "to prove the fair and reasonable value of the Ashokan reservoir site which the City of New York is now condemning," and that the Ashokan reservoir site (as a whole) was the best and most available site for the purpose of obtaining an additional water supply. These offers were enough to raise the question discussed, although the last one was only a reiteration of what was alleged in the original petition for the taking of the land, and stood admitted on the record. The action of the Commissioners was affirmed by the courts of New York. 130 App.Div.

350, 356, 195 N.Y. 573.

The statute requires the Commissioners to determine "the just and equitable compensation which ought to be made." If there has been any wrong done, it is due not to the statute, but to the courts' having made a mistake as to evidence, or, at most, as to the measure of damages. But, of course, not every judgment by which a man gets less than he ought, and in that sense is deprived of his property, can come to this Court. The result of a judgment in trover, at least, if satisfied ([Lovejoy v. Murray](#), 3 Wall. 1; *Miller v. Hyde*, 161 Mass. 472), is to pass property as effectually as condemnation proceedings; yet no one would contend that a plaintiff could come here under the Constitution simply because of an honest mistake to his disadvantage in laying down the rule of damages for conversion. If the plaintiff could bring such a case to this Court, one might ask why not the defendant for a mistake in the opposite direction that will deprive him of money that he is entitled to keep?

When property is taken by eminent domain, it equally is recognized that there must be something more than an ordinary honest mistake of law in the proceedings for

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compensation before a party can make out that the state has deprived him of his property unconstitutionally. *Backus v. Fort Street Union Depot Co.*, [169 U. S. 557](#) , [169 U. S. 575](#) -576. As it is put in the case most frequently cited in favor of the right to a writ of error,

"we are permitted only to inquire whether the trial court prescribed any rule for the guidance of the jury that was in absolute disregard of the company's right to just compensation."

And again, the final judgment of a state court

"ought not to be held in violation of the due process of law enjoined by the Fourteenth Amendment unless by the rulings upon questions of law the company

was prevented from obtaining substantially any compensation."

Chicago, Burlington & Quincy R. Co. v. Chicago, [166 U. S. 226](#) , [166 U. S. 246](#) - 247; *Appleby v. Buffalo*, [221 U. S. 524](#) , [221 U. S. 531](#) -532.

The present case, of course, does not show disregard of McGovern's rights, or that he was prevented from obtaining substantially any compensation. Even if the plaintiff in error is right, it shows only that the Commissioners and courts of New York adopted too narrow a view upon a doubtful point in the measure of damages. It hardly even is so strong as that; for the ruling of the Commissioners is not to be taken as an abstract universal proposition, but the judgment concerning this particular case, found by men, presumably, as the plaintiff in error says, men of experience, who had or were free to acquire outside information concerning the general conditions of the taking and the selected site. The plaintiff in error quotes authority that, probably for this reason, the New York courts will not set aside an award of such Commissioners unless so palpably wrong as to shock the sense of justice. It is conceded "that the owner is not permitted to take advantage of the necessities of the condemning party," and it would seem that it well might be that the Commissioners regarded it as too plain to be shaken by evidence, on the public facts, that the value of the land for a reservoir

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site could not come into consideration except upon the hypothesis that the City of New York could not get along without it, and that its only means of acquisition was voluntary sale by owners aware of the necessity, and intending to make from it the most they could. It is just this advantage that a taking by eminent domain excludes.

But if the rulings complained of be taken as universal propositions, they present no element of the arbitrary, even if they should be thought to be wrong. The enhanced value of the land as part of the Ashokan reservoir depends on the whole land necessary being devoted to that use. There are said to have been hundreds of titles to different parcels of that land. If the parcels were not brought together by

a taking under eminent domain, the chance of their being united by agreement or purchase in such a way as to be available well might be regarded as too remote and speculative to have any legitimate effect upon the valuation. See *Chicago, Burlington & Quincy R. Co. v. Chicago*, [166 U. S. 226](#) , [166 U. S. 249](#) . The plaintiff in error was entitled to be paid only for what was taken from him as the titles stood, and could not add to the value by the hypothetical possibility of a change unless that possibility was considerable enough to be a practical consideration and actually to influence prices. *Boston Chamber of Commerce v. Boston*, [217 U. S. 189](#) , [217 U. S. 195](#) . In estimating that probability, the power of effecting the change by eminent domain must be left out. The principle is illustrated in an extreme form by the disallowance of the strategic value for improvements of the island in St. Mary's River in *United States v. Chandler-Dunbar Water Power Co.*, ante, p. [229 U. S. 53](#) .

The plaintiff in error relies upon cases like *Mississippi &c.; Boom Company v. Patterson*, [98 U. S. 403](#) , to sustain his position that, while the valuation cannot be increased by the fact that his land has been taken for a water supply, still it can be by the fact that the land is valuable for that purpose. The difficulties in the way of such evidence and

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the wide discretion allowed to the trial court are well brought out in *Sargent v. Merrimac*, 196 Mass. 171. Much depends on the circumstances of the particular case. We are satisfied on all the authorities that, whether we should have agreed or disagreed with the Commissioners if we had been valuing the land, there was no such disregard of plain rights by the courts of New York as to warrant our treating their decision, made without prejudice, in due form, and after full hearing, as a denial by the state of due process of law.

Judgment affirmed.