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Georgia Vs. Chattanooga

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Court : US Supreme Court

Decided On : Apr-07-1924

Appeal No. : 264 U.S. 472

Appellant : Georgia

Respondent : Chattanooga

Judgement :

Georgia v. Chattanooga - 264 U.S. 472 (1924)
U.S. Supreme Court Georgia v. Chattanooga, 264 U.S. 472 (1924)

Georgia v. Chattanooga

No. 21, Original

Argued on motion to dismiss December 3, 1923

Decided April 7, 1924

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I N EQUITY

SYLLABUS

1. Land acquired and held for railway purposes by one state within the borders of another with the latter's consent remains subject to the eminent domain of the state in which it lies and subject to be condemned by that state, or her authorized municipality, for a public street, in proceedings against the owner state, even though she has not consented to be sued. P. 264 U. S. 479 .

2. Acceptance by Georgia of permission given her to acquire railroad land in Tennessee is inconsistent with an assertion of her own sovereign privileges in respect of such land, and amounts to consent that it may be condemned as may like property of others. P. 264 U. S. 482 .

3. Lack of opportunity to be heard before passage of an ordinance opening a street furnishes no ground of complaint, since the taking is a legislative, and not a judicial, function, and an opportunity to be heard in advance need not be given. P. 264 U. S. 483 .

4. In condemnation proceedings, personal service upon the owner is not essential; notice by publication is sufficient. *Id.*

5. A suit brought by a state in this Court to enjoin proceedings to condemn her land in another state begun by a city will be dismissed for want of equity where no complaint is made that the laws do not afford reasonable notice and opportunity to be heard before final determination of judicial questions involved in the condemnation proceedings, and where these afford a plain, adequate, and complete remedy at law. *Id.,* .

Bill dismissed without prejudice.

On defendant's motion to dismiss a bill filed in this Court by the State of Georgia to enjoin the City of Chattanooga from prosecuting, in a court of Tennessee, proceedings to condemn part of a railroad yard, owned by the plaintiff within the city, and from interfering with the possession of the plaintiff and its lessee, etc.

MR. JUSTICE BUTLER delivered the opinion of the Court.

The State of Georgia obtained leave to file its bill of complaint in this Court in a suit against the City of Chattanooga to enjoin it from appropriating for street purposes certain lands constituting a part of a railroad yard which that state owns in Chattanooga.

The substance of the bill may be stated briefly. In 1837, Georgia undertook the construction of a railroad, known as the Western & Atlantic Railroad, extending from Atlanta to Chattanooga. The legislature of Tennessee granted to Georgia the right to acquire the necessary right of way from the state line to Chattanooga and also land for terminal facilities. In 1852, Georgia purchased about 11 acres, then in the outskirts of that city, on which it located its railroad yard. The city has grown, and this tract of land is now near the business center. Georgia owns and formerly operated the railroad, but, since 1870, it has been operated by lessee companies, and now the Nashville, Chattanooga & St. Louis Railway Company operates it under a lease which will expire in 1969.

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For some years, there has been a demand for extending one of the principal streets of the city through this railroad yard. Georgia denies the power of the city to condemn the necessary right of way for the street. It says that the right of Tennessee to condemn this land, or to authorize the city to condemn it, is not involved. But it asserts that the state has not authorized the city to condemn this land; that the city has been granted power of eminent domain only to the extent that it is granted by general statutes to corporations; that these statutes do not confer the power to appropriate land already devoted to public use; that such land can be taken only when specifically authorized, and that no power has been delegated to take property which the state has permitted a sister state to acquire. It is stated that the city officials have assumed by ordinance to open the street in such a way as will destroy the yard for railroad purposes, and that, prior to the filing of the bill in this case, the city commenced proceedings in the circuit court of

Hamilton County, Tennessee, to condemn the right of way for the proposed street extension, and in its petition named the State of Georgia and its lessee as defendants, and caused publication to be made for that state as a nonresident defendant. The bill alleges that Georgia has never consented to be sued in the courts of Tennessee, and prays for a decree enjoining the city from prosecuting the proceedings, and from interfering with Georgia or its lessee in the possession and use of the land, and decreeing that its land which the city seeks to appropriate is not subject to condemnation. The city moved to dismiss the bill. The motion must be granted.

1. The power of Tennessee, or of Chattanooga, as its grantee, to take land for a street is not impaired by the fact that a sister state owns the land for railroad purposes. Having acquired land in another state for the purpose of using it in a private capacity, Georgia can claim no sovereign

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immunity or privilege in respect of its expropriation. The terms on which Tennessee gave Georgia permission to acquire and use the land and Georgia's acceptance amount to consent that Georgia may be made a party to condemnation proceedings.

The power of eminent domain is an attribute of sovereignty, and inheres in every independent state. *See Boom Co. v. Patterson,* 98 U. S. 403 , 98 U. S. 406 ; *United States v. Jones,* 109 U. S. 513 , 109 U. S. 518 ; *Shoemaker v. United States,* 147 U. S. 282 , 147 U. S. 300 ; *Cincinnati v. Louisville & Nashville R. Co.,* 223 U. S. 390 , 223 U. S. 404 . The taking of private property for public use upon just compensation is so often necessary for the proper performance of governmental functions that the power is deemed to be essential to the life of the state. It cannot be surrendered, and, if attempted to be contracted away, it may be resumed at will. *Pennsylvania Hospital v. Philadelphia,* 245 U. S. 20 ; *Galveston Wharf Co. v. Galveston,* 260 U. S. 473 . It is superior to property rights (*Kohl v. United States,* 91 U. S. 367 , 91 U. S. 371), and extends to all property within the jurisdiction of the state -- to lands already devoted to railway use, as well as to

other lands within the state. *United States v. Gettysburg Electric Ry.,* 160 U. S. 668 , 160 U. S. 685 ; *Adirondack Railway v. New York State,* 176 U. S. 335 , 176 U. S. 346 . Land acquired by one state in another state is held subject to the laws of the latter, and to all the incidents of private ownership. The proprietary right of the owning state does not restrict or modify the power of eminent domain of the state wherein the land is situated. *See Burbank v. Fay,* 65 N.Y. 57, 62; *United States v. Railroad Bridge Co.,* 6 McLean, 517, 533; *United States v. Chicago,* 7 How. 185, 48 U. S. 194 . Tennessee, by giving Georgia permission to construct a line of railroad from the state boundary to Chattanooga, did not surrender any of its territory, or give up any of its governmental power over the right of way and other lands to be acquired by Georgia

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for railroad purposes. The sovereignty of Georgia was not extended into Tennessee. Its enterprise in Tennessee is a private undertaking. It occupies the same position there as does a private corporation authorized to own and operate a railroad, and, as to that property, it cannot claim sovereign privilege or immunity. *Bank of the United States v. Planters' Bank,* 9 Wheat. 904, 22 U. S. 907 ; *Bank of Kentucky v. Wister,* 2 Pet. 318, 27 U. S. 323 ; *Louisville Railroad Co. v. Letson,* 2 How. 497, 43 U. S. 550 ; *South Carolina v. United States,* 199 U. S. 437 , 199 U. S. 463 . Undoubtedly Tennessee has power to open roads and streets across the railroad land owned by Georgia.

Chattanooga contends that Georgia has consented to be sued in the courts of Tennessee in respect of its railroad in that state. This claim is based upon the terms of the permission. Chapter 1, Laws Tenn. 1845-46, created the Nashville & Chattanooga Railroad Company for the purpose of constructing and operating a line of railroad between Nashville and Chattanooga, and, among other things, made it capable in law of suing and being sued. Chapter 195, Tennessee Laws 1847-1848, provides that:

"All the rights, privileges and immunities with the same restrictions which are given and granted to the Nashville & Chattanooga Railroad Company by the act

[Chapter 1 above-mentioned] . . . are, so far as they are applicable, hereby given to and conferred upon the State of Georgia, to be enjoyed and exercised by that state in the construction of that part of the Western & Atlantic Railroad lying in Hamilton County, Tennessee, and in the management of its business."

East Tennessee, Virginia & Georgia Railway Co. v. Nashville, Chattanooga & Saint Louis Railway Company, and others, including the State of Georgia (Court of Chancery Appeals, Tennessee, 1897, 51 S.W. 202) was a suit concerning the administration of this railroad owned by Georgia in Tennessee. P. 211. Georgia insisted that, being

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a sovereign state, it could not be sued in Tennessee. P. 203. The court said that the act last above mentioned "includes among the rights and restrictions the right to sue and be sued. This includes, namely, the courts of Tennessee along with other courts." P. 211. The case was taken to the supreme court of the state, where a decree was entered affirming the lower court (with modifications) in which it was said:

"The relief allowed as to the State of Georgia does not touch her sovereignty, but concerns only her contracts as to the operation of the union depot situated in the City of Chattanooga. . . ."

These decisions support the contention that Georgia has consented to be sued in the courts of Tennessee in respect of its railroad property in that state.

But we need not decide the broad question whether Georgia has consented generally to be sued in the courts of Tennessee in respect of all matters arising out of the ownership and operation of its railroad property in that state. The circuit court of Hamilton County had jurisdiction in the matter of the condemnation of land for streets by the City of Chattanooga, and exercised it prior to the filing of the bill of complaint in this Court. The State of Georgia and its lessee were named as parties. Notice was given to Georgia as a nonresident by publication. Having divested itself of its sovereign character, and having taken on the character of

those engaged in the railroad business in Tennessee (*Bank of the United States v. Planters' Bank, supra*), its property there is as liable to condemnation as that of others, and it has, and is limited to, the same remedies as are other owners of like property in Tennessee. The power of the city to condemn does not depend upon the consent or suability of the owner. Moreover, the acceptance by Georgia of the permission given it to acquire the railroad land in Tennessee is inconsistent with an assertion of its own sovereign privileges in respect of that land, and precludes a claim that it is not

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subject to taking for the use of the public, and amounts to a consent that it may be condemned as may like property of others.

2. There is such a want of equity that the bill will be dismissed. The lack of opportunity to be heard before the passage of the ordinance opening the street furnishes no ground for complaint. The taking is a legislative, and not a judicial, function, and an opportunity to be heard in advance need not be given. *Bragg v. Weaver,* 251 U. S. 57 , 251 U. S. 58 . Personal service upon the owner is not essential; publication of notice is sufficient. *Bragg v. Weaver, supra,* 251 U. S. 59 , 251 U. S. 61 . No complaint is made that the laws of Tennessee do not afford the State of Georgia and other owners reasonable notice and opportunity to be heard before the final determination of judicial questions that may be involved in the condemnation proceedings -- *e.g.,* whether the state has delegated to the city the power to condemn; whether the taking is for a public purpose (*Rindge Co. v. Los Angeles,* 262 U. S. 700 , 262 U. S. 705 ; *Hairston v. Danville & Western Railway,* 208 U. S. 598 , 208 U. S. 606), and the amount of the compensation (*Seaboard Air Line Railway v. United States,* 261 U. S. 299 , 261 U. S. 304). Georgia has been given notice, and has the right voluntarily to appear. *See Clark v. Barnard,* 108 U. S. 436 , 108 U. S. 447 . All its objections and defenses may be interposed in the Tennessee court. It appears on the face of the bill of complaint that, if it so elects, Georgia has a plain, adequate, and complete remedy in the condemnation proceedings instituted by the city. Its contention that the requisite power to condemn has not been delegated to the city involves a

consideration of the meaning and proper application of the laws of Tennessee, and it is especially appropriate that the Tennessee courts shall first decide that question. The decision of its highest court on that question would be followed by this Court. *Maguire v. Reardon,* 255 U. S. 271 ; *Cusack Co. v. Chicago,* 242 U. S. 526 , 242 U. S. 529 ; *Reinman v.*

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Little Rock, 237 U. S. 171 , 237 U. S. 176 ; *Atlantic Coast Line R. Co. v. Goldsboro,* 232 U. S. 548 , 232 U. S. 555 . If the decision of that court shall deny to Georgia any rights secured to it by the Constitution and laws of the United States, the case may be brought here for reexamination and review. That suits in equity will not be sustained in any case where a plain, adequate, and complete remedy may be had at law is declared by statute (Judicial Code 267) and established by decisions of this Court so numerous that citation is not necessary.

Bill dismissed without prejudice.

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