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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EDWIN F. TRACHTA and BLANCHE D. TRACHTA, Husband and Wife; and MARVIN TRACHTA and KAREN P. TRACHTA, Husband and Wife,	)	Filed December 21, 1978
Plaintiffs,	)	
vs.	)	
THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY; HAROLD D. VIETOR, JUDGE; THE CITY OF CEDAR RAPIDS, IOWA, and THE AIRPORT COMMISSION FOR THE CITY OF CEDAR RAPIDS, IOWA,	)	657 2-61304
Defendants.	)	

Certiorari to Linn District Court - Harold D. Vietor, Judge.

Certiorari action alleging trial court acted illegally in approving application for condemnation. Writ annulled.

William L. Meardon & Thomas D. Hobart, of Meardon, Sueppel, Downer & Hayes, of Iowa City, counsel for plaintiffs.

David F. McGuire, of Cedar Rapids, counsel for defendants.

Heard by Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Plaintiffs assert in this original certiorari action that the trial court acted illegally and in excess of its jurisdiction in approving an application for condemnation of agricultural land located near the Cedar Rapids, Iowa airport on the grounds that: (1) the application failed to specifically list the uses for which the land was being acquired; (2) plaintiffs had no notice or opportunity to be heard prior to the approval of the application; and (3) previous condemnation proceedings regarding the same land and parties were still pending.

I. Facts. Plaintiffs are owners and tenants of approximately 55 acres of farmland located adjacent to the Cedar Rapids airport. On July 1, 1977, defendants City of Cedar Rapids and the Airport Commission filed an application for condemnation of that land in Linn County District Court pursuant to chapter 472, The Code 1977. The application was approved the same day by Chief Judge Vietor, notice was served on all parties except tenant Karen Trachta who had not been named as a party in interest, and a compensation commission was appointed to assess damages. Despite plaintiffs' petition for injunction and refusal to participate in the condemnation hearing, the commission met on July 15, 1977 and assessed damages at $202,450. Both plaintiffs and the condemnors appealed the award to the district court.

On October 25, 1977, a second application for condemnation of the same farmland was filed, including Karen Trachta as a party in interest. The application indicated that condemnation was sought a second time to include notice to Karen Trachta "in the event such earlier condemnation is illegal and void." The second application was approved and an order was entered appointing a second compensation commission scheduled to meet on December 9, 1977. This writ of certiorari asserting the issues now before us was granted December 29, 1977, and all further proceedings in connection with the condemnation were stayed on November 28, 1977 until further order.

II. Sufficiency of the Application. The procedures governing eminent domain are found in chapter 472, The Code 1977, and § 472.3 sets forth the requirements for an application for condemnation. Before the district court chief judge acts upon an application for condemnation filed pursuant to § 472.3 by selecting a compensation commission pursuant to § 472.4, the chief judge must initially make a judicial (or at

least quasi-judicial) determination that the application is legally sufficient and the applicant is empowered to condemn. State v. Johann, 207 N.W.2d 21, 24 (Iowa 1973).

Thus, section 472.3(4) provides that the chief judge must find that "the purpose for which condemnation is sought" is legally sufficient. The application stated the purpose was for "expansion, development, operation, and use by and for the Cedar Rapids Municipal Airport." Plaintiffs contend that this language does not make clear that the condemnation is for public use. We disagree. The application indicates on its face that the purpose of condemnation is for the expansion of the airport. Section 330.15, The Code 1977, declares that property acquired for airport purposes is deemed "to be acquired, owned, controlled and occupied for a public purpose and as a matter of public need." Speculation that uses which are not public may be included will not make the proposed condemnation invalid. See Mann v. City of Marshalltown, 265 N.W.2d 307, 315 (Iowa 1978). In their petition for declaratory judgment and injunction concerning the July 1, 1977 condemnation proceedings, plaintiffs attempt to show that the purpose is for non-public use. The chief judge of the district court correctly fulfilled his function and acted within his jurisdiction in determining that the application on its face was legally sufficient to allow condemnation to proceed. The determination as to the necessity of taking private property for public use is ordinarily a legislative, not judicial function. Thornberry v. State Board of Regents, 186 N.W.2d 154, 156 (Iowa 1971). Plaintiffs' attack on the necessity of the condemnation can proceed through hearings on their petition for injunction.

III. **Pre-condemnation hearing.** Plaintiffs next ask us to determine whether they have been deprived of their right to procedural due process by the requirements of chapter 472, The Code, which allow the approval of an application for condemnation without prior notice and opportunity to be heard. The exercise of the power of eminent domain is subject to due process limitations, including notice and a hearing at some stage of condemnation proceedings, North Laramie Land Co. v. Hoffman, 268 U.S. 276, 45 S.Ct. 551, 69 L.Ed. 963 (1925); Bragg v. Weaver, 251 U.S. 57, 40 S.Ct. 62, 64 L.Ed. 135 (1919); Aplin v. Clinton County, 256 Iowa 1059, 129 N.W.2d 726 (1964). Chapter 472 provides notice and opportunity to be heard at the time of compensation, and before any seizure of the property under the power of eminent domain. Sections 472.8-472.13,

472.26, The Code. See generally, Thorp Credit, Inc. v. Barr, 200 N.W.2d 535 (Iowa 1973). When the statute is complied with, no other hearing is required to satisfy constitutional due process requirements. Government of the Virgin Islands v. 19.623 Acres of Land, etc., 536 F.2d 566 (3 Cir. 1976); Joiner v. City of Dallas, 380 F.Supp. 754 (N.D. Texas 1974), aff'd, 419 U.S. 1042, 95 S.Ct. 614, 42 L.Ed.2d 637 (1976). No pre-condemnation hearings was required to accord plaintiffs due process.

IV. Previous proceedings pending. The second application filed October 25, 1977 stated:

> (6) It is asserted that the condemnors have previously filed Application for Condemnation, and a Compensation Commission has made a damage assessment for property described in Paragrpah 2 above; that the property owners have appealed said matter to the Linn County District Court claiming the condemnation was illegal and void for the alleged failure to serve notice upon Karen P. Trachta; that, therefore, the property is again being condemned in the event such earlier condemnation is illegal and void."

The plaintiffs assert that because the application on its face indicates the pendency of condemnation proceedings against the same property by the same condemnors, any further attempt to condemn the real estate is invalid. On the very limited record before us, we may only interfere with Judge Vietor's order if this averment precludes, as a matter of law, the approval of the application. We decline to so hold.

While we agree that some effort should be made to minimize the burdens imposed upon the parties and the public by the duplicitous proceedings now being carried on simultaneously, we decline to protect against this by judgment of this court. See R.C.P. 316. Upon a proper factual showing, plaintiffs may be entitled to successfully enjoin the second condemnation, secure a stay thereof, or force an election by the condemnors. But on the face of the application, we cannot determine what action would be appropriate in this regard. Plaintiffs attempted to collaterally attack the original condemnation order. Doubtless, they may wage a similar attack against the second condemnation. This should be done in the district court where a full evidentiary hearing is available and the court may be apprised of the current status of the original condemnation proceeding.

It is unfortunate that as indicated by counsel at the time of oral argument of this challenge to the second condemnation, some 11 months after the initiation thereof, no progress had been made toward resolving the jurisdictional challenge to the first condemnation. Realizing that final resolution of that issue may require yet another appellate review, we urge that it be resolved at the trial court level at the earliest opportunity.

Writ Annulled.