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Eminent Domain Ruling Paves Way for NY Land Seizures

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In a 6-1 ruling the New York Court of Appeals has determined New York State may invoke eminent domain and seize nearly any private property for economic development projects.

The November 24 ruling clears away the last obstacle for the 22-acre Atlantic Yards project in Brooklyn being spearheaded by developer Bruce Ratner, owner of the National Basketball Association's New Jersey Nets.

The centerpiece of the mixed-use project is a new, \$1 billion arena for the Nets. The team currently plays across the Hudson River in East Rutherford, New Jersey. Ratner hopes to move his team to their new home by June 2012.

Much of the 18,000 seat arena will sit on a vacant rail yard he has already acquired. In addition to the stadium, the plan includes 16 high-rise residential buildings with condos, apartments, and retail establishments.

Holdout Landowners

The Atlantic Yards project has been in the works for six years and has become contentious as businesses and homeowners refused to sell their property. The court sided with the state in finding the land enclosed in the proposed project fit the state's legal definition of blighted and therefore could be seized.

Chief Judge Jonathan Lippman noted in his opinion the New York Constitution allows government agencies to take private land if it is "substandard and insanitary," terms added to the Constitution in the late 1930s.

As the lone dissenting voice, Judge Robert Smith wrote, "The whole point of the public use limitation is to prevent takings even when a state agency deems them desirable. To let the agency determine when the public use requirement is satisfied is to make the agency a judge in its own causes. I think it is we who should perform the role of judges, and that we should do so by

deciding that the proposed taking in this case is not for public use.”

Bogus Blight?

In a statement, Ratner said, “Once again the courts have made it clear that this project represents a significant public benefit for the people of Brooklyn and the entire city.”

But the court’s decision probably is not the end of the matter.

“The fight for the Atlantic Yards project is far from over,” said Daniel Goldman, a plaintiff in the case and spokesman for Develop Don’t Destroy Brooklyn, a citizens’ group fighting the project. He has called on Gov. David Paterson (D) to put a stop to the taking of private property and invited him to visit the area so he could see it is not blighted as Ratner claims.

Jim Vogle, a spokesman for State Senator Valmanette Montgomery (D-Brooklyn), said New York “will continue to enable the land-grab dreams of private developers” because the legislature, unlike those in many other states, has not redefined eminent domain in the wake of the U.S. Supreme Court ruling in *Kelo v. New London, Connecticut* in 2005. The Court ruled “public purpose” rather than “public use”—the wording used in the U.S. Constitution—was sufficient grounds to seize private property for another private party whose plans might generate more economic growth or tax revenues.

The New York ruling “should be a clarion call to the state legislature that they cannot avoid this issue any longer. Now is the time to give state residents the reform and protections they desperately need,” said Chip Mellor, president of the Institute for Justice, a nonprofit public interest law firm that represented homeowners in the *Kelo* case.

Establishment Support

Most of New York City’s political heavyweights back Ratner’s project, including Mayor Michael Bloomberg (R) and Brooklyn Borough President Marty Markowitz (D).

In his weekly radio address on November 29, Bloomberg said, “The court’s ruling was a long step forward for a project that will spur extensive development in new offices, stores, and thousands of units in new housing.”

Markowitz said in a statement, “The ruling by the State Court of Appeals reinforces previous decisions supporting the numerous public benefits of the Atlantic Yards project—during these difficult economic times and into Brooklyn’s bright future—including the creation of affordable housing, solid union jobs and permanent employment opportunities for Brooklynites who need work. . . Finally, we will bring a national professional sports team and a world-class facility back to our borough after 52 years! Brooklyn’s shovels are, and have been, ready. So, let’s pick them up and get to work!”

Eminent Domain Failures

The experience in New London, however, shows Bloomberg’s assertion is not guaranteed to come true. New London seized 100 homes and small businesses, the buildings were leveled, and the property was turned over to Pfizer. Weeks before the New York ruling, Pfizer announced it

had killed the redevelopment plan – despite New London spending more than 470 million to prepare the land for development -- and would close its research center, transferring 1,500 jobs out of town.

Empty lots stand where homes once did.

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