STROOCK

SPECIAL BULLETIN

UPDATE: N.Y. Court of Appeals Affirms State's Use of Eminent Domain for Columbia's Manhattanville Campus

July 21, 2010

On June 24, 2010, the New York State Court of Appeals reversed the First Department's December 2009 decision for *In re Parminder Kaur v. N.Y.S. Urban Development Corp.*,[1] holding that the taking of private property for use by Columbia University was a proper exercise of the State's eminent domain powers. This decision relied on and affirmed the standards used in *In the Matter of Daniel Goldstein v. N.Y.S. Urban Development Corp.*,[2] in which the Court of Appeals previously upheld the exercise of eminent domain powers to acquire private property in the Atlantic Yards area of Brooklyn, New York for future development by a private developer.[3]

This **Stroock Real Estate Practice Group Special Bulletin** provides a brief overview of the Court of Appeals' decision.

Background

In *Kaur*, the First Department employed standards similar to those in *Kelo* and in *Goldstein*; however, in contrast to those decisions, the First Department ruled in *Kaur* that the condemnation of private property for expansion of Columbia University was an improper exercise of eminent domain powers. Under the Urban Development Corporation Act ("UDCA"), the Empire State Development Corporation ("ESDC") is empowered to use its eminent domain powers for *land use improvement projects*.[4]

The First Department's decision was based on its findings that (i) there was no credible evidence of blight in the area, a finding required for the exercise of eminent domain powers (and noted there was no evidence that the area was blighted before Columbia University gained control over the vast majority of properties in the area) and (ii) there was no public purpose,[5] but rather that the ostensible purpose of eliminating blight was a pretext to give life to the plan to redevelop the area for Columbia University.[6] The First Department also rejected the use of eminent domain power on the ground that the expansion of a private university is not a *civic project*[7] as required under the UDCA.[8]

Court of Appeals' Decision

In reversing the First Department, the Court of Appeals held that ESDC's "findings of blight and determination that the condemnation … qualified as a land use improvement project" and "the alternative finding of civic purpose" were rationally based and entitled to deference.[9] In reaching its decision, the Court of Appeals held that First Department's *de novo* review of the record was improper, given that the conclusion of ESDC's consultants that the area was blighted was based on voluminous records of property conditions, and, as such, "all that is at issue is a reasonable difference of opinion as to whether the area in question is in fact substandard and insanitary, which is not a sufficient predicate . . . to supplant [ESDC's] determination."[10] The Court noted that, contrary to the First Department's findings, there was evidence of blight in the area prior to Columbia University's acquisition of properties in the area[11] and that the removal of blight served a public purpose.[12]

Additionally, the Court held that the exercise of eminent domain powers by ESDC was proper because the new campus project for Columbia University qualified as a civic project. For civic projects, the ESDC is empowered to exercise its eminent domain powers "regardless of whether a project site suffers from blight."[13] The Court held that civic projects are not limited to public projects and that the purpose of the expansion of Columbia University, a non-profit educational institution, was "unquestionably to promote education and academic research while providing public benefits to the local community."[14] The Court also found that: (i) there was no impropriety or "bad faith" on the part of ESDC in connection with ESDC's decision to hire AKRF (an environmental consulting firm that had previously worked for Columbia University) to prepare the environmental impact statement for the new campus, as there was no evidence that AKRF's study was compromised and an independent study had confirmed AKRF's conclusions; and (ii) rejected petitioner's claim that the term "substandard of insanitary area" is unconstitutionally vague.[15] These formed the basis for the Court of Appeals' decision.

Looking Ahead

This **Stroock Special Bulletin** provides only a brief overview of the decision and the law of eminent domain. As this area of the law is likely to continue to be defined over time by both the judicial and the legislative branches of government, we will continue to monitor developments and provide updates regarding significant developments.

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1. *In re Parminder Kaur v. N.Y.S. Urban Development Corp.*, 72 A.D.3d 1 (N.Y.A.D., 1st Dep't 2009), rev'd 2010 WL 2517686 (N.Y. 2010).

2. *In the Matter of Daniel Goldstein v. N.Y.S. Urban Development Corp.*, 64 A.D.3d 168 (N.Y. 2009).

3. The Court of Appeals noted that "[g]iven [the Court of Appeals'] predecent, the de novo review of the record undertaken by the plurality of the appellate division was improper." See *infra* note 9, at 18-19.

4. McKinney's Uncons. Laws. 6260 (c) (2010); required findings include: (i) the area in question is substandard or insanitary; (ii) project consists of a plan to clear, replan, reconstruct and rehabilitate such area; and (iii) the plan provides for "maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole." *Id.*

5. N.Y.S. Const, Article I, Section 7(a); "Private property shall not be taken for public purpose without just compensation."

6. *Kaur* 72 A.D.3d at 9-12.

7. "Civic Project" is a project or that portion of a multi-purpose project designed and intended for the purpose of providing facilities for educational, cultural, recreational, community, municipal, public service or other civic purposes. McKinney's Uncons. Laws of NY, § 6253(6)(d).

8. *Kaur* 72 A.D.3d at 15.

9. *In the Matter of Parminder Kaur v. N.Y.S. Urban Development Corp.*, 2010 WL 2517686, 2 (N.Y. 2010) (internal quotations removed).

10. *Id.* at 18-19 (internal quotations removed).

11. *Id.* at 20.

12. *Id.* at 16.

13. *Id.* at 23.

14. *Id.* at 25.

15. *Id.* at 19-20, 22-23.

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