

The appellate court affirmed the trial court's ruling that that court could not substitute its judgment for that of the condemner which did not abuse its discretion nor did it act capriciously in selecting the tract in question. The factors of economy and convenience, relative to both present construction and future maintenance of the highway, were legitimate reasons for selecting a site to be condemned.

The appellate court also upheld the ruling that the condemner did not abuse its discretion in condemning the entire fee simple even though the land would be used solely as a source of fill and that it could take all of the land which it stated it needed now and in the future for highway purposes. (Catholic Burse Endowment Fund, Inc. v. State Rd. Dep't, 180 So.2d 513, December 1965)

182-3 MARYLAND'S HIGHEST COURT RULES ACCESS TO EXISTING HIGHWAY MAY NOT BE DENIED UNDER THE POLICE POWER BUT MUST BE ACQUIRED BY CONDEMNATION

Dr. and Mrs. Jones owned a 25-acre tract, part of which fronted on Md. Route 144 and the other part on U.S. Route 29. They used private driveways to reach both highways. They also owned a 1.3-acre tract which was located on the opposite side of Route 29. The State roads commission, by resolution, designated Route 29, for a distance of about 14 miles, as a controlled-access arterial highway. Shortly hereafter, the commission filed a condemnation petition against the owners for the purpose of acquiring the small tract and "all the right whatsoever of ingress and egress between the through highway [Route 29] and the remaining property of the \* \* \* [owners] \* \* \* to the end that there will never be any vehicular, pedestrian and/or animal access to or from the through highway" and the owners' remaining property. Their access to Route 144 was left intact. The commission deposited \$4,001, \$4,000 of which was for the condemned parcel and \$1.00 for the closing of the driveway to and the denial of all access along Route 29.

During negotiations, the roads commission refused to discuss with the owners the question of compensation for the closing of the driveway and the denial of access, taking the position that there was no damage, and, in any event, the damage, if any, was not compensable. At the request of the owners, the trial court entered a summary judgment in their favor as to that part of the suit relating to the condemnation of their right of access to Route 29. The commission appealed to the court of appeals. That court noted that the commission had contended that the denial of access constituted a proper exercise of the police power so that no compensation was payable but that the commission was unable to reconcile this contention with the fact that the suit was brought pursuant to its powers of eminent domain and that it actually had paid damages into court. The amount of damages (\$1.00) was nominal but it was the sum of money deemed by the commission to be the fair value of the damages to the remaining land. Because these two positions could not be reconciled, the highest court permitted the parties to stipulate that the case should be treated as a petition for a declaratory judgment to determine whether access under the facts of the case could be denied under the police power or had to be acquired by condemnation under the principles of eminent domain.

The commission argued that in order to make conventional highways safer for the transportation of the public it was necessary to use the police power to limit or deny access to the abutting landowner and that this was a proper exercise

of the police power. It went further by contending that it was "obvious" that such a use of the police power "is an inherent segment of the highway laws." It conceded, however, that heretofore it had accomplished denial of access along existing highways only by paying compensation to the abutting landowner, the amount thereof having been resolved either by agreement or by condemnation. It also conceded that this case reflected a proposed change in policy, which, if successful, would result in substantial economies in the area of right-of-way acquisition.

The court of appeals stated that consistent, long continued, unvarying administrative practice would not be disregarded, even at the instance of the administrative agency itself, except for the strongest and most urgent reasons. It noted that the police power inhered exclusively in the legislature, and could be exercised by its creatures, such as the roads commission, only to the extent it had been delegated. It pointed out that the legislature had enacted a statute dealing with the construction of freeways which required the commission to close any existing means of ingress or egress to, from or across abutting land to or from the freeway by agreement or condemnation. Other statutes also provided that access rights had to be acquired in the same manner. The court thought that these statutory provisions applied in this case. The difference between a freeway and a controlled-access arterial highway was that the commission could regulate, restrict or prohibit the use of the former by various classes of vehicles or traffic but it could not do this on the latter. But the court was of the opinion that as far as the acquisition of rights-of-way was concerned, the term "controlled access arterial highway" had the same meaning as the term "freeway" so that the commission had to condemn the right of access which the owners had to Route 29. (State Rds. Comm'n v. Jones, 216 A.2d 563, February 1966)