

it is conceded that no private investors can be found who would undertake such an operation." The dissent further argued that the existence of a public need for the property should not serve to inflate the value of a facility which is otherwise "inherently incapable of profitable operation."

SUMMARY

The case represents a somewhat unique approach to the very difficult problem of valuing a specialty property. Ordinarily, where there is no comparable property against which to make a relative valuation, the courts will consider the cost of replacement or duplication of the improvements condemned to find an appropriate value. However, only last year, in the Casamassima case, the New York Court of Claims reaffirmed the rule that property could not be considered a specialty when it is used for the same purpose both before and after the condemnation. On the other hand, the litigation over the condemnation of the Polo Grounds also established that replacement cost was totally inappropriate where the facility condemned, albeit a specialty, was extremely outdated and admittedly obsolete and inadequate. Faced with these limitations, the court avoided treating the property as either a specialty or a going concern. Instead, it used scrap and replacement values as the polar extremes for reaching a more moderate and equitable award.

The award of depreciated original cost, while founded on no apparent judicial precedent, afforded the court a reasonable alternative to condemning as scrap property which would be continued in identical use. On the other hand, the condemnees, having no public market and having received a return on original investment, should have no further complaint against a city which will be operating what was, for the condemnees, a losing proposition.

A point of particular interest in this case is the apparent conclusion of the court that where there is a current demand for the services provided by a facility even though there is no market demand for the facility itself, such a demand will warrant some consideration of replacement cost and going concern value. This would be distinguishable from the Polo Grounds situation where the withdrawal of the baseball franchise and the construction of a new ballpark in Flushing Meadows eliminated both the public demand for the facility's services and the market demand for the facility itself. (Port Authority Trans-Hudson Corp. v. Hudson Rapid Tubes Corp., 20 N.Y.2d 457, 231 N.E.2d 734 (1968)).

197-2 NEW YORK SUPREME COURT, APPELLATE DIVISION, HOLDS THAT BOARD OF ESTIMATES MAY NOT REFUSE REDEMPTION OF FORECLOSED PROPERTY WHERE THE CITY HAS NO USE FOR THE PROPERTY.

Petitioner was delinquent on his taxes for certain business property and the City placed a tax lein on the property which it subsequently foreclosed. The value of the property was in excess of \$145,000 and the delinquent taxes, plus charges, amounted to \$50,467.06. Petitioner tendered the proper amount of delinquent taxes and filed for redemption of his property.

When the matter came up before the Board of Estimates, the redemption was opposed by a parents association and a community planning board on the grounds that the subject property contained a saloon and was contiguous to Public School 154. The thrust of the opposition was that the presence of such an establishment was inimical to the pupils attending the school and redemption should be denied in order to permanently exclude the drinking establishment from the foreclosed property. By unanimous vote, the Board refused redemption and the Supreme Court, Special Term, denied a petition for reversal of the Board's decision.

In reversing the Board of Estimates, the Appellate Division relied on two major premises. First, it argued that the Board was not vested with absolute discretion in determining whether to permit redemptions, and, in fact, the law governing redemption was enacted with the express purpose of liberalizing the right of redemption. The only time the Board is vested with discretion to deny redemption is in those instances where the city can demonstrate a need to use the property for a public purpose. Since such was not the case here, the Board exceeded its authority in denying the redemption.

The second premise for reversal was that the city could not have accomplished a similar result under its condemnation power and to permit it to do so through the Board of Estimates would enable the city to employ its taxing power as a form of indirect confiscation. This the Appellate Division was unwilling to do. The court treated the condemnation power as the city's broadest authority to take and any measure denied the city under this power must necessarily also be denied under the far less expansive taxing power.

The dissent of Justice McGivern emphasized the language of the governing statute and questioned the majority's limiting the Board's discretion to those cases where the city can demonstrate a public use for the property. He would have followed the literal wording of the statute, and, noting that all procedural formalities were observed and a basis in protection of public morals was offered, would have affirmed the Board's determination.

The most interesting facet of the case is the court's use of the condemnation power as the measure of a city's power to take under some other municipal authority. The court obviously considered condemnation as a city's ultimate power to appropriate property to its own uses and was unwilling to make the taxing power coextensive in that respect. (Dwyer v. Lindsay, 288 N.Y.S.2d 116 (App.Div. 1968)).