ML - Pemberton

12-6-76

Robert Paglee v. Twp Pemberton

- Opinion

PJS. 4

MM0000478

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-555-75

M. ROBERT PAGLEE and
MADELON PAGLEE,

Plaintiffs-Appellants,

v.

TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF PEMBERTON,

Defendant-Respondent.

Argued November 8, 1976 -- Decided DEC 6 1976

Before Judges Fritz, Crahay and Ard.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County.

Mr. Dante J. Sarubbi argued the cause for the appellants (Messrs. Bennie & Sarubbi, attorneys).

Mr. Steven Warm argued the cause for the respondent.

PER CURIAM

The judgment of the Superior Court, Law Division, is affirmed for the reasons expressed in the letter opinion of Judge Ferrelli dated July 24, 1975 and our supplementation below.

Conceding the Township of Pemberton to be a developing municipality, the record amply demonstrates that the ordinance in question does not make it physically or economically impossible to provide low and moderate income housing to those people who need

and want it. So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975), appeal dismissed and cert. den. 423 U.S. 808 (1975).

Appellants also claim that the zoning restrictions on their property impose "***substantial functional non-utilization of a property owner's lands." Schere v. Township of Freehold, 119 N.J. Super. 433, 436 (App. Div. 1972), certif. den. 62 N.J. 69 (1972), cert. den. 410 U.S. 931 (1973). We disagree.

The facts in Schere substantially differ from the present case. There the court found a zoning design to inhibit residential development in the municipality to avoid municipal expenses collateral with such development. The tracts, which the zoning ordinance required to be developed as 40,000 square foot lots (one acre), were surrounded by uses for either industrial purposes, or by 25,000, 20,000 or 9,000 square foot residential developments with an expressway projected for one side of one of the tracts.

In the case under consideration, the municipality is attempting to promote development. All of the land surrounding plaintiffs' land is similarly zoned, i.e., residential use on one or more acres. Furthermore, the land around plaintiffs' property is generally undeveloped. The character of the existing uses surrounding plaintiffs' land, unlike that in Schere, does not deter a reasonable development of one acre residences.

Although plaintiffs' experts claim there is no market for the $50,000 home which they claim would be the projected cost for a one family residence in this zone, Mr. Louis F. Clement, a real estate broker, testifying for plaintiffs did admit the

zoning ordinance was an attempt to upgrade the area and attract the $50,000 buyer. Leon Wack, another real estate broker and appraiser called by plaintiffs, admitted that four miles away a development called Oak Pines was succeeding, and its houses sold for $40,000 plus. Defense witnesses whose testimony the court found to be "valid" testified that $45,000 to $50,000 homes on plaintiffs' property would be marketable.

The record clearly demonstrates a municipal effort to upgrade the municipality, and unlike Schere, a careful combing of the record does not reveal any attempt to inhibit the development of the property in question.

We conclude that the plaintiffs' property has been zoned as part of a comprehensive plan for the entire township, intended to accommodate the needs of the existing and future residents consistent with the purposes of sound planning. We are satisfied the proofs support defendant's contentions that the property in question can be utilized and is not confiscatory. We do not construe the municipality's obligation to be that of maximizing the potential profit to a landowner. It is not enough to demonstrate the property can command greater sales value by permitting increased density. As stated in Bow & Arrow Manor v. Town of West Orange, 63 N.J. 335, 350 (1973), "[a]n owner is not entitled to have his property zoned for its most profitable use." We are satisfied the plaintiffs have failed to overcome the presumption of validity of the ordinance. In taking an overview of the entire ordinance and the testimony adduced, we believe the rationale of Justice Hall in the Mt. Laurel case most appropriate:

There is no reason why developing municipalities like Mount Laurel, required by this opinion to afford the opportunity for all types of housing to meet the needs of various categories of people, may not become and remain attractive, viable communities providing good living and adequate services for all their residents in the kind of atmosphere which a democracy and free institutions demand. They can have industrial sections, commercial sections and sections for every kind of housing from low cost and multi-family to lots of more than an acre with very expensive homes. Proper planning and governmental cooperation can prevent over-intensive and too sudden development, insure against future suburban sprawl and slums and assure the preservation of open space and local beauty. We do not intend that developing municipalities shall be overwhelmed by voracious land speculators and developers if they use the powers which they have intelligently and in the broad public interest. Under our holdings today, they can be better communities for all than they previously have been. [67 N.J. at 190-191].

Affirmed.

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Clerk