

Laura M. Halm
Jean L. Cipriani
Melanie S. Appleby
Robin La Bue
Michael S. Nagurka
Andrea E. Wyatt


Rothstein, Mandell, Strohm,
Halm & Cipriani, P.A.
ATTORNEYS AT LAW

Danielle Rosiejka
Matthew J. Donohue
Brandon A. Klimakowski

OF COUNSEL
Charles H. Mandell
Brian C. Bartlett

October 1, 2024

Heather Joy Baker, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 970
Trenton, NJ 08625

Re: Borough of Seaside Park v. Shree Jyoti, LLC

**On Petition for Certification of a Final Judgment of the Superior Court,
Appellate Division, Docket No. A-001915-22**

Sat Below:

Hon. Patrick DeAlmeida, J.A.D.
Hon. Maritz Berdote Byrne, J.A.D.
Hon. Avis Bishop-Thompson, J.A.D.

**Letter Brief on behalf of the Respondent Borough of Seaside Park in Opposition
to Petition for Certification**

By: Robin La Bue, Atty No: 021872009

Dear Ms. Baker:

Please accept this letter on behalf of the respondent Borough of Seaside Park in opposition to the petition for certification filed by Shree Jyoti, LLC. In addition, please find four copies of the brief filed by the Respondent with the Appellate Division.

PRELIMINARY STATEMENT

The Petition for Certification filed by Shree Jyoti, LLC should be denied as there are no special reasons that would warrant Certification and there is no question of general public importance that requires settlement by the Supreme Court.

Shree Jyoti, LLC seeks certification from the well-reasoned and comprehensive decision of the Appellate Division upholding the trial court's determination that the Borough's ordinance authorizing condemnation was valid and in accordance with the requirements of the Local Land and Buildings Law, and the Eminent Domain Act.

The Borough acquired the property located at Block 73, Lot 34, through Eminent Domain, adopted Ordinance 2022-08 on April 28, 2022. Thereafter the Borough attempted for months to engage in negotiations with the condemnee, who never responded to the Borough's offer. Having no response to the offer of Fair Market Value for almost 3 months, or any other communication from the Defendant or their representatives the Borough of Seaside Park filed the Complaint for Condemnation on July 19, 2022.

Plaintiffs filed a challenge to the Borough's Condemnation and during oral argument on September 30, 2022, the matter was dismissed because the complaint did not set forth the specific public purpose for the taking. The complaint was

Page 3

amended and re-filed that day. The public purpose for the taking is “a public parking lot together with electric vehicle charging infrastructure.”

Shree Jyoti complains that, because Ordinance 2022-08 did not state the specific public purpose for the taking, that the condemnation is invalid. Shree Jyoti did not challenge the ordinance within 45 days, nor did Shree Jyoti ever inquire as to the intended public purpose of the taking.

The Appellate Division appropriately held that the Borough’s ordinance validly adopted and that the Appellant had the opportunity to challenge the ordinance within 45 days and failed to do so. Furthermore, the identification of the public purpose in the complaint for condemnation was not improper. In addition, the language that the “not limited to” was a recognition that a recognition that the borough is not limited to the public use and purpose alleged should an additional or different public use and purpose arise for the property. The allegation that the Borough was stockpiling land was an unsupported allegation.

For these reasons the Court should deny Shree Jyoti’s Petition for Certification.

GROUND FOR DENIAL OF CERTIFICATION

Certification should only be granted in limited instances. R. 2:12-4 sets the standard for justification of review by the Supreme Court:

Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons.

In exercising its discretionary authority to decide whether to grant certification to review a final judgment of the Appellate Division, the Supreme Court is governed by the standards set forth in R. 2:12-4. Mahony v. Danis, 95 N.J. 50, 51 (1983)(Handler, J., concurring). R. 2:12-4 states that certification will be allowed on

Page 5

final judgments of the Appellate Division “if the interest of justice requires.” *See, Bandel v. Friederich*, 122 N.J. 235, 237-238 (1991).

The “interests of justice” proffered by the petitioner can be boiled down to essentially two claims: that the legislative intent of N.J.S.A. 40:12-5(a) requires specification of the public purpose and (2) that property owners “should know” why their property is being acquired.

THE PLAIN LANGUAGE OF N.J.S.A. 40A:12-5 IS UNAMBIGUOUS

Interpretation of a statute should be first by its plain language. When the language is clear and unambiguous, and subject to only one interpretation, the court must infer the Legislature's intent from the statute's plain meaning. *In re Plan for the Abolition of Council on Affordable Hous.*, 214 N.J. 444, 467 (2013). Only in the event that the statutory language is ambiguous may the court look at extrinsic evidence such as legislative history, judicial interpretation, and rules of statutory construction. *Id.* at 468. A court may also consider extrinsic evidence if “a plain reading of the statute leads to an absurd result or if the overall statutory scheme is at odds with the plain language.” *DiProspero v. Penn.*, 183 N.J. 477, 493.

Page 6

The Local Lands and Buildings Law at N.J.S.A. 40A:12-5(a)(1) is clear and unambiguous. The Law requires a municipality to adopt an ordinance authorizing the acquisition of any real property, capital improvement, or personal property via “purchase, gift, devise, lease, exchange, or condemnation,” but contains no other requirements concerning the form or content of the resolution.

While it is clear that an ordinance is required, the statute is devoid of any specific requirements for the ordinance. The ordinance authorizes the condemnation action and is a condition precedent to the filing of an eminent domain action, but is not the action itself.

The Borough has fully complied with the demands of due process. The Borough provided the pre-condemnation notice required by N.J.S.A. 20:3–6 and attempted for months to engage in negotiations with the condemnee. The Borough fully complied with the Rules of Court for service on the defendant; and the condemnee was provided notice and the opportunity to participate in the commissioners' hearings required by N.J.S.A. 20:3–12(c).

Due process in the condemnation context does not require the notification of the condemnee of the specific public purpose for which the land is taken. In this matter, the specific public purpose was set forth in the complaint for condemnation. The defendant failed to meaningfully participate in the process with the Borough at any

Page 7

point in time. Defendant was notified of the appraisal by certified mail, but failed to attend the inspection. Defendant was aware of the adoption of the ordinance, but failed to attend either public meeting, or to challenge the validity of the ordinance within 45 days as provided for by law. Defendant was later given a copy of the appraisal but failed to respond to the Borough's offer or engage in negotiations for a period of months.

Defendant's disappointment in the acquisition of the property does not nullify the power or authority of the governing body to acquire private property for public use, as the Borough of Seaside Park has done in this matter.

The Borough is authorized under the Local Land and Buildings Law to acquire private property for public use and properly exercised that authority.

Defendant manipulates an excerpt from Casino Reinvestment Development Authority v. Banin 320 N.J. Super. 342 (Law Div. 1998), which states that "the court found fault with a much more specific definition of the proposed use, stating:

while CRDA asserts that the properties are to be acquired for purposes of "a hotel development project and pertinent facilities," the court finds such rationale to be over broad. The properties are not to be acquired for simply any hotel development project. They are to be acquired for a specific hotel development project, which calls not only for construction of 361 hotel units by virtue of the rehabilitation of the existing holiday inn building, but the development of a park and parking area as well.

Page 8

However, the facts of CRDA are entirely distinguishable from the issue in this case. In CRDA, the problem was not the lack of specification of the use in the enabling legislation, but that there was a substantial question whether the condemned lands would be used for the specified public project, or for private use by a private developer, in other words whether the exercise of eminent domain resulted in a substantial benefit to specific and identifiable private parties.

The CRDA had entered into a number of agreements with a casino operator which set forth specific requirements for the use of the condemned lands for an unspecified period of time.

The property could have quickly been converted for private benefit following the completion of condemnation. The primary interest in this taking outweighed the public. Not only is this set of facts completely dissimilar to the instant matter in Seaside Park, but there has been no allegation or evidence of a possible private benefit in this taking.

Courts do not scrutinize a government's decision to utilize eminent domain unless there is evidence demonstrating that the decision to condemn was made in bad faith or through fraud. In re East Windsor Mun. Util. Auth. v. Shapiro, 57 N.J. 168 (1970), *cert. denied* 401 U.S. 1010 (1971); State of New

Page 9

Jersey, By Commissioner of Transportation v. Malibu Beach, Inc., 209 N.J. Super. 291 (1986). Absent a showing of “improper motives, bad faith or some other consideration amounting to a manifest abuse of the power of eminent domain,” the courts will not interfere with the public body's decision to condemn private property. Tennessee Gas Transmission Company v. Hirschfield, 39 N.J. Super. 286, 288 (App.Div.1956).

The party making the claim that the government has conducted itself in bad faith or in a fraudulent manner has the burden of proof to prove such claim with clear and convincing evidence. Texas East. Trans. Corp. v. Wildlife Preserves, Inc., 48 N.J. 261. (1966). “Bad faith” is referred to as the doing of an act for a dishonest purpose and “contemplates a state of mind affirmatively operating with a furtive design or some motive of interest or ill will.” Borough of Essex Fells v. Kessler Institute for Rehab., 289 N.J. Super. 329, 338 (1995), citing Lustrelon Inc. v. Prutscher, 178 N.J. Super. 128, 144 (App.Div.1981).

There is no allegation or evidence that the Borough of Seaside Park has conducted itself in bad faith or in a fraudulent manner. The only allegation is that the ordinance authorizing the condemnation of the subject property did not specify the public purpose for the taking. This requirement does not appear anywhere in the

Page 10

Local Land and Buildings Law. It is not in the Eminent Domain statute. It is not in any decision of any Court in the State of New Jersey.

For the above reasons, and for the reasons set forth in the decision of the Appellate Division and the briefs submitted by the Borough of Seaside Park to the Appellate Division, it is respectfully requested that Shree Jyoti's petition for certification be denied as there is no important public question implicated in this matter that requires review by the Supreme Court.

The Borough of Seaside Park has had title to the subject property since November of 2022. The intended public purpose, public parking with electric charging infrastructure and a necessary drinking water well has been subject to delay and frustration at the hands of the appellant for a period of almost two years on this simple question: whether the ordinance required the specification of the public purpose. The trial court and the Appellate Division have both ruled that it does not.

The intended public purpose is obviously valid and, were the appellant's petition be granted, all that the Borough would have to do is re-adopt the ordinance and re-acquire the property. The motel has been abated of asbestos and partially demolished. It is not able to be occupied at this time. This is not a question of an important public purpose but the subject of a personal vendetta against the Borough.

Rothstein, Mandell, Strohm,
Halm & Cipriani, P.A.

ATTORNEYS AT LAW

Page 11

It is urged that the petition be denied and an order entered permitting the Borough to complete the demolition and begin construction of the public parking and drinking water well that are both desperately needed.

Very truly yours,

Robin La Bue

ROBIN LA BUE
Atty No: 021872009
For the Firm
rlb@gm-law.net

cc: Peter Wegener, Esq.