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Overruled by [MB Financial Bank, N.A. v. Brophy, Ill.](#), September 21, 2023

379 Ill. 602

Supreme Court of Illinois.

CITY OF CHICAGO

v.

McCAUSLAND et al.

No. 26245.

|

May 13, 1942.

Synopsis

Proceeding by the City of Chicago against William H. McCausland and others to ascertain the compensation to be paid for taking certain parcels of land for the purpose of opening and widening a street and to ascertain what property would be benefited by such improvement. From an order directing the taxes for the years 1927, 1928, and 1929 to be deducted by John Toman, County Treasurer, from the award deposited as payment for the value of certain parcel fixed as of May 26, 1926, Zeldon A. Parkhurst and another appealed to the Supreme Court, which transferred the cause, [374 Ill. 34, 27 N.E.2d 824](#), to the Appellate Court, and from the judgment of the Appellate Court affirming the order, [308 Ill.App. 538, 32 N.E.2d 336](#), Zeldon A. Parkhurst and another appeal.

Reversed and remanded with directions.

West Headnotes (14)

[1] Eminent Domain Time with reference to which compensation to be made

The value of property taken under the Local Improvement Act is fixed as of the date on which the reports of the commissioners fixing such compensation are filed. Ill.Rev.Stat.1931, c. 24, § 717 (repealed), Smith-Hurd Stats. c. 47, § 1 et seq.

[2] Eminent Domain Persons Entitled**Eminent Domain** Time of passing of title or right

The title acquired through condemnation relates back to the date on which the petition in proceedings under the Eminent Domain Act or the reports of commissioners under the Local Improvement Act are filed, and liens on or rights existing against the land prior to such dates are transferred to or included in the award. Ill.Rev.Stat.1931, c. 24, § 717 (repealed); Smith-Hurd Stats. c. 47, § 1 et seq.

9 Cases that cite this headnote

[3] Eminent Domain Time of passing of title or right

In law the land is regarded as “taken” at the time petition for condemnation is filed. Ill.Rev.Stat.1931, c. 24, § 717 (repealed); Smith-Hurd Stats. c. 47, § 1 et seq.

4 Cases that cite this headnote

[4] Eminent Domain Necessity of Payment Before Taking

Possession of land condemned may not be had until compensation is paid.

[5] Eminent Domain Time of passing of title or right

A municipal body exercising eminent domain may never acquire any interest in the land even after the petition is filed, but the completion of the proceedings gives such body its rights as of the date of the filing of the petition. Ill.Rev.Stat.1931, c. 24, § 717 (repealed); Smith-Hurd Stats. c. 47, § 1 et seq.

1 Case that cites this headnote

[6] Evidence Rules and procedure of courts

It is common knowledge that in eminent domain proceedings under the Local Improvement Act considerable time may elapse between the time in which the value of the first and the last piece of property may be ascertained. Ill.Rev.Stat.1931,

c. 24, § 717 (repealed); Smith-Hurd Stats. c. 47, § 1 et seq.

[7] **Eminent Domain** — Conclusiveness and Effect of Award or Judgment in General

It is only when the rights of all parties to a local improvement proceeding have been determined that the judgment becomes “final”. Ill.Rev.Stat.1931, c. 24, § 731 (repealed).

1 Case that cites this headnote

[8] **Eminent Domain** — Time with reference to which compensation to be made

Eminent Domain — Persons Entitled

In condemnation proceeding under the Local Improvement Act, the value of the property taken must be ascertained as of the date of the commissioners' report and the net money that one will receive is determined by the liens existing on that date. Ill.Rev.Stat.1931, c. 24 § 731 (repealed).

1 Case that cites this headnote

[9] **Eminent Domain** — Persons Entitled

Eminent Domain — Right to discontinue or abandon proceedings

Eminent Domain — Time of passing of title or right

Under the Local Improvement Act, a municipality has the right after final judgment is entered to abandon the proceeding and taxing authorities may continue to assess the property involved; but, when the money is actually paid which is event that completes the taking, the title acquired relates back to the time when the commissioners made their report, and it is only the liens that existed at that time that are “liens” against the fund. Ill.Rev.Stat.1931, c. 24, § 731 (repealed).

1 Case that cites this headnote

[10] **Taxation** — Defenses

Taxation — Process and appearance

The right of tax collector to a personal judgment against one sued as owner of real estate is not absolute, but the defendant is entitled to personal service of process and may in such suit make certain defenses that would defeat the judgment.

1 Case that cites this headnote

[11] **Taxation** — Defenses

If a suit at law is brought against one for the payment of taxes on real estate and his answer discloses that he was not the owner of the property at the time the tax was imposed, it would be a complete bar to judgment.

1 Case that cites this headnote

[12] **Eminent Domain** — Time of passing of title or right

In condemnation proceedings under the Local Improvement Act, the rights of the owner and the public are mutual, and the passing of title and the payment of the money are concurrent events which are presumed to take place on the date the value is fixed. Ill.Rev.Stat.1931, c. 24, § 731 (repealed).

1 Case that cites this headnote

[13] **Eminent Domain** — Taxes, licenses, assessments, and users' fees in general

To permit taxes of subsequent years to be charged as lien against just compensation for land taken under Local Improvement Act, title to which relates back to time before their assessment, would infringe the constitutional provision that property shall not be “taken” for public use without “just compensation”. Ill.Rev.Stat.1931, c. 24, § 731 (repealed).

2 Cases that cite this headnote

[14] **Eminent Domain** — Persons Entitled

In condemnation proceedings under Local Improvement Act where value of property taken was fixed as of May 26, 1926, but final judgment was not rendered until June 30, 1929, taxes assessed against property involved for the years

1927, 1928 and 1929 could not be deducted from the award deposited as payment for value fixed as of May 26, 1926. Ill.Rev.Stat.1931, c. 24, § 717 (repealed); Smith-Hurd Stats. c. 47, § 1 et seq.

3 Cases that cite this headnote

***603 **746** Appeal from Third Division Appellate Court, First District, on Appeal from the Superior Court, Cook County; Francis B. Allegretti, Judge.

Enoch J. Price and Owen N. Price, both of Chicago, for appellants.

Attorneys and Law Firms

Thomas J. Courtney, State's Atty., of Chicago (Jacob Shamberg, Marshall V. Kearney, Neal J. McAuliffe, and Joseph Burke, all of Chicago, of counsel), for appellee.

Opinion

GUNN, Justice.

On February 17, 1926, the city of Chicago filed a petition under the provisions of an act concerning local improvements to ascertain the just compensation to be paid for taking certain parcels of land owned by Henry G. Wells, together with other real estate, for the purpose of opening and widening a street in the city of Chicago, and to ascertain what property would be benefited by such improvement. The verified report of the commissioners appointed by the court to investigate and report the amount of just compensation was filed May 26, 1926, and upon said cause being tried the court found the amount of just compensation to be paid to the property owners on January 30, 1928. The cause was continued from time to time pending other proceedings, to ascertain the just compensation and benefits to other parts of the land along the line of said improvement until June 30, 1929, when the final judgment was entered fixing just compensation for the Wells property.

The general taxes for the years 1927, 1928 and 1929 were levied and assessed against the Wells lots. January 27, 1936, the amount found to be just compensation was deposited with the county treasurer. In the meantime Wells had died, and appellants were appointed as executors of his estate and acting as such. The county treasurer refused ***604** to pay the full amount deposited as just compensation, but contended the

unpaid taxes for said mentioned lots should be deducted from said awards and paid to him as county collector. By stipulation \$1525 was retained until the rights of the county treasurer and appellants could be determined.

The county treasurer claimed, and the order of the superior court found, it was the duty of appellants to pay the taxes for said years 1927, 1928 and 1929, and the duty of the county treasurer to retain sufficient of said money for said purpose, and, in accordance with his claim, they were a deductible lien from the awards on deposit in his office. The cause was appealed to the Appellate court and affirmed, and an appeal to this court allowed.

[1] The narrow question to be decided is whether a lien of the taxes upon real estate, which had accrued after the date upon which just compensation is fixed and ****747** awarded, can be transferred to the amount paid to the county treasurer as just compensation. Under the law the value of property taken under the Local Improvement act is fixed as of the date of which the reports of the commissioners are filed fixing such compensation. Local Improvement act, section 18, Ill.Rev.Stat.1931, chap. 24, par. 717; [City of Chicago v. Farwell](#), 286 Ill. 415, 121 N.E. 795; [Siegel, Inc., v. City of Chicago](#), 325 Ill. 88, 155 N.E. 857.

[2] [3] It has also been held the title acquired through condemnation relates back to the date on which the petition, in case of proceedings under the Eminent Domain act, or the reports of commissioners under the Local Improvement act, are filed ([Chicago, Evanston & Lake Superior Railroad Co. v. Catholic Bishop of Chicago](#), 119 Ill. 525, 10 N.E. 372; [Hutchins v. Vandalia Levee and Drainage District](#), 217 Ill. 561, 75 N.E. 354); and that liens on, or rights existing against the land prior to such date are transferred to or included in the award. [City of Chicago v. Collin](#), 302 Ill. 270, 134 N.E. 751; [Chicago, Evanston & Lake Superior Railroad Co. v. Catholic Bishop of Chicago](#), supra. It is also said that in law the ***605** land is regarded as being taken at the time the petition for eminent domain is filed. [City of Chicago v. Collin](#), supra; [Chicago & State Line Railway Co. v. Mines](#), 221 Ill. 448, 77 N.E. 898.

[4] [5] It has also been established that possession of land condemned may not be had until compensation is paid. [Chicago & Northwestern Railway Co. v. City of Chicago](#), 148 Ill. 141, 35 N.E. 881. In [People v. Price](#), 282 Ill. 519, 118 N.E. 759, 760, it is said: 'The rule is that the title to property condemned does not vest until damages awarded by the judgment are paid.' The apparent conflict between these two statements of the law is reconciled when we understand

that the rights of the city in this case to the land and the possession thereof, and the owner to its value, are all fixed as of the date of the filing of the report of the commissioners, and, while the right to title may vest as on the date the money is paid, the title acquired relates back to the time of the filing of such report. In *Mills v. Forest Preserve District*, 345 Ill. 503, 178 N.E. 126, 129, it is recognized that while the municipal body exercising eminent domain may never acquire any interest in the land even after the petition is filed, the completion of the proceedings gives such body its rights as of the date of filing of the petition, where it is said: 'With the filing of the petition, the petition, if it has the right of condemnation, acquires the right to obtain the title to the property at its market value at that time, and rights acquired in the property after that time are subject to the pending suit and subordinate to the rights of the petitioner.'

The contention is made however that since it is the duty of the taxing authorities to continue to spread taxes on the property without regard to eminent domain proceedings (*People v. Price*, supra), and because the owners of the real estate may be made personally liable for taxes assessed against land, it follows that taxes levied on the property to be taken, subsequent to the date of the filing of the report of the commissioners, are a lien on the compensation money paid to the county treasurer, in favor of *606 the county collector, which authorizes the latter to deduct such taxes from the amount of the award deposited. We see nothing in the *Price* case which justifies such claim, as that question was not in issue, and was not decided.

[6] [7] [8] [9] We have here a case in which obligations and rights are fixed by law arising from different situations, which must be applied so as to effectuate their object, if conformable to the constitution. It is a matter of common knowledge that in eminent domain proceedings under the Local Improvement act, considerable time may elapse between the time in which the value of the first and the last piece of property may be ascertained. It is only when the rights have been determined as to all the parties to a local improvement proceeding that the judgment becomes final. Local Improvement act, section 32. The statute, as well as the decisions of this court, however, require ascertaining value of the property taken as of the date of the commissioners' report, and the net money that one will receive is determined as of the liens existing at that date. *City of Chicago v. Collin*, supra; *Turk v. City of Chicago*, 352 Ill. 171, 185 N.E. 258. However, the municipality has the right, after the final judgment is entered, to abandon the proceeding, so there is no certainty that the land proposed to be taken will become subjected to a

public purpose. It is therefore reasonable and necessary for the taxing authorities to continue to assess the property involved, but when the money is **748 actually paid, which is the event that completes the taking, the title acquired relates back to the time when the commissioners made their report, and it is only the liens that existed at that time that are liens against the fund.

[10] The right of the collector to a personal judgment against one sued as the owner of real estate is not absolute, but the defendant is entitled to personal service of process, and may in such suit make certain defenses that would defeat the judgment. *Griffin v. County of Cook*, 369 Ill. 380, 16 N.E.2d 906, 118 A.L.R. 1157; *607 *Neal Institute Co. v. Stuckart*, 281 Ill. 526, 117 N.E. 1012; *Elmwood Cemetery Co. v. People*, 204 Ill. 468, 68 N.E. 500.

[11] [12] It is rather apparent that if a suit at law were brought against one for the payment of taxes on real estate, and his answer should disclose he was not the owner of the property at the time the tax was imposed, it would be a complete bar to judgment. The rights of the owner and the public are mutual, and the passing of the title and the payment of the money are concurrent events. They are both presumed to take place at the date as of which value is fixed. *Chicago & Northwestern Railway Co. v. City of Chicago*, supra. If the proceeding is abandoned and the title to the land remains in the defendant while the subsequent taxes are levied, a question not before the court is presented.

[13] It has been held in other eminent domain cases that liens accruing after the date for fixing the value has passed, are subject to being avoided by the completion of title on payment of the award. To permit taxes of subsequent years to be charged as a lien against just compensation for land, title to which relates back to a time before their assessment, would infringe the constitutional provision that property shall not be taken for public use without just compensation.

[14] We are of the opinion it was error for the Appellate Court and the superior court to order the taxes for the years 1927, 1928 and 1929 to be deducted from the award deposited as payment for the value fixed as of May 26, 1926, and such judgments are accordingly reversed, and the cause remanded to the superior court of Cook county, with directions to proceed in a manner not inconsistent with the views herein expressed.

Reversed and remanded, with directions.

All Citations

379 Ill. 602, 41 N.E.2d 745

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