9-6-1977

Chesser v. Buchanan

IN THE SUPREME COURT OF COLORADO

NO. 27426

BETTY J. CHESSER, HELEN L. COULTER, JIM JORGENSEN, individually, and for and on behalf of all other persons similarly situated,

Plaintiffs- Appellants,

v.

MARY ESTILL BUCHANAN, Secretary of State of the State of Colorado; the ELECTION COMMISSION OF THE CITY AND COUNTY OF DENVER, the CLERKS AND RECORDERS OF THE COUNTIES OF ADAMS, BOULDER, GILPIN, GRAND, EAGLE, JEFFERSON, MOFFAT and ROUTT, STATE OF COLORADO;

and

MOFFAT TUNNEL COMMISSION, Intervenor,

Defendants-Appellees.

PETITION FOR REHEARING

Appellants, by their attorneys, petition the Court for rehearing on judgment affirming the decision of the trial court entered in this action on August 22, 1977, and as grounds therefore state:

1. The court failed to distinguish the statute involved and the facts of the Salyer Land Co v Tulare Lake Basin Water Storage District case from those involved in this action.

In Salyer, the California statute provided for the formation of the district to provide for the acquisition, storage and distribution of water for farming in the Tulare Lake Basin; and provided no other general public services. Costs of the district projects were assessed against the land in proportion to the benefits received from the district; and land not benefitted by the District could be withdrawn from the District. Upon entering into a long term lease, a landowner was permitted to transfer his right to vote for directors of the District to the tenant. The entire costs of the District were paid by the landowners or tenants in the District.

Our statute creating the Moffat Tunnel District does not provide for the exclusive use of the tunnel by the landowners in the district. A land owner not using the tunnel cannot withdraw from the district. A landowner cannot transfer his right to vote for commissioners to a tenant on his land. Our statute provides that the users of the tunnel shall pay their proportionate share of the expenses of the bonds and of maintenance of the tunnel, and the statute does not provide that the tunnel is to be used only and exclusively by taxpayers in the district.

2. In its decision, the court on page 8 states that the district has a greater effect on land within it than on land outside it and the value of land within the district undoubtedly increased because of construction of the tunnel. We cannot understand the difference between land in and out of the District. The District includes that portion of the City and County of Denver as it existed in 1922. The land in Denver west of Colorado Blvd and north of Alameda Avenue is in the District, and the land east of Colorado Blvd and south of Alameda is not. Assuming there are identical houses in the 200 block and in the 400 block on South Ivy Street in the City and County of Denver. Does the City assessor, when appraising the house in the 200 block for tax purposes value it higher than the other because its value is increased over the other because it is included in the Moffat Tunnel District? Or does a real estate broker place a higher value on the first house than on the second when determining reasonable market value because the first one is in the district and the second is not? Back in 1922 when the Milheim case was decided and the 400 block of South Ivy Street was part of Arapahoe County there may have been a difference in value between the two parcels, but no difference in value exists today because on is in the District and the other is not.

Our argument concerning the payment of taxes in the District and the constitutionality of the voter restriction is set forth in the dissenting opinion much more eloquently than we could set forth herein.

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Copy of the foregoing mailed to all attorneys of record on

September 6, 1977.

Victor F Crepeau