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United States Supreme Court: State Supreme Court's Decision Regarding Beachfront Property Owners' Claim Did Not Amount To A Judicial Taking Of Their Property Rights Without Just Compensation

In *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, (--- S. Ct. ----, U.S.Fl., June 17, 2010), the United States Supreme Court considered whether the Florida Supreme Court effectuated an unconstitutional taking of private property when it decided that the State of Florida owned land created after it added new sand and exposed previously submerged land. The United States Supreme Court held that the Florida Supreme Court's decision did not amount to a judicial taking of property because the beachfront property owners did not own the property allegedly taken by the state.

Facts

The State of Florida ("State") owns land that is permanently submerged under navigable waters and the land between the low-tide line and high-water line. The high-water line "is the ordinary boundary between private beachfront, or littoral property, and state-owned land." Littoral property owners enjoy several rights including the right to access the water, to use the water, to have unobstructed views of the water, and "to receive accretions and relictions to the littoral property." Accretions are additions of sand, sediments and other deposits to land at the waterfront and relictions occur when water recedes and land that was once covered by water becomes dry. An accretion occurs slowly. The sudden loss or addition of land is called an avulsion.

Florida law provides that a littoral owner takes title to dry land added to his or her property by accretion. However, when an avulsion occurs, the dry land "continues to belong to the owner of the seabed (usually the State)." When a new strip of land is added by avulsion, the littoral owner does not have a right to subsequent accretions to that strip of land.

Florida's Beach and Shore Preservation Act of 1961 established procedures for beach restoration and nourishment projects. A local government may apply for funds and permits to restore a beach. Once a beach restoration begins, a Board of Trustees sets "an erosion control line" by referencing the existing high-water line. Sand is dumped on what was previously submerged land. "The fixed erosion-control line replaces the fluctuating mean high-water line as the boundary between privately owned littoral property and state property." After the erosion-control line is established, "the common law ceases to increase upland property by accretion (or decrease it by erosion.)" What this means for beachfront property owners is that "when accretion to the shore moves the mean high-water line seaward, the property of beachfront landowners is not extended to that line . . . but remains bounded by the permanent erosion control line."

The City of Destin and Walton County Florida applied for permits to restore beaches that had been eroded by hurricanes. The project would add 75 feet of dry sand seaward of the high-water line. Stop the Beach Renourishment, Inc. ("SBR"), which is a nonprofit corporation formed by beachfront property owners that will be affected by the project, brought an unsuccessful administrative challenge to the project. SBR then challenged the action in state court. A state court of appeal set aside the permits but certified the following question to the Florida Supreme Court: "On its face, does the Beach and Shore Preservation Act unconstitutionally deprive upland owners of littoral rights without just compensation?" The Florida Supreme Court answered this question in the negative. SBR sought review in the United States Supreme Court.

Decision

SBR argued the Florida Supreme Court took

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two property rights from SBR members “by declaring that those rights did not exist: the right to accretions, and the right to have littoral property touch the water.” The theory advanced by SBR was that “because no prior Florida decision had said that the State’s filling of submerged tidal lands could have the effect of depriving a littoral owner of contact with the water and denying him future accretions, the Florida Supreme Court’s judgment in the present case abolished those two easements to which littoral property owners had been entitled.”

The United States Supreme Court held that SBR’s theory puts the burden on the wrong party. The beachfront property owners cannot establish a taking of property unless they can show they had the right to future accretions and right to contact with the water and that these rights were superior to Florida’s right to fill in its submerged land. The Court held that such a showing cannot be made.

The Court found there are two core principals of Florida property law at work in this case. The first is that “the State as owner of the submerged land adjacent to the littoral property has the right to fill that land, so long as it does not interfere with the rights of the public and the rights of littoral landowners.” The second is that “if an avulsion exposes land seaward of littoral property that has previously been submerged, that land belongs to the State even if it interrupts the littoral owner’s contact with the water.” The Court stated that the issue in SBR’s case is whether there is an exception to the avulsion rule if it is the State that causes the avulsion.

The Court concluded that prior Florida case law suggests there is no exception. Florida law “allowed the State to fill in its own seabed, and the resulting sudden exposure of previously submerged land was treated like an avulsion for purposes of ownership.” Therefore, the property owner’s right to accretions was subordinate to the State’s right to fill in its own seabed. The United States Supreme Court found the Florida Supreme Court’s decision was consistent with Florida property law in existence before the state court issued its decision in the SBR case. The Florida Supreme

Court’s decision “did not abolish [a SBR member’s] right to future accretions, but merely held that the right was not implicated by the beach-restoration project, because the doctrine of avulsion applies.”

“The Takings Clause only protects property rights as they are established under state law, not as they might have been established or ought to have been established.” The United States Supreme Court concluded that it could not “say that the Florida Supreme Court’s decision eliminated a right of accretion established under Florida law.”

The United States Supreme Court affirmed the decision of the Florida Supreme Court. The United States Supreme Court did not decide the question of whether a judicial decision that determines a property owner’s rights can violate the Takings Clause. The Court was split four to four on this question. One justice, Justice Stevens, did not take part in the decision of the case.

Questions

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

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