YEE v. CITY OF ESCONDIDO

Supreme Court of the United States
503 U.S. 519 (1992)

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, STEVENS, SCALIA, KENNEDY, and THOMAS, JJ., joined. BLACKMUN, J., and SOUTER, J., filed opinions concurring in the judgment.

Petitioners own mobile home parks in Escondido, California. They contend that a local rent control ordinance, when viewed against the backdrop of California's Mobilehome Residency Law, amounts to a physical occupation of their property entitling them to compensation under the first category of cases discussed above.

I

The term "mobile home" is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about one in every hundred mobile homes is ever moved. (Citations Omitted.) A mobile home owner typically rents a plot of land, called a "pad," from the owner of a mobile home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping. When the mobile home owner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located.

In 1978, California enacted its Mobilehome Residency Law, Cal.Civ.Code Ann. s 798 et seq. (West 1982 and Supp.1991). The Legislature found "that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter." s 798.55(a).

The Mobilehome Residency Law limits the bases upon which a park owner may terminate a mobile home owner's tenancy. These include the nonpayment of rent, the mobile home owner's violation of law or park rules, and the park owner's desire to change the use of his land. s 798.56. While a rental agreement is in effect, however, the park owner generally may not require the removal of a mobile home when it is sold. s 798.73. The park owner may neither charge a transfer fee for the sale, s 798.72, nor disapprove of the purchaser, provided that the purchaser has the ability to pay the rent, s 798.74. The Mobilehome Residency Law contains a number of other detailed provisions, but none limit the rent the park owner may charge.

In the wake of the Mobilehome Residency Law, various communities in California adopted mobilehome rent control ordinances. (Citations Omitted.) The voters of Escondido did

the same in 1988 by approving Proposition K, the rent control ordinance challenged here. The ordinance sets rents back to their 1986 levels, and prohibits rent increases without the approval of the City Council. Park owners may apply to the Council for rent increases at any time. The Council must approve any increases it determines to be "just, fair and reasonable," after considering the following nonexclusive list of factors * * * *.

Petitioners John and Irene Yee own the Friendly Hills and Sunset Terrace Mobile Home Parks, both of which are located in the city of Escondido. A few months after the adoption of Escondido's rent control ordinance, they filed suit in San Diego County Superior Court. According to the complaint, "[t]he rent control law has had the effect of depriving the plaintiffs of all use and occupancy of [their] real property and granting to the tenants of mobilehomes presently in The Park, as well as the successors in interest of such tenants, the right to physically permanently occupy and use the real property of Plaintiff." Id., at 3, P 6. The Yees requested damages of six million dollars, a declaration that the rent control ordinance is unconstitutional, and an injunction barring the ordinance's enforcement. Id., at 5-6.

We granted certiorari, 502 U.S. ----, 112 S.Ct. 294, 116 L.Ed.2d 239 (1991), to resolve the conflict between the decision below and those of two of the federal Courts of Appeals, in Hall, [Hall v. City of Santa Barbara, 833 F.2d 1270 (CA9 1987)], and Pinewood Estates of Michigan v. Barnegat Township Leveling Board, 898 F.2d 347 (CA3 1990).

II

Petitioners do not claim that the ordinary rent control statutes regulating housing throughout the country violate the Takings Clause. (Citatios Omitted.) Instead, their argument is predicated on the unusual economic relationship between park owners and mobile home owners. Park owners may no longer set rents or decide who their tenants will be. As a result, according to petitioners, any reduction in the rent for a mobile home pad causes a corresponding increase in the value of a mobile home, because the mobile home owner now owns, in addition to a mobile home, the right to occupy a pad at a rent below the value that would be set by the free market. Because under the California Mobilehome Residency Law the park owner cannot evict a mobile home owner or easily convert the property to other uses, the argument goes, the mobile home owner is effectively a perpetual tenant of the park, and the increase in the mobile home's value thus represents the right to occupy a pad at below-market rent indefinitely. And because the Mobilehome Residency Law permits the mobile home owner to sell the mobile home in place, the mobile home owner can receive a premium from the purchaser corresponding to this increase in value. The amount of this premium is not limited by the Mobilehome Residency Law or the Escondido ordinance. As a result, petitioners conclude, the rent control ordinance has transferred a discrete interest in land--the right to occupy the land indefinitely at a sub-market rent--from the park owner to the mobile home owner. Petitioners contend that what has been transferred from park owner to mobile home owner is no less than a right of physical occupation of the park owner's land.

This argument, while perhaps within the scope of our regulatory taking cases, cannot be squared easily with our cases on physical takings. The government effects a physical taking only where it requires the landowner to submit to the physical occupation of his land. "This element

of required acquiescence is at the heart of the concept of occupation." FCC v. Florida Power Corp., 480 U.S. 245, 252, 107 S.Ct. 1107, 1112, 94 L.Ed.2d 282 (1987). Thus whether the government floods a landowner's property, Pumpelly v. Green Bay Co., 13 Wall. 166, 20 L.Ed. 557 (1872), or does no more than require the landowner to suffer the installation of a cable, Loretto, supra, the Takings Clause requires compensation if the government authorizes a compelled physical invasion of property.

But the Escondido rent control ordinance, even when considered in conjunction with the California Mobilehome Residency Law, authorizes no such thing. Petitioners voluntarily rented their land to mobile home owners. At least on the face of the regulatory scheme, neither the City nor the State compels petitioners, once they have rented their property to tenants, to continue doing so. To the contrary, the Mobilehome Residency Law provides that a park owner who wishes to change the use of his land may evict his tenants, albeit with six or twelve months notice. Cal.Civ.Code Ann. s 798.56(g). Put bluntly, no government has required any physical invasion of petitioners' property. Petitioners' tenants were invited by petitioners, not forced upon them by the government. See Florida Power, supra, 480 U.S. at 252-253, 107 S.Ct. at 1112-1113. While the "right to exclude" is doubtless, as petitioners assert, "one of the most essential sticks in the bundle of rights that are commonly characterized as property," Kaiser Aetna v. United States, 444 U.S. 164, 176, 100 S.Ct. 383, 391, 62 L.Ed.2d 332 (1979), we do not find that right to have been taken from petitioners on the mere face of the Escondido ordinance.

Petitioners suggest that the statutory procedure for changing the use of a mobile home park is in practice "a kind of gauntlet," in that they are not in fact free to change the use of their land. Because petitioners do not claim to have run that gauntlet, however, this case provides no occasion to consider how the procedure has been applied to petitioners' property, and we accordingly confine ourselves to the face of the statute. See Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 493-495, 107 S.Ct. 1232, 1246-1247, 94 L.Ed.2d 472 (1987). A different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy. (Citations Omitted.)

On their face, the state and local laws at issue here merely regulate petitioners' use of their land by regulating the relationship between landlord and tenant.

Petitioners emphasize that the ordinance transfers wealth from park owners to incumbent mobile home owners. Other forms of land use regulation, however, can also be said to transfer wealth from the one who is regulated to another. Ordinary rent control often transfers wealth from landlords to tenants by reducing the landlords' income and the tenants' monthly payments, although it does not cause a one-time transfer of value as occurs with mobile homes. Traditional zoning regulations can transfer wealth from those whose activities are prohibited to their neighbors; when a property owner is barred from mining coal on his land, for example, the value of his property may decline but the value of his neighbor's property may rise. The mobile home owner's ability to sell the mobile home at a premium may make this wealth transfer more visible than in the ordinary case, see Epstein, Rent Control and the Theory of Efficient Regulation, 54 Brooklyn L.Rev. 741, 758-759 (1988), but the existence of the transfer in itself does not convert regulation into physical invasion.

Petitioners also rely heavily on their allegation that the ordinance benefits incumbent mobile home owners without benefiting future mobile home owners, who will be forced to purchase mobile homes at premiums. Mobile homes, like motor vehicles, ordinarily decline in value with age. But the effect of the rent control ordinance, coupled with the restrictions on the park owner's freedom to reject new tenants, is to increase significantly the value of the mobile home. This increased value normally benefits only the tenant in possession at the time the rent control is imposed. (Citations Omitted.) Petitioners are correct in citing the existence of this premium as a difference between the alleged effect of the Escondido ordinance and that of an ordinary apartment rent control statute. Most apartment tenants do not sell anything to their successors (and are often prohibited from charging "key money"), so a typical rent control statute will transfer wealth from the landlord to the incumbent tenant and all future tenants. By contrast, petitioners contend that the Escondido ordinance transfers wealth only to the incumbent mobile home owner. This effect might have some bearing on whether the ordinance causes a regulatory taking, as it may shed some light on whether there is a sufficient nexus between the effect of the ordinance and the objectives it is supposed to advance. (Citations Omitted.) But it has nothing to do with whether the ordinance causes a physical taking. Whether the ordinance benefits only current mobile home owners or all mobile home owners, it does not require petitioners to submit to the physical occupation of their land.

The same may be said of petitioners' contention that the ordinance amounts to compelled physical occupation because it deprives petitioners of the ability to choose their incoming tenants.  Again, this effect may be relevant to a regulatory taking argument, as it may be one factor a reviewing court would wish to consider in determining whether the ordinance unjustly imposes a burden on petitioners that should "be compensated by the government, rather than remain[ing] disproportionately concentrated on a few persons." Penn Central Transp. Co. v. New York City, 438 U.S., at 124, 98 S.Ct., at 2659. But it does not convert regulation into the unwanted physical occupation of land. Because they voluntarily open their property to occupation by others, petitioners cannot assert a per se right to compensation based on their inability to exclude particular individuals. See Heart of Atlanta Motel, Inc. v. United States, 379 U.S., at 261, 85 S.Ct., at 359, see also id., at 259, 85 S.Ct., at 358 ("appellant has no 'right' to select its guests as it sees fit, free from governmental regulation"); Pruneyard Shopping Center v. Robins, 447 U.S., at 82-84, 100 S.Ct., at 2041-2042.

Petitioners' final line of argument rests on a footnote in Loretto, in which we rejected the contention that "the landlord could avoid the requirements of [the statute forcing her to permit cable to be permanently placed on her property] by ceasing to rent the building to tenants." We found this possibility insufficient to defeat a physical taking claim, because "a landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation." Loretto, 458 U.S., at 439, n. 17, 102 S.Ct., at 3178 n. 17. Petitioners argue that if they have to leave the mobile home park business in order to avoid the strictures of the Escondido ordinance, their ability to rent their property has in fact been conditioned on such a forfeiture. This argument fails at its base, however, because there has simply been no compelled physical occupation giving rise to a right to compensation that petitioners could have forfeited.

Had the city required such an occupation, of course, petitioners would have a right to compensation, and the city might then lack the power to condition petitioners' ability to run mobile home parks on their waiver of this right. (Citations Omitted.) But because the ordinance does not effect a physical taking in the first place, this footnote in Loretto does not help petitioners.

With respect to physical takings, then, this case is not far removed from FCC v. Florida Power Corp., 480 U.S. 245, 107 S.Ct. 1107, 94 L.Ed.2d 282 (1987), in which the respondent had voluntarily leased space on its utility poles to a cable television company for the installation of cables. The Federal Government, exercising its statutory authority to regulate pole attachment agreements, substantially reduced the annual rent. We rejected the respondent's claim that "it is a taking under Loretto for a tenant invited to lease at a rent of $7.15 to remain at the regulated rent of $1.79." Id., 480 U.S., at 252, 107 S.Ct., at 1112. We explained that "it is the invitation, not the rent, that makes the difference. The line which separates [this case] from Loretto is the unambiguous distinction between a ... lessee and an interloper with a government license." Id., at 252-253, 107 S.Ct., at 1112. The distinction is equally unambiguous here. The Escondido rent control ordinance, even considered against the backdrop of California's Mobilehome Residency Law, does not authorize an unwanted physical occupation of petitioners' property. It is a regulation of petitioners' use of their property, and thus does not amount to a per se taking.

III

In this Court, petitioners attempt to challenge the ordinance on two additional grounds: They argue that it constitutes a denial of substantive due process and a regulatory taking. Neither of these claims is properly before us. The first was not raised or addressed below, and the second is not fairly included in the question on which we granted certiorari.

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IV

We made this observation in Loretto: "Our holding today is very narrow. We affirm the traditional rule that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation. We do not, however, question the equally substantial authority upholding a State's broad power to impose appropriate restrictions upon an owner's use of his property." 458 U.S., at 441, 102 S.Ct., at 3179.

We respected this distinction again in Florida Power, where we held that no taking occurs under Loretto when a tenant invited to lease at one rent remains at a lower regulated rent. Florida Power, 480 U.S., at 252-253, 107 S.Ct., at 1112-1113. We continue to observe the distinction today. Because the Escondido rent control ordinance does not compel a landowner to suffer the physical occupation of his property, it does not effect a per se taking under Loretto. The judgment of the Court of Appeal is accordingly

Affirmed.