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Court Weighing Eminent Domain

New York Case Pits State Against Land Owners Opposing a New NBA Arena

By SUZANNE SATALINE

New York's highest court is set to hear arguments Wednesday in a case that will decide whether the state government can lawfully seize private property for a development company.

The case pits the New York State Urban Development Corp., a government agency, against nearly a dozen land owners who say the state constitution bars the government from stripping the rights of private parties to benefit a developer that aims to build a new arena for the New Jersey Nets basketball team. The developer, Forest City Ratner Cos., is currently one of the owners of the Nets.

"The state is taking my home and other people's homes, not for the public use, but to give an extraordinary benefit to the developer," said the lead petitioner, Daniel Goldstein, one of the few remaining residents within the 22-acre site slated to be demolished. "It's not a public use. For the government to take my home to enrich any developer...is wrong and I believe is illegal."

A spokesman for Forest City Ratner declined to comment.

The case before the Court of Appeals in Albany is being watched closely by legal experts and property owners concerned about the power of governments to use eminent domain to further economic-development projects.

In 2005, the U.S. Supreme Court ruled in a 5-4 decision that the U.S. Constitution did not prohibit New London, Conn., from condemning private property to make way for a redevelopment project if the owners received "just compensation." That ruling didn't prevent states and cities from imposing additional limits on eminent domain.

The New York case may decide the future of the contested \$4.9 billion project, called Atlantic Yards, slated to be built in downtown Brooklyn in a transit center where several city subway lines meet the yards for the Long Island Rail Road. The area abuts middle-class row-house neighborhoods.

The Brooklyn property owners allege that the state doesn't have the right to use its powers of eminent domain to benefit a private developer.

The New York development corporation, meanwhile, argued in court filings that state law allowed it to take blighted property to make way for buildings that would benefit the public. Similar arguments raised in earlier eras led to housing being built, as well as the creation of office space in Times Square and the arts complex at Lincoln Center in Manhattan.

"The project has significant social, environmental, civic and economic benefits," the state argues in its brief. In particular, the brief states, the Nets arena would provide an athletic facility for the city's colleges and local academic institutions and "eliminate long-standing blight at the project site."

The project calls for 16 commercial and residential buildings, including 2,250 units of so-called affordable housing and about eight acres of open space.

The project received millions of dollars from the state even while being hit by a wave of lawsuits since it was proposed, as property owners looked to block the development. Tuesday, a group of state legislators joined citizens' groups in suing the state's Metropolitan Transportation Authority, another government agency. The suit seeks to annul the MTA's sale of a rail yard to Forest City Ratner. An MTA spokesman said the agency had no comment.

Critics have said the Atlantic Yards project was hindered by the current economic climate. In September, the Council of Brooklyn Neighborhoods, an opponent of the project, released a real-estate consultant's analysis that said it would take 20 years for the developers to finish Atlantic Yards because of a glut of high-end apartments and tighter financing for real-estate projects.

The property has been condemned, but the state hasn't transferred title to the development company and no buildings are under construction. A spokeswoman for the state development authority said: "We expect the entire project to be developed."

The project got a potential shot in the arm last month when Mikhail Prokhorov, a Russian billionaire, offered to buy an 80% stake in the Nets for \$200 million, and a 45% stake in the arena. The ownership deal awaits approval from at least 75% of National Basketball Association franchise owners.

The arena remains controversial. The city's Independent Budget Office said in a report last month that the arena would cost the city nearly \$170 million, nearly \$40 million more in spending than it would generate in tax revenues.

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