AEF

Decision No. ✓

Decision No. 3222

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

---oOo---

In the Matter of the Application of CITY OF SAN DIEGO for an order fixing and determining the just compensation to be paid to James A. Murray, Ed Fletcher and Wm. G. Henshaw, copartners doing business under the firm name and style of Cuyamaca Water Company for their lands, property and rights.	)	Application No. 1482.

Sweet, Stearns and Forward for Cuyamaca Water Company.
T. B. Cosgrove, City Attorney, for City of San Diego.

THELEN, COMMISSIONER.

OPINION ON ORDER TO SHOW CAUSE.

This is an application by James A. Murray, Ed Fletcher and Wm. G. Henshaw, copartners doing business under the firm name and style of Cuyamaca Water Company, in San Diego County, for an order determining that the findings heretofore made by this Commission in the above entitled proceeding shall no longer be of any force and effect. The findings referred to are the findings as to the just compensation to be paid by the City of San Diego for the lands, property and rights of Cuyamaca Water Company, in eminent domain proceedings or otherwise, heretofore made by this Commission on June 26, 1915 in Application No. 1482 (Vol. 7, Opinions and Orders of the Railroad Commission of California, p. 305).

The application is made under that portion of Section 47 of the Public Utilities Act which reads as follows:

320

"If the said county, city and county, incorporated city or town, municipal water district or other public corporation or the legislative or other governing body thereof shall fail to file such suit (referring to a condemnation suit) or proceed diligently to enforce the rights herein conferred and in the manner herein set forth, then upon written petition from the owner of such existing public utility setting forth said fact, the commission shall cause a notice of not less than ten days to be given to said county, city and county, incorporated city or town, municipal water district, county water district, irrigation district, public utility district or other public corporation to appear before said commission and show cause why an order should not be made by said commission, finding that the said county, city and county, incorporated city or town, municipal water district, county water district, irrigation district, public utility district or other public corporation has failed to diligently pursue its rights hereby conferred, and determining that the findings of the said commission theretofore made as to the just compensation that should be paid for the existing public utility and the lands, property and rights thereof, or any such part or portion thereof, shall no longer be of any force or effect. And said notice shall include a copy of said written petition so filed by said owner of such existing public utility. If the commission shall determine that said county, city and county, incorporated city or town, municipal water district, county water district, irrigation district, public utility district or other public corporation or the legislative or other governing body thereof has so failed to either file such suit or to proceed diligently to enforce the rights herein conferred and in the manner herein set forth, the commission shall make and enter such an order as so petitioned for by the owner of such existing public utility."

The petition in the present proceeding refers to the Commission's findings in Application No. 1482, made and filed on June 26, 1915, to the denial by the Railroad Commission of a petition for rehearing filed by petitioners herein, which denial was made and filed on August 4, 1915 and to the complaint in condemnation filed by the City of San Diego in the Superior Court of the State of California in and for San Diego County

on September 23, 1915. It is admitted that the complaint in condemnation was filed within the time prescribed by Section 47 of the Public Utilities Act. The petition herein then proceeds to allege that although a summons was issued in the condemnation suit on September 23, 1915, no steps were taken by the City of San Diego to cause service of said summons to be made upon any of the defendants named in said action or to prosecute said action diligently or at all. In February, 1916, the petitioners herein voluntarily filed a demurrer and in March, 1916 an answer in said condemnation proceedings, so as to be able to insist on the trial of the case. The petition alleges that one of the defendants in the condemnation proceedings is La Mesa, Lemon Grove and Spring Valley Irrigation District and that the City of San Diego has not caused the summons to be served upon this defendant and that until such service has been made, the action is not at issue and can not be set down for trial. The petition alleges that the condemnation proceeding is a cloud upon petitioners' title and hinders and interferes with the plans of petitioners for the handling and management of their property and that the City of San Diego does not intend to condemn or acquire the property of petitioners.

The petition herein was filed on March 30, 1916. It is admitted that on April 8, 1916, the City of San Diego caused the summons in the condemnation action to be served upon La Mesa, Lemon Grove and Spring Valley Irrigation District and that issue has now been joined in said proceeding.

A public hearing on this application was held in San Diego on April 12, 1916. At said time, the City of San Diego filed a motion to dissolve the order to show cause and to dismiss the application. In support of this motion, the City urged that in view of the fact that the City filed its complaint in condemnation

in the Superior Court within the time prescribed by law, this Commission now has no power to set aside its findings, which findings are made conclusive evidence as to the value of the property in the condemnation action. If this Commission had and exercised power to set aside its findings herein, it would be necessary for the parties to the condemnation proceeding in the Superior Court to retry completely the issue as to the just compensation. The trial of this issue before this Commission involved considerable time and expense for all parties, as well as for this Commission.

Whether this Commission has power to set aside its findings, on facts such as those herein presented, depends entirely upon a proper interpretation of the provisions of Section 47 of the Public Utilities Act.

Section 47 provides the procedure to be followed by cities and other public corporations of the classes therein specified in seeking from the Railroad Commission a finding as to the just compensation to be paid to a public utility for its lands, property and rights or some portion thereof. Such finding is declared to be conclusive in condemnation proceedings. The section provides for the filing of petitions with the Railroad Commission in two distinct classes of cases. In cases of the first class, the petition is filed by the city or other public corporation and alleges that the city intends to acquire under eminent domain proceedings or otherwise the public utility property described in the petition. In cases of the second class, the petition is filed by the legislative or other governing body of the city or other public corporation and alleges that such legislative or other governing body intends to initiate proceedings to submit to the voters a proposition to acquire the public utility property described in the petition.

In cases of the first class, the city or other public corporation must file a complaint in condemnation in the superior court, within sixty days subsequent to the certification of its finding by the Railroad Commission, unless the public utility has filed a stipulation accepting the finding of the Railroad Commission. This provision insures diligence on the part of the city or other public corporation in acting on the Railroad Commission's finding. Such provision, however, is obviously ineffective to insure diligence in cases of the second class, for the reason that unless some other means is provided to insure diligence, the city or other public corporation may delay as long as it pleases in initiating and carrying forward the proceedings under which the voters are to vote on the proposition of acquiring the public utility property at the price fixed by the Railroad Commission.

The section accordingly provides in the language hereinbefore quoted, that a petition may be filed by the public utility to have the Railroad Commission set aside its finding, if the city or other public corporation or the legislative or other governing body thereof "shall fail to file such suit or proceed diligently to enforce the rights herein conferred and in the manner herein set forth". In my opinion, the words "or proceed diligently to enforce the rights herein conferred and in the manner herein set forth" apply to cases of the second class in which the question of the acquisition of the property is to be submitted to the voters and not to proceedings of the first class, in which a condemnation action is to be filed directly if the utility does not accept the Commission's findings. If these words were intended to apply to both classes of cases, it would have been entirely unnecessary to insert the words "to file such suits": the general necessity of exercising diligence would then cover both classes of cases.

The view expressed herein by the petitioners would result in the possibility of having this Commission set aside its finding after suit brought within the time specified, in the Superior Court, in reliance on such finding. Thus, indirectly, at least, this Commission would be interfering with the proceedings in another forum over which it has no jurisdiction. It seems far more likely that the legislature intended to remit the parties, after suit filed in the Superior Court, to their remedies in the Superior Court prescribed by the code of civil procedure, and to limit this Commission's functions to the period of time prior to the filing of proceedings in another tribunal.

If proceedings are not diligently prosecuted in the Superior Court, the usual relief in such cases may be had in the Superior Court. The process of that court must be deemed sufficient to insure diligence therein. I have been unable to find any indication in Section 47 of the Public Utilities Act to show that the legislature intended to insure speed in actions pending before the Superior Court, through the instrumentality of proceedings before the Railroad Commission.

As already indicated, issue has now been joined in the condemnation suit filed in the Superior Court, and there would seem to be nothing to prevent any party in that court from moving that the case be set for trial.

I submit the following form of order:

O R D E R .

A public hearing having been held on the petition of James A. Murray, Ed Fletcher and Wm. G. Henshaw, in the above entitled proceeding, for an order determining that the

finding of the Railroad Commission heretofore made herein shall no longer be of any force or effect, and the City of San Diego having filed a written motion to dissolve the order to show cause heretofore issued on said petition and to dismiss said petition, and said matter having been submitted and being ready for decision,

IT IS HEREBY ORDERED that said order to show cause is hereby dissolved and that said petition for said order is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of May, 1916.

Max Thelen

H. D. Loveland

Alex Gordon

Frank R. Devlin

Commissioners.