

Decision No. 26617

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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THE MUNICIPAL LEAGUE, a Voluntary
Organization of the Citizens of the
City of Los Angeles, State of Calif-
ornia,)

Complainant,)

vs.)

THE SOUTHERN PACIFIC COMPANY, ATCHISON,
TOPEKA AND SANTA FE RAILWAY COMPANY,)
and SAN PEDRO, LOS ANGELES & SALT
LAKE RAILROAD COMPANY,)

Defendants.)

) Case No. 970

And Related cases, being Case No.
971; Case No. 972; Case No. 974;
Case No. 980; Case No. 981, and Case
No. 983.

Robert Brennan and E. E. Bennett, for
The Atchison, Topeka and Santa Fe Railway Company
and Los Angeles and Salt Lake Railroad Company

Guy V. Shoup and C. W. Durbrow, for
Southern Pacific Company and Southern Pacific Railroad
Company.

BY THE COMMISSION:

OPINION AND ORDER ON PETITION TO
CONDEMN REAL PROPERTY FOR PASSENGER TERMINAL SITE

By orders of this Commission The Atchison, Topeka
and Santa Fe Railway Company, Los Angeles and Salt Lake Railroad
Company, Southern Pacific Company and Southern Pacific Railroad
Company are presently obligated to construct and operate a
union passenger terminal in the City of Los Angeles (Decision
18593, issued July 8, 1927, 30 C.R.C. 151; Decision 26399,

issued October 4, 1933.) The Atchison, Topeka and Santa Fe Railway Company, et al. v. Railroad Commission (1930) 209 Cal. 460; (1931) 283 U. S. 380.

Decision 26399, supra, was issued on application of The Atchison, Topeka and Santa Fe and Los Angeles and Salt Lake Companies and approved the so-called Plaza set-back plan as being in compliance with the requirements of the Commission's order of 1927. The plan thus approved was acceptable to all carriers affected and the order became final. In approving the Plaza set-back plan the Commission had before it the contract of the several carriers dated September 11, 1933, in which it was agreed that subject to the Commission's approval of said plan, the carriers would acquire the necessary property to construct the required union passenger terminal, the same to be jointly owned by them in the following proportions: Southern Pacific Company and/or Southern Pacific Railroad Company 44 per cent; Santa Fe 33 per cent; Salt Lake 23 per cent. The contract of September 11, 1933, is comprehensive in scope and appertains to operation and the apportionment of such costs, as well as the allocation of capital costs. The respective rights and obligations of the carriers are set forth in detail.

On October 3, 1933, the Santa Fe and Salt Lake Companies filed with the Commission a petition seeking to acquire by condemnation certain undivided interests in lands owned by Southern Pacific Company and Southern Pacific Railroad Company, which lands are located in the Plaza area and are necessary to the consummation of the set-back plan. The Southern Pacific

Companies presently own most of the land required for the terminal project, approximately 1,340,000 square feet and by the said petition the Santa Fe seeks to acquire an undivided 33 per cent interest therein, while the Salt Lake Company seeks an undivided 23 per cent interest. The Commission is requested to fix and determine the just compensation to be paid for such interests and to issue a decree in condemnation to that end.

The Commission by order of October 20, 1933, set the petition of the Santa Fe and Salt Lake Companies down for argument on the question of the jurisdiction of the Commission to proceed thereunder. Argument was had on October 31, 1933, all carriers participating. The Southern Pacific Companies appeared specially to object to the jurisdiction of the Commission in the premises, briefs were filed by the parties on the question of jurisdiction, and the matter is now ready for decision.

A study of the question presented compels the conclusion that this Commission is without jurisdiction to hear and determine the said petition in eminent domain. No state constitutional or statutory provision delegates or purports to delegate such authority to this Commission and the petition will, therefore, be dismissed. Further reference to the petition will tend to demonstrate that this conclusion on Commission jurisdiction is inescapable.

By the petition of the Santa Fe and Salt Lake Companies, as amended on October 31, 1933, reference is made in Paragraphs I and II thereof to the above mentioned contract between the carriers of September 11, 1933, relative to construction, ownership and operation of the Los Angeles Union Passenger Terminal, and to the Commission order of October 4, 1933, approving the set-back plan.

In Paragraph III it is alleged:

"That such joint acquisition, construction and operation make it necessary that the lands, rights and property hereinafter described of Southern Pacific Company and Southern Pacific Railroad Company shall be appropriated and devoted to the use and occupancy of said union passenger terminal in the following proportions: Santa Fe, an undivided 33 per cent interest; Salt Lake, an undivided 23 per cent interest; and Southern Pacific Company, an undivided 44 per cent interest."

Then follows the description of the property affected, it being alleged that parcel 1 is owned by Southern Pacific Company and parcels 2 and 3 owned by Southern Pacific Railroad Company. Briefly described the said three parcels embrace all of the property bounded by Alameda, Macy, Avila, Ramirez, Lyon and Aliso Streets, except for a relatively small plot in the east end of the described area at the intersection of Ramirez and Lyon Streets. Most of the property described in the petition is embraced in parcel 1 and was acquired by Southern Pacific Company in 1924. At the argument it was developed that the said Southern Pacific Company land has not been used and is not now used for railroad purposes, except insofar as it is affected by two or three spur tracks located in the area.

In Paragraphs IV and V it is alleged that joint acquisition, construction and ownership of the union passenger terminal necessitates the acquisition of the above mentioned undivided interest in Southern Pacific lands by the petitioners. It is further alleged that parcel 2 is subject to two general railroad mortgages of Southern Pacific Railroad Company and the trustees under said mortgages are named.

In Paragraph VII it is alleged:

"That the Public Utilities Act of California vests in the Commission the power to determine and order that a joint improvement be made by two or more public utilities in such manner and upon such a site that property of one or more of such utilities is taken by one or more of the others, and to require joint ownership, and in such cases also vests in the Commission jurisdiction to fix and determine the amount of compensation to be paid for the property so taken unless such amount is agreed upon; and to order the same condemned for such purpose."

The significant portion of the prayer requests that the Commission

"Fix and determine the amount of compensation to be paid respectively by the Santa Fe and Salt Lake for said interests in said lands, rights and property; and order the same condemned for the purpose hereinabove mentioned.

And further that the Commission

"Direct that the compensation so found to be due shall be deposited with the Commission to be paid to the Southern Pacific Companies and/or their mortgagees as their respective interests may be made to appear in appropriate legal proceedings instituted by them for that purpose, unless the Southern Pacific Companies, concurrently with payment direct to them of the compensation so found to be due, shall deliver to the Santa Fe and Salt Lake good and sufficient instruments of conveyance for said undivided interests, including releases from any railroad mortgages which are a lien thereon."

Petitioners apparently concede that no section of the Public Utilities Act expressly grants to the Commission authority to issue a decree in condemnation and effectuate the taking of property essential to the development of a union passenger terminal, as is requested in this proceeding. Petitioners rely rather on a number of general provisions of the Public Utilities Act from which it is argued that the Commission at least impliedly possesses the jurisdiction which they seek to invoke. The sections particularly stressed are 36, 43, and 47 of the Act.

Section 36 provides in part:

"* * * If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

This section grants to the Commission no power of eminent domain. The administrative authority granted to the Commission thereunder "to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured" relates only to the allocation of the percentage or proportion of the cost to be borne by the several utilities. The making of such an allocation as between the carriers involved in this matter was obviated by the action of the carriers in executing the contract of September 11, 1933, agreeing upon the percentages above mentioned of 44, 33, and 23 per cent respectively.

Section 43 of the Act refers exclusively to grade crossing matters. Subdivision (a) thereof forbids the construction of certain grade crossings without authority first having been obtained from the Commission. Subdivision (b) thereof, in brief, grants to the Commission the exclusive power to determine

and prescribe the manner and the terms of installation, operation, maintenance, use and protection of railroad crossings and to alter, relocate or abolish by physical closing any such crossing heretofore or hereafter established, and to require, where in its judgment, it would be practicable a separation of grades at any crossing, and prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, location, relocation or abolition of such crossings shall be divided between the parties in interest, etc.

Subdivision (c) of said Section 47 grants to the Commission the power to fix the just compensation to be paid for property, or any interest in or to property, to be taken or damaged in the separation of grades at any crossing specified in subsection (b) of said Section 47, or for property or any interest in or to property to be taken or damaged in the construction, location or relocation, under the order or with the approval of the Commission, of elevated tracks or subways for any railroad or street railroad over or under any public road, etc., and upon the payment of the just compensation so fixed to make a final order of condemnation, said order to be made in accordance with the detailed procedure outlined in said subdivision (c).

The petition filed herein, as above noted, is one in eminent domain to "fix and determine the amount of compensation to be paid respectively by the Santa Fe and the Salt Lake for said interests in said lands, rights and property"; and petitioners request that the Commission "order the same condemned for the purpose hereinabove mentioned." The petition does not even remotely appertain to any grade crossing matter and the words "grade crossing" do not even appear in the petition. Section 43

of the Act is, therefore, inapplicable and cannot support the petitioners' claim of jurisdiction herein.

Section 47(b) grants to the Commission certain limited jurisdiction to fix the just compensation to be paid for public utility properties sought to be acquired by "any county, city and county, incorporated city or town, municipal water district, county water district, irrigation district, public utility district or any other public corporation, each of which is * * * referred to as the political subdivision * * *." This section does not apply to eminent domain proceedings initiated by private corporations.

Section 47(a) of the Act provides

"The commission shall have power to ascertain for each purpose specified in this act, the value of the property of every public utility in this state and every fact and element of value which in its judgment may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain the value of all additions, betterments, extensions and new construction to the property of every public utility,"

and Section 70 provides the procedure to be followed by the Commission for the purpose of ascertaining the matters and things specified in Section 47(a) concerning the value of the property of public utilities. These two sections, 47(a) and 70 are entirely administrative in character and neither of them carry any suggestion of a grant of power to the Commission to condemn property or to issue decrees in condemnation.

In addition to the sections of the Public Utilities Act suggested by petitioners, above noted, we have carefully reviewed the Act as a whole, as well as the provisions of the Constitution appertaining to the Railroad Commission, and find no grant of power sufficient to sustain jurisdiction in this matter.

If the Legislature had intended to grant to the Commission broad powers of eminent domain so as to permit the condemnation of real property by public utilities for the purpose of effecting a joint improvement, such as a union passenger terminal, it would have done so in unmistakable language.

In view of the ruling in this matter it will thus be incumbent upon petitioners to invoke the jurisdiction of the courts to acquire by eminent domain proceedings the desired interests in Southern Pacific lands.

The fact that the Commission is without jurisdiction in this matter does not in any manner lessen its authority to compel obedience to its orders. Where the parties affected by a Commission order are obliged to jointly acquire property and invoke the jurisdiction of the courts in eminent domain to comply with the Commission order, they can be compelled to institute and diligently prosecute such necessary actions.

The institution and prosecution of eminent domain proceedings in the courts by The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company for the purpose of acquisition of the necessary interests in Southern Pacific lands should not delay the joint construction of the union passenger terminal. At a conference with the Commission on September 11, 1933, the presidents of the carriers affected agreed that the pendency of such proceedings should not delay the construction program, and filed with the Commission a stipulation under which immediate possession of Southern Pacific lands may be taken and construction carried on notwithstanding the pendency of such proceedings.

O R D E R

Joint petition having been filed with the Commission by The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company for the acquisition of undivided interests in certain lands of Southern Pacific Company and Southern Pacific Railroad Company, as more particularly outlined in the opinion preceding this order, and the Commission having carefully considered the question of the jurisdiction of the Commission to proceed in the premises, and being of the opinion that the Commission is without jurisdiction,

NOW, THEREFORE, IT IS HEREBY ORDERED that the petition above described be and the same is hereby dismissed.

Dated at San Francisco, California, this ¹⁷⁰ 11 day of December 1933.

CE Kealey
Leon S. ...
W. P. ...
M. B. ...
Walter ...