

Supreme Court Summaries

Opinions filed July 8, 2016

Hampton v. Metropolitan Water Reclamation District, 2016 IL 119861

Appellate citation: 2015 IL App (1st) 132317

CHIEF JUSTICE GARMAN delivered the judgment of the court, with opinion.

Justices Thomas, Karmeier, and Theis concurred in the judgment and opinion.

Justice Burke specially concurred, with opinion, joined by Justices Freeman and Kilbride.

After heavy rainfall in July 2010 in Cook County, there was flooding in the villages of Bellwood, Hillside and Westchester, where defendant Metropolitan Water Reclamation District of Greater Chicago is responsible for stormwater management. Jenice Hampton is the lead plaintiff of a class of property owners and residents who filed suit to recover from the defendant concerning the flooding. Plaintiffs claimed that the flooding amounted to a taking of property for which the Illinois Constitution entitles them to compensation. The District contended that the Illinois Supreme Court had held in 1948 that temporary flooding could never be compensable as a taking. Recently, in 2012, the United States Supreme Court was presented with a case in which Army Corps of Engineers actions flooded timberlands annually for six years, making it impossible to grow timber productively. The Court ruled there that temporary flooding can give rise to a claim under the federal constitution that a taking has occurred if such temporary flooding directly and immediately interfered with the owner's use and enjoyment of the land, which it found to be shown there. In the case at bar, the circuit court refused to dismiss the complaint but certified the question of whether the 2012 decision "overruled[d]" the 1948 holding "that temporary flooding is not a taking."

In its analysis, the Illinois Supreme Court noted the U.S. Supreme Court has no authority to overrule a state court's declaration of the meaning of state law and that the circuit court should have avoided the use of the term "overrule" in drafting the certified question. The Illinois Supreme Court said in this decision that it has never viewed the 1948 case as stating a categorical bar, and neither have most panels of the appellate court. The court in that earlier case held that the flooding which did occur did not amount to a taking. The 2012 opinion held that temporary flooding can give rise to a taking if certain factors are present, which it found to be the case there. The two decisions are consistent. Both should inform Illinois courts when addressing a claim of taking based on temporary flooding.

Although taking means the same thing under both constitutions, the Illinois Supreme Court held in this case that the plaintiffs' complaint failed to sufficiently allege that their temporary flooding amounted to a taking. The certified question

addressed only the question of taking, but the plaintiffs' original pleadings had also complained of damage caused by the flooding, and Illinois's constitutional clause, in specifically adding coverage for damage, is more comprehensive than the federal provision. Article I, section 15, of the 1970 Constitution states: "Private property shall not be taken or damaged for public use without just compensation***." The lower courts have not had the opportunity to review whether plaintiffs have sufficiently alleged a claim for damage from temporary flooding, and the parties have not briefed the issue before the Illinois Supreme Court. Therefore, the court declined to review the merits of this argument at this time.

The cause was remanded to allow the circuit court to consider the entirety of plaintiffs' claim in light of this opinion. Plaintiffs should have the opportunity to amend their takings clause claim on remand.

To the extent that the appellate court expressed views other than those put forth here, it was reversed.