U.S. Supreme Court

Keystone Bituminous v. DeBenedictis, 480 U.S. 470 (1987)

Keystone Bituminous v. DeBenedictis

No. 85-1092

Argued November 10, 1986

Decided March 9, 1987

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Syllabus

Section 4 of Pennsylvania's Bituminous Mine Subsidence and Land Conservation Act (Act) prohibits coal mining that causes subsidence damage to preexisting public buildings, dwellings, and cemeteries. Implementing regulations issued by Pennsylvania's Department of Environmental Resources (DER) require 50% of the coal beneath § 4-protected structures to be kept in place to provide surface support, and extend § 4's protection to watercourses. Section 6 of the Act authorizes the DER to revoke a mining permit if the removal of coal causes damage to a § 4-protected structure or area and the operator has not within six months repaired the damage, satisfied any claim arising therefrom, or deposited the sum that repairs will reasonably cost as security. Petitioners, who own or control substantial coal reserves under Act-protected property, filed suit in Federal District Court seeking to enjoin the DER from enforcing the Act and regulations. The complaint alleged, *inter alia,* that Pennsylvania recognizes a separate "support estate" in addition to the surface and mineral estates in land; that approximately 90% of the coal petitioners will mine was severed from surface estates between 1890 and 1920; that petitioners typically acquired waivers of any damages claims that might result from coal removal; that § 4, as implemented by the 50% rule, and § 6 violate the Fifth Amendment's Takings Clause; and that § 6 violates Article I's Contracts Clause. Because petitioners had not yet alleged or proved any specific injury caused by the enforcement of §§ 4 and 6 or the regulations, the only question before the District Court was whether the mere enactment of §§ 4 and 6 and the regulations constituted a taking. The District Court granted DER's motion for summary judgment on this facial challenge. The Court of Appeals affirmed, holding that *Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, does not control; that the Act does not effect a taking; and that the impairment of private contracts effectuated by the Act was justified by the public interests protected by the Act.

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Held:

1. Petitioners have not satisfied their burden of showing that §§ 4 and 6 and the regulations' 50% rule constitute a taking of private property without compensation in violation of the Fifth and Fourteenth Amendments. Pennsylvania Coal does not control this case, because the two

factors there considered relevant – the Commonwealth's interest in enacting the law and the extent of the alleged taking – here support the Act's constitutionality. Pp. 480 U. S. 481-502.

(a) Unlike the statute considered in *Pennsylvania Coal,* the Act is intended to serve genuine, substantial, and legitimate public interests in health, the environment, and the fiscal integrity of the area by minimizing damage to surface areas. None of the indicia of a statute enacted solely for the benefit of private parties identified in *Pennsylvania Coal* are present here. Petitioners' argument that § 6's remedies are unnecessary to satisfy the Act's public purposes because of the Commonwealth's insurance program that reimburses repair costs is not persuasive, since the public purpose is served by deterring mine operators from causing damage in the first place by making them assume financial responsibility. Thus, the Commonwealth has merely exercised its police power to prevent activities that are tantamount to public nuisances. The character of this governmental action leans heavily against finding a taking. Pp. 480 U. S. 485-493.

(b) The record in this case does not support a finding similar to the one in *Pennsylvania Coal* that the Act makes it impossible for petitioners to profitably engage in their business, or that there has been undue interference with their investment-backed expectations. Because this case involves only a facial constitutional challenge, such a finding is necessary to establish a taking. However, petitioners have never claimed that their mining operations, or even specific mines, have been unprofitable since the Act was passed, nor is there evidence that mining in any specific location affected by the 50% rule has been unprofitable. In fact, the only relevant evidence is testimony indicating that § 4 requires petitioners to leave 27 million tons (less than 2%) of their coal in place. Petitioners' argument that the Commonwealth has effectively appropriated this coal, since it has no other useful purpose if not mined, fails, because the 27 million tons do not constitute a separate segment of property for taking law purposes. The record indicates that only 75% of petitioners' underground coal can be profitably mined in any event, and there is no showing that their reasonable "investment-backed expectations" have been materially affected by the § 4-imposed duty. Petitioners' argument that the Act constitutes a taking because it entirely destroys the value of their unique support estate also fails. As a practical matter, the support estate has value only insofar as it is used to exploit another

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estate. Thus, the support estate is not a separate segment of property for takings law purposes, since it constitutes just one part of the mine operators' bundle of property rights. Because petitioners retain the right to mine virtually all the coal in their mineral estates, the burden the Act places on the support estate does not constitute a taking. Moreover, since there is no evidence as to what percentage of petitioners' support estates, either in the aggregate or with respect to any individual estate, has been affected by the Act, their Takings Clause facial challenge fails. Pp. 480 U. S. 493-502.

2. Section 6 does not impair petitioners' contractual agreements in violation of Article I, § 10, of the Constitution by denying petitioners their right to hold surface owners to their contractual waivers of liability for surface damage. The Contracts Clause has not been read literally to obliterate valid exercises of the States' police power to protect the public health and welfare. Here, the Commonwealth has a significant and legitimate public interest in preventing subsidence damage to the § 4-protected buildings, cemeteries, and watercourses, and has determined that the imposition of liability on coal companies is necessary to protect that interest. This determination is entitled to deference, because the Commonwealth is not a party to the contracts in question. Thus, the impairment of petitioners' right to enforce the generations-old damages waivers is amply justified by the public purposes served by the Act. Pp. 480 U. S. 502-506.

771 F.2d 707, affirmed.

STEVENS, J., delivered the opinion of the Court, in which BRENNAN, WHITE, MARSHALL, and BLACKMUN, JJ., joined. REHNQUIST, C.J., filed a dissenting opinion, in which POWELL, O'CONNOR, and SCALIA, JJ., joined, *post,* p. 480 U. S. 506.

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