

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D34976
O/ct

_____AD3d_____

Argued - April 20, 2012

WILLIAM F. MASTRO, A.P.J.
ANITA R. FLORIO
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2011-06941

DECISION & JUDGMENT

In the Matter of Cherry Hargrove, petitioner, v New
York City School Construction Authority, respondent.

Cherry Hargrove, Brooklyn, N.Y., petitioner pro se.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Lisa Bova-Hiatt and
Emily Keyes of counsel), for respondent.

Proceeding pursuant to EDPL 207 to review a determination of the New York City
School Construction Authority dated July 27, 2011, made after a public hearing, to condemn a parcel
of real property owned by the petitioner for the purpose of building a public school.

ADJUDGED that the determination is confirmed, without costs or disbursements, the
petition is denied, and the proceeding is dismissed on the merits.

Judicial review of a condemnation determination is limited to whether the proceeding
was constitutional, whether the proposed acquisition is within the condemnor's statutory jurisdiction
or authority, whether the determination and findings were made in accordance with the procedures
set forth in EDPL article 2 and the State Environmental Quality Review Act, and whether a public
use, benefit, or purpose will be served by the proposed acquisition (*see* EDPL 207[C]; *Matter of
Waldo's, Inc. v Village of Johnson City*, 74 NY2d 718, 720; *Matter of Anderson v New York State
Urban Dev. Corp.*, 45 AD3d 583, 584; *Matter of Congregation Gates of Prayer of Far Rockaway,
v New York City School Constr. Auth.*, 286 AD2d 439, 439-440). Here, the petitioner failed to
demonstrate any basis for setting aside the respondent's determination.

The petitioner's equal protection claims are without merit, since there is no evidence
in the record to support a finding that she had "been intentionally treated differently from others

similarly situated and that there is no rational basis for the difference in treatment” (*Village of Willowbrook v Olech*, 528 US 562, 564; see *Matter of Goldstein v New York State Urban Dev. Corp.*, 64 AD3d 168, 186, *affd* 13 NY3d 511).

To the extent that the petitioner argues that the proposed acquisition will not serve a public purpose, the record shows that the respondent’s determination to condemn the subject property is rationally related to a public purpose and that such public purpose is dominant (see *Matter of Waldo's, Inc. v Village of Johnson City*, 74 NY2d at 720; *Matter of Arbern Sutphin Props., LLC v City of New York*, 85 AD3d 1158, 1159-1160).

The petitioner's remaining contentions are beyond the scope of our review as limited by EDPL 207.

MASTRO, A.P.J., FLORIO, CHAMBERS and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court