

Matter of Town of Hunter v City of New York

2007 NY Slip Op 31708(U)

June 19, 2007

Supreme Court, Greene County

Docket Number: 0020070/3651

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF GREENE

In the Matter of the Application of the,

TOWN OF HUNTER,

Petitioner,

DECISION and ORDER
INDEX NO. 07-0365
RJI NO. 19-07-2900

For a Combined Article 78 Proceeding
and Declaratory Judgment Action,

-against-

CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.

Supreme Court Albany County All Purpose Term, May 11, 2007
Reassigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Petitioner seeks by a combined CPLR article 78 proceeding and a declaratory judgment application pursuant to CPLR § 3001 annulling a determination by the respondents in adopting its Recreational Use Rules for the New York City Watershed in violation of Public Health Law § 1100(1). The petitioner also seeks attorney fees. The respondents interposed an Answer and oppose the petition.

The City of New York's water supply comes from three upstate reservoir systems which are owned by the City. The land area which drains into the reservoirs or into streams and rivers that flow into the reservoirs is known as the Watershed. The Watershed encompasses over 2000 square miles in eight upstate counties including Greene County. The New York City Department of Environmental Protection (DEP) oversees the Watershed. In order to circumvent a costly federal filtration water requirement, all parties affected by the Watershed entered into a Watershed Memorandum Agreement (MOA) in 1997. The MOA required the City to purchase lands and easements located in the Watershed. Sections 72-73 of the MOA required the City to allow recreational uses of the land and water supplies in the Watershed subject to enacted rules and regulations.

The petitioner alleges the DEP adopted Rules for the Recreational Use of the Water Supply Lands and Waters in August of 2006 which established comprehensive rules concerning all permissible recreational uses in the Watershed. The petitioner alleges the new rules and regulations were intended to "benefit the integrity of the water supply." The rules required the issuance of permits for all types of recreational uses of the Watershed lands and water supplies. The petitioner alleges it is a small community located in the Watershed. Petitioner alleges many watercourses, wetlands, reservoirs, reservoir streams and controlled lakes in the Watershed are

located in the Town of Hunter. The petitioner contends its primary industry is tourism. The petitioner alleges the enactment of the new Regulation Use Rules requiring a permit for public access to the Watershed will adversely affect the local economy. The petitioner alleges the respondents are in violation of the MOA which allows public access to the Watershed. The petitioner alleges the respondents are in violation of Public Health Law § 1100(1) which requires the approval of the New York State Department of Health for any rules and regulations proposed by the DEP before they are enacted. The petitioner alleges it is entitled to a declaratory judgment finding the Recreational Use Rules are illegal, null, void and of no legal effect as the DEP failed to comply with PHL § 1100(1).

The DEP contends that it has long agreed to allow members of the public to enter certain City owned lands for certain recreational purposes, so long as the public use is compatible with the City's watershed protection efforts. The respondents allege the MOA allows the City to deem appropriate recreational usage of its Watershed lands and waters. The respondents contend the Recreational Use Rules were adopted on August 15, 2006 in order to restrict and establish conditions for access to its property pursuant to the New York City Administrative Code § 24-315. DEP alleges it neither sought or obtained DOH approval for the Recreational Use Rules on the belief that it had not sought prior DOH approval for previous rules pertaining to fishing and boating. Respondents allege PHL § 1100 only requires approval to non-City owned properties in order to protect water quality. The respondents contend the Recreational Use Rules are not watershed protection rules but simply a management tool to efficiently establish conditions which DEP allows members of the public to enter the Watershed.

It is well established that the very limited standard which governs judicial review of

administrative determinations pursuant to Article 78 is whether the determination was arbitrary and capricious, and that a reviewing court is therefore restricted to an assessment of whether the action in question was taken “without sound basis in reason and...without regard to the facts” (Matter of Pell v. Board of Education, See, 34 NY2d 222 [1974]). Moreover, in order to maintain the limited nature of this review, it is incumbent upon the court to defer to the agency’s construction of the statutes and regulations that it administers as long as that construction is not irrational or unreasonable. (Matter of Metropolitan Assocs. Ltd. Partnership v. New York State Division of Housing & Community Renewal, See, 206 AD2d 251[1st Dept. 1994]). The Court is mindful that the Court’s role in reviewing an administrative determination is not to substitute its judgment for that of the agency, but simply to ensure that the determination has a rational basis and is not arbitrary and capricious. See, Akpan v. Koch, 75 NY2d 561 [1990]; Matter of Flacke v. Onondaga Landfill Sys., 69 NY2d 355 [1987]; Matter of Warder v. Board of Regents, 53 NY2d 186 [1981].

Petitioner alleges the Regulation Use Rules adopted in 2006 by the DEP are void as it did not comply with the approval requirement of Public Health Law § 1100(1). PHL § 1100(1) provides:

The department may make rules and regulations for the protection from contamination of any or all public supplies of potable waters and water supplies of the state or United States, institutions, parks, reservations or posts and their sources within the state, **and the commissioner of environmental protection of the city of New York and the board of water supply of the city of New York may make such rules and regulations subject to the approval of the department for the protection from contamination of any or all public supplies of potable waters and their sources within the state where the same constitute a part**

of the source of the public water supply of said city.
(emphasis added)

“As a general rule, unambiguous language of a statute is alone determinative.” Riley v. County of Broome, 95 NY2d 455 [2000]. Where the terms of the statute are clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used. See, Auerbach v. Board of Education, 86 NY 2d 198 [1995]. Article 11 of the Public Health Law includes provisions authorizing the City, subject to state approval, to adopt regulations for the protection of the quality of its water supply and to enforce compliance with those regulations. See, Public Health Law § 1100(1); Ryder v. City of New York, 32 AD3d 836 [2nd Dept. 2006]. The petitioners were aware of the statutory requirement that prior approval be obtained for the adoption of rules and regulations affecting the Watershed. The statute is clear. Although the commissioner of environmental protection of the City of New York may make rules and regulations for the protection from contamination of its water supplies, such rules and regulations are subject to the approval of the Department of Health. See, PHL § 1100(1). The CPLR article 78 portion of the petition is granted.

Petitioner also seeks a declaratory judgment pursuant to CPLR § 3001. The court has discretion whether to grant declaratory relief. See, CPLR § 3001; Bd. of Educ. of Freeport Union Free School Dist. v. Nyquist, 50 NY 2d 889 [1980]. A declaratory judgment action is the proper procedural vehicle to challenge the constitutionality of a legislative enactment, See, Press v. County of Monroe, 50 NY 2d 695 [1980]. A trial court may decline to entertain an action for declaratory judgment where other adequate remedies are available, such as a CPLR article 78 proceeding to challenge an administrative determination. See, Greystone Mgt. Corp. v.

Conciliation & Appeals Bd. of City of N.Y., 62 NY 2d 763 [1984]. The petitioner's application for a declaratory judgment is denied. The CPLR article 78 portion of this proceeding rendered the declaratory portion duplicative and unnecessary. See, Gable Transport, Inc. v. State of New York, 29 AD 3d 1125 [3rd Dept. 2006]. Petitioner's application for attorney fees is denied.

All papers, including this Decision and Order are being returned to the attorneys for the petitioner. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provision of that section respecting to filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
June 19, 2007


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Petition dated March 16, 2007;
2. Verified Petition dated March 16, 2007 with attached exhibits A-C;
3. Petitioner's Memorandum of Law dated March 16, 2007;
4. Verified Answer dated April 19, 2007;
5. Affirmation of Sandra Salter Jackson, Esq. dated April 19, 2007 with attached exhibits A-B;
6. Respondents' Memorandum of Law dated April 19, 2007;
7. Petitioner's Memorandum of Law dated May 2, 2007.