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2nd Circuit Reverses Finding That Village School Zoning Laws Were Discriminatory

The decision overturned the district court's finding that two Village zoning laws were enacted in 2001 and 2004 with the intent to discriminate against the Orthodox/Hasidic community, leaving those laws in effect.

By John F.X. Peloso, Jr. and Thomas J. Donlon | February 28, 2020

Absent a petition for certiorari to the U.S. Supreme Court, the Feb. 6, 2020 denial of the plaintiffs' petition for rehearing en banc by the U.S. Court of Appeals for the Second Circuit will bring to a close almost 13 years of litigation over the school zoning laws of the Village of Pomona. With the issuance of the court's mandate, the Second Circuit panel decision of Dec. 20, 2019, *Congregation Rabbinical College of Tartikov v. Village of Pomona*, 945 F.3d 83, is now final. That decision overturned the district court's finding that two Village zoning laws were enacted in 2001 and 2004 with the intent to discriminate against the Orthodox/Hasidic community, leaving those laws in effect.

Background

Congregation Rabbinical College of Tartikov purchased a 100-acre parcel in the Village from Yeshiva Spring Valley (YSV), another Jewish school, in 2004. Tartikov never filed an application to develop the property. However, in early 2007, the local paper published reports that Tartikov planned to develop a one of a kind rabbinical college with multi-family apartments to house up to 1,000 adult students and their families. This would have added up to 4,500 new residents in a Village of only 3,200 people. After a very contentious public hearing, and a local election in which the Tartikov plan featured prominently, the Village added two amendments to its zoning law imposing new restrictions on school dormitories and on construction near wetlands.

Tartikov filed suit in federal court claiming not only that the two 2007 laws, but also prior 2001 and 2004 zoning laws, were discriminatory. Tartikov brought federal constitutional claims under the Equal Protection and Free Exercise clauses, as well as asserting violations of the Religious Land Use and Institutional Persons Act (RLUIPA), and the Fair Housing Act. Tartikov also alleged violations of the New York State Constitution, and New York common law.

After a 10-day bench trial, the district court found all four Village Zoning laws were unconstitutional because they were enacted with the intent to discriminate on the basis of religion. *Congregation Rabbinical College of Tartikov v. Village of Pomona*, 280 F.Supp.3d 426 (S.D.N.Y. 2017). The district court also found in favor of Tartikov on its other claims, except for two provisions of RLUIPA. Following the decision, the district court entered an injunction, which exempted any future zoning applications by Tartikov from many of the normal state and local zoning and environmental requirements and imposed an expedited timetable for any future Tartikov application.

Second Circuit's Decision

The Second Circuit focused its opinion on the discrimination claims under Equal Protection, RLUIPA and the New York Constitution. It vacated the district court's rulings on Tartikov's remaining federal and state claims for lack of Article III standing. As Tartikov had never filed a zoning application for its rabbinical college, either prior to commencing suit, or during the litigation,

the court held that any injuries from these claims were “merely conjectural.” Therefore, the court found it lacked jurisdiction over them. 945 F.3d at 110.

On the religious discrimination claims, the Second Circuit drew a sharp distinction between the 2001 and 2004 laws and the two laws passed in 2007. The court highlighted the events surrounding the adoption of the 2001 and 2004 laws. At the time the 2001 law was enacted, the property still was owned by YSV. Tartikov was not even formed until the summer of 2004. In 1999, YSV approached the Village with a proposal to build a primary and pre-school. YSV’s proposed school had no dormitories. As this was the first organization to express interest in building a school, the Village’s planning consultant raised questions about the adequacy of the zoning for educational institutions. After receiving proposals from the planning consultant, the Village amended the zoning code to require schools to apply for special permit rather than remain a use permitted as of right. The 2001 law also required a school to be accredited by New York State and excluded any school with a dormitory. The Second Circuit pointed out that the changes in the 2001 law would not have prevented YSV from building what it originally proposed, “or otherwise thwart or exclude YSV from the Village.” 945 F.3d at 116.

As for the 2004 law, the court observed the amendments “liberalized several features of the existing zoning law” by allowing dormitories for the first time, loosening the requirements to allow accreditation by other agencies outside of New York and adding colleges, graduate and post-graduate schools to the definition. 945 F.3d at 116. Like the 2001 law, “the 2004 law would not have prevented YSV from developing the Subject Property.” 945 F.3d at 116. At the time the 2004 law was enacted, the Village was unaware that YSV had recently sold the property to Tartikov.

The Second Circuit concluded that the district court erred in finding the 2001 and 2004 laws were discriminatory. Notwithstanding the presumption in favor of the district court’s findings, the Second Circuit came to the firm conviction that a mistake had been committed. The 2001 and 2004 laws were passed after the Village, in light of YSV’s proposal, realized its “zoning laws did not adequately address permissible development for educational purposes.” 945 F.3d at 119. As the new laws “would not have impeded YSV’s planned project,” the evidence did not support a finding that the Village acted with discriminatory intent in adopting the 2001 and 2004 laws. 945 F.3d at 119.

In contrast, the Second Circuit held that the district court did not clearly err in concluding that two 2007 zoning laws, passed in response to local opposition to Tartikov’s plans, were tainted with discriminatory animus. The Second Circuit, therefore, affirmed the district court’s decision striking down the 2007 laws.

Turning to the remedy fashioned by the district court, the Second Circuit found that the injunction issued by the district court, which would have prohibited the Village from applying state and local land use procedures, including environmental requirements, went too far. The injunction conflicted with state law provisions, prescribing that any Tartikov application would receive different and expedited review. The Second Circuit limited the remedy to enjoining enforcement of the two 2007 laws that had been found discriminatory and vacated the rest of the district court’s injunction.

Following release of the December decision, Tartikov filed a request for rehearing en banc, which the Second Circuit’s recent order denied.

Conclusion

As the 2001 and 2004 laws are valid and still apply, Tartikov is back where it started in 2007. Striking down the 2007 laws does not remove the restrictions imposed by the earlier laws on its plan for adult student housing. The Village’s definition of dormitories specifically allows only traditional private or semi-private rooms with communal dining facilities while specifically excluding multi-family housing. As the district court’s injunction was vacated, Tartikov will have to go through the same zoning and environmental reviews as any other applicant. The Second Circuit’s reversal of the district court’s finding of intentional discrimination in this case demonstrates that, in the proper circumstances, even such emotionally charged claims can be successfully appealed.

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