(4)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, ODELL JONES, DOREATHA R. CRENCHAW, EVA RODGERS, JAMES RODGERS AND ROBERT M. FAIRFAX, Plaintiffs,	)	
v.	)	NO. 66 C 1460
ROBERT C. WEAVER, Secretary of the Department of Housing and Urban Development of the United States, Defendant.	)	

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Now comes the defendant Robert C. Weaver, Secretary of the Department of Housing and Urban Development of the United States, by Edward V. Hanrahan, United States Attorney for the Northern District of Illinois, and files herewith a Supplemental Memorandum in support of defendant's pending Motion to Dismiss. This is done for the purpose of calling to the attention of the court a change in the factual situation of which the United States Attorney has just been informed, and also two pertinent decisions of the Seventh Circuit Court of Appeals which were rendered after the original memorandum was filed.

1. The Department of Housing and Urban Development has now approved some of the 1966 projects ("twelve proposed projects")

a When the original Memorandum was filed, it correctly represented (p. 7) that the Department of Housing and Urban Development was still negotiating with the Chicago Housing Authority the question of approval of

the 1966 projects, referred to in the complaint as the "Twelve Proposed Projects." Since the filing of that Memorandum, the United States Attorney has been informed that the following sites included in the 1966 projects have been approved: [listing omitted]

Project No.	Site Location	Number of Dwelling Units	Community Area
Ill-2-63	D E. 70th & S. Harper	48	South Shore
Ill-2-64	(Scattered Sites)	356	North Lawndale
ILL-2-65	B W. Franklin & N. Albany	33	Humboldt Park
	F Congress & S. Millard	99	East Garfield Park
ILL-2-66	W. 118th & S. Wood	296	Morgan Park

Determination as to the remaining sites involved in the 1966 projects has not been made, and no approval has been given by HUD as to those remaining sites which are being held in abeyance.

2. The issues in this case have been disposed of by the Seventh Circuit Court of Appeals in Green Street Association v. Daley decided January 25, 1967

In Green Street Association v. Daley, (CA 7, No. 15619, decided January 25, 1967), the court disposed of the issues also involved in this case. Affirming the District Court decision (discussed in our original memorandum pp. 13, 27), the court dealt with the major issues involved here. It is appropriate to quote at length from the Slip Opinion (pp. 8-12):

> "Count II names both the local and the federal defendants. * * * it is asserted that the hearing

did not conform to the requirements of section 105(d) of the Housing Act of 1949, 42 U.S.C. § 1455(d), and denied the plaintiffs due process. The plaintiffs seek to enjoin all defendants from proceeding to carry out the Project until a 'full and fair public hearing on it has been held in compliance with law. . .' For jurisdictional purposes, they rely on 28 U.S.C. § 1331 and section 10 of the Administrative Procedure Act, 5 U.S.C. § 1009.

In Harrison-Halsted Community Group, Inc. v. Housing & Home Fin. Agency, supra, similar claims of the inadequacy of a hearing were made, supported by the same jurisdictional allegations. As has already been stated, we held there that neither section 105(d) of the Housing Act nor section 10 of the Administrative Procedure Act provides the basis for a federal right to judicial review of an urban renewal plan. We see no reason to reexamine our position in that case. Moreover, no substantial federal question of due process is raised. Rindge Co. v. Los Angeles, 262 U.S. 700, 709 (1923); Combs v. Illinois State Toll Highway Comm., 128 F. Supp. 305 (N.D. Ill. 1955). The district court properly dismissed Count II.

Count IV names both the local and the federal defendants. In it the plaintiffs allege that the relocation provisions of the Urban Renewal Plan for the Central Englewood area are deficient in two respects. First, they allege that the relocation provisions are not 'feasible' as required by section 105(c) of the Housing Act of 1949, 42 U.S.C. § 1455(c), in that persons displaced from the Project area will be forced to move into housing which is not 'decent, safe, and sanitary' or will be forced to pay more for housing than they are presently paying. Second, they allege that 'existence of a segregated residential pattern in the City of Chicago is expressly acknowledged in the Urban Renewal Plan . . . wherein separate relocation facilities based on race, for persons to be displaced from the project area, are given,' thus rendering the Plan violative of section 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. The plaintiffs allege that in approving the Plan despite these provisions the local and federal defendants are acting in violation of the plaintiffs' rights to equal protection

of the laws. The plaintiffs request a declaration that the Plan is invalid and seek to enjoin all defendants from proceeding with it 'until an adequate, realistic, and feasible method of relocation is devised in accordance with law.'

The plaintiffs renewed attack on the Plan in terms of the Housing Act of 1949 is again subject to the rule stated in the Harrison-Halsted case, discussed earlier. The plaintiffs have no standing to litigate questions arising from alleged violations of the act. [15]

The plaintiffs' remaining contention with respect to Count IV is that the Plan's 'recognition' of the segregated nature of residential facilities in Chicago subjects them to 'discrimination under [a] program . . . receiving Federal financial assistance' within the meaning of section 601 of the Civil Rights Act of 1964 and that this section implicitly confers standing upon them to sue to enjoin violations of it. As to the federal defendants, the plaintiffs' argument is erroneous in that it ignores the remaining sections of Title VI of the act. Sections 602 and 603 of the act, 42 U.S.C. §§ 2000d-1, 2000d-2, establish the procedure to be followed by federal officials in enforcing the nondiscrimination requirements of section 601. Only after the appropriate federal agency has followed this procedure is judicial review permitted by section 603. If an individual suit for an injunction against the federal officials were permitted, the administrative procedure would be bypassed. We do not think that section 601 was intended to permit the termination of federal participation in a given program by this means."

The Green Street case is therefore dispositive of plaintiffs assertions of standing to sue the defendant here. It both reaffirms the

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[15] Nor do we think that section 601 of the Civil Rights Act of 1964 confers standing upon the plaintiffs to raise questions concerning the Plan's compliance with the provisions of the Housing Act of 1949."

view of this Circuit in the Harrison-Halsted case (discussed pp. 10-11, 23, the original memorandum) as to lack of standing of private persons to sue on the basis of the National Housing Act, and dealt with the contentions that the Civil Rights Act grants standing to sue federal defendants,

3. In Tutoki v. Celebrezze, decided January 23, 1967, The Seventh Circuit Court of Appeals set forth the standards for requiring exhaustion of administrative remedy.

In the original memorandum (pp. 19-22), it was shown that plaintiffs have failed to exhaust their possible administrative remedy and for that reason alone should be barred from their action at this time. The Seventh Circuit Court of Appeals has just had occasion to set forth the standards applied by it in determining when an agency must be given the chance to review a matter before the courts will consider it. Tutoki v. Celebrezze, (C.A. 4, No. 15701, decided January 23, 1967). In that suit to enjoin prohibition by the Government of the interstate shipment of Krebiozen, plaintiffs had not made the application provided by law to the Food and Drug Administration. The Court held (Slip Opinion p. 4) that the matters involved come"within the primary jurisdiction of the FDA," citing and quoting at length the following statement from Far East Conference v. United States, 342 U.S. 570, at 574-5 (1952):

> " . . . [I]n cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative

discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure."

All of those considerations are fully applicable to the nationwide program administered by this defendant, as more fully shown in the original memorandum.

WHEREFORE, defendant prays that its Motion to Dismiss be allowed.

Respectfully submitted,

Edward V. Hanrahan
United States Attorney
Room 1500, U.S. Courthouse
Chicago, Illinois 60604
353-5312

JRS:ab

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,

Plaintiff)
)
-vs-) NO. 66 C 1460
)
ROBERT C. WEAVER, Secretary of the)
Department of Housing and Urban)
Development of the United States Defendant)

N O T I C E OF MOTION

TO: Alexander Polikoff, Milton I. Shadur & Merrill A. Freed, 231 S. LaSalle, Chgo.
Charles R. Markels, 120 South LaSalle St., Chicago, Illinois 60603
Bernard Weisberg, 111 West Jackson Blvd., Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Friday, February 3, 1967 at the opening of court or as soon thereafter as counsel may be heard, I will appear before Judge Richard B. Austin in the courtroom usually occupied by him in the United States Courthouse, 219 S. Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and there ask leave to file instanter a supplemental memorandum in support of defendant's motion to dismiss, a copy of which is attached hereto.

At which time and place you may appear if you so see fit.

UNITED STATES ATTORNEY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

being first duly sworn on oath deposes and says that he is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the day of January 1967, he placed a copy of the foregoing Notice, together with a copy of Supplemental Memorandum each of the above-named individuals, and deposited each envelope in the United States mail chute, located in the United States Courthouse, Chicago, Illinois, on said date at the hour of about 3:30 P.M.

SUBSCRIBED AND SWORN TO before me
this day of January 1967

NOTARY PUBLIC

JBS:ab