

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,)

Plaintiffs,)

vs.)

CHICAGO HOUSING AUTHORITY and)
PATRICIA HARRIS, Successor to)
CARLA A. HILLS, Secretary of the)
Department of Housing and Urban)
Development, et al.,)

Defendants.)

NOS. 66 C 1459

66 C 1460

(Consolidated)

ANSWER AND MEMORANDUM IN OPPOSITION TO
PLAINTIFFS MOTION FOR RECOMMENDATION
TO THE COURT

A. STATEMENT OF FACTS:

Plaintiffs, by their attorneys, move that the Special Master recommend to the Court that an Order be entered requiring, inter alia, that Chicago Housing Authority, within 30 days of the entry of said Order, submit to the Special Master and the parties a detailed plan for increasing the supply of dwelling units by the utilization of the "acquisition method" as provided in 24 CFR §841.401 et seq. The Plaintiffs contend by this method CHA has the unrestricted power to acquire any improved real estate, whether vacant and unoccupied or fully occupied, in the General Public Housing Area for low income housing. The CHA maintains it does not have this unlimited power to acquire improved real estate and displace the tenants therein in order to provide housing for the plaintiff class.

B. ARGUMENT

1. Remedial Order and CHA's Powers to Acquire.

Article III of the Judgment Order of July 1, 1969 provides in pertinent part as follows:

"B. CHA shall not commence or cause to be commenced the construction of any Dwelling Units, . . . , until CHA shall have commenced or caused to be commenced, and shall be continuing or shall have completed, the construction of not less than 700 Dwelling Units located in the General Public Housing Area of the City of Chicago".

Article VIII thereof further provides:

"A. CHA shall use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this Judgment Order and shall take all steps necessary to that end. . . ."

Subsection D of Article III relates to Leased Housing and was amended May 5, 1975 in order to permit leasing pursuant to Section 8 of Section 201 (a) of the Housing and Community Development Act of 1974.

The July 1, 1969 remedial Order requires CHA to use its "best efforts" to increase the supply of housing to the plaintiff class in conformance with the Orders of Court. It should also be noted, however, that the July 1, 1969 remedial Order in no way expanded CHA's powers beyond that granted to it by the Illinois legislature in the "Housing Authorities Act" (Chapter 67½ Illinois Revised Statutes). Therefore in effectuating and complying with the remedial purposes of the Order CHA must still operate

within the limited powers granted to it. CHA's legal status as a unit of local government with limited governmental powers has been established by judicial decision. Chicago Transit Authority and Chicago Housing Authority, Intervenor v. Danaher, 40 Ill.App.3rd 913 (1st Div. 1976).

The purpose of the Illinois Housing Authorities Act as embodied in Section 2 thereof is the eradication of slums and to increase the supply of low-rent housing. This purpose was recognized by the Illinois Supreme Court in Krause v. Peoria Housing Authority, 370 Ill. 356 (1939) wherein at page 360 it stated:

"It is hereby declared as a matter of legislative determination that in order to promote the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of municipal corporations to be known as housing authorities, and to confer upon and vest in said housing authorities, all powers necessary or appropriate in order that they may engage in low-rent housing and slum clearance projects . . ." (Underscoring supplied).

CHA being a creature of the legislature was granted the specific power and duty to serve a public purpose, that is, to engage in low-rent housing and slum clearance projects. The public, as a whole, has a direct and substantial interest in the granted powers, and, therefore in order to successfully implement the legislative plan, CHA cannot arbitrarily vest unto itself additional or illusory powers; and in carrying out its functions it cannot act in a manner which is arbitrary, capricious and unrelated to the general public good.

The power granted to Housing Authorities to acquire real property is specifically set forth in Sec. 9 of the Act which provides that:

"The power of eminent domain shall apply not only to* improved or unimproved property which may be acquired for or as an incident to the development or operation of a project or projects, but also to (a) any improved or unimproved property the acquisition of which is necessary or appropriate for the rehabilitation or redevelopment of any blighted or slum area, or, (b) any improved or unimproved property which the Authority may require to carry out the provisions of this Act."

Any undertaking to acquire existing improved real estate in the General Public Housing Area must satisfy (1) the statutory requirement that its acquisition is "necessary or appropriate" for the rehabilitation or redevelopment of a blighted or slum area (or) (2) the property is needed to carry out the provisions of the Act in the development of a "Project" which is planned as a unit and designed to provide housing accommodations and facilities appurtenant thereto.

Section 9 defines a "blighted or slum area" as meaning any area of not less, in the aggregate, than one (1) acre, excepting that in any municipality having a population in excess of 500,000, as determined by the last preceding Federal census, a "blighted or slum area" means any area of not less in the aggregate of two (2) acres . . . " { The Plaintiffs proposal does not undertake the acquisition of property as an "incident to the development or operation of a project or projects." } The term project is defined to include "all lands, buildings and improvements, acquired, owned, leased, managed or operated by a housing authority, and all buildings and improvements constructed, reconstructed or repaired by

*Broad powers to acquire without power of Eminent Domain is worthless.

a housing authority, designed to provide housing accommodations, . . ."
and also includes slum or blighted areas, any other deteriorated or
deteriorating area which is to be developed or redeveloped for predominantly
residential use and other undeveloped lands.*

The Judgment Order entered by this Court was to serve a two-fold
purpose:

- (1) It restricted the construction of dwelling units in
the restricted area.
- (2) It ordered the construction of dwelling units in the
general public housing area.

The Order did not in any manner seek or attempt to create additional powers
in the Authority, nor could it in any way enlarge the Authority's vested
statutory powers, the primary purpose of which is the eradication of slums
and development of low-income housing. To suggest and order that CHA
develop a comprehensive plan to acquire occupied dwelling units in the
General Public Housing Area for the express purpose of making this housing
available to the plaintiff class, contravenes the statutory powers of CHA,
is contrary to public policy and the general welfare of the community, and
is not within the purview of the Orders of this Court.

On the other hand, the acquisition of scattered vacant sites by
CHA pursuant to the Order of this Court is consistent with its powers to
carry out the provisions of the "Housing Authorities Act" which is "to under-
take such land assembly, clearance, rehabilitation, development and redevelop-
ment projects as will tend to relieve the shortage of decent, safe and sani-
tary dwellings." In short, the public responsibility of CHA is to increase

*Section 17 "Housing Authorities Act (Illinois Revised Statutes, as amended.)
Underscoring supplied to emphasize that Sec. 17(g) in 1st sentence speaks
in the past tense or of accomplished fact.

not decrease the supply of housing, not to displace persons from existing standard housing. The proposal to acquire existing housing which is occupied exacerbates not alleviates the conditions that CHA is charged to improve and is inimical to the legislative determination that there exists a shortage of housing. The displacement of citizens in order to provide housing for another group of citizens is contrary to CHA's statutory purpose to eradicate slums and to increase the supply of housing. The Plaintiff seeks to modify the July 1, 1969 Order of this Court to require the acquisition of existing housing in the general public housing area contrary to the provisions of Section 9 of the Act which pertains to (a) any improved or unimproved property, the acquisition of which is necessary or appropriate for the rehabilitation or redevelopment of any blighted or slum area, (b) any improved or unimproved property which the Authority may require to carry out the provisions of this Act.

2. The Displacement of Families Requires a Relocation Plan in Accordance With the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

The National Policy as stated in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is to ensure that persons displaced as a result of Federal and Federally assisted programs not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. The Act provides for a broad range of relocation payments, assistance and advisory services to be made available to displaced persons.

Section 206(a) Title II Uniform Relocation Assistance provides:

"(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency is satisfied that replacement housing in accordance with Section 205(c) (3) is available to such person.

HUD Handbook 1371.1 Rev. Relocation Policies and Procedures contains procedures for implementation of the Act. Chapter 2 of this Handbook details HUD standards and requirements for local agency operations under the Uniform Act. These standards would require the development of a relocation plan which would include assurances of the availability of comparable, safe and sanitary replacement housing meeting HUD-approved standards, and equal in number of and available to eligible persons who will be displaced. Assuming arguendo, that an acquisition program is approvable, the adoption of a relocation plan which coupled with the administrative expenses occasioned, relocation payments to eligible tenants and owners, represents a considerable expense factor to be added to acquisition costs. For example, relocation of a single tenant could result in costs of \$4,000 in addition to necessary moving expenses. Relocation expenses payable to an owner could amount to \$15,000. The expense factors mentioned as well as basic requirements of the law which will not permit the displacement of persons by a federally-assisted program without relocation in accordance with the standards of the Act, mitigate against the feasibility of such a program.

Chapter 1 Relocation Handbook (3171.1 Rev.), Page 1-9 provides:

"f. No displacement of a person shall take place in a locality which does not have a sufficient vacancy rate in rental and sales housing-- of units adequate to the needs and within the

financial means of those anticipated to be displaced -- unless the locality undertakes the replacement of housing units through rehabilitation of substandard units or new construction, as a minimum, on a one to one basis for each unit removed from the housing supply."

The above cited procedure simply implements the National Policy against displacement except where the public is benefited. CHA, in law and equity has no right to require tenants in existing housing to move as "chessmen" for arbitrary and capricious reasons.

3. HUD Vacant and Abandoned Properties Fall Within a Category of Properties Which the CHA Has The Power to Acquire.

CHA, prior to a complete examination of the inventory of properties available, made a proposal to acquire abandoned, vacant and vandalized properties for rehabilitation. The position taken was that these properties represent a continuing blight to the City, and their acquisition and rehabilitation would increase the supply of housing available to the Plaintiff class as well as assist in the removal of "blight" within the City. It has been determined that a blighted area need not be contiguous. Since the availability of HUD properties for auction and sale, many of these properties have been acquired or otherwise disposed of. A review of the availability of housing from inventory lists supplied by HUD discloses there is an insubstantial number of units available in the General Public Housing Area. The overall inventory of these HUD properties has been substantially reduced as a result of purchase and other assignment of these units to community programs with essentially the same goals as CHA. To the extent of their availability, these properties represent

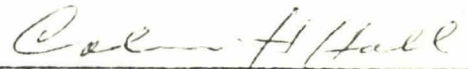
an opportunity for CHA to increase the housing supply within their statutory authority. Where occupied, the problems of relocation are substantially lessened in the acquisition of HUD-owned properties in that Section 841.406 outlines rules applicable only to these properties. These provisions allow for the tenant the option to lease the premises to be acquired for four years beginning with the date of acquisition or the date the dwelling is placed in decent, safe and sanitary condition. It also provides that a tenant shall not be required to move from the dwelling unless the move is necessary to permit rehabilitation. In the event of rehabilitation, temporary relocation is provided. Section 841.406 liberalized relocation procedures so as to minimize the displacement of tenants.

Finally, implicit in HUD regulations published in 24 CFR 841.40 et seq relating to the "acquisition method" as an alternative to the traditional method of constructing public housing, is the single requisite that methods set forth must be within the statutory purpose and powers granted the local housing authorities through its State Legislature.

As stated above, housing authorities throughout Illinois were created where it was determined that there was a shortage of housing and their legislative purpose was to eradicate "slum and blight" and to develop low-income housing. This overriding public purpose should not be clouded by the parochial view of plaintiffs counsel that CHA has the unrestricted power to acquire any improved real property, displace people without restriction. The Order of Reference here has charged the Special Master, in accordance with Rule 53 of the Federal Rules of Civil Procedure, to

expedite the mandate of the Court in increasing the supply of dwelling units in Chicago as rapidly as possible, utilizing new housing programs established by the Housing and Community Development Act of 1974. There have been new thrusts and directions in increasing the supply of housing, albeit not moving as rapidly as Counsel would wish. The Reference Order, however, does not vest in the Special Master authority to consider a matter outside the delegation and relating to the fundamental question of the Order of Court and power of CHA to act. It is for all these reasons the Plaintiffs' Motion in its present form should and must be denied.

Respectfully Submitted,



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