

Commentary

California Supreme Court Rules That A Property Owner Need Not Lose All Use Of His Property To Bring A Takings Claim

by McCutchen, Doyle, Brown & Enersen, LLP

Kavanau v. Santa Monica Rent Control Board, 16 Cal. 4th 761 (1997)

The California Supreme Court said that a property owner who did not lose all viable economic use of his property could still claim that a government regulation “took” his property without just compensation. However, the court ultimately held that the owner was not entitled to bring a takings claim against the Santa Monica Rent Control Board because he had a “full and adequate” remedy under the rent regulation process.

Earl Kavanau purchased a rent-controlled apartment building in Santa Monica. The Rent Control Board allowed Kavanau to increase rents due to increased expenses, but the rental increase was spread out over an eight year period to avoid violating a twelve percent cap on annual rent increases. Kavanau successfully challenged the annual cap in court on due process grounds, then sued for compensation for the interim period which the cap was in effect. Kavanau claimed prior enforcement of the cap was a compensable temporary taking.

The Supreme Court agreed that Kavanau’s receipt of some income from his property did not automatically bar his regulatory takings claim. The reviewing court must evaluate the regulation in light of the “factors” the United States Supreme Court discussed in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), and subsequent cases to determine if the regulation “goes too far” and becomes a taking. The Court listed thirteen factors, but emphasized that the list was not exhaustive and that not every factor applied to each case. Ultimately, however, the Court rejected Kavanau’s claim, holding that the procedures made available in the rent control ordinances provided a constitutionally sufficient remedy. When setting fair rates for Kavanau, the Rent Control Board could consider the former confiscatory rate ceiling and make up for the prior deficit.

Kavanau’s list of factors, and its insistence that other, unspecified factors might be relevant, only emphasizes once again the fact-specific nature of a regulatory takings claim, and the uncertainties government agencies and landowners face in determining whether a taking has occurred. As in other takings cases, *Kavanau* makes clear that there is no simple answer, and no substitute for a careful and lengthy analysis in adopting, applying or opposing economic regulations.

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