

B-215591

September 5, 1984

Digest:

Alleged violations of section 301 of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4651, do not state claim cognizable by our Office because section 102 of Relocation Act makes clear that provisions of section 301 create no legally enforceable rights in property owner. See court cases cited.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

120

B-215591

DO NOT MAKE AVAILABLE TO PUBLIC READING
~~FOR 30 DAYS~~

September 5, 1984

The Honorable William Green
House of Representatives

Dear Mr. Green:

Your letter of June 14, 1984 asks for our views on various allegations raised by your constituent, Peter R. Johl, concerning the Town of Groton's condemnation in August 1975, of a tract of land formerly owned by Mr. Johl, his brother, Mr. John H. Johl, and his sister, Mrs. Janet P. Johl Weissman. The Federal involvement in this matter arises from the fact that the Town of Groton funded a portion of the condemnation award with funds granted by the Department of Housing and Urban Development to acquire open space lands.

Mr. Peter Johl alleges that the Town of Groton violated several provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Relocation Act), 42 U.S.C. § 4601 et seq. In particular, Mr. Johl complains that he was denied the opportunity to accompany appraisers during their inspection of the Johl tract in violation of section 301(2) of the Relocation Act, 42 U.S.C. § 4651(2). Moreover, Mr. Johl asserts that the Town of Groton's payment of the balance of the condemnation award to the law firm of Goldstein and Peck, P.C. as representatives of the owners of the Johl tract was improper and coercive in violation of section 301(7) of the Relocation Act, 42 U.S.C. § 4651(7).

The materials your office supplied us indicate that as required by section 305 of the Relocation Act, 42 U.S.C. § 4655, the Town of Groton assured HUD that in acquiring real property pursuant to the HUD grant, the Town would be guided to the greatest extent practicable under State law by the acquisition policies of sections 301 and 302 of the Relocation Act. Section 301(2) and (7), relied on by Mr. Johl, generally establish the policy that property owners be given an opportunity to accompany appraisers during the appraisal inspection and that actions to coerce the property owner to agree to the price to be paid for the property be avoided.

Without commenting on the merits of Mr. Johl's allegations, we point out that section 102(a) of the Relocation Act makes clear that Mr. Johl acquired no legally enforceable rights under the Relocation Act.

"The provisions of section 301 of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation."

42 U.S.C. § 4602(a).

Moreover, the courts that have construed section 102(a) of the Relocation Act have held that the Relocation Act does not create rights in favor of property owners enforceable in the courts and that the purpose of the Relocation Act is merely to set policy guidelines to be followed in the acquisition of real property. Rubin v. Department of Housing and Urban Development, 347 F. Supp. 555, 558 (E.D. Pa. 1972); United States v. 416.81 Acres of Land, 525 F.2d 450, 454 (7th Cir. 1975) (section 301 does not require appraisers to comply with landowner's request to attend property inspections); Bunker Properties, Inc. v. Kemp, 524 F. Supp. 109 (D. Kan. 1981); Nelson v. Brinegar, 420 F. Supp. 975 (E.D. Wis. 1976); Barnhart v. Brinegar, 362 F. Supp. 464 (W.D. Mo. 1973); Will-Tax Plastics Mfg., Inc. v. Department of Housing and Urban Development, 346 F. Supp. 654 (E.D. Pa. 1972), aff'd 478 F.2d 1399 (1973). Accordingly, Mr. Johl has not stated a claim cognizable by our office. 31 U.S.C. § 3702(a).

Mr. Johl has also raised numerous allegations concerning the legality of the Town of Groton's condemnation of the Johl tract. Basically, Mr. Johl argues that "the Town of Groton has exceeded its authority given it by the [Town Council's] Resolution to Condemn." Mr. Johl argues in addition that a 1972 order of the Department of Environmental Protection of the State of Connecticut classifying the Johl tract as tidal wetland constituted a prior taking. Hence, according to Mr. Johl, "the entire tract is presently improperly vested in the Town of Groton."

Mr. Johl's allegations are all issues that should have been raised in the State condemnation proceedings. Available information indicates that Mr. Johl has had his day in court

B-215591

to challenge the condemnation action. In this regard, the Town of Groton filed a certificate of taking in August 1975, condemning the Johl tract for \$98,400. Peter R. Johl, along with his two siblings appealed the assessment of value to the Connecticut Superior Court which, in September 1976, awarded the Johls \$402,270. Mr. Johl then appealed the award to the Connecticut Supreme Court. Mr. Johl's brother and sister opposed the Supreme Court appeal and, on February 16, 1978, their motion to dismiss the appeal for failure to prosecute with due diligence was granted by the Supreme Court. Mr. Johl's March 15, 1978 motion to reargue was denied by the Connecticut Supreme Court on April 4, 1978. Accordingly, distribution of the condemnation award was completed on June 15, 1978.

Mr. Johl did not accept the dismissal of his appeal to the Connecticut Supreme Court as resolving the dispute concerning the condemnation and valuation of the Johl tract. In rejecting allegations raised by Mr. Johl similar to those which he is now raising, the United States District Court for the District of Connecticut observed that Mr. Johl

"has had years in court. Despite the essentially simple legal principles involved, it appears that, as of this date, he has initiated five separate cases in Connecticut Superior Court, one appeal to the Connecticut Supreme Court, two actions in Federal District Court, two appeals to the Second Circuit Court of Appeals, and one petition for writ of certiorari to the United States Supreme Court. He has filed dozens of affidavits, proposed orders, pleadings, motions and memoranda. He has appeared before this Court for oral argument, including the argument delivered in opposition to the motion now before the Court, on no fewer than six occasions. This litigation has arisen, in its entirety, from the condemnation of August 5, 1975. Whatever the plaintiff lacks in legal sophistication has been more than balanced by his industry."

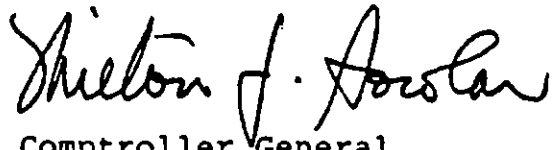
B-215591

Johl v. Johl et al., 556 F. Supp. 5, n. 11
 (D. Conn. 1981), aff'd. 697 F.2d 291 (2d
 Cir. 1982), cert. den. 103 S. Ct. 1224
 (1983), reh. den. 103 S. Ct. 1807 (1983).

We further understand that the United States Court of Appeals for the Second Circuit, by order dated July 14, 1982, has permanently enjoined Mr. Johl from instituting any actions in any court of the United States relating to or arising from the eminent domain action and subsequent proceedings in the State of Connecticut without leave of the Court. Johl v. Johl, Civ. No. 81-7237 (2d Cir. July 14, 1982).

In summary, Mr. Johl has not stated any claim cognizable by our Office. We trust the foregoing will be useful to you.

Sincerely yours,

for 
 Comptroller General
 of the United States

GENERAL ACCOUNTING OFFICE

Jurisdiction

Private property

Taking for Government use

Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970

REAL PROPERTY

Acquisition

Condemnation proceedings

Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970