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Constitutional Law--Extension of State Action

Eugene S. Bayer

Recent Decisions

CONSTITUTIONAL LAW — EXTENSION OF STATE ACTION

Smith v. Holiday Inns of America, Inc.
220 F. Supp. 1 (M.D. Tenn. 1963)

In *Smith v. Holiday Inns of America, Inc.*,[1] plaintiff, a Negro, instituted a class action for declaratory relief to restrain a motel owner and its resident manager from continuing a policy of discrimination against Negroes. The land upon which the motel was erected had been purchased with private funds from the Nashville Housing Authority, a public body.[2] Furthermore, restrictive covenants were incorporated in the deed to insure future conformity with an urban redevelopment plan.[3]

The issue before the federal court was whether the private owner's acts of discrimination could be considered illegal state action under the fourteenth amendment. The court held that the state was sufficiently involved in the conduct of the private motel owner to bring the case within the constitutional provision of the fourteenth amendment which prohibits state action denying equal protection of the laws to any person.[4] "State action" was found in the pervasive forms of governmental participation in the urban redevelopment project and continuing governmental controls over the use of the property.

Defendant contended that the land was purchased at arm's length from the state for its full market value. It was argued that the building was erected with private funds, at no cost to the public, and that the owner paid normal ad valorem and other taxes. While admitting a policy of racial discrimination, defendant denied that this took place under color of state law[5] or that it constituted in any way an arm or instrumentality of the State of Tennessee.[6] The motel owner claimed immunity from the provisions of the fourteenth amendment on the ground that the acts complained of were of the purely private type repeatedly held to be outside the purview of the federal constitution since the decision in the *Civil Rights Cases*.[7]

1. 220 F. Supp. 1 (M.D. Tenn. 1963).

2. TENN. CODE ANN. §§ 13-801 to 13-1007 (1955).

3. Article V, Restrictive Covenants, Capitol Hill Redevelopment Project, Nashville, Tennessee (1958), Smith v. Holiday Inns of America, Inc., 220 F. Supp. 1, 6 (M.D. Tenn. 1963).

4. U. S. CONST. amend. XIV, § 2.

5. As required by 28 U.S.C. § 1343(3) (1959) and 42 U.S.C. § 1983 (1959).

6. This condition precedent was established by Justice Bradley in the *Civil Rights Cases:* "It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment." Civil Rights Cases, 109 U.S. 3, 11 (1883). For a summary of what the Court has considered to be state action, see ANTIEAU, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 143 (1960).

7. 109 U.S. 3 (1883). No matter how far the concept of state action has been extended,

The court rejected these arguments and found "far reaching and significant" state participation.[8] This conclusion was based on the rationale of the Supreme Court in *Burton v. Wilmington Parking Authority.*[9] In *Burton,* the Court reiterated that the equal protection clause erects no shield against merely private conduct.[10] Yet it struck down racial discrimination in a privately-owned restaurant after finding significant involvement of the state in the leasing of space from a public body.[11]

Lower courts promptly applied the test used in the *Burton* case. Discrimination has been held unconstitutional when it occurred in a restaurant operating under a lease from a city.[12] Where a sale of land was involved, discrimination at a privately-owned golf course was held susceptible to the fourteenth amendment because the title to the land contained a clause under which it might revert to the city, a prior owner.[13]

Prior to the *Burton* case, courts had repeatedly rejected claims that state regulation or control made discrimination in public accommodations a form of state action. The instant opinion refers to two decisions in this area as being overruled by the *Burton* decision.[14] First, in *Barnes v. City of Gadsden,*[15] a restrictive covenant passed to a private owner from a city housing authority (as in *Smith*) and actually was *directed* against racial discrimination. The Court of Appeals for the Fifth Circuit affirmed a decision by a lower court which could not find state action in subsequent discrimination by private owners. Second, in *Dorsey v. Stuyvesant Town,*[16] land for a housing project had been cleared by New York City under its power of eminent domain and tax exemptions had been granted to the private owners. On appeal, the lower court's decision that the actions of the private owners were immune to the constitutional prohibition was upheld.

The development of the cases applying the fourteenth amendment and interpreting what constitutes "state action" seem to indicate a virtual

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no decision has failed to reiterate that more than "purely private" acts must be asserted and proved if the fourteenth amendment is to be invoked. See, *e.g.,* Shelley v. Kramer, 334 U.S. 1 (1947) (judicial enforcement of a restrictive covenant held unconstitutional). The opinion in *Shelley v. Kramer* is most often quoted to show that "the fourteenth amendment erects no shield against merely private conduct, however discriminatory or wrongful." Shelley v. Kramer, *id* at 13.

8. Smith v. Holiday Inns of America, Inc., 220 F. Supp. 1, 8 (M.D. Tenn. 1963).

9. 365 U.S. 715 (1961).

10. *Id.* at 721-22.

11. *Ibid.*

12. Turner v. City of Memphis, 369 U.S. 350 (1962).

13. Hampton v. City of Jacksonville, 304 F.2d 320 (5th Cir.), *cert. denied,* 371 U.S. 911 (1962).

14. Smith v. Holiday Inns of America, Inc., 220 F. Supp. 1 (M.D. Tenn. 1963).

15. 174 F. Supp. 64 (N.D. Ala. 1958), *aff'd,* 268 F.2d 593 (5th Cir. 1959), *cert. denied,* 361 U.S. 915 (1960).

16. 299 N.Y. 512, 87 N.E.2d 541, *cert. denied,* 339 U.S. 981 (1950).