Miller v. Schoene

276 U.S. 272 (1928)

MR. JUSTICE STONE delivered the opinion of the Court.

Acting under the Cedar Rust Act of Virginia [§§ 885-93 of Va.Code (1924)], the State Entomologist, ordered [private landowners] to cut down a large number of ornamental red cedar trees growing on their property as a means of preventing the communication of a rust or plant disease with which they were infected to the apple orchards in the vicinity. The [landowners] appealed from the order to the Circuit Court of Shenandoah County which, after a hearing and a consideration of evidence, affirmed the order and allowed to [landowners] $100 to cover the expense of removal of the cedars. Neither the judgment of the court nor the statute as interpreted allows compensation for the value of the standing cedars or the decrease in the market value of the realty caused by their destruction, whether considered as ornamental trees or otherwise. *** [The landowners] challenged the constitutionality of the statute under the due process clause of the Fourteenth Amendment….

The Virginia statute presents a comprehensive scheme for the condemnation and destruction of red cedar trees infected by cedar rust. By § 1, it is declared to be unlawful for any person to "own, plant or keep alive and standing" on his premises any red cedar tree which is or may be the source or "host plant" of the communicable plant disease known as cedar rust, and any such tree growing within a certain radius of any apple orchard is declared to be a public nuisance, subject to destruction. Section 2 makes it the duty of the State Entomologist, "upon the request in writing of ten or more reputable freeholders of any county or magisterial district, to make a preliminary investigation of the locality . . . to ascertain if any cedar tree or trees . . . are the source of, harbor, or constitute the host plant for the said disease . . . and constitute a menace to the health of any apple orchard in said locality, and that said cedar tree or trees exist within a radius of two miles of any apple orchard in said locality."

If affirmative findings are so made, he is required to direct the owner in writing to destroy the trees … [and] Section 5 authorizes the State Entomologist to destroy the trees if the owner, after being notified, fails to do so. ***

[C]edar rust is an infectious plant disease in the form of a fungoid organism which is destructive of the fruit and foliage of the apple, but without effect on the value of the cedar. *** It is communicated by spores from one to the other over a radius of at least two miles. *** The only practicable method of controlling the disease and protecting apple trees from its ravages is the destruction of all red cedar trees subject to the infection located within two miles of apple orchards.

The red cedar, aside from its ornamental use, has occasional use and value as lumber. It is indigenous to Virginia, is not cultivated or dealt in commercially on any substantial scale, and its value throughout the state is shown to be small as compared with that of the apple orchards of the state. Apple growing is one of the principal agricultural pursuits in

Virginia. The apple is used there and exported in large quantities. Many millions of dollars are invested in the orchards, which furnish employment for a large portion of the population, and have induced the development of attendant railroad and cold storage facilities.

[T]he state was under the necessity of making a choice between the preservation of one class of property and that of the other wherever both existed in dangerous proximity. It would have been nonetheless a choice if, instead of enacting the present statute, the state, by doing nothing, had permitted serious injury to the apple orchards within its borders to go on unchecked. When forced to such a choice, the state does not exceed its constitutional powers by deciding upon the destruction of one class of property in order to save another which, in the judgment of the legislature, is of greater value to the public.

It will not do to say that the case is merely one of a conflict of two private interests, and that the misfortune of apple growers may not be shifted to cedar owners by ordering the destruction of their property; for it is obvious that there may be, and that here there is, a preponderant public concern in the preservation of the one interest over the other. [citations omitted.] And, where the public interest is involved, preferment of that interest over the property interest of the individual, to the extent even of its destruction, is one of the distinguishing characteristics of every exercise of the police power which affects property. *Mugler v. Kansas*, 123 U. S. 623; *Hadacheck v. Los Angeles*, 239 U. S. 394; *Village of Euclid v. Ambler Realty Co.*, 272 U. S. 365; *Northwestern Fertilizer Co. v. Hyde Park*, 97 U. S. 659; *Northwestern Laundry v. Des Moines*, 239 U. S. 486; *Lawton v. Steele*, 152 U. S. 133; *Sligh v. Kirkwood*, 237 U. S. 52; *Reinman v. Little Rock*, 237 U. S. 171.

We need not weigh with nicety the question whether the infected cedars constitute a nuisance according to the common law, or whether they may be so declared by statute. *See Hadacheck v. Los Angeles, supra*, 239 U. S. 411. For where, as here, the choice is unavoidable, we cannot say that its exercise, controlled by considerations of social policy which are not unreasonable, involves any denial of due process. The injury to property here is no more serious, nor the public interest less, than in *Hadacheck v. Los Angeles, supra, Northwestern Laundry v. Des Moines, supra, Reinman v. Little Rock, supra,* or *Sligh v. Kirkwood, supra.*

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Affirmed.