

No. 26601 - Mingo County Redevelopment Authority v. James Green, Sr., single; James Green, Jr., single; Sidney Green, single; Alvin Green, single; Harvey Green, single; Connie Green, single; and Patricia Green, single, Glen B. Gainer, III, Auditor and Commissioner of Delinquent and Non-Entered Lands for the State of West Virginia, AND Stephen C. Sluss, Deputy Commissioner of Delinquent and Non-Entered Lands for Mingo County, v. Maggie Harmon; Matewan Bank; Sheriff of Mingo County, West Virginia; State of West Virginia; and unknown heirs

FILED

July 14, 2000

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

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Maynard, Chief Justice, dissenting:

I dissent because I believe the circuit court was correct in voiding the deed granted by the Auditor and granting ownership of the property to the Redevelopment Authority.

The majority bases its decision on the fact that the Auditor complied with the notice requirements of W.Va. Code § 11A-3-1, *et seq.*, but disregards the fact that the Redevelopment Authority properly exercised its authority¹ to acquire the property by eminent domain. The record shows that the Redevelopment Authority filed a condemnation proceeding against the property on November 20, 1995 and named the State of West Virginia in the complaint in an effort to discover any claim the State might have had on the property. On September 15, 1997, the circuit court entered an order approving the payment of \$10,500 into court by the Redevelopment Authority and granting the Redevelopment Authority immediate possession of the property.

¹The Redevelopment Authority's power to act is found in W.Va. Code § 16-18-8 (1951).

The Redevelopment Authority was not required to pay the accumulated taxes to the Auditor. “The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes of the municipality, the county, the State or any political subdivision thereof[.]” W.Va. Code § 16-18-15(b) (1951). Also, no execution or other judicial process shall issue against an authority’s property. W.Va. Code § 16-18-15(a). Therefore, after the Redevelopment Authority acquired the property in September 1997, the property was exempt from taxation, subjection to a tax sale, or other judicial process. Although the tax sale of the property occurred in April 1997, the deputy commissioner was required, at that point, to submit a report to the Auditor who then approves the sale unless he finds a sale not to be “in the best interest of the state,” in which case he will disapprove of the sale. W.Va. Code § 11A-3-51 (1995). This tax sale process did not terminate until the deputy commissioner conveyed the property to Maggie Harmon on October 1, 1997. However, at that point, the Redevelopment Authority had acquired ownership of the property. As a result, the deputy commissioner lacked the authority to convey the property to another party.

For this reason, the circuit court was correct to grant ownership of the property to the Redevelopment Authority. Accordingly, I dissent.