

HOPEWELL SCHOOL DISTRICT No. 28 v. BUSH.

Opinion delivered April 1, 1929.

EMINENT DOMAIN—SCHOOL PURPOSES.—A school district condemning lands for a school building site, under Acts 1927, c. 82, acquires the fee; the words “for school purposes” not being a limitation upon the interest or estate taken, but upon the right to exercise the power of eminent domain.

Appeal from Lawrence Circuit Court, Eastern District; *S. M. Bone*, Judge; reversed.

*E. H. Tharp*, for appellant.

*Cunningham & Cunningham*, for appellee.

KIRBY, J. The sole question presented for determination by this appeal is whether a school district, in exercising the right of eminent domain, condemning lands for school purposes, acquires the entire interest, the fee, in the lands condemned, or only the right to its exclusive use for such purposes so long as it may be so used.

Act 82 of the Acts of the 1927 Legislature authorizes the exercise of the power of eminent domain by the school districts in the State, and provides the procedure therefor. In *School District of Ogden v. Smith*, 113 Ark. 530, 168 S. W. 1089, this court, construing a like provision in an act of the Legislature of 1913 for the condemnation of lands for school purposes, held the power conferred was similar to the power of eminent domain conferred upon railroad corporations.

In *Rinke v. Union Special School District*, 174 Ark. 59, 294 S. W. 910, a case wherein land was condemned for a site for a school building and grounds, the court held the rule for the measure of the owner's compensation for the land condemned was as declared in *Fort Smith & Van Buren District v. Scott*, 103 Ark. 405, 147 S. W. 440, "the market value thereof at the time of the taking, for all purposes, comprehending its availability for any use to which it is plainly adapted, as well as the most valuable purpose for which it can be used and will bring most in the market."

The interest in the property to be taken or condemned in this proceeding was expressly stated to be the fee, and no lesser estate would be sufficient to satisfy the purpose of the taking—a site for the school building—and the price to be paid or the compensation for the land condemned was the full market value thereof for all purposes, and the court erred in not making an order condemning the said land for school purposes and vesting the title thereto, the entire interest, the fee, in the school district, in accordance with the statute. See 15 Cyc. 1020, and 20 C. J. 1223, § 583.

The words "for school purposes" in the statute are not a limitation upon the interest or estate taken in the lands condemned, but upon the right to exercise the power of eminent domain.

For the error designated the judgment is reversed, and the cause remanded with directions to enter a judgment vesting the entire interest and fee in the lands condemned in the school district.

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