

SUPREME COURT OF NEW JERSEY

Trinity Cemetery Ass'n v. Township of Wall

170 N.J. 39 (2001) · Decided November 8, 2001

OPINION

PER CURIAM.

PER CURIAM. This appeal presents two principal issues for resolution. The first is whether a municipality is preempted by the New Jersey Cemetery Act, N.J.S.A. 8A:1-1 to 12-6 (Cemetery Act), from adopting an ordinance rezoning property from cemetery to residential use after the New Jersey Cemetery Board has issued a certificate of authority permitting the property to be used for cemetery purposes subject only to the recording of the deed, which occurred after the municipal ordinance was introduced but *41prior to its adoption.

The second issue is whether the allegations of deception asserted by the municipality, if established at a plenary trial, would constitute a basis for invalidating the municipality's initial action by ordinance that rezoned the property for cemetery use.

The Appellate Division held that the Cemetery Act preempted the municipality's attempt to rezone the property back to residential use. That court did not address the deception issue. The Appellate Division summarized the facts that are pertinent to our disposition: Plaintiff, Trinity Cemetery Association, Inc. ("Trinity"), commenced an action in lieu of prerogative writs challenging the enactment of a zoning ordinance by defendant, the Township of Wall ("Township"), rezoning Trinity's property from cemetery use to residential use.

On July 18, 1997, Trinity moved for summary judgment. Following oral argument, the motion judge granted summary judgment on the ground that once Trinity's property was dedicated "for cemetery purposes," N.J.S.A. 8A:6-7, the New Jersey Cemetery Act, N.J.S.A. 8A:1-1 to — 12-6, preempted the Township's zoning ordinance.

We affirm. Trinity owns property located in the Township consisting of six and one-half acres of vacant, undeveloped land. Prior to November 1995, the land was zoned as residential. In 1995, Trinity's predecessor in title sought to have the Township rezone the property for cemetery purposes.

In connection with efforts to rezone the property, the prior owner submitted a proposal to the Township showing a pastoral, park-like cemetery setting with sprawling green, no headstones and a stone walkway encircling the property.

On November 5, 1995, the Township adopted Ordinance 25 1995, creating a cemetery zone that included the Trinity property. The zone permitted mausoleums as an accessory use. Subsequently, on July 17, 1996, the Township adopted a resolution pursuant to N.J.S.A. 8A:6-5, consenting to the establishment of a cemetery on Trinity's property.

The resolution was "contingent upon any other approvals necessary from the State of New Jersey and local approving agencies." Following the adoption of the Township resolution, on December 5, 1996, the New Jersey Cemetery Board ("Cemetery Board") issued a certificate of authority to Trinity to operate as a cemetery. See N.J.S.A. 8A:3-2.

The Cemetery Board notified Trinity that the certificate of authority would "be in full effect" once Trinity acquired title to the property and "a deed [was] appropriately filed." Although Trinity acquired title on January 15, 1997, the deed was not recorded until April 28, 1997.

In the interim, on February 20, 1997, Trinity submitted a site plan application to the Township planning board for its cemetery property. The plan included mausoleums, with the property surrounded by a stone wall. When the Township governing body learned of Trinity's site plan application, it introduced Ordinance *4210-1997 to rezone Trinity's property from cemetery use to residential use.

The Township took this action because it believed that it had been deceived by Trinity's predecessor in title by the proposal of a pastoral cemetery development without mausoleums. Following its introduction on April 23, 1997, the Ordinance was forwarded to the Township planning board for review and recommendation as required by N.J.S.A. 40:55D-64.

On May 5, 1997, the Township planning board recommended the approval of Ordinance 10-1997, and the Township adopted the ordinance on May 14, 1997. Trinity never received approval of its site plan application. Trinity subsequently commenced this action challenging the adoption of Ordinance 10-1997. It then moved for summary judgment, arguing that the Cemetery Act preempted the Township's enactment of Ordinance 10-1997.

[Id. at 295, 739 A.2d 409.] We are in agreement with the Appellate Division's conclusion that the Township was preempted by the Cemetery Act from adopting an ordinance rezoning the property to residential use after the Cemetery Board issued a certificate of authority, the deed to the property having been recorded before the Township's ordinance was finally adopted.

The court observed: The Cemetery Board issued a certificate of authority to Trinity with the condition that it acquire property and "file the deed." Trinity complied with that condition on April 28, 1997. Because these events occurred before the enactment of Ordinance 10-1997, the Township was preempted from rezoning Trinity's land. [Id. at 298, 739 A.2d 409.]

Nevertheless, we are compelled to reverse the judgment of the Appellate Division and remand the matter to the Law Division for trial. Our view of the record persuades us that the allegations of deception asserted by Wall Township, if proved, would require a court to invalidate the original ordinance that initially rezoned the property in question from residential to cemetery use.

The Township's affidavits allege that the original plan consisted of a "pastoral, park-like setting, with sprawling greens, no headstones, and a stone walkway encircling the property." The revised site plan was "drastically different" and no longer depicted a pastoral setting with in-ground graves. "The original park-like setting was instead replaced with large mausoleum structures and showed the entire property being surrounded by a massive stone wall...." As the Appellate Division observed *43 in *Zoning Bd. of Adjustment of Green Brook v. Datchko*, 142 N.J. Super.

501, 508, 362 A.2d 55 (1976): If, as here, a municipal authority has been induced to grant relief in connection therewith by fraud, it need not stand idly by. It or the municipal governing body may institute an action, such as that in the present case, to rescind the relief so granted and to enjoin what is actually a violation of the zoning ordinance and plan.

[Ibid.] Accord *Stafford v. Stafford Tp. Zoning Bd.*, 154 N.J. 62, 77-78, 711 A.2d 282 (1998). As noted, the original Township ordinance permitted mausoleums only as an accessory use. The record informs us that that ordinance also imposed lot coverage and height limitations, the validity of which are uncontested.

The cemetery operator asserts that its revised plan complies with those limitations. Accordingly, we need not and do not address any questions relating to the Township's authority to include in the 1995 ordinance provisions regulating the construction of mausoleums on property dedicated to cemetery use.

Because the authority of the Township to enact the 1995 Ordinance is not an issue that requires resolution in this appeal, the land coverage and height limitations set forth in that ordinance will govern the construction of mausoleums on the cemetery property in the event that the Township does not prevail in the remand proceeding on the deception issue. Reversed and remanded.