

Moran v. Randolph Twp.

Cite as 6 *N.J.A.R.* 58

---

**ANNA MORAN,**  
Petitioner,  
v.  
**RANDOLPH TOWNSHIP,**  
Respondent.

Decided July 23, 1980

**Initial Decision****SYNOPSIS**

Having vacated her rental premises in response to a notice of a zoning ordinance violation, the petitioner sought relocation assistance from Randolph Township under *N.J.S.A.* 52:13B-1, *et seq.* and *N.J.S.A.* 20:4-1, *et seq.* That assistance was denied and petitioner appealed.

The administrative law judge assigned to the case found that while the rented premises were in a zoning district designated as a resort district and limited in occupancy to the period between May and September 30, petitioner had entered into two successive leases for the premises and had lived there for 2 years. After three notices to the landlord that petitioner's continued occupation of the premises violated the local zoning ordinance, the landlord gave petitioner notice to vacate, which she did. The judge determined, however, that until she vacated her home petitioner was both a domiciliary of the premises and a lawful occupant within the meaning of *N.J.A.C.* 5:11-1.2.

Accordingly, the judge concluded that petitioner was entitled to relocation assistance.

---

**Gerald R. Brenna, Esq.,** for petitioner

**Edward J. Buzak, Esq.,** for respondent (Villoresi & Buzak, attorneys)

---

**OSPENSON, ALJ:**

Having vacated her rental premises at 4 Schuman Road, Randolph Township on November 1, 1979, in response to notice of a zoning ordinance violation, Anna Moran, petitioner, sought relocation assistance from the Township under rights granted by New Jersey's

---

Moran v. Randolph Twp.  
Cite as 6 *N.J.A.R.* 58

---

Relocation Assistance laws, *N.J.S.A.* 52:13B-1 *et seq.*, and *N.J.S.A.* 20:4-1 *et seq.* Assistance was denied. On February 22, 1980, she appealed the denial to the Commissioner of the Department of Community Affairs under *N.J.S.A.* 52:31B-8, *N.J.S.A.* 20:4-19 and *N.J.A.C.* 5:11-9.2 On March 12, 1980, the matter was transmitted by the Commissioner to the Office of Administrative Law for hearing and determination as a contested case, pursuant to *N.J.S.A.* 52:14B-9,10.

### EVIDENCE AT HEARING

Evidence in the cause is not in dispute. Anna Moran entered into a written lease with her landlord, Richard Michaluk, for the residence at 4 Schuman Road for a one-year term beginning December 1, 1977, for a total rental of \$229 a month. Of the total rent, \$176 was paid by the Housing Authority of Morris County (HACM) as housing assistance payments on petitioner's behalf; \$53 was payable by her. The landlord provided all utilities. The lease was extended for a second year by the parties.

Near the end of the second year of the term, petitioner was given notice by the landlord to vacate the premises because of a notice given him by the township building inspector that "all summer bungalow occupancies must be vacated by October 1, 1979." The premises are in an RT Resort District defined in the local zoning ordinance. It restricts occupancy of bungalow colonies to the five-month period from May 1 to September 30 and renders "each day of illegal occupancy . . . between October 1st and April 30 . . . punishable as a separate violation (of the ordinance)." In response to the landlord's notice, petitioner vacated the premises on November 1, 1979, and has since relocated elsewhere in the township. Her claims for relocation assistance are stipulated by the parties, under *N.J.A.C.* 5:11-3.5, at reasonable moving expenses of \$250 and a fixed dislocation allowance of \$200, for a total of \$450.

From the stipulations, it appears the township building inspector gave earlier notice to the landlord in December 1978 of illegal occupancy at the premises. Though the landlord (but not petitioner) was cautioned to abate the violation within 10 days or suffer the risk of summons and complaint, presumably in municipal court for a zoning ordinance violation, no further enforcement action ensued that year. Petitioner's occupancy, therefore, continued uninterrupted through the proscribed heating seasons of two winters, 1977-78 and 1978-79.

---

Moran v. Randolph Twp.

Cite as 6 *N.J.A.R.* 58

---

Indeed, she testified the premises were in all respects her sole residential domicile, where she received her mail and whence she sent her daughter, eleven years old, to a local Randolph Township grammar school. The premises were winterized. Neither before she occupied the premises nor until September 1979, she said, had the landlord or the municipality ever directly told her of the seasonal limitations of the zone.

#### DISCUSSION

The Relocation Assistance Law of 1967 (*N.J.S.A.* 52:31B-1 *et seq.*) provided for relocation assistance to persons displaced by a requirement to vacate real property, or tenancies therein, pursuant to any lawful order or notice of any state agency or unit of local government on account of a program for the voluntary rehabilitation of dwelling units, or on account of a program of law enforcement *N.J.S.A.* 52:31B-3(c), 4(a). (It should be noted parenthetically that departmental regulations under the 1967 act have long defined "law enforcement" as inclusive of zoning code enforcement and been applied accordingly. *See, Lunsford v. Township of Neptune*, a 1972 decision of the Commissioner of the Department of Community Affairs, in which petitioner was allowed relocation benefits after being displaced by order of zoning authorities for having stayed in a motel longer than 60 days, contrary to zoning ordinance. An administrative agency's contemporaneous and long-standing construction of an act it is charged with enforcing is entitled to great weight and may be properly considered as expressive of legislative purpose. *See, Application of Borough of Saddle River*, 71 *N.J.* 14, 24 (1978); *Snedeker v. Bd. Review, Div. Empl. Security*, 139 *N.J. Super.* 394, 402 (App. Div. 1976)).

The Relocation Assistance Act of 1971 (*N.J.S.A.* 20:4-1 *et seq.*), was enacted to comply with federal funding assistance standards for local programs causing displacement of persons. The act as its purpose the establishment of uniform policies for the fair and equitable treatment of persons displaced by state and local property acquisition programs, by building code enforcement and by voluntary rehabilitation of buildings, pursuant to governmental supervision, *N.J.S.A.* 20:4-2. Specifically, any person who moves from his dwelling as the direct result of *code enforcement activities*, is a displaced person pursuant to *N.J.S.A.* 20:4-14; *see, Marini v. Bor. Woodstown*, 146 *N.J. Super.* 235, 240-42 (App. Div. 1976). Administration and rule-making powers under both acts are committed to the Commissioner of the

---

Moran v. Randolph Twp.  
Cite as 6 *N.J.A.R.* 58

---

Department of Community Affairs *N.J.S.A.* 52:31B-10; *N.J.S.A.* 20:4-10,11. Among rules so promulgated by the Commissioner in furtherance thereof are the following:

*N.J.A.C.* 5:11-1.2 reads in part:

‘Displaced’ means required to vacate any real property lawfully occupied pursuant to any lawful order or notice of any displacing agency on account of a program of acquisition, code enforcement proceedings or voluntary rehabilitation of buildings.”

*N.J.A.C.* 5:11-1.2: ‘Displacing agency’ means any State Agency, unit of local government or publicly funded entity . . .

‘Unit of local government’ means any political subdivision of this state, . . . and any department, division, office, agency or bureau thereof . . .

‘Dwelling’ means the house, apartment or other residential unit that is the permanent place of lawful residence of a person or family and to which such person or family whenever absent has the intention of returning

‘Family’ means two or more individuals, regardless of blood or legal ties, who live together as a family unit

*N.J.A.C.* 5:11-2.1(a): ‘ELIGIBILITY.’ Building, housing, health and zoning code enforcement.

Whenever a . . . unit of local government undertakes a program of building code enforcement, housing code enforcement, health code enforcement or zoning code enforcement that causes the displacement of people, businesses or farm operations the said . . . unit of local government shall provide relocation payments and assistance to all lawful occupants who are displaced. . . . The date of eligibility shall be the date occupants received formal written notice to vacate from the . . . unit of local government

*N.J.A.C.* 5:11-3.2(a): ‘Rental assistance payments’

An individual who lawfully occupies a rental dwelling for a period of not less than 90 days prior to eligibility date as specified and who vacates the rental dwelling after notice to vacate and as a direct result of the cause of the displacement and rents and occupies decent, safe and sanitary replacement housing shall be eligible for a rental assistance payment in the amount not to exceed \$4,000

*N.J.A.C.* 5:11-3.5: ‘Moving expenses; residential’

An eligible individual who is displaced from a dwelling unit and moves his personal property therefrom shall receive either the

---

Moran v. Randolph Twp.

Cite as 6 *N.J.A.R.* 58

---

actual reasonable moving expenses incurred, or a fixed payment, based on the number of rooms in the unit, not to exceed \$300 and a \$200 dislocation allowance *N.J.A.C.* 5:11-3.5.

At issue here is whether petitioner's displacement from residential tenancy in a zoning district limited by ordinance to 5 month seasonal occupancies is nevertheless a displacement by zoning code enforcement entitling her to assistance under the relocation laws. The municipality argues it is not. Firstly, because petitioner's displacement was not the result of code enforcement activities because the tenancy became "void" by operation of law at the end of the 5 month season; and secondly, because thereafter, any continued occupancy was unlawful, thus contrary to the terms of *N.J.A.C.* 5:11-1.2 which requires lawful occupancy in a "lawful" residence.

Was petitioner's occupation after October 1st lawful? It seems clear that, except for Randolph Township, as against her landlord and the rest of the world it was. She was there by right under lease and was neither trespasser nor squatter. *Cf.*, *State v. Yaccarino*, 3 *N.J.* 291, 294-5 (1949) (in a criminal prosecution for violation of a zoning ordinance, it appeared defendant was neither owner nor lessee of the premises but apparently occupied them through sufferance). As between landlord and tenant, certainly, tenancy under the lease did not *automatically* end and was not ended until surrender of the premises. The question is whether other uses permitted under the lease survived prohibition of one of the beneficial uses of the property. *See, Proprietors Realty Co. v. Wohltmann*, 95 *N.J.L.* 303, 304-7 (Sup. Ct. 1921) (in a lease of business premises as a "cafe," enactment of a national prohibition law, the Volstead Act, did not *nullify* the lease since other beneficial uses survived; such an enactment nevertheless may constitute a defense in an action by lessor against lessee for the rent). The lessee's broad right of possession under a lease of residential property encompasses the right of habitation and all other beneficial perquisites of leasehold, including exclusivity of possession as against lessor and the world during the term of the demise. In Randolph Township, such other beneficial perquisites include one may suppose, all remaining permitted and accessory uses of the R-2 zoning district.

If petitioner's fundamental right of possession under the lease until October 1 was legal, and if the right of possession survived October 1 subject only to enforcement of a zoning prohibition against occupancy for 7 months, it follows that she was displaced and required to vacate occupation of her dwelling, within the meaning of law and regulation, when notice to vacate short of the term was served upon her.

---

Moran v. Randolph Twp.  
Cite as 6 *N.J.A.R.* 58

---

What is the construction of the rule's definition of "dwelling" in *N.J.A.C.* 5:11-1.2? When a regulation is legislative in character, rules of interpretation applicable to statutes should be used in determining its meaning *Sutherland, Statutory Construction*, § 31.06. If the intent is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases under the doctrine of *noscitur a sociis* as an intrinsic aid. *Sutherland, supra*, § 47.16. "Dwelling," under *N.J.A.C.* 5:11-1.2, is the house or residential unit that is the "permanent place of principal *lawful residence* of a person or family and to which such person or family whenever absent has the intention of returning." Reading the phrase "lawful residence" in association with the rule's other qualifying words suggests the rule merely describes "domicile" in its classical sense: that is, the phrase "legal residence" is there used, as it often is elsewhere, as the equivalent of domicile. *See, e.g., Lyon v. Glaser*, 60 *N.J.* 259, 263-65 (1972); *In re Estate of Gillmore*, 101 *N.J. Super.* 77, 84-5 (App. Div. 1968), certif. den., 52 *N.J.* 175 (1968). Every person, it is said, has a domicile at all times, and no person has more than one domicile at any one time. A domicile once established continues until it is superseded by a new one *Gillmore, supra*, at 87. Domicile is very much a matter of the mind—of intention. One may have many residences but only one domicile. *Lyon, supra*, at 264. Thus, if "lawful residence" in *N.J.A.C.* 5:11-1.2 imports the concept of domicile, it follows it does *not* connote or imply *use* lawfulness under zoning law restrictions. And as a corollary, it follows that residential occupancy violative of use or bulk provisions of a zoning ordinance does not *per se* disqualify a dislocatee from relocation benefits. Any narrower construction, such as that which the municipality here urges, creates the anomaly that one must first be free of zoning violation in order to be in a position to be displaced, and therefore, relocatable, by zoning code enforcement, which in the circumstances, of course, is then unnecessary. Such a bizarre construction of the rule cannot be attributed to the rule maker. *Cf., Hyland v. Kehayas*, 157 *N.J. Super.* 258, 262 (App. Div. 1978); and see *Sutherland, Statutory Construction*, § 45.12 (reasonableness of result is a golden rule of statutory construction where alternatives produce both reasonable and unreasonable results).

Municipal remedies for enforcement of zoning code violations are clear under the Municipal Land Use Law. *N.J.S.A.* 40:55D-18. They include ordinance enforcement in Municipal Court and resort to equitable civil proceedings in Superior Court to abate or to prevent illegal occupancy or use. Correspondingly, local zoning boards of

---

Moran v. Randolph Twp.

Cite as 6 *N.J.A.R.* 58

---

adjustment may grant variances from the strict application of the zoning regulations *N.J.S.A.* 40:55D-70. But the illegality must be enforced, or permitted by variance, and until such is the case the illegality in its presumptive state is not such as here should be used to disentitle petitioner to relocation benefits. The Randolph Township bungalow colony ordinance is not self-executing, nor did it have the effect of making petitioner a residential outlaw at midnight on September 30, 1979. She remained, as is clear from the evidence, a bona fide Randolph Township domiciliary, as she had been for almost two years, with no other legal residence, with the intention of maintaining her permanent home there, with her daughter emplaced in the local school district, until, as I find, she was displaced by official zoning code enforcement activity within the meaning of the relocation laws.

#### CONCLUSION

Based on the foregoing, I hereby **FIND** and **DECLARE** as follows:

1. The above discussion, to the extent of any mediate conclusions of fact, is adopted herein.
2. Anna Moran, petitioner herein, rented residential premises by written lease at 4 Schuman Road, Randolph Township, for a term of one year, beginning December 1, 1977 until November 30, 1978.
3. The lease was extended for a second year from December 1, 1978 to November 30, 1979.
4. Petitioner and her infant daughter occupied the premises for two years from December 1, 1977 until November 1, 1979 as their domicile.
5. The premises are in a zoning district that is designated a resort district and is limited to occupancy between May 1 and September 30. Each day of illegal occupancy between October 1 and April 30 next is punishable as a separate violation of the zoning ordinance.
6. In December 1978, the municipal zoning officer gave notice to the landlord that occupancy of the premises was illegal under the zoning ordinance and subject to court sanction. No further action was taken at the time.
7. In July 1979, another such notice was given the landlord.
8. In September 1979, another such notice was given the landlord that occupancy after October 1, 1979 was subject to court sanction.

---

Moran v. Randolph Twp.  
Cite as 6 *N.J.A.R.* 58

---

9. On September 26, 1979, the landlord gave petitioner notice to vacate and quit the premises by November 1, 1979, because of the notice given him by the municipal zoning officer.
10. As a direct result of the zoning enforcement notice, petitioner on November 1, 1979, vacated and was therefore displaced from the premises within the meaning of the relocation laws.
11. Despite petitioner's occupation of the premises for 30 days after October 11, 1979, in presumptive violation of the zoning ordinance, she was nevertheless until she vacated her home both a domiciliary of the premises and by merit of her original and continuing right of possession thereof under the lease, a lawful occupant or resident thereof within the meaning of *N.J.A.C.* 5:11-1.2.

Accordingly, based on the foregoing, I hereby **CONCLUDE** that petitioner is entitled to relocation assistance for moving expenses and dislocation allowance in the stipulated sum of \$450 and **ORDER** entry of judgment in her favor in that amount.

**ADOPTED BY THE COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS AS FINAL DECISION, AUGUST 25, 1980.**