

Leonard Girard & a. v. Town of Allenstown & a.

No. 80-359

SUPREME COURT OF NEW HAMPSHIRE

121 N.H. 268; 428 A.2d 488; 1981 N.H. LEXIS 295

April 3, 1981

PRIOR HISTORY: [***1]

Appeal from Merrimack County.

DISPOSITION:

Remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff multi-unit rental property owners filed a petition seeking a declaration that an ordinance enacted by defendant town was not valid because it purported to limit rent increases.

OVERVIEW: The voters of the town enacted a "fair rental ordinance," which purported to limit the rent increase that owners of rental property could charge and to establish a fair rental value for properties. The owners commenced a declaratory judgment action seeking to determine the validity of the ordinance. They contended that the town did not have the authority to enact such an ordinance because the state legislature had not delegated to the town the power to control rents. The town answered, agreeing that the ordinance was invalid. However, various tenant-residents intervened to support the ordinance. The matter was transferred from the trial court for an answer to the issue raised and the court held that the ordinance was invalid. The court noted that there was no necessarily implied or incidental authority to regulate rents in the towns' authority to pass by-laws for the making and ordering of their prudential affairs pursuant to N.H. Rev. Stat. Ann. § 31:39 (Supp. 1979). Additionally, authority did not exist under § 49-B:8 (Supp. 1979) to allow the town to enact such an ordinance.

OUTCOME: The court answered the transferred question in the negative by holding that the town did not have the authority to enact an ordinance to control rent, and remanded the matter.

LexisNexis(R) Headnotes

Governments > Local Governments > Duties & Powers
[HN1] Towns are but subdivisions of the state and have only the powers the state grants to them.

Governments > Local Governments > Duties & Powers
[HN2] N.H. Rev. Stat. Ann. § 31:39 (Supp. 1979) delegates certain general police powers to the towns and municipalities within the state. Although the police power is broad and has been described as including such varied interests as public health, safety, morals, comfort, the protection of prosperity, and the general welfare, it is not unlimited. Under the New Hampshire Constitution, the supreme legislative power is vested in the senate and house of representatives. N.H. Const. pt. II, art. 2. The towns only have such powers as are expressly granted to them by the legislature and such as are necessarily implied or incidental thereto.

Governments > Local Governments > Duties & Powers
[HN3] Towns may make by-laws for the making and ordering of their prudential affairs. N.H. Rev. Stat. Ann. § 31:39 (Supp. 1979). The term "prudential affairs" is not intended to confer unfettered power, nor should it be used as a substitute means of granting authority when express grants of power are more desirable to attain that end. The language "to order their prudential affairs" does not constitute a separate and distinct grant of legislative authority. Rather, the language is more suggestive of merely granting those powers that are "necessary and proper" in the execution of the powers that have been specifically granted to the towns. Section 31:39 does not convey to the towns the authority to adopt and enforce a rent control ordinance.

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Governments > Local Governments > Duties & Powers

[HN4] N.H. Rev. Stat. Ann. § 49-B:8 (Supp. 1979) provides that: Any municipality may, by the adoption, amendment or repeal of ordinances or by-laws, exercise any power or function which the legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the constitution, general law or charter.

Governments > Legislation > Interpretation

[HN5] If possible a statute will be interpreted with the presumption that the legislature intended to confine its action within constitutional bounds.

Governments > Local Governments > Duties & Powers

[HN6] The expressed legislative purpose of N.H. Rev. Stat. Ann. ch. 49-B (Supp. 1969) was to implement the home rule powers granted to municipalities by N.H. Const. pt. I, art. 39. N.H. Rev. Stat. Ann. § 49-B:1 (Supp. 1979). The power granted to cities and towns under N.H. Const. pt. I, art. 39, is the power to adopt or amend their charters or forms of government. This provision of the New Hampshire Constitution in no way provides or suggests that the towns, cities or other subdivisions of the state should have the right to exercise supreme legislative authority. Accordingly, N.H. Rev. Stat. Ann. ch. 49-B (Supp. 1979) was intended only to provide a statutory framework by which the cities and towns may amend their actual form of government and that N.H. Rev. Stat. Ann. § 49-B:8 (Supp. 1979) grants only the power necessary to carry out such changes.

HEADNOTES:

1. Municipal Corporations--Police Power and Regulations

Police power delegated to towns and municipalities within State--described as including such varied interests as public health, safety, morals, comfort, protection of prosperity and general welfare--is broad but not unlimited. RSA 31:39.

2. Municipal Corporations--Powers--Granted by State

Term "prudential affairs" should not be used as substitute means of granting authority when express grants of power are more desirable to attain that end. RSA 31:39.

3. Statutes--Construction and Application--Particular Words and Phrases

Where defendant town sought to enact rent control measure and tenant intervenors asserted that "prudential affairs" clause of the general police powers statute provides sufficient legislative authorization, the language "to order their prudential affairs", when placed in its historical and proper constitutional context, did not constitute a separate and distinct grant of legislative authority but was more suggestive of merely granting those powers that are "necessary and proper" in the execution of the powers that have been specifically granted to the towns; therefore, general police powers statute did not convey to the towns authority to adopt and enforce a rent control ordinance. RSA 31:39.

4. Statutes--Construction and Application--Irrational Consequences

Where defendant town sought to enact rent control measure and tenant intervenors argued for broad and literal interpretation of State statute that delegated powers to municipalities, result of such interpretation would be total abdication and delegation of legislative authority to towns, without any guidelines, supervision or legislative review whatsoever, and would raise serious constitutional questions. RSA 49-B:8.

5. Statutes--Construction and Application--Irrational Consequences

Home rule powers provision of State Constitution in no way provides or suggests that towns, cities or other subdivisions of State should have right to exercise supreme legislative authority. N.H. Const. pt. 1, art. 39.

6. Statutes--Construction and Application--Legislative Intent

Where defendant town sought to enact rent control measure by exercise of legislative authority, it was held that State statute, which implemented home rule powers granted to municipalities by State Constitution, was intended only to provide a statutory framework by which cities and towns may amend their actual form of government and that statutory provision delegating powers to municipalities grants only the power necessary to carry out such changes. N.H. Const. pt. 1, art. 39; RSA ch. 49-B, 49-B:8.

COUNSEL:

Emile R. Bussiere, of Manchester, by brief and orally, for the plaintiffs.

Elliott Berry, New Hampshire Legal Assistance, by brief and orally, for the intervenors.

Defendant, Town of Allenstown, waived brief and oral argument.

JUDGES:

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Brock, J. All concurred.

[*269] [**489] The Superior Court (*Cann*, J.) has transferred the following question of law to this court:

OPINIONBY:

BROCK

OPINION:

"Has the Town of Allentown, through the grant of authority in RSA 49-B:8 (Supp. 1979) and/or its general police powers under RSA 31:39, been empowered by the

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[*270] General Court to lawfully enact an ordinance limiting rent increases?"

We answer the question in the negative.

On March 11, 1980, the voters of Allentown, at town meeting, enacted a "fair rental ordinance." The ordinance purports to limit the amounts by which owners of rental property can increase rents and establishes a "fair rental board" empowered "to regulate residential housing and rentals in the Town of Allentown."

On May 6, 1980, the plaintiffs, owners of multi-unit rental properties in the town, filed a petition for declaratory judgment [***2] in the superior court questioning the validity of the ordinance. Although the plaintiffs have raised several arguments in support of their position that the ordinance is not valid, their principal claim is that the town lacked the authority to enact such an ordinance because the State legislature had not expressly delegated to it the power to control rents.

On June 3, 1980, the town filed its answer to the plaintiffs' petition, indicating that it agreed that the ordinance was invalid. At the same time, however, a number of tenant-residents in the town moved to intervene. Their motion was granted, and the trial court transferred the case to this court.

Our consideration of the question transferred must begin with a recognition that "[i]t is a long established principle under our law that [HN1] towns are but subdivisions of the State and have only the powers the State grants to them." *Piper v. Meredith*, 110 N.H. 291, 295, 266 A.2d 103, 106 (1970). The intervenors, however, argue that the State has, under RSA 31:39 (Supp. 1979) and RSA 49-B:8 (Supp. 1979), delegated to the towns the power to enact ordinances such as the one at issue.

[HN2] RSA 31:39 (Supp. 1979) delegates certain general [***3] police powers to the towns and municipalities within the State. See *Beck v. Town of Raymond*, 118 N.H. 793, 800, 393 A.2d 847, 851 (1978); *Piper v. Meredith*, 110 N.H. 295, 296, 266 A.2d 103, 106 (1970). Although the police power is broad and has been described as including "such varied interests as public health, safety, morals, comfort, the protection of prosperity, and the general welfare," *Piper v. Meredith, supra* at 294, 266 A.2d at 106, it is not unlimited. *Beck v. Town of Raymond, supra* at 798, 394 A.2d at 850; *accord Appeal of Meserve*, 120 N.H. 461, 464, 417 A.2d 11, 12 (1980); *L. Grossman & Sons, Inc. v. Town of Gilford*, 118 N.H. 480, 482-83, 387 A.2d 1178, 1180 (1978). Under our State Constitution "[t]he supreme legislative power . . . [is] vested in the senate and house of representatives" N.H. Const. pt. II, art. 2. See also

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[*271] N.H. Const., pt. I, art. 29. For these reasons, we have held that the towns only have "such powers as are *expressly granted* to them by the legislature and such as are *necessarily* implied or incidental thereto." *Piper v. Meredith*, 110 N.H. 291, 295, [**490] 266 A.2d 103, 106 (1970). [***4] (Emphasis added.)

The intervenors concede that RSA 31:39 (Supp. 1979) does not expressly authorize towns to enact rent control measures, but they do assert that the "prudential affairs" clause of the statute provides sufficient legislative authorization. [HN3] "Towns may make by-laws for the . . . making and ordering [of] their prudential affairs." RSA 31:39 (Supp. 1979); see *Piper v. Meredith*, *supra* at 296, 266 A.2d at 106-07. Therefore, the question before us is whether the authority to regulate rents is "necessarily implied or incidental" to the towns' authority to pass by-laws for the "making and ordering [of] their prudential affairs."

The term "prudential affairs" is one of ancient origin. *Piper v. Meredith*, 110 N.H. 291, 296, 266 A.2d 103, 106-07 (1970); *Rich v. Errol*, 51 N.H. 350, 354 (1871) (tracing origin of the phrase to at least 1679). This court, as early as 1820, recognized that the phrase is not intended to confer unfettered power, *Sanborn v. Town of Deerfield*, 2 N.H. 251, 253 (1820), nor should it be used as a substitute means of granting authority when

express grants of power are more desirable to attain that end. See *Underhill v. Gibson*, 2 [***5] N.H. 352, 355 (1821).

"[I]t is worthy of note that the nearer we get to the time of the framers of the early statutes . . ." the more restrictive the view becomes of the powers and authority conveyed by the phrase to manage "their prudential affairs." Cf. *Rich v. Errol*, 51 N.H. 350, 355 (1871). While limited land use controls have been upheld under this general phrase, see *Beck v. Town of Raymond*, 118 N.H. 793, 798, 394 A.2d 847, 850 (1978), we are unaware of any decision of this court that would support the proposition that towns have the power to control rents or otherwise interfere with private contracts concerning the rental of property under the vague authority of "ordering their prudential affairs." When placed in its historical and proper constitutional context, we do not consider the language "to order their prudential affairs" to constitute a separate and distinct grant of legislative authority. *Piper v. Meredith*, *supra* at 302, 266 A.2d at 110 (Grimes, J., dissenting). Rather, the language is more suggestive of merely granting those powers that are "necessary and proper" in the execution of the powers that have been specifically granted to the towns. See [***6] *Rich v. Errol*, 51 N.H. 350, 354-55

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[*272] (1871). *See generally, State v. Zetterberg*, 109 N.H. 126, 129, 244 A.2d 188, 191 (1968). We therefore hold that RSA 31:39 (Supp. 1979) does not convey to the towns the authority to adopt and enforce a rent control ordinance.

We next consider whether RSA 49-B:8 (Supp. 1979) grants authority to the towns to enact such an ordinance.

[HN4] RSA 49-B:8 (Supp. 1979) provides that:

"Any municipality may, by the adoption, amendment or repeal of ordinances or by-laws, exercise any power or function which the legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the constitution, general law or charter. . . ."

The intervenors argue that, because this section of the statute states that "any municipality may . . . exercise any power . . . which the legislature has . . .", the towns have been granted the authority to adopt rent control ordinances. However, if we were to interpret RSA 49-B:8 (Supp. 1979) as broadly and literally as the intervenors request, the result would be a total abdication and dele-

gation of the legislative [***7] authority to towns, without any guidelines, supervision or legislative review whatsoever. Such an interpretation would raise serious constitutional questions. N.H. Const. pt. I, art. 29, pt. II, art. 2. *Cf. Smith Ins. Co. v. Grievance Committee*, 120 N.H. 856, 861, 424 A.2d 816, 819-20 (1980). "[HN5] If possible a statute will be interpreted with the presumption that the legislature intended to confine its action within constitutional bounds." *State v. Millette*, 112 N.H. 458, 465, 299 A.2d 150, 154 (1972); *see State v. Smagula*, 117 N.H. 663, 666, 377 A.2d 608, 610 (1977).

[**491] [HN6] The expressed legislative purpose of RSA ch. 49-B (Supp. 1969) was "to implement the home rule powers granted to municipalities by article 39, part first, of the constitution of the State of New Hampshire." RSA 49-B:1 (Supp. 1979). The power granted to cities and towns under N.H. Const. pt. I, art. 39, is the power "to adopt or amend their *charters or forms* of government . . ." (Emphasis added.) This provision of our Constitution in no way provides or suggests that the towns, cities or other subdivisions of this State should have the right to exercise supreme legislative authority. Accordingly, [***8] we hold that RSA ch. 49-B (Supp. 1979) was intended only to provide a statutory framework by which the cities and towns may amend their actual form of government and

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[*273] that RSA 49-B:8 (Supp. 1979) grants only
the power necessary to carry out such changes. We an-

swer the question transferred "no."

Remanded.