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United States District Court; S.D. New York.

UNITED STATES OF AMERICA, Plaintiff, and YONKERS BRANCH-NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al., Plaintiffs-Intervenors,
v.
YONKERS BOARD OF EDUCATION; CITY OF YONKERS; and YONKERS COMMUNITY DEVELOPMENT AGENCY, Defendants.
CITY OF YONKERS and YONKERS COMMUNITY DEVELOPMENT AGENCY, Third-Party Plaintiffs,
v.
UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, and SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Third-Party Defendants.

No. 80 CIV 6761 (LBS).
|
May 28, 1986.

Attorneys and Law Firms

UNITED STATES DEPARTMENT OF JUSTICE Civil Rights Division 10th and Pennsylvania Avenue, N.W. Washington, D.C. 20530, for plaintiff United States; JOSHUA P. BOGIN, ESQ. KENNETH BARNES, ESQ. MICHAEL L. BARRETT, ESQ. SARAH VANDERWICKEN, ESQ.

MICHAEL H. SUSSMAN, ESQ. 30 South Broadway Yonkers, New York 10701, for plaintiffs-Intervenors N.A.A.C.P.

VEDDER, PRICE, KAUFMAN, KAMMHOLZ & DAY 1 Dag Hammarskjold Plaza New York, New York 10017, for defendants City of Yonkers and Yonkers Community Development Agency; MICHAEL W. SCULNICK, ESQ. GERALD S. HARTMAN, ESQ.

BUTZEL, LONG, GUST, KLEIN & VAN ZILE 1881 First National Building Detroit, Michigan 48226, for defendant Yonkers Board of Education; JOHN B. WEAVER, ESQ. JOHN H. DUDLEY, ESQ. MARK T. NELSON, ESQ.

HALL, DICKLER, LAWLER, KENT & HOWLEY 460 Park Avenue New York, New York 10022, for defendant Yonkers Board of Education; PAUL WHITBY, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE Civil Division 10th and Pennsylvania Avenue, N.W. Washington, D.C. 10530, for Third-Party defendant Department of Housing & Urban Development; RAYMOND M. LARIZZA, ESQ. CALVIN E. DAVIS, ESQ. KIRK VICTOR, ESQ.

JOHN W. HEROLD, ESQ. Office of Litigation United States Department of Housing & Urban Renewal 451 7th Street, S.W. Washington, D.C. 20410.

OPINION

SAND, Judge.

***1** On November 20, 1985 this Court issued its Opinion holding that the City of Yonkers had violated both the Equal Protection Clause and the Fair Housing Act by its discriminatory housing activities, and the Equal Protection Clause by its role in perpetuating and exacerbating racial segregation in the Yonkers public schools. At a scheduling conference on December 18, 1985, the City was ordered to submit a remedial proposal and the government and plaintiffs-intervenors were directed to respond. A hearing on the housing remedy was held from April 29 to May 6, 1986.

The Order filed today with respect to the housing remedy phase of these proceedings is, for the most part, self-explanatory. We limit ourselves in this Opinion to the making of supplemental findings of fact and to a brief discussion concerning matters not included in the Order and certain arguments advanced by the parties.

A. Supplemental Findings of Fact

After hearing, the Court finds that:

I. The conduct of the City of Yonkers, found to have been violative of the rights of blacks and Hispanics in Yonkers during the period 1940–1980, has continued to be violative of their rights through the date of this

Order. Evidence of this is found in the failure of the City:

(a) to designate two sites in east Yonkers acceptable to HUD for units of public housing as a condition to the receipt of CDBG funds pursuant to the City's commitment to HUD in 1980

(b) failure of Yonkers to submit its Housing Assistance Plan ('HAP') as required by HUD;

(c) failure to take other steps to implement issuance of section 8 existing certificates to eligible families for use in east Yonkers;

(d) failure to take any other steps to remedy the violations found herein.

II. The two sites designated by the City (the Tuckahoe Road and Yonkers Avenue sites) were properly rejected by HUD for the reasons stated by HUD. Further, the sites were not consistent with the intended purpose of furthering residential integration.

III. The pendency of this litigation in no way inhibited Yonkers from taking remedial steps. Any claim that such actions were not taken because of the pendency of these proceedings is a pretext.

IV. The normal governmental processes of Yonkers with respect to the designation of sites for public or subsidized housing have become stalemated. However, political paralysis cannot be allowed to frustrate a remedy for the violations found to exist. The City of Yonkers has been and will be given a full opportunity to designate sites and to take other remedial action pursuant to the operation of its normal governmental processes. The City may not, however, choose to forfeit scarce federal funds that would be of significant assistance in the provision of additional housing opportunities to minorities available on a nondiscriminatory basis pursuant to this order by refusing to submit sites and necessary documentation to HUD.

B. Relationship to School Desegregation Order

The Department of Justice and the NAACP have sought an explicit direction to Yonkers to fund this Court's School Desegregation Order of May 14, 1986 as well as its housing Order. We have included such a direction (Order, ¶10) but make this further observation with respect to the school funding issue. Although Yonkers must fund a desegregation plan, it need not fund a more expensive desegregation plan than is required to remedy the violations found to exist. As we have previously noted, the voluntary magnet school program sought by the Yonkers School Board and largely adopted by the Court for the school year beginning September, 1986, is clearly more costly than the readily available alternative of additional changes in attendance area lines and increased transportation (which is 90% refundable by the State and Federal governments).

***2** Our May 14, 1986 Order requires the Yonkers School Board to advise the Court forthwith if it concludes that the funding necessary to implement to school desegregation program embodied in that Order will not be forthcoming. If the Court, which has continuing jurisdiction in the matter, is so advised, we will draw the obvious inferences as to the improbability of success of a voluntary program and immediately institute a more mandatory, but less expensive, desegregation plan which Yonkers must fund. The choice, therefore, of whether to incur the additional costs in order to attempt to achieve desegregation in large part through voluntary action, lies—and appropriately lies—with the Yonkers City Council.

The School Board has urged that the housing remedy dovetail with and be supportive of its obligation to desegregate the Yonkers schools. We agree and the housing Order's provisions with respect to occupancy priorities is designed to be responsive to this concern. See Order, ¶7.

C. The City's Claimed Right to Forfeit CDBG Funds

In 1980, prior to and independent of this litigation, the City agreed to designate two east Yonkers sites for federally funded public housing as a condition to receipt of CDBG funds. Witnesses have testified that Yonkers agreed to this condition in the belief that no federal funding would be available in the foreseeable future. Pursuant to the terms of a Consent Decree between the NAACP and HUD, however, funding is available for 200 public housing units if Yonkers takes appropriate action by September 30, 1986. The two sites Yonkers has thus far designated, the Tuckahoe Road and Yonkers Avenue sites, have been rejected by HUD and we have found that HUD's rejection was fully warranted and that the sites are indeed unsuitable and inconsistent with the letter and spirit of Yonkers' prior commitment to HUD. We have also heard testimony from the Mayor and others that no

immediates steps have been or are being taken to designate alternative sites.

Yonkers takes the position in its post-hearing memorandum that the City has the right to forfeit the $7,200,000 in CDBG funds in question ($3,600,000 for the 1984–1985 grant and a like sum for the following year). In Yonkers' view, this Court is powerless to impose terms and conditions to which the City has not agreed. This contention misperceives the nature of these proceedings. We are not here construing what Yonkers and HUD intended in a prior Housing Assistance Plan nor what HUD and the NAACP intended in the Consent Decree. Rather, we are determining what actions are necessary and appropriate to remedy the violations which have been found to exist.

Everyone appearing before this Court has agreed on two basic propositions: 1) The need in Yonkers for subsidized housing for low and moderate income families continues unabated. The waiting list for public housing is as long as ever. Absent the terms of the Order herein, no other voluntary actions by Yonkers will serve to meet these needs; 2) Yonkers is in dire fiscal straits which have caused it to become subject to an Emergency Financial Control Board.

***3** It is simply unthinkable in such circumstances for Yonkers to forego desparately needed and available funding simply because of political concerns or antipathy to integrated housing.

The Department of Justice and the NAACP propose that this Court designate sites so that the political paralysis of Yonkers will not serve to frustrate a remedy. The Order embodies a less drastic measure. It provides that only if Yonkers fails by its normal political processes to designate sites by a prescribed date will Yonkers be 'deemed to have designated' specific sites proposed by the plaintiff and the plaintiffs-intervenors, sites the testimony has indicated are suitable and available. The Order further provides that this 'deemed designation' will satisfy all relevant HUD prerequisites to funding eligibility. Again, as with respect to significant aspects of the school desegregation order, this Court will stay its hand until it is conclusively established that no voluntary compliance will be forthcoming.

D. The Setting of Housing Goals

This Court raised the question during the housing remedy hearings whether it would be appropriate to establish a timetable and goals for the construction or acquisition of additional units of publicly assisted family housing in east Yonkers. The NAACP urges that we set a goal of 450–500 units. The Department of Justice proposes that an expert designated by Yonkers or appointed by the Court prepare an inventory of suitable and available sites to form the basis for such a timetable and goals.

We decline at this time to set goals or to provide a mechanism for establishing such goals other than to require Yonkers to submit a plan by November 15, 1986 for the construction or acquisition of such additional subsidized housing. We defer any further action until such time pursuant to the provisions of this Order.

The Affordable Housing Trust (but not its funding level) has been proposed by Yonkers and we have adopted that proposal. There are many means by which the objectives of this Trust could be accomplished and if Yonkers prefers this method of funding housing objectives, we see no reason not to defer to that preference.

All Citations

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