Domain Isn’t a Revenue-Raising Device

The high court is asked to rule on economic redevelopment.

Matthew and Suzanne Dery on land near their house, rear right, in a disputed area of New London, Conn. C. M. Giesler for The New York Times

closed in 1996. The state had agreed to spend $20 million to create a state park at Fort Trumbull, a mid-19th-century installation where Connecticut troops mustered during the Civil War before heading south.

Despite the Connecticut Supreme Court’s ruling, the demolition of the park has not yet occurred because the Institute for Justice, a public-interest law center in Washington that represents Ms. Kelo and the other homeowners, has asked the United States Supreme Court to review the case. The institute, which has been fighting eminent domain actions all over the country, argues that Kelo v. City of New London, demonstrates how government authorities are increasingly abusing condemnation powers to enrich developers at the expense of homeowners and small businesses.

Legal battles like this one, and a recent Michigan case in which a landmark ruling was overturned, have captured the attention of developers and economic development officials. Maureen L. McAvoy, a senior fellow for urban development at the Urban Land Institute and a former developer, said eminent domain was essential for assembling tracts of land for development. But she said the cases have had a cautionary effect, prompting many local officials to re-examine their procedures to make sure that they can clearly show how the public will benefit from a particular project. “Most local entities were using ‘smart growth’ — that is, denser development in older neighborhoods — as a means of reducing suburban sprawl. From 1998 to 2002, the institute says, more than 10,000 condemnations were filed or threatened in 41 states that involved transfers of property from one private owner to another.

But the institute contends that Kelo poses a novel question for the court — does “public use” include projects that are intended not to alleviate blight but to increase tax revenue and improve the local economy? States have been divided on this issue. Neighborhood Council v. Detroit, the court upheld a decision to displace hundreds of residents and businesses of a working-class Polish neighborhood so that General Motors could build an assembly plant there. G.M. created only about half the promised jobs, according to an editorial in The Detroit News on Aug. 3.

The Michigan court ruled that Wayne County officials had violated the state constitution by condemning land near Detroit Metro Airport to build a 1,300-acre industrial and office development known as Pinnacle Aeropark. The decision has no legal force outside Michigan, but it means that property can no longer be condemned in Michigan for economic development alone.

“The Michigan case,” Mr. Finkiel said, “was a wake-up call.” He said his group was developing guidelines to protect communities when eminent domain is appropriate. “We don’t think that somebody ought to be able to grab land and buildings based on a higher economic return,” he said, noting that this view was not shared by all defenders of eminent domain powers. “You have to have underlying blighted conditions.”

Roger Platt, a senior vice president and counsel for the Real Estate Roundtable, an advocacy group in Washington for the chief executives of major real estate companies, acknowledges that eminent domain powers have sometimes been abused. “We don’t oppose careful ju-
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