

Oct 17 1984

*Judge Frye's
Opinion
(extra copy)*

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

STATE OF OREGON

Plaintiff,

v.

CITY OF RAJNEESH PURAM, a putative
Oregon municipal corporation; WASCO
COUNTY, a political subdivision of the
State of Oregon; ROBERT M. BROWN,
Sheriff of Wasco County; RAJNEESH
FOUNDATION INTERNATIONAL, a New Jersey
corporation; RAJNEESH INVESTMENT
CORPORATION, an Oregon corporation;
RAJNEESH NEO-SANNYAS INTERNATIONAL
COMMUNE, an Oregon corporation; MA
ANAND SHEELA, individually; SWAMI PREM
JAYANANDA, MA YOGA VIDYA, SWAMI KRISHNA
DEVA, MA PREM ARCHAN, SWAMI DEVA
SANDESH, MA PREM PATIPADA, MA DEVA
JAYAMALA, MA SAT PRABODHI, MA PREM
RIKTA, individually and as
representatives of the class of all
current residents of the City of
Rajneeshpuram;

Defendants.

Civil No. 84-359 FR

OPINION AND ORDER

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25 FRYE, Judge:

26 The matters before the court are defendants' motions to
27 strike.

28 Defendants first move the court to strike plaintiff's
29 prayers for relief numbered one, two, and three, which are set
30 out in full on pages one and two of the Order signed this date
31 ruling on defendants' motions to dismiss.

32 Defendants first argue in support of this motion that
33 the proper remedy for a violation of the Establishment Clause is

1 not to invalidate the governmental body that violated the
2 Establishment Clause, but rather to enjoin the specific acts of
3 the governmental body that constitute the impermissible
4 establishment of religion. Defendants cite Establishment Clause
5 cases in which plaintiffs have sought to enjoin particular
6 governmental acts rather than to invalidate the governmental body
7 itself. However, the State's theory of this case based upon its
8 pleadings is not only that certain particular acts of the City of
9 Rajneeshpuram constitute an unconstitutional establishment of
10 religion, but also that the very existence of the City of
11 Rajneeshpuram and its operation as a city constitute an
12 establishment of religion. The State's theory is that either the
13 interrelationship of the City of Rajneeshpuram and religious cor-
14 porations and leaders is such that every act of the City of
15 Rajneeshpuram constitutes an impermissible establishment of reli-
16 gion because every act necessarily benefits a religion, or the
17 interrelationship of defendants is such that religion is so
18 inexorably intertwined with the existence and operation of the
19 City itself that it creates an unconstitutional entanglement of
20 religion and government. Given the facts as alleged by plain-
21 tiff, it may be that the only "necessary, fair and workable"
22 remedy, Lemon v. Kurtzman, 411 U.S. 192, 200 (1973), would be to
23 declare the existence and operation of the City of Rajneeshpuram
24 itself to be unconstitutional. Therefore, the court will deny
25 the motion to strike insofar as it is based on this ground.

26 Defendants' next argue that the relief sought by the

1 State is not available in a declaratory judgment proceeding. In
2 particular, defendants contend that the sole and exclusive remedy
3 for attacking the existence and operation of a municipal cor-
4 poration is through a quo warranto proceeding. See 74 C.J.S. Quo
5 Warranto § 13. However, the writ of quo warranto has been abol-
6 ished in Oregon, and in its place ORS 30.510 - 30.640 has been
7 enacted. ORS 34.810. ORS 30.510 reads:

8 An action at law may be maintained in the name of
9 the state, upon the information of the district attor-
10 ney, or upon the relation of a private party against the
11 person offending, in the following cases:

12 (1) When any person usurps, intrudes into, or
13 unlawfully holds or exercises any public office, civil
14 or military, or any franchise within this state, or any
15 office in a corporation either public or private,
16 created or formed by or under the authority of this
17 state; or

18 (2) When any public officer, civil or military,
19 does or suffers an act which, by the provisions of law,
20 makes a forfeiture of his office; or

21 (3) When any association or number of persons acts
22 within this state, as a corporation, without being duly
23 incorporated.

24 The complaint seeks three declarations: (1) that the
25 State is not required to recognize the municipal status of the
26 City of Rajneeshpuram; (2) that the State is not required to give
public funds to the City; and (3) that the Proclamation of
Incorporation for the City of Rajneeshpuram is null and void.

The essence of the State's complaint is not that the
City of Rajneeshpuram was not "duly incorporated" or that city
officials have usurped or improperly intruded into public office.
Rather, the State alleges that a duly incorporated city and the
otherwise lawful acts of the city and its officials are

1 unconstitutional for reasons unrelated to allegations necessary
2 to support a traditional quo warranto claim. A second ground for
3 rejecting defendants' argument rests upon constitutional grounds.
4 The court has accepted defendants' argument that plaintiff's
5 complaint "arose under" federal law rather than state law.
6 Defendants now argue that plaintiff's claims for relief must be
7 dismissed because plaintiff's exclusive remedy in this matter is
8 a quo warranto proceeding under state law. Defendants cannot
9 have it both ways. The court finds that the State's complaint
10 alleges a cause of action directly under the first amendment to
11 the United States Constitution. Even were the court to conclude
12 that as a matter of state law the exclusive remedy in this case
13 is quo warranto, this would not affect the State's right to the
14 relief requested under the first amendment as a matter of federal
15 law.

16 Defendants' final argument is that the State's action is
17 barred by the statute of limitations. ORS 12.270(4) provides:

18 On September 13, 1975, any proceeding which
19 establishes or alters the boundaries of a governmental
20 subdivision previously or hereafter initiated and pur-
21 ported to be effected in accordance with applicable
22 legal requirements shall be conclusively presumed valid
23 for all purposes one year after the purported effective
date of the action. No direct or collateral attack on
the action may thereafter be commenced. This statute of
limitations includes but is not limited to the following
proceedings:

24 . . .

(4) Incorporations under ORS 221.010 to 221.090.

25 Plaintiff's complaint alleges a federal cause of action. As
26 such, federal law provides the statute of limitations. For

1 actions brought directly under the first amendment, no express
2 statute of limitations exists, and federal courts must borrow for
3 such actions "the most closely analogous state statute of
4 limitations. . . ." Blanck v. McKeen, 707 F.2d 817 at 819 (4th
5 Cir. 1983), cert. denied 104 S. Ct. 279. Defendants may prevail
6 only if the court determines that ORS 12.270(4) is the most clo-
7 sely analogous state statute of limitations. However, the court
8 finds that ORS 12.270(4) is not applicable to the present action.
9 First, the State's action does not fall within this section. By
10 its terms, ORS 12.270(4) makes any incorporation proceeding
11 conclusively presumed valid after one year and prohibits attack
12 upon "the action" after that time. Here the State is not
13 alleging that the proceedings leading up to the incorporation of
14 the City of Rajneeshpuram are invalid, nor is the State attacking
15 the act of incorporation as defective. Second, "[i]t is a rule
16 of universal recognition that the government is not included in a
17 general statute of limitations unless it is expressly or by
18 necessary implication included." Chizek v. Port of Newport 252
19 Or. 570 at 577, 450 P.2d 749 at 753 (1969), quoting State Land
20 Board v. Lee, 84 Or. 431 at 434, 165 P. 372 at 373 (1917). This
21 policy has been adopted by the Oregon Legislature and codified as
22 ORS 12.250. Hence, the restriction of ORS 12.270(4) does not
23 apply to this action brought by the State.

24 Finally, defendants seek to strike certain portions of
25 the State's complaint as immaterial, impertinent, or scandalous
26 under Fed. R. Civ. P. 12(f). As a general rule,

1 [m]otions to strike alleged redundant, immaterial,
2 impertinent or scandalous matter are not favored.
3 Matter will not be stricken from a pleading unless it is
clear that it can have no possible bearing on the sub-
ject matter of the litigation.

4 2A J. Moore & J. Lucas, Moore's Federal Practice ¶12.21[2] at
5 2429 (2nd ed. 1984) (footnotes omitted). As to what constitutes
6 scandalous or impertinent matter, this same commentator states:

7 Impertinence consists of any allegation not respon-
8 sive nor relevant to the issues involved in the action
and which could not be put in issue or be given evidence
between the parties.

9 . . .

10 Scandal in general consists of any unnecessary
11 allegation which reflects cruelly upon the moral
12 character of an individual, or states something in
repulsive language which detracts from the dignity of
the court.

13
14 Id. ¶12.21[1] at 2421-23, 2426 (footnotes omitted). The court
15 will apply these standards to defendants' motions to strike.

16 Defendants move to strike the allegation at page 9, line
17 7 of the complaint that "[f]ollowers of the Bhagwan Shree
18 Rajneesh call themselves Rajneeshees. They assert that Rajneesh
19 is an enlightened religious master, akin to Jesus, Buddha or
20 Mohammed." This allegation is not scandalous and is relevant to
21 the issues in this lawsuit. Defendants next object to the
22 language at page 13, line 7 of the complaint, alleging that
23 Rajneeshism is a "self-described religion." This, too, is rele-
24 vant to the issues in this suit and is not so "cruel" or
25 "repulsive" as to constitute scandalous matter within the meaning
26 of the rule. Defendants also move to strike various references to

1 the religious association of various individual defendants and
2 members of the commune. (See Complaint p. 9, l. 22; p. 10,
3 l. 14; p. 17, l. 9; p. 12, l. 2.) Defendants argue that the
4 religious affiliation of residents and officials of the City of
5 Rajneeshpuram is irrelevant; but in light of the State's theory
6 of the case, the court deems that it is not irrelevant.
7 Finally, defendants move to strike the reference in the complaint
8 to the City of Rajneeshpuram as a "putative" municipal cor-
9 poration. Although such a description is conclusory, it is also
10 factual in the sense that it represents the position of the State
11 with respect to the City. As it is not scandalous within the
12 meaning of the rule, the motion to strike it will be denied.

13 IT IS THEREFORE ORDERED that defendants' motions to
14 strike are DENIED.

15 DATED this 12 day of October, 1984.

16
17 
18 Helen J. Frye
United States District Judge