STATE OF MICHIGAN

COURT OF APPEALS

TAYLOR COMMONS,

Petitioner-Appellant,

v

CITY OF TAYLOR and COUNTY OF WAYNE,

Respondents-Appellees.

UNPUBLISHED
July 9, 1996

No. 182833
LC No. 169590

Before: Cavanagh, P.J., Hood and J.J. McDonald*, JJ.

PER CURIAM.

Petitioner appeals as of right from Michigan Tax Tribunal's grant of summary disposition in favor of respondents. We affirm.

This case arose from petitioner's allegation that the "tax-freeze" act (the act), 1991 PA 15, caused the taxation of its property to be unconstitutional. Petitioner is the owner of an 83,330 square foot shopping center known as Taylor Commons. As of December 31, 1990, the buildings on this property were only partially constructed and were assessed for $273,550. By December 31, 1991, the buildings were complete and were assessed for $2,077,450. Petitioner claims that the provision of the act, 1991 PA 15, that allows for an increase in its assessment due to the new construction is unconstitutional where all other taxpayers' assessments were "frozen" at the 1991 levels.

Petitioner unsuccessfully appealed its assessment in March 1992 to the City of Taylor and then appealed to the Michigan Tax Tribunal (the tribunal). Petitioner challenged the constitutionality of 1991 PA 15, but the tribunal found that it did not have jurisdiction to decide the issue. The tribunal found that respondents had properly applied 1991 PA 15 to petitioner's property and granted summary disposition in favor of respondents.

Petitioner has raised numerous issues in its brief. Although we do not address the issues in the order or manner set forth by petitioner, we have concluded that none are meritorious.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Petitioner argues that the tribunal had jurisdiction to determine the proper assessment for his property in light of this state's constitutional requirements. Whether subject matter jurisdiction exists is a question of law which is reviewed de novo by this Court. *Board of County Road Com'rs for County of Eaton v Schultz*, 205 Mich App 371, 375; 521 NW2d 847 (1994).

"The Tax Tribunal does not have the authority to invalidate acts of the Legislature." *Eyde v Charter Tp of Lansing*, 420 Mich 287, 292; 363 NW2d 277 (1984). In taxation matters, the circuit court retains jurisdiction to consider certain constitutional issues concerning the validity of tax laws. *Johnston v City of Livonia*, 177 Mich App 200, 205; 441 NW2d 41 (1989).

In this case, petitioner argues that although the act is unconstitutional, it was not asking the tribunal to make such a finding. Petitioner merely requested that the tribunal, in formulating the assessment of petitioner's property, apply the Constitution's uniformity provision, art 9, § 3, instead of the act, MCL 211.10; MSA 7.10. The tribunal would have no reason to apply the constitutional uniformity provision unless it had determined that the act was unconstitutional. We find that the tribunal correctly found that it did not have the jurisdiction to decide the constitutionality of the act. *Eyde*, *supra*. We therefore conclude that the tribunal could not apply the Constitution's uniformity provision in place of the act.

Petitioner next argues that even if it was not entitled to summary disposition, the tribunal erred in sua sponte granting summary disposition in favor of respondents because there is a question of whether petitioner's property was taxed in a non-uniform manner. If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party under MCR 2.116(I)(2). *Michigan Mut Ins Co v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994). On appeal, an order granting summary disposition is reviewed de novo. *Id.*

It is undisputed that if the act is constitutional, the assessment amount is proper. Because the tribunal did not have jurisdiction to determine whether the act was constitutional, it could only choose to review petitioner's property tax assessment by examining its compliance with MCL 211.10; MSA 7.10. We therefore conclude that since the issue of the assessment's compliance with the statute is not in dispute, the tribunal did not err in sua sponte granting summary disposition in favor of respondents.

Petitioner also argues that if this Court determines that the tribunal did not have jurisdiction to apply the constitutional requirements of uniformity of taxation, this Court should do so. Although this issue was not raised below, this Court may review constitutional issues for the first time on appeal. *People v Heim*, 206 Mich App 439, 441; 522 NW2d 675 (1994); *Sprutte v Dep't of Corrections Hearing Officer*, 190 Mich App 127, 133; 475 NW2d 382 (1990). However, this Court will not address constitutional issues if a case can be decided on alternative grounds. *Taylor v Auditor General*, 360 Mich 146, 154; 103 NW2d 769 (1960). Because we have concluded that the tribunal's jurisdictional decision was proper, we need not address this issue.

Even if this Court were to address petitioner's argument, we would conclude that the act is constitutional. In 1992, the Legislature passed a bill that for one year barred increases in assessments on real property. The act, MCL 211.10; MSA 7.10, read:

> (2) In 1992, the assessment as equalized for the 1991 tax year shall be used on the assessment roll and shall be adjusted only to reflect additions and losses, as those terms are defined in section 34d, and splits and combinations that have occurred. Additions and losses and splits and combinations shall be valued at 1991 levels.

Petitioner argues that the act requires property to be valued, for the 1992 tax year, at the property's 1991 level. In 1991, because petitioner had not yet built its buildings and it had no assessed value, petitioner argues that it should pay no tax in 1992. We find that this argument is without merit. The act requires that taxing authorities account for real property additions made in 1991. This requirement comports with the constitutional requirement of equality. Const 1963, art 9, § 3. Petitioner argues that buildings fully assessed at their 1991 levels may have increased in value due to land appreciation or economic factors and will not be fully assessed in 1992. Meanwhile, petitioner's property, which was built in 1991, will be fully assessed for 1992. MCL 211.10; MSA 7.10, however, provides that "[a]dditions and losses and splits and combinations shall be valued at 1991 levels." Therefore, although petitioner's buildings were not built as of December 30, 1990, it will be assessed at the buildings' theoretical value at that date.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Harold Hood
/s/ John J. McDonald