

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal
Fourth Appellate District
FILED ELECTRONICALLY
01/18/2024
Brandon L. Henson, Clerk
By: Alissa Galvez

THE PEOPLE OF CALIFORNIA et
al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

THE CITY OF HUNTINGTON
BEACH et al.,

Real Parties in Interest.

D083339

(San Diego County
Super. Ct. No. 30-2023-01312235-
CU-WM-CJC)

THE COURT:

The petition for writ of mandate and informal response have been read and considered by Presiding Justice McConnell and Associate Justices Huffman and Castillo.

In their petition for writ of mandate, the People of California and the California Department of Housing and Community Development contend the respondent court abused its discretion by staying the underlying proceeding after concluding that Government Code sections 65750 et seq. (“Article 14”) does not apply because real party in interest, the City of Huntington Beach

(City), is a charter city. Petitioners contend that the action is entitled to preference under section 65752 and a trial court abuses its discretion by staying an action entitled to preference to allow for resolution of a related action. (*Koch-Ash v. Superior Court* (1986) 180 Cal.App.3d 689, 697.)

As the respondent court noted, Government Code section 65700 states that charter cities are exempt from some requirements of state planning and zoning law, but that statute also clarifies that like all other cities, charter cities must adopt general plans with the mandatory elements specified by state law, including a housing element. In Article 14, Government Code section 65751 states that *any* action to challenge a general plan shall be brought pursuant to section 1085 of the Code of Civil Procedure. Other provisions of Article 14 state that (1) *all* actions brought pursuant to section 65751 shall be given preference over all other civil actions; (2) a petitioner may request a hearing on the merits of such a petition within 120 days of the request; and (3) in the event the court is unable to set a hearing within 120 days, it must consider granting temporary relief. (Gov. Code, §§ 65752, 65753, 65757.) Division Two of this court has held that the provisions of Article 14 “serve as the *primary* judicial remedy” to address shortcomings in general plans and concluded those provisions applied in an action against a charter city. (*Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 303-304 (*Garat*); see also *Denham, LLC v. City of Richmond* (2019) 41 Cal.App.5th 340, 353-354.) Here, the respondent court declined to follow *Garat* on the basis that it was filed decades before Government Code section 65700 was enacted, but this is factually incorrect: section 65700 was enacted before the *Garat* decision and was discussed in that opinion. No opinion cited by either party has held that Article 14 does not apply to charter cities. Instead, at

least one provision of Article 14 expressly states that it applies to charter cities. (Gov. Code, § 65754, subd. (b).)

Accordingly, for good cause shown, on or before January 31, 2024, the respondent court is directed to vacate its minute order entered on November 2, 2023, granting the motion to stay proceedings and enter a new order denying the motion for a stay and setting a hearing on petitioners' request for a hearing pursuant to Government Code section 65753 and motion for temporary relief and a preliminary injunction pursuant to sections 65753, subdivision (b), and 65757. In the event the respondent court proceeds in this manner, it must afford the parties notice and an opportunity to be heard before vacating its order. (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1250.) Petitioners are directed to advise this court of the superior court's response to this alternative writ on or before February 2, 2024.

In the alternative, should respondent court fail to grant the relief specified above, the court is ordered to show cause why relief should not be granted. If respondent does not comply as suggested above, this court will issue an order specifying the briefing schedule for the return and the reply.

McCONNELL, P. J.

Copies to: All parties