

**GIL V. MARIBAO AND ENRIQUETA LLANILLO-MARIBAO,
PETITIONERS, VS. HONORABLE JUDGE NUMERIANO ESTENZO AND
THE CITY OF ORMOC, RESPONDENTS.***G.R. No. L-24768. June 27, 1968*

Ponente: CONCEPCION, C.J.

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This is an original action for certiorari. Petitioners Gil V. Maribao and his wife, Enriqueta Llanillo-Maribao - hereinafter referred to as the Maribaos - pray that certain orders issued by Hon. Numeriano Estenzo, as Judge of First Instance of Leyte, in Sp. Civil Case No. 711-0 of said court, be annulled and that he be declared to be without jurisdiction to try said case, as well as "immediately en-joined from proceeding further with the case."

The records show that, on January 25, 1965, the City of Ormoc instituted said Case No. 711-0 for the expropriation of several tracts of land located within its territorial boundaries, to be used as "City Government Center". Among the defendants therein - altogether 31 in number - were pe-titioners herein, as owners of some of the lots sought to be expropriated. In its complaint, the City prayed, inter alia, for an order fixing the sum of P50,000 as the provisional value of all the properties involved in the case and directing the defendants to deliver immediately the possession of said properties to the City, upon the deposit of said sum with its treasurer. On February 3, 1965, judge Estenzo issued an order fixing said provisional value at P50,000, and, a certification by said Treasurer, to the effect that this amount is provided for in the current annual budget of the City and is available for expenditure, having been forthwith submitted, Judge Estenzo ordered, on the same date, the issuance of the corresponding writ of possession.

The defendants other than the Maribaos filed motions to dismiss, which Judge Estenzo denied in an order dated February 23, 1965. Said order, moreover, declared that the City has the lawful right to expropriate the aforementioned properties, upon payment of just compensation, and appointed the City and Highway Engineer, the City assessor and the Assistant City Auditor as Commissioners to ascertain amount of said compensation and then report thereon. By an order dated March 27, 1965, Judge Estenzo appointed a new set of commissioners, composed of District Supervisor, and two (2) barrio captains.

Soon thereafter, or on March 5, 1965, the Maribaos filed a motion to set aside said orders of February 3 and 23, 1965, upon the ground that the same were issued before the court had acquired jurisdiction over their persons by service of summons, which took place on February 23, 1965, and another motion to dismiss the complaint. These motions were denied by Judge Estenzo on March 13, 1965. Subsequently, the Maribaos filed three (3) motions for reconsideration: one, dated April 15, 1965, as regards the denial of the motion to set aside the orders of February 3 and 23, 1965; another, dated April 17, 1965, with respect to the denial of the motion to dismiss; and still another, dated April 19, 1965, urging the appointment, in lieu of the commissioners appointed in the order of March 21, 1965, of a commissioner to represent the plaintiff, another commissioner to represent the defendants, and a third commissioner to represent the court. These three (3) motions for reconsideration were denied by Judge

Estenzo on April 30, 1965.

Meanwhile the commissioners had begun to perform their functions and to receive evidence, after which they submitted their report, copy of which was received by the Maribaos on June 11, 1965, recommending payment of P0.29 to P0.30 per square meter. Under date of June 19, 1965, the Maribaos filed their opposition to said report, alleging that they had no chance to present evidence as regards the value of their property and the commissioners had not duly considered actual sales of portions of the land sought to be expropriated.

On June 30, 1965, Judge Estenzo rendered his decision fixing the value of the properties in litigation at P0.30 a square meter. Copy of this decision was, on July 8, 1965, served on the Maribaos, who, on July 17, 1965, moved for a reconsideration thereof. The motion for reconsideration was denied on July 23, 1965. Four (4) days later, the Maribaos filed a motion for new trial.

In the meantime, or on July 23, 1965, they had commenced the present original civil action for certiorari, based, mainly, upon the theory that Judge Estenzo had acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction:

- (1) In giving due course to the complaint in said Case No. 711-0, despite the absence of allegation that the President or the proper department head had approved or authorized the exercise of the right of eminent domain by the City;
- (2) In issuing the writ of possession and appointing commissioners to ascertain the value of the properties sought to be expropriated, before the court had acquired jurisdiction over the person of said defendants by the service of summons upon them, and before their motion to dismiss had been denied;
- (3) In not requiring the City to deposit "money" before the issuance of said writ of possession;
- (4) In denying their motion to set aside the orders of February 3 and 23, 1965, as well as the motion to reconsider the order of denial of said motion to set aside;
- (5) In appointing as commissioners city officers who are, consequently, biased and incompetent, and who gave the Maribaos no chance to present their evidence.

The petition herein is clearly devoid of merit. The alleged absence of presidential or departmental approval of the exercise by the City of the power of eminent domain - assuming such approval to be necessary, on which we need not and do not express our view - did not affect the jurisdiction of the lower court. The same unquestionably had jurisdiction over the subject-matter of the proceedings, over the Maribaos - who, admittedly, had been duly served with summons - and over the properties sought to be expropriated, which are within the Province of Leyte. On the assumption above referred to, the absence of said approval, at most, affected the cause of action of the City, not the jurisdiction of the lower court.[1]

Neither did the other alleged irregularities complained of by the Maribaos divest said court of its aforementioned jurisdiction or constitute a grave abuse of discretion amounting to excess of jurisdiction. Said alleged irregularities are mere incidents in the exercise of said jurisdiction, on which the parties are free to disagree with the court. They may seek a review of its rulings thereon, but, on appeal, after the rendition of final judgment, not by original action of certiorari, which may not be availed of except in the absence of appeal or other plain speedy and adequate remedy in the ordinary course of law.[2] In the case at bar, the Maribaos could have availed of said appeal. In fact, some of, their co-defendants in Case No. 711-0 have appealed to the Court of Appeals.

The basic flaw in the position taken by the Maribaos is that it is predicated upon the erroneous premise that the lower court had no jurisdiction to entertain, hear and decide the case, because the City had not secured the

approval thereto of either the President or the proper department secretary. All of the issues raised by the Maribaos in the lower court were founded mainly upon this mistaken notion. Such was the basis of their motion to dismiss and their motion for reconsideration of the order denying said motion to dismiss.

The grounds upon which their other motions were based were foreign to the matter of jurisdiction of the Court. This is true even as regards the orders issued before the Maribaos had been summoned, for, after service of summons upon them, they had ample opportunity to be heard, and were actually heard, in connection therewith. In short, the irregularities complained of may not be dealt with in this original action for certiorari.[3] The review thereof may be sought only by appeal.[4]

WHEREFORE, the petition herein should be, as it is hereby dismissed, with cost against the petitioners.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.
Fernando, J., took no part.

[1] Republic v. Venturanza, L-20417, May 30, 1966.

[2] Rule 65, Section 1, Rules of Court; Claudio v. Zanduetta, 64 Phil. 812; Haw Pia v. San Jose, 78 Phil. 238; Silvestre v. Torres, 57 Phil. 885, 890; Pachoco v. Tumangday, L-14500, May 25, 1960.

[3] Tirona v. Nañawa, L-22107, Sept. 30, 1967; Layag v. Gerardo, L-19896, April 30, 1964; De la Cruz v. Sta. Maria, L-17928, April 30, 1963.

[4] Giron v. Caluag, L-17995, June 27, 1963; Republic v. Perez, L-16112, June 29, 1963; De la Rea v. Subido, L-26082, 27246 and 27248, March 1, 1968.

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