

SIXTO PANGILINAN, PETITIONER, VS. EMILIO PENA, JUDGE, COURT OF FIRST INSTANCE OF MANILA, SHERIFF OF THE CITY OF MANILA AND CRISPULO Q. MANANSALA, RESPONDENTS.*G. R. No. L-4143. May 28, 1951*

Ponente: BENGZON, J.

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To stop the execution of a judgment for desahucio against him, Sixto Pangilinan filed this petition for "certiorari, prohibition and injunction" alleging that proceedings had already been started by the City of Manila to expropriate and resell in small lots the whole of Nagtahan Estate that includes the parcel from which he was to be ejected. His plea was based on Commonwealth Act No. 538 providing that when the Government seeks to acquire any estate through purchase or expropriation proceedings all actions for ejectment against the tenants occupying said land shall be automatically suspended.

Undisputed facts are the following: On October 10, 1949 Crispulo Q. Manansala filed in the Manila municipal court a complaint to eject Sixto Pangilinan from a lot in Sampaloc, Manila. Said court after hearing the parties gave judgment for plaintiff. Pangilinan appealed to the court of first instance, wherein due to his failure to deposit the rents on time, execution of the judgment was ordered, in spite of his allegation that his failure was due to illness. He moved for reconsideration; but the motion was denied. Then he invoked the provisions regarding automatic suspension of ejectment proceedings whenever the Government starts negotiations for acquisition of landed estates. Again he failed. Hence he applied to this court for relief. We issued a preliminary injunction.

The case for the petitioner is built upon two major propositions, to wit: (a) The respondent judge abused his discretion in issuing the writ although his failure to deposit rents was due to illness; and (b) suspension of the proceedings should be decreed because all the requisites provided for in Commonwealth Act No. 538 in connection with Republic Act No. 409 had been complied with.

On the first point the record discloses that in the lower court Manansala disputed the veracity of such illness of petitioner, calling attention to the fact that the medical certificate was unverified. He also contended that the illness, even if true, could not have prevented the tenant from making deposits through others. The matter was debated in the trial court. Considering our pronouncements to the effect that execution is mandatory when the rents are not paid on time,[1] the duty of the court to order such execution being ministerial and imperative,[2] we cannot under the circumstances ascribe abuse of discretion to the respondent judge of Manila.

On the second point we are advised that the lot, containing about 180 square meters formerly belonged to the Nagtahan Estate of Rita Legarda Inc. from which Luis Gaddi obtained a contract of lease with option to purchase; that Gaddi transferred all his rights to the lot to Crispulo Manansala; that the latter exercising the option purchased the lot from Rita Legarda Inc. in a public document known as Contract of Sale No. 1156; that Gaddi had built two houses on the lot and sold one to Manansala and the other to Pangilinan; that after becoming the purchaser of the lot, Manansala notified Pangilinan to vacate and upon the latter's refusal, started ejectment proceedings; that as far

back as the year 1947 the City of Manila had initiated negotiations for the purchase of the Nagtahan Estate (containing about 43 hectares) for the purpose of reselling the same in smaller lots to the occupants thereof; that such negotiations failed, but in 1949 the Municipal Board of said city passed Resolution No. 73 series of 1949, authorizing the expropriation of the Nagtahan Estate, including the lot in question; that this resolution was approved by the Cabinet and the President of the Republic and that the City of Manila through its Mayor notified the owners of the land sought to be expropriated, of the Government's intention to acquire the lands through expropriation proceedings.

Commonwealth Act No. 538 provides as follows:

"SECTION 1. When the Government seeks to acquire through purchase or expropriation proceedings lands, belonging to the estate of chaplaincy (capellanias) any action for ejectment against the tenants occupying said lands shall be automatically suspended, for such time as may be required by the expropriation proceedings or necessary negotiations for the purchase of the lands, in which latter case, the period of suspension shall not exceed one year.

Sec. 2. For the purpose of this Act, the action by the Government shall be considered instituted from the date of filing of the complaint for expropriation with the proper court or from the time the party principally concerned of the intention of the Government to acquire his land, through any means herein stated."

This is the root and basis of petitioner's insistence on suspension. Supposing this Commonwealth Act No. 538 applies to expropriations by the City of Manila,[3] it is evident that the lot no longer forms part of the Nagtahan Estate, it having been sold to Manansala before the start of the expropriation proceedings. And the suspension may be invoked if this lot of 180 square meters, properly comes within the purview of the Government's right to expropriate lands for resale to occupants. Now, as we have heretofore held that the Constitutional grant of such prerogative refers to landed estates and does not include small parcels of land, (*Guido vs. Rural Progress*, 47 Off. Gaz., 1848; 84 Phil., 847; *Commonwealth vs. De Borja*. 85 Phil., 51 and *Rural Progress vs. Guzman*, 47 Off. Gaz., Supp. [12], 361; 87 Phil., 176) it follows that Manansala's lot does not come either under Commonwealth Act No. 538 or under Republic Act No. 409 and consequently petitioner is not entitled to the stoppage prescribed by the former legislative enactment.

Wherefore, this petition will have to be denied, and the preliminary injunction dissolved.

However, in the matter of petitioner's building on the lot the attention of respondents must be invited to section 13 of Rule 39, which for convenience is quoted below:

"Sec. 13. How execution for the delivery or restitution of property enforced.—The officer must enforce an execution for the delivery or restitution of property by placing the plaintiff in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the costs, damages, rents, and profits included in the execution. However, the officer shall not destroy, demolish or remove the improvements made by the defendant or his agent on the property, except by special order of the court, which order may only issue upon petition of the plaintiff after due hearing and upon the defendant's failure to remove the improvements within a reasonable time to be fixed by the court."

Petition denied, with costs.

Paras, C. J., Feria, Pablo, Tuason, Montemayor, Jugo, and Bautista Angelo, JJ., concur.

[1] *Silos vs. Court of Appeals* (G. K. No. L-3749, June 23, 1950). "

[2] *Galewsky vs. De la Rama* (45 Off. Gaz., 2033; 79 Phil., 583); *Basilio vs. Natividad* (45 Off. Gaz., 2888; 80

Phil, 52).

[3] "At the time it was approved the city had no power to expropriate lands for resale. Republic Act No. 409 that empowered the city to expropriate did not make Commonwealth Act No. 538 applicable. Act No. 538 speaks of the "Government" which normally refers to "National Government".

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