

VICTORIA AMIGABLE, PLAINTIFF-APPELLANT, VS. NICOLAS CUENCA, AS COMMISSIONER OF PUBLIC HIGHWAYS AND REPUBLIC OF THE PHILIPPINES, DEFENDANTS-APPELLEES.

G.R. No. L-26400. February 29, 1972

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/1a3a66a7773e/>

MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Cebu in its Civil Case No. R-5977, dismissing the plaintiffs complaint.

Victoria Amigable, the appellant herein, is the registered owner of Lot No. 639 of the Banilad Estate in Cebu City as shown by Transfer Certificate of Title No. T-18060, which superseded Transfer Certificate of Title No. RT-3272 (T-3435) issued to her by the Register of Deeds of Cebu on February 1, 1924. No annotation in favor of the government of any right or interest in the property appears at the back of the certificate. Without prior expropriation or negotiated sale, the government used a portion of said lot, with an area of 6,167 square meters, for the construction of the Mango and Gorordo Avenues.

It appears that said avenues were already existing in 1921 although "they were in bad condition and very narrow, unlike the wide and beautiful avenues that they are now," and "that the tracing of said roads was begun in 1924 and the formal construction in 1925."[*]

On March 27, 1958 Amigable's counsel wrote the President of the Philippines requesting payment of the portion of her lot which had been appropriated by the government. The claim was indorsed to the Auditor General, who disallowed it in his 9th Indorsement dated December 9, 1958. A Copy of said indorsement was transmitted to Amigable's counsel by the Office of the President on January 7, 1959.

On February 6, 1959 Amigable filed in the court a quo a complaint which was later amended on April 17, 1959 upon motion of the defendants, against the Republic of the Philippines and Nicolas Cuenca, in his capacity as Commissioner of Public Highways, for the recovery of ownership and possession of the 6,167 square meters of land traversed by the Mango and Gorordo Avenues. She also sought the payment of compensatory damages in the sum of P50,000.00 for the illegal occupation of her land, moral damages in the sum of P25,000.00, attorney's fees in the sum of P5,000.00 and the costs of the suit.

Within the reglementary period the defendants filed a joint answer denying the material allegations of the complaint and interposing the following affirmative defenses, to wit: (1) that the action was premature, the claim not having been filed first with the Office of the Auditor General; (2) that the right of action for the recovery of any amount which might be due the plaintiff, if any, had already prescribed; (3) that the action being a suit against the Government, the claim for moral damages, attorney's fees and costs had no valid basis since as to these items the Government had not given its consent to be sued; (4) that inasmuch as it was the province of Cebu that appropriated and used the area involved in the construction of Mango Avenue, plaintiff had no cause of action against the defendants.

During the scheduled hearings nobody appeared for the defendants notwithstanding due notice, so the trial court proceeded to receive the plaintiff's evidence ex parte. On July 29, 1959 said court rendered its decision holding that it had no jurisdiction over the plaintiff's cause of action for the recovery of possession and ownership of the portion of her lot in question on the ground that the government cannot be sued without its consent; that it had neither original nor appellate jurisdiction to hear, try and decide plaintiff's claim for compensatory damages in the sum of P50,000.00, the same being a money claim against the government; and that the claim for moral damages had long prescribed, nor did it have jurisdiction over said claim because the government had not given its consent to be sued. Accordingly, the complaint was dismissed. Unable to secure a reconsideration, the plaintiff appealed to the Court of Appeals, which subsequently certified the case to Us, there being no question of fact involved.

The issue here is whether or not the appellant may properly sue the government under the facts of the case.

In the case of *Ministerio vs. Court of First Instance of Cebu*,^[1] involving a claim for payment of the value of a portion of land used for the widening of the Gorordo Avenue in Cebu City, this Court, through Mr. Justice Enrique M. Fernando, held that where the government takes away property from a private landowner for public use without going through the legal process of expropriation or negotiated sale, the aggrieved party may properly maintain a suit against the government without thereby violating the doctrine of governmental immunity from suit without its consent. We there said:

"* * * If the constitutional mandate that the owner be compensated for property taken for public use were to be respected, as it should, then a suit of this character should not be summarily dismissed. The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen. Had the government followed the procedure indicated by the governing law at the time, a complaint would have been filed by it, and only upon payment of the compensation fixed by the judgment, or after tender to the party entitled to such payment of the amount fixed, may it 'have the right to enter in and upon the land so condemned, to appropriate the same to the public use defined in the judgment.' If there were an observance of procedural regularity petitioners would not be in the sad plight they are now. It is unthinkable then that precisely because there was a failure to abide by what the law requires, the government would stand to benefit. It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained. It is not too much to say that when the government takes any property for public use, which is conditioned upon the payment of just compensation, to be judicially ascertained, it makes manifest that it submits to the jurisdiction of a court. There is no thought then that the doctrine of immunity from suit could still be appropriately invoked."

Considering that no annotation in favor of the government appears at the back of her certificate of title and that she has not executed any deed of conveyance of any portion of her lot to the government, the appellant remains the owner of the whole lot. As registered owner, she could bring an action to recover possession of the portion of land in question at anytime because possession is one of the attributes of ownership. However, since restoration of possession of said portion by the government is neither convenient or feasible at this time because it is now and has been used for road purposes, the only relief available is for the government to make due compensation which it could and should have done years ago. To determine the due compensation for the land, the basis should be the price or value thereof at the time of the taking.^[2]

As regards the claim for damages, the plaintiff is entitled thereto in the form of legal interest on the price of the land from the time it was taken up to the time that payment is made by the government.^[3] In addition, the government should pay for attorney's fees, the amount of which should be fixed by the trial court after hearing.

WHEREFORE, the decision appealed from is hereby set aside and the case remanded to the court a quo for the determination of the compensation, including attorney's fees, to which the appellant is entitled as above indicated. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[*] Decision, Record on Appeal, p. 12.

[1] G.R. No. L-31635, August 31, 1971 (40 SCRA 464).

[2] Alfonso vs. City of Pasay (106 Phil. 1017).

[3] Alfonso vs. City of Pasay, *supra*.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.