

BACOLOD-MURCIA MILLING CO., INC., PETITIONER, VS. HON. JOSE R. QUERUBIN, AS JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, JULIO & JULIANA DE LA RAMA AND NAPOLEON GO...*G.R. No. L-29223. August 30, 1968*

Ponente: CASTRO, J.

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On December 29, 1967 the respondents Julio and Julian dela Rama Gonzaga and Napoleon Gonzaga (hereinafter to as the Landowners) a complaint for injunction with petitioner Bacolod-Murcia Milling Co., Inc., (hereinafter referred to Central) with the Court of First Instance of Negros Occidental (civil case 8410), alleging that they are the owners of parcels of land over the railway tracks of the Central pass for the purpose of hauling sugar cane from sugar plantations to the Central; that said railway tracks were constructed by the Central by virtue of 1920 and 1936 milling contracts executed between the Landowners and the Central, which contracts granted a right of way to the Central for the period of the milling contracts, this period to expire on September 30, 1965; and that the Central continues to used the said railway tracks, and unless an injunction grave and irreparable injury will result to the Landowners. Prayer is made for the issuance o a preliminary injunction restraining the use of the said railway lines passing thru the property of the Landowners, and, after hearing for judgment making the injunction permanent.

On the same date, December 29, 1967, the respondent court, thru Judge Jose F. Fernandez; issued an injunction ex parte as prayed for, upon the filing of a bond of P1,000.

On January 2, 1968 the Central filed an urgent motion to lift the preliminary injunction, alleging that there are about 8,000 hectares affected by the closure of the railway lines, involving about 500,000 picuIs, or a loss of more than \$2,000,00 in foreign exchange badly needed by the country.

The President of the Philippines intervened in G.R. No. L--27084, entitled "Angela Estate, et al. vs. Bacolod-Murcia Milling Co., Inc., et al.," and succeeded in persuading the Angela Estate and the Gonzaga Estate to allow the use by the Central of the railway tracks on the land of the petitioners in that case.

On January 4, 1968 the respondent judge issued an order which states in essence that while public interest maybe jeopardized by the closing of the railways by virtue of the injunction nevertheless, because the contracts have expired and the court cannot extend the contract for the parties, and because the President was going to call the parties to a round table conference, the motion to lift the preliminary injunction should in the meantime be denied.

As result of the said conference, it was agreed to allow the Central's cane cars and locomotives to pass thru the Landowners' property up to April 1, 1968 only.

The Central filed its answer on January 29, 1968 which was amended on April 18, 1968, which amended answer admits some of the factual allegations in the complaint and denies others, and raises legal defenses.

On April 24, 1968 the Central was informed that the Landowners were constructing a cement barricade over the railway tracks passing their property, and that they were ready to bull-doze the land on which the railway tracks are laid.

On May 10, 1968 the Central came to this Court on certiorari with preliminary injunction for review of the orders of the respondent court of December 29, 1967 and January 4, 1968, which was docketed as G. R. No. L-29001.

On May 15, 1968 the Supreme Court issued the following resolution:

"Acting upon the petition for certiorari in case G. R. No. L-29001 (Bacolod-Murcia Milling Co., Inc. vs. Hon. Jose R. Querubin, et al.) and there being no showing that all the grounds alleged in said petition were brought to the attention of the respondent Judge in due time, for which reason it can not be properly held that the order a January 4, 1968, now complained of, was issued in abused of discretion, the Court resolved to DISMISS the petition."

As a consequence on June 4, 1968 the Central filed a motion to lift injunction with the respondent court, interposing said grounds, and on June 25, 1968 the Central filed a second amended answer. The motion to lift injunction was denied in the respondent court's order of July 1, 1968 which reads:

"Considering the motion of the defendant to lift injunction dated June 4, 1968 and the oppo-sition thereto and finding the said motion without merit, same is hereby denied."

Hence, the present recourse.

The petitioner imputes excess of jurisdiction or grave abuse a discretion to the respondent court in issuing the said injunction and in refusing to lift the same, for the following reasons, in the language of the petition:

"1. Under Section 7, Act 2479, the milling contracts that should be executed between the planters and the Central should convey to the Central such right of way as the Central may deem necessary for reads and railroad connecting the mill with the fields' which provision of law must be read into the said contract, and since a conveyance of a railroad right of way is not only an easement, but is a conveyance in fee simple of the strip of land covered thereby, then the provision of milling contracts limiting the existence of the said right of way to 45 crop years or harvests, is null and void, as being in conflict with the law, and public policy and since the Central is the owner of the said railroad right of way, then, it may not be prevented from using the same.

"2. In the earlier portion of the contract of rights of way it provides for a donation by landowners of the strip of land traversed by the railroads, while in the latter portion, it provides a mere easement thereof, and in the case of conflict, the earlier prevails over the later, hence, since there is a donation, Central is again the owner thereof.

"3. Assuming arguendo that there is no conveyance in fee simple or donation of the strip of land constituting the right of way, since the period of the 45 crop years or harvest during the six years, from 1940-41 to 1946-47, then, the sale 45 crop-years will expire only in 1971-72, hence, landowners' acts of closing the railway tracks is premature.

"4. Assuming arguendo that the 45-year period has already expired, nevertheless, since according to Sec. 1(a), sub-par. 4(c) of Act 4166, 'A plantation is adherent to a sugar by virtue of the sugar cane delivered to the mill regardless of the contract relations,' and that according to Astorias Sugar Co. vs. Montinola (69 Phil. 725) that the contractual relations of planter and miller continues by operation of law even after the expiration of the contract, then, the obligation of the landowners to give such right of way to Central continues up to the present, hence, removing of the railway tracks or closing said right of way is an impairment of that obligation.

"5. Moreover, the contract for rights of way between the Central and the adhered planters, and the adhered planters themselves, is one entire and indivisible contract, considering bet-ween that the performance of the

planters in granting the rights of way is the consideration in the performance of the Central in putting up the railways, without which collective promises or commitments the Central could not have built said railways, and since the contract is entire, it may not be terminated piecemeal, for an entire contract stands or falls together, hence, since the contracts of rights of way of most adhered planters have not expired (even if that of the landowners have expired), the entire contract is not deemed to have expired.

“6. Assuming arguendo that the Landowners can now repossess the land constituting the right of way, nevertheless, under Art. 448 of the new Civil Code, the Central being a possessor in good faith of the right of way and have built construction thereon in the form of railway tracks, the same may not be closed or removed without payment of the value of the said railway tracks as well as the locomotive and cane cars using the same amounting to not less than P7 million, while on the other hand, the Central is willing to buy the land covered by the railway tracks in question at the price that may be fixed by the court, being smaller in value than the cost of improvements attached to the land, hence, closing the railway tracks therefrom, which will amount to appropriating said improvements, without compensation, and without a hearing, hence, denial of due process of law (Sec. 1[1 & 2], Art. III, Constitution).”

The present petition must be denied.

These six issues were substantially, albeit in different language, raised in *Angela Estate et al. vs. CFI of Negros Occidental et al.*, G.R. No. L-27084, July 31, 1968, where the factual setting is similar to that in the case at bar. In its decision this Court discussed and analyzed the said issues, and resolved all of them against the *Bacolod Marcia Milling Co.*, to deny the latter passage of its locomotives and cane cars through the lands of the petitioners therein, meantime that the existence of the statutory requisites for a right to a legal easement over the said lands has not been established.

In the present case, as in that case, there is no showing by the Central that the pre-conditions required by articles 649 and 650 of the new Civil Code for the grant of a legal easement actually exist. The respondent court therefore acted correctly in issuing the injunction against the Central and in refusing to lift the same.

ACCORDINGLY, the present petition is hereby dismissed.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.

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