

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. LA ORDEN DE PP. BENEDICTINOS DE FILIPINAS, DEFENDANT AND APPELLEE.

G.R. No. L-12792. February 28, 1961

Ponente: DIZON, J.

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DIZON, J.:

To ease and solve the daily traffic congestion on Legarda street, the Government drew plans to extend Azcarraga street from its junction with Mendiola street, up to the Sta. Mesa Rotonda, Sampaloc, Manila. To carry out this plan it offered to buy a portion of approximately 6,000 square meters of a bigger parcel belonging to La Orden de PP. Benedictinos de Filipinas, a domestic religious corporation that owns the San Beda College, a private educational institution situated on Mendiola street. Not having been able to reach an agreement on the matter with the owner, the Government instituted the present expropriation proceedings.

On May 27, 1957 the trial court, upon application of the Government—hereinafter referred to as appellant—issued an order fixing the provisional value of the property in question at P270,000.00 and authorizing appellant to take immediate possession thereof upon depositing said amount. The deposit having been made with the City Treasurer of Manila, the trial court issued the corresponding order directing the Sheriff of Manila to place appellant in possession of the property aforesaid.

On June 8, 1957, as directed by the Rules of Court, the herein appellee, in lieu of an answer, filed a motion to dismiss the complaint based on the following grounds:

"I. That the property sought to be expropriated is already dedicated to public use and therefore is not subject to expropriation.

"II. That there is no necessity for the proposed expropriation.

"III. That the proposed Azcarraga Extension could pass through a different site which would entail less expense to the Government and which would not necessitate the expropriation of a property dedicated to education.

"IV. That the present action filed by the plaintiff against the defendant is discriminatory.

"V. That the herein plaintiff does not count-with sufficient funds through its project of constructing the proposed Azcarraga Extension and to allow the plaintiff to expropriate defendant's property at this time would be only to needlessly deprive the latter of the use of its property."

The government filed a written opposition to the motion to dismiss (Record on Appeal, pp. 30-37) while appellee filed a reply thereto (Id. pp. 38-48). On July 29, 1957, without receiving evidence upon the questions of facts arising from the complaint, the motion to dismiss and the opposition thereto filed, the trial court issued the appealed order dismissing the case.

The appealed order shows that the trial court limited itself to deciding the point of whether or not the expropriation of the property in question is necessary (Rec. on Ap., p. 50) and, having arrived at the conclusion that such expropriation was not of extreme necessity, dismissed the proceedings.

It is to be observed that paragraph IV of the complaint expressly alleges that appellant needs, among other properties, the portion of appellee's property in question for the purpose of constructing the Azcarraga street extension, and that paragraph VII of the same complaint expressly alleges that, in accordance with Section 64(b) of the Revised Administrative Code, the President of the Philippines had authorized the acquisition, thru condemnation proceedings, of the aforesaid parcel of land belonging to appellee, as evidenced by the third indorsement dated May 15, 1957 of the Executive Secretary, Office of the President of the Philippines, a copy of which was attached to the complaint as Annex "C" and made an integral part thereof. In denial of these allegations appellee's motion to dismiss alleged that "there is no necessity for the proposed expropriation". Thus; the question of fact decisive of the whole case arose

It is the rule in this jurisdiction that private property may be expropriated for public use and upon payment of just compensation; that condemnation of private property is justified only if it is for the public good and there is a genuine necessity therefor of a public character. Consequently, the courts have the power to inquire into the legality of the exercise of the right of eminent domain and to determine whether or not there is a genuine necessity therefor (*City of Manila vs. Chinese Community*, 40 Phil., 349; *Manila Railroad Company vs. Hacienda Benito, Inc.*, 37 Off. Gaz. 1957).

Upon the other hand, it does not need extended argument to show that whether or not the proposed opening of the Azcarraga extension is a necessity in order to relieve the daily congestion of traffic on Legarda St., is a question of fact dependent not only upon the facts of which the trial court very liberally took judicial notice but also upon other factors that do not appear of record and must, therefore, be established by means of evidence. We are, therefore, of the opinion that the parties should have been given an opportunity to present their respective evidence upon these factors and others that might be of direct or indirect help in determining the vital question of fact involved, namely, the need to open the extension of Azcarraga street to ease and solve the traffic congestion on Legarda street.

Wherefore, the appealed order of dismissal is set aside and the present case is remanded to the trial court for further proceedings in accordance with this decision.

Without costs.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

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