

**BARANGAY MATICTIC, MUNICIPALITY OF NORZAGARAY,
PROVINCE OF BULACAN, PETITIONER, VS. HONORABLE J. M.
ELBINIAS AS DISTRICT JUDGE, CFI OF BULACAN, BRANCH V AND
SPOUSES JOSE SERAPIO...**

G.R. No. L-48769. February 27, 1987

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

Subject of the petition is the Order dated May 12, 1978 of the then Court of First Instance of Bulacan, Branch V, dismissing without prejudice, Civil Case No. SM-234, entitled "Municipality of Norzagaray vs. Jose Serapio, et. al.". Civil Case No. SM-234 is an expropriation proceeding filed by the Municipality of Norzagaray which the public respondent Judge dismissed on the ground that at the time the original complaint was filed, the plaintiff municipality had not yet obtained the requisite authority from the Department Head or Office of the President, as required in Section 2245 of the Revised Administrative Code. Respondent Judge held that —

"x x x since the filing of the amended complaint to cure this fatal defect, by submitting the requisite authority from the Office of the President as required by Section 2245 of the Revised Administrative Code, did not vest jurisdiction with this Court which it never had acquired even from the very filing of the original complaint - - x x x orders this case dismissed without prejudice." (Rollo, p. 19).

For municipalities, the municipal council shall exercise the right of eminent domain with the approval of the President [Sec. 2245 (h), Revised Administrative Code].

The factual and procedural antecedents which led to the filing of this petition are as follows:

- On December 7, 1968, petitioner (then called Barrio Matictic) filed with the then Court of First Instance of Bulacan, Branch V, an action for injunction, docketed as Civil Case No. SM-210, entitled Barrio Matictic vs. Zosimo Serapio, et al., praying therein that the defendants (who are the private respondents in the instant case) be enjoined from placing obstructions and closing the barrio road and to allow plaintiff barrio to remove the obstructions and repair the barrio road (the Poblacion-Tomana-Canyakan barrio road) so as "to enable the people and motorized vehicles the free use thereof and convenient passage through it.";
- On January 28, 1969, Barrio Matictic filed a motion to dismiss the case on the ground that an expropriation proceeding, not an injunction, is the better remedy and on the same date, the Court, Judge Ambrosio M. Geraldez then presiding, issued the corresponding order dismissing the case;
- However, and also on January 28, 1969, a complaint for Eminent Domain was filed by the Municipality of Norzagaray with the same court, docketed as Civil Case No. SM-234, CFI, Branch I, Bulacan, and entitled "Municipality of Norzagaray vs. Jose Serapio, et al." Said case involves the same property of the aforesated defendants that was the subject of Civil Case No. SM-210 hereinabove referred to;
- The defendants in Civil Case No. SM-234, Jose Serapio and Gregoria Pacida, on February 5, 1979, filed a Motion

to Dismiss alleging that the Court of First Instance of Bulacan has no jurisdiction over the subject of the action; that the complaint states no cause of action; and that plaintiff (municipality of Norzagaray) has no capacity to sue;

- On February 11, 1969, upon motion of plaintiff, the Court issued an order allowing plaintiff to take possession of the property subject of the expropriation proceedings upon deposit of the sum of P2,682.00;

- On February 14, 1969, defendants Felicitas Serapio-Merced and Eustaquio Merced filed through counsel a Motion to Dismiss the expropriation case on several grounds. Their principal contention is that the plaintiff municipality, in the absence of an approval from the Office of the President, may not properly file the subject expropriation case;

- On March 14, 1969, plaintiff filed an amended complaint alleging therein that it had obtained authority from the Office of the President to institute expropriation proceedings. Private respondents, Jose Serapio and Gregoria Pacida, in turn, filed an Amended Motion to Dismiss, dated March 19, 1969, reiterating therein plaintiff's lack of cause of action and that a subsequent authorization, even if obtained, would not cure the jurisdictional defect attaching to the plaintiff's complaint when the subject case was initially filed;

- On August 18 and 19, 1969, the Court issued orders requiring plaintiff municipality to submit plans of the land to be expropriated, duly approved by the Bureau of Lands;

- On January 22, 1970, for failure of the plaintiff to comply with the orders of August 18 and 19, 1969, the Court issued an order dismissing said Civil Case No. SM-234 for failure of plaintiff to take the necessary steps to prosecute its case;

- Said order of dismissal, however, upon appeal by the municipality, was reversed by the Court of Appeals in its decision dated January 5, 1973. The Court of First Instance of Bulacan was ordered to proceed with the expropriation case pursuant to Sec. 3, Rule 67 of the Rules of Court;

- The case went back to the court a quo, with Judge J.M. Elbinias presiding (now Associate Justice of the Court of Appeals). But at this point of time the municipal mayor of Norzagaray displayed reluctance to prosecute the said case for eminent domain. In fact, he requested the Municipal Council to withdraw the expropriation proceedings. The Municipal Council, however, refused to accede to the wishes of the mayor; (Rollo, pp. 98-99)

- It appear then that a motion to dismiss dated April 3, 1978 was once more filed by the defendants (private respondents herein) who reiterated their challenge to the jurisdiction of the said trial court based on their argument that the initial lack of jurisdiction of a court cannot be cured by the filing of an amended complaint;

- Petitioner herein, Barangay Matictic, chagrined and confronted by the attitude of its mayor, and on its averment that the result of the expropriation case will greatly affect the social and economic development of the area in and around Barangay Matictic, filed on January 26, 1978 a Motion for Intervention in Civil Case No. SM-234. Respondent Judge issued an order taking notice of the Motion for Intervention and denied the motion to dismiss filed by the defendants until the motion for intervention shall have been considered by the trial court;

- On May 12, 1978, respondent Judge, without taking any further action on petitioner's motion for intervention, issued an order dismissing, but without prejudice, the expropriation case — Civil Case No. SM-234, on the singular reason that at the time the expropriation case was initially filed there was no showing of any prior Presidential approval — a requisite that should have been first complied with, pursuant to Section 2245 of the Revised Administrative Code. A motion for reconsideration of this decision was filed by plaintiff municipality. It insisted that presidential approval was, after all, secured and that this fact was alleged in the plaintiff's amended complaint. Said motion for reconsideration was, however, denied in the order of the court below, dated January

15, 1978. This order closed the case for the plaintiff municipality of Norzagaray inasmuch as it no longer appealed said order of dismissal.

Petitioner, Barangay Matictic, in this certiorari and mandamus case before us, simply complains that in "x x x these orders, dated May 12, 1978 and June 15, 1978 (Annexes CC and DD) no resolution or ruling was made by respondent Judge with respect to its motion for intervention which was mentioned in the order dated January 26, 1978 (Annex AA) leaving petitioner (Barangay) no personality to take part in the case (Rollo, p. 9). Consequently, it filed the instant petition for certiorari and mandamus to compel respondent Judge to allow and admit its complaint in intervention.

This petition was given due course, under the resolution of this Court, dated January 15, 1979 (Rollo, p. 153) and on February 2, 1979, a temporary restraining order was issued enjoining respondents from exacting, charging and collecting toll fees for the use of the feeder road, subject of the expropriation proceedings until further orders from this Court (Rollo, p. 158).

The petition of Barangay Matictic is manifestly untenable.

Regarding the annulment and setting aside of the May 12, 1978 and June 15, 1979 orders of the public respondent, dismissing the expropriation proceedings, the proper party to appeal the same or seek a review of such dismissal, would be the Municipality of Norzagaray. Petitioner Barrio Matictic, which is a different political entity, and although a part and parcel of the aforesaid municipality, has no legal personality to question the aforesaid orders because by itself, it may not continue the expropriation case. It must be considered that the subject orders of the court a quo were not appealed by the Municipality of Norzagaray. The dismissal of the expropriation case, insofar as said municipality is concerned, became final. The expropriation case ceased to exist and there is consequently no more proceeding wherein Barangay Matictic may possibly intervene.

An intervention has been regarded as merely "collateral or accessory or ancillary to the principal action and not an independent proceeding; an interlocutory proceeding dependent on and subsidiary to, the case between the original parties". (Francisco, Rules of Court, Vol. I, p. 721). With the final dismissal of the original action, the complaint in intervention can no longer be acted upon. In the case of *Clareza vs. Rosales*, 2 SCRA 455, 457-458, it was stated that:

"That right of the intervenor should merely be in aid of the right of the original party, like the plaintiffs in this case. As this right of the plaintiffs had ceased to exist, there is nothing to aid or fight for. So the right of intervention has ceased to exist."

Consequently, it will be illogical and of no useful purpose to grant or even consider further herein petitioner's prayer for the issuance of a writ of mandamus to compel the lower court to allow and admit the petitioner's complaint in intervention. The dismissal of the expropriation case has no less the inherent effect of also dismissing the motion for intervention which is but the unavoidable consequence.

We are constrained to reject petitioner's averment that public respondent Judge "acted with grave and manifest abuse of discretion." Firstly, nothing is lost to the petitioner. If at all petitioner can rightfully establish that it is allowed by law to institute a separate and independent action of its own, then there would be no necessity for it to intervene in the case initiated by the Municipality of Norzagaray which is now apparently no longer interested in continuing the expropriation proceedings. The dismissal of the expropriation case was without prejudice. The municipality of Norzagaray, Bulacan can revive its action. There is no need for the proposed intervention of Barrio Matictic. What it may do is to urge the municipality to file its case anew. If the Barangay has obtained authority for itself to pursue the action of eminent domain, then the more reason there is to refuse its intervention.

"Approximately, if the rights of the party seeking to intervene will not be prejudiced by any judgment in the case at bar and that it may be fully protected in a separate proceeding in court, then the exercise of judicial discretion in denying a motion for intervention is deemed correctly made." (See *Pflieder vs. de Britanica*, L-19077, October 20, 1964, cited in 51 SCRA 368).

Considering the foregoing discussion indicating the lack of merit of the petition for certiorari, it will follow that the writ of mandamus prayed for by petitioner cannot be granted for lack of legal basis.

WHEREFORE, the instant petition is hereby DENIED for lack of merit. The temporary restraining order earlier issued in this case by the Court, dated February 2, 1979, is hereby lifted and dissolved.

No costs.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Padilla, Bidin, and Cortes, JJ., concur.

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