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G.R. No. L-47207. September 25, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

The petitioners complain about the judgment of the Court of Appeals, engrafting conditions on their repurchase of ten lots, which were expropriated to form part of the Lahug Airport in Cebu City, as well as the failure of the Appellate Court to grant them compensation for the use of the lots by the Civil Aeronautics Administration (CAA) from the time that they tendered the re-demption price (*Escaño vs. Republic of the Philippines*, CA-G.R. No. 57188-R, March 17, 1977).

In 1964, those ten lots with a total area of 10,639 square meters were sold for P31,977 by Mamerto Escaño, Inc. to the Republic for use by the CAA.

The sale was subject to the resolutive condition that when the CAA would no longer use the lots as part of the airport, then the title thereto would revert to the seller upon reimbursement of the price of P31, 977 without interest. That condition was annotated on the title issued to the Republic of the Philippines.

In 1966, by means of two deeds of assignment and other documents, the petitioners became the successors of Mamerto Escaño, Inc. to the reversionary right or the right to repurchase the lots from the Republic of the Philippines.

In the meantime, or on April 27, 1966, the Mactan Airport commenced its operation and the Philippine Airlines stopped using the Lahug Airport. Filipinas Airways and Air Manila ceased to use the Lahug Airport at the end of 1966 and thereafter used the Mactan Airport. (pp. 28-29, Record on Appeal, p. 38, Rollo).

On the premise that the above-mentioned resolutive condition had already been fulfilled, meaning that the ten lots were no longer being used as part of the Lahug Airport because of the operation of the Mactan Airport, the petitioners, through counsel, made on October 2, 1972 a written tender to the CAA of the repurchase price of P31,977 (Exh. G).

The Director of Civil Aviation rejected the tender in his reply of October 4, 1972. He reasoned out that because the Lahug Airport was still being utilized for general aviation, the ten lots could not yet be released and returned to the reversionary owners (Exh. H).

On November 29, 1972, the petitioners sued the Republic of the Philippines (CAA) in the Court of First Instance of Cebu for the reconveyance of the ten lots (Civil Case No. R-13078)

After hearing, the trial court rendered a decision on October 30, 1974, ordering the CAA to reconvey to the

petitioners the ten lots after payment of the repurchase price of P31,977.

The trial court found that the lots were no longer needed for the airport and that since 1964 they were never used for any airport facility.

The petitioners (plaintiffs) appealed because the lower court did not award to them the reasonable compensation for the use and occupation of the lots from the time that they tendered the redemption price.

The Government appealed because it believed that the resolutory condition for the repurchase had not yet materialized.

The Court of Appeals affirmed the trial court's judgment allowing the repurchase but it went farther. The Appellate Court ruled that the repurchase should be subject to the same five conditions which were imposed in 1961 on the resale made by the CAA to General Isagani Campo of his two lots which are in proximity to petitioners' ten lots. Those conditions were as follows (Exh. J-3):

"(a) That all taxes imposed on the property from the time the property is repossessed by the said spouses shall be paid by them.

"(b) That the repurchasers shall allow the CAA to continue using the property repurchased for airfield purposes, until such time as the airport operations are finally transferred to Mactan Airport.

"(c) That the CAA shall not pay any rents or other charges for its continued use of the property.

"(d) That the repurchase price of the property in question shall be based on the price paid by the CAA for the acquisition.

"(e) That the property shall not be resold by the repurchasers until the Lahug landing field is finally transferred to Mactan Airport.

The petitioners appealed to this Court. The Government did not appeal.

We hold that the Court of Appeals erred in imposing the said conditions in the reconveyance of the ten lots to the petitioners, a matter which was not raised in the pleadings.

The propriety of imposing those conditions was not in issue in the trial court and in the Court of Appeals. It was an immaterial point in the case. It was not included in any assignment of errors in the Government's brief.

When the petitioners filed in the Court of Appeals their motion for reconsideration, the Solicitor General did not oppose their prayer that the imposition of the conditions be deleted from the decision. The Solicitor General confined his opposition to petitioners' prayer that the CAA be adjudged liable to pay compensation for the use of the lots.

The Court of Appeals ignored the rule that the questions to be raised on appeal are those raised in the court below and within the issues framed by the parties (Sec. 18, Rule 46, Rules of Court).

It also disregarded the rule that "no error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the court, at its option, may notice plain errors not specified, and also clerical errors" (Sec. 7, Rule 51, Rules of Court).

It departed from the accepted and usual course of an appeal by adjudicating a point which was not raised by the parties.

The 1964 contract of sale between the petitioners' predecessors-in-interest and the Government is the law between them. Had they intended that the conditions imposed in the resale of General Campo's lots in 1961

should likewise be imposed in the resale to the reversionary owners of the ten lots, they could have easily made a stipulation to that effect in the 1964 deed of sale.

The fact that the contract of sale does not mention those conditions means that they were never within the contemplation of the parties. The Court of Appeals, in gratuitously imposing those conditions, made a new contract for them.

In fact, the second condition "that the repurchasers shall allow the CAA to continue using the property repurchased for airfield purposes, until such time as the airport operation is finally transferred to Mactan Airport" nullifies the reversion or resolutive condition and negatives the trial court's findings that the Lahug Airport had ceased to be operational and that it had been replaced by the Mactan Airport.

The other point is that the Court of Appeals denied petitioners' claim for reasonable compensation for the CAA's alleged use and occupancy of the lots from October 2, 1972 when the tender of the redemption price was made.

The trial court disallowed that claim because (1) the compensation was not stipulated by the parties in the contract of sale; (2) the claim is inconsistent with petitioners' theory that the CAA never used their lots for aviation purposes; (3) the Government, as owner, should not be required to pay rentals for the lots registered in its name, and (4) the petitioners' predecessors-in-interest were able to use the price of P31, 977.

To those grounds, the Solicitor General adds that the CAA, as owner, should not answer for the compensation for the use of the lots before the issuance of a judicial declaration that the resolutive condition had been fulfilled.

We hold that, while petitioners' claim for compensation may be justified on the ground that the CAA should have reconveyed the ten lots upon the tender of the redemption price, nevertheless, it would seem to be inequitable to require the CAA to pay compensation when it had not derived any benefit from the lots.

And on the other hand, it is undeniable that during all the time that the reconveyance has not been effected the petitioners have been able to use the redemption price of P31, 977 for their own purposes.

If any damage had been suffered by the petitioners due to the delay in the reconveyance, that damage might be equivalent to *damnum absque injuria*, which is damage without injury or damage or injury inflicted without injustice, or loss or damage without violation of a legal right, or a wrong done to a man for which the law provides no remedy (1 Bouvier's Law Dictionary, 3rd Ed., p. 754).

The petitioners have been dealing with a governmental entity whose activities are presumably dictated by policy considerations and the public interest.

WHEREFORE, the decision of the Court of Appeals is modified by deleting therefrom the five conditions for the reconveyance of the ten lots to the petitioners. The trial court's judgment is affirmed. No costs.

SO ORDERED.

Barredo, (Chairman), Guerrero,[*] Abad Santos, and De Castro, JJ., concur.

[*] Justice Guerrero was designated to sit in the Second Division. Justice Concepcion, Jr. is abroad.

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