

TALISAY-SILAY MILLING CO., INC., PETITIONER, VS. COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, DR. TRINO MONTINOLA, ESTATE OF BERNARDINO (RODOLFO) JALANDONI, SALVADOR LACSON, ET...*G.R. No. L-33423. December 22, 1971*

Ponente: CASTRO, J.

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At about the end of the sugar crop year 1969-1970, the petitioner Talisay-Silay Milling Co., Inc. (hereinafter referred to as the Central) faced the prospect of a severe cut-off, in railway connections, from the sugarcane plantations surrounding its mill. The respondents Trino Montinola, Estate of Bernardino Jalandoni, and about 39 others (herein-after referred to as the respondent landowners) had refused to extend the 50-year contractual right of way granted to the Central's railway complex in the Talisay-Silay mill district and outlying areas. In order to keep its railway lines open, the Central obtained several writs of preliminary injunction from the respondent Court of First Instance of Negros Occidental. Subsequently, however, these writs were dissolved at the instance of the respondent landowners. Unable to revive the court's injunction orders, the Central came to us by way of special civil action for certiorari and prohibition with preliminary injunction.

On May 5, 1971, upon the Central's posting of a bond in the amount of P100,000, we enjoined the respondent court and the respondent land-owners from giving effect to the various orders denying continuance of the Central's railway operations in the areas concerned. Following its receipt of our injunction order, the respondent court directed the res-toration of the railroad tracks in the places where the same had already been dismantled, all at the expense of the landowners who had caused the uprooting of the said tracks. This latter action of the respondent court was likewise halted by us on November 25, 1971, pending final adjudication on the merits.

The record shows that the Central has been operating in the Talisay-Silay mill district in Negros Occidental as early as in the sugar crop year 1920-1921. Sugarcane grown in the district and out-lying areas was being processed into sugar and other products in its mill. Coinciding with the start of its operations in 1920, the Central entered into identical milling contracts with the sugarcane planters in the mill district, among them the respondent landowners. Under these contracts, the Central was granted the right to construct and maintain railroad lines traversing the planters' properties for the hauling of sugarcane from the various plantations in the mill district to the mill site. The identical milling contracts, as with the contractual railway easements, were for a period of fifty years to expire at the end of the 1969-1970 sugar crop year.

On July 25, 1970 the Central lodged a complaint against the res-pondent landowners "for the conversion of their contractual easement of right of way into a legal easement." The essential allegations of this complaint read as follows:

"(6) That there is no other way by which the loco-motives of the plaintiff can pass in order to reach the plantations of planters growing sugar canes in the Talisay--Silay Mill District and milling with plaintiff, except

thru the railroad lines traversing the parcels of land indicated in 'Annex B', which lines altogether form a continuous system of railroad transportation as plaintiff's mill is surrounded by other immovables, and there is no outlet to a public highway to which it can haul the canes of said planters to its mill, said railways system being more particularly indicated in the Sketch attached hereto as Annex 'C ';

"7) That when the mill of the plaintiff was constructed in 1920, and railroad tracks were laid out and likewise erected and maintained, on the parcels of land indicated on Annex 'B' as well as on other properties, pursuant to the milling contracts aforesaid, it was in the expectation that the railroad right of way would be maintained and continued not only during the 50-year period, but also for a period coterminous with the existence of the Central, as the Central was constructed with the railways system as the sole, adequate, expeditious and most convenient means of hauling of planter's canes to the mill

"8) That the railroad tracks traversing the different parcels of land indicated on Annexes 'B' and 'C' are on portions thereof least prejudicial to the owners-defendants herein;

"9) That before the expiration of the railroad right of way over the lots indicated in Annex 'B', the plaintiff by means of letters sent to each and every defendant herein, offered to lease the area in their respective properties occupied by the railroad tracks of the plaintiff at an annual lease rental of P0.20 a sq. meter, xerox copies of said letters being attached hereto as Annex 'D', being attached hereto to the complaint of the particular defendant, and made integral parts here-of, however, defendants failed to answer the letters sent to each one of them, which failure amounts to a refusal of said offer or altogether refused to entertain the offer of plaintiff and, instead, demanded the removal of the railroad tracks of plaintiff presently erected on their respective properties, or otherwise threatened to remove and/or close the same for the passage of plaintiff's locomotives and cane cars on the ground that the 50 years period for railroad right of way has expired."

Further, as a ground for its petition for the issuance of a writ of preliminary injunction, the Central expressed apprehension of irreparable damage to itself, to the planters whose sugarcane needs hauling from their plantations to the mill, and to the national economy in general, that would result from closure of the Central's railway lines on the respondent landowners' properties.

In ultimately denying, after due hearing, the injunction sought by the Central, the respondent court, in its orders of December 8, 1970, January 4, 1971, and February 26, 1971, heavily relied on the rulings of this Court in *Bacolod-Murcia Milling Co., Inc. vs. Capitol Subdivision, Inc.* (L-25887, July 26, 1966, 17 SCRA 731), *Angela Estate, Inc. vs. Court of First Instance of Negros Occidental* (L-27084, July 31, 1969, 24 SCRA 500), and *Locsin vs. Climaco* (L-27319, January 31, 1969, 26 SCRA 816). The Central urges us to declare the said rulings inapplicable to the case at bar and to hold that the respondent Court gravely abused its discretion in denying the Central's petition for preliminary injunction.

The *Bacolod-Murcia*, *Angela Estate*, and *Locsin* cases also involved sugar centrals in Negros Occidental whose milling contracts, as with whose easements of railway passage, with the adherent plantations had expired. On the question of whether preliminary injunction may be secured to maintain the centrals' continuous railway passage over the properties of the demurring landowners, this Court, in sum, held that:

1. The function of an injunction is the maintenance of the status quo as of the time of its issuance. Injunction will not issue to allow a central continued use of its expired right of way in the manner established under its former milling contracts with the planters. Courts cannot create contracts between the parties through the expedient of injunctive relief.
2. After the central's right to maintain and use the railroad tracks over the properties of the landowners incontrovertibly expired with the milling contracts, the central has to rely strictly on its supposed entitlement to a compulsory servitude of right of way under the Civil Code, but it cannot claim any such servitude without first

establishing the preconditions for its grant, namely, (a) that it is surrounded by other immovables and has no adequate outlet to a public highway; (b) after payment of proper indemnity; (c) that the isolation is not the result of the central's own acts; and (d) that the right of way claimed is at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.[1]

The foregoing preconditions were not properly established in the courts below by the centrals concerned in the three cases mentioned. Their naked claim that they were entitled to compulsory easements of right of way was not enough to warrant the issuance of preliminary injunctions in their favor.

3. Injunction, whether preliminary or final, is not designed to protect contingent or future rights. An injunction will not issue to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of suits to establish title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed. The possibility of irreparable damage, without proof of violation of an actual existing right, is no ground for an injunction, being mere *damnum absque injuria*.

After assessing the facts obtaining in the case at bar, we do not see any cogent reason why the rulings essayed above should not apply.

The Central points out that at the time it commenced litigation against the respondent landowners, its contractual right of way still subsisted. The petitioner thus argues that the injunction issued shortly thereafter was proper because it merely saw to the preservation of the status quo. This, to our mind, is a simplistic view of the meaning of "status quo." True, at the time the injunction was initially issued by the court below, the Central had open and free use of the easements of right of way over the properties of the respondent landowners. It is equally true, however, that such contractual easements were fast coming to an end. The fact of the normal running of the period during which the milling contracts should last, is part too of the status quo and it would not serve the salutary function of injunctive relief to simply halt the same.

The factual disparity of the case at bar from the situations obtaining in the Bacolod-Murcia, etc. cases is not substantial and does not give additional leverage to the Central insofar as it must deal with the respondent landowners respecting its desire to obtain a legal easement of right of way for its railway system. The Central claims that it has fulfilled all the preconditions prescribed in articles 649 and 650 of the Civil Code or, at the very least, has alleged their attendance in its verified complaint. This claim of the Central is self-serving.

First, as regards the requisite that the Central's mill must be shown to be surrounded by other immovables and has no adequate outlet to a public highway, the complaint clearly shows that the Central, even as it assumes the role of a dominant estate, wants a railway access to the fields of its planters to be able to haul the latter's sugarcane to the milling site. It does not seek access to a public highway. As a matter of fact, the court a quo made a finding from the sketch submitted by the Central that "the entire length of one side of plaintiff's mill site abuts the provincial road, which certainly is a most adequate outlet to a public highway." After examining the said sketch ourselves, we do not see any error in such finding.

Second, the Central's offer to lease the affected portions of the respondent landowners' properties for P0.20 per square meter per annum is not the "prepayment" referred to in our previous decisions. Prepayment, as we used the term, means the delivery of the proper indemnity required by law for the damage that might be incurred by the servient estate in the event the legal easement is constituted.[2] The fact that a voluntary agreement upon the extent of compensation to be paid cannot be reached by the parties involved, is not an impediment to the establishment of such easement. Precisely, the action of the dominant estate against the servient estate should

include a prayer for the fixing of the amount which may be due from the former to the latter. Notably, the action filed by the Central did not opt for this.

Third, as regards the requisite that the isolation is not the result of the Central's own acts, the record shows that the Central has acted to secure the continuance of its easements of right of way at the eleventh hour when its fifty-year milling contracts with the respondent landowners were on their last few months of life. This laches on the part of the Central makes the denial of the preliminary injunction all the more justified, for "a remedy based on equity may not be awarded in favor of those who sleep on their rights."^[3]

Finally, the Central's cardinal mistake is its assumption that the railroad route secured to it under its former milling contracts with the respondent landowners is the same route the court would grant the Central in the event the latter succeeds in proving its right to a legal servitude. It made no attempt to negotiate with the respondent landowners for such railroad connections as will be least prejudicial to the latter's estates, and, insofar as consistent with this norm, where the distance from the Central to the proposed out-let is the shortest. Nor yet did the Central, in its complaint, ask the court to fix the location and length of the servitude sought in the manner and under the limitations defined by law.

In sum, as in *Bacolod-Murcia, Angela Estate, and Locsin*, the herein Central's right to the legal easement of right of way over the properties of the respondent landowners is not clear. And, unless it can show otherwise during the hearing on the merits, the Central cannot ask for the establishment of the said legal servitude in its favor, much less demand the restoration of the injunction orders dissolved by the respondent court.

ACCORDINGLY, we deny the present petition. The preliminary injunction we issued on May 5, 1971 against the respondents is hereby dissolved. Our order of November 25, 1971, enjoining the respondent court from directing the restoration of the dismantled railroad tracks at the expense of the respondent landowners, is hereby made permanent. Costs against the petitioner Talisay-Silay Milling Co., Inc.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Articles 649-650, Civil Code of the Philippines

[2] Article 649 in relation to article 1232, Civil Code of the Philippines

[3] *Bacolod-Murcia Milling Co., Inc. vs. Capitol Subdivision, Inc.*, *supra*.

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