

THE CITY OF CEBU, PLAINTIFF AND APPELLANT, VS. TEODORICO LEDESMA, ET. AL., DEFENDANTS AND APPELLEES.

G.R. No. L-16723. July 30, 1965

Ponente: DIZON, J.

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DIZON, J.:

This is an appeal taken by the City of Cebu—hereinafter referred to as the City—from the judgment rendered by the Court of First Instance of Cebu in Civil Case No. R-4975 "fixing the market value of all the properties involved in this expropriation case at the rate of P30.00 per square meter within 30 meters deep from the side of the road, and P15.00 per square meter beyond said depth as indicated in the plan of the lots affected in this expropriation proceedings as indicated in Annexes 'A', 'A-1', 'A-2', and 'A-3', attached to report of Commissioners Vicente E. R. Zosa and Genaro Ursal."

Pursuant to Resolutions Nos. 891 and 1180, Series of 1956, of the Municipal Board of the City providing for the construction of a supermarket at Fructuoso Ramos and Dionisio Jakosalem streets, and the acquisition of the necessary site therefor, the City offered to buy the lots comprising the area affected from their respective owners. As the latter, with the exception of a few, refused to accept the amounts offered for their properties, the City commenced the present condemnation proceedings.

On March 4, 1957, the court issued an order fixing the amount of P171,815.00 as the provisional value of the properties sought to be expropriated and ordered appellees to deliver the possession thereof to the City upon the latter depositing with the City Treasurer of Cebu the amount aforementioned.

On July 22 of the same year, the court issued an order declaring the City with lawful right to take the properties sought to be expropriated for the public use described in its complaint upon payment of just compensation to be determined as of the date of the filing of said pleading. The court thereafter appointed Messrs. Vicente E. R. Zosa, Genaro Ursal and Marcos M. Morelos as commissioners to ascertain, and report to it, the just compensation to be paid for the properties. On August 29, 1957, the court again ordered appellees to deliver the possession of the properties to the City for its immediate use in the construction of the public supermarket, the latter having deposited and placed at the disposal of the court the amount of P171,815.00 required in the court's order dated March 4, 1957.

After conducting several hearings and analyzing the evidence presented by both parties on the question of just compensation, Commissioners Zosa and Ursal, on February 26, 1958, filed a report of their findings, with the following recommendation:

"In view of all the foregoing and of the provisions of Commonwealth Act 530 to the effect that the value of the real property for taxation purposes, constitutes prima facie evidence of the real value of such property, as explained in the Memorandum filed by the counsel for the plaintiff on February 19, 1958, it is strongly recommended that the just compensation for the lots under expropriation be fixed at P15.00 per square meter within 30 meters deep from the side of the road and P7.50 per square meter beyond said depth with the

exception of those that are only partly affected and have remaining useful portions, in which case the value of the portions to be taken should be deducted by 30 per centum to offset the estimated increase in the value of the remaining useful portions." (Record on Appeal, pp. 77-78).

Commissioner Marcos M. Morelos submitted a separate report recommending:

"1. Fixing the fair market value of all the properties involved in this expropriation case at the rate of P30.00 per square meter and ordering the plaintiff, City of Cebu, to pay the defendants, with the exception of Cayetano Lu Do, the sum of P30.00 per square meter for the lands that may be actually taken by the said plaintiff in the case." (Record on Appeal, pp. 104-105)

After considering the aforementioned reports and the evidence of the parties, the lower court rendered the appealed judgment which the City now urges us to reverse, claiming that the lower court erred in fixing the fair market value of the properties sought to be condemned on the basis of the findings, conclusions and recommendation of Commissioner Morelos instead of doing it on the basis of the findings, conclusions and recommendation of Commissioners Zosa and Ursal.

It is well settled that reports submitted by commissioners of appraisal in condemnation proceedings are not binding, but merely advisory in character, as far as the court is concerned. In the present case We And that the lower court accepted the views of the minority commissioner because it was strongly supported by documentary evidence presented before the commissioners, which said court examined with special attention. One of them is the document Exhibit 7,—a Deed of Sale dated May 28, 1957 executed by and between Pedro and Jesus Solon and others, on the one hand, and the City of Cebu, on the other, covering two parcels of land within the supermarket area, purchased by the City at the rate of P30.00 per square meter. On motion of the City itself, the lower court issued an order for the payment of the agreed price.

True, the City claims that the purchase price agreed upon in connection with the above sale was due to certain attendant exceptional circumstances, but according to the lower court, these alleged exceptional circumstances were not duly proven.

The other document considered by the lower court was Exhibit 4, which is a similar Deed of Conveyance executed by Isabel and Eugenio Mission in favor of Alfonso R. Lim. Appellant City's contention that this sale should be disregarded in the determination of the true market value of the properties under expropriation because it was a transaction between brothers and sisters is, in our opinion, without merit. The very circumstance upon which the City bases its contention would seem to justify the conclusion that the price stipulated between the parties was, fair and reasonable, and that, perhaps, had not the transaction been between close relatives, the sale price would have been higher.

In view of the foregoing, We can not see our way clear to holding that the lower court erred in accepting as fair and just the recommendation of the minority commissioner.

The City's other contention that the lower court should have fixed the fair market value of the properties in question on the basis of its assessed value is similarly without merit. According to law, in condemnation proceedings the assessed value of the property is deemed no more than a prima facie evidence of its market value. This means obviously that either party is free to prove the contrary. In this case, We agree with the lower court that the evidence of record sufficiently shows that the property sought to be condemned is worth more than its assessed value.

WHEREFORE, the appealed judgment is affirmed, with costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Regala, Makalintal, Bengzon, J. P., and

Zaldivar, JJ., concur.

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