

THE MUNICIPALITY OF TACURONG, PLAINTIFF-APPELLANT, VS. ROSARIO ABRAGAN, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-25314. February 10, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On October 9, 1956, Lot No. 6001, PLS-73, situated in the Municipality of Tacurong, Cotabato and formerly part of the public domain, was declared by Executive Proclamation No. 351, as land reserved for Municipal Site Purposes and withdrawn from sale or settlement. Portions of said land were then occupied by Rosario Abragan, Ramo-na Pirales, Teofilo Apilado, Ester Apilado, all for resi-dential purposes, and by the Tacurong Evangelical Church, for religious purposes.

Years later, on August 29, 1961, the Municipality of Tacurong, through Atty. Estanislao Valdez, Secretary to the Mayor, filed before the Court of First Instance of Cotabato, a complaint for recovery of possession of the above-stated land against said occupants after the latter had allegedly refused repeated demands of the mu-nicipality for them to vacate the land so that the same may be devoted to the purpose reserved by the proclamation.

The defendants sought on September 18, 1961, to dis-miss the complaint, alleging that it stated no cause of action because Executive Proclamation No. 351 provides for compensation occupants for their constructions; and that there was no allegation of any of offer or refusal of compensation prior to the filing of the action. De-fendants also claimed that the complaint should have been filed by the Solicitor General or any attorney authorized by law.

The court, on February 28, 1962, ruled that the com-plaint had a sufficient cause of action and pointed out that the municipality could engage its own counsel to file the case on its behalf.

On April 5, 1962, however, defendants filed a motion for reconsideration citing a particular portion of the Proclamation which provides: "To protect and safeguard the interests of certain occupants who in good faith have in-troduced improvements in the reservation, the Municipality of Tacurong shall make proper arrangements for the compen-sation and/or removal of said improvements." These "ar-rangements for compensation" were advanced as conditions precedent to the filing of the complaint and, since no allegation of fulfillment of such conditions was made, defen-dants maintained that the complaint did not state a cause of action.

Acting thereon, the court of first instance dismissed the case on the ground that the complaint did not allege the conditions precedent to the enforcement of the Execu-tive Proclamation. The same court denied the plaintiff's urgent motion for reconsideration, rejecting plaintiff's argument that the contents of the proclamation should not have been considered, with the observation that the Presi-dential Proclamation is a matter of which judicial notice may be taken.

The plaintiff appealed to the Court of Appeals which in turn certified the case to Us on questions purely of law.

The purely legal questions are on the sufficiency of the cause of action alleged in the complaint and the pro-priety

of the court's having taken judicial notice of the Executive Proclamation.

As a ground for dismissal, lack of a cause of action must appear on the face of the complaint. And thus to determine whether a complaint states a cause of action, only facts alleged in the complaint, and no other, should be considered.[1] The complaint at bar after citing the Executive Proclamation, alleges among other things that:

"In view of the desire of the Municipality of Tacurong, Cotabato, to improve and utilize Lot No. 6001, Pls-73, for the purpose for which it was legally reserved, notices have been re-peatedly served on the above-named defendants to vacate said premises, but said defendants re-peatedly and obstinately refused to vacate said premises, the notices to that effect notwith-standing and they still continue to refuse to vacate said lot." [2]

We consider this to be a sufficient allegation of a cause action. Though not alleging that offers for compensation had been made by the municipality, paragraph two[3] of the complaint sufficiently alleges that Executive Proclamation No. 351 had reserved the land in question for Muni-cipal Park Site purposes. The defendants' alleged right to compensation under the proclamation is a matter for them to plead as a defense in their answer and during the trial on the merits.

The judicial notice of the proclamation was not an error on the part of the court because Executive Proclamation are among the matters within judicial notice un-der Section 1, Rule 129 of the Rules of Court.[4] However, We find it an error for the lower court to have considered that the offer of payment was a condition precedent to the enforceability of the proclamation. The cited portion of the proclamation does not speak only of compensation but adds "and/or removal of said improvements", thereby indicating that payment of compensation does not always have to take place. It is for the defendants, therefore, to show that they are entitled to compensation and recovery.

WHEREFORE, the dismissal order appealed from is here-by reversed and the case is remanded to the lower court for further proceedings. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Remitere v. Montino Vda. de Yulo, L-19751, Feb. 28, 1966; Dalandan v. Julio; L-19101, Feb. 29, 1964.

[2] Par. 4 of complaint, p. 3 of Record on Appeal.

[3] P. 2 of Record on Appeal.

[4] Formerly, Sec. 5, Rule 123.

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