

ANGEL MINISTERIO AND ASUNCION SADAYA, PETITIONERS, VS. THE COURT OF FIRST INSTANCE OF CEBU, FOURTH BRANCH, PRESIDED BY THE HONORABLE, JUDGE JOSE C. BORROMEO, THE PUBLIC HIGHWAY ...*G.R. No. L-31635. August 31, 1971*

Ponente: FERNANDO, J.

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What is before this Court for determination in this appeal by certiorari to review a decision of the Court of First Instance of Cebu is the question of whether or not plaintiffs, now petitioners, seeking the just compensation to which they are entitled under the Constitution for the expropriation of their property necessary for the widening of a street, no condemnation proceeding having been filed, could sue defendants Public Highway Commissioner and the Auditor General, in their capacity as public officials without thereby violating the principle of government immunity from suit without its consent. The lower court, relying on what it considered to be authoritative precedents, held that they could not and dismissed the suit. The matter was then elevated to us. After a careful consideration and with a view to avoiding the grave inconvenience, not to say possible injustice contrary to the constitutional mandate, that would be the result if no such suit were permitted, this Court arrives at a different conclusion and sustains the right of the plaintiff to file a suit of this character. Accordingly, we reverse.

Petitioners as plaintiffs in a complaint filed with the Court of First Instance of Cebu, dated April 13, 1966, sought the payment of just compensation for a registered lot, containing an area of 1045 square meters, alleging that in 1927 the National Government through its authorized representatives took physical and material possession of it and used it for the widening of the Gorordo Avenue, a national road, Cebu City, without paying just compensation and without any agreement, either written or verbal. There was an allegation of repeated demands for the payment of its price or return of its possession, but defendants Public Highway Commissioner and the Auditor General refused to restore its possession. It was further alleged that on August 25, 1965, the appraisal committee of the City of Cebu approved Resolution No. 90, appraising the reasonable and just price of Lot No. 647-B at P50.00 per square meter or a total price of P52,250.00. Thereafter, the complaint was amended on June 30, 1966 in the sense that the remedy prayed for was in the alternative, either the restoration of possession or the payment of the just compensation.

In the answer filed by defendants, now respondents, through the then Solicitor General, now Associate Justice, Antonio P. Barredo, the principal defense relied upon was that the suit in reality was one against the government and therefore should be dismissed, no consent having been shown. Then on July 11, 1969, the parties submitted a stipulation of facts to this effect: "That the plaintiffs are the registered owners of Lot 647-B of the Banilad estate described in the Survey Plan RS-600 GLRO Record No. 5988 and more particularly described in Transfer Certificate of Title No. RT-5963 containing an area of 1,045 square meters; That the National Government in 1927 took possession of Lot 647-B, Banilad estate, and used the same for the widening of Gorordo Avenue; That the Appraisal Committee of Cebu City approved Resolution No. 90, Series of 1965 fixing the price of Lot No.

647-B at P50.00 per square meter; That Lot No. 647-B is still in the possession of the National Government the same being utilized as part of the Gorordo Avenue, Cebu City, and that the National Government has not as yet paid the value of the land which is being utilized for public use."[1]

The lower court decision now under review was promulgated on January 30, 1969. As is evident from the excerpt to be cited, the plea that the suit was against the government without its consent having been manifested met with a favorable response. Thus: "It is uncontroverted that the land in question is used by the National Government for road purposes. No evidence was presented whether or not there was an agreement or contract between the government and the original owner and whether payment was paid or not to the original owner of the land. It may be presumed that when the land was taken by the government the payment of its value was made thereafter and no satisfactory explanation was given why this case was filed only in 1966. But granting that no compensation was given to the owner of the land, the case is undoubtedly against the National Government and there is no showing that the government has consented to be sued in this case. It may be contended that the present case is brought against the Public Highway Commissioner and the Auditor General and not against the National Government. Considering that the herein defendants are sued in their official capacity the action is one against the National Government who should have been made a party in this case, but, as stated before, with its consent."[2]

Then came this petition for certiorari to review the above decision. The principal error assigned would impugn the holding that the case being against the national government which was sued without its consent should be dismissed, as it was in fact dismissed. As was indicated in the opening paragraph of this opinion, this assignment of error is justified. The decision of the lower court cannot stand. We shall proceed to explain why.

1. The government is immune from suit without its consent.[3] Nor is it indispensable that it be the party proceeded against. If it appears that the action would in fact hold it liable, the doctrine calls for application. It follows then that even if the defendants named were public officials, such a principle could still be an effective bar. This is clearly so where a litigation would result in a financial responsibility for the government, whether in the disbursements of funds or loss of property. Under such circumstances, the liability of the official sued is not personal. The party that could be adversely affected is the government. Hence the defense of non-suability may be interposed.[4]

So it has been categorically set forth in *Syquia vs. Almeda Lopez*: [5] "However, and this is important, where the judgment in such a case would result not only in the recovery of possession of the property in favor of said citizen but also in a charge against or financial liability to the Government, then the suit should be regarded as one against the government itself, and, consequently, it cannot prosper or be validly entertained by the courts except with the consent of said Government." [6]

2. It is a different matter where the public official is made to account in his capacity as such for acts contrary to law and injurious to the rights of plaintiff. As was clearly set forth by Justice Zaldivar in *Director of the Bureau of Telecommunications vs. Aligaen*: [7] "Inasmuch as the State authorizes only legal acts by its officers, unauthorized acts of government officials or officers are not acts of the State, and an action against the officials or officers by one whose rights have been invaded or violated by such acts, for the protection of his rights, is not a suit against the State within the rule of immunity of the State from suit. In the same tenor, it has been said that an action at law or suit in equity against a State officer or the director of a State department on the ground that, while claiming to act for the State, he violates or invades the personal and property rights of the plaintiff, under an unconstitutional act or under an assumption of authority which he does not have, is not a suit against the State within the constitutional provision that the State may not be sued without its consent." [8]

3. It would follow then that the prayer in the amended complaint of petitioners being in the alternative, the lower

court, instead of dismissing the same, could have passed upon the claim of plaintiffs there, now petitioners, for the recovery of the possession of the disputed lot, since no proceeding for eminent domain, as required by the then Code of Civil Procedure, was instituted.[9] However, as noted in *Alfonso vs. Pasay City*,^[10] this Court speaking through Justice Montemayor, restoration would be "neither convenient nor feasible because it is now and has been used for road purposes."^[11] The only relief, in the opinion of this Court, would be for the government "to make due compensation, * * *."^[12] It was made clear in such decision that compensation should have been made "as far back as the date of the taking." Does it result, therefore, that petitioners would be absolutely remediless since recovery of possession is in effect barred by the above decision? If the constitutional mandate that the owner be compensated for property taken for public use^[13] were to be respected, as it should, then a suit of this character should not be summarily dismissed. The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen. Had the government followed the procedure indicated by the governing law at the time, a complaint would have been filed by it, and only upon payment of the compensation fixed by the judgment, or after tender to the party entitled to such payment of the amount fixed, may it "have the right to enter in and upon the land so condemned" to appropriate the same to the public use defined in the judgment."^[14] If there were an observance of procedural regularity, petitioners would not be in the sad plight they are now. It is unthinkable then that precisely because there was a failure to abide by what the law requires, the government would stand to benefit. It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained. It is not too much to say that when the government takes any property for public use, which is conditioned upon the payment of just compensation, to be judicially ascertained, it makes manifest that it submits to the jurisdiction of a court. There is no thought then that the doctrine of immunity from suit could still be appropriately invoked.^[15]

Accordingly, the lower court decision is reversed so that the court may proceed with the complaint and determine the compensation to which petitioners are entitled, taking into account the ruling in the above *Alfonso* case: "As to the value of the property, although the plaintiff claims the present market value thereof, the rule is that to determine due compensation for lands appropriated by the Government, the basis should be the price or value at the time that it was taken from the owner and appropriated by the Government."^[16]

WHEREFORE, the lower court decision of January 30, 1969 dismissing the complaint is reversed and the case remanded to the lower court for proceedings in accordance with law.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Teehankee, Villamor, and Makasiar, JJ., concur.
Concepcion, C.J., and Barredo, J., did not take part.

[1] Petition, Annex H, pp. 1 and 2.

[2] *Ibid.*, Annex I, p. 4.

[3] Cf. *Providence Washington Insurance Co. v. Republic*, L-26386, Sept. 30, 1969, 29 SCRA 598; *Firemen's Fund Insurance Co. v. United States Lines Co.*, L-26533, Jan. 30, 1970, 31 SCRA 309; *Switzerland General Insurance Company, Ltd. v. Republic*, L-27389, March 30, 1970, 32 SCRA 227.

[4] Cf. *Begosa v. Chairman, Philippine Veterans Administration*. L-25916, April 30, 1970, 32 SCRA 466, citing *Ruiz v. Cabahug*, 102 Phil. 110 (1957) and *Syquia v. Almeda Lopez*, 84 Phil. 312 (1949).

[5] 84 Phil. 312 (1949) affirmed in *Marvel Building Corp. v. Phil. War Damage Commission*, 85 Phil. 27 (1949) and *Johnson v. Turner*, 94 Phil. 807 (1954). Such a doctrine goes back to *Tan Te v. Bell*, 27 Phil. 354 (1914). Cf. *L.S. Moon v. Harrison*, 43 Phil. 27 (1922).

[6] Ibid., p. 319.

[7] L-31135, May 29, 1970, 33 SCRA 368.

[8] Ibid., pp. 377-378.

[9] Act No. 190 (1901). According to Section 241 of such Code: "The Government of the Philippine Islands, or of any province or department thereof, or of any municipality, and any person, or public or private corporation having by law the right to condemn private property for public use shall exercise that right in the manner hereinafter prescribed." The next section reads: "The complaint in condemnation proceedings shall state with certainty the right of condemnation, and describe the property sought to be condemned, showing the interest of each defendant separately." Sec. 242.

[10] 106 Phil. 1017 (1960).

[11] Ibid., p. 1022.

[12] Ibid.

[13] According to Article III, Section 1, paragraph 2 of the Constitution: "Private property shall not be taken for public use without just compensation."

[14] Section 247 of Act No. 190 reads in full: "Upon payment by the plaintiff to the defendant of compensation as fixed by the judgment, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter in and upon the land so condemned, to appropriate the same to the public use defined in the judgment. In case the defendant and his attorney absent themselves from the court or decline to receive the same, payment may be made to the clerk of the court for him, and such officer shall be responsible on his bond therefor and shall be compelled to receive it."

[15] Cf. *Merritt v. Government of the Philippine Islands*, 34 Phil. 311 (1916); *Compania General de Tabacos v. Government*, 45 Phil. 663 (1924); *Salgado v. Ramos*, 64 Phil. 724 (1937); *Bull v. Yatco*, 67 Phil. 728 (1939); *Santos v. Santos*, 92 Phil. 281 (1952); *Froilan v. Pan Oriental Shipping Co.*, 95 Phil. 905 (1954); *Angat River Irrigation v. Angat River Workers' Union*, 102 Phil 789 (1957), *Concepcion, J., diss.*; *Lyons, Inc. v. United States of America*, 104 Phil. 593 (1958); *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*, L-23139, December 17, 1966, 18 SCRA 1120; *Hartford Fire Insurance Co. v. P.D. Marchessini & Co.* L-24544, November 15, 1967, 21 SCRA 860; *Firemen's Fund Insurance Co. v. Maersk Line Far East Service*, L-27189, March 28, 1969, 27 SCRA 519; *Insurance Co. of North America v. Osaka Shosen Kaisha*, L-22784, March 28, 1969, 27 SCRA 780; *Providence Washington Insurance Co. v. Republic of the Philippines*, L-26386, Sept. 30, 1969, 29 SCRA 598.

[16] *Alfonso v. Pasay City*, 106 Phil. 1017, 1022-1023 (1960).

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