

RURAL PROGRESS ADMINISTRATION, PETITIONER, VS. EULOGIO F. DE GUZMAN, JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN (THIRD JUDICIAL DISTRICT), THE ROMAN CATHOLIC BISHOP OF L...

G.R. No. L-3224. August 15, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

The petitioner filed a complaint against the respondent Roman Catholic Bishop of Lingayen to expropriate two lots containing an aggregate area of 12,880 square meters, situated in the City of Dagupan, for the purpose of reselling them to the occupants of said land. Within the time specified in section 4 of Rule 69 said respondent filed a pleading entitled "Motion of Dismissal" in which he alleged his objections and defenses to the right of the plaintiff to expropriate the property for the use specified in the complaint, serving copy of said pleading upon the attorney of the adverse party.

Contending that said motion of dismissal was not filed in accordance with Rule 26 governing motions in that it did not contain notice of the time and place for the hearing thereof, the petitioner moved the respondent judge to declare the defendant in default, which motion was denied in an order dated March 31, 1949.

The petitioner also moved the respondent judge to issue an order of delivery of possession, the assessed value of the land sought to be expropriated having been deposited with the provincial treasurer of Pangasinan. That motion was also denied by the respondent judge in his order of July 16, 1949.

The petitioner has presented this original petition for certiorari to annul the said orders of the respondent judge on the ground that they were issued with grave abuse of discretion.

- The respondent judge not only did not abuse his discretion but acted in accordance with law in denying petitioner's motion to declare the defendant Roman Catholic Bishop of Lingayen in default. Rule 69 governing eminent domain in its section 4 provides as follows:

"Sec. 4. Defenses and objections.—Within the time specified in the summons, each defendant, in lieu of an answer, shall present in a single motion to dismiss or for other appropriate relief, all of his objections and defenses to the right of the plaintiff to take his property for the use specified in the complaint. All such objections and defenses not so presented are waived. A copy of the motion shall be served on the plaintiff's attorney of record and filed with the court with the proof of service."

The motion to dismiss referred to in the above-quoted section is not governed by Rule 26 referring to ordinary motions and need not be set by the movant for hearing, it being a pleading that takes the place of an answer in an ordinary civil action. It is the pleading that puts in issue the right of the plaintiff to expropriate the property of the defendant for the use specified in the complaint. All that the rule requires is that copy of said motion be served on the plaintiff's attorney of record. It is the court that at its convenience will set the case for trial after the filing of

said pleading.

- With regard to the denial of petitioner's motion for the delivery to the plaintiff of the property sought to be expropriated, it appearing that the right of the plaintiff to expropriate is contested by the defendant, and it further appearing that the occupants of the land for whose benefit the plaintiff is seeking to expropriate it are already in possession of said land, we find that the respondent judge did not abuse his discretion in refraining from issuing the order applied for by the petitioner pending the resolution of the issue as to the right of the plaintiff to expropriate the land for the use specified in the complaint, specially taking into consideration the decisions of this court in the cases of *Guido vs. Rural Progress Administration*, 47 Off. Gaz., 1848; 84 Phil., 847 and *City of Manila vs. Arrellano Law College*, 47 Off. Gaz., 4197; 85 Phil., 663.

The petition is denied, without any finding as to costs.

Moran, C.J., Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

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