

METROPOLITAN WATER DISTRICT, PLAINTIFF AND APPELLANT, VS. SIXTO DE LOS ANGELES ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-33545. March 07, 1931*

Ponente: JOHNSON, J.

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This action was commenced in the Court of First Instance of the Province of Rizal on the 27th day of October, 1926. The plaintiff is a public corporation, with its central office in the City of Manila. It was organized under and by virtue of Act No. 2832, for the purpose of furnishing an adequate water supply to the City of Manila and the nearby municipalities. The purpose of the action was to secure the expropriation of the land of the defendants situated in the municipality of Montalban, Province of Rizal, with an area of 171.8861 hectares, more particularly described in Exhibits A and B attached to the complaint. The plaintiff alleged that said land was necessary in the construction of the Angat Waterworks System, and that a portion of said waterworks, to wit, the watershed, was definitely located by the plaintiff over and through said land of the defendants.

Upon petition of the plaintiff the Court of First Instance of Rizal on October 27, 1926, fixed the provisional value of the land at P2,000, and authorized the plaintiff to enter into and take possession of the land upon deposit of P2,000 with the provincial treasurer of Rizal.

On November 9, 1926, the defendants answered, denying generally and specifically each and every allegation of the complaint, and prayed that the same be dismissed with costs.

On April 27, 1927 the court appointed three commissioners to hear the parties, view the premises, fix the value thereof, and assess damages and to make a full and complete report of their proceedings to the court. Those appointed were Emilio de la Paz, Jose M. Perez and Facundo San Agustin.

On May 10, 1929 the majority of the commissioners, Jose M. Perez and Facundo San Agustin, submitted their report fixing the value of the land at P58,750.60 and the improvements at P15,510, or a total of P74,260.60. They also recommended 6 per cent, as damages, of the value of the land and improvements and 6 per cent interest per annum on the total amount allowed in favor of the defendants. The other commissioner Emilio de la Paz submitted a separate report fixing the value of the land at P79,717.25 and the improvements at P21,825, or a total of P101,542.25, with damages and interest.

On January 6, 1930 the lower court rendered a judgment in accordance with the recommendation of the majority of the commissioners, fixing the value of the land at P58,750.60 and the improvements at P15,510, and ordered the plaintiff to pay said amounts to the defendants with interest at 6 per cent per annum from the date the plaintiff took possession of the land, with costs against the plaintiff.

From that judgment both parties appealed.

The plaintiff-appellant contends that the value of the land and improvements is grossly excessive, exorbitant, unreasonable and unjust. On the other hand the defendants-appellants claim (1) that the value fixed by the lower

court is less than the actual value of said land and improvements, and (2) that they are also entitled to damages equivalent to 6 per cent of the total value of the land and improvements.

During the pendency of this appeal, and on July 14, 1930 the Metropolitan Water District Board passed a resolution requesting the Attorney-General to petition the proper court to quash these condemnation proceedings. Said resolution reads as follows:

"RESOLUTION NO. 38

"Series 1930

"Be it resolved That the Acting Manager be and is hereby authorized to request the Attorney-General to petition the proper court for the quashing of the proceedings for the expropriation of the land of Dr. Sixto de los Angeles, situated in Montalban, Province of Rizal."

Acting upon said resolution the Attorney-General on July 18, 1930 filed a petition praying that the Metropolitan Water District be allowed to discontinue the condemnation proceedings and that the complaint filed in this case be dismissed. Said petition reads as follows:

"PETITION

"Now comes the undersigned Attorney-General and respectfully states:

"That the above-entitled case is a proceeding commenced by the Metropolitan Water District for the condemnation of a parcel of land situated in the municipality of Montalban, Province of Rizal, authorized by section 2, paragraph (k), of Act No. 2832.

"That the Metropolitan Water District Board, in its meeting of the 14th instant, decided to discontinue this proceeding, the land subject thereby not being indispensably necessary in the maintenance and operation of its system of waterworks. A copy of the extracts of the minutes of the meeting of said board is attached hereto, marked Exhibit A.

"That pursuant to the resolution of said board, the Acting Manager of the Metropolitan Water District requested the undersigned that steps be taken to have this proceeding discontinued or quashed. A copy of said request is hereto attached, marked Exhibit B.

"Wherefore, it is respectfully prayed that the Metropolitan Water District be permitted to discontinue the present condemnation proceeding, and that the expropriation complaint filed in this case be ordered dismissed.

"Manila, July 17, 1930.

(Sgd.) "DELFIN JARANILLA

"Attorney-General."

To said petition the defendants filed a vigorous opposition contending that it would be improper and unjust for this court to set aside and quash all the proceedings had after five years of litigation, during which time the plaintiff has been in possession of the land, and after the defendants have incurred heavy expenses and other troubles incident to a long litigation. They also contend that at this stage of the case, after a judgment has been rendered and after both parties have perfected their appeal, it is too late for the plaintiff to withdraw. The defendants, however, prayed that in case the plaintiff's petition is granted, that the record be returned to the lower court for the determination of the damages which they may have suffered by reason of these condemnation proceedings.

It will be noted from the foregoing that the only question presented to this court for decision now is, whether or

not the plaintiff or petitioner has the right to have the complaint dismissed. It has been held in many cases that:

"The right of the plaintiff to dismiss his action with the consent of the court is universally recognized with certain well-defined exceptions. If the plaintiff discovers that the action which he commenced was brought for the purpose of enforcing a right or a benefit, the advisability or necessity of which he later discovers no longer exists, or that the result of the action would be different from what he had intended, then he should be permitted to withdraw the same, subject to the approval of the court. The plaintiff should not be required to continue the action, subject to some well-defined exceptions, when it is not to his advantage so to do. Litigation should be discouraged and not encouraged. Courts should not require parties to litigate when they no longer desire so to do. Courts, in granting permission to dismiss an action, of course, should always take into consideration the effect which said dismissal would have upon the rights of the defendant." (City of Manila vs. Ruymann, 37 Phil., 421.)

It will also be remembered that the defendants from the very beginning of these proceedings insisted that the petition of the plaintiff should be dismissed for lack of cause of action.

It will not be overlooked that this is an action for the expropriation of land under the power of eminent domain. The Government of the Philippine Islands, by an Act of Congress of July 1, 1902, the first organic Act, was given the power to exercise the right of eminent domain. Said Act in its section 63 provides:

"SEC. 63. That the Government of the Philippine Islands is hereby authorized, subject to the limitations and conditions prescribed in this Act, to acquire, receive, hold, maintain, and convey title to real and personal property, and may acquire real estate for public uses by the exercise of the right of eminent domain."

In the second organic Act of the Philippine Government, of August 29, 1916 (sec. 28) the power to exercise the right of eminent domain was still continued in the Government of the Philippine Islands. In pursuance of the authority granted by Congress to the Government of the Philippine Islands, the Legislature, by virtue of section 241 of Act No. 190, provided that:

"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."

There is no question raised concerning the right of the plaintiff here to acquire the land under the power of eminent domain. That power was expressly granted it by its charter. The power of eminent domain is a right reserved to the people or Government to take property for public use. It is the right of the state, through its regular organization, to reassert either temporarily or permanently its dominion over any portion of the soil of the state on account of public necessity and for the public good. The right of eminent domain is the right which the Government or the people retains over the estates of individuals to resume them for public use. It is the right of the people, or the sovereign, to dispose, in case of public necessity and for the public safety, of all the wealth contained in the state.

It is not denied that the purpose of the plaintiff was to acquire the land in question for a public use. The fundamental basis then of all actions brought for the expropriation of lands, under the power of eminent domain, is public use. That being true, the very moment that it appears at any stage of the proceedings that the expropriation is not for a public use, the action must necessarily fail and should be dismissed, for the reason that the action cannot be maintained at all except when the expropriation is for some public use. That must be true even during the pendency of the appeal or at any other stage of the proceedings. If, for example, during the trial in the lower court, it should be made to appear to the satisfaction of the court that the expropriation is not for some public use, it would be the duty and the obligation of the trial court to dismiss the action. And even during the pendency of the appeal, if it should be made to appear to the satisfaction of the appellate court that the

expropriation is not for public use, then it would become the duty and the obligation of the appellate court to dismiss it.

In the present case the petitioner admits that the expropriation of the land in question is no longer necessary for public use. Had that admission been made in the trial court the case should have been dismissed there. It now appearing positively, by resolution of the plaintiff, that the expropriation is not necessary for public use, the action should be dismissed even without a motion on the part of the plaintiff. The moment it appears in whatever stage of the proceedings that the expropriation is not for a public use the complaint should be dismissed and all the parties thereto should be relieved from further annoyance or litigation.

It must follow, therefore, inasmuch as it appears by express admission of the plaintiff itself that the expropriation is not for a public use, that the complaint should be dismissed. But dismissed under what conditions? It will be remembered that the defendants contend that they have been greatly annoyed and have suffered great damages by this litigation. They have been dispossessed of their property for a number of years; they have been deprived of their right to reap the rents and profits from said land. It is alleged that certain damages have been occasioned to the land by destruction of improvements thereon; that they have been compelled to incur great expense in the employment of attorneys, etc. Should not the plaintiff, for causing such damages to the defendants, be required under the facts in the present case to answer for all the damages so occasioned to the defendants? That question must certainly be answered in the affirmative.

Therefore, in view of all of the facts of the record, we are forced to the conclusion that the motion to dismiss the action should be, and is hereby granted, with costs, upon the following conditions:

(a) That the record be returned to the lower court and that a writ of possession issue, ordering and directing the petitioner to return to the defendants the possession of the land in question immediately, and that the defendants be permitted to have, whatever damages they have suffered, determined either¹ in this or a separate action instituted for that purpose, which claim for damages must be presented within a period of thirty days from the return of this record to the court of its origin and notice thereof; and

(b) That whether the question of the determination of damages be in this or a separate action the lower court should take into consideration, for the purpose of determining the amount of damages, the following: (1) The loss resulting from the dispossession of the land; (2) the loss resulting from the deprivation of the use and occupation of the land; (3) the expenses incurred during the pendency of this action, including attorney's fees, etc.; (4) the destruction of buildings, canals and growing crops at the time of the occupation of the land by the petitioner; and (5) all of the damages of whatever kind or character which the defendants may be able to prove and which have been occasioned by virtue of the institution of the present action. So ordered.

Avanceña, C. J., Street, Ostrand, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

MALCOLM, VILLAMOR, AND JOHNS, JJ.:

On October 27, 1926, the Metropolitan Water District instituted an action in which it was alleged that the property owned by Sixto de los Angeles and others was needed in the construction of the Angat Waterworks System. Now, nearly five years later, after commissioners have been named and have made their report; after that report has been submitted to the Court of First Instance and a decision has been rendered thereon; after an appeal has in all respects been perfected, and after the Metropolitan Water District has gone upon the property and assumed

control over it, a motion is filed in this court on behalf of the Metropolitan Water District, asking for a discontinuance of the proceedings. The purpose in so doing, as stated by the Attorney-General at page 77 of his brief is this: "In accordance with the resolution of this court of July 26, 1930, we desire to make it of record, that the Metropolitan Water District Board, being of the opinion that the total assessment made by the lower court is excessive and exorbitant thereby rendering the investment too heavy for a reasonable return, it has decided to abandon the property, as it could do away with the necessity thereof without detriment to the public and to the maintenance and operation of its system of waterworks."

In other words, had the assessment of the value of the property claimed in eminent domain proceedings been deemed reasonable, the Water District would not have asked for the dismissal of the action, but inasmuch as the amount fixed for the taking is considered "excessive and exorbitant," the Water District moves for discontinuance. That is what is known in judicial circles as an "experimental suit," which is properly condemned. The entity needing property for public use can be permitted to take that property by giving just compensation, but that entity cannot speculate and gamble on results in the courts. Certainly, there must be a point when the right of the condemning party to abandon the proceedings is lost and the right of the owner of the land to compensation becomes vested.

It should be remembered that in the Philippines, the statute permits the party instituting condemnation proceedings almost immediately to take possession of the property on making a deposit in court. It is under statutes similar to this that we should look for authorities. Thus in Nebraska, the statutes in regard to condemnation by railroad, companies provide that, if the property cannot be obtained by grant, either party may apply to the probate judge of the county for the appointment of freeholders who shall assess the damages and report in writing to the probate judge and that the probate judge shall certify the report and deliver it to the county clerk, who is required to record and index the same. The company may deposit the amount of the award with the probate judge and enter on the property. Either party may appeal to the district court, and the decision and finding of the district court are required to be transmitted to the county clerk and recorded in like manner as the award of freeholders. Under this statute it has been held that it was proper for the district court on appeal to render an absolute judgment against the company and issue execution thereon, and that the company could not after judgment abandon the location and avoid the payment of the damages. The court in giving its decision says: "The statute gives a railroad company almost unlimited powers in regard to what real estate it requires for its use, and unless it is clear that this power is abused, a court would have no right to interfere. But the company must act in good faith. It cannot be permitted to condemn real estate for its use, and after the condemnation is complete, the certificate filed with the county clerk, and the amount of the award deposited with the county judge, an appeal taken to the district court and judgment rendered against it on such appeal, be permitted to abandon the proceedings. The power of eminent domain is placed in its hands to enable it to take such real estate as it may require, at its fair value. This, if the case is appealed to the district court, is to be ascertained by the verdict of a jury, based upon the evidence. Where, as in this case, the entire property is taken, the power of the lot owner to sell or mortgage the premises is entirely taken away while the proceedings are pending. The necessities of such owner may be very great, and the property condemned his entire estate, yet when the public good requires it he must submit to the delay in obtaining compensation for his property. But the court will not permit a railroad company to use the sovereign power of the state—that of eminent domain—as a means to enable it to obtain property at its own price, or failing to do so refuse to take it. If this could be done, the rights of property owners along a line of railway would indeed be insecure. But such is not the law. When a company has condemned real estate, and on appeal a judgment has been rendered against it, which remains in full force, it must like other litigants pay the judgment, and the judgment creditor is entitled to all the remedies given by law to enforce the same. It follows that the order of the district court denying the right to issue execution is reversed, and the cause is

remanded to that court with leave to the plaintiff to issue execution on her judgment as in other cases." (Drath vs. Burlington & Missouri R. R. Co. [1884], 15 Neb., 367.)

For the foregoing considerations and for others which come readily to mind when one thinks in terms of equity and justice, we sincerely believe that the motion presented by the Metropolitan Water District comes too late and should be denied, and that the court should proceed to a review of the case in order to fix upon the just compensation. That is our vote. Motion granted and case remanded for further proceedings.

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