

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. THE ARELLANO LAW COLLEGES, INC., DEFENDANT AND APPELLEE.

G.R. No. L-2929. February 28, 1950

Ponente: TUASON, J.

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TUASON, J.:

Section 1 of Republic Act No. 267 provides:

"Cities and municipalities are authorized to contract loans from the Reconstruction Finance Corporation, the Philippine National Bank, and/or any other entity or person at a rate of interest not exceeding eight per cent per annum for the purpose of purchasing or expropriating homesites within their respective territorial jurisdiction and reselling them at cost to residents of the said cities and municipalities."

The court below ruled that this provision empowers cities to purchase but not to expropriate lands for the purpose of subdivision and resale, and so dismissed the present action, which seeks to condemn, for the purpose just stated, several parcels of land having a combined area of 7270 square meters and situated on Legarda Street, City of Manila.

In the cases of *Guide vs. Rural Progress Administration*, (G.R. No. L-2089),[1] and *Commonwealth of the Philippines vs. Borja*, (G. R. No. L-1496),[2] we discussed at great length the extent of the Philippine Government's power to condemn private property for resale. Among other things, we said:

"It has been truly said that the assertion of the right on the part of the legislature to take the property of one citizen and transfer it to another, even for a full compensation, when the public interest is not promoted thereby, is claiming a despotic power, and one inconsistent with every just principle and fundamental maxim of a free government. (29 G.J.S. 820.)

"In a broad sense, expropriation of large estates, trusts in perpetuity, and land that embraces a whole town, or a large section of a town or city, bears direct relation, to the public welfare. The size of the land expropriated, the large number of people benefited, and the extent of social and economic reform secured by the condemnation, clothes the expropriation with public interest and public use. The expropriation in such cases tends to abolish economic slavery, feudalistic practices, endless conflicts between landlords and tenants, and other evils inimical to community prosperity and contentment and public peace and order. Although courts are not in agreement as to the tests to be applied in determining whether the use is public or not, some go so far in the direction of a liberal construction as to hold that public use is synonymous with public benefit, public utility, or public advantage, and to authorize the exercise of the power of eminent domain to promote such public benefit, etc., especially where the interests involved are of considerable magnitude. (29 C.J.S. 823, 82; see also *People of Puerto Rico vs. Eastern Sugar Associates et al*, 156 Fed. [2d] 316.) In some instances, slumsites have been, acquired by condemnation. The highest court of New York State has ruled that slum clearance and erection of houses for low-income families were public purposes for which New York City Housing authorities could exercise the power of condemnation. And this decision was followed by similar ones in other states. The underlying reasons for these decisions are that the destruction of congested areas and insanitary dwellings diminishes the potentialities of epidemics; crime and waste, prevents the spread of crime and diseases to

unaffected areas, enhances the physical and moral value of the surrounding communities, and promotes the safety and welfare of the public in general. (Murray fit al. vs. La Guardia, 52 N.E. [2d] 884; General Development Coop. vs. City of Detroit, 33 N.W. [2d] 919; Weizner vs. Stichman, 64 N. Y. S. [2d] 50.) But it will be noted that in all these "cases and others of similar nature extensive areas were involved and numerous people and the general public benefited by the action taken.

"The condemnation of a small property in behalf of 10, 20 or 50 persons and their families does not inure to the benefit of the public to a degree sufficient to give the use public character. The expropriation proceedings at bar have been instituted for the economic relief of a few families devoid of any consideration of public health, public peace and order, or other public advantage. What is proposed to be done is to take plaintiff's property, which for all we know she acquired by sweat and sacrifice for her and her family's security, and sell it at cost to a few lessees who refuse to pay the stipulated rent or leave the premises.

"No fixed line of demarcation between what taking is for public use and what is not can be made; each case has to be judged according to its peculiar circumstances. It suffices to say for the purpose of this decision that the case under consideration is far wanting in those elements which make? for public convenience or public use. It is patterned upon an ideology far removed from that consecrated in our system of government and embraced by the majority of the citizens of this country. If upheld, this case would open the gates to .more oppressive expropriations. If this expropriation be constitutional, we see no reason why a 10-, 15-, or 25-hectare farm land might not be expropriated and subdivided, and sold to those who want to own a portion of it. To make the analogy closer, we find no reason why the Rural Progress Administration could not take by condemnation an urban lot containing an area of 1,000 or 2,000 square meters for subdivision into tiny lots for resale to its occupants or those who want to build thereon.

We are inclined to believe that Act No. 267 empowers cities to expropriate as well as to purchase lands for homesites. The word "expropriating", taken singly or the text, is susceptible of only one meaning. But this power to expropriate is necessarily subject to the limitations and conditions noted in the decisions above cited. The National Government may not confer upon its instrumentalities authority which it itself may not exercise. A stream can not run higher than its source.

Viewed from another angle, the case at bar is we alter for the condemnor. In the first place, the land that is the subject of the present expropriation is only one-third of the land sought to be taken in the Guido case, and about two-thirds of that involved in the Borja condemnation proceeding. In the second place, the Arellano Colleges' land is situated in a highly commercial section of the city and is occupied by persons who are not bona fide, tenants. Lastly, this land was bought by the defendant for a university site to take the place of rented buildings that are unsuitable for schools of higher learning.

To authorize the condemnation of any particular land by a grantee of the power of eminent domain, a necessity must exist for the taking thereof for the proposed uses and purposes. (29 C. J. S. 884-885.) In *City of Manila vs. Manila Chinese Community*, (40 Phil., 349), this court, citing American decisions, laid down this rule:

"The very foundation of the right to exercise eminent domain is a genuine necessity, and that necessity must be of a public character. The ascertainment of the necessity must precede or accompany, and not follow, the taking of the land. (*Morrison vs. Indianapolis, etc. Ry. Co.*, 166 Ind., 511; *Stearns vs. Barre*, 73 Vt., 281; *Wheeling, etc. R. R. Co. vs. Toledo, Ry. etc. Co.*, 72 Ohio St., 368.)"

And this passage in Blackstone's Commentaries on the English Law is cited in that decisions "80 great is the regard of the law for private property that it will not authorize the least violation of it, even for the public good, unless there exists a very great necessity thereof."

Perhaps modern decisions are not so exigent. Necessity within the rule that the particular property to be

expropriated must be necessary, does not mean an absolute but only a reasonable or practical necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and property owner consistent with such benefit, (29 C. T. S. 386.) But, measured even by this standard, and forgetting for a moment the private character of the intended use, necessity for the condemnation has not been shown. The land in question has cost, the owner P140,000. The people for whose benefit the condemnation is being undertaken are so poor they could ill afford to meet this high price, unless they intend to borrow the money with a view to disposing of the property later for a profit. Cheaper lands not dedicated to a purpose so worthy as a school and more suited to the occupants' needs and means, if really they only want to own their own homes, are aplenty elsewhere. On the other hand, the defendant not only has invested a considerable amount for its property but had the plans for construction ready and would have completed the project a long time ago had it not been stopped by the city authorities. And again, while a handful of people stand to profit by the expropriation, the development of a university that has a present enrollment of 9j000 students would be sacrificed. Any good that would accrue to the public from providing homes to a few families fades into insignificance in comparison with the preparation of young men and young women for useful citizenship and for service to the government and the community, a task which the government alone is not in a position to undertake. As the Rural Progress Administration, the national agency created by the Government to purchase or expropriate lands for resale as homesites, and to which the petition to purchase the land in question on behalf of the occupants was referred by the President, turned down the occupants' request after proper investigation, commenting that "the necessity of the Arellano Law College to acquire a permanent site of its own is imperative not only because denial of the same would hamper the objectives of that educational institution, but it would likewise be taking a property intended already for public benefit." The Mayor of the City of Manila himself confessed that he believes the plaintiff is entitled to keep this land.

The order of the Court of First Instance of Manila is affirmed without costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.
Paras, J., no part.

[1] 84 Phil., 847.

[2] 85 Phil., 51.

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