

FERNANDO NIETO, PETITIONER, VS. HON. BONIFACIO YSIP, AS JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN; TEOFILO A. ABEJO, COMMISSIONER AND THE MUNICIPALITY OF MEYCAUAYAN, RESPO...*G.R. No. L-7894. May 17, 1955*

Ponente: LABRADOR, J.

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This is a special civil action for certiorari and mandamus against the judge of the Court of First Instance of Bulacan. In civil case No. 636 of that court, for eminent domain, the municipality of Meycauayan sought to expropriate a portion of the land of Fernando Nieto for the purpose of extending thereon the site of the municipal market. Nieto's land contains an area of 53,070 square meters and the municipality desires to expropriate 5,023 square meters for the market site. On June 29, 1953, defendant Fernando Nieto filed a motion to dismiss the action of condemnation on the ground that the expropriation of his land is unreasonably inconvenient and not beneficial to public interest, and that the approval of his land as a market site was obtained from the municipal council through misrepresentation of the facts and conditions surrounding its suitability. Evidence was submitted by both parties to the expropriation on the above motion to dismiss. After the evidence for the defendants had been submitted, the court, without making any ruling on the motion to dismiss, appointed respondent Teofilo A. Abejo as commissioner to determine the value of the property sought to be expropriated. The court's order is as follows:

"Despues de cerrar las pruebas tanto del demandante como de los demandados, este Tribunal no se halla aun en disposici6n de dictar sentencia en el presente asunto, porque aparece de los records que hasta el presente no se ha nombrado ningun comisionado de a value que se encargara de tazar el valor justo y razonable de la propiedad de Fernando Nieto que se trata de expropiar para uso publico."

It is now contended that the respondent judge committed a grave abuse of discretion in completely disregarding the provisions of Sections 6, Rule 69 of the Rules of Court, as it appointed the commissioner without having previously issued the order of condemnation and passing upon the motion to dismiss.

A cursory reading of Sections 4, 5 and 6 of Rule 69 of the Rules of Court discloses the steps to be followed, one after another, in condemnation proceedings from the institution thereof. The first step is the presentation by defendants of their objections and defenses to the right of plaintiff to take the property for the use specified, which objections and defenses shall be set forth in a single motion to dismiss (Section 4). The second is the hearing on the motion and the unfavorable resolution thereon by the court. That an adverse resolution on the motion to dismiss, if objections and defenses are presented, is required because the rule (Sec. 5) authorizes the court to enter an order of condemnation only if the motion to dismiss is overruled, or if no motion to dismiss had been presented. The second step includes the order of condemnation, which may be embodied in the resolution overruling the motion to dismiss. The third is the appointment of commissioners to assess the just compensation

for the property (Sec. 6). That the above "steps must follow one another is evident from the provisions of the rules as well as from the inter-relation between the steps and the dependence of one upon the previous step, Thus no order of condemnation may be entered if the motion to dismiss has not been passed upon and overruled, and no assessment should be undertaken unless and until an order of condemnation has already been entered.

In the case at bar, no order of condemnation has as yet been entered, because the motion to dismiss has not yet been resolved by the court. Of what use would the assessment be if the motion to dismiss would ultimately be granted? We hold that the appointment of the commissioner without an order of condemnation having been previously entered is a deviation from the steps indicated by the rules and constitutes an irregular exercise of the judicial power amounting to an abuse of discretion (*Leung Ben vs. O'Brien*, 38 Phil. 182).

The writ prayed for is hereby granted and the order complained of revoked, and the judge enjoined to proceed in the case in accordance with the procedure herein indicated. No costs.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

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