

BENITO UY, ELENA CAMACHO, EULOGIO EDEROSAS, PAULINO JONSON, FELIPE LUMANTAS, EDDIE PASTRANO, PEDRO MALINAS, BIENVENIDO ORONG, PEDRO GUANTINIAS, GUILLERMO MACARATE, BERNARDO DEGA...

G.R. NO. L-37399. May 29, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

It was the refusal of respondent Judge[1] to accord petitioners their constitutional right to be heard as required by procedural due process[2] to enable them to prove their claim to just compensation, again as mandated by the Constitution,[3] that led to this certiorari proceeding. More specifically, they would have us nullify an order dismissing their complaint so that the case could be heard on the merits. Certainly respondent Judge could not have been unaware that the exercise of the power of eminent domain is conditioned on compensation being awarded. For at first, he did deny the motion to dismiss, precisely relying on a presidential decree that manifested clear compliance with such a requisite.[4] Nonetheless, he changed his mind, reconsidered his order, and declined to proceed, on the assumption that the expropriation was ultimately traceable to a presidential letter of instruction issued during the period of martial law and thus excluded from his jurisdiction. Petitioners submit that such a ruling was clearly erroneous, one characterized by unorthodoxy, prompted no doubt by the inability to discern that compliance with a presidential letter of instruction, to put the case at its strongest for respondent city, is not incompatible with respect to what the Constitution ordains. There is nothing therein as was pointed out to justify judicial timidity in the face of clear constitutional commands, certainly accorded express recognition by the President. Such an approach meets with our approval. The order of dismissal must be set aside and the case remanded for further proceedings in accordance with law.

The antecedents of the case reveal that on March 27, 1973, after the effectivity of the present Constitution, there was a complaint filed by petitioners as plaintiffs alleging that they are owners of residential lots in the defendant City of Oroquieta, portions of which had previously been reserved as "road-right-of-way," that thereafter the City through its City Engineer, likewise named defendant, did undertake the widening of all roads resulting in the taking of the portions thus previously marked out, that with the road expansion having been carried out, there was a taking admittedly for public use but they had not been compensated. They sought the payment of just compensation for the portions taken from them and reimbursement for expenses incurred in removing or demolishing improvements thereon. Then came a motion to dismiss on the part of defendants City of Oroquieta and its City Engineer, now respondents, alleging lack of jurisdiction as the City did rely on instructions proceeding from the Commissioner of Public Highways as well as the Regional Director, who presumably were implementing martial law.[5] While respondent Judge at first denied such motion to dismiss, having in mind the aforesaid presidential decree, there was a turnabout in his order of June 21, 1973, which granted it. Apparently, this time he was oblivious to any other consideration, except that the expropriation having been undertaken pursuant to presidential decrees or letters of instruction under the basic martial law proclamation, all incidents

connected therewith was beyond judicial competence.[6] A motion for reconsideration having been denied, this petition was filed with this Court.

From what did transpire as set forth above, it is quite apparent that what was done by respondent Judge for the reason therein given cannot command assent. The Constitution points to one way; he chose another. The deviation from the path thus indicated is quite clear.

1. All that petitioners sought was to substantiate their claim to just compensation. They asserted that with the widening of the street in question, they lost part of their property. There was a taking, and they were entitled to just compensation. It is as simple as that. Is to be assumed that respondent Judge would have seen it that way. At least three decisions of this Court, *Herrera vs. Auditor General*,^[7] *Alfonso vs. Pasay City*,^[8] and *Ministerio vs. Court of First Instance of Cebu*^[9] so indicate. In all three cases, without any expropriation proceedings being undertaken, the government just went ahead and used portions of private lands to increase the width of roads. This Court saw, to it that they were duly compensated as required by the Constitution. Petitioners then should not be deprived of opportunity to prove that they too are deserving of similar treatment. Respondent Judge, however would deny them even that. He dismissed their complaint. He was led to do so on the belief that the alleged deprivation being ultimately attributable to a presidential decree as well as a letter of instruction and having taken place during martial law, he was without jurisdiction.

That was to commit an error of serious proportions. Had he been more meticulous, he ought to have realized that the authority of respondent City to undertake the widening of the street was at the instance of the highways commissioner, not of the President. Even if it could be ultimately traceable to the latter as made mention of earlier, still respondent Judge had not thereby justified his order of dismissal. In the first place, he was not unacquainted with the presidential decree as to the observance of the constitutional requirement as to just compensation. Then the particular letter of instruction^[10] did not prescribe that in the removal of impediments on streets, sidewalks and highways, and their expeditious repair, resulting possibly in the condemnation of private property, the right to just compensation could be ignored. To so conclude is to cast undeserved, reflection on the Presidency, considering the consistency of its adherence to the rule of law. How can it be said then that courts are deprived of power to assure compliance with this specific command of the charter? Certainly, the ratification of all "the proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President"^[11] in accordance with the Constitution did not alter matters one whit. For what was ratified did not, as above shown, provide that the constitutional provision on just compensation be disregarded. It only meant that what was ordered or instructed to be done, if accomplished, was free from any taint of illegality, even if doubtful, not that it could by a latitudinarian construction justify what was not even contemplated, especially so if thereby a constitutional right would be rendered nugatory.

2. Nor is this all. The actuation of respondent Judge in dismissing the complaint gives cause for concern. It is deplorable; it does no credit to the judiciary. It is ever timely to remember that courts exist to guarantee justice according to law not only between man and man but also between man and government. It has been aptly remarked that their role, as far as the latter aspect is concerned, in a parliamentary system, considering the fusion at the highest level of the legislative and executive branches, is even more crucial. To be more specific, all that was sought by petitioners as plaintiffs is to be accorded their day in court to enforce what they allege to be their constitutional right to just compensation. Respondent Judge ought to have displayed a certain degree of hardihood and intellectual toughness. He should not have succumbed to the deceptive plausibility of a plea from counsel fired with partisanship that under martial law his jurisdiction is so far curtailed that a claim based on the Constitution is beyond the pale of judicial inquiry. A more rigorous scrutiny would have disclosed that there was on the part of the President as shown by a decree known to respondent Judge a scrupulous respect for the

commands of the Constitution. Certainly he ought to have realized then that he would be merely doing his duty as a judge if he passed upon the controversy. Much less was there loss of jurisdiction on his part because the city officials, more specifically respondent city engineer, did nothing but to implement instructions from the highest seat of authority. There is relevance to this excerpt from an opinion of Justice Laurel, even if not precisely in point: "A mere plea that a subordinate officer of the government is acting under orders from the Chief Executive may be an important averment, but is neither decisive nor conclusive upon this court. Like the dignity of his high office, the relative immunity of the Chief Executive from judicial interference is not in the nature of a sovereign passport for all the subordinate officials and employees of the Executive Department to the extent that at the mere invocation of the authority that it purports the jurisdiction of this court to inquire into the validity or legality of an executive order is necessarily abated or suspended." [12] So constitutionalism requires.

WHEREFORE, the petition is granted, the order of dismissal of June 21, 1973 set aside, and the case remanded to the lower court for further proceedings in accordance with the law. No costs.

Zaldivar, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.
Barredo, J., took no part.

[1] In addition to Judge Melecio A. Genato of the Court of First Instance of Misamis Occidental, the City of Oroquieta and its City Engineer, Aresio Casing, were likewise named as respondents.

[2] According to Article IV, Sec. 1 of the Constitution: "No person shall be deprived of life, liberty, or property without due process of law nor shall an person be denied the equal protection of the laws.

[3] According to Article IV, Sec. 2 of the Constitution: "Private property shall not be taken for public use without just compensation."

[4] Presidential Decree No. 42 (1972).

[5] Presidential Proclamation No. 1081

[6] Petition, Annex, H.

[7] 102 Phil. 875 (1958).

[8] 106 Phil. 1017 (1960).

[9] L-31635, August 31, 1971, 40 SCRA 464.

[10] Letter of Instruction No. 43 (1972).

[11] According to Article XVII, Section 3, paragraph (2) of the Constitution: "All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

[12] Planas vs. Gil, 67 Phil, 62, 74-75 (1939).

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