

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. FERNANDA FELISA CORRALES ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. 10076. October 28, 1915*

Ponente: JOHNSON, J.

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The present action was commenced on the 22d of May, 1913, in the Court of First Instance of the City of Manila. It was brought for the purpose of condemning certain property under the power of eminent domain. The complaint alleged that the property in question was necessary for the purpose of opening or building a street running from Calle Marques de Comillas to Calle Nozaleda, crossing Calle San Marcelino and Taft Avenue. The plaintiff was able to purchase much of the land necessary for said construction. The property involved in the present action is represented by the following plan:

(See image Vol. 32 Phil. page 87)

The question of the necessity for said condemnation was submitted to the court. After hearing the respective parties it was agreed that the opening or construction of said proposed street was necessary. Whereupon, by agreement of all the parties, Mauro Prieto, Alfonso Tiaoqui, and Denis J. Mahoney were appointed as commissioners to view and appraise the property involved in the present action and to report their findings and conclusions to the court. Said commissioners were duly sworn and entered upon the performance of their duty. They held many sessions and heard all of the witnesses which the respective parties desired to present.

After hearing all of the proofs presented relating to the Value of the property involved, said commissioners unanimously agreed upon and made the following report:

"By virtue of an order issued by the Honorable A. S. Crossfield, judge, Court of First Instance, under date of September 1, 1913, the undersigned, Mauro Prieto, Alfonso Tiaoqui and Denis J. Mahoney were appointed commissioners to hear the parties, view the premises and assess the damages to be paid for the condemnation of the properties required to be expropriated in the above-entitled case.

"The commissioners, after having duly qualified and after having duly notified all the parties concerned, inspected the premises to be expropriated on September 13, 1913, and on the same date and on various subsequent dates held various sessions at which evidence, oral and documentary, relative to the property of Fernanda F. Corrales and children was offered and received. A complete report of the proceedings is submitted herewith.

"After all the evidence obtainable had been submitted by the litigants, the commissioners, after a careful analytical study of the evidence, decided to make the following appraisal and assessment of damages for the premises to be expropriated belonging to Fernanda F. Corrales and children. The land sought to be expropriated, parcel No. 2, Exhibit A hereto attached, was found to be considerably lower than the present level of Calle Marques de Comillas and lower than level of the proposed boulevard:

"For parcel No. 2, city engineer's plan F-10-161 F, hereto attached and marked Exhibit A, having an area of

1,837.20 sq. m., after deducting cost of fill required to bring to normal street level

P9,284.15

"This sum is arrived at by the following calculations:

.30 meters deep, Calle M. de Comillas, 483.76 sq. m., @ P8.00

Interior area, 1,353.44 sq. m., @ P5.00.....

P3,870.08

6,767.20

Total, 1,837.20 sq. m.....

10,637.28

Deduct cost of fill, 1,082.5 cubic meters, @ P1.25.....

1,353.13

Net value of land, present condition

9,284.15

"For the tienda indicated as building No. 2 on city engineer's plan above quoted.....

2,000.00

"For damages to residence, building No. 1 Exhibit A, and for cost of necessary rearrangement consequent on expropriation.....

8,105.00

"For the litografia, building No. 3 Exhibit A....

7,920.00

"For cost of removing machinery from present site and reinstalling on another location.....

2,100.00

"For stable or camarin known as building No. 4

376.00

"For damages incident to the stoppage of business for a period of three months, more or less

2,000.00

"Total

31,785.15

"In reviewing the testimony of the various witnesses, that of Sellner was taken as being the most reasonable and logical with regard to the value of the land, and the uncontradicted testimony of Latimer was used as a basis on which the estimated cost of fill to be deducted was considered and determined. With regard to the main building marked No. 1, Exhibit A, and the stable marked building No. 4, the evidence of Perez Munoz and George B. Asp were considered jointly. Asp's testimony was taken as the basis for the value placed on the litografia, building No. 3, Exhibit A, and the certificate of the city assessor and collector taken for the value placed on the tienda marked building No. 2 thereon. The item of P2,100 for removing and reinstalling the machinery was agreed on between the parties in litigation and the sum of P2,000 recommended to be awarded for the stoppage of business was based on the testimony of E. C. McCullough.

"It will be noted that the actual figures given in Latimer's testimony as the cost of filling were P1.65, but the undersigned believe that this price is excessive and have therefore recommended a deduction of only P1.25 per cubic meter to be allowed.

"Respectfully submitted.

(Signed)

"M. Prieto.

"A. Tiaoqui.

DENIS J. MAHONEY.

Upon a consideration of the report of said commissioners, the Honorable A. S. Crossfield, judge, accepted their findings of fact and conclusions and rendered a judgment in favor of the defendants and against the plaintiff in accordance with their recommendations.

From that judgment, both the plaintiff and the defendants appealed to this court and each made several assignments of error. For the purpose of convenience in discussing the questions presented by the respective appellants, their assignments of error are hereby presented in parallel columns:

ASSIGNMENTS OF ERROR BY DEFENDANT-APELLANTS

ASSIGNMENTS OF ERROR BY PLAINTIFF-APPELLANT.

First. The trial court erred in not awarding the defendants at in least P13,617.63, as the value of the land expropriated.

First. The trial court erred accepting the valuation of P9,284.15, assessed by the commissioners, as the present net market value of the land sought to be condemned, and in overruling plaintiff's motion to reduce said valuation by P433, the amount arbitrarily deducted by the commissioners from the cost of filling, as established by the defendants.

Second. The trial court erred in accepting the commissioners' valuation of the tienda (building No. 2 on plan) and in not fixing its valuation at at least P5,266.

Fourth. In accepting the sum of P2,000 assessed by the commissioners as the value of the structure known as building No. 2 and in not reducing said valuation to the sum of P1,680.

Third. The trial court erred in not awarding the defendants at least P6,048.40, as damages on building No. 1 on plan.

Second. In accepting the sum of P8,105 as assessed by the commissioners as the value of the portion to be taken from the structure described as "No. 1, main building," in Exhibit A, and for cost of work of reconstruction and damages to remainder of building, and in not finding that the owners are only entitled to receive for this item the sum of P5,444.50, and no more.

Fourth. The trial court erred in not awarding the defendants at least 16,362, as the value of the lithograph building No. 3 on

Fifth. In allowing the sum of P2,000 assessed by the commissioners as damages to the defendants, incident to the stoppage of plan. the lithograph business of defendants, and in overruling plaintiff's motion to reject said assessment.

Fifth. The trial court erred in not awarding the defendants at least P849.36 for the camarin or stable, No. 4 on plan.

Third. In accepting the sum of P376 assessed by the commissioners as the value of the structure described as "building No. 4" and in not finding that the total compensation which the owners are entitled to receive for said structure is the sum of P200 and no more.

Sixth. The trial court erred in not awarding defendants at least f 1,000 for trees, plants and tennis-court.

Seventh. The trial court erred in not allowing the consequential damages to the land not taken,

Sixth. In not finding that the sum of P6,566.44, which is the consequential gain in value which the remainder of the property of defendants will obtain through the construction of the public improvement referred to in these proceedings, should be deducted from the compensation to be paid to the owners.

In taking private property for public use under the power of eminent domain, the persons whose property is thus taken, should be paid the reasonable market price of their property. The owners of property should not take advantage of the necessity of the public for the purpose of requiring the Government to pay more than their property is worth, neither should the Government be permitted to take the property of private persons at a less price than it is reasonably worth at the time of the expropriation.

When we speak of the market value of property taken under the power of eminent domain, we mean the value which purchasers generally would pay for it. We do not mean what a purchaser would pay who had no particular object in view in purchasing, and no definite plan as to the use to which to put it. The owner has a right to its value for the use for which it would bring the most in the market. (King vs. Minneapolis Union Railway Co., 32 Minn., 224.) With this principle in mind we shall proceed to examine into the report of the commission for the purpose of ascertaining whether or not their conclusions conform therewith. The first assignment of error by each of the appellants relates to the amount allowed for all of the land belonging to the defendants, appropriated for the opening or construction of the street. It is admitted by both parties that the amount of land appropriated is 1,837.20 square meters.

(See parcel No. 2 of plan.) The commissioners allowed as the reasonable value of said land the sum of P9,284.15, said sum being, in their judgment, the reasonable and just market value of said land. The commissioners, for the purpose of ascertaining the value of said parcel No. 2, divided it into two parts, the first consisting of 483.76 square meters at P8 per meter, and the second consisting of 1,353.44 square meters at P5 per meter. On that basis,

the value of the land (1,837.20 square meters) amounted to P10,637.28. The commissioners, however, reduced said total amount by the sum of P1,353.13, which was the necessary cost, in their estimation, to properly grade the street. Deducting from the total value of the land (P10,637.28) the cost of grading the street (P1,353.13), we have what the commissioners regarded as the value of the land, or the sum of P9,284.15. The defendant-appellants insist that they should have been allowed the sum of P13,617.63. In support of their claim they cite the declaration of several of the witnesses who testified during the trial of the cause with reference to the value of the land in question. Serrano testified that a portion of the land was worth 78 per meter and the other portion 75 per meter. B. A. Green testified that the first portion or parcel was worth 78 per meter and the other portion from 74.50 to 75 per meter. Serrano testified that one portion of the land was worth 710 per meter and the balance 77 per meter. Enrique Brias testified that one portion was worth 78 per meter and the other 75 per meter. D.a Felisa Corrales testified that all of the land in question was worth on an average of 710 per meter.

It will be seen from the declarations of these witnesses that Sellner, Green, and Brias practically agreed as to the value of the land. The defendant-appellants, however, attempt to show that some of the witnesses were perhaps interested and that therefore their testimony should be to some extent discredited. Eliminating the declarations of the witnesses for the plaintiff whose testimony it is claimed is more or less prejudiced, and eliminating the declaration of one of the defendants for the same reason, we would then have left the declaration of Green and Brias, who practically agree as to the Value of the land, against the testimony of Serrano. While we do not pretend that the preponderance of evidence can always be measured by the number of witnesses, yet, nevertheless, in the present case, it would seem that by every rule of evidence, the preponderance is in favor of the conclusions of the commissioners, that one portion of the land in question is worth P8 and the other portion P5 per meter.

By reference to the report of the commissioners, it will be seen that they reduced the total value of the land, P10,627.28, by the sum of P1,353.13, the amount which was necessary to grade the street when opened. The commissioners found that it would cost P1.25 per cubic meter to properly grade the street. The plaintiff-appellant complains that they should have reduced the total amount by the sum of P1,353.13 plus P433 or the sum of P1,786.13. The only expert evidence adduced during the trial of the cause, which stands uncontradicted and undisputed, was the testimony of Latimer who stated that it would cost P1.65 per cubic meter to properly fill the street. Sellner testified that while the total Value of the land was P10,637.28, that amount should be reduced by whatever it would cost to fill and grade the street. He does not state, however, the amount which it would cost to properly grade the street. The plaintiff-appellant argues that the commissioners arbitrarily, without any proof whatever, reduced the cost of filling the street and grading the land from P1.65 to P1.25 per square meter.

It will be remembered that none of the witnesses, except Sellner, in estimating the value of the land in question, made any reduction whatever for the cost of grading the street when opened. It is difficult to understand upon what theory the plaintiff could insist upon having the actual value of the land at the time of expropriation reduced by what it would cost to grade the street after the land had been turned over to it. The plaintiff was attempting to expropriate the land in the condition under which it was found. The commissioners were appointed for the purpose of ascertaining its value in that condition. The question was as to the value then, not its value after it was appropriated for public street purposes. It is difficult to understand upon what theory the plaintiff could require the defendants to bear the cost of the construction of the proposed street. In fact, a condition might be imagined where the street might be so graded as to result in actual damage to the rest of the property of the defendants. For example, if the city should establish a grade much higher than the property belonging to the defendants, actual damages might result to the defendants by virtue of the grading of the street. We do not believe that the cost of grading the proposed street should be charged to the defendants. We are of the opinion, therefore, and so hold, that the value of the property, P10,637.28, should not have been reduced by the sum of P1,353. 28, or by any other sum, for the purpose of paying for the grading of the proposed street. In our opinion, a preponderance of the

evidence clearly shows that the land (parcel No. 2) is reasonably worth P10,637.28.

The second assignment of error of the defendant-appellants and the fourth of the plaintiff-appellant relates to the amount which the commissioners allowed for the tienda located on the land in question which is marked building No. 2 on the plan. The defendant-appellants assert that the commissioners did not allow sufficient for said tienda.

The plaintiff-appellant contends that the commissioners allowed too much as the value of the tienda. The defendant-appellants alleged that the commissioners should have allowed the sum of 75,265. The plaintiff-appellant attempts to show that the tienda was not worth more than P1,680. The commissioners allowed P2,000. By reference to the plan above, it will be seen that the tienda at the point marked No. 2 is located wholly upon the land in question. The opening of the street made it necessary to completely remove said tienda. The defendant-appellants show that they were receiving a monthly rent for said building in the sum of P60. That proof is not denied. The plaintiff-appellant insists, and presented proof in support of the contention, that the tienda could be reconstructed for the sum of P1,680. The plaintiff insists that the defendants should not receive more for the tienda than the cost of its construction, while the defendants insist that they should be allowed a sum which would produce P50 per month, at the current rate of interest. In other words, the defendant-appellants insist that if 6 per cent is the current rate of interest, for example, they should be allowed a sum for said tienda sufficient to produce P50 per month. Using this example as the basis of the defendants' contention, they should be allowed the sum of P10,000. Changing the basis of our calculations, and assuming that the current rate of interest is 10 per cent, then, upon that basis, under the theory of the defendants, they should receive the sum of 6,000 for said tienda.

One of the witnesses testified that property should be rented so as to render an income of 12 per cent on its value. Another witness testified that property should be rented so as to produce an income of 10 per cent. The defendant-appellants claim that under that testimony they should receive an amount for said tienda which, at 11 per cent, would produce an income of P50 per month, or the sum of P5,454. In support of their contention, the defendant-appellants cite several cases, the most important of which are the *G. R. & I. R. R. Co. vs. Weiden* (70 Mich., 390), and the *Union Railway Company vs. Hunton* (114 Tenn., 609).

The question of the value of property in expropriation proceedings is always a difficult one to settle. The opinions of men vary so much concerning the real value of property that the best the courts can do is to hear all of the witnesses which the respective parties desire to present, and then, by carefully weighing that testimony, arrive at a conclusion which is just and equitable. We do not believe that the contention of the defendant-appellants is tenable. There may be cases where the value of property can be fixed upon its actual rental value. For example, where the property has been rented for a number of years at a fixed rate, then such rate ought to be used as the basis of the actual value of the property. It must not be overlooked that there is a difference between the actual rental value of the property and the price for which it is rented at any particular time. What property will rent for is a variable quantity. The amount paid for the use of property is not always a constant quantity. The amount which the tenant will pay may depend upon his particular necessities at the time. The theory of the defendants would fix the rent for all time as a constant quantity. The constant changing of centers of population and of business, as well as the fluctuation of business, depending upon good or so-called hard times, affect the value of property for rental purposes. For example, had property been expropriated upon the Escolta in the city of Manila early in the year 1898, and had its value been capitalized upon the basis of its rental value then, the owner would have received a much less amount for his property than if the same property had been expropriated in the year 1906, the difference depending upon what the particular property rented for in the two periods. Thus, within a period of seven or eight years, an absolute readjustment of the value of properties had taken place. Thus it will be seen that the contention of the defendants that the rental value of the property should be fixed for all time by what

happens to be its rental value at the time of the expropriation would seem to be untenable.

Neither can the rental value be determined upon a consideration of the cost of the construction of the property.

For example, a building in the principal part of the city might be worth much more than one on the outskirts, which cost twice as much. A building on the Escolta, in the city of Manila, which cost P50,000 might rent for twice as much as a building on the outskirts of the city which cost P100,000. Thus it is clear that the cost of construction cannot be used as a basis for determining the value of property.

In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry, in such cases, must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted, that is to say, What is it worth from its availability for valuable uses?

So many and varied are the circumstances to be taken into account in determining the Value of property condemned for public purposes, that it is practically impossible to formulate a rule to govern its appraisalment in all cases. Exceptional circumstances will modify the most carefully guarded rule, but, as a general thing, we should say that the compensation of the owner is to be estimated by reference to the use for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future. (*Miss. and Rum River Boom Co. vs. Patterson*, 98 U. S., 403).

The tienda in question (building No. 2), according to the proof, is a very cheap structure, and might be reconstructed for the sum of M.,680. Its value, as insisted upon by the defendant-appellants, does not include the land. It does not seem reasonable to believe that such a structure, even granting that it rents for P50 a month, has a market value such as is contended for by the defendants, under normal conditions, where the owner desires to sell, without necessity, and to a person who desires to buy for some specified purpose.

Again referring to the contention of the defendant-appellants that they should receive for said tienda a sum which, at 11 per cent, would produce an income of P50 per month, we desire to make the following observations.

Upon the land expropriated there were three buildings, which the defendants rented: (a) A tienda which rented for P50; (b) a lithographing establishment which rented for P150 per month; and (c) a stable which rented for P10 per month.

The amount received by the defendants for these three buildings was P210 per month. Of course, in considering said buildings, some consideration must be given to the land which they occupy. Assuming that the defendants desired to sell said parcel No. 2, the land in question, in endeavoring to ascertain what the land and buildings in question are worth, upon their theory, then they would capitalize said buildings and land at an amount which, at 11 per cent, would produce P210 per month. Upon that basis, the land and buildings would be worth a little more than P22,909. Taking the amount which the commissioners allowed the defendants, P31,785.15, and reducing that sum by the sum which the commissioners allowed for damages done to the residence, P8,105, we have the sum of P23,680, which the commissioners allowed for the land and buildings, which is P771.15 more, than the defendants were entitled to upon their own theory. Of course, this conclusion is reached upon the theory of the defendants, to wit, that the value of their land is an amount which, at 11 per cent, would produce the present income of P210.

It must be remembered, by reference to the above, that we have added to the value of the land, the sum of P1,353.13, which the commissioners reduced, on account of the cost of grading the street. If that sum, P1,353.13, is added to the P771.15 above, we have the sum of P2,124.28, more than the defendants claim they are entitled to upon their own theory. This argument is not presented here for the Purpose of indicating our acceptance of the

theory of the defendants, but simply for the purpose of demonstrating that, even upon their own theory, they are receiving more for their property than they would under their own contention.

With reference to the other assignments of error, relating to the various items which the commissioners allowed, and considering the evidence adduced during the hearing, and in view of what has been said above, and without a further discussion of the evidence relating to said assignments of error, we are of the opinion, and so hold, that with the modification above indicated, relating to the cost of grading the street, the judgment of the lower court should be affirmed, with costs.

It is therefore hereby ordered and decreed that a judgment be entered in favor of the defendants and against the plaintiff in the sum of P33,138.28, with costs. So ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

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