

THE MANILA RAILROAD COMPANY, PETITIONER, VS. THE HONORABLE ISIDRO PAREDES, FLORENTINO ALANDY, JULIA ALANDY, AND VENTURA ALANDY, RESPONDENTS.

G.R. No. 10781, December 17, 1915

Ponente: TRENT, J.

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TRENT, J.:

This is an original action of mandamus in this Supreme Court. The plaintiff is a railroad corporation organized under the laws of the Philippine Islands and has the power of eminent domain. In conformity with its charter it constructed and is now operating a branch line from Manila to Gumaca, Province of Tayabas. On April 29, 1913, the herein defendants surnamed Alandy instituted an action to recover the value of a parcel of land comprising a portion of the right of way of the Gumaca line, alleging that they were the owners and that the company had never acquired title thereto by amicable purchase or expropriation proceedings. The amended complaint asks for the restitution of the land, P5,000 damages for improvements thereon which, it is alleged, the railroad company had destroyed, and an additional sum of ₱5,000 "by way of punishment and chastisement of the defendant company, so that it will not again illegally and arbitrarily occupy lands of private ownership." The company answered, setting up its error in believing that it had acquired title to the land by purchase from the owner and that the mistake was due to a misdescription in the plans; further alleging that it took possession of the parcel in question during September, 1912, constructed its railroad over the said parcel in due course, and continued to occupy the land and operate its railroad over it without objection from any one and especially from the defendants, until shortly before the defendants instituted their action to oust the company. By way of cross-complaint, the company instituted expropriation proceedings against the owners. These expropriation proceedings were duly had before the respondent judge, who approved the award of damages made by the commissioners and entered judgment on March 3, 1915, for that amount. The company promptly entered an exception to this judgment, notified the court of its intention to appeal, and presented a motion for a new trial upon the ground that the judgment was against the law and the weight of the evidence. Upon receiving notice of the overruling of this motion, an exception was entered thereto and in due course the corresponding bill of exceptions was presented and the same is now pending approval, subject to certain objections filed by the herein defendants. In the meantime, the herein defendants moved for the execution of the judgment. Notwithstanding the fact that the company offered an appeal bond in excess of the amount of the judgment, the court directed that: "If the defendant company desires to continue in the occupation and enjoyment of the property of the plaintiffs, it must pay to the latter the amount of the judgment; and therefore, if, within five days after notification of this order, the company fails to pay said amount or to signify its intention of vacating the property, let a corresponding writ of execution issue."

The company thereupon instituted these present proceedings in the Supreme Court, alleging that unless the respondent Paredes is restrained by the injunction of this court, he will execute the judgment complained of or dispossess the company of the parcel of land in controversy, pending the appeal, thus depriving this court of its jurisdiction over the subject matter and of the ability to do complete justice between the parties to the litigation.

And praying that a writ of mandamus issue to the respondent judge, commanding him to permit the company to stay the execution of the judgment, pending the appeal, by the execution of a bond sufficient to secure the performance of the judgment, in case it be affirmed in whole or in part by this court. A preliminary injunction was issued restraining the respondent judge from executing the judgment in question until further orders of this court.

It is necessary to first determine just what the rights of the herein defendants were at the time they instituted their action in the court below.

It seems that this is the first case in this jurisdiction in which it has been attempted to compel a public service corporation endowed with the power of eminent domain to vacate property occupied by it without first acquiring title thereto by amicable purchase or expropriation proceedings. This point, with special reference to railroads, has been the subject of numerous cases in the United States, from which country we have derived our law of eminent domain. The cauee are practically unanimous in principle, and turn upon the point whether the railroad company has the capacity to Acquire the land in dispute by virtue of its delegated power of eminent domain, and, if so, whether the company occupied the land with the express or implied consent or acquiescence of the owner. If these questions of fact be decided in the affirmative, it is uniformly held that an action of ejectment or trespass or injunction will not lie against the railroad company, but only an action for damages, that is, recovery of the value of the land taken, and the consequential damages, if any. The primary reason for thus denying to the owner the remedies usually afforded to him against usurpers is the irremedial injury which would result to the railroad company and to the public in general. It will readily be seen that the interruption of the transportation service at any point on the right of way impedes the entire service of the company and causes loss and inconvenience to all passengers and shippers using the line. Under these circumstances, public policy, if not public necessity, demands that the owner of the land be denied the ordinarily remedies of ejectment and injunction. The fact that the railroad company has the capacity to eventually acquire the land by expropriation proceedings undoubtedly assists in coming to the conclusion that the property owner has no right to the remedies of ejectment or injunction. There is also something akin to equitable estoppel in the conduct of one who stands idly by and watches the construction of the railroad without protest. (*Union Pac. R. Co. vs. City of Greeley* [C. C. A.], 189 Fed., 1.) But the real strength of the rule lies in the fact that it is against public policy to permit a property owner, under such circumstances, to interfere with the service rendered to the public by the railroad company.

We quote from *Northern Pacific Railroad Co. vs. Smith* (171 U. S., 260, 275; 43 L. ed., 157, 163) : "This subject was fully considered by this court in the case of *Roberts vs. Northern Pac. R. R. Co.* (158 U. S., 1; 38 L. ed., 873), where, upon the foregoing authorities and others, it was held that if a landowner, knowing that a railroad company has entered upon his land and is engaged in constructing Its road without having complied with a statute requiring either payment by agreement or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejectment for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages."

This case was affirmed in *Donohoe vs. El Paso & S. W. R. Co.* (214 U. S., 499; 63 L. ed., 1060), in a memorandum decision affirming a judgment of the Supreme Court of the Territory of Arizona, reported in volume 11 of the Arizona Reports, at p. 293. Among the numerous cases from state jurisdiction affirming the rule, we cite *Pickert vs. Ridgefield Park Railroad Co.* (25 N. J. Eq., 316); *Boise Valley Construction Co. vs. Kroeger* (17 Idaho, 384); *Kakeldy vs. Columbia & P. S. R. Co.* (37 Wash., 675) ; *Webster vs. Kansas City & S. R. Co.* (116 Mo., 114); *Buckwalter vs. Atchison, T. & S. F. R. Co.* (64 Kan., 403); *Florida Southern Railroad Co. vs. Hill* (40 Fla., 1; 74 Am. St. Rep., 124). The rule has been applied in favor of a municipal corporation in *New York vs. Pine* (185 U. S. 93; 46 L. ed., 820); in favor of the Federal Government in *United States vs. Lynah* (188 U. S. 445; 47 L. ed., 539); and in favor of an electric power company in *Gurnsey vs. Northern Cal. Power Co.* (160 Cal.,

699).

There is, however, a limit to this rule. The power of eminent domain is essential to the general welfare of society. It is assumed as an attribute of sovereignty by the state and by it delegated to persons or corporations whose functions are to offer services of some sort to the general public, such as highways, railroads, telegraph and telephone companies, public service plants, and the like. While the power of eminent domain is usually and ordinarily delegated to all such enterprises, and may be considered essential to their proper development and efficiency, it is theirs only by grant from the state and within the limits prescribed. If therefore, any such person or corporation enters upon private property in the absence of such authority, they are there as mere trespassers and stand in no better position than any other intruder. A concrete case in point is that of the State of Washington ex rel. *Sylvester vs. Superior Court* (60 Wash., 583), where a railroad company entered upon a street in the nighttime and proceeded with the construction of its railroad notwithstanding it had no franchise. The abutting property owners immediately contested the right of the company to thus enter upon the street. In disposing of one branch of the litigation, the Supreme Court of the State of Washington said: "In *Slaight vs. Northern Pac. R. Co.* (39 Wash., 576; 81 Pac, 1062), and the numerous cases therein cited, this court held, in effect, that where a property owner stands by and permits a railroad company to construct its railroad upon his land, without objection or protest, he cannot thereafter recover the right of way in an action of ejectment, or restrain the operation of the road by injunction, without first giving the company an opportunity to acquire the right of way by condemnation. But the railroad company in this case does not bring itself within the reason or the equity of these decisions. Here there has been no acquiescence on the part of the land owners, and no consent to the construction of the road, express or implied. The company is a trespasser ab initio, and acquired no rights by its trespass which a court of equity can respect or protect. To permit a railroad company to acquire even a temporary right, to occupy the property of another by such means is a palpable invasion of the constitutional and property rights of the citizen."

In *Wood vs. Charing Cross Railway Company* (33 Beav. [55 Eng. Rep., 379], 290), it was said by Sir John Romilly, M. R.: "I apprehend the rule of the court in all these matters is this: The legislature empowers the railway company to take the property on paying a reasonable sum for it; but they must not take it arbitrarily or without giving a fair and reasonable compensation to the owner of the property, and they are bound to put the matter in such shape that a jury or arbitrator may be able to form an accurate estimate of its value. If a railway company, disregarding the provisions of the act, thinks fit to take possession of property, to act with a high hand and set the owner in defiance, this court interferes and prevents the company from taking any further step in the matter; but it only does so if the owner comes with reasonable diligence, at the proper time, and without doing unnecessary injury to the company. But if a company acting bona fide take possession of property by mistake, and it is merely a question of value between the company and the owner, I apprehend the court does not act in the same way, unless it is shown that there has been culpable negligence on the part of the company."

In the case at bar the company has been granted a franchise for its line to Gumaca. (Act No. 1905, sec. 1.) It entered upon the land of the herein defendants in good faith. The continued silence of the defendants while the railroad was in the course of construction and until it was completed amounts to an implied acquiescence in the taking of their property. Hence, all the requirements of the rule we have discussed above have been met and the defendants are now left with an action for damages as their only remedy.

This case must, in our opinion, be governed by that of the *Manila Railroad Co. vs. Arzadon* (17 Phil. Rep., 288). This was a case of expropriation. The award of the Commissioners was modified, but resulted in a judgment in favor of some of the defendants far in excess of the preliminary deposit. The plaintiff appealed on the sole issue of the amount of the award. In the meantime, the defendants petitioned the trial court to execute the judgment. Whether this petition was presented before or after the appeal was perfected, we were not informed. Thereupon

the Supreme Court, upon motion of the plaintiff, issued a preliminary injunction restraining the enforcement of the judgment until further orders of this court. The appellees moved to dissolve the preliminary injunction thus issued upon the ground that an appeal in actions of this character does not, under section 248 of the Code of Civil Procedure, operate as a *stipersedea* and therefore the judgment may be executed, although an appeal has been taken. Upon this point we held that section 248 is not applicable to cases "in which the plaintiff was an appellant," and authorized the appellant to file bonds in the amounts of the awards, thereby staying the execution of the judgment pending appeal. In that case the company entered into possession of the land at the beginning of the proceedings upon the order of the court, while, in the case at bar, the company entered into possession of the land in question with the implied consent or acquiescence of the herein defendants. Here the position of the company is at least as strong as in the case cited. The mere fact that the herein defendants were the plaintiffs in the original action in the court below can make no material difference, as the case was converted on the cross complaint of the company into condemnation proceedings, the company by reason thereof becoming the real plaintiff. The two cases being the same in principle, any further discussion of the questions raised becomes unnecessary.

For the foregoing reasons the preliminary injunction heretofore issued in this case is continued in force until further orders of this court. The respondent judge will approve the bond offered by the plaintiff company, if, in his judgment, it is sufficient for the purposes presented. The appeal will then take its ordinary course. The herein defendants *su married* Alandy will pay the costs of this cause. So ordered.

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

Writ granted.

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