

THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. J. C. RUYMANN, H. G. FARRIS, THE HEIRS OF DIONISIO CABANDONG, AND THE POSTAL SAVINGS BANK, DEFENDANTS. J. C. RUYMANN AND H. G. FA...

G.R. No. 11519. January 17, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

This appeal presents three questions of law. They are: (1) May the petitioner, in an action of expropriation, after he has been placed in possession of the property and before the termination of the action, dismiss his petition? (2) In case said action is dismissed, may the defendant recover damages growing out of the action and said possession of the plaintiff? and (3) May said damages be ascertained as an incident in the principal action, or must the defendant submit to the dismissal of the action and commence an independent action for damages?

Upon the first question the decisions are in conflict. Many of the courts have held that, under the conditions mentioned in the above question, the plaintiff cannot dismiss his action; that when he obtained an order for the possession of the property and actually took possession of the same, that then it was too late for him to dismiss his action; that the sale of the property had been consummated; that the only question remaining was: What is the value of the property expropriated? (Carson vs. City of Hartford, 48 Conn., 68; Chicago etc. Ry. Co. vs. City of Chicago, 148 111., 141; Sowers vs. Cincinnati, etc. R. Co., 162 Ind., 676; Military Parade Ground, In re, 60 N. Y., 319; Lewis, Eminent Domain, sections 655, 663; Dillon on Municipal Corporations, section 1044; McQuillin on Municipal Corporations, vol. 4, section 1504; St. Louis etc. Ry. Co. vs. Teters, 68 111., 144; Shannahan vs. City of Waterbury, 63 Conn., 420; People vs. Common Council, 78 N. Y., 56; Moravian Seminary vs. Bethlehem Borough, 153 Pa. St., 583; 15 Cyc, 1027; Babcock vs. Chicago etc. Ry. Co., 107 Wis., 280.) Many more cases might be cited pro and con. The foregoing cases, however, are sufficient to show the diversity of opinion upon the question which we are discussing.

McQuillin, in his valuable work on Municipal Corporations, says:

"If there is no statutory or charter provision, the general rule is that a municipality may dismiss condemnation proceedings, at any time before title passes, and that if the title does not pass prior to confirmation or judgment, the proceedings, may be dismissed even after the return of an award or verdict." (Kelly vs. City of Waterbury, 83 Conn., 270; Ford vs. Board of Park Commissioners, 148 Iowa, 1; City of Evanston vs. Knox, 241 111, 460; McQuillin on Municipal Corporations, section 1504.)

Lewis, in his valuable work on Eminent Domain, after discussing at length pro and con the right to abandon an action of expropriation, says:

The weight of authority undoubtedly is that, in the absence of statutory provisions on the question, the effect of proceedings for condemnation is simply to fix the price at which the party condemning can take the property

sought, and that even after confirmation or judgment the purpose of taking the property may be abandoned without incurring any liability to pay the damages awarded." (Lewis, Eminent Domain, section 955.)

Chief Justice Beasley, in the case of O'Neill vs. Freeholders of Hudson (41 N. J. L., 161, 172), among other things said:

"That whenever land is sought to be taken for a public purpose, the public authorities, in the absence of any statutory provision to the contrary, have a reasonable time given them, after the ascertainment of the expense of the scheme, to decide whether to accept or refuse the land at the price fixed. On every account that rule commends itself to my judgment. With respect to the land owner, the procedure is fair and just: it calls for a reasonable valuation of his land, and if the public reject it at such estimation, he suffers, in general, no detriment, and if, in any exceptional case, any injury is done to him, he is entitled to reparation. On the other side, the rule in question is a necessity, in view of the rational conduct of public affairs; the question whether a projected improvement is wise or unwise, expedient or inexpedient, cannot be answered by any one who is ignorant of the expense that it involves, and therefore to require public agents, in handling these matters, to disregard this plain dictate of common sense, would be altogether absurd. A man of prudence relinquishes a project when he finds the cost is likely to exceed, in a large measure, its benefits; it would seem intolerably unreasonable to require the agent of the public to pursue the opposite course. (Lewis on Eminent Domain, sec. 955, p. 1674.)

The right of the plaintiff to dismiss an action with the consent of the court is universally recognized with certain well-defined exceptions. If the plaintiff discovers that the action which he commenced was brought for the purpose of enforcing a right or a benefit, the advisability or necessity of which he later discovers no longer exists, or that the result of the action would be different from what he had intended, then he should be permitted to withdraw his action, subject to the approval of the court. The plaintiff should not be required to continue the action, subject to some well-defined exceptions, when it is not to his advantage so to do. Litigation should be discouraged and not encouraged. Courts should not require parties to litigate when they no longer desire so to do. Courts, in granting permission to dismiss an action, of course, should always take into consideration the effect which said dismissal would have upon the rights of the defendant. (Pennsylvania Globe etc. Co., vs. Globe Gaslight Co., 121 Fed. Rep., 1015.)

The foregoing doctrine is recognized by the Code of Procedure in Civil Actions. Section 127 provides that:

"An action may be dismissed, with costs to the defendant, in the following cases:

"1. By the plaintiff himself, by written request to the clerk filed among the papers in the case, at any time before trial, upon payment of the costs; provided a counter-claim has not been made, or affirmative relief sought by the cross-complaint or answer of the defendant, or provided the judge shall not decide that the defendant has made such preparation for trial that it would be unjust to permit a dismissal without a trial on the merits.

"2. By the court, when the plaintiff fails to appear at the time of trial, and the defendant appears and asks for the dismissal.

"3. By the court, when the plaintiff fails, for an unreasonable length of time, to prosecute his action.

"In either of these three cases a dismissal of the action shall not be a bar to another action for the same cause.

"4. The court may also, in its discretion, allow a plaintiff to dismiss the action on payment of the costs after the trial has begun and at any time before final judgment, if the interests of justice so require, and in this case the dismissal shall not be a bar to another action for the same cause. The dismissal shall be entered on the docket of the court and shall be effective when so entered, to end the action."

By paragraph 1 above quoted, it will be seen that, where the defendant has interposed a counterclaim, or is seeking affirmative relief by a cross-complaint, that then, and in that case, the plaintiff cannot dismiss the action so as to affect the right of the defendant in his counterclaim or prayer for affirmative relief. The reason for that exception is clear. When the answer sets up an independent action against the plaintiff, it then becomes an action by the defendant against the plaintiff, and, of course, the plaintiff has no right to ask for a dismissal of the defendant's action.

The appellant contends, however, that he had interposed a counterclaim, and that, therefore, under the provisions of said section 127, the plaintiff could not dismiss the action. An examination of the prayer of the appellant shows that no counterclaim was interposed. He prayed: (1) That the value of the land in question be assessed at P200 per hectare, and that the plaintiff be not given the possession of the same until the full value of the land be deposited with the treasurer of the province; (2) that he be declared to be the owner of land described in the plaintiff's complaint; (3) that the court declare that the said land constitute only a fractional part of the land owned by him; and (4) that upon final judgment the defendant be given a judgment for the just and reasonable value of said parcel of land, together with damages for the repairs and improvements thereon.

The only part of said prayer which might, by any possibility, be considered a counterclaim is that part which asked the court to declare that the parcel of land in question was only a fractional part of the land owned by the appellant. The ownership of the land in question was recognized by the petitioner when it commenced the action. The plaintiff was not attempting to expropriate more land than that described in the complaint. Whether or not the defendant and appellant was interested in, or the owner of, a larger tract of land than that which the plaintiff is attempting to expropriate, was a question which had no relation whatever to the issue presented by the plaintiff. It was of no importance to the plaintiff whether the defendant was the owner of another and larger tract of land or not. Neither was that fact important for the purpose of determining the question of the right of the plaintiff to expropriate the parcel of land described in the complaint. That part of the prayer could, in no sense, be considered a counterclaim; for, even granting that the court had authority to pass upon that question, the judgment which might be rendered could in no sense affect the rights of the plaintiff. We are of the opinion, therefore, that the answer presented no counterclaim or prayer for affirmative relief which might, by any possibility, result in a judgment against the plaintiff.

Fully recognizing the force and weight of the argument adduced by the decisions which deny to the petitioner, in an expropriation proceeding, the right to abandon his action, especially after he has entered into the actual possession of the land, yet, in the case of a municipality, where the agents of the public are spending public money, we are of the opinion that such agent should not be required to continue an action when (a) it clearly appears that there is no longer a necessity therefor, or (b) when it clearly appears that to continue the action, the result would be prejudicial to the interests of the public. We think that this conclusion is more in harmony with the rational conduct of public affairs than the opposite rule. (2 Lewis. on Eminent Domain, sec. 956; O'Neill vs. Freeholders of Hudson, 41 N. J. L., 161; 4 McQuillin on Municipal Corporations, sec. 1504; Manion vs. Louisville, etc. R. Co., 90 Ky., 491; Mobile etc. R. Co. vs. Postal Telegraph Cable Co., 120 Ala., 21; Pool vs. Butler, 141 Cal., 46; Stevens vs. Borough of Dambury, 53 Conn., 9; Chicago vs. Sheppard, 8 111. App., 602; Winkleman vs. City of Chicago, 213 111., 360; Wilkinson vs. Bixler, 88 Ind., 574; Robertson vs. Hartenbower, 120 Iowa, 410; State vs. City Council, 40 Minn., 483; Silvester vs. City of St. Louis, 164 Mo., 601; Mason City etc. R. Co. vs. Boyton, 158 Fed. Rep., 599.)

Upon the second question, whether or not the defendant should be entitled to damages, if any had been occasioned by the abandonment of the proceedings by the plaintiff, must, we think, depend upon the question whether or not any damages had been caused. Upon that question, whether damages may at all be recovered in cases like the

present, the authorities are again in great conflict. A careful examination of the decisions upon that question, we think, will show that the result has been due to the fact that no damages had been occasioned, rather than to the rule that no damages could be recovered. We think the rule which should be established in cases like the present is no different from the rule in any other case where one party causes damage to another. In this jurisdiction, the petitioner, upon the presentation of his petition, the ascertainment of the value of the property in question, and the deposit of said value with the proper official, is justified in taking possession of the land being expropriated. In the present case the petition was presented, a value was fixed upon the land, the deposit was made, and the plaintiff took actual possession of the land, thereby causing the defendant to quit the possession of the same, to remove his animals and machinery therefrom, and to cease to exercise any right or control over the same. The plaintiff remained in possession of the land for some time prior to the presentation of his motion to dismiss his action. To deny defendant at least the right to prove that he had been damaged by such dispossession would be to deny him the right to prove, in any case, that he had been damaged by the dispossession of his property by another. Whether or not he has been damaged is a question of proof. He is entitled, at least, to an opportunity to present proof upon that question.

Of course, if, in an action for expropriation, the petitioner has not been given possession of the land during the pendency of the action and the action is subsequently dismissed, it is difficult to see in what way the owner of the land has been damaged. The result, however, is very different where, upon the commencement of the action, the petitioner has taken possession of the land and has ousted the defendant from his possession. (See *Simpson vs. Kansas City*, 111 Mo., 237; *Sanitary District of Chicago vs. Bernstein*, 175 Ill., 215; *Mellichar vs. Iowa City*, 116 Iowa, 390; *Feiten vs. City of Milwaukee*, 47 Wis., 494, 497; *Lamb vs. Schottler*, 54 Cal., 319.) For example, the city of Manila presents a petition for the expropriation of a certain piece or parcel of land upon which the owner is conducting a prosperous business rendering him a handsome income. Upon the presentation of the petition, the ascertainment of the value, and a deposit of the same, the petitioner enters into the possession of the property and dispossesses the owner, and remains in possession for a number of months, and then determines that it does not desire to expropriate the land and dismisses the action—can it be logically contended, in equity and justice, that the owner of the land has not been damaged and that he is not entitled to recover the damages actually caused by the petitioner? We think a statement of the question contains its own answer in the affirmative, notwithstanding the long line of authorities apparently to the contrary.

With reference to the third question, whether or not the damages should be ascertained as an incident to the principal action or in a separate action, again we find the authorities in conflict. (*Feiten vs. City of Milwaukee*, 47 Wis., 494, 497; *Drury vs. City of Boston*, 101 Mass., 439; *Winkleman vs. City of Chicago*, 213 Ill., 360; *De Hansen vs. District Court*, 11 Arizona, 379 [94 Pac, 1125].)

In the present case the petitioner was permitted to dismiss its action, with a reservation to the defendants of their right to institute a separate action for damages. The defendants insisted upon their right to have their damages ascertained and a judgment therefor before the action was dismissed. While the judgment of the lower court permitting the plaintiff to dismiss its action reserving to the defendants the right to maintain a separate action for damages has much authority to support it and therefore committed no error, we are of the opinion that it might have permitted the defendants to have presented their proof of damages as an incident to that action, requiring them to present, as a basis of their action for damages, a bill of particulars of their damage, and this for the purpose of giving the plaintiff an opportunity to know what were the claims of the defendants, so that it might properly prepare its defense.

Therefore, and for the reasons hereinbefore given, it is hereby ordered and decreed that the judgment of the lower court be affirmed, reserving to the defendants the right, before a final judgment is rendered in the court below, and

within a period of twenty days* after the return of the record to the lower court and notice thereof, to present their claim for damages, either as an incident to the present action or in a separate action. And without any finding as to costs, it is so ordered.

Arellano, C. J., Carson, Araullo, and Street, JJ., concur.

DISSENTING OPINION

MALCOLM, J., dissenting:

On the question involved in this appeal the authorities may be in conflict. The instant case is for us one of first impression. The reason of the law is therefore to be searched for and applied.

The right of eminent domain is a powerful arm of the Government. In the hands of vacillating agents, it can be made a weapon of oppression. Only after grave deliberation should use be made of this power. When condemnation proceedings are begun and when the individual is put to all the annoyance of litigation and is dispossessed of his property, no trivial reason should permit the Government to withdraw its action. Is it just to allow the city of Manila to dismiss this action after one year has elapsed from the institution of proceedings, after issues are joined, after deposit has been made, after commissioners have been named and have held many meetings, and after the city has taken possession of the land, coerced the tenants, driven off the cattle, and ousted the defendants? Is it the law, when action has been begun and when affirmative relief is sought by the defendant, under section 127 of our Code of Civil Procedure, to "permit the plaintiff to dismiss the suit? I think not. Appellants' prayer should be granted.

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