

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. ROBERTO ZURBANO, ETC., RESPONDENT*G.R. No. 12064. March 31, 1959*

Ponente: PADILLA, J.

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This is a petition for a writ of certiorari to annul an order of the Court of First Instance of Iloilo entered in civil case No. 4237 directing the plaintiff to amend its complaint to include therein Lot No. 662, owned by the Corporation de los Padres Agustinos.

After the institution of condemnation proceedings by the City Fiscal of Iloilo to acquire certain lands for the widening of the Iloilo South Road, the petitioner moved ex-parte for authority to take possession of the lands sought to be expropriated. On 19 and 23 January 1957 the Court granted the motion. On 30 January, the Corporacion de los Padres Agustinos filed a motion calling the attention of the Court to the fact that in the complaint and in the ex-parte motion for authority to take possession of the lands to be expropriated, Lot No. 662, described in transfer certificate of title No. 342, issued in its name by the Registrar of Deeds and valued at about P1,800, is not included and that no deposit of its provisional value has been made by the petitioner in the Office of the City Treasurer as provided for in section 3, Rule 69. It prayed that the petitioner be directed to deposit with the Office of the City Treasurer within five days the sum of P1,800, the provisional value of the lot, or to restore the possession thereof to the movant (Annex A). On 2 February, the Court ordered the petitioner to amend its complaint, within ten days from notice, to include Lot No. 662 and to submit the appraised value of the lot to enable the Court to ascertain and fix provisionally the value thereof to be deposited by the petitioner (Annex B). On 6 February the petitioner moved for reconsideration (Annex C) and on 8 February amended its motion for reconsideration (Annex D) praying that the order of 2 February be set aside. On 7 February the Corporacion de los Padres Agustinos objected to the petitioner's motion for reconsideration (Annex E). On 9 February the Court denied the petitioner's motion for reconsideration (Annex F). On 16 February the petitioner filed a motion praying that the execution of the order be suspended pending resolution of the petition for a writ of certiorari to be filed in this Court (Annex G). On 18 February the respondent Court granted its motion (Annex H). On 1 March this petition was filed.

To begin with, as the Corporacion de los Padres Agustinos, the entity interested in sustaining the order complained of, has not been included as co-respondent in this proceedings, contrary to section 5, Rule 67, which partly provides:

When the petition filed relates to the acts or omissions of a court or judge, the petitioner shall join, as parties defendant with such court or judge, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such person or persons to appear and defend, both in his or their own behalf and in behalf of the court or judge affected by the proceedings, * * *,

the petition for a writ of certiorari is defective.

Even if the procedural defect be overlooked or corrected by ordering the impleading of the indispensable party as respondent, still the petition has to be denied, for condemnation proceedings are within the jurisdiction of Courts of First Instance, and orders issued in the exercise of that jurisdiction in the absence of abuse cannot be disturbed by this Court. The order of the respondent court to the plaintiff to amend its complaint to include Lot No. 662 owned by and registered in the name of the Corporation de los Padres Agustinos and taken possession of by the plaintiff because it was not included in the complaint for expropriation, does not constitute an abuse of discretion and excess of jurisdiction. Moreover, the plaintiff's claim as alleged in its amended motion for reconsideration, that the lot in question has been occupied by it as a sidewalk since time immemorial, the same being outside the fence of the property of the Corporation de los Padres Agusnos; and that the City Fiscal cannot amend the complaint to include the lot, because the authority granted by the President to institute condemnation proceedings does not expressly include the authority to expropriate Lot No. 662, having been denied by the Corporation de los Padres Agustinos in its answer, the proper course for the respondent Court to pursue was to hear and receive evidence to enable it to determine whether or not the lot should be included. However, this step need not be taken because no copy of the alleged fifth indorsement dated 22 October 1956 of the Executive Secretary containing a list of the parcels of land authorized and directed by the President to be acquired through condemnation proceedings pursuant to section 64 (h) of the Revised Administrative Code (p. 4, Annex D) is attached to the petition for a writ of certiorari, and the respondent Court asserts in its answer filed in this Court that the said indorsement does not mention or enumerate the specific lots to be expropriated (p 2). The petitioner did not deny this assertion.

The petition for a writ of certiorari is denied, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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