

**DESIDERIO MIRANDA AND MARIA GONZAGA DE MIRANDA,
PLAINTIFFS AND APPELLANTS, VS. THE CITY OF BACOLOD,
DEFENDANT AND APPELLEE.***G.R. No. 12606. June 29, 1959*

Ponente: BAUTISTA ANGELO, J.

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Maria G. de Miranda is the registered owner of a lot in Bacolod City suitable for commercial purposes fronting Araneta and Gonzaga streets with an area of six hundred ninety-five (695) square meters. On said lot she and her husband constructed a building which was destroyed by fire sometime in April, 1955. When they : constructed said building, they were required by the City Engineer to observe certain requirement of an ordinance to the effect that all those who may desire to build upon Araneta street are required to recede their building line eight (8) meters from the road center-line. Accordingly, the spouses constructed their building in such a manner that a portion of their lot with an area of sixty-one (61) meters was absorbed by Araneta street.

On April 12, 1955, the building was destroyed by fire. To reconstruct it the spouses again applied for a permit from the City Engineer. The permit was granted subject however to the condition that they should reserve a portion of the lot and construct sidewalks on both sides of Araneta and Gonzaga streets. This requirement encroached further upon the spouses' lot by an overall width of three and seven tenth (3.7) meters from the curb line and reduced said lot by a total area of one hundred thirty-seven (137) square meters.

Claiming that the City of Bacolod had taken possession of portions of their lot fronting Gonzaga and Araneta streets without the benefit of an expropriation proceeding, the spouses instituted the present action praying that their possession of said portions be restored to them or the City be ordered to pay them a just compensation.

The City of Bacolod filed a motion to dismiss on the ground that the complaint does not state a cause of action in that the Gonzaga and Araneta streets which absorbed the portions mentioned therein being part of the national road, the real party to be sued is not the City of Bacolod but the National Government. During the hearing of the motion, it was admitted by plaintiffs that Araneta and Gonzaga streets are classified as portions of the national road which belongs to the National Government. Thereupon, the trial court issued an order sustaining the motion to dismiss, holding that the City of Bacolod is not the proper party to be sued but the National Government, and, therefore, the complaint fails to state a cause of action. Hence this appeal.

When appellants applied from the City Engineers for a permit to construct a building on their lot fronting Gonzaga and Araneta streets, the permit was granted subject to the condition that they should observe the provisions of existing laws, ordinances, and regulations. Among the requirements to be observed are as follows:

- "That Gonzaga-Araneta Streets, being designated National Road by Executive Order No. 194, dated March 13, 1939, the National Road Right of Way of not less than twenty (20) meters shall be strictly observed, that is, plaintiff's' building shall be constructed not less than (20) meters away from the other side of the National Road or not less than (10) meters away from the center line of the road;

- That the building shall be constructed with an arcade, (Ordinance No. 151, Series of April 30, 1955). The arcade shall be in such a way that it forms part of the building which is designated for conveniences of people doing business with said building."

In constructing that building in line with the permit granted them by the City Engineer, appellants religiously followed and observed the conditions therein prescribed, particularly those we quoted above. But after its construction they instituted the present action contending that they were deprived of portions of their lot without payment of a just compensation.

There is no dispute that the Gonzaga and Araneta streets are parts of the national road, for the same had been so declared by Executive Order No. 194 issued by the President of the Philippines on March 13, 1939. Appellants cannot ignore that fact, for the same appears expressly as one of the conditions to be observed in the permit granted by the City Engineer for the construction of their building. Being parts of the national road, the same belong to the National Government. In fact, in said Executive Order No. 194, it is expressly provided that "the construction, maintenance, and improvements of the national roads shall be accomplished by the district and City engineers under the supervision of the Director of Public Works, and shall be financed from such appropriations as may be authorized by the National Government in annual or special appropriation acts." And in that order, it is also required that "National roads shall have a right of way of not less than twenty (20) meters". It is, therefore, apparent from said order that while a national road belongs to the National Government its construction has to be undertaken by the City engineer, and it is in pursuance of this provision that the Araneta and Gonzaga streets which were declared parts of the national road were widened by the City of Bacolod, thus requiring the absorption of certain portions of land adjoining the road belonging to private owners. It is clear that the real party in interest is the National Government and that the City of Bacolod merely acted as agent or instrument in the improvement and widening of the streets in question.

But it is contended that the complaint should not have been dismissed with respect to its second cause of action because it is there alleged that the City of Bacolod compelled appellants to construct an arcade as part of their building and in so doing a portion of their land was also taken without just compensation.

There is no merit in this claim. It appears that said arcade was required by the City Engineer merely to comply with Ordinance No. 151, series of 1955, which requires the putting up of arcades on both sides of the streets as a measure of protection and safety of the inhabitants against fire under the authority of the general welfare clause granted by law to local governments. Moreover, as the trial court has observed, "the court gathers from the pleadings and discussion of this case in open court that the alleged sidewalk is an integral part of the national road, and therefore the claim in relation to the alleged sidewalk is inseparable from the first cause of action."

As a final stand, appellants contends that if they were to sue the National Government, their action might be of no avail, considering the principle that the State cannot be sued without its consent. This contention overlooks one important detail: if they have a valid money claim against the Government, they may file it with the City Auditor, and if he disapproves it, they may appeal to the Auditor General, who has to act thereon within sixty (60) days; and if said official denies the claim, they may appeal to the Supreme Court. All this they can do under Commonwealth Act No. 327, in connection with section 653 of the Revised Administrative Code.

Wherefore, the order appealed from is affirmed, with costs against appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Concepcion, Endencia, and Barrera, JJ., concur.

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