

THE MUNICIPALITY OF ANTIPOLO, PLAINTIFF AND APPELLEE, VS. FRANCISCO DOMINGO ET AL., DEFENDANTS. FRANCISCO DOMINGO, APPELLANT.

G.R. No. 12918. October 16, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by this appeal is whether or not appellant was allowed a reasonable value for his property which the plaintiff expropriated.

The proceedings were commenced in the Court of First Instance of the Province of Rizal in the month of August, 1913. Its purpose was to expropriate certain pieces or parcels of land particularly described in the complaint for the uses and purposes of said municipality. Upon the presentation of said complaint the owners of the parcels of land in question appeared and answered, and each set up in his answer the value of his particular piece or parcel of land sought to be expropriated. Commissioners were appointed, by the court, upon the request of the parties interested, for the purpose of examining into the value of the parcels of land in question and to make a report thereon. Later, said commissioners reported to the Court of First Instance. Upon receiving said report the Honorable Alberto Barretto, after considering the same and hearing the respective parties, modified it with reference to the value fixed by said commissioners of said parcels of land involved. For example, the commissioners allowed to the defendant Modesta Lanuza the sum of P10,000 for her parcel of land involved in said proceedings. Judge Barretto reduced the said amount to P3,715.40. The commissioners allowed the defendant Ildefonso Tambunting for his parcel of land the sum of P18,922. Judge Barretto reduced said amount of the sum of P5,776.70. The commissioners allowed the defendant Francisco Domingo for his parcel of land the sum of P9,677. Judge Barretto reduced that amount and allowed him the sum of P3,205.50 only. From the conclusions of the lower court Francisco Domingo appealed.

The lower court modified the conclusions of the commissioners for the reason that it held that they had proceeded upon a wrong theory in ascertaining the value of the different parcels of land in question. The proof contained in the record concerning the value of the parcel of land in question is, indeed, very unsatisfactory. The record contains no proof showing the value of said parcel of land as fixed by the provincial or municipal authorities for taxation purposes.

The principal claim of the appellant is that the court had no authority to modify the value fixed for said parcel of land by the commissioners. Before discussing that question we desire to note the estimate of the value of the parcel of land which the appellant Domingo himself placed upon it. In his answer he alleged that the parcel of land, together with the improvements thereon, is worth P6,700. The commissioners fixed the value of said parcel of land at P9,677, which sum was based upon its rental value. The appellant (Domingo), in the 5th paragraph of his answer, alleged that he had received nothing in the way of rents and profits from said property for nine years. In his brief in this court he alleged that the rental value of said property was P554 per year. The record, however,

contains no proof upon that question. The lower court, after finding that the commissioners had proceeded upon a wrong theory in ascertaining the value of the parcel of land in question, reached the conclusion that it is worth P3,205.50.

The courts have frequently set aside the findings of commissioners in expropriation proceedings when said commissioners had proceeded upon a wrong theory. Sometimes the courts have increased the amount allowed by the commissioners, and sometimes they have reduced said amount. If the commissioners have underestimated the value of the property upon a wrong theory, or have overestimated it, then the courts will set aside their report, and will hear proof upon the question of the real value. (Waterford etc. Co. vs. Reed, 94 N. Y. Supp., 551; In re Gilroy, 32 N. Y. Supp., 891; Williamson vs. Read, 106 Va., 453; Morris etc. Co. vs. Bonnell, 34 N. J. Law, 474; State vs. Shuffield etc. Co., 82 Conn., 460.)

Courts will not permit an injustice done to the public which furnishes the money for expropriation proceedings where the commissioners, upon a wrong theory, had allowed more for lands expropriated than they are really worth, nor permit the owner whose lands are expropriated to be damaged by compelling him to accept less than the real value for his property. (The City of Manila vs. Tuason, R. G. No. 3367 [not published] ; Manila Railway Co. vs. Fabie and Brothers, 17 Phil. Rep., 206; Manila Railroad Co. vs. Attorney-General, 22 Phil. Rep., 192; Manila Railroad Co. vs. Caligsihan, R. G. No. 7932, [not published].)

The attorney who appeared and presented an oral argument for the appellant presented a verbal motion asking the court to strike from the files the brief presented by the Attorney-General, and cited rule 23 of this court. The Attorney-General was the attorney for the appellee, the municipality of Antipolo. Rule 23 provides that "if the appellee fails to serve his brief within the time aforesaid (30 days after the appellant has presented his brief) he shall not be heard at the argument." The attorney for the appellee did not appear to present an argument at the hearing. Said verbal motion, therefore, is without merit.

After a full examination of the record, we are persuaded that the value fixed by the lower court was approximately the true value of the parcel of land expropriated.

Therefore, the judgment of the lower court is hereby affirmed, with costs. So ordered.

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

CONCURRING

MALCOLM, J.;

I agree in the resolution of the case. I reserve my opinion as to the portion of the decision which relates to compliance with the rules of the Supreme Court.

Judgment affirmed.

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