

THE MANILA RAILROAD CO., PLAINTIFF AND APPELLANT, VS. QUITERIA BUENCONSEJO ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 15142. November 16, 1920

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On May 11, 1914, the plaintiff, "The Manila Railroad Company," presented a complaint in the Court of First Instance of Albay, alleging that in the exercise of its franchise to construct a railway line from Legaspi to Tabaco and of its right to acquire land for the purpose of said franchise, it was necessary for it to expropriate the parcels of land described in its complaint and in the plan attached thereto, the company having been unable to acquire the lands extrajudicially from their owners, as some of them are unknown while others demand excessive and unjust prices. The plaintiff asks that after trial judgment be rendered, adjudicating the ownership of all the lands mentioned in its favor and fixing the just and lawful price which it should pay to their owners.

Three commissioners were appointed to hear and take the evidence of both parties and to assess thereafter the value of the lands and the indemnification which should be granted to the owners thereof for the damages occasioned to them by reason of the expropriation.

Upon the motion of the plaintiff the court issued an order on May 12, 1914, authorizing it to take immediate possession of the lands referred to in the complaint, upon the filing in court of the receipt or certificate of deposit with the Treasurer of the Philippine Islands in the sum of P113.02.

The owners of the lands described in the complaint appeared and in answer thereto admitted the right of the plaintiff to expropriate said lands and stated the sums which they claimed as damages.

At plaintiff's request the court ordered the publication of the complaint in a newspaper of general circulation in the province, with the warning that any interested party who should not appear and answer said complaint within the period of two months would forever be barred from claiming any interest which he may have in the lands intended to be expropriated.

The order for publication having been complied with, an order of default was, at the request of the plaintiff, entered against all persons who did not appear and answer the complaint.

After hearing the evidence the commissioners submitted their report and the court, notwithstanding the objection presented by the plaintiff, approved it although it reduced the sums fixed by the commissioners, the value of the house existing upon parcel No. 360 and that of the damages occasioned by the segregation of parcel No. 368, and it rendered judgment, adjudicating the lands in question to the plaintiff, upon payment of the corresponding indemnification fixed in the report of the commissioners and in the judgment, with legal interest from the filing of the complaint until payment in full, and setting aside that part of the report, already referred to, which makes reference to parcels Nos. 18 and 365.

The attorneys for the plaintiff excepted to this judgment and asked for a new trial, alleging that the judgment is

openly and manifestly contrary to the weight of the evidence and the law. Said motion having been overruled by order of November 10, 1917, of which the plaintiff was notified, the latter excepted thereto on the same day and announced its intention to appeal to this court.

On December 5, 1917, the plaintiff, in a writted motion, asked for an additional period of ten days for the filing of its bill of exceptions, which bill was filed in court on December 20, 1917.

The attorneys for the defendants objected to the approval of the bill of exceptions, alleging that it was not filed within the period fixed by law; but at the request of the plaintiff the court considered the period for the filing of said bill of exceptions as having been extended and approved said bill.

The appellant has submitted the following assignment of errors:

- The court below erred in approving the report submitted by the commissioners without taking evidence and in not considering the objection presented by the plaintiff.
- The court below erred in adjudicating to the defendants the sums respectively assigned in the judgment.
- The trial court erred in overruling the motion for new trial presented by the plaintiff.

As to the first error assigned by the appellant, we do not believe it necessary to enter upon an extensive discussion in order to conclude that it is without any foundation, because a proceeding, such as is intended to be established in said assignment of error, would completely nullify all the proceedings had before the commissioners of appraisal in every case of expropriation, which proceedings are had not upon the will of the court but by virtue of the express provisions of law. Section 246 of the Code of Civil Procedure provides:

"Upon the filing of such report in court, the court shall, upon hearing, accept the same and render judgment in accordance therewith; or for cause shown, it may recommit the report to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part, and may make such final order and judgment as shall secure to the plaintiff the property essential to the exercise of his rights under the law, and to the defendant just compensation for the land so taken; and the judgment shall require payment of the sum awarded as provided in the next section, before the plaintiff can enter upon the ground and appropriate it to the public use."

It therefore results that the court had the power to act in the manner in which it acted, accepting with slight modifications the report of the commissioners, after a hearing of the parties.

As to the second error assinged the appellant submits the following arguments to support it: (1) That the declarations concerning the sales of lands, the price of which was made the basis of the value at which the land of Julio V. Quijano was assessed, which value was taken as the basis of comparison in assessing the value of all the others, are mere hearsay evidence; and (2) that said sales took place many years prior to the occupation of said parcel by the railway company.

It positively appears in the record that the persons, who executed or had personal knowledge of the sales, which the commissioners took as the basis of comparison in fixing the value of the land of Julio V. Quijano, testified upon the price of said sales and the circumstances that surrounded their execution; and as it is not shown that they have violated their oaths there is no reason for discrediting their declarations and considering the conclusions of the commissioners based upon said sales as erroneous.

It is true that these sales were made long before the expropriation proceedings, but it is no less true that the prices in said sales are not those that have been given to the lands expropriated but they merely served as a basis of comparison; and the commissioners having considered all the circumstances of the case, such as the facts that the

town of Tabaco has grown in commercial importance since said sales took place, that the lands expropriated were situated more or less near the district of commercial activity, and other circumstances bearing upon the value of the lands, we do not feel justified in modifying the conclusion reached by the lower court and based upon the report of the commissioners.

In the case of *City of Manila vs. Estrada and Estrada* (25 Phil., 208), in declaring that the sale of other lands shall be admissible as evidence of the value of the condemned land when they are contemporaneous to the espropriation, this Court held that such sale must be sufficiently coeval with the date of the condemnation proceedings as to "exclude general increases or decreases in property values due to changed commercial conditions in the vicinity," so that, it having been demonstrated in the case at bar that the value of land in the town of Tabaco increased because of its growth in commercial importance, and considering that the commissioners adopted only the average price of said sales, it is evident that in so doing they had acted in conformity with the principles of law applicable to the case.

Lastly, the appellant contends that the commissioners erred in not taking into account the benefit that the construction of this railway line confers upon the owners; but the appellant has not pointed out to us the part of the record in which said benefit appears to be proved and we fail to find, reading the record, anything that shows that the construction of the railway line in the vicinity of the lands of the defendants has produced any special benefit to them; and as the commissioners, in assessing the value of said benefits as well as of any other thing, must limit themselves to the evidence in the record (*City of Manila vs. Estrada and Estrada*, supra), it follows that no evidence having been introduced on this point, said benefits can not be taken into consideration, and the commissioners committed no error in failing to consider them.

Apart from the questions above decided the appellant has not raised any other in his brief, although the errors assigned seem to require a complete review of the evidence inasmuch as the judgment is attacked in toto. In the case of *Palarca vs. Baguisi* (38 Phil., 177), this court said: "It is the duty of counsel to designate in their briefs by reference to the pages of the record, the evidence upon which they rely to refute or support the findings of the trial court; and when they fail to do so it is not incumbent upon the appellate court, in civil cases, to review the evidence for the purpose of verifying the correctness of the findings." (See page 181 for the volume cited.) The same rule was laid down in the case of *Fernandez and Fernandez vs. Garrido* (40 Phil., 965, 977). At the end of the decision rendered in said case it was said that "this court is not obliged under the law to review the evidence if the appellant beforehand has not taken the trouble to examine the same and thereby show that the lower court had committed an error, because section 497 of the Code of Civil Procedure only provides that this court may review the evidence when there has been a motion presented in the trial court that the decision appealed from is not sufficiently justified by the evidence, but does not order that said review must necessarily be made."

Therefore, without entering into a more detailed discussion of the evidence, we are of the opinion, and so declare, that the judgment appealed from should be affirmed, with the costs of this instance against the appellant. So ordered.

Mapa, C. J., Johnson, Street, Araullo, Malcolm and Avanceña, JJ., concur.

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