

VISAYAN REFINING COMPANY, DEAN C. WORCESTER, AND FRED A. LEAS, PETITIONERS, VS. HON. MANUEL CAMUS, JUDGE OF THE COURT OF FIRST INSTANCE OF THE PROVINCE OF RIZAL AND HON. QUINTIN...*G.R. No. 15870. December 03, 1919*

Ponente: STREET, J.

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This is an original petition, directed to the Supreme Court, containing an alternative prayer for a writ of certiorari or prohibition, as the facts may warrant to stop certain condemnation proceedings instituted by the Government of the Philippine Islands, and now pending in the Court of First Instance of the Province of Rizal. The respondents have interposed what is called an answer, but which is in legal effect merely a demurrer, challenging the sufficiency of the allegations of the petition. The matter having been submitted upon oral argument, the cause is now before us for the decision of the question thus presented.

It appears that upon September 13, 1919, the Governor-General directed the Attorney-General to cause condemnation proceedings to be begun for the purpose of expropriating a tract of land of an area of about 1,100,463 square meters, commonly known as the site of Camp Tomas Claudio. Said land is located in the municipality of Paranaque, Province of Rizal, and lies along the water front of Manila Bay, a few miles south of the city of Manila. It is stated in communication of the Governor-General that the property in question is desired by the Government of the Philippine Islands for military and aviation purposes.

In conformity with the instructions of the Governor-General, condemnation proceedings were begun by the Attorney-General on September 15, 1919, by filing a complaint in the name of the Government of the Philippine Islands in the Court of First Instance of the Province of Rizal. Numerous persons are named in the complaint as defendants because of their supposed ownership of portions of the property intended to be expropriated. In the list of persons thus impleaded appear the names of the three petitioners herein, namely, the Visayan Refining Co., Dean C. Worcester, and Fred A. Leas, who are severally owners of different portions of the property in question.

In the communication of the Governor-General, the Attorney-General was directed immediately upon filing the complaint to ask the court to give the Government the possession of the land to be expropriated, after the necessary deposit should be made as provided by law. Accordingly in the complaint itself the Attorney-General prayed the court promptly and provisionally to fix the sum of P600,000 as the total value of the property and to put the Government in immediate possession when said sum should be placed at the disposition of the court. An order was accordingly made on September 15, 1919, by the Honorable Judge Manuel Camus, of the Court of First Instance of the Province of Rizal, fixing the value of the property provisionally at the amount stated and ordering that the plaintiff be placed in possession, it being made to appear that a certificate of deposit for the amount stated had been delivered to the provincial treasurer.

At this stage of the proceedings in the Court of First Instance the three respondents already mentioned, to wit, the

Visayan Refining Co., Dean C. Worcester, and Fred A. Leas, interposed a demurrer, questioning the validity of the proceedings on the ground that there is no Act of the Philippine Legislature authorizing the exercise of the power of eminent domain to acquire land for military or aviation purposes.

Contemporaneously with the filing of their demurrer, the same parties moved the Court of First Instance to revoke its order of September 15, giving the plaintiff provisional possession. This motion is based substantially on the same ground as the demurrer, that is, the lack of legislative authority for the proposed expropriation, but it contains one additional allegation to the effect that the deposit in court of the sum of P600,000, had been made without authority of law. In support of this contention it was shown, by means of an informal communication from the Insular Auditor, that the money in question had been taken from the unexpended balance of the funds appropriated by Acts Nos. 2784 and 2785 of the Philippine Legislature for the use of the Militia Commission. This appropriation showed, upon the date said deposit of P600,000 was made, an unexpended balance of P1,144,672.83

On October 3, 1919, the Judge of the Court of First Instance overruled the demurrer interposed by the three parties mentioned and denied their motion to vacate the order granting possession to the Government. The present proceeding was thereupon instituted in this Court in the manner and for the purpose already stated.

General authority to exercise the power of eminent domain is expressly conferred on the Government of the Philippine Islands, as now constituted, by section 63 of the Philippine Bill, which reads as follows:

"That the Government of the Philippine Islands is hereby authorized, subject to the limitation and conditions prescribed in this Act to acquire, receive, hold, maintain, and convey title to real and personal property, and may acquire real estate for public uses by the exercise of the right of eminent domain." (Act of Congress of July 1, 1902.)

Section 3 of the Jones Act contains the further provision that "private property shall not be taken for public use without just compensation." In addition to this there is found in the same section the familiar provision, already expressed in section 5 of the Philippine Bill, that no law shall be enacted which shall deprive any person of property without due process of law, or deny any person the equal protection of the laws. (Act of Congress of August 29, 1906, sec. 3.)

Section 64 of the Administrative Code of the Philippine Islands (Act No. 2711) expressly confers on the Governor-General the power, among others:

"To determine when it is necessary or advantageous to exercise the right of eminent domain in behalf of the Government of the Philippine Islands; and to direct the Attorney-General, where such act is deemed advisable, to cause the condemnation proceedings to be begun in the court having proper jurisdiction."

The procedural provisions relative to the conduct of expropriation proceedings are contained in sections 241 to 253, inclusive, of the Code of Civil Procedure, supplemented as they are by various later Acts of the Legislature. Among the salient features of the scheme of expropriation thus created are these: (1) If the court is of the opinion that the right of expropriation exists, three commissioners are appointed to hear the parties, view the premises, and assess the damages to be paid for the condemnation (sec. 243 Code Civ. Proc.) ; (2) after hearing the evidence submitted by the parties and assessing the damages in the manner prescribed by law (sec. 244), the commissioners make their report to the court, setting forth all their proceedings; and it is expressly declared that "none of their proceedings shall be effectual to bind the property or the parties until the court shall have accepted their report and rendered judgment in accordance with its recommendations" (sec. 245) ; (3) the court then acts upon the report, accepting the same in whole or in part, or rejecting, recommitting, or setting aside the same, as it sees fit (sec. 246).

It is further declared in section 246 that—

"The court * * * 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 (i. e., sec. 247) before the plaintiff can enter upon the ground and appropriate it to the public use."

Sections 247 and 251 of the same Code are of sufficient importance in this connection to warrant quotation in their entirety. They are as follows:

"Sec. 247. Rights of Plaintiff After the Judgment.— Upon payment by the plaintiff to the defendant of compensation as fixed by the judgment, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter in and upon the land so condemned, to appropriate the same to the public use defined in the judgment. In case the defendant and his attorney absent themselves from the court or decline to receive the same, payment may be made to the clerk of the court for him, and such officer shall be responsible on his bond therefor and shall be compelled to receive it."

"Sec. 251. Final Judgment, Its Record and Effect.—The record of the final judgment in such action shall state definitely, by metes and bounds and adequate description, the particular land or interest in land condemned to the public use, and the nature of the public use. A certified copy of the record of the judgment shall be recorded in the office of the registrar of deeds for the province in which the estate is situated, and its effect shall be to vest in the plaintiff for the public use stated the land and estate so described."

The provisions which deal with the giving of immediate possession when the Government of the Philippine Islands is the plaintiff are found in Act No. 2826, which is in part as follows:

"Sec. 2. When condemnation proceedings are instituted by or in favor of the Insular Government * * * in any competent court of the Philippines, the plaintiff shall be entitled to enter immediately upon the land covered by such proceedings, after depositing with the provincial treasurer the value of said land in cash, as previously and promptly determined and fixed by the competent court, which money the provincial treasurer shall retain subject to the order and final decision of the court: Provided, however, That the court may permit that in lieu of cash, there may be deposited with the provincial treasurer a certificate of deposit of any depository of the Government of the Philippine Islands, payable to the provincial treasurer on sight, for the sum ordered deposited by the court. The certificate and the sums represented by it shall be subject to the order and final decision of the court, and the court shall have authority to place said plaintiff in possession of the land, upon such deposit being made, by the proper orders and a mandate, if necessary.

"Sec. 3. * * * Upon the payment by the plaintiff to the defendants of the compensation awarded by the sentence, or after the tender of said sum to the defendants, and the payment of the costs, or in case the court orders the price to be paid into court, the plaintiff shall be entitled to appropriate the land so condemned to the public use specified in the sentence. In case payment is made to the court, the clerk of the same shall be liable on his bond for the sum so paid and shall be obliged to receive the same."

In connection with the foregoing provisions found in laws enacted under the American regime is to be considered the following provision of the Civil Code:

"ART. 349. No one may be deprived of his property unless it be by competent authority for some purpose of proven public utility and after payment of the proper compensation.

"Unless this requisite has been complied with, it shall be the duty of the court to protect the owner of such property in its possession or to restore its possession to him, as the case may be."

Taken together the laws mentioned supply a very complete scheme of judicial expropriation, deducing the authority from its ultimate source in sovereignty, providing in detail for the manner of its exercise, and making the

right of! the expropriator finally dependent upon payment of the* amount awarded by the court.

As has already been indicated the petition before us proceeds on the idea that the expropriation proceedings in question cannot be maintained by the Philippine Government in the absence of a statute authorizing the exercise of the power of eminent domain for military and aviation purposes; and while it is not urged that a special legislative Act must be passed every time any particular parcel of property is to be expropriated, it is claimed—and this really amounts to the same thing—that the Government cannot institute and prosecute expropriation proceedings unless there is already in existence a legislative appropriation especially destined to pay for the land to be taken.

We are of the opinion that the contentions of the petitioners, in whatever way they may be understood or expressed, are not well founded. There is one point at least on which all must agree, namely, that if land can be taken by the Government for a public use at all, the use intended to be made of the land now in question, that is, for military and aviation purposes, is a public use. It is undeniable that a military establishment is essential to the maintenance of organized society, and the courts will take judicial notice of the recent progress of the military and naval arts resulting from the development of aeronautics.

The question as to the abstract authority of the Government to maintain expropriation proceedings upon the initiative of the Governor-General should not be confused with that which has reference to the necessity for a legislative appropriation. They really involve different problems and will be separately considered.

Upon the first, we are of the opinion that in this jurisdiction at least expropriation proceedings may be maintained upon the exclusive initiative of the Governor-General, without the aid of any special legislative authority other than that already on the statute books. Furthermore, if the Government complies with the requirements of law relative to the making of a deposit in court, provisional possession of the property may be at once given to it, just as is permitted in the case of any other person or entity authorized by law to exercise the power of eminent domain. Special legislative authority for the buying of a piece of land by the Government is no more necessary than for buying a paper of pins; and in the case of a forced taking of property against the will of the owner, all that can be required of the government is that it should be able to comply with the conditions laid down by law as and when those conditions arise.

The contention that the authority to maintain such a proceeding cannot be delegated by the Legislature to the Chief Executive, is in our opinion wholly erroneous and apparently has its basis in a misconception of fundamentals. It is recognized by all writers that the power of eminent domain is inseparable from sovereignty being essential to the existence of the State and inherent in government even in its most primitive forms. Philosophers and legists may differ as to the grounds upon which the exercise of this high power is to be justified, but no one can question its existence. No law, therefore, is ever necessary to confer this right upon sovereignty or upon any government exercising sovereign or quasi-sovereign powers.

As is well said by the author of the article on Eminent Domain in the encyclopaedic treatise *Ruling Case Law*.

"The power of eminent domain does not depend for its existence on a specific grant in the constitution. It is inherent in sovereignty and exists in a sovereign state without any recognition of it in the constitution. The provisions found in most of the state constitutions relating to the taking of property for the public use do not by implication grant the power to the government of the state, but limit a power which would otherwise be without limit." (10, R. C. L., pp. 11, 12.)

In other words, the provisions now generally found in the modern laws or constitutions of civilized countries to the effect that private property shall not be taken for public use without compensation have their origin in the recognition of a necessity for restraining the sovereign and protecting the individual. Moreover, as will be at once

apparent, the performance of the administrative acts necessary to the exercise of the power of eminent domain in behalf of the state is lodged by tradition in the Sovereign or other Chief Executive. Therefore, when the Philippine Legislature declared in section 64 of the Administrative Code, that the Governor-General, who exercises supreme executive power in these Islands (sec. 21, Jones Act), should be the person to direct the initiation of expropriation proceedings, it placed the authority exactly where one would expect to find it, and we can conceive of no ground upon which the efficacy of the statute can reasonably be questioned.

We would not of course pretend that, under our modern system of Government, in which the Legislature plays so important a role, the executive department could, without the authority of some statute, proceed to condemn property for its own uses; because the traditional prerogatives of the sovereign are not often recognized nowadays as a valid source of power, at least in countries organized under republican forms of government. Nevertheless it may be observed that the real check which the modern Legislature exerts over the Executive Department, in such a matter as this, lies not so much in the extinction of the prerogative as in the fact that the hands of the Executive can always be paralyzed by lack of money—something which is ordinarily supplied only by the Legislature.

At any rate the conclusion is irresistible that where the Legislature has expressly conferred the authority to maintain expropriation proceedings upon the Chief Executive, the right of the latter to proceed therein is clear. As is said by the author of the article from which we have already quoted, "Once authority is given to exercise the power of eminent domain, the matter ceases to be wholly legislative. The executive authorities may then decide whether the power will be invoked and to what extent." (10 R. C. L., p. 14.)

The power of eminent domain, with respect to the conditions under which the property is taken, must of course be exercised in subjection to all the restraints imposed by constitutional or organic law. The two provisions by which the exercise of this power is chiefly limited in this jurisdiction are found in the third section of the Jones Act, already mentioned, which among other things declares (1) that no law shall be enacted which shall deprive any person of property without due process of law and (2) that private property shall not be taken for public use without just compensation. The latter of these provisions is directly aimed at the taking of property under the exercise of the power of eminent domain; and as this requirement, in connection with the statutes enacted to make sure the payment of compensation, usually affords all the protection that the owner of property can claim, it results that the due process clause is rarely invoked by the owner in expropriation proceedings.

Nevertheless it should be noted that the whole problem of expropriation is resolvable in its ultimate analysis into a constitutional question of due process of law. The specific provisions that just compensation shall be made is merely in the nature of a superadded requirement to be taken into account by the Legislature in prescribing the method of expropriation. Even were there no organic or constitutional provision in force requiring compensation to be paid, the seizure of one's property without payment, even though intended for a public use, would undoubtedly be held to be a taking without due process of law and a denial of the equal protection of the laws.

This point is not merely an academic one, as might superficially seem. On the contrary it has a practical bearing on the problem before us, which may be expressed by saying that, if the Legislature has prescribed a method of expropriation which provides for the payment of just compensation, and such method is so conceived and adapted as to fulfill the constitutional requisite of due process of law, any proceeding conducted in conformity with that method must be valid.

These considerations are especially important to be borne in mind in connection with the second contention made by counsel for the petitioners, namely, that land cannot be expropriated by the Government in the absence of a legislative appropriation especially destined to pay for the land to be taken. To this question we now address ourselves; and while we bear in mind the cardinal fact that just compensation must be made, the further fact must

not be overlooked that there is no organic or constitutional provision in force in these Islands requiring that compensation shall actually be paid prior to the judgment of condemnation.

If the laws which we have exhibited or cited in the preceding discussion are attentively examined it will be apparent that the method of expropriation adopted in this jurisdiction is such as to afford absolute assurance that no piece of land can be finally and irrevocably taken from an unwilling owner until compensation is paid.[^]It is true that in rare instances the proceedings may be voluntarily abandoned before the expropriation is complete or the proceedings may fail because the expropriator becomes insolvent, in either of which cases the owner retains the property; and if possession has been prematurely obtained by the plaintiff in the proceedings, it must be restored. It will be noted that the title does not actually pass to the expropriator until a certified copy of the record of the judgment is recorded in the office of the register of deeds (sec. 251, Code Civ. Proc.). Before this stage of the proceedings is reached the compensation is supposed to have been paid; and the court is plainly directed to make such final order and judgment as shall secure to the defendant just compensation for the land taken. (Sec. 246, Code Civ. Proc.). Furthermore, the right of the expropriator is finally made dependent absolutely upon the payment of compensation by him. (Sec. 3, Act No. 2826; sec. 247, Code Civ. Proc.).

It will be observed that the scheme of expropriation exemplified in our statutes does not primarily contemplate the giving of a personal judgment for the amount of the award against the expropriator: the idea is rather to protect the owner by requiring payment as a condition precedent to the acquisition of the property by the other party. The power of the court to enter a judgment for the money and to issue execution thereon against the plaintiff is, however, unquestioned; and the court can without doubt proceed in either way. But whatever course be pursued the owner is completely protected from the possibility of losing his property without compensation.

When the Government is plaintiff the judgment will naturally take the form of an order merely requiring the payment of the award as a condition precedent to the transfer of the title, as a personal judgment against the Government could not be realized upon execution. It is presumed that by appearing as plaintiff in condemnation proceedings, the Government submits itself to the jurisdiction of the court and thereby waives its immunity from suit. As a consequence it would be theoretically subject to the same liability as any other expropriator. Nevertheless, the entering of a personal judgment against it would be an unnecessary, as well as profitless formality.

In the face of the elaborate safeguards provided in our procedure, it is frivolous to speculate upon the possibility that the Legislature may finally refuse to appropriate any additional amount, over and above the provisional deposit, that may be necessary to pay the award. That it may do. But the Government can not keep the land and dishonor the judgment. Moreover, in the eventuality that the expropriation shall not be consummated, the owners will be protected by the deposit from any danger of loss resulting from the temporary occupation of the land by the Government; for it is obvious that this preliminary deposit serves the double purpose of a prepayment upon the value of the property, if finally expropriated, and as an indemnity against damage in the eventuality that the proceedings should fail of consummation.

It appears that the money represented by the certificate of deposit which was placed at the disposal of the lower court, pursuant to the requirements of section 2 of Act No. 2826, was taken from certain appropriations under the control of the Militia Commission, a body created by section 29 of Act No. 2715, for the purpose, among others, of advising the Governor-General upon measures relative to the organization, equipment, and government of the National Guard and reserve militia. Counsel for the petitioners say that money appropriated for the purposes of the Militia Commission cannot be lawfully used to acquire the land which is now the subject of expropriation, because no authority for the exercise of the power of eminent domain is to be found in any of the Acts appropriating money for said Commission; from whence it is argued that the certificate of deposit affords no

protection to the owners of property.

The point appears to be one of little general importance, and we will not multiply words over it. Suffice it to say that in our opinion the Insular Auditor was acting within his authority when he let this money out of the Insular Treasury; and being now within the control of the lower court, it will doubtless in due time be applied to the purpose for which the deposit was made.

From the foregoing discussion it is apparent that the action taken by the lower court in the condemnation proceedings aforesaid was in all respects regular and within the jurisdiction of the court. The writ prayed for in the petition before us, therefore, can not be issued. The application is accordingly denied, with costs against the petitioners.

Arellano, C.J., Torres, Araullo, and Avanceña, JJ., concur.

Johnson, J., reserves the right to prepare a separate opinion.

CONCURRING
MALCOLM, J.,

I agree with the conclusion arrived at in the majority decision. I am clearly of the opinion that the alternative application for a writ of certiorari or prohibition should not be granted. An analysis into their simplest elements of the various questions presented may easily be made as follows: 1. The power of the Philippine Government in eminent domain; 2. The constitutional prohibition that (A) private property (B) shall not be taken for public use (C) without just compensation; and 3. The constitutional prohibition that no money shall be paid out of the treasury except in pursuance of an appropriation by law.

1. The power of eminent domain is expressly vested in the Government of the Philippine Islands by section 63 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill. The Philippine Legislature has, in turn by section 64 (h) of the Administrative Code of 1917, expressly delegated to the Governor-General the specific power and duty to determine when it is necessary or advantageous to exercise the right of eminent domain in behalf of the Government of the Philippine Islands. This delegation of legislative power to the Governor-General was authorized in view of the nature of eminent domain, which necessitates administrative agents for its execution, in view of the previous attitude assumed by the Judiciary with relation to similar delegations of power, and in view of the undeniable fact that the Governor-General is a part of the same Government of the Philippine Islands to which was transferred the right of eminent domain by the Congress of the United States. (See *Government of the Philippine Islands vs. Municipality of Binangonan* [1916], 34 Phil 518.) When, therefore, the Governor-General directed the Attorney General to cause condemnation proceedings to be begun in the Court of First Instance of Rizal with the object of having the Government obtain title to the site commonly known as "Camp Tomas Claudio," the Governor-General was merely acting as a mouthpiece of American sovereignty, pursuant to a delegated power transmitted by the Congress of the United States to the Government of the Philippine Islands and lodged by this latter Government in the Chief Executive. Any other holding would mean that section 64 (h) of the Administrative Code is invalid, a result to be avoided.

2. In the existing Philippine Bill of Rights (last sentence, paragraph 1, section 3, Act of Congress of August 29, 1916) is a provision that "private property shall not be taken for public use without just compensation." It seems undeniable (A) that Camp Claudio was "private property," and (B) that it was being "taken for public use," namely, for military and aviation purposes. The only remaining point concerns "just compensation," which can better be discussed under our division 3.

3. Another provision of the Philippine Bill of Rights (paragraph 15, section 3, Act of Congress of August 29, 1916) is, "that no money shall be paid out of the treasury except in pursuance of an appropriation by law." The same Organic Act provides (paragraph 1, section 24) for an Auditor who shall "audit, in accordance with law and administrative regulations, all expenditure of funds or property pertaining to, or held in trust, by the Government." His administrative jurisdiction is made "exclusive." The Philippine Legislature could, of course, have specifically appropriated an amount for the purchase of the Camp Claudio site just as it could have specifically enacted a law for the condemnation of such site, but instead it preferred to include in the general Appropriation Acts, under the heads of The Philippine National Guard or Philippine Militia, a large amount to be expended in the discretion of the Militia Commission, which may "use the funds appropriated for other purposes, as the efficiency of the service may require." This transfer of power to the Militia Commission, like the delegation of some of the general legislative power to the Governor-General, raises no constitutional bar. The Insular Auditor has stated that there is in the treasury over a million pesos available for the condemnation of Camp "Claudio, and this decision for present purposes must be taken as final and conclusive. The six hundred thousand pesos deposit is merely the provisional determination of the value of the land by the competent court, and in no way jeopardizes the financial interests of the owners of the property. No additional security is required since the sovereign power has waived its right to be sued, has pledged the public faith, and cannot obtain title until the owners receive just compensation for their property. (See *Sweet vs. Rechel* [1895], 159 U. S., 380.)

In resume, therefore, the Governor-General of the Philippine Islands had the right to authorize the condemnation of this land for military and aviation purposes, and no constitutional provision has been violated. The Court of First Instance of Rizal has merely acted in strict accord with law, and its action should, consequently, be sustained.

Application denied.

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