

JUAN FERY, PETITIONER, VS.. THE MUNICIPALITY OF CABANAPTUAN, NUEVA ECIJA, RESPONDENT.

G. R. No. 17540. July 23, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original action for the writ of mandamus, commenced in the Supreme Court. The respondent presented a demurrer to the petition.

The important facts admitted and found in the petition may be stated as follows:

- That sometime prior to the 3d day of October, 1913, the municipality of Cabanatuan, of the Province of Nueva Ecija, commenced an action in the Court of First Instance of said province, for the purpose of expropriating certain pieces or parcels of land for a public market. The action was known as No. 950 and was entitled "El Municipio de Cabanatuan vs. Gregorio Crisostomo y otros."
- That on the 9th day of July, 1915, the Court of First Instance rendered a final judgment in said action, granting to said municipality the pieces or parcels of land in question without condition, and ordered said municipality to pay to the various owners of said parcels of land the specific amounts which were mentioned in the dispositive part of the decision.
- That later (the exact date not appearing of record) the said municipality constructed upon said land houses to be rented.

The petitioner herein now alleges that, in view of the fact that the municipality expropriated the parcel of land in question for the purpose of a public market and that it abandoned that purpose, it thereby lost its right to the parcel of land so appropriated. The petitioner prayed that the writ of mandamus be issued requiring the said municipality to return said land to its former owner—the petitioner herein. The petitioner further alleged that he has not been paid the amount due him as the value of his land.

The question presented by the petition and demurrer is this: When private land is expropriated for a particular public use, and that particular public use is abandoned, does the land so expropriated return to its former owner?

The answer to that question depends upon the character of the title acquired by the expropriator, whether it be the State, a province, a municipality, or a corporation which has the right to acquire property under the power of eminent domain. If, for example, land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned the property shall return to its former owner, then, of course, when the purpose is terminated or abandoned the former owner reacquires the property so expropriated. If, for example, land is expropriated for a public street and the expropriation is granted upon condition that the city can only use it for a public street, then, of course, when the city abandons its use as a public street, it returns to the former owner, unless there is some statutory provision to the contrary. Many other similar examples might be given. If, upon the contrary, however, the decree of expropriation gives to the entity a fee simple title, then, of course, the land

becomes the absolute property of the expropriator, whether it be the State, a province, or municipality, and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings. (10 R. C. L., 240, sec. 202; 20 C. J., 1234, sees. 593-599, and numerous cases cited; *Reichling vs. Covington Lumber Co.*, 57 Wash., 225; 13. "i Am. St. Rep., 976; *McConihay vs. Wright*, 121 U. S., 201.)

When land has been acquired for public use in fee simple unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner. (*Fort Wayne vs. Lake Shore, etc. Ry. Co.*, 132 Ind., 558; 18 L. R. A., 367.)

The petitioner having admitted that the municipality of Cabanatuan, in the year 1915, had acquired a fee simple title to the land in question, it (the municipality) is the owner of the land in question, notwithstanding the fact that it is making a use of the same other than that for which it was expropriated.

If the petitioner has not been paid for his land, that is another question, and he has his remedy by an ordinary action.

For all of the foregoing reasons, the demurrer presented by the prosecuting attorney of the Province of Nueva Ecija is hereby sustained, and it is hereby ordered that a final decree be issued in accordance herewith, with costs, unless the petitioner amends his petition within five days from the notice hereof. So ordered.

Mapa, C. J ., Araullo, Street, Avancena, and Villamor, JJ., concur.

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