

LEONOR WRIGHT DE DIOKNO AND RAMON DIOKNO, PLAINTIFFS AND APPELLANTS, VS. THE CITY OF MANILA, DEFENDANT AND APPELLEE.

G.R. No. 24433, December 31, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a decision of the Court of First Instance of Manila sustaining a demurrer to the complaint and dismissing the action. The complaint in question reads as follows:

"The plaintiffs allege:

"1. That the plaintiffs and the defendant are residents in the City of Manila. The City of Manila is an organized public corporation under special charter.

"2. That the plaintiffs are the owners and are enjoying peaceful possession of the following described property:

" 'A parcel of land (lot No. 8) with the buildings and improvements thereon, situated on the SW. line of Calle Real, now M. H. del Pilar, District of Ermita, bounded on the NE. by Calle Real, now M. H. del Pilar; on the SE. by an alley, now Calle Militar; on the SW. by the property of the City of Manila, now E. A. Perkins, and on the NW. by the property of the City of Manila, now Calle Soldado, containing an area of 437.80 square meters, more or less.'

"3. That the adjoining property on the southwest side of the above described property is described as follows:

" 'A parcel of land situated in the District of Ermita, bounded on the north by an alley adjoining Calle Real and the bay; on the east by the property of Josefa Cembrano, now Leonor Wright de Diokno; on the south by another alley paralleled to the above named one, now Calle Militar, and on the west by the bay, containing an area of 343.67 square meters.'

"4. The property described in paragraph 3 of this complaint was dedicated as public plaza and was named during the Spanish government 'Plaza de Armas.'

"5. That on or about July 7, 1910, His Excellency the Governor-General, Honorable W. Cameron Forbes, granted, sold and conveyed the parcel of land described in paragraph 3 of this complaint to the City of Manila, belonging then to the Government of the Philippine Islands, under the express condition that the said land premises shall be used solely for public street, and that at any time the City of Manila shall not sell or incumber or attempt to sell or incumber the said property. Copy of the deed executed by His Excellency, Honorable W. Cameron Forbes, was attached to the original complaint marked Exhibit A and is made a part of this complaint.

"6. That the City of Manila accepted the conditional sale and conveyance of the parcel of land described in paragraph 2 of this amended complaint, took possession of the premises and, based on this document marked Exhibit A, applied for the registration of the said parcel of land, and the title was issued in favor of the said city.

"7. That in the year 1919, the plaintiffs purchased the property described in paragraph 2 of this complaint from the previous owners in the amount of P35,000, because of the sea view and the direct breeze from the sea and for the prospective interest they may have for the opening of the street in the adjoining property granted, sold and conveyed, as above stated, to the City of Manila.

"8. That in spite of the condition expressed in the deed marked Exhibit A, the City of Manila sold and incumbered the property, described in paragraph 3 of this complaint, to Mr. E. A. Perkins, who has built a house in the said parcel of land described in paragraph 3 of this complaint, covering the building located in the parcel of land described in paragraph 2 of this complaint on the southwest side.

"9. That in view of the sale and incumbrance made by the City of Manila to Mr. E. A. Perkins of the parcel of land described in paragraph 2 of this complaint, the plaintiffs lost the sea view and the direct breeze from the southwest side, which said plaintiffs were enjoying before the above mentioned sale to Mr. E. A. Perkins, and are now deprived to enjoy the commodity of bounding their property on the southwest side with a public street and diminished the market price of said, property, and lost also the prospective interest they had when they purchased the parcel of land described in paragraph 3 of this amended complaint.

"10. That if the street is opened on the southwest side of the property described in paragraph 3 of this complaint, imposed as a condition in the document Exhibit A, the market price of the property described in paragraph 2 of this complaint will be increased and should be valued at P60,000.

"11. That in view of the fact that the City of Manila did not comply with the condition imposed by His Excellency, Honorable W. Cameron Forbes, in accordance with the terms of the deed, marked Exhibit A, the plaintiffs suffered damages to the amount of P25,000.

"It is, therefore, prayed for that decision be rendered, ordering the City of Manila to build the street on the premises described in paragraph 2 of this complaint, in accordance with the terms of the deed, marked Exhibit A, or otherwise be condemned to pay the amount of P25,000 in favor of the plaintiffs, with costs. The plaintiffs further pray for any other relief which the court may deem just and equitable.

"Manila, P. I., February 17, 1925."

Exhibit A, referred to in paragraph 5 of the complaint, reads as follows:

"Know all men by these presents:

"That, I, W. Cameron Forbes, Governor-General of the Philippine Islands, party of the first part, in consideration of the sum of one peso (P1) Philippine currency, receipt whereof is hereby acknowledged, and for other good and valuable consideration hereinafter set forth, under and by virtue of the authority vested in me by Act of the Philippine Legislature Numbered Eighteen hundred and ninety, for and in the name of the Government of the Philippine Islands do hereby grant, sell and convey to the Government of the City of Manila, party of the second part, for public streets purposes, all that tract or parcel of land together with all building and improvement thereon situated in the City of Manila, Philippine Islands, bounded and described as follows:

"Beginning at a point marked A, on plan J-106-60, said point being S. 68° 24' 00" W. ang. 27.6 meters from the southeast corner of the house No. 249, Calle Real, Ermita.

"Thence S. 69° 08' W. along the north side of an alley adjoining Calle Real, and the bay 18.00 meters to point B on plan;

"Thence N. 23° 26' W. along the bay 19.44 meters to point marked C on plan;

"Thence N. 77° 02' E. along the S. side of a small alley adjoining Calle Real and the bay 20.27 meters to point marked D on plan;

"Thence S. 16° 47' E. along W. side of Josefa Cembrano's property 16.70 meters to point of beginning;

"Said parcel of land being bounded:

"On the north by an alley adjoining Calle Real and the bay; on the east by property of Josefa Cembrano; on the south by another alley paralleled to the above-named one; on the west by the bay.

"Containing 343.67 square meters.

"The above described parcel of land being shown on plan J-10-60, entitled 'City property in near of No. 249 Calle Real, District of Ermita.'

"Scale: 1:200.

"Date: February 28, 1907.

'All bearing refer to Magnetic Meridian.

"This conveyance is hereby made upon the express condition which is hereby accepted as a part of the consideration hereof that the land and premises hereby granted shall not be alienated or incumbered by the said party of the second part but shall be used solely for a public street and that if at any time the said party of the second part shall sell or incumber or attempt to sell or incumber the said premises or if at any time the aforesaid property or any part thereof shall cease to be used for a public street, then this grant shall thereupon become null and void and all the right, title and interest hereby granted to the said Government of the City of Manila in and to the aforesaid property shall thereupon cease and determine and revert to the Government of the Philippine Islands and the said Government of the Philippine Islands may reenter upon said premises and take possession thereof.

"In witness whereof I have set my hand and caused the seal of the Government of the Philippine Islands to be affixed hereto this 7th day of July, nineteen hundred and ten.

(Sgd.)

"W. CAMERON FORBES

"Governor-General

"(Sello del Gobierno)

"In the presence of

(Sgd.)

"THOMAS CARY WELCH

"GM. EGEM.

"(Acknowledgment) "

The defendant demurred to the complaint on the ground that it did not state facts sufficient to constitute a cause of action. The demurrer was sustained by an order dated March 4, 1925. On March 9 the plaintiffs filed an exception to the order and announced their intention to appeal to the Supreme Court and, on March 31, filed a motion declining to amend the complaint. The court below thereupon rendered judgment dismissing the complaint with the costs against the plaintiffs.

Upon appeal, the plaintiffs-appellants present only one assignment of error, namely, that the court erred in sustaining the demurrer to the complaint and in not requiring the defendant to answer said complaint.

The discussion of the legal issues involved in the case is simplified by bearing in mind that this is not an action to set aside or enjoin an alleged illegal sale, nor is it a question of maintaining a street already in existence. Neither is it here a case of building lots purchased in reliance on a plat or map showing streets, alleys, and other public places. The action is brought (1) to compel the City of Manila to open and construct a new street or, (2) in default thereof, to pay damages to the plaintiffs.

The first alternative may be disposed of in very few words. Judicial compulsion to open a new street could only be enforced through the issuance of a writ of mandamus. It is settled beyond argument that the planning and opening of new streets is discretionary with municipal corporations and it is equally well settled that in the absence of fraud or gross abuse, mandamus will not lie to control such discretion.

As to the claim for damages the plaintiffs allege in paragraph 11 of the complaint "that in view of the fact that the City of Manila did not comply with the condition imposed by His Excellency, Honorable W. Cameron Forbes, in accordance with the terms of the deed, marked Exhibit A, the plaintiffs suffered damages to the amount of P25,000."

A street is a public improvement and the general rule is that a municipal corporation cannot be held liable in damages for failure to construct such improvements. The rule is thus stated in Ruling Case Law:

"The liability of a municipal corporation with respect to the construction of public improvements does not extend to matters which are left by law to its discretion, and it cannot be held civilly liable for failure to construct or to supply a particular public improvement, upon proof that such improvement was so urgently required by public convenience and necessity that the corporation was neglectful of its duties in not supplying it. The decision as to which of the many needed improvements the available funds should be expended upon is an executive or administrative function involving the exercise of judgment and after it has once been rendered it is not open to review by the courts. Even when the construction of a public improvement is necessary to prevent a dangerous menace to life and limb, if the municipality in which such a situation exists is under no positive duty to construct the improvement, it is not civilly liable for failing to do so. * * * " (19 R. C. L., 1089.)

Judge Dillon, in his work on Municipal Corporations, says: "A municipal corporation is not liable to an action for damages, either for the nonexercise of, or for the manner in which, in good faith, it exercises, discretionary powers of a public or legislative character." (See also *Ewen vs. City of Philadelphia*, 194 Pa. St., 548; *McDade vs. City of Chester*, 117 Pa. St., 414; *Wheeler vs. City of Cincinnati*, 19 Ohio St., 19; *Forsyth vs. Mayor and Council of Atlanta*, 45 Ga., 153; *Fisher vs. City of Boston*, 104 Mass., 87.)

Authorities might be multiplied indefinitely. It is true that the decisions are, not all on one side, but the great weight of authority supports the rule above stated. But the appellants argue that the land here in question has been a public plaza and that the city is liable in damages for its closing under section 2246 of the Administrative Code which reads as follows:

"With the prior authorization of the Department Head, a municipal council may close any municipal road,

street, alley, park, or square; but no such way or place aforesaid, or any part thereof, shall be closed without indemnifying any person prejudiced thereby.

"Property thus withdrawn from public servitude may be used or conveyed for any purpose for which other real property belonging to the municipality might be lawfully used or conveyed."

The only allegation in the complaint bearing upon this point is paragraph 4 which reads:

"The property described in paragraph 3 of this complaint was dedicated as public plaza and was named during the Spanish government 'Plaza de Armas.'"

It will be noted that it is not alleged that the land has been a plaza subsequent to the Spanish regime; in fact, as far as the complaint shows, the plaza might have been closed or discontinued before the American occupation and long before the appellants acquired their interest in the adjoining property; the conveyance of the land by the Governor-General to the city so indicates. Very obviously the complaint fails to show a cause of action upon this ground.

We find no error in the decision appealed from and it is therefore affirmed with the costs against the appellants. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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