

THE BACHRACH MOTOR CO., INC., PLAINTIFF AND APPELLANT, VS. CIPRIANO E. UNSON, AS SECRETARY OF COMMERCE AND COMMUNICATIONS, A. D. WILLIAMS, AS DIRECTOR OF PUBLIC WORKS, AND JORGE...

G. R. No. 25853. December 31, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

In this case the Court of First Instance sustained a demurrer to the complaint on the ground that it did not state facts sufficient to constitute a cause of action. The plaintiff declined to amend the complaint, whereupon the court entered a judgment dismissing the case with the costs against the plaintiff. From this judgment the plaintiff appealed.

The complaint in question is somewhat lengthy, but the appellant's brief gives the following substantially correct synopsis of the facts alleged:

"On November 3, 1921, the defendant Director of Lands, with the approval of the Secretary of Agriculture and Natural Resources, duly executed in favor of the present plaintiff a twenty-five year lease on a certain parcel of land situated in Port Area and known as lots Nos. 1 to 11, inclusive, block 1, of reclamation No. 1, Manila Harbor, containing an area of 7,086.1 square meters at a yearly rental of P2,709.13 for the first ten years, payable in advance. Under the provisions of said contract of lease Exhibit A, appellant was obligated to commence the construction of permanent buildings and improvements appropriate for industrial, business and commercial purposes on the leased premises within six months from the date of the execution of said lease, and to complete the same on or before the 3d day of May, 1923.

"On March 9, 1923, the defendant Director of Lands wrote to the plaintiff calling attention to the fact that the latter had not commenced the construction of said buildings or improvements within the period stipulated in the contract and giving the said plaintiff fifteen days within which to show cause why the contract of lease in question should not be rescinded.

"On March 12, 1923, plaintiff replied to said letter stating that due to financial conditions it could not make any further extensions to its business, and proposed the following :

"If it is to the benefit of the Bureau of Lands to cancel our lease on this land, it is perfectly agreeable to us to have them to do so. On the other hand, if the Bureau will extend our lease indefinitely for the purpose of improvement, we will continue paying the rental, until such time that the present existing law will be changed, which we hope will be done by the next Legislature.

"But, as above stated, if the Bureau of Lands wishes to cancel this lease, request that same be done immediately, so that we will not have to pay any further rental on the ground from which we derive no benefit.

"In reply to said proposition of the plaintiff, the defendant Director of Lands, on March 27, 1923, wrote the plaintiff as follows:

"This Office is in receipt of your communication of the 12th instant relative to your reclaimed land lease application No. 82 (E-53) covering lots Nos. 1-11, block No. 1 of the Port Area District.

"In reply thereto, I beg to advise that proper consideration will be given your request for an extension of time within which to commence the improvement of the premises as provided in the contract executed between you and the Government.

"In view of that letter of the defendant Director of Lands of March 27, 1923, the plaintiff continued to pay, and the defendant Director of Lands accepted, the annual agreed rent of P2,709.13, plaintiff having paid said rent up to November 3, 1925, i. e. before the commencement of the present action. After the commencement of this action, and before November 3, 1925, plaintiff also offered in writing to pay to the defendant Director of Lands the rent corresponding to the period of November 3, 1925 to November 3, 1926. In the meantime, and since the receipt of said letter of the defendant Director of Lands of March 27, 1923, plaintiff has also improved and filled the premises in question at a considerable expense with the knowledge and acquiescence of the defendants.

'Since the said letter of March 27, 1923 of the defendant Director of Lands, plaintiff heard nothing from him until shortly after December 29, 1924, when the defendant Director of Lands wrote to the plaintiff enclosing copy of an order signed by him, dated December 3, 1924, purporting to cancel 'the lease application' and to terminate the contract of lease in question. Said pretended order reads as follows:

"ORDER : CANCELLATION OF APPLICATION

"This application was filed on August 7, 1920 for lots Nos. 1-11, block No. 1 of the Port Area District. The lease was advertised in the Official Gazette, Philippines Herald and El Ideal in accordance with law, and the auction was set for November 3, 1920, and there being no bidder other than the applicant, the lease was awarded to the company. A lease contract was executed on November 3, 1921 for a period of 25 years from and including February 15, 1921, among the provisions of which was the following:

"It is further covenanted and agreed by and between the parties hereto that the party of the second part (company) shall construct permanent improvements appropriate for industrial, business and commercial purposes * * * on the premises hereby demised and leased * * * provided, however that the said party of the second part shall commence the construction of such buildings or improvements within six months from the date of the execution of this lease and shall complete the same on or before the third day of May, 1923. * * *

"It appears that the lessee has not complied with the above provisions of the contract no building of any kind having been constructed on the premises up to date. A letter was received from the lessee on March 13, 1923, requesting that the performance of this requirement be postponed indefinitely due to financial conditions and for other reasons stated therein, but no action on this request has been taken in view of the propositions then under consideration to reserve for railroad purposes blocks 1-5 in the Port Area District including the area leased to the company. The 8th indorsement dated October 27, 1924 of the Office of the Governor-General relative to the proposed reservation reads in part as follows:

"* * * It seems to be generally agreed that some part of blocks 1-5 will be needed for railroad purposes.

This being so, all leases covering these lots should be cancelled as any portions remaining can easily be disposed of later if desired.

"In view of the foregoing, the lease application shall be as hereby it is cancelled and the contract of lease above mentioned terminated.

"Manila, December 3, 1924.

(Sgd.) "JORGE B. VARGAS

"Director of Lands

"Approved this 15th day of December, 1924.

(Sgd.) "SILVERIO APOSTOL

"Acting Secretary of Agriculture, and Natural Resources

"Plaintiff refused to consent or agree to the pretended cancellation of its lease by the defendant Director of Lands, contending that said order ' (Exhibit B) was illegal and null and void: (a) Because the defendant Director of Lands could not legally cancel an application for lease which had been duly accepted by him; (B) because the defendant Director of Lands was estopped from terminating the contract of lease in question by invoking the provision therein contained with reference to the commencement and termination of the buildings and improvements, after having allowed the plaintiff to incur considerable expenses in filling and improving said land and after accepting the rents from said plaintiff for the period ending November 3, 1925, notwithstanding plaintiff's letter of March 12, 1923, set forth above; (c) because as appears from said order itself the true reason for the attempted cancellation of the lease in question was that the Government desired to reserve the land in question for railroad purposes, and under the provisions of the contract of lease in question (Exhibit A), when 'it appears that the land leased is necessary in the public interest and benefit for any work that the Government wishes to undertake,' said lease may only be cancelled by order of the Secretary of Agriculture and Natural Resources 'upon payment of the value of the improvements, if any, made thereon by the lessee;' and (d) because the defendant Director of Lands has not offered to pay to the plaintiff the value of the improvements made by it on said land.

"The rest of the allegations of plaintiff's complaint, which are admitted by defendants' demurrer, are as follows:

"That on or about the 1st day of July, 1925, while the said contract of lease was in full force and effect as above set forth, and while the plaintiff was in undisturbed possession of the land in question, the plaintiff submitted to the defendants Director of Public Works and Secretary of Commerce and Communications, for their approval in accordance with the provisions of said lease and of section 63 of Act No. 2874, the plans of the building which the plaintiff desires, to construct on the land covered by said lease, but that said defendants have failed and refused and continue to fail and refuse to approve said plans upon the pretext that the defendant Director of Lands had cancelled said lease, notwithstanding that such alleged cancellation of the lease was illegal and null and void; that the building, the plans of which were submitted by the plaintiff to said defendants, as aforesaid, is a construction which, if made by the Government, would properly have to be executed under the supervision of the Bureau of Public Works; and that copies of said plans will be produced and exhibited in this court during the trial of this cause.

"That by reason of defendants' arbitrary and unlawful refusal to approve plaintiff's plans, the plaintiff is prevented from constructing the proposed building on the land in question, to its irreparable damage and injury.

"That the defendants Director of Public Works and Secretary of Commerce and Communications, by refusing to approve said plans, unlawfully neglected and still neglect the performance of an act which the law (sec. 63 of Act No. 2874) specifically enjoins as a duty resulting from an office; and that there is no other plain, speedy and adequate remedy in the ordinary course of law."

The plaintiff therefore prays for judgment in its favor (a) declaring that the order of the defendant Director of Lands of December 3, 1924, purporting to cancel and terminate the contract of lease in question, is null and void, and (b) granting a peremptory order against the defendants Director of Public Works and Secretary of Commerce and Communications, commanding them to approve the plans of the building which the plaintiff desires to construct on the land in question, unless they have other reasons for not approving same than the pretended

cancellation of said lease by the Director of Lands.

The lease Exhibit A, which is made part of the complaint, contains the following provisions:

"It is specially covenanted and agreed that the said tracts of land shall be used for the construction of buildings of strong materials for industrial, commercial, and business purposes only, and should the lessee use or attempt to use the premises or permit them to be used for any other purpose than above set forth, then, and in that event, this lease shall at once terminate, and all the rights and interest in said lease shall be forfeited and all improvements made by the party of the second part in the premises herein demised shall vest and become the property of the Government of the Philippine Islands unless the Secretary of Agriculture and Natural Resources shall find sufficient cause to waive the rescission arising from a violation of the conditions herein prescribed.

"It is further' covenanted and agreed by and between the parties hereto that the party of the second part shall construct permanent improvements appropriate for industrial, business, and commercial purposes and that any such building or improvements to be erected or made on the premises hereby demised to the party of the second part shall be subject to the prior approval of the Secretary of Commerce and Communications as provided in section 63 of Act No. 2874: Provided, however, That the said party of the second part shall commence the construction of such buildings or improvements within six (6) months from the date of the execution of this lease, and shall complete the same on or before the third day of May, 1923. Should the party of the second part fail to make the improvements within the time prescribed, the said lease shall be forfeited and all improvements made on the land herein demised shall vest in and become the property of the Government of the Philippine Islands unless the Secretary of Agriculture and Natural Resources, upon recommendation of the Secretary of Commerce and Communications and subject to such conditions as he may prescribe, waive the forfeiture and rescission or extend the time within which the construction of the improvements shall be commenced and completed.

* * * * *

"That upon the termination, of this lease or of any extension thereof, all the improvements made by the party of the second part, his successors or assigns, shall vest in and become the property of the Government of the Philippine Islands.

"In addition to the foregoing, this lease shall be subject to the terms and provisions of Act No. 2874 of the Philippine Legislature, relative to the leasing of reclaimed land." (Italics ours.)

Section 61 of Act No. 2874, to which reference is made in the lease contains, among other things, the following provisions:

"The leases executed under this chapter by the Secretary of Agriculture and Natural Resources shall, among other conditions, contain the following:

* * * * *"(d) The lessee shall construct permanent improvements appropriate for the purpose for which the lease is applied for and shall commence the construction thereof within six months from the date of the execution of the contract.

"The violation of one or any of the conditions specified in the contract shall give rise to the rescission of said contract. The Secretary of Agriculture and Natural Resources may, however, upon recommendation by the Secretary of Commerce and Communications, and subject to such conditions as he may prescribe, waive the rescission arising from a violation of the conditions of subsection (d), or extend the time within which the construction of the improvements shall be commenced and completed." (Italics ours.)

Upon the law and facts stated, it seems obvious that the complaint does not set forth a sufficient cause of action for declaring the cancellation of the lease null and void and for issuing a writ of mandamus to compel the Director

of Public Works and the Secretary of Commerce and Communications to approve the plans of the building which the plaintiff desires to construct on the land, and the ruling of the court below sustaining the demurrer to the complaint was undoubtedly correct.

The plaintiff-appellant's principal contention is that the Government as lessor had waived its right to demand the forfeiture of the lease inasmuch as in the letter of the Director of Lands, dated March 12, 1923, and quoted above, the plaintiff was advised that proper consideration would be given to its request for an extension of the time within which to make the required improvements upon the land as a result of which letter, the plaintiff was led to make valuable improvements on the land and to pay the agreed rent for several years.

This contention cannot be sustained. The letter in question held out no definite promise to grant the extension promised that proper consideration would be given the request. It is further to be noted that the Director of Lands had no authority to grant the extension; under section 61 of Act No. 2874, such extensions can only be granted by the Secretary of Agriculture and Natural Resources upon "recommendation of the Secretary of Commerce and Communications." The plaintiff is presumed to know the law and must therefore be charged with knowledge of the ex-tent of the authority of the Director of Lands, a public officer whose duties and authority are fixed by law.

Neither can the fact that there was a long delay on the part of the officials concerned in taking action upon the request for the extension be of any avail to the plaintiff; it is well settled that the neglects or omissions of public officers as to their public duties will not work an estoppel against the State (10 R. C. L., 705). The authorities cited to the contrary by the plaintiff-appellant are not in point, but relate to cases of estoppel against the State through affirmative acts of officers acting within their authority.

We think, however, that the plaintiff should be refunded the rent paid for the period from November 3, 1924 to November 3, 1925. The rescission or cancellation of the lease was in contemplation at the time the rent was paid and was effected shortly afterwards. In these circumstances, the Government cannot in equity and good faith retain the rent so paid, but the Government not being a party to the action and the matter not having been properly put in issue, we cannot here render a judgment to that effect.

For the reasons stated, the appealed judgment is affirmed with the costs against the appellant. So ordered.

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

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