

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. J. O. WAGNER AND CATHERINE CLELAND WAGNER, DEFENDANTS AND APPELLANTS.

G.R. No. 26291. February 23, 1927

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an action instituted by the Government of the Philippine Islands to obtain the rescission of the contract had with J. O. Wagner and Catherine Cleland Wagner for failure to comply with a condition of the contract, to the effect that they, as purchasers of a lot situated in the Baguio townsite, would construct improvements thereon of the value of not less than P15,000 within two years from date of sale, and to obtain the cancellation of the townsite patent for the lot, and of the certificate of title issued by the register of deeds for the City of Baguio. The importance of the decision with reference to the future of the City of Baguio is readily apparent.

The pleadings in the case are varied. The nature of the complaint has been mentioned. Subsequent to its presentation, one J. J. Murphy filed a complaint in intervention, and was thereafter considered as one of the defendants. The defendants interposed an answer containing what was denominated by them as a special defense, counterclaim, and cross-complaint. After a demurrer to the pleading was sustained by the trial judge, the answer was considered as merely setting up a special defense. The contents of this special defense need not be described, since it fails to do justice to defendants' theory of the case. Defendants also presented two motions for dismissal,—The first, predicated on the main thesis that the condition of the sale was imposed without authority of law; and, the second, that there was laches on the part of the Government and other adequate remedies available to it. On these pleadings, the decision of the trial court was with the defendants, while, also, apparently granting the motion to dismiss relating to laches, since the memorandum of counsel for the defendants on this motion was incorporated in His Honor's decision. Neither party was satisfied with the decision of the trial court.

The pleadings in relation with the assignment 6f errors make the following the main issues for defendants-appellants: (1) That the condition set forth in Exhibits A and B, requiring the defendants to construct improvements, is void and unconstitutional; (2) that the copy of the Philippine Commission Resolution, Exhibit A, should not have been admitted over the objections of the defendants; and (3) that the facts were not as found by the trial judge with reference to the improvements on the land. As to plaintiff-appellant, the main issues are: (1) That the action of the Bureau of Lands in issuing the patent, instead of cancelling the sale, was erroneous and unauthorized; (2) that the present action has not prescribed; (3) that the Government is not guilty of laches; (4) that alienation, conveyance, and grants under the Public Land Act are not decrees of registration; and (5) that sections 101 and 103 of the Land Registration Act are not applicable to the present case. Considering the impression which the case has made on the court, we deem it necessary to dispose of all the errors assigned by the defendants-appellants, but not necessary to dispose of all the errors assigned by the plaintiff-appellant.

Now as to the facts. On April 8, 1913, the Philippine Commission adopted Resolution No. 19, the pertinent

portions of which are the following:

"Whereas a survey of certain additional lots in Baguio townsite subdivision has been made;

* * * * *

"Whereas lot 29, residence section F, is to be used as a place for public entertainments and amusements: Now, therefore, be it

* * * * *

"Resolved further, That the Director of Lands be and hereby is directed to place restrictions upon the sale of lots as follows:

* * * * *

"Lot 29, residence section F, shall not be used for any purpose other than a place for public entertainments or amusements, without the written approval of the Secretary of the Interior.

* * * * *

"* * * Provided further, That the purchaser of lot 29, residence section F, shall, within two years from date of sale by the Government, construct thereon improvements of the value of not less than fifteen thousand pesos." (Exhibit A.)

In accordance with this resolution, the sale of lot 29, residence section F, Baguio townsite, was advertised. The advertisement recited:

"SALE OF BAGUIO LOTS

"Notice is hereby given that at ten o'clock a. m. on Wednesday, April 30, 1913, at the office of the Bureau of Lands, Baguio, P. I., there will be sold at public auction, subject to the conditions hereinafter stated, the following lots situated in Baguio townsite:

"* * * Lots 28, 29, and 30, residence section F.

* * * * *

"SPECIAL CONDITIONS

"* * * Lot 29, residence section F, shall not be used for any purpose other than as a place for public entertainment, without the written approval of the Secretary of the Interior; and the purchaser must construct improvements of the value of not less than P15,000 within two years of the date of the sale.

"PAYMENTS

"Ten per cent at time of sale and 40 per cent within five days thereafter; the balance within one year, with interest at 6 per cent per annum." (Exhibit B.)

The auction sale was held on the date and place fixed in the advertisement, and Catherine Cleland Wagner was the successful bidder. Ten per cent of the purchase price was paid on April 30, 1913, and the rest was paid on May 3d of the same year. (Exhibit E.)

On April 25, 1923, townsite patent No. 164 was issued, under the hand of the Governor-General, in the name of J. O. Wagner, the husband of Catherine Cleland Wagner, "subject further to the following conditions and stipulations:

"1. That this lot shall not be used other than as a place for public entertainment, without the written approval of the Secretary of the Interior;

"2. That the purchaser must construct improvements thereon of the value of not less than P15,000 within two years from the date of sale;

"3. That this lot shall not be subdivided without the written approval of the Secretary of the Interior; and

"4. That no building shall be erected on this lot until the plan thereof and the location of the building shall have been approved by the consulting architect to the Philippine Commission." (Exhibit C.)

On May 12, 1923, original certificate of title No. 463 was issued by the register of deeds for the City of Baguio making the same conditions and stipulations found in the townsite patent integral parts thereof. The title now contains a memorandum of encumbrances affecting the property concerning the notice of lis pendens of date May 14, 1925, having to do with the present case. (Exhibit D.)

It appears further that on June 17, 1913, J. J. Murphy purchased from Catherine Cleland Wagner, with the consent of her husband, J. O. Wagner, an undivided half interest in lot No. 29. He took over the parcel of land in the year 1913, and has since been in possession of it. His interest is not noted on the certificate of title.

It was the finding of the trial judge, and this finding finds support in the record, that the defendants, as well as the intervenor, had failed to construct improvements on the land of the value of P15,000. All of the improvements noted by the witnesses consisted of roads and grading of an uncertain value. This expression of opinion disposes of defendants-appellants' third assignment of error.

Defendants-appellants' second assignment of error relating to the admission of Exhibit A, which is a copy of Commission Resolution No. 19, need not give us pause, since it is a copy certified as correct by the Acting Secretary to the Governor-General. It is a matter of public knowledge, of which this court may take judicial notice, that the Philippine Commission is no longer in existence, and that its records are now on file in the Government archives. No measure of doubt can exist as to the authenticity of Commission Resolution No. 19.

We have left for decision on defendants-appellants' first assignment of error, that the condition set forth in Exhibits A and B, requiring them to construct improvements, is void and unconstitutional. This is a topic which invites discussion and reflection.

Philippine Organic Law, as found in the Philippine Bill, the Act of Congress of July 1, 1902, includes provisions dealing with the public domain. Section 13 of the Philippine Bill refers to homestead entries. Section 14 of the same law contemplates transfers of public lands to persons who were in possession thereof at the time American sovereignty was established in the Philippines. Section 15 of the law embraces sales of lands to private persons and corporations. It provides:

"That the Government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe, by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said Islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said Islands as it may deem wise, not exceeding sixteen hectares to any one person and for the sale and conveyance of not more than one thousand and twenty-four hectares to any corporation or association of persons: Provided, That the grant or sale of such lands, whether the purchase price be paid at once or in partial payments, shall be conditioned upon actual and continued occupancy, improvement, and cultivation of the premises sold for a period of not less than five years, during which time the purchaser or grantee cannot alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the estates of decedents."

Acting under the authority thus conferred by the Congress of the United States, the Government of the Philippine Islands, first, through the Philippine Commission, and, subsequently, through the Philippine Legislature, has provided the necessary legislation for the disposition of public lands. Act No. 926, the Public Land Act, in force when Commission Resolution No. 19 was adopted, included Chapter V entitled "Town Sites." It was provided

therein for resolutions of the Commission reserving surveyed lands and for the accomplishment of the projects by the Director of Lands. This action was taken by the Philippine Commission in its legislative capacity. The resolutions authorized by general legislation, including Commission Resolution No. 19, were then approved by the Commission in its executive capacity.

So we have this chain of title: An Act of Congress authorizing general legislation; an Act of the Philippine Commission providing general legislation and authorizing resolutions; a particular resolution of the Commission specifying the restrictions which the Director of Lands shall place upon the sale of lots, and specifying the express conditions with reference to the sale of lot 29, residence section F, Baguio townsite; and advertisement and sale in conformity with the Commission Resolution to defendants. Consequently, as to defendants-appellants' appeal, we must hold against them on all points, including their argument relative to the condition prescribed in Commission Resolution No. 19 and in the advertisement of sale, requiring defendants to construct improvements, a condition, by the way, which the defendants accepted by bidding at the auction, by paying the purchase price, and by acts indicative of ownership.

The Government's appeal is found to be meritorious. The action is not barred by the statute of limitations, since it was brought within the ten-year period provided in the Code of Civil Procedure. Laches which the trial judge dwelt on at great length constitutes no good defense, since, not specially pleaded, and since the doctrine of laches does not apply to the Government. The issuance of the townsite patent and of the certificate of title are not insurmountable bars, since both the patent and the title contain the conditions and stipulations which the Government claims have been infringed. As to Murphy, the purchaser of land from another, prior to the issuance of a Government patent, is not entitled to protection against the Government as a bona fide purchaser, but acquires only such interest as his vendor had, and takes, subject to all equities as exist at the time of his purchase. (There can be noted the following authorities: *Schlesinger vs. Kansas City & S. R. Co.* [1893], 152 U. S., 444; *Hawley vs. Diller* [1899], 178 U. S., 476; *Oregon & C. R. Co. vs. United States* [1914], 238 U. S., 393; *Utah Power & Light Company vs. United States* [[1916], 243 U. S., 389; *Oregon & C. R. Co. vs. United States* [1916], 243 U. S., 549; *De los Reyes vs. Razon* [1918], 38 Phil., 480; 22 R. C. L., pp. 270 et seq.)

Whether the condition in the contract be called a condition precedent or subsequent is of no great importance except as it determines the passing of title. The principles governing the question are to be found in the authorities and particularly in II Williston on Contracts, pp. 1285 et seq., and in the learned concurring opinion of Mr. Justice Johnson in the case of *Compañia General de Tabacos vs. Topiño* ([1904], 4 Phil., 33). The facts disclose a conditional obligation and a reciprocal obligation, as these terms are used in the civil law, carrying with them the right of the aggrieved party to ask for the rescission of the contract, (Civil Code, art. 1124.)

The condition here is in the nature of a consideration for the contract. The condition in the contract constitutes a valid and enforceable covenant. The contract must be fulfilled according to its stipulations. There is a breach of the condition upon which the grant was made. The party of the first part to the contract is entitled to rescission because of non-performance by the other party to the contract. That, in our opinion, is all there is to the case.

The Government, having asked for rescission, must restore to the defendants whatever it has received under the contract. It will only be just if, as a condition to rescission, the Government be required to refund to the defendants an amount equal to the purchase price, plus the sums expended by them in improving the land. (Civil Code, art. 1295.)

The apparent result is to hold with the Government in this particular case. The ultimate result will be to lend power to the arm of the Government in its laudable purpose to provide an effective means to put an end to speculation in land values in the City of Baguio, and to force the steady improvement of the summer capital.

It is but fair to state that this opinion more nearly reflects the consensus of views of a majority of the court than it does the individual opinion of the writer. He was greatly impressed with the arguments for the defendants, especially with that portion which deals with laches, but has finally been persuaded to yield on this point, as it seems to be an untenable position.

In accordance with the foregoing, the judgment appealed from will be set aside, and the record remanded to the lower court for the taking of testimony to determine the amount which the Government should refund to the defendants as a prerequisite to the rescission of the contract, and the cancellation of the patent and the title. Without special finding as to costs in either instance, it is so ordered.

Street, Villamor, Ostrand, and Romualdez, JJ., concur.

Johnson, J., dissents.

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