

NICANOR JACINTO, PETITIONER, VS. THE DIRECTOR OF LANDS, RESPONDENT.

G. R. No. 26374. December 31, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of mandamus to compel the Director of Lands to execute a deed of conveyance in favor of the petitioner for lots Nos. 670, 690, 691, 695, 696, 697, 698, 699, 700, 701, 950, 951, 952, 953, 954, 955, 956, 957, and 1050 of the Tala Friar Lands Estate, located at the barrio of Novaliches, municipality of Caloocan, Province of Rizal.

It appears from the record that, during the period from 1911 to 1913, sales certificates were issued by the Bureau of Lands to Frank W. Carpenter for more than 100 lots of the Tala and Piedad Friar Lands Estates including the lots enumerated above, the total area of the land covered by the sales certificates being over 1,490 hectares and the purchase price amounting to about P56,600, of which amount Carpenter up to the year 1923, had paid in installments the sum of P16,272.

Under a judgment rendered against Carpenter in civil case No. 24607 of the Court of First Instance of Manila, execution was levied upon all of his right, title and interest in the lots purchased together with the improvements thereon, and on November 16, 1923, the sheriff of Rizal sold the property to the petitioner herein, Nicanor Jacinto. The sheriff's sale was registered in the Bureau of Lands, assignments of the Bureau of Lands' sales certificates were duly recorded, and certificates of assignment were issued and delivered to Nicanor Jacinto in September, 1924.

On March 31, 1925, the Metropolitan Water District instituted proceedings in the Court of First Instance of Rizal for the condemnation of certain parcels of land situated in the municipality of Caloocan for the construction of an earth dam and a first class highway three kilometers long, in connection with the so-called Angat Water Works Project, and on the same date the Court of First Instance of Rizal issued an order authorizing the Metropolitan Water District to take possession of said parcels of land upon deposit with the provincial treasurer of the sum of P3,000 as the provisional value, fixed by the court, of the parcels so to be condemned. By virtue of this order, the Metropolitan Water District entered into occupation of the land and began the construction of permanent improvements thereon. Copies of the complaint as well as of the order of March 31, 1925, were filed with the register of deeds of the Province of Rizal on February 11, 1926, to be recorded as notices of lis pendens.

The lots hereinbefore enumerated in the first paragraph of this decision were included in the land sought to be expropriated and the herein petitioner, Nicanor Jacinto, was made a party defendant in the proceedings. He admitted the existence of the right of condemnation and the necessity for the expropriation, but demanded the sum of P64,839.33 as indemnity for the expropriation. As the actual purchase price to be paid by the purchaser from the Government only amounts to P13,725, including interest, the Metropolitan Water District considered the petitioner's demand excessive and declined to pay the claim.

In the month of July, 1926, the applicant tendered payment to the Director of Lands of the sum of P4,650 to cover the remaining balance of the sales price of the lots in question and demanded a corresponding deed of conveyance for said lots. The Director of Lands, upon the advice of the Attorney-General, rejected the tender and refused to execute and deliver the instrument of conveyance demanded from him.

The present action was thereupon brought, the petitioner insisting that, under Act No. 1120 as amended, he is entitled to a conveyance of the land upon payment of the purchase price to the Government, and that, upon such payment, the execution of the document of conveyance becomes a ministerial act which the Director of Lands is bound to perform, and, in regard to which, he has no discretion.

The respondent's contention seems to be that before the petitioner's tender of final payment was made, the land in question had already to all intents and purposes been expropriated and the Metropolitan Water District, the plaintiff in the expropriation proceedings, placed in possession; that the petitioner had admitted the necessity and the right of the plaintiff to expropriate the lands and that the only thing lacking to complete the condemnation was the appraisal of the value of the petitioner's interest in the land and the payment to him of the amount of such value, and that, therefore, the execution of a deed of conveyance for the land to the petitioner is not only useless, but also improper.

We find but little merit in this contention; the proprietary rights, except the right of occupation, are not affected by the condemnation proceedings until the title has passed to the plaintiff and that does not occur until the award of compensation or damages has been satisfied. But there are other reasons why the petition for a writ of mandamus to compel a conveyance must be denied. In the first place, mandamus is not the proper remedy to enforce purely contract rights such as that here sought to be enforced. (18 R. C. L., 121; *Quiogue vs. Romualdez*, 46 Phil., 337.)

In the second place, the writ cannot issue in this case unless it appears that the respondent "unlawfully neglects the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." (Section 222, Code of Civil Procedure.) The land in question is private or patrimonial property of the Philippine Government and we can find no law specially enjoining upon the Director of Lands the duty to execute deeds of conveyance to purchasers of such lands; on the contrary, that duty, under section 567 of the Administrative Code, appears to devolve upon the Governor-General.

By section 14 of Act No. 1120 the Director of Lands is, however, charged with the duty of receiving the purchase money payable under that Act and may therefore be compelled by mandamus to receive, as a purely ministerial act, such purchase money when tendered.

The respondent is, therefore, hereby ordered to receive the balance of the purchase money for any or all of the lots in question if and when payment thereof is tendered by the petitioner. The petition is denied as to the execution of deeds of conveyance. Without costs. So ordered.

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

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