

JUAN BENGZON, PLAINTIFF AND APPELLANT, VS. THE PROVINCE OF PANGASINAN, DEFENDANT AND APPELLEE.

G. R. No. 41941. January 09, 1936

Ponente: BUTTE, J.

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BUTTE, J.:

In this case the motion for reconsideration of the decision promulgated on October 26, 1935, was granted and the case set for re-argument on December 17, 1935. The court having had the benefit of the oral argument of counsel on the issue of their present value of the premises of the plaintiff-appellant involved in this suit, its decision of October 26, 1935, is amended to read as follows:

"This is an appeal from a judgment of the Court of First Instance of Pangasinan in an action for damages for maintaining a nuisance continuously injurious to the plaintiff and his family by reason of the maintenance and operation of a stand pipe, pumping station and open reservoir for the storage of water upon the premises immediately adjacent to the plaintiff's residence.

"It appears from the stipulation of facts that the plaintiff owns a house constructed of wood and covered with nipa on Avenida Rizal, municipality of Lingayen, Province of Pangasinan; that he and his family have resided there for twenty-seven years, his family being composed of eight members. Their house is of two stories constructed upon a lot which contains 720 square meters. Upon the adjacent lot the defendant, during the years 1924 and 1925, constructed a reinforced concrete stand pipe 28 meters high and nine meters in diameter. Within the base of this cylindrical tank there are three machines: One electrical, one gasoline and one crude oil. On the side of the tank nearest the plaintiff's residence and at a distance of 3.4 meters in a chimney which rises to about the height of the gable of the house. The tank itself is 3.8 meters from the house of the plaintiff.

"In March, 1927, the plaintiff protested to the governor of the province for the manner in which the plant was being operated and asked that he be indemnified for the value of his house and lot so that he might move his family and his effects to another residence. In this protest he stated:

" 'Expide humo y olor desagradable que penetran en el interior de mi casa, aun cerradas sus ventanas, molestos y perjudiciales a nuestra salud. La chimenea de la maquina, que esta en el lado del tanque, contiguo al alero de mi casa, aunque esta envuelta en la cabeza como una red de acero chispea en ocasiones en que dentro de la red se ha acumulado por el humo bastante suciedad inflamable, y si algunas chispas llevadas por el viento, cayeran sobre el alero contiguo de mi casa, techada de nipa, ella naturalmente se incendiarfa al momento sin darnos tiempo para salvar nada de su contenido.

" 'El tanque nos asusta y pone en peligro de ser aplastados por 61, siempre que ocurre un temblor como ya ha ocurrido varias veces desde su levantamiento, por sus pro- porciones y condiciones mencionadas, y la circunstancia de estar plantado sobre terreno blando, bajo y anegadizo. No es improbable, ni menos increíble, que este tanque volcara o se tumbara, si ocurriera en Lingayen un temblor tan fuerte como el ocurrido el año 63 u 80 en Manila, o el ocurrido en Japdn en 1923, o en la fecha 7 de este mes, que derrumbo muchas casas, matando a millares de personas. Ninguna persona, por sabia que sea, puede dar certidumbre y seguridad de que no se tumbaria, por cualquier terremoto fuerte que ocurriera aqui en Lingayen, maxime, estando cargada

de cien mil galones de agua en su parte superior. Y si en ocasi6n en que yo y mi familia estuvi6ramos dormidos, ocurrieran el temblor y el volcamiento del tanque hacia mi casa ¡ay de nosotros!"

"After making an ocular inspection of the plant and hearing the testimony of the witnesses, the trial court came to the conclusion that although the operation of the pumps and the tank creates some annoyance and discomfort to the plaintiff, these are but ordinary and incidental to the reasonable conduct of the defendant's water system. The court further held that inasmuch as the plaintiff did not protest till after the plan was constructed, his action is barred for laches.

"For this later conclusion of law the trial court cites no authority and we are not aware of any. It is to be noted that this is not a suit for equitable relief but an action for damages. The doctrine that one who consents to, permits or acquiesces in the erection of a structure with knowledge of the purpose for which it is to be put and the consequences of its erection and use will not be heard to say that the building or its uses are productive of a nuisance, is not applicable here, for the plaintiff neither consented to, permitted or acquiesced in the erection of the structure; nor could it fairly be said that he had knowledge in advance of all the consequences of the erection and the manner of operation of the plant here in question. The amended complaint in this case was filed on January 4, 1930, from which we infer that the suit was instituted some time before that date. But there is nothing in the record which warrants the inference of an estoppel by acquiescence.

"The learned trial judge, in his decision of January 27, 1934, made a careful and exhaustive analysis both of the law and the evidence in this case. But after a careful examination of the entire record, we cannot accept his conclusion that the plaintiff has not established by the preponderance of the evidence a case of actionable nuisance.

"In locating its pumping station within 3.8 meters from the house of the plaintiff, the defendant should reasonably have foreseen that the noise, vibrations, smoke, odor and sparks coming from the plant during its operation, not only during the day but during the night as well, would cause a constant annoyance, discomfort and danger both to the property of the plaintiff and the health and comfort of himself and his family. The chimney which is just opposite the plaintiff's house at a distance of only 3.4 meters emits smoke, gases of crude oil and gasoline and occasionally sparks as well. The plaintiff testified that at times the smoke blinds him and his family affecting their lungs and their eyes and that the noise and vibrations affect their sleep. As against the testimony of the plaintiff, who is exposed day in and day out to these conditions, and of his neighbors who corroborate him, the brief ocular inspection made by the court on one day, although conducted with eminent fairness, seems to us to be entitled to less weight. The witnesses for the defendant, its employees, naturally minimize the harmful effects to the plaintiff of the operation of the machines in the pumping plant. But the evidence as a whole leaves us with the clear conviction that the construction and operation of this pumping plant in such close proximity to the plaintiff's residence has rendered the same practically uninhabitable without exposing to risk the comfort, health and, in case of fire, even the lives of the plaintiff and his family.

"We find from the preponderance of the evidence that the fair present value of the appellant's premises involved in this suit is P3,000; and as, under the circumstances, the maintenance of the nuisance is practically tantamount to an expropriation, we have concluded that the defendant-appellee should be and it is hereby required and adjudged to pay the plaintiff-appellant the sum of P3,000 upon a tender by him to it of a valid conveyance of the premises, free of liens and incumbrances, reserving to the plaintiff-appellant the right to remove his improvements therefrom within three months from the date of payment of the said P3,000.

"The judgment appealed from is reversed and the cause is remanded for further proceedings in accordance with this decision. No special pronouncement as to costs in this instance."

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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