

**EMILIANA MORTEEA VIUDA DE CALVO, PLAINTIFF AND
APPELLANT, VS. THE CITY OF MANILA; JUAN POSADAS, JR., AS
MAYOR OF SAID CITY; HIS EXCELLENCY MANUEL L. QUEZON, AS
ACTING SECRETARY ...**

G. R. No. 45417. March 20, 1937

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DIAZ, J.:

The question raised by the two motions for reconsideration filed by the Solicitor-General on February 17, and March 5, 1937, and the plaintiff's opposition of February 23, 1937, is whether or not the court's resolution of February 12th of said year, permitting the substitution in this case of the former Acting Secretary of the Department of Public Works and Communications, His Excellency Manuel L. Quezon, by the permanent Secretary, Honorable Mariano Jesus Cuenco, should be sustained. The plaintiff asked for said substitution and the Solicitor-General contends that it was and is improper because, no appeal having been taken in time from the lower court's decision dismissing the case as against His Excellency, Manuel L. Quezon, as Acting Secretary of the Department of Public Works and Communications, said case should necessarily be considered terminated as to him.

For the resolution of the question, it is necessary first to state, even briefly, the facts alleged in the complaint and the grounds of the demurrer interposed by the Mayor of the City of Manila and of the motion to dismiss the case as against the Secretary of the Department of Public Works and Communications, filed in a special appearance by the Solicitor-General in representation of the latter.

The case referred to a complaint filed by the appellant to compel the Honorable Juan Posadas, jr., as Mayor of the City of Manila, His Excellency Manuel L. Quezon, as Acting Secretary of the Department of Public Works and Communications since he was so at the time of the filing of said complaint (July 10, 1936), and the Honorable Jaime Hernandez, as Auditor-General of the Philippines, to comply with the alleged contract entered into by said plaintiff-appellant on the one hand, and the defendants on the other, relative to the payment to the plaintiff-appellant of the assessed value of her land (P38,938), situated at the extension of the so-called Muelle del Banco Nacional Filipino, which the City of Manila had bound itself to expropriate to be able to carry out an improvement consisting in a wharf at said extension. The preliminary steps leading to what the plaintiff considers as a contract entered into between herself and the defendants consisted in: (1) her offer to construct the proposed improvement upon payment to her of the sum of P12,000 by the Government; (2) the endorsements of the Director of Public Works and of the City Engineer of Manila favorable to the plaintiff; (3) the recommendation of the Secretary of the Department of Commerce and Communications, which later became the Department of Public Works and Communications; to the auditor; and (4) the auditor's recommendation to the then Governor-General that the plaintiff be paid the assessed value of her land, provided she ceded it to the City of Manila for public purposes without asking for anything else. The Governor-General approved the recommendation and, on January 28, 1933, permitted that the money to pay for the plaintiff's land be taken from the funds appropriated by Act No. 2908. The plaintiff, who very willingly accepted the auditor's recommendation, as approved by the

Governor-General, wrote her letter of May 5, 1933; addressed to said auditor, to cede to the Government of the City of Manila the portion; of her land necessary for the extension of the wharf of the Philippine National Bank, on condition that she be paid the assessed value thereof, assuring that she would ask no indemnity for the improvements thereon. The plaintiff did so upon the belief that the Mayor of the City of Manila would recommend the appropriation of the funds necessary to pay her before the end of the year 1934, having been made to understand by the city engineer that she would be paid if not in 1933, at least in the following year.;; As the authorities called upon to act thereon did nothing either in 1934 or later, the plaintiff then went to the Secretary of the Department of Public Works and Communications to ask him to set aside from the gasoline funds allotted to the City of Manila the necessary amount to pay her the value of her land; but by reason of the mayor's opposition, said department took no action, notwithstanding the favorable recommendation of the Director of Public Works. When His Excellency Manuel L. Quezon, took charge of the Department of Public Works and Communications as Acting Secretary, the plaintiff again sought the allotment of the amount necessary to pay her the value of her land in question. She then alleged, as she reiterated in her complaint, that the Secretary of the Department of Public Works and Communications had funds available for the construction of streets in organized cities; that the City of Manila was then claiming said funds and that, if they were turned over to it without first setting aside the amount necessary to pay her, the judgment to be rendered in her favor would be frustrated. Basing her opinion principally upon the foregoing facts, the plaintiff prayed that her alleged contract with the auditor be complied with; that the Mayor of the City of Manila set aside the sum of P38,938 from the city funds to pay her the value of her land; that in case the city has no funds for said purpose, the Secretary of the Department of Public Works and Communications, who was then His Excellency Manuel L. Quezon, provisionally, set aside the necessary amount from the funds provided in Act No. 3992; that the auditor be ordered to certify payment of said sum of P38,938 plus legal interest thereon from May 5, 1932; that the defendants be ordered to pay the costs, and that a preliminary injunction be issued in the meantime, to prevent the Secretary of the Department of Public Works and Communications and the Mayor of the City of Manila or their successors from disposing of the funds collected by virtue of Acts Nos. 3248 and 3992.

The mayor interposed a demurrer against the plaintiff's complaint, alleging that the facts stated therein did not constitute a cause of action; that there was a defect or misjoinder of parties, etc. and that the complaint was vague, ambiguous and unintelligible.

The lower court sustained the demurrer in question and granted the plaintiff a period of five days to amend her complaint. Sometime later it, *motu proprio*, reconsidered its resolution sustaining said demurrer, which, by the way, had been issued on August 26, 1936, in the sense stated in its order of October 30, 1936, for the purpose of inserting a brief statement of the allegations of the complaint and of setting forth the grounds of the demurrer. Inasmuch as the plaintiff had signified her intention not to amend her complaint, the court dismissed the case. However, it granted the plaintiff all the time allowed by law to appeal from said order. Long before said incident and even before August 26, 1936, the Secretary of the Department of Public Works and Communications who then was His Excellency Manuel L. Quezon, provisionally, and the Auditor General, in a special appearance entered by them through the Solicitor-General, prayed for the dismissal of the case as against both, for the reasons then invoked by them. The court, acting upon their petition, issued its order also of August 26, 1936, which reads as follows:

"Upon consideration of the pleading in special appearance filed by the Solicitor-General in representation of the defendants in this case, His Excellency Manuel L. Quezon and Auditor-General Jaime Hernandez:

"The complaint filed in this case, in so far as it affects said defendants, is in reality an action against the Insular Government of the Philippines, without its previous consent, since they have been joined in the complaint to effect payment with funds of the Insular Government of a certain amount of money claimed by the plaintiff.

Furthermore, the courts of justice have no power to restrict or limit the discretion with which the Secretary of Public Works and Communications may distribute funds from the amounts appropriated under Acts Nos. 3248 and 3992, much less to compel him to reserve a part of said funds for a definite and fixed purpose, as the performance of an obligation or payment of an indemnity. With respect to the defendant His Excellency Manuel L. Quezon, although he is joined in this case as Acting Secretary of Public Works and Communications, he cannot be subject to the jurisdiction of the courts of justice of the Philippines on the ground that he is temporarily performing the functions of said office not by virtue of section 79 of the Administrative Code but as President of the Commonwealth of the Philippines.

"The present case is hereby dismissed as to the defendants His Excellency Manuel L. Quezon, and Jaime Hernandez as Auditor-General."

The plaintiff excepted to said order and then gave written notice of her intention to appeal, by presenting to that effect the following pleading which reads as follows:

"Comes now the plaintiff in the above-entitled case, through her undersigned attorney, and to the court respectfully states;

"1. That having received on the 27th instant copies of the three orders issued by this honorable court on the 26th of this month, dismissing the complaint as to the defendants His Excellency Manuel L. Quezon and the Honorable Jaime Hernandez; sustaining the demurrer interposed by the defendants City of Manila and the Honorable Juan Posadas, jr., and denying the petition for the issuance of a writ of preliminary injunction against all the defendants, the plaintiff respectfully excepts to said orders and announces her intention to appeal therefrom and from the final judgment to be rendered by this honorable court in this case, to the Supreme Court of these Islands.

"2. That as it is necessary that a final judgment be rendered in this case in order to appeal it, the plaintiff respectfully prays this honorable court to render such final judgment as soon as it deems convenient, since the plaintiff does not desire to amend her complaint.

"3. That in order that the plaintiff may have time to prepare her bill of exceptions, she be granted a period of fifteen (15) days therefor from the date she receives notice of the final judgment to be rendered in this case."

The truth, however, is that the plaintiff and appellant perfected her appeal by means of the bill of exceptions only on November 6, 1936, when she presented the one bearing said date now attached to the record. From August 29, 1936, the date of the plaintiff's exception and notice of appeal, to November 6, 1936, more than two months elapsed. It should be noted that in the bill of exceptions so presented by the appellant, there is no longer anything actually connecting the case either with the former Acting Secretary of the Department of Public Works and Communications or with the now permanent Secretary, except the substitution ordered in this instance by means of the resolution of February 12, 1937, which is sought to be reconsidered.

While it is true that the plaintiff, in omitting the incidents connected with the Secretary of the Department of Public Works and Communications in her printed bill of exceptions, did so by virtue of the lower court's order of November 19, 1936, imposing upon her the condition that her original bill of exceptions would be approved provided she eliminated said incidents therein, and it is likewise true that she did so with reservations, excepting as she in fact excepted to said order, it is nonetheless true that once said incidents are eliminated there is no way of taking them into consideration now at this stage of the case. If she wanted them to be taken into account, instead of acting as she did, she should have resorted to the remedy of mandamus, which is undoubtedly the proper one in cases of that nature.

Long after the approval of the bill of exceptions now of record, the Honorable Mariano Jesus Cuenco was appointed Secretary of the Department of Public Works and Communications and, consequently, His Excellency

Manuel L. Quezon, ceased as such Acting Secretary. It was because of His Excellency's cessation as such Acting Secretary of the Department of Public Works and Communications and the recent appointment of the Honorable Mariano Jesus Cuenco as permanent Secretary of said department that the plaintiff asked for the substitution of the one by the other, as already stated.

The argument that the plaintiff excepted to the lower court's orders of August 26, 1936, one sustaining the demurrer of the Mayor of the City of Manila, and the other ordering the dismissal of the case as to the Secretary of Public Works and Communications and the auditor, for the reasons alleged by the last two upon entering a special appearance in the case, through the Solicitor-General, and that she asked, as it so appears in fact in her above-stated pleading, for a period of 15 days to file her bill of exceptions, which period was not to commence running until she received notice of the final judgment rendered in said case, is of no merit, because the act which may be considered as judgment adverse to her in connection with the action instituted by her against the Secretary of the Department of Public Works and Communications appears precisely in one of said orders of August 26, 1936, and it was precisely said judgment to which she excepted and from which she gave notice of her intention to appeal. It is so inferred from her said pleading of August 26, 1936, since, in referring therein to the act to which she excepted and from which she desired to appeal as soon as final judgment was rendered, she stated that it was the order sustaining the demurrer interposed by the defendant City of Manila and by the mayor thereof and in no way the order decreeing the dismissal of the case as to the Secretary of the Department of Public Works and Communications and the AuditorGeneral. This should be so because, as the aforesaid order which put an end to the case as to the official in question, be he His Excellency Manuel L. Quezon, or the Honorable Mariano Jesus Cuenco, had already been issued, there was no necessity of rendering another final judgment.

The period within which the plaintiff could appeal from the order issued, by virtue of the special appearance of the Secretary of the Department of Public Works and Communications, dismissing the case as to said official, was and is that prescribed in section 145 of Act No. 190, that is, 30 days if her purpose was to ask for a new trial; and if she did not ask for a new trial because she considered such preliminary step unnecessary for the appeal, then it was 10 days from August 29, 1936, the date on which she announced her intention to appeal. Not having done so, the case must necessarily be considered terminated as to the Secretary of the Department of Public Works and Communications ; from which it follows that said official should not continue to appear in this case as one of the defendants.

For the foregoing reasons which were unknown to this court when the resolution of February 12, 1937, was rendered, said resolution is reconsidered and this court now decides to deny, as it hereby denies, the substitution sought by the plaintiff in her pleading of February 10, 1937, ordering that this appeal be prosecuted to the exclusion of the Secretary of the Department of Public Works and Communications as defendant and appellee. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

Resolution of February 12, 1937, reconsidered.

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