

THE MUNICIPALITY OP SAN PEDRO, LAGUNA, PETITIONER, VS. MODESTO CASTILLO, JUDGE OF FIRST INSTANCE OF LAGUNA, COLEGIO DE SAN JOSE AND CARLOS YOUNG, RESPONDENTS.

G. R. No. 45713. December 23, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This petition was instituted by the petitioner to set aside the order entered by the respondent judge on August 31, 1937, appointing commissioners on appraisal in civil case No. 6875 of the Court of First Instance of Laguna, on expropriation; to compel the respondent judge to determine beforehand the right of the Government of the Commonwealth of the Philippines, plaintiff in said case, to expropriate certain portions of land and the adverse rights invoked by the petitioner, as intervenor, and by the defendants; and to appoint commissioners on appraisal to represent each of the parties in interest.

Pursuant to the provisions of Commonwealth Act No. 20 and by authority of the President of the Philippines, the Government of the Commonwealth of the Philippines instituted civil case No. 6875 in the Court of First Instance of Laguna, with the Colegio de San Jose and Carlos Young as defendants. It was stated in the complaint filed that the Colegio de San Jose claimed to be the owner of the big tract of land known as Hacienda de San Pedro Tunasan; that Carlos Young claimed to be entitled to the possession thereof and that the government desired to expropriate a big parcel included in said hacienda, occupied by about 1,160 tenants; and it was prayed that the sum of P171,808 be provisionally fixed as the value of the land; that the deposit of this sum be authorized, and that delivery to the plaintiff government of the possession of the parcel of land sought to be expropriated be forthwith ordered, without prejudice to the immediate appointment of commissioners on appraisal who would proceed to appraise and determine the correct value of the land. Before the Colegio de San Jose and Carlos Young presented their answers, the petitioner municipality of San Pedro, with authority of the court, filed a complaint in intervention against all the parties, alleging in substance that the Hacienda de San Pedro Tunasan, as well as the big parcel of land sought to be expropriated by the Commonwealth Government, belonged to the latter, or as alleged by it, to the Philippine State by right of escheat; that it was and is the beneficiary of the entire hacienda and of the big parcel in question, and that the value of said big parcel of land is merely P60,000; and by way of remedies, asked for the appointment of Jose H. Guevara as commissioner to represent it and for the delivery and payment to it, instead of the defendants, of any amount of money the court may fix as the value of or indemnity for the land expropriated. The Colegio de San Jose and Carlos Young filed answers and amended answers to the government's complaint and acknowledged therein the latter's right to expropriate the big parcel of land in question, but alleged, as defenses, that the value thereof is P1,000,000, and that the amount of the damages that such expropriation would cause would not be less than P500,000. Carlos Young asked that he be finally adjudicated the sum of P750,000 to which he was entitled by way of damages incurred by him by reason of the expropriation and that the provisional value of the land fixed by the court be raised to P1,500,000. The Government of the Commonwealth of the Philippines, the Colegio de San Jose and Carlos Young likewise filed

answers to the petitioner's complaint in intervention. The Government of the Commonwealth of the Philippines stated that it had no objection to the court's determining the adverse rights of the intervenor and of the defendants. The Colegio de San Jose absolutely denied that the municipality of San Pedro had any right or interest in the hacienda or in the portion thereof sought to be expropriated by the government, alleging that it is the registered owner of the entire Hacienda de San Pedro Tunasan and that its title and possession have been recognized from time immemorial. Carlos Young likewise impugned the right claimed by the petitioner alleging that he is the lessee of the Hacienda de San Pedro Tunasan by virtue of a contract entered into between him and the Colegio de San Jose which is the true and only owner of the entire hacienda. By an order of March 31, 1937, the court denied the petitions of the Colegio de San Jose and of Carlos Young for the delivery to them of the sum of P171,808 deposited by the government as provisional value of the land sought to be expropriated, on the ground that the ownership thereof was in dispute between the petitioner and the Colegio de San Jose. On August 31, 1937, the court entered the order, which gave rise to the present appeal, appointing Mariano A. Garcia, Fernando Quisumbinor and Alfonso Farcon as commissioners, the first in representation of the government, the second in representation of the Colegio de San Jose and Carlos Young and the third as the court's own choice. Because the controversy between it and the Colegio de San Jose had not been previously determined and because Jose H. Guevara, who had been proposed by it, had not been appointed commissioner, the petitioner excepted to and filed a motion for reconsideration of the aforesaid order of August 31, 1937, which motion was denied.

- The first question to arise in view of the above-stated facts is whether or not the petitioner is entitled to the remedy of certiorari applied for by it. This court has invariably held, and it is the fundamental doctrine in this jurisdiction, that the remedy of certiorari lies only when the court that has rendered the judgment or issued the order in question is without jurisdiction, has exceeded the same or has abused its sound discretion (*Springer vs. Odlin*, 3 Phil., 344; *Gala vs. Cui and Rodriguez*, 25 Phil., 522; *Herrera vs. Barretto and Joaquin*, 25 Phil., 245; *Government of the Philippine Islands vs. Judge of First Instance of Iloilo and Bantillo*, 34 Phil., 157; *Bustos vs. Moir and Fajardo*, 35 Phil., 415; *De la Cruz vs. Moir*, 36 Phil., 213; *Jaranillo vs. Jacinto and Hart*, 43 Phil., 588; *Conde vs. Judge of First Instance and Fiscal of Tayabas*, 45 Phil., 173; *Gonzalez and Javellana vs. Salas*, 49 Phil., 1; *Ello vs. Judge of First Instance of Antique and Valdevin*, 49 Phil., 152; *Santos vs. Court of First Instance of Cavite*, 49 Phil., 398; *Tuason vs. Concepcion*, 54 Phil., 408).

Section 243 of the Code of Civil Procedure, which treats of the appointment of commissioners in condemnation proceedings, provides as follows:

"SEC. 243. Appointment of commissioners.—If the defendant concede that the right of condemnation exists on the part of the plaintiff, or if, upon trial, the court finds that such right exists, the court shall appoint three judicious and disinterested landowners of the province in which the land to be condemned, or some portion of the same, is situated, to be commissioners to hear the parties and view the premises, and assess damages to be paid for the condemnation, and to report their proceedings in full to the court, and shall issue a commission under the seal of the court to the commissioners authorizing the performance of the duties herein prescribed."

According to said section, when the defendant acknowledges the plaintiff's right to expropriate, the court may immediately appoint commissioners to assess the properties and determine the damages. In the present case, the Colegio de San Jose and Carlos Young, the defendants, expressly admitted in their answers the right of the Government of the Commonwealth of the Philippines to expropriate the portion of land described in the complaint and in the plan attached thereto, for which reason the respondent judge was perfectly authorized to proceed with the appointment of commissioners. While it is true that the petitioner, as intervenor in said case, claimed to be the holder of rights adverse to those of the Colegio de San Jose and Carlos Young, all the right invoked by it consists in that of an alleged beneficiary, as may be inferred from its complaint in intervention as well as from the petition filed by it in the present proceedings. From the beginning of the expropriation proceedings to date the petitioner

admits that the ownership of or title to the Hacienda de San Pedro Tunasan resides in the Commonwealth of the Philippines. On the other hand, the Commonwealth of the Philippines has instituted this expropriation proceeding recognizing the Colegio de San Jose as the owner of the Hacienda de San Pedro Tunasan and of the portion it seeks to expropriate. Under such circumstances this court deems it clear and so holds that the petitioner can neither obstruct the expropriation proceedings nor prevent the court from naming commissioners on appraisal pursuant to the provisions of section 243 of the Code of Civil Procedure. This court refrains from dwelling at length on the claims of the petitioner relative to the hacienda and the portion thereof sought to be expropriated, so as not to pass premature judgment upon the controversy raised by it in the Court of First Instance having jurisdiction over the expropriation proceedings. However, this court holds that, in view of the pleadings presented in civil case No. 6875 of the Court of First Instance of Laguna, the respondent judge had jurisdiction and neither exceeded the same nor abused his sound discretion in issuing the order of August 31, 1937, appointing the commissioners on appraisal.

- The petitioner alleges, as another ground, the fact that the respondent judge did not appoint commissioner the person proposed by it. Section 243 of the Code of Civil Procedure leaves the selection of the persons who should be appointed commissioners entirely to the sound discretion of the court having jurisdiction over an expropriation case. All that it requires is that the persons appointed be competent and disinterested landowners. Said section does not confer upon the parties to an expropriation proceeding the right to select the commissioners.

- It is finally contended by the petitioner that the respondent judge should not have appointed the commissioners until after he has decided the controversy between it, on the one hand, and the Colegio de San Jose and Carlos Young, on the other, and that it lies to compel him to decide said controversy beforehand. In view of the fact that the petitioner has never questioned and does not dispute the right of the Government of the Commonwealth of the Philippines to expropriate the big portion of the Hacienda de San Pedro Tunasan, and taking into consideration furthermore the fact that the petitioner does not invoke any right of ownership over said hacienda or any portion thereof, this court holds that, under said section 243, the respondent judge is not obliged to decide beforehand the controversy between the said parties.

For the foregoing reasons, the petition is denied, with costs to the petitioner. So ordered.

Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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