

**SPOUSES ANANIAS S. LAZAGA AND IGNACIA RAFOLS LAZAGA,
PETITIONERS, VS. THE HONORABLE CANDIDO C. AGUINALDO, IN HIS
CAPACITY AS PRESIDING JUDGE OF THE CFI CEBU, BRANCH IX,
CEBU CIT...**

G.R. No. 53973. May 16, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for a writ of certiorari seeking to nullify an order of the respondent judge denying the petitioners' "Motion for Issuance of Alias Writ of Execution" to enforce a decision of the Court of Appeals.

Atlas Consolidated Mining and Development Corporation (hereinafter referred to as Atlas) filed a complaint for eminent domain in Civil Case No. 153-BS before the Court of First Instance of Cebu stationed at Barili against various defendants including the petitioners. Atlas needed the property to construct power transmission lines.

The Court of First Instance ordered the petitioners to allow Atlas to take possession of the portions of land described in the complaint upon deposit by the latter of the amount of P5,041.50 which was provisionally determined and fixed to be the fair and reasonable value of the land sought to be expropriated. Pursuant to this order, Atlas entered the premises in question and established its power transmission lines now known as the Dascon Transmission Line.

Subsequently, Atlas needed another set of power transmission lines to a place called Biga. On March 9, 1970 and after negotiations between the parties, the petitioners executed a contract of a power transmission right of way over portions of their properties covering 3,180 square meters at Cabulihan, Toledo and 10,050 square meters at Anislag, Toledo.

On the same date, another agreement of a power transmission right of way for the Dascon Transmission Line was also executed by the petitioners granting Atlas absolute and exclusive power transmission line right of way over, through, and across a portion of their lands to the extent of 3,180 square meters of the parcel located at Magdodo, Toledo City and 10,816 square meters of the other parcel located at Calumanpao, Toledo City.

Aside from the two agreements covering the right of way, the petitioners also executed on the same date a deed of absolute release and quit-claim wherein they agreed to accept P20,459.00 as final and complete payment for the past, present, and future damage to said portions of the aforesaid parcels of land.

Later, a controversy arose as to the precise area or areas over which the power transmission right of way lines should be constructed. The petitioners claimed that Atlas had invaded a much greater area than that stipulated in the agreements while the latter contended that the combined areas occupied by it did not exceed the limits. Since neither party would concede, the petitioners brought an action for forcible entry and unlawful detainer with damages before the City Court of Toledo City against Atlas on February 14, 1972.

On January 31, 1973, the city court rendered a judgment, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, this Court having assessed the merits of the case at bar show preponderance of evidence presented, both oral and documentary in favor of the plaintiffs and finds that forcible entry and unlawful detainer as found in Sec. 1, Rule 70 of the New Rules of Court, had been perpetrated by the defendant corporation on the property of the plaintiff Ananias Lazaga in the total area of 743 sq. meters. The possession of the said property should therefore be returned to its lawful owner. Likewise, the defendant must pay actual damages of FIVE HUNDRED PESOS (P500.00) and summarily pay attorney's fees of ONE HUNDRED PESOS (P100.00). No action is taken by this Court regarding the counterclaim made by the defendant as the same is found to be without any basis in fact."

Upon motions for reconsideration filed by both parties, the city court decided to appoint a Board of Commissioners composed of a chairman designated by the court, one member nominated by the petitioners and the other member by respondent Atlas. The representatives of the two parties filed conflicting reports so the city court accepted the chairman's findings. On the basis of these factual findings, the city court denied the two motions for reconsideration.

Atlas appealed the decision to the Court of First Instance of Cebu, Branch IX, where a judgment was rendered on July 19, 1974, affirming the judgment appealed from. However, the court modified the decision by increasing the amount of actual damages from P500.00 to P2,000.00 and the attorney's fees from P100.00 to P500.00. Atlas was also ordered to pay rentals at P1.00 a month per square meter if it failed to vacate the premises.

Atlas filed a petition for review of the decision of the Court of First Instance of Cebu, Branch IX before the Court of Appeals raising the following assignments of errors:

- "1. In holding that there is a gap of 4.25 meters between the Dascon and Bigacon transmission lines all along the way and within the lands of the plaintiffs-respondents;
- "2. In ordering the defendant-petitioner to vacate the alleged inexistent gap between the Dascon and Bigacon lines, or, in the alternative, to pay P1.00 per month per square meter as rentals based on a minimum of 743 square meters;
- "3. In ordering the defendant-petitioner to pay P2,000.00 as actual damages and P500.00 as attorney's fees; and
- "4. In not holding that the lower court did not have jurisdiction over the case which is not actually forcible entry and unlawful detainer."

The Court of Appeals in affirming, with modifications, the appealed decision, ruled:

"Anent the first assignment of error, it is noteworthy that the finding of fact of the City Court that a gap exists between the Dascon and Bigacon lines, containing an area of 743 square meters, has been affirmed by the respondent Cebu CFI in the exercise of its appellate jurisdiction. Said finding of fact is based on the report of the Chairman of the Board of Commissioners. We have reviewed the evidence on record and We are constrained to sustain said findings not only because it is in accord with the facts but also because the City Judge who actually conducted the hearing gave credit to the said Chairman's report: and, on appeal his findings of fact are entitled to high credit and should not be disturbed, unless he failed to consider a fact or circumstance of such weight and importance as to warrant a modification or reversal of said findings, which is not the case here. Then again, this being a petition for review of the decision of the CFI in the exercise of its appellate jurisdiction over a case decided by the City Court in the exercise of its original exclusive jurisdiction, only substantial evidence is required to support said decision. And substantial evidence has been defined as that relevant evidence as a reasonable mind might accept as adequate to support a conclusion; and its absence is not shown by stressing that there is contrary evidence in the record, direct or circumstantial, for the appellate court cannot substitute its judgment or decision for that of the lower court in determining wherein lies the

weight of evidence or what evidence is entitled to belief. It is not the same as preponderance of evidence which is generally required in civil cases. (cf. *Bernardo Picardal, et al., vs. Cenon Lladas*, G.R. No. L-21309, Dec. 29, 1967, 21 SCRA 1463-1484.)

"Because of their intimate connection the second and third assignments of errors may be discussed together.

"With the overruling of the first assignment of error, it follows that defendant Corporation is illegally occupying the gap between the Dascon and Bigacon transmission lines, containing an area of 743 square meters. But it is quite another matter for the respondent CFI to order the Atlas Consolidated to pay a rental of P1.00 per square meter per month, starting from the notice of judgment until the said defendant vacates the same and also pay P2,000.00 as damages. We have carefully reviewed the record and there is no substantial evidence to support the rentals and damages. Plaintiff Ananias Lazaga who testified for himself and his wife as plaintiffs, did not prove the rental or reasonable value of the use and occupation of the 743 square meters in question. Neither was there evidence regarding what improvements exist or existed on the said gap or portion. Indeed, because of the absence of the said evidence, the City Judge (Trial Judge) in his order of July 20, 1972 decreed that 'the overall area of the gap should be made a subject of agreement or computation by the plaintiff and the defendant since it has already been established and admitted that the gap exists.' We are of the Considered opinion that the case should be remanded to the City Court with instruction to explore every possibility of an amicable settlement regarding the occupancy of the gap or portion in question; and, in case of failure to reach a compromise, then upon prior notices to both parties, to receive evidence on the reasonable rental or value of the use and occupancy of the same and to render a decision on the basis thereof.

"With respect to the award of P2,000.00 as damages in favor of the plaintiffs, it is far too excessive compared to the actual damages caused to improvements, if any, on the gap. As for damages or destruction of improvements inside the areas covered by the contracts Exhibits 1, 2 and 3, defendant Atlas Consolidated is relieved by the release-and-quitclaim clauses of the said contracts. All things considered, the award of P500.00 fixed by the Trial Judge (City Judge) is fair and reasonable and should be upheld. He had the opportunity to observe the witnesses when they testified before him and to gauge their credibility.

"As for the award of attorney's fees, there is no warrant for awarding P500.00 in favor of the plaintiffs. In this jurisdiction, the award of attorney's fees to a litigant is still an exception, the general rule being that the parties should pay their respective lawyer's fees. (Art. 2208, New Civil Code.) The respondent CFI had not explained in its decision why the defendant, should be ordered to pay P500.00 as attorney's fees. The rule is best stated by the Supreme Court in the case of *Bienvenido Buan, et al., vs. Prisillo Camaganacan*, L-21569, February 28, 1966, 16 SCRA, pp. 321-322 . . ."

.....

"Coming to the fourth assignment of error, We are constrained to reject the same. There is credible testimony by plaintiff Ananias Lazaga that on February 9, 1971 he went to see the land in question and tried to stop the men of the Atlas Consolidated who invaded the portions of the land, which he believed to be outside of the power transmission right-of-way agreements, but he was ignored and he could not resist them because of their number and determination.

.....

"This is, at least, substantial evidence supporting the appealed decision.

"It may be argued that there is the decision of the CFI in the eminent domain case, authorizing the Atlas Consolidated to enter the premises described in the complaint therein. It is sufficient answer to the said contention to state that, after the agreement Exhibits 1, 2 and 3 were executed the Corporation was bound by the terms thereof. It smacked of a high-handed procedure for it to disregard plaintiff's protest at the time and to take the law in its own hands and to remain in the possession of the portion in question. The action constituted

forcible entry and unlawful detainer."

A petition for review of the decision of the Court of Appeals filed with this Court as G.R. No. L-40833 by Atlas was denied on September 8, 1975.

After our denial became final, the Court of Appeals remanded the case to the City Court of Toledo. The petitioners, however, filed with the Court of First Instance of Cebu, not with the Court of Toledo, a motion for the issuance of a writ of execution. The motion was granted. Upon a motion of Atlas pointing out that according to the decision of the Court of Appeals, the case was remanded to the City Court of Toledo to enable the parties to arrive at a possible settlement regarding the occupancy of the disputed portion, or in the alternative for the City Court of Toledo to receive evidence on the reasonable rental or value of the use and occupancy of the same and to render a decision on the basis thereof and that further legal proceedings were necessary to determine the final liability of Atlas, the Court of First Instance of Cebu suspended the writ of execution it had earlier issued, impliedly leaving the city court to act on the matter.

Meanwhile, the City Court of Toledo conducted the appropriate proceedings pursuant to the remand. It initially attempted to bring the parties to agree to an amicable settlement. The attempts, however, failed.

On February 11, 1976, the City Court of Toledo required both parties to submit their respective memoranda.

On April 8, 1976, the City Court of Toledo resolved, as an alternative, that the payment of P5.00 per square meter in the outright sale to Atlas of the 743 square meters would be the just and reasonable value of the portions of land which had been the subject of the litigation between the parties.

The petitioners did not appeal from this resolution. After the resolution had already become final and executory, the petitioners went instead to the Court of First Instance of Cebu and filed a May 28, 1976 "Ex Parte Motion to Enforce Writ of Execution" referring to the writ of execution the CFI had earlier suspended because the remand was not to it but to the city court.

After an exchange of memoranda, replies, and rejoinders, the Court of First Instance of Cebu elevated the case to the Court of Appeals on November 13, 1976 for a clarification of the latter's decision. The motion to clarify was denied by the Court of Appeals in a minute resolution to the effect that there was nothing equivocal about the decision.

Due to the finality of the resolution of the City Court of Toledo, respondent Atlas filed with the Court of First Instance of Cebu a "Motion for Consignation" and "Satisfaction of Judgment" on March 13, 1978 and May 5, 1978, respectively. The "Satisfaction of Judgment" was accompanied by a deposit of a check in the amount of P3,715.00 in favor of the petitioners. The check was for the amount fixed by the City Court of Toledo in its April 8, 1976 resolution.

On May 10, 1978, the date set for the hearing of the foregoing pleadings, the petitioners did not appear so the Court of First Instance of Cebu had to reset the case for further hearings.

On October 6, 1978, the Court of First Instance of Cebu issued an order, the dispositive portion of which reads:

"WHEREFORE, by virtue of the defendant's deposit of the amount of P3,715.00 covered by Manila Bank Check No. 76373790, Cebu Branch, as payment of the 743 square meters, which is the area of the gap between the two (2) transmission lines of the defendant and subject of this litigation, at P5.00 per square meter, the herein plaintiffs, spouses Ananias S. Lazaga and Ignacia Rafols, are hereby ordered to execute a public document acknowledging and admitting the satisfaction of the judgment, as provided for under Section 46 of Rule 39 of the Revised Rules of Court, within ten (10) days from notice of this Order and upon submission thereof to this Court, the amount of P3,715.00 - covered by the aforesaid Check for which the herein defendant

is enjoined to substitute it with cash deposit within two (2) days from notice hereof - be delivered to the herein plaintiffs who are also ordered to execute the corresponding Deed of Sale covering the said area of 743 square meters in favor of the herein defendant, Atlas Consolidated Mining Development Corporation, likewise within ten (10) days from notice of this Order."

On October 11, 1978, Atlas deposited with the Clerk of Court of the Court of First Instance the amount of P3,715.00 in cash in substitution of MC Check No. 76373790.

A motion for reconsideration of the order of October 6, 1978, filed by the petitioners on October 23, 1978, was denied.

On February 22, 1980, the petitioners filed a "Motion for Alias Writ of Execution." This was denied for being moot and academic.

Hence, the present petition was filed.

The petitioners contend that the Court of Appeals' decision sought to be enforced by their "Motion for Issuance of Alias Writ of Execution", which was denied by the respondent judge in his order of April 30, 1980, mandated the City Court of Toledo "to receive evidence on the rental or value of the use and occupancy" of the premises in question. They assert that the City Court of Toledo went beyond the mandate of the Court of Appeals' decision when it rendered its Resolution and Recommendation of April 8, 1976, requiring "as an alternative, the payment of P5.00 per square meter in an outright absolute sale price for the 743 square meters portion which has been the subject of the litigation between the parties herein" without receiving evidence on the issue, thus, rendering said resolution null and void. They further argued that the amount of P3,715.00 should be considered as the reasonable monthly rental fee for the use and occupancy of the premises in question from the time of the rendition by the City Court of Toledo on January 31, 1973, of its decision finding herein private respondent guilty of forcible entry and unlawful detainer, up to the time private respondent actually vacates the premises.

Respondent Atlas countered that the Court of Appeals, instead of requiring it to vacate the premises in dispute, modified the decisions of the Court of First Instance of Cebu and City Court of Toledo, by remanding the case to the City Court of Toledo to determine how much it should pay to the petitioners as reasonable compensation for the use of the disputed premises. Therefore, Atlas argued that the orders complained of are in accordance with the decision of the Court of Appeals. It is also argued that the failure of the petitioners to appeal from the questioned orders rendered the same final and binding on the petitioners.

We find the stand of the petitioners to be without merit. It cannot be said that the City Court of Toledo went beyond the mandate of the Court of Appeals' decision because the latter's decision specifically stated "that the case should be remanded to the City Court with instruction to explore every possibility of an amicable settlement regarding the occupancy of the gap or portion in question; and, in case of failure to reach a compromise, then upon prior notices to both parties, to receive evidence on the reasonable rental or value of the use and occupancy of the same and to render a decision on the basis thereof." Both parties were summoned to an informal hearing on February 10, 1976. Plaintiff Ananias Lazaga appeared with his counsel Atty. Apolinario Bahena. They were given all the chances and opportunities to air their views as to the disposition of the 743 square meters of land in question. Both the petitioners and the private respondent presented their respective versions on how the problem of the gap could be resolved. The parties were given a chance to present their respective memorandums afterwards. At that hearing, no definite solution and agreement as to the price was reached prompting the City Court to require the payment of P5.00 per square meter in an outright sale price for the 743 square meters. The decision of the City Court was not appealed. Likewise, no appeal was taken on the order of the Court of First Instance denying the motion for issuance of alias writ of execution. This was questioned only six days short of

one year later. An award or judgment becomes final and executory upon the expiration of the period to appeal and no appeal was made within the reglementary period. (Volkchel Labor Union vs. National Labor Relations Commission, 98 SCRA 314.) The allegations of due process have no merit.

It is likewise incorrect to denominate the main case as simply one of forcible entry and detainer. The issues of possession and ownership of the 743 square meters of land arose because of the dispute as to whether the transmission lines were built only over the areas agreed upon or whether Atlas indeed transgressed or strayed into property not covered by the agreements. We cannot disassociate the forcible entry and detainer case from the eminent domain case. The petitioners are wrong in insisting only on ejectment and leaving the resolution of the real issues for another case still to be filed and for more years of litigation to clog our overburdened courts.

The petitioners want us to consider the amount of P3,715.00 as a reasonable monthly rental fee for the use and occupancy of the 743 square meters from January 31, 1973 up to the time Atlas either pays their selling price or tears down its power transmission lines and vacates the property. For rentals alone, Atlas would pay around P40,000.00. The petitioners valuation of their 743 square meters of rural land is bloated beyond reason. Atlas, on the other hand, contends that the reasonable and fair purchase value is only P1.00 a square meter, which appears too low a price.

We see no reason to disturb the price based on the factual findings of the trial court. We note that the petitioners willingly accepted P20,459.00 for 13,235 square meters of the same land. The payment of P5.00 per square meter is reasonable.

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

Plana and Escolin, JJ., concur.

Teehankee (Acting C.J.) and Vasquez, J., in the result.

Melencio-Herrera and Relova, JJ., on leave.

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