

NATIONAL HOUSING AUTHORITY, PETITIONER, VS. HON. MANUEL E. VALENZUELA, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXIX, PASAY CITY, LEONCIO YATCO, OSCAR YATCO...

G.R. No. 59913. March 30, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Petition for certiorari and mandamus with preliminary injunction with prayer for a restraining order, to annul and set aside the following orders of respondent court:

- order dated 28 July 1980 dismissing petitioner's complaint for expropriation, docketed as Civil Case no. M-7818-P entitled "NHA vs. Leoncio Yatco, et al", insofar as respondents Yatcos are concerned;
- order dated 31 August 1981, dismissing petitioner's complaint insofar as defendants Ramon Li, Sison Li and Nilda Sy are concerned; and
- order dated 9 February 1982, denying petitioner's Motion for Reconsideration of the order of dismissal dated 31 August 1981.

Petitioner likewise prays for the issuance of an order from this Court commanding the respondent Judge to allow it to present evidence in support of its complaint for expropriation and for the issuance of a temporary restraining order to enjoin the respondent Judge from conducting further proceedings and entering final judgment in the principal action.

Petitioner National Housing Authority (NHA, for brevity) is a government-owned corporation organized and existing under the laws of the Republic of the Philippines, specifically, PD No. 757 as amended. On 5 February 1980, NHA filed a complaint for expropriation before the Court of First Instance of Pasay City, Branch XXIX, against private respondents herein. Subject of the complaint are nine (9) adjacent parcels of land in Bagbagan, Muntinlupa, Metro Manila, with an aggregate area of 328,282 square meters, denominated as: "Lot Nos. 6-J, 6-K, 6-L and 6-R of TCT No. (74390) S-8524; Lot Nos. 6-E-E-2 and 6-F-F of TCT No. 74392; Lot No. 6-N of TCT No. S-93290; Lot No. 6-M of TCT No. S--93288; and Lot No. 6-O of TCT No. S-93290, all of the Register of Deeds of Rizal".

On 17 March 1980, NHA filed a Motion for Immediate Possession after depositing with the Philippine National Bank the amount of P153,580.00, representing ten percent (10%) of the just compensation payable.

Respondents Yatcos filed their Motion to Dismiss and their opposition to petitioner's Motion for Immediate Possession. Hearing of said motion and opposition was set by the respondent court on 23 May 1980. On said date, respondents Yatcos' Motion to Dismiss was heard ex parte in view of the absence of counsel for petitioner.

On 28 July 1980, respondent court issued an order dismissing the complaint insofar as respondents Yatcos are

concerned. Petitioner moved to reconsider the order of dismissal. Up to this date, respondent court has not resolved said motion.

Respondents Ramon Li, Sison Li and Nilda Sy also filed their own Motion to Dismiss. Acting favorably on said motion, the respondent court, on 31 August 1981, issued an order dismissing the complaint insofar as said movants are concerned conformably with the previous order of dismissal dated 28 July 1980.

On 18 September 1981, NHA filed its Motion for Reconsideration. As aforestated, this was denied by the respondent court in its order dated 9 February 1982. Hence, the instant petition.

As prayed for, a Temporary Restraining Order was issued by this Court on 18 March 1982.

Petitioner assails the act of respondent court in setting, hearing and resolving the Motion to Dismiss of private respondents. Petitioner submits that the respondent court committed grave abuse of discretion, tantamount to lack of or in excess of jurisdiction, in granting private respondents' motions to dismiss in gross and blatant violation of Sec. 3, Rule 67 of the Rules of Court. Petitioner contends that the Motion to Dismiss filed in an expropriation case is the responsive pleading that joins the issues for trial on the merits. It is not an ordinary motion that must be set for hearing[1].

The instant petition calls for a proper interpretation of Section 3, Rule 67 of the Rules of Court. The provision reads:

"Sec. 3. Defenses and Objections. Within the time specified in the summons, each defendant in lieu of an answer, shall present in a single motion to dismiss or for other appropriate relief, all of his objections and defenses to the right of the plaintiff to take his property for the use or purposes specified in the complaint. All such objections and defenses not so presented are waived. A copy of the motion shall be served on the plaintiff's attorney of record and filed with the court with the proof of service".

In *Nieto vs. Yap*[2], the Court interpreted the aforesaid provision of the Rules. There, it was held:

"A cursory reading of Sections 4, 5 and 6 of Rule 69 of the Rules of Court discloses the steps to be followed, one after another, in condemnation proceedings from the institution thereof. The first step is the presentation by defendants of their objections and defenses to the right of the plaintiff to take the property for the use specified, which objections and defenses shall be set forth in a single motion to dismiss (Section 4). The second is the hearing on the motion and the unfavorable resolution thereon by the court. That an adverse resolution on the motion to dismiss, if objections and defenses are presented, is required because the rule (Sec. 5) authorizes the court to enter an order of condemnation only if the motion to dismiss is overruled, or if no motion to dismiss had been presented. The second step includes the order of condemnation, which may be embodied in the resolution overruling the motion to dismiss. The third is the appointment of commissioners to assess the just compensation for the property (Sec. 6). That the above steps must follow one another is evident from the provisions of the rules as well as from the interrelation between the steps and the dependence of one upon the previous step. Thus no order of condemnation may be entered if the motion to dismiss has not been passed upon and overruled, and no assessment should be undertaken unless and until an order of condemnation has already been entered.

"In the case at bar, no order of condemnation has as yet been entered, because the motion to dismiss has not yet been resolved by the Court. Of what use would the assessment be if the motion to dismiss would ultimately be granted? We hold that the appointment of the commissioner without an order of condemnation having been previously entered is a deviation from the steps indicated by the rules and constitutes an irregular exercise of the judicial power amounting to an abuse of discretion (*Leung Ben vs. O'Brien*, 38 Phil. 182)[3].

Unquestionably, the Motion to Dismiss filed by the respondents must first be acted upon by the court before any

other action can be taken in the expropriation proceedings. Like ordinary motions, the motion to dismiss in an expropriation case must be set for hearing. The contention of petitioner that "counsel for petitioner NHA did not attend the scheduled hearing of said Motion to Dismiss, because a motion to dismiss in an expropriation case is not and never set for hearing conformably with Sec. 3, Rule 67, because a motion to dismiss in expropriation case is the answer"[4] is without merit. In its order granting the motion to dismiss, the respondent court said:

"It is the considered view of this Court that there is nothing wrong with setting a Motion to Dismiss like any other motion for hearing to enable the parties to expound their views. Like any ordinary motion addressed to it, the Court is authorized to set a motion for hearing on a date and time of its convenience.

What the law does not expressly prohibit - it permits.

"The records show that the plaintiff received a copy of the Motion to Dismiss as early as May 15, 1980. The plaintiff had ample opportunity to file an Opposition to the same, to oppose the procedure so adopted if it had desired; or to ask for another date of hearing if its representatives were not available on said date and time. This court would have been more than willing to entertain any such motions without prejudice to the arguments that defendant Yatos may present"[5].

In any event, this petition has become academic. The land sought to be expropriated has, according to respondents Yatos in their Manifestation to the Court dated 20 January 1984[6], been acquired by Trans-Pacific Properties, Inc. and converted to a housing project called Parkhomes under the supervision and financial guaranty of the Home Financing Corporation (HFC), an agency of the then Ministry of Human Settlement. As of January 1984, the project was more or less eighty per cent (80%) completed, and out of 776 units, 424 units had already been sold. Petitioner, despite proof of service on it of said Manifestation, has not denied the allegations thereof.

IN VIEW THEREOF, the petition is hereby DISMISSED. The Temporary Restraining Order issued by this Court on 18 March 1982 is lifted. No Costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, Cortes, and Grino-Aquino, JJ., concur.

[1] Petition, p. 8

[2] 97 Phil 31

[3] Id. at 33-34

[4] Petition, p. 9

[5] Rollo, p. 97

[6] Rollo, p. 289

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