

POTENCIANO TABIGUE ET AL., PETITIONERS, VS.. WILLIAM P. DUVALL, RESPONDENT.

G.R. No. 6185. August 02, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

This is an application for mandamus to compel the respondent to perform certain specified acts and to restrain him from performing certain other acts.

From the allegations of the petition it appears that respondent is a major-general of the United States Army, commanding the Division of the Philippines; that during the year 1902 or 1903 the United States Army, operating in the Philippine Islands, occupied as a military reservation certain lands in the Province of Leyte belonging to the relators, and that it continued the occupation and use of said premises until the year 1908 without compensating the owners thereof; that during the early part of the year 1908 five prominent persons of the Philippine Islands were asked to investigate the use and occupation of said premises by the United States Army and to fix the reasonable value for such use and occupation; that on the 15th day of February, 1908, said persons, known thereafter as the Wood Board, made a report in which they found certain sums to be the reasonable values of the monthly rental of the premises mentioned up to that date; that they also found the reasonable monthly rental value of said premises for the future and recommended that their findings in this regard be adopted by the United States Army in the future use and occupation of said premises; that, in pursuance of such recommendations, certain military officials, on behalf of the Philippines Division of the United States Army, executed various leases of said premises for the period running from the date of such findings to and including June 30, 1910; that the relators have received the rentals under said leases for a portion only of the period therein expressed; that, by order of the respondent, promulgated in the month of April, 1910, payment upon one of the leases in question was discontinued, although the period mentioned in the lease had not then expired; that, also by order of the respondent, the Army has ceased to occupy the premises in question and no longer holds the same as a military reservation.

The petition prays as follows:

" (a) To revoke his orders to his subordinates regarding the noncompliance with the contract between relators and Captain Baker dated July 1, 1909, to June 30, 1910, and that he order his subordinates to comply with and to pay said contract for the full period and for the full amount as stated therein;

"(b) That he immediately locate and bring forth the Yates contract dated July 1, 1908, to June 30, 1909; and that he have paid to relators' legal representative the full amount for the full period as stated therein, and in the event that said contract bearing the signature of relators' attorney can not be located by respondent within ten days after the issuance of this order, that respondent have his subordinates make up another contract for the same period and for the same amount and pay relators immediately upon same;

"(c) That he order his subordinates to pay to the legal representative of relators the amounts found by the Wood Board by virtue of the contract of his predecessors for the period subsequent to June 30, 1907;

"(d) That he require his subordinates to pay to relators' legal representative all available funds for rental found due by the Wood Board by virtue of his predecessors' contract prior to June 30, 1907. And if it should appear that the appropriations have lapsed for any of this period, or for any other reason if an appropriation of Congress is necessary, that he require his subordinates to make the necessary vouchers; placing in same the amounts found due by the Wood Board, prior to June 30, 1907; and that he send the said vouchers, so made up, to the Auditor for the War Department for settlement;

"(e) And that he be ordered to pay rentals upon these parcels at the basis as fixed by the Wood Board for the future period until relators are fully and completely compensated for all the damage done them by virtue of these parcels being a part and parcel of a military reservation;

" (f) And that he be ordered to pay relators' legal representative the damages as stated in Paragraph XXVII of this petition;

"(g) And petitioners further pray that he be required and ordered to perform properly, promptly and effectively each and every act in so far as he is concerned as division commander that is necessary in order to fully and completely protect the rights and interests of relators as asked in this petition and in this prayer;

"(h) And that the injunction asked for in Paragraph XXV remain in full force until relators are fully compensated for the taking, use, and occupancy of the property in this reservation, titles to which relators hold;

"(i) And petitioners further pray for such other relief as the facts and law warrant and equity demandeth."

It is, of course, a fundamental principle governing the issuance of mandamus that the duties to be enforced by such mandamus must be such as are clearly and peremptorily enjoined by law or by reason of official station. If, for any reason, the duty to be performed is doubtful, the obligation is not regarded as imperative and the applicant will be left to his other remedies. It is equally necessary that the respondent have the power to perform the act concerning which the application for mandamus is made. If the respondent have not the power to perform the act, mandamus will not issue, however clear his duty to perform may be.

A glance at the application filed in this proceeding discloses that there is an absence of adequate allegation that it is the duty of the respondent to perform the act or acts prayed for in the application. It is also apparent that there is an entire absence of allegation to the effect that the respondent has the power to perform the act or acts whose performance is prayed for in the petition. On the contrary, it affirmatively appears from the allegations of the petition, and the exhibits annexed thereto, that not only is the propriety of the payment of the claim of relators, as expressed in the findings of the Wood Board and the contract made in connection therewith, very doubtful, but is, in effect, prohibited by the order of the Comptroller until it can be ascertained by investigation whether or not the amounts found by the Wood Board include damages as well as rents. The Comptroller, as appears from the petition, specifically states in one of the exhibits heretofore mentioned, referring to the findings of the Wood Board, that the military authorities in the Philippine Islands "would not be authorized to cause payments to be made from existing appropriations for rents, of damages under the guise of rents. I know of no appropriation applicable to the payment of such damages, and Congress alone can afford relief." He further states in the same exhibit that it is "clear that for the period covered by lease no more can be paid as rents than the rates named therein, as anything beyond that would be in the nature of a gratuity." It appears also from this exhibit that the Comptroller advises the respondent that the findings of the Wood Board are not binding in any way upon him.

As to the sums due as rent under the leases executed subsequent to the date of the findings of the Wood Board, it is necessary, in addition to what has been said in relation to the findings of the Wood Board, to say only that there is an entire absence of allegation in the petition that the money for the payment of such rentals has been appropriated and that it is under the control of the respondent. There is also a failure of adequate allegation that respondent lacks all discretion in executing the leases mentioned in the prayer of the petition and of making

payments thereunder.

The whole case, under the allegations of the petition, smacks of an attempt to settle contractual rights and obligations, express or implied, between the parties and to regulate a course of conduct on the part of the respondent. Mandamus does not lie to require anyone to fulfill contractual obligations or to compel a course of conduct.

For these reasons the demurrer is sustained and the petition is dismissed, and the order of Mr. Justice Trent denying the application for an injunction, as expressed in Paragraph XXV of the petition, is hereby affirmed. There is no special finding as to the costs.

Arellano, C. J., Torres, Johnson, and Trent, JJ., concur.

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