

THE MANILA RAILROAD COMPANY, PLAINTIFF AND APPELLANT, VS. FRANCISCO ARZADON ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 6259. November 11, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 16th of February, 1907, the Manila Railroad Company filed a petition in the Court of First Instance of the Province of Pangasinan, under Act No. 1510 of the Philippine Commission, for the purpose of securing land upon which to locate its railroad between the municipalities of Dagupan and San Fabian, both in said province. Paragraph 3 of said petition contains the names of the owners of the different parcels of land across which the said plaintiff desired to construct its railroad. This paragraph also contains a statement of the appraised value of said land. The petition does not state clearly whether the lands mentioned in said paragraph are all the lands which the individual persons mentioned therein own or whether they are simply the lands which the plaintiff desires to occupy and have appropriated for the use of its railroad.

On the 20th of February, 1907, the Hon. J. C. Jenkins, then judge of the Court of First Instance of said province, issued the following order permitting the plaintiff company to occupy the lands in question, and to commence the construction of its railroad:

"The plaintiff company in the above-entitled case having asked for the immediate occupation of all the land described in paragraph 30 of the complaint in order to commence the work of laying the track of the railroad mentioned therein, and of which the said company is the concessioner, this court, finding that there exists sufficient reasons for granting said petition, in accordance with the provisions of Act No. 1510, by these presents orders and decrees:

"That the plaintiff, The Manila Railroad Company, may take immediate possession of and occupy the whole of the land described in paragraph 30 of its complaint, and may commence thereon the work necessary for building the road of which it is the concessioner; that the said company shall deposit in one of the banks of Manila in accordance with the provisions of Act No. 1592, the sum of P4,500, in which sum this court provisionally fixes the value of the land the expropriation of which is sought by the plaintiff company in its complaint. The defendants are notified that they must oppose no obstacle nor resistance to the possession allowed by this court to the plaintiff company, nor may they molest the latter in its work of building the road; otherwise they will be guilty of contempt of court. So ordered."

On the 27th day of March, 1907, a number of the defendants mentioned in paragraph 3 of the petition filed their answer, in which they -

- (1) Alleged that they were not satisfied with the price fixed by the plaintiff for the lands in question; and
- (2) Asked to have a commission appointed for the purpose of appraising the lands.

On the 3d day of April, 1907, others of the said defendants also presented an answer in which they -

(1) Alleged that they were not satisfied with the price fixed by the plaintiff for the lands in question; and

(2) Asked to have a commission appointed for the purpose of appraising the lands.

In accordance with the petition of the defendants, on the 15th day of April, 1907, by agreement of the parties the court appointed Walter E. Jones, Gregorio Frianesa, and Catalino Palisoc commissioners to appraise the lands in question.

On the 8th day of March, 1909, the plaintiff filed an amended petition in which some few changes were made in the lands to be occupied, (See bill of exceptions, pp. 17-26.)

Upon the filing of the amended petition, on the 10th day of March, 1909, the court made a further order (bill of exceptions, p. 26) permitting the plaintiff to occupy the lands described in the third paragraph of the amended petition, with certain conditions mentioned in said order.

On the 31st day of August, 1909, the said commissioners made their report, which report contained a statement of the amount allowed for each and every parcel of land of each of the said defendants occupied by the railroad.

On the 8th day of October, 1909, and on the 19th day of January, 1910, the commissioners made additional reports to their first report. (See bill of exceptions, pp. 39 and 40.)

On the 19th day of January, 1910, the Hon Isidro Paredes, then judge of the Court of First Instance of said province, rendered a decision in which he modified in part and affirmed in part the report of the commissioners.

From said decision the plaintiff appealed to this court and the bill of exceptions was prepared and brought to this court on the 6th day of June, 1910.

On the 24th day of August, 1910, the plaintiff presented in this court a petition praying for a preliminary injunction against the Hon. Isidro Paredes, to enjoin him from issuing an execution in favor of the defendants and against the plaintiff upon the decision rendered in said cause. Said petition alleged that the defendants had requested a writ of execution upon the decision rendered in the cause, and that the Honorable Isidro Paredes would issue the said execution unless the plaintiff deposited with the Insular Treasurer a sum of money equal to the amount of the judgment, as security for the payment of said judgment. The said petition does not disclose the date on which the defendants had requested the execution.

The record does not disclose whether or not said request was made before or after the appeal to this court had been perfected. After a due consideration of the said petition, this court issued the preliminary injunction prayed for. (See rollo, p. 23.)

On the 30th day of August, 1910, the defendants, Ciriaco Villamil, Juana Catubig, and Cecilio Catubig, by their attorneys, presented a motion to this court asking that the preliminary injunction be dissolved.

The theory of the defendants in their motion to dissolve is that an appeal in an action for the appropriation of property, under the power of eminent domain, does not operate as a supersedeas and that, notwithstanding the appeal, in that class of cases, the judgment of the lower court may be executed. In support of this contention the defendants rely upon section 248 of Act No. 190, section 6 of Act No. 294, section 5 of Act No. 1258, section 3 of Act No. 1459, and section 1 of Act No. 1592.

Said section 248 provides:

"The allowance of a bill of exceptions in condemnation proceedings shall not operate as a supersedeas, nor shall the right of the plaintiff to enter upon the land of the defendant and appropriate the same to public use be delayed by appeal to the Supreme Court. But if the Supreme Court shall determine that no right of

appropriation on the part of the plaintiff existed, the case shall be remanded to the Court of First Instance with mandate that the defendant be replaced in possession of the property and that he recover the damages sustained by reason of the possession taken by the plaintiff."

Section 144 provides:

"Except by special order of the court, no execution shall issue upon a final judgment rendered in a Court of First Instance until after the period for perfecting a bill of exceptions has expired, but the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that the execution be not stayed, in which event the execution may at once issue, but the court may require, as a condition of a stay of execution, that a bond shall be given reasonably sufficient to secure the performance of the judgment appealed from, in case it be affirmed in part or wholly."

It will be noted that the mere presentation of the bill of exceptions, under section 144 (unless special reasons to the contrary are given by the court), shall have the effect of staying the execution until a final determination by the appellate court; while section 248 provides that the allowance of a bill of exceptions in condemnation proceedings shall not operate to stay the execution of the judgment. Section 248 provides that the right of the plaintiff to enter upon the land of the defendant after judgment in the lower court shall not be delayed by appeal to the Supreme Court. The other Acts of the Commission mentioned above have not changed section 248 in respect of the question presented here. If section 248 is to be given the meaning contended for by the defendants in their motion to dissolve (that section 248 is applicable and not section 144), we would have this condition (in a case where the judgment is against the persons seeking the condemnation and in favor of the defendant) that notwithstanding the fact that the judgment is against the plaintiff (and he appealed) he may enter into possession of the land against the judgment of the court without having paid or deposited either the value or the estimated value of the property in question. We do not believe that it was the intention of the Legislature to apply section 248 to cases in which the plaintiff was the appellant. We do not believe that it was the intention of the Legislature to provide by section 248 that the plaintiff might execute the judgment, so far as he was concerned, and appeal from it at the same time, and compel the defendants, without any remedy whatever, to await the decision of the appellate court. We believe that the right of the plaintiff to enter upon the possession of the land, notwithstanding an appeal by the defendant, under section 248 (Code of Procedure in Civil Actions), depends upon his compliance with, the provisions of section 247 (Code of Procedure in Civil Actions). Said section 247 provides that the plaintiff may enter upon the possession of the land "upon the payment to the defendant of the compensation fixed by the judgment or after tender of the amount so fixed and payment of the costs^" etc. We do not believe that under said section 248 the allowance of a bill of exceptions in this class of cases would operate as a supersedeas, unless the plaintiff had complied with the provisions of said section 247.

Under section 2 of Act No. 1510, the plaintiff, by making a deposit with the Insular Treasurer and securing an order of the court, is permitted to enter into possession of the land upon the presentation of his petition for condemnation. In the present case the deposit made by the plaintiff was P4,500 for all of the lands appropriated, while the amount allowed by the lower court to the defendant, Ciriaco Villamil (P5,740), Juana Catubig (P14,588), and Cecilio Catubig (P2,010), was P22,338. It thus appears that all of the defendants together, who have lost the possession of their property, have secured only the sum of P4,500 in deposit, while the judgment in favor of these three defendants alone amounts to P22,338.

We are of the opinion and so hold, upon all of the facts presented to this court, that the lower court was justified in his order directing that the execution should issue in said cause in favor of the defendants who requested it, unless the appellant should give an additional bond or make an additional deposit. It will be noted that under section 144 the court may require, as a condition of a stay of execution, a bond to be given by the appellant, reasonably

sufficient to secure the performance of the judgment appealed from. This section does not state any time when the judge may require such bond. Therefore it is hereby ordered and directed that the preliminary injunction heretofore issued shall be dissolved, unless the plaintiff gives the following bonds within ten days from receipt of the notice of this order:

(a) One in favor of Ciriaco Villamil, for P6,000;

(b) One in favor of Juana Catubig, for P17,000; and

(c) One in favor of Cecilio Catubig, for P2,200, each conditioned to pay the amount stipulated, or such portion thereof as may be necessary to satisfy whatever judgment may be rendered by this court.

It is so ordered.

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

Moreland, J., concurs in the result.

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