50 Phil. 832

[G.R. No. 19280. March 16, 1923]

THE MANILA RAILROAD COMPANY, PLAINTIFF AND APPELLANT, VS. ASUNCION MITCHEL, DEFENDANT AND APPELLANT.

D E C I S I O N

OSTRAND, J.:

This action was commenced February 18, 1918, in the Court of First Instance of the City of Manila, by the plaintiff, a foreign corporation, for the purpose of condemning certain real estate situated in the District of Tondo, City of Manila, adjacent to plaintiff's principal terminal station.

On February 24, 1918, the trial court entered an order authorizing the plaintiff to take possession "of each and every one of the parcels of land set forth in the complaint herein * * *" Pursuant to this authority, plaintiff took possession of the property of the Sy Quia estate described in its complaint (lot No. 1 on the plan attached to the complaint), including the buildings thereon existing.

The defendant Asuncion Mitchel, Vda. de Sy Quia, was at first included in her individual capacity, and on March 23, 1918, filed a so-called demurrer on the ground that she was not the owner of any of the property described in the complaint and therefore had been erroneously included as a party defendant. The court treated the demurrer as a motion for a dismissal and dismissed the complaint in regard to said defendant. Subsequently, it was stipulated that she should be included as a party defendant in her representative capacity as administratrix of the estate of the late Pedro Sy Quia.

On April 10, 1918, a month before the defendant was made a party to the action as administratrix, the court issued an order authorizing the expropriation and appointing commissioners to hear the parties, inspect the premises, fix the indemnity to be paid by plaintiff, and to make a report to the court. No exception was taken to the order by any of the defendants. On May 3, 1918, the commissioners so appointed gave notice by its

chairman that its first meeting would be held on May 15, 1918, to hear the testimony of the heirs of Pedro Sy Quia. Asuncion Mitchel, Vda. de Sy Quia, as administratrix of the estate of Pedro Sy Quia, represented by her counsel, Aurelio A. Torres, acknowledged receipt of the notice on May 10, 1918.

The record does not show whether the commissioners met on the day announced, but on July 18, 1918, Commissioner Campbell tendered his resignation, which was accepted by the court. On the 31st of the same month plaintiff asked that Mr. E. S. Lyons be appointed a member of the commission in the place of Mr. Campbell and on August 13, 1918, the defendant, Asuncion Mitchel, in her capacity of administratrix of the estate of Pedro Sy Quia, appeared by counsel and proposed the appointment of Perez Muñoz to fill the vacancy.

In the meantime and on June 22, 1918, the said defendant, as administratrix of the estate of Pedro Sy Quia, filed an answer to the complaint in which she admitted, among other things, that the plaintiff is a foreign corporation operating a railroad on the Island of Luzon under statutory authority; that it is chartered for the purpose of constructing and operating such railroad; that it has terminal points at the City of Manila and municipality of Antipolo, Province of Rizal. It is further admitted that said defendant, in her representative capacity, is the owner of the land described as lot No. 1 on the attached plan.

The answer denies that the plaintiff is empowered by the law of the Philippine Islands to acquire lands necessary for the construction, maintenance and operation of its lines or for terminals, sidings or proper buildings and structures. As a special defense it is averred that the said lot No. 1 “has not been, is not and never will be necessary to the plaintiff for the proper operation of its railroad” and it is prayed that judgment be rendered excluding the property of the Sy Quia estate from condemnation. It is further averred in the answer that the real value of the property in question is greatly in excess of the assessed value.

Nothing further appears to have been done until February 21, 1921, when the defendant, by her then counsel, Mr. M. Torres, filed a motion praying that the proceedings be dismissed, the property seized by the plaintiff returned, and that the defendant be paid damages for the unlawful occupation of the property by the plaintiff. The reasons advanced were that plaintiff had made no proof that it is authorized to exercise the right of eminent domain; that it had not shown the particular use to which it is proposed to devote the property or the necessity for its acquisition; that plaintiff is already the owner of ample land upon which to erect whatever buildings may be required for the extension of its terminal facilities; that it

has never been shown that plaintiff has made any attempt to obtain the property by negotiating with defendant before taking this action, or that such an attempt has failed; that the amount of money deposited by the plaintiff, in order to obtain possession, is very much less than the true value of the property; and that since the property has been taken by the plaintiff, under the order of the court, no use has been made thereof. The motion was opposed by plaintiff and on March 21, 1921, it was denied upon the ground that the issues of fact raised by it would have to be considered at the trial of the case. To this order the defendant excepted.

On February 8, 1922, the same defendant, represented by her present counsel, filed a motion in which the attention of the court was called to the fact that the averment of the complaint regarding the necessity of the condemnation of defendant's property, had been expressly denied by her answer; that the commission appointed by the court to hear evidence had, upon defendant's opposition, declined to proceed until the question of the right of condemnation had been decided; and the court was asked to set the case down for hearing. This motion was opposed by plaintiff. On February 11, 1922, the Honorable P. Concepcion, Judge of Branch Two of the Court of First Instance of Manila entered an order overruling the oppositon of plaintiff and directing that the case be set down for trial upon the issue of the necessity for the condemnation of the land belonging to the Sy Quia estate. To this ruling the plaintiff excepted.

The trial took place on March 13, 1922, and upon the evidence presented, the court below found as follows:

> "Upon consideration of the evidence adduced by plaintiff, the court is of the opinion that there is no real necessity on the part of the Manila Railroad Company to occupy lot No. 1 of the property of the Sy Quia estate, because lots 9, 11 and 13 which are not built upon, may be used for the same purposes as those to which lot No. 1 is now devoted. But even upon the assumption that in order to furnish facilities for cargo arriving from the provinces, the building marked 'E' is needed at the place at which it has been constructed and for the offices of some of the departments of the company, it is clear that the very large part of lot No. 1 not occupied by any building—that is, that part of it which fronts on Calle Antonio Rivera and part of the frontage of Calle Azcarraga—is not needed by the company, because that part of the lot is only used for trucks and carts which come to haul away the merchandise deposited in said building, and

> for this purpose they can approach the building on the west side over completely open and unoccupied land belonging to the railroad company."
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> Upon these findings the court proceeded to render judgment, dated April 6, 1922, declaring that the railroad company has no right of condemnation as to the unoccupied part of lot No. 1, but that "* * * the Company may make use of that right solely with respect to that part of the lot occupied by the building thereon existing. Plaintiff is ordered to file a plan of the lot in question, excluding the land not built upon, and the parties are directed to nominate to the court three disinterested and upright landowners to be appointed as commissioners for the purposes prescribed by section 243 of the Code of Civil Procedure, such commissioners to be appointed by the court on its own motion in the event that the parties shall fail to agree upon the persons to be so appointed. * * *"

Both the plaintiff and the defendant excepted to the decision and filed motions for a new trial upon the ground that the findings of fact were plainly and manifestly contrary to the weight of the evidence; that the evidence did not justify the decision and that the decision was contrary to law. The motions were denied and both parties appealed to this court.

The plaintiff makes four assignments of error of which only one, the second, need be here discussed. The assignment reads:

> "The court erred in declaring that the taking by the plaintiff corporation of the portion of lot No. 1, not occupied by any building, was unnecessary and that the corporation therefore had no right to condemn the same."

In our opinion, this assignment is well taken and must be sustained. In this jurisdiction the question of the necessity of the taking of land by condemnation becomes a judicial question by virtue of section 28 of the Act of Congress of August 29, 1916 (the "Jones Law") which provides:

> "That no private property shall be damaged or taken for any purpose under this section without just compensation, and that such authority to take and occupy land shall not authorize the taking, use, or occupation of any land except such as is required for the actual necessary purposes for which the franchise is granted

* * *”

In this particular case the grant of the power of eminent domain contained in Act No. 1510 is also, by its terms, limited to “lands necessary for * * * terminals, * * * stations, engine houses, water stations, and other appropriate buildings and structures * * *”

It is well settled that the term “necessary” in this connection does not mean absolutely indispensable, but requires only a reasonable necessity of the taking for the purpose in view. Upon this subject Lewis, in section 601 of his work on Eminent Domain, 3d ed., citing numerous authorities, says:

> “When the law says that private property may be taken for public use only when it is necessary for such use, it means a reasonable, not an absolute necessity. What is a reasonable necessity is a question of fact, to be determined according to the peculiar facts of each case. No general rule can be laid down for determining the question. A necessity has been held to be shown if it appeared that the property sought to be condemned would conduce to some extent to the accomplishment of the public object to which it was to be devoted. ‘With the degree of necessity, or the extent to which the property will advance the public purpose, the courts have nothing to do.’ The growth and future needs of the enterprise may be considered. But such future needs must be founded upon facts and made reasonably clear. A large discretion is necessarily vested in those who are vested with the power, in determining what property and how much is necessary. To warrant a denial of the application, it should appear that what is sought is clearly an abuse of power on the part of the petitioner. ‘It may be said to be a general rule that, unless a corporation exercising the power of eminent domain acts in bad faith or is guilty of oppression, its discretion in the selection of land will not be interfered with.’ If the petitioner is acting in good faith and shows a reasonable necessity for the condemnation, in view of its present and future business, the application should be granted. If the object is to acquire lands for speculation, or to prevent competition, or for purposes collateral to those for which the petitioner is authorized to condemn property, then the application should be refused.”

In the instant case, it appears from the record that the Tondo terminal of the plaintiff’s

railroad is bounded on the south by Calle Azcarraga and on the west by Calle Dagupan. On the east it is separated from Calle Antonio Rivera by a narrow strip of land of which the property here in question forms a part. The distance between Calle Dagupan and Calle Antonio Rivera is only some 180 meters and the average width of the strip of land it is sought to have expropriated is about 40 meters. The object of the taking of this strip is to have the terminal extend to Calle Antonio Rivera so that the railway station may be made easily accessible from that street and so as to provide space for additional buildings and yard facilities.

The evidence presented by the plaintiff to show the necessity for the condemnation establishes that there are two sets of tracks at the Tondo terminal, one for outgoing freight and another for incoming freight; that the strip to be condemned is intended for incoming freight" and that the other part of the railroad property adjoining Calle Dagupan is used for outgoing freight; that no incoming freight can be handled on the Calle Dagupan side because the space is too restricted; that on a portion of lot No. 1, there is a two story building used as a warehouse for incoming freight and also for offices for certain departments of the company; that there is no other place in which the employees of the medical department, the department of supplies, the department of claims and the offices of the special agent of the railroad company can be housed or accommodated; that the part of lot No. 1 which is vacant, is used by trucks and carts which enter through Calle Antonio Rivera in order to receive freight from the warehouse mentioned; that hundreds of trucks and carts enter daily for the purpose of receiving freight; that there is no other place which can be utilized for the handling of incoming freight; that the space on the north side, adjoining Calle Dagupan, is fully covered by railroad tracks; that while the company possesses some land on the other side of Calle Dagupan it cannot be used for the purpose of laying tracks because it is too low, and also because the City Government would not permit the crossing of Calle Dagupan with the requisite number of tracks.

With this evidence before us, we certainly cannot hold that the taking of the land in question is so unnecessary as to call for judicial interference with the demand for condemnation.

A space of 180 meters in width for the service of the principal terminal of the Luzon Railroad System does not seem excessive, and it would obviously be a matter of great inconvenience, not only to the plaintiff but also to the public, if the railroad company should be compelled to seek a part of its necessary terminal space on the north side of Calle Dagupan.

The defendant-appellant makes the following assignments of error:

> "1. The trial court erred in failing to find upon the evidence that no necessity exists for the condemnation of any part of defendant's property by the plaintiff corporation.
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> "2. The trial court erred in assuming that plaintiff is vested with the power of eminent domain in the absence of allegations and proof in its possession of such authority.
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> "3. The trial court erred in failing to dismiss the complaint upon the ground that no showing has been made by plaintiff that an unsuccessful effort has been made to obtain the property in question by free arrangement.
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> "4. The trial court erred in failing to find that plaintiff has failed to comply with the conditions precedent to which its right, if any, to exercise the power of condemnation is subject.
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> "5. The trial court erred in directing the appointment of a committee to appraise defendant's land.
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> "6. The trial court erred in holding that plaintiff was entitled to condemn land within the City of Manila in the absence of proof that the consent of the municipal authorities or of the Governor-General has first been obtained.
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> "7. The trial court erred in denying defendant's motion for a new trial.
>
> "8. The trial court erred in giving judgment for plaintiff."

The first of these assignments of error relates to the necessity for the condemnation of the lot in question and has already been sufficiently discussed.

Under the second assignment of error the defendant argues that the plaintiff's failure to allege and prove that it possesses the power of eminent domain is reversible error.

This contention seeks its support in section 242 of the Code of Civil Procedure, which reads as follows:

> "The complaint in condemnation proceedings shall state with certainty the right of condemnation, and describe the property sought to be condemned, showing the interest of each defendant separately."

We do not think the section quoted is of necessary application to the present case where the power of eminent domain is specially conferred upon the plaintiff by legislative acts of which this court will take judicial notice. Section 1 of Act No. 2879 reads:

> "Whenever, in any existing law, mention is made of the Manila Railroad Company, such mention shall be deemed to include and to apply to the Manila Railroad Company of the Philippine Islands whenever necessary to confer upon the latter corporation any of the benefits, privileges and immunities conferred by such law upon the Manila Railroad Company, or to make applicable to said Manila Railroad Company of the Philippine Islands measures adopted by the Philippine Legislature for the control or administration of the Manila Railroad Company or for the granting of financial aid thereto."

The power of eminent domain was previously granted the Manila Railroad Company by section 2 of Act No. 1510. It is true, as stated by counsel, that this Act purports to be a "concessionary grant or contract" conditioned upon its acceptance within sixty days by the grantee of a bond in the sum of $300,000, and that the grant was made subject to the approval of the Secretary of War, and it is argued that there is nothing to show that these conditions have been fulfilled. However, in view of the fact that some eight years after its passage the Act was amended by Act No. 2373 and that railroad lines were constructed on the strength of the concession, we are justified in taking judicial notice of the fact that Act No. 1510 was in effect at the time of the enactment of Act No. 2879 and that hence the plaintiff, by virtue of the provisions of the section quoted from the latter Act, is vested with the power of eminent domain.

The defendant's third assignment of error raises the point that the action should be dismissed because it does not appear that the plaintiff, previously to the filing of its complaint, had unsuccessfully endeavored by amicable agreement to obtain the land it seeks to condemn. This contention rests upon the theory that Acts Nos. 703 and 1258, both of which provide that the power of eminent domain may be exercised when a railroad corporation has failed to obtain the land by agreement, are applicable to the present case.

But as we have seen, the plaintiff here exercises its power under Act No. 1510, in which the following language is used:

> "The grantee shall also have the right to acquire by condemnation the lands necessary for the right of way, for bridges, for terminals, including wharves and docks at harbor points and elsewhere, for sidings, stations, engine houses, water stations and other appropriate buildings and structures for the proper and convenient construction, operation, and maintenance of the lines of railway herein authorized; but no lands within the boundaries of any province, city, town, or municipality shall be occupied by the grantee if the same are in actual use for provincial, governmental, or municipal purposes, nor shall any land within the boundaries of any city, town, or municipality be so occupied without the consent of the proper authorities of such city, town, or municipality, unless the Governor-General shall consent to the same. The right of condemnation or eminent domain shall be exercised by the grantee in accordance with the laws of the Philippine Islands at the time being in force."

It may be observed that the paragraph quoted contains no provision requiring the plaintiff to seek to obtain the land by amicable agreement, nor is any such provision found elsewhere in the Act. And in the absence thereof, we know of no legal reason for holding that an effort to obtain the land by a free agreement is a prerequisite for instituting condemnation proceedings. The last sentence of the paragraph quoted relates to procedure and not to the existence of the right of condemnation.'

It may also be noted that even where the statutes provide that the power of eminent domain may be exercised upon failure to obtain the land by amicable agreement, it has been held by good authority that an attempt to agree is not a condition precedent and that failure to agree is sufficiently shown by the institution of litigation. (Doty *vs.* Am. Tel. & Tel. Co., 123 Tenn., 329; 130 S. W., 1053.) This would seem to be good sense and should therefore also be good law.

The fourth and sixth assignments of error are based upon the provision in the paragraph just quoted from Act No. 1510 to the effect that no lands within the boundaries of any city, town, or municipality shall be occupied by virtue of condemnation proceedings without the consent of the proper authorities, and the defendant argues that such consent is a condition precedent for the taking of such lands.

We find little merit in this contention. In the first place, the condition in question is for the benefit of the city, town, or municipality, as the case may be, and can hardly be taken advantage of by a third party. In the second place, it appears from the order of the court below, dated April 10, 1918, that the City of Manila, within the boundaries of which the land here in question is situated, appeared by its Fiscal, Angel Roco, and so far from objecting to the expropriation, agreed to the same and to the appointment of commissioners. That the consent of the city authorities was thus sufficiently shown admits of no doubt.

The defendant's fifth, seventh and eighth assignments of error are sufficiently covered by the discussion of the other assignments and need not be further considered.

For the reasons stated, the order appealed from is hereby modified and it is declared that the condemnation of all of the aforesaid lot No. 1 is necessary for the purposes for which the plaintiff's franchise is granted and in order to provide adequate terminal facilities for its railroad, and we hold that said plaintiff may exercise its power of eminent domain over said lot in the present proceedings. As much of said order as relates to the appointment of commissioners is affirmed. The record will be remanded to the court below for further proceedings. No costs will be allowed in this instance.

So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

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