

43 Phil. 576

[G. R. No. 16746. June 26, 1922]

THE MUNICIPALITY OF ALBAY, PLAINTIFF AND APPELLEE, VS, CONSTANCIO BENITO IN HIS OWN BEHALF AND AS ADMINISTRATOR OF THE ESTATE OF MARIA MIJARES, DECEASED, AND HONGKONG & SHANGHAI BANKING CORPORATION, DEFENDANTS. CONSTANCIO BENITO, APPELLANT. MANUEL NIETO, INTERVENOR AND APPELLEE.

D E C I S I O N

OSTRAND, J.:

In July, 1913, condemnation proceedings were instituted for the expropriation of land for a public market in the municipality of Albay. Part of the land to be condemned was owned by the Hongkong & Shanghai Banking Corporation but appears to have been voluntarily sold to the municipality by the bank after these proceedings were begun. The rest of the land, constituting a parcel of an area of 4,008.94 square meters, is the property of the estate of Maria Mijares of which the defendant Constancio Benito is the administrator, and is the only property involved in the appeal.

In his original answer filed October 25, 1913, the defendant Constancio Benito did not question the right of the plaintiff municipality to expropriate the land in question, and the Court of First Instance, consequently, on November 14, 1913, appointed commissioners to assess damages to be paid for the condemnation. Thereafter and on January 12, 1914, one Manuel Nieto was permitted to intervene as lessee of the land of the estate of Maria Mijares.

On April 25, 1914, the defendant Benito presented an amended answer in which he denied the right of the municipality to condemn a portion of the land measuring 714 square meters on the ground that he had ascertained that said portion was to be used as a site for stalls to be rented to merchants for long terms. The amendment was allowed by order dated May 2, 1914.

On December 17, 1914, the commissioners reported that in view of the fact that the defendant Benito disputed the right of the municipality to condemn the 714 square meters of land hereinbefore mentioned, they were unable to definitely assess the damages and therefore requested instructions from the court. The court, without setting the case for hearing upon the question of the right to condemn said 714 square meters, returned the case to the commissioners with instructions to disregard the contention that the municipality had no right to condemn the disputed 714 square meters. To this resolution the defendant duly excepted.

On December 20, 1916, the commissioners filed their report in which they awarded the estate of Maria Mijares the sum of P7,927.93 in damages for the condemnation of her entire parcel, including the aforesaid 714 square meters. Manuel Nieto, the lessee, was allowed the sum of P1,326.39. After a hearing upon the commissioners' report the court, on January 7, 1918, rendered judgment awarding the estate of Maria Mijares damages in the total sum of P5,748.76 and increasing the amount due Manuel Nieto to P1,550. From this judgment Constancio Benito, as administrator of the estate of Maria Mijares, appeals.

The appellant presents three assignments of error:

1. The court erred in not setting the case for hearing upon the question of the right of the plaintiff to expropriate the 714 square meters in regard to which that right was disputed by the appellant; and in returning the case to the commissioners by an order of February 5, 1915, with instructions to disregard the defendant's impugnation of such right.
2. In not excluding from the condemnation in this case the aforesaid 714 square meters.
3. In assessing the damages for the taking of the land at only P5,748.76.

There can be little doubt but that the trial court was in error in not assigning the case for hearing after the filing of defendant-appellant's amended answer had been allowed and before the commissioners rendered their report. However, if we accept the allegations of the defendant's amended answer in regard to the contemplated use of the 714 square meters as true and fully proven, the error of the court below will be nonprejudicial to said

defendant and will furnish no ground for reversal of the judgment appealed from, or for remanding the case to the court below for the taking of additional evidence. We will therefore take for granted that the aforesaid 714 square meters are to be used as the site of a building, divided into various compartments in the form of *tiendas* or stalls which are to be rented to merchants for long periods and for continuous and permanent use.

Touching the second assignment of error, the defendant's contention appears to be that the term "market" denotes a place used by transient vendors and excludes the idea of permanency of occupation of any part thereof by any one merchant; and that, therefore, section 2 of Act No. 2249 authorizing municipalities to condemn land for market sites did not authorize the taking of land for the sites of market stalls to be rented out for longer periods as adjuncts to the general market facilities.

We can find no authority in support of this view. The term "public market" is thus defined in Black's Law Dictionary :

"Public market.-A market which is not only open to the resort of the general public as purchasers, but also available to all who wish to offer their wares for sale, stalls, stands, or places being allotted to those who apply, to the limits of the capacity of the market, on payment of fixed rents or fees. (See American Live Stock Commission Co. vs. Chicago Live Stock Exchange, 143 111., 210; 32 N. E., 274; 18 L. R. A., '190; 36 Am. St. Rep., 385; State vs. Fernandez, 39 La. Ann., 538; 2 South., 233; Cincinnati vs. Buckingham, 10 Ohio, 257.)"

There is nothing in this definition to indicate that the renting of stands or stalls mentioned therein is of such an ephemeral character as to preclude the owner of a market from renting out the stalls or stands for a term of years, if he so desires, without destroying the character of the place as a market, and it is safe to say that no indication to that effect will be found elsewhere.

The plans accompanying the petition for condemnation in the present case shows clearly the character of both the market and of the stalls or *tiendas*. The market is of the usual construction and ground plan approved by the Bureau of Public Works for public markets in the more important provincial towns. It is divided into three sections of which only one appears to be completed at present, the other two sections to be constructed when the necessity therefor appears. Each section is to be provided with fourteen stalls or *tiendas*, the stalls being 4 meters wide and 5 meters long and separated from each other by substantial partitions or walls. The fourteen stalls of each section are under one roof and

are separated from the main open market-shed by an alley about 8 meters wide. These are the stalls which the defendant claims cannot be regarded as part of a public market because they are intended for continuous and permanent use.

That stalls of the size and construction indicated are not intended to be rented from day to day, but are designed for more permanent occupation and use is quite obvious. But both the market and the stalls are of standard design, *i. e.*, the design and construction adopted by the Government for municipal markets in general, and stalls such as the ones in question must therefore be considered essential component parts of a modern public market in these Islands. We do not think there can be any doubt whatever that authority to condemn land for a market site also includes the right to take land for sites for stalls, which by the Government authorities are considered necessary for the proper operation of public markets, and which are now generally understood to form a part of such markets, irrespective of the fact that in ancient times a different conception of the necessary features of markets may have prevailed.

The third assignment of error relates to the amount of the damages awarded the appellant. The findings of the court below upon this point appear to be sufficiently supported by the evidence and we see no reason to disturb them.

The judgment appealed from is affirmed with the costs of this instance against the appellant Constancio Benito. So ordered.

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