

43 Phil. 277

[G. R. No. 18664. March 31, 1922]

MARIA GONZALEZ, PETITIONER, VS. THE DIRECTOR OF LANDS, RESPONDENT.

D E C I S I O N

ROMUALDEZ, J.:

This is an action for mandamus, originally commenced in this court, to compel the Director of Lands to issue a certificate of title to the herein petitioner over lot No. 271, under the provisions of sections 12 and 16 of Act No. 1120, with costs.

In his answer to this petition, the respondent, through his counsel, the Attorney-General, denies generally and specifically the facts alleged by the petitioner and asks for the dismissal of the action with the costs against the petitioner.

A dispute having thus arisen as to the facts, this court commissioned its clerk to receive, after due notice to the parties, the evidence which they might desire to present. Consequently, both parties introduced their evidence, from which the following facts appear:

On the 26th of January, 1909, the Director of Lands agreed to sell to Francisco. Gonzalez, the father of the petitioner, lot No. 271, now in question, for the price of eighty-four pesos (P84), payable in nineteen yearly installments. Payments on these installments were made until the amount of the price was fully paid.

The aforesaid lot No. 271 adjoins lot No. 270, for the purchase of which Pablo Manguerra has applied. It was found by Pablo Manguerra that the *camarin* (shed) which ought to be within lot No. 270 covered by his application, was within lot No. 271, that is to say, that the boundaries of this lot No. 271 should be so fixed as not to include the said *camarin*, which, the petitioner admits, does not belong to her, nor to her predecessor in interest, Francisco Gonzalez.

In a letter dated August 20, 1919, the Director of Lands advised Francisco Gonzalez of this error, committed in the survey of these two lots, and since then negotiations have been held with a view to an amicable settlement, to which the petitioner seems to be opposed, alleging that the *camarin* belongs to the brother of her father, but that the latter is the owner of the land on which it is situated.

There exists, therefore, a controversy as to whether the *camarin* in question should, or should not, be included in lot No. 271, that is, as to what the true limits of this lot should be. This being the case, the object which is the subject-matter of this contract of sale is not definite, and the duty of the respondent to issue the title in question not yet clear.

Whether the Director of Lands may, or may not, have contracted any obligation under this sale, is not a matter to be decided in this proceeding. The question is whether or not the Director of Lands has the ministerial duty to issue the title claimed. And we believe that no such duty exists as yet under the aforesaid circumstances.

It appears from the record that the Director of Lands refuses to issue the title in question for the reason that it has not as yet been finally decided whether the land occupied by the aforesaid *camarin* must be included in lot No. 271, or in lot No. 270, the purchase of which has been applied for by different purchasers. Act No. 1120, specially sections 7, 11, and 12 thereof, gives the Director of Lands ample discretion to decide this question. Applying analogous statutes and solving a question similar to that under consideration, the Federal Supreme Court decided this point in *In re Emblen*, laying down, among others, the following doctrine:

“The determination of the contest between the claimants of conflicting rights of pre-emption, as well as the issue of a patent to either, was within the general jurisdiction and authority of the land department, and cannot be controlled * * * by mandamus * * *.” (*In re Emblen*, 161 U. S., 52, 56; 40 L. ed., 613.)

We find that the writ applied for cannot be issued in this proceeding; wherefore the petition is dismissed with costs against the petitioner. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.

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