

XVII

*Urban Estates, Inc., Petitioner vs. Agustin P. Montesa and the City of Manila, Respondents, G. R. L-3830, March 15, 1951.*

EXPROPRIATION PROCEEDINGS; MOTION TO DISMISS; EVIDENCE ON TO MOTION DISMISS.—U, the owner of the

division sought to be expropriated, alleged and offered to prove in support of his motion to dismiss (1) the true and fair market value; (2) that one-half of its total area has been already sold at a very fair and reasonable price, some lots having been paid for in full and down payments having been made on others; and (3) that a big portion of the tract is reserved for playground as evidenced by Plan duly approved by the National Urban Planning Commission and the Director of Lands. The trial court refused to receive evidence on these allegations on the theory that a motion to dismiss assumes the truth of the facts stated in the complaint. HELD: In expropriation proceedings "each defendant, in lieu of an answer, shall present in a single motion to dismiss... all of his objections and defenses to the right of the plaintiff, to take his property for the use specified in the complaint" (Rule 69, sec. 4). "The ascertainment of the necessity must precede or accompany, and not follow, the taking of the land" (City of Manila v. Chinese Community of Manila, 40 Phil. 349). As the City itself, the plaintiff, objected to the substantiation of the facts set forth in the motion to dismiss, and since on their face and by their nature these facts are based on documentary proof, they can be taken for granted instead of remanding the case to the court below for further proceeding.

2. EXPROPRIATION; NECESSITY FOR.—"The very foundation of the right to exercise eminent domain is a genuine necessity, and that necessity must be of a public character" (City of Manila v. Chinese Community of Manila, 40 Phil. 349). The decisions in *Guido v. Rural Progress* (L-2089, Oct. 31, 1949), *Commonwealth v. Arellano Law College* (L-2929, Feb. 28, 1950), warned of the tendency to expand the construction of section 4, Article XIII, of the Constitution "to the limit of its logic." The Constitution contemplates large-scale purchases or condemnation of lands with a view to agrarian reforms and the alleviation of acute housing shortage. These are vast social problems with which the Nation is vitally concerned and the solution of which would redound to the common weal. Condemnation of private lands in a makeshift or piecemeal fashion, random taking of a small lot here and a small lot there to accommodate a few tenants or squatters is a different thing. This is true be the land urban or agricultural. The first sacrifices the rights and interests of one or a few for the good of all; the second is deprivation of a citizen of his property for the convenience of another citizen or a few other citizens without perceptible benefit to the public. The first carries the connotation of public

use; the last follows along the lines of a faith or ideology alien to the institution of property and the economic and social systems consecrated in the Constitution and embraced by the great majority of the Filipino people.

3. ID.; ID.;—Wherein resorting to expropriation, the city government was prompted, not by the unwillingness of the owners to part with their property but by the inability of the present tenants or squatters to meet the owner's price, expropriation proceeding is not proper. The City cannot acquire land, by the simple expedient of eminent domain, for a price far below the capital invested therein and sell it at cost to help the homeless who may have been forced to migrate from the provinces in search of safer haven in this city. If the price of lots for sale is beyond the reach of some people who want to buy, the City cannot bring down the price to the level the poor could afford. That the city authorities have no power to do such thing, however altruistic may be the motive behind their action, seems too obvious for argument.

4. ID.; PARTIES.—In expropriating a subdivision, if the intention is to expropriate the lots that have been disposed of but have not been fully paid for, along with the rest of the entire tract, the purchasers should be made parties.

*Gibbs, Gibbs, Chuidian and Quasha* for petitioner.

*City Fiscal Eugenio Angeles and Assistant Fiscal Eulogio S. Serrano* for respondents.

#### DECISION

TUASON, J.:

This case, brought here on appeal from an order of Judge Agustin P. Montesa denying defendant's motion to dismiss, concerns the authority of the City of Manila to expropriate a tract of land situated within the city limits and having an area of 49,553.10 square meters, more or less.

Urban Estates, Inc., defendant, alleged and offered to prove in support of its motion to dismiss, that the true, fair market value of the property in question is P1,002,074.00 and the assessed value P363,150.00; that this land is mortgaged to Juan E. Tuason for P470,530.00 and is used to secure an overdraft with the People's Bank & Trust Co. in the sum of P150,000.00, so that it has at least a loan value of P620,530.00; that the said land is a subdivision property and one-half of its total area has been sold already at a very fair and reasonable price, some lots having been paid for in full and down payments having been made on others; and that a big portion of the tract is reserved for playground as evidenced by Plan Psd-24832 duly approved by the National Urban Planning Commission and the Director of Lands.

But the trial court refused to receive evidence on these allegations on the theory that they were improperly made in a motion to dismiss; the court was of the opinion that a motion to dismiss assumes the truth of the facts stated in the complaint.

Section 4, Rule 69, of the Rules of Court, entitled "Defenses and Objections" provides: "Within the time specified in the summons, each defendant, in lieu of an answer, shall present in a single motion to dismiss or for other appropriate relief, all of his objections and defenses to the right of the plaintiff to take his property for the use specified in the complaint. All such objections and defenses not so presented are waived. A copy of the motion shall be served on the plaintiff's attorney of record and filed with the court with the proof of service." And in the City of Manila v. Chinese Community of Manila, 40 Phil. 349, this Court laid down this rule: "The very foundation of the right to exercise eminent domain is a genuine necessity, and that necessity must be of a public character. The ascertainment of the necessity must precede or accompany and not follow, the taking of the land." The Court cited this passage in Blackstone's Commentaries: "So great is the regard of the law for private property that it will not authorize the least violation of it, even for the public good, unless there exists a very great necessity thereof."

As the City itself, the plaintiff, objected to the substantiation

of the facts set forth in the motion to dismiss, and since on their face and by nature these facts are based on documentary proof, we will take them for granted instead of remanding the case to the court below for further proceeding.

The matter of the right of the Government to condemn urban private lands for subdivision or resale to private persons has been discussed so extensively in Guido v. Rural Progress Administration, G. R. No. L-2089, De Borja v. Commonwealth of the Philippines, G. R. No. L-1496, and Arellano Law Colleges v. City of Manila, G. R. No. L-2929, that we should think the question is no longer open, at least as far as inferior courts are concerned. Lest those decisions may have been misread or misconstrued, a few remarks are in order in further elucidation of their meaning.

The Guido, De Borja and Arellano Colleges decisions expressly recognize the power of the Government to expropriate urban lands or rural estates for subdivision into lots. What those decisions emphasize is the distinction, set in broad outline, between taking that inures to the welfare of the community at large and taking that benefits a mere handful of people bereft of public character. In explaining the distinction we mentioned public benefit, public utility, or public advantage as the universal test of the exercise of the right of eminent domain, and warned of the tendency to expand the construction of Section 4, Article XIII, of the Constitution "to the limit of its logic."

It is a matter of common knowledge that there were and there are lands, comprising whole towns and municipalities, which were or are owned by one man or a group of men from whom their inhabitants hold the lots on which their homes are built as perpetual tenants. These are urban lands. And there are private lands which it may be necessary in the public interest for the Government to convert into townsites and the townsites into house lots. It is also a matter of past and contemporary history that feudalism has been the root cause of popular discontent that led to revolutions and of present unrest and political and social disorders.

It was such lands taken for such purpose which we said the framers of the Constitution had in mind and which the National Government and, with appropriate legislative authority, the cities and municipalities may condemn. We stated that it is economic slavery, feudalistic practices, endless conflicts between landlords and tenants, and allied evils which it is the authority, nay the duty, of the State to abolish by acquiring landed estates by purchase if possible or by condemnation proceedings if necessary.

In brief, the Constitution contemplates large-scale purchases or condemnation of lands with a view to agrarian reforms and the alleviation of acute housing shortage. These are vast social problems with which the Nation is vitally concerned and the solution of which would redound to the common weal. Condemnation of private lands in a makeshift or piecemeal fashion, random taking of small lot here and small lot there to accommodate a few tenants or squatters is a different thing. This is true be the land urban or agricultural. The first sacrifices the rights and interest of one or a few for the good of all; the second is deprivation of a citizen of his property for the convenience of another citizen or a few other citizens without perceptible benefit to the public. The first carries the connotation of public use; the last follows along the lines of a faith or ideology alien to the institution of property and the economic and social systems consecrated in the Constitution and embraced by the great majority of the Filipino people.

Strickley v. Highland Boy Gold Min. Co., 50 Law Ed. 581, cited to bolster the plaintiff-appellee's case, is in reality against its content. In that case the finding was that the plaintiff was a "carrier for itself and others (and) that the line (right of way) is dedicated to carrying for whatever portion of the public may desire to use it." The expropriation in that case was thus affected with public use and public interest. Our own railroad companies have been conferred with power of eminent domain.

Clark v. Nash, 49 Law Ed. 1085, mentioned in Strickley v. Highland Boy Min. Co. was a case in which the Supreme Court of

Utah had found and decided that the plaintiff was "entitled to a decree condemning a right of way through defendant's said ditch, to the extent of widening said ditch one foot more than its present width, and to a depth of said ditch now constructed through the entire length thereof down to plaintiff's said land, for the purpose of carrying his said waters of said Fort Canyon creek to the land of the plaintiff for the purpose of irrigation, and is entitled to an easement therein to the extent of the enlarging of said ditch, and for the purposes aforesaid, and to have a perpetual right of way to flow waters therein to the extent of the said enlargement." This was the background of Mr. Justice Holmes' statement "that there might be exceptional times and places in which the very foundations of public welfare could not be laid without requiring concessions from individuals to each other upon due compensation." To condemn private land and give it to another is a far cry from "the condemnation of the land of one individual for the purpose of allowing another individual to obtain waters from a stream in which he has an interest, to irrigate his land, which otherwise would remain absolutely valueless." Similar rights of riparian owners are expressly recognized by our own Civil Code independently of constitutions.

Attempts are made to differentiate this Court's recent decisions 2. from the present case. Actually the material differences which we can discern serve to show that there is less necessity for condemnation in this case than in either of the three cases before referred to, from the standpoint of the persons intended to be favored, let alone the public. In the first place, it has been seen that the land sought to be condemned here has actually been subdivided by its owners, who have spent considerable money for its improvements and in the laying out of streets, and is being offered for sale. Some lots in fact have already been sold and paid for in full or in part. The people on whose behalf this action has been instituted could acquire the remaining lots by direct purchase from the defendant like those purchasers.

In the face of these circumstances, it would appear that in resorting to expropriation, the plaintiff was prompted, not by the unwillingness of the owners to part with their property but by the inability of the present tenants or squatters to meet the owner's price. By the simple expedient of eminent domain, the City would acquire the land for a price far below the capital invested therein and sell it at cost to help the homeless who, it is said in the appealed decision, have been forced to migrate from the provinces in search of safer haven in this city. What all this adds up to then is ceiling price for lands. If the price of lots for sale is beyond the reach of some people who want to buy, the City would bring down the price to the level the poor could afford. That the city authorities have no power to do such thing, however altruistic may be the motive behind their action, seems too obvious for argument.

In the second place, the remaining lots after eliminating the lots that have already been alienated, are said to be about one-half of the entire subdivisions or smaller than the land involved in the Guido case. If the intention is to expropriate the lots that have been disposed of but have not been fully paid for, along with the rest of the entire tract, the purchasers have not been made parties, unlike the buyers to whom title has been issued and who have been included in the complaint but as to whose lots the complaint has been dismissed.

The order is reversed and the action dismissed with costs of 3. both instances against the plaintiff.

*Moran, Paras, Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, — J.J.*