412 Phil. 667

SECOND DIVISION

[G.R. No. 146062, June 28, 2001]

SANTIAGO ESLABAN, JR., IN HIS CAPACITY AS PROJECT MANAGER OF THE NATIONAL IRRIGATION ADMINISTRATION, PETITIONER, VS. CLARITA VDA. DE ONORIO, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review of the decision[1] of the Court of Appeals which affirmed the decision of the Regional Trial Court, Branch 26, Surallah, South Cotabato, ordering the National Irrigation Administration (NIA for brevity) to pay respondent the amount of P107,517.60 as just compensation for the taking of the latter's property.

The facts are as follows:

Respondent Clarita Vda. de Enorio is the owner of a lot in Barangay M. Roxas, Sto. Niño, South Cotabato with an area of 39,512 square meters. The lot, known as Lot 1210-A-Pad-11-000586, is covered by TCT No. T-22121 of the Registry of Deeds, South Cotabato. On October 6, 1981, Santiago Eslaban, Jr., Project Manager of the NIA, approved the construction of the main irrigation canal of the NIA on the said lot, affecting a 24,660 square meter portion thereof. Respondent's husband agreed to the construction of the NIA canal provided that they be paid by the government for the area taken after the processing of documents by the Commission on Audit.

Sometime in 1983, a Right-of-Way agreement was executed between respondent and the NIA (Exh. 1). The NIA then paid respondent the amount of P4,180.00 as Right-of-Way damages. Respondent subsequently executed an Affidavit of Waiver of Rights and Fees whereby she waived any compensation for damages to crops and improvements which she suffered as a result of the construction of a right-of-way on her property (Exh. 2). The same year, petitioner offered respondent the sum of P35,000.00 by way of amicable settlement pursuant to Executive Order No. 1035, §18, which provides in part that¾

> Financial assistance may also be given to owners of lands acquired under C.A. 141, as amended, for the area or portion subject to the reservation under Section 12 thereof in such amounts as may be determined by the implementing agency/instrumentality concerned in consultation with the Commission on Audit and the assessor's office concerned.

Respondent demanded payment for the taking of her property, but petitioner refused to pay. Accordingly, respondent filed on December 10, 1990 a complaint

against petitioner before the Regional Trial Court, praying that petitioner be ordered to pay the sum of P111,299.55 as compensation for the portion of her property used in the construction of the canal constructed by the NIA, litigation expenses, and the costs.

Petitioner, through the Office of the Solicitor-General, filed an Answer, in which he admitted that NIA constructed an irrigation canal over the property of the plaintiff and that NIA paid a certain landowner whose property had been taken for irrigation purposes, but petitioner interposed the defense that: (1) the government had not consented to be sued; (2) the total area used by the NIA for its irrigation canal was only 2.27 hectares, not 24,600 square meters; and (3) respondent was not entitled to compensation for the taking of her property considering that she secured title over the property by virtue of a homestead patent under C.A. No. 141.

At the pre-trial conference, the following facts were stipulated upon: (1) that the area taken was 24,660 square meters; (2) that it was a portion of the land covered by TCT No. T-22121 in the name of respondent and her late husband (Exh. A); and (3) that this area had been taken by the NIA for the construction of an irrigation canal.[2]

On October 18, 1993, the trial court rendered a decision, the dispositive portion of which reads:

> In view of the foregoing, decision is hereby rendered in favor of plaintiff and against the defendant ordering the defendant, National Irrigation Administration, to pay to plaintiff the sum of One Hundred Seven Thousand Five Hundred Seventeen Pesos and Sixty Centavos (P107,517.60) as just compensation for the questioned area of 24,660 square meters of land owned by plaintiff and taken by said defendant NIA which used it for its main canal plus costs.[3]

On November 15, 1993, petitioner appealed to the Court of Appeals which, on October 31, 2000, affirmed the decision of the Regional Trial Court. Hence this petition.

The issues in this case are:

1. WHETHER OR NOT THE PETITION IS DISMISSIBLE FOR FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION 5, RULE 7 OF THE REVISED RULES OF CIVIL PROCEDURE.

2. WHETHER OR NOT LAND GRANTED BY VIRTUE OF A HOMESTEAD PATENT AND SUBSEQUENTLY REGISTERED UNDER PRESIDENTIAL DECREE 1529 CEASES TO BE PART OF THE PUBLIC DOMAIN.

3. WHETHER OR NOT THE VALUE OF JUST COMPENSATION SHALL BE DETERMINED FROM THE TIME OF THE TAKING OR FROM THE TIME OF THE FINALITY OF THE DECISION.

4. WHETHER THE AFFIDAVIT OF WAIVER OF RIGHTS AND FEES EXECUTED BY RESPONDENT EXEMPTS PETITIONER FROM MAKING PAYMENT TO THE FORMER.

We shall deal with these issues in the order they are stated.

First. Rule 7, §5 of the 1997 Revised Rules on Civil Procedure provides ¾

> *Certification against forum shopping*. ¾ The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report the fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing . . . .

By reason of Rule 45, §4 of the 1997 Revised Rules on Civil Procedure, in relation to Rule 42, §2 thereof, the requirement of a certificate of non-forum shopping applies to the filing of petitions for review on certiorari of the decisions of the Court of Appeals, such as the one filed by petitioner.

As provided in Rule 45, §5, "The failure of the petitioner to comply with any of the foregoing requirements regarding . . . the contents of the document which should accompany the petition shall be sufficient ground for the dismissal thereof."

The requirement in Rule 7, §5 that the certification should be executed by the plaintiff or the principal means that counsel cannot sign the certificate against forum-shopping. The reason for this is that the plaintiff or principal knows better than anyone else whether a petition has previously been filed involving the same case or substantially the same issues. Hence, a certification signed by counsel alone is defective and constitutes a valid cause for dismissal of the petition.[4]

In this case, the petition for review was filed by Santiago Eslaban, Jr., in his capacity as Project Manager of the NIA. However, the verification and certification against forum-shopping were signed by Cesar E. Gonzales, the administrator of the agency. The real party-in-interest is the NIA, which is a body corporate. Without being duly authorized by resolution of the board of the corporation, neither Santiago Eslaban, Jr. nor Cesar E. Gonzales could sign the certificate against forum-shopping accompanying the petition for review. Hence, on this ground alone, the petition

should be dismissed.

Second. Coming to the merits of the case, the land under litigation, as already stated, is covered by a transfer certificate of title registered in the Registry Office of Koronadal, South Cotabato on May 13, 1976. This land was originally covered by Original Certificate of Title No. (P-25592) P-9800 which was issued pursuant to a homestead patent granted on February 18, 1960. We have held:

> Whenever public lands are alienated, granted or conveyed to applicants thereof, and the deed grant or instrument of conveyance [sales patent] registered with the Register of Deeds and the corresponding certificate and owner's duplicate of title issued, such lands are deemed registered lands under the Torrens System and the certificate of title thus issued is as conclusive and indefeasible as any other certificate of title issued to private lands in ordinary or cadastral registration proceedings.[5]

The Solicitor-General contends, however, that an encumbrance is imposed on the land in question in view of §39 of the Land Registration Act (now P.D. No. 1529, §44) which provides:

> Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free from all encumbrances except those noted on said certificate, and any of the following encumbrances which may be subsisting, namely:
>
> . . . .
>
> *Third*. Any public highway, way, private way established by law, or any government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, irrigation canal or lateral thereof, have been determined.

As this provision says, however, the only servitude which a private property owner is required to recognize in favor of the government is the easement of a "public highway, way, private way established by law, or any government canal or lateral thereof where the certificate of title does not state that the boundaries thereof have been pre-determined." This implies that the same should have been *pre-existing* at the time of the registration of the land in order that the registered owner may be compelled to respect it. Conversely, where the easement is *not pre-existing* and is sought to be imposed only after the land has been registered under the Land Registration Act, proper expropriation proceedings should be had, and just compensation paid to the registered owner thereof.[6]

In this case, the irrigation canal constructed by the NIA on the contested property was built only on October 6, 1981, several years after the property had been registered on May 13, 1976. Accordingly, prior expropriation proceedings should have been filed and just compensation paid to the owner thereof before it could be taken for public use.