

FIRST DIVISION

[G.R. No. 116417, October 18, 2000]

ALBERTO MAGLASANG, JR., PETITIONER, VS. HON. MERCEDES GOZO DADOLE, PRESIDING JUDGE, REGIONAL TRIAL COURT, CEBU, BRANCH 28, MANDAUE CITY, AND CONSUELO Q. PABROA, RESPONDENTS.

D E C I S I O N

PARDO, J.:

The case under consideration is a special civil action for certiorari assailing the order of the Regional Trial Court, Cebu, Branch 28, Mandaue City^[1] approving the commissioner's report and ordering the demolition of a structure constructed by Alberto Maglasang, Jr., for obstructing the road right of way.

On July 15, 1988, Alberto Maglasang, Jr. filed with the Regional Trial Court, Cebu, Mandaue City a petition for the cancellation of the inscription of a permanent lien of a right of way on Transfer Certificate of Title No. T-62901 of the Office of the Register of Deeds of the Province of Cebu in the name of the petitioner, covering a parcel of land situated in Consolacion, Cebu.^[2]

On September 28, 1988, Consuelo Q. Pabroa filed an opposition, alleging that she owned one of the lots adjoining petitioner's land and that the permanent lien of a right of way should not be cancelled because the road on which a portion of petitioner's property extends is used by the adjoining landowners as the only outlet to the national highway.^[3]

After conducting several hearings, the trial court noted that the only access to the national highway was through the road right of way located on the property of petitioner Alberto Maglasang, Jr. and spouses Jose M. Quiapo and Sinfrosa Flores. Thus, on October 2, 1989, the trial court denied the petition for cancellation of lien.^[4]

Upon appeal, the Court of Appeals affirmed the decision of the trial court.^[5] Not satisfied, Alberto Maglasang, Jr. filed a petition for review with this Court.^[6] On August 26, 1991, the Court denied the petition.^[7] On October 4, 1991, petitioner filed a motion for reconsideration.^[8] However, on October 21, 1991, the Court denied the motion for reconsideration.^[9] On November 13, 1991, the decision became final.^[10]

On February 12, 1993, Consuelo Q. Pabroa filed with the trial court a motion for execution. On March 2, 1993, she filed another motion for execution with prayer for immediate demolition of illegal structures.^[11] Respondent Pabroa alleged that while awaiting the enforcement of the writ of execution of the order dated October 2,

1989, petitioner Maglasang built a concrete hollow block fence obstructing the two-meter permanent right of way.

The trial court did not rule on the motion for execution, but instead, ordered the appointment of a commissioner to conduct an ocular inspection of the land in question. By agreement of the parties, the trial court appointed its clerk of court, Atty. Bonifacio Go Virtudes, to perform the task. Subsequently, Atty. Virtudes submitted a commissioner's report dated March 18, 1993.^[12] However, petitioner interposed numerous objections to the report.

Consequently, on April 14, 1993, the trial court ordered the appointment of a geodetic engineer to conduct a relocation survey of the land, subject of a right of way in accordance with the order of the trial court dated October 2, 1989.^[13]

On November 23, 1993, geodetic engineer Cesar V. Tecson submitted a commissioner's report.^[14] On December 6, 1993, petitioner filed an opposition to the report.^[15]

On January 7, 1994, the trial court ordered geodetic engineer Tecson to conduct another relocation survey of the land.

On January 24, 1994, Engineer Tecson submitted his report, adopting the findings of the first survey.^[16] Consequently, on February 4, 1994, petitioner filed a reiteration of his opposition, alleging that the surveyor was biased and that an approval of the commissioner's report would be tantamount to amending the substance of the original order which had long become final and irreversible.^[17]

On July 22, 1994, the trial court issued the questioned order, approving the commissioner's report. The order stated:

"Finally, since per findings of the commissioner as contained in his reports dated November 23, 1993 and January 24, 1994, a structure has been constructed by the petitioner which has in a way obstructed the subject road right of way, the same must have (sic) to be demolished in order that the road right of way be established completely.

"WHEREFORE, foregoing premises considered, Order is hereby issued:

"1) Approving the commissioner's report dated November 23, 1993 and the reiteration on the commissioner's report dated January 24, 1994;

"2) Ordering the petitioner to reimburse oppositor's share in the commissioner's fee in the amount of P1,750.00 per court's order dated April 14, 1992; and,

"3) Ordering the petitioner to demolish the structure which he has constructed on the road right of way within ten (10) days from receipt of this order; otherwise, after the lapse of ten (10) days without him complying with this order, the said structure will be demolished by the Sheriff of this court at petitioner's expense.