

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
ENRIQUE LARA, ET ALS., DEFENDANTS-APPELLANTS.***G.R. No. L-5080. November 29, 1954*

Ponente: REYES, J.B.L., J.

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The Republic of the Philippines as well as defendants Enrique Lara, et al., are appealing from the decision of the Court of First Instance of Batangas, in its Civil Case No. 43, filed by the Republic for the expropriation of a large area of land (covering 187 parcels) located in Lipa City, upon which the Armed Forces of the Philippines constructed and now operates and maintains the Fernando Air Base.

The land in question was, during the later part (1943) of the Japanese occupation, occupied by the enemy forces and converted into a campsite and airfield. The houses along the National Highway and the provincial roads were destroyed, and the fruit trees, orchards, and sugar crops cut down; in place thereof, the Japanese forces built concrete airstrips, concrete taxi-ways, dug-outs, canals, concrete ramps, ditches, gravel roads, and air raid shelters.

The battle for the liberation added to the devastation of the area in question. Upon liberation, the United States Army took possession of the airfield; and on July 4, 1946, the air base was handed over by the U. S. government to the Armed Forces of the Philippines. The Philippine Army then took steps to negotiate for the purchase of the area for the purpose of constructing thereat a permanent air base. A committee was appointed to make an appraisal of the parcels covered; several land-owners sold their properties to the government at the prices fixed by the Appraisal Committee. The extrajudicial negotiations, however, fell through with respect to the greater majority of the land owners, who did not want to accept the prices offered by the government; hence, steps were taken towards the filing of the complaint for expropriation. On July 9, 1949, the complaint was finally filed in the Court of First Instance of Batangas, describing in detail the 187 parcels sought to be expropriated. On August 5, 1949, the lower Court fixed the provisional value of the parcels in question at P117,097.52, which amount the plaintiff deposited with the Philippine National Bank to the credit of the City Treasurer of Lipa. As none of the defendants questioned the purpose of the expropriation in their respective answers, the lower Court appointed three commissioners to view the land, hear the evidence, and ascertain the just and reasonable compensation for the properties sought to be taken. In the meantime, many of the defendants, with the approval of the Court, made withdrawals from the provisional deposit made by the government.

On February 9, 1951, the Commissioners submitted their report to the Court below, classifying the parcels in question into residential and agricultural, and recommending as fair and reasonable market value: (1) for residential lands, P1.00 per square meter; (2) for agricultural lands within 500 meters from either the National Highway going to Batangas or the provincial road leading to the town of Mataas na Kahoy (designated as "Group A"), P2,500 a hectare or P0.25 per square meter; and (3) for the rest of the agricultural lands (designated as "Group B"), P2,000 a hectare or P0.20 per square meter. The Commissioners further recommended the payment of 6% interest per annum to the defendants on the amount awarded or remaining payable computed from November 17, 1949 the payment of P200 on each parcel of which only a portion was being expropriated, as

consequential damages, plus the expenses for the subdivision and issuance of new certificates of title and the indemnification to some defendants of the value of fruit trees found on their lands.

Both parties objected to the report; but the lower Court on March 31, 1951 rendered its decision, accepting most of the recommendations of the Commissioners on the just and reasonable compensation for the parcels expropriated, as well as the payment of consequential damages to some of the defendants, and of 6% interest to all of them on the amounts awarded and unpaid; but rejected the report insofar as it recommended the payment of P12.00 per square meter for the concrete airstrip, taxi-way, and ramp built by the Japanese forces on some of the parcels in question; the indemnification for the value of fruit trees found on the lands of some of the defendants; and the payment of the expenses for the subdivision and issuance of new certificates of title to those whose lands were only partially expropriated. Both the plaintiff and the defendants (with the exception of Eliseo Silva, Enrique Lumbea, the Teru brothers, and Eleno Dizon) in time perfected their joint appeal to this Court.

The basic dispute naturally lies on the reasonable value of the lands sought to be expropriated, with the question of the extent of damages and interest payable to the defendants as a secondary issue. The main propositions submitted by the plaintiff-appellant are as follows:

- (1) None of the parcels sought to be expropriated were residential at the time of the expropriation;
- (2) The value of the land expropriated must be reckoned as of the time of the actual possession thereof by the plaintiff in 194-6, and not as of the time of the filing of the complaint in 1949;
- (3) The lower Court awarded to some of the defendants unproved consequential damages but failed to consider the consequential benefits;
- (4) The interest, that should be awarded to the defendants should be computed only on the amount due to them in excess of the provisional deposit made after the filing of the complaint.

On their part, the defendants-appellants raise the following questions:

- (1) The lower Court should have awarded at least P1.70 per square meter for residential lots; P4,000 a hectare or P0.40 per square meter for agricultural lands under "Group A"; and P3,500 a hectare or P0.35 per square meter for agricultural lands under "Group B";
- (2) The lower Court should have awarded compensation of at least P5.00 per square meter for the concrete airstrip, rampways, and taxiways found on some of the parcels in question;
- (3) Some of the lots should have been classified as residential instead of agricultural; and others which are near or along the provincial road should be classified under "Group A" instead of under "Group B" agricultural lands;
- (4) In fixing the just compensation for the parcels in question, the lower Court should have taken into account the fact that said lots are already valuable for and adapted to airfield purposes; that plaintiff did not pay any rentals from July 4, 1946 when it took possession, up to November 21, 1949, when the trial court authorized it to take possession; and that many of the defendants-appellants have been rendered landless by the expropriation of their sole landholdings.

Plaintiff-appellant's first argument that none of the parcels in question should be classified as residential because at the time they were taken, they were no longer Sit for residential purposes, is without merit. According to the findings of the Commissioners appointed by the Court below, before the war and up to September, 1943, when the Japanese occupied the area in question and converted the same into an air field, there were houses 20 to 30 years old along the National Highway leading to Lipa, Batangas, and the provincial road to Mataas na Kahoy; and it appears from the evidence that after the war, the defendants would have again built their homes on these lands

had not the Army authorities restrained them from doing so. Furthermore, the residential nature of the lands along these two roads is, as found by the Court a quo, borne out not only by the topography of the land and other advantages mentioned in the Commissioners' Report, but also by the tax declarations Exhs. R to R-128, (presented by the plaintiff-appellant as its evidence without qualification), based on a general revision throughout the country in accordance with a schedule of values approved by the Secretary of Finance (Record on App., p. 781), and not upon declaration of the taxpayers. It is of no moment that at the time the Philippine Army took possession of the whole area in question, it had thoroughly cleared and converted into an airfield by the Japanese enemy forces; and that the battle for liberation left the area even more devastated that it was not then fit for residential purposes. As we have held in *Republic vs. Garcia*, L-3526, March 27, 1952,

"Nor is the absence of private houses a decisive factor in the classification of land as agricultural or residential. Under the circumstances of this case, the important consideration is the use to which the land was dedicated before the war and the use to which it could have been dedicated thereafter if it had not been taken by the U.S. Army."

Plaintiff-appellant's second argument—that the value of the lands expropriated must be reckoned as of the time of the actual possession by it in 1946 and not as of the time of the filing of this complaint in 1949—is, however, well taken. We believe the Court below erred in holding that because Sec. 5 of Rule 69 now provides that the payment of just compensation must be determined as of the date of the filing of the complaint, our ruling in the case of *Provincial Government vs. Caro*, 58 Phil. 308,, is deemed superseded. Ordinarily, inquiry is limited to actual market values at the time of the institution of the condemnation proceedings because, under normal circumstances, the filing of the complaint coincides or even precedes the taking of the property by the plaintiff; and Rule 69 simply fixes this convenient date for the valuation of property sought to be expropriated. Where, however, the actual taking or occupation by the plaintiff, with the consent of the landowner, long precedes the filing of the complaint for expropriation, the rule to be followed must still be that enunciated by us in *Provincial Government of Rizal vs. Caro*, supra, that "the value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings". For where property is taken ahead of the filing of the condemnation proceedings, the value there- of may be by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken. This is the only way the compensation to be paid can be truly just; i.e., "just" not only to the individual whose property is taken, "but to the public, which is to pay for it" (18 Am. Jur. 873, 874).

The inquiry, therefore, is: What would be the reliable standard for determining the reasonable worth of the parcels in question when the plaintiff began occupying them in 1946? On this question, courts have consistently considered as competent evidence bona fide sales of nearby parcels at times sufficiently coeval to the taking as to exclude general changes of value; and we see no reason to divert from this rule, considering that neither the price that the owners ask for their property, nor the assessed value thereof, is relevant in determining the reasonable market value (*Manila Railroad Co. vs. Mitchel*, Phil. 801; *Mun. of Tarlac vs. Besa*, 55 Phil. 423).

The only deeds of sale of nearby lands presented by the plaintiff-appellant are Exhs. "B" to "M", executed during the years 1936 to 1941; and Exhs. "T" to "T-4", extrajudicial sales of some parcels within the Fernando Air Base made by the owners to the government before the filing of these proceedings at the prices offered by the Appraisal Committee of the Philippine Army. As correctly held by the Court below., these sales are incompetent in determining the reasonable value of the lands in question at the time they were taken in 1946. For, apart from

being unsupported by oral evidence, Exhs. "B" to "M" were made before the war, at least 5 years before the taking in this ease, and judicial notice may be taken of the fact that because of post war inflation, prewar prices of real estate had risen considerably in 1946 and subsequent years; while the sales Exhs. "T" to "T-4" are "in the nature of a compromise" to avoid the risk of legal proceedings and are not prices (of land) obtained by one who desires but is not obliged to sell it, and is bought by one who is under no necessity for having it" (*City of Manila vs. Estrada*, 25 Phil. 222-223).

Upon the other hand, the defendants-appellants presented Exhs. 2, 4, 13, 15, 16 and 21—Lingao, sales of nearby parcels in 1945, 1947, and 1948 to 1950, and duly identified by either the vendees or the vendors and affirmed as having been made in the ordinary course of business. We particularly note that Exh. 4—Lingao and Exh. 4—Lingao were made in 1945 and 1947 respectively, just a year before and after the actual occupation by the plaintiff of the parcels in question in 1946. Under Exh. 4—Lingao, a parcel of riceland located about one kilometer from the western boundary of the air base (t.s.n. p. 300) was sold for about P0.18 per square meter. In an effort to discredit this exhibit, plaintiff-appellant insists that this sale not only includes the land conveyed but also "the improvements" thereon. As correctly observed by the Court below however, the inclusion of the phrase "and the improvements" in the deed appears to have been a mere matter of form., for it is an undisputed fact that the whole area in question was so devastated after the liberation that no improvements could possibly have remained thereon in 1945 when Exh. 4—Lingao was made (See Plaintiff-Appellant's Brief, p. 8). The other exhibit, 21—Lingao, executed in 1947, is a sale of riceland about 500 meters from the nearest lot in the base (t.s.n. p. 499) at approximately P0.21 per square meter. It should be noted that the lands sold under these two deeds appear to be below the quality of the land covered by the air base, which the Commissioners found to be "first class sugar land" (t.s.n. pp. 203, 208, 287).

Now, while the other exhibits for the defendants-appellants are sales of neighboring agricultural lands during the years 1948 to 1950, they do not show any appreciable increase in price from those quoted in Exhs. 4 and 21—Lingao made in 1945 and 1947; the lands sold thereunder appear to be generally priced at about P0.20 per square meter. Hence, we see no error in the lower Court's approval of the recommendations of the Commissioners on the just and reasonable value of the parcels in question classified as agricultural land; that is, twenty-five centavos (P0.25) per square meter for Class A (within 500 meters from the road) and for Class B (beyond 500 meters) twenty centavos (P0.20) per square meter.

As to the value of the lots classified as residential by the Commissioners, the relevant transactions appearing on record are: Exh. 14—Lingao, sale made in 1949, at about P1.71 per square meter; Exh. 22—Lingao, dated 1950, at about P0.84 per square meter; Exh. 14—Reyes, dated February 8, 1948, at P1.00 per square meter; and Exh. 14—Reyes, a sale of residential land in 1950, at about the sale price. Upon this evidence, the value of one peso (P1.00) per square meter, adopted by the Commissioners and the Court below, appears adequately justified.

For the above reasons, we overrule the contention of defendants-appellants that the values of their respective parcels are higher than the prices recommended by the Commissioners on Appraisal appointed by the the Court below.

We also find untenable the argument of defendants-appellants that lots 6132—A, 6133, 6135—A, 6613, 6612, and 6609, which are located along the provincial road to Mataas na Kahoy, should be classified as residential. The findings of the Commissioners that these lands are adapted for residential purposes obviously cannot refer to the totality of said lots, some of which are thousands of square meters' in area, and hundreds of meters away from the road. It was incumbent upon the defendants to prove what portions of these lots are residential, but they have failed to do so. Hence, these parcels must be classified only as "Group A" agricultural lands. As the decision appealed from already includes lots 6132—A, 6133, 6135—A, and 6135—B under this category, it is to be modified

in the sense that Lots 6613, 6612, and 6609 should also be classified as "Group A" agricultural lands.

However, we find well-taken the error raised by the defendants-appellants that Lots Nos. 6604—A, 6606-A, 6010—A, 6611—A, 8445, and 6247—A should be classified as "Class A" agricultural lands (that is, lands found within 500 meters from the National Highway or the provincial roads) because the survey plan, Exh. V of the plaintiff, discloses that these lots are located within 500 meters from the provincial road to Mataas na Kahoy.

On the question of whether the owners of the parcels upon which the Japanese Army had built a concrete airstrip, runway, and taxiway should be compensated for the value of these improvements, we agree with the Court below that these improvements should be excluded as an element of appreciation or damage, on the ground that "the Republic of the Philippines as victor in the last war should be considered the legitimate successor to the properties owned by the Japanese in the Philippines" (Rec. on App., p. 783).

Defendants-Appellants insist that a belligerent occupant could not take private property without compensation; that the Japanese forces were possessors of their lands in bad faith; and that therefore, the improvements constructed thereon by them should, under our civil law, belong to the owners of the lands to which they are attached. This argument is untenable. In the first place, the rules of Civil Code concerning industrial accession were not designed to regulate relations between private persons! and a sovereign belligerent, nor intended to apply to constructions made exclusively for prosecuting a war, when military necessity is temporarily paramount. In the second place, while Art. 46 of the Hague Regulations provide that "private property may not be confiscated", confiscation differs from the temporary use by the enemy occupant of private land and buildings for all kinds of purposes demanded by the necessities of war (II Oppenheim, Int. Law, Lauterpacht Edition, sec. 140); thus, the U. S. War Department Rules of Land Warfare of 1940 provide that—

"the rule requiring respect for private property is not violated through damage resulting from operations, movements, or combats of the army; that is, real estate may be utilized for marches, camp sites, construction of trenches, etc. Buildings may be used for shelter for troops, the sick and wounded, for animals, for reconnaissance, cover defense, etc. Fences, woods, crops, buildings, etc. may be demolished, cut down, and removed to clear a field of fire, to construct bridges, to furnish fuel if imperatively needed for the army." (Quoted in Hyde, Int. Law, Vol. II, p. 1894).

Consequently, the Japanese occupant is not regarded as a possessor in bad faith of the lands taken from the defendants-appellants and converted into an airfield and campsite; its use thereof was merely temporary, demanded by war necessities and exigencies. But while the defendants-appellants remained the owners of their respective lands, the Republic of the Philippines succeeded to the ownership or possession of the constructions made thereon by the enemy occupant for war purposes, unless the treaty of peace should otherwise provide; and it is under no obligation to pay indemnity for such constructions and improvements in these expropriation proceedings.

With respect to the question of the propriety of the award of consequential damages to the owners of parcels which are only being partially expropriated, we do not think it was error for the Court below to award to each of these owners the sum of P200 as recommended by the Commissioners, to compensate them for the damages to their remaining land. The rule is clear that "where only a part of a parcel of land is taken by eminent domain, the owner is not restricted to compensation for the land actually taken; he is also entitled to recover for the damage to his remaining land. * * * And there is no requirement that this damage be special and peculiar, or such as should be actionable at common law it is enough that it is a consequence of the taking" (18 Am. Jur. 905; also, Jahrr on Eminent Domain, Vol. III, p. 133-134; 29 C.J.3. 976-981). As may be observed from the survey plan of these parcels (Exh. U of plaintiff), the partial expropriation would leave the residue of some of them without access to the roads; while the remaining portions of other parcels would be so irregular in shape or so small in area as to

greatly depreciate their practical worth and market value. It may be added that as the Commissioners who recommended the payment of consequential damages to these owners had the opportunity to view the premises and determine the extent to which these remaining portions have been damaged, their report and recommendation as to the payment of damages are naturally entitled to great weight.

As for the alleged consequential benefits that would accrue to these parcels as a result of the establishment of the air base by the plaintiff, in that the value of the properties in the vicinity has generally increased, and that people have started to live and construct houses outside the base, they are much too speculative and uncertain. The fact is that three years after the taking over of the area by the Government, the Commissioners only found on ocular inspection, temporary shacks (barong-barong) mostly used for gambling purposes. The increase in assessed values, moreover, was due to Government action and did not arise from voluntary admission of the taxpayers.

As its last assignment of error, plaintiff-appellant submits that the lower Court erred in ordering it to pay 6% interest on the amounts awarded and unpaid to the defendants, computed from the filing of the complaint on November 17, 1949. It is plaintiff-appellant's contention that it should be required to pay interest only on the balance of the aggregate value of the whole area in question, after deducting therefrom the sum of P117,097.52 which it had deposited at the commencement of these proceedings. On this question, this Court has held "in unequivocal terms that the owners of expropriated lands are entitled to recover interest from the date that the company exercising the right of eminent domain takes possession of the condemned lands, and the amounts granted by the court shall cease to earn interest only from the moment they are paid to the owners or deposited in court. (Philippine Railway Co. vs. Solon, 13 Phil. 311 and Philippine Railway Co. vs. Duran, 33 Phil. 156)." (Manila Railway Co. vs. Attorney-General, 41 Phil. 163). Applying this doctrine to the case at bar, the defendants-appellants should be paid legal interest on the amounts respectively awarded to them from the time the plaintiff took actual possession of their lands in July, 1946; the deposit by the plaintiff of the amount of P117,097.52 in 1949, however, stops the running of such interest with respect to the amount thus deposited.

Finally, the defendants-appellants claim that in fixing the reasonable compensation for the parcels being expropriated, the following facts should be considered (1) that said lots are already valuable for and adapted to airfield purposes; (2) that plaintiff did not pay any rentals from July 4, 1946, when it began occupying the whole area; and (3) that many defendants-appellants have been rendered landless by these proceedings.

With respect to the first point, "the value of the land taken to the party taking it is not the test of what should be paid, nor should the fact that the land is desired or needed for a particular public use be considered when it is taken for that use. The necessities of the public or of the party seeking to condemn land cannot be taken into consideration in fixing the value." (18 Am. Jur., pp. 881-882). On the second point raised, aside from the fact that there is no evidence whatever to determine the reasonable rentals on the parcels in question, the indemnity for such rentals is inconsistent with defendant's right to be paid legal interest on the value of their properties from the time of their actual taking in 1946; for if plaintiff-appellant is to pay on the compensation due to the defendants from the time of the actual taking of their property, the payment of such compensation is deemed to retroact to the actual taking of the property; hence, there is no basis for defendants' claim for rentals from the time of actual taking to the filing of the complaint in court. As to the last point, that many of the defendant-appellants have been rendered homeless and landless by these proceedings, it has been held that the inconvenience resulting from a loss of a home, of its sentimental value to the owner, is not a proper element of damage. "If the loss be merely the cost of moving from one place to another, that is made up to the owner by the use of the money which the corporation must pay to him before he is required to move and any other inconvenience of a more sentimental nature he is required to suffer for the public benefit." (Madisonville, H & E. R. Co. vs. Ross, 13 L.R.A. [N.S.] 420).

WHEREFORE, with the modification that Lots Nos. 6613, 6612, 6609, 6604-A, 6606-A, 6610-A, 6611-A, 8445,

and 6247-A should, be classified and valued as "Group-A" agricultural lands, the judgment appealed from is, in all other respects, affirmed. Let the records of this case be remanded to the Court of origin for a revaluation of the aforementioned lots in accordance with this opinion. Without costs in this instance.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes A., Jugo, Bautista Angelo, and Concepcion, JJ., concur.

Mr. Justice Labrador, did not take part.

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