

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH),
PETITIONER, VS. HON. FERNANDO L. FELICEN, PRESIDING JUDGE OF
RTC BRANCH 20, IMUS,...**

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the public respondent's Order[1] dated November 25, 2008 which denied petitioner's Urgent Motion for Issuance of Writ of Possession and the Order[2] dated January 29, 2009 which denied petitioner's Motion for Reconsideration.

The facts of the case:

The present case originated from petitioner's complaint (Civil Case No. 0062-04)[3] to expropriate 1,992 square meters out of a total area of 6,068 square meters of private respondent's land, covered by TCT No. T-821169, in Binakayan, Kawit, Cavite, for the construction of the Manila-Cavite Toll Expressway Project (MCTEP), R-1 Extension Expressway, Segment 4, from Bacoar to Kawit, Cavite, a public purpose authorized by law.

A second complaint (Civil Case No. 0100-04)[4] was filed by petitioner seeking to expropriate 2,450 square meters out of a total area of 9,039 square meters of private respondent's property covered by TCT No. T-821170, which adjoins the property being expropriated in the first case.

Subsequently, petitioner filed in both cases an Amended Complaint[5] claiming that the subject land originated from a Free Patent title and should be adjudicated to petitioner without payment of just compensation pursuant to Section 112 of Commonwealth Act (C.A.) No. 141.

On August 16, 2005, the trial court in Civil Case No. 0062-04 issued an Order[6] granting petitioner's Motion for Issuance of Order of Expropriation[7], pertinent portion of the ruling reads:

“Accordingly, plaintiff Republic of the Philippines, as represented herein by the Department of Public Works and Highways (DPWH) is hereby declared to have a lawful right to take the 1,992 square meters portion of the subject property, particularly segregated and delineated in Annex “C” of the Amended Complaint with all its improvements for the intended purpose of construction of R1 Extension Expressway, Segment 4, spanning the Municipalities of Bacoar and Kawit, both in the Province of Cavite, an avowedly public purpose.

No pronouncement as to just compensation considering that the subject property originated from a free patent, without any improvements, and as such, pursuant to Commonwealth Act 141, the said land shall be subject to a right-of-way not exceeding more than 60 meters in width for public highways.”

Private respondent moved for reconsideration but the same was denied in the Order[8] dated November 16, 2006.

A Motion for Issuance of Order of Expropriation[9] was likewise filed by petitioner in Civil Case No. 0100-04.

But before this could be resolved, petitioner moved to consolidate the two cases which was granted by the trial court.[10]

After almost two years later or on July 28, 2008, private respondent filed a Manifestation with Motion (For Clarification of the Order dated August 16, 2005)[11] alleging that although it does not oppose the ruling regarding the determination of public purpose and the petitioner's right to expropriate the subject land, private respondent however claims that it is entitled to just compensation relying on the legal opinion dated October 26, 2007 of then Solicitor General Eduardo Nachura, and that the use of the subject property as school premises already complies with the reservation for a legal easement under CA 141.

Petitioner filed its Comment[12] contending that Manifestation with Motion is in truth a veiled attempt to revive an appeal which it lost through gross inaction of its counsel, and its unexplained inaction in appealing the August 16, 2005 Order for more than three (3) years rendered its request for clarification stale.

Meanwhile, when the project contractor sought to implement the August 16, 2005 Order, private respondent's counsel sent a letter demanding the project contractor to vacate the premises of St. Vincent de Paul Colleges fronting the Kawit National High School, and to remove any structures and equipment found on the property.

Hence, petitioner filed an Urgent Motion for Issuance of Writ of Possession on the ground that the Order of Expropriation has already attained finality. This was denied by the public respondent in the assailed Order dated November 25, 2008, which modified the August 16, 2005 Order insofar as the pronouncement of private respondent's entitlement to just compensation. The dispositive portion of the November 25, 2008 Order reads:

“In the light of the foregoing, the Court hereby resolves as follows, viz:

1. To MODIFY the Order of this Court dated 16 August 2005 insofar as the pronouncement regarding the non-entitlement of the defendant to payment of just compensation for the property subject matter of this case and ORDER the plaintiff to immediately pay the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the [BIR]; and (2) the value of the improvement and/or structure constructed thereon; and

2. To DENY plaintiff's Motion for Issuance of Writ of possession for being premature.”

Petitioner moved to reconsider but it was denied for lack of factual and legal basis in the second assailed Order dated January 29, 2009.

Hence, this petition raising the following issues for resolution, to wit:

I.

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SUBSTANTIALLY AMENDING THE FINAL AND EXECUTORY ORDER DATED AUGUST 16, 2005.

II.

WHETHER OR NOT PRIVATE RESPONDENT'S LAND WHICH WAS ORIGINALLY A PUBLIC LAND AND AWARDED BY FREE PATENT TITLE, WITH A RESERVATION FOR A LEGAL EASEMENT OF A RIGHT-OF-WAY IN FAVOR OF THE GOVERNMENT, IS ENTITLED TO JUST COMPENSATION FOR THE TAKING OF A PART THEREOF, FOR PUBLIC USE AS AN EASEMENT OF RIGHT-OF-WAY.

Petitioner argues that the public respondent failed to exercise his discretion properly and judiciously when he substantially amended the August 16, 2005 Order which had already attained finality. Further, petitioner maintains that private respondent is not entitled to an easement fee nor to just compensation for the affected

portion of its land, pursuant to the reservation granted under Commonwealth Act (C.A.) No. 141 in favor of the government.

The petition is meritorious.

After a careful evaluation of the records of the case, this Court holds that the public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed Orders dated November 25, 2008 and January 29, 2009, respectively.

We do not discuss the effects of the so-called finality of the Order dated August 16, 2005 with respect to the payment of just compensation as We believe that the finality of said Order will not prevent the fixing of just compensation in case of expropriation if there is found a basis to claim the same, because in expropriation cases, what is more important is that property should not be taken for public use without just compensation as enshrined in the Bill of Rights.

However, the rationale stated by public respondent in issuing the November 25, 2008 Order is not in accord with law and jurisprudence. In modifying his Order dated August 16, 2005, the public respondent relied on the Legal Opinion dated October 26, 2006 of then Solicitor General Antonio E.B. Nachura addressed to Engr. Bonifacio Seguit of the DPWH stating that notwithstanding the provisions of Section 112 of Commonwealth Act No. 141, as amended by PD Nos. 635 and 1361, the land owner is entitled to payment of just compensation which must be neither more nor less than the monetary equivalent of the land acquired in accordance with the ruling in *National Power Corporation (NPC) vs. Manubay Agro-Industrial*[13].

Public respondent's reliance on the legal opinion of then Solicitor General Nachura is misplaced. Said legal opinion, while persuasive, is not controlling considering that the case of *NPC vs. Manubay Agro-Industrial* which was used as basis in stating said legal opinion is not applicable to the instant case. In *NPC*, the subject land was not covered by a free patent, it was covered by a regular title so that just compensation must be paid for the taking of a part of the property for public use as an easement of a right of way. As opposed to this case, private respondent's land covered by TCT No. T-821169 originated from OCT No. P-5461 in the name of Florante J. Ilano which was issued pursuant to a free patent. Said OCT No. P-5461 contained a reservation granting the government a right-of-way over the land, as contained in C.A. No. 141, which states:

SEC. 112. Said land shall further be subject to a right-of-way not exceeding sixty (60) meters in width for public highways, railroads, irrigation ditches, aqueducts, telegraph and telephone lines, and similar works as the Government or any public or quasi-public service or enterprise, including mining or forest concessionaires, may reasonably require for carrying on their business, with damages for the improvements only.

xxx xxx xxx

In *Republic vs. Andaya*[14], it was held that the Republic is not liable for the payment of just compensation in enforcing the legal easement of right-of-way on a property granted by patent.

“xxx Andaya’s transfer certificates of title contained the reservation that the lands covered thereby are subject to the provisions of the Land Registration Act and the Public Land Act. Section 112 of the Public Land Act provides that lands granted by patent shall be subject to a right-of-way not exceeding 60 meters in width for public highways, irrigation ditches, aqueducts, and other similar works of the government or any public enterprise, free of charge, except only for the value of the improvements existing thereon that may be affected. In view of this, the Court of Appeals declared that all the Republic needs to do is to enforce such right without having to initiate expropriation proceedings and without having to pay any just compensation. xxx”

Further, it was not shown that there are improvements in the subject land which would warrant the payment of

damages. It should be noted that petitioner had no objections to the creation of a Board of Commissioners that will determine the amount of just compensation for damages for improvements introduced by private respondent.[15] As per the ocular inspection conducted by the Office of the Solicitor General, the Department of Public Works and Highways (DPWH) and private respondent on September 10, 2007, there is no improvement or structure constructed on the affected portion of the subject land. What private respondent claims as an improvement found on the affected portion of its land is the dumping of soil on an embankment which is not the improvement or structure contemplated under the aforesaid provision as compensable. Petitioner explained that the bridge that will be constructed on the subject lot will not traverse the Kawit National High School, but only on the affected portion on private respondent's property, which is plotted on Parcellary Reference Plan attached as an annex in the expropriation complaint. This fact was not rebutted by private respondent in its Comment.

The Memorandum of Agreement (MOA)[16] entered into by private respondent with the Municipality of Cavite, for the use of private respondent's land as school site of the Binakayan Elementary School and High School, is not the reservation in favor of the Government contemplated by law. Contrary to private respondent's assertion, there is no "prior taking" and use by the State through the Department of Education of its reservation under C.A. No. 141. It should be noted that the property will also be returned to private respondent after fifty (50) years. Further, the Republic was not a party to the MOA. Section 12, C.A. No. 112 is specific in stating that the easement of right of way shall be utilized as access to "public highways, railroads, irrigation ditches, aqueducts, telegraph and telephone lines, and similar works as the Government or any public or quasi-public service or enterprise, including mining or forest concessionaires". More so, the reservation granting the Government a right-of-way (legal easement) is an obligation arising from law and not a voluntary obligation arising from a contract as in the case of the MOA. Private respondent's act of entering into a MOA with the Municipality of Kawit is an act of liberality. In this case, petitioner initiated expropriation proceedings for the taking of a portion of private respondent's property for a public purpose.

WHEREFORE, premises considered, the instant petition is GRANTED. Finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent, the assailed Orders dated November 25, 2008 and January 29, 2009 are hereby NULLIFIED.

SO ORDERED.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, pp. 49-51.

[2] Rollo, pp. 52-53.

[3] Rollo, pp. 54-59.

[4] Rollo, pp. 60-66.

[5] Rollo, pp. 71-104.

[6] Rollo, p. 111.

[7] Rollo, pp. 106-110.

[8] Rollo, p. 142.

[9] Rollo, pp. 129-134.

[10] Rollo, p. 141.

[11] Rollo, pp. 143-149.

[12] Rollo, pp. 150-168.

[13] G.R. No. 150936, August 18, 2004.

[14] G.R. No. 160656, June 15, 2007.

[15] See Rollo, p. 142.

[16] Rollo, pp. 119-121.

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