

**MATAAS NA LUPA TENANTS ASSOCIATION, INC., NICOLAS AGLABAY, AND THOSE MENTIONED IN ANNEX "A"; OF COMPLAINT, PETITIONERS, VS. CARLOS DIMAYUGA AND JULIANA DIEZ VDA. DE GABRIEL, RESP...**

*G.R. No. L-32049. June 25, 1984*

Ponente: MAKASIAR, J.

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**MAKASIAR, J.:**

This petition for review on certiorari presents for review the order dated October 30, 1969 of the defunct Court of First Instance of Manila, Branch IV, which granted the motion to dismiss the complaint of petitioners in Civil Case No. 75391 on the ground that the same failed to state a cause of action (p. 16, rec.; pp. 1, 100, CFI rec.).

The undisputed facts are as follows:

On January 17, 1969, petitioners filed a complaint for the exercise of preferential rights with the then Court of First Instance of Manila, Branch IV, docketed as Civil Case No. 75391 (p. 32, rec.; p. 1, CFI rec.).

The said complaint alleged that petitioner association has for its members Nicolas Aglabay, et al., named and listed in Annex "A" of said complaint, which members are heads of 110 tenant families, and who have been, for more than ten years prior to 1959, occupants of a parcel of land (with their 110 houses built thereon), formerly owned by the respondent, Juliana Diez vda. de Gabriel, to whom petitioners have been paying rents for the lease thereof, but who, on May 14, 1968, without notice to petitioners, sold the same to respondent Carlos Dimayuga, who, in turn, mortgaged the same to her for the balance of the purchase price; that according to Republic Act 1162, as amended by Republic Act 2342, a parcel of land in Manila and suburbs, with at least fifty (50) houses of tenants erected thereon and actually leased to said tenants for at least ten (10) years prior to June 20, 1959, may not be sold by the landowner to any person other than such tenants, unless the latter renounced their rights in a public instrument; that without said tenants-petitioners having renounced their preferential rights in public instrument, respondent Vda. de Gabriel sold the land to respondent Dimayuga; that petitioners-tenants are willing to purchase said land at the same price and on the same terms and conditions observed in the contract of sale with respondent Dima-yuga; and that since aforesaid contract of sale is expressly prohibited by law, the same is null and void, while it is mandatory for respondent Vda. de Gabriel to execute such sale to petitioners. Petitioners therefore prayed that said contract of sale be declared void, and that respondent Vda. de Gabriel be ordered to execute a deed of sale in favor of petitioners at the same price and conditions followed in the contract with respondent Dimayuga, plus attorney's fees and damages (p. 32, rec.; p. 1, CFI rec.).

On January 31, 1969, respondent Vda. de Gabriel filed a motion to dismiss on the ground that the complaint stated no cause of action because the land subject of the complaint is not a landed estate, and not being such, the same cannot be expropriated, and not being expropriable, no preferential rights could be availed of by the tenants (p. 41, rec.; p. 22, CFI rec.).

Respondent Dimayuga filed his answer to afore-said complaint on February 6, 1969 admitting therein certain

factual allegations, denied some averments, interposed the affirmative defenses that plaintiffs had no personality to initiate the action since the Land Tenure Administration possessed the power to institute the proper expropriation proceedings before the competent court and that the subject complaint stated no cause of action against respondent, alleged a counterclaim to eject plaintiffs from the property, and prayed for the dismissal of the complaint and other remedies (p. 44, rec.; p. 155, CFI rec.).

On February 6, 1969, plaintiffs-petitioners filed their opposition to the motion to dismiss, maintaining, among others, that Republic Act 1162, as amended by Republic Act 2342 (law which respondent Vda. de Gabriel invoked), does not necessarily refer to landed estates, but to any piece of land occupied by more than 50 families leasing the same for more than ten (10) years prior to June 20, 1959; that their preferential rights are independent of the expropriability of the land; that therefore, said rights may be exercised even if the land is not expropriable; and that these rights were granted pursuant to the police power of the State for the general welfare, with prayer that aforesaid motion to dismiss be denied (p. 47, rec.; p. 26, CFI rec.).

On February 13, 1969, respondent Vda. de Gabriel replied to the aforesaid opposition to motion to dismiss, reiterating therein her prayer to dismiss the complaint (p. 57, rec.; p. 38, CFI rec.).

Plaintiffs-petitioners filed their rejoinder to above reply to their opposition on February 19, 1969, laying emphasis on the alleged distinction between the two ways of acquiring occupied land under Republic Act 1162, which are expropriation and voluntary disposal of the land by the owner thereof, and which are exercisable independently of each other (p. 56, rec.; p. 42, CFI rec.).

On October 30, 1969, Branch IV of the Court of First Instance of Manila issued the subject order which found respondent's motion to dismiss well-taken and thereby dismissed the complaint (p. 69, rec.; p. 100, CFI rec.).

Petitioners moved for reconsideration of the aforesaid order on January 7, 1970, which motion was denied in the lower court's order of January 27, 1970 (p. 111, 190, CFI rec.).

On February 9, 1970, petitioners filed a notice of appeal with the lower court to which respondent Vda. de Gabriel moved for dismissal of the same on February 11, 1970 on the alleged ground that pursuant to Republic Act 5440, petitioners should have appealed from the questioned order by way of a petition for certiorari to this Court since the matter involved only errors or questions of law (p. 143, CFI rec.).

After a series of motions, reply, rejoinder, surrejoinder, and answer between both parties, the lower court issued its order of May 11, 1970 dismissing petitioners' appeal (p. 225, CFI rec.).

Petitioners thus resorted to this petition.

Petitioners contend that the lower court committed an error in dismissing their complaint on the ground that since the land is not expropriable, it follows that the tenants therein have no preferential rights to buy said land, if the same is sold voluntarily. Petitioners' contention is anchored on the amendment introduced by Republic Act 3516 into Section 1 of Republic Act 1162, which latter law had been invoked in the decision of the lower court.

According to petitioners, the phrase "any landed estates or haciendas herein authorized to be expropriated" had been amended to read "any landed estates or haciendas or lands herein authorized to be expropriated"; hence, Republic Act 1162 does not refer exclusively to landed estates or haciendas, but even to smaller lands. The particular section as amended reads thus:

"The expropriation of landed estates or haciendas, or lands which formerly formed part thereof, or any piece of land in the City of Manila, Quezon City and suburbs, which have been and are actually being leased to tenants for at least ten years, is hereby authorized: Provided, That such lands shall have at least forty families of tenants thereon." (Sec. 1 of R.A. 3516).

Petitioners likewise invoke the amended title of Republic Act 1162 which had been introduced by Republic Act 2342 which title now reads as follows:

"An Act Providing for the Expropriation of Landed Estates or Haciendas or Lands Which Formerly Formed Part Thereof or Any Piece of Land in the City of Manila, Quezon City and Suburbs, Their Subdivision into Small Lots, and the Sale of Such Lots at Cost or Their Lease on Reasonable Terms, and for Other Purposes" (Italics supplied).

Petitioners further allege that Republic Act 1162 is both an exercise of the power of eminent domain and the police power of the State. The exercise of the police power of the State refers to the grant of preferential rights to the tenants of such land, if the same is disposed of voluntarily. Simply stated, petitioners theorize that Republic Act 1162 covers both compulsory and voluntary sale; hence, while expropriability is pertinent to compulsory sale, the same does not relate to voluntary sale. Even if the land is not expropriable, if the same is however actually leased to the occupants for more than ten years prior to May 22, 1963 (when R.A. 3516 took effect) with at least 40 families, said land, if sold voluntarily, is subject to the preferential rights of the tenants.

Respondent Vda. de Gabriel maintains, on the other hand, that there is no more issue regarding the non-expropriability of subject land, which condition or status was expressly admitted by petitioners in the lower court; that the title of Republic Act 1162, as amended by Republic Act Nos. 2342 and 3516 clearly embraces expropriation; that the prohibitive acts enumerated in Section 5 of R.A. 1162, as amended, are entirely dependent on the expropriability of the land in controversy; that there is nothing in the aforecited law which validly supports the alleged preferential right of petitioners to purchase the property at the same price and under the same conditions; that the only reasonable interpretation of the opening lines of Section 5 of Republic Act 1162, as amended, is that pending expropriation, the landowner shall not sell the land to any other person than the tenant or occupant unless the latter renounces his rights in a public instrument; but if the land is not expropriable, as petitioners have admitted, the prohibition does not apply; and that clearly, from the provision of Section 6 of the amended law, Section 5 thereof may be violated only if the land is "herein authorized to be expropriated" and since petitioners have admitted the non-expropriability of subject land, it necessarily follows that said Section 5 cannot apply.

Respondent Dimayuga avers that Section 9, in relation to the title of R.A. 1162, clearly provides that the preferential right could be exercised only when the land under question is subject to expropriation, or better still, if the tenanted property which formerly formed part of an hacienda or is a landed estate, had been expropriated; and, that R.A. 1162, as amended, embraces only landed estates or haciendas with an extensive area.

The sole issue raised by petitioners is whether or not they have the pre-emptive or preferential rights to buy the land in question.

WE find for petitioners.

I

The third proviso in Section 5 of Republic Act 3516, which law further amended R.A. 1162, reads:

"Provided, furthermore, That no lot or portion thereof actually occupied by a tenant or occupant shall be sold by the landowner to any other person than such tenant or occupant, unless the latter renounce in a public instrument his rights under this Act: Pro-vided, finally, That if there shall be tenants who have constructed bona fide improvements on the lots leased by them, the rights of these tenants should be recognized in the sale or in the lease of the lots, the limitation as to area in Section three notwithstanding."

The provision clearly defines the preferential right of herein petitioners to buy the parcel of land. It should be

noted that respondent Vda. de Gabriel voluntarily sold the land to respondent Dimayuga without informing the petitioners of the transaction. Respondent Vda. de Gabriel did not give the first offer to petitioners who were then tenants-lessees and who would have either accepted or refused to buy the land in a public document. The fact is that on discovery of the sale to respondent Dimayuga, petitioners filed their original claim for preferential rights eight months after the clandestine sale. Thus, the condition set forth in the aforesaid proviso -- that of offering first the sale of the land to petitioners and the latter's renunciation in a public instrument -- were not met when the land was sold to respondent Dimayuga. Evidently, said sale was made illegally and, therefore, void. Petitioners have still the first option to buy the land as provided for in the above provision.

## II

A brief run-down of this Court's decisions easily reveal the adherence to the principle that the test for a valid expropriation of private land for resale to its occupants, is the number of families to be benefited thereby, and not the area.

In his book on Constitutional Law, Dean Isagani Cruz recapitulates thus:

"In the earlier case of *Rural Progress Administration v. Reyes*, the Supreme Court held that the criterion for determining the validity of expropriation under this provision was not the area of the land sought to be taken but the number of people intended to be benefited thereby. The land, in other words, could be small provided it was tenanted by a sizable number of people.

"This ruling was abandoned in the case of *Guido v. Rural Progress Administration*, where the Supreme Court declared, also by a split decision as in the *Reyes* case, that the test to be applied was the area of the land and not the number of people who stood to be benefitted by the expropriation. The land should be a landed estate or one comprising a very vast area. It was stressed that one of the purposes of the framers was precisely to break up these estates in the hands of only a few individuals or families and thus more equitably distribute them among the landless.

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"It has also been held that where a landed estate is broken up unto reasonable portions which are thereafter sold to separate purchasers, the resultant portions cannot be deemed as still subject to expropriation under this provision simply because they used to form part of a landed estate.

"In the case of *Tuason v. PHHC*, which was a petition for prohibition to nullify a law directing the expropriation of Tatalon Estate in Quezon City, Justice Fernando suggested a return to the *Reyes* ruling, arguing that the propriety of expropriation 'could not be determined on a purely quantitative or area basis,' quoting from Justice J.B.L. Reyes in his dissenting opinion in the *Baylosis* Case. xx xx" (p. 71, 1983 Ed.; Italics supplied).

From the *Reyes* case where the number of beneficiaries test was applied in determining public use down to the *Guido* and *Baylosis* cases where the land or area size test was invoked, then to the *Tuason* case where a return to the *Reyes* decision was made and then up to the recent case of *Pulido vs. Court of Appeals* (L-57625, May 3, 1983; 122 SCRA 63) where this Court found it "unfortunate that petitioner would be deprived of his land holdings, but his interest and that of his family should not stand in the way of progress and the benefit of the greater majority of the inhabitants of the country," there has evolved a clear pattern of adherence to the "number of people to be benefited test."

This is made more manifest by the new constitutional provisions on the equitable diffusion of property ownership and profits (Sec. 6, Art. II) and the implementation of an agrarian reform program aimed at emancipating the tenant from the bondage of the soil (Sec. 12, Art. XIV).

It has been noted with concern that while respondents raised the issue of expropriability of the parcel of land, petitioners limited themselves to the issue of preferential or pre-emptive rights.

What petitioners might have failed to realize is that had they invoked the expropriability of subject land, they would have had a foolproof case. Right from the start, they would have had the upper hand. Ironically, however, instead of anchoring their case on the expropriability of such land, they concentrated on asserting their preferential right to buy the land. For, Section 1 of R.A. 1162, as amended by R.A. 3516, specifically authorizes the expropriation of any piece of land in the City of Manila, Quezon City and suburbs which have been and are actually being leased to tenants for at least ten (10) years, provided said lands have at least forty families of tenants thereon. The case at bar comes within the coverage of the aforesaid legal provision since the parcel of land is located in Manila which was then actually leased to 110 tenant families 20 years prior to the commencement of this action in the lower court. Clearly, therefore, the land in question is capable of expropriation.

The above situation now brings Us back to the case of *J.M. Tuason & Co. vs. Land Tenure Administration* (L-21064, Feb. 18, 1970, 31 SCRA 413-417) where this Court laid down certain basic doctrines on the power of eminent domain. Thus, this Court, speaking thru then Justice Fernando, declared:

"It does not admit of doubt that the congressional power conferred by the Constitution is far from limited. It is left to the legislative will to determine what lands may be expropriated so that they could be subdivided for resale to those in need of them. Nor can it be doubted either that as to when such authority may be exercised is purely for Congress to decide. Its discretion on the matter is not to be interfered with. This is shown by reference to the historical basis of the provision as reflected in the proceedings of the Constitutional Convention.

"Historical discussion while valuable is not necessarily decisive. It is easy to understand why. The social and economic conditions are not static. They change with the times. To identify the text of a written constitution with the circumstances that inspired its inclusion may render it incapable of being responsive to future needs. Precisely, it is assumed to be one of the virtues of a written constitution that it suffices to govern the life of the people not only at the time of its fram-ing but far into the indefinite future. It is not to be considered as so lacking in flexibility and suppleness that it may be a bar to measures, novel and unorthodox, as they may appear to some, but nonetheless imperatively called for.

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"The framers of the Consti-tution were seriously concerned with the grave problems of inequality of wealth, with its highly divisive tendency, result-ing in the generous scope accorded the police power and eminent domain prerogatives of the state, even if the exercise thereof would cover terrain of property right previously thought of as beyond state control, to promote social justice and the general welfare.

"As in the case of the more general provision on eminent domain, the power to expropriate lands under Sec. 4 of Art. XIII of the Constitution requires the payment of just compensation, the taking to be for the public use, and to meet the exacting standard of due process and equal protection guaranty of the Constitution.

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"The power granted to Congress by the Constitution to 'authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to in-dividuals' is unlimited by any other provision of the Constitution. Just compensation is in reality a part of the power granted rather than a limitation thereto, just as just compensation is of the essence in any exercise of the power of eminent domain, as, otherwise it would be plain commandeering.

"While the taking must be for public use as a matter of principle, in the judicial proceeding, the Government need not present evidence of such public use as a fact. The constitutional provision itself declares the public

objective, purpose or use of the expropriation contemplated, hence, it should follow that as long as a congressional legislation declares a the condemnation of particular land is for the specific purpose stated in the Constitution, it is not for the judiciary to inquire as to whether or not the taking of such land is for public use. The Constitution itself which is supposed to be the supreme law on private property rights declares it to be so, and leaves it to Congress, not to the judiciary, to make the choice of the lands to be taken to attain the objective the constituent assembly aimed to achieve. The scope and the limit of the power of the judiciary in this regard is only to determine the existence of enabling legislation, to see to it that the facts are as contemplated in such enabling act and to provide the vehicle for compliance with procedural due process in the implementation of the congressional act."

On the matter of taking for public use, Chief Justice Fernando summarily observes:

"The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not so any more. As long as the purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the Constitution in at least two cases, to remove any doubt, determines what is public use. One is the expro-priation of lands to be subdi-vided into small lots for resale at cost to individuals. The other is the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use" (The Constitution of the Philippines, 2nd Ed., 1977, pp. 523-24).

### III

This preferential right of petitioners and the power of eminent domain have been further mandated, strengthened and expanded by recent developments in law and jurisprudence.

It must be recalled that the 1973 Constitution embodies certain original and innovative provisions on eminent domain. The new Constitution provides thus:

"Private property shall not be taken for public use without just compensation" (Sec. 2, Art. IV).

"The Batasang Pambansa may authorize, upon payment of just compensation, the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens" (Sec. 13, Art. XIV).

"The State shall promote social justice to ensure the dignity, welfare and security of all the people. Toward this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits" (Sec. 6, Art. II; *Italics supplied*).

"The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living" (Sec. 7, Art. II).

"The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution" (Sec. 12, Art. XIV).

The aforequoted Section 6 of Article II, which is a modified version of the original provision of the 1935 Constitution, "emphasizes the stewardship concept, under which private property is supposed to be held by the individual only as a trustee for the people in general, who are its real owners. As a mere steward, the individual must exercise his rights to the property not for his own exclusive and selfish benefit but for the good of the entire community or nation" (p. 70, *Phil. Political Law*, Cruz, 1983 ed.).

In the case of *Almeda vs. Court of Appeals, et al.* (L-43800, 78 SCRA 194 [July 29, 1977]), this Court thus

declared:

"It is to be noted that under the new Constitution, property ownership is impressed with social function. Property use must not only be for the benefit of the owner but of society as well. The State, in the promotion of social justice, may 'regulate the acquisition, ownership, use, enjoyment and disposition of private property, and equitably diffuse property -- ownership and profits.' One governmental policy of recent date projects the emancipation of tenants from the bondage of the soil and the transfer to them of the ownership of the land they till."

"The Legislature may regulate 'the acquisition, ownership, use, enjoyment and disposition of private property,' to the end that maximum advantage can be derived from it by the people as a whole. Thus, it may limit the size of private landholdings, impose higher taxes on agricultural lands that are not being tilled, or provide for a wider distribution of land among the landless. xx" (p. 70, Phil. Political Law, Cruz, 1983 ed.).

It is obviously in the spirit of Sections 6 and 7 of Article II that P.D. No. 1517 on urban land reform was enacted and the subsequent implementing Proclamation No. 1967 was issued. Significantly also, the latest amendment to the Constitution on urban land reform and social housing program which has been proclaimed by the President as having been approved in the recent plebiscite on January 17, 1984 all the more emphasizes and strengthens the constitutional base for urban land reform consistent with the provisions on social justice.

Even as We have consistently and explicitly pronounced that the power of eminent domain is a basic and inherent power of government which does not have to be spelled out by the Constitution, still our legislators felt such urgent demands for redistribution of land in this country that they had to incorporate into the 1935 and 1973 Constitutions a specific provision on expropriation of land for resale. Section 13, Article IV of the 1973 Constitution, specially authorizes the expropriation of private lands for resale.

Thus, as earlier mentioned, P.D. No. 1517 entitled "Proclaiming Urban Land Reform in the Philippines and Providing for the Implementing Machinery Thereof" was enacted and became effective on June 11, 1978 and Proclamation No. 1967 was issued on May 14, 1980 as an implementing law. This decree, which is firmly based on Section 6, Article II of the new Constitution, undoubtedly adopts and crystallizes the greater number of people criterion when it speaks of tenants and residents in declared urban land reform zones or areas without any mention of the land area covered by such zones. The focus, therefore, is on people who would stand to benefit and not on the size of the land involved.

It should now be clarified that Section 22 of the aforecited decree declares thus:

"Sec. 22. Repealing Clause. All laws, decrees, executive orders, rules and regulations inconsistent herewith are hereby repealed, amended or modified accordingly."

The decree has, therefore, superseded R.A. Nos. 1162, 2342 and 3516.

The issue of pre-emptive or preferential rights still remains for Our resolution within the purview of the said decree.

The pertinent provisions of P.D. No. 1517 are as follows:

"Sec. 4. Proclamation of Urban Land Reform Zones. The President shall proclaim specific parcels of urban and urbanizable lands as Urban Land Reform Zones, otherwise known as Urban Zones for purposes of this Decree, which may include Bagong Lipunan Sites, as defined in P.D. 1396" (par. 1 of the section).

xx xx xx

"Sec. 6. Land Tenancy in Urban Land Reform Areas. Within the Urban Zones legitimate tenants who have

resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of the Decree.

xx xx xx

"Sec. 9. Compulsory Declaration of Sale and Pre-emptive Rights. Upon the proclamation by the President of an area as an Urban Land Reform Zone, all landowners, tenants and residents there-upon are required to declare to the Ministry any proposal to sell, lease or encumber lands and improvements thereon, including the proposed price, rent or value of encumbrances and secure approval of said proposed transactions.

"The Ministry shall have the preemptive right to acquire the above-mentioned lands and improvements thereon which shall include, but shall not be limited to lands occupied by tenants as provided for in Section 6 of this Decree" (Italics supplied).

Pursuant to the above decree and for purposes of making specific the applicability of the same and other subsequent laws on the matter, the President issued Proclamation No. 1967 dated May 14, 1980 declaring Metropolitan Manila Area as Urban Land Reform Zone. Thus, on page 2, No. 14 of said proclamation, Mataas na Lupa, the land in controversy, (an area bounded on the northwest by Quirino Avenue, South Super-highway on the east, San Andres Street on the south, and on the west, by Anak Bayan Street) was declared as an area for priority development and urban land reform zone.

The aforequoted provisions of P.D. 1517 and the declaration in the aforesaid proclamation are clear and leave no room for any interpretation. Evidently, petitioners' case falls squarely within the law. Under Section 6 of the decree, the 110 tenant-families have been vested with the right of first refusal to purchase the land in question within a reasonable time and reasonable prices, subject to Ministry of Human Settlements rules and regulations.

WHEREFORE, THE ORDER DATED OCTOBER 30, 1969 OF THE THEN MANILA COURT OF FIRST INSTANCE, BRANCH IV, IS HEREBY SET ASIDE AND THE MINISTRY OF HUMAN SETTLEMENTS IS HEREBY DIRECTED TO FACILITATE AND ADMINISTER THE IMPLEMENTATION OF THE RIGHTS OF HEREIN PETITIONERS. COSTS AGAINST RESPONDENTS. SO ORDERED.

Concepcion, Jr., Guerrero, and Escolin, JJ., concur.

Aquino, J., in the result.

Abad Santos, J., reserve his vote.

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