

**SOCORRO M. ZABALLERO, MARINA Z. REYES, ELENA F. ZABALLERO,
SOCORRO Z. FRANCISCO, EUGENIA ZABALLERO, LEONARDO M.
ZABALLERO AND AUGUSTO M. ZABALLERO, PETITIONERS, VS.
NATIONAL HOU...**

G.R. Nos. L-49291-92. October 29, 1987

Ponente: CORTES, J.

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CORTES, J.:

These petitions were consolidated as they arose from the same set of facts, involve the same parties and the same subject matter for resolution.

G.R. No. L-49291-92 is an appeal by certiorari of the Decision and Resolution of the Seventh Division of the Court of Appeals dated October 16, 1978 and November 14, 1978, respectively, nullifying the orders of the then Court of First Instance of Cavite in Civil Cases Nos. T.G.-392 and T.G.-417. On the other hand, G.R. No. 61237-39 is a petition for review by certiorari of the final decision of the CFI of Cavite in the consolidated Civil Cases Nos. T.G. 392, 396 and 417, involving the expropriation of Lot Nos. 6450, 6448-E, 6198-A and 6199 of the cadastral survey of Dasmarinas, Cavite, specifically on the issue of just compensation.

The record shows that in 1977, the National Housing Authority (NHA) instituted separate complaints for expropriation of sugarcane lands belonging to the Zaballeros, situated in the municipality of Dasmarinas, Cavite. The stated public purpose of these expropriation case is the expansion of the Dasmarinas Resettlement Project to accommodate the squatters who were relocated from the Metropolitan Manila area.

The first complaint, docketed as Civil Case No. T.G.-392, was filed on February 14, 1977 and amended on June 29, 1977 to implead other parties. This complaint called for the expropriation of Lot 6450 of the cadastral survey of Dasmarinas, Cavite with an area of 79,167 square meters which the NHA alleged to have an assessed value of P31,670.00 as shown by the tax declaration and "that on the basis of this valuation, the lawful and reasonable provisional value of the property sought to be expropriated is P79,170.00 as per assessor's market value as per P.D. 76." (Complaint, Civil Case No. T.G.-392).

This complaint alleged the fact that the plaintiff NHA had deposited with the Philippine National Bank (PNB), Cavite City Branch, the amount of P446,770.00 which included the amount of P31,670.00 representing the assessed value of the property sought to be expropriated, as evidenced by the certificate of deposit issued by said bank. A similar statement was made in the complaint for expropriation docketed as Civil Case No. T.G.-417 with the difference in the amount of the assessed value which was fixed at P60,394.02.

Upon motion filed by the plaintiff NHA on February 22, 1977, the trial court issued a writ of possession dated May 19, 1977 commanding the Provincial Sheriff to transfer possession of Lot 6450 to the NHA.

On April 11, 1977, a similar case was filed against Leonardo M. Zaballero involving the latter's sugarcane land (Lot No. 6448-E of the cadastral survey of Dasmarinas, Cavite) containing an area of 20,872 square meters and

docketed before the CFI of Cavite as Civil Case No. T.G.-396. The complaint likewise included a statement as to the sum of P8,350.00 deposited by the plaintiff NHA with the same PNB Branch. The NHA's motion for a writ of possession was granted on June 30, 1977.

The third complaint filed on July 22, 1977 (Civil Case No. T.G.-417) sought the expropriation of Lots 6198-A and 6199 covered by T.C.T. Nos. RT-639 and RT-641, respectively, with an aggregate area of 159,985 square meters, also of the cadastral survey of Dasmarinas, Cavite. It also alleged that on the basis of the assessed value of the two lots, "the lawful and reasonable provisional value of the property sought to be expropriated is P152,777.24 as per assessor's market value per P.D. 76." (Complaint, Civil Case No. T.G.-417, p. 4).

The answers of the defendants Zaballeros in the expropriation cases denied, among others, the right of NHA to expropriate their properties and prayed for the dismissal of the complaints. Negotiations were however undertaken by the parties and after some time, the owners of the land conceded to NHA the right to expropriate. The Zaballeros agreed to the immediate voluntary delivery of the land under expropriation, subject to the payment of just compensation to be ascertained first by negotiation and should this fail, through judicial adjudication. The NHA accordingly took over possession and use of the Zaballero properties. The parties tried to negotiate a mutually acceptable market value of the land and, failing to reach an agreement thereon, the matter was submitted for judicial determination.

After the joinder of issues and settlement negotiations, the Zaballeros filed in Civil Cases Nos. T.G.-392 and T.G.-417 separate motions for partial and/or provisional payment of the market value of the 228,113 square meters of sugar land actually taken for exclusive use by the NHA. The two motions with identical prayers read as follows:

WHEREFORE, defendants respectfully pray that, pending agreement on the final valuation of defendants' property and/or Court's order, defendants respectfully pray that (sic) an order be issued directing the Cavite City Branch of the Philippine National Bank to release plaintiff's deposit of P446,770.00 unto defendants, as and by way of provisional and/or partial payment on defendants' property subject matter of the instant litigation and already taken over and being used by plaintiff.

By way of answer to the abovementioned motions, the plaintiff NHA filed a pleading entitled "Comment on the Defendants' Motion for Partial and/or Provisional Payment" wherein it interposed no objection to the partial and/or provisional payments to the defendants of the just compensation of the property in question provided said compensation be based on their declaration as to the fair market value under Pres. Dec. No. 76 or the assessor's market value under the respective tax declarations, whichever is lower, pursuant to Pres. Dec. No. 794.

Hearings on the motions were held on October 17 and 25, 1978 where it was stipulated that the evidence adduced thereat will likewise form part of the parties' evidence on the merits of the case. The NHA presented no evidence to rebut the P9.50 per square meter valuation testified to and documented by the Zaballeros but insisted that the tax declarations as to the current market value of the properties be made the basis of payment.

The trial court in an order dated December 13, 1977 granted the said motions. On January 5, 1978 the the court amended the dispositive portion of the said order to read as follows:

WHEREFORE, the Cashier-Vice President of the Philippine National Bank, Escolta, Manila is hereby ordered to release and deliver to the defendants and/or their duly authorized representative the sum of P466,770.00 deposited with it by plaintiff NHA, as and by way of partial and/or provisional payment of the properties under expropriation in these cases.

In this order, the trial court fixed the value of the expropriated property at P7.75 per square meter.

Not convinced of the reasoning of the trial court, the NHA filed a motion for reconsideration but the same was denied in an order dated January 19, 1978. The NHA then went to the Court of Appeals on a petition for certiorari. Finding the petition to be meritorious, the appellate court rendered judgment nullifying the above orders of the trial court and required the Zaballeros to return to the PNB the amount of P466,770.00. As stated, this decision of the Court of Appeals is the subject matter of the appeal in G.R. No. L-49291-92.

In Civil Case No. TG-396, however, the defendant Leonardo M. Zaballero, instead of asking for partial payment, moved for the delivery of the deposit on January 26, 1981. On February 4, 1981, the trial Court ordered the immediate release of the amount of P8,350.00 deposited by the plaintiff with the PNB in favor of the defendant.

Subsequent to the issuance of the trial court order in Civil Cases No. TG-392 and No. TG-417, the parties entered into pre-trial. The three expropriation cases were subsequently consolidated after which the trial court issued a pre-trial order on December 17, 1980, which reads as follows:

When this case was called for pre-trial, the parties stipulated that in view of the issues raised in the pleadings, and considering that the parties have already presented evidence regarding the question of just compensation, and it appearing that there is no dispute regarding the right of eminent domain being exercised by the plaintiff corporation, that all the evidences so far presented during the hearing of the various incidents shall be considered reproduced as evidence during the hearing without prejudice on the part of the parties to present additional evidence if they so desire, regarding the actual reasonable valuation of the subject properties. (Annex "F" to G.R. No. 61237-39, Rollo, p. 104).

On March 9, 1982, the three cases were considered submitted for decision insofar as the defendants Socorro Zaballero, Elena F. Zaballero, Eugenia Zaballero, and Leonardo M. Zaballero were concerned. The order, however, allowed defendants Marina Z. Reyes, Socorro Z. Francisco and Augusto M. Zaballero to present additional evidence regarding the fair market value of the subject properties.

A final determination of the amount of just compensation was rendered in the trial court's decision dated April 7, 1982 the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered:

In Civil Case No. TG-392:

* * *

2) Sentencing the plaintiff National Housing Authority to pay the defendants SOCORRO M. ZABALLERO, ELENA F. ZABALLERO, EUGENIA M. ZABALLERO, and LEONARDO M. ZABALLERO a just compensation for their respective proportionate or aliquot shares in the abovesited subject property at the rate of P7.75 per sq. m., inclusive of the proof-sustained disturbance compensation;

3) Fixing and determining that the just compensation for the entire property subject of this case, consisting of 79,167 sq. m., in the aggregate amount of P613,544.25. However, the amount of P154,515.97 heretofore delivered to and received by all the defendants in compliance with the order of 13 December 1977, as corrected by the order of 7 February 1978, shall also be deducted from said amount, thereby leaving a balance of P459,028.38 due and payable to all the defendants;

* * *

In Civil Case No. TG-396:

* * *

2) Sentencing the plaintiff National Housing Authority to pay the defendant LEONARDO M. ZABALLERO a

just compensation for the abovesited property at the rate of P7.75 per sq. m., inclusive of the proof-sustained disturbance compensation;

3) Fixing and determining that the just compensation for the entire property subject of this case, consisting of 20,872 sq. m., in the aggregate sum of P161,758.00. However, the amount of P8,350.00 heretofore delivered to and received by the defendant in compliance with the order of 4 February 1981, shall be deducted from said amount, thereby leaving a balance of P153,408.00 due and payable to the defendant LEONARDO M. ZABALLERO;

* * *

In Civil Case No. TG-417:

* * *

2) Sentencing the plaintiff National Housing Authority to pay the defendants SOCORRO M. ZABALLERO, ELENA F. ZABALLERO, EUGENIA M. ZABALLERO, and LEONARDO M. ZABALLERO a just compensation for their respective proportionate or aliquot shares in the above-cited properties at the rate of P7.75 per sq. m., inclusive of the proof-sustained disturbance compensation;

3) Fixing and determining that the just compensation for all the properties subject of this case, consisting of an aggregate area of 159,985 sq. m., in the aggregate sum of P1,239,883.75. However, the amount of P312,254.13 heretofore delivered to and received by all the defendants in compliance with the order of 13 December 1977, as corrected by the order of 7 February 1978, shall be deducted from said amount, thereby leaving a balance of P972,629.62 due and payable to all the defendants;

* * *

SO ORDERED.

In all these three cases, the plaintiff NHA was ordered to pay the costs.

This Court notes that the dispositive portion of said decision did not include payment of the determined just compensation to the defendants Marina Z. Reyes, Socorro Z. Francisco and Augusto M. Zaballerro because of the reservation they made with respect to presenting additional evidence on the fair market value of the subject properties. However, it appears that the abovenamed individuals submitted themselves to the judgment of the trial court as shown in their Comment to the Petition of NHA, the prayer of which reads as follows:

WHEREFORE, respondents respectfully pray that the decision of the court a quo dated 7 April 1982 be affirmed in toto, with award of such other reliefs as may be just and equitable in the premises. (Comment, G.R. No. 61237-39, Rollo, p.148).

The April 7, 1982 Decision is the subject matter of the petition in G.R. No. 61237-39. In a Resolution dated September 16, 1982, this Court issued a temporary restraining order enjoining the trial court and the Zaballeros from executing the decision of April 7, 1982, such restraining order to be effective and continuing until otherwise ordered.

In summary, there are two legal issues for resolution which are raised in these consolidated cases, namely:

I. Whether or not it was proper for the trial court to order partial and/or provisional payment of just compensation before trial on the merits have begun; and

II. Whether or not the Government by itself or through its authorized agencies may be compelled to pay by way of just compensation for properties expropriated, an amount greatly in excess of the limits prescribed by Pres. Dec. No. 76, as amended by Section 92 of Pres. Dec. No. 464 and further amended by Pres. Dec. Nos. 794,

1224, 1259 and 1533.

I. On the first issue, it is the Zaballeros' position that the partial payment of compensation is a sine qua non to government take-over of property and that the only reason why the trial court had to touch and intrude into the issue of just compensation was for the purpose of determining whether or not the claimed partial payment is reasonable. The NHA, on the other hand, contends that it does not object to provisional payment so long as the same is in accordance with the Presidential Decrees. However, it disagreed with the manner by which the trial court fixed the provisional value of the expropriated properties saying that in effect, just compensation was already determined when the trial court was not in a position to do so because there was no pre-trial yet.

The Court of Appeals considered the order of the trial court dated December 13, 1977 as referring only to the two motions for partial payment (Decision in C.A.-G.R. Nos. SP-07925 and SP-07926, Rollo, p. 113). That the hearings on the two motions was not a trial on the issue of just compensation is supported by the agreement between the parties that the evidence adduced during the hearings would only form part of the parties' evidence on the merits of the case, and by the fact that after the trial judge issued the questioned orders, he set the two cases for expropriation for pre-trial on April 3, 1977. In fixing the price of the expropriated property per square meter, the trial court did so for the purpose of determining the amount of provisional payment and not for the purpose of finally adjudicating the question on just compensation. This being the case, there is no need for a pre-trial before the trial court could ascertain the provisional value of the land. More so that during the hearings on the motion for partial payment, the parties were given the opportunity to adduce evidence as to the fair market value of the property. The trial court, therefore, had ample basis for determining the provisional value of the land.

Rule 67 of the Rules of Court on Eminent Domain is silent on the matter of provisional payment pending the determination of just compensation but Philippine jurisprudence on the subject is not. In the case of *Republic of the Philippines v. Pasigolan* [112 Phil. 517, (1961)]; 2 SCRA 626] this Court recognized the collection made by the landowner of the amount deposited on the provisional payment of the expropriated lots. The Court ruled as follows:

. . . The sum of P3,240.00 was deposited by the Government as a condition precedent to its right to take possession of said lots, pursuant to Rule 69, section 3 (now Rule 67, section 2) of the Rules of Court. The collection of said sum by the Salases was a recognition not merely of that right which was perfected upon the making of said deposit, unless the court fixed another amount as the provisional value of the lots, but also, of the compliance with said condition. It thus rendered such right effective and executory. . .

The purpose of the preliminary deposit was spelled out in *Visayan Refining Co. v. Camus and Paredes*, [40 Phil. 550 (1919)]:

. . . for it is obvious that this preliminary deposit serves the double purpose of a prepayment upon the value of the property, if finally expropriated; and as an indemnity against damage in the eventuality that the proceedings should fail of consummation. . . (Underscoring supplied).

Considering that the owners do not dispute the right of NHA to expropriate the properties, the release of the amount deposited in favor of the Zaballeros served the purpose of a prepayment on the value of the expropriated properties pending the final determination of just compensation by the trial court in accordance with Rule 67 of the Rules of Court. By virtue of section 2, Rule 67, the trial judge ascertains and fixes the provisional value of the expropriated property to determine the amount of deposit to be made before the plaintiff shall have the right to enter upon the possession of the property involved. If the trial court is allowed to do this, and where, as in the case at bar, the defendants have conceded to plaintiff's authority to expropriate and the plaintiff had already taken possession of the property, equity dictates that provisional compensation be ordered in favor of the owners.

The present case must be distinguished from that of *Republic of the Philippines v. Guido* [83 Phil. 934 (1949)] wherein this court annulled an order of the trial court authorizing the withdrawal of a portion of the amount deposited which was claimed by the defendant-landowner as payment for unpaid back and current rentals due from some tenants occupying the land subject of the expropriation. Quoting the pertinent portion of that decided case:

After the careful study of this case and of the issues involved, We agree with the petitioner that the issuance of the order of the trial court of April 13, 1948, was unwarranted and illegal. Even assuming for a moment that the money deposited in court in condemnation proceeding in order to give possession of the land to the plaintiff is subject to the payment of damages consisting of rentals, in a case where the defendant landowner, as in the present case, is still in possession of the land, still the law contemplates that said damages be assessed during the condemnation proceedings and that they were caused thereof. The amount of P7,534.52, authorized by the trial court in its order of April 13, 1948 to be paid out of the deposit made in court, according to the very respondent Guido, includes rentals due and payable as far back as July, 1946. Inasmuch as the condemnation proceedings were commenced only after December 31, 1947, the date of the authority given by the President of the Philippines to institute condemnation proceedings, it is obvious that said unpaid rentals, assuming them to be damages in expropriation proceedings, were caused long before the institution of these condemnation proceedings, and consequently, were not caused by reason thereof. Furthermore, there is force in the contention of the petitioner that if, pending condemnation proceedings, that amount of the deposit required by the court so that possession of the land may be given to the plaintiff is diminished, not only once but continually as is feared in the present case in order to pay for the supposed damages consisting of rentals due and payable by the tenants of the land, then the time will come when the amount of the deposit would be so inadequate as to render precarious the provisional possession given to the plaintiff, unless said plaintiff, from time to time, made further deposits to keep the original amount intact. . .

The foregoing quotation explains why this Court in the *Guido* case annulled the order of the trial court. What the defendant-landowner claimed in that case was the payment of rentals due from some tenants on the ground that the amount being collected represented the amount deposited by the tenants. This allegation not having been established, the Court refrained from ruling upon it. The case at bar, however, involved collection of the amount deposited by way of partial and/or provisional payment of just compensation to which petitioners were undoubtedly entitled. The *Guido* case is therefore inapplicable.

II. The second issue, raised by the NHA, pertains to the trial court's final adjudication of the question of just compensation. The NHA posits that applying the provisions of Pres. Dec. No. 76, as amended, the just compensation for the Zaballero properties should be only P1.00 per square meter and not P7.75 as determined by the trial court.

The question relative to the basis for fixing just compensation in eminent domain cases is not new. This has been dealt with squarely in the recently decided case of *Export Processing Zone Authority v. Dulay* (G.R. No. 59603, April 29, 1987) and reiterated in *Ignacio v. Guerrero* (G.R. No. L-49088, May 29, 1987). This Court in the EPZA case declared the provisions of the Pres. Dec. Nos. 76, 464, 794, and 1533, unconstitutional and void insofar as they pegged the basis for determining just compensation to the fair market value declared by the owner or administrator of the property, or the market value as determined by the assessor, whichever is lower. Citing precedents on the matter of just compensation, this Court held in the EPZA case that:

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

The trial court correctly applied the law on the matter of just compensation in rendering the disputed decision of April 7, 1982. In the words of the trial court:

Since courts must first construe acts of government conformably with the Constitution, the proper, nay, inexorable, meaning to be given the cited Presidential Decrees should be that the rules therein enumerated are intended merely to provide guidelines for the courts as they go about their functions of determining just compensation. The plaintiff, therefore, may not impute upon the presidency the unconstitutional intent of direct executive determination of just compensation in the promulgation of the cited decrees and as a delegate of presidential powers, the National Housing Authority certainly cannot rise higher than its principal's constitutional source of authority. (Decision, G.R. No. 61237-39 Rollo, p. 57).

In arriving at the P7.75 per square meter valuation, the trial court considered the evidence presented by the Zaballeros consisting of documents and the testimony of Marina Z. Reyes on the following: (1) the classification and use for which the expropriated property is suited; (2) the developmental costs for improving the land; (3) the value declared by the owners; (4) the selling price of similar lands in the vicinity; (5) the reasonable "disturbance compensation" for the removal and/or demolition of certain improvements on the land and for the value of the sugar cane crops, trees and other improvements thereon. The court consequently overruled, and rightly so, the NHA's insistence that the just compensation should be set at P1.00 per square meter, which is the assessed market value.

With respect to the NHA's contention that the trial court erred in awarding "disturbance compensation" of P1.75 per square meter, in addition to the declared value of P6.00 per square meter adopted by the trial court as the fair market value of the expropriated property, this Court finds that although it was erroneously denominated, this amount actually represents consequential losses to the owners of the property for the removal and/or demolition of certain improvements and the value of sugar cane crops and fruit trees existing on the expropriated land at the time of the taking. Undoubtedly, this is a factor to be taken into account in fixing the just compensation.

WHEREFORE, the Court in G.R. No. L-49291-92 hereby GRANTS the petitions and SETS ASIDE the Court of Appeals decision and resolution dated October 16, 1978 and November 14, 1978, respectively; and in G.R. No. 61237-39 DENIES the petitions and AFFIRMS the April 7, 1982 Decision of the trial court with the provision that defendants MARINA Z. REYES, SOCORRO Z. FRANCISCO and AUGUSTO M. ZABALLERO should likewise be paid just compensation for their respective proportionate shares in the subject properties at the rate of P7.75 per square meter inclusive of the consequential losses deducting from the total value of their land whatever partial or provisional payment they had receives and paying them the balance plus costs. The temporary restraining order issued by this Court on September 16, 1982 is hereby LIFTED and SET ASIDE.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Sarmiento, JJ., concur.

Narvasa, J., no part.

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