

LORENZO SUMULONG AND EMILIA VIDANES-BALAOING, PETITIONERS, VS. HON. BUENAVENTURA GUERRERO AND NATIONAL HOUSING AUTHORITY, RESPONDENTS.

G.R. No. L-48685. September 30, 1987

Ponente: CORTES, J.

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CORTES, J.:

On December 5, 1977 the National Housing Authority (NHA) filed a complaint for expropriation of parcels of land covering approximately twenty five (25) hectares, (in Antipolo, Rizal) including the lots of petitioners Lorenzo Sumulong and Emilia Vidanes-Balaoing with an area of 6,667 square meters and 3,333 square meters respectively. The land sought to be expropriated were valued by the NHA at one peso (P1.00) per square meter adopting the market value fixed by the provincial assessor in accordance with presidential decrees prescribing the valuation of property in expropriation proceedings.

Together with the complaint was a motion for immediate possession of the properties. The NHA deposited the amount of P158,980.00 with the Philippine National Bank, representing the "total market value" of the subject twenty five hectares of land, pursuant to Presidential Decree No. 1224 which defines "the policy on the expropriation of private property for socialized housing upon payment of just compensation."

On January 17, 1978, respondent Judge issued the following Order:

Plaintiff having deposited with the Philippine National Bank, Heart Center Extension Office, Diliman, Quezon City, Metro Manila, the amount of P158,980.00 representing the total market value of the subject parcels of land, let a writ of possession be issued."

SO ORDERED.

Pasig, Metro Manila, January 17, 1978.

(SGD) BUENAVENTURA S. GUERRERO

Judge

Petitioners filed a motion for reconsideration on the ground that they had been deprived of the possession of their property without due process of law. This was however, denied.

Hence, this petition challenging the orders of respondent Judge and assailing the constitutionality of Pres. Decree No. 1224, as amended. Petitioners argue that:

- 1) Respondent Judge acted without or in excess of his jurisdiction or with grave abuse of discretion by issuing the Order of January 17, 1978 without notice and without hearing and in issuing the Order dated June 28, 1978 denying the motion for reconsideration.
- 2) Pres. Decree 1224, as amended, is unconstitutional for being violative of the due process clause,

specifically:

- a) The Decree would allow the taking of property regardless of size and no matter how small the area to be expropriated;
- b) "Socialized housing" for the purpose of condemnation proceeding, as defined in said Decree, is not really for a public purpose;
- c) The Decree violates procedural due process as it allows immediate taking of possession, control and disposition of property without giving the owner his day in court;
- d) The Decree would allow the taking of private property upon payment of unjust and unfair valuations arbitrarily fixed by government assessors;
- e) The Decree would deprive the courts of their judicial discretion to determine what would be the "just compensation" in each and every case of expropriation.

Indeed, the exercise of the power of eminent domain is subject to certain limitations imposed by the constitution, to wit:

Private property shall not be taken for public use without just compensation" (Art. IV, sec. 9);

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws" (Art. IV, sec. 1).

Nevertheless, a clear case of constitutional infirmity has to be established for this Court to nullify legislative or executive measures adopted to implement specific constitutional provisions aimed at promoting the general welfare.

Petitioners' objections to the taking of their property subsumed under the headings of public use, just compensation, and due process have to be balanced against competing interests of the public recognized and sought to be served under declared policies of the constitution as implemented by legislation.

1. Public use

a) Socialized Housing

Petitioners contend that "socialized housing" as defined in Pres. Decree No. 1224, as amended, for the purpose of condemnation proceedings is not "public use" since it will benefit only "a handful of people, bereft of public character."

"Socialized housing" is defined as, "the construction of dwelling units for the middle and lower class members of our society, including the construction of the supporting infrastructure and other facilities" (Pres. Decree No. 1224, par. 1). This definition was later expanded to include among others:

- a) The construction and/or improvement of dwelling units for the middle and lower income groups of the society, including the construction of the supporting infrastructure and other facilities;
- b) Slum clearance, relocation and resettlement of squatters and slum dwellers as well as the provision of related facilities and services;
- c) Slum improvement which consists basically of allocating homelots to the dwellers in the area or property involved, re-arrangement and re-alignment of existing houses and other dwelling structures and the construction and provision of basic community facilities and services, where there are none, such as roads, footpaths, drainage,

sewerage, water and power system, schools, barangay centers, community centers, clinics, open spaces, parks, playgrounds and other recreational facilities;

d) The provision of economic opportunities, including the development of commercial and industrial estates and such other facilities to enhance the total community growth; and

e) Such other activities undertaken in pursuance of the objective to provide and maintain housing for the greatest number of people under Presidential Decree No. 757. (Pres. Decree No. 1259, sec. 1)

The "public use" requirement for a valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. In this jurisdiction, the statutory and judicial trend has been summarized as follows:

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 anymore. 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 expropriation of lands to be subdivided into small lots for resale at cost to individuals. The other is in 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 [Heirs of Juancho Ardon v. Reyes, G.R. Nos. 60549, 60553-60555, October 26, 1983, 125 SCRA 220 (1983) at 234-5 quoting E. FERNANDO, THE CONSTITUTION OF THE PHILIPPINES 523-4, (2nd ed., 1977) Underscoring supplied].

The term "public use" has acquired a more comprehensive coverage. To the literal import of the term signifying strict use or employment by the public has been added the broader notion of indirect public benefit or advantage. As discussed in the above cited case of Heirs of Juancho Ardon:

The restrictive view of public use may be appropriate for a nation which circumscribes the scope of government activities and public concerns and which possesses big and correctly located public lands that obviate the need to take private property for public purposes. Neither circumstance applies to the Philippines. We have never been a laissez faire State. And the necessities which impel the exertion of sovereign power are all too often found in areas of scarce public land or limited government resources. (p. 231)

Specifically, urban renewal or redevelopment and the construction of low-cost housing is recognized as a public purpose, not only because of the expanded concept of public use but also because of specific provisions in the Constitution. The 1973 Constitution made it incumbent upon the State to establish, maintain and ensure adequate social services including housing [Art. II, sec. 7]. The 1987 Constitution goes even further by providing that:

The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, arising standard of living and an improved quality of life for all. [Art. II, sec. 9]

The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners. (Art XIII, sec. 9, Underscoring supplied)

Housing is a basic human need. Shortage in housing is a matter of state concern since it directly and significantly affects public health, safety, the environment and in sum, the general welfare. The public character of housing

measures does not change because units in housing projects cannot be occupied by all but only by those who satisfy prescribed qualifications. A beginning has to be made, for it is not possible to provide housing for all who need it, all at once.

Population growth, the migration to urban areas and the mushrooming of crowded makeshift dwellings is a world-wide development particularly in developing countries. So basic and urgent are housing problems that the United Nations General Assembly proclaimed 1987 as the "International Year of Shelter for the Homeless" "to focus the attention of the international community on those problems". The General Assembly is "(s)eriously concerned that, despite the efforts of Governments at the national and local levels and of international organizations, the living conditions of the majority of the people in slums and squatter areas and rural settlements, especially in developing countries, continue to deteriorate in both relative and absolute terms." (G.A. Res. 37/221, Yearbook of the United Nations 1982, Vol. 36, p. 1043-4]

In the light of the foregoing, this Court is satisfied that "socialized housing" falls within the confines of "public use". It is, particularly important to draw attention to paragraph (d) of Pres. Dec. No. 1224 which should be construed in relation with the preceding three paragraphs. Provisions on economic opportunities inextricably linked with low-cost housing, or slum clearance, relocation and resettlement, or slum improvement emphasize the public purpose of the project.

In the case at bar, the use to which it is proposed to put the subject parcels of land meets the requisites of "public use". The lands in question are being expropriated by the NHA for the expansion of Bagong Nayon Housing Project to provide housing facilities to low-salaried government employees. Quoting respondents:

1. The Bagong Nayon Project is a housing and community development undertaking of the National Housing Authority. Phase I covers about 60 hectares of GSIS property in Antipolo, Rizal; Phase II includes about 30 hectares for industrial development and the rest are for residential housing development.

It is intended for low-salaried government employees and aims to provide housing and community services for about 2,000 families in Phase I and about 4,000 families in Phase II.

It is situated on rugged terrain 7.5 kms. from Marikina Town proper; 22 Kms. east of Manila; and is within the Lungsod Silangan Townsite Reservation (created by Presidential Proclamation No. 1637 on April 18, 1977).

The lands involved in the present petitions are parts of the expanded/additional areas for the Bagong Nayon Project totalling 25.9725 hectares. They likewise include raw, rolling hills. (Rollo, pp. 266-7)

The acute shortage of housing units in the country is of public knowledge. Official data indicate that more than one third of the households nationwide do not own their dwelling places. A significant number live in dwellings of unacceptable standards, such as shanties, natural shelters, and structures intended for commercial, industrial, or agricultural purposes. Of these unacceptable dwelling units, more than one third is located within the National Capital Region (NCR) alone which lies proximate to and is expected to be the most benefited by the housing project involved in the case at bar [See, National Census and Statistics Office, 1980 Census of Population and Housing].

According to the National Economic and Development Authority at the time of the expropriation in question, about "50 per cent of urban families, cannot afford adequate shelter even at reduced rates and will need government support to provide them with social housing, subsidized either partially or totally" [NEDA, FOUR YEAR DEVELOPMENT PLAN FY 1974-1977, p. 357]. Up to the present, housing "still remains to be out of the reach of a sizable proportion of the population" [NEDA, MEDIUM-TERM PHILIPPINE DEVELOPMENT PLAN 1987-1992, p. 240].

The mushrooming of squatter colonies in the Metropolitan Manila area as well as in other cities and centers of population throughout the country, and, the efforts of the government to initiate housing and other projects are matters of public knowledge [See NEDA, FOUR YEAR DEVELOPMENT PLAN FY 1974-1977, pp. 357-361; NEDA, FIVE - YEAR PHILIPPINE DEVELOPMENT PLAN 1978-1982, pp. 215-228; NEDA, FIVE YEAR PHILIPPINE DEVELOPMENT PLAN 1983-1987, pp. 109-117; NEDA, MEDIUM TERM PHILIPPINE DEVELOPMENT PLAN 1987-1992, pp 240-254].

b) Size of Property

Petitioners further contend that Pres. Decree 1224, as amended, would allow the taking of "any private land" regardless of the size and no matter how small the area of the land to be expropriated. Petitioners claim that "there are vast areas of lands in Mayamot, Cupang, and San Isidro, Antipolo, Rizal hundred of hectares of which are owned by a few landowners only. It is surprising [therefore] why respondent National Housing Authority [would] include [their] two small lots . . ."

In *J.M. Tuason Co., Inc. v. Land Tenure Administration*, [G.R. No. L-21064, February 18, 1970, 31 SCRA 413 (1970) at 428] this Court earlier ruled that expropriation is not confined to landed estates. This Court, quoting the dissenting opinion of Justice J.B.L. Reyes in *Republic v Baylosis*, [96 Phil. 461 (1955)], held that:

The propriety of exercising the power of eminent domain under Article XIII, section 4 of our Constitution cannot be determined on a purely quantitative or area basis. Not only does the constitutional provision speak of lands instead of landed estates, but I see no cogent reason why the government, in its quest for social justice and peace, should exclusively devote attention to conflicts of large proportions, involving a considerable number of individuals, and eschew small controversies and wait until they grow into a major problem before taking remedial action.

The said case of *J.M. Tuason Co., Inc.* departed from the ruling in *Guido v. Rural Progress Administration* [84 Phil. 847 (1949)] which held that the test to be applied for a valid expropriation of private lands was the area of the land and not the number of people who stood to be benefited. Since then "there has evolved a clear pattern of adherence to the 'number of people to be benefited test'" [*Mataas na Lupa Tenants Association, Inc. v. Dimayuga*, G.R. No. 32049, June 25, 1984, 130 SCRA 30 (1984) at 39]. Thus, in *Pulido v. Court of Appeals* [G.R. No. 57625, May 3, 1983, 122 SCRA 63 (1983) at 73], this Court stated that, "[i]t is unfortunate that the petitioner would be deprived of his landholdings, 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."

The State acting through the NHA is vested with broad discretion to designate the particular property/properties to be taken for socialized housing purposes and how much thereof may be expropriated. Absent a clear showing of fraud, bad faith, or gross abuse of discretion, which petitioners herein failed to demonstrate, the Court will give due weight to and leave undisturbed the NHA's choice and the size of the site for the project. The property owner may not interpose objections merely because in their judgment some other property would have been more suitable, or just as suitable, for the purpose. The right to the use, enjoyment and disposal of private property is tempered by and has to yield to the demands of the common good. The Constitutional provisions on the subject are clear:

The State shall promote social justice in all phases of national development. (Art. II, sec. 10)

The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments. (Art. XIII, sec. 1)

Indeed, the foregoing provisions, which are restatements of the provisions in the 1935 and 1973 Constitution's, emphasize:

. . . 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 [Mataas na Lupa Tenants Association, Inc. supra at 42-3 citing I. CRUZ, PHILIPPINE POLITICAL LAW, 70 (1983 ed.)].

2. Just Compensation

Petitioners maintain that Pres. Decree No. 1224, as amended, would allow the taking of private property upon payment of unjust and unfair valuations arbitrarily fixed by government assessors. In addition, they assert that the Decree would deprive the courts of their judicial discretion to determine what would be "just compensation".

The foregoing contentions have already been ruled upon by this Court in the case of *Ignacio v. Guerrero* (G.R. No. L-49088, May 29, 1987) which, incidentally, arose from the same expropriation complaint that led to this instant petition. The provisions on just compensation found in Presidential Decree Nos. 1224, 1259 and 1313 are the same provisions found in Presidential Decree Nos. 76, 464, 794 and 1533 which were declared unconstitutional in *Export Processing Zone Authority v. Dulay* (G.R. No. 59603, April 29, 1987) for being encroachments on judicial prerogatives.

This Court abandoned the ruling in *National Housing Authority v. Reyes* [G.R. No. 49439, June 29, 1983, 123 SCRA 245 (1983)] which upheld Pres. Decree No. 464, as amended by Presidential Decree Nos. 794, 1224 and 1259.

In said case of *Export Processing Zone Authority*, this Court pointed out that:

The basic unfairness of the decrees is readily apparent.

Just compensation means the value of the property at the time of the taking. It means a fair and full equivalent for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities, should be considered.

* * *

Various factors can come into play in the valuation of specific properties singled out for expropriation. The values given by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts, or other crops. Very often land described as "cogonal" has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct. Tax values can serve as guides but cannot be absolute substitutes for just compensation.

To say that the owners are estopped to question the valuations made by assessors since they had the opportunity to protest is illusory. The overwhelming mass of landowners accept unquestioningly what is found in the tax declarations prepared by local assessors or municipal clerks for them. They do not even look at, much less analyze, the statements. The idea of expropriation simply never occurs until a demand is made or a case filed by an agency authorized to do so. (pp. 12-3)

3. Due Process

Petitioners assert that Pres. Decree 1224, as amended, violates procedural due process as it allows immediate taking of possession, control and disposition of property without giving the owner his day in court. Respondent

Judge ordered the issuance of a writ of possession without notice and without hearing.

The constitutionality of this procedure has also been ruled upon in the Export Processing Zone Authority case, viz:

It is violative of due process to deny to the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated. (p. 13)

On the matter of the issuance of a writ of possession, the ruling in the Ignacio case is reiterated, thus:

[I]t is imperative that before a writ of possession is issued by the Court in expropriation proceedings, the following requisites must be met: (1) There must be a Complaint for expropriation sufficient in form and in substance; (2) A provisional determination of just compensation for the properties sought to be expropriated must be made by the trial court on the basis of judicial (not legislative or executive) discretion; and (3) The deposit requirement under Section 2, Rule 67 must be complied with. (p. 14)

This Court holds that "socialized housing" defined in Pres. Decree No. 1224, as amended by Pres. Decree Nos. 1259 and 1313, constitutes "public use" for purposes of expropriation. However, as previously held by this Court, the provisions of such decrees on just compensation are unconstitutional; and in the instant case the Court finds that the Orders issued pursuant to the corollary provisions of those decrees authorizing immediate taking without notice and hearing are violative of due process.

WHEREFORE, the Orders of the lower court dated January 17, 1978 and June 28, 1978 issuing the writ of possession on the basis of the market value appearing therein are annulled for having been issued in excess of jurisdiction. Let this case be remanded to the court of origin for further proceedings to determine the compensation the petitioners are entitled to be paid. No costs.

SO ORDERED.

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

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