

BASES CONVERSION & DEVELOPMENT AUTHORITY, PLAINTIFF-APPELLANT, VS. STA. INES LANDHOLDINGS, INC., DEFENDANT-APPELLANT.

Ponente: LIBREA-LEAGOGO, J.

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LIBREA-LEAGOGO, J.:

Before this Court are the appeals filed by Sta. Ines Landholdings, Inc. and Bases Conversion Development Authority from the Decision[1] dated 15 April 2013 of the Regional Trial Court, Third Judicial Region, Branch 84, Malolos City, Bulacan in the case entitled "Bases Conversion and Development Authority v. Sta. Ines Landholdings, Inc.," docketed as Civil Case No. 795-M-2008, the dispositive portion of which reads:

"WHEREFORE, finding merit in the complaint at bench, the affected portions of the subject lots covered by TCT Nos. 347375 (M) and 347372 (M) in the aggregate area of Nine Hundred Forty One (941) square meters, more or less, and the improvement existing thereon, if any, are hereby ordered expropriated in favor of the plaintiff BCDA. Accordingly, the plaintiff is directed to pay the defendants just compensation in the amount of Php600.00 per square meter for the expropriated lot covered by TCT No. 347375 (M) or the sum of Php510,600.00 and Php500.00 per square meter for the lot covered by TCT No. 347372 (M) or the amount of Php45,000.00 or the total amount of Php555,600.00, minus the sum of Php177,890.00 it already deposited with the Office of the Clerk of Court.

SO ORDERED"[2]

Defendant-appellant filed its Appellant's Brief[3] dated 27 March 2014, while plaintiff-appellant filed its Appellant's Brief[4] dated 13 June 2014. Plaintiff-appellant then filed its Appellee's Brief[5] dated 07 July 2014, while defendant-appellant also filed its Appellee's Brief[6] dated 28 August 2014. Per JRD verification,[7] no reply brief was filed. Thus, the appeals are submitted for decision.

FACTUAL ANTECEDENTS

A Complaint for Expropriation (with prayer for the issuance of a writ of possession)[8] dated 07 November 2008 was filed by plaintiff Bases Conversion and Development Corporation ("BCDA," for brevity) against defendant Sta. Ines Landholdings, Inc. ("SILI," for brevity) before the Regional Trial Court of Malolos City, Bulacan, docketed as Civil Case No. 795-M-2008.

Plaintiff BCDA alleged in the Complaint, inter alia, that: pursuant to Section 4(b) of Republic Act No. 7227, as amended by Republic Act No. 7917, it is mandated by law to adopt, prepare and implement a comprehensive and detailed development plan for the sound and balanced conversion of the Clark and Subic military reservations and their extensions into other productive uses, inclusive of the development of transport infrastructures that would make them accessible, in order to promote the economic and social development of Central Luzon in particular and the country in general; in 1995, BCDA incorporated North Luzon Railways Corporation ("Northrail," for brevity) to develop and implement rail projects linking the former military facilities in Luzon, partly by reviving rail operations along the abandoned PNR lines; the Northrail Phase I project would run approximately sixty-four (64) kilometers, connecting the Bonifacio Global City (formerly Fort Bonifacio) located in Taguig City to the

Clark Special Economic Zone (formerly Clark Air Base) in Central Luzon; for ease of implementation, Phase I has been further subdivided into Phase I-a (Caloocan to Malolos), Phase I-b (Fort Bonifacio to Caloocan), and Phase I-c (Malolos to Clark); under Section 5(k) of R.A. No. 7227, it is vested, among others, with the power to exercise the right of eminent domain; SILI is in possession of and owns parcels of land, situated at Barangay Bunlo, Bocaue, Bulacan: Lot No. 94-B covered by TCT No. T-347375(M) having an affected area of 851 square meters ("sq.m.," for brevity) and Lot No. 705 covered by TCT No. T-347372(M) having an affected area of 90 sq.m.; the said properties are sought to be expropriated in order to pave the way for the implementation of the Northrail Phase I-a project, an important and vital flagship road project of the Philippine Government; the total area of the properties to be affected is nine hundred forty-one (941) sq.m. and the classification thereof is agricultural; the prevailing BIR zonal valuation thereof is Php190.00/sq.m. for Lot No. 94-B and Php180.00/sq.m. for Lot 705; the development of these properties will provide the shortest, direct and efficient link among vital development areas in Metro Manila and Central Luzon; in view of the apparent and pressing need for the immediate completion of the Northrail Phase I-a Project, plaintiff urgently needs to acquire those portions of the parcels of land to facilitate the construction thereon; the said parcels of land and the existing improvements thereon, if any, sought to be expropriated have not been applied to, nor expropriated for, any public use, and they have been selected as the most ideal and feasible sites for the implementation of the Northrail Phase I-a Project, in a manner compatible with the greatest public good and the least private injury in accordance with the Master Plan Study for the Northrail Project; plaintiff attempted to negotiate with and offered to buy from SILI portions of the subject property for a public purpose, at a price prescribed by law but failed to arrive at an agreement for the same, despite the repeated negotiations between the parties; the government will suffer irreparable damage if this project will not proceed as scheduled by reason of the failure to negotiate with the supposed owner after diligent efforts to do so; and pursuant to R.A. No. 8974 in relation to Section 8(a) of the Implementing Rules and Regulations ("IRR," for brevity) of the said law, plaintiff is willing, able and ready to pay the total amount of Php177,890.00 for the total affected area of 941 sq.m. with the Office of the Clerk of Court for purposes of the issuance of a writ of possession. BCDA prayed for: the issuance of a writ of possession and order of expropriation; appointment of three (3) competent and disinterested commissioners; after the determination of just compensation, to authorize the payment by plaintiff to defendant; for plaintiff to be adjudged to have the lawful right to enter, take possession and acquire portions of the subject properties, including all its improvements; the issuance of an order requiring defendant to surrender the owner's copy of the transfer certificates of title, to facilitate conveyance of title of the affected properties; and for the Register of Deeds of the place where the properties are located to effect the registration of title over the properties subject of the expropriation case to the BCDA.

In its Answer[9] dated 26 January 2009, defendant SILI alleged, inter alia, that: it admits the allegations in paragraphs 1, 2 and 7 of the Complaint; partially admits the allegations in paragraphs 3, 6, and 15 of the same; specifically denies the allegations in paragraphs 4, 5, 8, 10, and 11; specifically denies the allegations in paragraph 9 in so far as it alleged that the value of the subject property is Php180.00 per sq.m., the truth being that the present market value of the same is significantly more than that considering that the area and immediate vicinity is undergoing rapid development and urbanization; specifically denies the allegations in paragraph 12 in so far as it alleged that the subject expropriation sought by plaintiff is the most ideal and feasible and with least injury to defendant, the truth being those alleged in its special and affirmative defenses; specifically denies the allegations in paragraph 13, the truth being that save for the subject letters sent by plaintiff, there were no other communications, much less repeated negotiations between the parties; specifically denies the allegations in paragraph 14 in so far as it alleged diligent efforts on the part of the plaintiff to negotiate with defendant; and specifically denies the allegations in paragraph 16 for being mere conclusions of law. By way of special and affirmative defenses, defendant SILI alleged that: the acts of plaintiff is illegal and not sanctioned by law; there is

no particular provision of law specifically empowering plaintiff to exercise the power of expropriation for the use of developing a transport infrastructure; the expropriation of the portions of defendant's property is unnecessary as the present railway and/or right of way is sufficient to meet the needs of a mass rail transport system; hence, the expropriation of the subject property is clearly not for a public purpose but an unjust burden imposed upon defendant's property rights; and the market value of the subject property is way above the alleged amount of Php180.00 per sq.m. quoted by plaintiff which is grossly undervalued.

Plaintiff BCDA filed a Motion to Deposit and for the Issuance of Writ of Possession[10] dated 24 February 2009 praying that it be allowed to deposit the amount of Php177,890.00 with the Office of the Clerk of Court, and that it be issued a writ of possession. Defendant SILI filed its Comment[11] dated 23 March 2009. In an Order[12] dated 30 June 2009, the trial court granted the Motion and ordered plaintiff BCDA to deposit with the Office of the Clerk of Court the amount of Php177,890.00, equivalent to the amount of 100% of the value of the affected property based on the current Bureau of Internal Revenue ("BIR," for brevity) zonal valuation, to be paid to the owner of the subject property.

Plaintiff BCDA submitted the Judicial Affidavits of Engineer Virgilio J. Pidelo ("Engr. Pidelo," for brevity)[13] and Mrs. Evelyn V. Peralta ("Peralta," for brevity).[14]

Peralta testified, inter alia, that: she is currently employed with Northrail as Senior Manager for Financial Services; BCDA is the mother agency of Northrail; as Senior Finance Manager, she is in-charge of all the financial transactions of Northrail, including the issuance of the certificate of funds availability; and she identified her judicial affidavit, affirmed and confirmed the contents thereof, and adopted the same as her direct testimony.[15]

In an Order[16] dated 15 September 2009, it was stated that considering the manifestation of defendant SILI's counsel that he would no longer conduct his cross-examination on Peralta and he has no opposition to the issuance of writ of possession, the same was issued; and the parties were directed to submit the names of their nominees who will determine the just compensation of the subject property. A Writ of Possession[17] dated 30 September 2009 was issued.

Defendant SILI nominated Benjamin Isidro ("Isidro," for brevity), Municipal Assessor of Bocaue, Bulacan,[18] while plaintiff BCDA nominated the BIR Representative of the Revenue District Office of Plaridel, Bulacan.[19]

In the Order[20] dated 23 October 2009, the trial court declared plaintiff BCDA as having a lawful right to take the property in question for purposes for which the same was expropriated under R.A. No. 7227 and R.A. No. 8974; and the municipal assessor of Bocaue, Bulacan, the municipal engineer of Bocaue, Bulacan and the revenue district officer of BIR Plaridel, Bulacan were appointed as commissioners to ascertain and report to the trial court the just compensation for the property subject to be taken.

In the subsequent Order[21] dated 02 December 2009, it was stated that: despite receipt of the Order dated 23 October 2009, the designated commissioners have not filed any compliance therewith; in order to expedite the proceedings, said Order is amended by appointing Atty. Rhoderick P. Caraig ("Atty. Caraig," for brevity), Branch Clerk of Court, to act as chairperson of the commissioners together with the Municipal Assessor of Bocaue, Bulacan and the Revenue District Officer ("RDO," for brevity), BIR Plaridel, Bulacan, as members, to ascertain and report to the trial court the just compensation of the affected property subject of expropriation; and for said commissioners to appear before the trial court to take an oath.

Upon joint motion, the trial court, in an Order[22] dated 04 February 2010, allowed the parties to submit their respective position papers on the just compensation of the property and thereafter, the appointed commissioners

shall make the evaluation of the same for submission of a report to the court.

In its Position Paper[23] dated 02 March 2009, defendant SILI averred, inter alia, that: the subject property is strategically located within the vicinity of a major local development project, i.e. relocation and construction of the new municipal building, which is transforming the Igulot area and its immediate surroundings into the new town center; the same resulted to the ongoing urbanization and commercialization of the area which logically and inevitably pushed the market value of the affected lands, including the subject property; the property owners of lands located within the vicinity of the said local development project in Igulot and its immediate environs and surrounding realties, as well as property owners similarly situated as defendant, are offering their properties for sale anywhere from Php3,000.00 to Php5,000.00 per sq.m.; in the residential subdivision project which is adjacent to subject property, the market selling price is Php5,000.00 per sq.m.; other similarly situated property owners have relayed their collective stand of selling their properties at Php10,000.00 per sq.m. As their response to plaintiff's offer to buy their properties; the amount of Php5,000.00 per sq.m. is the fair market value as the same is truly reflective of the market realities of the area and approximates the prevailing real property market price; and said amount should thus be fixed by the court as just compensation.

In an Order[24] dated 31 May 2010, the filing of plaintiff BCDA's position paper was deemed waived. The RDO of Plaridel, Bulacan and the Municipal Assessor of Bocaue, Bulacan were directed to file their respective position papers insofar as the zonal valuation of the subject property is concerned for the determination of just compensation.[25]

Commissioner Isidro, Municipal Assessor of Bocaue, Bulacan, submitted a Member Commissioner's Report[26] dated 04 November 2010 stating that: the subject real properties are classified as agricultural lots; based on opinion gathered from authoritative person at Barangay Bunlo, Bocaue, Bulacan, the current and fair market value of agricultural lots is Php1,175.00 per sq.m. and for Barangay Igulot, the Php896.88 per sq.m.; and it was recommended that the defendant is entitled to be paid Php1,175.00 per sq.m. for Barangay Bunlo and Php896.88 per sq.m. for Barangay Igulot, as just compensation.

Commissioner Richard S. Ricarte ("Ricarte," for brevity) of BIR Revenue District No. 25A Plaridel, Bulacan, submitted his Member Commissioner's Report[27] dated 25 January 2011, which stated that: subject properties are classified as agricultural (A1) irrigated riceland which is the actual use as appearing in the Tax Declaration of Real Property; pursuant to the Department Order No. 29-09 of the Department of Finance issued to implement the revised zonal values of real properties for purposes of computing any internal revenue tax due on sale/transfer or any other disposition of real properties, the zonal value of the land situated at Barangay Bunlo and covered by TCT No. 347375 (M) is Php600.00 per sq.m. while the land situated at Barangay Igulot and covered by TCT No. 347372 (M) is Php500.00 per sq.m. effective 15 July 2009; and the zonal value as stated shall apply provided the same is higher than (a) the fair market value as shown in the Schedule of Values of the provincial or municipal/city assessor, and (b) the gross selling price/consideration as shown in the duly notarized document of sale or transfer of real property.

In an Order[28] dated 12 May 2011, the trial court directed the parties to comment on the Commissioner's Report filed by Isidro and Ricarte.

Defendant SILI filed its Comment, etc.[29] dated 23 May 2011 reiterating its position that the just compensation for the subject property is Php5,000.00 per sq.m. In its Manifestation, etc.[30] dated 26 May 2011, plaintiff BCDA stated that: those are the individual reports of the members of the Board of Commissioners and not a consolidated Commissioners' Report prepared and signed by the Chairman of the Board and its members as contemplated by Sections 6, 7, and 8 of Rule 67 of the 1997 Rules of Civil Procedure; as such, the filing of its

comment to the same is not only premature, but also contrary to the rules; and the filing of its comment be held in abeyance pending the submission of the consolidated Commissioners' Report. Defendant SILI filed a Supplement to Comment[31] dated 02 July 2011. Plaintiff filed a Manifestation, etc.[32] dated 29 June 2011 which prayed that the filing of its comment should be held in abeyance pending resolution of its motion. In an Order[33] dated 18 July 2011, plaintiff's motion to hold in abeyance the filing of its comment was granted; the determination of just compensation on the basis of the individual reports of the BIR and the Municipal Assessor was set for hearing ; and the parties were allowed to present evidence to substantiate their respective valuation of just compensation if they disagree with the said reports.

In an Order[34] dated 05 September 2011, the trial court directed the Chairman of the Commission to issue a consolidated report based on the recommendation of the members of the BIR and the Office of the Municipal Assessor of Bocaue, Bulacan; and the parties were also directed to submit judicial affidavits of their intended witnesses in so far as their claim for the correct just compensation of the subject property is concerned before the scheduled hearing, subject to cross-examination by the adverse counsel.

In the hearing dated 17 November 2011, plaintiff BCDA stated that it is no longer presenting any evidence and that its preferred value is the zonal valuation.[35]

Defendant SILI presented the following witnesses, to wit: Analyn M. Bunnao ("Bunnao," for brevity); Jose Andres R. Cruz ("JA Cruz," for brevity); and Engr. Jose Rexie Cruz ("Engr. Cruz," for brevity).

Bunnao affirmed the contents of her judicial affidavit. She testified, inter alia, that: as Assistant Manager of SILI, she sometimes talks to the person involved in the conduct of appraising values of SILI's real properties; she has no knowledge in the appraisal of real properties; BCDA negotiated with SILI through Atty. Gonzales; the amount of Php5,000.00 per sq.m. stated in her judicial affidavit was given by her boss Marcos de Guzman; she was not the one directly negotiating with BCDA, but de Guzman; the nature and classification of the property sought to be expropriated is agricultural; as SILI also has a property along MacArthur Highway, based on the information they gathered near the MacArthur Highway, the going rate is from Php3,500.00 to Php10,000.00; defendant is not privy to the contract to sell; she was able to go inside Shangri-la Subdivision and the developments there include a new town center; the amount of Php5,000.00 was the assessment of the late Architect de Guzman based on the value of other SILI properties along MacArthur Highway; and they do not have any document to prove their claim that the value of the lands along MacArthur Highway, which is 400 meters from the subject property, is Php3,500.00 to Php10,000.00.

JA Cruz affirmed the contents of his judicial affidavit. He testified, inter alia, that: Banco de Oro contracted a third party who prepared the credit appraisal and credit report; he does not personally conduct the ocular inspection or appraisal in relation to the preparation of the credit appraisal or credit report; he just reviewed the credit appraisal and credit report given to him by a certain group of people who made the report; it could not be said that just because a property is walking distance from MacArthur Highway, its market value would already cost between Php5,000.00 to Php10,000.00 because there are also other factors to consider; considering that he did not see the actual property, he could not estimate the fair market value of the same; the subject property was never used as collateral with the BDO Bocaue, Bulacan branch and was never appraised; it was his first time to hear about this particular property sought to be expropriated; he is not aware that it is an agricultural lot; the values of the properties along MacArthur Highway range from Php10,000.00 to Php15,000.00 and pertain to those which are commercial in nature; the same is not applicable in the instant case because it is an agricultural lot; and the proximity of the property to the commercial area which is MacArthur Highway is a factor to consider in determining the market value of the same.

Engr. Cruz affirmed the contents of his judicial affidavit. He testified that: in preparing the maps, he actually visited the area; he is familiar with the surrounding area; they are planning to transfer to the new municipal building which was erected in the area; they have the Shangri-la Place Subdivision within the area and St. Paul College of Bocaue; they also have the IS Montessori and their expansion area is within the subject area; the expansion area is from agricultural to residential; the approval of the Sangguniang Bayan is not sufficient to consider the property converted from agricultural to residential, as it must be ratified by the Sangguniang Panlalawigan; it was submitted to the Sangguniang Panlalawigan but he has no knowledge whether the same was already ratified; there was no board resolution from the Sangguniang Panlalawigan ratifying the reclassification; even the Housing and Land Use Regulatory Board has not yet ratified the same; as such, the classification may be based on the tax declaration of the property that it is agricultural; they based their certification on the land use plan that it is residential, even if the tax declaration states agricultural; and the subject property is approximately two hundred (200) meters away from St. Paul College and IS Montessori.

Defendant SILI filed its Formal Offer of Evidence[36] dated 06 June 2012, to which plaintiff BCDA filed its Comments/Objections[37] dated 27 June 2011. The trial court admitted the defendant's exhibits in an Order[38] dated 25 July 2012. The parties submitted their respective memoranda.[39]

The trial court rendered the assailed Decision[40] dated 15 April 2013, the dispositive portion of which was earlier quoted.[41] Defendant SILI filed a Notice of Appeal[42] dated 07 June 2013 which was given due course in the Order[43] dated 11 June 2013. Plaintiff BCDA also filed its Notice of Appeal[44] dated 23 October 2013 which was given due course in the Order[45] dated 13 December 2013.

Hence, this appeal of both parties.

RULING

Defendant-appellant SILI assigns the following errors, viz:

- The Lower Court erred in finding that the just compensation for the affected portions expropriated by the Appellee are P600.00 per square for the Igulot portion and P500.00 per square meter for the Bunlo Portion.
- The Lower Court erred in not finding the just compensation of the affected portions expropriated by the Appellee to be anywhere between P1,175.00 [Igulot Portion] and P896.88 per square meter [Bunlo Portion] to P5,000.00 per square meter.[46]

Plaintiff-appellant BCDA assigns a lone error, viz:

THE TRIAL COURT ERRED IN FINDING THAT THE JUST COMPENSATION FOR THE PROPERTIES SOUGHT TO BE EXPROPRIATED IS PHP600.00 PER SQUARE METER FOR THE LOT COVERED BY TCT T-347375 (M) AND PHP500.00 PER SQUARE METER FOR THE LOT COVERED BY TCT T-347372 (M).[47]

Defendant-appellant SILI contends, inter alia, that: the trial court erred in finding the subject property as agricultural; there is no dispute that as early as the year 2000, the subject property has been reclassified as residential as per testimony of the Municipal Planning Development Coordinator of Bocaue, Bulacan ("MPDC," for brevity); the trial court overlooked the fact that the said Comprehensive Land Use Plan ("CLUP," for brevity) and Zoning Ordinance of Bocaue, Bulacan has been submitted to the Sangguniang Panlalawigan on 14 December 2001 for the latter's approval and/or ratification; from that date until today, or roughly 12-13 years later, the Sangguniang Panlalawigan has not issued a Resolution, either approving or denying the same and has not acted upon the same; pursuant to Section 56 of the Local Government Code ("LGC," for brevity), if the Sangguniang Panlalawigan finds that such ordinance or resolution is beyond the power conferred upon it, it shall declare such

ordinance or resolution invalid in whole or in part, and more importantly, it shall advise the municipal authorities of the action it has taken; since the submission of the said CLUP and zoning ordinance, the Sangguniang Panlalawigan has not advised the municipal authorities of Bocaue of the denial of the proposed zoning ordinance, if it was the case; the zoning ordinance shall be presumed consistent with law, and therefore valid, by force of Section 56(d) of the LGC; upon the undisputed facts and stipulations of the parties, as well as the evidence on record, major developments have taken place within the vicinity of the subject properties consistent with the zoning ordinance, such as the establishment of the new municipal hall, the Shangri-la Residential Subdivision and various schools, among others; that the subject properties are declared as agricultural under their tax declarations does not negate the fact that the same have been zoned as residential and that their use and purpose have been determined by the local authority to be more conducive and productive for residential purposes, in conformity with the economic development goals of the Municipality of Bocaue and/or the zoning ordinance it crafted; it is not the tax declaration, but the zoning of the subject property by the local authority as residential which controls the determination of its classification, and which shall ultimately shape its market value and/or just compensation; it has been held that in case of conflict between the zoning ordinance and the tax declaration in regard to the determination of the use/classification of the subject property, "what prevails is the determination for zoning purposes"; even assuming, without admitting, that the actual use of the subject properties are still agricultural, that by itself will not cause the reversion of their classification into agricultural as the zoning classification is not affected by its actual use; the trial court erred in finding that there is no evidence as to the value of the subject properties and/or surrounding areas; no less than the Municipal Assessor of Bulacan himself, who was one of the commissioners formed by the trial court, submitted a report indicating the price of the subject properties to be Php1,175.00 per sq.m. for the Igulot area and Php896.88 for the Bunlo area; in the words of the lower court itself, "both commissioners, being public officials, are entitled to the presumption that they performed their function regularly"; such findings of the municipal assessor is validated by the undisputed developments and improvements in the area as stipulated by the parties, such as proximity of the subject properties to the new municipal building and the Shangri-la Residential Subdivision; the same is likewise supported and substantiated by the latest classification and zoning of the subject property into residential as testified to by the Municipal Planning and Development Officer of Bocaue, as well as the CLUP and Zoning Ordinance of Bocaue, Bulacan; as stipulated by the parties, the subject property is merely 400 meters away from the MacArthur Highway, where the properties are commercial; the Manager of BDO-MacArthur Highway testified that the market value of properties along MacArthur Highway ranges from Php10,000.00 to Php15,000.00 per sq.m.; this valuation was not disputed, much less refuted, by BCDA; these values serve as clues and indices to be able to have a complete picture of the market value of the subject properties; record shows that the price of lots in the adjoining Shangri-la Subdivision ranges from Php4,500.00 to Php5,000.00 per sq.m. as shown by its price lists, sales offerings and advertising brochures; this was substantiated by the duly notarized contract to sell dated 04 November 2008 showing the agreed price of Php4,500.00 per sq.m. of a lot purchased from the said subdivision; as owner, it claims as just compensation for the subject property the price of Php5,000.00 per sq.m., which declaration is recognized by law as a factor or standard in determining the just compensation; it is clear that the records are replete with evidence, direct and circumstantial, as to the market value of the subject property and the surrounding areas from which the just compensation of the subject properties could be approximated, applying the standards set by law and jurisprudence; the trial court erred in adopting the report of the BIR Revenue Officer which is solely based on the BIR zonal value; zonal valuation is simply one of the indices of the fair market value of real estate, and cannot be the sole basis of just compensation in expropriation cases; the just compensation for the subject property is anywhere between Php1,175.00 per sq.m. for the Igulot portion and Php896.88 per sq.m. for the Bunlo portion to Php5,000.00 per sq. meter, as declared by SILI as owner; aside from the reclassification and zoning of the subject properties as residential, the admitted and undisputed evidence on record clearly show that there is a great

improvement in the general vicinity of the subject property; and the potential use and capabilities of the subject property in light of the great improvements as established by the undisputed material facts should be considered in determining the market value and/or just compensation.

Plaintiff-appellant BCDA posits, inter alia, that: it presented and offered in evidence the BIR Zonal Value (3rd Revision) of the subject properties which pegged the values at Php190.00 per sq.m. for Lot 94-B and Php180.00 per sq.m. for Lot 705; the said zonal values are BCDA's proffered value based on Section 7 of the IRR of R.A. No. 8974; it was shown during cross-examination that although there were ongoing developments in the vicinity of the lots in dispute, the subject properties remained barren and undeveloped; SILI's witness JA Cruz, who pegged the values of the subject properties within the price range of Php10,000.00 to Php15,000.00 per sq.m. never actually conducted an ocular inspection of the subject properties nor ascertained their proximity to MacArthur Highway, and their actual conditions so as to give a reasonable estimate of the lots' fair market value; he also admitted that if the subject lots were indeed classified as agricultural lands, his prior appraisal was not applicable; SILI's witness Engr. Cruz, declared in court that the reclassification of the disputed lots was not yet final since it has not been ratified by the Sangguniang Panlalawigan; he also acknowledged that the subject properties remained classified as agricultural in the latest tax declaration of owner SILI; the latter claims that the just compensation of Php5,000.00 per sq.m. represents the fair market value of the lots sought to be expropriated but it has not shown any convincing proof to support such claim; the lone reliable and official document which reflects the real value of the property sought to be expropriated is the BIR zonal valuation (3rd Revision); the latter was the one in force when the complaint for expropriation was filed on 19 December 2008; where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint, which applies here since there was no prior taking by BCDA of the properties; the trial court based its Decision on the recommendation of the RDO, who in turn, used Department Order No. 29-2009 as the basis of his report; this valuation does not reflect the real value of the subject properties at the time of the filing of the complaint, contrary to the direct instruction of Section 2, Rule 67; the revision of the zonal value does not automatically mean a higher valuation for the disputed properties; the just compensation ordered by the trial court is not based on the true value of the subject properties at the time of the filing of the complaint but on the revised zonal values, issued after the filing of the complaint; to now apply the revised zonal value, which entails a huge discrepancy, would be highly disadvantageous to BCDA; no evidence was presented to prove that the subject properties merit a higher market value than that which is stated in the zonal valuation (3rd Revision); and the trial court erred when it anchored its judgment on the just compensation based on the RDO's report which is merely recommendatory and based on a document not yet operative during the time of the filing of the complaint.

Plaintiff-appellant BCDA ripostes, inter alia, that: Executive Order No. 648 declared the Housing and Land Use Regulatory Board ("HLURB," for brevity) as the planning, regulatory and quasi-judicial instrumentality of government for land use development; in 2006, the HLURB published its Guidelines on the Revision of CLUPs which were formulated to provide local government units ("LGUs," for brevity) with a detailed and logical process flow of the steps to be taken for land reclassification; in accordance with existing laws and regulations governing the reclassification of agricultural lands, the approval of the Sangguniang Panlalawigan/HLURB are essential to the adoption of the CLUP and Zoning Ordinance of Bocaue, Bulacan; there was no mention that the same was approved by the HLURB; it would be unfair to claim that the said lots are classified as residential, just so they can demand a higher valuation of the properties to the disadvantage of BCDA; to claim such constitutes bad faith because all these long years, SILI paid the corresponding taxes and fees based on its classification as agricultural and is now estopped to claim otherwise; and SILI's claims are merely based on conjectures and purely speculative which do not merit consideration.

Stripped of verbiage, the threshold issue in the instant case is whether or not the trial court erred in fixing the just compensation in the amount of Php600.00 per sq.m. for the expropriated lot covered by TCT No. 347375 (M) and Php500.00 per sq.m. for the expropriated lot covered by TCT No. 347372 (M).

We find in the affirmative.

Eminent domain is the power of the State to take private property for public use. xxx Section 9, Article III of the 1987 Constitution (which reads: "No private property shall be taken for public use without just compensation.") provides two essential limitations to the power of eminent domain, namely, that: (1) the purpose of taking must be for public use and (2) just compensation must be given to the owner of the private property.[48]

In the instant case, plaintiff-appellant BCDA sought the expropriation of the subject properties of defendant-appellant consisting of 851 sq.m. of Lot No. 94-B under TCT No. 347375 (M) [49] situated in Barangay Bunlo, Bocaue, Bulacan, and 90 sq.m. of Lot 705 under TCT No. 347372 (M)[50] situated in Bocaue, Bulacan, with a total area of 941 sq.m., to pave the way for the implementation of the Northrail Phase I-a Project, a vital flagship road project of the Philippine Government which will provide a rail-based commuter service between the Manila-Clark corridor.[51] BCDA is entitled to expropriate the subject lots as the purpose of the taking is for public use. As such, what remains disputed is the amount of just compensation for the subject properties.

Here, the trial court erred in finding that the subject properties remain agricultural as there was no approval yet by the Sangguniang Panlalawigan of Bulacan of the zoning ordinance reclassifying them to residential.

Section 56 of the Local Government Code ("LGC," for brevity) provides:

"SECTION 56. Review of Component City and Municipal Ordinances or Resolutions by the Sangguniang Panlalawigan. – (a) Within three (3) days after approval, the secretary to the sangguniang panlungsod or sangguniang bayan shall forward to the sangguniang panlalawigan for review, copies of approved ordinances and the resolutions approving the local development plans and public investment programs formulated by the local development councils.

(b) Within thirty (30) days after receipt of copies of such ordinances and resolutions, the Sangguniang Panlalawigan shall examine the documents or transmit them to the provincial attorney, or if there be none, to the provincial prosecutor for prompt examination. The provincial attorney or provincial prosecutor shall, within a period of ten (10) days from receipt of the documents, inform the sangguniang panlalawigan in writing his comments or recommendations, which may be considered by the sangguniang panlalawigan in making its decision.

(c) If the sangguniang panlalawigan finds that such an ordinance or resolution is beyond the power conferred upon the sangguniang panlungsod or sangguniang bayan concerned, it shall declare such ordinance or resolution invalid in whole or in part. The sangguniang panlalawigan shall enter its action in the minutes and shall advise the corresponding city or municipal authorities of the action it has taken.

(d) If no action has been taken by the sangguniang panlalawigan within thirty (30) days after submission of such an ordinance or resolution, the same shall be presumed consistent with law and therefore valid."

Defendant-appellant SILI presented in evidence the CLUP and Zoning Ordinance of Bocaue Bulacan (Exhibit "9").[52] In the letter dated 14 December 2001,[53] the CLUP "xxx na isinagawa at pinagtibay ng Sangguniang Bayan at ng aming Punong Bayan" of Bocaue, Bulacan was transmitted to the Sangguniang Panlalawigan "para po sa inyong pag-aaral at kaukulang pagpapatibay." As testified to on 10 May 2012 by Engr. Cruz, Municipal Planning Development Coordinator of Bocaue, Bulacan, despite the same being submitted to the Sangguniang Panlalawigan of Bulacan for the last twelve (12) years, it was not acted upon.[54] Said Engr. Cruz also issued

Certifications[55] dated 24 February 2012 that the subject properties have been zoned as residential.

Considering the inaction of the Sangguniang Panlalawigan of Bulacan for several years, the same should be deemed approved and valid pursuant to Section 56 (d)[56] of the LGC which provides that "(i)f no action has been taken by the sangguniang panlalawigan within thirty (30) days after submission of such an ordinance or resolution, the same shall be presumed consistent with law and therefore valid." As such, the trial court erred in holding that since the land use map classifying the subject lots as residential has yet to be approved by the Sangguniang Panlalawigan, the said lots remain to be agricultural to this date.[57]

The contention of plaintiff-appellant BCDA that the approval of the HLURB to the adoption of the CLUP and Zoning Ordinance of Bocaue, Bulacan is essential does not hold water. Memorandum Circular No. 54 dated 08 June 1993 prescribing the guidelines governing Section 20 of R.A. No. 7160 or the LGC of 1991, authorizing cities and municipalities to reclassify agricultural lands into non-agricultural uses, provides:

"SECTION 2. Requirements and procedures for reclassification. x x x

x x x x

(d) Reclassification of agricultural lands may be authorized through an ordinance enacted by the sangguniang panlungsod or sangguniang bayan, as the case may be, after conducting public hearings for the purpose. Such ordinance shall be enacted and approved in accordance with Articles 107 and 108 of the IRR of the LGC;

x x x x

SECTION 3. Review of ordinances reclassifying agricultural lands. – All ordinances authorizing the reclassification of agricultural lands shall be subject to the review and approval by the province in the case of component city or municipality, or by the HLRB in the case of highly urbanized or independent component city in accordance with EO 72 (1993)." (Emphasis supplied)

Thus, the approval of the HLURB is necessary only in the case of highly urbanized or independent component cities. In the instant case, since the CLUP and Zoning Ordinance involved is that of the Municipality of Bocaue, Bulacan, then only the approval of the Sangguniang Panlalawigan of Bulacan is necessary.

Section 20 of the LGC provides:

"SECTION 20. Reclassification of Lands. – (a) A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) whenever the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned x x x

x x x x

(c) The local government units shall, in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant bases for the future use of land resources: x x x

x x x x"

In the instant case, the Sangguniang Bayan of Bocaue, Bulacan, in preparing its comprehensive land use plan enacted through zoning ordinance, in the absence of evidence to the contrary, is deemed to have regularly performed such duty. Under Section 3 (m), Rule 131 of the Rules of Court, there is a presumption that official duty has been regularly performed.[58] Although the property is declared as agricultural in the tax declaration,

since the subject properties have been reclassified as residential, in view of the CLUP and Zoning Ordinance, then the classification in the CLUP and Zoning Ordinance prevails. (It has been held that) if there is any inconsistency, what prevails is the determination for zoning purposes.[59]

We now proceed to the issue of just compensation for the subject properties.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. Such "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property. Trial courts are required to be more circumspect in its evaluation of just compensation due the property owner, considering that eminent domain cases involve the expenditure of public funds.[60]

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair market value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.[61]

We agree with the trial court that it was not bound by the assessment report of the commissioners and that it had the discretion to reject the same and substitute its own judgment on its value as gathered from the record, or it may accept the report/recommendation of the commissioners in toto and base its judgment thereon. However, the decision of the court must be based on all established rules, upon correct legal principles and competent evidence. The court is proscribed from basing its judgment on speculations and surmises.[62]

Here, in determining the amount of just compensation to be Php600.00 per sq.m. and Php500.00 per sq.m. of the expropriated lots under TCT Nos. 347375 (M) and 347372 (M), respectively, the trial court deemed "that only the report of the BIR Revenue Officer is supported by the appropriate government guideline such as Department Order No. 29-09 dated 29 May 2009 of the Department of Finance,"[63] hence, adopting the same.

We do not agree.

Section 4, Rule 67 of the Rules of Court provides:

"SEC. 4. Order of Expropriation. If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

x x x" (Emphasis supplied)

(It) should be borne in mind that just compensation should be computed based on the fair market value of the subject property at the time of its taking or the filing of the complaint, whichever came first.[64] When the taking of the property sought to be expropriated coincides with the commencement of the expropriation proceedings or takes place subsequent to the filing of the complaint for eminent domain, the just compensation should be determined as of the date of the filing of the complaint.[65]

In the instant case, the Complaint for Expropriation was filed on 19 December 2008,[66] while the Writ of Possession was issued on 30 September 2009.[67] As such, since the taking of the subject properties took place

subsequent to the filing of the Complaint, the just compensation should be determined as of the date of the filing of the said Complaint on 19 December 2008. Therefore, it was erroneous for the trial court to use the zonal value as provided under the Department Order No. 29-09 dated 29 May 2009 of the Department of Finance, effective 15 July 2009, as stated in the "Member Commissioner's Report"[68] dated 25 January 2011 of Commissioner Ricarte of the BIR Revenue District Office No. 25A, Plaridel, Bulacan, which states:

"x x x x

2. Pursuant to Department Order No. 29-09 dated May 29, 2009 of the Department of Finance issued to implement the revised zonal values of real properties for purposes of computing any internal revenue tax due on sale/transfer or any other disposition of real properties, the zonal value of the land situated at Barangay Bunlo and covered by TCT No. 347375 (M) is SIX HUNDRED PESOS (P600.00) per square meter while the land situated at Barangay Igulot and covered by TCT No. 347372 (M) is FIVE HUNDRED PESOS (P500.00) per square meter effective July 15, 2009.

x x x x"[69] (Emphasis supplied)

The supposed Department Order No. 29-09 of the Department of Finance which was not attached to the Report,[70] states the same became effective on 15 July 2009. Hence, the trial court could not use the same as basis for the determination of just compensation for the subject properties as it was not yet operative or effective at the time of filing of the Complaint on 19 December 2008.

Moreover, Section 5 of Republic Act No. 8974 provides:

"SECTION 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. – In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a)

The classification and use for which the property is suited;

(b)

The developmental costs for improving the land;

(c)

The value declared by the owners;

(d)

The current selling price of similar lands in the vicinity;

(e)

The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f)

The size, shape or location, tax declaration and zonal valuation of the land;

(g)

The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h)

Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible."

The (Supreme) Court has consistently ruled that just compensation cannot be arrived at arbitrarily; several factors must be considered such as, but not limited to, acquisition cost, current market value of like properties, tax value of the condemned property, its size, shape, and location. But before these factors can be considered and given weight, the same must be supported by documentary evidence. The amount of just compensation could only be attained by using reliable and actual data as bases for fixing the value of the condemned property.[71]

Zonal valuation is just one of the indices of the fair market value of real estate. By itself, this index cannot be the sole basis of "just compensation" in expropriation cases.[72] The zonal value may be one, but not necessarily the sole, index of the value of a realty.[73] (T)he RTC was duty bound to look at other indices of fair market value.[74] Various factors can come into play in the valuation of specific properties singled out for expropriation. xxx Tax values can serve as guides but cannot be absolute substitutes for just compensation.[75] Here, the trial court failed to consider other indices of fair market value in arriving at the amount of just compensation for the subject properties.

It is settled that the final conclusions on the proper amount of just compensation can only be made after due ascertainment of the requirements set forth under R.A. 8974 and not merely based on the declaration of the parties. Since these requirements were not satisfactorily complied with, and in the absence of reliable and actual data as bases in fixing the value of the condemned property, remand of this case to the trial court is in order.[76]

Considering the foregoing disquisition, We find no necessity to pass upon other matters raised by the parties.

WHEREFORE, premises considered, the Decision dated 15 April 2013 of the Regional Trial Court, Third Judicial Region, Malolos City, Bulacan, Branch 84 in Civil Case No. 795-M-2008 is REVERSED and SET ASIDE. This case is remanded to the trial court for the proper determination of just compensation in conformity with this Decision. No costs.

SO ORDERED.

Diamante, and Sadang, JJ., concur.

[1] Rollo, pp. 65-73; penned by Judge Wilfredo T. Nieves

[2] Id. at 72-73

[3] Id. at 36-64

[4] Id. at 93-104

[5] Id. at 125-142

[6] Id. at 160-191

[7] Id. at 192 (dorsal side)

[8] Record, pp. 3-12

[9] Id. at 52-57

- [10] Id. at 61-64
- [11] Id. at 78-80
- [12] Id. at 92
- [13] Id. at 95-99
- [14] Id. at 100-102
- [15] TSN, 11 August 2009, pp. 7-10
- [16] Record, p. 108
- [17] Id. at 113-114
- [18] Id. at 120-121
- [19] Id. at 123-124
- [20] Id. at 126-127
- [21] Id. at 137-138
- [22] Id. at 143
- [23] Id. at 150-156
- [24] Id. at 172
- [25] Id. at 176
- [26] Id. at 180
- [27] Id. at 195
- [28] Id. at 196
- [29] Id. at 199-204
- [30] Id. at 211-214
- [31] Id. at 215-217
- [32] Id. at 241-245
- [33] Id. at 246
- [34] Id. at 249
- [35] TSN, 17 November 2011, p. 3
- [36] Record, pp. 299-303
- [37] Id. at 542-545
- [38] Id. at 547
- [39] Id. at 553-566, 573-591
- [40] Id. at 594-602

[41] Supra note 2

[42] Record, pp. 603-604

[43] Id. at 607

[44] Rollo, pp. 26-28

[45] Id. at 25

[46] Id. at 43

[47] Id. at 93

[48] Republic of the Philippines, etc. v. Sps. Tan Song Bok and Josefina S. Tan, et al., G.R. No. 191448, 16 November 2011, citing Apo Fruits Corporation v. Land Bank of the Philippines, G.R. No. 164195, 12 October 2010, 632 SCRA 739-741

[49] Record, p. 28

[50] Id. at 29

[51] Id. at 5-6

[52] Id. at 323-541

[53] Id. at 324

[54] TSN, 10 May 2012, p. 35

[55] Record, pp. 321-322

[56] Ramonito O. Acaac, et al. v. Melquiades D. Azcuna, Jr., etc., et al., G.R. No. 187378, 30 September 2013

[57] Record, p. 601

[58] Republic of the Philippines, etc. v. Far East Enterprises, Inc., et al., G.R. No. 176487, 25 August 2009

[59] Id.

[60] Republic of the Philippines, etc. v. Asia Pacific Integrated Steel Corporation, G.R. No. 192100, 12 March 2014

[61] National Power Corporation v. YCLA Sugar Development Corporation, G.R. No. 193936, 11 December 2013

[62] Republic of the Philippines, etc. v. Asia Pacific Integrated Steel Corporation, supra

[63] Record, p. 601

[64] National Power Corporation v. Spouses Rodolfo Zabala and Lilia Baylon, G.R. No. 173520, 30 January 2013

[65] City of Iloilo, etc. v. Hon. Lolita Contreras-Besana, etc., et al., G.R. No. 168967, 12 February 2010

[66] Record, p. 3

[67] Id. at 113-114

[68] Id. at 195

[69] Id.

[70] research on Dept. Order No. 29-09 yielded negative results

[71] National Power Corporation v. YCLA Sugar Development Corporation, supra.

[72] Republic of the Philippines, etc. v. Asia Pacific Integrated Steel Corporation, supra.

[73] Id., citing Leca Realty Corporation v. Republic of the Philippines, 534,Phil. 693, 707 (2006)

[74] Bases Conversion Development Authority v. Rosa Reyes, et al., G.R. No. 194247, 19 June 2013

[75] Republic of the Philippines, etc. v. Asia Pacific Integrated Steel Corporation, supra, citing EPZA v. Dulay as cited in Leca Realty Corporation v. Republic of the Philippines, supra

[76] Republic of the Philippines, etc. v. Asia Pacific Integrated Steel Corporation, supra.

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