

**PEDRO ARCE AND CARMEN BARRICA DE ARCE, PETITIONERS, VS.
HONORABLE MELECIO A. GENATO, PRESIDING JUDGE, BRANCH I,
COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, AND THE
MUNICIPALI...**

G.R. No. L-40587. February 27, 1976

Ponente: FERNANDO, J.

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FERNANDO, J.:

The sole issue in this petition for certiorari is whether the order of respondent Judge in an expropriation case allowing the other respondent, the Municipality of Baliangao of Misamis Occidental, to take immediate possession of the parcel of land sought to be condemned for the beautification of its public plaza, without a prior hearing to determine the necessity for the exercise of the power of eminent domain, is vitiated by jurisdictional defect, for at the very least, so petitioners would allege, it amounted to a grave abuse of discretion. It is not disputed that in issuing such order, respondent Judge relied on Presidential Decree No. 42 issued on the 9th of November, 1972.[1] The question as thus posed does not occasion any difficulty as to the answer to be given. This petition for certiorari must fail, there being no showing that compliance with the Presidential Decree, which under the Transitory Provisions is deemed a part of the law of the land,[2] would be characterized as either an act in excess of jurisdiction or a grave abuse of discretion. So we rule.

The relevant facts, not controverted, disclose the filing of a civil case for expropriation by respondent Municipality of Baliangao with respondent Judge, covering a parcel of land needed for the beautification and expansion of its public plaza.[3] Subsequently, in reliance on Presidential Decree No. 42, respondent Municipality sought immediate possession.[4] One of the petitioners, Carmen Barrica, joined by another defendant, Maria Bueno Vda. de Barrica, in their answer raised the issue of lack of urgent necessity for respondent to take immediate possession, alleging that one-third of the public plaza, more or less, being leased and occupied by private third parties, could be utilized for its beautification program.[5] It was at this stage that respondent Judge ordered that the other petitioner, Pedro Arce, be impleaded as a party defendant, the complaint to be amended for that purpose, the motion to take immediate possession of the property being held in abeyance while the affirmative defense of lack of necessity was being considered.[6] It was so amended to include petitioner Pedro Arce as a party defendant.[7] Then, on March 19, 1975, respondent Municipality in a pleading asked respondent Judge to rule on its motion to take immediate possession of the property.[8] In the answer to the amended complaint of the same date, petitioners reiterated their defense of absence of any showing or urgent public necessity and further maintained that the deposit with the Philippine National Bank was not only based on the wrong assessment but also did not show that it was made in connection with the expropriation case.[9] Respondent Municipality filed a manifestation showing that the deposit with the PNB was for the expropriation case.[10] There was a motion on the part of petitioners to postpone consideration of the motion to take immediate possession, but it was to no avail. Respondent Judge issued an order allowing the plaintiff to take immediate possession of the premises.[11] That is the order challenged in this petition as constituting an act in excess of his

jurisdiction with grave abuse of discretion, there being no preliminary hearing conducted to determine whether or not there was an urgent public necessity for respondent Municipality of Baliangao to take immediate possession of the property sought to be expropriated.[12]

The petition, as noted at the outset, lacks merit.

1. Presidential Decree No. 42 speaks categorically. It is thereby decreed and ordered "as part of the law of the land that, upon filing in the proper court of the complaint in eminent domain proceedings or at anytime thereafter, and after due notice to the defendant, plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the Philippine National Bank, in its main office or any of its branches or agencies, an amount equivalent to the assessed value of the property for purposes of taxation to be held by said bank subject to the orders and final disposition of the court." The decree, issued on November 9, 1972, was to "take effect immediately." It is beyond question that such a decree is included within the Transitory Provisions of the Constitution. So it is therein expressly provided: "All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after the lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly." [13] Deference to it, as is to be expected, has been accorded by this Court. [14] The task, therefore, of assailing a lower court order in compliance therewith, made a part of the law of the land by the Constitution itself, is one attended with extreme difficulty. That is why on its face, the weakness of the petition is rather apparent.

2. Nonetheless, petitioners did attempt to extricate itself from its highly untenable position. This it did by relying on the judicial doctrine that a municipal corporation like respondent Municipality must show the necessity for expropriation. It could not very well deny that the expansion and beautification of a public park comes definitely under the category of public use as required by the Constitution. As a matter of law, from the leading case of *Visayan Refining Company v. Camus*, [15] a 1919 decision, it has been undoubted that as long as the owner of the private property to be expropriated is awarded just compensation and that it is for public use, that specific constitutional provisions intended for his protection has been satisfied. It is true that in *J.M. Tuason and Company v. Land Tenure Administration*, [16] it was likewise held that there may be instances where the condemnation could run afoul of the constitutional requirements of due process and equal protection. [17]

There is nothing either in the petition itself or in the memorandum subsequently submitted that would raise any of the above constitutional questions. What is claimed is that there must be a showing of necessity for such condemnation and that it was not done in this case. In support of such a view, reliance is placed on *City of Manila v. Arellano Law Colleges*. [18] That doctrine itself is based on the earlier case of *City of Manila v. Chinese Community of Manila*, [19] also, like *Camus*, a 1919 decision. As could be discerned, however, in the *Arellano Law Colleges* decision, it was the antiquarian view of Blackstone with its sanctification of the right to one's estate on which such an observation was based. As did appear in his *Commentaries*: "So great is the regard of the law for private property that it will not authorize the least violation of it, even for the public good, unless there exists a very great necessity thereof." Even the most cursory glance at such well-nigh absolutist concept of property would show its obsolete character at least for Philippine constitutional law. It cannot survive the test of the 1935 Constitution with its mandates on social justice and protection to labor. [20] What is more, the present Constitution pays even less heed to the claims of property - and rightly so. After stating that the State shall promote social justice, it continues: "Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits." [21] If there is any need for explicit confirmation of what was set forth in Presidential Decree No. 42, the above provision supplies it.

Moreover, that is merely to accord to what of late has been the consistent course of decisions of this Court whenever property rights are pressed unduly.[22] The statement, therefore, that there could be discerned a constitutional objection to a lower court applying a Presidential Decree, when it leaves no doubt that a grantee of the power of eminent domain need not prove the necessity for the expropriation, carries its own refutation.

Wherefore, the petition is dismissed for lack of merit. No costs.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Presidential Decree No. 42 is entitled "Authorizing the Plaintiff in Eminent Domain Proceedings to take Possession of the Property Involved Upon Depositing the Assessed Value for Purposes of Taxation."

[2] According to Article XVII, Section 3, par. (2) of the Constitution: "All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after the lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

[3] Petition, par. 2.

[4] Ibid, par. 3.

[5] Ibid, par. 4.

[6] Ibid, par. 6.

[7] Ibid, par. 7.

[8] Ibid, par. 8.

[9] Ibid, par. 9.

[10] Ibid, par. 10.

[11] Ibid, pars. 11-12.

[12] Ibid, par. 14.

[13] Article XVII, Section 3, par. (2) of the Constitution.

[14] Cf. Aquino, Jr. v. Ponce Enrile, L-35546, September 17, 1974, 59 SCRA 183; Aquino, Jr. v. Commission on Elections, L-40004, Jan. 31, 1975, 62 SCRA 275; Aquino, Jr. v. Military Commission No, 2, L-37364, May 9, 1975, 63 SCRA 546.

[15] 40 Phil. 550.

[16] L-21064, February 18, 1970, 31 SCRA 413.

[17] According to Article IV, Section 1 of the Constitution: "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."

[18] 85 Phil. 663 (1950).

[19] 40 Phil. 349.

[20] Article II, Section 5 of the 1935 Constitution reads: "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State." Article XI, Section 6 of the same Constitution provides: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relation between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration."

[21] That is the second sentence of Article II, Section 6 of the Constitution.

[22] Cf. *Alalayan v. National Power Corporation*, L-24396, July 29, 1968, 24 SCRA 172; *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions*, L-21484, Nov. 29, 1969, 30 SCRA 649; *Edu v. Ericta*, L-32096, Oct. 24, 1970, 35 SCRA 481; *Phil. Virginia Tobacco Administration vs. Court of Industrial Relations*, L-32052, July 25, 1975, 65 SCRA 416.

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