

**PROVINCE OF PANGASINAN, PETITIONER, VS. HONORABLE
PRESIDING JUDGE OF BRANCH VIII OF THE COURT OF FIRST
INSTANCE OF PANGASINAN, CLERK OF COURT, COURT OF FIRST
INSTANCE OF PANGASI...**

G.R. No. L-38587. October 28, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

The effort in this certiorari proceeding of petitioner province of Pangasinan to locate a legal justification for a further delay in the payment of the compensation justly due private respondents[1] for the expropriation of their lot used for school purposes, the property having been in its possession as far back as 1963, can hardly elicit judicial sympathy, much less approval. As shown by the very petition, the complaint for expropriation was dated July 10, 1963.[2] Then came on the very next day an order from the then Judge Guillermo Dacumos fixing the provisional value of such property at P1,050.48 and authorizing the Province to take immediate possession.[3] Subsequently, there was a motion to withdraw the deposit of such sum as part of the payment due private respondents. It was dated more than three years later, on August 27, 1966.[4] There was an order allowing such withdrawal two days later. As to the remainder of the just compensation to which under the Constitution petitioner was entitled, it took the lower court more than five years, December 9, 1971 to be exact, to issue an order of that character, its dispositive portion reading: "In view of the foregoing, the Court finds that the fair market value of the land taken to be at P1.92 per square meter and the consequential damages to be [at] P330.00 for the 22 coconut trees and P1,000.00 for the three mango trees. There being no consequential benefits proven, the just compensation for the 8,754 square meters taken is hereby fixed at P18,137.68 with interest thereon at the legal rate from the date the plaintiffs took possession of the premises of the land in question." [5] That order had long since then become final and it was not until almost two years later, on September 14, 1973, that there was a motion for its execution to enable private respondents to receive the payment awarded them. There was an opposition but on October 25, 1973, the then Judge Sixto A. Domondon, who thereafter was appointed as Associate Justice of the Court of Appeals and had since then retired, issued this order: "Before this Court is a Motion for execution dated September 14, 1973, filed by Atty. Numeriano Tanopo, Jr., counsel for the defendants, as well as the opposition dated September 19, 1973, filed by Asst. Prov'l. Fiscal Oliver Cabel, and considering that the period of appeal has already expired, without the plaintiff having perfected an appeal from the order of this Court dated December 9, 1971; [Wherefore], the Court resolves to approve as it hereby approves, the motion for execution of judgment; Let a writ of execution issue accordingly." [6] Considering the explicit provision in the 1935 Constitution as in the present Charter that the right on expropriation is conditioned on the payment of just compensation, [7] it becomes difficult to understand and impossible to justify this petition for certiorari by the Province filed by two Assistant Provincial Fiscals [8] and the then Provincial Attorney [9] to nullify such order on the ground that there had been no final judgment and that the order of the then Judge Domondon "is a patent nullity." Both the Constitution and judicial decisions warn against such cavalier disregard of an obligation resting on the condemnor of property to award the just compensation due the owners of the

property expropriated.

There is no merit to the petition.

1. There is full and ample recognition of the power of eminent domain by Justice Street in a leading case of *Visayan Refining Co. v. Camus*,^[10] decided prior to the Commonwealth, the matter being governed by the Philippine Autonomy Act of 1916, otherwise known as the Jones Law. It was characterized as "inseparable from sovereignty being essential to the existence of the State and inherent in government even in its most primitive forms."^[11] Nonetheless, he was careful to point out: "In other words, the provisions now generally found in the modern laws or constitutions of civilized countries to the effect that private property shall not be taken for public use without just compensation have their origin in the recognition of a necessity for restraining the sovereign and protecting the individual."^[12] Moreover, he did emphasize: "Nevertheless it should be noted that the whole problem of expropriation is resolvable in its ultimate analysis into a constitutional question of due process of law. * * * Even were there no organic or constitutional provision in force requiring compensation to be paid, the seizure of one's property without payment, even though intended for a public use, would undoubtedly be held to be a taking without due process of law and a denial of the equal protection of the laws."^[13] That aspect of the matter was stressed in the recent case of *J. M. Tuason and Co., Inc. v. Land Tenure Administration*.^[14] Conformably to such a fundamental principle then, in accordance with a constitutional mandate, this Court has never hesitated to assure that there be just compensation. If it were otherwise, the element of arbitrariness certainly would enter. It is bad enough that an owner of a property, in the event of the exercise of this sovereign prerogative, has no choice but to yield to such a taking. It is infinitely worse if thereafter, he is denied all these years the payment to which he is entitled. This is one of the instances where law and morals speak to the same effect.^[15]

2. There is hyperbole in the exaggerated claim that the order of the then Judge Domondon "is a patent nullity." It is based on a misreading of Section 13 of Rule 67 of the Rules of Court. Its first sentence reads: "The judgment entered in condemnation proceedings shall state definitely, by an adequate description, the particular property or interest therein condemned, and the nature of the public use or purpose for which it is condemned." What it requires is that there be an adequate description of the particular property condemned as well as the nature of the public use or purpose for which it was expropriated. It was made clear in the challenged order that the subject matter of the eminent domain proceeding was the portion of the lot situated in Barrio San Julian, Malasiqui, Pangasinan, covered by Transfer Certificate of Title No. 16457 of the Registry of Deeds for the province of Pangasinan. Even on the assumption that it could have been more definite, petitioner province of Pangasinan would ignore that such a requirement was met by paragraph V of its complaint dated July 10, 1963. It reads thus: "That for the best interest of public service, the plaintiff urgently needs eight thousand seven hundred fifty-four (8,754) square meters on the southwestern part of the land described in par. 2 hereof, to be used as a school site for the construction of a school building for about one hundred fifty school children in the barrios of Nalsian Norte and Nalsian Sur of the Municipality of Malasiqui, this province, as per Resolution No. 14 of the barrio councils of said barrios and Resolution No. 54 of the Municipal Council of Malasiqui, hereto attached as Annexes 'A' and 'B' and made integral parts of this complaint. A sketch plan of the land covered by Transfer Certificate of Title No. 16467, showing the portion sought to be expropriated which is marked as Lot 1-A is hereto attached as Annex 'C'."^[16] Under the circumstances, even on the assumption that there is an irregularity, it cannot be considered as sufficiently grave to justify the fantastic assertion that the order was "a patent nullity." Much less could it justify the further unconscionable delay in the payment of the just compensation over a parcel of land in the possession of the province of Pangasinan for the last fourteen years and utilized for the purpose for which it was expropriated.

WHEREFORE, the petition for certiorari is dismissed.

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

Aquino, J., in the result.

[1] The respondents named are the Presiding Judge of Branch VIII of the Court of First Instance of Pangasinan and the Clerk of Court, Court of First Instance of Pangasinan (Dagupan City Branch) in his capacity as Provincial Sheriff Ex-Oficio. The private respondents are Socorro Roy, Manuel R. Magno, Godofredo R. Magno, Rosalia M. Salcedo, Rebecca M. Reyes, Aurora M. Panaguiton and Jose S. Ubaldo.

[2] Petition, Annex A.

[3] Ibid, Annex B.

[4] Ibid, Annex D.

[5] Ibid, Annex F.

[6] Ibid, Annex I.

[7] Article III, Section 1, par. 2, of the 1935 Constitution reads: "Private property shall not be taken for public use without just compensation." The same provision is found in Article IV, Section 2 of the present Constitution.

[8] The two Assistant Provincial Fiscals are Oliver G. Cabel and Ramon S. Milo.

[9] The Provincial Attorney is Juan de la Cruz.

[10] 40 Phil. 550 (1919).

[11] Ibid, 558.

[12] Ibid, 559.

[13] Ibid, 560-561.

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

[15] Cf. Province of Tayabas v. Perez, 66 Phil. 467 (1938); Republic v. De Guido, 83 Phil. 935 (1949); Philippine Oil Development Co. v. Go, 90 Phil. 692 (1952); Republic of the Philippines v. Lara, 96 Phil. 170 (1954); Alfonso v. Pasay City, 106 Phil. 1017 (1960); Capitol Subdivision, Inc. v. Province of Negros Occidental, 117 Phil. 59 (1963); City of Cebu v. Ledesma, L-16723, July 30, 1965, 14 SCRA 666; National Power Corporation v. Gatuangco, L-21865, Nov. 12, 1966, 18 SCRA 643; J. M. Tuason and Co. v. Land Tenure Administration, L-21064, Feb. 18, 1970, 31 SCRA 413; Ministerio v. Court of First Instance, L-31635, Aug. 31, 1971, 40 SCRA 464; Amigable v. Cuenca, L-26400, Feb. 29, 1972, 43 SCRA 360; Republic v. Vda. de Castellvi, L-20620, Aug. 15, 1974, 58 SCRA 336.

[16] Petition, par. V.

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