

**PROVINCE OF CAMARINES SUR, REPRESENTED BY GOV. LUIS R. VILLAFUERTE AND HON. BENJAMIN V. PANGA AS PRESIDING JUDGE OF RTC BRANCH 33 AT PILI, CAMARINES SUR, PETITIONERS, VS. THE CO...**

*G.R. No. 103125. May 17, 1993*

Ponente: QUIASON, J.

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**QUIASON, J.:**

In this appeal by certiorari from the decision of the Court of Appeals in AC-G.R. SP No. 20551 entitled "Ernesto N. San Joaquin, et al., v. Hon. Benjamin V. Panga, et al.," this Court is asked to decide whether the expropriation of agricultural lands by local government units is subject to the prior approval of the Secretary of the Agrarian Reform, as the implementator of the agrarian reform program.

On December 22, 1988, the Sangguniang Panlalawigan of the Province of Camarines Sur passed Resolution No. 129, Series of 1988, authorizing the Provincial Governor to purchase or expropriate property contiguous to the provincial capitol site, in order to establish a pilot farm for non-food and non-traditional agricultural crops and a housing project for provincial government employees.

The "WHEREAS" clause of the Resolution states:

"WHEREAS, the province of Camarines Sur has adopted a five-year Comprehensive Development plan, some of the vital components of which includes the establishment of model and pilot farm for non-food and non-traditional agricultural crops, soil testing and tissue culture laboratory centers, 15 small scale technology soap making, small scale products of plaster of paris, marine biological and sea farming research center, and other progressive feasibility concepts objective of which is to provide the necessary scientific and technology know-how to farmers and fishermen in Camarines Sur and to establish a housing project for provincial government employees;

"WHEREAS, the province would need additional land to be acquired either by purchase or expropriation to implement the above program component;

"WHEREAS, there are contiguous/adjacent properties to be (sic) present Provincial Capitol Site ideally suitable to establish the same pilot development center;

"WHEREFORE x x x."

Pursuant to the Resolution, the Province of Camarines Sur, through its Governor, Hon. Luis R. Villafuerte, filed two separate cases for expropriation against Ernesto N. San Joaquin and Efren N. San Joaquin, docketed as Special Civil Action Nos. P-17-89 and P-19-89 of the Regional Trial Court, Pili, Camarines Sur, presided by the Hon. Benjamin V. Panga.

Forthwith, the Province of Camarines Sur filed a motion for the issuance of a writ of possession. The San Joaquins failed to appear at the hearing of the motion.

The San Joaquins moved to dismiss the complaints on the ground of inadequacy of the price offered for their property. In an order dated December 6, 1989, the trial court denied the motion to dismiss and authorized the Province of Camarines Sur to take possession of the property upon the deposit with the Clerk of Court of the amount of P5,714.00, the amount provisionally fixed by the trial court to answer for damages that private respondents may suffer in the event that the expropriation cases do not prosper. The trial court issued a writ of possession in an order dated January 18, 1990.

The San Joaquins filed a motion for relief from the order, authorizing the Province of Camarines Sur to take possession of their property and a motion to admit an amended motion to dismiss. Both motions were denied in the order dated February 26, 1990.

In their petition before the Court of Appeals, the San Joaquins asked: (a) that Resolution No. 129, Series of 1988 of the Sangguniang Panlalawigan be declared null and void; (b) that the complaints for expropriation be dismissed; and (c) that the order dated December 6, 1989 (i) denying the motion to dismiss and (ii) allowing the Province of Camarines Sur to take possession of the property subject of the expropriation and the order dated February 26, 1990, denying the motion to admit the amended motion to dismiss, be set aside. They also asked that an order be issued to restrain the trial court from enforcing the writ of possession, and thereafter to issue a writ of injunction.

In its answer to the petition, the Province of Camarines Sur claimed that it has the authority to initiate the expropriation proceedings under Sections 4 and 7 of Local Government Code (B.P. Blg. 337) and that the expropriations are for a public purpose.

Asked by the Court of Appeals to give his Comment to the petition, the Solicitor General stated that under Section 9 of the Local Government Code (B.P. Blg. 337), there was no need for the approval by the Office of the President of the exercise by the Sangguniang Panlalawigan of the right of eminent domain. However, the Solicitor General expressed the view that the Province of Camarines Sur must first secure the approval of the Department of Agrarian Reform of the plan to expropriate the lands of petitioners for use as a housing project.

The Court of Appeals set aside the order of the trial court, allowing the Province of Camarines Sur to take possession of private respondents' lands and the order denying the admission of the amended motion to dismiss. It also ordered the trial court to suspend the expropriation proceedings until after the Province of Camarines Sur shall have submitted the requisite approval of the Department of Agrarian Reform to convert the classification of the property of the private respondents from agricultural to non-agricultural land.

Hence this petition.

It must be noted that in the Court of Appeals, the San Joaquins asked for: (i) the dismissal of the complaints for expropriation on the ground of the inadequacy of the compensation offered for the property and (ii) the nullification of Resolution No. 129, Series of 1988 of the Sangguniang Panlalawigan of the Province of Camarines Sur.

The Court of Appeals did not rule on the validity of the questioned resolution; neither did it dismiss the complaints. However, when the Court of Appeals ordered the suspension of the proceedings until the Province of Camarines Sur shall have obtained the authority of the Department of Agrarian Reform to change the classification of the lands sought to be expropriated from agricultural to non-agricultural use, it assumed that the resolution is valid and that the expropriation is for a public purpose or public use.

Modernly, there has been a shift from the literal to a broader interpretation of "public purpose" or "public use" for which the power of eminent domain may be exercised. The old concept was that the condemned property must

actually be used by the general public (e.g. roads, bridges, public plazas, etc.) before the taking thereof could satisfy the constitutional requirement of "public use". Under the new concept, "public use" means public advantage, convenience or benefit, which tends to contribute to the general welfare and the prosperity of the whole community, like a resort complex for tourists or housing project (*Heirs of Juancho Ardano v. Reyes*, 125 SCRA 220 [1983]; *Sumulong v. Guerrero*, 154 SCRA 461 [1987]).

The expropriation of the property authorized by the questioned resolution is for a public purpose. The establishment of a pilot development center would inure to the direct benefit and advantage of the people of the Province of Camarines Sur. Once operational, the center would make available to the community invaluable information and technology on agriculture, fishery and the cottage industry. Ultimately, the livelihood of the farmers, fishermen and craftsmen would be enhanced. The housing project also satisfies the public purpose requirement of the Constitution. As held in *Sumulong v. Guerrero*, 154 SCRA 461, "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."

It is the submission of the Province of Camarines Sur that its exercise of the power of eminent domain cannot be restricted by the provisions of the Comprehensive Agrarian Reform Law (R.A. No. 6657), particularly Section 65 thereof, which requires the approval of the Department of Agrarian Reform before a parcel of land can be reclassified from an agricultural to a non-agricultural land.

The Court of Appeals, following the recommendation of the Solicitor General, held that the Province of Camarines Sur must comply with the provision of Section 65 of the Comprehensive Agrarian Reform Law and must first secure the approval of the Department of Agrarian Reform of the plan to expropriate the lands of the San Joaquins.

In *Heirs of Juancho Ardana v. Reyes*, 125 SCRA 220, petitioners raised the issue of whether the Philippine Tourism Authority can expropriate lands covered by the "Operation Land Transfer" for use of a tourist resort complex. There was a finding that of the 282 hectares sought to be expropriated, only an area of 8,970 square meters or less than one hectare was affected by the land reform program and covered by emancipation patents issued by the Ministry of Agrarian Reform. While the Court said that there was "no need under the facts of this petition to rule on whether the public purpose is superior or inferior to another purpose or engage in a balancing of competing public interest," it upheld the expropriation after noting that petitioners had failed to overcome the showing that the taking of 8,970 square meters formed part of the resort complex. A fair and reasonable reading of the decision is that this Court viewed the power of expropriation as superior to the power to distribute lands under the land reform program.

The Solicitor General denigrated the power to expropriate by the Province of Camarines Sur by stressing the fact that local government units exercise such power only by delegation. (Comment, pp. 14-15; Rollo, pp. 128-129)

It is true that local government units have no inherent power of eminent domain and can exercise it only when expressly authorized by the legislature (*City of Cincinnati v. Vester*, 281 US 439, 74 L.ed. 950, 50 S Ct. 360). It is also true that in delegating the power to expropriate, the legislature may retain certain control or impose certain restraints on the exercise thereof by the local governments (*Joslin Mfg. Co. v. Providence*, 262 US 668 67 L. ed. 1167, 43 S Ct. 684). While such delegated power may be a limited authority, it is complete within its limits. Moreover, the limitations on the exercise of the delegated power must be clearly expressed, either in the law conferring the power or in other legislations.

Resolution No. 129, Series of 1988, was promulgated pursuant to Section 9 of B.P. Blg. 337, the Local Government Code, which provides:

"A local government unit may, through its head and acting pursuant to a resolution of its sanggunian exercise the right of eminent domain and institute condemnation proceedings for public use or purpose."

Section 9 of B.P. Blg. 337 does not intimate in the least that local government units must first secure the approval of the Department of Land Reform for the conversion of lands from agricultural to non-agricultural use, before they can institute the necessary expropriation proceedings. Likewise, there is no provision in the Comprehensive Agrarian Reform Law which expressly subjects the expropriation of agricultural lands by local government units to the control of the Department of Agrarian Reform. The closest provision of law that the Court of Appeals could cite to justify the intervention of the Department of Agrarian Reform in expropriation matters is Section 65 of the Comprehensive Agrarian Reform Law, which reads:

"SEC. 65. Conversion of Lands. - After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: Provided, That the beneficiary shall have fully paid his obligation."

The opening, adverbial phrase of the provision sends signals that it applies to lands previously placed under the agrarian reform program as it speaks of "the lapse of five (5) years from its award."

The rules on conversion of agricultural lands found in Section 4 (k) and 5 (1) of Executive Order No. 129 - A, Series of 1987, cannot be the source of the authority of the Department of Agrarian Reform to determine the suitability of a parcel of agricultural land for the purpose to which it would be devoted by the expropriating authority. While those rules vest on the Department of Agrarian Reform the exclusive authority to approve or disapprove conversions of agricultural lands for residential, commercial or industrial uses, such authority is limited to the applications for reclassification submitted by the land owners or tenant beneficiaries.

Statutes conferring the power of eminent domain to political subdivisions cannot be broadened or constricted by implication (*Schulman v. People*, 10 N.Y. 2d. 249, 176 N.E. 2d. 817, 219 NYS 2d. 241).

To sustain the Court of Appeals would mean that the local government units can no longer expropriate agricultural lands needed for the construction of roads, bridges, schools, hospitals, etc, without first applying for conversion of the use of the lands with the Department of Agrarian Reform, because all of these projects would naturally involve a change in the land use. In effect, it would then be the Department of Agrarian Reform to scrutinize whether the expropriation is for a public purpose or public use.

Ordinarily, it is the legislative branch of the local government unit that shall determine whether the use of the property sought to be expropriated shall be public, the same being an expression of legislative policy. The courts defer to such legislative determination and will intervene only when a particular undertaking has no real or substantial relation to the public use (*United States Ex Rel Tennessee Valley Authority v. Welch*, 327 US 546, 90 L. ed. 843, 66 S Ct 715; *State ex rel Twin City Bldg. and Invest. Co. v. Houghton*, 144 Minn. 1, 174 NW 885, 8 ALR 585).

There is also an ancient rule that restrictive statutes, no matter how broad their terms are, do not embrace the sovereign unless the sovereign is specially mentioned as subject thereto (*Alliance of Government Workers v. Minister of Labor and Employment*, 124 SCRA 1 [1983]). The Republic of the Philippines, as sovereign, or its political subdivisions, as holders of delegated sovereign powers, cannot be bound by provisions of law couched in general terms.

The fears of private respondents that they will be paid on the basis of the valuation declared in the tax declarations

of their property, are unfounded. This Court has declared as unconstitutional the Presidential Decrees fixing the just compensation in expropriation cases to be the value given to the condemned property either by the owners or the assessor, whichever was lower ([Export Processing Zone Authority v. Dulay, 149 SCRA 305 [1987]]). As held in Municipality of Talisay v. Ramirez, 183 SCRA 528 [1990], the rules for determining just compensation are those laid down in Rule 67 of the Rules of Court, which allow private respondents to submit evidence on what they consider shall be the just compensation for their property.

WHEREFORE, the petition is GRANTED and the questioned decision of the Court of Appeals is set aside insofar as it (a) nullifies the trial court's order allowing the Province of Camarines Sur to take possession of private respondents' property; (b) orders the trial court to suspend the expropriation proceedings; and (c) requires the Province of Camarines Sur to obtain the approval of the Department of Agrarian Reform to convert or reclassify private respondents' property from agricultural to non-agricultural use.

The decision of the Court of Appeals is AFFIRMED insofar as it sets aside the order of the trial court, denying the amended motion to dismiss of the private respondents.

**SO ORDERED.**

Cruz, (Chairman), Griño-Aquino, and Bellosillo, JJ., concur.

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