

PERCIVAL MODAY, ZOTICO MODAY (DECEASED) AND LEONORA MODAY, PETITIONERS, VS. COURT OF APPEALS, JUDGE EVANGELINE S. YUIPCO OF BRANCH 6, REGIONAL TRIAL COURT, AGUSAN DEL SUR AND MU...

G.R. No. 107916. February 20, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

The main issue presented in this case is whether a municipality may expropriate private property by virtue of a municipal resolution which was disapproved by the Sangguniang Panlalawigan. Petitioner seeks the reversal of the Court of Appeals decision and resolution, promulgated on July 15, 1992 and October 22, 1992 respectively[1], and a declaration that Municipal Resolution No. 43-89 of the Bunawan Sangguniang Bayan is null and void.

On July 23, 1989, the Sangguniang Bayan of the Municipality of Bunawan in Agusan del Sur passed Resolution No. 43-89, "Authorizing the Municipal Mayor to Initiate the Petition for Expropriation of a One (1) Hectare Portion of Lot No. 6138-Pls-4 along the National Highway Owned by Percival Moday for the Site of Bunawan Farmers Center and Other Government Sports Facilities." [2]

In due time, Resolution No. 43-89 was approved by then Municipal Mayor Anuncio C. Bustillo and transmitted to the Sangguniang Panlalawigan for its approval. On September 11, 1989, the Sangguniang Panlalawigan disapproved said Resolution and returned it with the comment that "expropriation is unnecessary considering that there are still available lots in Bunawan for the establishment of the government center." [3]

The Municipality of Bunawan, herein public respondent, subsequently filed a Petition for Eminent Domain against petitioner Percival Moday before the Regional Trial Court at Prosperidad, Agusan del Sur. [4] The complaint was later amended to include the registered owners, Percival Moday's parents, Zotico and Leonora Moday, as party defendants.

On March 6, 1991, public respondent municipality filed a Motion to Take or Enter Upon the Possession of Subject Matter of This Case stating that it had already deposited with the municipal treasurer the necessary amount in accordance with Section 2, Rule 67 of the Revised Rules of Court and that it would be in the government's best interest for public respondent to be allowed to take possession of the property.

Despite petitioners' opposition and after a hearing on the merits, the Regional Trial Court granted respondent municipality's motion to take possession of the land. The lower court held that the Sangguniang Panlalawigan's failure to declare the resolution invalid leaves it effective. It added that the duty of the Sangguniang Panlalawigan is merely to review the ordinances and resolutions passed by the Sangguniang Bayan under Section 208 (l) of B.P. Blg. 337, old Local Government Code and that the exercise of eminent domain is not one of the two acts enumerated in Section 19 thereof requiring the approval of the Sangguniang Panlalawigan. [5] The dispositive portion of the lower court's Order dated July 2, 1991 reads:

"WHEREFORE, it appearing that the amount of P632.39 had been deposited as per Official Receipt No. 5379647 on December 12, 1989 which this Court now determines as the provisional value of the land, the Motion to Take or Enter Upon the Possession of the Property filed by petitioner through counsel is hereby GRANTED. The Sheriff of this Court is ordered to forthwith place the plaintiff in possession of the property involved.

Let the hearing be set on August 9, 1991 at 8:30 o'clock in the morning for the purpose of ascertaining the just compensation or fair market value of the property sought to be taken, with notice to all the parties concerned.

SO ORDERED."[6]

Petitioners' motion for reconsideration was denied by the trial court on October 31, 1991.

Petitioners elevated the case in a petition for certiorari alleging grave abuse of discretion on the part of the trial court, but the same was dismissed by respondent appellate court on July 15, 1992.[7] The Court of Appeals held that the public purpose for the expropriation is clear from Resolution No. 43-89 and that since the Sangguniang Panlalawigan of Agusan del Sur did not declare Resolution No. 43-89 invalid, expropriation of petitioners' property could proceed.

Respondent appellate court also denied petitioners' motion for reconsideration on October 22, 1992.[8]

Meanwhile, the Municipality of Bunawan had erected three buildings on the subject property: the Association of Barangay Councils (ABC) Hall, the Municipal Motorpool, both wooden structures, and the Bunawan Municipal Gymnasium, which is made of concrete.

In the instant petition for review filed on November 23, 1992, petitioner seeks the reversal of the decision and resolution of the Court of Appeals and a declaration that Resolution No. 43-89 of the Municipality of Bunawan is null and void.

On December 8, 1993, the Court issued a temporary restraining order enjoining and restraining public respondent Judge Evangeline Yuipco from enforcing her July 2, 1991 Order and respondent municipality from using and occupying all the buildings constructed and from further constructing any building on the land subject of this petition.[9]

Acting on petitioners' Omnibus Motion for Enforcement of Restraining Order and for Contempt, the Court issued a Resolution on March 15, 1995, citing incumbent municipal mayor Anuncio C. Bustillo for contempt, ordering him to pay the fine and to demolish the "blocktiendas" which were built in violation of the restraining order.[10]

Former Mayor Anuncio C. Bustillo paid the fine and manifested that he lost in the May 8, 1995 election.[11] The incumbent Mayor Leonardo Barrios, filed a Manifestation, Motion to Resolve "Urgent Motion for Immediate Dissolution of the Temporary Restraining Order" and Memorandum on June 11, 1996 for the Municipality of Bunawan.[12]

Petitioners contend that the Court of Appeals erred in upholding the legality of the condemnation proceedings initiated by the municipality. According to petitioners, the expropriation was politically motivated and Resolution No. 43-89 was correctly disapproved by the Sangguniang Panlalawigan, there being other municipal properties available for the purpose. Petitioners also pray that the former Mayor Anuncio C. Bustillo be ordered to pay damages for insisting on the enforcement of a void municipal resolution.

The Court of Appeals declared that the Sangguniang Panlalawigan's reason for disapproving the resolution "could be baseless, because it failed to point out which and where are 'those available lots.'" Respondent court also concluded that since the Sangguniang Panlalawigan did not declare the municipal board's resolution as invalid,

expropriation of petitioners' property could proceed.[13]

The Court finds no merit in the petition and affirms the decision of the Court of Appeals.

Eminent domain, the power which the Municipality of Bunawan exercised in the instant case, is a fundamental State power that is inseparable from sovereignty.[14] It is government's right to appropriate, in the nature of a compulsory sale to the State, private property for public use or purpose.[15] Inherently possessed by the national legislature, the power of eminent domain may be validly delegated to local governments, other public entities and public utilities.[16] For the taking of private property by the government to be valid, the taking must be for public use and there must be just compensation.[17]

The Municipality of Bunawan's power to exercise the right of eminent domain is not disputed as it is expressly provided for in Batas Pambansa Blg. 337, the Local Government Code[18] in force at the time expropriation proceedings were initiated. Section 9 of said law states:

"Section 9. Eminent Domain. — 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."

What petitioners question is the lack of authority of the municipality to exercise this right since the Sangguniang Panlalawigan disapproved Resolution No. 43-89.

Section 153 of B.P. Blg. 337 provides:

"Sec. 153. Sangguniang Panlalawigan Review. — (1) Within thirty days after receiving copies of approved ordinances, resolutions and executive orders promulgated by the municipal mayor, the sangguniang panlalawigan shall examine the documents or transmit them to the provincial attorney, or if there be none, to the provincial fiscal, who shall examine them promptly and inform the sangguniang panlalawigan in writing of any defect or impropriety which he may discover therein and make such comments or recommendations as shall appear to him proper.

(2) If the sangguniang panlalawigan shall find that any municipal ordinance, resolution or executive order is beyond the power conferred upon the sangguniang bayan or the mayor, it shall declare such ordinance, resolution or executive order invalid in whole or in part, entering its actions upon the minutes and advising the proper municipal authorities thereof. The effect of such an action shall be to annul the ordinance, resolution or executive order in question in whole or in part. The action of the sangguniang panlalawigan shall be final.

xxx xxx xxx." (Emphasis supplied.)

The Sangguniang Panlalawigan's disapproval of Municipal Resolution No. 43-89 is an infirm action which does not render said resolution null and void. The law, as expressed in Section 153 of B.P. Blg. 337, grants the Sangguniang Panlalawigan the power to declare a municipal resolution invalid on the sole ground that it is beyond the power of the Sangguniang Bayan or the Mayor to issue. Although pertaining to a similar provision of law but different factual milieu then obtaining, the Court's pronouncements in *Velazco v. Blas*,^[19] where we cited significant early jurisprudence, are applicable to the case at bar.

"The only ground upon which a provincial board may declare any municipal resolution, ordinance, or order invalid is when such resolution, ordinance, or order is 'beyond the powers conferred upon the council or president making the same.' Absolutely no other ground is recognized by the law. A strictly legal question is before the provincial board in its consideration of a municipal resolution, ordinance, or order. The provincial (board's) disapproval of any resolution, ordinance, or order must be premised specifically upon the fact that such resolution, ordinance, or order is outside the scope of the legal powers conferred by law. If a provincial board passes these limits, it usurps the legislative functions of the municipal council or president. Such has

been the consistent course of executive authority." [20]

Thus, the Sangguniang Panlalawigan was without the authority to disapprove Municipal Resolution No. 43-89 for the Municipality of Bunawan clearly has the power to exercise the right of eminent domain and its Sangguniang Bayan the capacity to promulgate said resolution, pursuant to the earlier-quoted Section 9 of B.P. Blg. 337. Perforce, it follows that Resolution No. 43-89 is valid and binding and could be used as lawful authority to petition for the condemnation of petitioners' property.

As regards the accusation of political oppression, it is alleged that Percival Moday incurred the ire of then Mayor Anuncio C. Bustillo when he refused to support the latter's candidacy for mayor in previous elections. Petitioners claim that then incumbent Mayor C. Bustillo used the expropriation to retaliate by expropriating their land even if there were other properties belonging to the municipality and available for the purpose. Specifically, they allege that the municipality owns a vacant seven-hectare property adjacent to petitioners' land, evidenced by a sketch plan. [21]

The limitations on the power of eminent domain are that the use must be public, compensation must be made and due process of law must be observed. [22] The Supreme Court, taking cognizance of such issues as the adequacy of compensation, necessity of the taking and the public use character or the purpose of the taking [23], has ruled that the necessity of exercising eminent domain must be genuine and of a public character. [24] Government may not capriciously choose what private property should be taken.

After a careful study of the records of the case, however, we find no evidentiary support for petitioners' allegations. The uncertified photocopy of the sketch plan does not conclusively prove that the municipality does own vacant land adjacent to petitioners' property suited to the purpose of the expropriation. In the questioned decision, respondent appellate court similarly held that the pleadings and documents on record have not pointed out any of respondent municipality's "other available properties available for the same purpose. [25] " The accusations of political reprisal are likewise unsupported by competent evidence. Consequently, the Court holds that petitioners' demand that the former municipal mayor be personally liable for damages is without basis.

WHEREFORE, the instant petition is hereby DENIED. The questioned Decision and Resolution of the Court of Appeals in the case of "Percival Moday, et al. v. Municipality of Bunawan, et al." (CA G.R. SP No. 26712) are AFFIRMED. The Temporary Restraining Order issued by the Court on December 8, 1993 is LIFTED. SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] "Percival Moday v. Municipality of Bunawan, et. al." CA G.R. SP No. 26712, penned by Justice Artemon D. Luna, with Justices Jose A.R. Melo (now a member of this Court) and Segundino G. Chua, concurring. Rollo, p. 21, 36.

[2] The lot is part of 5.6610 hectares covered by Transfer Certificate of Title No. T-3132 in the name of Zotico Moday, married to Leonora Moday. The assessed value of the entire lot in 1989 was P3,580.00 while the assessed value of one hectare is about P632.39.

[3] Excerpts From the Minutes of the Regular Session of the Sangguniang Panlalawigan of Agusan del Sur Held at the Session Hall, Training Center, Prosperidad, on September 11, 1989. Rollo, p. 85.

"Municipality of Bunawan, Agusan del Sur v. Percival Moday, et al.," Special Civil Case No. 719, Judge Evangeline S. Yuipco, presiding.

[5] "Sec. 19. Certain Acts of the Sangguniang Bayan Requiring Approval of the Sangguniang Panlalawigan. — The following acts of the sangguniang bayan shall be subject to the approval of the sangguniang panlalawigan:

(1) Permanent closure of a public road, street, alley, park or square; and

(2) Donation of municipal funds or property."

[6] Rollo, p. 75.

[7] "Percival Moday, et al. v. Municipality of Bunawan, et al.," CA G.R. SP No. 26712, Rollo, pp. 21-25.

[8] Rollo, p. 36.

[9] Rollo, p. 104.

[10] Rollo, pp. 242-245.

[11] Rollo, pp. 248-249.

[12] Rollo, p. 286.

[13] Rollo, p. 24.

[14] V. SINCO, PHILIPPINE POLITICAL LAW: PRINCIPLES AND CONCEPTS 592 (10th ed., 1954) citing Kohl v. US, 91 U.S. 371. A. PIMENTEL, THE LOCAL GOVERNMENT CODE OF 1991: THE KEY TO NATIONAL DEVELOPMENT 106 (1993). Visayan Refining Co. v. Camus, 40 Phil. 550.

[15] BLACK'S LAW DICTIONARY 616 (4th ed.) cited in I. CRUZ, CONSTITUTIONAL LAW 59 (1991 ed.); J. BERNAS, THE 1987 PHILIPPINE CONSTITUTION, A REVIEWER-PRIMER 92 (2nd ed., 1992) citing Charles River Bridge v. Warren Bridge, 11 Pet. 420, 641 (US 1837).

[16] BERNAS, op. cit. at 93; CRUZ, op. cit. at 59-60; Province of Camarines Sur v. CA, G.R. No. 103125, May 11, 1993, 222 SCRA 173.

[17] Article III, Section 9 of the 1987 Constitution states that "(p)ivate property shall not be taken for public use without just compensation."

[18] Approved on February 10, 1983, the Code was published in 79 O.G. No. 7. The Local Government Code of 1991 (Republic Act No. 7160) took effect on January 1, 1992. Evardone v. Comelec, G.R. No. 94010, December 2, 1991, 204 SCRA 464.

[19] G.R. No. L-30456, July 30, 1982, 115 SCRA 540, 544-545. The law then in force, Section 2233 of the Revised Administrative Code, also provided that "(i)f the board should in any case find that any resolution, ordinance, or order, as aforesaid, is beyond the powers conferred upon the council or mayor making the same, it shall declare such resolution, ordinance, or order invalid, entering its action upon the minutes and advising the proper municipal authorities thereof. The effect of such action shall be to annul the resolution, ordinance, or order in question, subject to action by the Secretary of the Interior as hereinafter provided."

[20] At pages 544-545, citing Gabriel v. Provincial Board of Pampanga, 50 Phil. 686, 692-693; Cariño v. Jamoralne, 56 Phil. 188, Manantan v. Municipality of Luna, 82 Phil. 844, which cite the Opinions Attorney-General Wilfley (1905), II Op. Atty.-Gen., 557, 642, Opinion Attorney-General Villareal, November 22, 1922; Opinion Attorney-General Jaranilla, August 9, 1926; Provincial Circular Executive Bureau, September 16, 1918.

[21] Rollo, p. 88.

[22] V. SINCO, op. cit. citing Visayan Refining Company v. Camus, supra. and In re Fowler, 53 N.Y. 60.

[23] Municipality of Meycauayan v. IAC, G.R. No. L-72126, January 29, 1988, 157 SCRA 640; J.M. Tuason v. Land Tenure Administration, 31 SCRA 413; National Power Corporation v. Jocson, 206 SCRA 520; Republic v. IAC, 185 SCRA 572.

[24] City of Manila v. Chinese Community of Manila, 40 Phil. 349 citing Morrison v. Indianapolis, 166 Ind. 511; Stearns v. Barre, 73 Vt. 281; Wheeling v. Toledo, 72 Ohio St. 368.

[25] Rollo, p. 23.

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