

**ESTATE OR HEIRS OF THE LATE EX-JUSTICE JOSE B. L. REYES
REPRESENTED BY THEIR ADMINISTRATRIX AND
ATTORNEY-IN-FACT, ADORACION D. REYES, AND THE ESTATE OR
HEIRS OF THE LATE DR. EDM...**

G.R. No. 132431. February 13, 2004

Ponente: CORONA, J.

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CORONA, J.:

Before us are the following consolidated petitions filed by petitioners Heirs of Jose B.L. Reyes and Edmundo Reyes: (1) a petition for review[1] of the decision[2] of the Court of Appeals dated January 27, 1998 which ordered the condemnation of petitioners' properties and reversed the order[3] of the Regional Trial Court (RTC) of Manila, Branch 9, dated October 3, 1995 dismissing the complaint of respondent City of Manila (City) for expropriation, and (2) a petition for certiorari[4] alleging that the Court of Appeals committed grave abuse of discretion in rendering a resolution[5] dated August 19, 1998 which issued a temporary restraining order against the Municipal Trial Court (MTC) of Manila, Branch 10, not to "(disturb) the occupancy of Dr. Rosario Abiog, one of the members of SBMI, until the Supreme Court has decided the Petition for Review on Certiorari" and a resolution[6] dated December 16, 1998 enjoining petitioners "from disturbing the physical possession of all the properties subject of the expropriation proceedings."

The undisputed facts follow.

The records show that Jose B. L. Reyes and petitioners Heirs of Edmundo Reyes are the pro-indiviso co-owners in equal proportion of 11 parcels of land with a total area of 13,940 square meters situated at Sta. Cruz District, Manila and covered by Transfer Certificate of Title No. 24359 issued by the Register of Deeds of Manila. These parcels of land are being occupied and leased by different tenants, among whom are respondents Abiog, Maglonso and members of respondent Sampaguita Bisig ng Magkakapitbahay, Incorporated (SBMI). Petitioners leased to respondent Abiog Lot 2-E, Block 3007 of the consolidated subdivision plan (LRC) Psd- 328345, with an area of 191 square meters[7] and to respondent Maglonso, Lot 2-R, Block 2996 of the same consolidation plan, with an area of 112 square meters.[8]

On November 9, 1993 and May 26, 1994, respectively, Jose B.L. Reyes and petitioners Heirs of Edmundo Reyes filed ejectment complaints against respondents Rosario Abiog and Angelina Maglonso, among others. Upon his death, Jose B.L. Reyes was substituted by his heirs. Petitioners obtained favorable judgments against said respondents. In Civil Case No. 142851-CV, the Metropolitan Trial Court (MTC) of Manila, Branch 10, rendered a decision dated May 9, 1994 against respondent Abiog. In Civil Case No. 144205-CV, the MTC of Manila, Branch 3, issued judgment dated May 4, 1995 against respondent Maglonso.

Respondents Abiog and Maglonso appealed the MTC decisions but the same were denied[9] by the RTC of Manila, Branch 28, and the RTC of Manila, Branch 38, respectively. Their appeals to the Court of Appeals were likewise denied.[10] As no appeals were further taken, the judgments of eviction against respondents Abiog and

Maglonso became final and executory in 1998.

Meanwhile, during the pendency of the two ejectment cases against respondents Abiog and Maglonso, respondent City filed on April 25, 1995 a complaint for eminent domain (expropriation)[11] of the properties of petitioners at the RTC of Manila, Branch 9. The properties sought to be acquired by the City included parcels of land occupied by respondents Abiog, Maglonso and members of respondent SBMI.

The complaint was based on Ordinance No. 7818 enacted on November 29, 1993 authorizing the City Mayor of Manila to expropriate certain parcels of land with an aggregate area of 9,930 square meters, more or less, owned by Jose B.L. Reyes and Edmundo Reyes situated along the streets of Rizal Avenue, Tecson, M. Natividad, Sampaguita, Oroquieta, M. Hizon, Felix Huertes, Bulacan, Sulu, Aurora Boulevard, Pedro Guevarra and Kalimbas in the third district of Manila. These parcels of land are more particularly described in the pertinent Cadastral Plan as Lot 3, Block 2995, Lot 2, Block 2996; Lot 2, Block 2999; Lot 5, Block 2999, and Lot 2, Block 3007. According to the ordinance, the said properties were to be distributed to the intended beneficiaries, who were “the occupants of the said parcels of land who (had) been occupying the said lands as lessees or any term thereof for a period of at least 10 years.”[12]

The complaint alleged that, on March 10, 1995, respondent City thru City Legal Officer Angel Aguirre, Jr. sent the petitioners a written offer to purchase the subject properties for P10,285,293.38 but the same was rejected. Respondent City prayed that an order be issued fixing the provisional value of the property in the amount of P9,684,380 based on the current tax declaration of the real properties and that it be authorized to enter and take possession thereof upon the deposit with the trial court of the amount of P1,452,657 or 15% of the aforesaid value.

On May 15, 1995, respondent SBMI, a registered non-stock corporation composed of the residents of the subject properties (including as well as representing herein respondents Abiog and Maglonso), filed a motion for intervention and admission of their attached complaint with prayer for injunction. Respondent SBMI alleged that it had a legal interest over the subject matter of the litigation as its members were the lawful beneficiaries of the subject matter of the case. It prayed for the issuance of a temporary restraining order to enjoin the petitioners from ousting the occupants of the subject properties. The trial court denied the motion for intervention in an order dated June 2, 1995 on the ground that “the movants’ interest (was) indirect, contingent, remote, conjectual (sic), consequential (sic) and collateral. At the very least, it (was), if it (existed) at all, purely inchoate, or in sheer expectancy of a right that may or may not be granted.”[13]

On the day SBMI’s motion for intervention was denied, petitioners filed a motion to dismiss the complaint for eminent domain for lack of merit. Among the grounds alleged were the following:

xxx that the amount allegedly deposited by the plaintiff is based on an erroneous computation since Sec. 19 of the Local Government Code of 1991 provides that in order for the plaintiff to take possession of the property, the deposit should be at least 15% of the fair market value of the property based on the current tax declaration of the property to be expropriated which is P19,619,520.00, 15% of which is P2,942,928.00; that since the subject property is allegedly being expropriated for socialized housing, the guidelines for their equitable valuation shall be set by the Department of Finance on the basis of the market value reflected in the zonal valuation conformably to Sec. 13 of R.A. No. 7279; that under Department Order No. 33-93 adopted by the Department of Finance, through the Bureau of Internal Revenue, on 26 April 1992, the zonal valuation of the subject property is conservatively estimated at approximately P76M; that the plaintiff has no savings or unappropriated funds to pay for the just compensation; that instead of expropriating the subject property which enjoys the least priority in the acquisition by the City of Manila for socialized housing under Sec. 9(t) of R.A. 7279, the money to be paid should be channeled to the development of 244 sites in Metro Manila designated as area for priority development; that the City Ordinance was not properly adopted since there was no public

hearing and neither were the defendants notified; that the tenants occupying the subject property cannot be categorized as “underprivileged and homeless citizens” or those whose income falls within the poverty threshold to be qualified as beneficiaries of the intended socialized housing; and that the plaintiff failed to comply with Art. 34, Rule 6 of the Rules and Regulations Implementing the Local Government Code of 1991 which requires the local government unit to first establish the suitability of the property to be acquired for the use intended and then proceed to obtain from the proper authorities, like the National Housing Authority, the necessary locational clearance and other requirements imposed under existing laws, rules and regulations.[14]

On June 6, 1995, the trial court allowed respondent City to take possession of the subject property upon deposit of the amount of P1,542,793, based on the P10,285,293.38 offer by respondent City to petitioners which the trial court fixed as the provisional amount of the subject properties. On June 14, 1995, respondent City filed an opposition to petitioners’ motion to dismiss.

On October 3, 1995, the City’s complaint for eminent domain was dismissed.[15] The trial court held that expropriation was inappropriate because herein petitioners were in fact willing to sell the subject properties under terms acceptable to the purchaser. Moreover, respondent City failed to show that its offer was rejected by petitioners. Respondent City’s motion for reconsideration was denied.

On January 12, 1996, respondent City appealed the decision of the trial court to the Court of Appeals. Thereafter, several motions[16] seeking the issuance of a temporary restraining order and preliminary injunction were filed by respondent City to prevent petitioners from ejecting the occupants of the subject premises. On March 21, 1996, the Court of Appeals issued a resolution[17] denying the motions for lack of merit. Respondent City’s motion for reconsideration was likewise denied.

Meanwhile, on January 27, 1997, in view of the finality of the judgment in the ejectment case against respondent Abiog, the MTC of Manila, Branch 10, issued a writ of execution.

On January 31, 1997, respondent SBMI filed in the Court of Appeals a motion for leave to intervene with prayer for injunctive relief praying that the ejectment cases be suspended or that the execution thereof be enjoined in view of the pendency of the expropriation case filed by respondent City over the same parcels of land.

As a follow-up, respondent Abiog filed in the appellate court, on August 25, 1997, a reiteratory motion for issuance of temporary restraining order and to stop the execution of the order dated June 27, 1997 of the Hon. Judge Tranquil P. Salvador, MTC of Manila, Branch 10.

On August 26, 1997, the Court of Appeals issued a resolution[18] finding prima facie basis to grant SBMI’s motions. It issued a temporary restraining order to Judge Salvador, his employees and agents to maintain the status quo. After the hearing on the propriety of the issuance of a writ of preliminary injunction, respondent SBMI filed a reiteratory motion for injunctive relief on December 11, 1997.

On January 27, 1998, the Court of Appeals rendered the assailed decision reversing the trial court judgment and upholding as valid respondent City’s exercise of its power of eminent domain over petitioners’ properties. The dispositive portion of the decision stated:

WHEREFORE, the Orders appealed from are hereby REVERSED and SET ASIDE. The case is remanded to the lower court to determine specifically the amount of just compensation.

SO ORDERED.[19]

According to the Court of Appeals:

xxx there is no doubt as to the public purpose of the plaintiff-appellant in expropriating the property of the

defendants-appellees. Ordinance No. 7818 expressly states that the subject parcels of land are to be distributed to the landless poor residents therein who have been in possession of the said property for at least ten (10) years.

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xxx In the absence of any law which expressly provides for a period for filing an expropriation proceeding, the lower court erred in dismissing the complaint based on unsupported accusations and mere speculations, such as political motivation. The fact that the expropriation proceeding was not immediately instituted does not negate the existence of the public purpose for which the ordinance was enacted.

Another reason for the lower court's dismissal was its finding that there was no proof that the offer of the plaintiff-appellant, through the City Legal Office, was not accepted. This conclusion by the lower court is belied by the letter of Adoracion D. Reyes, dated 17 March 1995, xxx.

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There can be no interpretation of the letter of the defendant-appellee other than that the valid and definite offer of the plaintiff-appellant to purchase the subject property was not accepted and, in the words of the defendant-appellee, was totally turned down.

The lower court in denying the plaintiff-appellant's motion for reconsideration of the order of dismissal held that the defendants-appellees were actually willing to sell, in fact, some of the tenants have already purchased the land that they occupy. However, we agree with the plaintiff-appellant that the contracts entered into by the defendants-appellees with some of the tenants do not affect the offer it made. The plaintiff-appellant was not a party in those transactions and as pointed out, its concern is the majority of those who have no means to provide themselves with decent homes to live on.[20]

From the aforementioned decision of the Court of Appeals, petitioners filed on March 19, 1998 the present petition for review[21] before this Court. Alleging that respondent City cannot expropriate the subject parcels of land, petitioners assigned the following as errors of the Court of Appeals:

The Court Appeals committed grave abuse and irreversible errors in holding that respondent City of Manila may expropriate petitioners' parcels of land considering that:

I. Respondent did not comply with Secs. 9 and 10 of P.D. (sic) No. 7279, otherwise known as the "Urban Development and Housing Act of 1992 and Sec. 34 of the Local Government Code of 1991 (sic)."

II. Ordinance No. 7818 enacted by the City of Manila is violative of the equal protection clause.

III. There was no valid and definite offer by the respondent City of Manila to purchase subject parcels of land.

IV. Assuming there was a valid offer, the amount deposited for the payment of just compensation was insufficient.

V. Petitioners are not unwilling to sell the subject parcels of land.

VI. There was no pronouncement as to just compensation.[22]

What followed were incidents leading to the filing of the petition for certiorari against the resolutions of the Court of Appeals which essentially sought to enjoin the petitioners from enforcing the final judgments against respondents Abiog, Maglonso and SBMI (hereinafter, respondent occupants) in the ejectment cases.

On August 17, 1998, respondents Abiog and Maglonso filed in the Court of Appeals an urgent motion for protective order.

Meanwhile, on September 8, 1998, petitioners were able to secure from the MTC of Manila, Branch 3, a writ of execution of the final judgment in the other ejectment case against respondent Maglonso.

On October 19, 1998, respondent SBMI filed in the CA a similar motion for protective order. In essence, the respondents' motions for "protective order" sought to stop the execution of the final and executory judgments in the ejectment cases against them.

On August 19, 1998, the Court of Appeals promulgated the first assailed resolution,[23] the dispositive portion of which read:

Considering that this case has been elevated to the Supreme Court, the Municipal Trial Court of Manila, Branch 10 and Sheriff Jess Areola or any other sheriff of the City of Manila, are hereby TEMPORARILY RESTRAINED from disturbing the occupancy of Dr. Rosario Abiog, one of the members of the SBMI until the Supreme Court has decided the Petition for Review on Certiorari.

On September 4, 1998, petitioners filed a motion to set aside as ineffective and/or null and void the said August 19, 1998 resolution. But the Court of Appeals denied the same in a resolution dated December 16, 1998,[24] the dispositive portion of which read:

WHEREFORE, the Estate or heirs of J.B.L. Reyes and all persons acting in their behalf are hereby ENJOINED from disturbing the physical possession of all the properties (sic) subject of the expropriation proceedings.

SO ORDERED.

In enjoining the petitioners from evicting respondent occupants and in effect suspending the execution of the MTC judgments, the appellate court held that:

We do not agree with the contention of the defendants-appellees that we no longer have any jurisdiction to issue the subject resolution. In spite of having rendered the decision on 27 January 1998, the appellate Court still has the inherent power and discretion to amend whatever order or decision it had made before in order to render substantial justice.

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There is no doubt that the members of SBMI have a personality to intervene before this Court. The plaintiff-appellant itself, in their Comment to the defendants-appellees' motion to set aside this Court's 19 August 1998 resolution, recognized Dr. Rosario Abiog, as one of the intended beneficiaries of the expropriation case. The plaintiff-appellant also enumerated the ejectment cases pending before the lower courts when it filed a motion for the issuance of temporary restraining order and/or writ of preliminary injunction upon appeal to this Court. Moreover, the plaintiff-appellant also furnished this Court with a copy of the THIRD PARTY CLAIM it filed before the City Sheriff Office and Sheriff Dante Lot to enjoin them from implementing and executing the Demolition Order issued by the Metropolitan Trial Court of Manila (Branch 3) against Angelina Maglonso.

In their motion to set aside the 19 August 1998 resolution, the defendants-appellees, quoting the Order of the lower court denying the motion for intervention stated that:

The petition of the plaintiff to expropriate the property does not ipso facto create any fiat that would give rise to the claim of the movant of "legal interest" in the property. The petition could well be denied leaving any assertion of interest on the part of the movant absolutely untenable. If the petition, on the other hand, is granted, that would be the time for the movant to intervene, to show that they are the intended beneficiaries, and if the plaintiff would distribute the property to other persons, the remedy is to compel the plaintiff to deliver the lot to them.

Having established that they are the intended beneficiaries, the intervenors then have the right to seek protection from this Court.

On 27 January 1998, we held that the plaintiff-appellant validly exercised its power of eminent domain and consequently may expropriate the subject property upon payment of just compensation. The record before us shows that on 6 June 1995, the lower court allowed the plaintiff-appellant to take possession of the subject property upon filing of P1,542,793.00 deposit. The property to be expropriated includes the same properties subject of the ejectment cases against the intervenors. There is nothing in the record that would show that the order of possession was ever set aside or the deposit returned to the plaintiff-appellant.

Based on the foregoing considerations, we find that the intervenors are entitled to the injunction that they prayed for.

To allow the demolition of the premises of the intervenors would defeat the very purpose of expropriation which is to distribute the subject property to the intended beneficiaries who are the occupants of the said parcels of land who have been occupying the said lands as lessees or any term thereof for a period of at least ten (10) years.

In the case of *Lourdes Guardacasa Vda. De Legaspi vs. Hon. Herminion A. Avendano, et al.*, the Supreme Court ordered the suspension of the enforcement and implementation of the writ of execution and order of demolition issued in the ejectment case until after the final termination of the action for quieting of title because it is more equitable and just and less productive of confusion and disturbance of physical possession with all its concomitant inconvenience and expenses.

As held in *Wilmon Auto Supply Corp., et al. vs. Hon. Court of Appeals, et al.*, the exception to the rule in the case of *Vda. De Legaspi* case, execution of the decision in the ejectment case would also have meant demolition of the premises, which is the situation in the case at bar.[25]

Claiming that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction, petitioners filed the subject petition for certiorari[26] with the following assignments of error:

I

PUBLIC RESPONDENT COURT OF APPEALS HAS NO JURISDICTION IN ISSUING THE “PROTECTIVE ORDER” ENJOINING THE EXECUTION OF THE FINAL AND EXECUTORY JUDGMENTS IN THE EJECTMENT CASES AGAINST PRIVATE RESPONDENTS BECAUSE THE POWER TO ISSUE SUCH ORDER HAS BEEN LODGED WITH THE HONORABLE COURT IN VIEW OF THE PENDENCY OF G.R. NO. 132431.

II

ASSUMING ARGUENDO THAT PUBLIC RESPONDENT COURT OF APPEALS COULD ISSUE SUCH ORDER, IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE PROTECTIVE ORDER IN FAVOR OF PRIVATE RESPONDENTS BECAUSE IT HAS LONG BEEN SETTLED THAT THEIR INTERESTS IN THE PROPERTIES SUBJECT OF THE EXPROPRIATION CASE ARE NOT SUFFICIENT FOR THEM TO BE DECLARED AS INTERVENORS.

III

THE SO-CALLED PROTECTIVE ORDER IS AN INJUNCTIVE RELIEF IN DISGUISE.

IV

PRIVATE RESPONDENTS’ ACT OF SEEKING THE PROTECTIVE ORDER FROM THE COURT OF

APPEALS, DESPITE THE FINALITY OF THE ORDER BY THE TRIAL COURT DISALLOWING INTERVENTION, CONSTITUTES FORUM SHOPPING.

V

The assailed resolutions of the Court of Appeals should be set aside, following the ruling in *FILSTREAM INTERNATIONAL, INC. VS. CA, JUDGE TONGCO AND THE CITY OF MANILA* (G.R. NO. 125218, JANUARY 23, 1998) AND *FILSTREAM INTERNATIONAL, INC. VS. CA, MALIT ET AL.* (G.R. NO. 128077, JANUARY 23, 1998).[27]

In G.R. No 132431, petitioners allege: (1) that Ordinance 7818 is unconstitutional for violating the equal protection clause of the 1987 Constitution and for abridging the “contracts” between petitioners and prospective buyers of the subject parcels of land; (2) that, in expropriating the subject properties, respondent City’s act of expropriation is illegal because it did not comply with Sections 9 and 10 of Republic Act No. 7279 (The Urban Development and Housing Act of 1992); (3) that, prior to the filing of the eminent domain complaint, respondent City did not make a valid and definite offer to purchase the subject properties, and (4) that, assuming the offer as valid, the amount offered was insufficient.[28]

On the other hand, in insisting that its offer was valid and that the amount it deposited was sufficient, respondent City reiterates the reasons cited by the Court of Appeals. According to respondent City, there is nothing in the Local Government Code of 1991 which requires the offer to be made before enacting an enabling ordinance. The actual exercise of the power of eminent domain begins only upon the filing of the complaint for eminent domain with the RTC by the Chief Executive and not when an ordinance pursuant thereto has been enacted. It is therefore safe to say that the offer to purchase can be made before the actual filing of the complaint, whether that is before or after the ordinance is enacted.

On the sufficiency of the amount deposited, respondent City alleges that the determination of the provisional value of the property was judicially determined by the trial court at P10,285,293.38 in its order dated June 6, 1995. On the basis of this order, respondent City filed its compliance dated June 13, 1995 manifesting the deposit of the additional amount of P1,452,793 (15% of P10,285,293.38).

Respondent City also claims that all along petitioners were not willing to sell the subject parcels of land as proved by the tenor of the letter of petitioners’ agent, Adoracion Reyes, who wrote respondent City that “it is the consensus of the heirs xxx to turn down as we are totally turning down your offer to purchase the parcels of land subject matter of the aforesaid ordinance, or your offer is not acceptable to us in every respect.”

In G.R. No. 137146 (the petition for certiorari questioning the resolutions of the Court of Appeals which issued a temporary restraining order and ordered the parties to maintain the status quo), petitioners assail the resolutions of the Court of Appeals which in effect enjoined the MTC of Manila, Branches 9 and 10, from enforcing the final judgments in the ejectment cases while the appeal from the decision involving the same parcels of land in the expropriation case remains pending before this Court. Petitioners maintain that, first, only this Court and not the Court of Appeals has jurisdiction to enjoin the execution of the judgments in the ejectment cases considering that the expropriating case is now being reviewed by this Court; second, the orders are void as they protect an alleged right that does not belong to respondent City but to a non-party in the expropriation case; third, said orders deprive petitioners of their property without due process of law because they amount to a second temporary restraining order which is expressly prohibited by Section 5, Rule 58 of the Rules of Court[29]; last, petitioners brand respondent occupants’ act of seeking the assailed “protective order,” despite the finality of the trial court order disallowing intervention, as forum-shopping.

To justify the propriety of their intervention and the legality of the assailed resolutions, respondent occupants aver

the following:

first, Section 9(1)[30] of BP 129 (The Judiciary Reorganization Act of 1980) is broad enough to include “protective orders.” If the Court of Appeals has the power to annul judgments of the RTC, with more reason does it have the power to annul judgments of the MTC.

second, as the undisputed rightful beneficiaries of the expropriation, they have the right to intervene.

third, their right to intervene has never been barred with finality. Due to the dismissal of the complaint for expropriation, their motion for reconsideration of the trial court order denying their motion to intervene was never ruled upon as it became moot and academic. The trial court’s silence does not mean a denial of the intervention and injunction that respondent occupants prayed for.

fourth, it is more appropriate in the interest of equity and justice to preserve the status quo pending resolution by this Court of petitioners’ appeal in the expropriation case because they are anyway the beneficiaries of the subject properties. The expropriation case should be considered as a supervening event that necessitated a modification, suspension or abandonment of the MTC decisions.

fifth, respondents are not guilty of forum-shopping for the reason that the Court of Appeals never made a ruling or decision on respondents’ motion to intervene. Moreover, the causes of action in the two cases were different and distinct from each other. In the motion to intervene, respondent occupants sought to be recognized and included as parties to the expropriation case. On the other hand, in the motion for protective order, respondents sought to enjoin the execution of the decisions in the ejectment cases against them.

Before proceeding to the discussion of the issues, it would be best to first recapitulate the confusing maze of facts of this case.

It is not disputed that the petitioners acquired a favorable judgment of eviction against herein respondents Abiog and Maglonso. In 1998, the said judgments became final and executory. Consequently, writs of execution were issued. During the pendency of the complaints for unlawful detainer, respondent City filed a case for the expropriation of the same properties involved in the ejectment cases. From thereon, numerous motions to intervene and motions for injunction were filed in the expropriation case by respondents. The trial court allowed respondent City to take possession of the property; it denied the motions for intervention and injunction, and, after allowing respondent City to oppose the motion to dismiss, dismissed the complaint for expropriation. On appeal, the Court of Appeals reversed the trial court and found that respondent City properly exercised its right to expropriate the subject properties. Petitioners appealed the CA decision to this Court. Thereafter, on motion of respondent occupants, the Court of Appeals issued protective orders that required the parties to maintain the status quo (prohibiting any ejectment) pending this Court’s resolution of the appeal.

Petitioner is now before us questioning the legality of the CA’s expropriation order and the propriety of its act enjoining the execution of the final judgments in the ejectment cases.

With these given facts, it is imperative to first resolve the issue of whether the respondent City may legally expropriate the subject properties, considering that a negative finding will necessarily moot the issue of the propriety of the “protective orders” of the Court of Appeals.

Whether respondent City deprived petitioners of their property without due process of law depends on whether the City complied with the legal requirements for expropriation. Before respondent City can exercise its power of eminent domain, the same must be sanctioned and must not violate any law. Being a mere creation of the legislature, a local government unit can only exercise powers granted to it by the legislature. Such is the nature of the constitutional power of control of Congress over local government units, the latter being mere creations of the former.[31]

When it expropriated the subject properties, respondent City relied on its powers granted by Section 19 of the Local Government Code of 1991[32] and RA 409 (The Revised Charter of the City of Manila). The latter specifically gives respondent City the power to expropriate private property in the pursuit of its urban land reform and housing program.[33] Respondent City, however, is also mandated to follow the conditions and standards prescribed by RA 7279 (the Urban Development and Housing Act of 1992), the law governing the expropriation of property for urban land reform and housing. Sections 9 and 10 of RA 7279 specifically provide that:

Sec. 9. Priorities in the acquisition of Land – Lands for socialized housing shall be acquired in the following order:

- (a) Those owned by the Government or any of its sub-divisions, instrumentalities, or agencies, including government-owned or –controlled corporations and their subsidiaries;
- (b) Alienable lands of the public domain;
- (c) Unregistered or abandoned and idle lands;
- (d) Those within the declared Areas of Priority Development, Zonal Improvement sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
- (e) Bagong Lipunan Improvement sites and Services or BLISS sites which have not yet been acquired; and
- (f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands.

Sec. 10. Modes of Land Acquisition. – The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint venture agreement, negotiated purchase, and expropriation: Provided, however, That expropriation shall be resorted to only when other modes of acquisition have been exhausted: Provided further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act: Provided, finally, that abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court. [italics supplied]

In *Filstream vs. Court of Appeals*,[34] we held that the above-quoted provisions are limitations to the exercise of the power of eminent domain, specially with respect to the order of priority in acquiring private lands and in resorting to expropriation proceedings as a means to acquire the same. Private lands rank last in the order of priority for purposes of socialized housing. In the same vein, expropriation proceedings are to be resorted to only after the other modes of acquisition have been exhausted. Compliance with these conditions is mandatory because these are the only safeguards of oftentimes helpless owners of private property against violation of due process when their property is forcibly taken from them for public use.

We find that herein respondent City failed to prove strict compliance with the requirements of Sections 9 and 10 of RA 7279. Respondent City neither alleged in its complaint nor proved during the proceedings before the trial court that it complied with said requirements. Even in the Court of Appeals, respondent City in its pleadings failed to show its compliance with the law. The Court of Appeals was likewise silent on this specific jurisdictional issue. This is a clear violation of the right to due process of the petitioners.

We also take note of the fact that *Filstream* is substantially similar in facts and issues to the case at bar.

In that case, Filstream acquired a favorable judgment of eviction against the occupants of its properties in Tondo, Manila. But prior thereto, on the strength of Ordinance 7818 (the same ordinance used by herein respondent City as basis to file the complaint for eminent domain), respondent City initiated a complaint for expropriation of Filstream's properties in Tondo, Manila, for the benefit of the residents thereof. Filstream filed a motion to dismiss and the City opposed the same. The trial court denied the motion. When the judgment in the ejectment case became final, Filstream was able to obtain a writ of execution and demolition. It thereafter filed a motion to dismiss the expropriation complaint but the trial court denied the same and ordered the condemnation of the subject properties. On appeal, the Court of Appeals denied Filstream's petition on a technical ground. Thus, the case was elevated to this Court for review of the power of the City to expropriate the Filstream's properties.

Meanwhile, the occupants and respondent City filed in separate branches of the RTC of Manila several petitions for certiorari with prayer for injunction to prevent the execution of the judgments in the ejectment cases. After the consolidation of the petitions for certiorari, the designated branch of RTC Manila dismissed the cases on the ground of forum-shopping. The dismissal was appealed to the Court of Appeals which reversed the trial court's dismissal and granted respondent's prayer for injunction. Filstream appealed the same to this Court, which appeal was consolidated with the earlier petition for review of the decision of the Court of Appeals in the main expropriation case.

Due to the substantial resemblance of the facts and issues of the case at bar to those in Filstream, we find no reason to depart from our ruling in said case. To quote:

The propriety of the issuance of the restraining order and the writ of preliminary injunction is but a mere incident to the actual controversy which is rooted in the assertion of the conflicting rights of the parties in this case over the disputed premises. In order to determine whether private respondents are entitled to the injunctive reliefs granted by respondent CA, we deemed it proper to extract the source of discord.

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Proceeding from the parameters laid out in the above disquisitions, we now pose the crucial question: Did the city of Manila comply with the abovementioned conditions when it expropriated petitioner Filstream's properties? We have carefully scrutinized the records of this case and found nothing that would indicate the respondent City of Manila complied with Sec. 9 and Sec. 10 of R.A. 7279. Petitioners Filstream's properties were expropriated and ordered condemned in favor of the City of Manila sans any showing that resort to the acquisition of other lands listed under Sec. 9 of RA 7279 have proved futile. Evidently, there was a violation of petitioner Filstream's right to due process which must accordingly be rectified.

Indeed, it must be emphasized that the State has a paramount interest in exercising its power of eminent domain for the general good considering that the right of the State to expropriate private property as long as it is for public use always takes precedence over the interest of private property owners. However we must not lose sight of the fact that the individual rights affected by the exercise of such right are also entitled to protection, bearing in mind that the exercise of this superior right cannot override the guarantee of due process extended by the law to owners of the property to be expropriated. In this regard, vigilance over compliance with the due process requirements is in order.[35]

Due to the fatal infirmity in the City's exercise of the power of eminent domain, its complaint for expropriation must necessarily fail. Considering that the consolidated cases before us can be completely resolved by the application of our Filstream ruling, it is needless to discuss the constitutionality of Ordinance 7818. We herein apply the general precept that constitutional issues will not be passed upon if the case can be decided on other grounds.[36]

In view of the dismissal of the complaint for expropriation and the favorable adjudication of petitioners' appeal

from the decision of the Court of Appeals on the expropriation of the subject properties, the petition for certiorari questioning the validity of the Court of Appeals resolutions (allowing respondent occupants to intervene and granting their motion to enjoin the execution of the executory judgments in the ejectment cases) becomes moot and academic.

WHEREFORE, the petitions are hereby GRANTED. In G.R. No. 132431, the decision of the Court of Appeals dated January 27, 1998 is hereby REVERSED and SET ASIDE. In G.R. No. 137146, the resolutions of the Court of Appeals dated August 19, 1998 and December 16, 1998 are hereby REVERSED and SET ASIDE.

SO ORDERED.

Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

Vitug, (Chairman), J., no part. Did not participate in the deliberation.

[1] Docketed as G.R. No. 132431.

[2] Penned by Associate Justice Eubulo G. Verzola and concurred in by Associate Justices Jorge S. Imperial and Artemio G. Tuquero of the Fourth Division; Rollo of G.R. No. 132431, pp. 45-56.

[3] Penned by Judge Edilberto Sandoval; Rollo of G.R. No. 132431, pp. 114-119.

[4] Docketed as G.R. No. 137146.

[5] Penned by Associate Justice Eubulo Verzola and concurred in by Associate Justices Jorge S. Imperial and Artemio G. Tuquero; Rollo of G.R. No. 137146, pp. 42-43.

[6] Penned by Associate Justice Eubulo Verzola and concurred in by Associate Justices Jorge S. Imperial and Artemio G. Tuquero; Rollo of G.R. No. 137146, pp. 45-52.

[7] Rollo of G.R. No. 137146, pp. 73-74.

[8] Ibid, p. 97.

[9] Ibid., pp. 73-75, 99-110.

[10] Ibid., pp. 77-78, 129-133.

[11] Docketed as Civil Case No. 95-73687.

[12] Rollo of G.R. No. 132431, p. 47.

[13] Records, pp. 170-171.

[14] Records, pp. 136-148.

[15] Rollo of G.R. No. 137146, pp. 184-189.

[16] Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, a Reiteration of Supplement to Urgent Motion for Injunctive Relief and an Urgent Ex-Parte Motion for Temporary Restraining Order.

[17] Penned by Associate Justice Pedro Ramirez and concurred in by Associate Justice Ma. Alicia Austria-Martinez (now Associate Justice of the Supreme Court) and Bernardo Salas of the Fifth Division; Rollo of G.R. No. 137146, pp. 204-207.

[18] Penned by Associate Justice Maximiano C. Asuncion and concurred in by Associate Justice Minerva P. Gonzaga-Reyes (retired Associate Justice of the Supreme Court) and Eubulo G. Verzola of the Eighth Division; Rollo of G.R. No. 137146, p. 231.

[19] Rollo of G.R. No. 132431, p. 56.

[20] Rollo of G.R. No. 132431, pp. 52-54.

[21] Docketed as G.R. No. 132431.

[22] Rollo of G.R. No. 132431, p. 309.

[23] Penned by Justice Eubulo G. Verzola and concurred in by Justices Ramon A. Barcelona and Artemio G. Tuquero, Special Former Fourth Division; Rollo of G.R. No. 137146, p. 43.

[24] Penned by Justice Eubulo G. Verzola and concurred in by Justices Jorge S. Imperial and Artemio G. Tuquero, Former Fourth Division; Rollo of G.R. No. 137146, p. 52.

[25] Rollo of G.R. No. 137146, pp. 48, 50-51.

[26] Under Rule 65 of the 1997 Rules of Civil Procedure.

[27] Rollo of G.R. No. 137146, pp. 16-17.

[28] Petitioners pray that Ordinance 7818 be declared unconstitutional because it violated the “equal protection clause” of the 1987 Constitution. According to the ordinance, the beneficiaries of the subject properties are “the occupants of the said parcels of land who have been occupying the said lands as lessees or any term thereof for a period of at least ten (10) years.” Petitioners contend that the distinction between lessee and non-lessee is not germane to the purpose of the law, i.e., to give the land to the landless residents. By including only 10-year occupants, it also discriminates against other occupants who may also be landless. The ordinance failed to justify the distinction between a 10-year and a less-than-10-year occupant. Likewise, the ordinance impaired the contractual rights of petitioners. Prior to the expropriation, the tenants had pending negotiations with petitioners for the purchase of the portions of the subject properties. But after the passage of the ordinance, “none of our tenants desired to negotiate with us to purchase that (sic) portions of the subject parcels of land being respectively leased by them.”

Quoting *Filstream vs. Court of Appeals* (284 SCRA 716 [1998]), petitioners also aver that, in expropriating the properties, respondent City violated Sections 9 and 10 of RA 7279 by not complying with the procedure laid down by said provisions. They even point out that the subject parcels of land are not included in the 244 sites in Metropolitan Manila designated as area for priority development under PD 1967 (An Act Amending Proclamation No. 1893 By Specifying 244 Sites in Metropolitan Manila as Area for Priority and Urban Land Reform Zones.)

Petitioners likewise contend that respondent City did not make a definite and valid offer prior to the filing of the complaint for expropriation. According to Section 3 of the Ordinance 7818, “the funds necessary for paying just compensation shall come from the unappropriated fund and/or savings of the City Government.” Clearly, respondent City did not provide a specific amount of money for the expropriation of the subject properties. Respondent cannot therefore make any offer which may be considered definite as the ordinance which authorized it to expropriate the subject parcels of land did not even appropriate a specific and determinate sum of money for the purpose. Thus, the amount of P10,285,293.36 stated in its letter offering to buy the properties from the petitioners, had no legal basis.

Last, assuming *arguendo* that the offer was valid, the amount deposited for the payment of just compensation was

insufficient. In the complaint, respondent City prayed that it be allowed to enter and take possession of the subject parcels of land “upon the deposit of P1,452,657 which is fifteen (15%) percent of the (assessed value)” of the property. Under Section 19 of the Local Government Code of 1991, the deposit should be 15% of the fair market value of the property. Petitioners contend that the fair market value of the parcels of land based on the current tax declarations is P19,619,520. 15% of which is P2,942,928. The amount deposited was therefore insufficient.

[29] SEC. 5. Preliminary injunction not granted without notice; exception. –

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In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically not vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to renew the same on the same ground for which it was issued.

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[30] SECTION 9. Jurisdiction. — The Intermediate Appellate Court shall exercise:

(1) Original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

[31] See Section 10, Article X of the 1987 Constitution; Section 6 of the Local Government Code of 1991; Judge Dadole et. al. vs. Commission on Audit, G.R. No. 125350, December 3, 2002.

[32] SECTION 19. Eminent Domain – A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, that the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted; Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

[33] “General powers – The city may have a common seal and alter the same at pleasure, and may take, purchase, receive, hold, lease, convey, and dispose of real and personal property for the general interest of the city, condemn private property for public use, contract and be contracted with, sue and be sued, and prosecute and defend to final judgment and execution, and exercise all the powers hereinafter conferred.” (R.A. 409, Sec. 3).

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“Sec. 100. The City of Manila is authorized to acquire private lands in the city and to subdivide the same into home lots for sale on easy terms to city residents, giving first priority to the bona fide tenants or occupants of said lands, and second priority to laborers and low-salaried employees. For the purpose of this section, the city may raise necessary funds by appropriations of general funds, by securing loans or by issuing bonds, and, if necessary, may acquire the lands through expropriation proceedings in accordance with law, with the approval of the President xxx”.

[34] 284 SCRA 716, 731 [1998].

[35] Ibid., pp. 731-732.

[36] *Filipinas Marble Corp. vs. Intermediate Appellate Court*, 142 SCRA 182 [1986]; *Tropical Homes, Inc. vs. National Housing Authority*, 152 SCRA 540 [1987].

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