

HEIRS OF ALBERTO SUGUITAN, PETITIONER, VS. CITY OF MANDALUYONG, RESPONDENT.

G.R. No. 135087. March 14, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In this petition for review on certiorari under Rule 45, petitioners[1] pray for the reversal of the Order dated July 28, 1998 issued by Branch 155 of the Regional Trial Court of Pasig in SCA No. 875 entitled "City of Mandaluyong v. Alberto S. Suguitan, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, the instant Motion to Dismiss is hereby DENIED and an ORDER OF CONDEMNATION is hereby issued declaring that the plaintiff, City of Mandaluyong, has a lawful right to take the subject parcel of land together with existing improvements thereon more specifically covered by Transfer Certificate Of Title No. 56264 of the Registry of Deeds for Metro Manila District II for the public use or purpose as stated in the Complaint, upon payment of just compensation.

Accordingly, in order to ascertain the just compensation, the parties are hereby directed to submit to the Court within fifteen (15) days from notice hereof, a list of independent appraisers from which the Court t will select three (3) to be appointed as Commissioners, pursuant to Section 5, Rule 67, Rules of Court.

SO ORDERED.[2]

It is undisputed by the parties that on October 13, 1994, the Sangguniang Panlungsod of Mandaluyong City issued Resolution No. 396, S-1994[3] authorizing then Mayor Benjamin S. Abalos to institute expropriation proceedings over the property of Alberto Sugui located at Boni Avenue and Sto. Rosario streets in Mandaluyong City with an area of 414 square meters and more particularly described under Transfer Certificate of Title No. 56264 of the Registry of Deeds of Metro Manila District II. The intended purpose of the expropriation was the expansion of the Mandaluyong Medical Center.

Mayor Benjamin Abalos wrote Alberto Suguitan a letter dated January 20, 1995 offering to buy his property, but Suguitan refused to sell.[4] Consequently, on March 13, 1995, the city of Mandaluyong filed a complaint[5] for expropriation with the Regional Trial Court of Pasig. The case was docketed as SCA No. 875.

Suguitan filed a motion to dismiss[6] the complaint based on the following grounds -(1) the power of eminent domain is not being exercised in accordance with law; (2) there is no public necessity to warrant expropriation of subject property; (3) the City of Mandaluyong seeks to expropriate the said property without payment of just compensation; (4) the City of Mandaluyong has no budget and appropriation for the payment of the property being expropriated; and (5) expropriation of Suguitan' s property is but a ploy of Mayor Benjamin Abalos to acquire the same for his personal use. Respondent filed its comment and opposition to the motion. On October 24, 1995, the trial court denied Suguitan's motion to dismiss.[7]

On November 14, 1995, acting upon a motion filed by the respondent, the trial court issued an order allowing the

City of Mandaluyong to take immediate possession of Suguitan's property upon the deposit of P621,000 representing 15% of the fair market value of the subject property based upon the current tax declaration of such property. On December 15, 1995, the City of Mandaluyong assumed possession of the subject property by virtue of a writ of possession issued by the trial court on December 14, 1995.[8] On July 28, 1998, the court granted the assailed order of expropriation.

Petitioner assert that the city of Mandaluyong may only exercise its delegated power of eminent domain by means of an ordinance as required by section 19 of Republic Act (RA) No. 7160,[9] and not by means of a mere resolution.[10] Respondent contends, however, that it validly and legally exercised its power of eminent domain; that pursuant to article 36, Rule VI of the Implementing Rules and Regulations (IRR) of RA 7160, a resolution is a sufficient antecedent for the filing of expropriation proceedings with the Regional Trial Court. Respondent's position, which was upheld by the trial court, was explained, thus:[11]

...in the exercise of the respondent City of Mandaluyong's power of eminent domain, a "resolution" empowering the City Mayor to initiate such expropriation proceedings and thereafter when the court has already determine[d] with certainty the amount of just compensation to be paid for the property expropriated, then follows an Ordinance of the Sanggunian Panlungosd appropriating funds for the payment of the expropriated property. Admittedly, title to the property expropriated shall pass from the owner to the expropriator only upon full payment of the just compensation.[12]

Petitioners refute respondent's contention that only a resolution is necessary upon the initiation of expropriation proceedings and that an ordinance is required only in order to appropriate the funds for the payment of just compensation, explaining that the resolution mentioned in article 36 of the IRR is for purposes of granting administrative authority to the local chief executive to file the expropriation case in court and to represent the local government unit in such case, but does not dispense with the necessity of an ordinance for the exercise of the power of eminent domain under section 19 of the Code.[13]

The petition is imbued with merit.

Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare.[14] It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare.[15] Thus, the right of eminent domain appertains to every independent government without the necessity for constitutional recognition.[16] The provisions found in modern constitutions of civilized countries relating to the taking of property for the public use do not by implication grant the power to the government, but limit a power which would otherwise be without limit.[17] Thus, our own Constitution provides that "[p]rivate property shall not be taken for public use without just compensation."[18] Furthermore, the due process and equal protection clauses[19] act as additional safeguards against the arbitrary exercise of this governmental power.

Since the exercise of the power of eminent domain affects an individual's right to private property, a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty,[20] the need for its circumspect operation cannot be overemphasized. In *City of Manila vs. Chinese Community of Manila* we said:[21]

The exercise of the right of eminent domain, whether directly by the State, or by its authorized agents, is necessarily in derogation of private rights, and the rule in that case is that the authority must be strictly construed. No species of property is held by individuals with greater tenacity, and none is guarded by the constitution and the laws more sedulously, than the right to the freehold of inhabitants. When the legislature interferes with that right, and, for greater public purposes, appropriates the land of an individual without his consent, the plain meaning of the law should not be enlarged by doubt[ful] interpretation. (*Bensley vs.*

Mountainlake Water Co., 13 Cal., 306 and cases cited [73 Am. Dec. 576].)

The statutory power of taking property from the owner without his consent is one of the most delicate exercise of governmental authority. It is to be watched with jealous scrutiny. Important as the power may be to the government, the inviolable sanctity which all free constitutions attach to the right of property of the citizens, constrains the strict observance of the substantial provisions of the law which are prescribed as modes of the exercise of the power, and to protect it from abuse. (Dillon on Municipal Corporations [5th Ed.], sec. 1040, and cases cited; Tenorio vs. Manila Railroad Co., 22 Phil., 411.)

The power of eminent domain is essentially legislative in nature. It is firmly settled, however, that such power may be validly delegated to local government units, other public entities and public utilities, although the scope of this delegated legislative power is necessarily narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law.[22]

The basis for the exercise of the power of eminent domain by local government units is section 19 of RA 7160 which provides that:

A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, purpose, or welfare for the benefits 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 percent (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.

Despite the existence of this legislative grant in favor of local governments, it is still the duty of the courts to determine whether the power of eminent domain is being exercised in accordance with the delegating law.[23] In fact, the courts have adopted a more censorious attitude in resolving questions involving the proper exercise of this delegated power by local bodies, as compared to instances when it is directly exercised by the national legislature.[24]

The courts have the obligation to determine whether the following requisites have been complied with by the local government unit concerned:

- An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property.
- The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless.
- There is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws.
- A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.[25]

In the present case, the City of Mandaluyong seeks to exercise the power of eminent domain over petitioners' property by means of a resolution, in contravention of the first requisite. The law in this case is clear and free from ambiguity. Section 19 of the Code requires an ordinance, not a resolution, for the exercise of the power of

eminent domain. We reiterate our ruling in *Municipality of Parañaque v. V.M. Realty Corporation*[26] regarding the distinction between an ordinance and a resolution. In that 1998 case we held that:

We are not convinced by petitioner's insistence that the terms "resolution" and "ordinance" are synonymous. A municipal ordinance is different from a resolution. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature. Additionally, the two are enacted differently a third reading is necessary for an ordinance, but not for a resolution, unless decided otherwise by a majority of all the Sanggunian members.

We cannot uphold respondent's contention that an ordinance is needed only to appropriate funds after the court has determined the amount of just compensation. An examination of the applicable law will show that an ordinance is necessary to authorize the filing of a complaint with the proper court since, beginning at this point, the power of eminent domain is already being exercised.

Rule 67 of the 1997 Revised Rules of Court reveals that expropriation proceedings are comprised of two stages:

(1) the first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit; it ends with an order, if not in a dismissal of the action, of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint;

(2) the second phase is concerned with the determination by the court of the just compensation for the property sought to be taken; this is done by the court with the assistance of not more than three (3) commissioners.[27]

Clearly, although the determination and award of just compensation to the defendant is indispensable to the transfer of ownership in favor of the plaintiff, it is but the last stage of the expropriation proceedings, which cannot be arrived at without an initial finding by the court that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint. An order of condemnation or dismissal at this stage would be final, resolving the question of whether or not the plaintiff has properly and legally exercised its power of eminent domain.

Also, it is noted that as soon as the complaint is filed the plaintiff shall already have the right to enter upon the possession of the real property involved upon depositing with the court at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated.[28] Therefore, an ordinance promulgated by the local legislative body authorizing its local chief executive to exercise the power of eminent domain is necessary prior to the filing by the latter of the complaint with the proper court, and not only after the court has determined the amount of just compensation to which the defendant is entitled.

Neither is respondent's position improved by its reliance upon Article 36 (a), Rule VI of the IRR which provides that:

If the LGU fails to acquire a private property for public use, purpose, or welfare through purchase, LGU may expropriate said property through a resolution of the sanggunian authorizing its chief executive to initiate expropriation proceedings.

The Court has already discussed this inconsistency between the Code and the IRR, which is more apparent than real, in *Municipality of Parañaque vs. V.M. Realty Corporation*,[29] which we quote hereunder:

Petitioner relies on Article 36, Rule VI of the Implementing Rules, which requires only a resolution to authorize an LGU to exercise eminent domain. This is clearly misplaced, because Section 19 of RA 7160, the

law itself, surely prevails over said rule which merely seeks to implement it. It is axiomatic that the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation. Besides, what the discrepancy seems to indicate is a mere oversight in the wording of the implementing rules, since Article 32, Rule VI thereof, also requires that, in exercising the power of eminent domain, the chief executive of the LGU must act pursuant to an ordinance.

Therefore, while we remain conscious of the constitutional policy of promoting local autonomy, we cannot grant judicial sanction to a local government unit's exercise of its delegated power of eminent domain in contravention of the very law giving it such power.

It should be noted, however, that our ruling in this case will not preclude the City of Mandaluyong from enacting the necessary ordinance and thereafter reinstituting expropriation proceedings, for so long as it has complied with all other legal requirements.[30]

WHEREFORE, the petition is hereby GRANTED. The July 28, 1998 decision of Branch 155 of the Regional Trial Court of Pasig in SCA No. 875 is hereby REVERSED and SET ASIDE.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Alberto Suguitan passed away on October 2, 1998. On November 25, 1998 the Court allowed the heirs of Alberto Suguitan to substitute the latter as petitioner.

[2] Rollo, 17-18.

[3]

REPUBLIKA NG PILIPINAS

SANGGUNIANG PANLUNGSOD

Lungsod Ng Mandaluyong

RESOLUTION NO. 396, S-1994

RESOLUTION AUTHORIZING MAYOR BENJAMIN S. ABALOS TO INITIATE AND INSTITUTE APPROPRIATE STEPS TO EFFECT THE EXPROPRIATION OF THAT PARCEL OF LAND COVERED BY TRANSFER CERTIFICATE OF TITLE NO. 56264.

BE IT APPROVED by the Sangguniang Panlungsod of the City of Mandaluyong in session assembled:

WHEREAS, the daily influx of patients to the Mandaluyong Medical Center has considerably increased to a point that it could not accommodate some more.

WHEREAS, as the Mandaluyong Medical Center is the only institution that delivers health and medical services for free to the less fortunate residents of the City of Mandaluyong, it is imperative that appropriate steps be undertaken in order that those that need its services may be accommodated.

WHEREAS, adjacent to the Mandaluyong Medical Center is a two storey building erected on a parcel of land covered by Transfer Certificate of Title No. 56264 of the Registry of Deeds for Mandaluyong Branch.

WHEREAS, above structure and the land upon which the same is erected is very ideal for the projected expansion

of the Mandaluyong Medical Center in order that it may continue to serve a greater number of less fortunate residents of the City.

WHEREAS, and it appearing that the owner of the above property is not desirous of selling the same even under reasonable terms and conditions, there is a need that the power of eminent domain be exercised by the City Government in order that public health and welfare may continuously be served in a proper and suitable manner.

NOW, THEREFORE, upon motion duly seconded, the Sangguniang Panlungsod, RESOLVED, as it hereby RESOLVES, to authorize, as Mayor Benjamin S. Abalos is hereby authorized, to initiate and institute appropriate action for the expropriation of the property covered by Transfer Certificate of Title No. 56264 of the Registry of Deeds for Mandaluyong Branch, including the improvements erected thereon in order that the proposed expansion of the Mandaluyong Medical Center maybe implemented.

ADOPTED on this 13th day of October, 1994, at the City of Mandaluyong.

I HEREBY CERTIFY THAT THE FOREGOING RESOLUTION WAS ADOPTED AND APPROVED BY THE SANGGUNIANG PANLUNGSOD OF MANDALUYONG IN REGULAR SESSION HELD ON THE DATE , AND PLACE FIRST ABOVE GIVEN.

(sgd.)

WILLIARD S. WONG

Sanggunian Secretary

ATTESTED: APPROVED:

(sgd.) (sgd.)

RAMON M. GUZMAN BENJAMIN S. ABALOS

Vice-Mayor Mayor

Presiding Officer On: OCT 19 1994

[4] Rollo, 59.

[5] Ibid., 20-25.

[6] Ibid., 26-37.

[7] Ibid., 60; RTC Records, 86.

[8] Ibid., 60-62.

[9] Otherwise known as the "Local Government Code of 1991" (hereinafter, "[the] Code").

[10] Rollo, 8.

[11] Ibid., 15.

[12] Ibid., 50-51.

[13] Ibid., 10.

[14] *Jeffress v. Town of Greenville*, 70 S.E. 919, 921, 154 N.C. 490, cited in *Words and Phrases*, vol. 14, p. 469 (1952).

- [15] Ryan v. Housing Authority of City of Newark, 15 A.2d 647, 650, 125 N.J.L. 336.
- [16] Schrader v. Third Judicial Dist. Court in and for Eureka County, 73 P. 2d 493, 495, 58 Nev. 188.
- [17] Visayan Refining Co. v. Camus and Paredes, 40 Phil 550 (1919).
- [18] Art. III, sec. 9.
- [19] 1987 Constitution, art. III, sec. 1.
- [20] Joaquin G. Bernas, The Constitution of the Republic of the Philippines: A Commentary, vol. 1, p. 43 (1987).
- [21] 40 Phil 349 (1919).
- [22] City of Manila v. Chinese Community of Manila, Id.; Moday v. Court of Appeals, 268 SCRA 586 (1997).
- [23] City of Manila v. Chinese Community of Manila, Id.
- [24] Isagani A. Cruz, Constitutional Law, p. 62 (1991); See also Republic of the Philippines v. La Orden de PO. Benedictinos de Filipinas, 1 SCRA 649 (1961); City of Manila v. Chinese Community of Manila, Id.
- [25] Municipality of Parañaque v. V.M. Realty Corporation, 292 SCRA 678.
- [26] Id.
- [27] National Power Corporation v. Jocson, 206 SCRA 520 (1992), citing Municipality of Biñan v. Garcia, 180 SCRA 576 (1989).
- [28] Code, sec. 19.
- [29] Supra note 25.
- [30] Id.

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