

**LOURDES DE LA PAZ MASIKIP, PETITIONER, VS. THE CITY OF PASIG,
HON. MARIETTA A. LEGASPI, IN HER CAPACITY AS PRESIDING
JUDGE OF THE REGIONAL TRIAL COURT OF PASIG CITY, BRANCH
165 ...**

G.R. NO. 136349. January 23, 2006

Ponente: SANDOVAL GUTIERREZ, J.

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SANDOVAL GUTIERREZ, J.:

Where the taking by the State of private property is done for the benefit of a small community which seeks to have its own sports and recreational facility, notwithstanding that there is such a recreational facility only a short distance away, such taking cannot be considered to be for public use. Its expropriation is not valid. In this case, the Court defines what constitutes a genuine necessity for public use.

This petition for review on certiorari assails the Decision[1] of the Court of Appeals dated October 31, 1997 in CA-G.R. SP No. 41860 affirming the Order[2] of the Regional Trial Court, Branch 165, Pasig City, dated May 7, 1996 in S.C.A. No. 873. Likewise assailed is the Resolution[3] of the same court dated November 20, 1998 denying petitioner's Motion for Reconsideration.

The facts of the case are:

Petitioner Lourdes Dela Paz Masikip is the registered owner of a parcel of land with an area of 4,521 square meters located at Pag-Asa, Caniogan, Pasig City, Metro Manila.

In a letter dated January 6, 1994, the then Municipality of Pasig, now City of Pasig, respondent, notified petitioner of its intention to expropriate a 1,500 square meter portion of her property to be used for the "sports development and recreational activities" of the residents of Barangay Caniogan. This was pursuant to Ordinance No. 42, Series of 1993 enacted by the then Sangguniang Bayan of Pasig.

Again, on March 23, 1994, respondent wrote another letter to petitioner, but this time the purpose was allegedly "in line with the program of the Municipal Government to provide land opportunities to deserving poor sectors of our community."

On May 2, 1994, petitioner sent a reply to respondent stating that the intended expropriation of her property is unconstitutional, invalid, and oppressive, as the area of her lot is neither sufficient nor suitable to "provide land opportunities to deserving poor sectors of our community."

In its letter of December 20, 1994, respondent reiterated that the purpose of the expropriation of petitioner's property is "to provide sports and recreational facilities to its poor residents."

Subsequently, on February 21, 1995, respondent filed with the trial court a complaint for expropriation, docketed as SCA No. 873. Respondent prayed that the trial court, after due notice and hearing, issue an order for the condemnation of the property; that commissioners be appointed for the purpose of determining the just

compensation; and that judgment be rendered based on the report of the commissioners.

On April 25, 1995, petitioner filed a Motion to Dismiss the complaint on the following grounds:

I

PLAINTIFF HAS NO CAUSE OF ACTION FOR THE EXERCISE OF THE POWER OF EMINENT DOMAIN, CONSIDERING THAT:

(A) THERE IS NO GENUINE NECESSITY FOR THE TAKING OF THE PROPERTY SOUGHT TO BE EXPROPRIATED.

(B) PLAINTIFF HAS ARBITRARILY AND CAPRICIOUSLY CHOSEN THE PROPERTY SOUGHT TO BE EXPROPRIATED.

(C) EVEN ASSUMING ARGUENDO THAT DEFENDANT'S PROPERTY MAY BE EXPROPRIATED BY PLAINTIFF, THE FAIR MARKET VALUE OF THE PROPERTY TO BE EXPROPRIATED FAR EXCEEDS SEVENTY-EIGHT THOUSAND PESOS (P78,000.00)

II

PLAINTIFF'S COMPLAINT IS DEFECTIVE IN FORM AND SUBSTANCE, CONSIDERING THAT:

(A) PLAINTIFF FAILS TO ALLEGE WITH CERTAINTY THE PURPOSE OF THE EXPROPRIATION.

(B) PLAINTIFF HAS FAILED TO COMPLY WITH THE PREREQUISITES LAID DOWN IN SECTION 34, RULE VI OF THE RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE; THUS, THE INSTANT EXPROPRIATION PROCEEDING IS PREMATURE.

III

THE GRANTING OF THE EXPROPRIATION WOULD VIOLATE SECTION 261 (V) OF THE OMNIBUS ELECTION CODE.

IV

PLAINTIFF CANNOT TAKE POSSESSION OF THE SUBJECT PROPERTY BY MERELY DEPOSITING AN AMOUNT EQUAL TO FIFTEEN PERCENT (15%) OF THE VALUE OF THE PROPERTY BASED ON THE CURRENT TAX DECLARATION OF THE SUBJECT PROPERTY.[4]

On May 7, 1996, the trial court issued an Order denying the Motion to Dismiss,[5] on the ground that there is a genuine necessity to expropriate the property for the sports and recreational activities of the residents of Pasig. As to the issue of just compensation, the trial court held that the same is to be determined in accordance with the Revised Rules of Court.

Petitioner filed a motion for reconsideration but it was denied by the trial court in its Order of July 31, 1996. Forthwith, it appointed the City Assessor and City Treasurer of Pasig City as commissioners to ascertain the just compensation. This prompted petitioner to file with the Court of Appeals a special civil action for certiorari, docketed as CA-G.R. SP No. 41860. On October 31, 1997, the Appellate Court dismissed the petition for lack of merit. Petitioner's Motion for Reconsideration was denied in a Resolution dated November 20, 1998.

Hence, this petition anchored on the following grounds:

THE QUESTIONED DECISION DATED 31 OCTOBER 1997 (ATTACHMENT "A") AND RESOLUTION DATED 20 NOVEMBER 1998 (ATTACHMENT "B") ARE CONTRARY TO LAW, THE RULES OF COURT AND JURISPRUDENCE CONSIDERING THAT:

I

- THERE IS NO EVIDENCE TO PROVE THAT THERE IS GENUINE NECESSITY FOR THE TAKING OF THE PETITIONER'S PROPERTY.

- THERE IS NO EVIDENCE TO PROVE THAT THE PUBLIC USE REQUIREMENT FOR THE EXERCISE OF THE POWER OF EMINENT DOMAIN HAS BEEN COMPLIED WITH.

- THERE IS NO EVIDENCE TO PROVE THAT RESPONDENT CITY OF PASIG HAS COMPLIED WITH ALL CONDITIONS PRECEDENT FOR THE EXERCISE OF THE POWER OF EMINENT DOMAIN.

THE COURT A QUO'S ORDER DATED 07 MAY 1996 AND 31 JULY 1996, WHICH WERE AFFIRMED BY THE COURT OF APPEALS, EFFECTIVELY AMOUNT TO THE TAKING OF PETITIONER'S PROPERTY WITHOUT DUE PROCESS OF LAW:

II

THE COURT OF APPEALS GRAVELY ERRED IN APPLYING OF RULE ON ACTIONABLE DOCUMENTS TO THE DOCUMENTS ATTACHED TO RESPONDENT CITY OF PASIG'S COMPLAINT DATED 07 APRIL 1995 TO JUSTIFY THE COURT A QUO'S DENIAL OF PETITIONER'S RESPONSIVE PLEADING TO THE COMPLAINT FOR EXPROPRIATION (THE MOTION TO DISMISS DATED 21 APRIL 1995).

III

THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE RULE ON HYPOTHETICAL ADMISSION OF FACTS ALLEGED IN A COMPLAINT CONSIDERING THAT THE MOTION TO DISMISS FILED BY PETITIONER IN THE EXPROPRIATION CASE BELOW WAS THE RESPONSIVE PLEADING REQUIRED TO BE FILED UNDER THE THEN RULE 67 OF THE RULES OF COURT AND NOT AN ORDINARY MOTION TO DISMISS UNDER RULE 16 OF THE RULES OF COURT.

The foregoing arguments may be synthesized into two main issues - one substantive and one procedural. We will first address the procedural issue.

Petitioner filed her Motion to Dismiss the complaint for expropriation on April 25, 1995. It was denied by the trial court on May 7, 1996. At that time, the rule on expropriation was governed by Section 3, Rule 67 of the Revised Rules of Court which provides:

"SEC. 3. Defenses and objections. " Within the time specified in the summons, each defendant, in lieu of an answer, shall present in a single motion to dismiss or for other appropriate relief, all his objections and defenses to the right of the plaintiff to take his property for the use or purpose specified in the complaint. All such objections and defenses not so presented are waived. A copy of the motion shall be served on the plaintiff's attorney of record and filed with the court with proof of service."

The motion to dismiss contemplated in the above Rule clearly constitutes the responsive pleading which takes the place of an answer to the complaint for expropriation. Such motion is the pleading that puts in issue the right of the plaintiff to expropriate the defendant's property for the use specified in the complaint. All that the law requires is that a copy of the said motion be served on plaintiff's attorney of record. It is the court that at its convenience will set the case for trial after the filing of the said pleading.[6]

The Court of Appeals therefore erred in holding that the motion to dismiss filed by petitioner hypothetically admitted the truth of the facts alleged in the complaint, "specifically that there is a genuine necessity to expropriate petitioner's property for public use." Pursuant to the above Rule, the motion is a responsive pleading joining the issues. What the trial court should have done was to set the case for the reception of evidence to

determine whether there is indeed a genuine necessity for the taking of the property, instead of summarily making a finding that the taking is for public use and appointing commissioners to fix just compensation. This is especially so considering that the purpose of the expropriation was squarely challenged and put in issue by petitioner in her motion to dismiss.

Significantly, the above Rule allowing a defendant in an expropriation case to file a motion to dismiss in lieu of an answer was amended by the 1997 Rules of Civil Procedure, which took effect on July 1, 1997. Section 3, Rule 67 now expressly mandates that any objection or defense to the taking of the property of a defendant must be set forth in an answer.

The fact that the Court of Appeals rendered its Decision in CA-G.R. SP No. 41860 on October 31, after the 1997 Rules of Civil Procedure took effect, is of no moment. It is only fair that the Rule at the time petitioner filed her motion to dismiss should govern. The new provision cannot be applied retroactively to her prejudice.

We now proceed to address the substantive issue.

In the early case of *US v. Toribio*,^[7] this Court defined the power of eminent domain as "the right of a government to take and appropriate private property to public use, whenever the public exigency requires it, which can be done only on condition of providing a reasonable compensation therefor." It has also been described as the power of the State or its instrumentalities to take private property for public use and is inseparable from sovereignty and inherent in government.^[8]

The power of eminent domain is lodged in the legislative branch of the government. It delegates the exercise thereof to local government units, other public entities and public utility corporations,^[9] subject only to Constitutional limitations. Local governments have no inherent power of eminent domain and may exercise it only when expressly authorized by statute.^[10] Section 19 of the Local Government Code of 1991 (Republic Act No. 7160) prescribes the delegation by Congress of the power of eminent domain to local government units and lays down the parameters for its exercise, thus:

"SEC. 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, 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 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 expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property."

Judicial review of the exercise of eminent domain is limited to the following areas of concern: (a) the adequacy of the compensation, (b) the necessity of the taking, and (c) the public use character of the purpose of the taking.^[11]

In this case, petitioner contends that respondent City of Pasig failed to establish a genuine necessity which justifies the condemnation of her property. While she does not dispute the intended public purpose, nonetheless, she insists that there must be a genuine necessity for the proposed use and purposes. According to petitioner, there is already an established sports development and recreational activity center at Rainforest Park in Pasig City, fully operational and being utilized by its residents, including those from Barangay Caniogan. Respondent does not dispute this. Evidently, there is no "genuine necessity" to justify the expropriation.

The right to take private property for public purposes necessarily originates from "the necessity" and the taking

must be limited to such necessity. In *City of Manila v. Chinese Community of Manila*,^[12] we held that the very foundation of the right to exercise eminent domain is a genuine necessity and that necessity must be of a public character. Moreover, the ascertainment of the necessity must precede or accompany and not follow, the taking of the land. In *City of Manila v. Arellano Law College*,^[13] we ruled that "necessity within the rule that the particular property to be expropriated must be necessary, does not mean an absolute but only a reasonable or practical necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner consistent with such benefit."

Applying this standard, we hold that respondent City of Pasig has failed to establish that there is a genuine necessity to expropriate petitioner's property. Our scrutiny of the records shows that the Certification^[14] issued by the Caniogan Barangay Council dated November 20, 1994, the basis for the passage of Ordinance No. 42 s. 1993 authorizing the expropriation, indicates that the intended beneficiary is the Melendres Compound Homeowners Association, a private, non-profit organization, not the residents of Caniogan. It can be gleaned that the members of the said Association are desirous of having their own private playground and recreational facility. Petitioner's lot is the nearest vacant space available. The purpose is, therefore, not clearly and categorically public. The necessity has not been shown, especially considering that there exists an alternative facility for sports development and community recreation in the area, which is the Rainforest Park, available to all residents of Pasig City, including those of Caniogan.

The right to own and possess property is one of the most cherished rights of men. It is so fundamental that it has been written into organic law of every nation where the rule of law prevails. Unless the requisite of genuine necessity for the expropriation of one's property is clearly established, it shall be the duty of the courts to protect the rights of individuals to their private property. Important as the power of eminent domain may be, the inviolable sanctity which the Constitution attaches to the property of the individual requires not only that the purpose for the taking of private property be specified. The genuine necessity for the taking, which must be of a public character, must also be shown to exist.

WHEREFORE, the petition for review is GRANTED. The challenged Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 41860 are REVERSED. The complaint for expropriation filed before the trial court by respondent City of Pasig, docketed as SCA No. 873, is ordered DISMISSED.

SO ORDERED.

Panganiban, C.J., Puno, Corona, Azcuna, and Garcia, JJ., concur.

[1] Rollo at 75-86. Penned by Associate Justice Gloria C. Paras (deceased), with Associate Justice Lourdes Tayao-Jaguros and Associate Justice Oswaldo D. Agcaoili (both retired), concurring.

[2] Id. at 136-139.

[3] Id. at 87-88. Per Associate Justice Oswaldo D. Agcaoili (retired) and concurred in by Associate Justice Corona Ibay-Somera (retired) and Associate Justice Mariano M. Umali.

[4] Id. at 156-158.

[5] Id. at 139.

[6] *Rural Progress Administration v. De Guzman*, 87 Phil. 176, 178 (1950).

[7] 15 Phil. 85 (1910).

[8] See *Visayan Refining Co. v. Camus and Paredes*, 40 Phil. 550, 558-559 (1919).

[9] See *Northeastern Gas Transmission Co. v. Collins*, 138 Conn. 582, 87 A2d 139.

[10] *City of Cincinnati v. Vester*, 281 US 439, 7 L. Ed, 850, 50 S. Ct. 360.

[11] JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*, (1996 ed). 372-373.

[12] 40 Phil. 349 (1919).

[13] 85 Phil. 663 (1950).

[14] Rollo at 168.

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