

SMI DEVELOPMENT CORPORATION, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE DEPARTMENT OF HEALTH THROUGH THE NATIONAL CHILDREN'S HOSPITAL, RESPONDENT.

G.R. No. 137537. January 28, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In an eminent domain proceeding, a motion to dismiss filed under Rule 67 prior to the 1997 amendments partakes of the nature of an answer. Hence, its allegations of facts must be proven. On the other hand, under the 1997 Rules, upon the government's deposit of an amount equivalent to the assessed value of the property, a writ of possession shall be issued by the trial court without need of any hearing as to the amount to be deposited.

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to set aside the August 14, 1998 Decision[1] of the Court of Appeals[2] in CA-GR SP No. 44618; and its February 10, 1999 Resolution[3] denying petitioner's Motion for Reconsideration.

In the assailed Decision, the CA ruled that the trial judge acted without or in excess of jurisdiction in ordering the dismissal of the Complaint for eminent domain in Civil Case No. Q-96-28894. It disposed in this wise:

"WHEREFORE, public respondent having acted without or in excess of jurisdiction in issuing the assailed order of dismissal of the complaint, said order is NULLIFIED and SET ASIDE.

"Branch 225 of the Regional Trial Court of Quezon City is hereby directed to reinstate Civil Case No. Q-96-28894 to its docket and conduct proceedings and render judgment thereon in accordance with the Rules of Court and the law."[4]

The Facts

The Court of Appeals summarized the undisputed facts as follows:

"On September 20, 1996, the Republic of the Philippines represented by the Department of Health thru the National Children's Hospital filed a complaint for Eminent Domain against SMI Development Corporation for the purpose of expropriating three (3) parcels of land with a total area of 1,158 sq. m. (the properties) belonging to said corporation which are adjacent to the premises of the hospital.

"After summons was served on the defendant, the plaintiff filed on October 23, 1996 an Ex-Parte Motion for the Issuance of Order and Writ of Possession, after it deposited P3,126,000.00 representing 'the aggregate assessed value for taxation purposes of the property subject of the complaint' at P2,700.00 per sq. m.

"By Order of October 30, 1996, Branch 225 of the Quezon City RTC set the plaintiff's motion for hearing on December 11, 1996.

"In November 1996, the defendant filed a Motion to Dismiss and Opposition to the plaintiff's Ex-Parte Motion

for Issuance of Order and Writ of Possession. In its Motion to Dismiss, the defendant alleged that the complaint lacked or had insufficient cause of action; that the taking of the property would not serve the purpose for which it was intended; that the plaintiff failed to negotiate with it for the purchase of the property which 'reflects against the urgency and necessity' of the plaintiff's need of the property and implies lack of intention to pay its true and fair market value; and that [the] necessity to expropriate the property is negated by the fact that less than a kilometer from the plaintiff's premises was the Quezon Institute which is 'presently not put to its optimum use' and is a better place for putting up the 'frontline services for which the property is needed with less costs and less prejudice to private rights.'

"In its Opposition to the plaintiff's Motion for Issuance of Order and Writ of Possession, the defendant alleged that, among others, no urgency and necessity existed for the plaintiff to take possession of the property; that immediate possession upon mere deposit of the amount purportedly representing the aggregate assessed value of the property, if authorized by P.D. 42, is offensive to the due process clause of the Constitution, hence, said decree is unconstitutional, and at any rate Sec. 2 of Rule 67 of the Rules of Court still governs the procedure for ascertaining just compensation, even on a provisional basis, as held in the case of *Ignacio v. Guerrero*, 150 SCRA 369 promulgated on May 29, 1987, hence, the courts must determine provisionally the fair market value of the property and require the deposit thereof prior to allowing the plaintiff to acquire possession." [5]

Ruling of the Court of Appeals

Citing Section 3, Rule 67 of the Rules of Court (prior the 1997 amendments), the Court of Appeals held that (1) petitioner's Motion to Dismiss filed with the trial court took the place of an answer, and (2) it was not an ordinary motion to dismiss within the contemplation of Rules 15 and 16. It also held that the grounds stated therein, with the exception of lack of cause of action, were not those enumerated in Rule 16. As the said Motion partook of the nature of a pleading, the trial judge thus acted in excess of jurisdiction in granting it without having received any evidence beforehand from either of the parties.

In any case, even if the said Motion to Dismiss were considered as such within the contemplation of Rule 16, the trial court would still be deemed to have acted in excess of its jurisdiction, since the only ground alleged, among those enumerated under Rule 16, was lack of cause of action. It was therefore outside public respondent's jurisdiction to grant the Motion on the basis of "uncontroverted and undisputed factual and legal allegations relating to the issue of necessity for the expropriation," [6] when the only issue that ought to have been resolved was whether or not the allegations of the Complaint had stated a cause of action.

Hence, this recourse. [7]

Issues

Petitioner submits, for the consideration of this Court, the following assignment of errors:

- Whether or not the remedy of certiorari is proper in case of the dismissal of the complaint for expropriation[;]
- Whether or not the court a quo's resolution of the 'motion to dismiss' without receiving the evidence of both parties on the merits of the case was correct[;]
- Whether or not the complaint states a cause of action[; and]
- Whether or not the honorable Court of Appeals committed grave error when it annulled and reversed the order of the Regional Trial Court (Branch 225) of Quezon City." [8]

In addition, this Court will take up the solicitor general's request for a writ of preliminary mandatory injunction.

The Court's Ruling

The Petition has no merit.

Procedural Issue:

Propriety of Certiorari

Petitioner claims that the Court of Appeals erred in allowing respondent's Petition for Certiorari under Rule 65 of the Rules of Court, arguing that the proper remedy was an ordinary appeal. It stresses that certiorari is available only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

Under Section 1 of Rule 65 of the Rules of Court, "when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require." [9]

True, certiorari may not be resorted to when appeal is available as a remedy. However, it is equally true that this Court has allowed the issuance of a writ of certiorari when appeal does not provide a speedy and adequate remedy in the ordinary course of law. Indeed, in *PNB v. Sayo*, [10] this Court has ruled that the "availability of an appeal does not foreclose recourse to the ordinary remedies of certiorari or prohibition where appeal is not adequate, or equally beneficial, speedy and sufficient." In *Republic v. Sandiganbayan*, [11] this Court also held that "certiorari may be availed of where an appeal would be slow, inadequate and insufficient." The determination as to what exactly constitutes a plain, speedy and adequate remedy rests on judicial discretion and depends on the particular circumstances of each case.

In the case at bar, the Court of Appeals did not commit any reversible error in allowing the Petition for Certiorari filed by the government. The respondent was able to prove, to the CA's satisfaction, that appeal from the trial court Decision would not constitute a speedy and adequate remedy, thus necessitating the resort to the extraordinary remedy of certiorari under Rule 65. In its Petition before the CA, respondent cited the services which the hospital provided and its urgent need to expand to be able to continue providing quality tertiary health care to the ever-increasing population of its indigent patients. In short, the public interest involved and the urgency to provide medical facilities were enough justifications for respondent's resort to certiorari.

Substantive Issues:

Dismissal Without Prior Evidence, and Lack of Cause of Action

In granting petitioner's Motion to Dismiss, the Regional Trial Court (RTC) found "it difficult to understand why the [respondent] had to invade [petitioner's] property instead of looking into the possibility of increasing its floors." [12] The RTC further stated that "as correctly pointed out by the [petitioner], the [respondent hospital's] so-called frontline services could be [done] by expanding vertically or increasing the floors of its building. The [trial] court is of the opinion that a vertical expansion of [respondent's] building would be more reasonable and practical. In this way, the [respondent] would be able to save time and money." [13] The RTC upheld "the allegation of the defendant x x x that less than a kilometer away from the plaintiff's building lies the Quezon Institute (QI), which, despite its vast area, has not been put to its maximum use by the government." [14]

The CA correctly observed, however, that the trial judge should not have granted the Motion to Dismiss based on these grounds, without first receiving evidence from the parties. Obviously, the RTC's February 12, 1997 Resolution treated petitioner's Motion to Dismiss as one falling under Section 3 of Rule 67 of the Rules of Court, rather than as an ordinary one, since the grounds relied upon were not those enumerated in Section 1, Rule 16 [15] of the Rules of Court. [16]

Section 3, Rule 67 of the Rules of Court (prior the 1997 amendments) provides as follows:

"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 of 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 the proof of service." [17]

Under the above rule, petitioner's Motion to Dismiss partakes of the nature of an answer to respondent's Complaint for eminent domain. Without proof as to their truthfulness and veracity, the allegations in the Motion cannot be deemed proven. Hence, the CA was correct in holding that the trial judge should not have decided it based solely on the unsubstantiated allegations therein.

Lack of Cause of Action

Although petitioner's Motion to Dismiss alleged lack of cause of action, the trial judge made no ruling on this ground. Hence, the CA committed no reversible error in not lengthily discussing such ground. Only the matters contained in the decision below and raised as issues may be reviewed on appeal. [18]

In any event, we hold that the Complaint stated a cause of action for eminent domain. The necessity for taking petitioner's property for public use upon payment of just compensation was alleged in the said Complaint. The allegation stressing that the property would be used to improve the delivery of health services satisfied the requirements of necessity and public use. Needless to state, respondent has the burden of proving the elements of eminent domain during the continuation of the proceedings in the trial court, and the petitioner the right to rebut such proof.

Citing *Iron and Steel Authority v. Court of Appeals*, [19] petitioner insists that before eminent domain may be exercised by the state, there must be a showing of prior unsuccessful negotiation with the owner of the property to be expropriated.

This contention is not correct. As pointed out by the solicitor general, the current effective law on delegated authority to exercise the power of eminent domain is found in Section 12, Book III of the Revised Administrative Code, which provides:

"SEC. 12. Power of Eminent Domain -- The President shall determine when it is necessary or advantageous to exercise the power of eminent domain in behalf of the National Government, and direct the Solicitor General, whenever he deems the action advisable, to institute expropriation proceedings in the proper court."

The foregoing provision does not require prior unsuccessful negotiation as a condition precedent for the exercise of eminent domain. In *Iron and Steel Authority v. Court of Appeals*, the President chose to prescribe this condition as an additional requirement instead. In the instant case, however, no such voluntary restriction was imposed.

Additional Issue:

Issuance of Writ of Possession Justified

This Court deems meritorious the request of the solicitor general for the issuance of a writ of preliminary mandatory injunction. [20] This request was filed on December 22, 1999; hence, the 1997 Rules apply.

In *Robern Development Corporation v. Judge Quitain*, [21] the Court stated:

"In the present case, although the Complaint for expropriation was filed on June 6, 1997, the Motion for the Issuance of the Writ of Possession was filed on July 28, 1997; thus, the issuance of the Writ is covered by the

1997 Rules. As earlier stated, procedural rules are given immediate effect and are applicable to actions pending and undetermined at the time they are passed; new court rules apply to proceedings that take place after the date of their effectivity. Therefore, Section 2, Rule 67 of the 1997 Rules of Civil Procedure, is the prevailing and governing law in this case."

Section 2, Rule 67 of the 1997 Rules of Court, states:

"Sec. 2. Entry of plaintiff upon depositing value with authorized government depositary. -- Upon the filing of the complaint or at any time thereafter, and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real or personal property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit in a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.

"If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.

"After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties."

Under the foregoing Section, the Republic is entitled to a writ of possession, once the provisional compensation mentioned therein is deposited. We refer again to Robern for authority:

"With the revision of the Rules, the trial court's issuance of the Writ of Possession becomes ministerial, once the provisional compensation mentioned in the 1997 Rules is deposited." [22]

In the present case, an amount equivalent to the assessed value of the land has already been deposited. This fact is not contested and is readily shown by a certification [23] letter issued by the Philippine National Bank stating that the Department of Health-National Children's Hospital has already deposited P3,126,600 representing the assessed value of the property mentioned in Civil Case No. Q-96-28894.

WHEREFORE, the Petition is hereby DENIED and the assailed Decision and Resolution AFFIRMED. Moreover, the Court grants the Republic's request for the issuance of a writ of preliminary mandatory injunction. The court of origin is hereby directed to issue a writ of possession to enable the Republic of the Philippines to provisionally enter and take possession of petitioner's property, which is the subject of the condemnation proceedings in Civil Case No. Q-96-28894. Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 54-62.

[2] Eighth Division, composed of J. Conchita Carpio Morales, ponente; and JJ Salome A. Montoya (chairman) and Bernardo P. Abesamis (member) both concurring.

[3] Rollo, pp. 65-66.

[4] Assailed Decision, p. 6; rollo, p. 62.

[5] Assailed Decision, pp. 1-3; rollo, pp. 54-56.

[6] Ibid., p. 8; rollo, p. 61.

[7] This case was deemed submitted for decision on October 29, 1999, upon receipt by this Court of petitioner's Memorandum. Respondent's Memorandum was received earlier on September 29, 1999.

[8] Memorandum for Petitioner, p. 6; rollo, p. 292. Petitioner's Memorandum was submitted by Cuevas, Santos and Associates.

[9] See also *Solis v. National Labor Relations Commission*, 263 SCRA 629, October 28, 1996; *Roadway Express, Inc. v. Court of Appeals*, 264 SCRA 696, November 21, 1996, *Tanada v. Angara*, 272 SCRA 18, May 2, 1997; and *Sanchez v. Court of Appeals*, 279 SCRA 647, September 29, 1997.

[10] 292 SCRA 202, 231 July 9, 1998, per Davide Jr., J. (now CJ)

[11] 269 SCRA 316, 325, March 7, 1997, per Panganiban, J.

[12] Resolution of the trial court, p. 2; rollo, p. 94.

[13] Ibid.

[14] Ibid.

[15] "Section 1. Grounds. --- Within the time for pleading, a motion to dismiss the action may be made on any of the following grounds:

(a)

That the court has no jurisdiction over the person of the defendant or over the subject of the action or suit;

(b)

That the court has no jurisdiction over the nature of the action or suit;

(c)

That venue is improperly laid;

(d)

That the plaintiff has no legal capacity to sue;

(e)

That there is another action pending between the same parties for the same cause;

(f)

That the cause of action is barred by a prior judgment or by statute of limitations;

(g)

That the complaint states no cause of action;

(h)

That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i)

That the claim on which the action or suit is founded is unenforceable under the provisions of the statute of frauds;

(j)

That the suit is between members of the same family and no earnest efforts towards a compromise have been made."

[16] The 1997 Rules now require an answer to a complaint for eminent domain, rather than a motion to dismiss to avoid the confusion with Rule 16. See Regalado, Remedial Law Compendium, Vol. 1, 6th revised ed., p. 739.

[17] Since the Motion to Dismiss was filed on November 18, 1996, the trial court's resolution thereof should be based on the old rules.

[18] See First Philippine International Bank v. CA, 252 SCRA 259, January 24, 1996.

[19] 249 SCRA 538, October 25, 1995.

[20] The supplemental request was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Roman G. del Rosario, Assistant Solicitor General Karl B. Miranda and Solicitor Edgar R. Tupas.

[21] GR No. 135042, p. 30, September 23, 1999, per Panganiban, J.

[22] Ibid.

[23] Rollo, p. 192.

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