FELICIANO G. MANANSAN, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES AND PHILIPPINE NATIONAL BANK, RESPONDENTS.

G.R. NO. 140091. August 10, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 52063 affirming with modification the decision of the Regional Trial Court (RTC) of Manila in Civil Case No. 123003, granting the complaint of the Republic of the Philippines, through the Department of Education, Culture and Sports (DECS) (now DepEd), for the expropriation of the property of Agus Development Corporation (ADC, for brevity) and Feliciano G. Manansan.

On April 17, 1979, the Republic, in behalf of the DECS, filed a complaint in the RTC of Manila for the expropriation of two parcels of land with improvements thereon located at Geronimo Street, Sampaloc, Manila: one consisted of 2,905.6 square meters owned by ADC and covered by Transfer Certificate of Title (TCT) No. 104374; and the other 584.5 square meters owned by Manansan and covered by TCT No. 132892. The property was to be used for the construction of the Trinidad Tecson Elementary School. Plaintiff averred that the amount of just compensation was P884,830.00.

Plaintiff amended its complaint to implead the Philippine National Bank (PNB) in whose favor ADC had mortgaged the property as well as the occupants of the property. Plaintiff averred that the just compensation for the property was P904,830.00.

On October 15, 1980, plaintiff filed a motion for the issuance of a writ of possession on its allegation that, based on the certification of the City Treasurer of Manila issued on December 13, 1979, the amount of P90,483.00 representing 10% of the assessed value of the property had already been deposited with the PNB. Manansan did not object to the motion. On January 16, 1981, the RTC issued a writ of possession in favor of plaintiff. Plaintiff took possession of the property, caused the demolition of some of the improvements, and had the elementary school constructed thereon.

On June 23, 1987, ADC filed a motion for the appointment of three (3) commissioners to fix the just compensation and require plaintiff to deposit 10% thereof. Plaintiff opposed the motion, insisting that it had already deposited the same (or P90,483.00) on December 3, 1979 with the PNB branch. In its comment on September 28, 1987, the PNB alleged that it had no knowledge that the amount had been deposited in the names of ADC and Manansan. When ordered to show proof of the deposit, plaintiff submitted a PNB deposit slip amounting to P90,483.00 in favor of the City Treasurer, and not in favor of defendants as owners of the property.

Defendants filed a motion to be restored to the possession of the subject properties. On September 13, 1990, the RTC denied the motion on the ground that restoration was no longer feasible.[2] Meanwhile, the court fixed provisionally the value of the property at P904,830.00 and required plaintiff to deposit the whole amount.

On September 26, 1994, the court appointed the following three (3) commissioners to determine the just compensation of the properties expropriated: (1) City Assessor Reynaldo Jaylo; (2) City Auditor Reynaldo Ventura; and (3) Asian Appraisal Company, Inc. (AACI), thru its representative. However, on October 28, 1994, the court replaced City Auditor Reynaldo Ventura with the City Treasurer of Manila.

On March 11, 1995, the City Assessor and City Treasurer of Manila submitted a Joint Appraisal Report of the expropriated properties and fixed the valuation of both land and buildings at P15,893,111.00. The valuation was based on the 1995 BIR Zonal Value, broken down as follows:

Land Appraisal:

Lot 6 Blk. RP 37 Psd 47-Area

-

597.30 sq. m.

Lot 7 Blk. RP 37 Psd 47-Area

-

600.60 sq. m.

Lot 8 Blk. RP 37 Psd 47-Area

-

584.50 sq. m.

Lot 12 Blk. RP 37 Psd 47-Area

-

1,122.90 sq. m.

Lot 13 Blk. RP 37 Psd 47-Area

-

584.80 sq. m.

T o t a l

-

3,490.10 sq. m.

1995 BIR Zonal Value

-

P4,400.00 / sq. m.

Land Area

-

x 3,490.10 sq. m.

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P15,356,440.00

Building Appraisal:

Building 1

-

P270,010.00

Building 2

-

144,014.00

Building 3

-

29,445.00

Building 4

-

39,690.00

Building 5

-

19,012.00

Perimeter Wall Fence

34,500.00

-

P536,671.00

-Market value for Building & Fence

Total Market Value of Land, Building and Fence

-

P15,893,111.00

On the other hand, the AACI submitted two separate reports on the fair market values of the subject properties, as of April 15, 1995, using the market data approach, to wit:

1) Lots 6, 7, 12 & 13 (owned by Agus) – 2,905.60 sq. m.
P14,000.00 / sq.m. x 2,905.60 sq. m.
= P40,678,000.00

2) Lot 8 (owned by Feliciano Manansan) – 584.50 sq. m.
P14,000.00 / sq.m. x 584.50 sq. m.
= P8,183,000.00 (Emphasis supplied)[3]

The appraisal of AACI was based on the extent, character and utility of the property sales and holding prices of similar land, and the highest and best use of the property as of April 15, 1995.[4] In fine, under the report of the City Treasurer and City Assessor, the value of the subject properties was fixed at P3,490.50 per square meter, while AACI fixed the value of the land at P14,000.00 per square meter.

On January 17, 1996, the trial court rendered judgment in favor of plaintiff.[5] The court fixed the fair market value of the property of defendants at P2,200.00 per square meter, or one-half of the 1995 BIR Zonal Value submitted by the City Treasurer and City Assessor. The fallo of the decision reads:

> WHEREFORE, judgment is hereby rendered for the plaintiff and against the defendants, as follows:
> a) the lands (described as Lots 6, 7, 12 and 13 of Bk. RP 37) with an area of 2,905.6 sq. m. owned by defendant Agus Development Corporation and covered by TCT No. 104374 as well as the land (described as Lot 8 of Bk. RP 37) with an area of 584.5 sq. m. owned by defendant Feliciano Manansan and covered by TCT No. 132892 with the improvements erected thereon, located at Geronimo St., Sampaloc, Manila and declared expropriated to be used as a public school, the Trinidad Tecson Elementary School;
>
> b) the fair market value of the lands of the defendants is fixed at P2,200.00/sq. meter;
>
> c) the fair market values of the buildings or fence erected on the lands of Agus Development Corporation and Feliciano Manansan are P250,163.00 and P18,172.50, respectively;
>
> d) the Republic must pay the following defendants, to wit:
>
> 1) Agus Development Corporation, the sum of P6,642,483.00, and from which amount, the indebtedness incurred by Agus Development Corporation from the Phil. National Bank should first be liquidated and satisfied before the remaining balance thereof shall be delivered/paid to defendant Agus Development Corporation;
>
> 2) Feliciano Manansan, the sum of P1,304,072.50;
>
> With costs against the plaintiff.
>
> **SO ORDERED.[6]**

The trial court declared that the joint assessment of the City Treasurer and City Assessor recommended that defendants be paid P15,893,111.00 as just compensation for the properties. However, the joint assessment was based on the BIR Zonal Value of the property as of 1995 instead of 1979 when the complaint was filed. Moreover, instead of directing the commissioners to revise their valuation reports and base the just compensation of the property on their market value as of 1979, the court merely resolved to cut in half the BIR Zonal Value of P4,400.00 to P2,200.00 per square meter, and declare that the fair market value of Manansan's lot was P1,285,900.00, or a total of P1,304,072.50 including the value of the improvements thereon.

The RTC declared that it was not bound by the report of the commissioners, which was merely advisory in character. However, no attorney's fees were awarded to defendants.[7]

Manansan and ADC thereafter appealed the decision to the CA. In his brief as appellant, Manansan alleged the following:

> - THE LOWER COURT ERRED IN SETTING THE JUST COMPENSATION OF DEFENDANT'S PROPERTIES AT P7,946,555.55 WHICH IS HALF THE VALUE SET BY THE CITY TREASURER AND ASSESSOR.
>
> - THE LOWER COURT ERRED IN NOT CONSIDERING THE VALUATION REPORT OF THE

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> PRIVATE APPRAISAL COMPANY, ASIAN APPRAISAL COMPANY, INC., AS THE MORE CREDIBLE BASIS TO DETERMINE THE FAIR MARKET VALUE OF DEFENDANTS' PROPERTIES BY WAY OF JUST COMPENSATION.
>
> - THE LOWER COURT ERRED IN NOT AWARDING ATTORNEY'S FEES AS PART OF JUST COMPENSATION.[8]

On the issue of just compensation, Manansan alleged that the amount of P7,946,555.55 was not the fair and full equivalent for the loss sustained by him which is the measure of the indemnity. He pointed out that there was a blatant admission that the supposed 1979 valuations were taken or arrived at through the 1995 market values as submitted by the City Treasurer and City Assessor. Thus, he insisted, the halved amount of P7,946,555.55 is not the "fair and full equivalent for the loss sustained which is the measure of the indemnity."[9]

Manansan asserted that the trial court should have adopted the appraisal of AACI which determined the fair market value of his property at P8,183,000.00. After all, the market data approach was used, and the court based its valuation on the sales and listings of comparable property registered within the immediate vicinity. He emphasized that the records of recent sales and offerings of similar land were analyzed, and comparison made for such factors as size, characteristics of the property, location, quality and prospective use. He averred that the valuation of the City Treasurer and City Assessor, which the lower court considered in arriving at the median sum of P7,946,555.55, should not have been given the weight it was accorded in the assailed decision, as it is certainly and evidentially inferior to that of the determination made by the AACI. Manansan maintained that this fact can be deduced from the rejection of the mode of determining just compensation based on the valuation of the assessor, made by no less than the Supreme Court in Export Processing Zone Authority v. Dulay.[10]

On the issue of attorney's fees, Manansan averred that conformably with the ruling of this Court in Capitol Subdivision, Inc. v. Province of Negros Occidental,[11] he is entitled to attorney's fees. Thus, he prayed that the decision of the RTC be affirmed with modification, to wit:

> WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that the Decision appealed from be modified and plaintiff-appellee ordered to pay defendant-appellant Feliciano Manansan the following:
>
> - P4,091,500.00 (median of the appraisal of Asian Appraisal Company for lot 8: 584.50 sq. m. x P14,000/sq. m.);
>
> - Reasonable attorney's fees equivalent to 10% of the amount involved;
>
> - Legal interest on the sum awarded (P4,091,500.00) as just compensation computed from 1979 up to the date of finality of judgment;
>
> - The costs of suit.[12]

On the other hand, the Republic, through the Office of the Solicitor General, averred that what should apply is the ruling of this Court in Export Processing Zone Authority v. Dulay.[13] The valuation report of AACI recommending P40,678,000.00 for Manansan's land only is too much to be deemed credible by the trial court. It was stressed that it took possession of the property only on January 23, 1981; hence, its fair market value should be based as of that year, and not in 1995 when the commissioners submitted their report.

On October 28, 1998, the CA rendered judgment affirming with modification the decision of the RTC. The fallo of the decision reads:

> WHEREFORE, the judgment herein appealed from is hereby AFFIRMED, with the MODIFICATION that the

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> plaintiff-appellee is hereby ordered to pay the defendants-appellants legal interest (6% per annum) on the amounts of P6,642,483.00 and P1,304,072.50 due them, from January 16, 1981 until the said amounts are fully paid.
>
> No pronouncement as to costs.
>
> SO ORDERED.[14]

In affirming the just compensation fixed by the trial court, the appellate court declared that the City Treasurer and City Assessor submitted a second report on September 11, 1995 recommending a value of only P1,065,283.22 for the land and P536,671.00 for the building plus accumulated legal interest in the amount of P1,633,993.30, or in the total amount of P3,235,947.52. It ratiocinated that the appraisals of AACI were also based on estimates of market values as of April 15, 1995, not as of 1979 or 1981. Moreover, such estimates were based not really on sales of similar properties in the vicinity, but on offers to sell found in newspaper advertisements.[15] Both parties filed motions for reconsideration, which the appellate court denied on September 15, 1999.[16]

In the instant petition for review on certiorari, Manansan (now petitioner) raises the following issues:

> - WHETHER OR NOT EVIDENCE NOT FORMALLY OFFERED NOR FORMALLY ADMITTED MAY BE CONSIDERED BY THE COURT OF APPEALS IN DETERMINING THE DATE WHEN JUST COMPENSATION SHOULD BE BASED;
>
> - WHETHER OR NOT THE JUST COMPENSATION FOR A PROPERTY MAY BE BASED ONLY ON THE TRIAL COURT'S EXERCISE OF MERE HALVING A 1993 BIR ZONAL VALUATION AS THE BASIS OF JUST COMPENSATION AS APPROXIMATE VALUATION IN 1979, DATE OF USURPATION;
>
> - WHETHER OR NOT ATTORNEY'S FEES IS ALLOWED IN EXPROPRIATION PROCEEDINGS IN THE LIGHT OF THE CIRCUMSTANCES OF THIS CASE.[17]

On the first issue, petitioner avers that the public respondent failed to prove that it deposited 10% of the assessed value of the property on December 13, 1979. He points out that it failed to formally offer in evidence the certificate issued by the City Treasurer of Manila that the P90,483.00 had been deposited as directed by the RTC. Considering that it was not admitted in evidence by the trial court, such certification cannot be considered as proof that the said amount had been deposited by public respondent.

On the second issue, petitioner insists that the halving of the valuation of the City Treasurer and City Assessor of P15,893,111.00 made by the trial and appellate courts is not based on competent evidence; it was merely based on the trial court's belief that one-half of the amount or P7,946,555.55 appears adequate to be paid to petitioner and ADC. Petitioner maintains that the trial court's formulation of the fair market value of the property must be based on competent evidence and not on speculations or surmises. To bolster his claim, petitioner cited the ruling of the Court in Manila Railway Company v. Fabie.[18]On the last issue, petitioner posits that he was constrained to engage the services of counsel for the case, which has been pending for more than 20 years. The granting of his plea for attorney's fees does not even compensate his expenses in litigating this case. Petitioner prays that judgment be rendered in his favor ordering the public respondent to pay him the sum of P2,571,800.00 (584.50 sq.m. x P4,400.00 per square meter based on Bureau of Internal Revenue Zonal Valuation as of 1995) plus legal interest (at 6% per annum) from January 16, 1981 until fully paid; reasonable attorney's fees equivalent to 10% of the total award; and cost of suit.[19]By way of comment, public respondent avers that it had deposited P90,483.00 representing 10% of the just compensation as alleged in the complaint pursuant to Presidential Decree (P.D.) No. 1533, and that on January 16, 1981, the trial court issued an order for the issuance of a writ of possession and that a writ of possession was issued on January 23, 1981. On the strength of said writ, respondent took possession of

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the property, caused the demolition of the improvements on the property, and had a school building constructed thereon. It insists that under Section 2 of P.D. No. 1533, it is not required that the deposit be in the name and for the account of the owners of the property to be expropriated; the certification of the City Treasurer of Manila is not the only evidence to prove the 10% deposit; and the order of the trial court for the issuance of a writ of possession presupposes that the alleged 10% deposit had been complied with.

Public respondent also points out that petitioner never questioned the 10% deposit it made with the PNB, or requested the City Treasurer to comply with P.D. No. 1533, or attempted to withdraw the deposit; it was all along, the ADC which questioned the deposit for allegedly being defective. Thus, the trial court did not err in basing the valuation of the property as of 1981, the time public respondent took possession of the property, and in reducing in half the valuation report submitted by the City Treasurer and Assessor, considering further that P7,946,555.55 is the amount nearest to the original value of P904,830.00. It insists that the amount of P1,334,580.00 arrived at by the trial court and affirmed by the CA is reasonable.

Petitioner counters that while a writ of possession was issued by the trial court on January 23, 1981, it cannot thereby be concluded that the required 10% deposit had been complied with by public respondent. It insists that the alleged PNB Check No. 330334 representing the supposed 10% deposit had not been offered and admitted in evidence which is required under Section 2, Rule 67 of the Rules of Court, which reads:

> 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 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 of 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.

Petitioner claims that public respondent's reliance on the ruling of this Court in B.H. Berkenkotter & Co. v. Court of Appeals[20] is misplaced. To sustain public respondent's contention that the just compensation may be determined as of the filing of the complaint for expropriation is to condone the usurpation by the government of private property by the simple expedient of filing a complaint even if the latter is not prepared to allocate the requisite funds therefor.

The petition is partially granted.

On the first issue, we agree with the submission of public respondent that petitioner never raised the inadmissibility and lack of probative weight of the certification of the City Treasurer (on the ground that it was never offered in evidence) in the trial court; neither was the issue of public respondent's failure to offer said certification in evidence to prove that the P90,483.00 was deposited with the PNB raised in the appellate court. The issue was raised for the first time only in this Court, and the well-entrenched rule is that a party is proscribed from raising in this Court an issue which was never raised in the trial court.[21]Moreover, there is no dispute that public respondent deposited P90,483.00 with the PNB on December 19, 1979, except that the deposit was in the name of the City Treasurer and not in the names of petitioner and ADC as owners of the expropriated property.

There was a hearing on public respondent's motion for the issuance of a writ of possession during which the matter of the regularity and validity of the deposit must have been discussed by the parties. The RTC found the motion in order and granted the same in its Order dated January 10, 1981, which in fine is a confirmation that the requisite deposit was in order. This enabled public respondent to construct the elementary school on the expropriated property.

It must be stressed that petitioner never assailed the order of the trial court in the CA and in this Court; he never bothered to file any motion for the remittance of his share of the 10% deposit in the court a quo, neither did he file a motion for the reconsideration of the trial court's January 10, 1981 Order. While ADC sought the repossession of the property on account of public respondent's alleged failure to deposit the just compensation of the property as provisionally fixed by the trial court, petitioner failed to do so.

On the second issue, we agree with petitioner's contention that the trial court erred in reducing in half the assessment of the City Treasurer and City Assessor (P15,893,111.00) based on the BIR Zonal Value as of 1995, and consequently fixing the fair market value of the subject property at P7,946,555.55. There is no evidence on record that the fair market value of the property, as of 1979 when public respondent filed its complaint for expropriation in the RTC, was P7,946,555.55. The trial court merely indulged in speculations and surmises when it declared that the fair market value of the property in 1979 was P7,946,555.55.

The rule is that the value of the property must be determined either as of the date of the taking of the property or the filing of the complaint, whichever comes first.[22] In this case, the complaint was filed on April 17, 1979, and the trial court issued the writ of possession on January 10, 1981. The City Treasurer, City Assessor and the AACI based their assessment reports as of 1995 and not as of 1979 or a difference of 16 years. Indeed, the fair market value of the property in 1979 cannot be fixed by the mere expedient of cutting in half the assessment made by the City Treasurer and City Assessor or AACI for that matter as of 1997. Such a process is arbitrary and a grave abuse of the trial court's discretion.

It bears stressing that just compensation means a fair and full equivalent for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities should be considered.[23]

We agree with the contention of the Office of the Solicitor General that the trial court was not bound by the assessment report of the commissioners and that it had the discretion to reject the same and substitute its own judgment on its value as gathered from the record. The court may accept the report/recommendation of the commissioners in toto and base its judgment thereon.[24] However, the decision of the court must be based on all established rules, upon correct legal principles and competent evidence. The court is proscribed from basing its judgment on speculations or surmises.[25] While tax values can serve as guide, the same cannot be absolute substitutes for just compensation.[26] Just compensation is the just and complete equivalent of the loss that the owner of the thing expropriated has to suffer by reason of the expropriation. The court should thus insist that the owner of private property should be compensated only for what he actually loses; it is not intended that the compensation shall extend beyond the loss or injury.[27]Since the commissioners failed to base their assessment of the property as of 1979 and relied solely on data as of 1995 instead of 1979, it behooved the trial court to direct them to revise their assessment, or to discharge them and appoint new ones, or to require the parties to adduce competent evidence to prove the fair market value of the property as of 1979. The trial court failed to do so. Worse, the CA condoned the lapse of the trial court. Considering all the foregoing, the Court has no other recourse but to remand the case to the trial court.

On the last issue, the Court affirms the following ratiocination of the CA:

> We cannot say the same about the appellants' claims for attorney's fees. There appears to be no basis for the

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> same. Attorney's fees are not automatically awarded in every action for expropriation. The case of National Power Corp. v. Court of Appeals, supra, relied upon by appellant Agus Development Corporation, does not even award attorney's fees. It only refers to the case of Amigable v. Cuenca where the Supreme Court held that the government should pay attorney's fees which should be fixed by the trial court after hearing. But the facts in that case are different from the case at bench. In that case, the government simply occupied the plaintiff-appellant's property without benefit of expropriation.[28]

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 52063 is AFFIRMED WITH MODIFICATION. The trial court is ORDERED to RECONSTITUTE the commissioners or designate a panel of new commissioners who will assess the fair market value of the petitioner's property as of 1979, and to render judgment on the just compensation for the property in due course. No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Hector L. Hofileña, with Associate Justices Jorge S. Imperial and Omar U. Amin, concurring; rollo, pp. 26-35.

[2] Rollo, p. 28.

[3] CA rollo, pp. 76-77.

[4] Rollo, p. 32.

[5] CA rollo, pp. 73-79.

[6] Id. at 79.

[7] Id. at 78-79.

[8] Id. at 58-59.

[9] Id. at 59-60.

[10] Id. at 67.

[11] 117 Phil. 59, 71 (1963).

[12] CA rollo, p. 70.

[13] G.R. No. L-59603, April 29, 1987, 149 SCRA 305.

[14] Rollo, pp. 34-35.

[15] Id. at 28-34.

[16] Id. at 37-41.

[17] Id. at 89-90.

[18] 17 Phil. 206 (1910).

[19] Rollo, p. 21.

[20] G.R. No. 89980, December 14, 1992, 216 SCRA 584.

[21] National Power Corporation v. Gutierrez, G.R. No. 60077, January 18, 1991, 193 SCRA 1.

[22] Eslaban, Jr. v. De Onorio, 412 Phil. 667, 678 (2001); Ansaldo v. Tantuico, G.R. No. 50147, August 3, 1990, 188 SCRA 300; National Power Corporation v. Court of Appeals, 325 Phil. 29, 44 (1996); Berkenkotter & Co. v. Court of Appeals, G.R. No. 89980, December 14, 1992, 216 SCRA 584; Republic v. Philippine National Bank, 111 Phil. 572, 577 (1961).

[23] Export Processing Zone Authority v. Dulay, supra note 9, at 314-315.

[24] Republic v. Intermediate Appellate Court, G.R. No. 71176, May 21, 1990, 185 SCRA 572.

[25] Manila Railway Company v. Fabie, supra note 17.

[26] Export Processing Zone Authority v. Dulay, supra note 9, at 315.

[27] Ansaldo v. Tantuico, supra note 21.

[28] Rollo, p. 34.

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