SANTIAGO ESLABAN, JR., IN HIS CAPACITY AS PROJECT MANAGER OF THE NATIONAL IRRIGATION ADMINISTRATION, PETITIONER, VS. CLARITA VDA. DE ONORIO, RESPONDENT.

G.R. No. 146062. June 28, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision[1] of the Court of Appeals which affirmed the decision of the Regional Trial Court, Branch 26, Surallah, South Cotabato, ordering the National Irrigation Administration (NIA for brevity) to pay respondent the amount of P107,517.60 as just compensation for the taking of the latter's property.

The facts are as follows:

Respondent Clarita Vda. de Enorio is the owner of a lot in Barangay M. Roxas, Sto. Niño, South Cotabato with an area of 39,512 square meters. The lot, known as Lot 1210-A-Pad-11-000586, is covered by TCT No. T-22121 of the Registry of Deeds, South Cotabato. On October 6, 1981, Santiago Eslaban, Jr., Project Manager of the NIA, approved the construction of the main irrigation canal of the NIA on the said lot, affecting a 24,660 square meter portion thereof. Respondent's husband agreed to the construction of the NIA canal provided that they be paid by the government for the area taken after the processing of documents by the Commission on Audit.

Sometime in 1983, a Right-of-Way agreement was executed between respondent and the NIA (Exh. 1). The NIA then paid respondent the amount of P4,180.00 as Right-of-Way damages. Respondent subsequently executed an Affidavit of Waiver of Rights and Fees whereby she waived any compensation for damages to crops and improvements which she suffered as a result of the construction of a right-of-way on her property (Exh. 2). The same year, petitioner offered respondent the sum of P35,000.00 by way of amicable settlement pursuant to Executive Order No. 1035, §18, which provides in part that¾

> Financial assistance may also be given to owners of lands acquired under C.A. 141, as amended, for the area or portion subject to the reservation under Section 12 thereof in such amounts as may be determined by the implementing agency/instrumentality concerned in consultation with the Commission on Audit and the assessor's office concerned.

Respondent demanded payment for the taking of her property, but petitioner refused to pay. Accordingly, respondent filed on December 10, 1990 a complaint against petitioner before the Regional Trial Court, praying that petitioner be ordered to pay the sum of P111,299.55 as compensation for the portion of her property used in the construction of the canal constructed by the NIA, litigation expenses, and the costs.

Petitioner, through the Office of the Solicitor-General, filed an Answer, in which he admitted that NIA constructed an irrigation canal over the property of the plaintiff and that NIA paid a certain landowner whose property had been taken for irrigation purposes, but petitioner interposed the defense that: (1) the government had

not consented to be sued; (2) the total area used by the NIA for its irrigation canal was only 2.27 hectares, not 24,600 square meters; and (3) respondent was not entitled to compensation for the taking of her property considering that she secured title over the property by virtue of a homestead patent under C.A. No. 141.

At the pre-trial conference, the following facts were stipulated upon: (1) that the area taken was 24,660 square meters; (2) that it was a portion of the land covered by TCT No. T-22121 in the name of respondent and her late husband (Exh. A); and (3) that this area had been taken by the NIA for the construction of an irrigation canal.[2]

On October 18, 1993, the trial court rendered a decision, the dispositive portion of which reads:

> In view of the foregoing, decision is hereby rendered in favor of plaintiff and against the defendant ordering the defendant, National Irrigation Administration, to pay to plaintiff the sum of One Hundred Seven Thousand Five Hundred Seventeen Pesos and Sixty Centavos (P107,517.60) as just compensation for the questioned area of 24,660 square meters of land owned by plaintiff and taken by said defendant NIA which used it for its main canal plus costs.[3]

On November 15, 1993, petitioner appealed to the Court of Appeals which, on October 31, 2000, affirmed the decision of the Regional Trial Court. Hence this petition.

The issues in this case are:

> - WHETHER OR NOT THE PETITION IS DISMISSIBLE FOR FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION 5, RULE 7 OF THE REVISED RULES OF CIVIL PROCEDURE.
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> - WHETHER OR NOT LAND GRANTED BY VIRTUE OF A HOMESTEAD PATENT AND SUBSEQUENTLY REGISTERED UNDER PRESIDENTIAL DECREE 1529 CEASES TO BE PART OF THE PUBLIC DOMAIN.
>
> - WHETHER OR NOT THE VALUE OF JUST COMPENSATION SHALL BE DETERMINED FROM THE TIME OF THE TAKING OR FROM THE TIME OF THE FINALITY OF THE DECISION.
>
> - WHETHER THE AFFIDAVIT OF WAIVER OF RIGHTS AND FEES EXECUTED BY RESPONDENT EXEMPTS PETITIONER FROM MAKING PAYMENT TO THE FORMER.

We shall deal with these issues in the order they are stated.

First. Rule 7, §5 of the 1997 Revised Rules on Civil Procedure provides ¾

> Certification against forum shopping. ¾ The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report the fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing . . . .

By reason of Rule 45, §4 of the 1997 Revised Rules on Civil Procedure, in relation to Rule 42, §2 thereof, the requirement of a certificate of non-forum shopping applies to the filing of petitions for review on certiorari of the decisions of the Court of Appeals, such as the one filed by petitioner.

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As provided in Rule 45, §5, "The failure of the petitioner to comply with any of the foregoing requirements regarding . . . the contents of the document which should accompany the petition shall be sufficient ground for the dismissal thereof."

The requirement in Rule 7, §5 that the certification should be executed by the plaintiff or the principal means that counsel cannot sign the certificate against forum-shopping. The reason for this is that the plaintiff or principal knows better than anyone else whether a petition has previously been filed involving the same case or substantially the same issues. Hence, a certification signed by counsel alone is defective and constitutes a valid cause for dismissal of the petition.[4]

In this case, the petition for review was filed by Santiago Eslaban, Jr., in his capacity as Project Manager of the NIA. However, the verification and certification against forum-shopping were signed by Cesar E. Gonzales, the administrator of the agency. The real party-in-interest is the NIA, which is a body corporate. Without being duly authorized by resolution of the board of the corporation, neither Santiago Eslaban, Jr. nor Cesar E. Gonzales could sign the certificate against forum-shopping accompanying the petition for review. Hence, on this ground alone, the petition should be dismissed.

Second. Coming to the merits of the case, the land under litigation, as already stated, is covered by a transfer certificate of title registered in the Registry Office of Koronadal, South Cotabato on May 13, 1976. This land was originally covered by Original Certificate of Title No. (P-25592) P-9800 which was issued pursuant to a homestead patent granted on February 18, 1960. We have held:

> Whenever public lands are alienated, granted or conveyed to applicants thereof, and the deed grant or instrument of conveyance [sales patent] registered with the Register of Deeds and the corresponding certificate and owner's duplicate of title issued, such lands are deemed registered lands under the Torrens System and the certificate of title thus issued is as conclusive and indefeasible as any other certificate of title issued to private lands in ordinary or cadastral registration proceedings.[5]

The Solicitor-General contends, however, that an encumbrance is imposed on the land in question in view of §39 of the Land Registration Act (now P.D. No. 1529, §44) which provides:

> Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free from all encumbrances except those noted on said certificate, and any of the following encumbrances which may be subsisting, namely:
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> . . . .
>
> Third. Any public highway, way, private way established by law, or any government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, irrigation canal or lateral thereof, have been determined.

As this provision says, however, the only servitude which a private property owner is required to recognize in favor of the government is the easement of a "public highway, way, private way established by law, or any government canal or lateral thereof where the certificate of title does not state that the boundaries thereof have been pre-determined." This implies that the same should have been pre-existing at the time of the registration of the land in order that the registered owner may be compelled to respect it. Conversely, where the easement is not pre-existing and is sought to be imposed only after the land has been registered under the Land Registration Act, proper expropriation proceedings should be had, and just compensation paid to the registered owner thereof.[6]

In this case, the irrigation canal constructed by the NIA on the contested property was built only on October 6,

1981, several years after the property had been registered on May 13, 1976. Accordingly, prior expropriation proceedings should have been filed and just compensation paid to the owner thereof before it could be taken for public use.

Indeed, the rule is that where private property is needed for conversion to some public use, the first thing obviously that the government should do is to offer to buy it.[7] If the owner is willing to sell and the parties can agree on the price and the other conditions of the sale, a voluntary transaction can then be concluded and the transfer effected without the necessity of a judicial action. Otherwise, the government will use its power of eminent domain, subject to the payment of just compensation, to acquire private property in order to devote it to public use.

Third. With respect to the compensation which the owner of the condemned property is entitled to receive, it is likewise settled that it is the market value which should be paid or "that sum of money which a person, desirous but not compelled to buy, and an owner, willing but not compelled to sell, would agree on as a price to be given and received therefor."[8] Further, just compensation means not only the correct amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" for then the property owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[9] Nevertheless, as noted in Ansaldo v. Tantuico, Jr.,[10] there are instances where the expropriating agency takes over the property prior to the expropriation suit, in which case just compensation shall be determined as of the time of taking, not as of the time of filing of the action of eminent domain.

Before its amendment in 1997, Rule 67, §4 provided:

> Order of condemnation. When such a motion is overruled or when any party fails to defend as required by this rule, the court may enter an order 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. . . .

It is now provided that-

> SEC. 4. Order of expropriation. ¾ If the objections to and the defense against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring 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, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.
>
> A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid.
>
> After the rendition of such an order, the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court deems just and equitable. (Emphasis added)

Thus, 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 came first." Even before the new rule, however, it was already held in Commissioner of Public Highways v. Burgos[11] that the price of the land at the time of taking, not its value after the passage of time, represents the true value to be paid as just compensation. It was, therefore, error for the Court of Appeals to rule that the just compensation to be paid to respondent should be determined as of the filing of the complaint in 1990, and not the time of its taking by the NIA in 1981, because petitioner was allegedly remiss in

its obligation to pay respondent, and it was respondent who filed the complaint. In the case of Burgos,[12] it was also the property owner who brought the action for compensation against the government after 25 years since the taking of his property for the construction of a road.

Indeed, the value of the land may be affected by many factors. It may be enhanced on account of its taking for public use, just as it may depreciate. As observed in Republic v. Lara:[13]

> [W]here property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken. This is the only way that compensation to be paid can be truly just, i.e., "just" not only to the individual whose property is taken, "but to the public, which is to pay for it" . . . .

In this case, the proper valuation for the property in question is P16,047.61 per hectare, the price level for 1982, based on the appraisal report submitted by the commission (composed of the provincial treasurer, assessor, and auditor of South Cotabato) constituted by the trial court to make an assessment of the expropriated land and fix the price thereof on a per hectare basis.[14]

Fourth. Petitioner finally contends that it is exempt from paying any amount to respondent because the latter executed an Affidavit of Waiver of Rights and Fees of any compensation due in favor of the Municipal Treasurer of Barangay Sto. Niño, South Cotabato. However, as the Court of Appeals correctly held:

> [I]f NIA intended to bind the appellee to said affidavit, it would not even have bothered to give her any amount for damages caused on the improvements/crops within the appellee's property. This, apparently was not the case, as can be gleaned from the disbursement voucher in the amount of P4,180.00 (page 10 of the Folder of Exhibits in Civil Case 396) issued on September 17, 1983 in favor of the appellee, and the letter from the Office of the Solicitor General recommending the giving of "financial assistance in the amount of P35,000.00" to the appellee.
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> Thus, We are inclined to give more credence to the appellee's explanation that the waiver of rights and fees "pertains only to improvements and crops and not to the value of the land utilized by NIA for its main canal."[15]

WHEREFORE, premises considered, the assailed decision of the Court of Appeals is hereby AFFIRMED with MODIFICATION to the extent that the just compensation for the contested property be paid to respondent in the amount of P16,047.61 per hectare, with interest at the legal rate of six percent (6%) per annum from the time of taking until full payment is made. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Justice Ramon Mabutas, Jr. and concurred in by Justice Roberto A. Barrios and Eriberto U. Rosario, Jr.

[2] CA Decision, pp. 1-2; Rollo, pp. 25-26.

[3] RTC Decision, p. 5; id., p. 24.

[4] Far Eastern Shipping Co. v.. Court of Appeals, 297 SCRA 30 (1998).

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[5] Heirs of Deogracias Ramos v.. Court of Appeals, 139 SCRA 295, 299 (1985); See also Samonte v.. Sambilon, 107 Phil 198 (1960); El Hogar Filipino v.. Olvigas, 60 Phil. 17 (1934); Manalo v.. Lukban, 48 Phil. 973 (1924).

[6] Heirs of Malfore v.. Director of Forestry, 109 Phil. 586 (1960).

[7] Noble v.. City of Manila, 67 Phil. 1 (1938).

[8] See Manila Railroad Company v.. Caligsihan, 40 Phil. 326 (1919);.City of Manila v.. Estrada, 25 Phil. 208 (1913).

[9] Cosculluela v.. Court of Appeals, 164 SCRA 393 (1988).

[10] 188 SCRA 300, 303-304 (1990).

[11] 96 SCRA 831 (1980).

[12] Id.

[13] 96 Phil. 170, 177-178 (1954) citing 18 Am. Jur. 873, 874.

[14] RTC Decision, p. 4; Rollo, p. 23.

[15] CA Decision, p. 9; id., p. 33.

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