

**MARINA Z. REYES; ALFREDO A. FRANCISCO; ANGELITA Z. GARCIA;
ALFREDO Z. FRANCISCO, JR; ARMANDO Z. FRANCISCO; ALMA C.
FRANCISCO; EUGENIA Z. LUNA; CLARITA Z. ZABALLERO,
LEONARDO Z. ...**

G.R. No. 147511. January 20, 2003

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal by certiorari from the decision of the Court of Appeals in CA-GR CV No. 51641 dated September 29, 2000[1] affirming the judgment of the Regional Trial Court of Quezon City, Branch 79 which dismissed the complaint for forfeiture of rights filed by herein petitioners, as well as the Resolution dated March 13, 2001 denying petitioners' motion for reconsideration.

Records show that in 1977, respondent National Housing Authority (NHA) filed separate complaints for the expropriation of sugarcane lands, particularly Lot Nos. 6450, 6448-E, 6198-A and 6199 of the cadastral survey of Dasmariñas, Cavite belonging to the petitioners, before the then Court of First Instance of Cavite, and docketed as Civil Case Nos. T.G.-392, T.G.-396 and T.G.-417. The stated public purpose of the expropriation was the expansion of the Dasmariñas Resettlement Project to accommodate the squatters who were relocated from the Metropolitan Manila area. The trial court rendered judgment ordering the expropriation of these lots and the payment of just compensation. This was affirmed by the Supreme Court in a decision rendered on October 29, 1987 in the case of NHA vs. Zaballero[2] and which became final on November 26, 1987.[3]

On February 24, 1989, the expropriation court (now Branch 18, Regional Trial Court of Tagaytay City) issued an Order[4] the dispositive portion of which reads:

“WHEREFORE, and resolving thus, let an Alias Writ of Execution be immediately issued and that:

(1) The Register of Deeds of the Province of Cavite is hereby ordered to transfer, in the name of the plaintiff National Housing Authority, the following:

(a)

Transfer Certificate No. RT-638 containing an area of 79,167 square meters situated in Barrio Bangkal, Dasmariñas, Cavite;

(b)

Transfer Certificate of Title No. T-55702 containing an area of 20,872 square meters situated in Barrio Bangkal, Dasmariñas, Cavite;

(c)

Transfer Certificate of Title No. RT-639 and RT-4641 covering Lot Nos. 6198-A and 6199 with an aggregate area of 159,985 square meters also situated in Barrio Bangkal, Dasmariñas, Cavite.

(2) Plaintiff National Housing Authority is likewise hereby ordered, under pain of contempt, to immediately pay the defendants, the amounts stated in the Writ of Execution as the adjudicated compensation of their expropriated properties, which process was received by it according to the records, on September 26, 1988, segregating therefrom, and in separate check, the lawyer's fees in favor of Atty. Bobby P. Yuseco, in the amount of P322,123.05, as sustained by their contract as gleaned from the records, with no other deduction, paying on its own (NHA) account, the necessary legal expenses incident to the registration or issuance of new certificates of title, pursuant to the provisions of the Property Registration Law (PD 1529);

(3) Defendants, however, are directed to pay the corresponding capital gains tax on the subject properties, directing them additionally, to coordinate with the plaintiff NHA in this regard, in order to facilitate the termination of this case, put an end to this controversy and consign the same to its final rest."

For the alleged failure of respondent NHA to comply with the above order, petitioners filed on April 28, 1992 a complaint[5] for forfeiture of rights before the Regional Trial Court of Quezon City, Branch 79, in Civil Case No. Q-92-12093. They alleged that respondent NHA had not relocated squatters from the Metropolitan Manila area on the expropriated lands in violation of the stated public purpose for expropriation and had not paid the just compensation fixed by the court. They prayed that respondent NHA be enjoined from disposing and alienating the expropriated properties and that judgment be rendered forfeiting all its rights and interests under the expropriation judgment. In its Answer,[6] respondent NHA averred that it had already paid a substantial amount to herein petitioners and that the expropriation judgment could not be executed in view of several issues raised by respondent NHA before the expropriation court (now Branch 18, RTC, Tagaytay City) concerning capital gains tax, registration fees and other expenses for the transfer of title to respondent NHA, as well as the claims for attorney's fees of Atty. Joaquin Yuseco, Jr., collaborating counsel for petitioners.

Ocular inspections[7] conducted by the trial court on the subject properties show that:

"1.

80% of Lot No. 6198-A with an area of 120,146 square meters is already occupied by relocatees whose houses are made of light materials with very few houses partly made of hollow blocks. The relocatees were relocated only on (sic) March of 1994;

2.

Most of the area covered by Lot No. 2075 is almost occupied by houses and structures, most of which are made of concrete materials. These houses are not being occupied by squatters relocated to the said lot by the defendant NHA;

3.

Lot No. 6199 is also occupied by concrete houses and structures but likewise there are no relocatees in said lot. A large area of the same is still unoccupied."

On September 29, 1995, the trial court rendered judgment dismissing the complaint. Finding that the failure of respondent NHA to pay just compensation and of petitioners to pay capital gains tax are both unjustified and unreasonable, the trial court held that: (1) respondent NHA is not deemed to have abandoned the public purpose for which the subject properties were expropriated because the relocation of squatters involves a long and tedious process. It ruled that respondent NHA actually pursued the public purpose of the expropriation when it entered into a contract with Arceo C. Cruz involving the construction of low cost housing on the expropriated lots to be sold to qualified low income beneficiaries; (2) there is no condition imposed in the expropriation judgment that the subject properties shall revert back to its original owners in case the purpose of expropriation is terminated or

abandoned; (3) the payment of just compensation is independent of the obligation of herein petitioners to pay capital gains tax; and (4) in the payment of just compensation, the basis should be the value at the time the property was taken. On appeal, the Court of Appeals affirmed the decision of the trial court.

Petitioners are now before us raising the following assignment of errors:

“1.

The Honorable Court of Appeals had decided a question of substance not in accord with justice and equity when it ruled that, as the judgment of the expropriation court did not contain a condition that should the expropriated property be not used for the intended purpose it would revert to the condemnee, the action to declare the forfeiture of rights under the expropriation judgment can not prosper;

2.

The Honorable Court of Appeals decided a question of substance not in accord with jurisprudence, justice and equity when it ruled that the non-payment is not a ground for forfeiture;

3.

The Honorable Court of Appeals erred in not declaring the judgment of expropriation forfeited in light of the failure of respondent to use the expropriated property for the intended purpose but for a totally different purpose.”

The petition is not impressed with merit.

Petitioners contend that respondent NHA violated the stated public purpose for the expansion of the Dasmariñas Resettlement Project when it failed to relocate the squatters from the Metro Manila area, as borne out by the ocular inspection conducted by the trial court which showed that most of the expropriated properties remain unoccupied. Petitioners likewise question the public nature of the use by respondent NHA when it entered into a contract for the construction of low cost housing units, which is allegedly different from the stated public purpose in the expropriation proceedings. Hence, it is claimed that respondent NHA has forfeited its rights and interests by virtue of the expropriation judgment and the expropriated properties should now be returned to herein petitioners. We are not persuaded.

The 1987 Constitution explicitly provides for the exercise of the power of eminent domain over private properties upon payment of just compensation. More specifically, section 9, Article III states that private property shall not be taken for public use without just compensation. The constitutional restraints are public use and just compensation.

Petitioners cannot insist on a restrictive view of the eminent domain provision of the Constitution by contending that the contract for low cost housing is a deviation from the stated public use. It is now settled doctrine that the concept of public use is no longer limited to traditional purposes. Here, as elsewhere, the idea that “public use” is strictly limited to clear cases of “use by the public” has been abandoned. The term “public use” has now been held to be synonymous with “public interest,” “public benefit,” “public welfare,” and “public convenience.”[8] The rationale for this new approach is well explained in the case of *Heirs of Juancho Ardon, et al. vs. Reyes, et al.*, [9] to wit:

“The restrictive view of public use may be appropriate for a nation which circumscribes the scope of government activities and public concerns and which possesses big and correctly located public lands that obviate the need to take private property for public purposes. Neither circumstance applies to the Philippines. We have never been a *laissez faire* State. And the necessities which impel the exertion of sovereign power are all too often found in areas of scarce public land or limited government resources.

x x x x x x x x

The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not anymore. As long as the purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be subdivided into small lots for resale at cost to individuals. The other is in the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use.” (emphasis supplied)

The act of respondent NHA in entering into a contract with a real estate developer for the construction of low cost housing on the expropriated lots to be sold to qualified low income beneficiaries cannot be taken to mean as a deviation from the stated public purpose of their taking. Jurisprudence has it that the expropriation of private land for slum clearance and urban development is for a public purpose even if the developed area is later sold to private homeowners, commercials firms, entertainment and service companies, and other private concerns.[10]

Moreover, the Constitution itself allows the State to undertake, for the common good and in cooperation with the private sector, a continuing program of urban land reform and housing which will make at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas.[11] The expropriation of private property for the purpose of socialized housing for the marginalized sector is in furtherance of the social justice provision under Section 1, Article XIII of the Constitution which provides that:

“SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall require the acquisition, ownership, use and disposition of property and its increments.”

It follows that the low cost housing project of respondent NHA on the expropriated lots is compliant with the “public use” requirement.

We likewise do not subscribe to petitioners’ contention that the stated public purpose was abandoned when respondent NHA failed to occupy the expropriated lots by relocating squatters from the Metro Manila area. The expropriation judgment declared that respondent NHA has a lawful right to take petitioners properties “for the public use or purpose of expanding the Dasmariñas Resettlement Project.” The taking here is absolute, without any condition, restriction or qualification. Contrary to petitioners’ submission, the ruling enunciated in the early case of *Fery vs. Municipality of Cabanatuan*,[12] is still good and sound doctrine, viz.:

“x x x If, for example, land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned the property shall return to its former owner, then, of course, when the purpose is terminated or abandoned the former owner reacquires the property so expropriated. x x x If, upon the contrary, however, the decree of expropriation gives to the entity a fee simple title, then, of course, the land becomes the absolute property of the expropriator x x x.

When land has been acquired for public use in fee simple unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner.”

Petitioners further aver that the continued failure of respondent NHA to pay just compensation for a long period of time justifies the forfeiture of its rights and interests over the expropriated lots. They demand the return of the expropriated lots. Respondent NHA justifies the delay to pay just compensation by reason of the failure of petitioners to pay the capital gains tax and to surrender the owners' duplicate certificates of title.

In the recent case of *Republic of the Philippines vs. Court of Appeals, et al.*,^[13] the Court ruled that non-payment of just compensation does not entitle the private landowners to recover possession of their expropriated lots. Thus:

“Thus, in *Valdehueza vs. Republic* where the private landowners had remained unpaid ten years after the termination of the expropriation proceedings, this Court ruled –

“The points in dispute are whether such payment can still be made and, if so, in what amount. Said lots have been the subject of expropriation proceedings. By final and executory judgment in said proceedings, they were condemned for public use, as part of an airport, and ordered sold to the government. x x x. It follows that both by virtue of the judgment, long final, in the expropriation suit, as well as the annotations upon their title certificates, plaintiffs are not entitled to recover possession of their expropriated lots – which are still devoted to the public use for which they were expropriated – but only to demand the market value of the same.

Said relief may be granted under plaintiffs' prayer for such other remedies, which may be deemed just and equitable under the premises.’

The Court proceeded to reiterate its pronouncement in *Alfonso vs. Pasay City* where the recovery of possession of property taken for public use prayed for by the unpaid landowner was denied even while no requisite expropriation proceedings were first instituted. The landowner was merely given the relief of recovering compensation for his property computed at its market value at the time it was taken and appropriated by the State.

The judgment rendered by the Bulacan RTC in 1979 on the expropriation proceedings provides not only for the payment of just compensation to herein respondents but likewise adjudges the property condemned in favor of petitioner over which parties, as well as their privies, are bound. Petitioner has occupied, utilized and, for all intents and purposes, exercised dominion over the property pursuant to the judgment. The exercise of such rights vested to it as the condemnee indeed has amounted to at least a partial compliance or satisfaction of the 1979 judgment, thereby preempting any claim of bar by prescription on grounds of non-execution. In arguing for the return of their property on the basis of non-payment, respondents ignore the fact that the right of the expropriating authority is far from that of an unpaid seller in ordinary sales, to which the remedy of rescission might perhaps apply. An *in rem* proceeding, condemnation acts upon the property. After condemnation, the paramount title is in the public under a new and independent title; thus, by giving notice to all claimants to a disputed title, condemnation proceedings provide a judicial process for securing better title against all the world than may be obtained by voluntary conveyance.” (emphasis supplied)

We, however, likewise find the refusal of respondent NHA to pay just compensation, allegedly for failure of petitioners to pay capital gains tax and surrender the owners' duplicate certificates of title, to be unfounded and unjustified.

First, under the expropriation judgment the payment of just compensation is not subject to any condition. Second, it is a recognized rule that although the right to enter upon and appropriate the land to public use is completed prior to payment, title to the property expropriated shall pass from the owner to the expropriator only upon full payment of the just compensation. In the case of *Association of Small Landowners in the Phils., Inc., et al. vs. Secretary of Agrarian Reform*,^[14] it was held that:

“Title to property which is the subject of condemnation proceedings does not vest the condemnor until the judgment fixing just compensation is entered and paid, but the condemnor's title relates back to the date on

which the petition under the Eminent Domain Act, or the commissioner's report under the Local Improvement Act, is filed.

x x x Although the right to appropriate and use land taken for a canal is complete at the time of entry, title to the property taken remains in the owner until payment is actually made.

In *Kennedy v. Indianapolis*, the US Supreme Court cited several cases holding that title to property does not pass to the condemnor until just compensation had actually been made. In fact, the decisions appear to be uniformly to this effect. As early as 1838, in *Rubottom v. McLure*, it was held that 'actual payment to the owner of the condemned property was a condition precedent to the investment of the title to the property in the State' albeit 'not to the appropriation of it to public use.' In *Rexford v. Knight*, the Court of Appeals of New York said that the construction upon the statutes was that the fee did not vest in the State until the payment of the compensation although the authority to enter upon and appropriate the land was complete prior to the payment. Kennedy further said that 'both on principle and authority the rule is x x x that the right to enter on and use the property is complete, as soon as the property is actually appropriated under the authority of law for a public use, but that the title does not pass from the owner without his consent, until just compensation has been made to him.'"

Our own Supreme Court has held in *Visayan Refining Co. v. Camus and Paredes*, that:

If the laws which we have exhibited or cited in the preceding discussion are attentively examined it will be apparent that the method of expropriation adopted in this jurisdiction is such as to afford absolute reassurance that no piece of land can be finally and irrevocably taken from an unwilling owner until compensation is paid. x x x." (emphasis supplied)

With respect to the amount of the just compensation still due and demandable from respondent NHA, the lower courts erred in not awarding interest computed from the time the property is actually taken to the time when compensation is actually paid or deposited in court. In *Republic, et al. vs. Court of Appeals, et al.*,^[15] the Court imposed interest at 12% per annum in order to help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time, thus:

"The constitutional limitation of 'just compensation' is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it being fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

x x x This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. Article 1250 of the Civil Code, providing that, in case of extraordinary inflation or deflation, the value of the currency at the time of the establishment of the obligation shall be the basis for the payment when no agreement to the contrary is stipulated, has strict application only to contractual obligations. In other words, a contractual agreement is needed for the effects of extraordinary inflation to be taken into account to alter the value of the currency."

Records show that there is an outstanding balance of P1,218,574.35 that ought to be paid to petitioners.^[16] It is not disputed that respondent NHA took actual possession of the expropriated properties in 1977.^[17] Perforce, while petitioners are not entitled to the return of the expropriated property, they are entitled to be paid the balance

of P1,218,574.35 with legal interest thereon at 12% per annum computed from the taking of the property in 1977 until the due amount shall have been fully paid.

WHEREFORE, the appealed judgment is modified as follows:

- Ordering respondent National Housing Authority to pay petitioners the amount of P1,218,574.35 with legal interest thereon at 12% per annum computed from the taking of the expropriated properties in 1997 until the amount due shall have been fully paid;
- Ordering petitioners to pay the capital gains tax; and
- Ordering petitioners to surrender to respondent National Housing Authority the owners' duplicate certificates of title of the expropriated properties upon full payment of just compensation.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Quirino D. Abad Santos, Jr. and Salvador J. Valdez, Jr, JJ., concurring; Annex A, Petition; Rollo, pp. 49-66.

[2] 155 SCRA 224 (1987).

[3] Exhibit B; Original Records, Volume 2, p. 305.

[4] Exhibit I; *ibid.*, pp. 318-322.

[5] Original Records, Volume 1, pp. 1-5.

[6] *Ibid.*, pp. 10-14.

[7] Commissioner's Report issued in compliance with the Order dated July 13, 1994; Original Records, Volume 2, p. 407; Commissioner's Report issued in compliance with the Order dated November 11, 1994; *ibid.*, p. 653.

[8] *Heirs of Juancho Ardon, et al. vs. Reyes, et al.*, 125 SCRA 220 (1983).

[9] *Supra*.

[10] *Supra*.

[11] Section 9, Article XIII, 1987 Constitution.

[12] 42 Phil 28 (1921).

[13] G.R. No. 146587, July 2, 2002.

[14] 175 SCRA 343 (1989).

[15] G.R. No. 146587, July 2, 2002.

[16] Original Records, Volume 3, pp. 731-732.

[17] See *Zaballero, et al. vs. NHA, et al.*, *supra*, pp. 226-227.

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