MIGUEL BELUSO, NATIVIDAD BELUSO, PEDRO BELUSO, ANGELITA BELUSO, RAMON BELUSO, AND AMADA DANIEL, SUBSTITUTED BY HER HEIRS REPRESENTED BY TERESITA ARROBANG, PETITIONERS, VS. THE M...

G.R. NO. 153974. August 07, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review questioning the Decision[1] of the Court of Appeals (CA) dated March 20, 2002 in CA-G.R. SP No. 47052, as well the Resolution[2] dated June 11, 2002 denying petitioners' Motion for Reconsideration thereof.

The facts are as follows:

Petitioners are owners of parcels of land with a total area of about 20,424 square meters, covered by Free Patent Nos. 7265, 7266, 7267, 7268, 7269, and 7270.[3] On November 8, 1995, the Sangguniang Bayan of the Municipality of Panay issued Resolution No. 95-29 authorizing the municipal government through the mayor to initiate expropriation proceedings.[4] A petition for expropriation was thereafter filed on April 14, 1997 by the Municipality of Panay (respondent) before the Regional Trial Court (RTC), Branch 18 of Roxas City, docketed as Civil Case No. V-6958.[5]

Petitioners filed a Motion to Dismiss alleging that the taking is not for public use but only for the benefit of certain individuals; that it is politically motivated because petitioners voted against the incumbent mayor and vice-mayor; and that some of the supposed beneficiaries of the land sought to be expropriated have not actually signed a petition asking for the property but their signatures were forged or they were misled into signing the same.[6]

On July 31, 1997, the trial court denied petitioners' Motion to Dismiss and declared that the expropriation in this case is for "public use" and the respondent has the lawful right to take the property upon payment of just compensation.[7]

Petitioners filed an Answer on August 12, 1997 reasserting the issues they raised in their Motion to Dismiss.[8]

On October 1, 1997, the trial court issued an Order appointing three persons as Commissioners to ascertain the amount of just compensation for the property.[9] Petitioners filed a "Motion to Hold in Abeyance the Hearing of the Court Appointed Commissioners to Determine Just Compensation and for Clarification of the Court's Order dated October 1, 1997" which was denied by the trial court on November 3, 1997.[10] Petitioners' Motion for Reconsideration was also denied on December 9, 1997.[11]

Petitioners then filed on March 2, 1998 a Petition for Certiorari before the CA claiming that they were denied due process when the trial court declared that the taking was for public purpose without receiving evidence on

petitioners' claim that the Mayor of Panay was motivated by politics in expropriating their property and in denying their Motion to Hold in Abeyance the Hearing of the Court Appointed Commissioners; and that the trial court also committed grave abuse of discretion when it disregarded the affidavits of persons denying that they signed a petition addressed to the municipal government of Panay.[12] On January 17, 2001, petitioners filed a Motion to Admit Attached Memorandum and the Memorandum itself where they argued that based on the Petition for Expropriation filed by respondent, such expropriation was based only on a resolution and not on an ordinance contrary to Sec. 19 of Republic Act (R.A.) No. 7160; there was also no valid and definite offer to buy the property as the price offered by respondent to the petitioners was very low.[13]

On March 20, 2002, the CA rendered its Decision dismissing the Petition for Certiorari. It held that the petitioners were not denied due process as they were able to file an answer to the complaint and were able to adduce their defenses therein; and that the purpose of the taking in this case constitutes "public use".[14] Petitioners filed a Motion for Reconsideration which was denied on June 11, 2002.[15]

Thus, the present petition claiming that:

> - RESPONDENT IS WITHOUT, LACKS AND DOES NOT HAVE THE LAWFUL POWER TO ACQUIRE ANY OR ALL OF THE SUBJECT PROPERTIES THROUGH EMINENT DOMAIN, IT BEING EXERCISED BY MEANS OF A MERE RESOLUTION, AND NOT THROUGH AN ORDINANCE AS REQUIRED BY LAW AND APPLICABLE JURISPRUDENCE;
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> - RESPONDENT IS LIKEWISE WITHOUT, LACKS AND DOES NOT HAVE THE LAWFUL POWER TO ACQUIRE ANY OR ALL OF THE SUBJECT PROPERTIES THROUGH EMINENT DOMAIN, ITS PREVIOUS OFFER TO BUY THEM BEING NOT VALID; and
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> - IT WAS A SERIOUS ERROR ON THE PART OF THE HONORABLE COURT OF APPEALS NOT TO DISCUSS, MUCH LESS RULE ON, BOTH IN ITS QUESTIONED DECISION AND ITS RESOLUTION PROMULGATED ON 11 JUNE 2002 PETITIONERS' ARGUMENTS THAT RESPONDENT IS WITHOUT, LACKS AND DOES NOT HAVE THE LAWFUL POWER TO ACQUIRE ANY OR ALL OF THE SUBJECT PROPERTIES THROUGH EMINENT DOMAIN, IT BEING EXERCISED BY MEANS OF A MERE RESOLUTION, AND NOT THROUGH AN ORDINANCE AS REQUIRED BY LAW AND APPLICABLE JURISPRUDENCE, AND ITS PREVIOUS OFFER TO BUY THEM BEING NOT VALID, DESPITE THE FACT THAT THESE OBJECTIONS WERE PROPERLY PLEADED IN PETITIONERS' MEMORANDUM WHICH WAS DULY ADMITTED IN ITS RESOLUTION PROMULGATED ON 29 JANUARY 2001; and
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> - PETITIONERS WERE UTTERLY DENIED PROCEDURAL DUE PROCESS OF LAW BY THE COURT A QUO, WHEN IT SIMPLY DECLARED IN ITS ORDER DATED 31 JULY 1997 THAT THE TAKING BY RESPONDENT OF PETITIONERS' PROPERTIES IS PURPORTEDLY FOR PUBLIC PURPOSE WITHOUT RECEIVING EVIDENCE ON THEIR ASSERTED CLAIM THAT RESPONDENT'S MUNICIPAL MAYOR WAS POLITICALLY MOTIVATED IN SEEKING THE EXPROPRIATION OF THEIR PROPERTIES AND NOT FOR PUBLIC PURPOSE.[16]

Petitioners argue that: contrary to Sec. 19 of R.A. No. 7160 of the Local Government Code, which provides that a local government may exercise the power of eminent domain only by "ordinance," respondent's expropriation in this case is based merely on a "resolution"; while objection on this ground was neither raised by petitioners in their Motion to Dismiss nor in their Answer, such objection may still be considered by this Court since the fact upon which it is based is apparent from the petition for expropriation itself; a defense may be favorably considered even if not raised in an appropriate pleading so long as the facts upon which it is based are undisputed; courts have also adopted a more censorious attitude in resolving questions involving the proper exercise of local bodies of the delegated power of expropriation, as compared to instances when it is directly exercised by the

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national legislature; respondent failed to give, prior to the petition for expropriation, a previous valid and definite offer to petitioners as the amount offered in this case was only P10.00 per square meter, when the properties are residential in nature and command a much higher price; the CA failed to discuss and rule upon the arguments raised by petitioners in their Memorandum; attached to the Motion to Dismiss were affidavits and death certificates showing that there were people whose names were in the supposed petition asking respondent for land, but who did not actually sign the same, thus showing that the present expropriation was not for a public purpose but was merely politically motivated; considering the conflicting claims regarding the purpose for which the properties are being expropriated and inasmuch as said issue may not be rightfully ruled upon merely on the basis of petitioners' Motion to Dismiss and Answer as well as respondent's Petition for Expropriation, what should have been done was for the RTC to conduct hearing where each party is given ample opportunity to prove its claim.[17]

Respondent for its part contends that its power to acquire private property for public use upon payment of just compensation was correctly upheld by the trial court; that the CA was correct in finding that the petitioners were not denied due process, even though no hearing was conducted in the trial court, as petitioners were still able to adduce their objections and defenses therein; and that petitioners' arguments have been passed upon by both the trial court and the CA and were all denied for lack of substantial merit.[18]

Respondent filed a Memorandum quoting at length the decision of the CA to support its position.[19] Petitioners meanwhile opted to have the case resolved based on the pleadings already filed.[20]

We find the petition to be impressed with merit.

Eminent domain, which is the power of a sovereign state to appropriate private property to particular uses to promote public welfare, is essentially lodged in the legislature.[21] While such power may be validly delegated to local government units (LGUs), other public entities and public utilities the exercise of such power by the delegated entities is not absolute.[22] In fact, the scope of delegated legislative power is narrower than that of the delegating authority and such entities may exercise the power to expropriate private property only when authorized by Congress and subject to its control and restraints imposed through the law conferring the power or in other legislations.[23] Indeed, LGUs by themselves have no inherent power of eminent domain.[24] Thus, strictly speaking, the power of eminent domain delegated to an LGU is in reality not eminent but "inferior" since it must conform to the limits imposed by the delegation and thus partakes only of a share in eminent domain.[25] The national legislature is still the principal of the LGUs and the latter cannot go against the principal's will or modify the same.[26]

The exercise of the power of eminent domain necessarily involves a derogation of a fundamental right.[27] It greatly affects a landowner's right to private property which is a constitutionally protected right necessary for the preservation and enhancement of personal dignity and is intimately connected with the rights to life and liberty.[28] Thus, whether such power is exercised directly by the State or by its authorized agents, the exercise of such power must undergo painstaking scrutiny.[29]

Indeed, despite the existence of legislative grant in favor of local governments, it is still the duty of the courts to determine whether the power of eminent domain is being exercised in accordance with the delegating law.

Sec. 19 of R.A. No. 7160, which delegates to LGUs the power of eminent domain expressly provides:

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

It is clear therefore that several requisites must concur before an LGU can exercise the power of eminent domain, to wit:

> - An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property.
>
> - The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless.
>
> - There is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws.
>
> - A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.[30]

The Court in no uncertain terms have pronounced that a local government unit cannot authorize an expropriation of private property through a mere resolution of its lawmaking body.[31] R.A. No. 7160 otherwise known as the Local Government Code expressly requires an ordinance for the purpose and a resolution that merely expresses the sentiment of the municipal council will not suffice.[32]

A resolution will not suffice for an LGU to be able to expropriate private property; and the reason for this is settled:

> x x x A municipal ordinance is different from a resolution. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature. Additionally, the two are enacted differently -- a third reading is necessary for an ordinance, but not for a resolution, unless decided otherwise by a majority of all the Sanggunian members.
>
> If Congress intended to allow LGUs to exercise eminent domain through a mere resolution, it would have simply adopted the language of the previous Local Government Code. But Congress did not. In a clear divergence from the previous Local Government Code, Sec. 19 of R.A. [No.] 7160 categorically requires that the local chief executive act pursuant to an ordinance. x x x[33]

As respondent's expropriation in this case was based merely on a resolution, such expropriation is clearly defective. While the Court is aware of the constitutional policy promoting local autonomy, the court cannot grant judicial sanction to an LGU's exercise of its delegated power of eminent domain in contravention of the very law giving it such power.[34]

The Court notes that petitioners failed to raise this point at the earliest opportunity. Still, we are not precluded from considering the same. This Court will not hesitate to consider matters even those raised for the first time on appeal in clearly meritorious situations,[35] such as in this case.

Thus, the Court finds it unnecessary to resolve the other issues raised by petitioners.

It is well to mention however that despite our ruling in this case respondent is not barred from instituting similar

proceedings in the future, provided that it complies with all legal requirements.[36]

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 47052 is REVERSED and SET ASIDE. The Complaint in Civil Action No. V-6958 is DISMISSED without prejudice.

No costs.

SO ORDERED.

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

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[1] Penned by Associate Justice Teodoro P. Regino and concurred in by Associate Justices Eugenio S. Labitoria and Rebecca De Guia-Salvador, rollo, pp. 139-145.

[2] Id. at 158-159.

[3] Id. at 140, CA Decision.

[4] Records, pp. 9-10.

[5] Id. at 1-7.

[6] Id. at 54-55.

[7] Id. at 75.

[8] Id. at 81-85.

[9] Id. at 92-93.

[10] Id. at 111-112, 120.

[11] Id. at 135.

[12] CA rollo, pp. 7,11.

[13] Id. at 136-138, 140-149.

[14] Rollo, pp. 142-145.

[15] Id. at 158-159.

[16] Id. at 17-18.

[17] Id. at 18-30.

[18] Id. at 174.

[19] Id. at 183-187.

[20] Id. at 203.

[21] Heirs of Suguitan v. City of Mandaluyong, 384 Phil. 676, 687 (2000); Municipality of Parañaque v. V.M. Realty Corporation, 354 Phil. 684, 691 (1998); see also Antonio v. Geronimo, G.R. No. 124779, November 29, 2005, 476 SCRA 340, 350.

[22] Heirs of Suguitan v. City of Mandaluyong, supra at 689; Municipality of Parañaque v. V.M. Realty

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Corporation, supra at 691; Lagcao v. Labra, G.R. No. 155746, October 13, 2004, 440 SCRA 279, 284.

[23] Heirs of Suguitan v. City of Mandaluyong, supra; Municipality of Paranaque v. V.M. Realty Corporation, supra at 691.

[24] Lagcao v. Labra, supra at 284.

[25] Municipality of Parañaque v. V.M. Realty Corporation, supra at 695.

[26] Id.

[27] Municipality of Parañaque v. V.M. Realty Corporation, supra at 694.

[28] Lagcao v. Labra, supra at 285.

[29] Id.; see also Heirs of Suguitan v. City of Mandaluyong, supra at 688.

[30] Antonio v. Geronimo, supra at 351; Municipality of Parañaque v. V.M. Realty Corporation, supra at 692.

[31] Municipality of Parañaque v. V.M. Realty Corporation, supra at 687; Heirs of Suguitan v. City of Mandaluyong, supra; Antonio v. Geronimo, supra at 352.

[32] Municipality of Parañaque v. V.M. Realty Corporation, supra at 687.

[33] Id. at 693-694.

[34] Heirs of Suguitan v. City of Mandaluyong, supra at 693.

[35] Villanueva v. Court of Appeals, G.R. No 143286, April 14, 2004, 427 SCRA 439, 448.

[36] Municipality of Parañaque v. V.M. Realty Corporation, supra at 697; Heirs of Suguitan v. City of Mandaluyong, supra at 693.

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