

**DIOSDADO LAGCAO, DOROTEO LAGCAO AND URSULA LAGCAO,
PETITIONERS, VS. JUDGE GENEROSA G. LABRA, BRANCH 23,
REGIONAL TRIAL COURT, CEBU, AND THE CITY OF CEBU,
RESPONDENT.**

G.R. No. 155746. October 13, 2004

Ponente: CORONA, J.

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CORONA, J.:

Before us is a petition for review of the decision dated July 1, 2002 of the Regional Trial Court, Branch 23, Cebu City[1] upholding the validity of the City of Cebu's Ordinance No. 1843, as well as the lower court's order dated August 26, 2002 denying petitioner's motion for reconsideration.

In 1964, the Province of Cebu donated 210 lots to the City of Cebu. One of these lots was Lot 1029, situated in Capitol Hills, Cebu City, with an area of 4,048 square meters. In 1965, petitioners purchased Lot 1029 on installment basis. But then, in late 1965, the 210 lots, including Lot 1029, reverted to the Province of Cebu.[2] Consequently, the province tried to annul the sale of Lot 1029 by the City of Cebu to the petitioners. This prompted the latter to sue the province for specific performance and damages in the then Court of First Instance.

On July 9, 1986, the court *a quo* ruled in favor of petitioners and ordered the Province of Cebu to execute the final deed of sale in favor of petitioners. On June 11, 1992, the Court of Appeals affirmed the decision of the trial court. Pursuant to the ruling of the appellate court, the Province of Cebu executed on June 17, 1994 a deed of absolute sale over Lot 1029 in favor of petitioners. Thereafter, Transfer Certificate of Title (TCT) No. 129306 was issued in the name of petitioners and Crispina Lagcao.[3]

After acquiring title, petitioners tried to take possession of the lot only to discover that it was already occupied by squatters. Thus, on June 15, 1997, petitioners instituted ejectment proceedings against the squatters. The Municipal Trial Court in Cities (MTCC), Branch 1, Cebu City, rendered a decision on April 1, 1998, ordering the squatters to vacate the lot. On appeal, the RTC affirmed the MTCC's decision and issued a writ of execution and order of demolition.

However, when the demolition order was about to be implemented, Cebu City Mayor Alvin Garcia wrote two letters[4] to the MTCC, requesting the deferment of the demolition on the ground that the City was still looking for a relocation site for the squatters. Acting on the mayor's request, the MTCC issued two orders suspending the demolition for a period of 120 days from February 22, 1999. Unfortunately for petitioners, during the suspension period, the Sangguniang Panlungsod (SP) of Cebu City passed a resolution which identified Lot 1029 as a socialized housing site pursuant to RA 7279.[5] Then, on June 30, 1999, the SP of Cebu City passed Ordinance No. 1772[6] which included Lot 1029 among the identified sites for socialized housing. On July, 19, 2000, Ordinance No. 1843[7] was enacted by the SP of Cebu City authorizing the mayor of Cebu City to initiate expropriation proceedings for the acquisition of Lot 1029 which was registered in the name of petitioners. The intended acquisition was to be used for the benefit of the homeless after its subdivision and sale to the actual

occupants thereof. For this purpose, the ordinance appropriated the amount of P6,881,600 for the payment of the subject lot. This ordinance was approved by Mayor Garcia on August 2, 2000.

On August 29, 2000, petitioners filed with the RTC an action for declaration of nullity of Ordinance No. 1843 for being unconstitutional. The trial court rendered its decision on July 1, 2002 dismissing the complaint filed by petitioners whose subsequent motion for reconsideration was likewise denied on August 26, 2002.

In this appeal, petitioners argue that Ordinance No. 1843 is unconstitutional as it sanctions the expropriation of their property for the purpose of selling it to the squatters, an endeavor contrary to the concept of “public use” contemplated in the Constitution.[8] They allege that it will benefit only a handful of people. The ordinance, according to petitioners, was obviously passed for politicking, the squatters undeniably being a big source of votes.

In sum, this Court is being asked to resolve whether or not the intended expropriation by the City of Cebu of a 4,048-square-meter parcel of land owned by petitioners contravenes the Constitution and applicable laws.

Under Section 48 of RA 7160,[9] otherwise known as the Local Government Code of 1991,[10] local legislative power shall be exercised by the Sangguniang Panlungsod of the city. The legislative acts of the Sangguniang Panlungsod in the exercise of its lawmaking authority are denominated ordinances.

Local government units have no inherent power of eminent domain and can exercise it only when expressly authorized by the legislature.[11] By virtue of RA 7160, Congress conferred upon local government units the power to expropriate. Ordinance No. 1843 was enacted pursuant to Section 19 of RA 7160:

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 xxx. (*italics supplied*).

Ordinance No. 1843 which authorized the expropriation of petitioners’ lot was enacted by the SP of Cebu City to provide socialized housing for the homeless and low-income residents of the City.

However, while we recognize that housing is one of the most serious social problems of the country, local government units do not possess unbridled authority to exercise their power of eminent domain in seeking solutions to this problem.

There are two legal provisions which limit the exercise of this power: (1) no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws;[12] and (2) private property shall not be taken for public use without just compensation.[13] Thus, the exercise by local government units of the power of eminent domain is not absolute. In fact, Section 19 of RA 7160 itself explicitly states that such exercise must comply with the provisions of the Constitution and pertinent laws.

The exercise of the power of eminent domain drastically affects a landowner’s right to private property, which is as much a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty.[14] Whether directly exercised by the State or by its authorized agents, the exercise of eminent domain is necessarily in derogation of private rights.[15] For this reason, the need for a painstaking scrutiny cannot be overemphasized.

The due process clause cannot be trampled upon each time an ordinance orders the expropriation of a private individual’s property. The courts cannot even adopt a hands-off policy simply because public use or public

purpose is invoked by an ordinance, or just compensation has been fixed and determined. In *De Knecht vs. Bautista*,^[16] we said:

It is obvious then that a land-owner is covered by the mantle of protection due process affords. It is a mandate of reason. It frowns on arbitrariness, it is the antithesis of any governmental act that smacks of whim or caprice. It negates state power to act in an oppressive manner. It is, as had been stressed so often, the embodiment of the sporting idea of fair play. In that sense, it stands as a guaranty of justice. That is the standard that must be met by any governmental agency in the exercise of whatever competence is entrusted to it. As was so emphatically stressed by the present Chief Justice, "Acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity. xxx.

The foundation of the right to exercise eminent domain is genuine necessity and that necessity must be of public character.^[17] Government may not capriciously or arbitrarily choose which private property should be expropriated. In this case, there was no showing at all why petitioners' property was singled out for expropriation by the city ordinance or what necessity impelled the particular choice or selection. Ordinance No. 1843 stated no reason for the choice of petitioners' property as the site of a socialized housing project.

Condemnation of private lands in an irrational or piecemeal fashion or the random expropriation of small lots to accommodate no more than a few tenants or squatters is certainly not the condemnation for public use contemplated by the Constitution. This is depriving a citizen of his property for the convenience of a few without perceptible benefit to the public.^[18]

RA 7279 is the law that governs the local expropriation of property for purposes of urban land reform and housing. Sections 9 and 10 thereof provide:

SEC 9. Priorities in the Acquisition of Land. – Lands for socialized housing shall be acquired in the following order:

(a)

Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;

(b)

Alienable lands of the public domain;

(c)

Unregistered or abandoned and idle lands;

(d)

Those within the declared Areas or Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;

(e)

Bagong Lipunan Improvement of Sites and Services or BLISS which have not yet been acquired; and

(f)

Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site

development of government lands. (Emphasis supplied).

SEC. 10. Modes of Land Acquisition. The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint venture agreement, negotiated purchase, and expropriation: Provided, however, That expropriation shall be resorted to only when other modes of acquisition have been exhausted: Provided further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act: xxx. (Emphasis supplied).

In the recent case of *Estate of Heirs of the Late Ex-Justice Jose B.L. Reyes et al. vs. City of Manila*,^[19] we ruled that the above-quoted provisions are strict limitations on the exercise of the power of eminent domain by local government units, especially with respect to (1) the order of priority in acquiring land for socialized housing and (2) the resort to expropriation proceedings as a means to acquiring it. Private lands rank last in the order of priority for purposes of socialized housing. In the same vein, expropriation proceedings may be resorted to only after the other modes of acquisition are exhausted. Compliance with these conditions is mandatory because these are the only safeguards of oftentimes helpless owners of private property against what may be a tyrannical violation of due process when their property is forcibly taken from them allegedly for public use.

We have found nothing in the records indicating that the City of Cebu complied strictly with Sections 9 and 10 of RA 7279. Ordinance No. 1843 sought to expropriate petitioners' property without any attempt to first acquire the lands listed in (a) to (e) of Section 9 of RA 7279. Likewise, Cebu City failed to establish that the other modes of acquisition in Section 10 of RA 7279 were first exhausted. Moreover, prior to the passage of Ordinance No. 1843, there was no evidence of a valid and definite offer to buy petitioners' property as required by Section 19 of RA 7160.^[20] We therefore find Ordinance No. 1843 to be constitutionally infirm for being violative of the petitioners' right to due process.

It should also be noted that, as early as 1998, petitioners had already obtained a favorable judgment of eviction against the illegal occupants of their property. The judgment in this ejectment case had, in fact, already attained finality, with a writ of execution and an order of demolition. But Mayor Garcia requested the trial court to suspend the demolition on the pretext that the City was still searching for a relocation site for the squatters. However, instead of looking for a relocation site during the suspension period, the city council suddenly enacted Ordinance No. 1843 for the expropriation of petitioners' lot. It was trickery and bad faith, pure and simple. The unconscionable manner in which the questioned ordinance was passed clearly indicated that respondent City transgressed the Constitution, RA 7160 and RA 7279.

For an ordinance to be valid, it must not only be within the corporate powers of the city or municipality to enact but must also be passed according to the procedure prescribed by law. It must be in accordance with certain well-established basic principles of a substantive nature. These principles require that an ordinance (1) must not contravene the Constitution or any statute (2) must not be unfair or oppressive (3) must not be partial or discriminatory (4) must not prohibit but may regulate trade (5) must be general and consistent with public policy, and (6) must not be unreasonable.^[21]

Ordinance No. 1843 failed to comply with the foregoing substantive requirements. A clear case of constitutional infirmity having been thus established, this Court is constrained to nullify the subject ordinance. We recapitulate:

first, as earlier discussed, the questioned ordinance is repugnant to the pertinent provisions of the Constitution, RA 7279 and RA 7160;

second, the precipitate manner in which it was enacted was plain oppression masquerading as a pro-poor ordinance;

third, the fact that petitioners' small property was singled out for expropriation for the purpose of awarding it to no more than a few squatters indicated manifest partiality against petitioners, and

fourth, the ordinance failed to show that there was a reasonable relation between the end sought and the means adopted. While the objective of the City of Cebu was to provide adequate housing to slum dwellers, the means it employed in pursuit of such objective fell short of what was legal, sensible and called for by the circumstances.

Indeed, experience has shown that the disregard of basic liberties and the use of short-sighted methods in expropriation proceedings have not achieved the desired results. Over the years, the government has tried to remedy the worsening squatter problem. Far from solving it, however, government's kid-glove approach has only resulted in the multiplication and proliferation of squatter colonies and blighted areas. A pro-poor program that is well-studied, adequately funded, genuinely sincere and truly respectful of everyone's basic rights is what this problem calls for, not the improvident enactment of politics-based ordinances targeting small private lots in no rational fashion.

WHEREFORE, the petition is hereby GRANTED. The July 1, 2002 decision of Branch 23 of the Regional Trial Court of Cebu City is REVERSED and SET ASIDE.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.
Carpio-Morales, Azcuna, and Chico-Nazario, JJ., on leave.

[1] Presided by Judge Generosa G. Labra.

[2] The records of the case do not state why and how the lots reverted to the Province of Cebu.

[3] Now deceased.

[4] Dated February 22, 1999 and May 20, 1999.

[5] The Urban Development and Housing Act of 1992 (Lina Law).

[6] Entitled, "AN ORDINANCE FURTHER AMENDING ORDINANCE NO. 1656 AS AMENDED BY ORDINANCE NO. 1684 OTHERWISE KNOWN AS THE 1966 REVISED ZONING ORDINANCE OF THE CITY OF CEBU, BY INCORPORATING THEREIN A NEW DISTRICT CALLED SOCIALIZED HOUSING SITES."

[7] Entitled "AN ORDINANCE AUTHORIZING THE CITY MAYOR OF CEBU CITY TO INSTITUTE EXPROPRIATION PROCEEDINGS AGAINST MRS. CRISPINA VDA. DE LAGCAO, OWNER OF LOT NO. 1029 LOCATED AT GREEN VALLEY, CAPITOL SITE, CEBU CITY, TO ACQUIRE THE SAME FOR PUBLIC USE OR PURPOSE."

[8] Article IV, Section 9 – "Private property shall not be taken for public use without just compensation."

[9] Section 48. Local Legislative Power – Local legislative power shall be exercised by the sangguniang panlalawigan for the province; the sangguniang panlungsod for the city; the sangguniang bayan for the municipality; and the sangguniang barangay for the barangay.

[10] The law was approved on October 10, 1991 and it became effective on January 1, 1992.

- [11] *City of Cincinnati vs. Vester*, 281 US 439, 74 L. ed 950, 50 S Ct. 360.
- [12] Article 3, Section 1, 1987 Constitution.
- [13] Article 3, Section 9, 1987 Constitution.
- [14] Joaquin G. Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, vol. 1. p. 43, 1987.
- [15] *City of Manila vs. Chinese Community of Manila*, 40 Phil. 349, 1919.
- [16] G.R. No. L-51078, 30 October 1980, 100 SCRA 660.
- [17] *City of Manila vs. Chinese Community of Manila*, *supra*.
- [18] *Urban Estates, Inc. vs. Montesa*, 88 Phil. 348 (1951).
- [19] G.R. Nos. 132431 and 137146, February 13, 2004.
- [20] Sec 19. Eminent Domain – “xxx. 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: xxx.”
- [21] *Tatel vs. Municipality of Virac*, G.R. No. 40243, 11 March 1992, 207 SCRA 157.

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