

REPUBLIC OF THE PHILIPPINES THROUGH THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, PETITIONER, VS. COURT OF APPEALS AND ROSARIO RODRIGUEZ REYES, RESPONDENTS.

G.R. No. 160379. August 14, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 15 November 2002 and Resolution dated 17 September 2003 in CA-G.R. CV No. 50358. The Court of Appeals affirmed with modifications the Amended Decision of the Regional Trial Court of Cagayan de Oro City, Branch 19 (RTC).

The Antecedent Facts

Private respondent Rosario Rodriguez Reyes is the absolute owner of a parcel of land identified as Lot 849-B and covered by TCT No. T-7194. The 1,043-square meter lot is situated on Claro M. Recto and Osmeña Streets, Cagayan de Oro City.

On 6 November 1990, private respondent received a letter from petitioner Republic of the Philippines, through the Department of Public Works and Highways (DPWH), requesting permission to enter into a portion of private respondent's lot consisting of 663 square meters, and to begin construction of the Osmeña Street extension road. On 20 December 1990, petitioner took possession of private respondent's property without initiating expropriation proceedings. Consequently, on 4 and 7 January 1991, private respondent sent letters to the DPWH stating her objection to the taking of her property. On 16 May 1991, private respondent sent a letter to the City Appraisal Committee (CAC) rejecting the latter's appraisal of the subject property, to wit:[3]

Declared Owner

Tax Declaration No.

Market Value 1981 Schedule

Recommended Appraised Value

Description

Rosario Reyes

90066

P400/sq.m.

P4,000/sq.m.

1 to 20 meters from Claro M. Recto Super Highway

P3,200/sq.m.

21 to 40 meters from Claro M. Recto Super Highway

P2,400/sq.m.

41 to 60 meters from Claro M. Recto Super Highway

In the same letter, private respondent requested the City Assessor for a reappraisal of her property, but said request was denied.[4]

On 17 March 1992, private respondent filed with the Regional Trial Court (RTC) of Cagayan de Oro City a complaint claiming just compensation and damages against petitioner.

On 30 June 1993, the RTC appointed three commissioners[5] to determine the subject property's fair market value, as well as the consequential benefits and damages of its expropriation. On 15 September 1993, one of the three commissioners, Provincial Assessor Corazon Beltran, submitted to the RTC a separate report, the dispositive portion of which reads:

WHEREFORE, the undersigned deems it only to be just, fair and reasonable to adopt the market value of FOUR THOUSAND PESOS (P4,000.00) per square meter as the highest price obtaining and prevailing in 1990, the time of the taking of the property subject of the above entitled case, and fairly reasonable also to impose an additional value equivalent to 5% of the market value as fixed for severance fee.[6]

On 13 April 1994, the scheduled hearing was reset to 19 May 1994, to give private respondent (plaintiff) time to consider the offer of petitioner (defendant) to amicably settle the case and to accept the just compensation of P3,200 per square meter, or a total of P2,212,600, for the 663-square meter portion of private respondent's lot.[7]

On 16 May 1994, private respondent filed with the RTC an "Urgent Motion to Deposit The Amount of P2,121,600 in Court," alleging that petitioner's counsel previously manifested in open court that the amount of P2,121,600 was ready for release should the amount be acceptable to private respondent, and praying that said amount of P2,121,600 be deposited by petitioner with the trial court.[8] The RTC granted the motion in an Order dated 16 June 1994.[9] However, it was only on 21 October 1994 that petitioner deposited with the RTC Clerk of Court a Landbank check amounting to P2,121,600 as just compensation.[10]

On 16 June 1994, the RTC ordered the commissioners to submit their report as soon as possible, but until the scheduled hearing on 15 July 1994, the commissioners still failed to submit their report. Upon motion of private respondent, the RTC issued an order appointing a new set of commissioners.[11]

On 11 October 1994, the new commissioners submitted their report, the pertinent portions of which provide, thus:

COMMISSIONERS' REPORT

x x x

The property litigated upon is strategically located along Recto Avenue (National Highway) which is a commercial district. Fronting it across the national highway is the Cagayan Coca Cola Plant and the Shell Gasoline Station. It adjoins an establishment known as the Palana Grocery Store and after it is the Northern Mindanao Development Bank. Three Hundred (300) meters to the west of plaintiff's property is the gigantic structure of the Gaisano City department store along Recto Avenue and Corrales Avenue Extension. Towards the eastern direction of the property are banking institution buildings and the Ororama Superstore along the national highway (Recto Avenue) and the Limketkai Commercial Complex.

For purpose of affording a fair assessment of the market value of plaintiff's property, the herein Commissioners have divided the whole parcel of land into three parts, viz:

- Front portion along Recto Avenue measuring 21.52 meters from south to north ----- 347.66 SQM
- Middle portion with a measurement of 21.52 meters ----- 347.66 SQM
- Rear/back portion with a measurement of 21.52 meters ----- 347.66 SQM

TOTAL AREA: ----- 1,043 SQM

Taking into consideration, among others, the location of the property and a research of the prevailing prices of lots proximate to and/or near the vicinity of plaintiff's property, the undersigned Commissioners respectfully recommend to the Honorable Court the following valuation, to wit:

(CURRENT VALUE)

- Front portion along Recto Avenue with a measurement of 21.52 meters from south to north with an area of 347.66 square meters at P18,000.00 to P20,000.00 per square meter;
- Middle portion with a measurement of 21.52 meters containing an area of 347.66 square meters at P16,000.00 to P18,000.00 per square meter;
- Rear/back portion measuring 21.52 meters with an area of 347.66 square meters at P14,000.00 to P16,000.00 per square meter;

VALUATION AS OF 1990

- Front Portion - P10,000.00 to P12,000.00 per square meter;
- Middle Portion- P8,000.00 to P10,000.00 per square meter;
- Rear Portion - P6,000.00 to P8,000.00 per square meter;

The undersigned Commissioners would however like to bring to the attention of the Honorable Court that in the subdivision plan prepared by the City Engineer's Office, the whole of plaintiff's property was subdivided into three (3) lots designated as follows:

Lot 849-B-1 (Road Lot)-83 square meters;

Lot 849-B-2 (Road Lot traversed by the RCDP Osmeña Extension Street)-663 SQM;

Lot 849-B-3 remaining portion with an area of 297 square meters;

In effect, what has been taken over and used by the defendant is not only 663 square meters but 746 square meters, more or less, which includes Lot No. 849-B-1.

On the other hand, the remaining portion left to the plaintiff, Lot No. 849-B-3 will not actually be 297 square meters. If we deduct the setback area from Osmeña Extension Street, the usable/buildable area left to the plaintiff would only be a little over 50 square meters. This portion would not command a good price if sold. Neither is it ideal for purposes of any building construction because aside from its being a very small strip of land, the shape is triangular.[12]

The Trial Court's Ruling

On 2 June 1995, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the

former as having the right to retain 590 square meters of the property covered by TCT No. T-7194, and ordering the latter to return 210 square meters of the 663 square meters taken; that defendants are solidarily liable to pay the sum of P5,526,000.00, the fair market value of 1990 (sic), as just compensation for the 536 square meters taken for the Osmeña street extension; to pay P185,000.00 representing damages for 37 months computed at the rate of P5,000.00 per month from the filing of this case; and Attorney's fees of P10,000.00 plus costs of suit.

Plaintiff herein is ordered to forthwith defray the expenses to be incurred in undertaking the road construction of the 210 square meters which the defendants will later on provide along the right portion of her property.

SO ORDERED.[13]

On 15 June 1995, the RTC rendered an Amended Decision with the following dispositive portion, thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the former as having the right to retain 590 square meters of the property covered by TCT No. T-7194, and ordering the latter to return 293 square meters of the 746 square meters taken; that defendants are solidarily liable to pay the sum of P4,696,000.00, the fair market value of 1990 (sic), as just compensation for the 453 square meters taken for the Osmeña Street extension; to pay P185,000.00 representing damages for 37 months computed at the rate of P5,000.00 per month from the filing of this case; and Attorney's fees of P10,000.00 plus costs of suit.

Plaintiff herein is ordered to forthwith defray the expenses to be incurred in undertaking the road construction of the 293 square meters which the defendants will later on provide along the right portion of her property.

SO ORDERED.[14]

The Court of Appeals' Ruling

On appeal by petitioner, the Court of Appeals rendered judgment,[15] affirming with modifications the decision of the RTC. The Court of Appeals found that the commissioners' recommendations on just compensation were not supported by valid documents. Also, it was unclear in the RTC decision whether the trial court merely adopted the commissioners' recommendations or the court made its own independent valuation of the subject property. Thus, the Court of Appeals held that a reconvening of the commissioners or an appointment of new commissioners to determine just compensation was necessary. The appellate court further held that the trial court's order for petitioner's return of the 293-square meter lot had no legal basis and was no longer feasible since the lot was already part of the completed Sergio Osmeña extension road. Moreover, consequential damages should be awarded in lieu of actual damages for private respondent's alleged loss of income from the remaining 297-square meter lot. We quote the dispositive portion of the Court of Appeals' decision below.

WHEREFORE, the appealed judgment is hereby MODIFIED.

- The case is REMANDED to the trial court which is ordered to reconvene the commissioners or appoint new commissioners to determine, in accordance with this Decision, the amount of just compensation due to plaintiff-appellee Rosario Rodriguez Reyes for the 746 square meters of land taken from her and consequential damages to the 297-square meter portion left.

- Defendant-appellant DWP[16] is ordered to pay plaintiff-appellee the following amounts:

- a. the balance, if any, of just compensation to be finally determined after deducting the amount of P2,161,600.00[17] DPWH previously advanced and deposited with the trial court;
- b. 6% legal interest per annum on the amount it provisionally deposited from the time of taking up to the time it is deposited with the trial court on October 21, 1994; and on the balance, if any, from the time of taking on

December 20, 1990 until fully paid;

c. attorney's fees of P20,000.00.

- Defendant-appellant City Government of Cagayan de Oro is relieved from any liability;

- The award of P185,000.00 as actual damages is deleted;

- No pronouncement as to costs.

SO ORDERED.[18]

Petitioner filed a Motion for Reconsideration, but this was denied by the Court of Appeals in its Resolution of 17 September 2003.[19]

Hence, this appeal.

The Issues

Petitioner raises the following issues:

- Whether the Court of Appeals erred in ordering the remand of the case to the trial court, to order the reconvening of the commissioners or appointment of new commissioners to determine the consequential damages for the remaining 297- square meter lot; and

- Whether the Court of Appeals erred in ordering petitioner to pay attorney's fees.

The Court's Ruling

We find the appeal unmeritorious.

On whether the Court of Appeals erred in ordering the remand of the case to the trial court to order the reconvening of the commissioners or appointment of new commissioners to determine the consequential damages for the remaining 297-square meter lot

Eminent domain is the authority and right of the State, as sovereign, to take private property for public use upon observance of due process of law and payment of just compensation.[20] The Constitution provides that, "[p]rivate property shall not be taken for public use without just compensation."[21]

Just compensation is the full and fair equivalent of the property sought to be expropriated.[22] Among the factors to be considered in arriving at the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon.[23] The measure is not the taker's gain but the owner's loss.[24] To be just, the compensation must be fair not only to the owner but also to the taker.[25]

Just compensation is based on the price or value of the property at the time it was taken from the owner and appropriated by the government.[26] However, if the government takes possession before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint. The value at the time of the filing of the complaint should be the basis for the determination of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings.[27]

The procedure for determining just compensation is set forth in Rule 67 of the 1997 Rules of Civil Procedure.

Section 5 of Rule 67 partly states that "[u]pon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken." However, we held in *Republic v. Court of Appeals*[28] that Rule 67 presupposes a prior filing of complaint for eminent domain with the appropriate court by the expropriator. If no such complaint is filed, the expropriator is considered to have violated procedural requirements, and hence, waived the usual procedure prescribed in Rule 67, including the appointment of commissioners to ascertain just compensation.[29] In *National Power Corporation v. Court of Appeals*,[30] we clarified that when there is no action for expropriation and the case involves only a complaint for damages or just compensation, the provisions of the Rules of Court on ascertainment of just compensation (i.e., provisions of Rule 67) are no longer applicable, and a trial before commissioners is dispensable, thus:

In this case, NPC appropriated Pobre's Property without resort to expropriation proceedings. NPC dismissed its own complaint for the second expropriation. At no point did NPC institute expropriation proceedings for the lots outside the 5,554 square-meter portion subject of the second expropriation. The only issues that the trial court had to settle were the amount of just compensation and damages that NPC had to pay Pobre.

This case ceased to be an action for expropriation when NPC dismissed its complaint for expropriation. Since this case has been reduced to a simple case of recovery of damages, the provisions of the Rules of Court on the ascertainment of the just compensation to be paid were no longer applicable. A trial before commissioners, for instance, was dispensable.[31]

In this case, petitioner took possession of the subject property without initiating expropriation proceedings. Consequently, private respondent filed the instant case for just compensation and damages. To determine just compensation, the trial court appointed three commissioners pursuant to Section 5 of Rule 67 of the 1997 Rules of Civil Procedure. None of the parties objected to such appointment.

The trial court's appointment of commissioners in this particular case is not improper. The appointment was done mainly to aid the trial court in determining just compensation, and it was not opposed by the parties. Besides, the trial court is not bound by the commissioners' recommended valuation of the subject property. The court has the discretion on whether to adopt the commissioners' valuation or to substitute its own estimate of the value as gathered from the records.[32]

However, we agree with the appellate court that the trial court's decision is not clear as to its basis for ascertaining just compensation. The trial court mentioned in its decision the valuations in the reports of the City Appraisal Committee and of the commissioners appointed pursuant to Rule 67. But whether the trial court considered these valuations in arriving at the just compensation, or the court made its own independent valuation based on the records, was obscure in the decision. The trial court simply gave the total amount of just compensation due to the property owner without laying down its basis. Thus, there is no way to determine whether the adjudged just compensation is based on competent evidence. For this reason alone, a remand of the case to the trial court for proper determination of just compensation is in order. In *National Power Corporation v. Bongbong*,[33] we held that although the determination of just compensation lies within the trial court's discretion, it should not be done arbitrarily or capriciously. The decision of the trial court must be based on all established rules, correct legal principles, and competent evidence.[34] The court is proscribed from basing its judgment on speculations and surmises.[35]

Petitioner questions the appellate court's decision to remand the case to determine the consequential damages for the remaining 297-square meter lot of private respondent. Petitioner contends that no consequential damages may be awarded as the remaining lot was "not actually taken" by the DPWH, and to award consequential damages for the lot which was retained by the owner is tantamount to unjust enrichment on the part of the latter.

Petitioner's contention is unmeritorious.

No actual taking of the remaining portion of the real property is necessary to grant consequential damages. If as a result of the expropriation made by petitioner, the remaining lot (i.e., the 297-square meter lot) of private respondent suffers from an impairment or decrease in value, consequential damages may be awarded to private respondent. On the other hand, if the expropriation results to benefits to the remaining lot of private respondent, these consequential benefits[36] may be deducted from the awarded consequential damages, if any, or from the market value of the expropriated property. We held in *B.H. Berkenkotter & Co. v. Court of Appeals*[37] that:

To determine just compensation, the trial court should first ascertain the market value of the property, to which should be added the consequential damages after deducting therefrom the consequential benefits which may arise from the expropriation. If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the property should be paid in every case.

Section 6 of Rule 67 of the Rules of Civil Procedure provides:

x x x The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.

An award of consequential damages for property not taken is not tantamount to unjust enrichment of the property owner. There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." [38] Article 22 of the Civil Code provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage. [39] There is no unjust enrichment when the person who will benefit has a valid claim to such benefit. [40]

As stated, consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value. Thus, there is a valid basis for the grant of consequential damages to the property owner, and no unjust enrichment can result therefrom.

On whether the Court of Appeals erred in ordering petitioner to pay attorney's fees.

The Court of Appeals did not err in granting attorney's fees to private respondent. Article 2208(2) of the New Civil Code provides that attorney's fees may be awarded:

x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.

x x x

Attorney's fees may be awarded by a court if one who claims it is compelled to litigate with third persons or to incur expenses to protect one's interest by reason of an unjustified act or omission on the part of the party from

whom it is sought.[41] In this case, petitioner took possession of private respondent's real property without initiating expropriation proceedings, and over the latter's objection. As a result, private respondent was compelled to litigate and incur expenses to protect her interests over her property. Thus, the appellate court's award of attorney's fees is proper, viz:

We find, however, the award of attorney's fees in plaintiff-appellee's favor justified. x x x It is admitted that defendant-appellant DPWH neglected to file the appropriate expropriation proceedings before taking over plaintiff-appellee's land. That their road contractor no longer has any portion to work on except on plaintiff-appellee's property is no justification for the precipitate taking of her lot. It is incumbent upon defendant-appellant DPWH to foresee whether private lands will be affected by their project and to file appropriate expropriation proceedings if necessary. They did not do so. Thus, plaintiff-appellee was constrained to institute the instant suit to protect her rights.[42]

WHEREFORE, we DENY the petition. We AFFIRM the Court of Appeals' Decision dated 15 November 2002 and Resolution dated 17 September 2003 in CA-G.R. CV No. 50358.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Ruben T. Reyes with Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam, concurring.

[3] Rollo, p. 14; records, pp. 204-206.

[4] Letter dated 19 June 1991, signed by City Assessor Myrna R. Pimentel. Records, p. 207.

[5] The three Commissioners were the City Assessor, the City Registrar of Deeds of Cagayan de Oro, and Mrs. Cecilia Roa (id. at 160). The City Assessor, who was also the CAC Chairman, was later replaced by Provincial Assessor Corazon Beltran (id. at 178-179; rollo, p. 140).

[6] Rollo, p. 71.

[7] Id. at 72.

[8] Id. at 73.

[9] Records, p. 296.

[10] Rollo, p. 20.

[11] The new commissioners were (1) Atty. Avelino Pakino, the Registrar of Deeds of Cagayan de Oro, (2) Ms. Cecilia Roa (reappointed), and (3) Mr. Norberto Cosadio, the Provincial Assessor. Records, p. 304.

[12] Rollo, pp. 79-81.

[13] CA rollo, pp. 109-110.

[14] Id. at 111-112.

[15] Promulgated on 15 November 2002.

[16] This should be "DPWH."

[17] This should be P2,121,600 in accordance with the RTC Order of 16 June 1994. Supra notes 9 and 10.

[18] Rollo, p. 54.

[19] Id. at 55.

[20] National Power Corporation v. Court of Appeals, 479 Phil. 850, 860 (2004), citing Visayan Refining Co. v. Camus, 40 Phil. 550 (1919).

[21] Article III, Section 9 of the 1987 Philippine Constitution.

[22] B.H. Berkenkotter & Co. v. Court of Appeals, G.R. No. 89980, 14 December 1992, 216 SCRA 584, 586.

[23] Id. at 587, citing Cruz, Constitutional Law, 1991 ed., p. 74.

[24] Id. at 586.

[25] Id.

[26] National Power Corporation v. Court of Appeals, 214 Phil. 583, 590 (1984), citing Alfonso v. Pasay City, 106 Phil. 1017 (1960).

[27] Municipality of La Carlota v. Spouses Gan, 150-A Phil. 588, 594 (1972).

[28] G.R. No. 147245, 31 March 2005, 454 SCRA 516, 530.

[29] Id. at 531.

[30] Supra note 20.

[31] Id. at 867.

[32] Republic of the Philippines v. Santos, 225 Phil. 29, 35 (1986), citing Manila Railroad Company v. Velasquez, 32 Phil. 286 (1915).

Section 8 of Rule 67 of the 1997 Rules of Civil Procedure provides that, "the court may x x x accept the report and render judgment in accordance therewith; or, for cause shown, it may recommit the same to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken."

[33] G.R. No. 164079, 3 April 2007, 520 SCRA 290, 304.

[34] Manansan v. Republic, G.R. No. 140091, 10 August 2006, 498 SCRA 348, 363, citing Manila Railway Company v. Fabie, 17 Phil. 206, 209 (1910).

[35] Id.

[36] The consequential benefits that shall be deducted refer to the actual benefits derived by the owner on the remaining portion of his land which are the direct and proximate results of the improvements consequent to the expropriation, and not the general benefits which he receives in common with the community. (Regalado, Remedial Law Compendium, Vol. 1, p. 746)

[37] Supra note 22.

[38] Benguet Corporation v. Department of Environment and Natural Resources-Mines Adjudication Board, G.R.

No. 163101, 13 February 2008, 545 SCRA 196, citing *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, 23 January 2006, 479 SCRA 404, 412.

[39] *Id.*

[40] *Id.* at 413.

[41] *Industrial Insurance Company, Inc. v. Bondad*, 386 Phil. 923, 932 (2000).

[42] *Rollo*, p. 53.

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