REPUBLIC OF THE PHILIPPINES (DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS), PETITIONER, VS. ISMAEL ANDAYA, RESPONDENT.

G.R. NO. 160656. June 15, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review of the Decision[1] dated October 30, 2003 of the Court of Appeals in CA-G.R. CV No. 65066 affirming with modification the Decision[2] of the Regional Trial Court of Butuan City, Branch 33 in Civil Case No. 4378, for enforcement of easement of right-of-way (or eminent domain).

Respondent Ismael Andaya is the registered owner of two parcels of land in Bading, Butuan City. His ownership is evidenced by Transfer Certificates of Title Nos. RT-10225 and RT-10646. These properties are subject to a 60-meter wide perpetual easement for public highways, irrigation ditches, aqueducts, and other similar works of the government or public enterprise, at no cost to the government, except only the value of the improvements existing thereon that may be affected.

Petitioner Republic of the Philippines (Republic) negotiated with Andaya to enforce the 60-meter easement of right-of-way. The easement was for concrete levees and floodwalls for Phase 1, Stage 1 of the Lower Agusan Development Project. The parties, however, failed to reach an agreement.

On December 13, 1995, the Republic instituted an action before the Regional Trial Court of Butuan City to enforce the easement of right-of-way or eminent domain. The trial court issued a writ of possession on April 26, 1996.[3] It also constituted a Board of Commissioners (Board) to determine the just compensation. Eventually, the trial court issued an Order of Expropriation upon payment of just compensation.[4] Later, the Board reported that there was a discrepancy in the description of the property sought to be expropriated. The Republic thus amended its complaint, reducing the 60-meter easement to 10 meters, or an equivalent of 701 square meters.

On December 10, 1998, the Board reported that the project would affect a total of 10,380 square meters of Andaya's properties, 4,443 square meters of which will be for the 60-meter easement. The Board also reported that the easement would diminish the value of the remaining 5,937 square meters. As a result, it recommended the payment of consequential damages amounting to P2,820,430 for the remaining area.[5]

Andaya objected to the report because although the Republic reduced the easement to 10 meters or an equivalent of 701 square meters, the Board still granted it 4,443 square meters. He contended that the consequential damages should be based on the remaining area of 9,679 square meters. Thus, the just compensation should be P11,373,405. The Republic did not file any comment, opposition, nor objection.

After considering the Board's report, the trial court decreed on April 29, 1999, as follows:

> WHEREFORE, in the light of the foregoing, the Court decides as follows:
>
> a)

That the plaintiff is legally entitled to its inherent right of expropriation to, viz.: 1) the lot now known as lot 3291-B-1-A, portion of lot 3291-B-1, (LRC) Psd-255693, covered by TCT No. RT-10225, with an area of 288 sq. m.; and 2) the lot now known as lot 3293-F-5-B-1, portion of lot 3293-F-5-B (LRC) Psd-230236, covered by TCT No. RT-10646, with an area of 413 sq. m., both of the Butuan City Registry of Deeds, it being shown that it is for public use and purpose --- free of charge by reason of the statutory lien of easement of right-of-way imposed on defendant's titles;

b)

That however, the plaintiff is obligated to pay defendant the sum of TWO MILLION EIGHT HUNDRED TWENTY THOUSAND FOUR HUNDRED THIRTY (P2,820,430.00) PESOS as fair and reasonable severance damages;

c)

To pay members of the Board of Commissioners, thus: for the chairman --- TWENTY THOUSAND (P20,000.00) PESOS and the two (2) members at FIFTEEN THOUSAND (P15,000.00) PESOS each;

d)

To pay defendant's counsel FIFTY THOUSAND (P50,000.00) PESOS as Attorney's fees; and finally,

e)

That the Registry of Deeds of Butuan City is also directed to effect the issuance of Transfer Certificate of Titles for the aforementioned two (2) lots in the name of the Republic of the Philippines, following the technical description as appearing in pages 6, 7, and 8 of the Commissioner's Report.

NO COSTS.

IT IS SO ORDERED.[6]

Both parties appealed to the Court of Appeals. The Republic contested the awards of severance damages and attorney's fees while Andaya demanded just compensation for his entire property minus the easement. Andaya alleged that the easement would prevent ingress and egress to his property and turn it into a catch basin for the floodwaters coming from the Agusan River. As a result, his entire property would be rendered unusable and uninhabitable. He thus demanded P11,373,405 as just compensation based on the total compensable area of 9,679 square meters.

The Court of Appeals modified the trial court's decision by imposing a 6% interest on the consequential damages from the date of the writ of possession or the actual taking, and by deleting the attorney's fees.

Hence, the instant petition. Simply put, the sole issue for resolution may be stated thus: Is the Republic liable for just compensation if in enforcing the legal easement of right-of-way on a property, the remaining area would be rendered unusable and uninhabitable?

It is undisputed that there is a legal easement of right-of-way in favor of the Republic. Andaya's transfer certificates of title[7] contained the reservation that the lands covered thereby are subject to the provisions of the Land Registration Act[8] and the Public Land Act.[9] Section 112[10] of the Public Land Act provides that lands granted by patent shall be subject to a right-of-way not exceeding 60 meters in width for public highways, irrigation ditches, aqueducts, and other similar works of the government or any public enterprise, free of charge, except only for the value of the improvements existing thereon that may be affected. In view of this, the Court of Appeals declared that all the Republic needs to do is to enforce such right without having to initiate expropriation proceedings and without having to pay any just compensation.[11] Hence, the Republic may appropriate the 701

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square meters necessary for the construction of the floodwalls without paying for it.

We are, however, unable to sustain the Republic's argument that it is not liable to pay consequential damages if in enforcing the legal easement on Andaya's property, the remaining area would be rendered unusable and uninhabitable. "Taking," in the exercise of the power of eminent domain, occurs not only when the government actually deprives or dispossesses the property owner of his property or of its ordinary use, but also when there is a practical destruction or material impairment of the value of his property.[12] Using this standard, there was undoubtedly a taking of the remaining area of Andaya's property. True, no burden was imposed thereon and Andaya still retained title and possession of the property. But, as correctly observed by the Board and affirmed by the courts a quo, the nature and the effect of the floodwalls would deprive Andaya of the normal use of the remaining areas. It would prevent ingress and egress to the property and turn it into a catch basin for the floodwaters coming from the Agusan River.

For this reason, in our view, Andaya is entitled to payment of just compensation, which must be neither more nor less than the monetary equivalent of the land.[13] One of the basic principles enshrined in our Constitution is that no person shall be deprived of his private property without due process of law; and in expropriation cases, an essential element of due process is that there must be just compensation whenever private property is taken for public use. Noteworthy, Section 9, Article III of our Constitution mandates that private property shall not be taken for public use without just compensation.[14]

Finally, we affirm the findings of the Court of Appeals and the trial court that just compensation should be paid only for 5,937 square meters of the total area of 10,380 square meters. Admittedly, the Republic needs only a 10-meter easement or an equivalent of 701 square meters. Yet, it is also settled that it is legally entitled to a 60-meter wide easement or an equivalent of 4,443 square meters. Clearly, although the Republic will use only 701 square meters, it should not be liable for the 3,742 square meters, which constitute the difference between this area of 701 square meters and the 4,443 square meters to which it is fully entitled to use as easement, free of charge except for damages to affected existing improvements, if any, under Section 112 of the Public Land Act.

In effect, without such damages alleged and proved, the Republic is liable for just compensation of only the remaining areas consisting of 5,937 square meters, with interest thereon at the legal rate of 6% per annum from the date of the writ of possession or the actual taking until full payment is made. For the purpose of determining the final just compensation, the case is remanded to the trial court. Said court is ordered to make the determination of just compensation payable to respondent Andaya with deliberate dispatch.

WHEREFORE, the Decision of the Court of Appeals dated October 30, 2003 in CA-G.R. CV No. 65066, modifying the Decision of the Regional Trial Court of Butuan City, Branch 33 in Civil Case No. 4378, is AFFIRMED with MODIFICATION as herein set forth.

The case is hereby REMANDED to the Regional Trial Court of Butuan City, Branch 33 for the determination of the final just compensation of the compensable area consisting of 5,937 square meters, with interest thereon at the legal rate of 6% per annum from the date of the writ of possession or actual taking until fully paid.

No pronouncement as to costs.

SO ORDERED.

Carpio, Tinga, and Velasco, Jr., JJ., concur.
Carpio-Morales, J., on official leave.

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[1] Rollo, pp. 22A-34. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Roberto A. Barrios and Hakim S. Abdulwahid concurring.

[2] Records, pp. 208-212. Penned by Judge Victor A. Tomaneng.

[3] Id. at 31-32.

[4] Id. at 127.

[5] Report of the Board of Commissioners in Civil Case No. 4378, pp. 32-33.

[6] Records, pp. 211-212.

[7] Id. at 9-12, 15-17.

[8] Act No. 496, superseded by Presidential Decree No. 1529, known as the Property Registration Decree.

[9] AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN (Com Act No. 141, as amended). Amended by Presidential Decree No. 635 (effective January 7, 1975).

[10] SEC. 112. Said land shall further be subject to a right-of-way not exceeding sixty (60) meters in width for public highways, railroads, irrigation ditches, aqueducts, telegraph and telephone lines, and similar works as the Government or any public or quasi-public service or enterprise, including mining or forest concessionaires, may reasonably require for carrying on their business, with damages for the improvements only.

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[11] Rollo, p. 29.

[12] Republic v. Court of Appeals, G.R. No. 147245, March 31, 2005, 454 SCRA 516, 536; Ansaldo v. Tantuico, Jr., G.R. No. 50147, August 3, 1990, 188 SCRA 300, 304.

[13] National Power Corporation v. Manubay Agro-Industrial Development Corporation, G.R. No. 150936, August 18, 2004, 437 SCRA 60, 67-68.

[14] Republic v. Lim, G.R. No. 161656, June 29, 2005, 462 SCRA 265, 278.

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