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G.R. NO. 166964. October 11, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari seeks to set aside the March 25, 2004 Decision[1] of the Court of Appeals in CA-G.R. CV No. 70209, and its February 4, 2005 Resolution,[2] which denied petitioners' motion for reconsideration.

The facts show that on April 3, 1987, respondent National Housing Authority (NHA) filed a complaint for eminent domain with the Regional Trial Court of Manila, Branch 35, against petitioners who are owners of several lots located in Tondo, Manila with a total area of 66,783.40 square meters and an aggregate value of P21,024,136.50. Instead of an answer, petitioners filed motions to dismiss with prayer for actual, moral and exemplary damages and attorney's fees.

On March 11, 1988, NHA deposited the amount of P21,107,485.07 with the Philippine National Bank (PNB) as provisional just compensation for the subject lots, as evidenced by Certificate of Time Deposit No. 233991-B. The deposit is now under PNB (Escolta Branch) Fiduciary Account No. 068-576012-6.

On March 11, 1991, the trial court rendered a Decision, the dispositive portion of which states:

WHEREFORE, the prayer of the defendants in their motion to dismiss is GRANTED, and the complaint of the plaintiff is DISMISSED.

The counterclaims of the defendants are also ordered DISMISSED.

No pronouncement as to costs.[3]

The Court of Appeals affirmed the lower court in a Decision dated February 26, 1993. On petition before this Court, we resolved to declare the case terminated for failure of NHA to file the petition on time. The resolution became final and executory on July 26, 1993.

Thus, NHA filed on September 7, 2000 a motion for leave of court to withdraw deposit but failed to specify a date for hearing. On October 30, 2000, NHA filed a second motion for leave to withdraw deposit which set the hearing on November 10, 2000.

On November 8, 2000, the trial court issued an Order[4] expunging the first motion from the records. It also declared that the amount sought to be withdrawn by NHA constitutes advance payment if the expropriation proceeds, and as indemnity for damages should the proceedings not succeed, as in the instant case. The trial court

noted that petitioners might have sustained damages in the course of the expropriation proceedings which they could pursue or waive. The motion being litigious, the trial court declared that the same be set for hearing.

NHA's motion for reconsideration was denied on December 8, 2000.[5]

On appeal, the Court of Appeals held that the dismissal of petitioners' counterclaim barred them from presenting evidence to prove damages. It ruled that the trial court's assessment that they suffered damages is conjectural and inconsistent with the dismissal of the counterclaim.

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, the order of the Regional Trial Court of Manila (Branch 35) dated November 8, 2000 is REVERSED and SET ASIDE and that Court is directed to release to the National Housing Authority the amount of P21,107,485.07, represented by PNB (Escolta branch) Fiduciary Account No. 068-576012-6, including accrued interest thereon.

SO ORDERED.[6]

Petitioners' motion for reconsideration was denied, hence, the instant petition based on the following issues:

I. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ACTING AND GRANTING THE MOTION FILED BY RESPONDENT NHA FOR WITHDRAWAL OF ITS DEPOSIT IN QUESTION ALTHOUGH SAID MOTION SHOULD HAVE BEEN TREATED AS A MERE SCRAP OF PAPER FOR LACK OF NOTICE OF HEARING.

II. THE HONORABLE COURT OF APPEALS HAD ALSO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN GRANTING THE MOTION OF RESPONDENT NHA TO WITHDRAW ITS DEPOSIT IN QUESTION EVEN BEFORE A HEARING ON SAID ISSUE CAN BE HELD TO DETERMINE THE AMOUNT OF DAMAGES SUFFERED BY PETITIONERS MANOTOK RESULTING FROM THE FINAL DISMISSAL OF THE COMPLAINT FOR EXPROPRIATION OF THEIR SUBJECT LOTS.

The petition lacks merit.

Expropriation proceedings, or the procedure to enforce the state's right of eminent domain, are governed by Rule 67 of the Rules of Court. There are two stages in every action for expropriation: first, condemnation of the property after determination that its acquisition is for public purpose; and, second, the ascertainment of just compensation.[7]

During the condemnation stage, the court may either issue 1) an order of expropriation, declaring that the plaintiff has a lawful right to take the property sought to be condemned for public use or purpose, or 2) an order of dismissal, if it appears that the expropriation is not for some public use.

In the case at bar, the trial court dismissed NHA's complaint for expropriation upon determination that its acquisition is not for public purpose. Along with the dismissal of the complaint, the trial court also dismissed the counterclaim interposed by petitioners. The Court of Appeals correctly held that this counterclaim for actual, moral and exemplary damages and attorney's fees is compulsory. As such, it is auxiliary to the proceeding in the original suit and derives its jurisdictional support therefrom. In the case of *Financial Building Corp. v. Forbes Park Assoc., Inc.*, [8] we stated:

... A counterclaim presupposes the existence of a claim against the party filing the counterclaim. Hence, where there is no claim against the counterclaimant, the counterclaim is improper and it must be dismissed, more so

where the complaint is dismissed at the instance of the counterclaimant. In other words, if the dismissal of the main action results in the dismissal of the counterclaim already filed, it stands to reason that the filing of a motion to dismiss the complaint is an implied waiver of the compulsory counterclaim because the grant of the motion ultimately results in the dismissal of the counterclaim.[9]

The aforementioned doctrine is in consonance with the primary objective of a counterclaim which is to avoid and prevent circuity of action by allowing the entire controversy between the parties to be litigated and finally determined in one action, wherever this can be done with justice to all parties concerned.[10]

It is true that we held in *National Power Corporation v. Court of Appeals*[11] (NAPOCOR) that when the defendant claims that his land suffered damage because of the expropriation, the dismissal of the action should not foreclose the defendant's right to have the damages ascertained either in the same case or in a separate action.[12] However, this pronouncement is not applicable in the instant case.

In the NAPOCOR case, the motion to dismiss was filed not only by the property owner, Pobre, but also by the expropriating authority. In the instant case, only the property owners moved to dismiss the complaint. When the trial court granted NAPOCOR's motion to dismiss, it also allowed Pobre to adduce evidence on his claim for damages. In effect, the trial court made a reservation to allow Pobre to recover damages. Thereafter, Pobre presented evidence and recounted in detail the scope of damage caused by NAPOCOR. In contrast, the court below dismissed petitioners' counterclaim without reservation as to their claim for damages. Petitioners did not adduce evidence as to the extent of damage caused by NHA. NHA appealed the dismissal of the complaint while petitioners opted not to appeal the dismissal of their counterclaim. The dismissal of the complaint for expropriation became final and executory on July 26, 1993. Plainly, the same is already beyond review.

Thus, on September 7, 2000 or after seven years from the finality of the dismissal of the complaint for expropriation, NHA filed a motion for leave to withdraw the deposit. Petitioners did not oppose the motion. In fact, the records are bereft of evidence that petitioners took action to pursue their claim for damages during the entire seven years. They did not file a motion or pleading in court to ask for a hearing or to claim the damages they now seek. Clearly, they cannot claim to have been deprived of due process as they had the time and opportunity to pursue their claim for the damages they may have sustained as a result of the filing of the complaint for expropriation.

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals dated March 25, 2004 and February 4, 2005 in CA-G.R. CV No. 70209, respectively, are hereby AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 37-43. Penned by Associate Justice Edgardo P. Cruz, as concurred in by Associate Justices Ruben T. Reyes and Noel G. Tijam.

[2] Id. at 45.

[3] Id. at 39.

[4] Id. at 54. Penned by Judge Ramon P. Makasiar.

[5] Id. at 63.

[6] Id. at 43.

[7] National Housing Authority v. Heirs of Isidro Guivelondo, G.R. No. 154411, June 19, 2003, 404 SCRA 389, 398.

[8] 392 Phil. 895 (2000).

[9] Id. at 904.

[10] Metals Engineering Resources Corp. v. Court of Appeals, G.R. No. 95631, October 28, 1991, 203 SCRA 273, 282.

[11] G.R. No. 106804, August 12, 2004, 436 SCRA 195.

[12] Id. at 207.

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