

**CITY OF ILOILO REPRESENTED BY HON. JERRY P. TREÑAS, CITY
MAYOR, PETITIONER, VS. HON. LOLITA CONTRERAS-BESANA,
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 32, AND
ELPIDIO JAVEL...**

G.R. No. 168967. February 12, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

It is arbitrary and capricious for the government to initiate expropriation proceedings, seize a person's property, allow the order of expropriation to become final, but then fail to justly compensate the owner for over 25 years. This is government at its most high-handed and irresponsible, and should be condemned in the strongest possible terms. For its failure to properly compensate the landowner, the City of Iloilo is liable for damages.

This Petition for Certiorari under Rule 65 of the Rules of Court with a prayer for the issuance of a temporary restraining order seeks to overturn the three Orders issued by Regional Trial Court (RTC) of Iloilo City, Branch 32 on the following dates: December 12, 2003 (the First Assailed Order),^[1] June 15, 2004 (the Second Assailed Order),^[2] and March 9, 2005 (the Third Assailed Order) (the three aforementioned Orders are collectively referred to as the Assailed Orders).^[3]

Factual Antecedents

The essential facts are not in dispute.

On September 18, 1981, petitioner filed a Complaint^[4] for eminent domain against private respondent Elpidio T. Javellana (Javellana) and Southern Negros Development Bank, the latter as mortgagee. The complaint sought to expropriate two parcels of land known as Lot Nos. 3497-CC and 3497-DD registered in Javellana's name under Transfer Certificate of Title (TCT) No. T-44894 (the Subject Property) to be used as a school site for Lapaz High School.^[5] Petitioner alleged that the Subject Property was declared for tax purposes in Tax Declaration No. 40080 to have a value of P60.00 per square meter, or a total value of P43,560.00. The case was docketed as Civil Case No. 14052 and raffled to then Court of First Instance of Iloilo, Branch 7.

On December 9, 1981, Javellana filed his Answer^[6] where he admitted ownership of the Subject Property but denied the petitioner's avowed public purpose of the sought-for expropriation, since the City of Iloilo already had an existing school site for Lapaz High School. Javellana also claimed that the true fair market value of his property was no less than P220.00 per square meter. ^[7]

On May 11, 1982, petitioner filed a Motion for Issuance of Writ of Possession, alleging that it had deposited the amount of P40,000.00 with the Philippine National Bank-Iloilo Branch. Petitioner claimed that it was entitled to the immediate possession of the Subject Property, citing Section 1 of Presidential Decree No. 1533,^[8] after it had deposited an amount equivalent to 10% of the amount of compensation. Petitioner attached to its motion a Certification issued by Estefanio C. Libutan, then Officer-in-Charge of the Iloilo City Treasurer's Office, stating

that said deposit was made.[9]

Javellana filed an Opposition to the Motion for the Issuance of Writ of Possession[10] citing the same grounds he raised in his Answer - that the city already had a vast tract of land where its existing school site was located, and the deposit of a mere 10% of the Subject Property's tax valuation was grossly inadequate.

On May 17, 1983, the trial court issued an Order[11] which granted petitioner's Motion for Issuance of Writ of Possession and authorized the petitioner to take immediate possession of the Subject Property. The court ruled:

PREMISES CONSIDERED, the Motion for the Issuance of a Writ of Possession dated May 10, 1982, filed by plaintiff is hereby granted. Plaintiff is hereby allowed to take immediate possession, control and disposition of the properties known as Lot Nos. 3497-CC and 3497-DD x x x.[12]

Thereafter, a Writ of Possession[13] was issued in petitioner's favor, and petitioner was able to take physical possession of the properties sometime in the middle of 1985. At no time has Javellana ever denied that the Subject Property was actually used as the site of Lapaz National High School. Aside from the filing by the private respondent of his Amended Answer on April 21, 1984,[14] the expropriation proceedings remained dormant.

Sixteen years later, on April 17, 2000, Javellana filed an Ex Parte Motion/Manifestation, where he alleged that when he finally sought to withdraw the P40,000.00 allegedly deposited by the petitioner, he discovered that no such deposit was ever made. In support of this contention, private respondent presented a Certification from the Philippine National Bank stating that no deposit was ever made for the expropriation of the Subject Property.[15] Private respondent thus demanded his just compensation as well as interest. Attempts at an amicable resolution and a negotiated sale were unsuccessful. It bears emphasis that petitioner could not present any evidence - whether documentary or testimonial - to prove that any payment was actually made to private respondent.

Thereafter, on April 2, 2003, private respondent filed a Complaint[16] against petitioner for Recovery of Possession, Fixing and Recovery of Rental and Damages. The case was docketed as Civil Case No. 03-27571, and raffled to Branch 28 of the Iloilo City Regional Trial Court. Private respondent alleged that since he had not been compensated for the Subject Property, petitioner's possession was illegal, and he was entitled to recovery of possession of his lots. He prayed that petitioner be ordered to vacate the Subject Property and pay rentals amounting to P15,000.00 per month together with moral, exemplary, and actual damages, as well as attorney's fees.

On May 15, 2003, petitioner filed its Answer,[17] arguing that Javellana could no longer bring an action for recovery since the Subject Property was already taken for public use. Rather, private respondent could only demand for the payment of just compensation. Petitioner also maintained that the legality or illegality of petitioner's possession of the property should be determined in the eminent domain case and not in a separate action for recovery of possession.

Both parties jointly moved to consolidate the expropriation case (Civil Case No. 14052) and the case for recovery of possession (Civil Case No. 03-27571),[18] which motion was granted by the trial court in an Order dated August 26, 2003.[19] On November 14, 2003, a commission was created to determine the just compensation due to Javellana.[20]

On November 20, 2003, private respondent filed a Motion/Manifestation dated November 19, 2003 claiming that before a commission is created, the trial court should first order the condemnation of the property, in accordance with the Rules of Court. Javellana likewise insisted that the fair market value of the Subject Property should be reckoned from the date when the court orders the condemnation of the property, and not the date of actual taking, since petitioner's possession of the property was questionable.[21] Before petitioner could file its Comment, the

RTC issued an Order dated November 21, 2003 denying the Motion.[22]

Undeterred, Javellana filed on November 25, 2003, an Omnibus Motion to Declare Null and Void the Order of May 17, 1983 and to Require Plaintiff to Deposit 10% or P254,000.00. Javellana claimed that the amount is equivalent to the 10% of the fair market value of the Subject Property, as determined by the Iloilo City Appraisal Committee in 2001, at the time when the parties were trying to negotiate a settlement.[23]

First Assailed Order

On December 12, 2003, the RTC issued the First Assailed Order, which nullified the Order dated May 17, 1983 (concerning the issuance of a writ of possession over the Subject Property). The trial court ruled:

x x x the Order dated May 17, 1983 is hereby declared null and void and the plaintiff [is] hereby ordered to immediately deposit with the PNB the 10% of the just compensation after the Commission shall have rendered its report and have determined the value of the property not at the time it was condemned but at the time the complaint was filed in court.[24] (Emphasis ours)

Second Assailed Order

Neither party sought reconsideration of this Order.[25] Nonetheless, about six months later, the RTC issued the Second Assailed Order, which it denominated as an "Amended Order". The Second Assailed Order was identical to the first, except that the reckoning point for just compensation was now the "time this order was issued," which is June 15, 2004.

x x x the Order dated May 17, 1983 is hereby declared null and void and the plaintiff [is] hereby ordered to immediately deposit with the PNB the 10% of the just compensation after the Commission shall have rendered its report and have determined the value of the property not at the time it was condemned but at the time this order was issued. (Underscoring in original text)

This time, petitioner filed a Motion for Reconsideration claiming that there was no legal basis for the issuance of the Second Assailed Order.[26] Javellana opposed, arguing that since the May 17, 1983 Order and the Second Assailed Order were interlocutory in character, they were always subject to modification and revision by the court anytime.[27]

Third Assailed Order

After the parties were able to fully ventilate their respective positions,[28] the public respondent issued the Third Assailed Order, denying the Motion for Reconsideration, and ruling as follows:

The Order dated June 15, 2004 among other things stated that parties and counsels must be bound by the Commissioner's Report regarding the value of the property not at the time it was condemned but at the time this order was issued.

This is true inasmuch as there was no deposit at the PNB and their taking was illegal.

The plaintiff thru [sic] Atty. Laurea alleged that this Court had a change of heart and issued an Amended Order with the same wordings as the order of December 12, 2003 but this time stated not at the time it was condemned but at the time the order was issued. Naturally, this Court in the interest of justice, can amend its order because there was no deposit by plaintiff.

The jurisprudence cited by plaintiff that the just compensation must be determined as of the date of the filing of the complaint is true if there was a deposit. Because there was none the filing was not in accordance with law, hence, must be at the time the order was issued.

The allegation of defendant thru [sic] counsel that the orders attacked by plaintiff thru [sic] counsel saying it has become final and executory are interlocutory orders subject to the control of the Judge until final judgment is correct. Furthermore, it is in the interes[t] of justice to correct errors.[29]

In the meantime, on April 15, 2004, the Commission submitted its Report, providing the following estimates of value, but without making a proper recommendation:[30]

Reckoning Point

Value per square meter

Fair Market Value

Basis

1981 - at the time the complaint was filed

P110.00/sqm

P79,860.00

based on three or more recorded sales of similar types of land in the vicinity in the same year

1981 - at the time the complaint was filed

P686.81/sqm

P498,625.22

Appraisal by Southern Negros Development Bank based on market value, zonal value, appraised value of other banks, recent selling price of neighboring lots

2002

P3,500.00/sqm

P2,541,000.00

Appraisal by the City Appraisal Committee, Office of the City Assessor

2004

P4,200.00/sqm

PhP3,049,200.00

Private Appraisal Report (Atty. Roberto Cal Catolico dated April 6, 2004)

Hence, the present petition.

Petitioner's Arguments

Petitioner is before us claiming that (1) the trial court gravely abused its discretion amounting to lack or excess of jurisdiction in overturning the Order dated May 17, 1983, which was already a final order; and (2) just compensation for the expropriation should be based on the Subject Property's fair market value either at the time of taking or filing of the complaint.

Private Respondent's Arguments

Private respondent filed his Comment on October 3, 2005,[31] arguing that (1) there was no error of jurisdiction correctible by certiorari; and (2) that the Assailed Orders were interlocutory orders that were subject to amendment and nullification at the discretion of the court.

Issues

There are only two questions we need answer, and they are not at all novel. First, does an order of expropriation become final? Second, what is the correct reckoning point for the determination of just compensation?

Our Ruling

Expropriation proceedings have two stages. The first phase ends with an order of dismissal, or a determination that the property is to be acquired for a public purpose.[32] Either order will be a final order that may be appealed by the aggrieved party.[33] The second phase consists of the determination of just compensation. [34] It ends with an order fixing the amount to be paid to the landowner. Both orders, being final, are appealable.[35]

An order of condemnation or dismissal is final, resolving the question of whether or not the plaintiff has properly and legally exercised its power of eminent domain.[36] Once the first order becomes final and no appeal thereto is taken, the authority to expropriate and its public use can no longer be questioned.[37]

Javellana did not bother to file an appeal from the May 17, 1983 Order which granted petitioner's Motion for Issuance of Writ of Possession and which authorized petitioner to take immediate possession of the Subject Property. Thus, it has become final, and the petitioner's right to expropriate the property for a public use is no longer subject to review. On the first question, therefore, we rule that the trial court gravely erred in nullifying the May 17, 1983 Order.

We now turn to the reckoning date for the determination of just compensation. Petitioner claims that the computation should be made as of September 18, 1981, the date when the expropriation complaint was filed. We agree.

In a long line of cases, we have constantly affirmed that:

x x x just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.[38]

When the taking of the property sought to be expropriated coincides with the commencement of the expropriation proceedings, or takes place subsequent to the filing of the complaint for eminent domain, the just compensation should be determined as of the date of the filing of the complaint.[39] Even under Sec. 4, Rule 67 of the 1964 Rules of Procedure, under which the complaint for expropriation was filed, just compensation is to be determined "as of the date of the filing of the complaint." Here, there is no reason to depart from the general rule that the point of reference for assessing the value of the Subject Property is the time of the filing of the complaint for expropriation.[40]

Private respondent claims that the reckoning date should be in 2004 because of the "clear injustice to the private respondent who all these years has been deprived of the beneficial use of his properties."

We commiserate with the private respondent. The school was constructed and has been in operation since 1985. Petitioner and the residents of Iloilo City have long reaped the benefits of the property. However, non-payment of just compensation does not entitle the private landowners to recover possession of their expropriated lot.[41]

Concededly, Javellana also slept on his rights for over 18 years and did not bother to check with the PNB if a

deposit was actually made by the petitioner. Evidently, from his inaction in failing to withdraw or even verify the amounts purportedly deposited, private respondent not only accepted the valuation made by the petitioner, but also was not interested enough to pursue the expropriation case until the end. As such, private respondent may not recover possession of the Subject Property, but is entitled to just compensation.[42] It is high time that private respondent be paid what was due him after almost 30 years.

We stress, however, that the City of Iloilo should be held liable for damages for taking private respondent's property without payment of just compensation. In *Manila International Airport Authority v. Rodriguez*,[43] the Court held that a government agency's prolonged occupation of private property without the benefit of expropriation proceedings undoubtedly entitled the landowner to damages:

Such pecuniary loss entitles him to adequate compensation in the form of actual or compensatory damages, which in this case should be the legal interest (6%) on the value of the land at the time of taking, from said point up to full payment by the MIAA. This is based on the principle that interest "runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking x x x.

x x x x

For more than twenty (20) years, the MIAA occupied the subject lot without the benefit of expropriation proceedings and without the MIAA exerting efforts to ascertain ownership of the lot and negotiating with any of the owners of the property. To our mind, these are wanton and irresponsible acts which should be suppressed and corrected. Hence, the award of exemplary damages and attorneys fees is in order. x x x.[44] (Emphasis supplied)

WHEREFORE, the petition is GRANTED. The Orders of the Regional Trial Court of Iloilo City, Branch 32 in Civil Case No. 14052 and Civil Case No. 03-27571 dated December 12, 2003, June 15, 2004, and March 9, 2005 are hereby ANNULLED and SET ASIDE.

The Regional Trial Court of Iloilo City, Branch 32 is DIRECTED to immediately determine the just compensation due to private respondent Elpidio T. Javellana based on the fair market value of the Subject Property at the time Civil Case No. 14052 was filed, or on September 18, 1981 with interest at the legal rate of six percent (6%) per annum from the time of filing until full payment is made.

The City of Iloilo is ORDERED to pay private respondent the amount of P200,000.00 as exemplary damages.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] Rollo, pp. 44-45.

[2] Id. at 46-47.

[3] Id. at 48-49.

[4] Id. at 50-52.

[5] The expropriation was authorized by Resolution No. 96 dated April 25, 1978 issued by the Sangguniang Panglungsod of Iloilo entitled "Authorizing the City Legal Officer to initiate the expropriation of Lot No. 180 of Arevalo and Lot Nos. 3497-CC and 3497-DD at La Paz for School Site Purposes". Id. at 50-51.

[6] Id. at 53-56.

[7] Id.

[8] Presidential Decree No. 1533, Establishing A Uniform Basis For Determining Just Compensation And The Amount Of Deposit For Immediate Possession Of The Property Involved In Eminent Domain Proceedings (1978).

Section 1. In determining just compensation for private property acquired through eminent domain proceedings, the compensation to be paid shall not exceed the value declared by the owner or administrator or anyone having legal interest in the property or determined by the assessor, pursuant to the Real Property Tax Code, whichever value is lower, prior to the recommendation or decision of the appropriate Government office to acquire the property.

Section 2. Upon the filing of the petition for expropriation and the deposit in the Philippine National Bank at its main office or any of its branches of an amount equivalent to ten per cent (10%) of the amount of compensation provided in Section 1 hereof, the government or its authorized instrumentality agency or entity shall be entitled to immediate possession, control and disposition of the real property and the improvements thereon, including the power of demolition if necessary, notwithstanding the pendency of the issues before the courts.

[9] Rollo, p. 59

[10] Id. at 60-61.

[11] Id. at 62-64.

[12] Id. at 63-64.

[13] Id. at 65-66. Private respondent filed a Motion for Reconsideration against the trial court's Order, id. at 67-68; petitioner opposed, id. at 69-70. The trial court denied private respondent's Motion in an Order dated January 10, 1984, id. at 71.

[14] Id. at 74-77.

[15] Id. at 88.

[16] Id. at 78-87.

[17] Id. at 89-93.

[18] Records, p. 88.

[19] Id. at 89.

[20] Rollo, p. 94

[21] Id. at 95-96.

[22] Id. at 97.

[23] Petitioner first claimed that it never received a copy of this Motion, however, private respondent presented its file copy of the Motion, duly received by the City Legal Office of Iloilo City.

[24] Rollo, p. 45.

[25] Petitioner claims that it never received a copy of the Order.

[26] Rollo, pp. 105-114.

Petitioner also claimed that it had not been furnished with a copy of the First Assailed Order, although this was disproved by the lower court. Records, p. 48.

[27] Rollo, pp. 115-122.

[28] Petitioner filed a Rejoinder on August 12, 2004; id at 123-126. Private respondent filed a Reply dated August 17, 2004; id at 127-129.

[29] Id. at 48-49.

[30] Records, pp. 124-155.

[31] Id. at 132-145.

[32] Estate of Salud Jimenez v. Philippines Export Processing Zone, 402 Phil. 271, 284 (2001).

[33] Municipality of Biñan v. Garcia, G.R. No. 69260, December 22, 1989, 180 SCRA 576, 584-585.

[34] City of Manila v. Serrano, 411 Phil. 754, 765 (2001).

[35] National Housing Authority v. Heirs of Guivelondo, 452 Phil. 483, 492 (2003).

[36] Heirs of Alberto Suguitan v. City of Mandaluyong, 384 Phil. 676, 692 (2000).

[37] Estate of Salud Jimenez v. Philippine Export Processing Zone, supra note 32 at 288.

[38] B.H. Berkenkotter & Co. v. Court of Appeals, G.R. No. 89980, December 14, 1992, 216 SCRA 584, 587. See also Rules of Court, Rule 67, Sec. 4:

If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint whichever came first.

[39] Republic of the Philippines v. Vda. De Castellvi, 157 Phil. 329, 349 (1974).

[40] National Power Corporation v. Co, G.R. No. 166973, February 10, 2009, 578 SCRA 235, 246.

[41] Forfom Development Corporation v. Philippine National Railways, G.R. No. 124795, December 10, 2008. 573 SCRA 350, 369.

[42] Eusebio v. Luis, G.R. No. 162474, October 13, 2009.

[43] G.R. No. 161836, February 28, 2006, 483 SCRA 619, 630-632.

[44] See also Forfom Development Corporation v. Philippine National Railways, supra.

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