# JULITA P. TAN, PETITIONER, VS. THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE PUBLIC ESTATES AUTHORITY, RESPONDENT.

*G.R. No. 170740. May 25, 2007*

Ponente: SANDOVAL-GUTIERREZ, J.

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**SANDOVAL-GUTIERREZ, J.:**

For our resolution is the Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals (Thirteenth Division, Special Division of Five) dated July 6, 2005 in CA-G.R. SP No. 84667.

The undisputed facts of the case are:

Julita P. Tan, petitioner herein, is the registered owner of a parcel of land consisting of 7,161 square meters located at the southern bank of the Zapote River in Sitio Wawa, Pulang Lupa, Las Piñas City. Her ownership is evidenced by Transfer Certificate of Title (TCT) No. 78188 of the Registry of Deeds, same city. She acquired this property from the San Antonio Development Corporation (SADC) as shown by a document denominated "Irrevocable and Exclusive Special Power of Attorney" dated April 6, 2001, whereby she assumed SADC's "obligation of paying all imposable taxes due said land." In consideration of such assumption and "for value" she "stepped into the shoes" of SADC "free to exercise such rights and prerogatives as owner of the subject property, including the right to collect and demand payment for the sale and/or use of the subject land or any portion thereof, by and from any person or entity."

The Public Estates Authority (PEA) is a government-owned and controlled corporation, organized and existing pursuant to Presidential Decree (P.D.) No. 1084 representing in this case the Republic of the Philippines, herein respondent. Among the properties PEA manages is the Manila-Cavite Coastal Road (Coastal Road), also known as the R-1 Expressway.

Prior to the transfer of the property to petitioner by SADC, or on March 29, 1985, PEA wrote SADC requesting permission to enter the latter's property, then covered by TCT No. 439101, for the purpose of constructing thereon the southern abutment of the Zapote Bridge at the Coastal Road. PEA also proposed to SADC to start their negotiation for its acquisition of the latter's property.

On April 11, 1985, SADC replied authorizing PEA to enter the property, subject to the condition that the latter should pay a monthly rental of P10,000.00. PEA then directed its contractor, the Philippine National Construction Corporation, to enter the property and begin the necessary engineering works on the Coastal Road.

In a letter dated May 28, 1985, PEA requested SADC either to donate or sell the property to the government.

On October 22, 1985, SADC replied by offering to sell the property to PEA. SADC's asking price was P1,288,980.00 plus P400,000.00 as compensation for the house and other improvements thereon that were destroyed during the construction of the Coastal Road.

On January 7, 1987, PEA informed SADC it has no plan to buy the whole lot, but only the 1,131 square meter portion above sea level. PEA then asked SADC to submit proofs of ownership and costs of the improvements which were demolished.

Negotiations then ensued between the parties. However, for the past twenty (20) years, they failed to reach an agreement.

On October 2, 2000, SADC asked PEA to pay compensation equivalent to the current zonal value plus interest of ten percent (10%) per annum and a monthly rental of P10,000.00, also with the same interest. These sums, according to SADC, could be considered just compensation for the government's use of the property since 1985 until September 2000 and thereafter.

The following month, PEA inquired from the Bureau of Internal Revenue (BIR) District 53, Alabang, Muntinlupa City the zonal value of the SADC property. It submitted to the BIR the appraisal reports prepared by two (2) independent licensed appraisers.

On April 6, 2001, petitioner Julita Tan acquired the property from SADC.

On July 12, 2001, the BIR sent a letter to PEA stating that the zonal value of the property is P2,900.00 per square meter, with the caveat that the said assessment is subject to review and approval by higher tax authorities.

On October 9, 2001, the BIR informed PEA that the current zonal value of the property is P20,000.00 per square meter.

In the meantime, the construction of the Coastal Road was completed. PEA entered into a Joint Venture Agreement with the Toll Regulatory Board and the UEM-MARA Philippine Corporation for the toll operation of the Coastal Road, as shown by the Certificate of the Secretary of the Toll Regulatory Board dated May 13, 2003.[2]

PEA has been collecting toll fees from the road users in the average amount of P1,039,404.85 per day, as shown by a document denominated "Traffic Count of the Year 2002.[3] Despite its collection of huge toll fees, PEA continuously refuses to pay petitioner any compensation.

On October 22, 2001, petitioner, in her desperation, wrote PEA expressing her willingness to be compensated through a land swapping arrangement. She proposed that PEAï¿½s Fishermanï¿½s Wharf be given to her in exchange for her property.

On August 6, 2002, the PEA Board approved the exchange of a portion of petitioner's lot consisting of 4,719 square meters for PEA's Lot 12 with an area of 2,360 square meters. The parties entered into a Memorandum of Agreement wherein PEA agreed to execute a Deed of Exchange by way of compensation for petitioner's property affected by the Coastal Road.

However, on June 18, 2003, PEA withdrew from the land swapping agreement. Instead, on September 22, 2003, it filed with the Regional Trial Court (RTC), Branch 202, Las Piñas City a complaint for expropriation, docketed as Civil Case No. 03-0220. PEA alleged therein, among others, that its liability for just compensation is based on the zonal value of the land at the time of the taking in 1985. Thus, it is liable for only P852,993.51 for the 4,719 square meter portion. In her answer, petitioner claimed that PEA should pay for the whole area consisting of 7,161 square meters at P20,000.00 per square meter, the zonal value set by the BIR pursuant to Republic Act No. 8974.[4] She then prayed that she be paid P143,200,000.00 plus interest of twelve percent (12%) per annum, aside from the P10,000.00 monthly rental with 12% interest per annum for the occupancy and use of the property since April 1985 up to the present.


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On October 20, 2003, petitioner filed with the RTC a motion to order PEA to immediately pay her just compensation based on the zonal valuation of the BIR. This was opposed by PEA.

On December 16, 2003, the trial court issued the following Order[5]:

> WHEREFORE, finding merit to the "Motion To Order the Plaintiff to Immediately Pay Defendant Her Expropriated Property," dated October 20, 2003, the same is hereby GRANTED. Accordingly, plaintiff, through PEA, is hereby ordered to immediately pay defendant the sum of P94,380,000.00 (ninety-four million, three hundred eighty thousand pesos) representing the just compensation for the 4,719 square meters of defendant's property covered by TCT No. 78188 of the Registry of Deeds of Las Piñas based on P20,000.00 per square meter zonal valuation of the Bureau of Internal Revenue.
>
> SO ORDERED.

PEA timely filed a motion for reconsideration but it was denied by the trial court in its Order[6] dated April 14, 2004.

PEA then elevated the matter to the Court of Appeals by way of a petition for certiorari, prohibition, and mandamus.

On July 6, 2005, the Court of Appeals rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, the instant petition for certiorari and prohibition is hereby GRANTED while that of mandamus is hereby DENIED (sic). Accordingly, the assailed Orders, dated December 16, 2003 and April 14, 2004, are hereby REVERSED and SET ASIDE. Public respondent is hereby ordered to DESIST from enforcing the assailed Orders.
>
> SO ORDERED.

Petitioner filed a motion for reconsideration. In a Resolution dated December 12, 2005, the Court of Appeals denied the same.

Hence, the present petition anchored on these twin issues: Whether the Court of Appeals erred in sustaining PEA's petition for certiorari and prohibition and in dismissing that for mandamus; and in holding that the just compensation for petitioner's property should be based on the BIR zonal valuation in 1985 when petitioner entered the subject property.

The first issue involves the nature of the two Orders of the trial court dated December 16, 2003 and April 14, 2004. The Order of December 16, 2003 directed PEA to pay petitioner just compensation in the sum of P94,380,000.00. The Order of April 14, 2004 denied PEAï¿½s motion for reconsideration. Are these orders final or interlocutory?

Sec. 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended, partly provides:

> SEC. 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> x x x
>
> (c) an interlocutory order.
>
> x x x

A final order is one that disposes of the subject matter in its entirety or terminates a particular proceeding or

action, leaving nothing else to be done but to enforce by execution what has been determined by the court, while an interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon.[7]

Under Rule 67 of the same Rules, there are two (2) stages in a condemnation proceeding:[8]

(1) Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, with condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned for the public use or purpose described in the complaint, upon payment of just compensation. An order of expropriation is final.[9] An order of dismissal, if this be ordained, would be a final one, as it finally disposes of the action and leaves nothing more to be done by the court on the merits.[10] The order of expropriation would also be a final one for after its issuance, no objection to the right of condemnation shall be heard. The order of expropriation may be appealed by any party aggrieved thereby by filing a record on appeal.[11]

(2) Determination by the court of the just compensation for the property sought to be taken with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before the court and findings of the commissioners would likewise be a final one, as it would leave nothing more to be done by the court regarding this issue. A second and separate appeal may be taken from this order fixing the just compensation.

The trial court's Orders in Civil Case No. 03-0220 required PEA to pay petitioner P94,380,000.00 representing the just compensation for her 4,719 square meter lot based on the BIR zonal valuation of P20,000.00 per square meter. Clearly, the Orders are final, hence, appealable. However, instead of appealing from the said Orders within the reglementary period, PEA resorted to certiorari, prohibition and mandamus. It is basic that the remedy of certiorari is not a substitute for a lost appeal, as in this case.

On the second issue, Section 9, Article III of the Constitution specifically mandates that "Private property shall not be taken for public use without just compensation."

In City of Manila v. Estrada,[12] we held that "compensation" means "an equivalent for the value of land (property) taken." The use of the word "just" is "to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full, ample." Thus, Estrada defined just compensation as "a fair and full equivalent for the loss sustained." This definition has been reiterated in Manila Railroad Co. v. Velasquez[13] and Province of Tayabas v. Perez.[14] Then in Manila Railroad Co. v. Caligsahan,[15] we held that "to be exactly just, the compensation should be estimated at the time of the taking." Subsequently, in Republic v. Vda. de Castellvi,[16] we ruled that just compensation is determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

The Court of Appeals, in its challenged Decision, held that PEA's taking of petitioner's property occurred in 1985. Even if PEA requested permission to enter the subject property and petitioner granted such request on condition that PEA should pay a monthly rental of P10,000.00, "it does not change the fact that there was "taking" of the property for public use." Consequently, the compensation should be computed on the basis of the zonal value of the property at that time (1985) which was P2,900.00 per square meter per letter dated July 12, 2001 of the BIR to PEA.

The Court of Appeals is wrong. PEA's entry into the property with the permission of SADC, its previous owner, was not for the purpose of expropriating the property. Records show and as stressed by Mr. Justice Renato C. Dacudao of the Court of Appeals in his Dissenting Opinion, SADC allowed PEA to enter the land on condition


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that it should pay a monthly rental of P10,000.00. Thereafter, PEA, in a letter dated May 28, 1985, requested SADC to donate or sell the land to the government. On October 22, 1985, SADC responded, offering to sell the land to PEA for P1,288,980.00, plus P400,000.00 representing the value of the improvements destroyed by PEA when it entered the property. However, since 1985 up to the present, no agreement has been reached between PEA and SADC or herein petitioner who acquired the property from the latter.

While PEA has been earning huge toll fees, it has refused to pay petitioner any compensation for the use of her property in violation of her right as an owner.

The above circumstances clearly show that when PEA entered petitioner's land in 1985, it was not for the purpose of expropriating it. We stress that after its entry, PEA wrote SADC requesting to donate or sell the land to the government. Indeed, there was no intention on the part of PEA to expropriate the subject property. Why did it ask permission from SADC to enter the property? Thereafter, why did it request SADC to donate or sell the land to the government? It could have simply exercised its power of eminent domain.

Section 2, Rule 67 (on Expropriation) of the same Rules provides, among others, that upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property. It bears reiterating that in Republic v. Vda. de Castellvi,[17] we ruled that just compensation is determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

We have made it clear that there was no taking of the property in 1985 by PEA for purposes of expropriation. As shown by the records, PEA filed with the RTC its petition for expropriation on September 22, 2003. The trial court, therefore, was correct in ordering respondent, through PEA, upon the filing of its complaint for expropriation, to pay petitioner just compensation on the basis of the BIR zonal valuation of the subject property at P20,000.00 per square meter.

In sum, we rule that the Court of Appeals erred (1) in not dismissing PEA's petition for certiorari, prohibition and mandamus; and (2) in ruling that PEA's taking of the property occurred in 1985 and that the compensation should be based on the BIR zonal valuation in that year.

WHEREFORE, the assailed Decision of the Court of Appeals dated July 6, 2005, in CA-G.R. SP No. 84667 is REVERSED. The Decision of the RTC, Branch 202, Las Piñas City is AFFIRMED.

**SO ORDERED.**

Puno, C. J., (Chairperson), Azcuna and Garcia, JJ., concur.
Corona, J., On leave.

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[1] Rollo, pp. 63-87. Penned by Associate Justice Edgardo F. Sundiam with Associate Justice Arturo D. Brion and Associate Justice Celia C. Librea-Leagogo, concurring; and Associate Justice Renato C. Dacudao and Associate Justice Japar B. Dimaampao, dissenting.

[2] Annex "O" of the petition, Rollo, pp. 120-124.

[3] Annex "P", id., p. 125.

[4] Entitled "An Act To Facilitate The Acquisition of Right-Of-Way, Site Of Location For National Government Infrastructure Projects And For Other Purposes." It was signed into law on November 7, 2000.


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[5] Rollo, pp. 196-198.

[6] Id., pp. 319-322.S

[7] Valenzuela v. Court of Appeals, G.R. No. 149449, February 20, 2006, 482 SCRA 637, citing Rizal Commercial Banking Corp. v. Magwin Marketing Corp., 402 SCRA 592 (2003).

[8] As held in Municipality of Biñan v. Garcia, G.R. No. 69260, December 22, 1989, 180 SCRA 576; National Power Corp. v. Jocson, G.R. Nos. 94193-99, February 25, 1992, 206 SCRA 520.

[9] See also National Housing Authority v. Heirs of Isidro Guivelendo, G.R. No. 154111, June 19, 2003, 404 SCRA 389; Estate of Salud Jimenez v. Philippine Export Processing Zone, G.R. No. 137285, January 16, 2001, 349 SCRA 240.

[10] See also Investments, Inc. v. Court of Appeals, G.R. No. 60036, January 27, 1987, 147 SCRA 334, 339-341.

[11] Sec. 4, Rule 67, 1997 Rules of Civil Procedure, as amended. See also par. 19 (1) Interim Rules of the Supreme Court dated January 11, 1987 in relation to Sec. 39, Judiciary Reorganization Act of 1981 (BP Blg. 129); Heirs of Alberto Suguitan v. City of Mandaluyong, 384 Phil. 578 (2000).

[12] 25 Phil. 208 (1913).

[13] 32 Phil. 286 (1915).

[14] 66 Phil. 467 (1938).

[15] 40 Phil. 326 (1919). See also Republic v. Lara, 96 Phil. 170 (1954), J.M. Tuason & Co. Inc. v. Land Tenure Administration, G.R. No. 21064, February 18, 1970, 31 SCRA 413; National Power Corp. v. Chiong, G.R. No. 152436, June 20, 2003, 404 SCRA 527.

[16] G.R. No. 20620, August 15, 1974, 58 SCRA 336.

[17] Supra, footnote 16.


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