REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE TOLL REGULATORY BOARD, PETITIONER, VS. PHIL-VILLE DEVELOPMENT AND HOUSING CORPORATION AND SY CHI SIONG AND CO., INC., RESPONDENTS.

G.R. NO. 172243. June 26, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Simply put, the lone legal issue involved in this petition for review is whether, under the facts obtaining in this case, a final determination of just compensation in an expropriation proceedings must first be made before an order of expropriation may be issued by the court. In its Decision[1] of January 27, 2006 in CA-G.R. SP No. 89878, as reiterated in its Resolution[2] of April 10, 2006, the Court of Appeals (CA) answered the issue in the affirmative. Disagreeing, petitioner Republic, as represented by the Toll Regulatory Board, has come to this Court via this recourse to seek the annulment and setting aside of the CA decision and resolution.

But first the facts:

In an effort to ease traffic congestion on the North Luzon Expressway, petitioner Republic, through the Toll Regulatory Board, sought to widen the Balintawak Toll Plaza which would necessarily affect two (2) parcels of land registered under the names of herein respondents Phil-Ville Development and Housing Corporation (Phil-Ville, for brevity) and Sy Chi Siong and Co., Inc. (Sy Chi Siong, for short). The parcels of land are more particularly described as follows:melo

Owner

TCT No./ Lot No.

Total Area (sq. m.)

Assessed Value of Entire Area

Affected Area

Assessed Value of Affected Area

Zonal Value of the Affected Area

Phil-Ville

243189

425

P45,900.00

425

45,900.00

P1,062,500.00

Sy Chi Siong

29737

8,425

P658,690.00

2,924

P228,606.47

P7,310,000.00

On January 3, 2001, petitioner filed a complaint for expropriation before the Regional Trial Court of Caloocan City for the acquisition of the aforedescribed parcels of land. The case was raffled to Branch 131 of that court.

After filing an Amended Complaint to reflect the proper schedule of valuation of the properties sought to be expropriated, petitioner deposited with the Land Bank of the Philippines the amount of Two Million Three Hundred Eleven Thousand Two Hundred Pesos (P2,311,200.00), representing the total zonal value of the properties under expropriation. Thereafter, it filed with the court a Motion for Issuance of Writ of Possession.

Both respondents separately moved to dismiss the complaint on the main ground that the trial court lacked jurisdiction over the res. However, in its Order of April 3, 2002, the trial court denied both motions and asserted jurisdiction over the case. In time, respondents separately moved for reconsideration but their motions were denied by the court in its subsequent Order of June 18, 2002. In the same Order, the court directed the issuance of a writ of possession in favor of petitioner and required the respondents to file their respective answers to the complaint.

Of the two respondents impleaded as defendants in the complaint, only Sy Chi Siong filed its Answer, thereunder reiterating the grounds pleaded in its earlier motion to dismiss. In the alternative, it prayed for just compensation.

As regards respondent Phil-Ville, petitioner alleged that this respondent "has yet to file its responsive pleading to the complaint for expropriation."

Thereafter, petitioner filed a Motion for Issuance of Order of Expropriation and Appointment of Commissioners on the rationale that the respondents had never challenged its right to expropriate their properties subject of the suit.

In an Order dated January 27, 2005, the trial court, even as it found the aforementioned motion meritorious, deferred action on the petitioner's prayer for an order of expropriation and instead set the same motion for hearing on March 7, 2005 "so that the parties may nominate the commissioners who will ascertain and report to the court the just compensation for the aforementioned properties." Partly reads the Order:

> The motion is impressed with merit.

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> It is worthy to mention that: "The right of eminent domain is usually understood to be an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose" [Republic vs. Court of Appeals, 383 SCRA 611, 2002].
>
> An examination of the amended Complaint clearly show the overriding necessity of expropriating the subject properties in order to give way to the construction, rehabilitation and expansion of the North Luzon Expressway, which is undoubtedly for public purpose and benefit.
>
> Premises considered, the "Motion for issuance of Order of Expropriation" is hereby deferred pending final determination of just compensation.
>
> Meanwhile, let this case be set for hearing on March 7, 2005 at 8:30 in the morning so that the parties may nominate the commissioners who will ascertain and report to the court the just compensation for the aforementioned properties. [Emphasis supplied]

On February 22, 2005, petitioner filed a Motion for Partial Reconsideration of the above Order, arguing that since the case had been set for hearing on March 7, 2005 for the nomination of the commissioners and necessarily for the conduct of hearing for the determination of just compensation, "it is proper that an order of expropriation be forthwith issued before such determination of just compensation proceeds," citing, as basis therefor, Section 4, Rule 67 of the 1997 Rules of Civil Procedure, and adding that where a defendant in an expropriation case raises only the issue of just compensation, the court "should forthwith enter an order of expropriation."

In an Order dated March 7, 2005, the trial court denied petitioner's motion for partial reconsideration, to wit:

> The Court is of the opinion that the contentions of the counsel for the petitioner [are] exactly the opposite of what the rules provide. The provision of the rules relied upon, Section 4 Rule 67 is quite clear that this 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 the payment of just compensation. Thus, just compensation of the subject properties must first be determined and paid before the Court can issue an order of expropriation.
>
> Premises considered, the 'Motion for Partial Reconsideration' is hereby DENIED for lack of merit. (Italics supplied).

Dissatisfied, petitioner then went to the CA on certiorari, thereat docketed as CA-G.R. SP No. 89878, imputing grave abuse of discretion on the part of the trial court in insisting on the payment of just compensation before an order of expropriation may be issued.

As stated at the threshold hereof, the appellate court, in its herein assailed Decision dated January 27, 2006, upheld the trial court. Partly says the CA in its challenged decision:

> Jurisprudential law has already settled that condemnation suits involve two stages: the order authorizing expropriation, and the judgment on just compensation. An order of expropriation is a court's resolution upholding the State's lawful right to take property sought to be expropriated and thus forecloses any objection to the petitioner's authority to expropriate for the public purpose stated in the complaint. This is implied in Rule 67, Section 4. The order can be issued unless there are objections and defenses against the condemnation proceedings that would require the presentation of evidence, and only after an adjudication of these objections and defenses can a court proceed with the second stage of the expropriation proceedings.
>
> However, under the circumstances at bar, there is already no more issue as to the petitioner's authority to expropriate and the propriety of its exercise, which the lot owners themselves had acknowledged and admitted, and that the State has already been given the right to enter upon and to use the lots. In fact, the project has already been completed. We thus find no grave abuse of discretion on the court's deferment of the issuance of

> the Order of expropriation pending the determination of just compensation, for this is not a major procedural flaw fatal to the action of the petitioner.
>
> The only substantial issue now is the amount of compensation. The court a quo merely aims to secure its prompt adjudication and payment to the owners, and the order would only be a formality. Hence, the second stage of expropriation may proceed, the issuance of an order in this case is only a permissive one and discretionary on the part of the trial court. A failure to issue an expropriation order is no bar at all to the State to wield its power of eminent domain. In the case at bar, what will actually complete the vesting of title in favor of the State is the actual payment of just compensation to the owners of the condemned properties.
>
> WHEREFORE, in view of the foregoing, the instant petition is hereby DENIED. No pronouncement as to costs. (Emphasis supplied).
>
> SO ORDERED.

With its motion for reconsideration having been denied by the CA in its equally assailed resolution of April 10, 2006, petitioner is now with us via the present recourse on the following submissions:

> I
>
> AN ORDER OF EXPROPRIATION MERELY REQUIRES A DETERMINATION OF THE AUTHORITY TO EXERCISE THE POWER OF EMINENT DOMAIN; ITS ISSUANCE DOES NOT HINGE ON THE PAYMENT OF JUST COMPENSATION; AND
>
> II
>
> PAYMENT OF JUST COMPENSATION IS NOT A CONDITION SINE QUA NON FOR THE ISSUANCE OF AN ORDER OF EXPROPRIATION.

WE GRANT the petition.

Section 4, Rule 67 of the Rules of Court provides:

> Section 4. Order of expropriation. - 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 the 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.
>
> A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid.
>
> After the rendition of such an order, the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court deems just and equitable. [Emphasis supplied]

As is evident from the foregoing, there are two (2) stages in every action for expropriation, namely:

> - 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. This ends with an order, if not of dismissal of the action, of condemnation [or order of expropriation] 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 the payment of just compensation to be determined as of the date of the filing of the complaint; and
>
> - Determination by the court of the just compensation for the property sought to be taken.[3]

Petitioner Republic is correct in saying that an order of expropriation denotes the end of the first stage of expropriation. Its end then paves the way for the second stage – the determination of just compensation, and, ultimately, payment. An order of expropriation puts an end to any ambiguity regarding the right of the petitioner to condemn the respondents' properties. Because an order of expropriation merely determines the authority to exercise the power of eminent domain and the propriety of such exercise, its issuance does not hinge on the payment of just compensation. After all, there would be no point in determining just compensation if, in the first place, the plaintiff's right to expropriate the property was not first clearly established.

During the first stage, if the defendant had denied or objected to the plaintiff's right to expropriate, a hearing would have been held to decide upon whether the land was private, and whether the purpose was, in fact, public.[4] However, once the objections and defenses against the right of the plaintiff to expropriate are overruled, an order of expropriation may issue. With all the more reason must this be so when, as in this case, there is no contest or objection by either of the herein respondents as to the petitioner's right to expropriate.

Neither respondent raised an issue as to petitioner's right to expropriate its parcels of land, or the public purpose of the expropriation. For sure, respondent Phil-Ville even allowed petitioner unimpeded entry and unlimited access to the portion of its property under expropriation for the eventual construction, completion, operation and maintenance of the North Luzon Expressway Project.

After the trial court determined the right of petitioner to condemn the subject properties for the expansion and rehabilitation of the North Luzon Expressway, the first stage of the expropriation proceedings should have been properly terminated with the issuance of an order of expropriation declaring that petitioner has the right to take the properties.

To stress, payment of just compensation is not a condition sine qua non to the issuance of an order of expropriation. In expropriation proceedings, it is the transfer of title to the land expropriated that must wait until the indemnity is actually paid.[5] This is made all the more clear when note is taken of the second paragraph of Section 4, Rule 67, supra, which states that the defendant may appeal from the order of expropriation by filing a record on appeal, which appeal does not prevent the court from determining the just compensation to be paid.

Further, a perusal of Section 5, Rule 67 bolsters this point:

> Section 5. Ascertainment of Compensation. - Upon 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. x x x

Clearly, it is after the rendition of the order of expropriation that the court shall appoint commissioners to ascertain the just compensation for the property sought to be taken.

WHEREFORE, the petition is GRANTED and the assailed decision and resolution of the Court of Appeals are ANNULLED and SET ASIDE. Accordingly, the trial court is directed to issue an order of expropriation in favor of petitioner Republic.

No costs.

SO ORDERED.

Puno, CJ., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Conrado M. Vasquez, Jr., and

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Magdangal M. De Leon, concurring; rollo, pp. 41-48.

[2] Id. at 49.

[3] National Power Corporation v. Jocson, G.R. Nos. 94193-99, February 25, 1992, 206 SCRA 520.

[4] City of Manila v. Chinese Community of Manila, 40 Phil. 349, 357 (1919).

[5] Calvo v. Zandueta and Ordonez, 49 Phil. 605 (1926).

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