

AIR TRANSPORTATION OFFICE, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS AND MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, PETITIONERS, VS. ANGELES URGELLO TONGOY AND THE HEIRS OF PILA...

G.R. No. 174011. April 14, 2008

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] of the March 31, 2004 decision and August 2, 2006 resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 55114.

In 1963, the Republic of the Philippines instituted expropriation proceedings for the improvement and expansion of the Lahug Airport in Cebu City. Among the properties affected were Lot Nos. 913-F and 913-G belonging to respondents.[3] The trial court ruled in favor of the government. The respondents filed an appeal.[4]

Pending the appeal, the parties entered into a verbal compromise agreement whereby the owners of the affected lots agreed to withdraw their appeal in consideration of a commitment that, pursuant to an established policy involving similar cases, the subject lots would be resold to them at the same price at which they were expropriated in the event that the Civil Aeronautics Administration (CAA), predecessor of petitioner Air Transportation Office (ATO),[5] later abandoned the Lahug Airport.[6] Consequently, the respondents withdrew their appeal.[7]

In accordance with the expropriation, the subject properties were registered in the name of the government. However, the projected improvement and expansion plan did not materialize as ATO decided to move its operations to the Mactan Airbase and to instead lease out the area of the Lahug Airport. Petitioner Department of Public Works and Highways constructed a building on a portion of the subject properties.[8]

In 1964 or a year after the expropriation, respondents requested the repurchase of the lots in accordance with the commitment of the CAA. On August 10, 1964, the CAA responded that there could still be a need to use the Lahug Airport as an emergency DC-3 airport. It reiterated, however, that "should this office dispose and resell the properties which may be found out to be no longer necessary as an airport, then the policy of this office is to give priority to the former owners subject to the approval of the President." [9]

On January 7, 1967, respondents reiterated their offer to repurchase the properties, referring to an executive order of President Ferdinand Marcos which directed the closure of the Lahug Airport and transferred all aviation operations to Mactan Airbase. The Director of the CAA, in a letter dated March 28, 1967, informed respondents that their office had no plans yet of abandoning Lahug Airport.[10]

In a memorandum dated November 29, 1989 to the Secretary of the Department of Transportation,[11] President Corazon Aquino directed the transfer of general aviation operations of the Lahug Airport to the Mactan International Airport before the end of 1990, and upon such transfer, to close the Lahug Airport. By virtue of RA 6958,[12] the management and aeronautics operations of Lahug Airport were transferred to petitioner

Mactan-Cebu International Airport Authority (MCIAA).[13]

In 1992, respondents filed an action for recovery of possession and reconveyance of ownership of properties with damages in the Regional Trial Court (RTC), Cebu City, Branch 21 against petitioners.[14] Petitioners did not present any testimonial or documentary evidence. Neither did they cross-examine the witness presented by respondents. They also failed to submit any memorandum despite the ample time given to file it.[15]

The RTC rendered a decision on December 27, 1995 ordering petitioners to restore possession and ownership of Lot Nos. 913-F and 913-G to respondents and to remove all improvements thereon upon reimbursement of the just compensation paid to respondents at the time of expropriation. It also ordered the Register of Deeds of Cebu City to issue new transfer certificates of title in the name of respondents, upon payment of the proper fees.[16] It held that respondents were able to prove the oral agreement that the lots could be repurchased by their previous owners for the same price at which they were expropriated in case the CAA abandoned Lahug Airport.

Aggrieved, petitioners filed an appeal in the CA. In a decision dated March 31, 2004, the CA affirmed the RTC judgment. It denied reconsideration in a resolution promulgated on August 2, 2006.

Hence this petition which boils down to one core issue: whether the respondents were able to prove that there was an oral compromise agreement that entitled them to repurchase the expropriated lots.

The issue raised by petitioners is factual. Both the RTC and CA found that there was such an agreement and that petitioners failed to rebut the evidence presented by respondents. We find no reason to disturb their findings.

Moreover, in *Heirs of Timoteo Moreno and Maria Rotea v. MCIAA*[17] involving lots similarly expropriated for the expansion of the same Lahug Airport, we recognized the right of the previous owners who were able to prove the commitment of the government to allow them to repurchase their land:

The indisputable certainty in the present case is that there was a prior promise by the predecessor of the respondent that the expropriated properties may be recovered by the former owners once the airport is transferred to Mactan, Cebu. In fact, the witness for the respondent testified that 15 lots were already reconveyed to their previous owners.[18]

MCIAA v. CA[19] and *ATO v. Gopuco*[20] cited by petitioners are not applicable here. In *MCIAA*, the previous owner failed to prove that there was a compromise settlement.[21] In *ATO*, the previous owner was not a party to the compromise agreements.[22]

WHEREFORE, the petition is hereby DENIED.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, and Leonardo-De Castro, JJ., concur.
Azcuna, J., on official leave.

****** Angeles U. Tongoy died on March 22, 2002. In a resolution dated December 11, 2006, we granted the prayer of respondents in their motion for substitution that Antonina A. Fritzsche, the only legitimate child of Tongoy, be substituted as respondent in place of her mother; rollo, p. 149.

[1] Under Rule 45 of the Rules of Court.

[2] Both penned by Associate Justice Elvi John S. Asuncion (dismissed from the service) and concurred in by

Associate Justices Godardo A. Jacinto (retired) and Lucas P. Bersamin of the Fourth Division of the Court of Appeals; rollo, pp. 9-16.

[3] Respondent Angeles U. Tongoy was the owner of lot no. 913-F with an area of 6,640 sq. m. located in Cebu City and covered by TCT No. 10874. Pilar U. Arcenas, represented herein by respondent heirs, Enrique Arcenas, Monette A. Sanchez, Renato U. Arcenas, Patricia A. Ting, Roy U. Arcenas, Victor U. Arcenas and Rosendo U. Arcenas, was the owner of the adjacent lot no. 913-G with an area of 6,638 sq. m. which was covered by TCT No. 10875; *id.*, p. 89.

[4] *Id.*, p. 10.

[5] The ATO, created under EO 365, had the exclusive jurisdiction to administer, operate, manage, control, maintain and develop all government-owned airports, including Lahug Airport; *id.*, p. 88.

[6] *Id.*

[7] *Id.*, p. 12.

[8] *Id.*, pp. 10-11.

[9] *Id.*, p. 11.

[10] *Id.*

[11] *Id.*, p. 186. The RTC and CA decisions stated it was a memorandum to the Department of Tourism; *id.*, pp. 11 and 90.

[12] Entitled "An Act Creating the Mactan-Cebu International Airport Authority, Transferring Existing Assets of the Mactan International Airport and the Lahug Airport to the Authority, Vesting the Authority with Power to Administer and Operate the Mactan International Airport and the Lahug Airport, and for Other Purposes" and also known as the "Charter of the Mactan-Cebu International Airport Authority." This was passed on July 31, 1990.

[13] Rollo, p. 66.

[14] It was docketed as Civil Case No. CEB-11795; *id.*, p. 88.

[15] *Id.*, p. 11.

[16] *Id.*, p. 95.

[17] G.R. No. 156273, 15 October 2003, 413 SCRA 502. MCIAA's motion for reconsideration was denied in a resolution dated 9 August 2005, 466 SCRA 288.

[18] G.R. No. 156273, 9 August 2005, 466 SCRA 288, 301.

[19] G.R. No. 139495, 27 November 2000, 346 SCRA 126.

[20] G.R. No. 158563, 30 June 2005, 462 SCRA 544.

[21] *Supra* note 19, pp. 137-140.

[22] *Supra* note 20, pp. 556 and 558.

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