

**MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY,
PETITIONER, VS. BENJAMIN TUdTUD, BIENVENIDO TUdTUD, DAVID
TUdTUD, JUSTINIANO BORGA, JOSE BORGA, AND FE DEL ROSARIO,
REPRESENTED BY L...**

G.R. No. 174012. November 14, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The predecessors-in-interest of respondents Benjamin Tudtud et al. were the owners of a parcel of land in Cebu City, identified as Lot No. 988 of the Banilad Estate and covered by Transfer Certificate of Title (TCT) No. 27692.

In 1949, the National Airports Corporation (NAC), a public corporation of the Republic of the Philippines, embarked on a program to expand the Cebu Lahug Airport. For this purpose, it sought to acquire, by negotiated sale or expropriation, several lots adjoining the then existing airport.

By virtue of a judgment rendered by the third branch of the Court of First Instance in Civil Case No. R-1881, the NAC acquired Lot No. 988, among other lots. TCT No. 26792 covering Lot No. 988 was thus cancelled and TCT No. 27919 was issued in its stead in the name of the Republic of the Philippines. No structures related to the operation of the Cebu Lahug Airport were constructed on Lot No. 988.

Lot No. 988 was later transferred to the Air Transport Office (ATO), and still later to petitioner Mactan Cebu International Airport Authority (MCIAA) in 1990 via Republic Act No. 6958.

When the Mactan International Airport at Lapu Lapu City was opened for commercial flights, the Cebu Lahug Airport was closed and abandoned and a significant area thereof was purchased by the Cebu Property Ventures, Inc. for development as a commercial complex.

By letter of October 7, 1996 to the general manager of the MCIAA, Lydia Adlawan, acting as attorney-in-fact of the original owners of Lot No. 988, demanded to repurchase the lot at the same price paid at the time of the taking, without interest, no structures or improvements having been erected thereon and the Cebu Lahug Airport having been closed and abandoned, hence, the purpose for which the lot was acquired no longer existed.[1]

As the demand remained unheeded, respondents, represented by their attorney-in-fact Lydia Adlawan, filed a Complaint[2] before the Regional Trial Court (RTC) of Cebu City, docketed as Civil Case No. CEB-19464, for reconveyance and damages with application for preliminary injunction/restraining order against the MCIAA.

Respondents anchored their complaint on the assurance they claimed was made by the NAC that the original owners and/or their successors-in-interest would be entitled to repurchase the lot when and in the event that it was no longer used for airport purposes.[3]

In its Answer with Counterclaim,[4] the MCIAA countered that, inter alia, the decision in Civil Case No. R-1881

did not lay any condition that the lots subject of expropriation would revert to their owners in case the expansion of the Cebu Lahug Airport would not materialize.[5]

To prove their claim, respondents presented witnesses who testified that the NAC promised their predecessors-in-interest-original owners of Lot No. 988 that it would be returned to them should the expansion of the Cebu Lahug Airport not materialize.[6] And respondents invoked this Court's ruling in MCIAA v. Court of Appeals[7] involving another lot acquired by the NAC for the expansion of the Cebu Lahug Airport. In that case, although the deed of sale between the therein respondent Melba Limbaco's predecessor-in-interest and NAC did not contain a provision for the repurchase of the therein subject lot should the purpose for its acquisition ceased to exist, this Court allowed Melba Limbaco to recover the lot based on parole evidence that the NAC promised the right of repurchase to her predecessor-in-interest.[8]

The MCIAA disputed the applicability to the present case of the immediately-cited MCIAA ruling, the NAC having acquired Lot No. 988 not by a deed of sale but by virtue of a final judicial decree of expropriation which cannot be modified by parole evidence.[9]

After trial, Branch 20 of the Cebu City RTC rendered judgment in favor of respondents, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs as against defendant ordering the latter to reconvey the entire subject real property covered by T.C.T. No. 27919 within 15 days from receipt of this decision.

SO ORDERED.[10] (Underscoring supplied)

On appeal,[11] the Court of Appeals, by Decision of May 8, 2006[12] affirmed the RTC decision. Its Motion for Reconsideration[13] having been denied,[14] the MCIAA filed the present petition,[15] faulting the appellate court in "disregarding" the following considerations:

I.

THE JUDGMENT OF EXPROPRIATION IN CIVIL CASE NO. R-1881 WAS ABSOLUTE AND UNCONDITIONAL.

II.

RESPONDENTS' CLAIM OF ALLEGED VERBAL ASSURANCES FROM THE GOVERNMENT VIOLATES THE STATUTE OF FRAUDS.

III.

THE BEST EVIDENCE SHOWING THE UNCONDITIONAL ACQUISITION OF LOT 988 IS THE CERTIFICATE OF TITLE.[16] (Underscoring supplied)

In insisting that the judgment in Civil Case No. R-1881 was absolute and unconditional, the MCIAA cites *Fery v. Municipality of Cabanatuan*[17] which held that:

x x x If x x x the decree of expropriation gives to the entity a fee simple title, then, of course, the land becomes the absolute property of the expropriator, whether it be the State, a province, or municipality, and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings.

When land has been acquired for public use in fee simple, unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner.[18] (Italics in the original; underscoring supplied)

MCIAA in fact offers the text of the trial court's decision in R-1881, inviting attention to the dispositive portion thereof, to prove that the judgment of expropriation entered in favor of the government is absolute and unconditional, and that there is nothing in the decision that would show that the government made any assurance or stipulation whatsoever to reconvey the subject lot in case the expansion of the Lahug airport would not materialize.[19]

But also in Fery, this Court, passing on the question of whether a private land which is expropriated for a particular public use, but which particular public use is abandoned, may be returned to its former owner, held:

The answer to that question depends upon the character of the title acquired by the expropriator x x x. If, for example, land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned the property shall return to its former owner, then, of course, when the purpose is terminated or abandoned, the former owner reacquires the property so expropriated. If, for example, land is expropriated for a public street and the expropriation is granted upon conditions that the city can only use it for a public street, then, of course, when the city abandons its use as a public street, it returns to the former owner, unless there is some statutory provision to the contrary.[20] (Underscoring supplied)

That nothing in the trial court's decision in Civil Case No. R-1881 indicates a condition attached to the expropriation of the subject lot, this Court, in *Heirs of Timoteo Moreno v. MCIAA*[21] involving the rights of another former owner of lots also involved in Civil Case No. R-1881, noting the following portion of the body of the said trial court's decision:

As for the public purpose of the expropriation proceeding, it cannot now be doubted. Although the Mactan Airport is being constructed, it does not take away the actual usefulness and importance of the Lahug Airport: it is handling the air traffic both civilian and military. From it aircrafts fly to Mindanao and Visayas and pass through it on their return flights to the North and Manila. Then, no evidence was adduced to show how soon is the Mactan Airport to be placed in operation and whether the Lahug Airport will be closed immediately thereafter. It is for the other departments of the Government to determine said matters. The Court cannot substitute its judgment for those of the said departments and agencies. In the absence of such a showing, the Court will presume that the Lahug Airport will continue to be in operation,[22]

held:

While the trial court in Civil Case No. R-1881 could have simply acknowledged the presence of public purpose for the exercise of eminent domain regardless of the survival of Lahug Airport, the trial court in its Decision chose not to do so but instead prefixed its finding of public purpose upon its understanding that "Lahug Airport will continue to be in operation." Verily, these meaningful statements in the body of the Decision warrant the conclusion that the expropriated properties would remain to be so until it was confirmed that Lahug Airport was no longer "in operation". This inference further implies two (2) things: (a) after the Lahug Airport ceased its undertaking as such and the expropriated lots were not being used for any airport expansion project, the rights vis-à-vis the expropriated Lots Nos. 916 and 920 as between the State and their former owners, petitioners herein, must be equitably adjusted; and, (b) the foregoing unmistakable declarations in the body of the Decision should merge with and become an intrinsic part of the fallo thereof which under the premises is clearly inadequate since the dispositive portion is not in accord with the findings as contained in the body thereof.[23]

On the Heirs of Moreno's motion for reconsideration, this Court affirmed its decision, emphasizing that "the fallo of the decision in Civil Case No. R-1881 must be read in reference to the other portions of the decision in which it forms a part[.]"[24] and that "[a] reading of the Court's judgment must not be confined to the dispositive portion alone; rather, it should be meaningfully construed in unanimity with the ratio decidendi thereof to grasp the true intent and meaning of a decision."[25]

The MCIAA goes on, however, to cite *MCIAA v. Court of Appeals and Chiongbian*[26] wherein this Court rejected testimonial evidence of an assurance of a right to repurchase property acquired by the NAC under the judgment in still the same Civil Case No. R-1881. The MCIAA's reliance on this case is misplaced. As this Court noted in *Heirs of Timoteo Moreno v. MCIAA*,[27] the respondent Chiongbian put forth inadmissible and inconclusive evidence, Chiongbian's testimony as well as that of her witness as to the existence of the agreement being hearsay.[28]

In contrast, in the case at bar, respondents' witness respondent Justiniano Borga himself, who represented his mother-one of the original owners of subject lot during the negotiations between the NAC and the landowners, declared that the original owners did not oppose the expropriation of the lot upon the assurance of the NAC that they would reacquire it if it is no longer needed by the airport.[29]

Another witness for respondent, Eugenio Amores, an employee of the NAC, declared that in the course of some meetings with the landowners when he accompanied the NAC legal team and was requested to jot down what transpired thereat, he personally heard the NAC officials give the assurance claimed by respondents.[30]

The MCIAA nevertheless urges this Court to reject respondents' testimonial evidence, citing Article 1403 (2)(e) of the Civil Code which places agreements for the sale of real property or an interest therein within the coverage of the Statute of Frauds.

The Statute of Frauds applies, however, only to executory contracts.[31] It does not apply to contracts which have been completely or partially performed,[32] the rationale thereof being as follows:

x x x In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud. However, if a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable the defendant to keep the benefits already delivered by him from the transaction in litigation, and, at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby.[33] (Underscoring supplied)

A word on MCIAA's argument that *MCIAA v. Court of Appeals*, supra, does not apply to the present case. As reflected in the earlier-quoted ruling in *Fery*, the mode of acquisition for public purpose of a land - whether by expropriation or by contract - is not material in determining whether the acquisition is with or without condition.

In fine, the decision in favor of respondents must be affirmed. The rights and duties between the MCIAA and respondents are governed by Article 1190 of the Civil Code[34] which provides:

When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.

In case of the loss, deterioration, or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article [Article 1189] shall be applied to the party who is bound to return.

x x x x

While the MCIAA is obliged to reconvey Lot No. 988 to respondents, respondents must return to the MCIAA what they received as just compensation for the expropriation of Lot No. 988, plus legal interest to be computed from default,[35] which in this case runs from the time the MCIAA complies with its obligation to the respondents.[36]

Respondents must likewise pay the MCIAA the necessary expenses it may have incurred in sustaining Lot No. 988 and the monetary value of its services in managing it to the extent that respondents were benefited thereby.

Following Article 1187[37] of the Civil Code, the MCIAA may keep whatever income or fruits it may have obtained from Lot No. 988, and respondents need not account for the interests that the amounts they received as just compensation may have earned in the meantime.

In accordance with the earlier-quoted Article 1190 of the Civil Code vis-à-vis Article 1189 which provides that "[i]f a thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor x x x," respondents, as creditors, do not have to settle as part of the process of restitution the appreciation in value of Lot 988 which is a natural consequence of nature and time.

WHEREFORE, the petition is, in light of the foregoing disquisition, DENIED. The May 8, 2006 Decision of the Court of Appeals affirming that of Branch 20 of the Cebu City Regional Trial Court is AFFIRMED with MODIFICATION as follows:

- Respondents are ORDERED to return to the MCIAA the just compensation they received for the expropriation of Lot No. 988 plus legal interest in the case of default, to be computed from the time the MCIAA complies with its obligation to reconvey Lot No. 988 to them;
- Respondents are ORDERED to pay the MCIAA the necessary expenses it incurred in sustaining Lot No. 988 and the monetary value of its services to the extent that respondents were benefited thereby;
- The MCIAA is ENTITLED to keep whatever fruits and income it may have obtained from Lot No. 988; and
- Respondents are also ENTITLED to keep whatever interests the amounts they received as just compensation may have earned in the meantime, as well as the appreciation in value of Lot No. 988 which is a natural consequence of nature and time;

In light of the foregoing modifications, the case is REMANDED to Branch 20 the Regional Trial Court of Cebu City only for the purpose of receiving evidence on the amounts that respondents will have to pay to the MCIAA in accordance with this Court's decision.

SO ORDERED.

Quisumbing, Acting C.J., (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Exhibit "D," records, p. 11.

[2] Id. at 1-8.

[3] Id. at 2.

[4] Id. at 40-47.

[5] Id. at 43.

[6] TSN, March 18, 1997, pp. 25-36; TSN, May 14, 1997, pp. 2-11; TSN, June 9, 1997, pp. 2-10.

[7] G.R. No. 121506, October 30, 1996, 263 SCRA 736. Vide records, pp. 96, 130-138, 154, 194-195.

[8] MCIAA v. Court of Appeals, id. at 741-744.

[9] Records, pp. 183-185.

[10] Id. at 204.

[11] Id. at 205-205.

[12] Penned by Court of Appeals Associate Justice Vicente L. Yap, with the concurrence of Associate Justices Arsenio J. Magpale and Apolinario D. Bruselas, Jr. CA rollo, pp. 169-180.

[13] Id. at 195-206.

[14] Id. at 211-213.

[15] Rollo, pp. 25-44.

[16] Id. at 32.

[17] 42 Phil. 28 (1921).

[18] Id. at 30. (Citations omitted).

[19] Exhibit "1," records, pp. 101-127; Exhibit "1-A," records, pp. 125-127; records, p. 169.

[20] Supra note 17 at 29-30.

[21] 459 Phil. 948 (2003).

[22] Exhibit "C," records, p. 109.

[23] Heirs of Moreno v. MCIAA, 459 Phil. 948, 963 (2003).

[24] Heirs of Timoteo Moreno and Maria Rotea v. MCIAA, G.R. No. 156273, August 9, 2005, 466 SCRA 285, 305.

[25] Ibid.

[26] 399 Phil. 695 (2000).

[27] Supra note 21.

[28] MCIAA v. Court of Appeals, supra note 26 at 708-710.

[29] Vide TSN, May 14, 1997, pp. 4-7.

[30] TSN, June 9, 1997, p. 5.

[31] Vide Asia Production Co., Inc. v. Paño, G.R. No. 51058, January 27, 1992, 205 SCRA 458, 467.

[32] Id. at 466.

[33] Ibid. Citation omitted.

[34] Heirs of Moreno v. MCIAA, supra note 21 at 967.

[35] Vide Heirs of Timoteo Moreno and Maria Rotea v. MCIAA, G.R. No. 156273, August 9, 2005, 466 SCRA 288, 306; Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

[36] Civil Code, Article 1169:

x x x x

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[37] Civil Code, Article 1187:

The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated.

Vide Heirs of Moreno v. MCIAA, supra note 26 at 968.

SEPARATE CONCURRING OPINION

VELASCO, JR., J.:

I concur with the well-written ponencia of my respected colleague, but wish to make the following comments:

This is the opportune time to revisit *Fery v. Municipality of Cabanatuan*,^[1] a 1921 expropriation suit commenced and resolved during the American occupation of the country. The principles thereat expounded, needless to stress, were based on American jurisprudence.

As may be recalled, *Fery* involved the expropriation of parcels of land to be used as site of a public market. Instead of putting up a public market on the area, the then municipality of Cabanatuan constructed houses to be rented out. Claiming that the municipality lost its right to the property taken since it did not pursue its public purpose, *Fery* brought suit to recover, only to be rebuffed by the Court. The basic tenet of expropriation explained in *Fery* is, "When private land is expropriated for a particular public use, the same does not return to its former owner upon an abandonment of the particular use for which the land was expropriated." In fine, *Fery* enunciates the fee simple concept in expropriation holding that an acquisition thru the medium of expropriation vests on the government absolute ownership or fee simple title on the expropriated land, though the public purpose stated is not achieved. Further defined, an acquisition in "fee simple" is "one in which the owner is entitled to the entire property, with unconditional power of disposition during one's life, and descending to one's heirs and legal representatives upon one's death intestate. Such estate is unlimited as to duration, disposition, and descendibility."^[2] The fee-simple theory adopted in *Fery* was based in turn on: *City of Fort Wayne v. Lake Shore & M.S. RY. Co.*,^[3] *McConihay v. Theodore Wright*,^[4] and *Reichling v. Covington Lumber Co.*^[5] which were one in holding that the transfer to a third party of the expropriated parcels which necessarily resulted in the abandonment of the particular public use or purpose for which the property was taken is not a ground for the recovery of the expropriated lot by the previous owner, the title of the selling or donating expropriating agency being one in fee simple.

It is respectfully submitted that applying, on all fours, the doctrine established in *Fery*, specifically the fee simple concept underlying it, on the instant and similar condemnation cases may no longer be appropriate, considering the ensuing inequity such application entails. Too, *Fery* was decided not under the aegis of any of the Philippine Constitutions uniformly decreeing that private property shall not be taken for public use without just compensation.

Expropriation is, in essence, forced taking by the state or its agencies of private property, the private landowner being really without a ghost of a chance to defeat, try as he might, the case of the expropriating agency. In other words, in expropriation, the private owner is compelled to give up his property for the common weal;^[6] he is deprived of property against his will. Be that as it may, the mandatory requirement of due process ought to be strictly followed. In context, this would mean that before a "taking" for the purpose of eminent domain is allowed, it must be shown, at the minimum, that there is a compelling public need and purpose to take private property, the purpose to be specifically alleged or least reasonably deducible from the complaint. The power of eminent

domain, being an inherent attribute of the government, is fundamentally limitless if not restrained by the Bill of Rights. Without the limitations thus imposed, the use of the power of eminent domain can become despotic. The Bill of Rights is, indeed, a guarantee of protecting certain areas of a person's life, liberty, and property against the government's abuse of power.

Public use, as an eminent domain concept, is now deemed to include any use that is of "usefulness, utility, or advantage, or what is productive of general benefit [of the public]."[7] If the genuine public necessity—the very reason or condition as it were—allowing, in the first place, the expropriation of a private land ceases or disappears, then there is no more cogent point for the government's retention of the expropriated land. The same legal situation should hold if the government devotes the property to another public use very much different from the original or deviates from the declared purpose to benefit another private person. It has been said that the direct use by the state of its power to oblige a landowner to renounce his productive possession to another citizen, who will use it predominantly for that citizen's own private gain, is offensive to our laws.[8]

A condemnor should commit to use the property pursuant to the purpose stated in the petition for expropriation file, failing which it should file another petition for the new purpose. If not, then it behooves the condemnor to return the said property to its private owner, if the latter so desires. The government cannot plausibly keep the property it expropriated in any manner it pleases and, to borrow from *Republic v. Lim*,[9] dishonor the judgment of expropriation. This is not in keeping with justice and equity. There is authority to the effect that land taken for a public use shall be devoted to that use within a reasonable time and this condition to the taking will be implied even though the authorizing statute is silent on the subject; that a statute is invalid if it exempts the condemning agency from devoting the land to a public purpose indefinitely.[10]

The simplistic notion, therefore, that the government, via an expropriation proceedings, acquires unrestricted ownership over or a fee simple title to the covered land, is difficult to take. Expropriated lands should be differentiated from a piece of land ownership of which was absolutely transferred by way of an unconditional purchase and sale contract freely entered by two parties, one without obligation to buy and the other without the duty to sell. In that case, the fee simple concept really comes into play, as in the above *City of Fort Wayne* case. There is to me no occasion to apply the "fee simple concept" if the transfer is conditional. I respectfully suggest that the taking of a private land in expropriation proceedings is always conditioned on its continued devotion to its public purpose. As a necessary corollary, once the purpose is terminated or peremptorily abandoned, then the former owner, if he so desires, may seek its reversion, subject of course to the return, at the very least, of the just compensation received. So it must be here.

In the case at bench, there appears to be an additional reason for allowing the former land owners to recover their property. I refer not only to the non-user of the property for the public purpose for which it was acquired. It appears that Mactan-Cebu International Airport Authority (MCIAA) has in fact abandoned the property and dropped the Lahug Airport expansion project altogether. I need not belabor respondents' claim of having been given assurance by MCIAA, during the preliminary negotiations, that they can repurchase the lots in question in the event the expansion project does not materialize. Though the condition was not stated in any contract or in the expropriation order, the respondents had witnesses who testified as to the veracity of the fact.

To be compelled to renounce dominion and all the rights flowing therefrom over a piece of land is hard enough for the owner. But to be asked to sacrifice for the common good and yield ownership to the government which reneges on its assurance that the private property shall be for a public purpose may be too much. But it would be worse if the power of eminent domain is deliberately used as a subterfuge to benefit another with influence and power in the political process, including development firms. The mischief thus depicted is not all far-fetched with the continued application of *Fery*. Even as the Court deliberates on the case, there is an allegation that the area in

question has been sold to Cebu Property Ventures, Inc. It is high time the Court abandon Fery.

[1] G.R. No. 17540, July 23, 1921.

[2] Slayden v. Hardin, 257 Ky. 685, 79 S.W. 2d 11, 12.

[3] 132 Ind. 558, November 5, 1892.

[4] 121 U.S. 932, April 11, 1887.

[5] 57 Wash. 225, February 4, 1910.

[6] Yujuico v. Atienza, Jr., G.R. No. 164282, October 12, 2005, 472 SCRA 463.

[7] Bernas, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, p. 391 (2003).

[8] Heirs of Timoteo Moreno and Maria Rotea v. Mactan-Cebu International Airport Authority, G.R. No. 156273, August 9, 2005, 466 SCRA 288, 302.

[9] G.R. No. 161656, June 29, 2005, 462 SCRA 265; It must be pointed out that the Court stated that land recovery may be allowed if the government fails to pay just compensation within 5 years from finality of the judgment in expropriation proceedings.

[10] Marietta Chair Co. v. Henderson, 121 Ga. 399, 49 SE 312, and other cases, cited in 26 Am. Jur. 2nd, Sec. 146.

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