

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HEIRS OF GABRIEL Q. FERNANDEZ, RESPONDENTS.

G.R. No. 175493. March 25, 2015

Ponente: LEONEN, J.

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LEONEN, J.:

The state and its implementing agencies must first comply with the requirements outlined in Section 4 of Republic Act No. 8974[2] before these are allowed to take possession of private property for a national infrastructure project.

This is a Petition for Review on Certiorari[3] under Rule 45 assailing the Decision[4] dated August 25, 2006 and Resolution[5] dated November 14, 2006 of the Court of Appeals, which reversed and set aside the authorization granted by the trial court for petitioner Republic of the Philippines to take possession of respondents Heirs of Gabriel Q. Fernandez's property in an expropriation proceeding.

The Heirs of Gabriel Q. Fernandez (Heirs of Fernandez) are the owners of an 11,165-square-meter property in Barangay Tuyo, Balanga, Bataan. The property is covered by Transfer Certificate of Title No. T-139051.[6]

On June 5, 2001, the Republic of the Philippines (Republic), on behalf of the Department of Public Works and Highways, filed a Verified Complaint for Expropriation against the Heirs of Fernandez and Sotera Santuyo, the owner of another property in Barangay Tuyo.[7]

The Republic, through its Verified Complaint for Expropriation, alleged that the Department of Public Works and Highways intended to construct a four-lane highway in Barangay Tuyo. It further alleged that it was necessary to acquire the properties of the Heirs of Fernandez and Sotera Santuyo for that purpose, but its offer to purchase was refused. It also alleged that the adjacent properties were already acquired by negotiation. The Republic prayed that a Writ of Possession be issued in its favor upon the filing of the Petition and the deposit of the value of the properties "as provisionally ascertained and fixed by the court, which should not be more than P50.00 per square meter." [8]

In their Answer, the Heirs of Fernandez admitted that there was "nobility and utility"[9] in the construction of the highway but disputed the necessity of expropriating their property. They argued that the expropriation of their property was not permitted by the Constitution and that the Republic must first comply with the guidelines stated in Section 4 of Republic Act No. 8974[10] and Section 12 of its Implementing Rules and Regulations[11] before a Writ of Possession can be issued. They also alleged that the fair and true market value of their property was P1,200.00 per square meter.[12]

The summons, meanwhile, for Sotera Santuyo "was returned unserved." [13]

In the Pre-trial Order dated January 7, 2002, the trial court stated that no stipulation of facts was made by the parties and that while the Republic had marked their documentary evidence, the Heirs of Fernandez had not yet marked theirs. The trial court terminated the pre-trial and set the case for initial hearing.[14]

The Republic filed a Motion/Manifestation dated February 4, 2002 wherein it alleged that on October 20, 2000, it offered the amount of P35.00 per square meter to the Heirs of Fernandez as compensation for the property. It alleged that the price was above the zonal value, which was P15.00 per square meter. It also alleged that after it had filed the Verified Complaint for Expropriation, it offered the Heirs of Fernandez P50.00 per square meter, which the latter refused as they were demanding P1,000.00 per square meter. It also submitted that in compliance with Section 12 of the Implementing Rules and Regulations of Republic Act No. 8974, it was ready to deposit P167,475.00, which was the equivalent of the zonal value of the property.[15]

The Heirs of Fernandez also filed a Manifestation and Motion alleging that the pre-trial had not yet been concluded as they had not yet marked their evidence. They prayed for the re-opening of the pre-trial so that they could mark their evidence and the parties could enter into a stipulation of facts.[16]

On February 11, 2002, a hearing was conducted.[17] The Heirs of Fernandez's counsel was absent, but the Republic was able to mark additional documents. The trial court also directed the re-opening of the pre-trial.[18]

On February 21, 2002, the trial court issued an Order allowing the Republic to take possession of the Heirs of Fernandez's property in view of their payment of P167,475.00, as evidenced by a Land Bank of the Philippines check in the name of Gabriel Q. Fernandez.[19]

On April 23, 2002, the Heirs of Fernandez filed an Omnibus Motion requesting for the admission of the existence of seven roads connecting Balanga to the Roman Highway, the comprehensive land use plan, a list of provincial roads per municipality, and a photocopy of the Bureau of Internal Revenue zonal valuation for Barangay. Tuyo. They prayed for the nullification of the Order dated February 21, 2002, alleging that a copy of the Order was only served on them at the pre-trial on April 3, 2002. They also alleged that they were not served a copy of the Republic's Motion/Manifestation dated February 4, 2002.[20]

On May 22, 2002, the trial court issued an Order finding that the Republic had a lawful right to take the property and appointing three commissioners to determine the amount of just compensation to be given to the Heirs of Fernandez. It also ruled that the failure to serve a copy of the Order dated February 21, 2002 was a mere inadvertence of the clerk in charge of civil cases. It ruled that the zonal value of P15.00 per square meter obtained by the Republic was also based on a Bureau of Internal Revenue certification and that the Heirs of Fernandez's rights were not violated when the Republic exercised its power of eminent domain.[21]

The Heirs of Fernandez appealed the case before the Court of Appeals, arguing that the expropriation was unnecessary since there were seven existing public roads that connected Balanga to the Roman Highway. They also argued that they were deprived of due process as they were not duly notified of the trial court's Order dated February 21, 2002. They argued that the trial court Order not only violated Article III of the Constitution but also the guidelines set forth in Section 4 of Republic Act No. 8974 and Section 12 of its Implementing Rules and Regulations.[22]

On August 25, 2006, the Court of Appeals rendered a Decision[23] that set aside the Republic's authority to take possession of the property but affirmed the Order to appoint commissioners to determine the amount of just compensation.

The Court of Appeals acknowledged that while there were roads that connected Balanga to Roman Highway, it conceded that the construction of a four-lane highway was a public need that would undeniably become beneficial to Balanga and the Province of Bataan.[24]

The Court of Appeals also ruled that the Heirs of Fernandez were not denied due process since they had the opportunity to seek for the nullification of the Order dated February 21, 2002 when they filed their Omnibus

Motion on April 23, 2002.[25]

On the issue, however, on the correct valuation of the property, the Court of Appeals relied on the Heirs of Fernandez's copy of the Bureau of Internal Revenue zonal valuation and Gabriel Q. Fernandez's tax declaration submitted by the Republic, which categorized the property as "A1" or "1st agricultural land" valued at P50.00 per square meter. Since the valuation of P15.00 per square meter was for pastureland, the Court of Appeals concluded that the Republic's deposit of P167,475.00 was incorrect.[26]

Citing Section 4 of Republic Act No. 8974, the Court of Appeals ruled that it was only upon the payment of P558,250.00, which was 100% of the zonal value of the property, and the submission of a certificate of availability of funds that a Writ of Possession may be issued.[27] The dispositive portion states:

WHEREFORE, the Order dated May 22, 2002, which reiterated the Order dated February 21, 2002[,] is REVERSED and SET ASIDE insofar as it authorized plaintiff-appellee to take possession of the 11,650 square meter property of defendants-appellants in view of the deposit of the amount of P167,475.00 only, but AFFIRMED with respect to the appointment of Commissioners to determine the just compensation for defendants-appellants' property.[28]

The Republic filed a Motion for Reconsideration, but this was denied by the Court of Appeals in the Resolution dated November 14, 2006.[29] Aggrieved, the Republic filed a Petition for Review on Certiorari before this court.

Petitioner Republic alleges that it faithfully complied with the legal requirements to authorize it to take possession of the property.[30] It also alleges that the P15.00 per square meter valuation was based on the Bureau of Internal Revenue's zonal valuation, while the P50.00 per square meter valuation was a "sheer allegation"[31] of respondents Heirs of Fernandez "which was not even offered in evidence." [32]

Petitioner Republic argues that since a Writ of Possession was already issued in its favor when it made its deposit, the only issue left to be settled is the determination of just compensation. It also argues that the Court of Appeals' Decision was similar to a temporary restraining order or injunction, which is prohibited by Section 3[33] of Republic Act No. 8975.[34]

In their Comment,[35] respondents Heirs of Fernandez argue that the P15.00 per square meter valuation corresponded to pastureland, not agricultural land, as stated in the Bureau of Internal Revenue's zonal valuation presented as petitioner Republic's own evidence. They also argue that since the Order issuing the Writ of Possession was already reversed by the Court of Appeals, there was no more Writ of Possession.[36]

Petitioner Republic was required to reply to the Comment. However, it manifested on July 26, 2007 that it was no longer filing a Reply since it already raised and extensively discussed the issues in its Petition.[37]

The issues for this court's resolution are:

First, whether the Court of Appeals erred in setting aside petitioner Republic's Writ of Possession for the latter's failure to comply with Section 4 of Republic Act No. 8974.

Second, whether the reversal of the issuance of the Writ of Possession by the Court of Appeals was effectively an injunction against petitioner Republic from proceeding with the expropriation.

The Petition is denied.

I

A Writ of Possession may be issued only upon full compliance with Section 4 of Republic Act No. 8974.

Before the state may expropriate private property for a national infrastructure project, it must first comply with the requisites in Republic Act No. 8974, otherwise known as An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes. Section 4 of Republic Act No. 8974 states:

Section 4. Guidelines for Expropriation Proceedings. - Whenever it is necessary to acquire real property for the right-of-way or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a)

Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum, of (1) . one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7[38] hereof;

(b)

In provinces, cities, municipalities and other areas where there is no zonal valuation, the BIR is hereby mandated within the period of sixty (60) days from the date of the expropriation case, to come up with a zonal valuation for said area; and

(c)

In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the implementing agency shall immediately pay the owner of the property its proffered value taking into consideration the standards prescribed in Section 5 hereof.

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be. paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court.

Under Section 4 of Republic Act No. 8974, the implementing agency must, upon filing of the expropriation complaint, immediately pay the property owner an amount equivalent to 100% of the value of the property based on the current relevant zonal valuation by the Bureau of Internal Revenue and the value of any improvements or structure on a replacement cost method. The law further mandates that courts may issue a Writ of Possession only upon the presentation by the implementing agency of a certificate of availability of funds.

The provisional value that must be paid under Section 4 of Republic Act No. 8974 should not be confused with the payment of just compensation required by the Constitution[39] in the exercise of the power of eminent

domain.

II

The payment of the provisional value under Section 4 of Republic Act No. 8974 is different from the payment of just compensation.

In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*:^[40]

Upon compliance with the requirements, a petitioner in an expropriation case is entitled to a writ of possession as a matter of right and it becomes the ministerial duty of the trial court to forthwith issue the writ of possession. No hearing is required and the court neither exercises its discretion or judgment in determining the amount of the provisional value of the properties to be expropriated as the legislature has fixed the amount under Section 4 of R.A. 8974.

To clarify, the payment of the provisional value as a prerequisite to the issuance of a writ of possession differs from the payment of just compensation for the expropriated property. While the provisional value is based on the current relevant zonal valuation, just compensation is based on the prevailing fair market value of the property. As the appellate court explained:

The first refers to the preliminary or provisional determination of the value of the property. It serves a double-purpose of pre-payment if the property is fully expropriated, and of an indemnity for damages if the proceedings are dismissed. It is not a final determination of just compensation and may not necessarily be equivalent to the prevailing fair market value of the property. Of course, it may be a factor to be considered in the determination of list compensation.

Just compensation, on the other hand, is the final determination of the fair market value of the property. It has been described as "the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation." Market values, has also been described in a variety of ways as the "price fixed by the buyer and seller in the open market in the usual and ordinary course of legal trade and competition; the price and value of the article established as shown by sale, public or private, in the ordinary way of business; the fair value of the property between one who desires to purchase and one who desires to sell; the current price; the general or ordinary price for which property may be sold in that locality.

There is no need for the determination with reasonable certainty of the final amount of just compensation before the writ of possession may be issued.^[41] (Emphasis and underscoring in the original)

Any payment made by the Republic as to the expropriated property's provisional value is not equivalent to the payment of the present fair market value of the property. It only serves- as a pre-payment so that the government may take possession of the property. Moreover, the value need not be judicially determined; rather, the value has already been set by the current relevant zonal value of the area as classified by the Bureau of Internal Revenue.

This pre-payment must also be paid immediately to the owner of the property before a Writ of Possession may be issued. In *Republic v. Gingoyon*:^[42]

Rep. Act No. 8974 represents a significant change from previous expropriation laws such as Rule 67, or even Section 19 of the Local Government Code. Rule 67 and the Local Government Code merely provided that the Government deposit the initial amounts antecedent to acquiring possession of the property with, respectively, an authorized Government depositary or the proper court. In both cases, the private owner does not receive compensation prior to the deprivation of property. On the other hand, Rep. Act No. 8974 mandates immediate payment of the initial just compensation prior to the issuance of the writ of possession in favor of the Government.

Rep. Act No. 8974 is plainly clear in imposing the requirement of immediate prepayment, and no amount of statutory deconstruction can evade such requisite. It enshrines a new approach towards eminent domain that reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity. While expropriation proceedings have always demanded just compensation in exchange for private property, the previous deposit requirement impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed. Under the new modality prescribed by Rep. Act No. 8974, the private owner sees immediate monetary recompense with the same degree of speed as the taking of his/her property.[43] (Emphasis supplied)

Here, the Republic issued a check[44] in the name of Gabriel Q. Fernandez for P167,475.00, the amount it alleged was 100% of the zonal value of the property at P15.00 per square meter. It presented as evidence a certification[45] by the Bureau of Internal Revenue on the zonal valuation of Barangay Road in Barangay Tuyoy, Balanga, Bataan, which pegged the property as "pastureland" valued at P15.00 per square meter.

The Department of Public Works and Highways also submitted a certificate of availability of funds[46] certifying that the amount of P7,705,000.00 was appropriated for the four-lane highway in Barangay Tuyoy, Balanga, Bataan less the amount of P167,475.00 to be paid to Gabriel Q. Fernandez.

Respondents Heirs of Fernandez, however, contest the amount deposited by the Republic. They insist that the zonal value of the property was P50.00 per square meter, not P15.00 per square meter.[47]

III

The correct zonal value of the property is P50.00 per square meter, not P15.00 per square meter.

As a general rule, findings of fact of the lower courts are binding on this court. There are, however, exceptions to this rule, such as when the factual findings of the Court of Appeals contradict the findings of the trial court.[48] In this instance, an independent examination of the evidence is necessary in order to resolve the issue.

The case records show that the parties presented as evidence two different sets of the Bureau of Internal Revenue zonal valuations covering Barangay Tuyoy, Balanga, Bataan.

The relevant zonal value of the properties in Balanga, Bataan at the time of the filing of the expropriation case was covered by Bureau of Internal Revenue Department Order No. 92-96. This Department Order was effective from December 30, 1996 to December 27, 2002.

Respondents Heirs of Fernandez's photocopy of the Bureau of Internal Revenue's zonal values for Barangay Tuyoy, Balanga, Bataan states:[49]

RDO NO. 20 BALANGA, BATAAN

PAGE 12

....

BARANGAY: TUYO

STREET/SUBDIVISION

VICINITY

CLASSIFICATION

VALUE PER SQ. METER

JACOBA

RR

300.00

MONARK SUBD

RR

200.00

SUNSHINE SUBD

RR

300.00

BARANGAY ROAD

A1

50.00

In contrast, the Republic presented the following photocopy of the Bureau of Internal Revenue's zonal value of the area:[50]

RDO NO. 20 BALANGA, BATAAN

PAGE 12

....

BARANGAY: TUYO

STREET/SUBDIVISION

VICINITY

CLASSIFICATION

VALUE PER SQ. METER

JACOBA

RR

300.00

MONARK SUBD

RR

200.00

SUNSHINE SUBD

RR

300.00

BARANGAY ROAD

riceland

A1

50.00

unirr. riceland

20.00

pastureland

15.00

The photocopies presented by the Republic and respondents Heirs of Fernandez are almost identical computer-encoded copies. However, typewritten annotations on the Republic's photocopy, specifically of "riceland," "unirr. riceland," and "pastureland" under "Vicinity" and the corresponding amounts of "20.00" corresponding to "unirr. riceland" and "15.00" corresponding to "pastureland," are present.

The Republic's photocopy was certified as a true photocopy by "Marciano P. Felipe, Jr., Group Supervisor, Chief, Assessment Br." His name and designation were also typewritten. The document stamps were affixed on February 2, 2002.

Respondents Heirs of Fernandez's photocopy, on the other hand, was certified as a true photocopy by Epifania A. Recana, signing on behalf of Beatriz S. Pelino, Assistant Division Chief of the Asset Valuation Board, and verified by Mirasol Z. Tolentino on June 2, 2001. It does not contain the typewritten annotations.

Since there was a discrepancy as to the two certifications, reference must be made to the zonal values posted by the Bureau of Internal Revenue on their website, which are accessible to the general public.[51] The zonal values of the Bureau of Internal Revenue for Barangay Tuyoy, Balanga, Bataan do not reflect the same typewritten annotations as that of the Republic's photocopy. What appears in the Bureau of Internal Revenue's records, in fact, is the same document presented by respondents Heirs of Fernandez:

RDO NO. 20 BALANGA, BATAAN

PAGE 12

....

BARANGAY: TUYO

STREET/SUBDIVISION

VICINITY

CLASSIFICATION

VALUE PER SQ. METER

JACOBA

RR

300.00

MONARK SUBD

RR

200.00

SUNSHINE SUBD

RR

300.00

BARANGAY ROAD

A1

50.00

It is clear, therefore, that alterations were made to the Republic's photocopy of the zonal values. These alterations, however, were not properly authenticated in court by the Republic. Rule 132(B), Section 31 of the Rules of Evidence provides:

Section 31. Alteration in document, how to explain. — The party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, must account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that, the document shall not be admissible in evidence. (Emphasis'supplied)

Marciano P. Felipe, Jr. was not presented as a witness to testify on the typewritten annotations. There was no evidence presented that the Bureau of Internal Revenue or any of its officers consented to the typewritten annotations. There was also no explanation given by the Republic as to why there were typewritten annotations to

what otherwise appeared to be a genuine document.

Under Section 6(E) of Republic Act No. 8424,[52] only the Commissioner of Internal Revenue has the power to determine the zonal value of properties. The provision states:

Section 6. Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement. -

. . . .

(E) Authority of the Commissioner to Prescribe Real Property Values. - The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair market value of real properties located in each zone or area. For purposes of computing any internal revenue tax, the value of the property shall be, whichever is the higher of [:]

(1)

the fair market value as determined by the Commissioner, or

(2)

the fair market value as shown in the schedule of values of the Provincial and City Assessors. (Emphasis supplied)

Under Section 7[53] of Republic Act No. 8424, the Commissioner is authorized to delegate his or her powers under the law. However, the Republic did not present any evidence that the signatory, Marciano P. Felipe, Jr., was authorized by the Commissioner to make alterations on the photocopy of the document.

In view of this omission, the Republic's photocopy is inadmissible as evidence.

Even assuming that the Republic's photocopy were valid, the zonal value of respondents Heirs of Fernandez's property at P15.00 per square meter, corresponding to "pastureland," would still be incorrect. According to the tax declaration of Gabriel Q. Fernandez submitted by the Republic before the trial court, the property was classified as "Veg. land." [54] In the Bureau of Internal Revenue Department Order No. 92-96, the classification legend of vegetable land was "A7" while the classification legend for pastureland was "A9." The Republic would have to pay the zonal value corresponding to "A7," not "A9."

As it stands, the Bureau of Internal Revenue Department Order No. 92-96 only classified the area of respondents Heirs of Fernandez's property as "A1," valued at P50.00 per square meter. The proper zonal value of the property, therefore, is P50.00 per square meter. The incorrect amount paid by petitioner Republic cannot be considered as sufficient pre-payment since it was less than the amount required by Section 4 of Republic Act No. 8974. The Court of Appeals correctly set aside the Writ of Possession in view of petitioner Republic's failure to pay the correct provisional value.

IV

The setting aside of an improperly issued Writ of Possession is not the same as the issuance of an Injunctive Writ.

The Republic argues that the Court of Appeals' setting aside the Writ of Possession was "akin to a Temporary Restraining Order (TRO) or Injunction," [55] which was prohibited by Section 3 of Republic Act No. 8975. [56] This is erroneous.

Section 3 of Republic Act No. 8975 states:

Sec. 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. - No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

(a)

Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

.....

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws. (Emphasis supplied)

The law is clear. All courts, excluding this court, are prohibited from issuing a temporary restraining order, preliminary injunction, or mandatory preliminary injunction to enjoin the government from acquiring the site of any national government project.

Contrary to the Republic's argument, the setting aside of a Writ of Possession is not an injunction.

Section 4 of Republic Act No. 8974 mandates that:

[u]pon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned. (Emphasis supplied)

Thus, the court cannot issue a Writ of Possession if the guidelines were not complied with. There is also nothing that prevents a court from setting aside a Writ of Possession on appeal when it is found that the guidelines were not complied with.

In contrast, an injunction is a separate proceeding that must be instituted by a party seeking immediate relief. Before an injunctive writ can be issued, a party must first establish a right to be protected and show a perceived injury if the act complained of is not enjoined. In *Nerwin Industries Corporation v. PNOC Energy Development Corporation*:^[57]

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or person, to refrain from a particular act or acts. It is an ancillary or preventive remedy resorted to by a litigant to protect or preserve his rights or interests during the pendency of the case. As such, it is issued only when it is established that:

(a)

The applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; or

(b)

The commission, continuance or non- performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c)

A party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.[58] (Emphasis supplied)

Moreover, the applicant must follow the procedural requisites outlined in Rule 58 of the Rules of Civil Procedure before a preliminary injunction may be granted by the court. The facts show that respondents Heirs of Fernandez have not commenced any proceeding of this nature.

Clearly, the Writ of Possession was set aside by the Court of Appeals, not as an ancillary remedy to preserve respondents Heirs of Fernandez's rights, but because the Republic failed to comply with the requirements of Republic Act No. 8974.

For the Republic to be able to take possession of the property, the law mandates that it must first pay to the landowner 100% of the value of the property based on the current relevant zonal valuation of the property by the Bureau of Internal Revenue. The payment of less than the amount required by law cannot be considered substantial compliance.

WHEREFORE, the Petition is DENIED.

SO ORDERED.

Brion,[*] (Acting Chairperson), Del Castillo, Mendoza, and Perlas-Bernabe,[**] JJ., concur.

[1] Namely, Helen F. De Los Santos, Bernardita Fernandez, Gabriel Y. Fernandez, and Generoso Y. Fernandez.

[*] Designated Acting Chairperson per S.O. No. 1955 dated March 23, 2015.

[**] Designated Acting Member per S.O. No. 1956 dated March 23, 2015.

[2] An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes (2000).

[3] Rollo, pp. 8-20.

[4] Id. at 23-39. The case, docketed as CA-G.R. CV No. 75449 and dated August 25, 2006, was penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Regalado E. Maambong and Japar B. Dimaampao of the Court of Appeals Manila Fifth Division.

[5] Id. at 41-42.

[6] Id. at 24.

[7] Id.

[8] Id. at 24-25.

[9] Id. at 25.

[10] Rep. Act No. 8974, sec. 4. Guidelines for Expropriation Proceedings. - Whenever it is necessary to acquire real property for the right-of-way or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a)

Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;

(b)

In provinces, cities, municipalities and other areas where there is no zonal valuation, the BIR is hereby mandated within the period of sixty (60) days from the date of the expropriation case, to come up with a zonal valuation for said area; and

(c)

In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation Of the area concerned, the implementing agency shall immediately pay the owner of the property its proffered value taking into consideration the standards prescribed in Section 5 hereof.

Upon compliance with the guidelines above mentioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already, paid and the just compensation as determined by the court.

[11] Implementing Rules and Regulations, Rep. Act. No. 8974, sec. 12. Writ of Possession - pursuant to Section 4 of the Act, upon compliance with the guidelines stated in Section 8 of this IRR, the Court shall immediately issue to the Implementing Agency an order to take possession of the property and start the implementation of the project.

Before the Court can issue a Writ of Possession, however, the Implementing Agency shall present to the Court a Certificate of Availability of Funds signed by authorized officials to cover the payment to be made to the property owner.

After the Implementing Agency has complied with foregoing requirements, the Court shall immediately issue the Writ of Possession to the complainant Implementing Agency.

[12] Rollo, p. 25.

[13] Id.

[14] Id.

[15] Id. at 26.

[16] Id.

[17] Id. at 27.

[18] Id.

[19] Id.

[20] Id. at 27-28.

[21] Id. at 28-30.

[22] Id. at 30-31.

[23] Id. at 23-39.

[24] Id. at 31.

[25] Id. at 31-32.

[26] Id. at 36.

[27] Id. at 36-37.

[28] Id. at 38.

[29] Id. at 41-42.

[30] Id. at 14.

[31] Id. at 16.

[32] Id.

[33] Rep. Act No. 8975, sec. 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Mandatory Injunctions. - No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government direction, to restrain, prohibit or compel the following acts:

a)

Acquisition, clearance and development of the right-of-way and/or site or location of any national government project[.]

[34] Rollo, pp. 16-18.

[35] Id. at 49-52.

[36] Id. at 50-51.

[37] *Id.* at 54-55.

[38] Rep. Act No. 8974, sec. 7. Valuation of Improvements and/or Structures. - The Department of Public Works and Highways and other implementing agencies concerned, in coordination with the local government units concerned in the acquisition of right-of-way, site or location for any national government infrastructure project, are hereby mandated to adopt within sixty (60) days upon approval of this Act, the necessary implementing rules and regulations for the equitable valuation of the improvements and/or structures on the land to be expropriated.

Implementing Rules and Regulations, Rep. Act No. 8974, sec. 10. Valuation of Improvements and/or Structures - Pursuant to Section 7 of the Act, the Implementing Agency shall determine the valuation of the improvements and/or structures on the land to be acquired using the replacement cost method. The replacement cost of the improvements/structures is defined as the amount necessary to replace the improvements/structure's, based on the current market prices for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures.

In the valuation of the affected improvements/structures, the Implementing Agency shall consider, among other things, the kinds and quantities of materials/equipment used, the location, configuration and other physical features of the properties, and prevailing construction prices.

[39] CONST., Art. III, Sec. 9. Private property shall not be taken for public use without just compensation.

[40] 539 Phil. 644 (2006) [Per J. Carpio Morales, Third Division].

[41] *Id.* at 659-660, citing *City of Iloilo v. Legaspi*, 486 Phil. 474 (2004) [Per J. Chico-Nazario, Second Division] and *Republic v. Gingoyon*, G.R. No. 166429, February 1, 2006, 481 SCRA 457, 469 [Per J. Tinga, En Banc].

[42] G.R. No. 166429, February 1, 2006, 481 SCRA 457 [Per J. Tinga, En Banc].

[43] *Id.*, citing RULES OF COURT, Rule 67, Sec. 2 and LOCAL GOVT. CODE, Sec. 19.

[44] RTC records, p. 53.

[45] *Id.* at 49.

[46] *Id.* at 51.

[47] *Id.* at 110.

[48] See *Republic v. Court of Appeals and Francisco Diaz*, 494 Phil. 494, 507 (2005) [Per J. Carpio, First Division], citing *Changco v. Court of Appeals*, 429 Phil. 336 (2002) [Per J. Ynares-Santiago, First Division].

[49] RTC records, p. 110.

[50] *Id.* at 49.

[51] Zonal Values <<http://www.bir.gov.ph/index.php/zonal-values.html>> (visited February 11, 2015).

[52] Otherwise known as the Tax Reform Act of 1997, enacted on December 11, 1997.

[53] Title I, sec. 7. Authority of the Commissioner to Delegate Power. - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of [F]inance, upon recommendation of the Commissioner: Provided, However, That the following powers of the Commissioner shall not be delegated:

(a)

The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b)

The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c)

The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of [F]inance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d)

The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.

[54] RTC records, p. 8.

[55] Rollo, p. 17.

[56] An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations thereof, and for Other Purposes (2000).

[57] G.R. No. 167057, April 11, 2012, 669 SCRA 173 [Per J. Bersamin, First Division].

[58] Id. at 186, citing RULES OF CIV. PROC., Rule 58, Secs. 1 and 3.

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