

**MUNICIPALITY OF BIÑAN, PETITIONER, VS. HON. JOSE MAR GARCIA,
JUDGE OF THE REGIONAL TRIAL COURT AT BIÑAN, LAGUNA
(BRANCH XXIV, REGION IV), AND ERLINDA FRANCISCO,
RESPONDENTS.**

G.R. No. 69260. December 22, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

Three (3) questions are resolved in the action of certiorari at bar. The first is whether the special civil action of eminent domain under Rule 67 of the Rules of Court is a case "wherein multiple appeals are allowed,"[1] as regards which "the period of appeal shall be thirty [30] days,"[2] instead of fifteen (15) days.[3] The second is whether or not the Trial Court may treat the "motion to dismiss" filed by one of the defendants in the action of eminent domain as a motion to dismiss under Rule 16 of the Rules of Court, reverse the sequence of trial in order and hear and determine said motion to dismiss, and thereafter dismiss the expropriation suit as against the movant. And the third is whether or not a "locational clearance" issued by the Human Settlement Regulatory Commission relative to use of land is a bar to an expropriation suit involving that land.

The expropriation suit involved in this certiorari proceeding was commenced by complaint of the Municipality of Biñan, Laguna,[4] filed in the Regional Trial Court of Laguna and City of San Pablo, presided over by respondent Judge Jose Mar Garcia. The complaint named as defendants the owners of eleven (11) adjacent parcels of land in Biñan with an aggregate area of about eleven and a half (11-1/2) hectares. The land sought to be expropriated was intended for use as the new site of a modern public market and the acquisition was authorized by a resolution of the Sangguniang Bayan of Biñan approved on April 11, 1983.

One of the defendants was Erlinda Francisco. She filed a "Motion to Dismiss" dated August 26, 1983, on the following grounds: (a) the allegations of the complaint are vague and conjectural; (b) the complaint violates the constitutional limitations of law and jurisprudence on eminent domain; (c) it is oppressive; (d) it is barred by prior decision and disposition on the subject matter; and (e) it states no cause of action.¹ Now, her "motion to dismiss" was filed pursuant to Section 3, Rule 67 of the Rules of Court:

"SEC. 3. Defenses and objections. - Within the time specified in the summons, each defendant, in lieu of an answer, shall present in a single motion to dismiss or for other appropriate relief, all of his objections and defenses to the right of the plaintiff to take his property for the use or purpose specified in the complaint. All such objections and defenses not so presented are waived. A copy of the motion shall be served on the plaintiff's attorney of record and filed with the court with the proof of service."

Her "motion to dismiss" was thus actually a pleading, taking the place of an answer in an ordinary civil action;² it was not an ordinary motion governed by Rule 15, or a "motion to dismiss" within the contemplation of Rule 16 of the Rules of Court.

On October 23, 1983, respondent Judge issued a writ of possession in favor of the plaintiff Municipality.

On February 3, 1984, Erlinda Francisco filed a "Motion for Separate Trial," invoking Section 2, Rule 31.3 She alleged that there had already been no little delay in bringing all the defendants within the court's jurisdiction, and some of the defendants seemed "nonchalant or without special interest in the case" if not mere "free riders;" and "while the cause of action and defenses are basically the same," she had, among other defenses, "a constitutional defense of vested right via a pre-existing approved Locational Clearance from the H.S.R.C.⁴" Until this clearance was revoked, Francisco contended, or the Municipality had submitted and obtained approval of a "rezoning of the lots in question," it was premature for it to "file a case for expropriation."⁵ The Court granted the motion. By Order dated March 2, 1984, it directed that "a separate trial be held for defendant Erlinda Francisco regarding her special defenses mentioned in her ** Motion for Separate Trial and in her Motion to Dismiss, distinct from and separate from the defenses commonly raised by all the defendants in their respective motions to dismiss."

At the separate trial, the Fiscal, in representation of the Municipality called the Trial Court's attention to the irregularity of allowing Francisco to present her evidence ahead of the plaintiff, "putting the cart before the horse, as it were." He argued that the motion to dismiss was in truth an answer, citing *Rural Progress Administration v. Judge de Guzman*, and its filing did "not mean that the order of presentation of evidence will be reversed," but the usual procedure should be followed; and the evidence adduced should be deemed "evidence only for the motion for reconsideration of the writ of possession."¹

Nevertheless, at the hearings of March 5, and March 26, 1984, the Court directed Francisco to commence the presentation of evidence. Francisco presented the testimony of Atty. Josue L. Jorvina, Jr. and certain exhibits -- the Land Use Map of the Municipality of Biñan, the Locational Clearance and Development Permit issued by the HSRC in favor of "Erlinda Francisco c/o Ferlins Realty & Development Corporation, and Executive Order No. 648 and Letter of Instructions No. 729, etc. Thereafter, the respondent Judge issued an Order dated July 24, 1984 dismissing the complaint "as against defendant ERLINDA FRANCISCO," and amending the Writ of Possession dated October 18, 1983 so as to "exclude therefrom and from its force and effects said defendant ** and her property **." His Honor found that -

- 1) a Locational Clearance had been issued on May 4, 1983 by the Human Settlements Regulatory Commission to the "Ferlin's Realty ** owned by defendant Erlinda Francisco to convert ** (her) lot to a commercial complex;"
- 2) according to the testimony of Atty. Jorvina of the HSRC, "a grantee of a locational clearance acquires a vested right over the subject property in the sense that * * said property may not be subject of an application for locational clearance by another applicant while said locational clearance is subsisting;"
- 3) such a clearance should be "considered as a decision and disposition of private property co-equal with or in parity with a disposition of private property through eminent domain;"
- 4) the clearance was therefore "a legal bar against the right of plaintiff Municipality * * to expropriate the said property."

The Municipality filed on August 17, 1984 a Motion for Reconsideration. Therein it (a) reiterated its contention respecting the irregularity of the reversal of the order of trial, *supra*,² (b) decried the act of the Court in considering the case submitted for decision after the presentation of evidence by Francisco without setting the case for further hearing for the reception of the plaintiff's own proofs, (c) pointed out that as admitted by Atty. Jorvina, the locational clearance did not "mean that other persons are already prevented from filing locational clearance for the same project, and so could not be considered a bar to expropriation, (d) argued that the locational clearance, issued on May 4, 1983, became a "worthless sheet of paper" one year later, on May 4, 1984 in accordance with the explicit condition in the clearance that it "shall be considered automatically revoked it not used within a period of one (1) year from date of issue," the required municipal permits to put up the commercial

complex never having been obtained by Francisco; and (e) alleged that all legal requirements for the expropriation of the property had been duly complied with by the Municipality.¹

The Municipality set its motion for reconsideration for hearing on August 28, 1984 after furnishing Francisco's counsel with copy thereof. The Court however re-scheduled the hearing more than two (2) months later, on November 20, 1984.² Why the hearing was reset to such a remote date is not explained.

On September 13, 1984, Francisco filed an "Ex-Parte Motion for Execution and/or Finality of Order," contending that the Order of July 27, 1984 had become "final and executory on August 12, 1984" for failure of the Municipality "to file a motion for reconsideration and/or appeal within the reglementary period,"³ i.e., "fifteen (15) days counted from the notice of the final order ** appealed from."⁴

On October 10, 1984, the Court issued an Order declaring the Municipality's motion for reconsideration dated August 15, 1984 to have been "filed out of time," on account of which the Court "could not give due course to and/or act ** (thereon) except to dismiss (as it did thereby dismiss) the same."⁵ It drew attention to the fact that notice of its Order of July 24, 1984 (dismissing the complaint as against Francisco) was served on plaintiff Municipality on July 27, 1984, but its motion for reconsideration was not presented until August 17, 1984, beyond the fifteen-day period for appeal prescribed by law. And on October 15, 1985, His Honor promulgated another Order directing the issuance of (1) a writ of execution of the Order of July 24, 1984, and (2) a "certificate of finality" of said order.⁶

The Municipality attempted to have the respondent Court reconsider both said Orders of October 10, and October 15, 1984. To this end it submitted a motion contending that:⁷

- 1) "multiple appeals are allowed by law" in actions of eminent domain, and hence the period of appeal is thirty (30), not fifteen (15) days;
- 2) moreover, the grant of a separate trial at Francisco's instance had given rise "ipso facto to a situation where multiple appeals became available (Sections 4 and 5, Rule 36, **; Santos v. Pecson, 79 Phil. 261);"
- 3) it was wrong for the Trial Court to have acted ex parte on the motion for execution, the motion being "litigable in character;" and
- 4) it (the Municipality) was denied due process when the Court, after receiving Francisco's evidence and admitting her exhibits, immediately resolved the case on the merits as regards Francisco, without setting the case "for further hearing for reception of evidence for the plaintiff."

The motion was denied, by Order dated October 18, 1984; hence, the special civil action of certiorari at bar.

1. There are two (2) stages in every action of expropriation. The first is concerned with a 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.¹ It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint."² An order of dismissal, if this be ordained, would be a final one, of course, since it finally disposes of the action and leaves nothing more to be done by the Court on the merits.³ So, too, would an order of condemnation be a final one, for thereafter, as the Rules expressly state, in the proceedings before the Trial Court, "no objection to the exercise of the right of condemnation (or the propriety thereof) shall be filed or heard."⁴

The second phase of the eminent domain action is concerned with the determination by the Court of "the just

compensation for the property sought to be taken." This is done by the Court with the assistance of not more than three (3) commissioners.⁵ The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too. It would finally dispose of the second stage of the suit, and leave nothing more to be done by the Court regarding the issue. Obviously, one or another of the parties may believe the order to be erroneous in its appreciation of the evidence or findings of fact or otherwise. Obviously, too, such a dissatisfied party may seek reversal of the order by taking an appeal therefrom.

A similar two-phase feature is found in the special civil action of partition and accounting under Rule 69 of the Rules of Court.⁶

The first phase of a partition and/or accounting suit is taken up with the determination of whether or not a co-ownership in fact exists, and a partition is proper (i.e., not otherwise legally proscribed) and may be made by voluntary agreement of all the parties interested in the property.⁷ This phase may end with a declaration that plaintiff is not entitled to have a partition either because a co-ownership does not exist, or partition is legally prohibited.⁸ It may end, on the other hand, with an adjudgment that a co-ownership does in truth exist, partition is proper in the premises and an accounting of rents and profits received by the defendant from the real estate in question is in order.¹ In the latter case, "the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon."² In either case -- i.e., either the action is dismissed or partition and/or accounting is decreed -- the order is a final one, and may be appealed by any party aggrieved thereby.³

The second phase commences when it appears that "the parties are unable to agree upon the partition" directed by the Court. In that event partition shall be done for the parties by the Court with the assistance of not more than three (3) commissioners.⁴ This second stage may well also deal with the rendition of the accounting itself and its approval by the Court after the parties have been accorded opportunity to be heard thereon, and an award for the recovery by the party or parties thereto entitled of their just share in the rents and profits of the real estate in question."⁵ Such an order is, to be sure, final and appealable.

Now, this Court has settled the question of the finality and appealability of a decision or order decreeing partition or recovery of property and/or accounting. In *Miranda v. Court of Appeals*, decided on June 18, 1986,⁶ the Court resolved the question affirmatively, and expressly revoked the rulings in *Zaldarriaga v. Enriquez*⁷ -- that a decision or order of partition is not final because it leaves something more to be done in the trial court for the complete disposition of the case, i.e., the appointment of commissioners, the proceedings for the determination by said commissioners of just compensation, the submission of their reports, the hearing thereon, and the approval of the partition -- and in *Fuentebella v. Carrascoso*⁸ -- that a judgment for recovery of property with accounting is not final, but merely interlocutory and hence not appealable until the accounting is made and passed upon. As pointed out in *Miranda*, imperative considerations of public policy, of sound practice and adherence to the constitutional mandate of simplified, just, speedy and inexpensive determination of every action require that judgments for recovery (or partition) of property with accounting be considered as final judgments, duly appealable. This, notwithstanding that further proceedings will still have to take place in the Court, i.e., the accounting will still have to be rendered by the party required to do so, it will be ventilated and discussed by the parties, and will eventually be passed upon by the Court. It is of course entirely possible that the Court's disposition may not sit well with either the party in whose favor the accounting is made, or the party rendering it. In either case, the Court's adjudication on the accounting is without doubt a final one, for it would finally terminate the proceedings thereon and leave nothing more to be done by the Court on the merits of the issue. And it goes without saying that any party feeling aggrieved by that ultimate action of the Court on the accounting may seek reversal or modification thereof by the Court of Appeals or the Supreme Court.¹

The Miranda doctrine was reiterated in *de Guzman v. C.A.*; ²*Valdez v. Bagaso*; ³*Lagunzad v. Gonzales*; ⁴*Cease v. C.A.*; ⁵*Macadangdang v. C.A.*; ⁶and *Hernandez v. C.A.*; ⁷*Gabor v. C.A.*, ⁸*Fabrica v. C.A.* ⁹

No reason presents itself for a different disposition as regards cases of eminent domain. On the contrary, the close analogy between the special actions of eminent domain and partition already pointed out, argues for the application of the same rule to both proceedings.

The Court therefore holds that in actions of eminent domain, as in actions for partition, since no less than two (2) appeals are allowed by law, the period for appeal from an order of condemnation¹⁰ is thirty (30) days counted from notice of said order, and not the ordinary period of fifteen (15) days prescribed for actions in general, conformably with the provisions of Section 39 of *Batas Pambansa Bilang 129*, in relation to paragraph 19 (b) of the *Implementing Rules* to the effect that in "appeals in special proceedings in accordance with Rule 109 of the *Rules of Court* and other cases wherein multiple appeals are allowed, the period of appeal shall be thirty (30) days, a record of appeal being required."¹¹

The Municipality's motion for reconsideration filed on August 17, 1984 was therefore timely presented, well within the thirty-day period laid down by law therefor; and it was error for the Trial Court to have ruled otherwise and to have declared that the order sought to be reconsidered had become final and executory.

2. As already observed, the Municipality's complaint for expropriation impleaded eleven (11) defendants. A separate trial was held on motion of one of them, Erlinda Francisco,¹² it appearing that she had asserted a defense personal and peculiar to her, and inapplicable to the other defendants, *supra*. Subsequently, and on the basis of the evidence presented by her, the Trial Court promulgated a separate Order dismissing the action as to her, in accordance with Section 4, Rule 36 of the *Rules of Court*, reading as follows:

SEC. 4. Several judgments. -- In an action against several defendants, the court may, when a several judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others.

It is now claimed by the Municipality that the issuance of such a separate, final order or judgment had given rise "ipso facto to a situation where multiple appeals became available." The Municipality is right.

In the case at bar, where a single complaint was filed against several defendants having individual, separate interests, and a separate trial was held relative to one of said defendants after which a final order or judgment was rendered on the merits of the plaintiff's claim against that particular defendant, it is obvious that in the event of an appeal from that separate judgment, the original record cannot and should not be sent up to the appellate tribunal. The record will have to stay with the trial court because it will still try the case as regards the other defendants. As the rule above quoted states, "In an action against several defendants, the court may, when a several judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others."¹ In lieu of the original record, a record on appeal will perforce have to be prepared and transmitted to the appellate court. More than one appeal being permitted in this case, therefore, "the period of appeal shall be thirty (30) days, a record of appeal being required," as provided by the *Implementing Rules* in relation to Section 39 of *B.P. Blg. 129*, *supra*.²

3. Erlinda Francisco filed a "motion to dismiss" in traverse of the averments of the Municipality's complaint for expropriation. That "motion to dismiss" was in fact the indicated responsive pleading to the complaint, "in lieu of an answer."³

Now, the Trial Court conducted a separate trial to determine whether or not, as alleged by Francisco in her "motion to dismiss," she had a "vested right via a pre-existing approved Locational Clearance from the HSRC," making the expropriation suit premature.⁴ While such a separate trial was not improper in the premises,⁵ and was

not put at issue by the Municipality, the latter did protest against the Trial Court's (a) reversing the order of trial and receiving first, the evidence of defendant Francisco, and (b) subsequently rendering its order sustaining Francisco's defense and dismissing the action as to her, solely on the basis of said Francisco's evidence and without giving the plaintiff an opportunity to present its own evidence on the issue. The Trial Court was clearly wrong on both counts. The Court will have to sustain the Municipality on these points.

Nothing in the record reveals any valid cause to reverse the order of trial. What the Trial Court might have had in mind was the provision of Section 5, Rule 16 of the Rules of Court allowing "any of the grounds for dismissal" in Rule 16 to "be pleaded as an affirmative defense," and authorizing the holding of a "preliminary hearing ** thereon as if a motion to dismiss had been filed." Assuming this to be the fact, the reception of Francisco's evidence first was wrong, because obviously, her asserted objection or defense -- that the locational clearance issued in her favor by the HSRC was a legal bar to the expropriation suit -- was not a ground for dismissal under Rule 16. She evidently meant to prove the Municipality's lack of cause of action; but lack of cause of action is not a ground for dismissal of an action under Rule 16; the ground is the failure of the complaint to state a cause of action, which is obviously not the same as plaintiff's not having a cause of action.

Nothing in the record, moreover, discloses any circumstance from which a waiver by the Municipality of the right to present contrary proofs may be inferred. So, in deciding the issue without according the Municipality that right to present contrary evidence, the Trial court had effectively denied the Municipality due process and thus incurred in another reversible error.

4. Turning now to the locational clearance issued by the HSRC in Francisco's favor on May 4, 1983, it seems evident that said clearance did become a "worthless sheet of paper," as averred by the Municipality, upon the lapse of one (1) year from said date in light of the explicit condition in the clearance that it "shall be considered automatically revoked if not used within a period of one (1) year from date of issue," and the unrebutted fact that Francisco had not really made use of it within that period. The failure of the Court to consider these facts, despite its attention having been drawn to them, is yet another error which must be corrected.

WHEREFORE, the challenged Order issued by His Honor on July 24, 1984 in Civil Case No. 8-1960 is ANNULLED AND SET ASIDE, and the case is remanded to the Trial Court for the reception of the evidence of the plaintiff Municipality of Biñan as against defendant Erlinda Francisco, and for subsequent proceedings and judgment in accordance with the Rules of Court and the law. Costs against private respondent.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Sec. 39, BP 129

[2] Par. 19 (b), Interim Rules of the Supreme Court en banc dated Jan. 11, 1987 in implementation of the Judiciary Reorganization Act of 1981 (B.P. Blg. 129)

[3] Par. 19 (a), id.

[4] Docketed as Civil Case No. 8-1960

1 Rollo, pp. 34 et seq.

2 Moran, Comments on the Rules, 1980 ed., Vol. 3, p. 248, citing Rural Progress Adm. v. Judge de Guzman, L-3224, Aug. 15, 1951

3 Which reads as follows: "The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims or issues."

4 Human Settlements Regulatory Commission

5 Rollo, pp. 40-44

1 Id., pp. 53-54

2 Ibid.

1 Rollo., pp. 54-61

2 Id., p. 62 (Minutes of the session of September 28, 1984)

3 Rollo, pp. 63-65

4 Sec. 39, B.P. Blg. 129; par. 19 (a), Interim Rules of the Supreme Court in Implementation of the Judiciary Reorganization Act of 1981

5 Rollo, p. 67

6 Id., p. 66

7 Id., pp. 68-73

1 SEE Secs. 1, 2 and 3, Rule 67 of the Rules of Court

2 Sec. 4, Rule 67; See Nieto v. Isip, 97 Phil. 31; Benguet Consolidated v. Republic, 143 SCRA 466

3 SEE Investments, Inc. v. C.A., et al., 147 SCRA 334, 339-341

4 Ibid.

5 Secs. 5 to 8, Rule 67

6 SEE Miranda v. C.A., 71 SCRA 295 (1976); Roque v. I.A.C., 165 SCRA 118, 125-126; Fabrica v. C.A., 148 SCRA 250; Garbo v. C.A., 129 SCRA 616; Valdez v. Bagaso, 82 SCRA 22

7 Secs. 1 and 2, Rule 69, Rules of Court

8 Roque v. I.A.C., supra

1 Sec. 8, Rule 69

2 Sec. 2, Rule 69

3 SEE footnote 3, at page 5, supra

4 Secs. 3-7, Rule 69

5 Sec. 8, Rule 69, supra

6 71 SCRA 295; 73 O.G. 11646

7 111 Phil. 829; 1 SCRA 1188 (1966)

8 G.R. No. 48102, May 27, 1942 (unpublished), 14 L.J. 305 (1949)

1 Mr. Justice Jose Y. Feria (ret.) in his annotations on B.P. Blg. 129 and the Interim Rules and Guidelines, Rules of Court (Philippine Legal Studies, Series No. 1, 1983 ed., Central Lawbook) (at p. 52) pointed out that under *Miranda*, *supra*, and *de Guzman*, *infra*, "a judgment for recovery of property is final and appealable without awaiting the accounting; and an order of partition is final and appealable without awaiting the actual partition. Hence the accounting or the partition may continue pending the appeal, and a second appeal may be taken from the judgment on the accounting or the partition."

2 71 SCRA 195 (1976)

3 82 SCRA 22 (1978)

4 92 SCRA 476 (1979)

5 93 SCRA 483 (1981)

6 108 SCRA 314 (1981)

7 120 SCRA 856 (1983)

8 129 SCRA 616

9 148 SCRA 250

10 The first final order

11 Emphasis supplied

12 Pursuant to Sec. 2 of Rule 31 already quoted: footnote 3 on page 2, *supra*

1 Italics supplied

2 SEE *Santos v. Pecson*, et al., 79 Phil. 261, 265, 270, Dissenting Opinion, distinguishing between the situation of defendants having separate or severable interest, and that of defendants having solidary or joint or common interest.

3 See footnote 2 at page 2, *supra*

4 SEE footnote 5 and related text, at page 2, *supra*

5 SEE footnote 3, at page 2, *supra*

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