

REPUBLIC OF THE PHILIPPINES (MINISTRY OF EDUCATION AND CULTURE), PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND AMEREX ELECTRONICS, PHILS. CORPORATION, RESPONDENTS.*G.R. No. 71176. May 21, 1990*

Ponente: FERNAN, C.J.

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The government, in the exercise of its power of eminent domain, expropriated property owned by Amerex Electronics, Phils. Corporation. The amount of just compensation for such property is now the subject of this petition for review on certiorari.

The property involved consists of four (4) parcels of land with a total area of 9,650 square meters located at No. 2090 Dr. Manuel L. Carreon Street, Manila, a short walking distance from Herran (now Pedro Gil) Street. Its previous owner, Avegon, Inc., offered it for sale to the City School Board of Manila on July 21, 1973 at P2,300,000. The school board was willing to buy at P1,800,000 but the then Mayor of Manila intervened and volunteered to negotiate with Avegon, Inc. for a better price.

Inasmuch as the alleged negotiation did not materialize, on June 3, 1974, Avegon, Inc. sold the property and its improvements to Amerex Electronics, Phils. Corporation (Amerex for brevity) for P1,800,000. Thereafter, Transfer Certificates of Title Nos. 115571, 115572, 115573 and 115574 were issued in favor of Amerex.

On August 29, 1975, the Solicitor General filed for the Department of Education and Culture (DEC) a complaint against Amerex for the expropriation of said property before the Court of First Instance of Manila (Civil Case No. 99190). The complaint stated that the property was needed by the government as a permanent site for the Manuel de la Fuente High School (later renamed Don Mariano Marcos Memorial High School); that the fair market value of the property had been declared by Amerex as P2,435,000, and that the assessor had determined its market value as P2,432,042 and assessed it for taxation purposes in the amount of P1,303,470.[1]

In a motion praying that the plaintiff be authorized to take immediate possession of the property, the then Acting Solicitor General Hugo E. Gutierrez, Jr., invoking Presidential Decree No. 42, informed the court that said assessed value of the property for taxation purposes had been deposited with the Philippine National Bank (PNB) in Escolta, Manila on September 30, 1975.

Consequently, on October 9, 1975, the court issued an order directing the sheriff to place the plaintiff in possession of the property. The plaintiff took actual possession thereof on October 13, 1975.

Amerex filed a motion to dismiss the complaint stating that while it was not contesting the merits of the complaint, the same failed to categorically state the amount of just compensation for the property. It therefore prayed that in consonance with P.D. No. 794, the just compensation be fixed at P2,432,042, the market value of the property determined by the assessor which was lower than Amerex's own declaration.

The motion to dismiss was opposed by the plaintiff reasoning that while indeed the market value as determined by

the assessor was lower than that declared by Amerex, the plaintiff intended to present evidence of a much lower market value.

Alleging that its motion to dismiss merely sought a clarification on the just compensation for the property, Amerex filed a motion to withdraw the plaintiff's deposit of P1,303,470 with the PNB without prejudice to its entitlement to the amount of P1,128,572, the balance of the just compensation of P2,432,042 insisted upon. The plaintiff interposed no objection to the motion provided that an order of condemnation be issued by the court and that the plaintiff be allowed to present its evidence on the matter of just compensation.

On December 3, 1975, the lower court issued an order vesting the plaintiff with the lawful right to take the property upon payment of just compensation as provided by law. On December 19, 1975, after the parties had submitted the names of their respective recommendees to the appraisal committee, the lower court appointed Atty. Narciso Pena, Aurelio V. Aquino and Atty. Higinio Sunico as commissioners.

Thereafter, the lower court ordered Amerex to submit an audited financial statement on the acquisition cost of the property including expenses for its improvement. Amerex was also allowed by the court, after it had filed a second motion therefor, to withdraw the P1,303,470 deposit with the PNB.

On March 12, 1976, the plaintiff filed a motion for leave of court to amend its complaint stating that after it had filed the same, P.D. No. 464[2] was amended by P.D. No. 794; that Section 92 of said Code, as amended, provided that when private property is acquired for public use, its just compensation "shall not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower"; and that the amended complaint would state that the fair market value of the property could not be in excess of P1,800,000, the amount for which defendant's predecessor-in-interest had offered to sell said properties to the Division of Public Schools of Manila and which amount was also the purchase price paid by Amerex to Avegon, Inc. In due course, plaintiff filed an amended complaint.

Amerex, however, opposed the motion for leave to amend the complaint contending that the plaintiff was insisting on a valuation given by neither the owner nor the assessor as mandated by P.D. No. 794 but by another person in August 1973 when the peso value was much higher.

The lower court denied the motion to amend the complaint; but after the plaintiff had filed a motion for reconsideration, the lower court admitted the amended complaint on April 27, 1976. In the meantime, Amerex submitted to the court "audited financial statements" consisting of an account stating that the cost of its land and buildings was P2,107,479.48, and another account stating that it incurred total expenses of P150,539 for their maintenance.[3] These statements yielded the amount of P2,258,018.48 as the total value of the property.

The commissioners conducted an ocular inspection and hearing on the value of the property. On October 18, 1976, the plaintiff filed a motion seeking the disqualification of Engineer Aurelio B. Aquino as commissioner on the ground that he could not be expected to be unbiased inasmuch as in the three appraisal reports submitted by Amerex, Aquino had indicated as fair market value of the property amounts much more than the plaintiff's fair market value determination of P1,800,000. Said appraisal reports were made by Ampil Realty and Appraisal Co., Inc. with Aquino signing thereon as real estate appraiser. One report, dated February 15, 1974 and submitted to Commonwealth Insurance Company indicated P2,100,000 as the fair market value of the property.[4] Two other reports were made at the behest of Amerex with one, dated November 15, 1974, fixing the fair market value at P2,300,00[5] and the other, dated June 5, 1975, with P2,400,000 as the fair market value.[6]

Amerex opposed the motion to disqualify Aquino as commissioner, and the court, in its order of November 5,

1976, denied it. Hence, on January 24, 1977, the commissioners submitted their appraisal report finding that the fair market value of the property was P2,763,400. The commissioners, however, added:

"Under the provision of Presidential Decree No. 464, as amended by Presidential Decree No. 794, above-quoted, we could have safely adopted the valuation of the City Assessor in the sum of P2,432,042.00, this being lower than that declared by the owner in the sum of P2,435,000.00, although by actual appraisal of the undersigned Commissioners the property could command a fair market value of P2,763,400.00 as of the date of our ocular inspection.

"Considering, however, that according to the audited statement submitted by defendant, the acquisition costs and other legal expenses incurred on the subject property by AMEREX, the grand total of P2,258,018.57, are (sic) lower than the findings of the undersigned Commissioners, the explanation being the fact that the price of the sale was a real bargain possibly due to dire necessities of the seller AVEGON, it is respectfully submitted that the said sum of P2,258,018.57 be adopted for purposes of determining just compensation payable to defendant AMEREX, which sum does not exceed, but is even lower than, the fair market value as determined by the City Assessor and as declared by said defendant." [7]

Both parties objected to the report of the commissioners. The plaintiff contended that the commissioners' conclusion that the fair market value of the property was P2,763,400 was unsupported by evidence and that their recommended just compensation of P2,258,018.57 was excessive. It reiterated its stand that the just compensation should only be P1,800,000 it being the price had the sale between the city school board and Avegon, Inc. materialized and also the actual price of the sale between Avegon, Inc. and Amerex. On the other hand, Amerex averred that the recommended just compensation was unjustified in view of the commissioners' finding that the fair market value of the property was P2,763,400.

On March 15, 1977, the lower court [8] rendered a decision based on the following findings:

"The court believes that the findings of the commissioners are supported by the evidence adduced during the hearings and that their recommendation is reasonable. The property was originally owned by Avegon, Inc. and was assessed at P1,079,370.00 by the City of Manila for the year 1974 (Exh. A-4) Avegon, Inc. offered to sell it to the City School Board on July 21, 1973 at P2,300,000.00 but it accepted the counter-offer of P1,800,000. The negotiations, however, fell through when the city failed to act (Exhs. C, C-1, C-2, C-3 and C-4). The property was appraised on February 15, 1974 at P2,100,000.00 at the instance of Commonwealth Insurance Company, an affiliate of Warner, Barnes & Co., Inc. (Exh. G). The defendant company introduced improvements on the property in the middle part of 1974 worth P260,690.50 (Exhs. 4, 4-A to 4-J; 11, 13, 14 to 19). After the renovation, the property was again appraised at the instance of the defendant at P2,300,000.00 on November 15, 1974 (Exh. 2). Due to the world-wide recession, there followed a slump in the demand for electronic products. On June 4, 1975, the Traders Commodities Corporation offered to buy the property at P2,750,000.00 with a deposit of P50,000.00 as earnest money. The offer was formally made by the law firm Salonga, Ordonez, Yap, Africano and Associates (Exh. 6). The offer was accepted on June 9, 1975 (Exhs. 7 and 8). The sale was not consummated, however, when the government notified the defendant in conference held in Malacanang on June 15, 1975 that it wanted to buy the property for the use of the Manuel de la Fuente High School (Exh. 9). Because of the failure of the parties to agree on the price and other conditions of the purchase, the government filed this action on August 2, 1975.

"It is apparent that the commissioners were influenced by the fact that the city assessors fixed the market value of the property at P2,432,042.00 for the year 1975 pursuant to Presidential Decree No. 464 and that there was a perfected contract to buy it at P2,750,000.00. No evidence was presented nor even an allegation made, to show that the government valuation is fraudulent or erroneous. It must therefore be regular (Rule 131, sec. m); and in view of the reliance of the Presidential Decree upon it as a standard to be followed by the courts in arriving at the just compensation of the property when it is acquired by the government, it has great evidentiary weight.

The offer to buy at P2,750,000.00 was made by one of the most reputable law-firms in the country. It is not likely that it would have lent itself to any fraudulent device or scheme to inflate the value of the property. Commissioner Pena is a renowned authority on land registration, and has been a realtor for many years. Atty. Higinio Sunico is the chief of the Land Management Division, Bureau of Lands, who was recommended by the plaintiff. Both are well-known for their probity. Although it appears that Mr. Aquino, the commissioner recommended by the defendant, had occasion in the past to participate in transactions involving the same property, the court believes that the concurrence of the other commissioners is a safe guaranty of the correctness of their appraisal and recommendation."

Accordingly, the dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered fixing the amount of P2,258,018.57 as just compensation for the property of the defendant and declaring the plaintiff entitled to possess and appropriate it to the public use alleged in the complaint and to retain it upon payment of the said amount, after deducting the amount of P1,303,470.00, with legal interest from October 13, 1975 when the plaintiff was placed in possession of the real property, and upon payment to each of the commissioners of the sum of P35.00 for their attendance during the hearings held on January 23, February 16, May 11, July 23, September 17, October 12 and December 10, 1976, plus P500.00 each for the preparation of the report, and the costs."

The plaintiff elevated the case to the then Intermediate Appellate Court (IAC) for review. On October 29, 1984, it affirmed the appealed decision with the modification that the plaintiff Republic of the Philippines be exempted from the payment of the commissioners' fees, the P500.00 granted each of them for the preparation of the report and the costs.

Its motion for the reconsideration of said decision having been denied, petitioner filed the instant petition submitting the following issues for resolution:

- "1. Whether or not respondent Court erred in not disqualifying Commissioner Aurelio B. Aquino from membership in the Committee of Appraisal.
2. Whether or not respondent Court erred in not totally disregarding the 'audited statement by the defendant', which is hearsay in nature and was not formally offered in evidence.
3. Whether or not respondent Court erred in totally disregarding petitioner's evidence showing that the award of just compensation should be only P1,800,000.00 and not P2,258,018.57 as awarded by said respondent Court."

The issue of the disqualification of Aquino as commissioner deserves scant attention. Under Section 8, Rule 67 of the Rules of Court, the court may take the following actions on the report submitted by commissioners: it may "accept the report and render judgment in accordance therewith; or for cause shown, it may recommit the same to the commissioners for further report of facts, or it may set aside the report and appoint new commissioners, or it may accept the report in part and reject it in part; x x x." In other words, the report of commissioners is merely advisory and recommendatory in character as far as the court is concerned.[9]

Hence, it hardly matters that one of the three commissioners had a preconceived and biased valuation of the condemned property. The veracity or exactitude of the estimate arrived at by the commissioners may not be adversely affected thereby. In fact, the report of only two commissioners may suffice if the third commissioner dissents from the former's valuation.[10] Indeed, the participation of an allegedly biased commissioner may not result in the total disregard of an appraisal report in the absence of proof that the two other commissioners were unduly influenced by their allegedly partial colleague.

The determination of just compensation for a condemned property is basically a judicial function. As the court is

not bound by the commissioners' report, it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of its right of condemnation, and to the defendant just compensation for the property expropriated. For that matter, this Court may even substitute its own estimate of the value as gathered from the record.[11] Hence, although the determination of just compensation appears to be a factual matter which is ordinarily outside the ambit of its jurisdiction, this Court may disturb the lower court's factual finding on appeal when there is clear error or grave abuse of discretion.[12]

We hold that the courts below made an erroneous determination of just compensation in this case.

In the first place, the just compensation prescribed herein is based on the commissioners recommendation which in turn is founded on the "audited" statements of Amerex that the property is worth P2,258,018.57. As earlier pointed out, while the court may accept the commissioners' report and render judgment in accordance therewith, it may not do so without considering whether the report is supported by evidence. The court is also duty-bound to determine whether the commissioners had discharged the trust reposed in them according to well-established rules and formed their judgment upon correct legal principles for they are not supposed to act ad libitum.[13]

Amerex's "audited" statement on the acquisition cost, cost of painting and major repairs, taxes, and insurance premiums which totals P2,107,479.48, contains the following certification:

"We have checked the details of the transactions indicated in the foregoing schedule of Land and Building Account as at January 31, 1976 with the books and records of Amerex Electronics (Philippines) Corporation which were presented to us for examination and have found the details to be in accordance therewith. We have not made an audit of the books of accounts of Amerex Electronics (Philippines) Corporation.

Sycip, Gorres, Velayo & Co.

PTR No. 4709791

January 23, 1976

Makati, Rizal"

(Underscoring supplied.)[14]

Amerex's other "audited" statement on the maintenance expenses of the property wherein it allegedly incurred the amount of P150,539.09 contains a similar certification by the same accounting firm specifically stating that the auditor did not make an audit of the books of accounts of Amerex.[15]

It is clear from these certifications that the accounting firm which issued them merely compared the figures in the schedules or "audited" statements with those of the records and books of accounts of Amerex. As no investigation was made as to the veracity of the figures in the account, there was no audit in the real sense of the term. To audit is to examine an account, compare it with the vouchers, adjust the same, and to state the balance, by persons legally authorized for the purpose.[16] While the word "audit" is sometimes restricted to a mere mathematical process, it generally includes investigation, the weighing of evidence, and deciding whether items should or should not be included in the account.[17] Audit involves the exercise of discretion; it is a quasi-judicial function.[18] The accuracy of the "audited" statements herein is therefore suspect.

Besides the fact that the petitioner was not furnished a copy of the audited statements which were also not introduced in evidence, Enrique P. Esteban, vice-president and treasurer of Amerex, and even a representative of the accounting firm, were likewise not presented during the trial thereby depriving petitioner herein of the opportunity to cross-examine them. It would therefore be unfair to the petitioner to hold it bound by the "audited" statements of Amerex which may have been premised on false or mistaken data.[19]

This Court having declared as unconstitutional the mode of fixing just compensation under P.D. No. 794,[20] just compensation should be determined either at the time of the actual taking of the government or at the time of the judgment of the court, whichever comes first.[21]

In this case, the issuance of the condemnation order and the actual taking of the property both occurred in October, 1975. Accordingly, the appraisal made by Ampil Realty and Appraisal Co., Inc. on June 5, 1975, which date is nearest to that of the actual taking of the property, should be the basis for the determination of just compensation the record being bereft of any indications of anomaly appertaining thereto. It should be added that Wenceslao Ampil, the president of said appraisal firm, testified at the trial and therefore petitioner had the opportunity to confront him and to question his report. The reasonableness of the June 5, 1975 appraisal fixing at P2,400,000 the fair market value of the property, is bolstered by the fact that on June 4, 1975, Traders Commodities Corporation, through its lawyer, Sedfrey A. Ordonez, offered to buy the property at P2,750,000.[22] It must be emphasized, however, that legal interest on the balance of the just compensation of P2,400,000 after deducting the amount of P1,303,470 which had been delivered to Amerex, should be paid by petitioner from the time the government actually took over the property.[23]

Much as we realize the need of the government, under these trying times, to get the best possible price for the expropriated property considering the ceaseless and continuing necessity for schools, we cannot agree with the petitioner that the just compensation for the property should be the price it commanded when it was first offered for sale to the City School Board of Manila. Petitioner failed to substantiate its claim that the property is worth the lower amount of P1,800,000. In contrast, Amerex submitted evidence consisting of the aforesaid June 5, 1975 appraisal report which fixed the fair market value of the property at P2,400,000.

WHEREFORE, the just compensation of the property expropriated for the use of the Manuel de la Fuente High School (Don Mariano Marcos Memorial High School) is hereby fixed at Two Million Four Hundred Thousand Pesos (P2,400,000.00). After deducting the amount of P1,303,470.00 therefrom, the petitioner shall pay the balance with legal interest from October 13, 1975.

SO ORDERED.

Feliciano and Cortes, JJ., concur.

Gutierrez, Jr., no-part, because earlier role in the case.

Bidin, JJ., no part, participated in appealed decision.

[1] Original Record on Appeal, p. 3.

[2] Real Property Tax Code.

[3] Original Record on Appeal, p. 47-A.

[4] Exh. 1.

[5] Exh. 2.

[6] Exh. 3.

[7] Original Record on Appeal, pp. 82-83.

[8] Judge Jose C. Colayco, presiding.

[9] Municipality of Daet vs. Court of Appeals, L-35861, October 18, 1979, 93 SCRA 503.

[10] See: Republic vs. Garcellano, 103 Phil. 231.

[11] Republic vs. Santos, G.R. No. 57564, January 8, 1986, 141 SCRA 30 citing Manila Railroad Company vs. Velasquez, 32 Phil. 286.

[12] City Government of Toledo City vs. Fernandos, L-45144, April 15, 1988, 160 SCRA 285.

[13] Municipality of Daet vs. Court of Appeals, supra.

[14] Original Record on Appeal, p. 47-B.

[15] Supra, p. 47-c.

[16] Moreno's Philippine Law Dictionary, 3rd ed., citing Ynchausti & Co. vs. Wright, 47 Phil. 885.

[17] 4A Words and Phrases 578 citing Travelers' Ins. Co. vs. Pierce Engine Co., 123 N.W. 643, 644, 141 Wis. 103.

[18] Mabuhay vs. Serina, L-28636, June 29, 1982, 114 SCRA 642.

[19] See: Republic of the Philippines vs. Urtula, 110 Phil. 263.

[20] Export Processing Zone Authority vs. Dulay, G.R. No. 59603, April 29, 1987, 149 SCRA 305.

[21] Manotok vs. National Housing Authority, G.R. No. 55166, May 21, 1987, 150 SCRA 89.

[22] Exh. 6.

[23] Benguet Consolidated, Inc. vs. Republic of the Philippines, G.R. No. 71412, August 15, 1986, 143 SCRA 466.

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