

BENGUET CONSOLIDATED, INC., (NOW BENGUET CORPORATION), PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

G.R. No. 71412. August 15, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the Intermediate Appellate Court in an expropriation case, insofar as the decision affects the petitioner.

On June 18, 1958, the Republic of the Philippines filed with the then Court of First Instance of Benguet and Baguio a complaint for expropriation against ten (10) defendants, among them Benguet Consolidated, Inc. The Republic stated that it needed the property for the purpose of establishing and maintaining a permanent site for the Philippine Military Academy, a training institution for officers in the Armed Forces of the Philippines, under the direct authority and supervision of the Department of National Defense. It also averred that it had occupied since May 6, 1950, the area covered by the mining claims of the defendants and had already installed therein permanent buildings and other valuable improvements with no less than P3,000,000.00 in the belief that the area was unoccupied portions of the public domain, and that according to the Appraisal Committee constituted under Administrative Order No. 144, dated October 10, 1955, by the President of the Philippines, the reasonable and fair market value of the rights and interests of all the defend-ants which will be affected by these eminent domain proceedings cannot exceed the total sum of P532,371.40.

The locations of the petitioner's four mining claims with a total area of 25.1082 hectares were made on the following dates:

JEAN May 18, 1933

DOLORES FR May 15, 1933

NUGGET FR August 24, 1930

SMOKE May 11 & 12, 1933

The petitioner filed a motion to dismiss on the ground that, insofar as it is concerned, the Republic did not need and has not occupied the areas covered by the above-mentioned mining claims and neither have improve-ments been made on the said areas and that the area covers ground which is rugged in terrain for which the Philippine Military Academy could have no use. By way of separate and special grounds for dismissal, Benguet Consolidated, Inc. alleged that the authority given by the President of the Philippines for the expropriation proceedings refers to privately owned mineral lands, mining interests, and other private interests of private individuals and entities of private individuals in certain portions of the site surveyed for and presently occupied by the Philippine Military Academy at Loakan, Baguio and that the expropriation of Benguet Consolidated, Inc.'s mineral claims is in violation of law.

On December 28, 1955, the trial court heard Benguet Consolidated Inc.'s motion to dismiss. Valentin Camado was presented as witness and he testified that he performed the annual assessment work for movant's mineral

claims. Since the possibility of an amicable settlement was raised, the representatives of both parties agreed that pending any definite settlement, the hearing of the motion to dismiss would be held in abeyance. On this same day, the trial court issued an order, the dispositive portion of which reads:

"In view of the fact that the defendants are no longer challenging plaintiff's right to condemn the property, subject of the instant case, the plaintiff Republic of the Philippines is hereby declared to have lawful right to take the property sought to be condemned, for the public use described in the complaint, upon payment of just compensation to be determined as of the date of the filing of the complaint."

Benguet Consolidated, Inc. took exception to the order of condemnation by filing a motion stating that at no time, had it, manifested, either expressly or impliedly, that it was no longer challenging the plaintiff's right to expropriate its former mineral claims. In the same motion, Benguet Consolidated, Inc. moved for the setting of a date for the continuation of the hearing of its motion to dismiss.

Acting on this motion, the trial court in its Order dated February 23, 1960, stated that "x x x to satisfy Benguet Consolidated, Inc., this Court makes it of record that, pending negotiations between the Government and Benguet Consolidated, Inc. said corporation has not waived its right to challenge plaintiff's right to condemn the mineral claims in question."

In the course of the proceedings, a Board of Commissioners to assess and establish the reasonable amount of compensation was formed. Appointed by the court as members of the board of Commissioners were Engineer Ernesto C. Bengson and Attorney-Engineer Rolando J. Gamboa representing the court and the army respectively and Mining Engineer Francisco G. Joaquin, nominated by the defendants to represent all of them.

Commissioner Joaquin resigned after attending eight (8) hearings leaving the two other commissioners to conduct 56 more hearings.

On February 28, 1963, the Board of Commissioners submitted their report recommending the payment of P43,703.37 to the ten (10) defendants as just compensation for their expropriated properties.

The parties filed their objections to the Commissioners' report.

The trial court rejected the Commissioners' Report and made its own findings and conclusions. On July 5, 1973, the trial court promulgated a decision awarding various sums to the defendants.

Benguet Consolidated filed a motion to clarify the decision since the dispositive portion of the decision computed the respective amounts to be paid by the Republic to the defendants without, however, including the amount to be paid to Benguet Consolidated for the expropriation of its four (4) mining claims. In other words, the petitioner was excluded from the awards made by the trial court.

After Benguet Consolidated filed two other motions (motion for new trial and/or reconsideration; second motion for clarification) reiterating its objection to the decision in not providing for just compensation for their expropriated properties, the trial court issued an order fixing the "just compensation of the surface area of the four (4) claims of Benguet Consolidated, Inc. in the amount of P128,051.82 with interest at 6% per Annum from May 6, 1950 until fully paid, plus attorney's fees in an amount equal to 5% of the sum fixed by this Court." A motion to reopen the case praying for a new trial to allow it to present evidence as to the value of the properties filed by Benguet Consolidated was denied by the trial court.

Among all parties, only the plaintiff and defendant Benguet Consolidated, Inc. pursued their appeal before the then Court of Appeals.

On June 28, 1985, the Intermediate Appellate Court promulgated a decision setting aside the trial court's decision.

The dispositive portion of the decision reads:

"WHEREFORE, the appealed judgment is hereby reversed and set aside, and another one is rendered (1) condemning the mineral claims described in the complaint belonging to the defendants for the public use therein stated; and (2) ordering the plaintiff to pay the defendants as follows:

"Demonstration Gold
Mines, Ltd.

22.0037 Has.

x P600.00

P13,202.22

Benguet Goldfields

Mining Co.

.50.6633 Has.

x P300.00 . .

15,198.99

Crown Mines, Inc.

.....

none

Benguet Consolidated
Mining Co.

25.1082 Has.

x P300.00 . .

7,532.46

Josephine McKenzie

.....

none

Josephine Murphy . . .

5.8432 Has.

x P300.00

1,752.96

J.E.H. Stevenot . .

1.1151 Has

x P300.00

334.53

Andres Trepp .

.....

none

Gregoria Beley. . .

18.9407 Has.

x P300.00

5,682.21

"No costs."

The petitioner asserts that there is a need to re-view and reverse the appellate court's decision because of the following reasons:

A.

THE CONDEMNATION OF PETITIONER'S MINERAL CLAIMS IS CONTRARY TO LAW AND APPLICABLE JURISPRUDENCE.

B.

THE APPROVAL OF THE COMMISSIONER'S REPORT IS CONTRARY TO LAW AND APPLICABLE JURISPRUDENCE.

The petitioner states that its mineral claims were located since 1933 at the latest. It argues that by such location and perfection, the land is segregated from the public domain even as against the government. Citing *Gold Creek Mining Corporation v. Rodriguez, et al.* (66 Phil. 259), it states that when the location of a mining claim is perfected, this has the effect of a grant of exclusive possession with right to the enjoyment of the surface ground as well as of all the minerals within the lines of the claim and that this right may not be infringed.

The petitioner's arguments have no merit. The filing of expropriation proceedings recognizes the fact that the petitioner's property is no longer part of the public domain. The power of eminent domain refers to the power of government to take private property for public use. If the mineral claims are public, there would be no need to expropriate them. The mineral claims of the petitioner are not being transferred to another mining company or to a public entity interested in the claims as such. The land where the mineral claims were located is needed for the Philippine Military Academy, a public use completely unrelated to mining. The fact that the location of a mining claim has been perfected does not bar the Government's exercise of its power of eminent domain. The right of eminent domain covers all forms of private property, tangible or intangible, and includes rights which are attached to land.

The petitioner next raises a procedural point - whether or not in expropriation proceedings an order of condemnation may be entered by the court before a motion to dismiss is denied.

Citing the case of *Nieto v. Ysip, etc., et al.* (97 Phil. 31), the petitioner claims that this cannot be done.

We ruled in the *Nieto* case that:

"A cursory reading of Sections 4, 5 and 6 of Rules 69 of the Rules of Court discloses the steps to be followed, one after another, in condemnation proceedings from the institution thereof. The first step is the presentation

by defendants of their objections and defenses to the right of plaintiff to take the property for the use specified which objections and defenses shall be set forth in a single motion to dismiss (Section 4). The second is the hearing on the motion and the unfavorable resolution thereon by the court. That an adverse resolution on the motion to dismiss, if objections and defenses are presented, is required because the rule (Sec. 5) authorizes the court to enter an order of condemnation only if the motion to dismiss is overruled, or if no motion to dismiss had been presented. The second step includes the order of condemnation, which may be embodied in the resolution overruling the motion to dismiss. The third is the appointment of commissioners to assess the just compensation for the property (Sec. 6). That the above steps must follow one another is evident from the provisions of the rules as well as from the inter-relation between the steps and the dependence of one upon the previous step. Thus no order of condemnation may be entered if the motion to dismiss has not been passed upon and overruled, and no assessment should be undertaken unless and until an order of condemnation has already been entered."

In the instant case the ruling on the motion to dismiss was deferred by the trial court in view of a possible amicable settlement. Moreover, after the trial court entered an order of condemnation over the objection of the petitioner, the court issued an order to the effect that the trial court "x x x makes it of record that, pending negotiations between the Government and Benguet Consolidated, Inc. said corporation has not waived its right to challenge plaintiff's right to condemn the mineral claims in question."

At the hearing conducted by the Board of Commissioners, the counsel for the petitioner manifested that its motion to dismiss was still pending in court, and requested that the hearing for the presentation of evidence for the petitioner be cancelled. At this point, negotiations between the government and the petitioner were still going on.

In its original decision, the lower court overlooked an award of just compensation for the petitioner. This triggered off the filing of the following motions by the petitioner: (1) motion for clarification praying that an order be issued clarifying the decision insofar as the compensation to be paid to the petitioner is concerned; (2) motion for new trial and/or reconsideration on the ground that the court did not award just compensation for the properties of the petitioner; (3) motion to re-open case on the ground that the issues insofar as the petitioner is concerned have not been joined since its motion to dismiss has not been resolved; and (4) a second motion for clarification praying therein:

"WHEREFORE, it is respectfully prayed that a clarification of the decision rendered on July 9th 1973 be made particularly with respect to defendant Benguet Consolidated, Inc., so as to make a specific award, as in the case of all then other defendants, for the just and fair market value of the surface rights to its four condemned mineral claims at the very least on the basis of the same rate of P0.51 per square meter, or for the total amount of P128,051.82; with interest thereon at 6% per annum from May 6, 1950 until fully paid; plus attorney's fees in an amount equal to 5% of the sum fixed to be just and fair market value of the mineral claims."

The lower court denied the motion to re-open the case by stating in its Order:

xxx xxx xxx

"When this Court issued the order declaring that plaintiff has a lawful right to take the property sought to be condemned, it impliedly overruled defendant's Motion to dismiss which in expropriation cases takes the place of an answer (Sec. 3, Rule 67, Rules of Court), and what defendant could have done at the time would have been to present evidence on the fair market value of its properties. Having slept on its rights, Benguet Consolidated, Inc. can no longer have this case reopened for the presentation of its evidence."

This order was not challenged by the petitioner. Instead, it filed its above-mentioned second motion for clarification. It is to be noted that in its motion for new trial and/or reconsideration, the petitioner stated:

"Defendant Benguet Consolidated, Inc., does not dispute the right of the government to exercise the power of

eminent domain with respect to its property. However, in so doing this court failed to comply with the basic constitutional provision that said power can only be exercised upon payment of just compensation. x x x."

Under these circumstances, the petitioner is estopped from questioning the proceedings of condemnation followed by the court. We cannot condone the inconsistent positions of the petitioner. (See Republic v. Court of Appeals, 133 SCRA 505). It is very clear from the statements of the petitioner that it had already abandoned its earlier stand on the propriety of expropriation and that its intent shifted to the just compensation to be paid by the plaintiff for its condemned properties.

The second issue centers on the amount of just compensation which should be paid by the respondent to the petitioner for the condemned properties.

The petitioner assails the appellate court's approval of the Commissioners' Report which fixed the amount of P7,532.46 as just compensation for the mineral claims. The petitioner contends that this amount is by any standard ridiculously low and cannot be considered just and that in fact the commissioners' report was rejected by the trial court.

The Commissioners' Report was submitted by Ernesto C. Bengson, chairman of the board and Rolando J. Gamboa, Francisco Joaquin, representing the defendants resigned after attending eight (8) hearings due to ill health. The defendants did not ask for a replacement.

The conclusion of the Commissioners are the result of documentary evidence presented by the parties, testimonies of several mining experts and executives of mining companies including Mr. Ralph W. Crosby, the then vice-president of the petitioner, and ocular inspections of the mining claims involved in this case. Among those present during the ocular inspection were Mr. Joventino S. Perfecto and Mr. Kevin A. Callow, the Chief Engineer of the Acupan Mines and the Exploration Geologist of the Benguet Consolidated, Inc., respectively. Among those considered by the commissioners in order to determine the just compensation to be paid to the defendants were the ore reserves, base metal concentrates, and gypsums deposits of the mining claims.

The P7,532.46 just compensation for the petitioner was based on the following findings of the Board of Commissioners:

"The Commissioners conducted an ocular inspection of the mining claims involved in this case, on October 14, 1961, with prior notice to all the parties. At this ocular inspection, Joventino S. Perfecto and Mr. Kevin A. Callow, Chief Engineer of the Acupan mines and Exploration Geologist, respectively, of the Benguet Consolidated, Inc., also took part. In the mining claims of Benguet Consolidated, Inc., involved in this case, namely, Dolores, Nugget, Jean and Smoke mining claims, there are some exploration tunnels and trenches to explore the mineral character of these claims. However, the exploration and/or development work on these claims is not sufficient for making any estimate of the value of these claims for mining purposes. The property has possibilities; but, with the limited work done on these claims, no ore body has as yet been found. Consequently, the value of these claims cannot be determined at the present time.

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xxx xxx xxx

"With respect to the mining claims of Benguet Consolidated, Inc., which are considered apart from the other mining claims involved in this case, the mineral value of these claims cannot possibly be determined for the present, as these claims are not yet sufficiently developed.

"Upon the foregoing considerations, it would appear that all that the defendants would be entitled to would be the value of the surface rights of their mining claims.

XXX XXX XXX

XXX XXX XXX

"According to the 'Schedule of Assessed Value of Mineral Lands' (Exhs. B and B-1), the assessed value of a patented lode claim (producing or non-producing) or a non-patented producing claim is P600.00 per hectare, and for a non-producing unpatented claim, it is P300.00 per hectare."

The petitioner's mining claims were classified as non-producing unpatented claims. It was established that the area of the mineral claims belonging to the petitioner and included in the Philippine Military Reservation was 25.1082 hectares. Hence, the commissioners arrived at the total amount of P7,532.46 (25.1082 x P300.00) as just compensation to be paid to the petitioner for its mining claims.

The Schedule of Assessment Value of Mineral Lands (Exhibits B, B-1) presented by the government, is a "SCHEDULE of Assessed Values of mineral lands, furnished by the Provincial Assessor of Mountain Province on June 30, 1955" issued by Onofre D. Alabanza, ex-officio Mining Recorder of the Office of the Mining Recorder, City of Baguio, Bureau of Mines, Department of Agriculture and Natural Resources.

These findings negate the trial court's observation that the commissioners only took into consideration the surface value of the mineral claims. In fact, the lower court affirmed the commissioners' report to the effect that the petitioner herein is only entitled to the surface value of the mineral claims when it said:

"The Court regrets that it has no basis on which to evaluate the value of the other claims the mineral reserves of which were not included or taken into consideration in the above-mentioned evaluations. The Court, however, realizes that these mineral claims have values. In the absence of any evidence as to their positive, possible and probable ore contents, said claims shall be evaluated only on the basis of their surface areas."

"Other claims" include the petitioner's mining claims. Thus, the trial court computed the amount to be paid to the petitioner as just compensation on the basis of the surface value of its mining claims.

We find no reason to disturb the lower court's findings on this matter. The petitioner has not advanced any reason for us to reject such findings.

As stated earlier, the appellate court based its findings on the Commissioners' Report. The petitioner now assails the approval of the commissioners' report regarding the P7,532.46 just compensation to be paid by the government for its four (4) mining claims.

While it is true that a court may reject a Commissioners' Report on the ground that the amount allowed is palpably inadequate (*Republic v. Vda. de Castellvi*, 58 SCRA 336, citing *Manila Railroad Co. v. Caligsihan*, 40 Phil. 326) it is to be noted that the petitioner herein has not supported its stand that the P7,532.46 just compensation for its mining claims is by any standard ridiculously low and cannot be considered just.

On the other hand, the appellate court said:

"The integrity and impartiality of the remaining Commissioners, Engrs. Bengson and Gamboa, were not questioned by the defendants. They are experienced mining engineers and members of the bar. And the Commissioners did give value to the mineral contents of the claims. Pages 168 to 206 of the Report will show that the Board considered the ore reserves and the base metal concentrates and gypsum deposits. The Board concluded that it was not profitable to operate the claims, taking into account the cost of production, rehabilitation and depletion, depreciation and smelting and marketing expenses. Although Engineer Joaquin resigned after eight hearings of the Board, the defendants did not ask for a replacement. Anyway, the Court was ably represented by Engineer Bengson. The Board held a total of 64 hearings. Besides documentary evidence, and an ocular inspection of the mining claims involved made with prior notice, twelve witnesses

were presented by the parties."

We are not inclined to reject these findings of facts of the appellate court in the absence of any contrary evidence pointed to by the petitioner.

Moreover, it is to be noted that unlike the plaintiff and other defendants, the petitioner did not file any opposition to the Commissioners' Report in the lower court.

The appellate court, however, should have provided for the payment of legal interest from the time the government took over the petitioner's mining claims until payment is made by the government. (See *National Power Corporation v. Court of Appeals*, 129 SCRA 665)

We ruled in *Republic v. Juan* (92 SCRA 26):

xxx xxx xxx

"x x x [S]aid interest x x x 'runs as a matter of law and follows as a matter of course from the right of the landowner to be placed in as good a position as money can accomplish, as of the date of the taking' (30 CJS 230). Stated otherwise: 'Where the payment of compensation does not accompany the taking of property for public use but is postponed to a later date, the owner of the property is ordinarily entitled to the award of an additional sum which will compensate for delay (cases cited) or which will, in other words, produce the full equivalent of the value of the property paid contemporaneously with the taking' (29-A CJS 762). Under this view, the interest awarded is deemed part of the just compensation required to be paid to the owner (27 Am. Jur. 112). x x x."

The appellate court's decision is, therefore, modified in this respect.

WHEREFORE, the decision of the Intermediate Appellate Court is MODIFIED in that the government is directed to pay the petitioner the amount of SEVEN THOUSAND FIVE HUNDRED THIRTY-TWO PESOS and 46/100 (P7,532.46) plus 6% interest from May 6, 1950 to July 29, 1974 and 12% thereafter until fully paid, and AFFIRMED in all other respects.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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