

SEBASTIAN COSCULLUELA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY NATIONAL IRRIGATION ADMINISTRATION, RESPONDENTS.

G.R. No. 77765. August 15, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari which seeks to set aside the decision of the Court of Appeals nullifying the orders of the trial court on the ground that said orders in effect, sought the enforcement of a writ of execution against government funds. The petitioner contends that to set aside the writ of execution would be an abridgment of his right to compensation and due process of law. The public respondents on the other hand, state that government funds cannot be disbursed without proper appropriation and that a writ of execution cannot legally issue against the State.

On March 8, 1976, the Republic of the Philippines filed a complaint with the Court of First Instance of Iloilo to expropriate two parcels of land in the municipality of Barotoc, Iloilo owned by petitioner Sebastian Cosculluela and one Mita Lumampao, for the construction of the canal network of the Barotoc Irrigation Project.

On April 4, 1976, the trial court rendered a decision granting the expropriation and ordered the public respondent to pay the following amounts:

“1. To Mita Lumampao, the sum of P20,000 minus P4,001.82 which she had already withdrawn plus P3,000 attorney’s fees; and

“2. Sebastian Cosculluela, the sum of P200,000.00 which is the reasonable estimate of his actual and consequential loss by reason of the taking of his 3 hectares of land, destruction of the sugarcane therein and the reduce in the yield of his sugarcane farm due to water lagging and seepage; plus attorney’s fees of P10,000 and litigation expenses of P5,000.00.” (p. 36, Rollo)

On appeal, the Court of Appeals modified the trial court’s decision in that the attorney’s fees and litigation expenses were reduced from P10,000.00 and P5,000.00 to P5,000.00 and P2,500.00 respectively. The decision became final and executory on September 21, 1985.

On May 7, 1986, on motion of the petitioner, the trial court ordered the issuance of a writ of execution to implement the judgment of the appellate court.

On August 11, 1986, the respondent Republic filed a motion to set aside the order of May 7, 1986 as well as the writ of execution issued pursuant thereto, contending that the funds of the National Irrigation Authority (NIA) are

(government funds and therefore, cannot be disbursed without a government appropriation.

On October 6, 1986, the lower court issued an order modifying its order of May 7, 1986, directing instead that the respondent Republic deposit with the Philippine National Bank (PNB) in the name of the petitioner, the amount adjudged in favor of the latter.

The respondent filed a petition with the Court of Appeals to annul the orders of May 7 and October 6, 1986.

On November 25, 1986, the appellate court rendered the questioned decision setting aside the aforementioned orders of the trial court on the ground that public or government funds are not subject to levy and execution.

In this instant petition, the petitioner assails the decision of the appellate court as being violative of his right to just compensation and due process of law. He maintains that these constitutional guarantees transcend all administrative and procedural laws and jurisprudence for [as between these said laws and the constitutional rights of private citizens, the latter must prevail.

As admitted by the respondent Republic, the NIA took possession of the expropriated property in 1975 and for around ten (10) years already, it has been servicing the farmers on both sides of the Barotac Viejo Irrigation Project in Iloilo Province and has been collecting fees therefor by way of taxes at the expense of the petitioner. On the other hand, the petitioner, who is already more than eighty (80) years old and sickly, is undergoing frequent hospitalization, and is made to suffer further by the unconscionable delay in the payment of just compensation based on a final and executory judgment.

The respondent Republic, on the other hand, argues that while it has no intention of keeping the land and dishonoring the judgment, the manner of which the same will have to be satisfied must not be inconsistent with prevailing jurisprudence, and that is, that public funds such as those of the respondent NIA cannot be disbursed without the proper appropriation.

We rule for the petitioner.

One of the basic principles enshrined in our Constitution is that no person shall be deprived of his private property without due process of law; and in appropriation cases, an essential element of due process is that there must be just compensation whenever private property is taken for public use. Thus, in the case of *Province of Pangasinan v. CFI Judge of Pangasinan, Branch VIII* (80 SCRA 117, 120-121), this Court speaking through then Chief Justice Fernando ruled:

“There is full and ample recognition of the power of eminent domain by Justice Street in a leading case of *Visayan Refining Co. v. Camus* (40 Phil. 550 [1919]) decided prior to the Commonwealth, the matter being governed by the Philippine Autonomy Act of 1916, otherwise known as the Jones Law. It was characterized as ‘inseparable from sovereignty being essential to the existence of the State and inherent in government even in its most primitive forms.’ (Ibid, 558) Nonetheless, he was careful to point out: ‘In other words, the provisions now generally found in the modern laws of constitutions of civilized countries to the effect that private property shall not be taken for public use without just compensation have their origin in the recognition of a necessity for restraining the sovereign and protecting the individual.’ (Ibid, 559) Moreover, he did emphasize: ‘Nevertheless it should be noted that the whole problem of expropriation is resolvable in its ultimate analysis into a constitutional question of due process of law. x x x Even were there no organic or constitutional provision in force requiring compensation to be paid, the seizure of one’s property without payment, even though intended for a public use, would undoubtedly be held to be a taking without due process of law and a denial of the equal protection of the laws.’ That aspect of the matter was stressed in the recent case of *J. M. Tuason and Co., Inc. v. Land Tenure Administration*. (31 SCRA 413) Conformably to such a fundamental

principle then, in accordance with a constitutional mandate, this Court has never hesitated to assure that there be just compensation. If it were otherwise, the element of arbitrariness certainly would enter. It is bad enough that an owner of a property, in the event of the exercise of this sovereign prerogative, has no choice but to yield to such a taking. It is infinitely worse if thereafter, he is denied all these years the payment to which he is entitled. This is one of the instances where law and morals speak to the same effect." (Cf. *Province of Tayabas v. Perez*, 66 Phil. 467 [1938] and other related cases).

The property of the petitioner was taken by the government in 1975. The following year, respondent NIA made the required deposit of P2,097.30 with the Philippine National Bank and within the same year, the Barotac Viejo Irrigation Project was finished. Since then, for more than a period of ten (10) years, the project has been of service to the farmers nearby in the province of Iloilo. It is thus, inconceivable how this project could have been started without the necessary appropriation for just compensation. Needless to state, no government instrumentality, agency, or subdivision has any business initiating expropriation proceedings unless it has adequate funds, supported by proper appropriation acts, to pay for the property to be seized from the owner. Not only was the government able to make an initial deposit of P2,097.30 but the project was finished in only a year's time. We agree with the petitioner that before the respondent NIA undertook the construction of the Barotac Viejo Irrigation Project, the same was duly authorized, with the corresponding funds appropriated for the payment of expropriated land and to pay for equipment, salaries of personnel, and other expenses incidental to the project. The NIA officials responsible for the project have to do plenty of explaining as to where they mis-directed the funds intended for the expropriated property.

The present case must be distinguished from earlier cases where payment for property expropriated by the National Government may not be realized upon execution. As a rule, the legislature must first appropriate the additional amount to pay the award. (See *Commissioner of Public Highways v. San Diego*, 31 SCRA 616 and *Visayan Refining Co. v. Camus & Paredes*, 40 Phil. 550).

In the present case, the Barotac Viejo Project was a package project of government. Money was allocated for an entire project. Before bulldozers and ditch diggers tore up the place and before millions of pesos were put into the development of the project, the basic responsibility of paying the owners for property seized from them should have been met.

Another distinction lies in the fact that the NIA collects fees for the use of the irrigation system constructed on the petitioner's land. It does not have to await an express act of Congress to locate funds for this specific purpose. The rule in earlier precedents that the functions and public services rendered by the state cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects (*Commissioner of Public Highways v. San Diego*, supra, at p. 625) is not applicable here. There is no showing of any public service to be disrupted if the fees collected from the farmers of Iloilo for the use of irrigation water from the disrupted property were utilized to pay for that property.

We must emphasize that nowhere in any expropriation case has there been a deviation from the rule that the Government must pay for expropriated property. In the *Commissioner of Public Highways* case, the Court stressed that it is incumbent upon the legislature to appropriate the necessary amount because it cannot keep the land and dishonor the judgment.

This case illustrates the expanded meaning of "public use" in the eminent domain clause. (Constitution, Article III, Section 9.) The petitioner's land was not taken for the construction of a road, bridge, school, public buildings, or other traditional objects of expropriation. When the National Housing Authority expropriates raw land to convert into housing projects for rent or sale to private persons or the NIA expropriates land to construct irrigation systems and sells water rights to farmers, it would be the height of abuse and ignominy for the agencies to start

earning from those properties while ignoring final judgments ordering the payment of just compensation to the former owners.

Just compensation means not only the correct determination of the amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. Thus, in the case of *Provincial Government of Sorsogon v. Rosa E. Vda. De Villaroyo* (153 SCRA 291), we ruled:

"The petitioners have been waiting for more than thirty years to be paid for their land which was taken for use as a public high school. As a matter of fair procedure, it is the duty of the Government, whenever it takes property from private persons against their will to supply all required documentation and facilitate payment of just compensation. The imposition of unreasonable requirements and vexatious delays before effecting payment is not only galling and arbitrary but a rich source of discontent with government. There should be some kind of swift and effective recourse against unfeeling and uncaring acts of middle or lower level bureaucrats.

"Under ordinary circumstances, immediate return to the owners of the unpaid property is the obvious remedy. In cases where land is taken for public use, public interest, however, must be considered. The children of Gubat, Sorsogon have been using the disputed land as their high school athletic grounds for thirty years."
(Italics supplied)

In the present case, the irrigation project was completed, and has been in operation since 1976. The project is benefitting the farmers specifically and the community in general. Obviously, the petitioner's land cannot be returned to him. However, it is high time that the petitioner be paid what was due him eleven years ago. It is arbitrary and capricious for a government agency to initiate expropriation proceedings, seize a person's property, allow the judgment of the court to become final and executory and then refuse to pay on the ground that there are no appropriations for the property earlier taken and profitably used. We condemn in the strongest possible terms the cavalier attitude of government officials who adopt such a despotic and irresponsible stance.

WHEREFORE, the petition is hereby GRANTED. The decision and order of the respondent appellate court dated November 25, 1987 and February 16, 1987 respectively are ANNULLED and SET ASIDE. The Regional Trial Court of Iloilo City is ordered to immediately execute the final judgment in Civil Case No. 10530 and effect payment of P200,000.00 as just compensation deducting therefrom the partial payment deposited by the respondent at the institution of the action below with legal interest from September 21, 1985, plus P5,000.00 attorney's fees and P2,500.00 litigation expenses.

SO ORDERED.

Fernan, C.J., Feliciano, Bidin, and Cortes, JJ., concur.

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