

**BRUNO S. CABRERA, PETITIONER, VS. HON. COURT OF APPEALS AND
THE PROVINCE OF CATANDUANES, VICENTE M. ALBERTO,
ENCARNACION TORRES, SANTIAGO VALDERAMA, JEREMIAS
TRINIDAD, ALFREDO D...**

G.R. No. 78673. March 18, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

On September 19, 1969, the Provincial Board of Catanduanes adopted Resolution No. 158, providing as follows:

RESOLVED, as it is hereby resolved, to close the old road leading to the new Capitol Building of this province to traffic effective October 31, 1969, and to give to the owners of the properties traversed by the new road equal area as per survey by the Highway District Engineer's office from the old road adjacent to the respective remaining portion of their properties;

RESOLVED FURTHER, that the Honorable Provincial Governor be, as he is hereby authorized to sign for and in behalf of the province of Catanduanes, the pertinent Deed of Exchange and or other documents pertaining thereto;

Pursuant thereto, Deeds of Exchange were executed under which the Province of Catanduanes conveyed to Remedios R. Bagadiong, Fredeswindo F. Alcala, Elena S. Latorre, Baldomero Tolentino, Eulogia T. Alejandro, Angeles S. Vargas, and Juan S. Reyes portions of the closed road in exchange for their own respective properties, on which was subsequently laid a new concrete road leading to the Capitol Building.

In 1978, part of the northern end of the old road fronting the petitioner's house was planted to vegetables in 1977 by Eulogia Alejandro. Anselmo Peña, who had bought Angeles Vargas's share, also in the same part of the road, converted it into a piggery farm.

Learning about Resolution 158, the petitioner filed on December 29, 1978, a complaint with the Court of First Instance of Catanduanes for "Restoration of Public Road and/or Abatement of Nuisance, Annulment of Resolutions and Documents with Damages." He alleged that the land fronting his house was a public road owned by the Province of Catanduanes in its governmental capacity and therefore beyond the commerce of man. He contended that Resolution No. 158 and the deeds of exchange were invalid, as so too was the closure of the northern portion of the said road.

In a decision dated November 21, 1980, Judge Graciano P. Gayapa, Jr., while holding that the land in question was not a declared public road but a mere "passageway" or "short-cut," nevertheless sustained the authority of the provincial board to enact Resolution No. 158 under existing law.[1] Appeal was taken to the respondent court,[2] which found that the road was a public road and not a trail but just the same also upheld Resolution 158. It declared:

Pursuant to Republic Act No. 5185, municipal authorities can close, subject to the approval or direction of the

Provincial Board, thoroughfares under Section 2246 of the Revised Administrative Code. Although in this case the road was not closed by the municipality of Catanduanes but by the provincial board of Catanduanes, the closure, nevertheless, is valid since it was ordered by the approving authority itself. However, while it could do so, the provincial government of Catanduanes could close the road only if the persons prejudiced thereby were indemnified, Section 2246 of the Revised Administrative Code being very explicit on this.

Before us now, the petitioner insists that Sec. 2246 is not applicable because Resolution No. 158 is not an order for the closure of the road in question but an authority to barter or exchange it with private properties. He maintains that the public road was owned by the province in its governmental capacity and, without a prior order of closure, could not be the subject of a barter. Control over public roads, he insists, is with Congress and not with the provincial board.

The petitioner alleges that the closure of the road has especially injured him and his family as they can no longer use it in going to the national road leading to the old capitol building but must instead pass through a small passageway. For such inconvenience, he is entitled to damages in accordance with law.

The petition has no merit.

The Court cannot understand how the petitioner can seriously argue that there is no order of closure when it is there in the resolution, in black and white. Resolution 158 clearly says that it is "hereby resolved to close the old road." The closure is as plain as day except that the petitioner, with the blindness of those who will not see, refuses to acknowledge it. The Court has little patience with such puerile arguments. They border dangerously on a trifling with the administration of justice and can only prejudice the pleader's cause.

The authority of the provincial board to close that road and use or convey it for other purposes is derived from the following provisions of Republic Act No. 5185 in relation to Section 2246 of the Revised Administrative Code:

R.A. No. 5185, Section 11 (II) (a):

II. The following actions by municipal officials or municipal councils, as provided for in the pertinent sections of the Revised Administrative Code shall take effect without the need of approval or direction from any official of the national government: Provided, That such actions shall be subject to approval or direction by the Provincial Board:

(a) Authority to close thoroughfare under Section 2246;

x x x

Section 2246. Authority to close thoroughfare. - With the prior authorization of the Department Head, a municipal council may close any municipal road, street, alley, park, or square; but no such way or place aforesaid or any part thereof, shall be closed without indemnifying any person prejudiced thereby.

Property thus withdrawn from public servitude may be used or conveyed for any purpose for which other real property belonging to the municipality might be lawfully used or conveyed.

In the case of *Cebu Oxygen and Acetylene Co., Inc. v. Bercilles*,^[3] the Court held the closure of a city street as within the powers of the city council under the Revised Charter of Cebu City, which provided:

Section 31. Legislative Powers. Any provision of law and executive order to the contrary notwithstanding, the City Council shall have the following legislative powers:

x x x

(34) x x x; to close any city road, street or alley, boulevard, avenue, park or square. Property thus withdrawn

from public servitude may be used or conveyed for any purpose for which other real property belonging to the City may be lawfully used or conveyed;

It sustained the subsequent sale of the land as being in accordance not only with the charter but also with Article 422 of the Civil Code, which provides: "Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State."

In the case of *Favis v. City of Baguio*,^[4] the power of the City Council of Baguio City to close city streets and withdraw them from public use was also assailed. This Court said:

5. So it is, that appellant may not challenge the city council's act of withdrawing a strip of Lapu-Lapu Street at its dead end from public use and converting the remainder thereof into an alley. These are acts well within the ambit of the power to close a city street. The city council, it would seem to us, is the authority competent to determine whether or not a certain property is still necessary for public use.

Such power to vacate a street or alley is discretionary. And the discretion will not ordinarily be controlled or interfered with by the courts, absent a plain case of abuse or fraud or collusion. Faithfulness to the public trust will be presumed. So the fact that some private interests may be served incidentally will not invalidate the vacation ordinance.

While it is true that the above cases dealt with city councils and not the provincial board, there is no reason for not applying the doctrine announced therein to the provincial board in connection with the closure of provincial roads. The provincial board has, after all, the duty of maintaining such roads for the comfort and convenience of the inhabitants of the province. Moreover, this authority is inferable from the grant by the national legislature of the funds to the Province of Catanduanes for the construction of provincial roads. On this matter, Governor Vicente Alberto of Catanduanes testified as follows:

x x x when the Province was given funds to construct a road that will be more convenient to the public, more solid and wider and to have a better town planning whereby the Capitol would be reached directly from the pier for purposes of improving services to the public, it was recommended by the District Highway Engineer that a new road would be constructed connecting the Capitol with the veterans fountain, and believing this recommendation was for the good of the community, it was carried out. The original passageway was already unnecessary and since there was a problem of compensation the land owners where the new road was going to pass, so they decided to close this passageway and instead of paying the owners of the property where the new road was to be constructed, they exchanged some portions of this passageway with properties where the proposed road would pass.^[5]

The lower court found the petitioner's allegation of injury and prejudice to be without basis because he had "easy access anyway to the national road, for in fact the vehicles used by the Court and the parties during the ocular inspection easily passed and used it, reaching beyond plaintiff's house." However, the Court of Appeals ruled that he "was prejudiced by the closure of the road which formerly fronted his house. He and his family were undoubtedly inconvenienced by the loss of access to their place of residence for which we believe they should be compensated."

On this issue, the governing principle was laid down in *Favis* thus:

x x x The general rule is that one whose property does not abut on the closed section of a street has no right to compensation for the closing or vacation of the street, if he still has reasonable access to the general system of streets. The circumstances in some cases may be such as to give a right to damages to a property owner, even though his property does not abut on the closed section. But to warrant recovery in any such case the property owner must show that the situation is such that he has sustained special damages differing in kind, and not merely in degree, from those sustained by the public generally.

This rule was based on the following observations made in *Richmond v. City of Hinton*[6] which were quoted with approval by this Court:

The Constitution does not undertake to guarantee to a property owner the public maintenance of the most convenient route to his door. The law will not permit him to be cut off from the public thoroughfares, but he must content himself with such route for outlet as the regularly constituted public authority may deem most compatible with the public welfare. When he acquires city property, he does so in tacit recognition of these principles. If, subsequent to his acquisition, the city authorities abandon a portion of the street to which his property is not immediately adjacent, he may suffer loss because of the inconvenience imposed, but the public treasury cannot be required to recompense him. Such case is *damnum absque injuria*.

Following the above doctrine, we hold that the petitioner is not entitled to damages because the injury he has incurred, such as it is, is the price he and others like him must pay for the welfare of the entire community. This is not a case where his property has been expropriated and he is entitled to just compensation. The construction of the new road was undertaken under the general welfare clause. As the trial judge acutely observed, whatever inconvenience the petitioner has suffered "pales in significance compared to the greater convenience the new road, which is wide and concrete, straight to the veterans fountain and down to the pier, has been giving to the public, plus the fact that the new road adds beauty and color not only to the town of Virac but also to the whole province of Catanduanes." For the enjoyment of those benefits, every individual in the province, including the petitioner, must be prepared to give his share.

The dispositive portion of the challenged decision awarded the petitioner the sum of P5,000.00 as nominal and/or temperate damages, and the sum of P2,000.00 as and for attorney's fees. For the reasons stated above, these awards should all be deleted. The petitioner must content himself with the altruistic feeling that for the prejudice he has suffered, the price he can expect is the improvement of the comfort and convenience of the inhabitants of Catanduanes, of whom he is one. That is not a paltry recompense.

WHEREFORE, the decision of the Court of Appeals dated February 17, 1987, is **AFFIRMED** as above modified, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 87-97.

[2] Ibid., pp. 109-119. Pronove, Jr., ponente with Camilon and Cacdac, Jr., JJ.

[3] 66 SCRA 481.

[4] 27 SCRA 1060.

[5] TSN, October 22, 1979, p. 21.

[6] 185 S.E. 411, 412-413, quoted in the *Favis* case.

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