

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS, HENRICO UVERO, ET AL., RESPONDENTS.

G.R. No. 79732. November 08, 1993

Ponente: VITUG, J.

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VITUG, J.:

The Republic of the Philippines has sought the expropriation of certain portions of land owned by the private respondents for the widening and concreting of the Nabua-Bato-Agos Section, Philippine-Japan Highway Loan (PJHL) road. While the right of the Republic is not now disputed, the private respondents, however, demand that the just compensation for the property should be based on fair market value and not that set by Presidential Decree No. 76, as amended, which fixes payment on the basis of the assessment by the assessor or the declared valuation by the owner, whichever is lower. The Regional Trial Court ruled for the private respondents. When elevated to it, the Court of Appeals affirmed the trial court's decision.

Hence, the instant petition by the Republic.

In *Export Processing Zone Authority ("EPZA") vs. Dulay, etc., et al.*, [1] this Court held the determination of just compensation in eminent domain to be a judicial function, and it thereby declared Presidential Decree No. 76, as well as related decrees, including Presidential Decree No. 1533, to the contrary extent, as unconstitutional and as an impermissible encroachment of judicial prerogatives. The ruling, now conceded by the Republic, was reiterated in subsequent cases.[2]

The petition for review, despite the aforesaid pronouncement by this Court, has been given due course upon the pleas of the Solicitor General to have us address the following concerns:

I

EFFECT OF JUDICIAL DECLARATION OF PD 1533 AS UNCONSTITUTIONAL AND VOID; UP TO WHEN RETROACTIVELY; EFFECT ON A PENDING APPEALED CASE WHERE CONSTITUTIONALITY OF PD 1533 NOT ASSAILED BEFORE COURT A QUO.

II

WHETHER OR NOT THE DECISION OF THIS HONORABLE COURT IN *EPZA VS. HON. DULAY, ETC., ET AL.* (G.R. NO. 59603, APRIL 29, 1987) DECLARING PD 1533 UNCONSTITUTIONAL AND VOID, BE APPLIED IN THIS CASE.

III

WHETHER OR NOT VALUATION OF LAND SOUGHT FOR EXPROPRIATION AS APPEARING ON THE TAX DECLARATION BE USED AS PRELIMINARY BASIS FOR THE TEN PER CENT (10%) DEPOSIT REQUIRED UNDER RULE 67 OF THE REVISED RULES OF COURT, AS AMENDED

BEFORE PLAINTIFF IS PERMITTED ENTRY THEREON.

The last item is not in issue; being merely provisional in character, the matter has not been questioned by the private respondents.[3] We will thus limit ourselves to the first two issues which, in turn, really boil down to whether the declaration of nullity of the law in question should only have prospective, not retroactive, application. The petitioner proposes the affirmative.

Instructive is the brief treatise made by Mr. Justice Isagani A. Cruz, whose words we quote -

"There are two views on the effects of a declaration of the unconstitutionality of a statute.

The first is the orthodox view. Under this rule, as announced in *Norton v. Shelby*, an unconstitutional act is not a law; it confers no right; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, inoperative, as if it had not been passed. It is therefore stricken from the statute books and considered never to have existed at all. Not only the parties but all persons are bound by the declaration of unconstitutionality, which means that no one may thereafter invoke it nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity.

The second or modern view is less stringent. Under this view, the court in passing upon the question of constitutionality does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it and determines the rights of the parties just as if such statute had no existence. The court may give its reasons for ignoring or disregarding the law, but the decision affects the parties only and there is no judgment against the statute. The opinion or reasons of the court may operate as a precedent for the determination of other similar cases, but it does not strike the statute from the statute books; it does not repeal, supersede, revoke, or annul the statute. The parties to the suit are concluded by the judgment, but not one else is bound.

The orthodox view is expressed in Article 7 of the Civil Code, providing that "when the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. x x x"[4]

The strict view considers a legislative enactment which is declared unconstitutional as being, for all legal intents and purposes, a total nullity, and it is deemed as if it had never existed. Here, of course, we refer to the law itself being per se repugnant to the Constitution. It is not always the case, however, that a law is constitutionally faulty per se. Thus, it may well be valid in its general import but invalid in its application to certain factual situations. To exemplify, an otherwise valid law may be held unconstitutional only insofar as it is allowed to operate retrospectively such as, in pertinent cases, when it vitiates contractually vested rights. To that extent, its retroactive application may be so declared invalid as impairing the obligations of contracts.[5]

A judicial declaration of invalidity, it is also true, may not necessarily obliterate all the effects and consequences of a void act occurring prior to such a declaration. Thus, in our decisions on the moratorium laws,[6] we have been constrained to recognize the interim effects of said laws prior to their declaration of unconstitutionality, but there we have likewise been unable to simply ignore strong considerations of equity and fair play. So also, even as a practical matter, a situation that may aptly be described as *fait accompli* may no longer be open for further inquiry, let alone to be unsettled by a subsequent declaration of nullity of a governing statute.

The instant controversy, however, is too far distant away from any of the above exceptional cases. To this day, the controversy between the petitioner and the private respondents on the issue of just compensation is still unresolved, partly attributable to the instant petition that has prevented the finality of the decision appealed from. The fact of the matter is that the expropriation cases, involved in this instance, were still pending appeal when the EPZA ruling was rendered and forthwith invoked by said parties.

In fine, we hold that the appellate court in this particular case committed no error in its appealed decision.

WHEREFORE, the instant petition is DISMISSED. No costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] G.R. No. 59603, 29 April 1987, 149 SCRA 305.

[2] Toledo vs. Fernando, 160 SCRA 285; Belen vs. Court of Appeals, 160 SCRA 291.

[3] Rollo, 160-162.

[4] Constitutional Law, 1991, 32-33, citing Norton vs. Shelby, 118 U.S. 425 and Shepard vs. Barren, 194 U.S. 553.

[5] A similar rule has been applied to new doctrines enunciated by this Court (reversing prior ones) in the interpretation and construction of laws [Sps. Benzonan vs. Court of Appeals, 205 SCRA 515].

[6] Republic v. Herida, 119 SCRA 411; Republic vs. CFI, Negros Occidental, 120 SCRA 154; see also Tan vs. Barrios, 190 SCRA 686.

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