

JAIME T. PANES, DOMINADOR A. TAN, NILDA, SYVELIN, ROSELLER, HUMILIA, ERNA, SHERLYN, LYGAGE, EDELYN, LAURENCE AND FUJILYN, ALL SURNAMED TAN; ANTONIO C. RAQUIZA, JR., HEIRS OF RA...

G.R. Nos. 56219 & 56220. November 27, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Before us are consolidated petitions both seeking the review of the decision[1] of respondent Court of Appeals[2] in an expropriation case[3] filed before the Court of Agrarian Relations of Ormoc City. Of the two sets of petitions, G.R. No. 56219-20 had been denied by our resolution[4] of February 27, 1981. Since petitioners did not ask for the reconsideration thereof, the said resolution of denial had become final, and so we have only the petitions in G.R. Nos. 56393-94 to rule upon.

The facts, as culled from the pleadings, follows:

On March 21, 1977, then President Marcos issued Presidential Decree (P.D.) No. 1107 establishing the Philippine Root Crops Research and Training Center (hereafter, Root Crops Center) in the Visayas State College of Agriculture (hereafter VISCA) located at Baybay, Leyte. Pursuant to the purposes of the Root Crops Center, VISCA was authorized under P.D. No. 1107 to acquire by negotiated sale or expropriation, private agricultural properties in Barrios Pangasugan to the extent of 250 hectares and in Guadalupe, Baybay, Leyte to the extent of 75 hectares.[5]

Clothed by P.D. No. 1107 with the power to expropriate lands situated within the aforecited barrios, respondent VISCA filed a complaint[6] for expropriation against petitioners. The public purposes cited therefor were the following: (1) to establish experimental fields; (2) to construct buildings, laboratories and housing facilities for the personnel of the Root Crops Center; and (3) to integrate and conduct country-wide researches on root crops.[7]

Respondent VISCA deposited the amount of P74,050.00 with the Philippine National Bank (PNB) representing the assessed value of the lands for taxation purposes as determined under P.D. No. 76. On the basis of this deposit, respondent VISCA prayed in its complaint that a writ of possession be issued. P.D. No. 42 allows the entity expropriating the land to take possession thereof upon deposit with the PNB of the amount equivalent to the assessed value of the subject properties.

On May 15, 1978, petitioners filed their answer to the complaint. They alleged that (1) the lands sought to be expropriated were not within the area specified under P.D. No. 1107; (2) the amount of P74,050.00 did not constitute just compensation; (3) P.D. No. 794 providing that the just compensation shall not be in excess of the current and fair market value declared by the owner or administrator, or such market value as determined by the provincial assessor, which is lower, was unconstitutional; (4) likewise unconstitutional was P.D. No. 1107 for impairing the freedom of contract and violating the equal protection clause; and (5) there was no public necessity

for the acquisition by respondent VISCA of petitioners' lands. Petitioners also averred, by way of counterclaim, that because of the institution of the expropriation suit against them, they suffered anguish and anxiety for which they should be indemnified with damages.

On May 10, 1978, respondent VISCA filed a motion for the issuance of a writ of possession of the properties in question, attaching thereto a certification dated November 17, 1977 issued by the cashier of the PNB, Ormoc Branch, Ormoc City, to the effect that respondent VISCA had deposited with said bank the amount of P74,050.00.

On June 8, 1978, the aforesaid motion was heard before the trial court. During the hearing, respondent VISCA presented in evidence tax declarations of the properties involved which indicate the assessed values thereof for taxation purposes and the PNB certification. All these documents were admitted by the trial court without objections from petitioners. On the other hand, petitioners moved for and were granted by the lower court, additional time within which to file their written opposition to the said motion.

On July 7, 1978, some 1,298 tenants filed a motion to intervene attaching thereto an answer in intervention. In their answer, the intervenors alleged, among others, that: (1) they were tenant-tillers and occupants of the lands involved in the expropriation proceedings; (2) their tenure of work as tenants being secured and protected by law, they cannot be removed from their landholdings through eminent domain; (3) P.D. No. 1107 was unconstitutional because the expropriation contemplated under the Constitution refers to landed estates or haciendas and not to small agricultural lands; and (4) P.D. No. 27 decreeing emancipation of tenant-tillers from the bondage of the soil and other decrees related thereto preclude expropriation of the properties of the intervenors.

On July 21, 1978, the trial court issued an order granting the intervenors' motion to intervene and admitting their answer in intervention.

On December 4, 1978, respondent VISCA filed its reply to the answer in intervention. Respondent VISCA denied that all the intervenors were tenants of the lands being expropriated and alleged that their reliance on P.D. No. 27 and other related decrees was misplaced since the proscription therein against the ejectment or removal of tenants is applicable as regards landowners, landholders and agricultural lessors and not as regards the State or those acting for and in its behalf.

On March 29, 1979, the trial court issued a resolution denying respondent VISCA's motion for the issuance of a writ of possession. The trial court reasoned that (1) expropriation was not one of the causes provided for in Republic Act (R.A.) Nos. 1199 and 3844 and P.D. Nos. 316 and 583 for the ejectment of tenants; (2) the presiding judge would be subjected to prosecution and suffer the penalty provided for under Section 2 of P.D. No. 583 were he to grant said motion; (3) P.D. No. 42, being a procedural law, cannot be said to prevail over the aforesaid agrarian laws which are substantive laws; (4) P.D. No. 42 was only applicable to untenanted private properties; (5) the purpose for the expropriation, which is root crop experimentation, cannot be deemed to prevail over the tenurial rights of the tenant-intervenors; and (6) there is doubt as to whether the lands to be expropriated were indeed within the area indicated by P.D. No. 1107 to be proper for expropriation.

On April 23, 1979, respondent VISCA filed a motion for reconsideration of the aforesaid resolution.

On June 21, 1979, the trial court issued an order denying respondent VISCA's motion for reconsideration.

On August 17, 1979, respondent VISCA filed with this court a petition for review by certiorari with prayer for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction. We, however, referred the said petition to the respondent Court of Appeals which docketed the same as CA-G.R. No. 09659-SP.

Acting on the prayer for the issuance of a TRO, respondent court issued the same on August 30, 1979 ordering all

the parties and the trial court to maintain the status quo.

Notwithstanding the mandate of the TRO, however, the trial court proceeded with the scheduled hearing of the expropriation case on September 5 and 6, 1979. On September 6, 1979, the trial judge dismissed the case in an order of the same date. Respondent VISCA filed a motion for reconsideration of the order of dismissal which was denied in an order dated October 23, 1979, this notwithstanding receipt by the trial judge of the TRO on September 14, 1979.

On November 6, 1979, respondent VISCA filed in CA-G.R. No. 09659-SP a motion for the issuance of an order of preliminary mandatory injunction directing the trial court to reinstate the expropriation case.

On December 10, 1979, respondent appellate court issued a resolution directing the trial judge to reinstate the expropriation case as it was on or before August 31, 1979.

Meanwhile, respondent VISCA, on November 7, 1979, likewise filed a notice of appeal from the trial court's order of September 6, 1979 and resolution of October 23, 1979 as regards the dismissal of the expropriation case.

On December 6, 1979, the clerk of court of the trial court forwarded the original records of the expropriation case to the respondent appellate court. The appeal was docketed as CA-G.R. No. 10250-CAR.

Subsequently, respondent VISCA filed a manifestation with motion to consolidate CA-G.R. No. 09659-SP and CA-G.R. No. 10250-CAR. Said motion was granted by the respondent court on February 20, 1980.

On August 14, 1980, respondent Court of Appeals rendered a decision in the aforecited consolidated cases. Respondent court found the dismissal of the expropriation case to be tainted with grave abuse of discretion. It explained:

"We cannot approve the dismissal of CAR Case NO. 1659. The reasons advanced by the x x x [trial] court for the issuance of the order of September 6, 1979 and the resolution of October 23, 1979, do not support the dismissal with prejudice of CAR Case No. 1659. That step taken by the lower court is too drastic and harsh under the premises. First, the petitioner [private respondent] sent a telegram on August 28, 1979 to the x x x [trial] court and to the opposing counsels requesting for the 'cancellation' of the hearing of CAR Case No. 1659 set on September 5, 6 and 7, 1979. Second, the scheduled hearings were also subject of injunction in a petition for certiorari filed before x x x [respondent] Court. Third, it was the first time the petitioner [respondent VISCA] sought for a postponement of the hearing of the case. Fourth, there is no basis for the conclusion of the lower court that there is failure to prosecute the case. x x x we find in the record evidence of grave abuse of discretion on the part of the x x x [trial] court in dismissing with prejudice CAR Case No. 1659 considering that the petitioner [respondent VISCA] had already asked for the postponement of the hearings set for September 5, 6 and 7, 1979 until the resolution by x x x [respondent] court of the issue raised in its original petition x x x." [8]

With respect to the issue of whether or not the trial court erred in not granting respondent VISCA's motion for the issuance of a writ of possession, respondent Court of Appeals ruled in favor of respondent VISCA, holding that:

"x x x [trial] court had committed a grave abuse of discretion when it denied immediate possession of the subject properties in its resolution of March 29, 1979 and in its order of June 21, 1979. As we see it, the authority of the petitioner [respondent VISCA] to take immediate possession of the subject properties appear clear and explicit under Section 4 of Presidential Decree No. 1107 in relation to Presidential Decree No. 42. The contention of the respondents [petitioners] that Presidential Decree No. 42 applies only to untenanted lands is not convincing for there is nothing in Presidential Decree No. 42 that indicates this. We are guided in this by the prevailing wisdom that there is no basis for distinction when the law itself does not distinguish.

x x x

x x x [P]etitioner [respondent] Visayas State College filed on May 10, 1978 a motion for the issuance of a writ to take possession of the subject properties. Petitioner [respondent VISCA] has complied with the requirements of Presidential Decree no. 42 which gives the petitioner [respondent VISCA] the right to take possession of the subject of the expropriation proceedings. Petitioner [respondent VISCA] has notified the respondents [petitioners] of its desire to take possession of the properties, as evidenced by the complaint filed in Civil Case NO. 1659-CAR. Petitioner [respondent VISCA] has also deposited with the Philippine National Bank, Ormoc Branch, the amount equivalent to the assessed value of the subject properties. Petitioner's [respondent VISCA's] motion for the issuance of the writ of possession was duly heard by the x x x [trial] court x x x Under Section 4 of Presidential Decree No. 1107, the issuance of a possessory writ is then mandatory on the part of the x x x [trial] judge. But this notwithstanding, the x x x [trial] court denied the motion for the issuance of the writ of possession.

While it is a fact that at the time the resolution of March 29, 1979 and the order of June 21, 1979 were issued by the x x x [trial] court, Presidential Decree No. 1533 x x x has previously established a uniform basis for the determination of just compensation and the amount of deposit for immediate possession of the property involved in eminent domain proceedings, having been promulgated on June 11, 1978, the same does not render the deposit made by the petitioner void or invalid. As a matter of fact, Section 2 of Presidential Decree No. 1533 authorizes the immediate possession of properties affected by eminent domain proceedings upon payment of an amount equivalent to 10% of the amount of compensation for the property. So that if and when the standing deposit of the petitioner with the Philippine National Bank as required by Presidential Decree No. 42 is not sufficient under Presidential Decree No. 1533, the x x x [trial] court should have ordered the petitioner [respondent VISCA] to deposit the additional amount rather than deny the motion"[9]

Petitioners also assailed the constitutionality of P.D. No. 1107 before the respondent Court of Appeals. Said court, however, was unconvinced. It ruled:

"Respondents [petitioners] x x x assails [sic] the constitutionality of Presidential Decree No. 1107 on the grounds that it: 1) impairs the freedom of contract guaranteed by the Constitution, 2) violates the equal protection of law and the tenurial security guaranteed by the Constitution, and 3) runs counter to Republic Act Nos. 1199 and 3844 and Presidential Decree Nos. 316, 583, and other related agrarian laws.

Our analysis of this matter does not sustain the constitutional attack leveled by the respondents [petitioners] on Presidential Decree No. 1107. The constitutional guaranty of non-impairment of contract is of course subject to the exercise of the police power of the State for reasons of public health, public safety, public morals, and general welfare. The concept of freedom of contract is not an unlimited one for it is vulnerable to reasonable legislation aimed at the promotion of public health, public safety, public morals and general welfare. By implication, therefore, even the tenurial security of the respondent tenants would not be an exception. The supremacy of the police power of the State over individual rights is a constitutional precept that is well entrenched in our jurisprudence (J.M. Tuason vs. Land Tenure Administration, 31 SCRA 413, 430)."[10]

In accordance with the aforecited rulings, the respondent Court of Appeals, in the dispositive portion of its decision, ordered the following:

"WHEREFORE, finding the petitions meritorious, the resolutions or orders of March 29, 1979, June 21, 1979, September 6, 1979, and October 23, 1979 x x x are all set aside. x x x [trial] court is hereby ordered to require the petitioner [respondent VISCA] to comply with the requirements of Presidential Decree No. 1533, in relation to Presidential Decrees [sic] Nos. 1107 and 42, if it has not yet done so, after which issue a writ in favor of the petitioner [respondent VISCA] to take immediate possession of the properties involved in CAR Case No. 1659, pursuant to Section 4 of Presidential Decree No. 1107, and then proceed with the trial of CAR Case No. 1659 on the merits. The preliminary injunction heretofore issued by this Court is hereby made permanent."[11]

The trial court decision favorable to petitioners having been reversed on appeal by respondent court, petitioners are now before us seeking the nullification of that reversal on the basis of the following assignment of errors:

"First Assignment of Error

THE COURT OF APPEALS ERRED IN ORDERING THE ISSUANCE OF A WRIT OF POSSESSION OVER THE PROPERTIES SUBJECT MATTER OF THE EXPROPRIATION PROCEEDINGS

A. The Court of Appeals erred in failing to consider the valid and substantial grounds raised by the petitioner against the issuance of a writ of possession

1. Almost all of the lands sought to be expropriated are not within the area defined in Annex 'A' of PD 1107

2. The lands sought to be expropriated are already devoted to another public purpose

3. There is no public necessity for the expropriation

a. There are other areas which respondent VISCA can utilize for root crop research

b. The alleged purposes for which respondent VISCA seeks to expropriate the property do not require 325 hectares of prime rice and coconut land

4. The lands sought to be expropriated are not contiguous and adjacent to VISCA

B. The issuance of a writ of possession will render the whole proceedings for expropriation moot and academic

C. VISCA is unable to comply with the requirement of a deposit for the amount of just compensation

Second Assignment of Error

THE COURT OF APPEALS ERRED IN ORDERING THE REINSTATEMENT OF THE EXPROPRIATION PROCEEDINGS BEFORE THE COURT OF AGRARIAN RELATIONS

Third Assignment of Error

THE COURT OF APPEALS COMMITTED GRAVE PROCEDURAL ERRORS IN THE DISPOSITION OF THE CASE BEFORE IT."[12]

We affirm the respondent Court of Appeals insofar only as it ordered the reinstatement of the expropriation proceedings before the Court of Agrarian Relations (now the Regional Trial Court). The dismissal with prejudice of the complaint for expropriation was indeed precipitate under the circumstances obtaining. The law under which the expropriation is sought, notwithstanding the attack against its constitutionality, remains in force and effective. Admittedly enacted pursuant to the police power of the state, P.D. 1107 has in its favor the presumption of constitutionality that is not easily eroded by a mere allegation of its illegality. Hence, respondent VISCA is entitled to prosecute its expropriation case and be heard on the merits as to the rights that it claims under P.D. 1107.

However, the finding of respondent appellate court insofar as it found that respondent VISCA has the right to a writ of possession upon compliance with the requirements of P.D. No. 1533 in relation to P.D. Nos. 1107 and 42, i.e., payment of an amount equivalent to 10% of the amount of compensation for the property which is, under P.D. 42, the amount equivalent to the assessed value of the subject property for purposes of taxation, has been rendered ineffectual by our ruling in *Export Processing Zone Authority v. Dulay*.

P.D. No. 1533 determines the just compensation in expropriation cases to be the fair and current market value declared by the owner of the property sought to be expropriated or such market value as determined by the assessor, whichever is lower. As such, the determination of just compensation, by virtue of the enactment of P.D. No. 1533, was converted from being a judicial prerogative to an executive decision. Because the executive

determination of just compensation in eminent domain proceedings renders the courts inutile in a matter which under the Constitution is reserved to them for final determination, we declared P.D. No. 1533 to be unconstitutional and void in the case of *Export Processing Zone Authority v. Dulay*[13] Similar provisions regarding executive determination of just compensation found in Presidential Decree Nos. 42, 76, 464, 794, 1224, 1259, 1313, and 1517 were therefore likewise nullified for being unconstitutional.[14]

In the instant case, respondent VISCA deposited an amount with the PNB representing the assessed value of the lands for taxation purposes as determined under P.D. No. 76. On the basis of this deposit, respondent VISCA prayed in its complaint that a writ of possession be issued, the same being allegedly sanctioned under P.D. No. 42 which allows the entity expropriating the land to take possession thereof upon deposit with the PNB of the amount equivalent to the assessed value of the subject properties for purposes of taxation.

The trial court refused to grant a writ of possession upon the foregoing basis.

When the case was elevated before it, the respondent appellate court indirectly ordered the issuance of said writ upon the condition that respondent VISCA comply with the requirements of P.D. No. 1533.

Now, in the light of the declared unconstitutionality of P.D. No. 76, P.D. No. 1533 and P.D. No. 42 insofar as they sanction executive determination of just compensation in expropriation cases, it is imperative that any right to the immediate possession of the subject property, accruing to respondent VISCA, must be firmly grounded on a valid compliance with Section 2 of Rule 67, i.e., there must be a deposit with the National or Provincial Treasurer of the value of the subject property as provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings.[15]

As to the other assigned errors raised by petitioners, suffice it to say that they indubitably involve factual questions such as, among others, whether or not the properties sought to be expropriated are within the areas specified by P.D. No. 1107 as proper for expropriation, which factual questions need to be threshed out in trial court proceedings for hearing thereupon on the merits. At any rate, we cannot pre-empt the prosecution of this expropriation case and defeat the statutory rights of respondent VISCA by prematurely ruling on the constitutionality issues raised herein.

WHEREFORE, the decision of the Court of Appeals is affirmed insofar as it ordered the reinstatement of CAR Case No. 1659 and is **HEREBY MODIFIED** insofar as it ordered respondent VISCA to comply with the requirements under P.D. No. 1533 in order to be entitled by right to a writ of possession of the subject property. The trial court is hereby ordered to issue a writ of possession in CAR Case No. 1659 in favor of respondent VISCA pending trial on the merits but only after payment of just compensation determined by the trial court in accordance with Section 2, Rule 67, of the Revised Rules of Court.

No pronouncement as to cost.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] In CA-G.R. Nos. 09659-SP and 10250-CAR, dated August 14, 1980, penned by Associate Justice Crisolito Pascual and concurred in by Associate Justices Serafin Cuevas and Carolina Griño-Aquino, Rollo, pp. 66-77.

[2] Fourth Division.

[3] CAR Case No. 1659.

- [4] Rollo, of G.R. Nos. 56219-20, p. 6.
- [5] Annex "A" referred to in P.D. 1107, Rollo, p. 64.
- [6] Rollo, pp. 51-64.
- [7] Complaint dated November 4, 1977, p. 8, Rollo, p. 58.
- [8] Decision dated August 14, 1980, pp. 8-9, Rollo, pp. 73-74.
- [9] Id., pp. 9-11, Rollo, pp. 74-76.
- [10] Id., p. 10, Rollo, p. 75.
- [11] Id., pp. 11-12, Rollo, pp. 76-77.
- [12] Brief for Petitioners dated September 23, 1982, pp. i-iii, Rollo, p. 257.

[13] 149 SCRA 305 (1987).

- [14] Id.; *Ignacio v. Guerrero*, 150 SCRA 369 (1987); *Sumulong v. Guerrero*, 154 SCRA 461 (1987); *Leyva v. Intermediate Appellate Court*, 155 SCRA 39 (1987); *Belen v. Court of Appeals*, 160 SCRA 291 (1988); *City Government of Toledo v. Fernandos*, 160 SCRA 285 (1988); *Municipality of Talisay v. Ramirez*, 183 SCRA 528 (1990).
- [15] Our ruling in the case of *National Power Corporation v. Jocson*, 206 SCRA 520 [1992], that "PD No. 42, however, effectively removes the discretion of the Court in determining the provisional value," being clearly inconsistent with our ruling in *EPZA v. Dulay* and its catena of subsequent cases, must now be declared abandoned.

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