

**EMILIANO R. DE LOS SANTOS, SPOUSES NORMA A. PADILLA AND
ISIDORO L. PADILLA AND THE HEIRS OF FRANCISCO DAYRIT,
PETITIONERS, VS. THE HON. INTERMEDIATE APPELLATE COURT,
HON. JUDGE ...**

G.R. Nos. 71998-99. June 02, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

Questioned in the instant petition for review on certiorari is the Decision of the then Intermediate Appellate Court[1] affirming the December 1, 1982 Order of the then Court of First Instance of Rizal, Branch XXII at Pasig[2] in Civil Cases Nos. 46800 and 46801 which states in toto:

"It appearing that the construction of the road and creek in question was a project undertaken under the authority of the Minister of Public Works, the funding of which was the responsibility of the National Government and that the defendants impleaded herein are Edilberto Cadiente and Nestor Agustin and not the Republic of the Philippines which cannot be sued without its consent, this Court hereby resolves to dismiss these two (2) cases without pronouncement as to costs.

SO ORDERED."

Civil Cases Nos. 46800 and 46801 were both filed on July 13, 1982 by petitioners who are co-owners under TCT No. 329945 of a parcel of land located in Barrio Wawa, Binangonan, Rizal with an area of nineteen thousand sixty-one (19,061) square meters. In Civil Case No. 46800, petitioners alleged in the petition for prohibition that in October 1981, without their knowledge or consent, Lorenzo Cadiente, a private contractor and the Provincial Engineer of Rizal constructed a road nine (9) meters wide and one hundred twenty-eight meters and seventy centimeters (128.70) long occupying a total area of one thousand one hundred sixty-five (1,165) square meters of their land.

Petitioners added that aside from the road, the said respondents also constructed, without their knowledge and consent, an artificial creek twenty-three meters and twenty centimeters (23.20) wide and one hundred twenty-eight meters and sixty-nine centimeters long (128.69) occupying an area of two thousand nine hundred six (2,906) square meters of their property. Constructed in a zigzag manner, the creek meandered through their property.

Alleging that if completed, the road and the creek would "serve no public profitable and practicable purpose but for respondents' personal profit, to the great damage and prejudice of the taxpayers and the petitioners," the same petitioners invoked their rights under Art. IV, Secs. 1 and 2, of the Bill of Rights of the 1973 Constitution and prayed for the issuance of a restraining order or a writ of preliminary injunction to stop the construction. They also prayed that after hearing on the merits, judgment be rendered: (1) declaring illegal the construction of the road and artificial creek which was made without their knowledge and consent, "without due process and without just compensation and in violation of the provision of statute law and of the Philippine Constitution;" (2) issuing a

permanent prohibition; (3) ordering respondents to pay petitioners "jointly and collectively" P15,000.00 as attorney's fees and P600.00 for each appearance, and (4) ordering the respondents to pay the costs of the suit.[3]

An action for damages, Civil Case No. 46801, on the other hand, was founded on Art. 32, paragraphs 6 and 7 of the Civil Code and the constitutional provisions on the right against deprivation of property without due process of law and without just compensation.

Thereafter, the two cases were consolidated. On November 11, 1982, the Solicitor General filed a motion to dismiss both cases on the following grounds: (a) with respect to Civil Case No. 46800, the pendency of Civil Case No. 46801 which involved the same parties and cause of action; (b) both cases were in reality suits against the state which could not be maintained without the State's consent; and (c) lack of cause of action.

Consequently, the lower court issued the aforementioned Order of December 1, 1982. Their motion for the reconsideration of said Order having been denied, petitioners elevated (to) the cases to this Court through an "appeal by certiorari" which was docketed as G.R. No. 63610. The Second Division of this Court, however, referred the cases to the then Intermediate Appellate Court pursuant to Sec. 16 of the Interim Rules.[4] In due course, the appellate court rendered a Decision on May 22, 1985 which disposed of the cases thus:

"Accordingly, the two actions cannot be maintained. They are in reality suits against the state which has not given its consent to be sued (Minister [sic] vs. CFI, 40 SCRA 464; Isberto vs. Raquiza, 67 SCRA 116; Begosa v. Chairman, PVA, 32 SCRA 466). Appellants' remedy lies elsewhere.

Appellants assert that the taking of their property in the manner alleged in these two cases was without due process of law. This is not correct. The appealed order has not closed the door to appellants' right, if any, to just compensation for the alleged area of their land which was expropriated. The court below dismissed the cases for lack of consent on the part of the state to be sued herein. We repeat, appellants' remedy for just compensation lies elsewhere.

WHEREFORE, the order appealed from is in full accord with the evidence and the law and is hereby therefore affirmed in all its parts. Costs against appellants.

SO ORDERED."[5]

Consequently, petitioners elevated the cases to this Court through a petition for review on certiorari. The petition is anchored on the ruling of the Court in *Amigable v. Cuenca*[6] which states: "x x x where the government takes away property from a private landowner for public use without going through the legal process of expropriation or negotiated sale," a suit may properly be maintained against the government.

We hold for the petitioners.

That the principle of state immunity from suit cannot be invoked to defeat petitioners' claim has long been settled. In *Ministerio v. Court of First Instance of Cebu*,[7] the Court held:

"x x x The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen. Had the government followed the procedure indicated by the governing law at the time, a complaint would have been filed by it, and only upon payment of the compensation fixed by the judgment, or after tender to the party entitled to such payment of the amount fixed, may it 'have the right to enter in and upon the land so condemned' to appropriate the same to the public use defined in the judgment. If there were an observance of procedural regularity, petitioners would not be in the sad plight they are now. It is unthinkable then that precisely because there was a failure to abide by what the law requires, the government would stand to benefit. It is just as important, if not more so, that there be fidelity to legal norms on the part of the officialdom if the rule of law were to be maintained. It is not too much to say that when the government takes any property for public use, which is conditioned upon the payment of just compensation, to be judicially

ascertained, it makes manifest that it submits to the jurisdiction of a court. There is no thought then that the doctrine of immunity from suit could still be appropriately invoked."

We find the facts of the Ministerio case on all fours with the instant cases insofar as the fact that the respondent government officials executed a shortcut in appropriating petitioners' property for public use is concerned. As in the Amigable case, no expropriation proceedings were initiated before construction of the projects began. In like manner, nowhere in his pleadings in the cases at bar does the Solicitor General mention the fact that expropriation proceedings had in fact been undertaken before the road and artificial creek were constructed. Thus, quoting the answer of the defendants in Civil Case No. 46801, the Solicitor General summarized the facts which defendants considered as constituting justification for the construction as follows:

"10. The construction of the road and creek in question on the property which at the time was said to be public property, was initiated, and construction effected, through the usual and ordinary course, as shown by the following:

- a. November 5, 1979 - Engr. Data who was the incumbent District Engineer submitted (thru channels) plans, program of works and detailed estimates for approval of higher authorities, thru the initiation of Mayor Ynares and Assemblyman Gilberto Duavit;
- b. February 18, 1980 - Regional Director Eduardo L. Lagunilla, MPW Region IV, EDSA, Quezon City endorsed said request to the Minister of Public Works;
- c. February 13, 1981 - Assemblyman Gilberto Duavit sent a hand-written follow-up note regarding the project;
- d. June 17, 1981 - The undersigned defendant Nestor Agustin was designated Chief Civil Engineer of the Rizal Engineering District, Vice Engr. Cresencio Data who reached his compulsory retirement age;
- e. September 23, 1981 - Funds in the amount of P588,000.00 was released for partial implementation of the project. The total amount requested was P1,200,000.00;
- f. October 19, 1981 - The undersigned submitted a request to the MPWH Central Office seeking authority to effect implementation of the project;
- g. October 29, 1981 - The Regional Director approved the plans and program of works for the project in the amount of P588,000.00;
- h. November 11, 1981 - The Honorable Minister Jesus S. Hipolito granted the request to undertake the implementation of the project;
- i. November 25, 1981 - Project implementation was started;
- j. March 3, 1982 - Construction of rock bulkhead was completed;
- k. November 23, 1981 - P249,000.00 was released for improvement (deepening and diverting of flow) of Binangonan River which was a complimentary structure of Binangonan port system;
- l. April 19, 1982 - Implementation was started. Contract for this project was approved by the Regional Director in favor of EDILBERTO CADIENTE CONSTRUCTION;
- m. May 21, 1982 - Deepening slightly of the adjacent portion of the rock bulkhead was completed.

11. The construction of the structures was done in good faith;

The construction of the roadway and deepening of the creek was designed to generate for the municipality of Binangonan, Rizal more benefits in the form of substantial revenue from fishing industry, parking area, market

rentals, development site, and road system improvements. The area covered by said public improvements is part of the Laguna Lake area which is submerged in water even during dry season. The municipal mayor of Binangonan, Rizal stated that said area is public property."^[8]

Public respondents' belief that the property involved is public, even if buttressed by statements of other public officials, is no reason for the unjust taking of petitioners' property. As TCT No. 329945 shows, the property was registered under the Torrens system in the names of "Emiliano R. de los Santos, married to Corazon Dayrit; and Norma Alabastro, married to Isidoro L. Padilla" as early as March 29, 1971. Had the public respondents, including the other officials involved in the construction, performed their functions by exercising even the ordinary diligence expected of them as public officials, they would not have failed to note that the property is a private one. A public infrastructure loses its laudability if, in the process of undertaking it, private rights are disregarded. In this connection, the Court said in *Republic v. Sandiganbayan*^[9]:

"It can hardly be doubted that in exercising the right of eminent domain, the State exercises its *jus imperii*, as distinguished from its proprietary rights or *jus gestionis*. Yet, even in that area, it has been held that where private property has been taken in expropriation without just compensation being paid, the defense of immunity from suit cannot be set up by the State against an action for payment by the owner."

Public respondents' assertion that the project had been completed on May 21, 1982 meets strong opposition from the petitioners who insist that the project "until now is not yet finished."^[10] This factual issue needs determination which only the trial court can undertake. Thus, the need for a full blown trial on the merits. We do not subscribe to the appellate court's suggestion that the remedy of the petitioners "lies elsewhere."

The filing of another case to determine just compensation is superfluous. The issue may be threshed out below for practical reasons in the event that it is shown later that it is no longer possible to prohibit the public respondents from continuing with the public work. As held in the *Amigable* case, damages may be awarded the petitioners in the form of legal interest on the price of the land to be reckoned from the time of the unlawful taking.

WHEREFORE, the petition is hereby GRANTED and Civil Cases Nos. 46800 and 46801 shall be REMANDED to the lower court for trial on the merits after the Republic of the Philippines shall have been impleaded as defendant in both cases.

SO ORDERED.

Feliciano, (Chairman), Davide, Jr., and Melo, JJ., concur.

Bidin, J., on leave.

[1] Associate Justice Porfirio V. Sison, ponente, Associate Justices Abdulwahid A. Bidin and Marcelino R. Veloso, concurring.

[2] Judge Gregorio G. Pineda, presiding.

[3] Record of Civil Case No. 46800, pp. 4-5.

[4] Rollo, p. 19.

[5] Rollo, p. 22.

[6] L-26400, February 29, 1972, 43 SCRA 360.

[7] L-31635, August 31, 1971, 40 SCRA 464.

[8] Comment of Public Respondents, pp. 3-5, quoting the Motion to Dismiss, pp. 4-5, which in turn lifted the answer in Civil Case No. 46801 of Nestor Agustin, represented by then Solicitor General Estelito P. Mendoza, Assistant Solicitor General Ruben E. Agpalo and Solicitor Gloria Fermo-Berin, pp. 3-4 (Rollo, pp. 42-44).

[9] G.R. No. 90478, November 21, 1991, 204 SCRA 212, 231.

[10] Petitioners' Reply to Comment, p. 2; Rollo, p. 56.

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