Supreme Court E-Library

of the law enforcers that the persons on board said vehicle were officers of the law or that the vehicle contained objects which were instruments of some offense. This ruling squarely applies to the present case. Verily, the Court of Appeals did not err in holding that respondent judge did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when she ruled that the warrantless search is valid and that the lumber seized is admissible in evidence against petitioners.

WHEREFORE, we *DENY* the petition and *AFFIRM* the assailed Decision of the Court of Appeals in CA-G.R. SP No. 55684. Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Garcia, JJ.,* concur.

SECOND DIVISION

[G.R. No. 150640. March 22, 2007]

BARANGAY SINDALAN, SAN FERNANDO, PAMPANGA, rep. by BARANGAY CAPTAIN ISMAEL GUTIERREZ, *petitioner, vs.* **COURT OF APPEALS, JOSE MATOTO III, and PATRICIA SINDAYAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; STATE; POWER OF EMINENT DOMAIN; REQUISITES FOR A VALID EXERCISE THEREOF; CONSTITUTIONAL LIMITATIONS. — In general, eminent domain is defined as "the power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon payment of just compensation." It is acknowledged as "an

Supreme Court E-Library

inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities of the whole community." The exercise of the power of eminent domain is constrained by two constitutional provisions: (1) that private property shall not be taken for public use without just compensation under Article III (Bill of Rights), Section 9 and (2) that no person shall be deprived of his/her life, liberty, or property without due process of law under Art. III, Sec. 1.

2. ID.; ID.; ID.; ID.; EXPROPRIATION IS FOR A PUBLIC USE; TERM "PUBLIC USE," CONSTRUED. — However, there is no precise meaning of "public use" and the term is susceptible of myriad meanings depending on diverse situations. The limited meaning attached to "public use" is "use by the public" or "public employment," that "a duty must devolve on the person or corporation holding property appropriated by right of eminent domain to furnish the public with the use intended, and that there must be a right on the part of the public, or some portion of it, or some public or quasi-public agency on behalf of the public, to use the property after it is condemned." The more generally accepted view sees "public use" as "public advantage, convenience, or benefit, and that anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor, [which] contributes to the general welfare and the prosperity of the whole community." In this jurisdiction, "public use" is defined as "whatever is beneficially employed for the community." It is settled that the public nature of the prospective exercise of expropriation cannot depend on the "numerical count of those to be served or the smallness or largeness of the community to be benefited." The number of people is not determinative of whether or not it constitutes public use, provided the use is exercisable in common and is not limited to particular individuals. Thus, the first essential requirement for a valid exercise of eminent domain is for the expropriator to prove that the expropriation is for a public use. In *Municipality of Biñan v. Garcia*, this Court explicated that expropriation ends with an order of condemnation declaring "that the plaintiff has a lawful right to take the property sought

Supreme Court E-Library

to be condemned, **for the public use or purpose described in the complaint,** upon the payment of just compensation."

3. ID.; ID.; ID.; ID.; PAYMENT OF JUST COMPENSATION; JUST COMPENSATION, EXPLAINED. — Another vital requisite for a valid condemnation is the payment of just compensation to the property owner. In the recent case of *APO Fruits Corporation v. The Honorable Court of Appeals*, just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator," and that the gauge for computation is not the taker's gain but the owner's loss. In order for the payment to be "just," it must be real, substantial, full, and ample. Not only must the payment be fair and correctly determined, but also, the Court in *Estate of Salud Jimenez v. Philippine Export Processing Zone* stressed that the payment should be made within a "reasonable time" from the taking of the property. It succinctly explained that without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is being made to suffer the consequences of being immediately deprived of the land while being made to wait for a decade or more before actually receiving the amount necessary to cope with the loss. Thus, once just compensation is finally determined, the expropriator must immediately pay the amount to the lot owner. In *Reyes v. National Housing Authority*, it was ruled that 12% interest per annum shall be imposed on the final compensation until paid. Thus, any further delay in the payment will result in the imposition of 12% interest per annum. However, in the recent case of *Republic v. Lim*, the Court enunciated the rule that "where the government failed to pay just compensation within five (5) years from the finality of the judgment in the expropriation proceedings, the owners concerned shall have the right to recover possession of their property."

4. ID.; ID.; ID.; ID.; PAYMENT OF JUST COMPENSATION SHOULD NOT BE DELAYED. — Since the individual stands to lose the property by compulsion of the law, the expropriation authority should not further prejudice the owner's rights by delaying payment of just compensation. To obviate any possibility of delay in the payment, the expropriator should already make available, at the time of the filing of the expropriation complaint, the amount equal to the BIR zonal valuation or the fair market value of the property per tax declaration whichever

Supreme Court E-Library

is higher. The delayed payment of just compensation in numerous cases results from lack of funds or the time spent in the determination of the legality of the expropriation and/or the fair valuation of the property, and could result in dismay, disappointment, bitterness, and even rancor on the part of the lot owners. It is not uncommon for the expropriator to take possession of the condemned property upon deposit of a small amount equal to the assessed value of the land per tax declaration and then challenge the valuation fixed by the trial court resulting in an "expropriate now, pay later" situation. In the event the expropriating agency questions the reasonability of the compensation fixed by the trial court before the appellate court, then the latter may, upon motion, use its sound discretion to order the payment to the lot owner of the amount equal to the valuation of the property, as proposed by the condemnor during the proceedings before the commissioners under Sec. 6, Rule 67 of the Rules of Court, subject to the final valuation of the land. This way, the damage and prejudice to the property owner would be considerably pared down.

5. ID.; ID.; ID.; ID.; PROPERTY OWNER MUST BE AFFORDED A REASONABLE OPPORTUNITY TO BE HEARD ON THE ISSUES OF PUBLIC USE AND JUST COMPENSATION AND TO PRESENT OBJECTIONS TO AND CLAIMS ON THEM. — On due process, it is likewise basic under the Constitution that the property owner must be afforded a reasonable opportunity to be heard on the issues of public use and just compensation and to present objections to and claims on them. It is settled that taking of property for a private use or without just compensation is a deprivation of property without due process of law. Moreover, it has to be emphasized that taking of private property without filing any complaint before a court of law under Rule 67 of the Rules of Court or existing laws is patently felonious, confiscatory, and unconstitutional. Judicial notice can be taken of some instances wherein some government agencies or corporations peremptorily took possession of private properties and usurped the owner's real rights for their immediate use without first instituting the required court action. Running roughshod over the property rights of individuals is a clear and gross breach of the constitutional guarantee of due process, which should not be countenanced in a society where the rule of law holds sway.

Supreme Court E-Library

6. ID.; ID.; ID.; EXPROPRIATION OF PRIVATE PROPERTY FOR THE BENEFIT OF A PRIVATE INDIVIDUAL IS PROSCRIBED BY THE CONSTITUTION; LIMITATION ON EXPROPRIATION. — The intended expropriation of private property for the benefit of a private individual is clearly proscribed by the Constitution, declaring that it should be for public use or purpose. In *Charles River Bridge v. Warren*, the limitation on expropriation was underscored, hence: Although the sovereign power in free government may appropriate all property, public as well as private, for public purposes, making compensation therefore; yet **it has never been understood, at least never in our republic, that the sovereign power can take the private property of A and give it to B by the right of eminent domain;** or that it can take it at all, except for public purposes; or that it can take it for public purposes, without the duty and responsibility of ordering compensation for the sacrifice of the private property of one, for the good of the whole (11 Pet. at 642) US case law also points out that a member of the public cannot acquire a certain private easement by means of expropriation for being unconstitutional, because "even if every member of the public should acquire the easement, it would remain a bundle of private easements."

7. ID.; ID.; ID.; EXPROPRIATION CAN NEVER BE JUSTIFIED ON THE BASIS OF AN UNLAWFUL PURPOSE. — Secondly, a compelling reason for the rejection of the expropriation is expressed in Section 29, PD 957, which provides: Sec. 29. *Right of Way to Public Road*.—The owner or developer of a subdivision without access to any existing public road or street must secure a right of way to a public road or street and such right of way must be developed and maintained according to the requirement of the government authorities concerned. Considering that the residents who need a feeder road are all subdivision lot owners, it is the obligation of the Davsan II Subdivision owner to acquire a right-of-way for them. However, the failure of the subdivision owner to provide an access road does not shift the burden to petitioner. To deprive respondents of their property instead of compelling the subdivision owner to comply with his obligation under the law is an abuse of the power of eminent domain and is patently illegal. Without doubt, expropriation cannot be justified on the basis of an unlawful purpose.

Supreme Court E-Library

8. ID.; ID.; ID.; PUBLIC FUNDS CAN BE USED ONLY FOR A PUBLIC PURPOSE. — Thirdly, public funds can be used only for a public purpose. In this proposed condemnation, government funds would be employed for the benefit of a private individual without any legal mooring. In criminal law, this would constitute malversation.

9. ID.; ID.; ID.; WHEN A SERIOUS DOUBT ARISES REGARDING THE SUPPOSED PUBLIC USE OF PROPERTY, THE DOUBT SHOULD BE RESOLVED IN FAVOR OF THE PROPERTY OWNER AND AGAINST THE STATE. — The power of eminent domain can only be exercised for public use and with just compensation. Taking an individual's private property is a deprivation which can only be justified by a higher good — which is public use — and can only be counterbalanced by just compensation. Without these safeguards, the taking of property would not only be unlawful, immoral, and null and void, but would also constitute a gross and condemnable transgression of an individual's basic right to property as well. For this reason, courts should be more vigilant in protecting the rights of the property owner and must perform a more thorough and diligent scrutiny of the alleged public purpose behind the expropriation. Extreme caution is called for in resolving complaints for condemnation, such that when a serious doubt arises regarding the supposed public use of property, the doubt should be resolved in favor of the property owner and against the State.

APPEARANCES OF COUNSEL

Office of the Provincial Legal Officer for petitioner.
W.C. Mangiliman Law Office for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Expropriation, if misused or abused, would trench on the property rights of individuals without due process of law.

Supreme Court E-Library

The Case

For review before the Court in a petition for *certiorari* under Rule 45 are the May 30, 2001 Decision[1] and October 26, 2001 Resolution[2] of the Court of Appeals (CA), reversing and setting aside the August 2, 1990 Order[3] of the San Fernando, Pampanga Regional Trial Court (RTC), Branch 43. The CA Resolution denied petitioner's Motion for Reconsideration of the May 30, 2001 Decision and in effect, the appellate court dismissed petitioner's Complaint for eminent domain.

The Facts

On April 8, 1983, pursuant to a resolution passed by the *barangay* council, petitioner Barangay Sindalan, San Fernando, Pampanga, represented by Barangay Captain Ismael Gutierrez, filed a Complaint for eminent domain against respondents spouses Jose Magtoto III and Patricia Sindayan, the registered owners of a parcel of land covered by Transfer Certificate of Title No. 117674-R. The Complaint was docketed as Civil Case No. 6756 and raffled to the San Fernando, Pampanga RTC, Branch 43. Petitioner sought to convert a portion of respondents' land into Barangay Sindalan's feeder road. The alleged public purposes sought to be served by the expropriation were stated in *Barangay* Resolution No. 6, as follows:

> WHEREAS, said parcels of land shall be used, when acquired, as a *barangay* feeder road for the agricultural and other products of the residents, and just as inlet for their basic needs;
>
> WHEREAS, presently, residents have to take a long circuitous dirt road before they can reach the concrete provincial road, entailing so much time, effort and money, not to mention possible damage and/or spilage [sic] on the products consigned to or coming from, the market outside the *barangay*; and

---

[1] *Rollo*, pp. 27-36. The Decision was penned by Associate Justice Ramon A. Barcelona and concurred in by Associate Justices Rodrigo V. Cosico and Alicia L. Santos.

[2] *Id*. at 44-45.

[3] *Id*. at 52-67.

Supreme Court E-Library

WHEREAS, said lots, used as outlet or inlet road, shall contribute greatly to the general welfare of the people residing therein social, cultural and health among other things, beside economic.[4]

Petitioner claimed that respondents' property was the most practical and nearest way to the municipal road. Pending the resolution of the case at the trial court, petitioner deposited an amount equivalent to the fair market value of the property.[5]

On the other hand, respondents stated that they owned the 27,000- square meter property, a portion of which is the subject of this case. In their Memorandum,[6] they alleged that their lot is adjacent to Davsan II Subdivision privately owned by Dr. Felix David and his wife. Prior to the filing of the expropriation case, said subdivision was linked to MacArthur Highway through a pathway across the land of a certain Torres family. Long before the passage of the *barangay* resolution, the wives of the subdivision owner and the *barangay* captain, who were known to be agents of the subdivision, had proposed buying a right-of-way for the subdivision across a portion of respondents' property. These prospective buyers, however, never returned after learning of the price which the respondents ascribed to their property.

Respondents alleged that the expropriation of their property was for private use, that is, for the benefit of the homeowners of Davsan II Subdivision. They contended that petitioner deliberately omitted the name of Davsan II Subdivision and, instead, stated that the expropriation was for the benefit of the residents of *Sitio* Paraiso in order to conceal the fact that the access road being proposed to be built across the respondents' land was to serve a privately owned subdivision and those who would purchase the lots of said subdivision. They also pointed out that under Presidential Decree No. (PD) 957, it is the subdivision owner who is obliged to provide a feeder road to the subdivision residents.[7]

---

[4] *Id*. at 58.

[5] *Id*. at 52.

[6] *Id*. at 302-310.

[7] "Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof" (1976), Sec. 29.

Supreme Court E-Library

After trial, the court *a quo* ruled, thus:

WHEREFORE, in view of all the foregoing premises duly considered, the herein plaintiff is hereby declared as having a lawful right to take the property hereinabove described and sought to be condemned for the public purpose or use as aforestated, upon payment of just compensation to be determined as of the date of the filing of the Complaint in this [sic] expropriation proceedings.

Upon the entry of this Order of Condemnation, let three (3) competent and disinterested persons be appointed as Commissioners to ascertain and report to the Court the just compensation for the property condemned.[8]

The Ruling of the Court of Appeals

Upon respondents' appeal, the CA held:

We are convinced that it is the duty of the subdivision owner to provide the right of way needed by residents of Davsan II Subdivision as provided for in Section 29 of P.D. 957. Records show that Purok Paraiso, which is supposed to benefit from this [sic] expropriation proceedings is in reality Davsan II Subdivision as per the testimony of Ruben Palo, plaintiff's own witness (TSN, p. 12, December 115, 1986) [sic]. Appellants correctly stated that:

> "The act of Bo. Sindalan, San Fernando, Pampanga, in effect relieved the owners of Davsan II Subdivision of spending their own private funds for acquiring a right of way and constructing the required access road to the subdivision. It spent public funds for such private purpose and deprived herein defendants-appellants of their property for an ostensible public purpose x x x."

x x x x x x x x x

WHEREFORE, premises considered, the appealed Decision is hereby **REVERSED** and **SET ASIDE** and the Complaint for Eminent Domain is **DISMISSED** for lack of merit.

SO ORDERED.[9]

---

[8] *Supra* note 3, at 67.

[9] *Rollo*, pp. 33-36.

Supreme Court E-Library

The Issues

Petitioner imputes errors to the CA for (1) allegedly violating its power of eminent domain, (2) finding that the expropriation of the property is not for public use but for a privately owned subdivision, (3) finding that there was no payment of just compensation, and (4) failing to accord respect to the findings of the trial court. Stated briefly, the main issue in this case is whether the proposed exercise of the power of eminent domain would be for a public purpose.

The Court's Ruling

The petition lacks merit.

In general, eminent domain is defined as "the power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon payment of just compensation."[10] It is acknowledged as "an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities of the whole community."[11]

The exercise of the power of eminent domain is constrained by two constitutional provisions: (1) that private property shall not be taken for public use without just compensation under Article III (Bill of Rights), Section 9 and (2) that no person shall be deprived of his/her life, liberty, or property without due process of law under Art. III, Sec. 1.

However, there is no precise meaning of "public use" and the term is susceptible of myriad meanings depending on diverse situations. The limited meaning attached to "public use" is "use by the public" or "public employment," that "a duty must devolve on the person or corporation holding property appropriated by right of eminent domain to furnish the public with the use

---

[10] 26 Am Jur 2d 638; citing Re Ohio Turnpike Can. 164 Ohio St 377, 58 Ohio Ops 179, 131 NE2d 397.

[11] *Id*.; citing *Bloodgood v. Mohawk & H.R. Co.*, 18 Wend. (NY).

Supreme Court E-Library

intended, and that there must be a right on the part of the public, or some portion of it, or some public or quasi-public agency on behalf of the public, to use the property after it is condemned."[12] The more generally accepted view sees "public use" as "public advantage, convenience, or benefit, and that anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor, [which] contributes to the general welfare and the prosperity of the whole community."[13] In this jurisdiction, "public use" is defined as "whatever is beneficially employed for the community."[14]

It is settled that the public nature of the prospective exercise of expropriation cannot depend on the "numerical count of those to be served or the smallness or largeness of the community to be benefited."[15] The number of people is not determinative of whether or not it constitutes public use, provided the use is exercisable in common and is not limited to particular individuals.[16] Thus, the first essential requirement for a valid exercise of eminent domain is for the expropriator to prove that the expropriation is for a public use. In *Municipality of Biñan v. Garcia*, this Court explicated that expropriation ends with an order of condemnation declaring "that the plaintiff has a lawful right to take the property sought to be condemned, **for the public use or purpose described in the complaint,** upon the payment of just compensation."[17]

Another vital requisite for a valid condemnation is the payment of just compensation to the property owner. In the recent case

---

[12] *Id*.; citing *Cloth v. Chicago, R.I., & P.R. Co.*, 97 Ark 86, 132 SW 1005.

[13] *Id*. at 673; citing *Strikley v. Highland Bay Gold Min. Co.*, 200 US 527.

[14] *Seña v. Manila Railroad Co*., 42 Phil. 102, 105 (1921).

[15] *Supra* note 10, at 679; citing *Charlotte v. Heath*, 226 NC 750, 40 SE 2d 600, 169 ACR 569.

[16] *Id*. at 680; citing *Cox v. Revelle*, 123 MD 579, 94 A 203.

[17] G.R. No. 69260, December 22, 1989, 180 SCRA 576, 583-584.

Supreme Court E-Library

of *APO Fruits Corporation v. The Honorable Court of Appeals*,[18] just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator," and that the gauge for computation is not the taker's gain but the owner's loss. In order for the payment to be "just," it must be real, substantial, full, and ample. Not only must the payment be fair and correctly determined, but also, the Court in *Estate of Salud Jimenez v. Philippine Export Processing Zone* stressed that the payment should be made within a "reasonable time" from the taking of the property.[19] It succinctly explained that without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is being made to suffer the consequences of being immediately deprived of the land while being made to wait for a decade or more before actually receiving the amount necessary to cope with the loss. Thus, once just compensation is finally determined, the expropriator must immediately pay the amount to the lot owner. In *Reyes v. National Housing Authority*, it was ruled that 12% interest per annum shall be imposed on the final compensation until paid.[20] Thus, any further delay in the payment will result in the imposition of 12% interest per annum. However, in the recent case of *Republic v. Lim*, the Court enunciated the rule that "where the government failed to pay just compensation within five (5) years from the finality of the judgment in the expropriation proceedings, the owners concerned shall have the right to recover possession of their property."[21]

Since the individual stands to lose the property by compulsion of the law, the expropriation authority should not further prejudice the owner's rights by delaying payment of just compensation. To obviate any possibility of delay in the payment, the expropriator should already make available, at the time of the filing of the expropriation complaint, the amount equal to the BIR zonal

---

[18] G.R. No. 164195, February 6, 2007.

[19] G.R. No. 137285, January 16, 2001, 349 SCRA 240, 264.

[20] G.R. No. 147511, January 20, 2003, 395 SCRA 494, 506.

[21] G.R. No. 161656, June 29, 2005, 462 SCRA 265, 288.

Supreme Court E-Library

valuation or the fair market value of the property per tax declaration whichever is higher.

The delayed payment of just compensation in numerous cases results from lack of funds or the time spent in the determination of the legality of the expropriation and/or the fair valuation of the property, and could result in dismay, disappointment, bitterness, and even rancor on the part of the lot owners. It is not uncommon for the expropriator to take possession of the condemned property upon deposit of a small amount equal to the assessed value of the land per tax declaration and then challenge the valuation fixed by the trial court resulting in an "expropriate now, pay later" situation. In the event the expropriating agency questions the reasonability of the compensation fixed by the trial court before the appellate court, then the latter may, upon motion, use its sound discretion to order the payment to the lot owner of the amount equal to the valuation of the property, as proposed by the condemnor during the proceedings before the commissioners under Sec. 6, Rule 67 of the Rules of Court, subject to the final valuation of the land. This way, the damage and prejudice to the property owner would be considerably pared down.

On due process, it is likewise basic under the Constitution that the property owner must be afforded a reasonable opportunity to be heard on the issues of public use and just compensation and to present objections to and claims on them.[22] It is settled that taking of property for a private use or without just compensation is a deprivation of property without due process of law.[23] Moreover, it has to be emphasized that taking of private property without filing any complaint before a court of law under Rule 67 of the Rules of Court or existing laws is patently felonious, confiscatory, and unconstitutional. Judicial notice can be taken of some instances wherein some government agencies or corporations peremptorily took possession of private properties

---

[22] *Supra* note 10, at 648; citing *Slattery Co. v. U.S.*, CA 5 La 231 F2d 37.

[23] *Id*. at 647; citing *Panhandle E. Pipe Line Co. v. State Highway Com.*, 294 U.S. 613.

Supreme Court E-Library

and usurped the owner's real rights for their immediate use without first instituting the required court action. Running roughshod over the property rights of individuals is a clear and gross breach of the constitutional guarantee of due process, which should not be countenanced in a society where the rule of law holds sway.

In the case at bar, petitioner harps on eminent domain as an inherent power of sovereignty similar to police power and taxation. As a basic political unit, its *Sangguniang Barangay* is clothed with the authority to provide *barangay* roads and other facilities for public use and welfare. Petitioner relied on the following cases which held a liberal view of the term "public use" in recognition of the evolving concept of the power of eminent domain: *Seña v. Manila Railroad Co.*; *Philippine Columbian Association v. Panis*; *Sumulong v. Guerrero*; *Province of Camarines Sur v. Court of Appeals*; and *Manosca v. Court of Appeals*.[24]

Petitioner's delegated power to expropriate is not at issue. The legal question in this petition, however, is whether the taking of the land was for a public purpose or use. In the exercise of the power of eminent domain, it is basic that the taking of private property must be for a public purpose. A corollary issue is whether private property can be taken by law from one person and given to another in the guise of public purpose.

In this regard, the petition must fail.

Petitioner alleges that there are at least 80 houses in the place and about 400 persons will be benefited with the use of a *barangay* road. The trial court believed that the expropriation "will not benefit only the residents of the subdivision, but also the residents of Sitio or Purok Paraiso and the residents of the entire Barangay of Sindalan x x x."[25] The trial court held that

---

[24] *Supra* note 14; G.R. No. 106528, December 21, 1993, 228 SCRA 668; G.R. No. 56948, September 30, 1987, 154 SCRA 461; G.R. No. 103125, May 11, 1993, 222 SCRA 173; G.R. No. 106440, January 29, 1996, 252 SCRA 412; respectively.

[25] *Supra* note 3, at 66.

Supreme Court E-Library

the subdivision is covered by Sitio or Purok Paraiso which is a part or parcel of Barangay Sindalan. However, this finding was not supported by evidence. On the contrary, it is Sitio Paraiso which is within Davsan II Subdivision based on the testimony of petitioner's own witness, Ruben Palo, as follows:

Atty. Mangiliman: Mr. Palo, you said that you have been residing at Sitio Paraiso since 1973, is this Sitio Paraiso within the Davson [sic] Subdivision?

Witness: Yes, sir.

x x x x x x x x x

Atty. Mangiliman: And before you purchased that or at the time you purchased it in 1972, I am referring to the lot where you are now residing, the Davson [sic] Subdivision did not provide for a road linking from the subdivision to the *barrio* road, am I correct? Witness: None, sir.

Atty. Mangiliman: And despite [sic] of that you purchased a lot inside Davson [sic] Subdivision?

Witness: Yes, sir.

Atty. Mangiliman: Did you not demand from the developer of Davson [sic] Subdivision that he should provide a road linking from the subdivision to the *barrio* road of Sindalan?

Witness: No, sir, because I know they will provide for the road.

Atty. Mangiliman: And when you said that they will provide for that road, you mean to tell us that it is the developer of Davson [sic] Subdivision who will provide a road linking from the subdivision to the *barrio* road of Sindalan?

Witness: Yes, sir.

Atty. Mangiliman: Now, Mr. Witness, you will agree with me that the proposed road which will connect from Davson [sic] Subdivision to the *barrio* road of Sindalan would benefit mainly the lot buyers and home owners of Davson [sic] Subdivision?

Witness: Yes, sir.

Supreme Court E-Library

Atty. Mangiliman: And you also agree with me that there is no portion of Davson [sic] Subdivision which is devoted to the production of agricultural products?

Witness: None, sir.

Atty. Mangiliman: When the road which is the subject of this case and sought to be expropriated has not yet been opened and before a Writ of Possession was issued by the Court to place the plaintiff in this case in possession, the residents of Davson [sic] Subdivision have other way in going to the *barrio* road?

Witness: None, sir.

Atty. Mangiliman: In that case Mr. Witness, how do you negotiate or go out of the subdivision in going to the *barrio*?

Witness: We passed to the lot own [sic] by Mr. Torres which is near the subdivision in going to the *barrio* road, sir.

Atty. Mangiliman: Did you not complain to the owner/developer of the subdivision that he should provide for a road linking to [sic] his subdivision to the *barrio* road because there is no available exit from the said subdivision to the *barrio* road?

Witness: We have been telling that and he was promising that there will be a road, sir.[26]

Firstly, based on the foregoing transcript, the intended feeder road sought to serve the residents of the subdivision only. It has not been shown that the other residents of Barangay Sindalan, San Fernando, Pampanga will be benefited by the contemplated road to be constructed on the lot of respondents spouses Jose Magtoto III and Patricia Sindayan. While the number of people who use or can use the property is not determinative of whether or not it constitutes public use or purpose, the factual milieu of the case reveals that the intended use of respondents' lot is confined solely to the Davsan II Subdivision residents and is not exercisable in common.[27] Worse, the expropriation will actually benefit the subdivision's owner who will be able to circumvent

---

[26] TSN, December 15, 1986, pp. 4-10.

[27] *Supra* note 16.

Supreme Court E-Library

his commitment to provide road access to the subdivision in conjunction with his development permit and license to sell from the Housing and Land Use Regulatory Board, and also be relieved of spending his own funds for a right-of-way. In this factual setting, the Davsan II Subdivision homeowners are able to go to the barrio road by passing through the lot of a certain Torres family. Thus, the inescapable conclusion is that the expropriation of respondents' lot is for the actual benefit of the Davsan II Subdivision owner, with incidental benefit to the subdivision homeowners.

The intended expropriation of private property for the benefit of a private individual is clearly proscribed by the Constitution, declaring that it should be for public use or purpose. In *Charles River Bridge v. Warren*, the limitation on expropriation was underscored, hence:

> Although the sovereign power in free government may appropriate all property, public as well as private, for public purposes, making compensation therefore; yet **it has never been understood, at least never in our republic, that the sovereign power can take the private property of A and give it to B by the right of eminent domain;** or that it can take it at all, except for public purposes; or that it can take it for public purposes, without the duty and responsibility of ordering compensation for the sacrifice of the private property of one, for the good of the whole (11 Pet. at 642) (emphasis supplied).[28]

US case law also points out that a member of the public cannot acquire a certain private easement by means of expropriation for being unconstitutional, because "even if every member of the public should acquire the easement, it would remain a bundle of private easements."[29]

Secondly, a compelling reason for the rejection of the expropriation is expressed in Section 29, PD 957, which provides:

---

[28] Cited in J. Bernas, S.J., *The 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY 390* (2003).

[29] *Supra* note 10, at 680; citing *Hartman v. Tresise*, 36 Colo 146, 84 P 685.

Supreme Court E-Library

Sec. 29. *Right of Way to Public Road*.—The owner or developer of a subdivision without access to any existing public road or street must secure a right of way to a public road or street and such right of way must be developed and maintained according to the requirement of the government authorities concerned.

Considering that the residents who need a feeder road are all subdivision lot owners, it is the obligation of the Davsan II Subdivision owner to acquire a right-of-way for them. However, the failure of the subdivision owner to provide an access road does not shift the burden to petitioner. To deprive respondents of their property instead of compelling the subdivision owner to comply with his obligation under the law is an abuse of the power of eminent domain and is patently illegal. Without doubt, expropriation cannot be justified on the basis of an unlawful purpose.

Thirdly, public funds can be used only for a public purpose. In this proposed condemnation, government funds would be employed for the benefit of a private individual without any legal mooring. In criminal law, this would constitute malversation.

Lastly, the facts tend to show that the petitioner's proper remedy is to require the Davsan II Subdivision owner to file a complaint for establishment of the easement of right-of-way under Articles 649 to 656 of the Civil Code. Respondents must be granted the opportunity to show that their lot is not a servient estate. Plainly, petitioner's resort to expropriation is an improper cause of action.

One last word: the power of eminent domain can only be exercised for public use and with just compensation. Taking an individual's private property is a deprivation which can only be justified by a higher good — which is public use — and can only be counterbalanced by just compensation. Without these safeguards, the taking of property would not only be unlawful, immoral, and null and void, but would also constitute a gross and condemnable transgression of an individual's basic right to property as well.

Supreme Court E-Library

For this reason, courts should be more vigilant in protecting the rights of the property owner and must perform a more thorough and diligent scrutiny of the alleged public purpose behind the expropriation. Extreme caution is called for in resolving complaints for condemnation, such that when a serious doubt arises regarding the supposed public use of property, the doubt should be resolved in favor of the property owner and against the State.

WHEREFORE, we *AFFIRM* the May 30, 2001 Decision and the October 26, 2001 Resolution of the CA, with costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Tinga, JJ.,* concur.

SECOND DIVISION

[G.R. No. 152430. March 22, 2007]

SAMAHANG MAGSASAKA NG 53 HEKTARYA, represented by ELVIRA M. BALADAD, *petitioner, vs.* **WILFREDO G. MOSQUERA, ROSARIO R. ROMAN, DANILO M. RELUCIO, and EDGARDO V. GUEVARRA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM; ADMINISTRATIVE ADJUDICATION; FARMER LEADERS ARE ALLOWED TO REPRESENT THEMSELVES, THEIR FELLOW FARMERS OR THEIR ORGANIZATION; RIGHT OF REPRESENTATION CONTINUES IN APPEALS. — The peculiar circumstances of this case should be noted. This petition originated from an application for exemption from CARP which was filed by the