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4. Records reveal that the action is for reconveyance and was brought within the prescriptive period; hence, the trial court has jurisdiction over the subject matter.

WHEREFORE, the order of the lower court, dated May 9, 1968, dismissing the complaint; and the order, dated July 24, 1968, denying the motion for reconsideration are hereby SET ASIDE, and the case is REMANDED to the trial court for further proceedings.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Gutierrez, Jr., and *de la Fuente, JJ.,* concur.

SECOND DIVISION

[G.R. No. L-40108. August 31, 1984]

CESAR B. HAGUISAN, *petitioner, vs.* THE HONORABLE OSTERVALDO Z. EMILIA, in his capacity as Presiding Judge of the Court of First Instance of Negros Occidental, Branch VI, Himamaylan, and MARINDUQUE MINING AND INDUSTRIAL CORPORATION, *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; EMINENT DOMAIN; MINING FIRMS VESTED WITH POWER TO EXERCISE SAME.**— The Mining Act (Commonwealth Act 137) as amended by Republic Act 4388 as well as Presidential Decree No. 463 expressly declare the "mining warehouses" and "port facilities" are for "public purpose, use or benefit" and Secs. 58 and 59 of said Presidential Decree No. 463 grants mining firms the right of easement and power of eminent domain.

2. **ID.; ID.; EXPROPRIATION PROCEEDINGS; HEARING NOT REQUIRED FOR PLAINTIFF TO TAKE IMMEDIATE**

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POSSESSION OF THE PROPERTY SOUGHT TO BE EXPROPRIATED; CASE AT BAR.— Private respondent's complaint for expropriation was filed in the court below on January 8, 1975. It is therefore governed by P.D. No. 42 which was issued on November 9, 1972, which provides — plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the Philippine National Bank in its main office or any of its branches or agencies an amount equivalent to the assessed value of the property. This decree repealed Sec. 2, Rule 67 of the Rules of Court which imposed upon the court "having jurisdiction of the proceeding the duty of ascertaining and fixing the provisional value of the property," thus necessitating a hearing. Precisely, said procedure has been done away with by P.D. No. 42, as clearly stated in one of its WHEREASES — because it "is not expeditious enough to enable the plaintiff to take possession of the property involved as soon as possible, when needed for public purposes." In the case at bar, it is not denied that petitioner was notified of the complaint filed against him because he admits having been served with the summons on January 13, 1975. The amount which respondent Judge fixed as the provisional value of the property and which the respondent deposited with the Philippine National Bank pursuant to Presidential Decree No. 42 was equivalent to the assessed value of the property for purposes of taxation as stated in the Declaration of Real Property No. 3189, submitted by petitioner. Even with the issuance of the latest decree on expropriation proceedings prior hearing is not a requirement before the plaintiff can take immediate possession of the property sought to be expropriated.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI AND PROHIBITION; WILL NOT LIE WHERE QUESTIONED ORDERS ARE FREE FROM ANY LEGAL INFIRMITY.**— The assailed Orders being unquestionably free from any legal infirmity, the extraordinary writ of certiorari and prohibition cannot lie.

APPEARANCES OF COUNSEL

Venustiano T. Tavora & Loreto Guevarra for petitioner.

Pelaez Jalandoni & Adriano for respondents.

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DECISION

CUEVAS, *J.:*

In this special civil action of CERTIORARI and PROHIBITION, petitioner Cesar B. Haguisan seeks to annul the Orders dated January 16 and 27, 1975, issued by the Honorable respondent Judge in Civil Case No. 837 of the then Court of First Instance of Negros Occidental together with all the proceedings held in the aforesaid case. Petitioner likewise prays that the aforenamed respondent Judge be ordered to desist from further proceeding with the aforementioned case.

Petitioner is the registered owner of a parcel of coconut land situated in the Municipality of Cauayan, Province of Negros Occidental, known as Lot No. 5972, (portion of Lot No. 3384 of Cauayan Cadastre), covered by Transfer Certificate of Title No. T-70001 in his name, and more particularly described as follows -

"Beginning at a point marked "1" on plan F-14-3414-D, being S. 3434'W., 1385.97 m. from BLIM NO. 99, Cauayan Cadastre, thence S. 40-00 E., 200.00 m. to point "2"; N. 68-19 W., 125.29 m. to point "3". S. 5-30'W., 200.00 m. to point "4"; S. 8659 W., 389.54 m. to point "5"; N. 20-42 E., 179.18 m. to point "6"; N. 6824 E., 160-12 m. to point "7"; N. 64-27 E., 195.34 m. to point 1, point of beginning; containing an area of EIGHTY FIVE THOUSAND TWO HUNDRED AND SIXTY EIGHT (85,268) SQUARE METERS. All points referred to are indicated on the plan and are marked on the ground as follows: points 2 & 3 by X on Trees and the rest by Old P.L. S./B.L. Cvl. Conc. Mons. Bounded on the NE., E., & S., along lines 1-2-3-4-5 by Lot 3384, Cauayan Cadastre; on the W., along line 5-6 by Lot 3174, Cauayan Cadastre; and on the N., along lines 6-7 by Lot 3171, Cauayan Cadastre; and along line 7-1 by Lot 3172, Cauayan Cadastre."

Private respondent, on the other hand, is a mining corporation operating a copper concentrate mill in the Municipality of Sipalay, Negros Occidental. It is also engaged in intensified discovery, exploration and development of various mining claims all of which are situated in the same and adjacent localities.

In line with the government's program of intensive production of mineral areas as a major support to the national economy,

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private respondent is constructing an adequate pier in Barrio Bulata, Municipality of Cauayan, Province of Negros Occidental in order to cope with the increased volume of copper produced for shipment abroad. Within the area or site of its pier under construction is the aforedescribed lot of the petitioner. Private respondent then negotiated to acquire the said parcel either through sale or some other acceptable arrangement, but to no avail. Left with no other recourse, private respondent, on January 8, 1975, instituted expropriation proceedings in the Court of First Instance of Negros Occidental, which case was docketed therein as Civil Case No. 837 and assigned to the sala presided over by the Honorable respondent Judge.

In its complaint, private respondent, among others alleged that —

"8. Defendant Haguisan's real property being expropriated is situated within the area where plaintiff is constructing the pier and it needs it as a site to construct the pier facilities such as warehouses, depots and storages;

9. Plaintiff negotiated to acquire from defendant Haguisan the property being expropriated but they failed to agree on the price of the property, more particularly because defendant Haguisan charged plaintiff unreasonable prices beyond what they have declared in their sworn statement under Presidential Decree No. 76;

10. Plaintiff, as a mining corporation is imbued with power of eminent domain to acquire properties for mining purposes sanctioned by Presidential Decree No. 463, otherwise known as the Mineral Resources Decree of 1974;

11. Plaintiff hereby tenders to deposit with Philippine National Bank, the sum of P17,500.00, equivalent to the assessed value of the real property being expropriated so that plaintiff may immediately be placed in possession, pursuant to Presidential Decree No. 42. The said assessed value is stated in the Declaration of Real Property No. 3184, xerox copy of which is hereto attached as Annex "A" and made integral part of this complaint."

Plaintiff then prayed for judgment as follows —

"1. Provisionally adjudging the value of said real property in an amount equal to the assessed value of the property being expropriated;

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2. After said provisional sum is deposited by the plaintiff with the Philippine National Bank (Presidential Decree No. 42) or any of its branches in Negros Occidental, awarding forthwith the possession of the property being expropriated to the plaintiff; and

3. That, after due notice and hearing, an order of condemnation be entered, declaring that the plaintiff has a lawful right to take and acquire the property herein sought to be condemned, for the public use hereinabove specified, upon payment of just compensation to be determined as of the date of the filing of this complaint."

On January 16, 1975, respondent Judge issued the first assailed Order, fixing the provisional value of the property sought to be expropriated at P17,500.00, the same being its assessed value and requiring the defendants to deposit the said amount with the Philippine National Bank or any of its branches in Negros Occidental and after making the deposit, ordering the provincial sheriff of Negros Occidental or any of his deputies, to place immediately the plaintiff in the possession of the property.

On January 23, 1975, private respondent (then plaintiff) deposited with the Philippine National Bank (Bacolod Branch) the amount of P17,500.00 pursuant to the aforesaid Order.

On January 27, 1975, respondent Judge issued the second challenged Order, directing the Provincial Sheriff or any of his deputies to immediately place private respondent in actual possession of the property sought to be expropriated.

On January 28, 1975, petitioner (then defendant) filed his Motion to Dismiss with Counterclaim.

On February 10, 1975, petitioner instituted the instant petition for Certiorari and Prohibition seeking to annul and set aside the aforesaid Orders dated January 16, 1975 and January 27, 1975.

The instant petition being one for certiorari and prohibition, the only and sole issue which this court is called upon to decide is

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whether the respondent Judge, in issuing the two (2) Orders (dated January 16 and 27, 1975) in question acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction.[1]

The Mining Act (Commonwealth Act 137) as amended by Republic Act 4388 as well as Presidential Decree No. 463 expressly declare that "mining warehouses" and "port facilities" are for "public purpose, use or benefit" and Secs. 58 and 59 of said Presidential Decree No. 463 grants mining firms the right of easement and power of eminent domain.

"SEC. 58. Easement Rights.- When mining claims are so situated that for purposes of more convenient exploration, development, exploitation, utilization and operation thereof by the claim owner or lessee, it is necessary to build, construct or install on mining claims or lands owned, occupied or leased by other persons, roads, railroads, mills, waste dumpsites, *warehouses and port facilities,* tramways, electric transmission, telephone or telegraph lines, serial transportation thereto or therefrom, dams and their normal flood areas, ditches, canals, pipelines, flumes, cuts, shafts or tunnels to drain or convey water, ore waste, or tailings therefrom, shafts or tunnels for mining purposes, which are hereby declared to be for public purposes, use or benefit, the claim owner or lessee *upon payment of just compensation shall be entitled to the right to enter and occupy the said mining claims or land.*" (Italics supplied)

"SEC. 59. Eminent Domain.- When the claim owner or an occupant or owner of private lands *refuses to grant to another claim owner or lessee the right to build, construct or install* any of the facilities mentioned in the next preceding section, the claim owner or lessee *may prosecute an action for eminent domain under the Rules of Court* in the Court of First Instance of the province where the mining claims involved are situated. In the *determination* of the just compensation due the claim owner or occupant of the land, the court shall appoint at least one duly qualified mining engineer or geologist to be recommended by the Director as one of the Commissioners." (Italics supplied)

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[1] Philippine Rabbit Bus Co. *vs.* Galauran, 118 SCRA 664; Darmac Realty Dev. Corp. *vs.* Ayala Corp., 117 SCRA 538; Raymundo *vs.* PHHC, 114 SCRA 712; F.S. Divinagracia *vs.* Court of Appeals, 104 SCRA 354.

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The main thrust of petitioner's attack against the Orders sought to be annulled and set aside is that said orders were issued without hearing and before the expiration of his time to plead. Thus, petitioner argues —

"The dispatch attendant to the fixing of the amount of the deposit and allowing immediately the private respondent to take possession of the property in question without petitioner being heard on the matter and before the reglementary period for petitioner to file his responsive pleading had expired makes the Orders corrosive intrusion on substantial justice gravely prejudicial to the interest of petitioners warranting their avoidance."

Petitioner's aforesaid submission fails to convince us.

Private respondent's complaint for expropriation was filed in the court below on January 8, 1975. It is therefore governed by P.D. No. 42 which was issued on November 9, 1972, the pertinent portion of which provides —

"Upon the filing in the proper court of the complaint in eminent domain proceedings or anytime thereafter, and after notice to the defendant *plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the Philippine National Bank in its main office or any of its branches or agencies an amount equivalent to the assessed value of the property* for purposes of taxation to be held by said bank, subject to the final orders and final disposition of the court." (Italics supplied)

This decree repealed Sec. 2, Rule 67 of the Rules of Court which imposed upon the court "having jurisdiction of the proceeding the duty of ascertaining and fixing the provisional value of the property" thus necessitating a hearing. Precisely, said procedure has been done away with by P.D. No. 42, as clearly stated in one of its WHEREASES — because it "is not expeditious enough to enable the plaintiff to take possession of the property involved as soon as possible, when needed for public purposes."[2]

This Court, speaking thru the Honorable Justice Fernando, now Chief Justice, in the cases of Arce *vs.* Genato[3] and San Diego *vs.*

[2] Municipality of Daet *vs.* Court of Appeals, et al., 93 SCRA 503.

[3] 69 SCRA 544.

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Valdellon[4] held that under Presidential Decree No. 42, which is decreed to be "a part of the law of the land," no prior hearing is necessary.

"There is insistence on the part of petitioners that there be a prior hearing on the question of necessity before immediate possession can be granted. That is an untenable stand. There is no such requirement in Presidential Decree No. 42. The decree is plain and explicit. All that is required is notice to the owner of the property sought to be condemned. Petitioners were duly notified. They were so informed upon the filing of the complaint on October 25, 1976."

In the case at bar, it is not denied that petitioner was notified of the complaint filed against him because he admits having been served with the summons on January 13, 1975.[5] The amount which respondent Judge fixed as the provisional value of the property and which the respondent deposited with the Philippine National Bank pursuant to Presidential Decree No. 42 was equivalent to the assessed value of the property for purposes of taxation as stated in the Declaration of Real Property No. 3189, submitted by petitioner.[6]

Even with the issuance of the latest decree on expropriation proceedings[7] prior hearing is not a requirement before the plaintiff can take immediate possession of the property sought to be expropriated, as can be gleaned from the following portion of the said decree:

"Sec. 2. Upon the filing of the petition for expropriation and the deposit in the Philippine National Bank at its main office or any of its branches of an amount equivalent to ten percent (10%) of the amount of compensation provided in Section 1 hereof, the government or its authorized instrumentality, agency or entity shall be entitled to immediate possession, control and disposition of the real property and the improvements thereon, including the power of demolition if necessary, notwithstanding the pendency of the issues before the courts."

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[4] 80 SCRA 305.

[5] Par. 4, Petition

[6] Annex "A", Complaint.

[7] P.D. No. 1533, June 11, 1978.

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The assailed Orders being unquestionably free from any legal infirmity, the extraordinary writ of certiorari and prohibition cannot lie.

The other contentions of petitioner — that there is no genuine necessity to justify expropriation; that the allegation in the complaint do not make out a case of eminent domain and that the proposed port facilities are not for public purpose, use or benefit are matters that could be taken up and considered in the trial on the merits before the lower court.

WHEREFORE, the instant petition is DISMISSED with costs against petitioner.

SO ORDERED.

Aquino, Concepcion Jr., Guerrero, Abad Santos, and *Escolin, JJ.,* concur.

Makasiar (Chairman), J., on leave.

FIRST DIVISION

[G.R. No. L-42526. August 31, 1984]

MARIO GARCIA, *petitioner, vs.* THE WORKMEN'S COMPENSATION COMMISSION and COLUMBIA TOBACCO COMPANY, INC., *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION ACT; COMPENSABILITY OF DISEASES; PRESUMPTION OF COMPENSABILITY; BURDEN OF OVERTHROWING PRESUMPTION PERTAINS TO EMPLOYER.**— It is well settled, in the absence of proof that the injury or death supervening in the course of one's employment has arisen because of the nature of the same, that the death or injury is by law presumed compensable, unless the employer clearly establishes that it was not caused or aggravated by such