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WHEREFORE, premises considered, the petition for review is hereby **DENIED**. Accordingly, the Decision dated March 27, 2008 and the Resolution dated July 3, 2008 of the Court of Appeals in CA-G.R. SP No. 99626 are **AFFIRMED** *in toto.*

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Brion, Perez, and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 187604. June 25, 2012]

CITY OF MANILA, *petitioner, vs.* **ALEGAR CORPORATION, TEROCEL REALTY CORPORATION, and FILOMENA *VDA. DE* LEGARDA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; PETITIONER CITY OF MANILA WAS NOT DENIED OF ITS RIGHT TO BE HEARD ON ITS ACTION WHEN THE COURT DISMISSED THE SAME; REASON; TWO STAGES IN AN EXPROPRIATION OF PRIVATE LAND.— The RTC did not deny the City its right to be heard on its action when that court dismissed the same. An expropriation proceeding of private lands has two stages: *first*, the determination of plaintiff's authority to exercise the power of eminent domain in the context of the facts of the case and, *second*, if there be such authority, the determination of just compensation. The first phase ends with either an order of dismissal or a determination that the property is to be acquired for a public purpose. Here, the City's action was still in the first stage when the RTC called the parties to a pre-trial conference where, essentially, their task was to determine how

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the court may resolve the issue involved in the first stage: the City's authority to acquire by expropriation the particular lots for its intended purpose. As it happened, the parties opted to simultaneously submit their memoranda on that issue. There was nothing infirm in this agreement since it may be assumed that the parties knew what they were doing and since such agreement would facilitate early disposal of the case. Unfortunately, the agreement implied that the City was waiving its right to present evidence that it was acquiring the subject lots by expropriation for a proper public purpose. Counsel for the City may have been confident that its allegations in the complaint can stand on their own, ignoring the owners' challenge to its right to expropriate their lots for the stated purpose. Parenthetically, the City moved for the reconsideration of the RTC's order of dismissal but withdrew this remedy by filing a notice of appeal from that order to the CA. Evidently, the City cannot claim that it had been denied the opportunity of a hearing.

2. ID.; ID.; ID.; THE PROPERTY OWNER'S ANSWER TO THE COMPLAINT TENDERED A FACTUAL ISSUE THAT CALLED FOR EVIDENCE ON THE CITY'S PART TO PROVE THE AFFIRMATIVE OF ITS ALLEGATIONS.— Admittedly, the City alleged in its amended complaint that it wanted to acquire the subject lots in connection with its land-for-the-landless program and that this was in accord with its Ordinance 8012. But the City misses the point. The owners directly challenged the validity of the objective of its action. They alleged that the taking in this particular case of their lots is not for public use or purpose since its action would benefit only a few. Whether this is the case or not, the owners' answer tendered a factual issue that called for evidence on the City's part to prove the affirmative of its allegations. As already stated, the City submitted the issue for the RTC's resolution without presenting evidence.

3. POLITICAL LAW; LOCAL GOVERNMENT; URBAN DEVELOPMENT HOUSING ACT (R.A. 7279); PETITIONER CITY OF MANILA FAILED TO SHOW THAT IT COMPLIED WITH THE REQUIREMENTS OF SECTION 9 OF R.A. 7279 WHICH LAYS DOWN THE ORDER OF PRIORITY IN THE ACQUISITION THROUGH EXPROPRIATION OF LANDS FOR SOCIALIZED

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HOUSING.— The CA correctly ruled that the City failed to show that it complied with the requirements of Section 9 of R.A. 7279 which lays down the order of priority in the acquisition through expropriation of lands for socialized housing. x x x The City of course argues that it did not have to observe the order of priority provided above in acquiring lots for socialized housing since it found on-site development to be more practicable and advantageous to the beneficiaries who were these lots' long-time occupants. But the problem remains. The City did not adduce evidence that this was so. Besides, Section 10 of R.A. 7279 also prefers the acquisition of private property by "negotiated sale" over the filing of an expropriation suit. It provides that such suit may be resorted to only when the other modes of acquisitions have been exhausted. x x x There is a sensible reason for the above. Litigation is costly and protracted. The government should also lead in avoiding litigations and overburdening its courts.

4. ID.; LOCAL GOVERNMENT CODE; UNDER ARTICLE 35 OF THE RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE, THE GOVERNMENT MUST EXHAUST ALL REASONABLE EFFORTS TO OBTAIN BY AGREEMENT THE LAND IT DESIRES AND ITS FAILURE TO COMPLY WILL WARRANT DISMISSAL OF THE COMPLAINT.— The Court has held that when the property owner rejects the offer but hints for a better price, the government should renegotiate by calling the property owner to a conference. The government must exhaust all reasonable efforts to obtain by agreement the land it desires. Its failure to comply will warrant the dismissal of the complaint. Article 35 of the Rules and Regulations Implementing the Local Government Code provides for this procedure. x x x Here, the City of Manila initially offered ₱1,500.00 per sq m to the owners for their lots. But after the latter rejected the offer, claiming that the offered price was even lower than their current zonal value, the City did not bother to renegotiate or improve its offer. The intent of the law is for the State or the local government to make a reasonable offer in good faith, not merely a *pro forma* offer to acquire the property. The Court cannot treat the requirements of Sections 9 and 10 of R.A. 7279 lightly. It held in *Estate or Heirs of the Late Ex-Justice Jose B.L. Reyes v. City of Manila*, that these requirements are strict

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limitations on the local government's exercise of the power of eminent domain. They are the only safeguards of property owners against the exercise of that power. The burden is on the local government to prove that it satisfied the requirements mentioned or that they do not apply in the particular case.

5. ID.; ID.; EMINENT DOMAIN; DUAL PURPOSE OF THE ADVANCE DEPOSIT REQUIRED UNDER SECTION 19 OF THE LOCAL GOVERNMENT CODE.— The City insists that it made a deposit of ₱1.5 million with the RTC by way of advance payment on the lots it sought to expropriate. By withdrawing this deposit, respondents may be assumed to have given their consent to the expropriation. But the advance deposit required under Section 19 of the Local Government Code constitutes an advance payment only in the event the expropriation prospers. Such deposit also has a dual purpose: as pre-payment if the expropriation succeeds and as indemnity for damages if it is dismissed. This advance payment, a prerequisite for the issuance of a writ of possession, should not be confused with payment of just compensation for the taking of property even if it could be a factor in eventually determining just compensation. If the proceedings fail, the money could be used to indemnify the owner for damages.

6. ID.; ID.; ID.; THE PROPERTY OWNER'S WITHDRAWAL OF THE DEPOSIT THAT THE CITY MADE DOES NOT AMOUNT TO A WAIVER OF THE DEFENSES THEY RAISED AGAINST EXPROPRIATION; THE ADVANCE DEPOSIT OR A PORTION OF IT COULD BE AWARDED TO THE OWNERS AS INDEMNITY TO COVER THE EXPENSES THEY INCURRED IN DEFENDING THEIR RIGHT.— The owners' withdrawal of the deposit that the City made does not amount to a waiver of the defenses they raised against the expropriation. With the dismissal of the complaint, the amount or a portion of it could be awarded to the owners as indemnity to cover the expenses they incurred in defending their right. Notably, the owners neither filed a counterclaim for damages against the City nor did they seek indemnity for their expenses after the RTC dismissed its action. Consequently, the City government is entitled to the return of the advance deposit it made and that the owners withdrew. But, considering the expenses that the owners needed to incur in defending themselves in the appeals that the City instituted before the

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CA and this Court, an award of ₱50,000.00 in attorney's fees against the City is in order. The owners must return the rest of the ₱1,500,000.00 that they withdrew.

APPEARANCES OF COUNSEL

Office of the City Legal Officer for petitioner.
Cruz Capule Marcon and Nabaza Law Offices for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the issues that a local government unit has to cope with when expropriating private property for socialized housing.

The Facts and the Case

On March 1, 2001 the City Council of Manila passed Ordinance 8012 that authorized the City Mayor to acquire certain lots[1] belonging to respondents Alegar Corporation, Terocel Realty Corporation, and Filomena *Vda. De* Legarda, for use in the socialized housing project of petitioner City of Manila. The City offered to buy the lots at ₱1,500.00 per square meter (sq m) but the owners rejected this as too low with the result that on December 2, 2003 the City filed a complaint for expropriation against them before the Regional Trial Court (RTC) of Manila.[2]

The City alleged in its complaint that it wanted to acquire the lots for its land-for-the-landless and on-site development programs involving the residents occupying them.[3] The City offered to acquire the lots for ₱1,500.00 per sq m[4] but the

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[1] Totaling 1,505.30 square meters covered by TCT 61050, 61051, 61052, 61059, 61061, 61062, 61063, 61064, 90853 and 126822.

[2] Docketed as Civil Case 03-108565.

[3] Amended Complaint, paragraphs 3 & 5, records, Vol. I, p. 49.

[4] *Id.,* paragraph 4.

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owners rejected the offer. The total aggregate value of the lots for taxation purpose was ₱809,280.00 but the City deposited ₱1,500,000.00 with the Land Bank of the Philippines to enable it to immediately occupy the same pending hearing of the case.

Both Alegar and Terocel questioned the legitimacy of the City's taking of their lots solely for the benefit of a few long-time occupants. Alegar also pointed out that, while it declined the City's initial offer, it did not foreclose the possibility of selling the lots for the right price.[5] The filing of the suit was premature because the City made no effort in good faith to negotiate the purchase.

Meantime, on June 9, 2004 the trial court issued a writ of possession in the City's favor. On December 19, 2006, upon the joint motion of the parties, the RTC released the ₱1,500,000.00 deposit to the defendant owners.

On October 15, 2007 the parties agreed to forego with the pre-trial, opting instead to simultaneously submit their memoranda on the issue of whether or not there is necessity for the City to expropriate the subject properties for public use. The owners of the lots submitted their memorandum but the City did not.

On February 12, 2008 the RTC dismissed the complaint on the ground that the City did not comply with Section 9 of Republic Act (R.A.) 7279[6] which set the order of priority in the acquisition of properties for socialized housing. Private properties ranked last in the order of priorities for such acquisition and the City failed to show that no other properties were available for the project. The City also failed to comply with Section 10 which authorized expropriation only when resort to other modes (such as community mortgage, land swapping, and negotiated purchase) had been exhausted.

The trial court pointed out that the City also failed to show that it exhausted all reasonable efforts to acquire the lots through

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[5] Annex "2" of Answer.

[6] Known as the Urban Development Housing Act (UDHA).

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a negotiated sale. Article 35 of the Rules and Regulations Implementing the Local Government Code provides that when property owners are willing to sell but for a higher price than that offered, the local chief executive must confer with them for the possibility of coming to an agreement on the price. Here, after the owners refused to sell the lots for ₱1,500.00 per sq m offer, the City did not exert any effort to renegotiate or revise its offer. The RTC also ruled that the City submitted the issue of genuine necessity to acquire the properties for public purpose or benefit without presenting evidence on the same.

The City moved for the reconsideration of the order of dismissal but before the RTC could act on it, the City appealed the case to the Court of Appeals (CA).[7]

On February 27, 2009[8] the CA affirmed the RTC's dismissal of the City's action, mainly for the reason that the City failed to comply with the requirements of Sections 9 and 10 of R.A. 7279 which ranked privately-owned lands last in the order of priority in acquiring lots for socialized housing and which preferred modes other than expropriation for acquiring them. The CA rejected the City's claim that the RTC denied it its right to due process, given that the City agreed to forego with pre-trial and to just submit a memorandum on the threshold issues raised by the owners' answer regarding the propriety of expropriation.[9] The City simply did not submit a memorandum. Although it moved for the reconsideration of the order of dismissal, the City filed a notice of appeal before the RTC could resolve the motion.

The Issues

The petition raises the following issues:

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[7] Docketed as CA-G.R. CV 90530.

[8] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associates Justices Fernanda Lampas-Peralta and Apolinario D. Bruselas, Jr.

[9] Order dated October 15, 2007.

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1. Whether or not the CA erred in failing to rule that the RTC denied the City its right to due process when it dismissed the case without hearing the City's side;

2. Whether or not the CA erred in affirming the RTC's ruling that the City failed to comply with the requirements of Sections 9 and 10 of R.A. 7279 in trying to acquire the subject lots by expropriation;

3. Whether or not the CA erred in failing to set aside the RTC's ruling that the City failed to establish the existence of genuine necessity in expropriating the subject lots for public use or purpose; and

4. Whether or not the CA erred in failing to rule that the owners' withdrawal of its ₱1.5 million deposit constituted implied consent to the expropriation of their lots.

The Rulings of the Court

One. The RTC did not deny the City its right to be heard on its action when that court dismissed the same. An expropriation proceeding of private lands has two stages: ***first***, the determination of plaintiff's authority to exercise the power of eminent domain in the context of the facts of the case and, ***second***, if there be such authority, the determination of just compensation. The first phase ends with either an order of dismissal or a determination that the property is to be acquired for a public purpose.[10]

Here, the City's action was still in the first stage when the RTC called the parties to a pre-trial conference where, essentially, their task was to determine how the court may resolve the issue involved in the first stage: the City's authority to acquire by expropriation the particular lots for its intended purpose. As it happened, the parties opted to simultaneously submit their memoranda on that issue. There was nothing infirm in this agreement since it may be assumed that the parties knew what

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[10] *City of Iloilo v. Hon. Lolita Contreras-Besana*, G.R. No. 168967, February 12, 2010, 612 SCRA 458, 467-468.

they were doing and since such agreement would facilitate early disposal of the case.[11]

Unfortunately, the agreement implied that the City was waiving its right to present evidence that it was acquiring the subject lots by expropriation for a proper public purpose. Counsel for the City may have been confident that its allegations in the complaint can stand on their own, ignoring the owners' challenge to its right to expropriate their lots for the stated purpose. Parenthetically, the City moved for the reconsideration of the RTC's order of dismissal but withdrew this remedy by filing a notice of appeal from that order to the CA. Evidently, the City cannot claim that it had been denied the opportunity of a hearing.

Two. The CA correctly ruled that the City failed to show that it complied with the requirements of Section 9 of R.A. 7279 which lays down the order of priority in the acquisition through expropriation of lands for socialized housing. This section provides:

Section 9. *Priorities in the acquisition of Land.* — Lands for socialized housing shall be acquired in the following order:

(a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;

(b) Alienable lands of the public domain;

(c) Unregistered or abandoned and idle lands;

(d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;

(e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and

(f) **Privately-owned lands**.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this

[11] RULES OF COURT, Rule 18, Section 2(i).

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section shall not apply. The local government units shall give budgetary priority to on-site development of government lands. (Emphasis supplied)

The City of course argues that it did not have to observe the order of priority provided above in acquiring lots for socialized housing since it found on-site development to be more practicable and advantageous to the beneficiaries who were these lots' long-time occupants. But the problem remains. The City did not adduce evidence that this was so.

Besides, Section 10 of R.A. 7279 also prefers the acquisition of private property by "negotiated sale" over the filing of an expropriation suit. It provides that such suit may be resorted to only when the other modes of acquisitions have been exhausted. Thus:

Section 10. *Modes of Land Acquisition*. — The modes of acquiring land for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation: Provided, however, **That expropriation shall be resorted to only when other modes of acquisition have been exhausted**; Provided, further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act. x x x (Emphasis supplied)

There is a sensible reason for the above. Litigation is costly and protracted. The government should also lead in avoiding litigations and overburdening its courts.

Indeed, the Court has held that when the property owner rejects the offer but hints for a better price, the government should renegotiate by calling the property owner to a conference.[12] The government must exhaust all reasonable efforts to obtain by agreement the land it desires. Its failure to comply will warrant the dismissal of the complaint. Article 35 of the Rules and Regulations Implementing the Local Government Code provides for this procedure. Thus:

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[12] *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig, Metro Manila*, 503 Phil. 845, 864 (2005).

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Article 35. *Offer to Buy and Contract of Sale*—(a) The offer to buy private property for public use or purpose shall be in writing. It shall specify the property sought to be acquired, the reasons for its acquisition, and the price offered.

x x x x x x x x x

(c) If the owner or owners are willing to sell their property but at a price higher than that offered to them, the local chief executive shall call them to a conference for the purpose of reaching an agreement on the selling price. The chairman of the appropriation or finance committee of the *sanggunian*, or in his absence, any member of the *sanggunian* duly chosen as its representative, shall participate in the conference. When an agreement is reached by the parties, a contract of sale shall be drawn and executed.

Here, the City of Manila initially offered ₱1,500.00 per sq m to the owners for their lots. But after the latter rejected the offer, claiming that the offered price was even lower than their current zonal value, the City did not bother to renegotiate or improve its offer. The intent of the law is for the State or the local government to make a reasonable offer in good faith, not merely a *pro forma* offer to acquire the property.[13]

The Court cannot treat the requirements of Sections 9 and 10 of R.A. 7279 lightly. It held in *Estate or Heirs of the Late Ex-Justice Jose B.L. Reyes v. City of Manila*,[14] that these requirements are strict limitations on the local government's exercise of the power of eminent domain. They are the only safeguards of property owners against the exercise of that power. The burden is on the local government to prove that it satisfied the requirements mentioned or that they do not apply in the particular case.[15]

Three. Admittedly, the City alleged in its amended complaint that it wanted to acquire the subject lots in connection with its land-for-the-landless program and that this was in accord with its Ordinance 8012. But the City misses the point. The owners

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[13] *Id.* at 866.

[14] 467 Phil. 165 (2004).

[15] *Filstream International, Inc. v. Court of Appeals*, 348 Phil. 756, 775 (1998).

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directly challenged the validity of the objective of its action. They alleged that the taking in this particular case of their lots is not for public use or purpose since its action would benefit only a few. Whether this is the case or not, the owners' answer tendered a factual issue that called for evidence on the City's part to prove the affirmative of its allegations. As already stated, the City submitted the issue for the RTC's resolution without presenting evidence.

Four. The City insists that it made a deposit of ₱1.5 million with the RTC by way of advance payment on the lots it sought to expropriate. By withdrawing this deposit, respondents may be assumed to have given their consent to the expropriation.

But the advance deposit required under Section 19 of the Local Government Code constitutes an advance payment only in the event the expropriation prospers. Such deposit also has a dual purpose: as pre-payment if the expropriation succeeds and as indemnity for damages if it is dismissed. This advance payment, a prerequisite for the issuance of a writ of possession, should not be confused with payment of just compensation for the taking of property even if it could be a factor in eventually determining just compensation.[16] If the proceedings fail, the money could be used to indemnify the owner for damages.[17]

Here, therefore, the owners' withdrawal of the deposit that the City made does not amount to a waiver of the defenses they raised against the expropriation. With the dismissal of the complaint, the amount or a portion of it could be awarded to the owners as indemnity to cover the expenses they incurred in defending their right.

Notably, the owners neither filed a counterclaim for damages against the City nor did they seek indemnity for their expenses after the RTC dismissed its action. Consequently, the City government is entitled to the return of the advance deposit it

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[16] *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*, G.R. No. 169453, December 6, 2006, 510 SCRA 590, 602-603.

[17] *Visayan Refining Company v. Camus*, 40 Phil. 550, 563 (1919).

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made and that the owners withdrew. But, considering the expenses that the owners needed to incur in defending themselves in the appeals that the City instituted before the CA and this Court, an award of ₱50,000.00 in attorney's fees against the City is in order. The owners must return the rest of the ₱1,500,000.00 that they withdrew.

Lastly, the Court must point out that the ruling in this case is without prejudice to the right of the City to re-file the action after it has complied with the relevant mandatory provisions of R.A. 7279 and Article 35 of the Rules and Regulations Implementing the Local Government Code.

WHEREFORE, the Court **DENIES** the petition and ***AFFIRMS*** the decision of the Court of Appeals dated February 27, 2009 in CA-G.R. CV 90530 subject to the following **MODIFICATIONS**:

1. Petitioner City of Manila is ordered to indemnify respondents Alegar Corporation, Terocel Realty Corporation, and Filomena *Vda. De* Legarda in the amount of ₱50,000.00 as attorney's fees;

2. Respondents Alegar Corporation, Terocel Realty Corporation, and Filomena *Vda. De* Legarda are in turn ordered to return the advance deposit of ₱1,500,000.00 that they withdrew incident to the expropriation case; and

3. This decision is without prejudice to the right of the City of Manila to re-file their action for expropriation after complying with what the law requires.

SO ORDERED.

Bersamin,[*] *Villarama, Jr.,*[**] *Sereno,*[***] and *Perlas-Bernabe, JJ.,* concur.

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[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 1241 dated June 14, 2012.

[**] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order 1229 dated June 6, 2012.

[***] Designated Additional Member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated June 11, 2012.