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SECOND DIVISION

[G.R. No. 142304. June 20, 2001]

CITY OF MANILA, *petitioner, vs.* **OSCAR, FELICITAS, JOSE, BENJAMIN, ESTELITA, LEONORA, and ADELAIDA, all surnamed SERRANO,** *respondents.*

SYNOPSIS

Petitioner, pursuant to the Land Use Development Program of the City of Manila, enacted Ordinance No. 7833, which authorized the expropriation of certain properties in Manila's First District in Tondo, which are to be sold and distributed to qualified applicants. Lot 1-C, covered by TCT No. 226048 in the name of the respondents' mother, the late Demetria De Guia, was one of the properties sought to be expropriated. Thereafter, petitioner, filed a complaint for expropriation against the supposed owners of the properties with the Regional Trial Court of Manila. Respondents opposed the expropriation of Lot 1-C claiming that the said property was exempted from expropriation because it comes within the purview of a "small property" as defined by R.A. No. 7279 otherwise known as the Urban Development and Housing Act of 1992. The trial court, however, held that Lot 1-C was not exempt from expropriation and thereafter ordered the issuance of the writ of possession in favor of petitioner after the latter had deposited an amount equivalent to the assessed value of the property expropriated. On appeal, the Court of Appeals upheld the trial court's finding that Lot 1-C is not exempt from expropriation. The appellate court, however, enjoined the petitioner from expropriating the said lot for its failure of petitioner to comply with the requirements laid down in §§9 and 10 of R.A. No. 7279 and reiterated in the *Filstream* case (284 SCRA 716). Petitioner elevated the case before the Supreme Court after its two motions for reconsideration were denied by the Court of Appeals.

The Court of Appeals erred in applying the doctrine laid down in *Filstream.* The ruling in *Filstream* was necessitated because an order of condemnation had already been issued by the trial court in that case. Thus, the judgment in that case had already become final. In this case, the trial court has not gone beyond the issuance of a writ of possession. Hearing is still to be held to determine

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whether or not petitioner indeed complied with the requirements provided in R.A. No. 7279. The Court, therefore, held that it was still premature at that stage of the proceedings to find that petitioner resorted to expropriation without first trying the other modes of acquisition enumerated in §10 of the law.

Whether petitioner has complied with the said provisions requires the presentation of evidence. The determination of this question must await the hearing on the complaint for expropriation, particularly the hearing for the condemnation of the properties sought to be expropriated. Consequently, the Court remanded the case to the trial court for further proceedings.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; PETITION FOR REVIEW ON *CERTIORARI*; DOES NOT LIE TO QUESTION GRANT OF WRIT OF POSSESSION.—** A petition for review under Rule 45 is a mode of appeal. Accordingly, it could not have been resorted to by respondents inasmuch as the order of the trial court granting a writ of possession was merely interlocutory from which no appeal could be taken. Rule 45, §1 of the 1997 Rules of Civil Procedure applies only to final judgments or orders of the Court of Appeals, the Sandiganbayan, and the Regional Trial Court.

2. **ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; PROPER REMEDY TO QUESTION GRANT OF WRIT OF POSSESSION.—** A petition for *certiorari* is the suitable remedy in view of Rule 65, §1 which provides: When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. Respondents' petition before the Court of Appeals alleged that the trial court had acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in issuing the order, dated December 15, 1998,

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resolving that Lot 1-C is not exempt from expropriation and ordering the issuance of the writ of possession in favor of petitioner.

3. **ID.; PROVISIONAL REMEDIES; EXPROPRIATION; REQUIREMENTS; ISSUANCE OF WRIT OF POSSESSION, A MINISTERIAL DUTY OF THE COURT AFTER COMPLIANCE THEREWITH.—** A writ of execution may be issued by a court upon the filing by the government of a complaint for expropriation sufficient in form and substance and upon deposit made by the government of the amount equivalent to the assessed value of the property subject to expropriation. Upon compliance with these requirements, the issuance of the writ of possession becomes ministerial. In this case, these requirements were satisfied and, therefore, it became the ministerial duty of the trial court to issue the writ of possession.

4. **ID.; ID.; ID.; EXPROPRIATION PROCEEDINGS; STAGES.—** Whether petitioner has complied with §§9-10 of R.A. No. 7279 provisions requires the presentation of evidence, although in its amended complaint petitioner did allege that it had complied with the requirements. The determination of this question must await the hearing on the complaint for expropriation, particularly the hearing for the condemnation of the properties sought to be expropriated. Expropriation proceedings consists of two stages: first, condemnation of the property after it is determined that its acquisition will be for a public purpose or public use and, second, the determination of just compensation to be paid for the taking of private property to be made by the court with the assistance of not more than three commissioners.

APPEARANCES OF COUNSEL

The City Legal Officer for petitioner.
Oscar Q. Serrano for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* of the decision, dated November 16, 1999, and resolution, dated February 23, 2000, of the Court of Appeals reversing the order, dated December 15, 1998, of the Regional Trial Court, Branch 16, Manila and

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perpetually enjoining it from proceeding with petitioner's complaint for eminent domain in Civil Case No. 94-72282.

The facts are as follows:

On December 21, 1993, the City Council of Manila enacted Ordinance No. 7833, authorizing the expropriation of certain properties in Manila's First District in Tondo, covered by TCT Nos. 70869, 105201, 105202, and 138273 of the Register of Deeds of Manila, which are to be sold and distributed to qualified occupants pursuant to the Land Use Development Program of the City of Manila.

One of the properties sought to be expropriated, denominated as Lot 1-C, consists of 343.10 square meters. It is covered by TCT No. 138272 which was derived from TCT No. 70869 issued in the name of Feliza De Guia.[1] After her death, the estate of Feliza De Guia was settled among her heirs by virtue of a compromise agreement, which was duly approved by the Regional Trial Court, Branch 53, Manila in its decision, dated May 8, 1986.[2] In 1989, Alberto De Guia, one of the heirs of Feliza De Guia, died, as a result of which his estate, consisting of his share in the properties left by his mother, was partitioned among his heirs. Lot 1-C was assigned to Edgardo De Guia, one of the heirs of Alberto De Guia.[3] On April 15, 1994, Edgardo De Guia was issued TCT No. 215593, covering Lot 1-C.[4] On July 29, 1994, the said property was transferred to Lee Kuan Hui, in whose name TCT No. 217018 was issued.[5]

The property was subsequently sold on January 24, 1996 to Demetria De Guia to whom TCT No. 226048 was issued.[6]

On September 26, 1997, petitioner City of Manila filed an amended complaint for expropriation, docketed as Civil Case No.

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[1] CA Decision, p. 3; CA *Rollo*, p. 329.

[2] CA *Rollo*, pp. 44-47.

[3] *Id.*, p. 60.

[4] *Id.*, p. 54.

[5] *Id.*, p. 57.

[6] *Id.*, p. 58.

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94-72282, with the Regional Trial Court, Branch 16, Manila, against the supposed owners of the lots covered by TCT Nos. 70869 (including Lot 1-C), 105201, 105202, and 138273, which included herein respondents Oscar, Felicitas, Jose, Benjamin, Estelita, Leonora, Adelaida, all surnamed Serrano[7] On November 12, 1997, respondents filed a consolidated answer, in which they alleged that their mother, the late Demetria De Guia, had acquired Lot 1-C from Lee Kian Hui; that they had been the *bona fide* occupants of the said parcel of land for more than 40 years; that the expropriation of Lot 1-C would result in their dislocation, it being the only residential land left to them by their deceased mother; and that the said lot was exempt from expropriation because dividing the said parcel of land among them would entitle each of them to only about 50 square meters of land. Respondents, therefore, prayed that judgment be rendered declaring Lot 1-C exempt from expropriation and ordering the cancellation of the notice annotated on the back of TCT No. 226048,[8] regarding the pendency of Civil Case No. 94-72282 for eminent domain filed by petitioner.[9]

Upon motion by petitioner, the trial court issued an order, dated October 9, 1998, directing petitioner to deposit the amount of ₱1,825,241.00 equivalent to the assessed value of the properties.[10] After petitioner had made the deposit, the trial court issued another order, dated December 15, 1998, directing the issuance of a writ of possession in favor of petitioner.[11]

Respondents filed a petition for *certiorari* with the Court of Appeals, alleging that the expropriation of Lot 1-C would render respondents, who are actual occupants thereof, landless; that Lot 1-C is exempt from expropriation because R.A. No. 7279 provides that properties consisting of residential lands not exceeding 300 square meters in highly urbanized cities are exempt from

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[7] *Id.*, pp. 28-34.

[8] *Id.*, pp. 36-39.

[9] *Id.*, p. 58.

[10] *Id.*, p. 70.

[11] *Id.*, pp. 24-26.

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expropriation; that respondents would only receive around 49 square meters each after the partition of Lot 1-C which consists of only 343.10 square meters; and that R.A. No. 7279 was not meant to deprive an owner of the entire residential land but only that in excess of 300 square meters.[12]

On November 16, 1999, the Court of Appeals rendered a decision holding that Lot 1-C is not exempt from expropriation because it undeniably exceeds 300 square meters which is no longer considered a small property within the framework of R.A. No. 7279. However, it held that in accordance with the ruling in *Filstream International Inc. v. Court of Appeals*,[13] the other modes of acquisition of lands enumerated in §§9-10 of the law must first be tried by the city government before it can resort to expropriation. As petitioner failed to show that it had done so, the Court of Appeals gave judgment for respondents and enjoined petitioner from expropriating Lot 1-C. The dispositive portion of its decision reads:

> WHEREFORE, in view of all the foregoing, the instant petition is hereby GIVEN DUE COURSE and accordingly GRANTED. The Order, dated December 15, 1998, denying petitioners' motion for reconsideration issued by respondent Regional Trial Court of Manila, Branch 16, in Civil Case No. 94-72282 is hereby REVERSED and SET ASIDE. Let a writ of injunction issue perpetually enjoining the same respondent court from proceeding with the complaint for eminent domain in Civil Case No. 94-72282.[14]

In its resolution, dated February 23, 2000, the Court of Appeals likewise denied two motions for reconsideration filed by petitioner.[15] Hence this petition. Petitioner contends that the Court of Appeals erred in —

> 1) Giving due course to the Petition of the Serranos under Rule 65 notwithstanding its own declaration of the impropriety of the resort to the writ and filing thereof with the wrong appellate court;

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[12] *Id.*, pp. 16-18.

[13] 284 SCRA 716 (1998).

[14] CA Decision, p. 8; CA *Rollo*, p. 334.

[15] CA *Rollo*, p. 393.

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2) Concluding that the Order of October 9, 1998 which authorizes the immediate entry of the City as the expropriating agency into the property sought to be expropriated upon the deposit of the provisionally fixed fair market value thereof as tantamount to condemnation of the property without prior showing of compliance with the acquisition of other lands enumerated in Sec. 9 of R.A. 7279 ergo a violation of due process to the Serranos by the doctrinaire application of FILSTREAM ruling and corrollarily,

3) In prohibiting permanently, by writ of injunction, the trial court from proceeding with a complaint for expropriation of the City in Civil Case No. 94-72282.[16]

We will deal with these contentions in the order they are presented.

First. Petitioner contends that respondents' remedy against the order of the trial court granting a writ of possession was not to file a petition for *certiorari* under Rule 65 but a petition for review under Rule 45 which should have been filed in the Supreme Court.[17]

This contention has no merit. A petition for review under Rule 45 is a mode of appeal. Accordingly, it could not have been resorted to by respondents inasmuch as the order of the trial court granting a writ of possession was merely interlocutory from which no appeal could be taken. Rule 45, §1 of the 1997 Rules of Civil Procedure applies only to final judgments or orders of the Court of Appeals, the Sandiganbayan, and the Regional Trial Court. On the other hand, a petition for *certiorari* is the suitable remedy in view of Rule 65, §1 which provides:

When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

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[16] Petition, p. 5; *Rollo*, p. 14.

[17] *Id.*, p. 6; Id., p. 15.

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Respondents' petition before the Court of Appeals alleged that the trial court had acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in issuing the order, dated December 15, 1998, resolving that Lot 1-C is not exempt from expropriation and ordering the issuance of the writ of possession in favor of petitioner.[18]

Second. Petitioner faults the Court of Appeals for deciding issues not raised in the trial court, specifically the question of whether or not there was compliance with §§9 and 10 of R.A. No. 7279. It argues that the sole defense set up by respondents in their petition before the Court of Appeals was that their property was exempted from expropriation because it comes within the purview of a "small property" as defined by R.A. No. 7279. Accordingly, the Court of Appeals should not have applied the doctrine laid down by this Court in the *Filstream*[19] case as such issue was not raised by respondents in their petition before the Court of Appeals.

This contention likewise has no merit. In their petition before the Court of Appeals, respondents raised the following issues:

1. Whether or not the subject Lot 1-C with an area of 343.10 square meters covered by T.C.T. No. 226048 in the name of petitioners' mother, the late Demetria [De Guia] Serrano, may be lawfully expropriated "for the public purpose of providing landless occupants thereof homelots of their own under the "land-for-the-landless program of respondent City of Manila."
2. Whether or not the expropriation of the said Lot 1-C by respondent City of Manila violates the equal protection clause of the Constitution, since petitioners, with the exception of petitioner Oscar G. Serrano, who are likewise landless are actual occupants hereof.
3. Whether or not Lot 1-C is or may be exempted from expropriation pursuant to R.A. 7279, otherwise known as the Urban Development and Housing Act of 1992.[20]

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[18] CA *Rollo*, p. 7.

[19] *Supra.*

[20] CA *Rollo*, p. 12.

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It is clear that respondents raised in issue the propriety of the expropriation of their property in connection with R.A. No. 7279. Although what was discussed at length in their petition before the Court of Appeals was whether or not the said property could be considered a small property within the purview of the exemption under the said law, the other provisions of the said law concerning expropriation proceedings need also be looked into to address the first issue raised by respondents and to determine whether or not expropriation of Lot 1-C was proper under the circumstances. The Court of Appeals properly considered relevant provisions of R.A. No. 7279 to determine the issues raised by respondents. Whether or not it correctly applied the doctrine laid down in *Filstream* in resolving the issues raised by respondents, however, is a different matter altogether, and this brings us to the next point.

Third. Petitioner contends that the Court of Appeals erroneously presumed that Lot 1-C has been ordered condemned in its favor when the fact is that the order of the trial court, dated December 15, 1998, merely authorized the issuance of a writ of possession and petitioner's entry into the property pursuant to Rule 67, §2. At that stage, it was premature to determine whether the requirements of R.A. No. 7279, §§9-10 have been complied with since no evidentiary hearing had yet been conducted by the trial court.[21]

This contention is well taken. Rule 67, §2 provides:

> Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.
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> If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be fixed by the court.

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[21] Petition, pp. 8-10; *Rollo*, pp. 17-20.

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After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties.

Thus, a writ of execution may be issued by a court upon the filing by the government of a complaint for expropriation sufficient in form and substance and upon deposit made by the government of the amount equivalent to the assessed value of the property subject to expropriation. Upon compliance with these requirements, the issuance of the writ of possession becomes ministerial.[22] In this case, these requirements were satisfied and, therefore, it became the ministerial duty of the trial court to issue the writ of possession.

The Court of Appeals, however, ruled that petitioner failed to comply with the requirements laid down in §§9-10 of R.A. No. 7279 and reiterated in the *Filstream* ruling. This is error. The ruling in *Filstream* was necessitated because an order of condemnation had already been issued by the trial court in that case. Thus, the judgment in that case had already become final. In this case, the trial court has not gone beyond the issuance of a writ of possession. Hearing is still to be held to determine whether or not petitioner indeed complied with the requirements provided in R.A. No. 7279. It is, therefore, premature at this stage of the proceedings to find that petitioner resorted to expropriation without first trying the other modes of acquisition enumerated in §10 of the law.

R.A. No. 7279 in pertinent parts provide:

SEC. 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 and 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 or Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;

[22] *Biglang-awa v. Bacalla*, G.R. Nos. 139927 and 139936, Nov. 22, 2000.

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(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 section shall not apply. the local government units shall give budgetary priority to on-site development of government lands.

SEC. 10. *Modes for Land Acquisition.*— The modes of acquiring lands 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: *Provided, finally,* That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.

For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase: *Provided,* That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.

Whether petitioner has complied with these provisions requires the presentation of evidence, although in its amended complaint petitioner did allege that it had complied with the requirements.[23] The determination of this question must await the hearing on the

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[23] In its amended complaint, petitioner alleged:

4. Prior to the institution of this action, plaintiff tried to purchase the subject property by negotiated sale with a valid and definite offer of ₱4,324,000.00 as fair market value thereof contained in a letter dated March 17, 1994 of the then City Legal Officer Mario C.R. Domingo addressed to defendants' administrator, Ms. Linda De Guia . . .

4.1. Defendants LEE KIAN HUI, EDGARDO DE GUIA, FELISSA DE GUIA, RODOLFO DE GUIA, BRUHILDA DE GUIA, OSCAR, FELICITAS, JOSE, BENJAMIN, ESTRELLITA, LEONORA, ADELAIDA, all surnamed SERRANO, ERLINDA DE GUIA, ELENA DE GUIA, RAMIRO DE GUIA, who received the offer-letter, rejected the offer.

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complaint for expropriation, particularly the hearing for the condemnation of the properties sought to be expropriated. Expropriation proceedings consists of two stages: first, condemnation of the property after it is determined that its acquisition will be for a public purpose or public use and, second, the determination of just compensation to be paid for the taking of private property to be made by the court with the assistance of not more than three commissioners.[24]

WHEREFORE, the decision, dated November 16, 1999, and resolution, dated February 23, 2000, of the Court of Appeals are REVERSED and the order of the trial court, dated December 15, 1998, is REINSTATED. This case is REMANDED to the trial court for further proceedings.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ.*, concur.

SECOND DIVISION

[A.M. No. MTJ-01-1342. June 21, 2001]

BISHOP CRISOSTOMO A. YALUNG and ATTY. ROY MANUEL M. VILLASOR, *complainants, vs.* **JUDGE ENRIQUE M. PASCUA, 8th MCTC of Paoay - Currimao, Ilocos Norte, in his capacity as Acting Presiding Judge, MeTC, Branch 64, Makati City,** *respondent.*

SYNOPSIS

Respondent judge was charged for gross misconduct, dishonesty, and the commission of acts inimical to the interest of the judiciary. The Court found him guilty of the acts and omissions charged.

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[24] *Barangay San Roque, Talisay, Cebu v. Heirs of Francisco Pastor*, G.R. No. 138896, June 20, 2000.