Supreme Court E-Library

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[G.R. No. 59603. April 29, 1987]

EXPORT PROCESSING ZONE AUTHORITY, *petitioner*, *vs.* **HON. CEFERINO E. DULAY, in his capacity as the Presiding Judge, Court of First Instance of Cebu, Branch XVI, Lapu-Lapu City, and SAN ANTONIO DEVELOPMENT CORPORATION**, *respondents*.

SYLLABUS

1. **CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; PROVISIONS OF P.D. NOS. 76, 464, 794 AND 1533 CONSTITUTE IMPERMISSIBLE ENCROACHMENT ON JUDICIAL PREROGATIVES.** — The method of ascertaining just compensation under the aforecited decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court initial in a matter which under the Constitution is reserved to it for final determination. Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the applicable decrees, its task would be relegated to simply *stating* the lower value of the property as declared either by the owner or the assessor. As a necessary consequence, it would be useless for the court to appoint commissioners under Rule 67 of the Rules of Court. Moreover, the need to satisfy the due process clause in the taking of private property is seemingly fulfilled since it cannot be said that a judicial proceeding was not had before the actual taking. However, the strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. The court cannot exercise its discretion or independence in determining what is just or fair. Even a grade school pupil could substitute for the judge insofar as the determination of constitutional just compensation is concerned.

2. **ID.; ID.; ID.; VALUATION IN THE DECREE MAY ONLY SERVE AS A GUIDING PRINCIPLE IN THE DETERMINATION OF**

Supreme Court E-Library

JUST COMPENSATION BUT MAY NOT SUBSTITUTE THE COURT'S OWN JUDGMENT AS TO WHAT AMOUNT SHOULD BE AWARDED AND HOW TO ARRIVE AT SUCH AMOUNT; DOCTRINE ENUNCIATED IN THE CASE OF *NATIONAL HOUSING AUTHORITY V. REYES* (123 SCRA 245) ABANDONED. — We are convinced and so rule that the trial court correctly stated that the valuation in the decree may only serve as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. A return to the earlier well-established doctrine, to our mind, is more in keeping with the principle that the judiciary should live up to its mission "by vitalizing and not denigrating constitutional rights." The doctrine we enunciated in *National Housing Authority v. Reyes, supra*, therefore, must necessarily be abandoned if we are to uphold this Court's role as the guardian of the fundamental rights guaranteed by the due process and equal protection clauses and as the final arbiter over transgressions committed against constitutional rights.

3. **ID.; ID.; DEFINITION OF JUST COMPENSATION; WHAT CONSTITUTES ARBITRARY AND CONFISCATORY VALUATION.** — Just compensation means the value of the property at the time of the taking. It means a fair and full equivalent for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities, should be considered. In this particular case, the tax declarations presented by the petitioner as basis for just compensation were made by the Lapu-Lapu municipal, later city assessor long before martial law, when land was not only much cheaper but when assessed values of properties were stated in figures constituting only a fraction of their true market value. The private respondent was not even the owner of the properties at the time. It purchased the lots for development purposes. To peg the value of the lots on the basis of documents which are out of date and at prices below the acquisition cost of present owners would be arbitrary and confiscatory.

4. **ID.; ID.; FACTORS CONSIDERED IN THE VALUATION OF PROPERTIES FOR EXPROPRIATION.** — Various factors can come into play in the valuation of specific properties singled

Supreme Court E-Library

out for expropriation. The values given by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts, or other crops. Very often land described as "cogonal" has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct. Tax values can serve as guides but cannot be absolute substitutes for just compensation.

5. ID.; ID.; **DENIAL TO THE OWNER OF EXPROPRIATED PROPERTY OF THE OPPORTUNITY TO QUESTION THE VALUATION IN THE TAX DOCUMENTS IS VIOLATIVE OF DUE PROCESS.** — To say that the owners are estopped to question the valuations made by assessors since they had the opportunity to protest is illusory. The overwhelming mass of land owners accept unquestioningly what is found in the tax declarations prepared by local assessors or municipal clerks for them. They do not even look at, much less analyze, the statements. The idea of expropriation simply never occurs until a demand is made or a case filed by an agency authorized to do so. It is violative of due process to deny to the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated.

6. ID.; ID.; ID.; **DETERMINATION OF JUST COMPENSATION, A JUDICIAL FUNCTION.** — The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own

Supreme Court E-Library

determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

7. **ID.; ID.; PRESIDENTIAL DECREE NO. 1533; DECLARED UNCONSTITUTIONAL AND VOID.** — We, hold that P.D. No. 1533, which eliminates the court's discretion to appoint commissioners pursuant to Rule 67 of the Rules of Court, is unconstitutional and void. To hold otherwise would be to undermine the very purpose why this Court exists in the first place.

APPEARANCES OF COUNSEL

Elena M. Cuevas for respondents.

D E C I S I O N

GUTIERREZ, JR., *J.*:

The question raised in this petition is whether or not Presidential Decrees Numbered 76, 464, 794 and 1533 have repealed and superseded Sections 5 to 8 of Rule 67 of the Revised Rules of Court, such that in determining the just compensation of property in an expropriation case, the only basis should be its market value as declared by the owner or as determined by the assessor, whichever is lower.

On January 15, 1979, the President of the Philippines, issued Proclamation No. 1811, reserving a certain parcel of land of the public domain situated in the City of Lapu-Lapu, Island of Mactan, Cebu and covering a total area of 1,193,669 square meters, more or less, for the establishment of an export processing zone by petitioner Export Processing Zone Authority (EPZA).

Not all the reserved area, however, was public land. The proclamation included, among others, four (4) parcels of land with an aggregate area of 22,328 square meters owned and registered in the name of the private respondent. The petitioner, therefore, offered to purchase the parcels of land from the

Supreme Court E-Library

respondent in accordance with the valuation set forth in Section 92, Presidential Decree (P.D.) No. 464, as amended. The parties failed to reach an agreement regarding the sale of the property.

The petitioner filed with the then Court of First Instance of Cebu, Branch XVI, Lapu-Lapu City, a complaint for expropriation with a prayer for the issuance of a writ of possession against the private respondent, to expropriate the aforesaid parcels of land pursuant to P.D. No. 66, as amended, which empowers the petitioner to acquire by condemnation proceedings any property for the establishment of export processing zones, in relation to Proclamation No. 1811, for the purpose of establishing the Mactan Export Processing Zone.

On October 21, 1980, the respondent judge issued a writ of possession authorizing the petitioner to take immediate possession of the premises. On December 23, 1980, the private respondent filed its answer.

At the pre-trial conference on February 13, 1981, the respondent judge issued an order stating that the parties have agreed that the only issue to be resolved is the just compensation for the properties and that the pre-trial is thereby terminated and the hearing on the merits is set on April 2, 1981.

On February 17, 1981, the respondent judge issued the order of condemnation declaring the petitioner as having the lawful right to take the properties sought to be condemned, upon the payment of just compensation to be determined as of the filing of the complaint. The respondent judge also issued a second order, subject of this petition, appointing certain persons as commissioners to ascertain and report to the court the just compensation for the properties sought to be expropriated.

On June 19, 1981, the three commissioners submitted their consolidated report recommending the amount of ₱15.00 per square meter as the fair and reasonable value of just compensation for the properties.

On July 29, 1981, the petitioner filed a Motion for Reconsideration of the order of February 19, 1981 and Objection

Supreme Court E-Library

to Commissioner's Report on the grounds that P.D. No. 1533 has superseded Sections 5 to 8 of Rule 67 of the Rules of Court on the ascertainment of just compensation through commissioners; and that the compensation must not exceed the maximum amount set by P.D. No. 1533.

On November 14, 1981, the trial court denied the petitioner's motion for reconsideration and gave the latter ten (10) days within which to file its objection to the Commissioner's Report.

On February 9, 1982, the petitioner filed this present petition for *certiorari* and *mandamus* with preliminary restraining order, enjoining the trial court from enforcing the order dated February 17, 1981 and from further proceeding with the hearing of the expropriation case.

The only issue raised in this petition is whether or not Sections 5 to 8, Rule 67 of the Revised Rules of Court had been repealed or deemed amended by P.D. No. 1533 insofar as the appointment of commissioners to determine the just compensation is concerned. Stated in another way, is the exclusive and mandatory mode of determining just compensation in P.D. No. 1533 valid and constitutional?

The petitioner maintains that the respondent judge acted in excess of his jurisdiction and with grave abuse of discretion in denying the petitioner's motion for reconsideration and in setting the commissioner's report for hearing because under P.D. No. 1533, which is the applicable law herein, the basis of just compensation shall be the fair and current market value declared by the owner of the property sought to be expropriated or such market value as determined by the assessor, whichever is lower. Therefore, there is no more need to appoint commissioners as prescribed by Rule 67 of the Revised Rules of Court and for said commissioners to consider other highly variable factors in order to determine just compensation. The petitioner further maintains that P.D. No. 1533 has vested on the assessors and the property owners themselves the power or duty to fix the market value of the properties and that said property owners are given the full opportunity to be heard before the Local

Supreme Court E-Library

Board of Assessment Appeals and the Central Board of Assessment Appeals. Thus, the vesting on the assessor or the property owner of the right to determine the just compensation in expropriation proceedings, with appropriate procedure for appeal to higher administrative boards, is valid and constitutional.

Prior to the promulgation of P.D. Nos. 76, 464, 794 and 1533, this Court has interpreted the eminent domain provisions of the Constitution and established the meaning, under the fundamental law, of just compensation and who has the power to determine it. Thus, in the following cases, wherein the filing of the expropriation proceedings were all commenced prior to the promulgation of the aforementioned decrees, we laid down the doctrine on just compensation:

Municipality of Daet v. Court of Appeals (93 SCRA 503, 516),

x x x x x x x x x

"x x x And in the case of *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 31 SCRA 413, the Court, speaking thru now Chief Justice Fernando, reiterated the 'well-settled (rule) that just compensation means the equivalent for the value of the property at the time of its taking. Anything beyond that is more and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity.'"

Garcia v. Court of Appeals (102 SCRA 597, 608),

x x x x x x x x x

"x x x Hence, in estimating the market value, all the capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in the time and the use to which it is then applied by the owner. All the facts as to the condition of the property and its surroundings, its improvements and capabilities may be shown and considered in estimating its value."

Republic v. Santos (141 SCRA 30, 35-36).

Supreme Court E-Library

"According to Section 8 of Rule 67, the court is not bound by the commissioners' report. It may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of condemnation, and to the defendant just compensation for the property expropriated. This Court may substitute its own estimate of the value as gathered from the record (*Manila Railroad Company v. Velasquez*, 32 Phil. 286).

However, the promulgation of the aforementioned decrees practically set aside the above and many other precedents hammered out in the course of evidence-laden, well argued, fully heard, studiously deliberated, and judiciously considered court proceedings. The decrees categorically and peremptorily limited the definition of just compensation thus:

P.D. No. 76:

x x x x x x x x x

"For purposes of just compensation in cases of private property acquired by the government for public use, the basis shall be the current and fair market value declared by the owner or administrator, or such market value as determined by the assessor, whichever is lower."

P.D. No. 464:

"Section 92. Basis for payment of just compensation in expropriation proceedings. — In determining just compensation which private property is acquired by the government for public use, the basis shall be the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower."

P.D. No. 794:

"Section 92. Basis for payment of just compensation in expropriation proceedings. — In determining just compensation when private property is acquired by the government for public use, the same shall not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower."

Supreme Court E-Library

P.D. No. 1533:

"Section 1. In determining just compensation for private property acquired through eminent domain proceedings, the compensation to be paid shall not exceed the value declared by the owner or administrator or anyone having legal interest in the property or determined by the assessor, pursuant to the Real Property Tax Code, whichever value is lower, prior to the recommendation or decision of the appropriate Government office to acquire the property."

We are constrained to declare the provisions of the Decrees on just compensation unconstitutional and void and accordingly dismiss the instant petition for lack of merit.

The method of ascertaining just compensation under the aforecited decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under the Constitution is reserved to it for final determination.

Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the applicable decrees, its task would be relegated to simply *stating* the lower value of the property as declared either by the owner or the assessor. As a necessary consequence, it would be useless for the court to appoint commissioners under Rule 67 of the Rules of Court. Moreover, the need to satisfy the due process clause in the taking of private property is seemingly fulfilled since it cannot be said that a judicial proceeding was not had before the actual taking. However, the strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. The court cannot exercise its discretion or independence in determining what is just or fair. Even a grade school pupil could substitute for the judge insofar as the determination of constitutional just compensation is concerned.

In the case of *National Housing Authority v. Reyes* (123 SCRA 245), this Court upheld P.D. No. 464, as further amended

Supreme Court E-Library

by P.D. Nos. 794, 1224 and 1259. In this case, the petitioner National Housing Authority contended that the owner's declaration at ₱1,400.00 which happened to be lower than the assessor's assessment, is the just compensation for the respondent's property under Section 92 of P.D. No. 464. On the other hand, the private respondent stressed that while there may be basis for the allegation that the respondent judge did not follow the decree, the matter is still subject to his final disposition, he having been vested with the original and competent authority to exercise his judicial discretion in the light of the constitutional clauses on due process and equal protection.

To these opposing arguments, this Court ruled that under the conceded facts, there should be a recognition that the law as it stands must be applied; that the decree having spoken so clearly and unequivocably calls for obedience; and that on a matter where the applicable law speaks in no uncertain language, the Court has no choice except to yield to its command. We further stated that "the courts should recognize that the rule introduced by P.D. No. 76 and reiterated in subsequent decrees does not upset the established concepts of justice or the constitutional provision on just compensation for, precisely, the owner is allowed to make his own valuation of his property."

While the Court yielded to executive prerogative exercised in the form of absolute law-making power, its members, nonetheless, remained uncomfortable with the implications of the decision and the abuse and unfairness which might follow in its wake. For one thing, the President himself did not seem assured or confident with his own enactment. It was not enough to lay down the law on determination of just compensation in P.D. 76. It had to be repeated and reiterated in P.D. 464, P.D. 794, and P.D. 1533. The provision is also found in P.D. 1224, P.D. 1259 and P.D. 1313. Inspite of its effectivity as general law and the wide publicity given to it, the questioned provision or an even stricter version had to be embodied in cases of specific expropriations by decree as in P.D. 1669 expropriating the Tambunting Estate and P.D. 1670 expropriating the Sunog Apog area in Tondo, Manila.

Supreme Court E-Library

In the present petition, we are once again confronted with the same question of whether the courts under P.D. 1533, which contains the same provision on just compensation as its predecessor decrees, still have the power and authority to determine just compensation, independent of what is stated by the decree and to this effect, to appoint commissioners for such purpose.

This time, we answer in the affirmative.

In overruling the petitioner's motion for reconsideration and objection to the commissioner's report, the trial court said:

"Another consideration why the Court is empowered to appoint commissioners to assess the just compensation of these properties under eminent domain proceedings, is the well-entrenched ruling that 'the owner of property expropriated is entitled to recover from expropriating authority the fair and full value of the lot, as of the time when possession thereof was actually taken by the province, plus consequential damages — including attorney's fees — from which the consequential benefits, if any should be deducted, with interest at the legal rate, on the aggregate sum due to the owner from and after the date of actual taking.' (*Capitol Subdivision, Inc. v. Province of Negros Occidental*, 7 SCRA 60). In fine, the decree only establishes a uniform basis for determining just compensation which the Court may consider as one of the factors in arriving at 'just compensation,' as envisage in the Constitution. In the words of Justice Barredo, 'Respondent court's invocation of General Order No. 3 of September 21, 1972 is nothing short of an unwarranted abdication of judicial authority, which no judge duly imbued with the implications of the paramount principle of independence of the judiciary should ever think of doing.' (*Lina v. Purisima*, 82 SCRA 344, 361; Cf. *Prov. of Pangasinan v. CFI Judge of Pangasinan*, Br. VIII, 80 SCRA 117) Indeed, where this Court simply follows PD 1533, thereby limiting the determination of just compensation on the value declared by the owner or administrator or as determined by the Assessor, whichever is lower, it may result in the deprivation of the landowner's right of due process to enable it to prove its claim to just compensation, as mandated by the Constitution. (*Uy v. Genato*, 57 SCRA 123). The tax declaration under the Real Property Tax Code is, undoubtedly, for purposes of taxation."

Supreme Court E-Library

We are convinced and so rule that the trial court correctly stated that the valuation in the decree may only serve as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. A return to the earlier well-established doctrine, to our mind, is more in keeping with the principle that the judiciary should live up to its mission "by vitalizing and not denigrating constitutional rights." (See *Salonga v. Cruz Paño*, 134 SCRA 438, 462; citing *Mercado v. Court of First Instance of Rizal*, 116 SCRA 93.) The doctrine we enunciated in *National Housing Authority v. Reyes, supra*, therefore, must necessarily be abandoned if we are to uphold this Court's role as the guardian of the fundamental rights guaranteed by the due process and equal protection clauses and as the final arbiter over transgressions committed against constitutional rights.

The basic unfairness of the decrees is readily apparent.

Just compensation means the value of the property at the time of the taking. It means a *fair and full equivalent* for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities, should be considered.

In this particular case, the tax declarations presented by the petitioner as basis for just compensation were made by the Lapu-Lapu municipal, later city assessor long before martial law, when land was not only much cheaper but when assessed values of properties were stated in figures constituting only a fraction of their true market value. The private respondent was not even the owner of the properties at the time. It purchased the lots for development purposes. To peg the value of the lots on the basis of documents which are out of date and at prices below the acquisition cost of present owners would be arbitrary and confiscatory.

Various factors can come into play in the valuation of specific properties singled out for expropriation. The values given by provincial assessors are usually uniform for very wide areas

Supreme Court E-Library

covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts, or other crops. Very often land described as "cogonal" has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct. Tax values can serve as guides but cannot be absolute substitutes for just compensation.

To say that the owners are estopped to question the valuations made by assessors since they had the opportunity to protest is illusory. The overwhelming mass of land owners accept unquestioningly what is found in the tax declarations prepared by local assessors or municipal clerks for them. They do not even look at, much less analyze, the statements. The idea of expropriation simply never occurs until a demand is made or a case filed by an agency authorized to do so.

It is violative of due process to deny to the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated.

As was held in the case of *Gideon v. Wainwright* (93 ALR 2d, 733, 742):

"In the light of these and many other prior decisions of this Court, it is not surprising that the Betts Court, when faced with the contention that 'one charged with crime, who is unable to obtain counsel' must be furnished counsel by the State,' conceded that '[E]xpressions in the opinions of this court lend color to the argument . . .' 316 U.S., at 462, 463, 86 L ed. 1602, 62 S Ct. 1252. The fact is that in deciding as it did - that 'appointment of counsel is not a fundamental right, essential to a fair trial' — the Court in *Betts v. Brady* made an

Supreme Court E-Library

abrupt brake with its own well-considered precedents. In returning to these old precedents, sounder we believe than the new, we but restore constitutional principles established to achieve a fair system of justice. x x x.'

We return to older and more sound precedents. This Court has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. (See *Salonga v. Cruz Pano, supra*).

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

We, therefore, hold that P.D. No. 1533, which eliminates the court's discretion to appoint commissioners pursuant to Rule 67 of the Rules of Court, is unconstitutional and void. To hold otherwise would be to undermine the very purpose why this Court exists in the first place.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED. The temporary restraining order issued on February 16, 1982 is LIFTED and SET ASIDE.

SO ORDERED.

Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and *Cortes, JJ.*, concur.

Teehankee, C.J., concur in the result.

Yap, J., on leave.