Supreme Court E-Library

resolved without need for reception of additional evidences. Once more, this Court respects and adopts the finding of the CTA, affirmed by the Court of Appeals, that respondent Toshiba had indeed availed of the income tax holiday under Exec. Order No. 226, as amended.

WHEREFORE, based on the foregoing, this Court *AFFIRMS* the decision of the Court of Appeals in CA-G.R. SP. No. 59106, and the order of the CTA in CTA Case No. 5593, ordering said petitioner CIR to refund or, in the alternative, to issue a tax credit certificate to respondent Toshiba, in the amount of ₱16,188,045.44, representing unutilized input VAT for the first and second quarters of 1996.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

SECOND DIVISION

[G.R. No. 152230. August 9, 2005]

JESUS IS LORD CHRISTIAN SCHOOL FOUNDATION, INC., *petitioner, vs.* **MUNICIPALITY (now CITY) OF PASIG, METRO MANILA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATE; INHERENT POWERS; LOCAL GOVERNMENT CODE; EMINENT DOMAIN; NATURE AND SCOPE.— The right of eminent domain is usually understood to be an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose. The nature and scope of such power has been comprehensively described as follows: … It is an indispensable attribute of sovereignty; a power grounded in the primary duty

Supreme Court E-Library

of government to serve the common need and advance the general welfare. Thus, the right of eminent domain appertains to every independent government without the necessity for constitutional recognition. The provisions found in modern constitutions of civilized countries relating to the taking of property for the public use do not by implication grant the power to the government, but limit the power which would, otherwise, be without limit. Thus, our own Constitution provides that "[p]rivate property shall not be taken for public use without just compensation." Furthermore, the due process and equal protection clauses act as additional safeguards against the arbitrary exercise of this governmental power.

2. ID.; ID.; ID.; ID.; STRICT CONSTRUCTION AND BURDEN OF PROOF THEREOF.— The exercise of the right of eminent domain, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. It is one of the harshest proceedings known to the law. Consequently, when the sovereign delegates the power to a political unit or agency, a strict construction will be given against the agency asserting the power. The authority to condemn is to be strictly construed in favor of the owner and against the condemnor. When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained. Corollarily, the respondent, which is the condemnor, has the burden of proving all the essentials necessary to show the right of condemnation. It has the burden of proof to establish that it has complied with all the requirements provided by law for the valid exercise of the power of eminent domain.

3. ID.; ID.; ID.; ID.; REQUISITES FOR VALID EXERCISE THEREOF.— The grant of the power of eminent domain to local government units is grounded on Section 19 of R.A. No. 7160. The Court declared that the following requisites for the valid exercise of the power of eminent domain by a local government unit must be complied with: 1. An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property. 2. The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless. 3. There is payment of

Supreme Court E-Library

just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws. 4. A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.

4. ID.; ID; ID.; ID.; VALID AND DEFINITE OFFER, A MANDATORY REQUIREMENT; FAILURE TO COMPLY WILL RESULT IN DISMISSAL OF COMPLAINT FOR EMINENT DOMAIN.— The respondent was burdened to prove the mandatory requirement of a valid and definite offer to the owner of the property before filing its complaint and the rejection thereof by the latter. It is incumbent upon the condemnor to exhaust all reasonable efforts to obtain the land it desires by agreement. Failure to prove compliance with the mandatory requirement will result in the dismissal of the complaint. An offer is a unilateral proposition which one party makes to the other for the celebration of a contract. It creates a power of acceptance permitting the offeree, by accepting the offer, to transform the offeror's promise into a contractual obligation. Corollarily, the offer must be complete, indicating with sufficient clearness the kind of contract intended and definitely stating the essential conditions of the proposed contract. An offer would require, among other things, a clear certainty on both the object and the cause or consideration of the envisioned contract.

5. ID.; ID.; ID.; ID.; ID.; PURPOSE OF REQUIREMENT THEREOF IS TO ENCOURAGE SETTLEMENTS AND VOLUNTARY ACQUISITIONS OF PROPERTY NEEDED FOR PUBLIC PURPOSES IN ORDER TO AVOID THE EXPENSE AND DELAY OF A COURT ACTION; A SINGLE *BONA FIDE* OFFER THAT IS REJECTED BY THE OWNER WILL SUFFICE.— The purpose of the requirement of a valid and definite offer to be first made to the owner is to encourage settlements and voluntary acquisition of property needed for public purposes in order to avoid the expense and delay of a court action. The law is designed to give to the owner the opportunity to sell his land without the expense and inconvenience of a protracted and expensive litigation. This is a substantial right which should be protected in every instance. It encourages acquisition without litigation and spares not only the landowner but also the condemnor, the expenses and delays of litigation. It permits the landowner to receive full compensation, and the entity acquiring the property, immediate use and enjoyment of

Supreme Court E-Library

the property. A reasonable offer in good faith, not merely perfunctory or *pro forma* offer, to acquire the property for a reasonable price must be made to the owner or his privy. A single *bona fide* offer that is rejected by the owner will suffice.

6. ID.; ID.; ID.; ID.; ID.; RESPONDENT FAILED TO PROVE THAT BEFORE IT FILED ITS COMPLAINT, IT MADE A WRITTEN DEFINITE AND VALID OFFER TO ACQUIRE THE PROPERTY FOR PUBLIC USE AS AN ACCESS ROAD.— The expropriating authority is burdened to make known its definite and valid offer to all the owners of the property. However, it has a right to rely on what appears in the certificate of title covering the land to be expropriated. Hence, it is required to make its offer only to the registered owners of the property. After all, it is well-settled that persons dealing with property covered by a Torrens certificate of title are not required to go beyond what appears on its face. In the present case, the respondent failed to prove that before it filed its complaint, it made a written definite and valid offer to acquire the property for public use as an access road. The only evidence adduced by the respondent to prove its compliance with Section 19 of the Local Government Code is the photocopy of the letter purportedly bearing the signature of Engr. Jose Reyes, to only one of the co-owners, Lorenzo Ching Cuanco. It bears stressing, however, that the respondent offered the letter only to prove its desire or intent to acquire the property for a right-of-way. The document was not offered to prove that the respondent made a definite and valid offer to acquire the property. Moreover, the RTC rejected the document because the respondent failed to adduce in evidence the original copy thereof. The respondent, likewise, failed to adduce evidence that copies of the letter were sent to and received by all the co-owners of the property, namely, Lorenzo Ching Cuanco, Victor Ching Cuanco and Ernesto Kho.

7. ID.; ID.; ID.; ID.; ID.; A LETTER, WHICH IS MERELY AN INVITATION TO A CONFERENCE TO DISCUSS THE PROJECT AND ITS PRICE DOES NOT AMOUNT TO A VALID AND DEFINITE OFFER TO PURCHASE.— Even if the letter was, indeed, received by the co-owners, the letter is not a valid and definite offer to purchase a specific portion of the property for a price certain. It is merely an invitation for only one of the co-owners, Lorenzo Ching Cuanco, to a conference

Supreme Court E-Library

to discuss the project and the price that may be mutually acceptable to both parties.

8. ID.; ID.; ID.; ID.; ID.; ANNOTATION OF A NOTICE OF *LIS PENDENS* IN PETITIONER'S TRANSFER CERTIFICATE OF TITLE IS NOT A SUBSTANTIAL COMPLIANCE WITH THE REQUISITE OFFER.— There is no legal and factual basis to the CA's ruling that the annotation of a notice of *lis pendens* at the dorsal portion of petitioner's TCT No. PT-92579 is a substantial compliance with the requisite offer. A notice of *lis pendens* is a notice to the whole world of the pendency of an action involving the title to or possession of real property and a warning that those who acquire an interest in the property do so at their own risk and that they gamble on the result of the litigation over it. Moreover, the *lis pendens* was annotated at the dorsal portion of the title only on November 26, 1993, long after the complaint had been filed in the RTC against the Ching Cuancos.

9. ID.; ID.; ID.; ID.; ID.; DECLARATION OF NOTICE IN ONE OF THE WHEREAS CLAUSES OF THE ORDINANCE IS NOT ALSO A SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENT OF A VALID AND DEFINITE OFFER UNDER SECTION 19 OF R.A. NO. 7160.— Neither is the declaration in one of the whereas clauses of the ordinance that "the property owners were already notified by the municipality of the intent to purchase the same for public use as a municipal road," a substantial compliance with the requirement of a valid and definite offer under Section 19 of R.A. No. 7160. Presumably, the *Sangguniang Bayan* relied on the erroneous premise that the letter of Engr. Reyes reached the co-owners of the property. In the absence of competent evidence that, indeed, the respondent made a definite and valid offer to all the co-owners of the property, aside from the letter of Engr. Reyes, the declaration in the ordinance is not a compliance with Section 19 of R.A. No. 7160.

10. ID.; ID.; ID.; ID.; REQUIREMENT OF PUBLIC NECESSITY; WHATEVER MAY BE BENEFICIALLY EMPLOYED FOR THE GENERAL WELFARE SATISFIES THE REQUIREMENT OF PUBLIC USE AND THAT ONLY FEW WOULD ACTUALLY BENEFIT FROM THE EXPROPRIATION DOES NOT NECESSARILY DIMINISH THE ESSENCE AND CHARACTER OF PUBLIC USE.— We reject the contention of the petitioner that its property can

Supreme Court E-Library

no longer be expropriated by the respondent because it is intended for the construction of a place for religious worship and a school for its members. As aptly explained by this Court in *Manosca v. Court of Appeals*, thus: It has been explained as early as *Seña v. Manila Railroad Co.*, that: … A historical research discloses the meaning of the term "*public use*" to be one of constant growth. As society advances, its demands upon the individual increases and each demand is a new use to which the resources of the individual may be devoted. … for "*whatever is beneficially employed for the community is a public use.*" Chief Justice Enrique M. Fernando states: The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not so any more. As long as the purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be subdivided into small lots for resale at cost to individuals. The other is the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirements of public use. Chief Justice Fernando, writing the *ponencia* in *J.M. Tuason & Co. vs. Land Tenure Administration*, has viewed the Constitution a dynamic instrument and one that "*is not to be construed narrowly or pedantically* so as to enable it *to meet adequately whatever problems the future has in store.*" Fr. Joaquin Bernas, a noted constitutionalist himself, has aptly observed that what, in fact, has ultimately emerged is a concept of public use which is just as broad as "*public welfare.*" Petitioners ask: But "(w)hat is the so-called unusual interest that the expropriation of (Felix Manalo's) birthplace become so vital as to be a public use appropriate for the exercise of the power of eminent domain" when only members of the *Iglesia ni Cristo* would benefit? This attempt to give some religious perspective to the case deserves little consideration, for what should be significant is the principal objective of, not the casual consequences that might follow from, the exercise of the power. The purpose in setting up the marker is essentially to recognize the distinctive contribution of the

Supreme Court E-Library

late Felix Manalo to the culture of the Philippines, rather than to commemorate his founding and leadership of the *Iglesia ni Cristo.* The practical reality that greater benefit may be derived by members of the *Iglesia ni Cristo* than by most others could well be true but such a peculiar advantage still remains to be merely incidental and secondary in nature. Indeed, that only a few would actually benefit from the expropriation of property, does not necessarily diminish the essence and character of public use.

11. ID.; ID.; ID.; ID.; ALTHOUGH THE EXPROPRIATION IS FOR THE PURPOSE OF CONSTRUCTING A ROAD, RESPONDENT IS NOT MANDATED TO COMPLY WITH THE ESSENTIAL REQUISITES FOR AN EASEMENT OF RIGHT OF WAY UNDER THE NEW CIVIL CODE.— The subject property is expropriated for the purpose of constructing a road. The respondent is not mandated to comply with the essential requisites for an easement of right-of-way under the New Civil Code. Case law has it that in the absence of legislative restriction, the grantee of the power of eminent domain may determine the location and route of the land to be taken unless such determination is capricious and wantonly injurious. Expropriation is justified so long as it is for the public good and there is genuine necessity of public character. Government may not capriciously choose what private property should be taken. The respondent has demonstrated the necessity for constructing a road from E. R. Santos Street to Sto. Tomas Bukid. The witnesses, who were residents of Sto. Tomas Bukid, testified that although there were other ways through which one can enter the vicinity, no vehicle, however, especially fire trucks, could enter the area except through the newly constructed Damayan Street. This is more than sufficient to establish that there is a genuine necessity for the construction of a road in the area. After all, absolute necessity is not required, only reasonable and practical necessity will suffice.

12. ID.; ID.; ID.; ID.; RESPONDENT FAILED TO SHOW THE NECESSITY FOR CONSTRUCTING A ROAD PARTICULARLY IN PETITIONER'S PROPERTY AND NOT ELSEWHERE.— The respondent failed to show the necessity for constructing the road particularly in the petitioner's property and not elsewhere. We note that the whereas clause of the ordinance states that the 51-square meter lot is the shortest

Supreme Court E-Library

and most suitable access road to connect Sto. Tomas Bukid to E. R. Santos Street. The respondent's complaint also alleged that the said portion of the petitioner's lot has been surveyed as the best possible ingress and egress. However, the respondent failed to adduce a preponderance of evidence to prove its claims.

13. ID.; ID.; ID.; ID.; SINCE PETITIONER WAS NOT NOTIFIED OF ANY OCULAR INSPECTION ON THE SUBJECT PROPERTY, ANY FACTUAL FINDING OF THE COURT BASED ON THE SAID INSPECTION HAS NO PROBATIVE VALUE.— As correctly pointed out by the petitioner, there is no showing in the record that an ocular inspection was conducted during the trial. If, at all, the trial court conducted an ocular inspection of the subject property during the trial, the petitioner was not notified thereof. The petitioner was, therefore, deprived of its right to due process. It bears stressing that an ocular inspection is part of the trial as evidence is thereby received and the parties are entitled to be present at any stage of the trial. Consequently, where, as in this case, the petitioner was not notified of any ocular inspection of the property, any factual finding of the court based on the said inspection has no probative weight. The findings of the trial court based on the conduct of the ocular inspection must, therefore, be rejected.

APPEARANCES OF COUNSEL

Jose-San Juan & Associates for petitioner.
Carlos C. Abesamis for respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

Before us is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 59050, and its Resolution dated February 18, 2002, denying the motion for reconsideration thereof. The assailed decision affirmed the order of the Regional Trial Court (RTC) of Pasig, Branch 160, declaring

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Fermin A. Martin, Jr. and Mercedes Gozo-Dadole, concurring; *Rollo*, pp. 6-14.

Supreme Court E-Library

the respondent Municipality (now City) of Pasig as having the right to expropriate and take possession of the subject property.

The Antecedents

The Municipality of Pasig needed an access road from E. R. Santos Street, a municipal road near the Pasig Public Market, to Barangay Sto. Tomas Bukid, Pasig, where 60 to 70 houses, mostly made of light materials, were located. The road had to be at least three meters in width, as required by the Fire Code, so that fire trucks could pass through in case of conflagration.[2] Likewise, the residents in the area needed the road for water and electrical outlets.[3] The municipality then decided to acquire 51 square meters out of the 1,791-square meter property of Lorenzo Ching Cuanco, Victor Ching Cuanco and Ernesto Ching Cuanco Kho covered by Transfer Certificate of Title (TCT) No. PT-66585,[4] which is abutting E. R. Santos Street.

On April 19, 1993, the *Sangguniang Bayan* of Pasig approved an Ordinance[5] authorizing the municipal mayor to initiate expropriation proceedings to acquire the said property and appropriate the fund therefor. The ordinance stated that the property owners were notified of the municipality's intent to purchase the property for public use as an access road but they rejected the offer.

On July 21, 1993, the municipality filed a complaint, amended on August 6, 1993, against the Ching Cuancos for the expropriation of the property under Section 19 of Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code. The plaintiff alleged therein that it notified the defendants, by letter, of its intention to construct an access road on a portion of the property but they refused to sell the same portion. The plaintiff appended to the complaint a photocopy of the letter addressed to defendant Lorenzo Ching Cuanco.[6]

---

[2] TSN, 9 January 1996, pp. 4-9.

[3] TSN, 1 August 1994, p. 17.

[4] Records, p. 17.

[5] Exhibit "C", *Id*. at 59-60.

[6] Records, pp. 19-20.

Supreme Court E-Library

The plaintiff deposited with the RTC 15% of the market value of the property based on the latest tax declaration covering the property. On plaintiff's motion, the RTC issued a writ of possession over the property sought to be expropriated. On November 26, 1993, the plaintiff caused the annotation of a notice of *lis pendens* at the dorsal portion of TCT No. PT-92579 under the name of the Jesus Is Lord Christian School Foundation, Incorporated (JILCSFI) which had purchased the property.[7] Thereafter, the plaintiff constructed therein a cemented road with a width of three meters; the road was called Damayan Street.

In their answer,[8] the defendants claimed that, as early as February 1993, they had sold the said property to JILCSFI as evidenced by a deed of sale[9] bearing the signature of defendant Ernesto Ching Cuanco Kho and his wife.

When apprised about the complaint, JILCSFI filed a motion for leave to intervene as defendant-in-intervention, which motion the RTC granted on August 26, 1994.[10]

In its answer-in-intervention, JILCSFI averred, by way of special and affirmative defenses, that the plaintiff's exercise of eminent domain was only for a particular class and not for the benefit of the poor and the landless. It alleged that the property sought to be expropriated is not the best portion for the road and the least burdensome to it. The intervenor filed a crossclaim against its co-defendants for reimbursement in case the subject property is expropriated.[11] In its amended answer, JILCSFI also averred that it has been denied the use and enjoyment of its property because the road was constructed in the middle portion and that the plaintiff was not the real party-in-interest. The intervenor, likewise, interposed counterclaims against the plaintiff for moral damages and attorney's fees.[12]

---

[7] *Id*. at 56.

[8] *Id*. at 21.

[9] Exhibits "2" and "3".

[10] *Id*. at 24.

[11] Records, p. 26.

[12] *Id*. at 31-32.

Supreme Court E-Library

During trial, Rolando Togonon, the plaintiff's messenger, testified on direct examination that on February 23, 1993, he served a letter of Engr. Jose Reyes, the Technical Assistant to the Mayor on Infrastructure, to Lorenzo Ching Cuanco at his store at No. 18 Alkalde Jose Street, Kapasigan, Pasig. A lady received the same and brought it inside the store. When she returned the letter to him, it already bore the signature of Luz Bernarte. He identified a photocopy of the letter as similar to the one he served at the store. On cross-examination, he admitted that he never met Luz Bernarte.[13]

Edgardo del Rosario, a resident of Sto. Tomas Bukid since 1982 declared that he would pass through a wooden bridge to go to E. R. Santos Street. At times, the bridge would be slippery and many had met accidents while walking along the bridge. Because of this, they requested Mayor Vicente Eusebio to construct a road therein. He attested that after the construction of the cemented access road, the residents had water and electricity.[14]

Augusto Paz of the City Engineer's Office testified that, sometime in 1992, the plaintiff constructed a road perpendicular from E. R. Santos Street to Sto. Tomas Bukid; he was the Project Engineer for the said undertaking. Before the construction of the road, the lot was raw and they had to put filling materials so that vehicles could use it. According to him, the length of the road which they constructed was 70 meters long and 3 meters wide so that a fire truck could pass through. He averred that there is no other road through which a fire truck could pass to go to Sto. Tomas Bukid.[15]

Manuel Tembrevilla, the Fire Marshall, averred that he had seen the new road, that is, Damayan Street, and found that a fire truck could pass through it. He estimated the houses in the area to be around 300 to 400. Tembrevilla also stated that Damayan Street is the only road in the area.[16]

---

[13] TSN, 1 August 1994, pp. 3-8.

[14] TSN, 1 August 1994, pp. 15-18.

[15] TSN, 9 January 1996, pp. 5-10.

[16] TSN, 30 January 1996, pp. 9-10.

Supreme Court E-Library

Finally, Bonifacio Maceda, Jr., Tax Mapper IV, testified that, according to their records, JILCSFI became the owner of the property only on January 13, 1994.[17]

The plaintiff offered in evidence a photocopy of the letter of Engr. Jose Reyes addressed to Lorenzo Ching Cuanco to prove that the plaintiff made a definite and valid offer to acquire the property to the co-owners. However, the RTC rejected the same letter for being a mere photocopy.[18]

For the defendant-intervenor, Normita del Rosario, owner of the property located across the subject property, testified that there are other roads leading to E. R. Santos Street. She asserted that only about ten houses of the urban poor are using the new road because the other residents are using an alternative right-of-way. She averred that she did not actually occupy her property; but there were times that she visited it.[19]

Danilo Caballero averred that he had been a resident of Sto. Tomas Bukid for seven years. From his house, he could use three streets to go to E. R. Santos Street, namely, Catalina Street, Damayan Street and Bagong Taon Street. On cross-examination, he admitted that no vehicle could enter Sto. Tomas Bukid except through the newly constructed Damayan Street.[20]

Eduardo Villanueva, Chairman of the Board of Trustees and President of JILCSFI, testified that the parcel of land was purchased for purposes of constructing a school building and a church as worship center. He averred that the realization of these projects was delayed due to the passing of the ordinance for expropriation.[21]

The intervenor adduced documentary evidence that on February 27, 1993, Lorenzo Ching Cuanco and the co-owners agreed to

---

[17] TSN, 13 March 1996, p. 5.

[18] Records, p. 41.

[19] TSN, 15 July 1996, pp. 17-19.

[20] TSN, 19 August 1996, pp. 8-13.

[21] TSN, 25 September 1996, pp. 7-9.

Supreme Court E-Library

sell their property covered by TCT No. PT-66585 for ₱1,719,000.00.[22] It paid a down payment of ₱1,000,000.00 for the property. After payment of the total purchase price, the Ching Cuancos executed a Deed of Absolute Sale[23] over the property on December 13, 1993. On December 21, 1993, TCT No. PT-92579 was issued in the name of JILCSFI.[24] It declared the property for taxation purposes under its name.[25]

On September 3, 1997, the RTC issued an Order in favor of the plaintiff, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing and in accordance with Section 4, Rule 67 of the Revised Rules of Court, the Court Resolves to DECLARE the plaintiff as having a lawful right to take the property in question for purposes for which the same is expropriated.
>
> The plaintiff and intervenor are hereby directed to submit at least two (2) names of their recommended commissioners for the determination of just compensation within ten (10) days from receipt hereof.
>
> SO ORDERED.[26]

The RTC held that, as gleaned from the declaration in Ordinance No. 21, there was substantial compliance with the definite and valid offer requirement of Section 19 of R.A. No. 7160, and that the expropriated portion is the most convenient access to the interior of Sto. Tomas Bukid.

Dissatisfied, JILCSFI elevated the case to the CA on the following assignment of errors:

First Assignment of Error

THE LOWER COURT SERIOUS[LY] ERRED WHEN IT RULED THAT PLAINTIFF-APPELLEE SUBSTANTIALLY COMPLIED WITH

---

[22] Exhibit "3".

[23] Exhibit "5".

[24] Exhibit "1".

[25] Exhibit "2".

[26] *Rollo*, pp. 58-59.

Supreme Court E-Library

THE LAW WHEN IT EXPROPRIATED JIL'S PROPERTY TO BE USED AS A RIGHT OF WAY.

Second Assignment of Error

THE LOWER COURT ERRED IN DISREGARDING JIL'S EVIDENCE PROVING THAT THERE WAS NO PUBLIC NECESSITY TO WARRANT THE EXPROPRIATION OF THE SUBJECT PROPERTY.[27]

The Court of Appeals' Decision

In a Decision dated March 13, 2001, the CA affirmed the order of the RTC.[28] The CA agreed with the trial court that the plaintiff substantially complied with Section 19 of R.A. No. 7160, particularly the requirement that a valid and definite offer must be made to the owner. The CA declared that the letter of Engr. Reyes, inviting Lorenzo Ching Cuanco to a conference to discuss with him the road project and the price of the lot, was a substantial compliance with the "valid and definite offer" requirement under said Section 19. In addition, the CA noted that there was also constructive notice to the defendants of the expropriation proceedings since a notice of *lis pendens* was annotated at the dorsal portion of TCT No. PT-92579 on November 26, 1993.[29]

Finally, the CA upheld the public necessity for the subject property based on the findings of the trial court that the portion of the property sought to be expropriated appears to be, not only the most convenient access to the interior of Sto. Tomas Bukid, but also an easy path for vehicles entering the area, particularly fire trucks. Moreover, the CA took into consideration the provision of Article 33 of the Rules and Regulations Implementing the Local Government Code, which regards the "construction or extension of roads, streets, sidewalks" as public use, purpose or welfare.[30]

---

[27] CA *Rollo*, p. 46.

[28] *Rollo*, p. 13.

[29] *Id.* at 10-11.

[30] *Rollo*, pp. 12-13.

Supreme Court E-Library

On April 6, 2001, JILCSFI filed a motion for reconsideration of the said decision alleging that the CA erred in relying on the photocopy of Engr. Reyes' letter to Lorenzo Ching Cuanco because the same was not admitted in evidence by the trial court for being a mere photocopy. It also contended that the CA erred in concluding that constructive notice of the expropriation proceeding, in the form of annotation of the notice of *lis pendens,* could be considered as a substantial compliance with the requirement under Section 19 of the Local Government Code for a valid and definite offer. JILCSFI also averred that no inspection was ever ordered by the trial court to be conducted on the property, and, if there was one, it had the right to be present thereat since an inspection is considered to be part of the trial of the case.[31]

The CA denied the motion for reconsideration for lack of merit. It held that it was not precluded from considering the photocopy[32] of the letter, notwithstanding that the same was excluded by the trial court, since the fact of its existence was duly established by corroborative evidence. This corroborative evidence consisted of the testimony of the plaintiff's messenger that he personally served the letter to Lorenzo Ching Cuanco, and Municipal Ordinance No. 21 which expressly stated that the property owners were already notified of the expropriation proceeding. The CA noted that JILCSFI failed to adduce controverting evidence, thus the presumption of regularity was not overcome.[33]

The Present Petition

In this petition, petitioner JILCSFI raises the following issues: (1) whether the respondent complied with the requirement, under Section 19 of the Local Government Code, of a valid and definite offer to acquire the property prior to the filing of the complaint; (2) whether its property which is already intended to be used for public purposes may still be expropriated by the respondent;

---

[31] CA *Rollo*, pp. 143-148.

[32] Exhibit "H",

[33] *Rollo,* p. 18.

Supreme Court E-Library

and (3) whether the requisites for an easement for right-of-way under Articles 649 to 657 of the New Civil Code may be dispensed with.

The petitioner stresses that the law explicitly requires that a valid and definite offer be made to the owner of the property and that such offer was not accepted. It argues that, in this case, there was no evidence to show that such offer has been made either to the previous owner or the petitioner, the present owner. The petitioner contends that the photocopy of the letter of Engr. Reyes, notifying Lorenzo Ching Cuanco of the respondent's intention to construct a road on its property, cannot be considered because the trial court did not admit it in evidence. And assuming that such letter is admissible in evidence, it would not prove that the offer has been made to the previous owner because mere notice of intent to purchase is not equivalent to an offer to purchase. The petitioner further argues that the offer should be made to the proper party, that is, to the owner of the property. It noted that the records in this case show that as of February 1993, it was already the owner of the property. Assuming, therefore, that there was an offer to purchase the property, the same should have been addressed to the petitioner, as present owner.[34]

The petitioner maintains that the power of eminent domain must be strictly construed since its exercise is necessarily in derogation of the right to property ownership. All the requirements of the enabling law must, therefore, be strictly complied with. Compliance with such requirements cannot be presumed but must be proved by the local government exercising the power. The petitioner adds that the local government should, likewise, comply with the requirements for an easement of right-of-way; hence, the road must be established at a point least prejudicial to the owner of the property. Finally, the petitioner argues that, if the property is already devoted to or intended to be devoted to another public use, its expropriation should not be allowed.[35]

---

[34] *Rollo*, pp. 159-162.

[35] *Rollo*, pp. 168-175.

Supreme Court E-Library

For its part, the respondent avers that the CA already squarely resolved the issues raised in this petition, and the petitioner failed to show valid and compelling reason to reverse the CA's findings. Moreover, it is not the function of the Supreme Court to weigh the evidence on factual issues all over again.[36] The respondent contends that the Ching Cuancos were deemed to have admitted that an offer to purchase has been made and that they refused to accept such offer considering their failure to specifically deny such allegation in the complaint. In light of such admission, the exclusion of the photocopy of the letter of Engr. Reyes, therefore, is no longer significant.[37]

The Ruling of the Court

The petition is meritorious.

At the outset, it must be stressed that only questions of law may be raised by the parties and passed upon by the Supreme Court in petitions for review on *certiorari*.[38] Findings of fact of the CA, affirming those of the trial court, are final and conclusive and may not be reviewed on appeal.[39]

Nonetheless, where it is shown that the conclusion is a finding grounded on speculations, surmises or conjectures or where the judgment is based on misapprehension of facts, the Supreme Court may reexamine the evidence on record.[40]

Eminent Domain: Nature and Scope

The right of eminent domain is usually understood to be an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose. The nature

---

[36] *Id*. at 196.

[37] *Id*. at 97-98.

[38] *Vicente v. Planters Development Bank*, G.R. No. 136112, 28 January 2003, 396 SCRA 282.

[39] *Larena v. Mapili*, G.R. No. 146341, 7 August 2003, 408 SCRA 484.

[40] *Chan v. Maceda, Jr.*, G.R. No. 142591, 30 April 2003, 402 SCRA 352.

Supreme Court E-Library

and scope of such power has been comprehensively described as follows:

> . . . It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare. Thus, the right of eminent domain appertains to every independent government without the necessity for constitutional recognition. The provisions found in modern constitutions of civilized countries relating to the taking of property for the public use do not by implication grant the power to the government, but limit the power which would, otherwise, be without limit. Thus, our own Constitution provides that "[p]rivate property shall not be taken for public use without just compensation." Furthermore, the due process and equal protection clauses act as additional safeguards against the arbitrary exercise of this governmental power.[41]

Strict Construction and Burden of Proof

The exercise of the right of eminent domain, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights.[42] It is one of the harshest proceedings known to the law. Consequently, when the sovereign delegates the power to a political unit or agency, a strict construction will be given against the agency asserting the power.[43] The authority to condemn is to be strictly construed in favor of the owner and against the condemnor.[44] When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained.[45]

Corollarily, the respondent, which is the condemnor, has the burden of proving all the essentials necessary to show the right

---

[41] *Heirs of Alberto Suguitan v. City of Mandaluyong,* G.R. No. 135087, 14 March 2000, 328 SCRA 137.

[42] *City of Manila v. Chinese Community of Manila,* 40 Phil. 349 (1919).

[43] *District Board of Trustees of the Daytona Beach Community College v. Allen,* 428 So.2d 704 (1983).

[44] *Pequonnock Yacht Club, Inc. v. City of Bridgeport,* 259 Conn. 592, 790 A.2d 1178 (2002).

[45] *City of Birmingham v. Brown,* 241 Ala. 203, 2 So.2d 305 (1941).

Supreme Court E-Library

of condemnation.[46] It has the burden of proof to establish that it has complied with all the requirements provided by law for the valid exercise of the power of eminent domain.

The grant of the power of eminent domain to local government units is grounded on Section 19 of R.A. No. 7160 which reads:

> SEC. 19. *Eminent Domain.* — A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws; *Provided, however,* That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: *Provided, further,* That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: *Provided, finally,* That the amount to be paid for the expropriated property shall be determined by the proper court based on the fair market value at the time of the taking of the property.

The Court declared that the following requisites for the valid exercise of the power of eminent domain by a local government unit must be complied with:

1. An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property.
2. The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless.
3. There is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws.

---

[46] *Gordon v. Conroe Independent School District,* 789 S.W.2d 395 (1990).

Supreme Court E-Library

4. A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.[47]

Valid and Definite Offer

Article 35 of the Rules and Regulations Implementing the Local Government Code provides:

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.

(b) If the owner or owners accept the offer in its entirety, a contract of sale shall be executed and payment forthwith made.

(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.

(d) The contract of sale shall be supported by the following documents:

(1) Resolution of the sanggunian authorizing the local chief executive to enter into a contract of sale. The resolution shall specify the terms and conditions to be embodied in the contract;

(2) Ordinance appropriating the amount specified in the contract; and

(3) Certification of the local treasurer as to availability of funds together with a statement that such fund shall not be disbursed or spent for any purpose other than to pay for the purchase of the property involved.

The respondent was burdened to prove the mandatory requirement of a valid and definite offer to the owner of the

---

[47] *Heirs of Alberto Suguitan v. City of Mandaluyong, supra.*

Supreme Court E-Library

property before filing its complaint and the rejection thereof by the latter.[48] It is incumbent upon the condemnor to exhaust all reasonable efforts to obtain the land it desires by agreement.[49] Failure to prove compliance with the mandatory requirement will result in the dismissal of the complaint.[50]

An offer is a unilateral proposition which one party makes to the other for the celebration of a contract.[51] It creates a power of acceptance permitting the offeree, by accepting the offer, to transform the offeror's promise into a contractual obligation.[52] Corollarily, the offer must be complete, indicating with sufficient clearness the kind of contract intended and definitely stating the essential conditions of the proposed contract.[53] An offer would require, among other things, a clear certainty on both the object and the cause or consideration of the envisioned contract.[54]

The purpose of the requirement of a valid and definite offer to be first made to the owner is to encourage settlements and voluntary acquisition of property needed for public purposes in order to avoid the expense and delay of a court action.[55] The law is designed to give to the owner the opportunity to sell his land without the expense and inconvenience of a protracted and expensive litigation. This is a substantial right which should be protected in every instance.[56] It encourages acquisition without

---

[48] *Wampler v. Trustees of Indiana University,* 241 Ind. 449, 172 N.E.2d 67 (1961).

[49] *Pequonnock Yacht Club, Inc. v. City of Bridgeport, supra.*

[50] *Casino Reinvestment Development Authority v. Katz*, 334 N.J. Super 473, 759 A.2d 1247 (2000).

[51] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume IV,* 1991 Edition, p. 448.

[52] Black's *Law Dictionary*, 5th Edition, p. 976.

[53] Tolentino, *supra*, p. 449.

[54] *Swedish Match, AB v. Court of Appeals*, G.R. No. 128120, 20 October 2004, 441 SCRA 1.

[55] *City of Atlantic v. Cynwyd Investments,* 148 N.J. 55, 689 A.2d 712 (1997).

[56] *In Re University of Avenue in City of Rochester*, 82 Misc. 598, 144 N.Y.S. 1086 (1913).

Supreme Court E-Library

litigation and spares not only the landowner but also the condemnor, the expenses and delays of litigation. It permits the landowner to receive full compensation, and the entity acquiring the property, immediate use and enjoyment of the property. A reasonable offer in good faith, not merely perfunctory or *pro forma* offer, to acquire the property for a reasonable price must be made to the owner or his privy.[57] A single *bona fide* offer that is rejected by the owner will suffice.

The expropriating authority is burdened to make known its definite and valid offer to all the owners of the property. However, it has a right to rely on what appears in the certificate of title covering the land to be expropriated. Hence, it is required to make its offer only to the registered owners of the property. After all, it is well-settled that persons dealing with property covered by a Torrens certificate of title are not required to go beyond what appears on its face.[58]

In the present case, the respondent failed to prove that before it filed its complaint, it made a written definite and valid offer to acquire the property for public use as an access road. The only evidence adduced by the respondent to prove its compliance with Section 19 of the Local Government Code is the photocopy of the letter purportedly bearing the signature of Engr. Jose Reyes, to only one of the co-owners, Lorenzo Ching Cuanco. The letter reads:

MR. LORENZO CHING CUANCO
18 Alcalde Jose Street
Capasigan, Pasig
Metro Manila

Dear Mr. Cuanco:

This refers to your parcel of land located along E. Santos Street, Barangay Palatiw, Pasig, Metro Manila embraced in and covered by TCT No. 66585, a portion of which with an area of fifty-one (51)

---

[57] *Chambers v. Public Service Company of Indiana, Inc.*, 265 Ind. 336, 355 N.E.2d 781 (1976).

[58] *Orquiola v. Court of Appeals*, G.R. No. 141463, 6 August 2002, 386 SCRA 301.

Supreme Court E-Library

square meters is needed by the Municipal Government of Pasig for conversion into a road-right of way for the benefit of several residents living in the vicinity of your property. Attached herewith is the sketch plan for your information.

In this connection, may we respectfully request your presence in our office to discuss this project and the price that may be mutually agreed upon by you and the Municipality of Pasig.

Thank you.

Very truly yours,

(Sgd.)
ENGR. JOSE L. REYES
Technical Asst. to the Mayor
on Infrastructure[59]

It bears stressing, however, that the respondent offered the letter only to prove its desire or intent to acquire the property for a right-of-way.[60] The document was not offered to prove that the respondent made a definite and valid offer to acquire the property. Moreover, the RTC rejected the document because the respondent failed to adduce in evidence the original copy thereof.[61] The respondent, likewise, failed to adduce evidence that copies of the letter were sent to and received by all the co-owners of the property, namely, Lorenzo Ching Cuanco, Victor Ching Cuanco and Ernesto Kho.

The respondent sought to prove, through the testimony of its messenger, Rolando Togonon, that Lorenzo Ching Cuanco received the original of the said letter. But Togonon testified that he merely gave the letter to a lady, whom he failed to identify. He stated that the lady went inside the store of Lorenzo Ching Cuanco, and later gave the letter back to him bearing the signature purportedly of one Luz Bernarte. However, Togonon admitted, on cross-examination, that he did not see Bernarte affixing her signature on the letter. Togonon also declared that

[59] Records, p. 57.

[60] *Id*. at 38.

[61] Records, p. 41.

Supreme Court E-Library

he did not know and had never met Lorenzo Ching Cuanco and Bernarte:

Q And after you received this letter from that lady, what did you do afterwards?

A I brought it with me, that letter, and then I went to Caruncho.

Q So, [M]r. Witness, you are telling this Honorable Court that this letter intended to Mr. Lorenzo was served at Pasig Trading which was situated at No. 18 Alkalde Jose Street on February 23, 1993?

A Yes, Ma'am.

ATTY. TAN:

That is all for the witness, Your Honor.

COURT:

Do you have any cross-examination?

ATTY. JOLO:

Just a few cross, Your Honor, please. With the kind permission of the Honorable Court.

COURT:

Proceed.

CROSS-EXAMINATION

BY ATTY. JOLO:

Q Mr. Witness, do you know Mr. Lorenzo Ching [Cuanco]

A I do not know him.

Q As a matter of fact, you have not seen him even once, isn't not (*sic*)?

A Yes, Sir.

Q This Luz Bernarte, do you know her?

A I do not know her.

Q As a matter of fact, you did not see Mrs. Bernarte even once?

A That is correct.

Supreme Court E-Library

Q And as a matter of fact, [M]r. Witness, you did not see Mrs. Luz Bernarte affixing her signature on the bottom portion of this demand letter, marked as Exh. "C-2"?

A Yes, Sir.[62]

Even if the letter was, indeed, received by the co-owners, the letter is not a valid and definite offer to purchase a specific portion of the property for a price certain. It is merely an invitation for only one of the co-owners, Lorenzo Ching Cuanco, to a conference to discuss the project and the price that may be mutually acceptable to both parties.

There is no legal and factual basis to the CA's ruling that the annotation of a notice of *lis pendens* at the dorsal portion of petitioner's TCT No. PT-92579 is a substantial compliance with the requisite offer. A notice of *lis pendens* is a notice to the whole world of the pendency of an action involving the title to or possession of real property and a warning that those who acquire an interest in the property do so at their own risk and that they gamble on the result of the litigation over it.[63] Moreover, the *lis pendens* was annotated at the dorsal portion of the title only on November 26, 1993, long after the complaint had been filed in the RTC against the Ching Cuancos.

Neither is the declaration in one of the whereas clauses of the ordinance that "the property owners were already notified by the municipality of the intent to purchase the same for public use as a municipal road," a substantial compliance with the requirement of a valid and definite offer under Section 19 of R.A. No. 7160. Presumably, the *Sangguniang Bayan* relied on the erroneous premise that the letter of Engr. Reyes reached the co-owners of the property. In the absence of competent evidence that, indeed, the respondent made a definite and valid offer to all the co-owners of the property, aside from the letter of Engr. Reyes, the declaration in the ordinance is not a compliance with Section 19 of R.A. No. 7160.

---

[62] TSN, 1 August 1994, pp. 6-8.

[63] *Los Baños Rural Bank, Inc. v. Africa*, G.R. No. 143994, 11 July 2002, 384 SCRA 535.

Supreme Court E-Library

The respondent contends, however, that the Ching Cuancos, impliedly admitted the allegation in its complaint that an offer to purchase the property was made to them and that they refused to accept the offer by their failure to specifically deny such allegation in their answer. This contention is wrong. As gleaned from their answer to the complaint, the Ching Cuancos specifically denied such allegation for want of sufficient knowledge to form a belief as to its correctness. Under Section 10,[64] Rule 8 of the Rules of Court, such form of denial, although not specific, is sufficient.

Public Necessity

We reject the contention of the petitioner that its property can no longer be expropriated by the respondent because it is intended for the construction of a place for religious worship and a school for its members. As aptly explained by this Court in *Manosca v. Court of Appeals*,[65] thus:

It has been explained as early as *Seña v. Manila Railroad Co.*, that:

> . . . A historical research discloses the meaning of the term "*public use*" to be one of constant growth. As society advances, its demands upon the individual increases and each demand is a new use to which the resources of the individual may be devoted. . . . for "*whatever is beneficially employed for the community is a public use*."

Chief Justice Enrique M. Fernando states:

> The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached

[64] Section 10, Rule 8 of the Rules of Court provides:

Section 10. *Specific denial*. — A defendant must specify each material allegation of fact the truth of which he does not admit and whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. *Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.* (Italics supplied)

[65] G.R. No. 106440, 29 January 1996, 252 SCRA 412.

Supreme Court E-Library

> to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not so any more. As long as the purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be subdivided into small lots for resale at cost to individuals. The other is the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirements of public use.

Chief Justice Fernando, writing the *ponencia* in *J.M. Tuason & Co. vs. Land Tenure Administration,* has viewed the Constitution a dynamic instrument and one that *"is not to be construed narrowly or pedantically so as to enable it to meet adequately whatever problems the future has in store."* Fr. Joaquin Bernas, a noted constitutionalist himself, has aptly observed that what, in fact, has ultimately emerged is a concept of public use which is just as broad as "*public welfare*."

Petitioners ask: But "(w)hat is the so-called unusual interest that the expropriation of (Felix Manalo's) birthplace become so vital as to be a public use appropriate for the exercise of the power of eminent domain" when only members of the *Iglesia ni Cristo* would benefit? This attempt to give some religious perspective to the case deserves little consideration, for what should be significant is the principal objective of, not the casual consequences that might follow from, the exercise of the power. The purpose in setting up the marker is essentially to recognize the distinctive contribution of the late Felix Manalo to the culture of the Philippines, rather than to commemorate his founding and leadership of the *Iglesia ni Cristo*. The practical reality that greater benefit may be derived by members of the *Iglesia ni Cristo* than by most others could well be true but such a peculiar advantage still remains to be merely incidental and secondary in nature. Indeed, that only a few would actually benefit from the expropriation of property, does not necessarily diminish the essence and character of public use.

The petitioner asserts that the respondent must comply with the requirements for the establishment of an easement of right-of-way, more specifically, the road must be constructed at the point least prejudicial to the servient state, and that there must

Supreme Court E-Library

be no adequate outlet to a public highway. The petitioner asserts that the portion of the lot sought to be expropriated is located at the middle portion of the petitioner's entire parcel of land, thereby splitting the lot into two halves, and making it impossible for the petitioner to put up its school building and worship center.

The subject property is expropriated for the purpose of constructing a road. The respondent is not mandated to comply with the essential requisites for an easement of right-of-way under the New Civil Code. Case law has it that in the absence of legislative restriction, the grantee of the power of eminent domain may determine the location and route of the land to be taken[66] unless such determination is capricious and wantonly injurious.[67] Expropriation is justified so long as it is for the public good and there is genuine necessity of public character.[68] Government may not capriciously choose what private property should be taken.[69]

The respondent has demonstrated the necessity for constructing a road from E. R. Santos Street to Sto. Tomas Bukid. The witnesses, who were residents of Sto. Tomas Bukid, testified that although there were other ways through which one can enter the vicinity, no vehicle, however, especially fire trucks, could enter the area except through the newly constructed Damayan Street. This is more than sufficient to establish that there is a genuine necessity for the construction of a road in the area. After all, absolute necessity is not required, only reasonable and practical necessity will suffice.[70]

---

[66] *Alabama Elec. Co-op., Inc. v. Watson*, 419 So. 2d 1351 (1982).

[67] *Alabama Power Co. v. Tauton*, 465 So. 2d 1105 (1984).

[68] *Municipality of Meycauayan, Bulacan v. Intermediate Appellate Court*, G.R. No. L-72126, 29 January 1988, 157 SCRA 640.

[69] *Moday v. Court of Appeals*, G.R. No. 107916, 20 February 1997, 268 SCRA 586.

[70] *Manotok v. National Housing Authority*, G.R. No. L-55166, 21 May 1987, 150 SCRA 89.

Supreme Court E-Library

Nonetheless, the respondent failed to show the necessity for constructing the road particularly in the petitioner's property and not elsewhere.[71] We note that the whereas clause of the ordinance states that the 51-square meter lot is the shortest and most suitable access road to connect Sto. Tomas Bukid to E. R. Santos Street. The respondent's complaint also alleged that the said portion of the petitioner's lot has been surveyed as the best possible ingress and egress. However, the respondent failed to adduce a preponderance of evidence to prove its claims.

On this point, the trial court made the following findings:

> . . . The contention of the defendants that there is an existing alley that can serve the purpose of the expropriator is not accurate. An inspection of the vicinity reveals that the alley being referred to by the defendants actually passes thru Bagong Taon St. but only about one-half (1/2) of its entire length is passable by vehicle and the other half is merely a foot-path. It would be more inconvenient to widen the alley considering that its sides are occupied by permanent structures and its length from the municipal road to the area sought to be served by the expropriation is considerably longer than the proposed access road. The area to be served by the access road is composed of compact wooden houses and literally a slum area. As a result of the expropriation of the 51-square meter portion of the property of the intervenor, a 3-meter wide road open to the public is created. This portion of the property of the intervenor is the most convenient access to the interior of Sto. Tomas Bukid since it is not only a short cut to the interior of the Sto. Tomas Bukid but also an easy path for vehicles entering the area, not to mention the 3-meter wide road requirement of the Fire Code.[72]

However, as correctly pointed out by the petitioner, there is no showing in the record that an ocular inspection was conducted during the trial. If, at all, the trial court conducted an ocular

---

[71] See *City of Manila v. Chinese Community of Manila*, *supra*, where the Court noted that the record contains no proof of the necessity of opening the same through the cemetery; *Manotok v. National Housing Authority*, *supra*, where the Court observed that there is no showing as to why the properties involved were singled out for expropriation or what necessity impelled the particular choices or selection.

[72] *Rollo*, pp. 57-58.

Supreme Court E-Library

inspection of the subject property during the trial, the petitioner was not notified thereof. The petitioner was, therefore, deprived of its right to due process. It bears stressing that an ocular inspection is part of the trial as evidence is thereby received and the parties are entitled to be present at any stage of the trial.[73] Consequently, where, as in this case, the petitioner was not notified of any ocular inspection of the property, any factual finding of the court based on the said inspection has no probative weight. The findings of the trial court based on the conduct of the ocular inspection must, therefore, be rejected.

IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The Decision and Resolution of the Court of Appeals are *REVERSED AND SET ASIDE*. The RTC is ordered to dismiss the complaint of the respondent without prejudice to the refiling thereof.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Tinga, and *Chico-Nazario, JJ.,* concur.

---

[73] Ricardo J. Francisco, *Evidence,* 3rd ed., 1996, p. 52, citing *Benton v. State,* 30 Ark. 329; *Denver Omnibus & Cab Co. v. War Auction Co.*, 47 Colo. 446, 1076 Pac. 1073.