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SECOND DIVISION

[G.R. No. L-45673. November 22, 1977]

Sps. SERAPIO SAN DIEGO and ASUNCION BALAJADIA, RODANTE SAN DIEGO and LILIA S.D. CHAVEZ, *petitioners, vs.* **HON. NELLY L. ROMERO VALDELLON, Judge, Branch XXII, Court of First Instance of Rizal (Pasig), and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; STATE INHERENT POWERS; EMINENT DOMAIN; PRESIDENTIAL DECREE NO. 2; DOES NOT REQUIRE PRIOR HEARING BEFORE GOVERNMENT CAN EXPROPRIATE PROPERTY; CASE AT BAR.**— There is insistence on the part of petitioners that there be a prior hearing on the question of necessity before immediate possession can be granted the Republic of the Philippines. That is an untenable stand. There is no such requirement in Presidential Decree No. 42. As noted in the assailed order, the defenses raised by petitioner in their opposition to the motion for immediate possession could be considered in the trial on the merits. The Decree is plain and explicit. All that is required is notice to the owner of the property sought to be condemned. Petitioners were duly notified. They were so informed upon the filing of the complaint by the Republic of the Philippines on October 25, 1976. The received copy of the manifestation and motion for immediate possession dated November 10, 1976. As a matter of fact, in a pleading dated November 17, 1976, they presented an urgent *ex-parte* motion to defer resolution on writ of possession. The order of respondent Judge of November 24, 1976 was agreeable to such manifestation and motion deferring a ruling on the plea for immediate possession until it could he shown that the requirements of both Presidential Decrees Nos. 42 and 76 have been complied with.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; EXCESS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION, NOT A CASE OF.**— What cannot be sufficiently stressed is that there being a compliance with Presidential

Supreme Court E-Library

Decrees which now constitute part of the law of the land and there being no claim that such decrees are violative of any constitutional provision, it follows that respondent Judge is not susceptible to the accusation of acting either in excess or with grave abuse of discretion when all that she did was to comply. Moreover, as noted at the outset, the assailed order is in conformity with the aforesaid *Arce v. Genato* decision, the facts of which are controlling. As a matter of law, the position taken by respondent Judge is even less vulnerable as the plaintiff in this case is the Republic of the Philippines, seeking to expropriate property not only of petitioners but of others to construct a much-needed national highway. All that respondent Judge did was to implement the applicable decrees and thus assure that no judicial obstacle be placed to the governmental efforts aimed at completing infrastructure projects to assure economic growth and development.

APPEARANCES OF COUNSEL

David G. Nitafan & Associates for petitioners.

Acting Solicitor General Vicente V. Mendoza, Assistant Solicitor General Ruben E. Agpalo and *Solicitor Amado Aquino* for respondents.

D E C I S I O N

FERNANDO, *J.*:

This is the second case where an order of a lower court judge, respondent Judge Nelly L. Romero Valdellon in this instance, in an expropriation proceeding allowing immediate possession, the other respondent this time being the Republic of the Philippines, upon compliance with the applicable Presidential Decrees,[1] is

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[1] The basic order is Presidential Decree No. 42 (1972). Presidential Decree No. 76 (1972) requires natural or juridical persons owning or administering real property, including the improvements thereon to file sworn statement of the true value of such property. It is provided in Section 1 thereof: "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

Supreme Court E-Library

assailed as having been issued either in excess of jurisdiction or with grave abuse of discretion. The challenged order of January 26, 1977 reads as follows: "Acting on plaintiff's 'Manifestation and Motion' dated November 10, 1976 as well as that dated December 15, 1976, the latter motion having attached to it an amended estimate of the costs of damages on oppositor's properties, and it appearing that the requirements of both Presidential Decrees Nos. 42 and 76 have been complied with, and since the defenses raised by defendants in their opposition and answer are proper during the trial on the merits, plaintiff is hereby authorized to take possession of the property sought to be expropriated, after depositing with the Philippine National Bank in the name of defendants the additional amount of ₱138.69, representing the difference in appraisal."[2] In the other case, *Arce v. Genato*,[3] such an issue had to be resolved as the immediate possession of the property sought to be expropriated by respondent Municipality of Baliangao of Misamis Occidental was allowed by respondent Judge Genato. In dismissing such petition, this Court held: "Presidential Decree No. 42 speaks categorically. It is thereby decreed and ordered 'as part of the law of the land that, upon filing in the proper court of the complaint in eminent domain proceedings or at anytime thereafter, and after due notice to the defendant, plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the Philippine National Bank, in its main office or any of its branches or agencies, an amount equivalent to the assessed value of the property for purposes of taxation to be held by said bank subject to the orders and final disposition of the court.' The decree, issued on November 9, 1972, was to 'take effect immediately.' It is beyond question that such a decree is included within the Transitory Provisions of the Constitution. So it is therein expressly provided: 'All proclamations, orders, decrees, instructions, and acts promulgated,

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market value declared by the owner or administrator, or such market value as determined by the assessor, whichever is lower."

[2] Petition, Annex A.

[3] L-40587, February 27, 1976, 69 SCRA 544.

Supreme Court E-Library

issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting the martial law or, the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly.' Deference to it, as is to be expected, has been accorded by this Court. The task, therefore, of assailing a lower court order in compliance therewith, made a part of the law of the land by the Constitution itself, is one attended with extreme difficulty. That is why on its face, the weakness of the petition is rather apparent."[4] So it must be likewise in this case.

There is no dispute as to the facts. The Republic of the Philippines, on October 29, 1976, started expropriation proceedings with a complaint against the spouses Serapio San Diego and Asuncion Balajadia, Rodante San Diego, and Lilia S. D. Chavez, now petitioners, filed with the sala of respondent Judge. The property sought to be condemned covering 642 square meters, situated in the municipality of Morong, Rizal, would form part of a national highway, the Pasig-Sta. Cruz-Calamba Road (Manila East Road), 2nd IBRD Project. It was alleged in such complaint that upon the filing thereof and with due notice to the defendants, "the plaintiff is authorized to take and enter into the possession of the properties involved, upon deposit made with the Philippine National Bank, at its main office or at any of its branches or agencies, of the amount equivalent to the assessed value of the subject properties for purposes of taxation, to be held by said bank subject to the orders and final disposition of the court (Presidential Decree No. 42)."[5] It was also set forth in such complaint that for taxation purposes as computed in accordance with the rate provided for under Presidential Decree No. 76, the value of such property is ₱2,889.00.[6] There was likewise mention of its being needed

[4] *Ibid.*, 547-548.

[5] Petition, Annex B, par. VII.

[6] *Ibid.*, par. VIII.

Supreme Court E-Library

for the construction of the Pasig-Sta. Cruz-Calamba Road (Manila East Road), 2nd IBRD Project.[7] Then came as part of the prayer a plea for the issuance of an order or writ authorizing it to take possession of the parcels of land in question and appropriate the same for public use, upon the sum of ₱2,889.00 being deposited with the Philippine National Bank in its main office or any of its branches or agencies pursuant to Presidential Decree No. 42.[8] Thereafter, on November 10, 1976, a manifestation and motion of the Republic of the Philippines alleging that it has deposited with the Philippine National Bank, Pasig Branch, the amount of ₱5,848.00 representing the assessed value for taxation purposes of the lands sought to be expropriated and the "value of the affected improvements thereon," was filed with the lower court, with the prayer "that an order be issued authorizing [it] to take possession of said properties sought to be expropriated and appropriate the same for public use."[9] Petitioners as defendants in an *ex-parte* motion sought deferment of the resolution of the plea for issuance of a writ of possession, on the ground that there had been no independent assessment by the Provincial Assessor of Rizal of the improvements on the lands in question pursuant to Presidential Decree No. 76, the deposit requirement of Presidential Decree No. 42 not having been complied with.[10] Respondent Judge granted such motion in an order of November 24, 1976 deferring resolution of the plea by the Republic for the issuance of a writ of possession until it could be shown that the requirements of the aforesaid Presidential decrees were complied with.[11] There were further proceedings, respondent Judge even conducting an ocular inspection and deferring action on the motion for reconsideration filed by the Republic, understandably convinced with the immediate possession of the land needed until there be an amended

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[7] *Ibid.*, par. IX.

[8] *Ibid.*, Prayer.

[9] *Ibid.*, Annex C.

[10] *Ibid.*, Annex D.

[11] *Ibid.*, Annex E.

Supreme Court E-Library

estimate of the damages to be incurred by petitioners. So it was set forth in an order of December 8, 1976.[12] Subsequently, on December 15, 1976, respondent Republic filed a manifestation and motion praying that having submitted an amended estimate of the value of the improvements of the land in question in the amount of ₱3,097.39, or an increase of ₱138.39 over the previous appraisal, an order be issued authorizing it (Republic) to take possession of the properties involved after it shall have deposited the additional amount of ₱138.39.[13] There was an opposition on the part of petitioners.[14] It was not until a month later, on January 26, 1977 to be exact, that the order, subject of this *certiorari* proceeding, was issued.

It was the submission of Solicitor General Estelito P. Mendoza[15] in his comment treated as the answer that the requisites of Presidential Decree No. 42 having been fully complied with, there being filed in the proper court a complaint for expropriation with the deposit in the Philippine National Bank of an amount equivalent to the assessed value of the property for purposes of taxation to be held by said bank subject to the orders and final disposition of the court, as well as the notice to the defendant, the order cannot be impugned on the ground that the court acted either in excess or with grave abuse of discretion. Independently, therefore, of the authoritative ruling in the aforesaid *Arce v. Genato* decision, there would be no justification for sustaining the claim of petitioners. *Certiorari*, as noted at the outset, does not lie.

1. There is insistence on the part of petitioners that there be a prior hearing on the question of necessity before immediate possession can be granted the Republic of the Philippines. That is an untenable stand. There is no such requirement in Presidential Decree No. 42. As noted in the assailed order, the defenses

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[12] *Ibid.*, Annex J.

[13] *Ibid.*, Annex K.

[14] *Ibid.*, Annex L.

[15] He was assisted by Assistant Solicitor General Ruben E. Agpalo and Solicitor Amado D. Aquino.

Supreme Court E-Library

raised by petitioner in their opposition to the motion for immediate possession could be considered in the trial on the merits. The Decree is plain and explicit. All that is required is notice to the owner of the property sought to be condemned. Petitioners were duly notified. They were so informed upon the filing of the complaint by the Republic of the Philippines on October 25, 1976.[16] The received copy of the manifestation and motion for immediate possession dated November 10, 1976.[17] As a matter of fact, in a pleading dated November 17, 1976, they presented an urgent *ex-parte* motion to defer resolution on writ of possession.[18] The order of respondent Judge of November 24, 1976 was agreeable to such manifestation and motion deferring a ruling on the plea for immediate possession until it could he shown that the requirements of both Presidential Decrees Nos. 42 and 76 have been complied with.[19] There was a motion for reconsideration dated November 26, 1976 by the Republic of the Philippines.[20] Petitioners again filed their own opposition to such motion on December 2, 1976.[21] Again, respondent Judge held in abeyance the ruling on the motion for reconsideration until after an ocular inspection as set forth in an order of December 3, 1976.[22] Even after such an ocular inspection, there was another order from respondent Judge of December 8, 1976 holding in abeyance the action on the motion for reconsideration by the Republic of the Philippines to enable it to have an immediate possession until an amended estimate of the cost of damages on the property have been submitted by the Republic of the Philippines.[23] Then came such data in a manifestation and motion

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[16] Petition. Annex B.

[17] *Ibid.*. Annex C.

[18] *Ibid.*. Annex D.

[19] *Ibid.*. Annex E.

[20] *Ibid.*. Annex F.

[21] *Ibid.*. Annex G.

[22] *Ibid.*. Annex H.

[23] *Ibid.*. Annex J.

Supreme Court E-Library

filed by the Republic of the Philippines on December 15, 1976 wherein it asked that an order be issued authorizing it to take possession of the property sought to be condemned.[24] On December 27, 1976, an opposition was filed by petitioners.[25] It was not until January 26, 1977, long after the plea for possession, that the assailed order was issued. Any assertion, therefore, that the requirements of Presidential Decree No. 42 were not complied with before the order for possession was issued would be absolutely bereft of any support either in fact or in law.

2. Nonetheless, petitioners, in pleading after pleading both in the lower court and with this Tribunal, reiterate their stand that there should be a prior hearing before an order for immediate possession could be issued. Ostensibly, support is derived from two judicial decisions, *Urban Estates, Inc. v. Montesa*[26] and *Republic of the Philippines v. La Order de PP. Benedictinos de Filipinas*.[27] Neither case is applicable. The opening paragraph of the Urban Estates decision reads as follows: "This case, brought here on appeal from an order of Judge Agustin P. Montesa denying defendant's motion to dismiss, concerns the authority of the City of Manila to expropriate a tract of land situated within the city limits and having an area of 49,553.10 square meters, more or less."[28] Moreover, as stressed in the opinion of the *ponente*, Justice Tuazon, the question deals with the power of the government to condemn "urban private lands for subdivision or resale to private persons ***."[29] Since such an issue had previously been passed upon in the leading case of *Guido v. Rural Progress Administration*,[30] *De Borja v. Commonwealth of the Philippines*,[31] and *Arellano Law*

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[24] *Ibid.*, Annex K.

[25] *Ibid.*, Annex L.

[26] 88 Phil. 348 (1951).

[27] 111 Phil. 230 (1961).

[28] 88 Phil. 348, 349.

[29] *Ibid.*, 351.

[30] 84 Phil. 847 (1949).

[31] 85 Phil. 51 (1949).

Supreme Court E-Library

Colleges v. City of Manila,[32] he stressed that "the question is no longer open, at least as far as inferior courts are concerned."[33] Nor could petitioners derive comfort from the *Republic v. La Orden de PP. Benedictinos* decision. For as expressly set forth in the opinion of Justice Dizon, there was an order "authorizing appellant [Republic of the Philippines] to take immediate possession [of the property in question] upon depositing said amount."[34]

3. What cannot be sufficiently stressed is that there being a compliance with Presidential Decrees which now constitute part of the law of the land and there being no claim that such decrees are violative of any constitutional provision, it follows that respondent Judge is not susceptible to the accusation of acting either in excess or with grave abuse of discretion when all that she did was to comply. Moreover, as noted at the outset, the assailed order is in conformity with the aforesaid *Arce v. Genato* decision, the facts of which are controlling. As a matter of law, the position taken by respondent Judge is even less vulnerable as the plaintiff in this case is the Republic of the Philippines, seeking to expropriate property not only of petitioners but of others to construct a much-needed national highway. All that respondent Judge did was to implement the applicable decrees and thus assure that no judicial obstacle be placed to the governmental efforts aimed at completing infrastructure projects to assure economic growth and development.

WHEREFORE, the petition for *certiorari* is dismissed. Costs against petitioners.

Barredo, Antonio, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

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[32] 85 Phil. 663 (1950).

[33] 88 Phil. 348, 351.

[34] 111 Phil. 230, 231. The amount is in the sum of ₱270,000.00.