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SECOND DIVISION

[G.R. No. 154614. November 25, 2004]

THE CITY OF ILOILO, Represented by HON. JERRY P. TREÑAS, City Mayor, *petitioner, vs.* **HON. JUDGE EMILIO LEGASPI, Presiding Judge, RTC, Iloilo City, Branch 22, and HEIRS OF MANUELA YUSAY, Represented by SYLVIA YUSAY DEL ROSARIO and ENRIQUE YUSAY, JR.,** *respondents*.

SYNOPSIS

Petitioner City of Iloilo offered to purchase the property of private respondents for the purpose of converting the same as an on-site relocation for the poor and landless residents of the city in line with its housing development program. When private respondents refused to sell their properties, an expropriation case was thereafter filed. After depositing with the court the amount of ₱2,809,696.50 representing fifteen percent (15%) of the fair market value of the property sought to be expropriated based on its current tax declaration, petitioner filed a Motion for Issuance of Writ of Possession. The trial court, however, held in abeyance the resolution of the motion until after the petitioner shall have rested their case after the trial on the merits. Petitioner moved for reconsideration, but the trial court denied it. Hence, this petition where it was argued that the duty to issue a Writ of Possession becomes a ministerial duty upon the trial court without necessity of a hearing once the provisional deposit under Section 2 of Rule 67 has been complied with. On the other hand, private respondents alleged, among other things, that there was a need for a court hearing before a writ of possession can be issued, because the amended complaint was assailed before the lower court for not being sufficient in form and substance; that petitioner waived its right to ask for the immediate possession of the property since it took the latter eight (8) months and twelve (12) days from the filing of the Amended Complaint, and nine (9) months and thirteen (13) days from the filing of the Original Complaint, before it filed the Motion for Issuance of Writ of Possession.

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The Court granted the petition, and directed the respondent Judge to issue the writ of possession prayed for and to continue hearing the case. According to the Court, for a writ of possession to issue, only two requirements are required: the sufficiency in form and substance of the complaint and the required provisional deposit. Upon compliance with these requirements, the issuance of a writ of possession becomes ministerial. In fact, no hearing is required for the issuance of a writ of possession. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint. In this case, the sufficiency of the Amended Complaint was confirmed by public respondent when he set the case for pre-trial and hearing. The Court further found that the petitioner did not waive its right. Section 19 of Rep. Act No. 7160 does not put a time limit as to when a local government may immediately take possession of the real property. As long as the expropriation proceedings have been commenced and the deposit has been made, the local government unit cannot be barred from praying for the issuance of a writ of possession.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; NO JURIDICAL EXISTENCE UNTIL AND UNLESS IT IS SET IN WRITING, SIGNED, PROMULGATED AND SERVED ON THE PARTIES; CASE AT BAR.—** Time-honored and of constant observance is the principle that no judgment, or order, whether final or interlocutory, has juridical existence until and unless it is set in writing, signed, and promulgated, *i.e.,* delivered by the Judge to the Clerk of Court for filing, release to the parties and implementation, and that indeed, even after promulgation, it does not bind the parties until and unless notice thereof is duly served on them by any of the modes prescribed by law. This is so even if the order or judgment has in fact been orally pronounced in the presence of the parties, or a draft thereof drawn up and signed and/or a copy thereof somehow read or acquired by any party. In the case at bar, the Motion for Reconsideration filed by petitioner was filed before the 15 April 2002 order became final. The order dictated in open court had no juridical existence before it is set in writing, signed,

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promulgated and served on the parties. Since the order orally pronounced in court had no juridical existence yet, the period within which to file a motion for reconsideration cannot be reckoned therefrom, but from the time the same was received in writing. Petitioner had fifteen (15) days from its receipt of the written order on 26 April 2002 within which to file a motion for reconsideration. Thus, when it filed the motion for reconsideration on 09 May 2002, the said motion was timely filed.

2. POLITICAL LAW; LOCAL GOVERNMENT; POWER OF EMINENT DOMAIN; REPUBLIC ACT NO. 7160; AUTHORITY TO IMMEDIATELY ENTER THE PREMISES REQUISITES; ISSUANCE OF WRIT OF POSSESSION BECOMES MINISTERIAL UPON COMPLIANCE THEREWITH.— Petitioner has the irrefutable right to exercise its power of eminent domain. It being a local government unit, the basis for its exercise is granted under Section 19 of Rep. Act No. 7160, to wit: x x x. The requisites for authorizing immediate entry are as follows: (1) the filing of a complaint for expropriation sufficient in form and substance; and (2) the deposit of the amount equivalent to fifteen percent (15%) of the fair market value of the property to be expropriated based on its current tax declaration. Upon compliance with these requirements, the issuance of a writ of possession becomes ministerial.

3. ID.; ID.; ID.; ID.; HEARING REQUIRED TO DETERMINE COMPLIANCE WITH THE REQUIREMENTS FOR SOCIALIZED HOUSING; CASE AT BAR.— On the averment of private respondents that the Amended Complaint failed to allege compliance with the mandatory requirements for the exercise of the power of eminent domain for purposes of socialized housing as interpreted in the *Filstream* cases, it appears that the Amended Complaint did contain allegations showing compliance therewith. However, whether there is, indeed, compliance with these requirements, the Court deems it not proper to resolve the issue at this time. Hearing must be held to establish compliance. In *City of Manila v. Serrano*, this Court ruled that "hearing is still to be held to determine whether or not petitioner indeed complied with the requirements provided in Rep. Act No. 7279. . . . The determination of this

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question must await the hearing on the complaint for expropriation, particularly the hearing for the condemnation of the properties sought to be expropriated." From the foregoing, it is clear that an evidentiary hearing must be conducted if compliance with the requirements for socialized housing has been made. This hearing, however, is not a hearing to determine if a writ of possession is to be issued, but whether there was compliance with the requirements for socialized housing.

4. **ID.; ID.; ID.; ID.; WRIT OF POSSESSION; REQUISITES FOR ISSUANCE THEREOF.—** For a writ of possession to issue, only two requirements are required: the sufficiency in form and substance of the complaint and the required provisional deposit. In fact, no hearing is required for the issuance of a writ of possession. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint. In this case, the sufficiency of the Amended Complaint was further confirmed by public respondent when he set the case for pre-trial and hearing.

5. **ID.; ID.; ID.; ID.; ID.; PRESENCE OF ESTOPPEL NEGATED BY THE FILING OF THE MOTION FOR RECONSIDERATION AT THE EARLIEST POSSIBLE TIME.—** Estoppel may be successfully invoked only if the party fails to raise the question in the early stages of the proceedings. In the case before us, petitioner, through its counsel, undeniably committed a mistake when it agreed that the resolution of its Motion for Issuance of Writ of Possession be made by public respondent after a hearing is conducted and after it has adduced its evidence. To remedy this, petitioner immediately filed a Motion for Reconsideration. The filing thereof was precisely for the purpose of rectifying the error it committed. With the timely filing of the motion for reconsideration, petitioner cannot be held in estoppel because it right away asked the court to nullify the agreement it entered into. The filing of the motion for reconsideration which was done at the earliest possible time clearly negates the presence of estoppel.

6. **ID.; ID.; ID.; ID.; ID.; PRIOR HEARING NOT REQUIRED BEFORE ISSUANCE THEREOF.—** Under the facts of the case, estoppel should not apply because petitioner is simply

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following the procedure laid down by the rules and jurisprudence. Under Section 19 of Rep. Act No. 7160 (law governing exercise of eminent domain by local government units [LGU]) and Section 2 of Rule 67 of the Revised Rules of Civil Procedure (law governing exercise of eminent domain by entities other than LGUs), and in the cases of *Robern Development Corporation v. Quitain, et al.*, and *Biglang-awa v. Bacalla, et al.*, a prior hearing is not required before a writ of possession can be issued. As above discussed, a complaint, sufficient in form and substance, and the required deposit, are the only requirements before a writ of possession can be issued. Thus, petitioner should not be prevented from changing and correcting its position when the same is in accord with the rules and jurisprudence.

7. ID.; ID.; ID.; ID.; ID.; LOCAL GOVERNMENT UNIT CANNOT BE BARRED FROM PRAYING FOR THE ISSUANCE OF A WRIT OF POSSESSION AS LONG AS THERE IS COMPLIANCE WITH THE REQUISITES.— Private respondents argue that petitioner waived its right to ask for the immediate possession of Lot No. 935 since it took the latter eight (8) months and twelve (12) days from the filing of the Amended Complaint, and nine (9) months and thirteen (13) days from the filing of the Original Complaint, before it filed the Motion for Issuance of Writ of Possession. Petitioner did not waive its right. Section 19 of Rep. Act No. 7160 does not put a time limit as to when a local government may immediately take possession of the real property. Said section provides that the local government unit may take immediate possession of the property upon the filing of the expropriation proceedings and upon making a deposit of at least fifteen percent (15%) of the fair market value of the property based on its current tax declaration. As long as the expropriation proceedings have been commenced and the deposit has been made, the local government unit cannot be barred from praying for the issuance of a writ of possession.

APPEARANCES OF COUNSEL

Hilmar RA. Recaoco & Lorna G. Laurea for petitioner.
Amelita Del Rosario-Benedicto for private respondents.

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D E C I S I O N

CHICO-NAZARIO, *J.*:

Via a Petition for *Certiorari* and Prohibition with Prayer for Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order, the City of Iloilo, represented by Mayor Jerry P. Treñas, seeks the nullification and/or modification of the Order dated 05 June 2002 of Honorable Emilio Legaspi, Presiding Judge, Regional Trial Court, Branch 22, Iloilo City, denying its Motion for Reconsideration of the court's Order dated 15 April 2002, holding in abeyance the resolution of the Motion for Issuance of Writ of Possession until after it shall have rested its case.

The factual antecedents are the following:

On 07 March 2001, the *Sangguniang Panlungsod* of the City of Iloilo enacted Regulation Ordinance No. 2001-037 granting authority to its City Mayor to institute expropriation proceedings on Lot No. 935, registered in the name of Manuela Yusay, located at Barangay Sto. Niño Norte, Arevalo, Iloilo City. The regulation ordinance was approved by then City Mayor Mansueto A. Malabor.[1]

On 14 March 2001, Mayor Malabor wrote the heirs of Manuela Yusay, through Mrs. Sylvia Yusay del Rosario, Administratrix of the estate of Manuela Yusay, making a formal offer to purchase their property known as Cadastral Lot No. 935 with an area of 85,320 square meters covered by Transfer Certificate of Title (TCT) No. T-67506 of the Registry of Deeds of Iloilo City for ₱250 per square meter for the purpose of converting the same as an on-site relocation for the poor and landless residents of the city in line with the city's housing development program.[2]

In a letter dated 26 June 2001, Mayor Malabor informed Administrators Sylvia Y. del Rosario and Enrique Yusay, Jr.

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[1] *Rollo*, pp. 49-50.

[2] *Id*. at 51.

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that their counter-proposal to the City's proposal to purchase Lot No. 935 was not acceptable to the City Government, particularly to the City Council, which insisted that an expropriation case be filed per SP Resolution No. 01-445. With their apparent refusal to sell the property, the City terminated further proceedings on the matter.[3]

Petitioner City of Iloilo, represented by Mayor Jerry P. Treñas, filed an Amended Complaint[4] for Eminent Domain against private respondents Heirs of Manuela Yusay, represented by Sylvia Yusay del Rosario and Enrique Yusay, Jr.[5] The subject of the same is Lot No. 935 of the Cadastral Survey of Arevalo covered by TCT No. T-67506.

Private respondents filed an Answer,[6] dated 25 September 2001, to which petitioner filed a Reply,[7] dated 19 October 2001.

On 23 October 2001, private respondents filed a Motion to Set Case for Preliminary Hearing on the Special and Affirmative Defenses they have raised in the Answer.[8] Petitioner opposed[9] the motion to which private respondents filed a Reply.[10]

In an Order dated 04 February 2002, public respondent Hon. Emilio B. Legaspi, Presiding Judge, Regional Trial Court of Iloilo City, Branch 22, found the motion to be in order and meritorious, and the grounds of the opposition to be untenable; thus, he set the case for Preliminary Hearing on the Special and Affirmative Defenses.[11]

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[3] *Id*. at 52.

[4] Original Complaint was not appended.

[5] *Id*. at 39-54.

[6] *Id*. at 55-63.

[7] *Id*. at 73-77.

[8] *Id*. at 78-79.

[9] *Id*. at 80-86.

[10] *Id*. at 87-90.

[11] *Id*. at 91-92.

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Petitioner moved for the reconsideration[12] of the order which private respondents opposed.[13]

On 01 April 2002, public respondent set the case for Pre-Trial after Atty. Amelita K. del Rosario-Benedicto, counsel for private respondents, manifested she was withdrawing the Motion for Preliminary Hearing on the Special and Affirmative Defenses. Petitioner did not interpose any objection.[14]

On 11 April 2002, petitioner filed a Motion for Issuance of Writ of Possession alleging that since it has deposited with the Court the amount of ₱2,809,696.50 representing fifteen percent (15%) of the fair market value of the property sought to be expropriated based on its current tax declaration, it may immediately take possession of the property in accordance with Section 19, Republic Act No. 7160.[15]

On 15 April 2002, public respondent issued an Order with the following disposition:

> WHEREFORE, in view of the foregoing, Atty. Benedicto is given ten (10) days from today within which to file an Opposition to the pending Motion For Issuance of Writ of Possession, furnishing copy of the same to plaintiff's counsel who has the same period to file a Reply.
>
> Parties agreed that the Court will resolve the Motion For Issuance of Writ of Possession after the plaintiffs shall have rested their case after the trial on the merits.[16]

Private respondents filed their Opposition to the Motion for Issuance of Writ of Possession[17] to which petitioner filed a Reply.[18]

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[12] *Id*. at 93-97.

[13] *Id*. at 101-103.

[14] *Id*. at 107.

[15] *Id*. at 108-112.

[16] *Id*. at 113.

[17] *Id*. at 115-117.

[18] *Id*. at 127-129.

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On 09 May 2002, petitioner filed a Motion for Reconsideration praying that the lower court reconsider its order of 15 April 2002, and to consider its Motion for Issuance of Writ of Possession submitted for resolution after the filing of its Reply to private respondents' Opposition to the motion. Citing the case of *Robern Development Corp. v. Judge Jesus V. Quitain, et al.,*[19] it maintains "there is no need for a hearing before the Honorable Court can grant [its] Motion for Issuance of Writ of Possession.[20]

Private respondents filed an Opposition to the Motion for Reconsideration with Rejoinder to Reply to Opposition. They vehemently opposed the motion arguing that counsels of the parties had agreed that the lower court will resolve the Motion for Issuance of Writ of Possession after petitioner shall have rested its case after trial on the merits. They added that in view of the defects as to form and substance of the amended complaint, the issuance of a writ of possession ceases to be a ministerial duty on the court; hence, there is a need for a court hearing.[21]

On 05 June 2002, the assailed order was issued, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the Motion for Reconsideration is DENIED and resolution of the Motion for Writ of Possession is hereby held in abeyance until further orders from this Court.[22]

Hence, this petition.

The petition raises the following alleged errors of the lower court:

> A. THAT THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE MOTION FOR RECONSIDERATION DATED MAY 9, 2002 AS CONTAINED IN

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[19] G.R. No. 135042, 23 September 1999, 315 SCRA 150.

[20] *Id*. at 130-133.

[21] *Id*. at 134-136.

[22] *Id*. at 38.

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ITS ORDER OF JUNE 5, 2002, AND IN HOLDING THAT PETITIONER'S MOTION FOR ISSUANCE OF WRIT OF POSSESSION BE RESOLVED AFTER HEREIN PETITIONER HAS CONVINCED THE TRIAL COURT THAT IT HAS A MERITORIOUS CASE OF EMINENT DOMAIN, DESPITE THE PROVISIONS OF SECTION 2, RULE 67 OF THE 1997 RULES OF CIVIL PROCEDURE AND DESPITE THE RULING OF THE SUPREME COURT IN THE CASE OF "*ROBERN DEVELOPMENT CORPORATION VS. JUDGE JESUS V. QUITAIN, ET AL.*"

B. THAT THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDER OF JUNE 5, 2002 WHICH IN EFFECT UPHELD THE CONTENTION OF PRIVATE RESPONDENTS THAT THE AMENDED COMPLAINT FOR EXPROPRIATION FILED BY HEREIN PETITIONER IS NOT SUFFICIENT IN FORM AND SUBSTANCE, HENCE THE LATTER IS NOT ENTITLED TO AN IMMEDIATE ISSUANCE OF A WRIT OF POSSESSION.[23]

As to its Amended Complaint, petitioner maintains that the same is sufficient in form and substance since it has complied with Section 19 of Rep. Act No. 7160 (1991 Local Government Code) and Section 1, Rule 67 of the 1997 Rules of Civil Procedure. It explains that since public respondent has ordered the parties to proceed with the Pre-Trial Conference and trial of the case, it can be concluded that the Amended Complaint is sufficient in form and substance.

In compliance with Section 19 of the 1991 Local Government Code, petitioner says it deposited the amount of ₱2,809,696.50 with the Regional Trial Court of Iloilo, which is equivalent to fifteen percent (15%) of the fair market value of the property sought to be expropriated based on its current tax declaration. It further argues that in the cases of *Robern Development Corporation v. Judge Jesus Quitain, et al.,*[24] and *Salvador Biglang-Awa v. Hon. Judge Marciano I. Bacalla, et al.,*[25] the

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[23] *Rollo*, pp. 16-17.

[24] *Supra*, note 19.

[25] G.R. Nos. 139927-139936, 22 November 2000, 345 SCRA 562.

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duty to issue a Writ of Possession becomes a ministerial duty upon the trial court without necessity of a hearing once the provisional deposit under Section 2 of Rule 67[26] has been complied with.

In their Comment, private respondents maintain that there was nothing for the lower court to reconsider because the order dated 15 April 2002 which was dictated in open court, and which petitioner sought to be reconsidered, was already final (on 30 April 2002) when the latter filed its Motion for Reconsideration on 09 May 2002. Second, they insist that petitioner is estopped to change its position with respect to the immediate issuance of the writ of possession. The agreement entered into is binding and is the law between the parties and should be accorded respect since it was approved by public respondent. Third, they claim there is waiver on the part of petitioner to ask for the immediate possession of Lot No. 935 since it took the latter eight (8) months and twelve (12) days from the filing of the Amended Complaint, and nine (9) months and thirteen (13) days from the filing of the Original Complaint before it filed the Motion for Issuance of Writ of Possession. Moreover, they assert that there is a need for a court hearing before a writ of possession can be issued, because the amended complaint is being assailed before the lower court for not being sufficient in form and substance. Finally, they aver that the issuance of the writ of possession ceases to be ministerial when the complaint for expropriation fails to allege compliance with the mandatory requirements for the exercise of the power of eminent domain for purposes of socialized housing as interpreted in the cases of *Filstream International Incorporated v. Court of Appeals, et al*.[27]

In its Reply, petitioner avers that the order of 15 April 2002 became final only after fifteen (15) days from the time the same was received by it on 26 April 2002, and not fifteen (15) days from the time the order was made in open court on 15 April 2002.

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[26] 1997 Rules of Civil Procedure.

[27] G.R. Nos. 125218 and 128077, 23 January 1998, 248 SCRA 716.

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Petitioner argues that there is nothing in the rules which prohibits it from reversing its position with respect to the issuance of the writ of possession in light of Section 2, Rule 67 of the 1997 Rules of Civil Procedure which allows taking immediate possession of property sought to be expropriated upon compliance with said section. Further, it adds that its stand to seek immediate possession of the property is supported by the *Robern* and *Biglang-awa* cases.

It insists that there is no waiver or estoppel on its part. There is no provision of law which sets a time limit within which to file a motion for the issuance of a writ of possession. It reiterated that the sufficiency of the form and substance of the Amended Complaint can be determined and resolved by the lower court through an examination of the allegations contained therein and if the same complies with the requisites set forth in Section 19 of Rep. Act No. 7160 and Section 1 of Rule 67.[28] Thus, there is no necessity of a trial before the lower court can resolve the Motion for Issuance of a Writ of Possession.

Finally, it argues that the *Filstream*[29] cases are not applicable. It adds that the provisions of Rep. Act No. 7279 which private respondents allege as not to have been complied with are not conditions precedent for the exercise of the power of eminent domain.

We first rule on the issue of whether the Order dated 15 April 2002, which was dictated in open court, was already final when petitioner filed a Motion for Reconsideration on 09 May 2002. Petitioner maintains that the motion for reconsideration was filed before the order became final fifteen (15) days from the time it received a copy thereof in writing, and not from the time the same was dictated in open court as claimed by private respondents.

Time-honored and of constant observance is the principle that no judgment, or order, whether final or interlocutory, has juridical existence until and unless it is set in writing, signed,

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[28] Rules of Civil Procedure.

[29] *Supra*.

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and promulgated, *i.e.,* delivered by the Judge to the Clerk of Court for filing, release to the parties and implementation, and that indeed, even after promulgation, it does not bind the parties until and unless notice thereof is duly served on them by any of the modes prescribed by law. This is so even if the order or judgment has in fact been orally pronounced in the presence of the parties, or a draft thereof drawn up and signed and/or a copy thereof somehow read or acquired by any party.[30]

In the case at bar, the Motion for Reconsideration filed by petitioner was filed before the 15 April 2002 order became final. The order dictated in open court had no juridical existence before it is set in writing, signed, promulgated and served on the parties. Since the order orally pronounced in court had no juridical existence yet, the period within which to file a motion for reconsideration cannot be reckoned therefrom, but from the time the same was received in writing. Petitioner had fifteen (15) days from its receipt of the written order on 26 April 2002 within which to file a motion for reconsideration. Thus, when it filed the motion for reconsideration on 09 May 2002, the said motion was timely filed.

Petitioner has the irrefutable right to exercise its power of eminent domain. It being a local government unit, the basis for its exercise is granted under Section 19 of Rep. Act No. 7160, to wit:

> 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

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[30] *Echaus v. Court of Appeals*, G.R. No. 57343, 23 July 1990, 187 SCRA 672, 674.

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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 requisites for authorizing immediate entry are as follows: (1) the filing of a complaint for expropriation sufficient in form and substance; and (2) the deposit of the amount equivalent to fifteen percent (15%) of the fair market value of the property to be expropriated based on its current tax declaration.[31] Upon compliance with these requirements, the issuance of a writ of possession becomes ministerial.[32]

In the case at bar, petitioner avers that the Amended Complaint it filed complies with both requisites, thus entitling it to a writ of possession as a matter of right and the issuance thereof becoming ministerial on the part of the lower court even without any hearing. On the other hand, private respondents allege that the Amended Complaint is not sufficient in form and substance since it failed to allege compliance with the mandatory requirements for the exercise of the power of eminent domain for purposes of socialized housing.

Section 1 of Rule 67 of the Revised Rules of Civil Procedure reads:

Section 1. *The complaint*. — The right of eminent domain shall be exercised by the filing of a verified complaint which shall state with certainty the right and purpose of expropriation, describe the real or personal property sought to be expropriated, and join as defendants all persons owning or claiming to own, or occupying, any part hereof or interest therein, showing, so far as practicable, the separate interest of each defendant. If the title to any property sought to be expropriated appears to be in the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with

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[31] *Bardillon v. Barangay Masili of Calamba, Laguna*, G.R. No. 146886, 30 April 2003, 402 SCRA 440; citing *Biglang-awa v. Bacalla, supra*.

[32] *City of Manila v. Serrano*, G.R. No. 142304, 20 June 2001, 359 SCRA 231.

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accuracy or certainty specify who are the real owners, averment to that effect shall be made in the complaint.

The Court finds the Amended Complaint sufficient in form and substance, and the amount of ₱2,809,696.50 deposited with the Regional Trial Court of Iloilo is equivalent to fifteen percent (15%)[33] of the fair market value of the property sought to be expropriated per current tax declaration.

On the averment of private respondents that the Amended Complaint failed to allege compliance with the mandatory requirements[34] for the exercise of the power of eminent domain

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[33] As petitioner is a local government unit, the basis for the amount of the deposit before it can take possession of the property is Section 19 of Rep. Act No. 7160 and not Section 2 of Rule 67 of the 1997 Rules of Civil Procedure (See III Oscar Herrera, *Remedial Law,* p. 317 [1999 Ed.]).

[34] Sections 9 and 10, Urban Development and Housing Act of 1992 (Republic Act No. 7279).

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

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

(b) Alienable lands of the public domain;

(c) Unregistered or abandoned and idle lands;

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

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

(f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply, the local government units shall give budgetary priority to on-site development of government lands.

SEC. 10. *Modes of Land Acquisition*. — The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint venture agreement, negotiated purchase, and expropriation: Provided, however, That expropriation shall be resorted to only when other

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for purposes of socialized housing as interpreted in the *Filstream* cases, it appears that the Amended Complaint did contain allegations showing compliance therewith.[35] However, whether there is, indeed, compliance with these requirements, the Court deems it not proper to resolve the issue at this time. Hearing must be held to establish compliance.

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modes of acquisition have been exhausted: Provided, further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act: Provided, finally, That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court. For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase: Provided, That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.

[35] Petitioner, in its Amended Complaint, alleged that:

4. That plaintiff urgently needs said property for the purpose of converting the same into an On-Site Relocation and Housing Development for the underprivileged and homeless residents of the City of Iloilo;

5. That the acquisition of said property by plaintiff will benefit hundreds of underprivileged and homeless/landless residents of the City through the various improvements and projects which could be introduced thereon by the City Government;

6. That offers to acquire the above-described property by negotiated sale have been made by plaintiff to defendants, but the same have been tacitly rejected by the latter, hence plaintiff was constrained to seek the condemnation of said property by filing the above-case. Lately, defendant Sylvia Yusay del Rosario announced in radio that they will never sell Lot [No.] 935 to herein plaintiff;

7. That plaintiff through the incumbent Mayor Jerry P. Treñas is authorized to acquire the aforementioned parcel of land through condemnation proceedings by virtue of Regulation Ordinance No. 2001-037 enacted on March 7, 2001 by the Sangguniang Panlungsod of the City of Iloilo, machine copy of which is hereto attached as Annex "B";

8. That acting pursuant to the aforesaid Regulation Ordinance No. 2001-037, plaintiff sent a letter dated 14 March 2001 to defendants formally offering to purchase Lot No. 935 for the amount of Two Hundred Fifty (₱250.00) Pesos per square meter, a machine copy of which is hereto attached as Annex "C";

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In *City of Manila v. Serrano*,[36] this Court ruled that "hearing is still to be held to determine whether or not petitioner indeed complied with the requirements provided in Rep. Act No. 7279. x x x The determination of this question must await the hearing on the complaint for expropriation, particularly the hearing for the condemnation of the properties sought to be expropriated." From the foregoing, it is clear that an evidentiary hearing must be conducted if compliance with the requirements for socialized housing has been made. This hearing, however, is not a hearing to determine if a writ of possession is to be issued, but whether there was compliance with the requirements for socialized housing.

For a writ of possession to issue, only two requirements are required: the sufficiency in form and substance of the complaint and the required provisional deposit. In fact, no hearing is required for the issuance of a writ of possession. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint. In this case, the sufficiency of the Amended Complaint was further confirmed by public respondent when he set the case for pre-trial and hearing.

We likewise find private respondents' claim that petitioner cannot change its position regarding the immediate issuance of the writ of possession on the ground of estoppel, to be untenable.

First, estoppel may be successfully invoked only if the party fails to raise the question in the early stages of the proceedings.[37] In the case before us, petitioner, through its counsel, undeniably committed a mistake when it agreed that the resolution of its Motion for Issuance of Writ of Possession be made by public

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9. That notwithstanding the formal offer to purchase aforesaid Lot and several conferences held, defendants have not made any concrete counter-offer but instead indulged in written semantics which constrained plaintiff to terminate further negotiations per letter dated 26 June 2001, a machine copy of which is hereto attached as Annex "D"; . . . (*Rollo*, pp. 207-208)

[36] *Supra*, note 32 at 239-240.

[37] *Huerta Alba Resort, Inc. v. Court of Appeals*, G.R. No. 128567, 01 September 2000, 339 SCRA 534.

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respondent after a hearing is conducted and after it has adduced its evidence. To remedy this, petitioner immediately filed a Motion for Reconsideration. The filing thereof was precisely for the purpose of rectifying the error it committed. With the timely filing of the motion for reconsideration, petitioner cannot be held in estoppel because it right away asked the court to nullify the agreement it entered into. The filing of the motion for reconsideration which was done at the earliest possible time clearly negates the presence of estoppel.

Second, under the facts of the case, estoppel should not apply because petitioner is simply following the procedure laid down by the rules and jurisprudence. Under Section 19[38] of Rep. Act No. 7160 (law governing exercise of eminent domain by local government units [LGU]) and Section 2[39] of Rule 67 of the

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[38] 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.

[39] SEC. 2. *Entry of plaintiff upon depositing value with authorized government depository.* — Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.

If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.

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Revised Rules of Civil Procedure (law governing exercise of eminent domain by entities other than LGUs), and in the cases of *Robern Development Corporation v. Quitain, et al., and Biglang-awa v. Bacalla, et al.*, a prior hearing is not required before a writ of possession can be issued. As above discussed, a complaint, sufficient in form and substance, and the required deposit, are the only requirements before a writ of possession can be issued. Thus, petitioner should not be prevented from changing and correcting its position when the same is in accord with the rules and jurisprudence.

Private respondents argue that petitioner waived its right to ask for the immediate possession of Lot No. 935 since it took the latter eight (8) months and twelve (12) days from the filing of the Amended Complaint, and nine (9) months and thirteen (13) days from the filing of the Original Complaint, before it filed the Motion for Issuance of Writ of Possession.

Petitioner did not waive its right. Section 19 of Rep. Act No. 7160 does not put a time limit as to when a local government may immediately take possession of the real property. Said section provides that the local government unit may take immediate

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

Section 4 of Rep. Act No. 8974 (An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes) provides for the guidelines for expropriation proceedings. It reads:

SECTION 4. Guidelines for Expropriation Proceedings. — Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on. the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof; . . .

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possession of the property upon the filing of the expropriation proceedings and upon making a deposit of at least fifteen percent (15%) of the fair market value of the property based on its current tax declaration. As long as the expropriation proceedings have been commenced and the deposit has been made, the local government unit cannot be barred from praying for the issuance of a writ of possession.

WHEREFORE, the instant petition is GRANTED. The assailed orders of respondent judge in Civil Case No. 01-26801 dated 05 June 2002 and 15 April 2002 are set aside. Respondent Judge is directed to issue the writ of possession prayed for and to continue hearing the case. No costs.

SO ORDERED.

Puno (Acting C.J.), Austria-Martinez, Callejo, Sr., and *Tinga, JJ.*, concur.

FIRST DIVISION

[G.R. No. 154689. November 25, 2004]

UNICORN SAFETY GLASS, INC., LILY YULO and HILARIO YULO, *petitioners, vs.* **RODRIGO BASARTE, JAIMELITO FLORES, TEODOLFO LOR, RONNIE DECIO, ELMER SULTORA and JOSELITO DECIO**, *respondents*.

SYNOPSIS

The private respondents charged their employer, herein petitioner Company, with constructive dismissal and unfair labor practice. They protested the rotation scheme implemented by the petitioner Company wherein the latter reduced the respondents' workdays from six days to merely three days a week. According to them, the management was merely getting