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[G.R. No. 248061, September 15, 2020]

**MORE ELECTRIC AND POWER CORPORATION, PETITIONER, VS.
PANAY ELECTRIC COMPANY, INC., RESPONDENT.**

G.R. NO. 249406

**REPUBLIC OF THE PHILIPPINES, PETITIONER-OPPOSITOR,
MORE ELECTRIC AND POWER CORPORATION, PETITIONER, VS.
PANAY ELECTRIC COMPANY, INC., RESPONDENT.**

DECISION

REYES, J. JR., J.:

The constitutional question before the Court is whether Sections 10 and 17 of Republic Act (R.A.) No. 11212^[1] violate the constitutional guarantee of due process and equal protection by providing that the power and electricity distribution system in Iloilo City which is owned by the previous franchise holder Panay Electric Company, Inc. (PECO) may be acquired by the current franchise holder MORE Electric and Power Corporation (MORE), through the exercise of the right of eminent domain, and applied to the same public purpose of power distribution in Iloilo City.

This constitutional question is raised in the Petition for Review on *Certiorari*, docketed as G.R. No. 248061, filed by MORE against PECO from the July 1, 2019 Judgment^[2] of the Regional Trial Court of Mandaluyong City, Branch 209 (RTC) in Civil Case No. R-MND-19-00571-S, declaring that Sections 10 and 17 of R.A. No. 11212 are unconstitutional legislated corporate takeover of the private assets of respondent PECO by petitioner MORE. The same question is raised in a separate Petition for Review on *Certiorari*, docketed as G.R. No. 249406, filed by the Republic of the Philippines through the Office of the Solicitor General (OSG) from the same judgment and proceedings and involving the same facts and parties.

PECO filed a Motion for Consolidation of G.R. No. 248061 and G.R. No. 249406,^[3] Thereafter, PECO filed an Urgent Omnibus Motion^[4] urging the Court to consolidate the petitions and to resolve the same without further delay on the ground that the continuing dispute over possession of the distribution system twice plunged Iloilo City into darkness just when the city is struggling to deal with the current extreme public health emergency. Moreover, if the dispute will continue, electricity and power interruptions will recur to the prejudice of the health and safety of the residents of the city.

In view of the highest necessity to resolve the constitutional issue, the Court allows the consolidation of the two petitions and proceeds to resolve the same.

Antecedent Facts and Proceedings

R.A. No. 11212 grants to MORE a franchise to establish, operate and maintain an electric power distribution system in Iloilo City,^[5] Under Section 10, MORE may "exercise the power of eminent domain" when necessary for the efficient establishment of its service. In particular, it may acquire a distribution system consisting of poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used x x x for the conveyance of electric power to end-users in its franchise area.^[6]

The distribution system which is currently and actually being used in Iloilo City consists of "5 sub-transmission line substations, 450 kilometers of electrical lines, 20,000 poles, 1,300 transformers and 64,000 electrical meters."^[7] It is owned by PECO, the holder of the franchise since 1922.^[8] PECO's franchise expired on January 18, 2019,^[9] and no new franchise has been issued to it since.^[10] However, as MORE has yet to set up its service, Section 17 of R.A. No. 11212 allows PECO to operate the existing distribution system in the *interim*. PECO presently operates the system under a Provisional Certificate of Public Convenience and Necessity (CPCN) issued by the Energy Regulatory Commission (ERC) on May 21, 2019.^[11]

At the same time, Section 17 of R.A. No. 11212 expressly provides that, even as PECO is operating the distribution system, this interim arrangement shall not prevent MORE from acquiring the system through the exercise of the right of eminent domain. Thus, after R.A. No. 11212 took effect on March 9, 2019, MORE filed on March 11, 2019 a Complaint for Expropriation with the RTC of Iloilo City, Branch 37, over the distribution system of PECO in Iloilo City.^[12]

Earlier, PECO filed on March 6, 2019 with the RTC a Petition^[13] for Declaratory Relief assailing the constitutionality of Sections 10 and 17 of R.A. No. 11212, on the ground that these provisions violate the constitutional guarantees of due process and equal protection. The RTC issued a Temporary Restraining Order^[14] (TRO) on March 14, 2019 enjoining commencement of expropriation proceedings and takeover by MORE of PECO's distribution system in Iloilo City, as well as the issuance of a CPCN to MORE by the Department of Energy (DOE) and Energy Regulatory Commission (ERC). The RTC then rendered the assailed judgment on the pleadings, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring Sections 10 and 17 of [R.A.] No. 11212 void and unconstitutional for infringing on PECO's right to due process and equal protection of the law. Consequently, PECO has no obligation to sell and respondent has no right to expropriate PECO's assets under Sections 10 and 17 of [R.A.] No. 11212; and PECO's rights to its properties are protected against arbitrary and confiscatory taking under the relevant portions of Sections 10 and 17 of [R.A.] No. 11212.

Finally, the Temporary Restraining Order dated 14 March 2019 insofar as it enjoins respondent MORE and/or any of its representatives from enforcing, implementing and exercising any of the rights and obligations set forth under [R.A. No.] 11212, including but not limited to

commencing or pursuing the expropriation proceedings against petitioner PECO under the assailed provisions; and takeover by respondent MORE of petitioner PECO's distribution assets in the franchise area is hereby made permanent.

SO ORDERED.^[15]

The RTC agreed with PECO that, by virtue of its provisional CPCN, PECO's distribution system is currently being devoted to the public use of electricity distribution; and that, as Sections 10 and 17 of R.A. No. 11212 provide that said distribution system will be expropriated by MORE and devoted to the very same public use, said law amounts to an unconstitutional legislated corporate takeover by MORE of the private property of PECO.^[16] In effect, the expropriation will be nothing but a "corporate [takeover]" impelled by corporate greed rather than by public necessity.^[17] Sections 10 and 17 violate the constitutional guarantees of due process by authorizing 18 expropriation proceedings that do not serve a genuine public necessity.^[18]

The RTC further relied on PECO's argument that Sections 10 and 17 of R.A. No. 11212 violate the constitutional guarantee of equal protection in that under these provisions MORE may exercise the power of eminent domain even at the stage of establishing its service. In contrast, other legislative franchises grant electric distribution utilities merely the right of eminent domain as may be reasonably necessary for the efficient "maintenance and operation of [their] services."^[19]

The issues and arguments revolving around the foregoing ruling and reasoning of the RTC are both substantive and procedural.

Issues and Arguments

As defined in **G.R. No. 248061**, the substantive issues are:

- (1) THE COURT A *QUO* HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT WHEN IT HELD THAT THERE IS NO "PUBLIC USE" IN THE EXPROPRIATION BY MORE OF THE DISTRIBUTION ASSETS IN ILOILO FROM PECO AS AUTHORIZED UNDER SECTIONS 10 AND 17 OF R.A. [No.] 11212.
- (2) THE COURT A *QUO* HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT DECLARED THAT THE DISTRIBUTION ASSETS IN ILOILO CITY CANNOT BE SUBJECT OF EXPROPRIATION BY MORE AS THE NEW FRANCHISE HOLDER BECAUSE IT IS "ALREADY BEING DEVOTED TO PUBLIC USE."
- (3) THE COURT A *QUO* HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS

WHEN IT DECLARED UNCONSTITUTIONAL THE PROVISIONS OF R.A. [No.] 11212 ALLOWING THE TRANSFER OF THE "DISTRIBUTION ASSETS IN THE FRANCHISE AREA" TO MORE BY EXPROPRIATION.

- (4) THE COURT A *QUO* HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT HELD THAT THE IMPLEMENTATION OR ENFORCEMENT OF SECTIONS 10 AND 17 OF R.A. [No.] 11212 VIOLATES PECO'S RIGHT TO EQUAL PROTECTION UNDER THE LAW, DUE PROCESS, AND IS DISCRIMINATORY AND CONFISCATORY.^[20]

The foregoing issues in **G.R. No. 248061** are clearly related. MORE argues that, contrary to the views of the RTC and respondent PECO, expropriation under Sections 10 and 17 of R.A. No. 11212 serves the distinct emergency public purpose of ensuring the continuous and uninterrupted supply of electricity to Iloilo City, as the city transitions from the old franchise holder to the new franchise holder. There is no prohibition to the application of PECO's distribution system to such distinct emergency public purpose, even as the property is already devoted to a related, but ordinary public purpose, which is the provision of power and electricity to the city.^[21]

Moreover, Sections 10 and 17 of R.A. No. 11212 recognize that MORE is differently situated from other distribution utilities. For one, within the franchise area of MORE, there is an existing distribution system that continues to burden public space — that is, this distribution continues to occupy streets, lands and properties owned by the government.

Finally, "Iloilo end-users have paid for" charges to enable PECO to recover its investments in said distribution system; thus, these end-users are entitled to have the system continuously applied to a public use.^[22] However, the system is owned by PECO which no longer holds a franchise and is therefore unable to apply the system to the public purpose for which it is intended. Ideally, MORE should dismantle the system to unburden public space and make way for a new distribution system; however, as acknowledged by R.A. No. 11212, the ensuing transition will spell extreme inconvenience to the end-users and ruinous disruption to the local economy. Thus, R.A. No. 11212 devised a means whereby MORE, as the new franchise holder, is authorized to take over the distribution system and apply the same to the service of the public, after expropriation and payment of just compensation to PECO.

As defined in **G.R. No. 249406** the substantive issues are:

x x x x

III.

THE COURT A *QUO* GRAVELY ERRED WHEN IT DECLARED SECTIONS 10 AND 17 OF R.A. NO. 11212 UNCONSTITUTIONAL.

- A. THE POWER OF EMINENT DOMAIN WAS VALIDLY DELEGATED BY THE LEGISLATURE TO DISTRIBUTION UTILITIES, INCLUDING MORE.
- B. SECTIONS 10 AND 17 OF [R.A. NO.] 11212 SATISFY THE REQUISITES FOR VALID EXERCISE OF THE POWER OF EMINENT DOMAIN.
 - 1. THERE IS GENUINE NECESSITY FOR THE TAKING OF PRIVATE PROPERTY UNDER SECTIONS 10 AND 17 OF [R.A. NO.] 11212, AS REASONABLY AND ACTUALLY NECESSARY FOR THE REALIZATION OF THE PURPOSES FOR WHICH MORE'S FRANCHISE WAS GRANTED.
 - 2. THE TAKING OF PROPERTY AUTHORIZED UNDER SECTIONS 10 AND 17 OF [R.A. NO.] 11212 IS FOR PUBLIC USE.
 - 3. THE REQUIREMENTS OF DUE PROCESS AND EQUAL PROTECTION ARE COMPLIED WITH UNDER SECTIONS 10 AND 17 OF [R.A. NO.] 11212.

IV

THE COURT A *QUO* GRAVELY ERRED WHEN IT ENJOINED THE ENFORCEMENT, IMPLEMENTATION AND EXERCISE OF ANY OF THE RIGHTS AND OBLIGATIONS SET FORTH UNDER [R.A. NO.] 11212, DESPITE RULING VOID AND UNCONSTITUTIONAL ONLY SECTIONS 10 AND 17 THEREOF.^[23]

The OSG argues that R.A. No. 9136^[24] delegated to public utilities like MORE the power of eminent domain to enable them to exercise their public function.^[25] Section 17 of R.A. No. 11212 highlighted a specific public need, which is to ease the transition of operations from PECO to MORE by expressly providing that the right of MORE to expropriate the distribution system of PECO for the public purpose of electricity and power distribution system, will not be prejudiced or hampered by the *interim* authority given to PECO to continue to operate the said system for the very same purpose of power distribution.^[26]

To summarize, the common substantive issues raised by MORE and the OSG boil down to whether the RTC erred in ruling that Sections 10 and 17 of R.A. No. 11212 are unconstitutional in that these provisions authorize MORE to expropriate the existing distribution system of PECO and apply it to the very same public use for which it is already devoted.^[27]

In its Comment in **G.R. No. 248061**, PECO argues that the lack of franchise does not diminish its constitutional right to due process and equal protection against an illegal expropriation of its distribution system.^[28] It reiterates that "property of a private corporation that is already devoted to public use cannot be taken for the