

# FIRST DIVISION

[ G.R. No. 205473, December 10, 2019 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, PETITIONER,  
VS. SPOUSES MARCELINO BUNSAY AND NENITABUNSAY,  
RESPONDENTS.**

## DECISION

**CAGUIOA, J:**

### The Facts

This is a petition for review on *certiorari*<sup>[1]</sup> (Petition) filed under Rule 45 of the Rules of Court against the Order/Resolution<sup>[2]</sup> dated August 23, 2012 (assailed Resolution) and Order<sup>[3]</sup> dated January 10, 2013 (assailed Order) of the Regional Trial Court of Valenzuela City, Branch 270 (RTC) in Civil Case No. 188-V-11.

The assailed Resolution and Order: (i) directed the expropriation of a 100-square meter lot in Valenzuela City covered by Transfer Certificate of Title (TCT) No. V-16548 (Disputed Property) issued in the name of respondents Spouses Marcelino and Nenita Bunsay (Spouses Bunsay); and (ii) ordered petitioner Republic of the Philippines (Republic), through the Department of Public Works and Highways (DPWH), to pay Spouses Bunsay consequential damages equivalent to the value of the capital gains tax (CGT) and other taxes necessary to transfer the Disputed Property in its name.

The facts are undisputed.

DPWH is the Republic's engineering and construction arm tasked to undertake the "planning, design, construction and maintenance of infrastructure facilities, especially national highways, flood control and water resource development system, and other public works in accordance with national development objectives."<sup>[4]</sup>

Among DPWH's projects is the C-5 Northern Link Road Project Phase 2 (Segment 9) connecting the North Luzon Expressway (NLEX) to McArthur Highway, Valenzuela City (the Project).<sup>[5]</sup>

In connection with the implementation of the Project, DPWH filed with the RTC a Complaint for Expropriation with Urgent Prayer for the Issuance of a Writ of Possession<sup>[6]</sup> (Expropriation Complaint) against Spouses Bunsay, concerning the Disputed Property.<sup>[7]</sup>

Records show that while notices were sent to Spouses Bunsay, they were returned with the notation "party moved". As expected, Spouses Bunsay did not file an Answer.<sup>[8]</sup>

The RTC later scheduled a hearing on the issuance of the writ of possession prayed for. During the hearing, DPWH deposited checks in the total amount of Two Hundred Thousand Pesos (Php200,000.00), representing the sum of the Disputed Property's zonal value and replacement cost of the improvements built thereon.<sup>[9]</sup> Thereafter, the RTC issued a Writ of Possession in favor of DPWH in its Order dated February 20, 2012. <sup>[10]</sup>

Later still, the RTC directed the parties to submit their respective nominees to the Board of Commissioners for determination of just compensation. However, during the subsequent hearing held on August 23, 2012, DPWH manifested in open court that while all notices sent to Spouses Bunsay were returned unserved, they already claimed the checks that DPWH deposited with the RTC. Thus, DPWH moved that the amount received by Spouses Bunsay be deemed as just compensation for the Disputed Property.<sup>[11]</sup>

The RTC granted DPWH's oral motion through the assailed Resolution, the dispositive portion of which reads:

**WHEREFORE,** foregoing considered, judgment is hereby rendered in favor of [DPWH] condemning the [Disputed Property], free from all liens and encumbrances for the purpose of implementing the construction [of the Project] from NLEX to McArthur Highway, Valenzuela City, and vesting unto [DPWH] the title to the property so described for such public use or purpose.

**[DPWH] is directed to issue [a] manager's check in the amount of Five Hundred Five Thousand Three Hundred Seventy-Four Pesos and Seventy-One Centavos (Php 505,374.71),** representing the total valuation of the improvements located on the [Disputed Property], in the name of [Spouses Bunsay] and to deposit the same [with] the Office of the Clerk of Court, Regional Trial Court, Valenzuela City within fifteen (15) days from receipt of this Resolution.

**As consequential damages, [DPWH] is further directed to pay the value of the [CGT] and other taxes necessary for the transfer of the [Disputed Property] in [DPWH's] name.**

[Spouses Bunsay are] hereby directed to turn-over the owner's duplicate certificate of title to [DPWH].

After [the] parties have complied x x x, the Register of Deeds of Valenzuela City is directed to effect the transfer of ownership of the [Disputed Property] to [DPWH] and to issue the corresponding certificate of title X X X.

SO ORDERED.<sup>[12]</sup> (Emphasis supplied)

The RTC's award of just compensation represented the sum of the replacement cost of the following improvements built on the Disputed Property, as alleged by DPWH in the Expropriation Complaint:

[1. A] one-storey residential house (semi-concrete) with x x x [f]ence and [s]teel [g]ate, the replacement cost of which is valued at Three Hundred Thirty Thousand Six Hundred Four Pesos and Thirty-Five Centavos (Php 330,604.35); and

[2. A] one[-]storey residential house (concrete) with upper concrete slab, the replacement cost of which is valued at One Hundred Seventy-Four Thousand Seven Hundred Seventy Pesos and Thirty-Six Centavos (Php 174,770.36).<sup>[13]</sup>

DPWH filed a Motion for Partial Reconsideration (MPR), praying that the award corresponding to the replacement cost of improvements, and equivalent value of CGT and other transfer taxes be deleted.<sup>[14]</sup>

After due proceedings, the RTC issued the assailed Order granting DPWH's MPR in part. Therein, the RTC resolved to exclude the replacement cost of improvements from the total award since Spouses Bunsay acknowledged, in their Comment to the MPR, that they had already received payment for these improvements.<sup>[15]</sup>

However, with respect to the value of CGT and other transfer taxes, the RTC held:

[With respect to] the aspect of payment of [CGT] and other transfer tax, the [RTC] finds the argument of [DPWH] that it has been ordered to pay [CGT] and other transfer taxes to be misplaced and misleading.

The [RTC] did not order [DPWH] to pay the [CGT] and other transfer taxes. **What was ordered of [DPWH] is to pay the consequential damages constituting the value [of CGT] and other transfer taxes.**<sup>[16]</sup> (Emphasis and underscoring supplied)

Aggrieved, DPWH filed the present Petition via Rule 45 of the Rules of Court on March 4, 2013.

In compliance with the Court's directive, Spouses Bunsay filed their Comment<sup>[17]</sup> to the Petition, to which DPWH filed its Reply.<sup>[18]</sup> Thereafter, the Petition was submitted for resolution.

Here, DPWH insists that by directing it to pay consequential damages equivalent to the value of CGT and other transfer taxes, the RTC indirectly held DPWH liable for payment of taxes for which it cannot be charged.

For its part, Spouses Bunsay argue that the consequential damages should be understood in its general sense so as to permit recovery of damages arising from "some involuntary act which is prejudicial to the person entitled [to] the same."<sup>[19]</sup>

## ***The Issue***

The sole issue for the Court's resolution is whether the RTC erred in awarding consequential damages equivalent to the value of CGT and transfer taxes in favor of Spouses Bunsay.

## ***The Court's Ruling***

The Petition is granted.

The crux of the controversy is hinged on the definition of "consequential damages" in the context of an expropriation proceeding.

Rule 67 of the Rules of Court governs expropriation proceedings. With respect to consequential damages, Section 6 of Rule 67 states:

SEC. 6. *Proceedings by commissioners.*- Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. **The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property.** But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken. (Emphasis and underscoring supplied)

In *Republic v. Court of Appeals*,<sup>[20]</sup> the Court explained that consequential damages may be awarded to the owner if, as a result of the expropriation, the **remaining portion not so expropriated** suffers from an impairment or decrease in value.<sup>[21]</sup>

From the foregoing, it becomes clear that the award of consequential damages representing the value of CGT and other transfer taxes in favor of Spouses Bunsay was improper.

To recall, the expropriation covered the entire Disputed Property, that is, the entire 100-square meter lot covered by Spouses Bunsay's TCT No. V- 16548. Hence, there is no basis for an award of consequential damages where there is no "remaining portion" to speak of, as in this case.

In any event, even if there was a "property not taken" or "remaining portion" to

speak of, the award of consequential damages constituting the value of CGT and transfer taxes would still be improper, in the absence of evidence showing that said remaining portion had been impaired or had suffered a decrease in value as a result of the expropriation. The Court's ruling in *Republic v. Spouses Salvador* [22] (Spouses Salvador) involving the same expropriating authority, project and handling court, is on all fours.

In *Spouses Salvador*, DPWH filed a complaint for expropriation concerning an 83-square meter portion of a 229-square meter property registered in the name of the respondents therein, Spouses Senando and Josefina Salvador (Spouses Salvador). Like Spouses Bunsay, Spouses Salvador also received checks from DPWH representing the zonal value of the expropriated portion and the cost of the improvements built thereon. However, in addition to the sum received by Spouses Salvador, the RTC also directed DPWH to pay consequential damages "equivalent to the value of the [CGT] and other taxes necessary for the transfer of the subject property in the Republic's name." [23]

Hence, DPWH assailed the propriety of the award of consequential damages therein, as it does here. Resolving the issue, the Court held, as follows:

**We likewise rule that the RTC committed a serious error when it directed the Republic to pay respondents consequential damages equivalent to the value of the capital gains tax and other taxes necessary for the transfer of the subject property.**

"Just compensation [is defined as] the full and fair equivalent of the property sought to be expropriated. x x x The measure is not the taker's gain but the owner's loss. [The compensation, to be just,] must be fair not only to the owner but also to the taker."

In order to determine just compensation, the trial court should first ascertain the market value of the property by considering the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon. **If as a result of the expropriation, the remaining lot suffers from an impairment or decrease in value, consequential damages may be awarded by the trial court, provided that the consequential benefits which may arise from the expropriation do not exceed said damages suffered by the owner of the property.**

While it is true that "the determination of the amount of just compensation is within the court's discretion, it should not be done arbitrarily or capriciously. [Rather,] it must [always] be based on all established rules, upon correct legal principles and competent evidence." The court cannot base its judgment on mere speculations and surmises.

In the present case, the RTC deemed it "fair and just that x x x whatever is the value of the [CGT] and all other taxes necessary for the transfer of the subject property to the [Republic] are but consequential damages that should be paid by the latter." x x x