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FIRST DIVISION

[G.R. No. 205428, June 07, 2017]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), PETITIONER, VS. SPOUSES SENANDO F. SALVADOR AND JOSEFIMA R. SALVADOR, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

We resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the August 23, 2012 Decision[1] and the January 10, 2013 Order[2] of the Regional Trial Court (RTC), Branch 270, Valenzuela City, in Civil Case No. 175-V-11 which directed petitioner Republic of the Philippines (Republic) to pay respondents spouses Senando F. Salvador and Josefina R. Salvador consequential damages equivalent to the value of the capital gains tax and other taxes necessary for the transfer of the expropriated property in the Republic's name.

The Antecedent Facts

Respondents are the registered owners of a parcel of land with a total land area of 229 square meters, located in Kaingin Street, *Barangay* Parada, Valenzuela City, and covered by Transfer Certificate of Title No. V-77660.[3]

On November 9, 2011, the Republic, represented by the Department of Public Works and Highways (DPWH), filed a verified Complaint[4] before the RTC for the expropriation of 83 square meters of said parcel of land (subject property), as well as the improvements thereon, for the construction of the C-5 Northern Link Road Project Phase 2 (Segment 9) from the North Luzon Expressway (NLEX) to McArthur Highway.[5]

On February 10, 2012, respondents received two checks from the DPWH representing 100% of the zonal value of the subject property and the cost of the one-storey semi-concrete residential house erected on the property amounting to P161,850.00[6] and P523,449.22,[7] respectively.[8] The RTC thereafter issued the corresponding Writ of Possession in favor of the Republic.[9]

On the same day, respondents signified in open court that they recognized the purpose for which their property is being expropriated and interposed no objection thereto.[10] They also manifested that they have already received the total sum of P685,349.22 from the DPWH and are therefore no longer intending to claim any just compensation.[11]

Ruling of the Regional Trial Court

In its Decision[12] dated August 23, 2012, the RTC rendered judgment in favor of the Republic condemning the subject property for the purpose of implementing the construction of the C-5 Northern Link Road Project Phase 2 (Segment 9) from NLEX to McArthur Highway, Valenzuela City.[13]

The RTC likewise 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 in the Republic's name.[14]

The Republic moved for partial reconsideration,[15] specifically on the issue relating to the payment of the capital gains tax, but the RTC denied the motion in its Order[16] dated January 10, 2013 for having been belatedly filed. The RTC also found no justifiable basis to reconsider its award of consequential damages in favor of respondents, as the payment of capital gains tax and other transfer taxes is but a consequence of the expropriation proceedings.[17]

As a result, the Republic filed the present Petition for Review on *Certiorari* assailing the RTC's August 23, 2012 Decision and January 10, 2013 Order.

Issues

In the present Petition, the Republic raises the following issues for the Court's resolution: *first*, whether the RTC correctly denied the Republic's Motion for Partial Reconsideration for having been filed out of time;[18] and *second*, whether the capital gains tax on the transfer of the expropriated property can be considered as consequential damages that may be awarded to respondents.[19]

The Court's Ruling

The Petition is impressed with merit.

"Section 3, Rule 13 of the Rules of Court provides that if a pleading is filed by registered mail, x x x **the date of mailing shall be considered as the date of filing**. It does not matter when the court actually receives the mailed pleading."[20]

In this case, the records show that the Republic filed its Motion for Partial Reconsideration before the RTC via registered mail on September 28, 2012.[21] Although the trial court received the Republic's motion only on October 5, 2012,[22] it should have considered the pleading to have been filed on September 28, 2012, the date of its mailing, which is clearly within the reglementary period of 15 days to file said motion,[23] counted from September 13, 2012, or the date of the Republic's receipt of the assailed Decision.[24]

Given these circumstances, we hold that the RTC erred in denying the Republic's Motion for Partial Reconsideration for having been filed out of time.

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."[25]

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.[26] 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.[27]

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**."[28] The court cannot base its judgment on mere speculations and surmises.[29]

In the present case, the RTC deemed it "fair and just that x x x whatever is the value of the capital gains tax 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."[30] The RTC further explained in its assailed Order that said award in favor of respondents is but equitable, just, and fair, *viz*.:

> As aptly pointed out by [respondents], they were merely forced by circumstances to be dispossessed of [the] subject property owing to the exercise of the State of its sovereign power to expropriate. **The payment of capital gains tax and other transfer taxes is a consequence of the expropriation proceedings.** It is in the sense of equity, justness and fairness, and as upheld by the Supreme Court in the case of *Capitol Subdivision, Inc. vs. Province of Negros Occidental*, G.R. No. L-16257, January 31, 1963, that the assailed consequential damages was awarded by the court.[31]

This is clearly an error. It is settled that **the transfer of property through expropriation proceedings is a sale or exchange within the meaning of Sections 24(D) and 56(A)(3) of the National Internal Revenue Code**, and profit from the transaction constitutes capital gain.[32] Since capital gains tax is a tax on passive income, it is the seller, or respondents in this case, who are liable to shoulder the tax.[33]

In fact, the Bureau of Internal Revenue (BIR), in BIR Failing No. 476-2013 dated December 18, 2013, has constituted the DPWH as a withholding agent tasked to withhold the 6% final withholding tax in the expropriation of real property for infrastructure projects. Thus, as far as the government is concerned, **the capital gains tax In expropriation proceedings remains a liability of the seller**, as it