

## SECOND DIVISION

[ G.R. No. 229335, November 29, 2017 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), PETITIONER, V. BELLY H. NG, REPRESENTED BY ANNABELLE G. WONG, RESPONDENT.**

### DECISION

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated July 1, 2016 and the Resolution<sup>[3]</sup> dated January 23, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 102033, which affirmed the Decision<sup>[4]</sup> dated November 26, 2013 and the Order<sup>[5]</sup> dated January 16, 2014 of the Regional Trial Court of Valenzuela City, Branch 270 (RTC) in Civil Case No. 38-V-13, fixing the just compensation for the subject lots at P15,000.00/square meter (sq. m.) and the replacement cost of the improvements thereon at P12,000.00/sq.m., but deleting the award of consequential damages and reducing the legal rate of interest on the obligation from twelve percent (12%) to six percent (6%) per annum (p.a.).

#### The Facts

On February 12, 2013, petitioner the Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH; petitioner), filed before the RTC a complaint<sup>[6]</sup> against respondent Belly H. Ng (respondent), represented by Annabelle G. Wong<sup>[7]</sup>, seeking to expropriate the lots registered in the name of respondent under Transfer Certificate of Title (TCT) Nos. V-92188<sup>[8]</sup> and V-92191<sup>[9]</sup> with a total area of 1,671 sq. m. (subject lots), together with the improvements thereon with an aggregate surface area of 2,121.7 sq. m. (collectively, subject properties), located in Kowloon Industrial Compound, Tatalon Street, Brgy. Ugong, Valenzuela City,<sup>[10]</sup> for the construction of the Mindanao Avenue Extension Project, Stage II-C (Valenzuela City to Caloocan City).<sup>[11]</sup> Petitioner manifested that it is able and ready to pay respondent the amounts of P6,684,000.00 (*i.e.*, at P4,000.00/sq. m.) and P11,138,362.74,<sup>[12]</sup> representing the combined relevant zonal value of the subject lots and the replacement cost of the improvements thereon, respectively.<sup>[13]</sup>

In her answer,<sup>[14]</sup> respondent contended that the offer price is unreasonably low, and that she should be compensated the fair market value of her properties at the time of taking, estimated to be at P25,000.00/sq. m. Moreover, the fair and just replacement cost of the improvements on the subject lots should be in the amount of P22,276,724.00,<sup>[15]</sup> pursuant to Section 10 of the Implementing Rules and Regulations of Republic Act No. (RA) 8974.<sup>[16]</sup>

Petitioner was eventually granted a Writ of Possession,<sup>[17]</sup> after respondent received the amount of P17,822,362.74, representing 100% of the zonal value of the subject properties.<sup>[18]</sup>

The RTC appointed a board of commissioners to determine the just compensation for the properties<sup>[19]</sup> which, thereafter, submitted its Commissioner's Report<sup>[20]</sup> dated June 10, 2013, recommending the amounts of P7,000.00/sq. m. and P12,000.00/sq. m. as the just compensation for the subject lots and the improvements thereon, respectively, and the payment of six percent (6%) legal interest therefor, reckoned from the time of taking.<sup>[21]</sup>

Dissatisfied, respondent objected<sup>[22]</sup> to the recommended just compensation of P7,000.00/sq. m. for the subject lots, contending that the same "is not [the] real, substantial, full, ample[,] and fair market value" of her lots,<sup>[23]</sup> considering that the just compensation for nearby properties<sup>[24]</sup> expropriated for the C-5 Northern Link Project<sup>[25]</sup> had been fixed by the same RTC at P15,000.00/sq. m.<sup>[26]</sup> She likewise objected to the imposition of six percent (6%) interest, insisting that the same should be pegged at twelve percent (12%) interest p.a.,<sup>[27]</sup> in line with the rulings in *Land Bank of the Philippines (LBP) v. Imperial*<sup>[28]</sup> and in

*Republic of the Philippines (Republic) v. Ker & Company, Limited.*<sup>[29]</sup> However, she accepted the value of P12,000.00/sq. m. fixed as the replacement cost of the improvements.<sup>[30]</sup>

On the other hand, petitioner filed its comment,<sup>[31]</sup> interposing no objection to the P7,000.00/sq. m. valuation for the subject lots and the imposition of six percent (6%) legal interest recommended by the board of commissioners,<sup>[32]</sup> citing the letter<sup>[33]</sup> dated July 30, 2013 of the Office of Director Patrick B. Gatan, Project Director, Infrastructure Right-of-Way and Resettlement - Project Management Office, DPWH.<sup>[34]</sup> However, it failed to attach a copy of the said letter.

### **The RTC Ruling**

In a Decision<sup>[35]</sup> dated November 26, 2013, the RTC fixed the just compensation for the subject lots at P15,000.00/sq. m. or the total amount of P25,065,000.00, taking into account: (a) the classification of the subject lots as industrial, their location, shape, and their being not prone to flood;<sup>[36]</sup> and (b) a previous case<sup>[37]</sup> involving a neighboring property expropriated for the C-5 Northern Link Project which was valued at P15,000.00/sq. m. by the same RTC.<sup>[38]</sup> It adopted the replacement cost of P12,000.00/sq. m. recommended by its appointed commissioners or the total amount of P25,460,400.00, noting that respondent accepted said recommendation.<sup>[39]</sup> Consequently, it ordered petitioner to pay respondent the aforesaid amounts with twelve percent (12%) legal interest p.a., reckoned from the time of taking of the properties, less the provisional deposit of P17,822,362.74, plus consequential damages and attorney's fees.<sup>[40]</sup>

Dissatisfied, petitioner moved for reconsideration,<sup>[41]</sup> but was denied in an Order<sup>[42]</sup> dated January 16, 2014, prompting it to file an appeal<sup>[43]</sup> before the CA.

### **The CA Ruling**

In a Decision<sup>[44]</sup> dated July 1, 2016, the CA affirmed the RTC rulings, but deleted the award of consequential damages and reduced the legal interest to six percent (6%) p.a., computed from the date of the RTC Decision until full satisfaction.<sup>[45]</sup>

The CA upheld the just compensation of P15,000.00/sq. m. fixed by the RTC for the subject 1,671-sq. m. lots on the basis of relevant factors, such as the BIR zonal valuation of the land, tax declarations and the Commissioner's Report, as well as the market value of the properties within the area.<sup>[46]</sup> It likewise sustained the value of P12,000.00/sq. m. fixed as the replacement cost of the improvements with an aggregate surface area of 2,121.7 sq. m. or the total amount of P25,460,400.00, holding that: (a) the amount of P11,138,362.74 proposed by petitioner was inconceivably lower than the current construction cost of a commercial/warehouse which was at P32,000.00/sq. m., even as early as November 2009; and (b) petitioner did not interpose any objection to the said amount.<sup>[47]</sup>

However, the CA ruled that the award of consequential damages was improper, considering that the entirety of the subject properties is being expropriated, hence, there is no remaining portion that may suffer an impairment or decrease in value.<sup>[48]</sup> It likewise reduced the legal interest to six percent (6%) p.a., in line with the amendment introduced by the *Bangko Sentral ng Pilipinas* Monetary Board in BSP-MB Circular No. 799,<sup>[49]</sup> Series of 2013.<sup>[50]</sup>

Petitioner filed a Motion for Partial Reconsideration,<sup>[51]</sup> which was, however, denied in a Resolution<sup>[52]</sup> dated January 23, 2017; hence, the instant petition.

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA committed reversible error in affirming the replacement cost for the improvements fixed by the RTC, and the award of attorney's fees.

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

The petition is partly meritorious.

The construction of the Mindanao Avenue Extension Project, Stage II-C (Valenzuela City to Caloocan City) involves the implementation of a national infrastructure project. Thus, for purposes of determining the just compensation, RA 8974<sup>[53]</sup> and its implementing rules and regulations (IRR), which were effective at the time of the filing of the complaint, shall govern.<sup>[54]</sup>

Under Section 10 of the IRR, the improvements and/or structures on the land to be acquired shall be appraised using the **replacement cost method**, thus:

Section 10. *Valuation of Improvements and/or Structures*. — Pursuant to Section 7 of [RA 8974], the Implementing Agency shall determine the valuation of the improvements and/or structures on the land to be acquired using the replacement cost method. **The replacement cost of the improvements/structures is defined as the amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures.** In the valuation of the affected improvements/structures, the Implementing Agency shall consider, among other things, the kinds and quantities of materials/equipment used, the location, configuration and other physical features of the properties, and prevailing construction prices. (Emphasis supplied)

The replacement cost method is premised on the principle of substitution, which means that "all things being equal, a rational, informed purchaser would pay no more for a property than the cost of building an acceptable substitute with like utility."<sup>[55]</sup>

Accordingly, the Implementing Agency should consider: (a) construction costs or the current market price of materials, equipment, labor, as well as the contractor's profit and overhead; and (b) attendant costs or the cost associated with the acquisition and installation of an acceptable substitute in place of the affected improvements/structures.<sup>[56]</sup> In addition, the case of *Republic v. Mupas (Mupas)*<sup>[57]</sup> instructs that in using the replacement cost method to ascertain the value of improvements, the courts may also consider the **relevant standards** provided under Section 5<sup>[58]</sup> of RA 8974, as well as **equity** consistent with the principle that eminent domain is a concept of *equity and fairness* that attempts to make the landowner whole. Thus, it is not the amount of the owner's investment, but the "value of the interest" in land taken by eminent domain, that is guaranteed to the owner.<sup>[59]</sup>

While there are various methods of appraising a property using the cost approach, among them, the reproduction cost, the replacement cost new, and the depreciated replacement cost, *Mupas* declared that the use of the **depreciated replacement cost method**<sup>[60]</sup> is consistent with the principle that the property owner shall be compensated for his actual loss,<sup>[61]</sup> bearing in mind that the concept of just compensation does not imply fairness to the property owner alone, but must likewise be just to the public which ultimately bears the cost of expropriation. **The property owner is entitled to compensation only for what he actually loses, and what he loses is only the actual value of the property at the time of the taking.**<sup>[62]</sup> Hence, even as undervaluation would deprive the owner of his property without due process, so too would its overvaluation unduly favor him to the prejudice of the public.<sup>[63]</sup>

It must be emphasized that in determining just compensation, the courts must consider and apply the parameters set by the law and its implementing rules and regulations in order to ensure that they do not arbitrarily fix an amount as just compensation that is contradictory to the objectives of the law.<sup>[64]</sup> Be that as it may, when acting within the parameters set by the law itself, courts are not strictly bound to apply the formula to its minutest detail, particularly when faced with situations that do not warrant the formula's strict application. **Thus, the courts may, in the exercise of their discretion, relax the formula's application,**<sup>[65]</sup> **subject to the jurisprudential limitation that the factual situation calls for it and the courts clearly explain the reason for such deviation.**<sup>[66]</sup>

In this case, the RTC and the CA upheld the recommendation of the court-appointed commissioners, fixing the just compensation for the improvements on the expropriated properties at P12,000.00/sq. m., which merely considered their location, classification, value declared by the owner, and the zonal valuation of the subject lots. However, there is no competent evidence showing that it took into account the prevailing construction costs and all other attendant costs associated with the acquisition and installation of an acceptable substitute in place of the affected improvements/structures as required by the IRR. Consequently, the Court cannot uphold and must, perforce, set aside the said valuation as the just compensation for the subject improvements.

On the other hand, it is unclear how the parameters set by the IRR have been factored-in in petitioner's proposed valuation of P11,138,362.74.<sup>[67]</sup> Thus, the Court cannot automatically adopt petitioner's own computation as prayed for in the instant petition. Neither can the Court accept respondent's submitted valuation<sup>[68]</sup> which claimed to have used the prevailing replacement cost method for lack of proper substantiation to support the correctness of the values or data used in such computation.

It must be emphasized that the veracity of the facts and figures which the parties used in their respective computations involves the resolution of questions of fact which is, as a rule, improper in a petition for review on *certiorari* since the Court is not a trier of facts. Thus, a remand of this case for reception of further evidence is necessary in order for the RTC to determine just compensation for the subject improvements in accordance with the guidelines set under RA 8974 and its IRR.

In relation thereto, the Court deems it proper to correct the award of legal interest to be imposed on the unpaid balance of the just compensation, which shall be computed at the rate of twelve percent (12%) p.a. from the date of taking, *i.e.*, from April 10, 2013 when the RTC issued a writ of possession<sup>[69]</sup> in favor of petitioner,<sup>[70]</sup> until June 30, 2013. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due respondent shall earn interest at the rate of six percent (6%) p.a.,<sup>[71]</sup> in line with the amendment introduced by BSP-MB Circular No. 799, Series of 2013.

Finally, the Court finds the award of attorney's fees to be improper and should be, accordingly, deleted. Even when a claimant is compelled to incur expenses to protect his rights, attorney's fees may still be withheld where no sufficient showing of bad faith could be reflected in a party's persistence in a suit other than an erroneous conviction of the righteousness of his cause.<sup>[72]</sup> The case of *Republic v. CA (Republic)* <sup>[73]</sup> cited by the CA to justify the award is inapplicable because, unlike in this case where petitioner only acquired possession of the expropriated properties after paying respondent the amount of P17,822,362.74, representing the 100% zonal valuation thereof, the petitioner in *Republic* took possession of the landowner's real property without initiating expropriation proceedings, and over the latter's objection.

**WHEREFORE**, the petition is **PARTLY GRANTED**. The Decision dated July 1, 2016 and the Resolution dated January 23, 2017 of the Court of Appeals in CA-G.R. CV No. 102033 are hereby **AFFIRMED** insofar as it upheld the just compensation fixed by the Regional Trial Court of Valenzuela City, Branch 270 (RTC) for the subject 1,671-square meter (sq. m.) lots at P15,000.00/sq. m. However, the valuation of P12,000.00/ sq. m. fixed by the lower courts as the replacement cost of the subject improvements with an aggregate surface area of 2,121.7 sq. m. is hereby **SET ASIDE**, and Civil Case No. 38-V-13 is **REMANDED** to the RTC for reception of evidence on the issue of just compensation therefor in accordance with the guidelines set under Republic Act No. 8974 and its implementing rules and regulations. Legal interest is hereby imposed on the unpaid balance of the just compensation, as determined by the RTC, at twelve percent (12%) per annum (p.a.) reckoned from April 10, 2013 to June 30, 2013 and, thereafter, at six percent (6%) p.a. until full payment. Finally, the award of attorney's fees is **DELETED** for lack of factual and legal bases.

The RTC is directed to conduct the proceedings in said case with reasonable dispatch, and to submit to the Court a report on its findings and recommended conclusions within sixty (60) days from notice of this Decision.

**SO ORDERED.**

*Carpio (Chairperson), Peralta, Caguioa, and Reyes, Jr., JJ., concur.*

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<sup>[1]</sup> *Rollo*, pp. 28-55.

<sup>[2]</sup> *Id.* at 60-70. Penned by Associate Justice Noel G. Tijam (now a member of the Supreme Court) with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring.

<sup>[3]</sup> *Id.* at 71-72.

<sup>[4]</sup> *Id.* at 160-168. Penned by Presiding Judge Evangeline M. Francisco.

<sup>[5]</sup> *Id.* at 209.

<sup>[6]</sup> See Complaint with Urgent Prayer for the Issuance of a Writ of Possession dated February 4, 2013; *id.* at 88-99.

<sup>[7]</sup> See Special Power of Attorney dated November 9, 2012; *id.* at 101-102.

<sup>[8]</sup> With an area of 1,379 sq. m. See TCT No. V-92188; records, p. 16, including dorsal portion.

<sup>[9]</sup> With an area of 292 sq. m. See TCT No. V-92191; *id.* 17, including dorsal portion.