

## FIRST DIVISION

[ G.R. No. 167290, November 26, 2014 ]

**HERMANO OIL MANUFACTURING & SUGAR CORPORATION,  
PETITIONER, VS. TOLL REGULATORY BOARD, ENGR. JAIME S.  
DUMLAO, JR., PHILIPPINE NATIONAL CONSTRUCTION  
CORPORATION (PNCC) AND DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS (DPWH), RESPONDENTS.**

### DECISION

**BERSAMIN, J.:**

The issue to be determined concerns the demand of the petitioner to have access to the North Luzon Expressway (NLEX) by way of an easement of right of way. The demand was rebuffed by the respondents, and upheld by both the trial and appellate courts.

#### The Case

On appeal by review on *certiorari* is the decision promulgated on October 27, 2004, [1] whereby the Court of Appeals (CA) affirmed the dismissal of the petitioner's complaint for specific performance by the Regional Trial Court (RTC) in Malolos, Bulacan, Branch 7, through the order issued on March 6, 2002. [2]

#### Antecedents

The petitioner owned a parcel of land located at the right side of the Sta. Rita Exit of the NLEX situated at Barangay Sta. Rita, Guiguinto, Bulacan and covered by Transfer Certificate of Title (TCT) No. T-134222 in its name issued by the Registry of Deeds of Bulacan. [3] The parcel of land was bounded by an access fence along the NLEX. In its letter dated September 7, 2001, [4] the petitioner requested that respondent Toll Regulatory Board (TRB) grant an easement of right of way, contending that it had been totally deprived of the enjoyment and possession of its property by the access fence that had barred its entry into and exit from the NLEX. On September 26, 2001, however, the TRB denied the petitioner's request, explaining thusly:

It is with regret that we cannot favorably consider your client's request at this point in time. Said request is inconsistent with the provision of Section 7.0 of Republic Act No. 2000, also known as the Limited Access Highway Act. Moreover, allowing easement of right-of-way may have detrimental/adverse effect on the scheduled rehabilitation and improvement of the North Luzon Expressway Interchanges, as well as on the operational problems, i.e. traffic conflicts that may arise, if approved.

[5]

Thereafter, the petitioner sued the TRB and Engr. Jaime S. Dumlao, the TRB's Executive Director, in the RTC,<sup>[6]</sup> demanding specific performance, the grant of the easement of right of way and damages (Civil Case No. 37-M-2002). The petitioner amended its complaint to implead the Philippine National Construction Corporation (PNCC) and the Department of Public Works and Highways (DPWH) as indispensable parties.<sup>[7]</sup>

The petitioner alleged in its amended complaint that the access fence had totally deprived it of the use and enjoyment of its property by preventing ingress and egress to its property; that the only access leading to its property was the road network situated in front of its property; that it was thereby deprived of its property without due process of law and just compensation; and that it was also denied equal protection of the law because adjacent property owners had been given ingress and egress access to their properties. It prayed that the RTC:

1. Immediately issue a writ of preliminary injunction/temporary restraining order enjoining the defendants, its agents and/or representatives from depriving plaintiff to ingress and egress of its property;

2. After due hearing:

- a) Render the foregoing writ of preliminary injunction perpetual;

- b) Granting plaintiff a right of way;

- c) Declare the condemnation of plaintiff's property as null and void. Alternatively, plaintiff prays that defendants be ordered to pay plaintiff a just and fair compensation of the latter's property in the amount of not less than Four Thousand Pesos (Ps. 4,000.00) per square meter;

- d) To pay plaintiff the amount of THREE HUNDRED THOUSAND PESOS (Ps. 300,000.00) and Ps. 5,000.00 per court appearance by way of Attorney's fees;

- e) To pay plaintiff Moral and Exemplary Damages in the amount of Ps. 200,000.00; and

- f) To pay plaintiff the costs of suit.

Plaintiff further prays for such other reliefs and remedies as may be deemed just and equitable under the premises.<sup>[8]</sup>

Appearing for the TRB, the Office of the Solicitor General (OSG) filed a *Motion to Dismiss with Opposition to the Application for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction* based on the following grounds:<sup>[9]</sup>

THE HONORABLE COURT HAS NO JURISDICTION OVER THE CASE

II.

THE PETITION STATES NO CAUSE OF ACTION CONSIDERING THAT:

A. PLAINTIFF IS NOT THE REAL PARTY IN INTEREST

B. EASEMENT WILL NOT LIE BECAUSE THE LIMITED ACCESS TO THE NORTH LUZON EXPRESSWAY IS ALLOWED UNDER REPUBLIC ACT 2000

C. THE STATE CANNOT BE SUED WITHOUT ITS CONSENT

III.

THE REQUISITES FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER AND/OR WRIT OF INJUNCTION ARE NOT PRESENT

IV.

THE COMPLAINT HAS NO LEGAL BASIS, THE PROPER REMEDY AVAILABLE IN THIS CASE IS NOT COMPLAINT BUT A PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT.

In its order dated March 6, 2002,<sup>[10]</sup> the RTC granted the motion to dismiss, observing as follows:

The present action against the defendants Toll Regulatory Board and its Executive Director, Engr. Jaime S. Dumlao, Jr., could be considered as a suit against the state without its consent as among the reliefs prayed for in the complaint is to require the said defendants to pay, jointly and severally, a just and reasonable compensation of the plaintiff's property which, if awarded in the judgment against said defendants, would ultimately involve an appropriation by the state of the amount needed to pay the compensation and damages so awarded. Moreover, as pointed out by the defendants-movants, defendant Jaime S. Dumlao, Jr. is sued in his official capacity so that the instant complaint against him is tantamount to a claim against the state which cannot be sued without its consent.

This principle applies with equal force as regards new defendant Department of Public Works and Highways (DPWH).

Defendant Philippine National Construction Corporation (PNCC), on the other hand, was impleaded as additional defendant being the entity that operates the North Luzon Expressway and was primarily responsible in depriving the plaintiff of the use and enjoyment of its property by reason of the construction of the access or right of way fence that prevents ingress to and egress from the subject property, considering further that the other defendants had refused to grant plaintiff's request for an easement of right of way.

The main objective and prayer of the plaintiff is for this court to issue a writ of injunction that will restrain the defendants from depriving it of ingress and egress to its property in question or to grant to it a right of way to its property.

Suffice it to say that the main relief sought by the plaintiff is beyond the jurisdiction of this court to grant as provided for under Presidential Decree No. 1818 and Republic Act No. 8975 which essentially prohibit the courts from issuing temporary restraining orders and/or writs of injunction against government infrastructure projects, and which expressly declares any such TRO or writ of injunction void under Section 3 of R.A. No. 8975.

In view of all the foregoing, the motion to dismiss is hereby GRANTED.

WHEREFORE, the instant complaint is hereby DISMISSED.

SO ORDERED.<sup>[11]</sup>

The petitioner sought reconsideration, but the RTC denied its motion on July 25, 2002.<sup>[12]</sup>

The petitioner appealed.<sup>[13]</sup>

### **Judgment of the CA**

On October 27, 2004, the CA promulgated its assailed judgment, affirming the RTC's dismissal of the complaint, to wit:

The law is clear. Plaintiff-appellant does not deny that the NLEX is a limited access facility. Neither did it put forward any reason why it should not be covered by the said law. Plaintiff-appellant, therefore, cannot expect any court to issue a decision in its favor in violation of an existing law. The Court further notes that plaintiff-appellant skirted this issue in its pleadings perhaps because it recognizes the fact that its prayers in the complaint before the trial court is in violation of the said law.

Moreover, as pointed out by defendants-appellees (*Rollo*, p. 19 and 127-128), when plaintiff-appellant acquired the property on December 14, 1999 (See: Records, p. 33), the NLEX was already in existence and as a matter of fact Entry No. 189568 in the title indicated that a portion of the property was already sold to the Republic of the Philippines (See: Dorsal portion, Records, p. 33). It is basic that a person cannot demand an easement of right of way if the isolation of the property was due to owner's own act (Art. 649, NCC; *Villanueva v Velasco*, 346 SCRA 99 [2000]). In the present case, when the plaintiff-appellant bought the property in 1999, the NLEX was already in existence and so was the access fence. In short, its predecessors-in-interest allowed the property to be isolated. Plaintiff-appellant is now bound by the acts of its predecessors-in-interest.

Moreover, as admitted by plaintiff-appellant in its amended complaint, there is a road network in front of the property which serves as its access (Records, p. 28). It is settled that to be able to demand a compulsory right of way, the dominant estate must not have adequate access to a public highway (*Villanueva v Velasco, supra*). Plaintiff-appellant did not complain about the adequacy of the existing road works.

Also, as pointed out by defendants-appellees, the action below was one for specific performance which is proper only in case of contractual breach. In the present case, plaintiff-appellant cannot claim that defendants-appellees committed a breach of contract because there is precisely no contract between them.

As to the matter of non-suability, the Court notes that while defendant-appellee PNCC is a government owned and controlled corporation, the other defendants-appellees are either agencies of the State (DPWH and TRB) or an employee of a government agency. Plaintiff-appellant argued that the principle of non-suability of the state does not apply when the government acted in a non-governmental capacity. The Court, however, notes that plaintiff-appellant merely cites cases to this effect but did not put forward any argument why the maintenance of NLEX should be considered as a non-governmental function. It cannot be denied that the maintenance of the highways is part of the necessary functions of the government of maintaining public infrastructures.

Coming now to PNCC although it is not strictly a government agency, its function is a necessary incident to a government function and, hence, it should likewise enjoy immunity from suit (See: *Union Insurance Society of Canton, Ltd. v Republic of the Philippines*, 46 SCRA 120 [1972]).

As to the assertion that no expropriation proceeding was taken against the subject property, the Court agrees with the PNCC that these arguments were not raised in the Court below and, hence, is no longer proper at this stage. Moreover, the Court notes that the proper party to complain against the alleged lack of proper expropriation proceeding is the previous owner, when portion of the property was sold to the Republic of the Philippines in 1979.

**WHEREFORE**, the appealed Order dated March 6, 2002 of the Regional Trial Court of Malolos, Bulacan, Branch 7, in Civil Case No. 37-M-2002 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>[14]</sup>

### **Issues**

The present appeal is anchored on the following grounds, namely:

#### **FIRST**

THE DECISION OF THE COURT OF APPEALS IS REPUGNANT TO THE DUE PROCESS AND EQUAL PROTECTION CLAUSE ENSHRINED IN OUR