

## SECOND DIVISION

[ G.R. No. 202690, June 05, 2013 ]

**HENRY L. SY, PETITIONER, VS. LOCAL GOVERNMENT OF QUEZON CITY, RESPONDENT.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the January 20, 2012 Decision<sup>[2]</sup> and July 16, 2012 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 91964 which affirmed with modification the August 22, 2008 Order<sup>[4]</sup> of the Regional Trial Court of Quezon City, Branch 80 (RTC) in Civil Case No. Q-96-29352, ordering respondent Local Government of Quezon City (the City) to pay petitioner Henry L. Sy (Sy) just compensation set at P5,500.00 per square meter (sq. m.), including P200,000.00 as exemplary damages and attorney's fees equivalent to one percent (1%) of the total amount due.

### The Facts

On November 7, 1996, the City, through then Mayor Ismael Mathay, Jr., filed a complaint for expropriation with the RTC in order to acquire a 1,000 sq. m. parcel of land, owned and registered under the name of Sy (subject property),<sup>[5]</sup> which was intended to be used as a site for a multi-purpose barangay hall, day-care center, playground and community activity center for the benefit of the residents of Barangay Balingasa, Balintawak, Quezon City.<sup>[6]</sup> The requisite ordinance to undertake the aforesaid expropriation namely, Ordinance No. Sp-181, s-94, was enacted on April 12, 1994.<sup>[7]</sup>

On March 18, 1997, pursuant to Section 19<sup>[8]</sup> of Republic Act No. 7160 (RA 7160), otherwise known as the "Local Government Code of 1991," the City deposited the amount of P241,090.00 with the Office of the Clerk of Court, representing 15% of the fair market value of the subject property based on its tax declaration.<sup>[9]</sup>

During the preliminary conference on November 8, 2006, Sy did not question the City's right to expropriate the subject property. Thus, only the amount of just compensation remained at issue.<sup>[10]</sup>

On July 6, 2006, the RTC appointed Edgardo Ostaco (Commissioner Ostaco), Engr. Victor Salinas (Commissioner Salinas) and Atty. Carlo Alcantara (Commissioner Alcantara) as commissioners to determine the proper amount of just compensation to be paid by the City for the subject property. Subsequently, Commissioners Ostaco and Alcantara, in a Report dated February 11, 2008, recommended the payment of P5,500.00 per sq. m., to be computed from the date of the filing of the expropriation complaint, or on November 7, 1996. On the other hand, Commissioner

Salinas filed a separate Report dated March 7, 2008, recommending the higher amount of P13,500.00 per sq. m. as just compensation.<sup>[11]</sup>

### **The RTC Ruling**

In the Order dated August 22, 2008,<sup>[12]</sup> the RTC, citing the principle that just compensation must be fair not only to the owner but to the expropriator as well, adopted the findings of Commissioners Ostaco and Alcantara and thus, held that the just compensation for the subject property should be set at P5,500.00 per sq. m.<sup>[13]</sup> Further, it found no basis for the award of damages and back rentals in favor of Sy.<sup>[14]</sup> Finally, while legal interest was not claimed, for equity considerations, it awarded six percent (6%) legal interest, computed from November 7, 1996 until full payment of just compensation.<sup>[15]</sup>

Dissatisfied, Sy filed an appeal with the CA.<sup>[16]</sup>

### **The CA Ruling**

In the Decision dated January 20, 2012,<sup>[17]</sup> the CA affirmed the RTC's ruling but modified the same, ordering the City to pay Sy the amount of P200,000.00 as exemplary damages and attorney's fees equivalent to one percent (1%) of the total amount due.

It found the appraisal of Commissioners Ostaco and Alcantara for the subject property to be more believable than the P13,000.00 per sq. m. valuation made by independent appraisers Cuervo and Asian Appraisers in 1995 and 1996, respectively, considering that it was arrived at after taking into account: (a) the fair market value of the subject property in the amount of P4,000.00 per sq. m. based on the September 4, 1996 recommendation of the City Appraisal Committee;<sup>[18]</sup> (b) the market value of the subject lot in the amount of P2,000.00 per sq. m. based on several sworn statements made by Sy himself;<sup>[19]</sup> and (c) Sy's own tax declaration for 1996,<sup>[20]</sup> stating that the subject property has a total market value of P2,272,050.00. Accordingly, it held that the fair market value of P5,500.00 per sq. m., or P5,500,000.00 in total, for the 1,000 sq. m. subject property arrived at by Commissioners Ostaco and Alcantara was more than fair and reasonable.<sup>[21]</sup>

The CA also denied Sy's assertion that he should be entitled to damages on account of the purported shelving of his housing project, finding no sufficient evidence to support the same. Likewise, it observed that the expropriation would not leave the rest of Sy's properties useless as they would still be accessible through a certain Lot 8 based on the Property Identification Map.<sup>[22]</sup>

Nonetheless, citing the case of *Manila International Airport Authority v. Rodriguez (MIAA)*,<sup>[23]</sup> it awarded exemplary damages in the amount of P200,000.00 and attorney's fees equivalent to one percent (1%) of the amount due because of the City's taking of the subject property without even initiating expropriation proceedings.<sup>[24]</sup> It, however, denied Sy's claim of back rentals considering that the RTC had already granted legal interest in his favor.<sup>[25]</sup>

Aggrieved, Sy moved for reconsideration which was denied in the Resolution dated July 16, 2012<sup>[26]</sup> for being filed out of time.<sup>[27]</sup> The City also filed a motion for reconsideration which was equally denied for lack of merit.<sup>[28]</sup>

Hence, this petition.

### **Issues Before The Court**

The present controversy revolves around the issue of whether the CA correctly: (a) dismissed Sy's motion for reconsideration for being filed out of time; (b) upheld the amount of just compensation as determined by the RTC as well as its grant of six percent (6%) legal interest; and (c) awarded exemplary damages and attorney's fees.

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

The petition is partly meritorious.

#### ***A. Failure to seasonably move for reconsideration; excusable negligence; relaxation of procedural rules***

At the outset, the Court observes that Sy's motion for reconsideration was filed out of time and thus, was properly dismissed by the CA. Records show that, as per the Postmaster's Certification, the CA's January 20, 2012 Decision was received by Sy on January 26, 2012 and as such, any motion for reconsideration therefrom should have been filed not later than fifteen (15) days from receipt,<sup>[29]</sup> or on February 10, 2012.<sup>[30]</sup> However, Sy filed his motion for reconsideration (subject motion) **a day late**, or on February 13, 2012,<sup>[31]</sup> which thus, renders the CA decision final and executory.<sup>[32]</sup>

In this regard, it is apt to mention that Sy's counsel, Atty. Tranquilino F. Meris (Atty. Meris), claims that his secretary's inadvertent placing of the date January 27, 2012, instead of January 26, 2012, on the Notice of Decision<sup>[33]</sup> constitutes excusable negligence which should therefore, justify a relaxation of the rules.

The assertion is untenable.

A claim of excusable negligence does not loosely warrant a relaxation of the rules. **Verily, the party invoking such should be able to show that the procedural oversight or lapse is attended by a genuine miscalculation or unforeseen fortuitousness which ordinary prudence could not have guarded against so as to justify the relief sought.**<sup>[34]</sup> The standard of care required is that which an ordinarily prudent man bestows upon his important business.<sup>[35]</sup> In this accord, the duty rests on every counsel to see to adopt and strictly maintain a system that will efficiently take into account all court notices sent to him.<sup>[36]</sup>

Applying these principles, the Court cannot excuse Atty. Meris' misstep based on his proffered reasons. Evidently, the erroneous stamping of the Notice of Decision could have been averted if only he had instituted a credible filing system in his office to account for oversights such as that committed by his secretary. Indeed, ordinary

prudence could have prevented such mistake.

Be that as it may, procedural rules may, nonetheless, be relaxed for the most persuasive of reasons in order to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.<sup>[37]</sup> Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires.<sup>[38]</sup>

As applied in this case, the Court finds that the procedural consequence of the above-discussed one-day delay in the filing of the subject motion – which, as a matter of course, should render the CA's January 20, 2012 Decision already final and executory and hence, bar the instant petition – is incommensurate to the injustice which Sy may suffer. This is in line with the Court's observation that the amount of just compensation, the rate of legal interest, as well as the time of its accrual, were incorrectly adjudged by both the RTC and the CA, contrary to existing jurisprudence. In this respect, the Court deems it proper to relax the rules of procedure and thus, proceed to resolve these substantive issues.

#### ***B. Rate of legal interest and time of accrual***

Based on a judicious review of the records and application of jurisprudential rulings, the Court holds that the correct rate of legal interest to be applied is twelve percent (12%) and not six percent (6%) per annum, owing to the nature of the City's obligation as an effective forbearance.

In the case of *Republic v. CA*,<sup>[39]</sup> the Court ruled that the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes an effective forbearance which therefore, warrants the application of the 12% legal interest rate, viz:

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

The Bulacan trial court, in its 1979 decision, was correct in imposing interests on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and "took" the

property in September 1969. **This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.** x x x  
(Emphasis and underscoring supplied)

In similar regard, the Court, in *Land Bank of the Philippines v. Rivera*,<sup>[40]</sup> pronounced that:

In many cases decided by this Court,<sup>[41]</sup> it has been repeated time and again that the **award of 12% interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance.** This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades.  
(Emphasis and underscoring supplied)

As to the reckoning point on which the legal interest should accrue, the same should be computed from the time of the taking of the subject property in 1986 and not from the filing of the complaint for expropriation on November 7, 1996.

Records show that the City itself admitted in its Appellee's Brief filed before the CA that **as early as 1986**, "a burden was already imposed upon the owner of the [subject] property x x x, considering that the expropriated property was already being used as Barangay day care and office."<sup>[42]</sup> Thus, the property was actually taken during that time and from thereon, legal interest should have already accrued. In this light, the Court has held that: <sup>[43]</sup>

x x x [T]he final compensation **must include interests on its just value to be computed from the time the property is taken** to the time when compensation is actually paid or deposited with the court[.] x x x  
(Emphasis supplied)

This is based on the principle that interest "runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking." <sup>[44]</sup>

Notably, the lack of proper authorization, *i.e.*, resolution to effect expropriation,<sup>[45]</sup> did not affect the character of the City's taking of the subject property in 1986 as the CA, in its January 20, 2012 Decision, suggests. Case law dictates that there is "taking" when the owner is actually deprived or dispossessed of his property; when there is a practical destruction or a material impairment of the value of his property or when he is deprived of the ordinary use thereof.<sup>[46]</sup> Therefore, notwithstanding the lack of proper authorization, the legal character of the City's action as one of "taking" did not change. In this relation, the CA noted that the City enacted Ordinance No. Sp-181, s-94, only on April 12, 1994 and filed its expropriation