

## THIRD DIVISION

[ G.R. No. 187604, June 25, 2012 ]

### **CITY OF MANILA, PETITIONER, VS. ALEGAR CORPORATION, TEROCEL REALTY CORPORATION, AND FILOMENA VDA. DE LEGARDA, RESPONDENTS.**

#### **D E C I S I O N**

##### **ABAD, J.:**

This case is about the issues that a local government unit has to cope with when expropriating private property for socialized housing.

##### **The Facts and the Case**

On March 1, 2001 the City Council of Manila passed Ordinance 8012 that authorized the City Mayor to acquire certain lots<sup>[1]</sup> belonging to respondents Alegar Corporation, Terocele Realty Corporation, and Filomena Vda. De Legarda, for use in the socialized housing project of petitioner City of Manila. The City offered to buy the lots at P1,500.00 per square meter (sq m) but the owners rejected this as too low with the result that on December 2, 2003 the City filed a complaint for expropriation against them before the Regional Trial Court (RTC) of Manila.<sup>[2]</sup>

The City alleged in its complaint that it wanted to acquire the lots for its land-for-the-landless and on-site development programs involving the residents occupying them.<sup>[3]</sup> The City offered to acquire the lots for P1,500.00 per sq m<sup>[4]</sup> but the owners rejected the offer. The total aggregate value of the lots for taxation purpose was P809,280.00 but the City deposited P1,500,000.00 with the Land Bank of the Philippines to enable it to immediately occupy the same pending hearing of the case.

Both Alegar and Terocele questioned the legitimacy of the City's taking of their lots solely for the benefit of a few long-time occupants. Alegar also pointed out that, while it declined the City's initial offer, it did not foreclose the possibility of selling the lots for the right price.<sup>[5]</sup> The filing of the suit was premature because the City made no effort in good faith to negotiate the purchase.

Meantime, on June 9, 2004 the trial court issued a writ of possession in the City's favor. On December 19, 2006, upon the joint motion of the parties, the RTC released the P1,500,000.00 deposit to the defendant owners.

On October 15, 2007 the parties agreed to forego with the pre-trial, opting instead to simultaneously submit their memoranda on the issue of whether or not there is necessity for the City to expropriate the subject properties for public use. The owners of the lots submitted their memorandum but the City did not.

On February 12, 2008 the RTC dismissed the complaint on the ground that the City

did not comply with Section 9 of Republic Act (R.A.) 7279<sup>[6]</sup> which set the order of priority in the acquisition of properties for socialized housing. Private properties ranked last in the order of priorities for such acquisition and the City failed to show that no other properties were available for the project. The City also failed to comply with Section 10 which authorized expropriation only when resort to other modes (such as community mortgage, land swapping, and negotiated purchase) had been exhausted.

The trial court pointed out that the City also failed to show that it exhausted all reasonable efforts to acquire the lots through a negotiated sale. Article 35 of the Rules and Regulations Implementing the Local Government Code provides that when property owners are willing to sell but for a higher price than that offered, the local chief executive must confer with them for the possibility of coming to an agreement on the price. Here, after the owners refused to sell the lots for P1,500.00 per sq m offer, the City did not exert any effort to renegotiate or revise its offer. The RTC also ruled that the City submitted the issue of genuine necessity to acquire the properties for public purpose or benefit without presenting evidence on the same.

The City moved for the reconsideration of the order of dismissal but before the RTC could act on it, the City appealed the case to the Court of Appeals (CA).<sup>[7]</sup>

On February 27, 2009<sup>[8]</sup> the CA affirmed the RTC's dismissal of the City's action, mainly for the reason that the City failed to comply with the requirements of Sections 9 and 10 of R.A. 7279 which ranked privately-owned lands last in the order of priority in acquiring lots for socialized housing and which preferred modes other than expropriation for acquiring them. The CA rejected the City's claim that the RTC denied it its right to due process, given that the City agreed to forego with pre-trial and to just submit a memorandum on the threshold issues raised by the owners' answer regarding the propriety of expropriation.<sup>[9]</sup> The City simply did not submit a memorandum. Although it moved for the reconsideration of the order of dismissal, the City filed a notice of appeal before the RTC could resolve the motion.

### **The Issues**

The petition raises the following issues:

1. Whether or not the CA erred in failing to rule that the RTC denied the City its right to due process when it dismissed the case without hearing the City's side;
2. Whether or not the CA erred in affirming the RTC's ruling that the City failed to comply with the requirements of Sections 9 and 10 of R.A. 7279 in trying to acquire the subject lots by expropriation;
3. Whether or not the CA erred in failing to set aside the RTC's ruling that the City failed to establish the existence of genuine necessity in expropriating the subject lots for public use or purpose; and
4. Whether or not the CA erred in failing to rule that the owners' withdrawal of its P1.5 million deposit constituted implied consent to the expropriation of their lots.

### **The Rulings of the Court**

**One.** The RTC did not deny the City its right to be heard on its action when that court dismissed the same. An expropriation proceeding of private lands has two stages: *first*, the determination of plaintiff's authority to exercise the power of eminent domain in the context of the facts of the case and, *second*, if there be such authority, the determination of just compensation. The first phase ends with either an order of dismissal or a determination that the property is to be acquired for a public purpose.<sup>[10]</sup>

Here, the City's action was still in the first stage when the RTC called the parties to a pre-trial conference where, essentially, their task was to determine how the court may resolve the issue involved in the first stage: the City's authority to acquire by expropriation the particular lots for its intended purpose. As it happened, the parties opted to simultaneously submit their memoranda on that issue. There was nothing infirm in this agreement since it may be assumed that the parties knew what they were doing and since such agreement would facilitate early disposal of the case.<sup>[11]</sup>

Unfortunately, the agreement implied that the City was waiving its right to present evidence that it was acquiring the subject lots by expropriation for a proper public purpose. Counsel for the City may have been confident that its allegations in the complaint can stand on their own, ignoring the owners' challenge to its right to expropriate their lots for the stated purpose. Parenthetically, the City moved for the reconsideration of the RTC's order of dismissal but withdrew this remedy by filing a notice of appeal from that order to the CA. Evidently, the City cannot claim that it had been denied the opportunity of a hearing.

**Two.** The CA correctly ruled that the City failed to show that it complied with the requirements of Section 9 of R.A. 7279 which lays down the order of priority in the acquisition through expropriation of lands for socialized housing. This section provides:

Section 9. *Priorities in the acquisition of Land.*—Lands for socialized housing shall be acquired in the following order:

- (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;
- (b) Alienable lands of the public domain;
- (c) Unregistered or abandoned and idle lands;
- (d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
- (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and
- (f) **Privately-owned lands.**

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands. (Emphasis supplied)