

SECOND DIVISION

[G.R. No. 175983, April 16, 2009]

**METROPOLITAN CEBU WATER DISTRICT (MCWD), PETITIONER,
VS. J. KING AND SONS COMPANY, INC., RESPONDENT.**

DECISION

TINGA, J.:

Before us is a Rule 45 petition^[1] which seeks the reversal of the decision^[2] and resolution^[3] of the Court of Appeals in CA-G.R. CEB-SP No. 00810. The Court of Appeals' decision nullified the orders^[4] and the writ of possession^[5] issued by the Regional Trial Court (RTC) of Cebu City, Branch 23, allowing petitioner to take possession of respondent's property.

Petitioner Metropolitan Cebu Water District is a government-owned and controlled corporation created pursuant to Presidential Decree No. 198, as amended. Among its purposes are to acquire, install, improve, maintain and operate water supply and distribution systems within the boundaries of the District.^[6]

Petitioner wanted to acquire a five (5)-square meter lot occupied by its production well. The lot is part of respondent's property covered by TCT No. 168605 and located in Banilad, Cebu City. Petitioner initiated negotiations^[7] with respondent J. King and Sons Company, Inc. for the voluntary sale of the latter's property. Respondent did not acquiesce to petitioner's proposal. After the negotiations had failed, petitioner pursuant to its charter^[8] initiated expropriation proceedings through Board Resolution No. 015-2004^[9] which was duly approved by the Local Water Utilities Administration (LWUA).^[10] On 10 November 2004, petitioner filed a complaint^[11] to expropriate the five (5)-square meter portion of respondent's property.

On 7 February 2005, petitioner filed a motion^[12] for the issuance of a writ of possession. Petitioner wanted to tender the amount to respondent during a rescheduled hearing which petitioner's counsel had failed to attend.^[13] Petitioner deposited^[14] with the Clerk of Court the amount of P17,500.00 equivalent to one hundred percent (100%) of the current zonal value of the property which the Bureau of Internal Revenue had pegged at P3,500.00 per square meter.^[15] Subsequently, the trial court granted the motion^[16] and issued the writ of possession.^[17] Respondent moved for reconsideration but the motion was denied.^[18]

Respondent filed a petition^[19] for certiorari under Rule 65 with the Court of Appeals. It sought the issuance of a temporary restraining order (TRO) which the Court of

Appeals granted.^[20] Thus, petitioner was not able to gain entry to the lot.^[21]

On 26 July 2006, the Court of Appeals rendered the assailed decision^[22] granting respondent's petition. It ruled that the board resolution which authorized the filing of the expropriation complaint lacked exactitude and particularity which made it invalid; that there was no genuine necessity for the expropriation of the five (5)-square meter lot and; that the reliance on Republic Act (R.A.) No. 8974 in fixing the value of the property contravenes the judicial determination of just compensation. Petitioner moved^[23] for reconsideration but the motion was rejected.^[24]

Hence, this petition.

The issues raised by petitioner can be summarized as follows:

1. Whether there was sufficient authority from the petitioner's board of directors to institute the expropriation complaint; and
2. Whether the procedure in obtaining a writ of possession was properly observed.

Eminent domain is the right of the state to acquire private property for public use upon payment of just compensation.^[25] The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. Its exercise is proscribed by only two Constitutional requirements: first, that there must be just compensation, and second, that no person shall be deprived of life, liberty or property without due process of law^[26].

As an inherent sovereign prerogative, the power to expropriate pertains to the legislature. However, Congress may, as in fact it often does, delegate the exercise of the power to government agencies, public officials and quasi-public entities. Petitioner is one of the numerous government offices so empowered. Under its charter, P.D. No. 198, as amended,^[27] petitioner is explicitly granted the power of eminent domain.

On 7 November 2000, Congress enacted R.A. No. 8974, entitled "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes." Section 2 thereof defines national government projects as follows:

Sec. 2. National Government Projects.-- The term "national government projects" shall refer to all national government infrastructure, engineering works and service contracts, **including projects undertaken by government-owned and -controlled corporations**, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of source of funding." (emphasis ours)

R.A. No. 8974 includes projects undertaken by government owned and controlled corporations,^[28] such as petitioner. Moreover, the Implementing Rules and

Regulations of R.A. No. 8974 explicitly includes water supply, sewerage, and waste management facilities among the national government projects covered by the law. [29] It is beyond question, therefore, that R.A. No. 8974 applies to the expropriation subject of this case.

The Court of Appeals held that the board resolution authorizing the expropriation lacked exactitude and particularity. It described the board resolution as akin to a general warrant in criminal law and as such declared it invalid. Respondent reiterates the same argument in its comment and adds that petitioner's exercise of the power of eminent domain was not reviewed by the LWUA.

A corporation does not have powers beyond those expressly conferred upon it by its enabling law. Petitioner's charter provides that it has the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in it. [30] All the powers, privileges, and duties of the district shall be exercised and performed by and through the board and that any executive, administrative or ministerial power may be delegated and redelegated by the board to any of its officers or agents for such purpose. [31] Being a corporation, petitioner can exercise its powers only through its board of directors.

For petitioner to exercise its power of eminent domain, two requirements should be met, namely: first, its board of directors passed a resolution authorizing the expropriation, and; second, the exercise of the power of eminent domain was subjected to review by the LWUA. In this case, petitioner's board of directors approved on 27 February 2004, Board Resolution No. 015-2004 [32] authorizing its general manager to file expropriation and other cases. Moreover, the LWUA did review and gave its stamp of approval to the filing of a complaint for the expropriation of respondent's lot. Specifically, the LWUA through its Administrator, Lorenzo H. Jamora, wrote petitioner's manager, Armando H. Paredes, a letter dated 28 February 2005 [33] authorizing petitioner to file the expropriation case "against the owner of the five-square meter portion of Lot No. 921-A covered by TCT No. 168805, pursuant to Section 25 of P.D. No. 198, as amended."

The letter not only explicitly debunks respondent's claim that there was no authorization from LWUA but it also identifies the lot sought to be expropriated with sufficient particularity.

It is settled that the validity of a complaint may be questioned immediately upon its filing through a motion to dismiss or raised thereafter as an affirmative defense. However, there is no need to further belabor the issue since it is established that petitioner has the legal capacity to institute the expropriation complaint.

Anent the second issue involving the issuance of a writ of possession, a discussion on the various stages in an expropriation proceeding is necessary.

The general rule is that upon filing of the expropriation complaint, the plaintiff has the right to take or enter into possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation. An exception to this procedure is provided by R.A. No. 8974 [34]. It requires the payment of one hundred percent (100%) of the zonal value of the property to be expropriated to entitle the plaintiff

to a writ of possession.

In an expropriation proceeding there are two stages, first, is the determination of the validity of the expropriation, and second is the determination of just compensation.^[35] In *Tan v. Republic*,^[36] we explained the two (2) stages in an expropriation proceeding to wit:

(1) Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, with condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned for the public use or purpose described in the complaint, upon payment of just compensation. An order of expropriation is final. An order of dismissal, if this be ordained, would be a final one, as it finally disposes of the action and leaves nothing more to be done by the courts on the merits. The order of expropriation would also be a final one for after its issuance, no objection to the right of condemnation shall be heard. The order of expropriation may be appealed by any party aggrieved thereby by filing a record on appeal.

(2) Determination by the court of the just compensation for the property sought to be taken with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before the court and findings of the commissioners would likewise be a final one, as it would leave nothing more to be done by the court regarding the issue. A second and separate appeal may be taken from this order fixing the just compensation.^[37]

Thus, the determination of the necessity of the expropriation is a justiciable question which can only be resolved during the first stage of an expropriation proceeding. Respondent's claim that the expropriated property is too small to be considered for public use can only be resolved during that stage.

Further, the Court of Appeals ruled that Section 4 of R.A. No. 8974 runs counter to the express mandate of Section 2 of Rule 67.^[38] It held that the law undermined the principle that the determination of just compensation is a judicial function. However, this Court has already settled the issue. In *Republic v. Gingoyon*,^[39] this Court held that:

It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects.

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It likewise bears noting that the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of Rep. Act No. 8974. Specifically, this prescribes the new standards in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the manner of payment thereof.

At the same time, Section 14 of the Implementing Rules recognizes the continued applicability of Rule 67 on procedural aspects when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court."^[40]

R.A. No. 8974 does not take away from the courts the power to judicially determine the amount of just compensation. The law merely sets the minimum price of the property as the provisional value. Thus, the amount of just compensation must still be determined by the courts according to the standards set forth in Section 5^[41] of R.A. No. 8974.

R.A. No. 8974 provides a different scheme for the obtention of a writ of possession. The law does not require a deposit with a government bank; instead it requires the government to immediately pay the property owner.^[42] The provisional character of this payment means that it is not yet final, yet, sufficient under the law to entitle the Government to the writ of possession over the expropriated property.^[43] The provisional payment is a prerequisite^[44] and a trigger^[45] for the issuance of the writ of possession. In *Gingoyon*,^[46] we held that:

It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects.^[47]

x x x

Rep. Act. No. 8974 is plainly clear in imposing the requirement of immediate prepayment, and no amount of statutory deconstruction can evade such requisite. It enshrines a new approach towards eminent domain that reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity. While expropriation proceedings have always demanded just compensation in exchange for private property, the previous deposit requirement impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed. Under the new modality prescribed by Rep. Act. No. 8974, the private owner sees immediate monetary recompense, with the same degree of speed as the taking of his/her property.^[48]

Petitioner was supposed to tender the provisional payment directly to respondent during a hearing which it had failed to attend. Petitioner, then, deposited the provisional payment with the court. The trial court did not commit an error in accepting the deposit and in issuing the writ of possession. The deposit of the provisional amount with the court is equivalent to payment.