

SECOND DIVISION

[G.R. NO. 136349, January 23, 2006]

LOURDES DE LA PAZ MASIKIP, PETITIONER, VS. THE CITY OF PASIG, HON. MARIETTA A. LEGASPI, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 165 AND THE COURT OF APPEALS, RESPONDENTS.

DECISION

SANDOVAL GUTIERREZ, J.:

Where the taking by the State of private property is done for the benefit of a small community which seeks to have its own sports and recreational facility, notwithstanding that there is such a recreational facility only a short distance away, such taking cannot be considered to be for public use. Its expropriation is not valid. In this case, the Court defines what constitutes a genuine necessity for public use.

This petition for review on certiorari assails the Decision^[1] of the Court of Appeals dated October 31, 1997 in CA-G.R. SP No. 41860 affirming the Order^[2] of the Regional Trial Court, Branch 165, Pasig City, dated May 7, 1996 in S.C.A. No. 873. Likewise assailed is the Resolution^[3] of the same court dated November 20, 1998 denying petitioner's Motion for Reconsideration.

The facts of the case are:

Petitioner Lourdes Dela Paz Masikip is the registered owner of a parcel of land with an area of 4,521 square meters located at Pag-Asa, Caniogan, Pasig City, Metro Manila.

In a letter dated January 6, 1994, the then Municipality of Pasig, now City of Pasig, respondent, notified petitioner of its intention to expropriate a 1,500 square meter portion of her property to be used for the "sports development and recreational activities" of the residents of Barangay Caniogan. This was pursuant to Ordinance No. 42, Series of 1993 enacted by the then *Sangguniang Bayan* of Pasig.

Again, on March 23, 1994, respondent wrote another letter to petitioner, but this time the purpose was allegedly "in line with the program of the Municipal Government to provide land opportunities to deserving poor sectors of our community."

On May 2, 1994, petitioner sent a reply to respondent stating that the intended expropriation of her property is unconstitutional, invalid, and oppressive, as the area of her lot is neither sufficient nor suitable to "provide land opportunities to deserving poor sectors of our community."

In its letter of December 20, 1994, respondent reiterated that the purpose of the expropriation of petitioner's property is "to provide sports and recreational facilities to its poor residents."

Subsequently, on February 21, 1995, respondent filed with the trial court a complaint for expropriation, docketed as SCA No. 873. Respondent prayed that the trial court, after due notice and hearing, issue an order for the condemnation of the property; that commissioners be appointed for the purpose of determining the just compensation; and that judgment be rendered based on the report of the commissioners.

On April 25, 1995, petitioner filed a Motion to Dismiss the complaint on the following grounds:

I

PLAINTIFF HAS NO CAUSE OF ACTION FOR THE EXERCISE OF THE POWER OF EMINENT DOMAIN, CONSIDERING THAT:

(A) THERE IS NO GENUINE NECESSITY FOR THE TAKING OF THE PROPERTY SOUGHT TO BE EXPROPRIATED.

(B) PLAINTIFF HAS ARBITRARILY AND CAPRICIOUSLY CHOSEN THE PROPERTY SOUGHT TO BE EXPROPRIATED.

(C) EVEN ASSUMING *ARGUENDO* THAT DEFENDANT'S PROPERTY MAY BE EXPROPRIATED BY PLAINTIFF, THE FAIR MARKET VALUE OF THE PROPERTY TO BE EXPROPRIATED FAR EXCEEDS SEVENTY-EIGHT THOUSAND PESOS (P78,000.00)

II

PLAINTIFF'S COMPLAINT IS DEFECTIVE IN FORM AND SUBSTANCE, CONSIDERING THAT:

(A) PLAINTIFF FAILS TO ALLEGE WITH CERTAINTY THE PURPOSE OF THE EXPROPRIATION.

(B) PLAINTIFF HAS FAILED TO COMPLY WITH THE PREREQUISITES LAID DOWN IN SECTION 34, RULE VI OF THE RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE; THUS, THE INSTANT EXPROPRIATION PROCEEDING IS PREMATURE.

III

THE GRANTING OF THE EXPROPRIATION WOULD VIOLATE SECTION 261 (V) OF THE OMNIBUS ELECTION CODE.

IV

PLAINTIFF CANNOT TAKE POSSESSION OF THE SUBJECT PROPERTY BY MERELY DEPOSITING AN AMOUNT EQUAL TO FIFTEEN PERCENT (15%)

OF THE VALUE OF THE PROPERTY BASED ON THE CURRENT TAX
DECLARATION OF THE SUBJECT PROPERTY.^[4]

On May 7, 1996, the trial court issued an Order denying the Motion to Dismiss,^[5] on the ground that **there is a genuine necessity to expropriate the property for the sports and recreational activities of the residents of Pasig**. As to the issue of just compensation, the trial court held that the same is to be determined in accordance with the Revised Rules of Court.

Petitioner filed a motion for reconsideration but it was denied by the trial court in its Order of July 31, 1996. Forthwith, it appointed the City Assessor and City Treasurer of Pasig City as commissioners to ascertain the just compensation. This prompted petitioner to file with the Court of Appeals a special civil action for *certiorari*, docketed as CA-G.R. SP No. 41860. On October 31, 1997, the Appellate Court dismissed the petition for lack of merit. Petitioner's Motion for Reconsideration was denied in a Resolution dated November 20, 1998.

Hence, this petition anchored on the following grounds:

THE QUESTIONED DECISION DATED 31 OCTOBER 1997 (ATTACHMENT "A") AND RESOLUTION DATED 20 NOVEMBER 1998 (ATTACHMENT "B") ARE CONTRARY TO LAW, THE RULES OF COURT AND JURISPRUDENCE CONSIDERING THAT:

I

- A. THERE IS NO EVIDENCE TO PROVE THAT THERE IS GENUINE NECESSITY FOR THE TAKING OF THE PETITIONER'S PROPERTY.
- B. THERE IS NO EVIDENCE TO PROVE THAT THE PUBLIC USE REQUIREMENT FOR THE EXERCISE OF THE POWER OF EMINENT DOMAIN HAS BEEN COMPLIED WITH.
- C. THERE IS NO EVIDENCE TO PROVE THAT RESPONDENT CITY OF PASIG HAS COMPLIED WITH ALL CONDITIONS PRECEDENT FOR THE EXERCISE OF THE POWER OF EMINENT DOMAIN.

THE COURT A QUO'S ORDER DATED 07 MAY 1996 AND 31 JULY 1996, WHICH WERE AFFIRMED BY THE COURT OF APPEALS, EFFECTIVELY AMOUNT TO THE TAKING OF PETITIONER'S PROPERTY WITHOUT DUE PROCESS OF LAW:

II

THE COURT OF APPEALS GRAVELY ERRED IN APPLYING OF RULE ON ACTIONABLE DOCUMENTS TO THE DOCUMENTS ATTACHED TO RESPONDENT CITY OF PASIG'S COMPLAINT DATED 07 APRIL 1995 TO JUSTIFY THE COURT A QUO'S DENIAL OF PETITIONER'S RESPONSIVE PLEADING TO THE COMPLAINT FOR EXPROPRIATION (THE MOTION TO DISMISS DATED 21 APRIL 1995).

III