

THIRD DIVISION

[G.R. NO. 157847, August 25, 2005]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE AIR
TRANSPORTATION OFFICE (ATO), PETITIONER, VS.
LEODIGARIO SARABIA, HERMENIGILDO DE LA CRUZ, DELIA
REBUTAR, MILDRED ROSE, ANITA DE LA CRUZ, ERLINDA
LUCERIO, GEORGIE DE LA CRUZ, FELMA DE LA CRUZ, FELINO DE
LA CRUZ, TERESITA SAMSON, AND EVANGELINE COLOMER,
RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

Before the Court is this petition for review on certiorari under Rule 45 of the Rules of Court, assailing the decision^[1] dated November 18, 2002 of the Court of Appeals in **CA-G.R. CV No. 66124**, which affirmed the November 26, 1999 decision of the Regional Trial Court at Aklan, Branch 5, in an expropriation case thereat filed by the petitioner. The affirmed decision of the trial court dispositively reads:

WHEREFORE, judgment is hereby rendered:

1. Fixing the amount of P800.00 per square meter as just compensation to be paid by plaintiff to defendants for the taking of the subject property indicated as Lot 6068-A in the Sketch Plan (Annex B, complaint) containing an area of 4,901 square meters which is a portion of the bigger parcel of land covered by Original Certificate of Title No. P-15596. The aggregate amount shall earn legal interest of 6% per annum commencing from November 11, 1999 until the finality of this Decision, thereafter, 12% interest per annum from the finality of the Decision on the remaining unpaid amount until full payment.
2. Ordering the defendants to withdraw the amount of P50,000.00 deposited provisionally with the Land Bank Kalibo Branch, Kalibo, Aklan, by the Air Transportation Office under Savings Account No. 0452-1084-45 to be deducted therefrom the costs of P10,600.00 and balance shall be deducted from the aggregate amount of the just compensation; and
3. Declaring the plaintiff's lawful right to retain possession of the subject property and to appropriate it for the public purpose it was intended for, i.e., the operations of the airport control tower, Kalibo crash fire rescue station, airport terminal and headquarters of the PNP Aviation Security, upon full payment of the just compensation thereat as fixed in paragraph 1 hereof.

Plaintiff is directed to pay the costs of P9,600.00 representing the Commissioners' fees equivalent to P800.00 per session for each commissioner, and P1,000.00 to Mr. Remegio M. Bautista as the designated secretary of the commissioners.

SO ORDERED.^[2]

Sometime in 1956, the Air Transportation Office (ATO) took possession and control of some 4,901 square-meter portion of Lot 6068, a 10,468 square-meter lot located at Pook Kalibo, Aklan. Lot 6068 is covered by Original Certificate of Title No. P-15596 of the Register of Deeds of Aklan in the names of the private respondents who are heirs of the late Segundo De la Cruz.

Initially, the ATO utilized the subject occupied portion of Lot 6068 as an airport parking area. In time, several structures were erected thereon, including the control tower, the Kalibo crash fire rescue station, the Kalibo airport terminal and the headquarters of the PNP Aviation Security Group.

In 1995, stores and restaurants made of light materials were constructed on the area outside the 4,901 square-meter portion occupied by ATO. In 1997, private respondents filed a complaint for *Recovery of Possession with Damages* before the Municipal Trial Court of Kalibo. The case, docketed as Civil Case No. 1644, is now pending in said court. ATO intervened in that case and alleged that the occupants of the stores and restaurants are its lessees.

Petitioner assured private respondents that they would be paid the fair market value of the subject land. However, the parties did not agree on the amount of compensation therefor.

On June 25, 1998, petitioner Republic of the Philippines, represented by the Air Transportation Office, filed with the Regional Trial Court at Aklan an action for the expropriation of the entire Lot 6068, thereat docketed as Civil Case No. 5543.

On August 6, 1999, the trial court appointed three (3) commissioners to ascertain the just compensation for the subject property.

Upon conduct of ocular inspection and hearing, the commissioners submitted a report to the trial court with the following recommendation:

NOW THEREFORE, after a brief discussion and in consideration of the premises herein above presented, the Commissioners hereby recommends (sic) and fix the value of 4,901 sq. m. at P800.00 pesos per square meter and the remaining area of 5,567 square meters at P500.00 per square meter as offered by the defendants.

On pre-trial, petitioner submitted a sketch plan of Lot 6068, showing the relative location of the 4,901 square-meter portion it actually occupied.

During the hearing of September 3, 1999, the trial court directed petitioner to present evidence to prove that the remaining portion not actually and physically occupied by the government is still needed for public purpose. However, petitioner countered that there is no need to present evidence thereon considering that almost

one-half (1/2) of the entire property subject of the case has already been in fact occupied and devoted to public purpose.

The trial court ignored petitioner's posturing and issued an order^[3] disposing, as follows:

WHEREFORE, the Court finds and so holds that the additional area consisting of 5,567 square meters or Lot 6068-B (unshaded portion in Annex "B"- Complaint) is not needed by the plaintiff for public use or purpose, but only the shaded portion, Lot 6068-A, containing an area of 4,901 square meters.

SO ORDERED.

Eventually, in a decision dated November 26, 1999,^[4] the trial court adopted the aforestated commissioner's report which fixed the just compensation for the 4,901 square-meter portion of Lot 6068 at P800.00 per square meter, the current market value of the property in 1999.

In so adjudging, the trial court relied on *Republic vs. Honorable Lucerito Tagle, et al.*,^[5] and thus fixed the just compensation for the 4,901 square-meter portion based on the current market value not at the time of the taking which was in 1956, but at the time of the issuance of the writ of possession on November 11, 1999. To the trial court, the date of the issuance of the writ has to be considered in fixing the just compensation because the same signified petitioner's proper acquisition and taking of the property which involves not only physical possession but also the legal right to possess and own the same.

Unable to accept the trial court's decision for allegedly being contrary to law and established jurisprudence, petitioner Republic filed a notice of appeal and record on appeal, which the trial court approved on January 18, 2000. Hence, the entire records of the case were transmitted to the Court of Appeals, whereat the Republic's appeal was docketed as CA-G.R. CV No. 66124.

In the herein assailed decision^[6] dated November 18, 2002, the Court of Appeals AFFIRMED the appealed decision of the trial court, thus:

WHEREFORE, premises considered, the assailed decision dated November 26, 1999 of the Regional Trial Court, Branch 5, Kalibo, Aklan in Civil Case No. 5543 is hereby AFFIRMED.

SO ORDERED.

In its decision, the appellate court placed emphasis on the alleged failure of petitioner prove that the "taking" of the occupied 4,901 square-meter portion of Lot 6068 occurred in 1956. More specifically, it ruled:

Granting that indeed plaintiff-appellant's possession took place in 1956, said possession pertained to a "portion" of said lot. The admission of plaintiff-appellant that the encroachment covered a wider and wider area as time passed, puts into issue the character of said possession. Was it "taking" in the sense of expropriation?

The expropriation of real property does not include mere physical entry or occupation of land. The physical entry and occupation of the property in 1956 should include all the rights that may be exercised by an owner of the subject property. Plaintiff-appellant failed to show that it intended to acquire physical possession but also the legal right to possess and ultimately to own the subject property.

Disconsolately, the assailed decision reveals inaction of plaintiff-appellant in proving its present claim which should have been done the earliest possible opportunity. It was stated that:

The plaintiff, despite receipt of copy of aforesaid report and the expiration of the prescribed period to file any comment thereto, opted not to file any pleading relative thereto. Upon the other hand, the defendants interposed no objection to said report.

Hence, there appears no error in the lower court's ruling that the "taking" for the purposes of fixing just compensation be considered on November 11, 1999, the date of the issuance of the writ of possession, as well as the lower court's adherence to the recommendation of the commissioners.

Petitioner moved for a reconsideration of the appellate court's decision but its motion was denied by said court in its resolution of April 1, 2003.

Hence, petitioner's present recourse.

As we see it, the sole question presented herein involves the precise time at which just compensation should be fixed: whether as of the time of actual taking of possession by the expropriating entity, as insisted by petitioner Republic, or at the issuance of the writ of possession pursuant to the expropriation proceedings, as maintained by the respondents and sustained by both the trial court and the Court of Appeals.

Before going any further, however, we take exception to the appellate court's finding that evidence is wanting on the fact of petitioner's taking possession of the disputed 4,901 square-meter portion in 1956.

Petitioner contends that contrary to what the appellate court found, the taking of the property in 1956 or at least a wide portion thereof, was adequately established.

We agree with petitioner Republic that sufficient evidence exists to prove that the taking occurred sometime in 1956.

As borne by the records, private respondents' Answer and Pre-Trial Brief contain irrefutable admissions. Thus, in their Answer,^[7] respondents declared, among others, as follows:

1. That they admit each and every allegation in paragraphs 1,2,3,4,5 and 6 of the complaint. They admit that the portion of the land sought to be expropriated which is indicated by the white shaded of the sketch plan