

## SECOND DIVISION

**[ G. R. No. 154614, November 25, 2004 ]**

**THE CITY OF ILOILO, REPRESENTED BY HON. JERRY P. TREÑAS, CITY MAYOR, PETITIONER, VS. HON. JUDGE EMILIO LEGASPI, PRESIDING JUDGE, RTC, ILOILO CITY, BRANCH 22, AND HEIRS OF MANUELA YUSAY, REPRESENTED BY SYLVIA YUSAY DEL ROSARIO AND ENRIQUE YUSAY, JR., RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

*Via* a Petition for *Certiorari* and Prohibition with Prayer for Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order, the City of Iloilo, represented by Mayor Jerry P. Treñas, seeks the nullification and/or modification of the Order dated 05 June 2002 of Honorable Emilio Legaspi, Presiding Judge, Regional Trial Court, Branch 22, Iloilo City, denying its Motion for Reconsideration of the court's Order dated 15 April 2002, holding in abeyance the resolution of the Motion for Issuance of Writ of Possession until after it shall have rested its case.

The factual antecedents are the following:

On 07 March 2001, the *Sangguniang Panlungsod* of the City of Iloilo enacted Regulation Ordinance No. 2001-037 granting authority to its City Mayor to institute expropriation proceedings on Lot No. 935, registered in the name of Manuela Yusay, located at Barangay Sto. Niño Norte, Arevalo, Iloilo City. The regulation ordinance was approved by then City Mayor Mansueto A. Malabor.<sup>[1]</sup>

On 14 March 2001, Mayor Malabor wrote the heirs of Manuela Yusay, through Mrs. Sylvia Yusay del Rosario, Administratrix of the estate of Manuela Yusay, making a formal offer to purchase their property known as Cadastral Lot No. 935 with an area of 85,320 square meters covered by Transfer Certificate of Title (TCT) No. T-67506 of the Registry of Deeds of Iloilo City for P250 per square meter for the purpose of converting the same as an on-site relocation for the poor and landless residents of the city in line with the city's housing development program.<sup>[2]</sup>

In a letter dated 26 June 2001, Mayor Malabor informed Administrators Sylvia Y. del Rosario and Enrique Yusay, Jr. that their counter-proposal to the City's proposal to purchase Lot No. 935 was not acceptable to the City Government, particularly to the City Council, which insisted that an expropriation case be filed per SP Resolution No. 01-445. With their apparent refusal to sell the property, the City terminated further proceedings on the matter.<sup>[3]</sup>

Petitioner City of Iloilo, represented by Mayor Jerry P. Treñas, filed an Amended Complaint<sup>[4]</sup> for Eminent Domain against private respondents Heirs of Manuela

Yusay, represented by Sylvia Yusay del Rosario and Enrique Yusay, Jr.<sup>[5]</sup> The subject of the same is Lot No. 935 of the Cadastral Survey of Arevalo covered by TCT No. T-67506.

Private respondents filed an Answer,<sup>[6]</sup> dated 25 September 2001, to which petitioner filed a Reply,<sup>[7]</sup> dated 19 October 2001.

On 23 October 2001, private respondents filed a Motion to Set Case for Preliminary Hearing on the Special and Affirmative Defenses they have raised in the Answer.<sup>[8]</sup> Petitioner opposed<sup>[9]</sup> the motion to which private respondents filed a Reply.<sup>[10]</sup>

In an Order dated 04 February 2002, public respondent Hon. Emilio B. Legaspi, Presiding Judge, Regional Trial Court of Iloilo City, Branch 22, found the motion to be in order and meritorious, and the grounds of the opposition to be untenable; thus, he set the case for Preliminary Hearing on the Special and Affirmative Defenses.<sup>[11]</sup>

Petitioner moved for the reconsideration<sup>[12]</sup> of the order which private respondents opposed.<sup>[13]</sup>

On 01 April 2002, public respondent set the case for Pre-Trial after Atty. Amelita K. del Rosario-Benedicto, counsel for private respondents, manifested she was withdrawing the Motion for Preliminary Hearing on the Special and Affirmative Defenses. Petitioner did not interpose any objection.<sup>[14]</sup>

On 11 April 2002, petitioner filed a Motion for Issuance of Writ of Possession alleging that since it has deposited with the Court the amount of P2,809,696.50 representing fifteen percent (15%) of the fair market value of the property sought to be expropriated based on its current tax declaration, it may immediately take possession of the property in accordance with Section 19, Republic Act No. 7160.<sup>[15]</sup>

On 15 April 2002, public respondent issued an Order with the following disposition:

WHEREFORE, in view of the foregoing, Atty. Benedicto is given ten (10) days from today within which to file an Opposition to the pending Motion For Issuance of Writ of Possession, furnishing copy of the same to plaintiff's counsel who has the same period to file a Reply.

Parties agreed that the Court will resolve the Motion For Issuance of Writ of Possession after the plaintiffs shall have rested their case after the trial on the merits.<sup>[16]</sup>

Private respondents filed their Opposition to the Motion for Issuance of Writ of Possession<sup>[17]</sup> to which petitioner filed a Reply.<sup>[18]</sup>

On 09 May 2002, petitioner filed a Motion for Reconsideration praying that the lower court reconsider its order of 15 April 2002, and to consider its Motion for Issuance of Writ of Possession submitted for resolution after the filing of its Reply to private respondents' Opposition to the motion. Citing the case of *Robern Development Corp. v. Judge Jesus V. Quitain, et al.*,<sup>[19]</sup> it maintains "there is no need for a

hearing before the Honorable Court can grant [its] Motion for Issuance of Writ of Possession.”<sup>[20]</sup>

Private respondents filed an Opposition to the Motion for Reconsideration with Rejoinder to Reply to Opposition. They vehemently opposed the motion arguing that counsels of the parties had agreed that the lower court will resolve the Motion for Issuance of Writ of Possession after petitioner shall have rested its case after trial on the merits. They added that in view of the defects as to form and substance of the amended complaint, the issuance of a writ of possession ceases to be a ministerial duty on the court; hence, there is a need for a court hearing.<sup>[21]</sup>

On 05 June 2002, the assailed order was issued, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is DENIED and resolution of the Motion for Writ of Possession is hereby held in abeyance until further orders from this Court.<sup>[22]</sup>

Hence, this petition.

The petition raises the following alleged errors of the lower court:

A. THAT THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE MOTION FOR RECONSIDERATION DATED MAY 9, 2002 AS CONTAINED IN ITS ORDER OF JUNE 5, 2002, AND IN HOLDING THAT PETITIONER’S MOTION FOR ISSUANCE OF WRIT OF POSSESSION BE RESOLVED AFTER HEREIN PETITIONER HAS CONVINCED THE TRIAL COURT THAT IT HAS A MERITORIOUS CASE OF EMINENT DOMAIN, DESPITE THE PROVISIONS OF SECTION 2, RULE 67 OF THE 1997 RULES OF CIVIL PROCEDURE AND DESPITE THE RULING OF THE SUPREME COURT IN THE CASE OF “ROBERN DEVELOPMENT CORPORATION VS. JUDGE JESUS V. QUITAIN, ET AL.”

B. THAT THE LOWER COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDER OF JUNE 5, 2002 WHICH IN EFFECT UPHELD THE CONTENTION OF PRIVATE RESPONDENTS THAT THE AMENDED COMPLAINT FOR EXPROPRIATION FILED BY HEREIN PETITIONER IS NOT SUFFICIENT IN FORM AND SUBSTANCE, HENCE THE LATTER IS NOT ENTITLED TO AN IMMEDIATE ISSUANCE OF A WRIT OF POSSESSION.<sup>[23]</sup>

As to its Amended Complaint, petitioner maintains that the same is sufficient in form and substance since it has complied with Section 19 of Rep. Act No. 7160 (1991 Local Government Code) and Section 1, Rule 67 of the 1997 Rules of Civil Procedure. It explains that since public respondent has ordered the parties to proceed with the Pre-Trial Conference and trial of the case, it can be concluded that the Amended Complaint is sufficient in form and substance.

In compliance with Section 19 of the 1991 Local Government Code, petitioner says it

deposited the amount of P2,809,696.50 with the Regional Trial Court of Iloilo, which is equivalent to fifteen percent (15%) of the fair market value of the property sought to be expropriated based on its current tax declaration. It further argues that in the cases of *Robern Development Corporation v. Judge Jesus Quitain, et al.*,<sup>[24]</sup> and *Salvador Biglang-Awa v. Hon. Judge Marciano I. Bacalla, et al.*,<sup>[25]</sup> the duty to issue a Writ of Possession becomes a ministerial duty upon the trial court without necessity of a hearing once the provisional deposit under Section 2 of Rule 67<sup>[26]</sup> has been complied with.

In their Comment, private respondents maintain that there was nothing for the lower court to reconsider because the order dated 15 April 2002 which was dictated in open court, and which petitioner sought to be reconsidered, was already final (on 30 April 2002) when the latter filed its Motion for Reconsideration on 09 May 2002. Second, they insist that petitioner is estopped to change its position with respect to the immediate issuance of the writ of possession. The agreement entered into is binding and is the law between the parties and should be accorded respect since it was approved by public respondent. Third, they claim there is waiver on the part of petitioner to ask for the immediate possession of Lot No. 935 since it took the latter eight (8) months and twelve (12) days from the filing of the Amended Complaint, and nine (9) months and thirteen (13) days from the filing of the Original Complaint before it filed the Motion for Issuance of Writ of Possession. Moreover, they assert that there is a need for a court hearing before a writ of possession can be issued, because the amended complaint is being assailed before the lower court for not being sufficient in form and substance. Finally, they aver that the issuance of the writ of possession ceases to be ministerial when the complaint for expropriation fails to allege compliance with the mandatory requirements for the exercise of the power of eminent domain for purposes of socialized housing as interpreted in the cases of *Filstream International Incorporated v. Court of Appeals, et al.*<sup>[27]</sup>

In its Reply, petitioner avers that the order of 15 April 2002 became final only after fifteen (15) days from the time the same was received by it on 26 April 2002, and not fifteen (15) days from the time the order was made in open court on 15 April 2002.

Petitioner argues that there is nothing in the rules which prohibits it from reversing its position with respect to the issuance of the writ of possession in light of Section 2, Rule 67 of the 1997 Rules of Civil Procedure which allows taking immediate possession of property sought to be expropriated upon compliance with said section. Further, it adds that its stand to seek immediate possession of the property is supported by the *Robern* and *Biglang-awa* cases.

It insists that there is no waiver or estoppel on its part. There is no provision of law which sets a time limit within which to file a motion for the issuance of a writ of possession. It reiterated that the sufficiency of the form and substance of the Amended Complaint can be determined and resolved by the lower court through an examination of the allegations contained therein and if the same complies with the requisites set forth in Section 19 of Rep. Act No. 7160 and Section 1 of Rule 67.<sup>[28]</sup> Thus, there is no necessity of a trial before the lower court can resolve the Motion for Issuance of a Writ of Possession.

Finally, it argues that the *Filstream*<sup>[29]</sup> cases are not applicable. It adds that the

provisions of Rep. Act No. 7279 which private respondents allege as not to have been complied with are not conditions precedent for the exercise of the power of eminent domain.

We first rule on the issue of whether the Order dated 15 April 2002, which was dictated in open court, was already final when petitioner filed a Motion for Reconsideration on 09 May 2002. Petitioner maintains that the motion for reconsideration was filed before the order became final fifteen (15) days from the time it received a copy thereof in writing, and not from the time the same was dictated in open court as claimed by private respondents.

Time-honored and of constant observance is the principle that no judgment, or order, whether final or interlocutory, has juridical existence until and unless it is set in writing, signed, and promulgated, *i.e.*, delivered by the Judge to the Clerk of Court for filing, release to the parties and implementation, and that indeed, even after promulgation, it does not bind the parties until and unless notice thereof is duly served on them by any of the modes prescribed by law. This is so even if the order or judgment has in fact been orally pronounced in the presence of the parties, or a draft thereof drawn up and signed and/or a copy thereof somehow read or acquired by any party.<sup>[30]</sup>

In the case at bar, the Motion for Reconsideration filed by petitioner was filed before the 15 April 2002 order became final. The order dictated in open court had no juridical existence before it is set in writing, signed, promulgated and served on the parties. Since the order orally pronounced in court had no juridical existence yet, the period within which to file a motion for reconsideration cannot be reckoned therefrom, but from the time the same was received in writing. Petitioner had fifteen (15) days from its receipt of the written order on 26 April 2002 within which to file a motion for reconsideration. Thus, when it filed the motion for reconsideration on 09 May 2002, the said motion was timely filed.

Petitioner has the irrefutable right to exercise its power of eminent domain. It being a local government unit, the basis for its exercise is granted under Section 19 of Rep. Act No. 7160, to wit:

Sec. 19. *Eminent Domain.* - A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.