

SECOND DIVISION

[G.R. No. 130118, July 09, 1998]

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS, HON. PEDRO M. SUNGA, JR., AND TETRO ENTERPRISES, INC., RESPONDENTS.

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision^[1] of the Court of Appeals in CA-G.R. SP No. 43524. The facts are as follows:

On February 10, 1992, private respondent Tetro Enterprises, Inc. filed a complaint, denominated "for recovery of possession and damages," against petitioner, the Republic of the Philippines, represented by the Regional Director of Region III of the Department of Public Works and Highways (DPWH). The complaint was assigned to Branch 41 of the Regional Trial Court (RTC) of San Fernando, Pampanga, presided over by respondent Judge Pedro M. Sunga, Jr.^[2] Tetro Enterprises alleged that it was the owner of a piece of land, consisting of 12,643 square meters, in San Fernando, Pampanga, registered in its name under Transfer Certificate of Title No. 283205-R; that the land had a "probable value" of P252,569.00; that sometime in 1974, petitioner, without having acquired the property through expropriation or negotiated sale, constructed a road thereon; and that, despite demands by private respondent, petitioner refused to return the land taken and to pay the rent for the use of the same since 1974. Private respondent, therefore, prayed that petitioner be ordered to return the land to it in its "original state" and to close the road constructed thereon; and to pay actual damages in the amount of P100,000.00, rentals for the use of the land at P200.00 a month, in the total amount of P40,800.00, and attorney's fees.

Petitioner filed an answer^[3] in due time, alleging that private respondent had no cause of action because it had not exhausted administrative remedies before filing its complaint and that the case was actually a suit against the State without its consent. Petitioner alleged that it constructed part of the Olongapo-Gapan Road on the subject property with the knowledge and consent of private respondent which in fact entered into negotiations regarding the price of the land; that petitioner was willing to pay the fair market value of the property at the time of taking, plus interest, but, instead of accepting its offer, private respondent filed the present complaint; and that the return of the land to private respondent was no longer feasible.

Upon agreement of the parties, the trial court issued an order, dated November 25, 1994,^[4] creating a board of commissioners "to determine the actual value of the property subject of this case which shall be a basis for an amicable settlement by the parties or the decision to be rendered by this Court, as the case may be." The

board was composed of Eller V. Garcia, a real estate broker, representing private respondent Tetro Enterprises, Abraham Sison, Provincial Assessor of Pampanga, representing petitioner, and Juan P. Limpin, Jr., clerk of court of the RTC, as chairman.

On December 8, 1995, the board rendered a report^[5] recommending that the price of the subject property be fixed between P4,000.00 and P6,000.00 per square meter as "the just and reasonable price" to be paid to private respondent. The board found that while the lot was, at the time of taking, devoted to sugarcane, it had become highly commercial since the construction of the Olongapo-Gapan Road resulting in the opening of residential subdivisions and the construction of commercial buildings.

Based on the report of the board, the RTC rendered a decision^[6] on September 2, 1996 fixing the price of the land at P6,000.00 per square meter or the total amount of P75,858,000.00 for 12,643 square meters. The RTC noted that a lot within the vicinity of the land in question had been sold at P10,000.00 per square meter and that, as Provincial Assessor Abraham Sison said, the government stood to benefit from the acquisition of the property because it was "of great use."

A copy of the decision was received by petitioner's counsel, the Office of the Solicitor General, on September 9, 1996.

On September 17, 1996, the OSG moved for a reconsideration, contending that the RTC erred in fixing the compensation for the taking of the land on the basis of its current market value of P6,000.00 per square meter when the basis should be its price at the time of taking by the government in 1974. No proof of service of a copy of the motion was, however, attached to the motion as required by Rule 15, §6.^[7]

In its order^[8] dated October 3, 1996, the RTC denied petitioner's motion, finding it to be without merit and, in addition, to be a "mere scrap of paper" for having been filed in violation of Rule 15, §6 of the Rules of Court. A copy of the order was received by the OSG on December 6, 1996.

Meanwhile, on December 3, 1996, private respondent Tetro Enterprises moved for the execution of the decision in its favor. In its order dated December 23, 1996, the RTC granted the motion. On December 13, 1996, petitioner filed a notice of appeal, but the notice was denied by the court on January 7, 1997 on the ground that its decision of September 2, 1996 had become final and executory.

Petitioner filed a petition for certiorari in the Court of Appeals to set aside the orders of October 3, 1996, December 23, 1996, and January 7, 1997 of the RTC. Its petition was, however, dismissed by the Court of Appeals in its decision of June 9, 1997. In its resolution dated August 6, 1997,^[9] the appellate court denied reconsideration of its decision.

The Court of Appeals agreed with the RTC that because of petitioner's failure to attach proof of service of its motion for reconsideration, the motion was nothing but a mere scrap of paper which did not toll the period of appeal, with the result that the trial court's decision became final. Consequently, the trial court correctly denied petitioner's notice of appeal. Petitioner submitted to the Court of Appeals a registry return card showing that private respondent's counsel had received a copy of its

motion for reconsideration on September 24, 1996, but the Court of Appeals considered this to be of "little moment" for the reason that the proof of service should have been presented to the RTC and not to the appellate court for the first time. Concluding, the Court of Appeals held:

[I]n a very real sense, petitioner's present predicament is of its own making. Consider: counsel for the petitioner did not a) append the registry return receipt and the affidavit of service, if one has been prepared, to petitioner's motion for reconsideration; b) at any time apprise the lower court of the sending, if this be the case, of a copy of the motion for reconsideration to Atty. Cruz-Ducut; c) appear at the hearing on the date he set for the consideration of the motion for reconsideration; d) oppose, despite notice, private respondent's motion for execution; and e) seek reconsideration of the order disapproving petitioner's notice of appeal, knowing pretty well that a special civil action for certiorari is available only when there is no other plain, speedy and adequate remedy in the ordinary course of law. Petitioner thus cannot lay blame on respondent judge's doorstep for the way the latter disposed of the incidents obtaining in this case.

Hence, this petition. Petitioner contends that —

THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT RIGIDLY AND STRICTLY APPLIED THE RULES OF PROCEDURE AGAINST HEREIN PETITIONER WHICH, IF NOT CORRECTED, WOULD RESULT IN A MISCARRIAGE OF JUSTICE TO THE GREAT AND IRREPARABLE DAMAGE TO THE GOVERNMENT.

Petitioner argues that it had substantially complied with the requirement of notice to the adverse party as shown by the registry return card which it submitted to the Court of Appeals. This card shows that a copy of petitioner's motion for reconsideration was sent by registered mail to private respondent's counsel, Atty. Zenaida G. Cruz-Ducut, on September 18, 1996.

Petitioner further contends that it has a meritorious defense because the value of the land taken should be based not on its current market value but on its value at the time of taking by the government in 1974. Petitioner, therefore, prays that the decision of the Court of Appeals be set aside and the case be remanded to the RTC for determination of the amount of just compensation due private respondent "in accordance with law and settled jurisprudence."

On the other hand, private respondent argues that the decision of the Court of Appeals, holding petitioner's motion for reconsideration to be a mere scrap of paper because it contained no proof of service on the adverse party, is in accordance with the rulings of this Court. Anent petitioner's contention that the compensation for the taking of the property should be based on its value at the time of taking in 1974 and not on its current market value, private respondent argues that the basis of compensation is not the issue in this case. At any rate, it is contended that the cases invoked by petitioner do not apply since this case is not one for expropriation but one for recovery of possession and for damages. Moreover, private respondent argues that the government is estopped from questioning the trial court's valuation because it is based on the recommendation of the board of commissioners in which petitioner was represented.