

## THIRD DIVISION

[ G.R. No. 119328, July 26, 1996 ]

**PROVIDENT INTERNATIONAL RESOURCES CORPORATION,  
PETITIONER, VS. COURT OF APPEALS, AND MUNICIPALITY OF  
PARAÑAQUE, REPRESENTED BY MAYOR PABLO R. OLIVARES,  
RESPONDENTS.**

### D E C I S I O N

**DAVIDE, JR., J.:**

The pivotal issue in this petition for review under Rule 45 of the Rules of Court is whether respondent Court of Appeals, in its Amended Decision<sup>[1]</sup> of 18 October 1994 in CA-G.R. SP No. 32672, committed reversible error in annulling an order of execution of the Regional Trial Court (RTC) of Makati, Branch 133, in an expropriation case docketed as Civil Case No. 93-1412.<sup>[2]</sup> The said RTC order directed the Municipality of Parañaque (hereinafter *PARAÑAQUE*) to vacate the property subject of the expropriation case and to surrender possession thereof to its owner, defendant Provident International Resources, Inc. (PIRC), and was issued after the trial court had: (a) handed down an order dismissing the case for want of jurisdiction over the subject matter; (b) given due course to the appeal of *PARAÑAQUE* from such dismissal; and (c) directed the transmittal of the entire record of the case to the Court of Appeals.

We resolved to give due course to the petition after petitioner PIRC filed its reply to the private respondent's comment on the petition.

The factual and procedural antecedents in this case, as gathered from the original record of CA-G.R. SP No. 32672, the pleadings of the parties, and the decision and amended decision of the Court of Appeals, are not complicated.

On 28 April 1993, *PARAÑAQUE* filed Civil Case No. 93-1412 with the RTC of Makati for the expropriation of certain parcels of land covered by Transfer Certificate of Title Nos. 58641, 58604, 63460, 44745, and 48033, with a total area of 68,151 square meters, located at Likod Ibayo, Barangay Sto. Niño, Ninoy Aquino Avenue, Parañaque, Metro Manila. These lots belonged to PIRC and were to be used as the site for a new municipal building. *PARAÑAQUE* claimed that it offered to buy the property for P54,520,800.00 based on the fair market value stated in the tax declarations, but PIRC refused to sell. The case was raffled to Branch 61 of the said court, but on motion of *PARAÑAQUE*, the case was transferred to the RTC of Parañaque, then presided by Judge Octavio Astilla.

On 13 May 1993, *PARAÑAQUE* deposited with the Philippine National Bank (PNB) the amount of P8.1 million, or fifteen percent (15%) of P54,520,800.00, pursuant to Section 19<sup>[3]</sup> of the Local Government Code of 1991 (R.A. No. 7160, hereinafter LGC). It then filed an ex-parte motion for the issuance of a writ of possession

pursuant to said Section 19.

On 17 May 1993, the RTC of Parañaque granted the motion for a writ of possession and ordered: (a) the Municipal Treasurer of Parañaque to hold the money in trust for the court and to disburse it only upon a court order; and (b) the deputy sheriff of Branch 77 of the Metropolitan Trial Court (MeTC) of Parañaque to personally serve a copy of the complaint on PIRC and to place PARAÑAQUE in possession, control, and disposition of the lots in question.

On 18 May 1993, PARAÑAQUE was placed in possession of the lots.

On 28 June 1993, Judge Astilla, on motion of PIRC, inhibited himself from the case and ordered the return of the case to the Executive Judge for re-raffle. Although the case was re-raffled to Branch 60, it was returned to Branch 61 of the RTC of Makati, presided by Judge Fernando V. Gorospe, Jr.

On 19 July 1993, PIRC moved for reconsideration of the 17 May 1993 order of the RTC of Parañaque and prayed that PARAÑAQUE be ordered to vacate the lots on the following grounds: (1) the 17 May 1993 order violated PIRC's fundamental right to due process as it was given no notice nor opportunity to be heard before it was deprived of its property; (2) there was no appropriation ordinance nor certification as to the availability of "unobligated" funds for the expropriation of the lots; (3) the mandatory legal requirements for the immediate taking of possession of the lots were not fulfilled; (4) Section 19 of the LGC[4] is unconstitutional; (5) absence of an ordinance providing for the expropriation of the lots; (6) lack of a valid and definite offer previously made to PIRC; (7) lack of necessity for the expropriation of PIRC's lots considering the availability of other parcels of land suitable for PARAÑAQUE's purpose; (8) the expropriation violates the national policy of encouraging private investments; (9) failure to implead the Republic of the Philippines which, through the Presidential Commission of Good Government (PCGG), had sequestered the lots in question; and (10) lack of jurisdiction because the lots in question were also the subject of an action pending before the Sandiganbayan.

On 10 August 1993, the RTC of Makati (Branch 61 - Judge Gorospe) considered the motion for reconsideration submitted for resolution with respect to the ground of lack of jurisdiction, but deferred resolution of the other arguments.

On 17 August 1993, the RTC of Makati (Branch 61) granted PIRC's motion for reconsideration and dismissed the case for lack of jurisdiction as the lots to be expropriated were in *custodia legis*, being sequestered by the PCGG and involved in a case pending before the Sandiganbayan. It also set aside the previous order of 17 May 1993 granting the petitioner's ex-parte motion for the issuance of a writ of possession, and ordered the Deputy Sheriff to "maintain a [sic] *status quo ante* since it appears on record that this court has not yet issued the corresponding writ of possession to implement and enforce said order of 17 May 1993."

On 23 August 1993, PARAÑAQUE moved for reconsideration of the 17 August 1993 order. On the other hand, PIRC filed an urgent ex-parte motion for an order directing PARAÑAQUE to vacate the lots and surrender them to PIRC.

On 31 August 1993, Judge Gorospe, upon PARAÑAQUE's motion, inhibited himself

and ordered the case re-raffled. The case was eventually assigned to Branch 133 of the RTC of Makati, presided by Judge Ruben A. Mendiola.<sup>[5]</sup>

On 22 October 1993, Branch 133 of the RTC of Makati, per Judge Mendiola, issued an order<sup>[6]</sup> denying PARAÑAQUE's motion for reconsideration and directing PARAÑAQUE and its agents to vacate the lots and surrender possession to PIRC within five days from notice.

On 27 October 1993, PARAÑAQUE filed its Notice of Appeal<sup>[7]</sup> from the orders of 17 August 1993 and 22 October 1993.

On 29 October 1993, Branch 133 of the RTC of Makati issued an order<sup>[8]</sup> giving due course to PARAÑAQUE's appeal and ordering the transmittal of "the entire records" of Civil Case No. 93-1412 to the Court of Appeals for further proceedings.

On 4 November 1993, PIRC filed a motion for the issuance of a writ implementing the order to vacate and the appointment of a special sheriff.<sup>[9]</sup> Forthwith, and on even date, the RTC of Makati (Branch 133) gave PARAÑAQUE a period of five days from receipt of the order within which to file its Comment/Opposition to the motion.  
<sup>[10]</sup>

On 10 November 1993, PARAÑAQUE manifested<sup>[11]</sup> that the trial court had lost jurisdiction over the case "after November 6, 1993 with the perfection of [PARAÑAQUE's] appeal by the filing of its notice of appeal on 27 October 1993 before the 15-day period for appeal expired." Hence, no longer could the court act on PIRC's motion for an order to vacate, which, PARAÑAQUE pointed out, was not a motion for execution pending appeal; and even assuming otherwise, no good reason was cited in the motion to justify its grant. Nevertheless, PARAÑAQUE asked the trial court "should [it] be [so] minded, before transmittal of the entire records to the Court of Appeals, to reverse or reconsider its appealed order due to the supervening event of a Sandiganbayan denial . . . of the PCGG motion for reconsideration of its decision lifting the sequestration. . . ."

On 11 November 1993, PARAÑAQUE filed a manifestation calling the trial court's attention to the fact that up to said date, the record of the case had not been transmitted to the Court of Appeals.<sup>[12]</sup>

On 16 November 1993, Branch 133 of the RTC of Makati issued an order<sup>[13]</sup> denying PARAÑAQUE's "prayer for reversal or second reconsideration of the August 17, 1993 order," contained in its Manifestation filed on 10 November 1993, but granting PIRC's motion for the issuance of a writ implementing the order to vacate which the court deemed a motion for execution pending appeal. It then ordered the issuance of a writ of execution upon PIRC's filing of a bond of P1 million, and appointed a special sheriff to implement the writ by ejecting PARAÑAQUE from the subject property and placing PIRC in physical possession thereof.

PARAÑAQUE then filed with this Court a special civil action for certiorari and prohibition, docketed as G.R. No. 112442, to annul the orders of the trial court of 17 August 1993, 22 October 1993, and 16 November 1993. On 23 November 1993, this Court referred the case to the Court of Appeals,<sup>[14]</sup> which docketed it as CA-G.R. SP

No. 32672.

It was only on 4 January 1994 when the RTC transmitted to the Court of Appeals the record of Civil Case No. 93-1412, which, nevertheless, was still undocketed with the Court of Appeals at the time the challenged Amended Decision in CA-G.R. SP No. 32672 was promulgated on 18 October 1994.<sup>[15]</sup> Parenthetically, it may be noted that PARAÑAQUE claims in its Memorandum dated 8 December 1995 that the said appeal remained undocketed "pending elevation by the trial court of the complete records to the Court of Appeals notwithstanding efforts made by Parañaque to expedite the appeal."<sup>[16]</sup>

On 31 May 1994, the Court of Appeals rendered its original decision<sup>[17]</sup> in CA-G.R. SP No. 32672, dismissing the petition on the ground of forum shopping. It stated thus:

It is evident that the subject of petitioner's appeal and this petition are basically the same orders issued by the trial court (dated August 17, 1993 and October 22, 1993; the November 16, 1993 order is merely a consequence of the earlier orders).

It is essential for the issuance of a writ of certiorari and prohibition that there be no appeal or any plain, speedy and adequate remedy in the ordinary course of law. (Rule 65, Secs. 1 and 2)

In the case at bar, the remedy of appeal was available and in fact had been taken by petitioner on November 22, 1993. In the language of *Collado v. Hernando*, 161 SCRA 639, 645 (1988), where the petitioner also filed both an appeal and later a petition for certiorari, the Supreme Court described this "as a classic case of forum-shopping which this Court definitely cannot and will not countenance."

Our conclusion that petitioner is guilty of forum-shopping and that its petition therefore must be dismissed makes it unnecessary for us to discuss the other issues raised therein.<sup>[18]</sup>

PARAÑAQUE seasonably moved for its reconsideration.<sup>[19]</sup>

On 18 October 1994, the Court of Appeals promulgated its challenged Amended Decision<sup>[20]</sup> which disposed as follows:

WHEREFORE, the Court GRANTS petitioner's motion for reconsideration dated 27 June 1994. We RECALL and SET ASIDE Our decision promulgated on May 31, 1994.

In lieu thereof, the Court GRANTS the petition for *certiorari* and prohibition, hereby ANNULING the order dated 11 November 1993, in Civil Case No. 93-1412 of the respondent Court, and permanently enjoining the respondent Court from further acting in said case, without prejudice to the final decision in the appeal.<sup>[21]</sup>

In support thereof, it ratiocinated as follows:

(8) It was not until January 4, 1994, that the trial court's record was finally transmitted to this Court. The case is still undocketed (UDK 9504), for the reason that the appealing party has not yet paid the docketing and other legal fees. Moreover, the record is not yet complete in that certain transcripts of stenographic notes have not been submitted.

The foregoing circumstances indicate that, indeed, the filing of an appeal was an inadequate remedy, and that the continuance of the proceedings in the trial court would have been an oppressive exercise of authority, which this Court, as the appellate Court, could not have stopped for the reason that the case was then not yet elevated to it. In fact, it was not until about two and a half (2½) months from the filing of the notice of appeal, and about one and a half (1½) month after the filing of this case on November 22, 1993, that the record of the trial court was forwarded to this Court on appeal. Hence, the certification on non-forum-shopping should be taken as technically correct.

xxx            xxx            xxx

What is more, appeal having been perfected, the trial court should not have ordered the execution of its order to eject the plaintiff from the subject property. Even then, there is still a question as to its jurisdiction over the subject matter of the case. The order dated November 11, 1993, was issued precipitately, and with grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>[22]</sup>

Its motion for reconsideration<sup>[23]</sup> of the abovementioned Amended Decision having been denied on 16 February 1995,<sup>[24]</sup> PIRC filed this petition wherein it contends that the Court of Appeals erred in: (1) failing to dismiss PARAÑAQUE's special civil action for *certiorari* and prohibition on the ground of forum-shopping; (2) concluding that PARAÑAQUE could avail itself of the extraordinary remedy of *certiorari*; and (3) ruling that the RTC issued the writ for the execution pending appeal of the order to vacate precipitately or with grave abuse of discretion.<sup>[25]</sup>

The subject of PARAÑAQUE's petition for *certiorari* (CA-G.R. SP No. 32672) was the annulment of the following: (1) the order of 17 August 1993 dismissing the complaint for expropriation filed by it; (2) the order of 22 October 1993 denying the motion for reconsideration of the order of dismissal and directing PARAÑAQUE to vacate the premises and to peacefully surrender the possession thereof to PIRC; and (3) the order of 16 November 1993 granting PIRC's motion for the issuance of a writ of execution to implement the order to vacate.

It must be pointed out that the first two orders were the subject of the ordinary appeal interposed by PARAÑAQUE. It would appear from the language of Section 1, Rule 65 of the Rules of Court that the availability of the right to appeal precludes recourse to the special civil action for *certiorari*.<sup>[26]</sup> However, it is settled, as a general proposition, that the availability of an appeal does not foreclose recourse to the extraordinary remedies, such as *certiorari* and prohibition, where appeal is not adequate or equally beneficial, speedy and sufficient,<sup>[27]</sup> as where the orders of the trial court were issued in excess of or without jurisdiction;<sup>[28]</sup> or there is need to promptly relieve the aggrieved party from the injurious effects of the acts of an