

## THIRD DIVISION

**[ G.R. No. 181562-63, October 02, 2009 ]**

**SPOUSES CIRIACO AND ARMINDA ORTEGA, PETITIONERS, VS.  
CITY OF CEBU, RESPONDENT.**

**[G.R. NO. 181583-84]**

**CITY OF CEBU, PETITIONER, VS. SPOUSES CIRIACO AND  
ARMINDA ORTEGA, RESPONDENTS.**

### D E C I S I O N

**NACHURA, J.:**

These are consolidated petitions for review on *certiorari* filed by petitioners Ciriaco and Arminda Ortega (Spouses Ortega) in G.R. Nos. 181562-63 and petitioner City of Cebu (Cebu City) in G.R. Nos. 181583-84 assailing the Decision of the Court of Appeals (CA) in the similarly consolidated petitions docketed as CA-G.R. SP No. 80187 and CA-G.R. SP No. 00147, respectively.<sup>[1]</sup>

The facts, summarized by the CA, follow.

Spouses Ciriaco and Arminda Ortega x x x are the registered owners of a parcel of land known as Lot No. 310-B, situated in Hipodromo, Cebu City, with an area of 5,712 square meters and covered by Transfer Certificate of Title No. 113311, issued by the Register of Deeds of the City of Cebu.

One-half of the above described land is occupied by squatters. On September 24, 1990, [the Spouses Ortega] filed an ejectment case against the squatters before the Municipal Trial Court in Cities (MTCC) of Cebu City, which rendered decision in favor of [the spouses Ortega]. The case eventually reached the Supreme Court, which affirmed the decision of the MTCC. The decision of the MTCC became final and executory, and a writ of execution was issued on February 1, 1994.

On May 23, 1994, the Sangguniang Panglungsod of [Cebu City] enacted City Ordinance No. 1519, giving authority to the City Mayor to expropriate one-half (1/2) portion (2,856 square meters) of [the spouses Ortega's] land (which is occupied by the squatters), and appropriating for that purpose the amount of P3,284,400.00 or at the price of ONE THOUSAND ONE HUNDRED FIFTY PESOS (P1,150.00) per square meter. The amount will be charged against Account No. 8-93-310, Continuing Appropriation, Account No. 101-8918-334, repurchase of lots for various projects. The value of the land was determined by the Cebu City Appraisal Committee in Resolution No. 19, series of 1994, dated April 15,

1994.

Pursuant to said ordinance, [Cebu City] filed a Complaint for Eminent Domain [before the Regional Trial Court (RTC), Branch 23, Cebu City] against [the spouses Ortega], docketed as Civil Case No. CEB-16577.

On March 13, 1998, the [RTC] issued an order declaring that [Cebu City] "has the lawful right to take the property subject of the instant case, for public use or purpose described in the complaint upon payment of just compensation."

Based on the recommendation of the appointed Commissioners (one of whom was the City Assessor of [Cebu City]), the [RTC] issued another Order dated May 21, 1999, fixing the value of the land subject to expropriation at ELEVEN THOUSAND PESOS (P11,000.00) per square meter and ordering [Cebu City] to pay [Spouses Ortega] the sum of THIRTY ONE MILLION AND FOUR HUNDRED SIXTEEN THOUSAND PESOS (P31,416,000.00) as just compensation for the expropriated portion of Lot No. 310-B.

The Decision of the [RTC] became final and executory because of [Cebu City's] failure to perfect an appeal on time, and a Writ of Execution was issued on September 17, 1999 to enforce the court's judgment. Upon motion of [the Spouses Ortega], the [RTC] issued an Order dated March 11, 2002, quoted as follows:

"Reading of the aforestated resolution shows that the City Council of Cebu approved Ordinance No. 1519 appropriating the sum of P3,284,400.00 for payment of the subject lot chargeable to Account No. 101-8918-334.

"In view thereof, the above-mentioned sum is now subject for execution or garnishment for the same is no longer exempt from execution."

[Cebu City] filed an Omnibus Motion to Stay Execution, Modification of Judgment and Withdrawal of the Case, contending that the price set by the [RTC] as just compensation to be paid to [the Spouses Ortega] is way beyond the reach of its intended beneficiaries for its socialized housing program. The motion was denied by the [RTC]. [Cebu City's] Motion for Reconsideration was likewise denied.

By virtue of the Order of the [RTC], dated July 2, 2003, x x x Sheriff Benigno B. Reas[, ] Jr. served a Notice of Garnishment to Philippine Postal Bank, P. del Rosario and Junquera Branch Cebu City, garnishing [Cebu City's] bank deposit therein.

Hence, [Cebu City] filed the instant Petition for *Certiorari* before [the CA] (CA-G.R. SP NO. 80187).

During the pendency of x x x CA-G.R. SP NO. 80187, [Cebu City] filed before the [RTC] a Motion to Dissolve, Quash or Recall the Writ of Garnishment, contending that Account No. 101-8918-334 mentioned in Ordinance No. 1519 is not actually an existing bank account and that the garnishment of [Cebu City's] bank account with Philippine Postal Bank was illegal, because government funds and properties may not be seized under writ of execution or garnishment to satisfy such judgment, on obvious reason of public policy. The [RTC] issued an Order dated March 8, 2004, denying said motion. [Cebu City's] Motion for Reconsideration was also denied.

[The Spouses Ortega] filed an Ex-Parte Motion to Direct the New Manager of Philippine Postal Bank to Release to the Sheriff the Garnished Amount, which was granted by the [RTC]. [Cebu City] filed a Motion for Reconsideration, but the same was denied.

Hence, [Cebu City] filed another Petition for *Certiorari* (CA-G.R. SP NO. 00147) [with the Court of Appeals].<sup>[2]</sup>

Ruling on the petitions for *certiorari*, the CA disposed of the cases, to wit:

**WHEREFORE**, all the foregoing premises considered, the instant Petitions for *Certiorari* are hereby PARTIALLY GRANTED. The assailed Orders of the [RTC] [Assailed Orders dated March 11, 2002 and July 2, 2003, respectively, in CA-G.R SP NO. 80187] are hereby ANNULLED AND SET ASIDE insofar as they denied [Cebu City's] Motion to Stay Execution, but they are hereby AFFIRMED insofar as they denied [Cebu City's] Motion to Modify Judgment and Withdraw from the Expropriation Proceedings. Furthermore, the assailed Orders of the [RTC dated March 8, 2004 in CA-G.R. SP NO. 00147] are hereby ANNULLED AND SET ASIDE. Let the Decision of the [RTC] be executed in a manner prescribed by applicable law and jurisprudence.

SO ORDERED.<sup>[3]</sup>

Hence, these consolidated appeals by petitioners Cebu City and the Spouses Ortega positing the following issues:

1. Whether the CA erred in affirming the RTC's denial of Cebu City's Omnibus Motion to Modify Judgment and to be Allowed to Withdraw from the Expropriation Proceedings.
2. Whether the deposit of Cebu City with the Philippine Postal Bank, appropriated for a different purpose by its Sangguniang Panglungsod, can be subject to garnishment as payment for the expropriated lot covered by City Ordinance No. 1519.

We deny both petitions.

On the first issue, the CA did not err in affirming the RTC's Order that the

expropriation case had long been final and executory. Consequently, both the Order of expropriation and the Order fixing just compensation by the RTC can no longer be modified. In short, Cebu City cannot withdraw from the expropriation proceedings.

Section 4, Rule 67 of the Rules of Court on Expropriation provides:

**SEC. 4. Order of expropriation.** - If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid.

After the rendition of such an order, the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court deems just and equitable.

Plainly, from the aforequoted provision, expropriation proceedings speak of two (2) stages, *i.e.*:

1. Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. This ends with an order, if not of dismissal of the action, of condemnation [or order of expropriation] declaring that the plaintiff has the lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint; and
2. Determination by the court of the just compensation for the property sought to be taken.<sup>[4]</sup>

We held in the recent case of *Republic v. Phil-Ville Development and Housing Corporation*<sup>[5]</sup> that:

[A]n order of expropriation denotes the end of the first stage of expropriation. Its end then paves the way for the second stage--the determination of just compensation, and, ultimately, payment. **An order of expropriation puts an end to any ambiguity regarding the right of the petitioner to condemn the respondents' properties.** Because an order of expropriation merely determines the authority to exercise the power of eminent domain and the propriety of such exercise, its issuance