

SECOND DIVISION

[G.R. No. 206484, June 29, 2016]

**DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
(DOTC), PETITIONER, VS. SPOUSES VICENTE ABECINA AND
MARIA CLEOFE ABECINA, RESPONDENTS.**

DECISION

BRION, J.:

This petition for review on *certiorari* seeks to reverse and set aside the **March 20, 2013** decision of the Court of Appeals (CA) in **CA-G.R. CV No. 93795**^[1] affirming the decision of the Regional Trial Court (RTC) of Daet, Camarines Norte, Branch 39, in **Civil Case No. 7355**.^[2] The RTC ordered the Department of Transportation and Communications (DOTC) to vacate the respondents' properties and to pay them actual and moral damages.

ANTECEDENTS

Respondent spouses Vicente and Maria Cleofe Abecina (*respondents/spouses Abecina*) are the registered owners of five parcels of land in Sitio Paltik, Barrio Sta. Rosa, Jose Panganiban, Camarines Norte. The properties are covered by Transfer Certificates of Title (TCT) Nos. T-25094, T-25095, T-25096, T-25097, and T-25098.^[3]

In February 1993, the DOTC awarded Digitel Telecommunications Philippines, Inc. (*Digitel*) a contract for the management, operation, maintenance, and development of a Regional Telecommunications Development Project (RTDP) under the National Telephone Program, Phase I, Tranche 1 (NTPI-1)^[4]

The DOTC and Digitel subsequently entered into several Facilities Management Agreements (FMA) for Digitel to manage, operate, maintain, and develop the RTDP and NTPI-1 facilities comprising local telephone exchange lines in various municipalities in Luzon. The FMAs were later converted into Financial Lease Agreements (FLA) in 1995.

Later on, the municipality of Jose Panganiban, Camarines Norte, donated a one thousand two hundred (1,200) square-meter parcel of land to the DOTC for the implementation of the RDTP in the municipality. However, the municipality erroneously included portions of the respondents' property in the donation. Pursuant to the FLAs, Digitel constructed a telephone exchange on the property which encroached on the properties of the respondent spouses.^[5]

Sometime in the mid-1990s, the spouses Abecina discovered Digitel's occupation over portions of their properties. They required Digitel to vacate their properties and pay damages, but the latter refused, insisting that it was occupying the property of

the DOTC pursuant to their FLA.

On April 29, 2003, the respondent spouses sent a final demand letter to both the DOTC and Digitel to vacate the premises and to pay unpaid rent/damages in the amount of one million two hundred thousand pesos (P1,200,000.00). Neither the DOTC nor Digitel complied with the demand.

On September 3, 2003, the respondent spouses filed an *accion publiciana* complaint^[6] against the DOTC and Digitel for recovery of possession and damages. The complaint was docketed as **Civil Case No. 7355**.

In its answer, the DOTC claimed immunity from suit and ownership over the subject properties.^[7] Nevertheless, during the pre-trial conference, the DOTC admitted that the Abecinas were the rightful owners of the properties and opted to rely instead on state immunity from suit.^[8]

On March 12, 2007, the respondent spouses and Digitel executed a Compromise Agreement and entered into a Contract of Lease. The RTC rendered a partial decision and approved the Compromise Agreement on March 22, 2007.^[9]

On May 20, 2009, the RTC rendered its decision against the DOTC.^[10] It brushed aside the defense of state immunity. Citing *Ministerio v. Court of First Instance*^[11] and *Amigable v. Cuenca*,^[12] it held that government immunity from suit could not be used as an instrument to perpetuate an injustice on a citizen.^[13]

The RTC held that as the lawful owners of the properties, the respondent spouses enjoyed the right to use and to possess them - rights that were violated by the DOTC's unauthorized entry, construction, and refusal to vacate. The RTC (1) ordered the Department - as a builder in bad faith -to forfeit the improvements and vacate the properties; and (2) awarded the spouses with P1,200,000.00 as actual damages, P200,000.00 as moral damages, and P200,000.00 as exemplary damages plus attorney's fees and costs of suit.

The DOTC elevated the case to the CA arguing: (1) that the RTC never acquired jurisdiction over it due to state immunity from suit; (2) that the suit against it should have been dismissed after the spouses Abecina and Digitel executed a compromise agreement; and (3) that the RTC erred in awarding actual, moral, and exemplary damages against it.^[14] The appeal was docketed as **CA-G.R. CV No. 93795**.

On March 20, 2013, the CA affirmed the RTC's decision but deleted the award of exemplary damages. The CA upheld the RTC's jurisdiction over cases for *accion publiciana* where the assessed value exceeds P20,000.00.^[15] It likewise denied the DOTC's claim of state immunity from suit, reasoning that the DOTC removed its cloak of immunity after entering into a proprietary contract - the Financial Lease Agreement with Digitel.^[16] It also adopted the RTC's position that state immunity cannot be used to defeat a valid claim for compensation arising from an unlawful taking without the proper expropriation proceedings.^[17] The CA affirmed the award of actual and moral damages due to the DOTC's neglect to verify the perimeter of

the telephone exchange construction but found no valid justification for the award of exemplary damages.^[18]

On April 16, 2013, the DOTC filed the present petition for review on *certiorari*.

THE PARTIES' ARGUMENTS

The DOTC asserts that its Financial Lease Agreement with Digitel was entered into in pursuit of its governmental functions to promote and develop networks of communication systems.^[19] Therefore, it cannot be interpreted as a waiver of state immunity.

The DOTC also maintains that while it was regrettable that the construction of the telephone exchange erroneously encroached on portions of the respondent's properties, the RTC erred in ordering the return of the property.^[20] It argues that while the DOTC, in good faith and in the performance of its mandate, took private property without formal expropriation proceedings, the taking was nevertheless an exercise of eminent domain.^[21]

Citing the 2007 case of *Heirs of Mateo Pidacan v. Air Transportation Office (ATO)*,^[22] the Department prays that instead of allowing recovery of the property, the case should be remanded to the RTC for determination of just compensation.

On the other hand, the respondents counter that the state immunity cannot be invoked to perpetrate an injustice against its citizens.^[23] They also maintain that because the subject properties are titled, the DOTC is a builder in bad faith who is deemed to have lost the improvements it introduced.^[24] Finally, they differentiate their case from *Heirs of Mateo Pidacan v. ATO* because *Pidacan* originated from a complaint for payment of the value of the property and rentals while their case originated from a complaint for recovery of possession and damages.^[25]

OUR RULING

We find no merit in the petition.

The State may not be sued without its consent.^[26] This fundamental doctrine stems from the principle that there can be no legal right against the authority which makes the law on which the right depends.^[27] This generally accepted principle of law has been explicitly expressed in both the 1973^[28] and the present Constitutions.

But as the principle itself implies, the doctrine of state immunity is not absolute. The State may waive its cloak of immunity and the waiver may be made expressly or by implication.

Over the years, the State's participation in economic and commercial activities gradually expanded beyond its sovereign function as regulator and governor. The evolution of the State's activities and degree of participation in commerce demanded a parallel evolution in the traditional rule of state immunity. Thus, it became necessary to distinguish between the State's sovereign and governmental acts (*jure imperii*) and its private, commercial, and proprietary acts (*jure gestionis*).

Presently, state immunity restrictively extends only to acts *jure imperii* while acts *jure gestionis* are considered as a waiver of immunity.^[29]

The Philippines recognizes the vital role of information and communication in nation building.^[30] As a consequence, we have adopted a policy environment that aspires for the full development of communications infrastructure to facilitate the flow of information into, out of, and across the country.^[31] To this end, the DOTC has been mandated with the promotion, development, and regulation of dependable and coordinated networks of communication.^[32]

The DOTC encroached on the respondents' properties when it constructed the local telephone exchange in Daet, Camarines Norte. The exchange was part of the RTDP pursuant to the National Telephone Program. We have no doubt that when the DOTC constructed the encroaching structures and subsequently entered into the FLA with Digitel for their maintenance, it was carrying out a sovereign function. Therefore, we agree with the DOTC's contention that these are acts *jure imperii* that fall within the cloak of state immunity.

However, as the respondents repeatedly pointed out, this Court has long established in *Ministerio v CFI*,^[33] *Amigable v. Cuenca*,^[34] the 2010 case *Heirs of Pidacan v. ATO*,^[35] and more recently in *Vigilar v. Aquino*^[36] that the doctrine of state immunity cannot serve as an instrument for perpetrating an injustice to a citizen.

The Constitution identifies the limitations to the awesome and near-limitless powers of the State. Chief among these limitations are the principles that no person shall be deprived of life, liberty, or property without due process of law and that private property shall not be taken for public use without just compensation.^[37] These limitations are enshrined in no less than the Bill of Rights that guarantees the citizen protection from abuse by the State.

Consequently, our laws^[38] require that the State's power of eminent domain shall be exercised through expropriation proceedings in court. Whenever private property is taken for public use, it becomes the ministerial duty of the concerned office or agency to initiate expropriation proceedings. By necessary implication, the filing of a complaint for expropriation is a waiver of State immunity.

If the DOTC had correctly followed the regular procedure upon discovering that it had encroached on the respondents' property, it would have initiated expropriation proceedings instead of insisting on its immunity from suit. The petitioners would not have had to resort to filing its complaint for reconveyance. As this Court said in *Ministerio*:

It is unthinkable then that precisely because there was a failure to abide by what the law requires, the government would stand to benefit. It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained. It is not too much to say that **when the government takes any property for public use, which is conditioned upon the payment of just compensation, to be judicially ascertained, it makes manifest that it submits to the jurisdiction of a court.** There is no thought then that