

## THIRD DIVISION

[ G.R. No. 195594, September 29, 2014 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE  
NATIONAL IRRIGATION ADMINISTRATION, PETITIONER, VS.  
SPOUSES ROGELIO LAZO AND DOLORES LAZO, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

This petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules on Civil Procedure (*Rules*) seeks to annul and set aside the October 22, 2010 Decision<sup>[1]</sup> and January 31, 2011 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 107962, which affirmed the Order<sup>[3]</sup> dated September 17, 2008 and Supplement to the Order<sup>[4]</sup> of September 17, 2008 dated September 19, 2008 of Regional Trial Court, Branch 21, Vigan City, Ilocos Sur, granting respondents' prayer for preliminary prohibitory and mandatory injunction in Civil Case No. 6798-V for Just Compensation with Damages against petitioner.

The facts appear as follows:

Respondents spouses Rogelio Lazo and Dolores Lazo are the owners and developers of Monte Vista Homes (*Monte Vista*), a residential subdivision located in Barangay Paing, Municipality of Bantay, Ilocos Sur. Sometime in 2006, they voluntarily sold to the National Irrigation Administration (*NIA*) a portion of Monte Vista for the construction of an open irrigation canal that is part of the Banaoang Pump Irrigation Project (*BPIP*). The consideration of the negotiated sale was in a total amount of P27,180,000.00 at the rate of P2,500.00 per square meter.<sup>[5]</sup>

Subsequently, respondents engaged the services of Engr. Donno G. Custodio, retired Chief Geologist of the Mines and Geosciences Bureau-Department of Environment and Natural Resources,<sup>[6]</sup> to conduct a geohazard study on the possible effects of the BPIP on Monte Vista. Engr. Custodio later came up with a Geohazard Assessment Report (*GAR*),<sup>[7]</sup> finding that ground shaking and channel bank erosion are the possible hazards that could affect the NIA irrigation canal traversing Monte Vista. He then recommended the following:

- Construction of a two (2) or double slope retaining walls anchored to a reinforced foundation on both sides of the irrigation channel within the Monte Vista Homes Subdivision Project (Phase I & II). A buffer zone of at least 20 meters from the embankment to the nearest structure should be strictly enforced.
- Construction of a one (1) meter high concrete dike above the retaining wall to prevent surface run-off during heavy rainfall from

- flowing to the irrigation canal. Likewise, to prevent future residents of the subdivision from accidentally falling into the irrigation canal.
- Construction of adequate draining system along the buffer zone to prevent surface run-off during rainy season to percolate into the irrigation canal embankment and/or scour the concrete dike and retaining wall.
  - Planting of ornamental trees/plants and shrubs along the buffer zone to prevent destabilization of the irrigation canal embankment and for aesthetic reasons in the area.<sup>[8]</sup>

On December 22, 2006, the *Sangguniang Bayan* of Bantay, Ilocos Sur approved Resolution No. 34, which adopted the recommendations contained in the GAR.<sup>[9]</sup> Among others, it resolved that the GAR recommendations should be observed and implemented by the concerned implementing agency of the NIA BPIP.

Respondent Rogelio Lazo brought to NIA's attention Resolution No. 34 through his letters dated January 15, 2007, September 5, 2007, and November 1, 2007.<sup>[10]</sup> He specifically asked for the implementation of the GAR recommendations and the payment of just compensation for the entire buffer zone involving an aggregate area of 14,381 sq. m., more or less.

When respondents' demands were not acted upon, they decided to file a complaint for just compensation with damages against NIA on January 31, 2008.<sup>[11]</sup> Prior to the filing of an Answer, respondents filed an Amended Complaint with application for a temporary restraining order (TRO) and preliminary injunction.<sup>[12]</sup> They further alleged that the BPIP contractor is undertaking substandard works that increase the risk of a fatal accident.

Per Order<sup>[13]</sup> dated July 8, 2008, the trial court issued an *ex parte* 72-hour TRO and directed the NIA to appear in a summary hearing on July 9, 2008 to show cause why the injunction should not be granted. Instead of a personal appearance, the NIA, through the Office of the Solicitor General (OSG), filed a Manifestation and Motion<sup>[14]</sup> praying that the TRO be lifted and the application for preliminary injunction be denied for being prohibited by Republic Act. No. 8975.<sup>[15]</sup> In the July 9, 2008 hearing, the trial court ordered respondents to comment on the Manifestation and Motion (which was later on complied with)<sup>[16]</sup> and extended the TRO for 20 days from its issuance.<sup>[17]</sup>

During the July 23, 2008 hearing on respondents' prayer for provisional relief, the parties presented their respective witnesses. Engr. Jerry Zapanta, the Technical Operations Manager of the NIA-BPIP, was petitioner's sole witness, while Rogelio Lazo and Engr. Custodio testified for respondents.

Petitioner filed its Answer<sup>[18]</sup> to the Amended Complaint on August 22, 2008. After which, respondents filed a Reply.<sup>[19]</sup>

On September 17, 2008, the trial court granted respondents' application for preliminary injunction. The dispositive portion of the Order reads:

**WHEREFORE**, in view of all the foregoing, the application for preliminary prohibitory and mandatory injunction by plaintiffs is hereby **GRANTED**.

Defendant is hereby enjoined from continuing further construction works on the irrigation canal particularly those located inside the Monte Vista Homes until the issue in the main case is resolved.

Further, defendant is ordered to comply with Resolution No. 34, Series of 2006 of the Sangguniang Bayan of the Municipality of Bantay Ilocos Sur, adopting the recommendations of the Geohazard Assessment Report undertaken by Engr. Donno Custodio, unless said Resolution has been revoked, superseded or modified in such a manner that would negate compliance therewith by defendant.

**SO ORDERED.**<sup>[20]</sup>

Two days later, the trial court issued a Supplement to the Order of September 17, 2008, stating:

The dispositive portion of the Order of September 17, 2008 is supplemented with a last paragraph to read as follows:

***"The Court hereby fixes the injunction bond in the amount of THREE MILLION PESOS (Php3,000,000.00). Upon approval of the requisite bond, let the Writ of preliminary prohibitory and mandatory injunctions issue."***

**SO ORDERED.**<sup>[21]</sup>

The trial court ruled that the instant case falls under the exception of Section 3 of R.A. No. 8975, because respondents' demand for just compensation is by reason of the property being burdened by the construction of the open irrigation canal in Monte Vista which altered its use and integrity. In declaring that the right of private individuals whose property were expropriated by the State is a matter of constitutional urgency, it opined:

While [petitioner] insists that [ respondents] were fully paid for the actual area where the irrigation canal is being constructed, it refuses to compensate [respondents] for their property burdened by the construction of the irrigation canal. "Taking" in the constitutional sense may include trespass without actual eviction of the owner, material impairment of the property or the prevention of the ordinary use for which the property was intended. Thus, in **National Power Corporation vs. Gutierrez** (193 SCRA 1, as cited by J. Antonio B. Nachura in his *Outline Reviewer in Political Law*, 2002 Edition, p. 37), the Supreme Court held that the exercise of the power of eminent domain does not always result in the taking of property; it may also result in the imposition of burden upon the owner of the condemned property without

loss of title or possession.

It would indubitably appear in this case that there is really a necessity of appropriating more of the [respondents'] property by [petitioner] to ensure the safety and security of operating the open irrigation canal. This could never be more true in the light of the Sangguniang Bayan's Resolution [34], Series of 2006[,] which adopted the recommendations contained in the Geohazard Assessment Report. Significantly, [petitioner] never refuted that there was such a Resolution, and worse, [petitioner] never explained why it never incorporated the recommendations in the Resolution or even made an attempt to consult with the concerned Sanggunian concerning the same.<sup>[22]</sup>

Also, the trial court found that petitioner violated R.A. No. 7160, or the *Local Government Code of 1991*. It said:

The Local Government Code embodies the policy of the State to devolve the powers and authority of a former centralized government. [Petitioner] seemed to have disregarded all deference due to the local government of the Municipality of Bantay when[,] despite the issuance of Resolution, it insisted that its design of the open irrigation canal is adequately safe without consultation or asking a formal audience with the Sangguniang Bayan and spell-out the design of the open irrigation canal which could persuade the latter to reconsider its Resolution.

Section 3 (g) of the Local Government Code provides that:

*"The capabilities of local government units, especially the municipalities and barangays, shall be enhanced by providing them with opportunities to participate actively in the implementation of national programs and projects;"*

Section 5 of the same Code leaves no doubt as to the empowerment of local government units that it provides.

*Section 5. Rules of Interpretation. – In the interpretation of the provision of this Code, the following rules shall apply:*

*"(a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned;"*

x x x

[Petitioner][,] by reason of its failure to abide by the required consultation, had effectively deprecated the function, authority and power of the Sangguniang Bayan of the Municipality of Bantay. Consequently, without the prior approbation of the Sanggunian[,], [petitioner's] irrigation project cannot be absolutely declared as

representative of the consent of the local government. Hence, it must be enjoined until compliance by [petitioner] on consultative requirement or clear and convincing proof of incorporation of the Sanggunian Resolution in the project design of the irrigation project has been adduced.<sup>[23]</sup>

Without moving for a reconsideration of the two Orders, petitioner directly filed a petition for *certiorari*<sup>[24]</sup> before the CA.

On May 14, 2009, petitioner filed a Very Urgent Motion for the Issuance of a TRO and/or Writ of Preliminary Injunction.<sup>[25]</sup> In its May 27, 2009 Resolution, the CA denied the motion and directed the parties to submit their respective memoranda.<sup>[26]</sup> Accordingly, both parties filed their Memorandum.<sup>[27]</sup>

Eventually, the CA dismissed the petition and affirmed the challenged Orders of the trial court on October 22, 2010.

On procedural matters, the appellate court resolved the issues of whether petitioner failed to exhaust administrative remedies and whether the petition should be dismissed for lack of motion for reconsideration filed before the trial court. The CA opined that the controversy falls squarely within the jurisdiction of the regular courts and not of the *Sangguniang Bayan* concerned, because what petitioner seeks to nullify are the Orders of the trial court allegedly rendered in violation of R.A. No. 8975 and not the act or propriety of the issuance of Resolution No. 34. It agreed, however, with respondents that the petition for *certiorari* suffers from fatal defect since it was filed without seeking first the reconsideration of the trial court. It was said that petitioner omitted to show sufficient justification that there was no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

As to the substantive merits of the case, the CA affirmed that the payment of just compensation and the alleged need to rectify the inferior construction work on the irrigation canal are constitutional issues which are of extreme urgency justifying the trial court's issuance of an injunctive writ. It held:

In the controversy below, what is put in issue is the consequent just compensation as a result of the acquisition of a right-of-way for a national infrastructure project. Hence, the application of Republic Act No. 8974 which pertinently provides:

"Sec. 4. *Guidelines for Expropriation Proceedings.* – Whenever it is necessary to acquire real property for the right-of-way or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the