

## THIRD DIVISION

[ G.R. No. 156684, April 06, 2011 ]

**SPOUSES ANTONIO AND FE YUSAY, PETITIONERS, VS. COURT OF APPEALS, CITY MAYOR AND CITY COUNCIL OF MANDALUYONG CITY, RESPONDENTS.**

### RESOLUTION

**BERSAMIN, J.:**

The petitioners appeal the adverse decision promulgated on October 18, 2002<sup>[1]</sup> and resolution promulgated on January 17, 2003,<sup>[2]</sup> whereby the Court of Appeals (CA) reversed and set aside the order issued in their favor on February 19, 2002 by the Regional Trial Court, Branch 214, in Mandaluyong City (RTC).<sup>[3]</sup> Thereby, the CA upheld Resolution No. 552, Series of 1997, adopted by the City of Mandaluyong (City) authorizing its then City Mayor to take the necessary legal steps for the expropriation of the parcel of land registered in the names of the petitioners.

We affirm the CA.

### Antecedents

The petitioners owned a parcel of land with an area of 1,044 square meters situated between Nueve de Febrero Street and Fernandez Street in Barangay Mauway, Mandaluyong City. Half of their land they used as their residence, and the rest they rented out to nine other families. Allegedly, the land was their only property and only source of income.

On October 2, 1997, the *Sangguniang Panglungsod* of Mandaluyong City adopted Resolution No. 552, Series of 1997, to authorize then City Mayor Benjamin S. Abalos, Sr. to take the necessary legal steps for the expropriation of the land of the petitioners for the purpose of developing it for low cost housing for the less privileged but deserving city inhabitants. The resolution reads as follows:

### RESOLUTION NO. 552, S-1997<sup>[4]</sup>

RESOLUTION AUTHORIZING HON. BENJAMIN S. ABALOS TO TAKE THE NECESSARY LEGAL STEPS FOR THE EXPROPRIATION OF A PARCEL OF LAND SITUATED ALONG DR. JOSE FERNANDEZ STREET, BARANGAY MAUWAY, CITY OF MANDALUYONG, OWNED BY MR. ANTONIO YUSAY

WHEREAS, there is a parcel of land situated along Dr. Jose Fernandez Street, Barangay Mauway, City of Mandaluyong, owned and registered in the name of MR. ANTONIO YUSAY;

WHEREAS, this piece of land have been occupied for about ten (10) years by many financially hard-up families which the City Government of Mandaluyong desires, among other things, to provide modest and decent dwelling;

WHEREAS, the said families have already negotiated to acquire this land but was refused by the above-named owner in total disregard to the City Government's effort of providing land for the landless;

WHEREAS, the expropriation of said land would certainly benefit public interest, let alone, a step towards the implementation of social justice and urban land reform in this City;

WHEREAS, under the present situation, the City Council deems it necessary to authorize Hon. Mayor BENJAMIN S. ABALOS to institute expropriation proceedings to achieve the noble purpose of the City Government of Mandaluyong.

NOW, THEREFORE, upon motion duly seconded, the City Council of Mandaluyong, in session assembled, RESOLVED, as it hereby RESOLVES, to authorize, as it is hereby authorizing, Hon. Mayor BENJAMIN S. ABALOS, to institute expropriation proceedings against the above-named registered owner of that parcel of land situated along Dr. Jose Fernandez Street, Barangay Mauway, City of Mandaluyong, (f)or the purpose of developing it to a low-cost housing project for the less privileged but deserving constituents of this City.

ADOPTED on this 2<sup>nd</sup> day of October 1997 at the City of Mandaluyong.

Sgd. Adventor R. Delos  
Santos  
Acting Sanggunian  
Secretary

Attested:  
Approved:

Sgd. Roberto J. Francisco  
Benjamin S. Abalos  
City Councilor & Acting  
Presiding Officer

Sgd.  
City Mayor

Notwithstanding that the enactment of Resolution No. 552 was but the initial step in the City's exercise of its power of eminent domain granted under Section 19 of the *Local Government Code of 1991*, the petitioners became alarmed, and filed a petition for *certiorari* and prohibition in the RTC, praying for the annulment of Resolution No. 552 due to its being unconstitutional, confiscatory, improper, and without force and effect.

The City countered that Resolution No. 552 was a mere authorization given to the City Mayor to initiate the legal steps towards expropriation, which included making a

definite offer to purchase the property of the petitioners; hence, the suit of the petitioners was premature.

On January 31, 2001, the RTC ruled in favor of the City and dismissed the petition for lack of merit, opining that *certiorari* did not lie against a legislative act of the City Government, because the special civil action of *certiorari* was only available to assail judicial or quasi-judicial acts done without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; that the special civil action of prohibition did not also lie under the circumstances considering that the act of passing the resolution was not a judicial, or quasi-judicial, or ministerial act; and that notwithstanding the issuance of Resolution No. 552, the City had yet to commit acts of encroachment, excess, or usurpation, or had yet to act without or in excess of jurisdiction or with grave abuse of discretion amounting lack or in excess of jurisdiction.

However, on February 19, 2002, the RTC, acting upon the petitioners' motion for reconsideration, set aside its decision and declared that Resolution No. 552 was null and void. The RTC held that the petition was not premature because the passage of Resolution No. 552 would already pave the way for the City to deprive the petitioners and their heirs of their only property; that there was no due process in the passage of Resolution No. 552 because the petitioners had not been invited to the subsequent hearings on the resolution to enable them to ventilate their opposition; and that the purpose for the expropriation was not for public use and the expropriation would not benefit the greater number of inhabitants.

Aggrieved, the City appealed to the CA.

In its decision promulgated on October 18, 2002, the CA concluded that the reversal of the January 31, 2001 decision by the RTC was not justified because Resolution No. 552 deserved to be accorded the benefit of the presumption of regularity and validity absent any sufficient showing to the contrary; that notice to the petitioners (Spouses Yusay) of the succeeding hearings conducted by the City was not a part of due process, for it was enough that their views had been consulted and that they had been given the full opportunity to voice their protest; that to rule otherwise would be to give every affected resident effective veto powers in law-making by a local government unit; and that a public hearing, although necessary at times, was not indispensable and merely aided in law-making.

The CA disposed as follows:

WHEREFORE, premises considered, the questioned order of the Regional Trial Court, Branch 214, Mandaluyong City dated February 19, 2002 in SCA Case No. 15-MD, which declared Resolution No. 552, Series of 1997 of the City of Mandaluyong null and void, is hereby REVERSED and SET ASIDE. No costs.

SO ORDERED.<sup>[5]</sup>

The petitioners moved for reconsideration, but the CA denied their motion. Thus,

they appeal to the Court, posing the following issues, namely:

1. Can the validity of Resolution No. 552 be assailed even before its implementation?
2. Must a citizen await the takeover and possession of his property by the local government before he can go to court to nullify an unjust expropriation?

Before resolving these issues, however, the Court considers it necessary to first determine whether or not the action for *certiorari* and prohibition commenced by the petitioners in the RTC was a proper recourse of the petitioners.

### **Ruling**

We deny the petition for review, and find that *certiorari* and prohibition were not available to the petitioners under the circumstances. Thus, we sustain, albeit upon different grounds, the result announced by the CA, and declare that the RTC gravely erred in giving due course to the petition for *certiorari* and prohibition.

#### **1.**

#### ***Certiorari* does not lie to assail the issuance of a resolution by the Sanggunian Panglungsod**

The special civil action for *certiorari* is governed by Rule 65 of the *1997 Rules of Civil Procedure*, whose Section 1 provides:

Section 1. Petition for *certiorari*. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

xxx

For *certiorari* to prosper, therefore, the petitioner must allege and establish the concurrence of the following requisites, namely:

(a) The writ is directed against a tribunal, board, or officer *exercising judicial or quasi-judicial functions*;

(b) Such tribunal, board, or officer has acted *without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction*; and

(c) There is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.<sup>[6]</sup>

It is further emphasized that a petition for *certiorari* seeks solely to correct defects in jurisdiction,<sup>[7]</sup> and does not correct just any error or mistake committed by a court, board, or officer exercising judicial or quasi-judicial functions unless such court, board, or officer thereby acts without jurisdiction or in excess of jurisdiction or with such grave abuse of discretion amounting to lack of jurisdiction.<sup>[8]</sup>

The first requisite is that the respondent tribunal, board, or officer must be exercising judicial or quasi-judicial functions. Judicial function, according to Bouvier,<sup>[9]</sup> is the exercise of the judicial faculty or office; it also means the capacity to act in a specific way which appertains to the judicial power, as one of the powers of government. "The term," Bouvier continues,<sup>[10]</sup> "is used to describe generally those modes of action which appertain to the judiciary as a department of organized government, and through and by means of which it accomplishes its purpose and exercises its peculiar powers."

Based on the foregoing, *certiorari* did not lie against the *Sangguniang Panglungsod*, which was not a part of the Judiciary settling an actual controversy involving legally demandable and enforceable rights when it adopted Resolution No. 552, but a legislative and policy-making body declaring its sentiment or opinion.

Nor did the *Sangguniang Panglungsod* abuse its discretion in adopting Resolution No. 552. To demonstrate the absence of abuse of discretion, it is well to differentiate between a resolution and an ordinance. The first is upon a specific matter of a temporary nature while the latter is a law that is permanent in character.<sup>[11]</sup> No rights can be conferred by and be inferred from a resolution, which is nothing but an embodiment of what the lawmaking body has to say in the light of attendant circumstances. In simply expressing its sentiment or opinion through the resolution, therefore, the *Sangguniang Panglungsod* in no way abused its discretion, least of all gravely, for its expression of sentiment or opinion was a constitutionally protected right.

Moreover, Republic Act No. 7160 (*The Local Government Code*) required the City to pass an ordinance, not adopt a resolution, for the purpose of initiating an expropriation proceeding. In this regard, Section 19 of *The Local Government Code* clearly provides, viz:

Section 19. *Eminent Domain*. - A local government unit may, through its chief executive and **acting pursuant to an ordinance**, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a