

## THIRD DIVISION

[ G.R. No. 169263, September 21, 2011 ]

**CITY OF MANILA, PETITIONER, VS. MELBA TAN TE,  
RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

In this Petition for Review,<sup>[1]</sup> the City of Manila assails the April 29, 2005 Decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. CV No. 71894, as well as the August 12, 2005 Resolution,<sup>[3]</sup> in the said case denying reconsideration.

The assailed decision affirmed the June 13, 2001 Order<sup>[4]</sup> of the Regional Trial Court of Manila, Branch 24 issued in Civil Case No. 00-99264 - one for expropriation filed by petitioner, the City of Manila. The said Order, in turn, granted the motion to dismiss the complaint that was filed by respondent Melba Tan Te, in lieu of an answer.

The facts follow.

On March 15, 1998, then Manila City Mayor Joselito L. Atienza approved Ordinance No. 7951 - an expropriation measure enacted on February 3, 1998 by the city council - authorizing him to acquire by negotiation or expropriation certain pieces of real property along Maria Clara and Governor Forbes Streets where low-cost housing units could be built and then awarded to *bona fide* residents therein. For this purpose, the mayor was also empowered to access the city's funds or utilize funding facilities of other government agencies.<sup>[5]</sup> In the aggregate, the covered property measures 1,425 square meters, and includes the 475-square-meter lot owned by respondent Melba Tan Te.<sup>[6]</sup>

The records bear that respondent had acquired the property from the heirs of Emerlinda Dimayuga Reyes in 1996, and back then it was being occupied by a number of families whose leasehold rights had long expired even prior to said sale. In 1998, respondent had sought before the Metropolitan Trial Court of Manila, Branch 15 the ejectment of these occupants from the premises. The favorable ruling in that case evaded execution; hence, the court, despite opposition of the City of Manila, issued a Writ of Demolition at respondent's instance.<sup>[7]</sup> It appears that in the interim between the issuance of the writ of execution and the order of demolition, the City of Manila had instituted an expropriation case<sup>[8]</sup> affecting the same property. Respondent had moved for the dismissal of that first expropriation case for lack of cause of action, lack of showing of an ordinance authorizing the expropriation, and non-compliance with the provisions of Republic Act (R.A.) No. 7279, otherwise known as the *Urban Development and Housing Act of 1992*.<sup>[9]</sup> The trial court found merit in the motion and dismissed the complaint without prejudice.

[10]

On November 16, 2000, petitioner<sup>[11]</sup> filed this second Complaint<sup>[12]</sup> for expropriation before the Regional Trial Court of Manila, Branch 24.<sup>[13]</sup> This time, it attached a copy of Ordinance No. 7951 and alleged that pursuant thereto, it had previously offered to purchase the subject property from respondent for P824,330.00.<sup>[14]</sup> The offer was contained in a letter sent to respondent by the City Legal Officer on May 21, 1999,<sup>[15]</sup> but respondent allegedly failed to retrieve it despite repeated notices,<sup>[16]</sup> thereby compelling petitioner to institute the present expropriation proceedings after depositing in trust with the Land Bank of the Philippines P1,000,000.00 cash, representing the just compensation required by law to be paid to respondent.<sup>[17]</sup>

Respondent did not file an answer and in lieu of that, she submitted a Motion to Dismiss<sup>[18]</sup> and raised the following grounds: that Ordinance No. 7951 was an invalid expropriation measure because it violated the rule against taking private property without just compensation; that petitioner did not comply with the requirements of Sections 9<sup>[19]</sup> and 10<sup>[20]</sup> of R.A. No. 7279; and that she qualified as a small property owner and, hence, exempt from the operation of R.A. No. 7279, the subject lot being the only piece of realty that she owned.

Petitioner moved that it be allowed to enter the property, but before it could be resolved, the trial court issued its June 13, 2001 Order<sup>[21]</sup> dismissing the complaint. *First*, the trial court held that while petitioner had deposited with the bank the alleged P1M cash in trust for respondent, petitioner nevertheless did not submit any certification from the City Treasurer's Office of the amount needed to justly compensate respondent for her property. *Second*, it emphasized that the provisions of Sections 9 and 10 of R.A. No. 7279 are mandatory in character, yet petitioner had failed to show that it exacted compliance with them prior to the commencement of this suit. *Lastly*, it conceded that respondent had no other real property except the subject lot which, considering its total area, should well be considered a small property exempted by law from expropriation. In view of the dismissal of the complaint, petitioner's motion to enter was rendered moot and academic.<sup>[22]</sup>

Petitioner interposed an appeal to the Court of Appeals which, finding no merit therein, dismissed the same.<sup>[23]</sup> Petitioner sought reconsideration,<sup>[24]</sup> but it was denied.<sup>[25]</sup>

In this Petition,<sup>[26]</sup> petitioner posits that the trial court's dismissal of its complaint was premature, and it faults the Court of Appeals for having failed to note that by such dismissal it has been denied an opportunity to show previous compliance with the requirements of Sections 9 and 10 of R.A. No. 7279 as well as to establish that respondent actually owns other realty apart from the subject property. Besides, continues petitioner, whether or not it had truly complied with the requirements of the law is a matter which can be determined only after a trial of the case on the merits and not, as what happened in this case, at the hearing of the motion to dismiss.<sup>[27]</sup>

Respondent, for her part, points out that Ordinance No. 7951 is an invalid

expropriation measure as it does not even contain an appropriation of funds in its implementation. In this respect, respondent believes that the P1M cash deposit certified by the bank seems to be incredible, since petitioner has not shown any certification from the City Treasurer's Office on the amount necessary to implement the expropriation measure. More importantly, she believes that the dismissal of the complaint must be sustained as it does not allege previous compliance with Sections 9 and 10 of R.A. No. 7279 and, hence, it does not present a valid cause of action.

[28] She theorizes that the expropriation for socialized housing must abide by the priorities in land acquisition and the available modes of land acquisition laid out in the law, and that expropriation of privately-owned lands avails only as the last resort.[29] She also invokes the exemptions provided in the law. She professes herself to be a small property owner under Section 3 (q),[30] and claims that the subject property is the only piece of land she owns where she, as of yet, has not been able to build her own home because it is still detained by illegal occupants whom she had already successfully battled with in the ejectment court.[31]

In its Reply, petitioner adopts a different and bolder theory. It claims that by virtue of the vesture of eminent domain powers in it by its charter, it is thereby not bound by the requirements of Sections 9 and 10 of R.A. No. 7279. It also asserts its right to immediately enter the subject property because not only is its complaint supposedly sufficient in form and substance but also because it has already deposited P1M cash with the bank in trust for respondent. It reiterates that the dismissal of its complaint constitutes a denial of due process because all the issues propounded by respondent, initially in her motion to dismiss and all the way in the present appeal, must be resolved in a full-blown trial.

Prefatorily, the concept of socialized housing, whereby housing units are distributed and/or sold to qualified beneficiaries on much easier terms, has already been included in the expanded definition of "public use or purpose" in the context of the State's exercise of the power of eminent domain. Said the Court in *Sumulong v. Guerrero*, [32] citing the earlier case of *Heirs of Juancho Ardon v. Reyes*: [33]

The public use requirement for a valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions.

The taking to be valid must be for public use. There was a time where it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not anymore. As long as the purpose of the taking is public, then the power of eminent domain comes into play. x x x The constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be divided into small lots for resale at cost to individuals. The other is in the transfer, through the exercise of this power, of utilities and other enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use.

The term "public use" has acquired a more comprehensive coverage. To

the literal import of the term signifying strict use or employment by the public has been added the broader notion of **indirect public benefit or advantage.** x x x

The restrictive view of public use may be appropriate for a nation which circumscribes the scope of government activities and public concerns and which possesses big and correctly located public lands that obviate the need to take private property for public purposes. Neither circumstance applies to the Philippines. We have never been a laissez-faire state. And the necessities which impel the exertion of sovereign power are all too often found in areas of scarce public land or limited government resources.

Specifically, **urban renewal or development and the construction of low-cost housing are recognized as a public purpose, not only because of the expanded concept of public use but also because of specific provisions in the Constitution.** x x x The 1987 Constitution [provides]:

The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living and an improved quality of life for all. (Article II, Section 9)

The State shall, by law and for the common good, undertake, in cooperation with the private sector, a continuing program for urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. x xx In the implementation of such program the State shall respect the rights of small property owners. (Article XIII, Section 9)

Housing is a basic human need. Shortage in housing is a matter of state concern since it directly and significantly affects public health, safety, the environment and in sum, the general welfare. The public character of housing measures does not change because units in housing projects cannot be occupied by all but only by those who satisfy prescribed qualifications. A beginning has to be made, for it is not possible to provide housing for all who need it, all at once.

Population growth, the migration to urban areas and the mushrooming of crowded makeshift dwellings is a worldwide development particularly in developing countries. So basic and urgent are housing problems that the United Nations General Assembly proclaimed 1987 as the "International Year of Shelter for the Homeless" "to focus the attention of the international community on those problems." The General Assembly is seriously concerned that, despite the efforts of Governments at the

national and local levels and of international organizations, the driving conditions of the majority of the people in slums and squatter areas and rural settlements, especially in developing countries, continue to deteriorate in both relative and absolute terms." [G.A. Res. 37/221, Yearbook of the United Nations 1982, Vol. 36, p. 1043-4]

**In light of the foregoing, the Court is satisfied that "socialized housing" falls within the confines of "public use."**<sup>[34]</sup>

Congress passed R.A. No. 7279,<sup>[35]</sup> to provide a comprehensive and continuing urban development and housing program as well as access to land and housing by the underprivileged and homeless citizens; uplift the conditions of the underprivileged and homeless citizens in urban areas by making available decent housing at affordable cost; optimize the use and productivity of land and urban resources; reduce urban dysfunctions which affect public health, safety and ecology; and improve the capability of local governments in undertaking urban development and housing programs and projects, among others.<sup>[36]</sup> Accordingly, all city and municipal governments are mandated to inventory all lands and improvements within their respective locality and identify lands which may be utilized for socialized housing and as resettlement sites for acquisition and disposition to qualified beneficiaries.<sup>[37]</sup> Section 10 thereof authorizes local government units to exercise the power of eminent domain to carry out the objectives of the law, but subject to the conditions stated therein and in Section 9.<sup>[38]</sup>

It is precisely this aspect of the law which constitutes the core of the present controversy, yet this case presents a serious procedural facet - overlooked by both the trial court and the Court of Appeals - which needs foremost attention ahead of the issues propounded by the parties.

Expropriation is a two-pronged proceeding: *first*, the determination of the authority of the plaintiff to exercise the power and the propriety of its exercise in the context of the facts which terminates in an order of dismissal or an order of condemnation affirming the plaintiff's lawful right to take the property for the public use or purpose described in the complaint and *second*, the determination by the court of the just compensation for the property sought to be expropriated.<sup>[39]</sup>

Expropriation proceedings are governed by Rule 67 of the Rules of Court. Under the Rules of Court of 1940 and 1964, where the defendant in an expropriation case conceded to the plaintiff's right to expropriate (or where the trial court affirms the existence of such right), the court-appointed commissioners would then proceed to determine the just compensation to be paid.<sup>[40]</sup> Otherwise, where the defendant had objections to and defenses against the expropriation of his property, he was required to file a single motion to dismiss containing all such objections and defenses.<sup>[41]</sup>

This motion to dismiss was not covered by Rule 15 which governed ordinary motions, and was then the required responsive pleading, taking the place of an answer, where the plaintiff's right to expropriate the defendant's property could be put in issue.<sup>[42]</sup> Any relevant and material fact could be raised as a defense, such as