

FIRST DIVISION

[G.R. No. 170147, January 30, 2009]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), PETITIONER,
VS. SPOUSES AGUSTIN AND IMELDA CANCIO, RESPONDENTS.**

D E C I S I O N

CORONA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to set aside the October 17, 2005 decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 75092.

Petitioner Philippine Economic Zone Authority is a government-owned and controlled corporation created and existing under and by virtue of RA 7916,^[2] as amended. It is vested with governmental functions,^[3] including the power of eminent domain, thus enabling it to acquire private land within or adjacent to the ecozone for consolidation with land for zone development purposes.^[4]

On January 15, 1979, then President Ferdinand E. Marcos issued Proclamation No. 1811^[5] which reserved certain parcels of land of the public domain in Lapu Lapu City in favor of petitioner (then Export Processing Zone Authority or EPZA) for the establishment of the Mactan Export Processing Zone. However, some of the parcels covered by the proclamation, including that of respondent spouses Agustin and Imelda Cancio, were private land.

Petitioner eventually laid out the development of the economic zone and subsequently leased out respondents' 47,540 sq. m. lot to an investor in the economic zone, Maitland Smith Inc. (Maitland).

On May 19, 2001, petitioner offered to purchase respondents' lot at P1,100 per sq. m. or P52,294,000 for the whole property. The letter containing the offer further instructed respondents "to consider and accept, otherwise we will initiate expropriation proceedings in the proper court."

Instead of accepting the offer, respondents filed an unlawful detainer case against Maitland in the Municipal Trial Court of Lapu Lapu City.

Thereafter, petitioner commenced expropriation proceedings for respondents' property with the Regional Trial Court (RTC) of Lapu Lapu City, Branch 54 on August 27, 2001.^[6] Accordingly, *it sought a writ of possession for the property for which it was willing to deposit 10% of the offered amount or a total of P5,229,400 with the Land Bank of the Philippines in accordance with Administrative Order (A.O.) No. 50.*

^[7]

Respondents, however, filed a motion to require petitioner to comply with RA 8974, [8] specifically Section 4(a) thereof, which requires that, upon the filing of the complaint for expropriation, the implementing agency shall immediately pay the owner of the property an amount equivalent to 100% of the current zonal valuation thereof for purposes of the issuance of a writ of possession.

In its January 14, 2002 order (first order), the trial court granted respondents' motion.

Petitioner moved for its reconsideration. It argued that RA 8974 was inapplicable as the payment required under the law applied only to instances where the property was still in the owner's possession and had yet to be transferred to the government. It could not be validly invoked when the property was already in the government's possession, as in this case. It also averred that it should be made to pay only the price of the land at the time of its taking. Corollarily, if it was ordered to pay the amount required under RA 8974, it would be unjustly penalized for its own improvements to the property.

This time, the RTC agreed with petitioner's position. On February 26, 2002 (second order), the court *a quo* granted petitioner's motion for reconsideration.

Respondents filed a motion for reconsideration, contending that petitioner should make the required payment under the law because RA 8974, which took effect before the commencement of the expropriation case, applied to all actions of such nature regardless of whether the government agency was already in possession or not. The court *a quo* issued its September 5, 2002 order (third order) which reversed its second order and reinstated the first one.

Thereafter, petitioner filed a petition for certiorari in the CA, assailing the first and third orders of the RTC. The appellate court sustained the RTC's ruling.

Hence, this petition.

The issue before us is whether or not RA 8974 is applicable to this case *for purposes of the issuance of the writ of possession.* [9] It is petitioner's stance that it is not. It cited A.O. No. 50 as its legal authority when it offered to purchase respondents' property in an amount equivalent to ten percent (10%) higher than the zonal value thereof. [10] Consequently, petitioner prayed in its complaint for expropriation [11] that it be issued a writ of possession upon a showing that the amount equivalent to ten percent (10%) of the offered amount has been duly deposited. Respondents, on the other hand, agree that RA 8974 is the controlling law in this case as the complaint for expropriation was instituted when said law was already in effect.

We deny the petition. RA 8974 governs this case, not A.O. No. 50 as petitioner insists.

A perusal of RA 8974 readily reveals that it applies to instances when the national government expropriates property for national government infrastructure projects. [12] Undeniably, the economic zone is a national government project - a matter undisputed by both parties. Also, the complaint for expropriation was filed only on

August 27, 2001 or almost one year after the law was approved on November 7, 2000. Thus, there is no doubt about its applicability to this case.

We note that this expropriation case is still in its initial stages. *The trial court had yet to approve a writ of possession in petitioner's favor when the issue of payment of just compensation cropped up.* Both parties seemed to have confused the requirement of paying 100% of the current zonal valuation of the property (as a prerequisite to the issuance of a writ of possession) with the payment of just compensation itself.

In its complaint filed in the RTC,^[13] petitioner prayed that:

- a. A writ of possession be issued in favor of plaintiff respecting its possession, control and disposition of the land sought to be expropriated including the power or authority to demolish, if any, improvements thereon, upon showing that the amount equivalent to 10% of the offered amount has been duly deposited.

In their motion to require petitioner to comply with RA 8974,^[14] respondents countered that they:

x x x contest PEZA's proffered value as it is not a just compensation for the property sought to be expropriated.

When petitioner moved for reconsideration^[15] after the RTC granted respondents' aforementioned motion, it argued that:

The inapplicability of R. A. No. 8974 is further highlighted by the fact that it requires **a deposit based on the current zonal valuation of the property.** To apply such valuation to the instant case would be to **violate the cardinal principle in eminent domain proceedings that the just compensation for the property should be its fair market value at the time of taking.** The nature and character of the land at the time of its taking is the principal criterion to determine just compensation to the landowner (National Power Corporation vs. Henson, 300 SCRA 751 [1998]). (Emphasis supplied)

Clearly, there was a confusion regarding the nature of the amount to be paid for the issuance of a writ of possession. In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*,^[16] we clarified that the payment of the provisional value as a condition for the issuance of a writ of possession is different from the payment of just compensation for the expropriated property. While the provisional value is based on the current relevant zonal valuation, just compensation is based on the prevailing fair market value of the property.

In that case, we agreed with the CA's explanation^[17] that:

The first refers to the preliminary or provisional determination of the value of the property. It serves a double-purpose of pre-payment if the property is fully expropriated, and of an indemnity for damages if the proceedings are dismissed. It is **not a final determination of just compensation** and may not necessarily be equivalent to the prevailing fair market value of the property. Of course, it may be a factor to be

considered in the determination of just compensation.

*Just compensation, on the other hand, is the **final** determination of the fair market value of the property.* It has been described as "the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation." Market value[s,] has also been described in a variety of ways as the "price fixed by the buyer and seller in the open market in the usual and ordinary course of legal trade and competition; the price and value of the article established as shown by sale, public or private, in the ordinary way of business; the fair value of the property between one who desires to purchase and one who desires to sell; the current price; the general or ordinary price for which property may be sold in that locality." (Emphasis in the original)

There is therefore no need yet to determine with reasonable certainty the final amount of just compensation in resolving the issue of a writ of possession.^[18] In fact, it is the ministerial duty of the trial court to issue the writ upon compliance with the requirements of Section 4^[19] of the law. No hearing is required and the court cannot exercise its discretion in order to arrive at the amount of the provisional value of the property to be expropriated as the legislature has already fixed the amount under the aforementioned provision of the law.^[20]

It is only after the trial court ascertains the provisional amount to be paid that just compensation will be determined.

In establishing the amount of just compensation, the parties may present evidence relative to the property's fair market value, as provided under Section 5 of RA 8974.^[21] Thus:

Sec. 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. - In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

- (a) The classification and use for which the property is suited;
- (b) The developmental costs for improving the land;
- (c) The value declared by the owners;
- (d) The current selling price of similar lands in the vicinity;
- (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;
- (f) The size, shape or location, tax declaration and zonal valuation of the land;
- (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
- (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.