

## SECOND DIVISION

[ G.R. No. 158563, June 30, 2005 ]

**AIR TRANSPORTATION OFFICE (ATO) AND MACTAN-CEBU  
INTERNATIONAL AIRPORT AUTHORITY (MCIAA), PETITIONERS,  
VS. APOLONIO GOPUCO, JR., RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

When private land is expropriated for a particular public use, and that particular public use is abandoned, does its former owner acquire a cause of action for recovery of the property?

The trial court's ruling in the negative was reversed by the Court of Appeals in its Decision<sup>[1]</sup> of 28 February 2001. Hence this petition for review under Rule 45 of the 1997 Rules of Civil Procedure of the said Decision of the court *a quo*, and its Resolution<sup>[2]</sup> of 22 May 2003 dismissing petitioners' motion for reconsideration.

The facts, as adduced from the records, are as follows:

Respondent Apolonio Gopuco, Jr. was the owner of Cadastral Lot No. 72 consisting of 995 square meters located in the vicinity of the Lahug Airport in Cebu City covered by Transfer Certificate of Title (TCT) No. 13061-T.

The Lahug Airport had been turned over by the United States Army to the Republic of the Philippines sometime in 1947 through the Surplus Property Commission, which accepted it in behalf of the Philippine Government. In 1947, the Surplus Property Commission was succeeded by the Bureau of Aeronautics, which office was supplanted by the National Airport Corporation (NAC). The NAC was in turn dissolved and replaced with the Civil Aeronautics Administration (CAA).<sup>[3]</sup>

Sometime in 1949, the NAC informed the owners of the various lots surrounding the Lahug Airport, including the herein respondent, that the government was acquiring their lands for purposes of expansion. Some landowners were convinced to sell their properties on the assurance that they would be able to repurchase the same when these would no longer be used by the airport. Others, including Gopuco, refused to do so.

Thus, on 16 April 1952, the CAA filed a complaint with the Court of First Instance (CFI) of Cebu for the expropriation of Lot No. 72 and its neighboring realties, docketed as Civil Case No. R-1881.

On 29 December 1961, the CFI promulgated a Decision,

1. Declaring the expropriation of [the subject lots, including Lot No. 72] justified and in lawful exercise of the right of eminent domain;

2. Declaring . . . a balance of P1,990 in favor of Apolonio Go Puco, Jr. with legal interest from November 16, 1947 until fully paid. . . .;

3. After the payment of the foregoing financial obligation to the landowners, directing the latter to deliver to the plaintiff the corresponding Transfer Certificates of Title to their respective lots; and upon the presentation of the said titles to the Register of Deeds, ordering the latter to cancel the same and to issue, in lieu thereof, new Transfer Certificates of Title in the name of the plaintiff.<sup>[4]</sup>

No appeal was taken from the above Decision on Lot No. 72, and the judgment of condemnation became final and executory. Thereafter, on 23 May 1962, absolute title to Lot No. 72 was transferred to the Republic of the Philippines under TCT No. 25030.<sup>[5]</sup>

Subsequently, when the Mactan International Airport commenced operations, the Lahug Airport was ordered closed by then President Corazon C. Aquino in a Memorandum of 29 November 1989.<sup>[6]</sup> Lot No. 72 was thus virtually abandoned.<sup>[7]</sup>

On 16 March 1990, Gopuco wrote<sup>[8]</sup> the Bureau of Air Transportation, through the manager of the Lahug Airport, seeking the return of his lot and offering to return the money previously received by him as payment for the expropriation. This letter was ignored.<sup>[9]</sup>

In the same year, Congress passed Republic Act No. 6958 creating the Mactan-Cebu International Airport Authority (MCIAA) and in part providing for the transfer of the assets of the Lahug Airport thereto. Consequently, on 08 May 1992, ownership of Lot No. 72 was transferred to MCIAA under TCT No. 120356.<sup>[10]</sup>

On 06 August 1992, Apolonio Gopuco, Jr. filed an amended complaint<sup>[11]</sup> for recovery of ownership of Lot No. 72 against the Air Transportation Office<sup>[12]</sup> and the Province of Cebu with the Regional Trial Court (RTC) of Cebu, Branch X, docketed as Civil Case No. CEB-11914. He maintained that by virtue of the closure of the Lahug Airport, the original purpose for which the property was expropriated had ceased or otherwise been abandoned, and title to the property had therefore reverted to him.

Gopuco further alleged that when the original judgment of expropriation had been handed down, and before they could file an appeal thereto, the CAA offered them a compromise settlement whereby they were assured that the expropriated lots would be resold to them for the same price as when it was expropriated in the event that the Lahug Airport would be abandoned. Gopuco claims to have accepted this offer.<sup>[13]</sup> However, he failed to present any proof on this matter, and later admitted that insofar as the said lot was concerned, no compromise agreement was entered into by the government and the previous owners.<sup>[14]</sup>

Lastly, Gopuco asserted that he had come across several announcements in the papers that the Lahug Airport was soon to be developed into a commercial complex, which he took to be a scheme of the Province of Cebu to make permanent the deprivation of his property.

On 20 May 1994, the trial court rendered a Decision<sup>[15]</sup> dismissing the complaint and directing the herein respondent to pay the MCIAA exemplary damages, litigation

expenses and costs.

Aggrieved by the holding of the trial court, Gopuco appealed to the Court of Appeals, which overturned the RTC decision, ordered the herein petitioners to reconvey Lot No. 72 to Gopuco upon payment of the reasonable price as determined by it, and deleted the award to the petitioners of exemplary damages, litigation expenses and costs.

The Motion for Reconsideration was denied<sup>[16]</sup> on 22 May 2003, hence this petition, which raises the following issues:

WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT HAS THE RIGHT TO RECLAIM OWNERSHIP OVER THE SUBJECT EXPROPRIATED LOT BASED ON THE IMPORT OF THE DECEMBER 29, 1961 DECISION IN CIVIL CASE NO. 1881.

WHETHER THE COURT OF APPEALS ERRED IN DELETING THE AWARD OF LITIGATION EXPENSES AND COSTS IN FAVOR OF PETITIONERS.

In deciding the original expropriation case that gave rise to the present controversy, Civil Case No. R-1881, the CFI reasoned that the planned expansion of the airport justified the exercise of eminent domain, thus:

As for the public purpose of the expropriation proceeding, it cannot be doubted. Although the Mactan Airport is being constructed, it does not take away the actual usefulness and importance of the Lahug Airport; it is handling the air traffic both civilian and military. From it aircrafts fly to Mindanao and Visayas and pass thru it on their return flights to the North and Manila. *Then, no evidence was adduced to show how soon is the Mactan Airport to be placed in operation and whether the Lahug Airport will be closed immediately thereafter. It is for the other departments of the Government to determine said matters. The Court cannot substitute its judgment for those of the said departments or agencies. **In the absence of such a showing, the Court will presume that the Lahug Airport will continue to be in operation.***<sup>[17]</sup> (italics supplied)

By the time Gopuco had filed his action for recovery of ownership of Lot No. 72, Lahug Airport had indeed ceased to operate. Nevertheless, the trial court held:

The fact of abandonment or closure of the Lahug Airport admitted by the defendant did not by itself, result in the reversion of the subject property back to the plaintiff. Nor did it vest in the plaintiff the right to demand reconveyance of said property.

When real property has been acquired for public use unconditionally, either by eminent domain or by purchase, the abandonment or non-use of the real property, does not *ipso facto* give to the previous owner of said property any right to recover the same (*Fery vs. Municipality of Cabanatuan*, 42 Phil. 28).<sup>[18]</sup>

In reversing the trial court, the Court of Appeals called attention to the fact that both parties cited *Fery v. Municipality of Cabanatuan*,<sup>[19]</sup> which the trial court also relied on in its Decision. The court *a quo* agreed in Gopuco's interpretation of *Fery* that when the CFI in Civil Case No. R-1881 held that,

. . . [T]hen, no evidence was adduced to show how soon is the Mactan Airport to be placed in operation and whether the Lahug Airport will be closed immediately thereafter. . . . In the absence of such a showing, the Court will presume that the Lahug Airport will continue to be in operation, . . . [20]

the expropriation of the property was conditioned on its continued devotion to its public purpose. Thus, although the MCIAA stressed that nothing in the judgment of expropriation expressly stated that the lands would revert to their previous owners should the public use be terminated or abandoned, the Court of Appeals nevertheless ruled that,

. . . [W]hile, there is no explicit statement that the land is expropriated with the condition that when the purpose is ended the property shall return to its owner, the full import of the decision (in Civil Case No. R-1881) suggests that the expropriation was granted because there is no clear showing that Lahug Airport will be closed, the moment Mactan International Airport is put to operation. It stands to reason that should that public use be abandoned, then the expropriated property should revert back to its former owner.

Moreover, the foundation of the right to exercise the power of eminent domain is genuine necessity. Condemnation is justified only if it is for the public good and there is genuine necessity of a public character. Thus, when such genuine necessity no longer exists as when the State abandons the property expropriated, government interest must yield to the private right of the former land owner, whose property right was disturbed as a consequence of the exercise of eminent domain.

Justice, equity and fair play demand that the property should revert back to plaintiff-appellant upon paying the reasonable value of the land to be based on the prevailing market value at the time of judicial demand to recover the property. If the State expects landowners to cooperate in its bid to take private property for its public use, so must it apply also the same standard, to allow the landowner to reclaim the property, now that the public use has been abandoned. [21]

In this petition, the MCIAA reiterates that the Republic of the Philippines validly expropriated Lot No. 72 through the proceedings in Civil Case No. R-1881, the judgment of which had long become final and executory. It further asserts that said judgment vested absolute and unconditional title in the government, specifically on the petitioners, there having been no condition whatsoever that the property should revert to its owners in case the Lahug Airport should be abandoned.

On the other hand, the respondent would have us sustain the appellate court's interpretation of *Fery* as applied to the original judgment of expropriation, to the effect that this was subject to the condition "that the Lahug Airport will continue to be in operation."

We resolve to grant the petition.

In *Fery*, the Court asked and answered the same question confronting us now: When private land is expropriated for a particular public use, and that particular

public use is abandoned, does the land so expropriated return to its former owner?

[22]

The answer to that question depends upon the character of the title acquired by the expropriator, whether it be the State, a province, a municipality, or a corporation which has the right to acquire property under the power of eminent domain. *If, for example, land is expropriated for a particular purpose, **with the condition that when that purpose is ended or abandoned the property shall return to its former owner, then, of course, when the purpose is terminated or abandoned the former owner reacquires the property so expropriated.*** If, for example, land is expropriated for a public street and the expropriation is granted upon condition that the city can only use it for a public street, then, of course, when the city abandons its use as a public street, it returns to the former owner, unless there is some statutory provision to the contrary. . . If upon the contrary, however, the decree of expropriation gives to the entity a fee simple title, then of course, the land becomes the absolute property of the expropriator, whether it be the State, a province, or municipality, and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings. (10 R.C.L., 240, Sec. 202; 20 C.J. 1234, Secs. 593-599 and numerous cases cited; *Reichling vs. Covington Lumber Co.*, 57 Wash., 225; 135 Am. St. Rep., 976; *McConihay vs. Wright*, 121 U.S., 201.)

**When land has been acquired for public use in fee simple, unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner.** (*Fort Wayne vs. Lake Shore, etc. Ry. Co.*, 132 Ind., 558; 18 L.R.A., 367.) (Emphases Supplied)[23]

Did the judgment of expropriation in Civil Case No. R-1881 vest absolute and unconditional title in the government? We have already had occasion to rule on this matter in *Mactan-Cebu International Airport Authority v. Court of Appeals*, [24] which is a related action for reconveyance of a parcel of land also subject of the expropriation proceedings in Civil Case No. R-1881. One of the landowners affected by the said proceeding was Virginia Chiongbian, to whom the CFI ordered the Republic of the Philippines to pay P34,415.00, with legal interest computed from the time the government began using her land. Like the herein respondent, she did not appeal from the CFI's judgment. Also like Gopuco, she eventually filed for the reconveyance of her property when the airport closed. Although she was upheld by both the RTC of Cebu and the Court of Appeals, on appeal we held that **"the terms of the judgment (in Civil Case No. R-1881) are clear and unequivocal and granted title to Lot No. 941 in fee simple to the Republic of the Philippines. There was no condition imposed to the effect that the lot would return to CHIONGBIAN or that CHIONGBIAN had a right to repurchase the same if the purpose for which it was expropriated is ended or abandoned or if the property was to be used other than as the Lahug Airport."**[25] Moreover, we held that although other lot owners were able to successfully reacquire their lands