

## SECOND DIVISION

[ G.R. NO. 127967, December 14, 2005 ]

**FEDERATED REALTY CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND REPUBLIC OF THE PHILIPPINES, THROUGH THE COMMANDING GENERAL OF THE ARMED FORCES OF THE PHILIPPINES VISAYAS COMMAND (AFP-VISCOM), RESPONDENTS.**

### DECISION

**TINGA, J.:**

Eminent domain is one of the fundamental powers inherent to the State as a sovereign. It is the authority and right of the State to take private property for public use upon observance of due process of law and payment of just compensation.<sup>[1]</sup> Any arm of the State that exercises such power must wield the same with circumspection and utmost regard for procedural requirements.<sup>[2]</sup>

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Federated Realty Corporation (FRC) against the Republic of the Philippines through the Armed Forces of the Philippines-Visayas Command (AFP-VISCOMM) and several of its men.<sup>[3]</sup>

The operative facts, together with a historical background of the property involved, follow. Knowing the history of the property is essential to understanding the case.

Petitioner FRC is the registered owner of a 543-square meter lot in Apas, Lahug, Cebu City, covered by Transfer Certificate of Title (TCT) No. 119929 of the Registry of Deeds of Cebu City. The lot adjoins a military reservation, Camp Lapu-Lapu, where the Command Headquarters of the Armed Forces of the Philippines-Visayas Command (AFP-VISCOMM) is situated.

The lot in question used to be a portion of Lot No. 933 containing an area of 37,126 square meters and formed part of the Banilad Friar Lands Estate. In 1932, Lot No. 933 was registered in the names of Francisco Racaza, Pantaleon Cabrera and Josefina Martinez per TCT No. RT 2533 (T-13) issued on 30 August 1932.

Sometime in 1938, Lot No. 933 was one of 18 lots subjected to expropriation proceedings by the government before the Court of First Instance (CFI) of Cebu in the case entitled *Commonwealth of the Philippines v. Borromeo, et al. (Commonwealth case)*, docketed as Civil Case No. 781, for the purpose of establishing a military reservation.<sup>[4]</sup> Pursuant to the CFI Order dated 19 October 1938, the Republic deposited P9,500.00 with the Philippine National Bank as a precondition for entry to the lots sought to be expropriated.

On 14 May 1940, the CFI rendered a *Decision*<sup>[5]</sup> condemning Lot No. 933 along with the 17 other adjacent lots of the Banilad Friar Lands Estate in favor of the Republic. In 1947, the whole military reservation was converted into a national airport by virtue of a Presidential Proclamation and, by virtue thereof, turned over to the National Airports Corporation.

The *Decision* in the *Commonwealth* case notwithstanding, the legal ownership of the expropriated lands was mired in controversy. This Court has had two occasions to rule on the question of ownership involving two of the lots. *Valdehueza v. Republic*,<sup>[6]</sup> decided in 1966, concerned Lot Nos. 932 and 939 of the Banilad Friar Lands Estate, while Lot No. 932 was likewise the subject of *Republic v. Lim*,<sup>[7]</sup> decided earlier this year. In both cases, the Court found that by the very admission of the government, there was no record of payment of compensation by the government to the landowners. Thus, the Court ruled in both cases that there was no transfer of the lots involved in favor of the government. The decisions, however, did not touch on the state of ownership of Lot No. 933 which was not involved in the cases.

Beginning in 1940, Lot No. 933 had been subdivided. Part of it was segregated as Lot 933-B under TCT No. 49999 in the name of Francisco Racaza who sold the same to the Cebu Agro Development Corporation (Cebu Agro) on 11 March 1974.<sup>[8]</sup> Cebu Agro had Lot 933-B further subdivided into three farm lots to expand its rabbit farm. TCT No. 108002 was issued for Lot 933-B-1 by the Register of Deeds of Cebu City on 05 April 1989 while TCT No. 108001 was issued for Lot 933-B-2. On 08 April 1992, TCT No. 119740 was issued for Lot 3, with an area of 543 square meters, which is a portion of the consolidation of Lots 933-B-1 and 933-B-2. All three titles were registered in the names of Arturo Mercader, the President-General Manager of Cebu Agro, and his wife Evangeline Mercader, who religiously paid the real property taxes for the three lots.<sup>[9]</sup>

On 27 April 1992, FRC bought Lot 3 from the Mercader spouses and was issued TCT No. 119929 therefor by the Register of Deeds.<sup>[10]</sup>

FRC hired workers to fence the said lot in preparation for the construction of a commercial building thereon. However, the fence construction was halted on 03 June 1992 when Captain Rogelio Molina arrived with a jeepload of fully-armed men from the AFP-VISCOMM, and ordered FRC's workers to stop building the structure per instructions of AFP-VISCOMM Commanding General Romeo Zulueta. Intimidated, FRC's men stopped working. When they resumed work the following day, Captain Molina returned with his armed men and again ordered them to stop the construction. A similar incident occurred on 08 July 1992, with Captain Molina asserting that the lot in question formed part of the military reservation. All three incidents were recorded in the blotter of Police Station 2, Mabolo, Cebu City.<sup>[11]</sup>

On 22 July 1992, FRC filed a *Complaint*<sup>[12]</sup> for injunction and damages with the Regional Trial Court (RTC) of Cebu against Captain Rogelio Molina and six John Does. The complaint was later amended to implead the Republic of the Philippines (Republic) through the AFP-VISCOMM and its Commanding General Romeo Zulueta. FRC sought the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, to order the respondents to cease, desist and refrain from threatening, intimidating and harassing the workers constructing its fence and to

cease, desist and refrain from committing acts of intrusion into and deprivation of subject land, and to cease, desist and refrain from harassing, disturbing and interfering with its peaceful and lawful possession and enjoyment thereof. FRC also prayed that after trial, (i) the injunction be made permanent, (ii) respondents adjudged without any legal right to or interest whatsoever in the parcel of land in litigation, (iii) respondents ordered to pay compensatory and exemplary damages, attorney's fees and expenses of litigation.

On the same day, the trial court issued the TRO<sup>[13]</sup> prayed for with a duration of 20 days, and set the hearing of the application for preliminary injunction.

In their *Answer*,<sup>[14]</sup> respondents admitted that Captain Rogelio Molina ordered FRC's workers to desist from fencing the land in dispute on the ground that said lot is government property. However, they denied that he and his armed men threatened and/or harassed the said workers.

In an *Omnibus Order*<sup>[15]</sup> dated 26 August 1992, the trial court granted FRC's application for preliminary injunction which writ it later made permanent in an *Order*<sup>[16]</sup> dated 12 October 1995 "until such time that the issue of ownership between the parties shall have been resolved by a competent court."<sup>[17]</sup> The trial court found that the subject property is in the possession of FRC and its predecessor-in-interest and ruled that FRC's assertion of ownership is supported by a TCT which must be upheld until nullified by a competent court in a proper proceeding. In all probability, the Republic would prevent the construction of FRC's fence, if not provisionally prevented by court order, thereby making injunction a proper relief, the lower court noted.

Aggrieved, the Republic filed with the Court of Appeals (CA) on 24 November 1995 a petition for certiorari under Rule 65 with an urgent prayer for TRO and/or preliminary injunction seeking to set aside the 12 October 1995 *Order* of the trial court.<sup>[18]</sup> It justified its immediate recourse to the appellate court on the basis of urgency and the perceived futility of filing a motion for reconsideration with the lower court, thereby leaving it with no other plain, speedy and adequate remedy in the ordinary course of law except through the petition.<sup>[19]</sup>

As per *Resolution*<sup>[20]</sup> dated 29 November 1995, the CA gave due course to the petition and temporarily restrained the implementation of the trial court's questioned order pending full consideration of the Republic's petition.

On 12 September 1996, the CA promulgated its assailed *Decision*<sup>[21]</sup> granting the Republic's petition for certiorari, setting aside the trial court's 12 October 1995 *Order*, and making permanent the writ of preliminary injunction it issued against the implementation of the trial court's decision. It further ordered the trial court to dismiss Civil Case No. CEB-12290.

The appellate court ratiocinated that FRC does not have a clear and unmistakable right over the subject property on the ground that "the subject lot not only adjoins military structures, but the main entrance thereof carries the arch of the AFP-VISCOMM identifying beyond peradventure of doubt that one is entering the premises of the AFP, a government entity."<sup>[22]</sup> It likewise held that the damage

which FRC may suffer in enjoining it from undertaking any improvements on the subject property "pales in comparison with what the [Republic] stands to suffer in the event of a permanent injunction against it – the integrity of its military premises."<sup>[23]</sup> It concluded that not until FRC's title to the land is upheld by final judgment may a writ of injunction properly issue to prevent the Republic from disallowing FRC to fence the lot and introduce any improvement thereon.

FRC then filed a motion for reconsideration<sup>[24]</sup> but the same was denied by the CA in a *Resolution*<sup>[25]</sup> dated 31 January 1997. The appellate court found the trial court in grave abuse of discretion when it disregarded the fact that the subject lot had been expropriated by the government a long time ago in the *Commonwealth* case.

Hence, this petition.

The core issue in this case is whether or not injunction lies in favor of FRC to prevent the Republic from interfering in the exercise of its rights of ownership over the subject property.

In a long line of cases, this Court has held that injunction is a preservative remedy aimed at protecting substantive rights and interests.<sup>[26]</sup> The very foundation of the jurisdiction to issue a writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of multiplicity of suits.<sup>[27]</sup> Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.<sup>[28]</sup>

Thus, to be entitled to injunctive relief, the following must be shown: (1) the invasion of a right sought to be protected is material and substantial; (2) the right of complainant is clear and unmistakable; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage.<sup>[29]</sup>

In reversing the trial court, the CA found FRC's case to be wanting in the second and third requisites.

We disagree.

We first take up the second requisite. Without ruling on the question of ownership over the subject property, we shall delve into the respective claims of ownership of the parties if only to determine if FRC had sufficiently established the existence of a right to be protected by a writ of injunction.

Basically, FRC anchors its claim on the indefeasibility of its registered title to the subject lot which cannot be collaterally attacked by the Republic in an injunction suit. It further alleges, and as found by the trial court, that along with its predecessors-in-interest it has been in open, peaceful and continuous possession thereof since time immemorial, tilling the same and paying all the taxes due thereon.

On the other hand, the Republic has not presented any title over the subject lot but instead relies heavily on the *Commonwealth* and *Valdehueza* cases in asserting ownership and possession over the same, arguing that it was expropriated by the

government for military purposes in 1940. It further alleges that its possession of the subject lot is evidenced by the existence of military structures on the adjoining lots and that of the Camp Lapu-Lapu arch on the main entrance of the property in question.

Time and again, we have upheld the fundamental principle in land registration that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.<sup>[30]</sup> It becomes the best proof of ownership of a parcel of land.<sup>[31]</sup> One who deals with property registered under the Torrens system may rely on the title and need not go beyond the same.<sup>[32]</sup> Such principle of indefeasibility has long been well-settled in this jurisdiction and it is only when the acquisition of the title is attended with fraud or bad faith that the doctrine finds no application.<sup>[33]</sup>

In the instant case, it is undisputed that FRC is a holder of a certificate of title over the lot in question. Records show that each of FRC's predecessors-in-interest was likewise a holder of an indefeasible title. Furthermore, no patent irregularity can be gleaned on the face of FRC's title. Yet, the Republic challenges the validity of the same by maintaining that the subject lot had long been expropriated in favor of the government. Although it does not present any title over the property, the Republic invokes the expropriation proceedings which are the *Commonwealth and Valdehueza* cases. However, the Republic's reliance on the proceedings does not in any way bolster its cause.

First, *Valdehueza* involves Lot Nos. 932 and 939. It does not in any way deal with the subject property nor were FRC and its predecessors-in-interest made parties thereto. Hence, the ruling therein cannot be applied to the instant case.

On the other hand, the property in question was indeed made subject of expropriation proceedings in the *Commonwealth* case. However, the CFI in said case made no mention of the award of the land subject thereof in favor of the government. The CFI merely fixed the valuation of the lots involved for the purpose of payment of just compensation by the government. Until the government has paid for the value of the lots, ownership shall remain with the respective landowners.<sup>[34]</sup> In *Republic v. Lim*, we reiterated the rule that title to the property expropriated shall pass from the owner to the expropriator only upon full payment of just compensation.<sup>[35]</sup>

We note that the Republic claims possession over the subject lot based first on its alleged deposit of P9,500 pursuant to the CFI Order dated 19 October 1938 in the *Commonwealth* case, and second, on the existence of military structures on the adjoining lots of the subject property coupled with the existence of a portion of the runway of the defunct Lahug airport on Lot No. 933 and the arch of Camp Lapu-Lapu on the subject lot. However, the records are bereft of evidence on the alleged deposit made by the Republic with the Philippine National Bank. The Republic merely relies on our ruling in *Valdehueza* which the Republic claims to have reinforced the *Commonwealth* case. However, although *Valdehueza* and even *Lim* do mention a disbursement of the said amount, there was no proof presented by the Republic in both cases as to the receipt of the said deposit by the authorized depository.<sup>[36]</sup> Even then, said cases do not involve Lot No. 933. There is also