

FIRST DIVISION

[G.R. No. 142971, May 07, 2002]

THE CITY OF CEBU, PETITIONER, VS. SPOUSES APOLONIO AND BLASA DEDAMO, RESPONDENTS.

D E C I S I O N

DAVIDE JR., C.J.:

In its petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, petitioner City of Cebu assails the decision of 11 October 1999 of the Court of Appeals in CA-G.R. CV No. 59204^[1] affirming the judgment of 7 May 1996 of the Regional Trial Court, Branch 13, Cebu City, in Civil Case No. CEB-14632, a case for eminent domain, which fixed the valuation of the land subject thereof on the basis of the recommendation of the commissioners appointed by it.

The material operative facts are not disputed.

On 17 September 1993, petitioner City of Cebu filed in Civil Case No. CEB-14632 a complaint for eminent domain against respondents spouses Apolonio and Blasa Dedamo. The petitioner alleged therein that it needed the following parcels of land of respondents, to wit:

Lot No. 1527

Area-----1,146 square meters
Tax Declaration-----03472
Title No.-----31833
Market value-----P240,660.00
Assessed Value-----P72,200.00

Lot No. 1528

Area-----793 square meters
Area sought to be-----478 square meters
expropriated
Tax Declaration-----03450
Title No. -----31832
Market value for the whole lot-----P1,666,530.00
Market value of the Area to be expropriated-----P100,380.00
Assessed Value-----P49,960.00

for a public purpose, *i.e.*, for the construction of a public road which shall serve as an access/relief road of Gorordo Avenue to extend to the General Maxilum Avenue and the back of Magellan International Hotel Roads in Cebu City. The lots are the most suitable site for the purpose. The total area sought to be expropriated is 1,624 square meters with an assessed value of P1,786,400. Petitioner deposited

with the Philippine National Bank the amount of P51,156 representing 15% of the fair market value of the property to enable the petitioner to take immediate possession of the property pursuant to Section 19 of R.A. No. 7160.^[2]

Respondents, filed a motion to dismiss the complaint because the purpose for which their property was to be expropriated was not for a public purpose but for benefit of a single private entity, the Cebu Holdings, Inc. Petitioner could simply buy directly from them the property at its fair market value if it wanted to, just like what it did with the neighboring lots. Besides, the price offered was very low in light of the consideration of P20,000 per square meter, more or less, which petitioner paid to the neighboring lots. Finally, respondents alleged that they have no other land in Cebu City.

A pre-trial was thereafter had.

On 23 August 1994, petitioner filed a motion for the issuance of a writ of possession pursuant to Section 19 of R.A. No. 7160. The motion was granted by the trial court on 21 September 1994.^[3]

On 14 December 1994, the parties executed and submitted to the trial court an Agreement^[4] wherein they declared that they have partially settled the case and in consideration thereof they agreed:

1. That the SECOND PARTY hereby conforms to the intention to [*sic*] the FIRST PARTY in expropriating their parcels of land in the above-cited case as for public purpose and for the benefit of the general public;
2. That the SECOND PARTY agrees to part with the ownership of the subject parcels of land in favor of the FIRST PARTY provided the latter will pay just compensation for the same in the amount determined by the court after due notice and hearing;
3. That in the meantime the SECOND PARTY agrees to receive the amount of ONE MILLION SEVEN HUNDRED EIGHTY SIX THOUSAND FOUR HUNDRED PESOS (1,786,400.00) as provisional payment for the subject parcels of land, without prejudice to the final valuation as maybe determined by the court;
4. That the FIRST PARTY in the light of the issuance of the Writ of Possession Order dated September 21, 1994 issued by the Honorable Court, agreed to take possession over that portion of the lot sought to be expropriated where the house of the SECOND PARTY was located only after fifteen (15) days upon the receipt of the SECOND PARTY of the amount of P1,786,400.00;
5. That the SECOND PARTY upon receipt of the aforesaid provisional amount, shall turn over to the FIRST PARTY the title of the lot and within the lapse of the fifteen (15) days grace period will voluntarily demolish their house and the other structure that may be located

thereon at their own expense;

6. That the FIRST PARTY and the SECOND PARTY jointly petition the Honorable Court to render judgment in said Civil Case No. CEB-14632 in accordance with this AGREEMENT;
7. That the judgment sought to be rendered under this agreement shall be followed by a supplemental judgment fixing the just compensation for the property of the SECOND PARTY after the Commissioners appointed by this Honorable Court to determine the same shall have rendered their report and approved by the court.

Pursuant to said agreement, the trial court appointed three commissioners to determine the just compensation of the lots sought to be expropriated. The commissioners were Palermo M. Lugo, who was nominated by petitioner and who was designated as Chairman; Alfredo Cisneros, who was nominated by respondents; and Herbert E. Buot, who was designated by the trial court. The parties agreed to their appointment.

Thereafter, the commissioners submitted their report, which contained their respective assessments of and recommendation as to the valuation of the property.

On the basis of the commissioners' report and after due deliberation thereon, the trial court rendered its decision on 7 May 1996,^[5] the decretal portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in accordance with the report of the commissioners.

Plaintiff is directed to pay Spouses Apolonio S. Dedamo and Blasa Dedamo the sum of pesos: TWENTY FOUR MILLION EIGHT HUNDRED SIXTY-FIVE THOUSAND AND NINE HUNDRED THIRTY (P24,865.930.00) representing the compensation mentioned in the Complaint.

Plaintiff and defendants are directed to pay the following commissioner's fee;

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| 1. | To Palermo Lugo | - P21,000.00 |
| 2. | To Herbert Buot | - P19,000.00 |
| 3. | To Alfredo Cisneros | - P19,000.00 |

Without pronouncement as to cost.

SO ORDERED.

Petitioner filed a motion for reconsideration on the ground that the commissioners' report was inaccurate since it included an area which was not subject to expropriation. More specifically, it contended that Lot No. 1528 contains 793 square meters but the actual area to be expropriated is only 478 square meters. The remaining 315 square meters is the subject of a separate expropriation proceeding in Civil Case No. CEB-8348, then pending before Branch 9 of the Regional Trial Court of Cebu City.