403 Phil. 404

FIRST DIVISION

[G.R. No. 137152, January 29, 2001]

CITY OF MANDALUYONG, PETITIONER, VS. ANTONIO N., FRANCISCO N., THELMA N., EUSEBIO N., RODOLFO N., ALL SURNAMED AGUILAR, RESPONDENTS.

D E C I S I O N

PUNO, J.:

This is a petition for review under Rule 45 of the Rules of Court of the Orders dated September 17, 1998 and December 29, 1998 of the Regional Trial Court, Branch 168, Pasig City[1] dismissing the petitioner's Amended Complaint in SCA No. 1427 for expropriation of two (2) parcels of land in Mandaluyong City.

The antecedent facts are as follows:

On August 4, 1997, petitioner filed with the Regional Trial Court, Branch 168, Pasig City a complaint for expropriation entitled "*City of Mandaluyong, plaintiff v. Antonio N., Francisco N., Thelma N., Eusebio N., Rodolfo N., all surnamed Aguilar, defendants*." Petitioner sought to expropriate three (3) adjoining parcels of land with an aggregate area of 1,847 square meters registered under Transfer Certificates of Title Nos. 59780, 63766 and 63767 in the names of the defendants, herein respondents, located at 9 de Febrero Street, Barangay Mauwag, City of Mandaluyong; on a portion of the 3 lots, respondents constructed residential houses several decades ago which they had since leased out to tenants until the present; on the vacant portion of the lots, other families constructed residential structures which they likewise occupied; in 1983, the lots were classified by Resolution No. 125 of the Board of the Housing and Urban Development Coordinating Council as an Area for Priority Development for urban land reform under Proclamation Nos. 1967 and 2284 of then President Marcos; as a result of this classification, the tenants and occupants of the lots offered to purchase the land from respondents, but the latter refused to sell; on November 7, 1996, the Sangguniang Panlungsod of petitioner, upon petition of the Kapitbisig, an association of tenants and occupants of the subject land, adopted Resolution No. 516, Series of 1996 authorizing Mayor Benjamin Abalos of the City of Mandaluyong to initiate action for the expropriation of the subject lots and construction of a medium-rise condominium for qualified occupants of the land; on January 10, 1996, Mayor Abalos sent a letter to respondents offering to purchase the said property at P3,000.00 per square meter; respondents did not answer the letter. Petitioner thus prayed for the expropriation of the said lots and the fixing of just compensation at the fair market value of P3,000.00 per square meter.[2]

In their answer, respondents, except Eusebio N. Aguilar who died in 1995, denied having received a copy of Mayor Abalos' offer to purchase their lots. They alleged that the expropriation of their land is arbitrary and capricious, and is not for a public purpose; the subject lots are their only real property and are too small for

expropriation, while petitioner has several properties inventoried for socialized housing; the fair market value of P3,000.00 per square meter is arbitrary because the zonal valuation set by the Bureau of Internal Revenue is P7,000.00 per square meter. As counterclaim, respondents prayed for damages of P21 million.[3]

Respondents filed a "Motion for Preliminary Hearing" claiming that the defenses alleged in their Answer are valid grounds for dismissal of the complaint for lack of jurisdiction over the person of the defendants and lack of cause of action. Respondents prayed that the affirmative defenses be set for preliminary hearing and that the complaint be dismissed.[4] Petitioner replied.

On November 5, 1997, petitioner filed an Amended Complaint and named as an additional defendant Virginia N. Aguilar and, at the same time, substituted Eusebio Aguilar with his heirs. Petitioner also excluded from expropriation TCT No. 59870 and thereby reduced the area sought to be expropriated from three (3) parcels of land to two (2) parcels totalling 1,636 square meters under TCT Nos. 63766 and 63767.[5]

The Amended Complaint was admitted by the trial court on December 18, 1997. Respondents, who, with the exception of Virginia Aguilar and the Heirs of Eusebio Aguilar had yet to be served with summons and copies of the Amended Complaint, filed a "Manifestation and Motion" adopting their "Answer with Counterclaim" and "Motion for Preliminary Hearing" as their answer to the Amended Complaint.[6]

The motion was granted. At the hearing of February 25, 1998, respondents presented Antonio Aguilar who testified and identified several documentary evidence. Petitioner did not present any evidence. Thereafter, both parties filed their respective memoranda.[7]

On September 17, 1998, the trial court issued an order dismissing the Amended Complaint after declaring respondents as "small property owners" whose land is exempt from expropriation under Republic Act No. 7279. The court also found that the expropriation was not for a public purpose for petitioner's failure to present any evidence that the intended beneficiaries of the expropriation are landless and homeless residents of Mandaluyong. The court thus disposed of as follows:

> "WHEREFORE, the Amended Complaint is hereby ordered dismissed without pronouncement as to cost.
>
> SO ORDERED."[8]

Petitioner moved for reconsideration. On December 29, 1998, the court denied the motion. Hence this petition.

Petitioner claims that the trial court erred

> "IN UPHOLDING RESPONDENT'S CONTENTION THAT THEY QUALIFY AS SMALL PROPERTY OWNERS AND ARE THUS EXEMPT FROM EXPROPRIATION."[9]

Petitioner mainly claims that the size of the lots in litigation does not exempt the same from expropriation in view of the fact that the said lots have been declared to

be within the Area for Priority Development (APD) No. 5 of Mandaluyong by virtue of Proclamation No. 1967, as amended by Proclamation No. 2284 in relation to Presidential Decree No. 1517.[10] This declaration allegedly authorizes petitioner to expropriate the property, *ipso facto*, regardless of the area of the land.

Presidential Decree (P.D.) No. 1517, the Urban Land Reform Act, was issued by then President Marcos in 1978. The decree adopted as a State policy the liberation of human communities from blight, congestion and hazard, and promotion of their development and modernization, the optimum use of land as a national resource for public welfare.[11] Pursuant to this law, Proclamation No. 1893 was issued in 1979 declaring the entire Metro Manila as Urban Land Reform Zone for purposes of urban land reform. This was amended in 1980 by Proclamation No. 1967 and in 1983 by Proclamation No. 2284 which identified and specified 245 sites in Metro Manila as Areas for Priority Development and Urban Land Reform Zones.

In 1992, the Congress of the Philippines passed Republic Act No. 7279, the "Urban Development and Housing Act of 1992." The law lays down as a policy that the state, in cooperation with the private sector, undertake a comprehensive and continuing Urban Development and Housing Program; uplift the conditions of the underprivileged and homeless citizens in urban areas and resettlement areas by making available to them decent housing at affordable cost, basic services and employment opportunities and provide for the rational use and development of urban land to bring about, among others, equitable utilization of residential lands; encourage more effective people's participation in the urban development process and improve the capability of local government units in undertaking urban development and housing programs and projects.[12] Towards this end, all city and municipal governments are mandated to conduct an **inventory** of all lands and improvements within their respective localities, and in coordination with the National Housing Authority, the Housing and Land Use Regulatory Board, the National Mapping Resource Information Authority, and the Land Management Bureau, **identify** lands for socialized housing and resettlement areas for the immediate and future needs of the underprivileged and homeless in the urban areas, **acquire** the lands, and **dispose** of said lands to the beneficiaries of the program.[13]

The acquisition of lands for socialized housing is governed by several provisions in the law. Section 9 of R.A. 7279 provides:

> "*Sec. 9. Priorities in the Acquisition of Land.*--Lands for socialized housing shall be acquired in the following order:
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> (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;
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> (b) Alienable lands of the public domain;
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> (c) Unregistered or abandoned and idle lands;
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> (d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;

(e) Bagong Lipunan Improvement of Sites and Services or BLISS Sites which have not yet been acquired;

(f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands."

Lands for socialized housing are to be acquired in the following order: (1) government lands; (2) alienable lands of the public domain; (3) unregistered or abandoned or idle lands; (4) lands within the declared Areas for Priority Development (APD), Zonal Improvement Program (ZIP) sites, Slum Improvement and Resettlement (SIR) sites which have not yet been acquired; (5) BLISS sites which have not yet been acquired; and (6) privately-owned lands.

There is no dispute that the two lots in litigation are privately-owned and therefore last in the order of priority acquisition. However, the law also provides that lands within the declared APD's which have not yet been acquired by the government are fourth in the order of priority. According to petitioner, since the subject lots lie within the declared APD, this fact mandates that the lots be given priority in acquisition. [14]

Section 9, however, is not a single provision that can be read separate from the other provisions of the law. It must be read together with Section 10 of R.A. 7279 which also provides:

"*Section 10. Modes of Land Acquisition.*--The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation: *Provided, however*, **That expropriation shall be resorted to only when other modes of acquisition have been exhausted**: *Provided, further,* **That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act:** *Provided, finally*, That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.[15]

For the purposes of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase: *Provided*, That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal."

Lands for socialized housing under R.A. 7279 are to be acquired in several modes. Among these modes are the following: (1) community mortgage; (2) land swapping, (3) land assembly or consolidation; (4) land banking; (5) donation to the government; (6) joint venture agreement; (7) negotiated purchase; and (8) expropriation. The mode of expropriation is subject to two conditions: (a) it shall be

resorted to only when the other modes of acquisition have been exhausted; and (b) parcels of land owned by small property owners are exempt from such acquisition.

Section 9 of R.A. 7279 speaks of **priorities** in the acquisition of lands. It enumerates the type of lands to be acquired and the heirarchy in their acquisition. Section 10 deals with the **modes** of land acquisition or the process of acquiring lands for socialized housing. These are two different things. **They mean that the type of lands that may be acquired in the order of priority in Section 9 are to be acquired only in the modes authorized under Section 10.** The acquisition of the lands in the priority list must be made subject to the modes and conditions set forth in the next provision. In other words, land that lies within the APD, such as in the instant case, may be acquired only in the modes under, and subject to the conditions of, Section 10.

Petitioner claims that it had faithfully observed the different modes of land acquisition for socialized housing under R.A. 7279 and adhered to the priorities in the acquisition for socialized housing under said law.[16] It, however, did not state with particularity whether it **exhausted** the other modes of acquisition in Section 9 of the law before it decided to expropriate the subject lots. The law states "expropriation shall be resorted to when other modes of acquisition have been exhausted." Petitioner alleged only one mode of acquisition, *i.e.,* by negotiated purchase. Petitioner, through the City Mayor, tried to purchase the lots from respondents but the latter refused to sell.[17] As to the other modes of acquisition, no mention has been made. Not even Resolution No. 516, Series of 1996 of the Sangguniang Panlungsod authorizing the Mayor of Mandaluyong to effect the expropriation of the subject property states whether the city government tried to acquire the same by community mortgage, land swapping, land assembly or consolidation, land banking, donation to the government, or joint venture agreement under Section 9 of the law.

Section 9 also exempts from expropriation parcels of land owned by small property owners.[18] Petitioner argues that the exercise of the power of eminent domain is not anymore conditioned on the size of the land sought to be expropriated.[19] By the expanded notion of public use, present jurisprudence has established the concept that expropriation is not anymore confined to the vast tracts of land and landed estates, but also covers small parcels of land.[20] That only a few could actually benefit from the expropriation of the property does not diminish its public use character.[21] It simply is not possible to provide, in one instance, land and shelter for all who need them.[22]

While we adhere to the expanded notion of public use, the passage of R.A. No. 7279, the "Urban Development and Housing Act of 1992" introduced a limitation on the size of the land sought to be expropriated for socialized housing. The law expressly exempted "small property owners" from expropriation of their land for urban land reform. R.A. No. 7279 originated as Senate Bill No. 234 authored by Senator Joey Lina[23] and House Bill No. 34310. Senate Bill No. 234 then provided that one of those lands not covered by the urban land reform and housing program was "land actually used by small property owners within the just and equitable retention limit as provided under this Act."[24] "Small property owners" were defined in Senate Bill No. 234 as: