

THIRD DIVISION

[G.R. No. 135087, March 14, 2000]

HEIRS OF ALBERTO SUGUITAN, PETITIONER, VS. CITY OF MANDALUYONG, RESPONDENT.

DECISION

GONZAGA-REYES, J.:

In this petition for review on *certiorari* under Rule 45, petitioners^[1] pray for the reversal of the Order dated July 28, 1998 issued by Branch 155 of the Regional Trial Court of Pasig in SCA No. 875 entitled "City of Mandaluyong v. Alberto S. Suguitan, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, the instant Motion to Dismiss is hereby DENIED and an ORDER OF CONDEMNATION is hereby issued declaring that the plaintiff, City of Mandaluyong, has a lawful right to take the subject parcel of land together with existing improvements thereon more specifically covered by Transfer Certificate Of Title No. 56264 of the Registry of Deeds for Metro Manila District II for the public use or purpose as stated in the Complaint, upon payment of just compensation.

Accordingly, in order to ascertain the just compensation, the parties are hereby directed to submit to the Court within fifteen (15) days from notice hereof, a list of independent appraisers from which the Court t will select three (3) to be appointed as Commissioners, pursuant to Section 5, Rule 67, Rules of Court.

SO ORDERED.^[2]

It is undisputed by the parties that on October 13, 1994, the Sangguniang Panlungsod of Mandaluyong City issued Resolution No. 396, S-1994^[3] authorizing then Mayor Benjamin S. Abalos to institute expropriation proceedings over the property of Alberto Sugui located at Boni Avenue and Sto. Rosario streets in Mandaluyong City with an area of 414 square meters and more particularly described under Transfer Certificate of Title No. 56264 of the Registry of Deeds of Metro Manila District II. The intended purpose of the expropriation was the expansion of the Mandaluyong Medical Center.

Mayor Benjamin Abalos wrote Alberto Suguitan a letter dated January 20, 1995 offering to buy his property, but Suguitan refused to sell.^[4] Consequently, on March 13, 1995, the city of Mandaluyong filed a complaint^[5] for expropriation with the Regional Trial Court of Pasig. The case was docketed as SCA No. 875.

Suguitan filed a motion to dismiss^[6] the complaint based on the following grounds - (1) the power of eminent domain is not being exercised in accordance with law; (2)

there is no public necessity to warrant expropriation of subject property; (3) the City of Mandaluyong seeks to expropriate the said property without payment of just compensation; (4) the City of Mandaluyong has no budget and appropriation for the payment of the property being expropriated; and (5) expropriation of Suguitan's property is but a ploy of Mayor Benjamin Abalos to acquire the same for his personal use. Respondent filed its comment and opposition to the motion. On October 24, 1995, the trial court denied Suguitan's motion to dismiss.^[7]

On November 14, 1995, acting upon a motion filed by the respondent, the trial court issued an order allowing the City of Mandaluyong to take immediate possession of Suguitan's property upon the deposit of P621,000 representing 15% of the fair market value of the subject property based upon the current tax declaration of such property. On December 15, 1995, the City of Mandaluyong assumed possession of the subject property by virtue of a writ of possession issued by the trial court on December 14, 1995.^[8] On July 28, 1998, the court granted the assailed order of expropriation.

Petitioner assert that the city of Mandaluyong may only exercise its delegated power of eminent domain by means of an ordinance as required by section 19 of Republic Act (RA) No. 7160,^[9] and not by means of a mere resolution.^[10] Respondent contends, however, that it validly and legally exercised its power of eminent domain; that pursuant to article 36, Rule VI of the Implementing Rules and Regulations (IRR) of RA 7160, a resolution is a sufficient antecedent for the filing of expropriation proceedings with the Regional Trial Court. Respondent's position, which was upheld by the trial court, was explained, thus:^[11]

...in the exercise of the respondent City of Mandaluyong's power of eminent domain, a "resolution" empowering the City Mayor to initiate such expropriation proceedings and thereafter when the court has already determine[d] with certainty the amount of just compensation to be paid for the property expropriated, then follows an Ordinance of the Sanggunian Panlungosd appropriating funds for the payment of the expropriated property. Admittedly, title to the property expropriated shall pass from the owner to the expropriator only upon full payment of the just compensation.^[12]

Petitioners refute respondent's contention that only a resolution is necessary upon the initiation of expropriation proceedings and that an ordinance is required only in order to appropriate the funds for the payment of just compensation, explaining that the resolution mentioned in article 36 of the IRR is for purposes of granting administrative authority to the local chief executive to file the expropriation case in court and to represent the local government unit in such case, but does not dispense with the necessity of an ordinance for the exercise of the power of eminent domain under section 19 of the Code.^[13]

The petition is imbued with merit.

Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare.^[14] It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare.^[15] Thus, the right of

eminent domain appertains to every independent government without the necessity for constitutional recognition.^[16] The provisions found in modern constitutions of civilized countries relating to the taking of property for the public use do not by implication grant the power to the government, but limit a power which would otherwise be without limit.^[17] Thus, our own Constitution provides that "[p]rivate property shall not be taken for public use without just compensation."^[18] Furthermore, the due process and equal protection clauses^[19] act as additional safeguards against the arbitrary exercise of this governmental power.

Since the exercise of the power of eminent domain affects an individual's right to private property, a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty,^[20] the need for its circumspect operation cannot be overemphasized. In *City of Manila vs. Chinese Community of Manila* we said:^[21]

The exercise of the right of eminent domain, whether directly by the State, or by its authorized agents, is necessarily in derogation of private rights, and the rule in that case is that the authority must be strictly construed. No species of property is held by individuals with greater tenacity, and none is guarded by the constitution and the laws more sedulously, than the right to the freehold of inhabitants. When the legislature interferes with that right, and, for greater public purposes, appropriates the land of an individual without his consent, the plain meaning of the law should not be enlarged by doubt[ful] interpretation. (*Bensley vs. Mountainlake Water Co.*, 13 Cal., 306 and cases cited [73 Am. Dec. 576].)

The statutory power of taking property from the owner without his consent is one of the most delicate exercise of governmental authority. It is to be watched with jealous scrutiny. Important as the power may be to the government, the inviolable sanctity which all free constitutions attach to the right of property of the citizens, constrains the strict observance of the substantial provisions of the law which are *prescribed* as modes of the exercise of the power, and to protect it from abuse. (*Dillon on Municipal Corporations* [5th Ed.], sec. 1040, and cases cited; *Tenorio vs. Manila Railroad Co.*, 22 Phil., 411.)

The power of eminent domain is essentially legislative in nature. It is firmly settled, however, that such power may be validly delegated to local government units, other public entities and public utilities, although the scope of this delegated legislative power is necessarily narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law.^[22]

The basis for the exercise of the power of eminent domain by local government units is section 19 of RA 7160 which provides that:

A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, purpose, or welfare for the benefits of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws; *Provided, however,* That the

power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted; *Provided, further*, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated; *Provided, finally*, That the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

Despite the existence of this legislative grant in favor of local governments, it is still the duty of the courts to determine whether the power of eminent domain is being exercised in accordance with the delegating law.^[23] In fact, the courts have adopted a more censorious attitude in resolving questions involving the proper exercise of this delegated power by local bodies, as compared to instances when it is directly exercised by the national legislature.^[24]

The courts have the obligation to determine whether the following requisites have been complied with by the local government unit concerned:

1. An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property.
2. The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless.
3. There is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws.
4. A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.^[25]

In the present case, the City of Mandaluyong seeks to exercise the power of eminent domain over petitioners' property by means of a resolution, in contravention of the first requisite. The law in this case is clear and free from ambiguity. Section 19 of the Code requires an ordinance, not a resolution, for the exercise of the power of eminent domain. We reiterate our ruling in *Municipality of Parañaque v. V.M. Realty Corporation*^[26] regarding the distinction between an ordinance and a resolution. In that 1998 case we held that:

We are not convinced by petitioner's insistence that the terms "resolution" and "ordinance" are synonymous. A municipal ordinance is different from a resolution. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature. Additionally, the two are enacted differently a third reading is necessary for an ordinance, but