

SECOND DIVISION

[G.R. Nos. 139927 and 139936, November 22, 2000]

**SALVADOR BIGLANG-AWA, REMEDIOS BIGLANG-AWA,
PETITIONERS, VS. HON. JUDGE MARCIANO I. BACALLA IN HIS
CAPACITY AS PRESIDING JUDGE OF BRANCH 216 - REGIONAL
TRIAL COURT OF QUEZON CITY, REPUBLIC OF THE PHILIPPINES
(DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS),
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

Before us is a petition for certiorari under Rule 65 of the Rules of Court, with a prayer for the issuance of a writ of preliminary injunction, seeking to annul and set aside the Orders of the respondent Court dated August 5, 1998, ordering the issuance of Writs of Possession of the properties of herein petitioners, and the Order dated August 12, 1998, issuing the corresponding Writs of Possession, as well as the Order dated July 7, 1999, denying the petitioners' Motion for Reconsideration of the August 5, 1998 Orders. The petition further prays for the dismissal of Civil Cases Nos. Q-97-31368 and Q-97-31369 for being premature due to failure to comply with the substantive requirements of Executive Order No. 1035 (1985).^[1]

The antecedent facts are as follows:

Petitioners Remedios Biglang-awa and Salvador Biglang-awa are the registered owners of certain parcels of land situated in Talipapa, Novaliches, Quezon City. The parcel of land owned by petitioner Remedios Biglang-awa is covered by T.C.T. No. RT-101389 (362966) with an area of 769 sq. m., while that owned by Salvador Biglang-awa is covered by T.C.T. No. RT-101390 (19352) with an area of 2,151 sq. m. The government needed to expropriate 558 sq. m. of the aforesaid property of petitioner Remedios Biglang-awa, and 881 sq. m. of that belonging to petitioner Salvador Biglang-awa for the construction of the Mindanao Avenue Extension, Stages II-B and II-C..

On August 29, 1996, the petitioner Remedios Biglang-awa received a Notice from the respondent Republic, through the Department of Public Works and Highways (DPWH) Project Manager Patrick G. Gatan, requiring her to submit the documents necessary to determine the just compensation for her property.^[2]

On October 15, 1996, Final Notices, signed by Project Director Cresencio M. Rocamora, were given by the DPWH to the petitioners to submit within five (5) days the pertinent documents, otherwise, expropriation proceedings would be filed against their properties.^[3] As the petitioners failed to comply with these final notices, the respondent Republic, through the DPWH, filed with the respondent

Regional Trial Court of Quezon City^[4] separate cases for expropriation against the petitioners, docketed as Civil Case Nos. Q-99-31368 and Q-97-31369.

On July 10, 1997, the petitioners received summons from the respondent court, and were ordered to file their respective Answers to the Complaints for expropriation. The petitioners filed their Answers on August 11, 1997.

Subsequently, the respondent Republic, through the DPWH, deposited with the Land Bank of the Philippines the amounts of P3,964,500.00 and P2,511,000.00 for the properties of Salvador and Remedios Biglang-awa, respectively, based on the appraisal report of the Quezon City Appraisal Committee.

On April 24, 1998, respondent Republic filed separate Motions for the Issuance of Writs of Possession of the properties of the petitioners with the respondent court. The court issued Orders giving the petitioners, through counsel Atty. Jose Felix Lucero, ten (10) days within which to submit their Opposition to the said motions. The petitioners failed to file their Opposition to the Motion.

On August 5, 1998, the respondent court issued separate Orders^[5] granting the motions for the issuance of writs of possession. Accordingly, the writs of possession were issued by the respondent court on August 12, 1998.^[6]

On September 11, 1998, petitioner Remedios Biglang-awa received a Notice to Vacate her property. A similar Notice was likewise received by petitioner Salvador Biglang-awa at about the same time.

On January 25, 1999, the petitioners filed a joint Manifestation with the respondent court to the effect that they were retaining the law firm of Gumpal and Valenzuela, in lieu of Atty. Jose Felix Lucero whose services they had already terminated due to the latter's inaction and abandonment of their cases.

On May 10, 1999, the petitioners, through their new counsel, moved for a reconsideration of the respondent court's Orders dated August 5, 1998, and a recall of the writs of possession issued on August 12, 1998, mainly on the ground that the respondent Republic failed to comply with the provisions of E.O. 1035 (1985), relating to the conduct of feasibility studies, information campaign, detailed engineering/surveys, and negotiation prior to the acquisition of, or entry into, the property being expropriated.

On July 7, 1999, the respondent court issued an Order denying the petitioners' Motion for Reconsideration, a copy of which was received by the petitioners on July 26, 1999.

Hence, this Petition for Certiorari.

The sole issue in this case is whether or not the respondent court gravely abused its discretion, amounting to lack or excess of its jurisdiction, when it issued the questioned orders.

We rule in the negative.

The petitioners contend that due process of law in relation to expropriation proceedings mandates that there be compliance with the provisions of Executive Order No. 1035, particularly Sections 2, 3, 4 and 6, claimed to constitute the substantive requirements of the expropriation law, prior, and as a condition precedent, to Section 2 of Rule 67 of the 1997 Revised Rules of Civil Procedure. Hence, a writ of possession pursuant to the above provision of Rule 67 will issue only upon showing that the said provisions of E.O. 1035 have already been complied with. As the writs of possession in the instant case were issued by the respondent court without the respondent Republic, through the DPWH, having furnished the petitioners any feasibility study and "approved" parcellary survey in connection with the Mindanao Avenue Extension Project,^[7] despite formal request by the latter,^[8] and therefore without showing prior compliance with E.O. 1035, the petitioners contend that such issuance of the writs of possession by the respondent court was made with grave abuse of discretion amounting to lack or excess of jurisdiction.

We do not agree.

The provisions of law adverted to by petitioners are as follows:

Title A. Activities Preparatory To Acquisition Of Property

Sec. 2. Feasibility Studies. Feasibility studies shall be undertaken for all major projects, and such studies shall, in addition to the usual technical, economic and operational aspects, include the social, political, cultural and environmental impact of the project.

Sec. 3. Information Campaign. Every agency, office and instrumentality of the government proposing to implement a development project which requires the acquisition of private real property or rights thereon shall first make consultations with the local government officials, including the regional development councils having jurisdiction over the area where the project will be undertaken to elicit their support and assistance for the smooth implementation of the project. The implementing agency/instrumentality concerned with the assistance of the local government officials and representatives of the Office of Media Affairs shall conduct an extensive public information campaign among the local inhabitants that will be affected by the project to acquaint them with the objectives and benefits to be derived from the project and thus avoid any resistance to or objection against the acquisition of the property for the project.

Sec. 4. Detailed Engineering/Surveys. The implementing government agency/ instrumentality concerned shall, well in advance of the scheduled construction of the project, undertake detailed engineering, including parcellary surveys to indicate the location and size of the sites and to determine ownership of the land to be acquired, including the status of such landownership.

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Title B. Procedure For Acquisition Of Property

Sec. 6. *Acquisition Through Negotiated Sale.* As an initial step, the government implementing agency/instrumentality concerned shall negotiate with the owner of the land that is needed for the project for the purchase of said land, including improvements thereon. In the determination of the purchase price to be paid, the Ministry of Finance and the Provincial/City/Municipal Assessors shall extend full assistance and coordinate with the personnel of the government implementing agency concerned in the valuation of lands and improvements thereon taking into consideration the current and fair market value declared by the owner or administrator of the land, or such current market value as determined by the assessor, whichever is lower, prior to the negotiation. [Executive Order No. 1035 (1985)]

Nothing in the foregoing provisions supports the contention of the petitioners. A careful perusal of the provisions cited do not yield the conclusion that the conduct of feasibility studies, information campaign and detailed engineering/surveys are conditions precedent to the issuance of a writ of possession against the property being expropriated. Although compliance with these activities should indeed be made prior to the decision to expropriate private property, the requirements for issuance of a writ of possession once the expropriation case is filed, are expressly and specifically governed by Section 2 of Rule 67 of the 1997 Rules of Civil Procedure, to wit:

Sec.2. *Entry of the plaintiff upon depositing value with authorized government depositary.*-- Upon the filing of the complaint or at anytime thereafter, and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for the purposes of taxation to be held by such bank subject to the orders of the court
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If such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties.

As clearly enunciated in *Robern Development Corporation vs. Judge Jesus Quitain*^[9]:

"Expropriation proceedings are governed by revised Rule 67 of the 1997 Rules of Civil Procedure which took effect on July 1, 1997. Previous doctrines inconsistent with this Rule are deemed reversed or modified. Specifically, (1) an answer, not a motion to dismiss, is the responsive pleading to a complaint in eminent domain; (2) the trial court may issue a writ of possession once the

plaintiff deposits an amount equivalent to the assessed value of the property, pursuant to Section 2 of said Rule, without need of a hearing to determine the provisional sum to be deposited; and (3) *a final order of expropriation may not be issued prior to a full hearing and resolution of the objections and defenses of the property owner.*" (Emphasis Ours)

Thus, pursuant to Section 2 of Rule 67 of the 1997 Revised Rules of Civil Procedure and the *Robern Development Corporation* case, the only requisites for authorizing immediate entry in expropriation proceedings are: (1) the filing of a complaint for expropriation sufficient in form and substance; and (2) the making of a deposit equivalent to the assessed value of the property subject to expropriation. Upon compliance with the requirements the issuance of the writ of possession becomes "ministerial."^[10]

The antecedents and the rationale for the rule are explained thus:

"There is no prohibition against a procedure whereby immediate possession of the land involved in expropriation proceedings may be taken, provided always that due provision is made to secure the prompt adjudication and payment of just compensation to the owners. However, the requirements for authorizing immediate entry in expropriation proceedings have changed.

To start with, in Manila Railroad Company v. Paredes, [Manila Railroad Company v. Paredes, 31 Phil 118, 135, March 31 & December 17, 1915] the Court held that the railway corporation had the right to enter and possess the land involved in condemnation proceedings under Section 1, Act No. 1592, immediately upon the filing of a deposit fixed by order of the court.

The Rules of Court of 1964 sanctioned this procedure as follows:

Sec. 2. Entry of plaintiff upon depositing value with National or Provincial Treasurer. Upon the filing of the complaint or at any time thereafter the plaintiff shall have the right to take or enter upon the possession of the real or personal property involved if he deposits with the National or Provincial Treasurer its value, as provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings, to be held by such treasurer subject to the orders and final disposition of the court. . . . (emphasis ours.)

Subsequently, former President Ferdinand E. Marcos signed into law Presidential Decree No. 42 and its companion decrees, which removed the court's discretion in determining the amount of the provisional value of the land to be expropriated and fixed the provisional deposit at its assessed value for taxation purposes. Hearing was not required; only notice to the owner of the property sought to be condemned.