

EN BANC

[G.R. No. 135042, September 23, 1999]

ROBERN DEVELOPMENT CORPORATION, PETITIONER, VS. JUDGE JESUS V. QUITAIN, REGIONAL TRIAL COURT OF DAVAO CITY, BR. 15; AND NATIONAL POWER CORPORATION, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

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.

The Case

Before us is a Petition under Rule 45, challenging the Decision of the Court of Appeals^[1] promulgated February 27, 1998 and its Resolution promulgated July 23, 1998 in CA-GR SP-46002, which (1) dismissed the action for certiorari and preliminary injunction filed by Robern Development Corporation ("Robern" for brevity); and (2) effectively affirmed the Orders (dated August 13, 1997; September 11, 1997; and November 5, 1997) and the Writ of Possession (dated September 19, 1997), all issued by the Regional Trial Court of Davao City in Civil Case No. 25356-97.

The assailed Decision disposed as follows:^[2]

"IN VIEW OF ALL THE FOREGOING, the instant petition is ordered DISMISSED. Costs against the petitioner."

In its assailed Resolution, the Court of Appeals denied reconsideration in this manner:^[3]

"There being no compelling reason to modify, reverse or reconsider the Decision rendered in the case dated February 27, 1998[;] the Motion for Reconsideration posted by petitioner on March 23, 1998 is DENIED, it appearing further that the arguments raised therein were already considered and passed upon in the aforesaid Decision."

The Facts

The following facts are undisputed.

1. Robern is the registered owner of a parcel of land with an area of about 17,746.50 square meters, which the National Power Corporation ("NPC" for brevity) is seeking to expropriate. The property forms part of a proposed low-cost housing project in Inawayan, Binugao, Toril, Davao City.

2. On June 6, 1997, NPC filed a Complaint for Eminent Domain against Robern.^[4] Instead of filing an answer, petitioner countered with a Motion to Dismiss,^[5] alleging (a) that the Complaint suffered a jurisdictional defect for not showing that the action bore the approval of the NPC board of directors; (b) that Nemesio S. Cañete, who signed the verification and certification in the Complaint, was not the president, the general manager or an officer specifically authorized under the NPC charter (RA 6395); (c) that the choice of property to be expropriated was improper, as it had already been intended for use in a low-cost housing project, a public purpose within the contemplation of law; and the choice was also arbitrary, as there were similar properties available within the area.

3. Before this Motion could be resolved, NPC filed a Motion for the Issuance of Writ of Possession based on Presidential Decree No. 42. On July 9, 1997, NPC deposited P6,121.20 at the Philippine National Bank, Davao Branch, as evidenced by PNB Savings Account No. 385-560728-9.^[6]

4. In its Order of August 13, 1997, the trial court denied the petitioner's Motion to Dismiss in this wise:

"This refers to the motion to dismiss. The issues raised are matters that should be dealt with during the trial proper. Suffice it to say that [NPC] has the privilege as a utility to use the power of eminent domain.

"The motion is denied for lack of merit. The pre-trial conference shall be on August 27, 1997 at 2:30 P.M."^[7]

5. On September 2, 1997, petitioner filed a Motion for Reconsideration, pointing out that (a) the issues raised in the Motion to Dismiss could be resolved without trial, as they could be readily appreciated on the face of the Complaint itself vis-à-vis the applicable provisions of law on the matter; and (b) the grounds relied upon for dismissing the Complaint did not require evidence *aliunde*.

6. On September 11, 1997, the trial court denied the Motion, as follows:

"The xxx motion [of the petitioner] for reconsideration is denied for lack of merit. Finding the xxx motion [of NPC] to be meritorious[,], let a writ of possession issue."^[8]

7. On September 22, 1997, petitioner filed a Motion for Reconsideration of the Order of September 11, 1997, arguing among others that Section 15-A of RA 6395 was virtually "amended" when Cañete was allowed to verify and sign the certificate of non-forum shopping in regard to the Complaint for expropriation filed by NPC.

8. Without awaiting the outcome of the Motion for Reconsideration, NPC filed a

Motion to Implement the Writ of Possession.

9. On September 19, 1997, in spite of petitioner's opposition, the trial court issued a Writ of Possession as follows:

"WHEREAS, the applicant National Power Corporation in the above-titled case has presented to this Court a petition praying for the issuance of a Writ of Possession of the affected property of the xxx Robern Development Corporation, described hereinbelow, as follows:

TCT No.	Total Area in Square Meter	Area Affected in Square Meter
T-251558 (T-141754)	11,469.00	3,393.00
T-251559 (T-141755)	10,000.00	2,124.00
T-251556 (T-14152)	30,000.00	3,402.00
T-251555	<u>45,000.00</u>	<u>8,827.50</u>
TOTAL	97,371.00	17,746.50– Tota laffected area

"WHEREAS, on September 11, 1997 the court issued an Order granting the issuance of a Writ of Possession in favor of the xxx National Power Corporation for the immediate possession and control of the parcels of land owned by the [petitioner] as aforestated for the construction of the Mantanao-New-Loon 138 KV Transmission Line Project to be undertaken by the petitioner affecting 17,746.50 sq.m. of the 97,371.00 sq. meters as shown above.

"NOW THEREFORE, you are hereby commanded to place [NPC] in possession and control of the affected property consisting 17,746.50 [s]quare [m]eters of the total area of 97,371.00 square meters described above and to eject therefrom all adverse occupants, Robern Development Corporation and [all other] persons xxx claiming under it."^[9]

10. On November 5, 1997, before counsel for the petitioner received any order from the trial court directing the implementation of the Writ of Possession, NPC occupied the disputed property.

11. In a Petition for Certiorari before the Court of Appeals (CA), Robern assailed the Writ on the following grounds: (a) patent on the face of the complaint were its jurisdictional defect, prematurity and noncompliance with RA 6395; and (b) the issuance of the Writ of Possession was irregular, arbitrary and unconstitutional, as

the trial court had yet to fix the “appropriate value for purposes of taking or entering upon the property to be expropriated.”

Ruling of the Court of Appeals

The Court of Appeals upheld the trial court on the following grounds.

First, the verification and certification of the Complaint by someone other than the president or the general manager of NPC was not a fatal jurisdictional defect. It was enough to allege that the expropriating body had the right of eminent domain. The issues of whether the expropriation was properly authorized by the board of directors and whether Cañete’s verification and certification of the Complaint was likewise authorized were evidentiary and could be ruled upon only after the reception of evidence.

Second, whether the disputed property could still be expropriated even if it had already been intended to be used in a low-cost housing project and whether the choice of that lot was arbitrary and erroneous, given the availability of similar properties in the area, were factual issues that would entail presentation of evidence by both parties.

Third, the allegation in the Complaint that NPC sought to acquire an easement of right-of-way through the disputed property did not preclude its expropriation. Section 3-A of the NPC charter allowed the power company to acquire an easement of right-of-way or even the land itself if the servitude would injure the land.

Fourth, the issuance of the Writ of Possession was proper in view of NPC’s compliance with Section 2, Rule 67 of the 1997 Rules of Civil Procedure, by depositing with the Philippine National Bank an amount equivalent to the assessed value of the disputed property.

Fifth, certiorari was not the proper remedy, as the Order sustaining the right to expropriate the property was not final and could still be appealed by the aggrieved party. The availability of appeal ruled out certiorari.

Hence, this Petition.^[10]

The Issues

In their Memorandum,^[11] petitioner raises the following issues:^[12]

“I WHETHER OR NOT THE QUESTIONED ORDER OF THE RESPONDENT JUDGE DATED SEPTEMBER 11, 1997 DIRECTING THE ISSUANCE OF A WRIT OF POSSESSION IS UNCONSTITUTIONAL, HIGHLY IRREGULAR, ARBITRARY, AND DESPOTIC.

“II WHETHER OR NOT THE COMPLAINT FILED IN THE INSTANT CASE IS DISMISSIBLE ON ITS FACE FOR LACK OF JURISDICTION, BEING FLAWED WITH PREMATURETY, AND VIOLATIVE OF RA 6395.

“III WHETHER OR NOT THE COURT OF APPEALS MADE A FINDING NOT BORNE OUT BY THE COMPLAINT, THUS IT EXCEEDED ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION.

"IV WHETHER OR NOT THE CHOICE OF THE PROPERTY TO BE
EXPROPRIATED IS ARBITRARY."

Simply stated, the petition raises the following issues:

1. Were there valid grounds to dismiss the Complaint?
2. Was the Writ of Possession validly issued, considering that the trial court had not conducted any hearing on the amount to be deposited?

This Court's Ruling

The Court of Appeals was correct in its rulings, but in the interest of substantial justice, the petitioner should be given an opportunity to file its answer.

First Issue: Grounds for Dismissal

Jurisdiction

Petitioner contends that the trial court did not acquire jurisdiction over the case because, first, Atty. Cañete who signed the verification and certification of non-forum shopping was neither the president nor the general manager of NPC; and second, under Section 15-A of RA 6395, only the NPC chief legal counsel, under the supervision of the Office of the Solicitor General is authorized to handle legal matters affecting the government power corporation. On the other hand, NPC argues that Cañete, as its regional legal counsel in Mindanao, is authorized to prepare the Complaint on its behalf.

We find the disputed verification and certification to be sufficient in form. Verification is intended to assure that the allegations therein have been prepared in good faith or are true and correct, not mere speculations.^[13] Generally, lack of verification is merely a formal defect that is neither jurisdictional nor fatal. Its absence does not divest the trial court of jurisdiction.^[14] The trial court may order the correction of the pleading or act on the unverified pleading, if the attending circumstances are such that strict compliance with the rule may be dispensed with in order to serve the ends of justice.

The certificate of non-forum shopping directs the "plaintiff or principal party" to attest under oath that (1) no action or claim involving the same issues have been filed or commenced in any court, tribunal or quasi-judicial agency and that, to the best of the plaintiff's knowledge, no such other action or claim is pending; (2) if there is such other pending action or claim, a complete statement of its present status shall be made; and (3) if it should be learned that the same or a similar action or claim has been filed or is pending, the plaintiff shall report this fact to the court where the complaint or initiatory pleading was filed.^[15] This rule is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different forums, as this practice is detrimental to orderly judicial procedure.^[16] Administrative Circular No. 04-94, which came before the 1997 Rules of Court, is deemed mandatory but not jurisdictional, as jurisdiction over the subject or nature of the action is conferred by law.^[17]