

## FOURTH DIVISION

[ CA-G.R. SP No. 108499, November 20, 2014 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH),  
PETITIONER, VS. HON. FERNANDO L. FELICEN, PRESIDING  
JUDGE OF RTC BRANCH 20, IMUS, CAVITE, AND ST. VINCENT DE  
PAUL COLLEGES, INC., RESPONDENTS.**

### D E C I S I O N

#### **CARANDANG, J.:**

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the public respondent's Order<sup>[1]</sup> dated November 25, 2008 which denied petitioner's *Urgent Motion for Issuance of Writ of Possession* and the Order<sup>[2]</sup> dated January 29, 2009 which denied petitioner's *Motion for Reconsideration*.

#### *The facts of the case:*

The present case originated from petitioner's complaint (Civil Case No. 0062-04)<sup>[3]</sup> to expropriate 1,992 square meters out of a total area of 6,068 square meters of private respondent's land, covered by TCT No. T-821169, in Binakayan, Kawit, Cavite, for the construction of the Manila-Cavite Toll Expressway Project (MCTEP), R-1 Extension Expressway, Segment 4, from Bacoor to Kawit, Cavite, a public purpose authorized by law.

A second complaint (Civil Case No. 0100-04)<sup>[4]</sup> was filed by petitioner seeking to expropriate 2,450 square meters out of a total area of 9,039 square meters of private respondent's property covered by TCT No. T-821170, which adjoins the property being expropriated in the first case.

Subsequently, petitioner filed in both cases an *Amended Complaint*<sup>[5]</sup> claiming that the subject land originated from a Free Patent title and should be adjudicated to petitioner without payment of just compensation pursuant to Section 112 of Commonwealth Act (C.A.) No. 141.

On August 16, 2005, the trial court in Civil Case No. 0062-04 issued an Order<sup>[6]</sup> granting petitioner's *Motion for Issuance of Order of Expropriation*<sup>[7]</sup>, pertinent portion of the ruling reads:

“Accordingly, plaintiff Republic of the Philippines, as represented herein by the Department of Public Works and Highways (DPWH) is hereby

declared to have a lawful right to take the 1,992 square meters portion of the subject property, particularly segregated and delineated in Annex "C" of the Amended Complaint with all its improvements for the intended purpose of construction of R1 Extension Expressway, Segment 4, spanning the Municipalities of Bacoor and Kawit, both in the Province of Cavite, an avowedly public purpose.

No pronouncement as to just compensation considering that the subject property originated from a free patent, without any improvements, and as such, pursuant to Commonwealth Act 141, the said land shall be subject to a right-of-way not exceeding more than 60 meters in width for public highways."

Private respondent moved for reconsideration but the same was denied in the Order<sup>[8]</sup> dated November 16, 2006.

A *Motion for Issuance of Order of Expropriation*<sup>[9]</sup> was likewise filed by petitioner in Civil Case No. 0100-04. But before this could be resolved, petitioner moved to consolidate the two cases which was granted by the trial court.<sup>[10]</sup>

After almost two years later or on July 28, 2008, private respondent filed a *Manifestation with Motion (For Clarification of the Order dated August 16, 2005)*<sup>[11]</sup> alleging that although it does not oppose the ruling regarding the determination of public purpose and the petitioner's right to expropriate the subject land, private respondent however claims that it is entitled to just compensation relying on the legal opinion dated October 26, 2007 of then Solicitor General Eduardo Nachura, and that the use of the subject property as school premises already complies with the reservation for a legal easement under CA 141.

Petitioner filed its *Comment*<sup>[12]</sup> contending that *Manifestation with Motion* is in truth a veiled attempt to revive an appeal which it lost through gross inaction of its counsel, and its unexplained inaction in appealing the August 16, 2005 Order for more than three (3) years rendered its request for clarification stale.

Meanwhile, when the project contractor sought to implement the August 16, 2005 Order, private respondent's counsel sent a letter demanding the project contractor to vacate the premises of St. Vincent de Paul Colleges fronting the Kawit National High School, and to remove any structures and equipment found on the property.

Hence, petitioner filed an *Urgent Motion for Issuance of Writ of Possession* on the ground that the Order of Expropriation has already attained finality. This was denied by the public respondent in the assailed Order dated November 25, 2008, which modified the August 16, 2005 Order insofar as the pronouncement of private respondent's entitlement to just compensation. The dispositive portion of the November 25, 2008 Order reads:

"In the light of the foregoing, the Court hereby resolves as follows, viz:

1. To MODIFY the Order of this Court dated 16 August 2005 insofar as the pronouncement regarding the non-entitlement of the defendant to payment of just compensation for the property subject matter of this case and ORDER the plaintiff to immediately pay the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the [BIR]; and (2) the value of the improvement and/or structure constructed thereon; and

2. To DENY plaintiff's Motion for Issuance of Writ of possession for being premature."

Petitioner moved to reconsider but it was denied for lack of factual and legal basis in the second assailed Order dated January 29, 2009.

Hence, this petition raising the following issues for resolution, to wit:

I.

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SUBSTANTIALLY AMENDING THE FINAL AND EXECUTORY ORDER DATED AUGUST 16, 2005.

II.

WHETHER OR NOT PRIVATE RESPONDENT'S LAND WHICH WAS ORIGINALLY A PUBLIC LAND AND AWARDED BY FREE PATENT TITLE, WITH A RESERVATION FOR A LEGAL EASEMENT OF A RIGHT-OF-WAY IN FAVOR OF THE GOVERNMENT, IS ENTITLED TO JUST COMPENSATION FOR THE TAKING OF A PART THEREOF, FOR PUBLIC USE AS AN EASEMENT OF RIGHT-OF-WAY.

Petitioner argues that the public respondent failed to exercise his discretion properly and judiciously when he substantially amended the August 16, 2005 Order which had already attained finality. Further, petitioner maintains that private respondent is not entitled to an easement fee nor to just compensation for the affected portion of its land, pursuant to the reservation granted under Commonwealth Act (C.A.) No. 141 in favor of the government.

**The petition is meritorious.**

After a careful evaluation of the records of the case, this Court holds that the public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed Orders dated November 25, 2008 and January 29, 2009, respectively.

We do not discuss the effects of the so-called finality of the Order dated August 16, 2005 with respect to the payment of just compensation as We believe that the finality of said Order will not prevent the fixing of just compensation in case of