



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,
represented by the **DEPARTMENT**
OF PUBLIC WORKS AND
HIGHWAYS,

Petitioner,

- versus -

SPOUSES MARCELINO BUNSAY
and **NENITA BUNSAY,**

Respondents.

G.R. No. 205473

Present:

PERALTA, *C.J., Chairperson,*
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:

DEC 10 2019

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DECISION

CAGUIOA, J.:

The Facts

This is a petition for review on *certiorari*¹ (Petition) filed under Rule 45 of the Rules of Court against the Order/Resolution² dated August 23, 2012 (assailed Resolution) and Order³ dated January 10, 2013 (assailed Order) of the Regional Trial Court of Valenzuela City, Branch 270 (RTC) in Civil Case No. 188-V-11.

The assailed Resolution and Order: (i) directed the expropriation of a 100-square meter lot in Valenzuela City covered by Transfer Certificate of Title (TCT) No. V-16548 (Disputed Property) issued in the name of respondents Spouses Marcelino and Nenita Bunsay (Spouses Bunsay); and (ii) ordered petitioner Republic of the Philippines (Republic), through the Department of Public Works and Highways (DPWH), to pay Spouses Bunsay consequential damages equivalent to the value of the capital gains tax (CGT) and other taxes necessary to transfer the Disputed Property in its name.

¹ *Rollo*, pp. 9-19.

² *Id.* at 20-23. Penned by Presiding Judge Evangeline M. Francisco.

³ *Id.* at 24-25.

The facts are undisputed.

DPWH is the Republic's engineering and construction arm tasked to undertake the "planning, design, construction and maintenance of infrastructure facilities, especially national highways, flood control and water resource development system, and other public works in accordance with national development objectives."⁴

Among DPWH's projects is the C-5 Northern Link Road Project Phase 2 (Segment 9) connecting the North Luzon Expressway (NLEX) to McArthur Highway, Valenzuela City (the Project).⁵

In connection with the implementation of the Project, DPWH filed with the RTC a Complaint for Expropriation with Urgent Prayer for the Issuance of a Writ of Possession⁶ (Expropriation Complaint) against Spouses Bunsay, concerning the Disputed Property.⁷

Records show that while notices were sent to Spouses Bunsay, they were returned with the notation "party moved". As expected, Spouses Bunsay did not file an Answer.⁸

The RTC later scheduled a hearing on the issuance of the writ of possession prayed for. During the hearing, DPWH deposited checks in the total amount of Two Hundred Thousand Pesos (Php200,000.00), representing the sum of the Disputed Property's zonal value and replacement cost of the improvements built thereon.⁹ Thereafter, the RTC issued a Writ of Possession in favor of DPWH in its Order dated February 20, 2012.¹⁰

Later still, the RTC directed the parties to submit their respective nominees to the Board of Commissioners for determination of just compensation. However, during the subsequent hearing held on August 23, 2012, DPWH manifested in open court that while all notices sent to Spouses Bunsay were returned unserved, they already claimed the checks that DPWH deposited with the RTC. Thus, DPWH moved that the amount received by Spouses Bunsay be deemed as just compensation for the Disputed Property.¹¹

The RTC granted DPWH's oral motion through the assailed Resolution, the dispositive portion of which reads:

⁴ Executive Order No. 292, ADMINISTRATIVE CODE OF 1987, Book IV, Title V, Chapter I, Sec. 1.

⁵ *Rollo*, p. 10.

⁶ *Id.* at 34-49.

⁷ *Id.* at 11.

⁸ *Id.* at 20.

⁹ *Id.* 11, 20.

¹⁰ *Id.* at 11.

¹¹ *Id.*

WHEREFORE, foregoing considered, judgment is hereby rendered in favor of [DPWH] condemning the [Disputed Property], free from all liens and encumbrances for the purpose of implementing the construction [of the Project] from NLEX to McArthur Highway, Valenzuela City, and vesting unto [DPWH] the title to the property so described for such public use or purpose.

[DPWH] is directed to issue [a] manager's check in the amount of Five Hundred Five Thousand Three Hundred Seventy-Four Pesos and Seventy-One Centavos (Php 505,374.71), representing the total valuation of the improvements located on the [Disputed Property], in the name of [Spouses Bunsay] and to deposit the same [with] the Office of the Clerk of Court, Regional Trial Court, Valenzuela City within fifteen (15) days from receipt of this Resolution.

As consequential damages, [DPWH] is further directed to pay the value of the [CGT] and other taxes necessary for the transfer of the [Disputed Property] in [DPWH's] name.

[Spouses Bunsay are] hereby directed to turn-over the owner's duplicate certificate of title to [DPWH].

After [the] parties have complied x x x, the Register of Deeds of Valenzuela City is directed to effect the transfer of ownership of the [Disputed Property] to [DPWH] and to issue the corresponding certificate of title x x x.

SO ORDERED.¹² (Emphasis supplied)

The RTC's award of just compensation represented the sum of the replacement cost of the following improvements built on the Disputed Property, as alleged by DPWH in the Expropriation Complaint:

- [1. A] one-storey residential house (semi-concrete) with x x x [f]ence and [s]teel [g]ate, the replacement cost of which is valued at Three Hundred Thirty Thousand Six Hundred Four Pesos and Thirty-Five Centavos (Php 330,604.35); and
- [2. A] one[-]storey residential house (concrete) with upper concrete slab, the replacement cost of which is valued at One Hundred Seventy-Four Thousand Seven Hundred Seventy Pesos and Thirty-Six Centavos (Php 174,770.36).¹³

DPWH filed a Motion for Partial Reconsideration (MPR), praying that the award corresponding to the replacement cost of improvements, and equivalent value of CGT and other transfer taxes be deleted.¹⁴

¹² Id. at 22.

¹³ See Expropriation Complaint, id. at 36.

¹⁴ See Motion for Partial Reconsideration (Re: Order/Resolution dated August 23, 2012), id. at 26-33.



After due proceedings, the RTC issued the assailed Order granting DPWH's MPR in part. Therein, the RTC resolved to *exclude* the replacement cost of improvements from the total award since Spouses Bunsay acknowledged, in their Comment to the MPR, that they had already received payment for these improvements.¹⁵

However, with respect to the value of CGT and other transfer taxes, the RTC held:

[With respect to] the aspect of payment of [CGT] and other transfer tax, the [RTC] finds the argument of [DPWH] that it has been ordered to pay [CGT] and other transfer taxes to be misplaced and misleading.

The [RTC] did not order [DPWH] to pay the [CGT] and other transfer taxes. **What was ordered of [DPWH] is to pay the consequential damages constituting the value [of CGT] and other transfer taxes.**¹⁶ (Emphasis and underscoring supplied)

Aggrieved, DPWH filed the present Petition *via* Rule 45 of the Rules of Court on March 4, 2013.

In compliance with the Court's directive, Spouses Bunsay filed their Comment¹⁷ to the Petition, to which DPWH filed its Reply.¹⁸ Thereafter, the Petition was submitted for resolution.

Here, DPWH insists that by directing it to pay consequential damages equivalent to the value of CGT and other transfer taxes, the RTC indirectly held DPWH liable for payment of taxes for which it cannot be charged.

For its part, Spouses Bunsay argue that the consequential damages should be understood in its general sense so as to permit recovery of damages arising from "some involuntary act which is prejudicial to the person entitled [to] the same."¹⁹

The Issue

The sole issue for the Court's resolution is whether the RTC erred in awarding consequential damages equivalent to the value of CGT and transfer taxes in favor of Spouses Bunsay.

¹⁵ Id. at 24.

¹⁶ Id.

¹⁷ Id. at 120-130.

¹⁸ Id. at 144-153.

¹⁹ See Comment, *id.* at 124.

The Court's Ruling

The Petition is granted.

The crux of the controversy is hinged on the definition of “consequential damages” in the context of an expropriation proceeding.

Rule 67 of the Rules of Court governs expropriation proceedings. With respect to consequential damages, Section 6 of Rule 67 states:

SEC. 6. *Proceedings by commissioners.* — Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. **The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property.** But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken. (Emphasis and underscoring supplied)

In *Republic v. Court of Appeals*,²⁰ the Court explained that consequential damages may be awarded to the owner if, as a result of the expropriation, the **remaining portion not so expropriated** suffers from an impairment or decrease in value.²¹

From the foregoing, it becomes clear that the award of consequential damages representing the value of CGT and other transfer taxes in favor of Spouses Bunsay was improper.

To recall, the expropriation covered the entire Disputed Property, that is, the entire 100-square meter lot covered by Spouses Bunsay's TCT No. V-16548. Hence, there is no basis for an award of consequential damages where there is no “remaining portion” to speak of, as in this case.

In any event, even if there was a “property not taken” or “remaining portion” to speak of, the award of consequential damages constituting the value of CGT and transfer taxes would still be improper, in the absence of

²⁰ 612 Phil. 965 (2009).

²¹ Id. at 980, 982.

evidence showing that said remaining portion had been impaired or had suffered a decrease in value as a result of the expropriation. The Court's ruling in *Republic v. Spouses Salvador*²² (*Spouses Salvador*) involving the same expropriating authority, project and handling court, is on all fours.

In *Spouses Salvador*, DPWH filed a complaint for expropriation concerning an 83-square meter portion of a 229-square meter property registered in the name of the respondents therein, Spouses Senando and Josefina Salvador (*Spouses Salvador*). Like *Spouses Bunsay*, *Spouses Salvador* also received checks from DPWH representing the zonal value of the expropriated portion and the cost of the improvements built thereon. However, in addition to the sum received by *Spouses Salvador*, the RTC also directed DPWH to pay consequential damages "equivalent to the value of the [CGT] and other taxes necessary for the transfer of the subject property in the Republic's name."²³

Hence, DPWH assailed the propriety of the award of consequential damages therein, as it does here. Resolving the issue, the Court held, as follows:

We likewise rule that the RTC committed a serious error when it directed the Republic to pay respondents consequential damages equivalent to the value of the capital gains tax and other taxes necessary for the transfer of the subject property.

"Just compensation [is defined as] the full and fair equivalent of the property sought to be expropriated. x x x **The measure is not the taker's gain but the owner's loss.** [The compensation, to be just,] must be fair not only to the owner but also to the taker."

In order to determine just compensation, the trial court should first ascertain the market value of the property by considering the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon. **If as a result of the expropriation, the remaining lot suffers from an impairment or decrease in value, consequential damages may be awarded by the trial court, provided that the consequential benefits which may arise from the expropriation do not exceed said damages suffered by the owner of the property.**

While it is true that "the determination of the amount of just compensation is within the court's discretion, it should not be done arbitrarily or capriciously. [Rather,] it must [always] be based on all established rules, upon correct legal principles and competent evidence." The court cannot base its judgment on mere speculations and surmises.

In the present case, the RTC deemed it "fair and just that x x x whatever is the value of the [CGT] and all other taxes necessary for the

²² 810 Phil. 742 (2017).

²³ Id. at 745.

transfer of the subject property to the [Republic] are but consequential damages that should be paid by the latter.” x x x

x x x x

This is clearly an error. **It is settled that the transfer of property through expropriation proceedings is a sale or exchange within the meaning of Sections 24(D) and 56(A)(3) of the National Internal Revenue Code, and profit from the transaction constitutes capital gain. Since [CGT] is a tax on passive income, it is the seller, or respondents in this case, who are liable to shoulder the tax.**

In fact, the Bureau of Internal Revenue (BIR), in BIR Ruling No. 476-2013 dated December 18, 2013, has constituted the DPWH as a withholding agent tasked to withhold the 6% final withholding tax in the expropriation of real property for infrastructure projects. Thus, as far as the government is concerned, the [CGT] in expropriation proceedings remains a liability of the seller, as it is a tax on the seller's gain from the sale of real property.

Besides, as previously explained, consequential damages are only awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value. In this case, no evidence was submitted to prove any impairment or decrease in value of the subject property as a result of the expropriation. More significantly, given that the payment of [CGT] on the transfer of the subject property has no effect on the increase or decrease in value of the remaining property, it can hardly be considered as consequential damages that may be awarded to respondents.²⁴ (Emphasis and underscoring supplied while those in the original omitted)

The Court's ruling in *Spouses Salvador* is clear — CGT may not be awarded in the form of consequential damages since the term assumes a fixed definition in the context of expropriation proceedings; it is limited to the impairment or decrease in value of the portion which remains with the affected owner *after* expropriation.

It must be clarified, however, that the ruling in *Spouses Salvador* should not be interpreted to preclude the courts from considering the value of CGT and other transfer taxes in determining the amount of just compensation to be awarded to the affected owner.

To recall, Section 5 of Republic Act No. (RA) 8974²⁵ sets forth the standards in the determination of just compensation. It states:

SEC. 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale.* — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

²⁴ Id. at 746-749.

²⁵ AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES, November 7, 2000.

- (a) The classification and use for which the property is suited;
- (b) The developmental costs for improving the land;
- (c) **The value declared by the owners;**
- (d) **The current selling price of similar lands in the vicinity;**
- (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;
- (f) The size, shape or location, tax declaration and zonal valuation of the land;
- (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
- (h) **Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.** (Emphasis supplied)

CGT, being a tax on passive income, is imposed by the National Internal Revenue Code on the seller as a consequence of the latter's presumed income from the sale or exchange of real property. Notably however, the transfer of real property by way of expropriation is *not* an ordinary sale contemplated under Article 1458²⁶ of the Civil Code. Rather, it is akin to a "forced sale" or one which arises *not* from the consensual agreement of the vendor and vendee, but by compulsion of law.²⁷ Unlike in an ordinary sale wherein the vendor sets and agrees on the selling price, the compensation paid to the affected owner in an expropriation proceeding comes in the form of just compensation determined by the court.

In turn, just compensation is defined as the fair and full equivalent of the loss incurred by the affected owner.²⁸ More specifically:

x x x [J]ust compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. **The word 'just' is used to modify the meaning of the word 'compensation' to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample.**"²⁹ (Emphasis supplied)

²⁶ Article 1458 states:

ART. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

x x x x

²⁷ See *Hospicio de San Jose De Barili, Cebu City v. Department of Agrarian Reform*, 507 Phil. 585, 597-598 (2005) in reference to expropriation of lands under agrarian reform.

²⁸ See *Evergreen Manufacturing Corp. v. Republic*, 817 Phil. 1048, 1058 (2017).

²⁹ *Id.* at 1058-1059.

To recall, Section 6, Rule 67 of the Rules of Court mandates that “in no case shall x x x the owner be deprived of the actual value of his property so taken.”³⁰ Since just compensation requires that real, substantial, full and ample equivalent be given for the property taken, the loss incurred by the affected owner necessarily includes all incidental costs to facilitate the transfer of the expropriated property to the expropriating authority, *including* the CGT, other taxes and fees due on the forced sale. These costs must be taken into consideration in determining just compensation in the same way these costs are factored into the selling price of real property in an arm’s length transaction. Notably, the value of the expropriated property, as declared by the affected owner, and the current selling price of similar lands are factors listed under Section 5 of RA 8974.

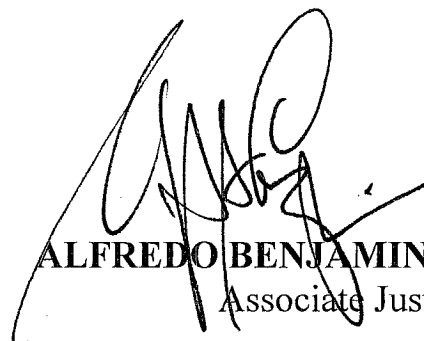
Here, Spouses Bunsay received, as just compensation, an amount equal to the sum of the zonal value of the Disputed Property and the replacement cost of the improvements built thereon. Evidently, the value of CGT and transfer taxes due on the transfer of the Disputed Property was *not* factored into the amount paid to Spouses Bunsay, but instead, separately awarded as consequential damages.

While the award of consequential damages equivalent to the value of CGT and transfer taxes must be struck down for being erroneous, the Court deems it just and equitable to direct the Republic to shoulder such taxes to preserve the compensation awarded to Spouses Bunsay as a consequence of the expropriation. To stress, compensation, to be just, must be of such value as to fully rehabilitate the affected owner; it must be sufficient to make the affected owner *whole*.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Order/Resolution and Order respectively dated August 23, 2012 and January 10, 2013 rendered by the Regional Trial Court of Valenzuela City, Branch 270, in Civil Case No. 188-V-11 are **MODIFIED**, in that the award of consequential damages, equivalent to the value of capital gains tax and other transfer taxes, is **DELETED**.

Nevertheless, the petitioner is **DIRECTED** to shoulder such capital gains tax and other transfer taxes as part of the just compensation due the respondents.

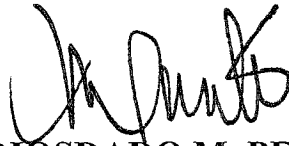
SO ORDERED.



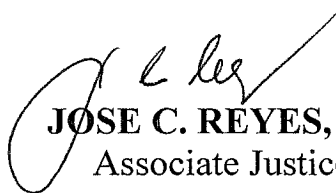
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

³⁰ Underscoring supplied.

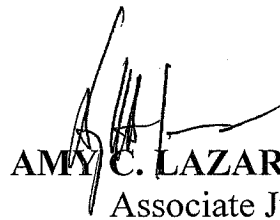
WE CONCUR:



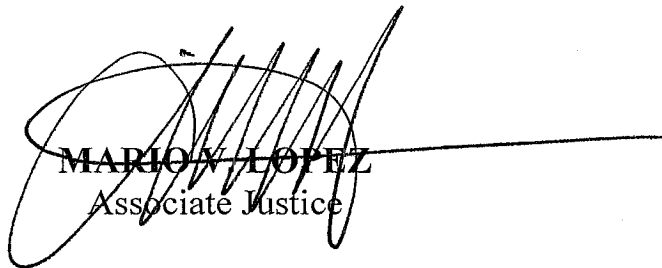
DIOSDADO M. PERALTA
Chief Justice
Chairperson



JOSE C. REYES, JR.
Associate Justice



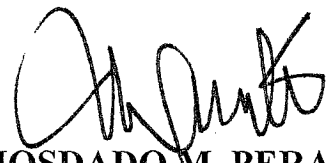
AMY C. LAZARO-JAVIER
Associate Justice



MARION LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

