



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **10 February 2021** which reads as follows:*

“G.R. No. 252946 (*Mandaluyong City Government v. Pagong Realty Corporation, Hon. Edilwasif T. Baddiri, Acting Presiding Judge, Regional Trial Court, Branch 208, Mandaluyong City and the Court of Appeals*). –

At the outset, the proper remedy to question the Court of Appeals’ judgment, final order, or resolution is *via* a petition for review on *certiorari* under Section 1, Rule 45 of the Rules of Court, *viz.*:

Section 1. Filing of petition with Supreme Court.

A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, x x x whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Under Rule 45 of the Rules of Court, decisions, final orders, or resolutions of the Court of Appeals, regardless of the nature of the action or proceedings involved, may be appealed to the Supreme Court by filing a petition for review on *certiorari* which would just be a continuation of the appellate process over the original case.¹

¹ *Albor v. Court of Appeals*, 823 Phil. 901, 909 (2018).

On the other hand, a special civil action under Rule 65 is a limited form of review and a remedy of last recourse. It is an independent action that lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. So long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal or a petition for review under Rule 45 of the Rules of Court.²

Here, appeal *via* Rule 45 was not only available but also a speedy and adequate remedy. Clearly, petitioner Mandaluyong City Government availed of the wrong remedy when it initiated the present petition for *certiorari* before the Court. Hence, even on this ground alone, the petition should be dismissed outright.

But even on the merits, the petition must fail.

Section 19 of the Local Government Code (LGC)³ provides:

SEC. 19. Eminent Domain. – A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose[,] or welfare for the benefit 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. (Emphasis supplied)

Thus, issuance of a writ of possession requires the following: (a) the sufficiency in form and substance of the complaint, and (b) the provisional deposit equivalent to fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated. Upon compliance with these requirements, the petitioner in an expropriation case is entitled to a writ of possession as a matter of right and the issuance of the writ becomes ministerial.⁴

² *Id.* at 909-910.

³ Republic Act No. 7160 (RA 7160).

⁴ *Municipality of Cordova, Province of Cebu v. Pathfinder Development Corporation*, 788 Phil. 622, 632 (2016).

Here, the complaint was not sufficient in form and substance since it failed to comply with the mandatory requirements for the exercise of the power of eminent domain for purposes of socialized housing. Consider:

Republic Act No. 7279 (RA 7279) otherwise known as the *Urban Development and Housing Act of 1992*, requires:

SEC 9. Priorities in the Acquisition of Land. – Lands for socialized housing shall be acquired in the following order:

- (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;
- (b) Alienable lands of the public domain;
- (c) Unregistered or abandoned and idle lands;
- (d) Those within the declared Areas or Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
- (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and
- (f) **Privately-owned lands.**

Where [on-site] development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands.

SEC. 10. Modes of Land Acquisition. – The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation: Provided, however, **That expropriation shall be resorted to only when other modes of acquisition have been exhausted:** Provided, further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act: x x x. (Emphases supplied)

The complaint bore an allegation that “there are no government lands or alienable lands of the public domain or unregistered or abandoned or idle lands that are available or BLISS sites which have not yet been acquired” that is suitable for socialized housing. Aside from such allegation, however, petitioner failed to present evidence to justify its non-compliance with Section 9 of RA 7279 ranking privately-owned lands last in the order of priority of lands to be expropriated for socialized housing. Indeed, mere allegation is not evidence and is not equivalent to proof.

Petitioner likewise failed to exhaust the other modes of acquisition before it resorted to expropriation in violation of Section 10 of RA 7279. *City of Manila v. Alegar Corporation*⁵ ruled that when the property owner rejects the offer but hints for a better price, the government should renegotiate by calling the property owner to a conference. Article 35 of the Rules and Regulations Implementing the Local Government Code states:

Article 35. *Offer to Buy and Contract of Sale* – (a) The offer to buy private property for public use or purpose shall be in writing. It shall specify the property sought to be acquired, the reasons for its acquisition, and the price offered.

x x x x

(c) If the owner or owners are willing to sell their property but at a price higher than that offered to them, the local chief executive shall call them to a conference for the purpose of reaching an agreement on the selling price. The chairman of the appropriation or finance committee of the *sanggunian*, or in his absence, any member of the *sanggunian* duly chosen as its representative, shall participate in the conference. When an agreement is reached by the parties, a contract of sale shall be drawn and executed.

Here, petitioner offered to purchase respondent Pagong Realty Corporation's property for Three Thousand Five Hundred Pesos (₱3,500.00) per sq.m. As it was, however, after respondent had rejected its offer because it was too low (even lower than the current zonal value of the property) petitioner no longer bothered to renegotiate or improve its offer. *City of Manila v. Prieto*⁶ held that the intent of the law is for the State or the local government to make a reasonable offer in good faith, not merely a *pro forma* offer to acquire the property. Since, petitioner did not exert an honest to goodness effort to secure the subject property *via* negotiated sale, there was actually no valid and definite offer to speak of as condition precedent to the filing of the expropriation complaint.

In *Estate or Heirs of the Late Ex-Justice Jose B.L. Reyes v. City of Manila*,⁷ the Court emphasized that compliance with Sections 9 and 10 of RA 7279 is **mandatory** because these are the only safeguards for the oftentimes helpless owners of private property against what may be a tyrannical violation of due process when their property is forcibly taken from them allegedly for public use.

Finally, Section 19 of the LGC mandates that there must be a deposit of the amount equivalent to fifteen percent (15%) of the fair market value of the property to be expropriated based on its current tax declaration. Petitioner

⁵ 689 Phil. 31, 41 (2012).

⁶ G.R. No. 221366, July 8, 2019.

⁷ 467 Phil. 165, 187 (2004).

made a provisional deposit of Three Million Pesos (₱3,000,000.00) but the case records do not show if the same was indeed equivalent to fifteen percent (15%) of the fair market value based on the current tax declaration of subject property. On this score, we agree with the Court of Appeals' lucid disquisition, thus:

It does not appear in the records that a copy of the latest tax declaration at the time of the filing of the complaint in 2016 was presented by the City Government. In fact, x x x the City Government does not refute the claim of [respondent] that the amount of deposit (Php3 Million) was based on a 1993 tax declaration. Neither does it appear in the questioned Order of 23 March 2017 that the true "current tax declaration" was used as the basis in the computation of the fifteen percent (15%) deposit, as it was only ruled that:

x x x In essence, Plaintiff moves that [it] is entitled to a writ of possession as accordingly, a complaint was filed with a responsive pleading equally filed and, the filing of (Php3,000,000.00) to the Honorable Court which is alleged as more [than fifteen percent] (15%) of the fair market value of the property sought to be expropriated based on its current tax declaration (Tax Declaration No. D-011-00001).

It is impossible for the Court to determine whether Tax Declaration No. **D-011-00001** is indeed the "current tax declaration" as it is not found in the records of the case.

A copy of the expropriation complaint filed in the court *a quo* mentions an attachment marked as "Annex B" which was described as Tax Declaration No. **D-023-00454** covering the subject property but no such attachment exists in the records.

x x x x

As it was not shown that the basis used in the computation of the amount of initial deposit was indeed the "current tax declaration" being referred to by Section 19 of the LGC, the Court cannot rule that the deposit requirement was complied with.⁸

To be sure, as *City of Manila v. Prieto*⁹ ordained, while we recognize petitioner's power to expropriate and the fact that housing is one of the most serious social problems that it needs to address, it is equally important to acknowledge that local government units do not have an unbridled authority to exercise such formidable power in seeking solutions to such problem. Again, such formidable power greatly affects a citizen's fundamental right to property, hence, there is a need to strictly comply with

⁸ *Rollo*, pp. 82-83.

⁹ *Supra* note 6.

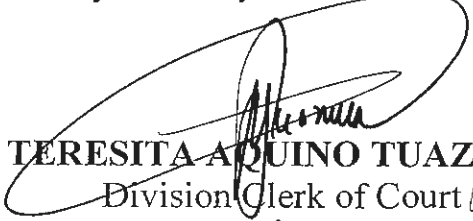
the conditions and restrictions set forth in the Constitution and pertinent laws to assure that every right is protected and every mandate is properly discharged. Thus, the ruling here is not meant to disparage the local government units' delegated power to expropriate. It merely calls for compliance with all the legal requirements, as well as the presentation of proof of such compliance.

All told, the Court of Appeals did not err, much less, gravely abuse its discretion when it set aside the assailed writ of possession in view of petitioner's non-compliance with the mandatory requirements for its issuance.

WHEREFORE, the petition is **DENIED** and the assailed Decision dated August 9, 2019 and Resolution dated March 3, 2020 of the Court of Appeals in CA-G.R. SP No. 153588, **AFFIRMED**.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *Utib*
09 MAR 2021 3/9

MANDALUYONG CITY LEGAL
DEPARTMENT (reg)
4th Floor, Executive Building
City Government Complex
Maysilo Circle, Brgy. Plainview
Mandaluyong City 1550

ROXAS DE LOS REYES LAUREL
ROSARIO AND LEAGOGO (reg)
Counsel for Respondent
19th Floor, BDO Plaza, 8737 Paseo de Roxas
1200 Makati City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 208
Mandaluyong City
(Civil Case No. MC 16-9759)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. SP No. 153588

Please notify the Court of any change in your address.
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