



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Victor G. ...*  
CAPITAN  
of Court  
JUL 27 2016

THIRD DIVISION

MUNICIPALITY OF CORDOVA,  
PROVINCE OF CEBU; THE  
SANGGUNIANG BAYAN OF  
CORDOVA; and THE MAYOR OF  
THE MUNICIPALITY of  
CORDOVA,

Petitioners,

– versus –

PATHFINDER DEVELOPMENT  
CORPORATION and TOPANGA  
DEVELOPMENT CORPORATION,

Respondents.

G.R. No. 205544

Present:

VELASCO, JR., J., *Chairperson*,  
PERALTA,  
PEREZ,  
REYES, and  
JARDELEZA, JJ.

Promulgated:

June 29, 2016

*Victor G. ...*

X-----X

DECISION

PERALTA, J.:

This is a Petition for Review on *Certiorari* which petitioners Municipality of Cordova, Province of Cebu, the Sangguniang Bayan of Cordova, and the Mayor of the Municipality of Cordova filed seeking to reverse the Court of Appeals (CA) Decision<sup>1</sup> dated March 28, 2012 in CA-G.R. SP No. 06193 and to order the trial court to proceed to the second stage of the proceedings for the determination of the proper valuation of the expropriated properties.

The procedural and factual antecedents of the case, as borne by the records, are as follows:

Respondent Pathfinder Development Corporation (*Pathfinder*) is the owner of real properties in Alegria, Cordova, Cebu: (1) Lot No. 692 covered by Tax Declaration (TD) No. 190002-02765 with an area of 1,819 square

<sup>1</sup> Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Pampio A. Abarintos, and Ramon Paul L. Hernando, concurring; *rollo*, pp. 11-21.

*[Handwritten mark]*

meters (*sq.m.*), and (2) part of Lot No. 697 covered by Transfer Certificate of Title (*TCT*) No. T-95706 and TD No. 190002-02902 with an area of 50,000 *sq.m.*, while respondent Topanga Development Corporation (*Topanga*) owns Lot No. 691 covered by TCT No. 109337 and TD No. 190002-02761 with an area of 29,057 *sq.m.*, and part of Lot No. 697 covered by TD No. 190002-02901 with an area of 15,846 *sq.m.*

On February 8, 2011, petitioner Sangguniang Bayan of the Municipality of Cordova enacted Ordinance No. 003-2011 expropriating 836 *sq.m.* of Lot No. 692, 9,728 *sq.m.* of Lot No. 697, 3,898 *sq.m.* of Lot No. 691, and 1,467 *sq.m.* of Lot No. 693 owned by one Eric Ng Mendoza, for the construction of a road access from the national highway to the municipal roll-on/roll-off (*RORO*) port. It likewise authorized petitioner Mayor of Cordova (*the Mayor*) to initiate and execute the necessary expropriation proceedings.

On February 17, 2011, the Mayor of Cordova filed an expropriation complaint against the owners of the properties. Later, the Mayor filed a motion to place the municipality in possession of the properties sought to be expropriated.

On March 4, 2011, Pathfinder and Topanga filed an action for Declaration of Nullity of the Expropriation Ordinance before the Regional Trial Court (*RTC*) of Mandaue City, Branch 56, claiming that no offer to buy addressed to them was shown or attached to the expropriation complaint, thereby rendering the Ordinance constitutionally infirm for being in violation of their right to due process and equal protection. On July 13, 2011, they likewise filed an Urgent Motion to Suspend Proceedings based on prejudicial question in the case for the declaration of nullity of the Ordinance.

On August 12, 2011, the Lapu-Lapu RTC, Branch 27 issued an Order<sup>2</sup> denying the corporations' motion for suspension of the proceedings and granting the issuance of a Writ of Possession in favor of the municipality. Pathfinder and Topanga moved for reconsideration, but the same was denied. Hence, they elevated the case to the CA via a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court.

On March 28, 2012, the CA reversed the RTC, thus:

**WHEREFORE**, the petition is hereby **GRANTED**. The Orders issued by the Regional trial Court, 7<sup>th</sup> Judicial Region, Branch 53 and Branch 27, Lapu-Lapu City in Civil Case No. R-LLP-11-05959-CV, dated

---

<sup>2</sup>*Id.* at 143-145.

May 26, 2011, August 12, 2011 and August 22, 2011, are **REVERSED, [ANNULLED] and SET ASIDE.**

The case is remanded to the Regional Trial Court, Branch 27, Lapu-Lapu City for the reception of evidence *de novo* on the determination of the authority of the respondent municipality to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. No pronouncement as to costs.

**SO ORDERED.**<sup>3</sup>

Petitioners Municipality, Sangguniang Bayan, and Mayor of Cordova then filed a Motion for Reconsideration, but the same proved to be futile.

Hence, this petition.

The main issue before the Court is whether or not the CA committed a reversible error in giving due course to the petition under Rule 65.

The petition deserves merit.

The municipality argues that the CA seriously erred when it allowed the companies' Petition for *Certiorari* despite the available remedy of appeal under Rule 67 of the Rules of Court.

While there exists a settled rule precluding *certiorari* as a remedy against the final order when appeal is available, a petition for *certiorari* may be allowed when: (a) the broader interest of justice demands that *certiorari* be given due course to avoid any grossly unjust result that would otherwise befall the petitioners; and (b) the order of the RTC evidently constitutes grave abuse of discretion amounting to excess of jurisdiction. In the past, the Court has considered *certiorari* as the proper remedy despite the availability of appeal, or other remedy in the ordinary course of law. In *Francisco Motors Corporation v. Court of Appeals*,<sup>4</sup> the Court has declared that "the requirement that there must be no appeal, or any plain, speedy and adequate remedy in the ordinary course of law admits of exceptions, such as: (a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate, and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case of urgency."<sup>5</sup>

<sup>3</sup> *Id.* at 20-21.

<sup>4</sup> 736 Phil. 736, 748 (2006).

<sup>5</sup> *Heirs of Spouses Reterta, et al. v. Spouses Mores and Lopez*, 671 Phil. 346, 358-359 (2011)

If appeal is not an adequate remedy, or an equally beneficial, or speedy remedy, the availability of appeal as a remedy cannot constitute sufficient ground to prevent or preclude a party from making use of *certiorari*. It is mere inadequacy, not the absence of all other legal remedies, and the danger of failure of justice without the writ, that must determine the propriety of *certiorari*. A remedy is said to be plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency. It is understood, then, that a litigant need not resort to the less speedy remedy of appeal in order to have an order annulled and set aside for being patently void. And even assuming that *certiorari* is not the proper remedy against an assailed order, the petitioner should still not be denied the recourse because it is better to look beyond procedural requirements and to overcome the ordinary disinclination to exercise supervisory powers in order that a void order of a lower court may be made conformable to law and justice.<sup>6</sup>

Verily, the instances in which *certiorari* will issue cannot be strictly defined, because to do so is to destroy the comprehensiveness and usefulness of the extraordinary writ. The wide breadth and range of the discretion of the Court are such that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*, and that in the exercise of superintending control over inferior courts, a superior court is to be guided by all the circumstances of each particular case as the ends of justice may require. Therefore, when, as in this case, there is an urgent need to prevent a substantial wrong or to do substantial justice, the writ will be granted.<sup>7</sup>

The foregoing notwithstanding, the CA erred when it held that the RTC acted with grave abuse of discretion.

Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare. It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare.<sup>8</sup> The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. Its exercise is proscribed by only two Constitutional requirements: *first*, that there must be just compensation, and *second*, that no person shall be deprived of life, liberty or property without due process of law.<sup>9</sup>

---

<sup>6</sup> *Id.* at 359-360.

<sup>7</sup> *Id.* at 360.

<sup>8</sup> *Heirs of Suguitan v. City of Mandaluyong*, 384 Phil. 677, 687 (2000).

<sup>9</sup> *Metropolitan Cebu Water District (MCWD) v. J. King and Sons Company, Inc.*, 603 Phil. 471, 480 (2009).



The power of eminent domain is essentially legislative in nature but may be validly delegated to local government units. The basis for its exercise by the Municipality of Cordova, being a local government unit, is granted under Section 19 of Republic Act 7160, to wit:

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.

Judicial review of the exercise of the power of eminent domain is limited to the following areas of concern: (a) the adequacy of the compensation, (b) the necessity of the taking, and (c) the public use character of the purpose of the taking.<sup>10</sup>

Under Rule 67 of the Rules of Court, expropriation proceedings are comprised of two stages: (1) the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the surrounding facts, and (2) the determination of the just compensation for the property sought to be taken. The first stage ends, if not in a dismissal of the action, with an order of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for public use or purpose.<sup>11</sup>

Pathfinder and Topanga contend that the trial court issued an Order of Condemnation of the properties without previously conducting a proper hearing for the reception of evidence of the parties. However, no hearing is actually required for the issuance of a writ of possession, which demands only two requirements: (a) the sufficiency in form and substance of the complaint, and (b) the required provisional deposit. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint.<sup>12</sup> Here, there is indeed a necessity for the taking of the subject properties as these would provide

<sup>10</sup> *De la Paz Masikip v. The City of Pasig*, 515 Phil. 364, 374 (2006).

<sup>11</sup> *Heirs of Suguitan v. City of Mandaluyong*, *supra* note 8, at 691.

<sup>12</sup> *The City of Iloilo v. Judge Legaspi*, 486 Phil. 474, 490 (2004).



access towards the RORO port being constructed in the municipality. The construction of the new road will highly benefit the public as it will enable shippers and passengers to gain access to the port from the main public road or highway.

The requisites for authorizing immediate entry are the filing of a complaint for expropriation sufficient in form and substance, and the 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. Upon compliance with these requirements, the petitioner in an expropriation case is entitled to a writ of possession as a matter of right<sup>13</sup> and the issuance of the writ becomes ministerial.<sup>14</sup> Indubitably, since the complaint was found to have been sufficient in form and substance and the required deposit had been duly complied with, the issuance of the writ had aptly become ministerial on the part of the RTC. It cannot be said, therefore, that the RTC committed grave abuse of discretion when it found the taking of the properties of Topanga and Pathfinder proper.

**WHEREFORE, IN VIEW OF THE FOREGOING**, the petition is **GRANTED**. The Decision of the Court of Appeals dated March 28, 2012 in CA-G.R. SP No. 06193 is hereby **REVERSED** and **SET ASIDE**. The Orders of the Regional Trial Court of Lapu-Lapu, Branches 53 and 27, in Civil Case No. R-LLP-11-05959-CV, dated May 26, 2011, August 12, 2011, and August 22, 2011, are hereby **REINSTATED**. The case is **REMANDED** to the trial court for further proceedings.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**





**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

<sup>13</sup> *Metropolitan Cebu Water District (MCWD) v. J. King and Sons Company, Inc.*, *supra* note 9, at 488.

<sup>14</sup> *The City of Iloilo v. Judge Legaspi*, *supra* note 12, at 487.


  
**JOSE PORTUGAL PEREZ**  
 Associate Justice

  
**BIENVENIDO L. REYES**  
 Associate Justice

  
**FRANCIS H. JARDELEZA**  
 Associate Justice


**ATTESTATION**

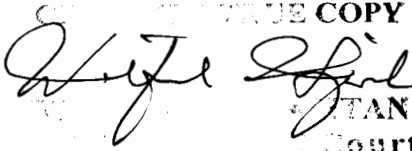
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice

  
 TRUE COPY  
 CLERK  
 Court  
 27 2016