



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HENRY L. SY,

Petitioner,

G.R. No. 202690

Present:

BRION, *J.*, Acting Chairperson,*

DEL CASTILLO,

PEREZ,

PERLAS-BERNABE, and

LEONEN,** *JJ.*

- versus -

**LOCAL GOVERNMENT OF
QUEZON CITY,**

Respondent.

Promulgated:

JUN 05 2013

Handwritten signature: H. Cabalag

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*¹ are the January 20, 2012 Decision² and July 16, 2012 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 91964 which affirmed with modification the August 22, 2008 Order⁴ of the Regional Trial Court of Quezon City, Branch 80 (RTC) in Civil Case No. Q-96-29352, ordering respondent Local Government of Quezon City (the City) to pay petitioner Henry L. Sy (Sy) just compensation set at ₱5,500.00 per square meter (sq. m.), including ₱200,000.00 as exemplary damages and attorney's fees equivalent to one percent (1%) of the total amount due.

* Designated Acting Chairperson in lieu of Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

** Designated Acting Member per Special Order No. 1461 dated May 29, 2013.

¹ *Rollo*, pp. 9-23.

² *Id.* at 24-44. Penned by Associate Justice Romeo F. Barza, with Associate Justices Noel G. Tijam and Edwin D. Sorongon, concurring.

³ *Id.* at 45-47.

⁴ *CA rollo*, pp. 19-24. Penned by Presiding Judge Charito B. Gonzales.

The Facts

On November 7, 1996, the City, through then Mayor Ismael Mathay, Jr., filed a complaint for expropriation with the RTC in order to acquire a 1,000 sq. m. parcel of land, owned and registered under the name of Sy (subject property),⁵ which was intended to be used as a site for a multi-purpose barangay hall, day-care center, playground and community activity center for the benefit of the residents of Barangay Balingasa, Balintawak, Quezon City.⁶ The requisite ordinance to undertake the aforesaid expropriation namely, Ordinance No. Sp-181, s-94, was enacted on April 12, 1994.⁷

On March 18, 1997, pursuant to Section 19⁸ of Republic Act No. 7160 (RA 7160), otherwise known as the “Local Government Code of 1991,” the City deposited the amount of ₱241,090.00 with the Office of the Clerk of Court, representing 15% of the fair market value of the subject property based on its tax declaration.⁹

During the preliminary conference on November 8, 2006, Sy did not question the City’s right to expropriate the subject property. Thus, only the amount of just compensation remained at issue.¹⁰

On July 6, 2006, the RTC appointed Edgardo Ostaco (Commissioner Ostaco), Engr. Victor Salinas (Commissioner Salinas) and Atty. Carlo Alcantara (Commissioner Alcantara) as commissioners to determine the proper amount of just compensation to be paid by the City for the subject property. Subsequently, Commissioners Ostaco and Alcantara, in a Report dated February 11, 2008, recommended the payment of ₱5,500.00 per sq. m., to be computed from the date of the filing of the expropriation complaint, or on November 7, 1996. On the other hand, Commissioner

⁵ *Rollo*, p. 25. The subject property is covered by two (2) titles, namely, Transfer Certificate of Title (TCT) No. 113193, with an area of 649 sq. m., and TCT No. 113194, with an area of 905 sq. m. (See also *CA rollo*, p. 19).

⁶ *Id.*

⁷ *Id.* at 36.

⁸ 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)

⁹ *Rollo*, pp. 25-26.

¹⁰ *Id.* at 26.

Salinas filed a separate Report dated March 7, 2008, recommending the higher amount of ₱13,500.00 per sq. m. as just compensation.¹¹

The RTC Ruling

In the Order dated August 22, 2008,¹² the RTC, citing the principle that just compensation must be fair not only to the owner but to the expropriator as well, adopted the findings of Commissioners Ostaco and Alcantara and thus, held that the just compensation for the subject property should be set at ₱5,500.00 per sq. m.¹³ Further, it found no basis for the award of damages and back rentals in favor of Sy.¹⁴ Finally, while legal interest was not claimed, for equity considerations, it awarded six percent (6%) legal interest, computed from November 7, 1996 until full payment of just compensation.¹⁵

Dissatisfied, Sy filed an appeal with the CA.¹⁶

The CA Ruling

In the Decision dated January 20, 2012,¹⁷ the CA affirmed the RTC's ruling but modified the same, ordering the City to pay Sy the amount of ₱200,000.00 as exemplary damages and attorney's fees equivalent to one percent (1%) of the total amount due.

It found the appraisal of Commissioners Ostaco and Alcantara for the subject property to be more believable than the ₱13,000.00 per sq. m. valuation made by independent appraisers Cuervo and Asian Appraisers in 1995 and 1996, respectively, considering that it was arrived at after taking into account: (a) the fair market value of the subject property in the amount of ₱4,000.00 per sq. m. based on the September 4, 1996 recommendation of the City Appraisal Committee;¹⁸ (b) the market value of the subject lot in the amount of ₱2,000.00 per sq. m. based on several sworn statements made by Sy himself;¹⁹ and (c) Sy's own tax declaration for 1996,²⁰ stating that the subject property has a total market value of ₱2,272,050.00. Accordingly, it held that the fair market value of ₱5,500.00 per sq. m., or ₱5,500,000.00 in

¹¹ Id. at 26-27. See also CA *rollo*, pp. 20-21.

¹² CA *rollo*, pp. 19-24.

¹³ Id. at 23.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 25-26.

¹⁷ *Rollo*, pp. 24-44.

¹⁸ Id. at 37-38.

¹⁹ Id. at 38.

²⁰ Id. Covered under Tax Declaration Nos. D-01200698 and D-01200214, with market values of ₱778,800.00 and ₱1,493,250.00, respectively, or ₱2,272,050.00 in total.

total, for the 1,000 sq. m. subject property arrived at by Commissioners Ostaco and Alcantara was more than fair and reasonable.²¹

The CA also denied Sy's assertion that he should be entitled to damages on account of the purported shelving of his housing project, finding no sufficient evidence to support the same. Likewise, it observed that the expropriation would not leave the rest of Sy's properties useless as they would still be accessible through a certain Lot 8 based on the Property Identification Map.²²

Nonetheless, citing the case of *Manila International Airport Authority v. Rodriguez (MIAA)*,²³ it awarded exemplary damages in the amount of ₱200,000.00 and attorney's fees equivalent to one percent (1%) of the amount due because of the City's taking of the subject property without even initiating expropriation proceedings.²⁴ It, however, denied Sy's claim of back rentals considering that the RTC had already granted legal interest in his favor.²⁵

Aggrieved, Sy moved for reconsideration which was denied in the Resolution dated July 16, 2012²⁶ for being filed out of time.²⁷ The City also filed a motion for reconsideration which was equally denied for lack of merit.²⁸

Hence, this petition.

Issues Before The Court

The present controversy revolves around the issue of whether the CA correctly: (a) dismissed Sy's motion for reconsideration for being filed out of time; (b) upheld the amount of just compensation as determined by the RTC as well as its grant of six percent (6%) legal interest; and (c) awarded exemplary damages and attorney's fees.

The Court's Ruling

The petition is partly meritorious.

²¹ Id.

²² Id. at 38-40.

²³ G.R. No. 161836, February 28, 2006, 483 SCRA 619, 633.

²⁴ *Rollo*, pp. 42-43.

²⁵ Id. at 42.

²⁶ Id. at 45-47.

²⁷ Id. at 46.

²⁸ Id. at 47.

A. Failure to seasonably move for reconsideration; excusable negligence; relaxation of procedural rules

At the outset, the Court observes that Sy's motion for reconsideration was filed out of time and thus, was properly dismissed by the CA. Records show that, as per the Postmaster's Certification, the CA's January 20, 2012 Decision was received by Sy on January 26, 2012 and as such, any motion for reconsideration therefrom should have been filed not later than fifteen (15) days from receipt,²⁹ or on February 10, 2012.³⁰ However, Sy filed his motion for reconsideration (subject motion) **a day late**, or on February 13, 2012,³¹ which thus, renders the CA decision final and executory.³²

In this regard, it is apt to mention that Sy's counsel, Atty. Tranquilino F. Meris (Atty. Meris), claims that his secretary's inadvertent placing of the date January 27, 2012, instead of January 26, 2012, on the Notice of Decision³³ constitutes excusable negligence which should therefore, justify a relaxation of the rules.

The assertion is untenable.

A claim of excusable negligence does not loosely warrant a relaxation of the rules. **Verily, the party invoking such should be able to show that the procedural oversight or lapse is attended by a genuine miscalculation or unforeseen fortuitousness which ordinary prudence could not have guarded against so as to justify the relief sought.**³⁴ The standard of care required is that which an ordinarily prudent man bestows upon his important business.³⁵ In this accord, the duty rests on every counsel to see to adopt and strictly maintain a system that will efficiently take into account all court notices sent to him.³⁶

²⁹ See Section 1, Rule 37 of the Rules of Court.

³⁰ *Rollo*, p. 46.

³¹ February 11 and 12, 2012 fall on a Saturday and Sunday, respectively.

³² Section 2, Rule 36 of the Rules of Court partly provides:

SEC. 2. *Entry of judgments and final orders.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, within a certificate that such judgment or final order has become final and executory. (2a, 10, R51)

³³ *Rollo*, p. 10.

³⁴ See *Fernandez v. Tan Tiong Tick*, 111 Phil. 773, 779 (1961).

³⁵ *Id.*, citing *Gaylord v. Berry*, 169 N.C. 733, 86 S.E. 623.

³⁶ *Colcol v. Philippine Bank of Commerce*, 129 Phil. 117-119 (1967), citing *Mendoza v. Bulanadi*, 108 Phil. 11 (1967).

Applying these principles, the Court cannot excuse Atty. Meris' misstep based on his proffered reasons. Evidently, the erroneous stamping of the Notice of Decision could have been averted if only he had instituted a credible filing system in his office to account for oversights such as that committed by his secretary. Indeed, ordinary prudence could have prevented such mistake.

Be that as it may, procedural rules may, nonetheless, be relaxed for the most persuasive of reasons in order to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.³⁷ Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires.³⁸

As applied in this case, the Court finds that the procedural consequence of the above-discussed one-day delay in the filing of the subject motion – which, as a matter of course, should render the CA's January 20, 2012 Decision already final and executory and hence, bar the instant petition – is incommensurate to the injustice which Sy may suffer. This is in line with the Court's observation that the amount of just compensation, the rate of legal interest, as well as the time of its accrual, were incorrectly adjudged by both the RTC and the CA, contrary to existing jurisprudence. In this respect, the Court deems it proper to relax the rules of procedure and thus, proceed to resolve these substantive issues.

B. Rate of legal interest and time of accrual

Based on a judicious review of the records and application of jurisprudential rulings, the Court holds that the correct rate of legal interest to be applied is twelve percent (12%) and not six percent (6%) per annum, owing to the nature of the City's obligation as an effective forbearance.

In the case of *Republic v. CA*,³⁹ the Court ruled that the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes an effective forbearance which therefore, warrants the application of the 12% legal interest rate, *viz*:

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly

³⁷ *Lazaro v. CA*, 386 Phil. 412, 417 (2000). (Citations omitted)

³⁸ *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, G.R. No. 170488, December 10, 2012, 687 SCRA 469, 476, citing *Villanueva v. People*, G.R. No. 188630, February 23, 2011, 644 SCRA 358, 368.

³⁹ 433 Phil. 107, 122-123 (2002). (Citations omitted)

described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

The Bulacan trial court, in its 1979 decision, was correct in imposing interests on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and “took” the property in September 1969. **This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.** x x x (Emphasis and underscoring supplied)

In similar regard, the Court, in *Land Bank of the Philippines v. Rivera*,⁴⁰ pronounced that:

In many cases decided by this Court,⁴¹ it has been repeated time and again that the **award of 12% interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance.** This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades. (Emphasis and underscoring supplied)

As to the reckoning point on which the legal interest should accrue, the same should be computed from the time of the taking of the subject property in 1986 and not from the filing of the complaint for expropriation on November 7, 1996.

Records show that the City itself admitted in its Appellee’s Brief filed before the CA that **as early as 1986**, “a burden was already imposed upon the owner of the [subject] property x x x, considering that the expropriated property was already being used as Barangay day care and office.”⁴² Thus, the property was actually taken during that time and from thereon, legal interest should have already accrued. In this light, the Court has held that:⁴³

⁴⁰ G.R. No. 182431, February 27, 2013.

⁴¹ *Land Bank of the Philippines v. Celada*, 515 Phil. 467, 484 (2006) citing *Land Bank of the Philippines v. Wycoco*, G.R. No. 140160, 13 January 2004, 419 SCRA 67, 80 further citing *Reyes v. National Housing Authority*, G.R. No. 147511, 20 January 2003, 395 SCRA 494.

⁴² CA rollo, p. 103

⁴³ *Republic v. CA*, supra note 39.

x x x [T]he final compensation **must include interests on its just value to be computed from the time the property is taken** to the time when compensation is actually paid or deposited with the court[.] x x x (Emphasis supplied)

This is based on the principle that interest “runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking.”⁴⁴

Notably, the lack of proper authorization, *i.e.*, resolution to effect expropriation,⁴⁵ did not affect the character of the City’s taking of the subject property in 1986 as the CA, in its January 20, 2012 Decision, suggests. Case law dictates that there is “taking” when the owner is actually deprived or dispossessed of his property; when there is a practical destruction or a material impairment of the value of his property or when he is deprived of the ordinary use thereof.⁴⁶ Therefore, notwithstanding the lack of proper authorization, the legal character of the City’s action as one of “taking” did not change. In this relation, the CA noted that the City enacted Ordinance No. Sp-181, s-94, only on April 12, 1994 and filed its expropriation complaint on November 7, 1996. However, as it previously admitted, it already commenced with the taking of the subject property as early as 1986. Accordingly, interest must run from such time.

This irregularity does not, however, proceed without any consequence. As correctly observed by the CA, citing as basis the *MIAA* case, exemplary damages and attorney’s fees should be awarded to the landowner if the government takes possession of the property for a prolonged period of time without properly initiating expropriation proceedings. The *MIAA* ruling was applied in the more recent case of *City of Iloilo v. Judge Lolita Contreras-Besana*,⁴⁷ wherein the Court said:

⁴⁴ *MIAA v. Rodriguez*, supra note 23, at 631, citing *Urtula v. Republic*, No. L-22061, 31 January 1968, 22 SCRA 477, 480.

⁴⁵ Batas Pambansa Bilang 337 was the law applicable at the time of the subject property’s taking in 1986 as RA 7160 took effect only in January 1, 1992. Under Section 9, Book 1, Title 1, Chapter 2 of the former law, a resolution was the proper authorization to institute condemnation proceedings, thus:

SEC. 9. *Eminent Domain*. – A local government unit may, through its head and acting pursuant to a **resolution** of its head and acting pursuant to a resolution of its sanggunian, exercise the right of eminent domain and institute condemnation proceedings for public use or purpose. (Emphasis supplied)

Meanwhile, under Section 19 of RA 7160, an ordinance is required:

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 x x x (Emphasis supplied)

⁴⁶ *Municipality of La Carlota v. NAWASA*, G.R. No. L-20232, September 30, 1964, 12 SCRA 164, citing *U.S. v. Causby*, 382 U.S. 256.

⁴⁷ G.R. No. 168967, February 12, 2010, 612 SCRA 459, 470-471, citing *MIAA v. Rodriguez*, supra note 23, at 630-632.

We stress, however, that the City of Iloilo should be held liable for damages for taking private respondent's property without payment of just compensation. In *Manila International Airport Authority v. Rodriguez*, the Court held that a government agency's prolonged occupation of private property without the benefit of expropriation proceedings undoubtedly entitled the landowner to damages:

Such pecuniary loss entitles him to adequate compensation in the form of actual or compensatory damages, which in this case should be the legal interest (6%) on the value of the land at the time of taking, from said point up to full payment by the MIAA. This is based on the principle that interest "runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking x x x.

x x x x

For more than twenty (20) years, the MIAA occupied the subject lot without the benefit of expropriation proceedings and without the MIAA exerting efforts to ascertain ownership of the lot and negotiating with any of the owners of the property. To our mind, **these are wanton and irresponsible acts which should be suppressed and corrected. Hence, the award of exemplary damages and attorneys fees is in order.** x x x. (Emphasis and underscoring supplied; citations omitted)

All told, the Court finds the grant of exemplary damages in the amount of ₱200,000.00 as well as attorney's fees equivalent to 1% of the total amount due amply justified, square as it is with existing jurisprudence.

C. Amount of just compensation

Finally, the Court cannot sustain the amount of ₱5,500.00/sq. m. as just compensation which was set by the RTC and upheld by the CA. The said valuation was actually arrived at after considering: (a) the September 4, 1996 recommendation of the City Appraisal Committee; (b) several sworn statements made by Sy himself; and (c) Sy's own tax declaration for 1996.⁴⁸ **It is well-settled that the amount of just compensation is to be ascertained as of the time of the taking.**⁴⁹ However, the above-stated documents do not reflect the value of the subject property at the time of its taking in 1986 but rather, its valuation in 1996. Consequently, the case must be remanded to the RTC in order to properly determine the amount of just compensation during such time the subject property was actually taken.

⁴⁸ *Rollo*, pp. 37-38.

⁴⁹ See *City of Iloilo v. Judge Lolita Contreras-Besana*, supra note 47, at 468-469, citing *B.H. Berkenkotter & Co. v. CA*, G.R. No. 89980, December 14, 1992, 216 SCRA 584, 587.

WHEREFORE, the petition is **PARTLY GRANTED**. The January 20, 2012 Decision and July 16, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 91964 are hereby **SET ASIDE**. Accordingly, the case is **REMANDED** to the trial court for the proper determination of the amount of just compensation in accordance with this Decision. To forestall any further delay in the resolution of this case, the trial court is hereby ordered to fix the just compensation for petitioner Henry L. Sy's property with dispatch and report to the Court its compliance. Finally, respondent Local Government of Quezon City is ordered to **PAY** exemplary damages in the amount of **₱200,000.00** and attorney's fees equivalent to one percent (1%) of the amount due, after final determination of the amount of just compensation.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ARTURO D. BRION
Associate Justice
Acting Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
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.

**ARTURO D. BRION**

Associate Justice

Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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