



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

COURT OF THE PHILIPPINES  
RECEIVED  
MAR 27 2023  
BY: [Signature]  
TIME: 2:10

JOSE CO LEE,  
Petitioner,

G.R. No. 246201

Present:

-versus-

LEONEN, J., Chairperson,  
LAZARO-JAVIER,  
LOPEZ, M.,  
LOPEZ, J., and  
KHO, JR., JJ.

CITY OF OLONGAPO  
REPRESENTED BY ITS CITY  
MAYOR HON. ROLEN C.  
PAULINO,  
Respondent.

Promulgated:  
DEC 07 2022

[Signature]

X-----X

DECISION

LEONEN, J.:

The property owner who objects to the expropriation proceeding may file an answer, which shall specifically state their objections and defenses to the taking of their property. Affirmative defenses necessitating the presentation of evidence *aliunde* must be addressed in a full-blown trial and hearing, the absence of which constitutes a violation of the property owner's right to due process.

This Court resolves the Petition for Review on Certiorari<sup>1</sup> challenging the Court of Appeals Decision<sup>2</sup> and Resolution<sup>3</sup> that affirmed the Regional

<sup>1</sup> *Rollo*, pp. 4-27.

<sup>2</sup> *Id.* at 31-55. The September 27, 2018 Decision in CA-G.R. CV No. 109714 was penned by Associate Justice Ronaldo Roberto B. Martin and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Myra V. Garcia-Fernandez of the Tenth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 57-59. The March 15, 2019 Resolution in CA-G.R. CV No. 109714 was penned by Associate

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Trial Court's earlier Order.<sup>4</sup> The trial court found that the City of Olongapo has the lawful right to expropriate the property owned by Jose Co Lee (Lee).

Lee is the registered owner of a parcel of land located in East Tapinac, City of Olongapo.<sup>5</sup>

On July 4, 2012, Ordinance No. 12, Series of 2012 (Ordinance No. 12) was passed by the Sangguniang Panlungsod of the City of Olongapo, reclassifying and rezoning some government properties into an institutional/mixed zone and mixed-use development for the construction of a new civic center complex.<sup>6</sup>

Ordinance No. 12 defines institutional/mixed use as, "an area within a city or municipality principally for general types of institutional establishments where government offices, schools, hospitals/clinics, academic/research, convention centers may co-exist with commercial developments for trade, business activities and service industries."<sup>7</sup>

Meanwhile, it defines mixed-use development as "development characterized by two or more significant revenue-producing uses[,] such as retail, office, residential, hotel/motel, entertainment/cultural/recreation that in well-planned projects are mutually supporting."<sup>8</sup>

Ordinance No. 12 was later amended by Ordinance No. 19, Series of 2014.<sup>9</sup>

On December 23, 2014, a Notice of Negotiated Sale or Expropriation<sup>10</sup> was sent to Lee by Architect Tony Kar M. Balde III (Balde), City of Olongapo's planning and development coordinator. In the Notice, Balde informed Lee that the City of Olongapo has approved a mixed-use development plan that would affect his property. Balde advised Lee that the City of Olongapo was willing to purchase his property at a "negotiated mutually agreeable price."<sup>11</sup>

In a Letter dated March 24, 2015,<sup>12</sup> Balde reiterated the plan of City of

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Justice Ronaldo Roberto B. Martin and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Myra V. Garcia-Fernandez of the Former Tenth Division, Court of Appeals, Manila.

<sup>4</sup> Id. at 75-80. The Order was penned by Judge Roline M. Ginez-Jabalde of Regional Trial Court, Olongapo City, Branch 74.

<sup>5</sup> Id. at 5, 20. The ownership of Lee was evidenced by Original Certificate No. P-8280 issued by the Registry of Deeds in Olongapo City. Also *see id.* at 124-127.

<sup>6</sup> Id. at 17-18, 32.

<sup>7</sup> Id. at 134.

<sup>8</sup> Id.

<sup>9</sup> Id. at 32.

<sup>10</sup> Id. at 146.

<sup>11</sup> Id.

<sup>12</sup> Id. at 148.

Olongapo to use the property and offered PHP 13,824,000.00 for it.<sup>13</sup>

Lee rejected the offer.<sup>14</sup>

On May 15, 2015, the Sangguniang Panlungsod of the City of Olongapo passed Ordinance No. 15, Series of 2015, authorizing then City Mayor Rolan C. Paulino (Mayor Paulino) to expropriate parcels of land located in East Tapinac.<sup>15</sup> It justified the expropriation given the need to construct a civic center complex, which would house “the Olongapo City Disaster Risk Reduction Management Office, City Museum, City Public Library, and the satellite office of the Red Cross[.]”<sup>16</sup>

When the parties failed to reach an agreement, City of Olongapo, represented by Mayor Paulino, filed a Complaint for Expropriation.<sup>17</sup>

On August 28, 2015, City of Olongapo filed a Manifestation with Motion before the Regional Trial Court, stating that it had deposited with the Office of the Clerk of Court the amount of PHP 239,760.00 and prayed that it be allowed to enter the property.<sup>18</sup>

Lee then filed his Answer. Among others, he alleged that the Complaint states no cause of action<sup>19</sup> and that the expropriation of his property was not for public use.<sup>20</sup> He added that the Complaint was defective since the Sangguniang Panlungsod of the City of Olongapo failed to pass a board resolution authorizing Mayor Paulino to file the Complaint and sign the verification of nonforum shopping.<sup>21</sup>

Citing The Right-of-Way Act,<sup>22</sup> Lee also argued that the proper payment of just compensation is not 15 percent of the fair market value based on the current tax declaration, but 100 percent of the value of the land based on the current relevant valuation of the Bureau of Internal Revenue.<sup>23</sup>

During the hearing on May 5, 2016, Lee was called to the witness stand by his counsel for the purpose of identifying his Judicial Affidavit to which the counsel for the City of Olongapo objected.<sup>24</sup>

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<sup>13</sup> Id.

<sup>14</sup> Id. at 32.

<sup>15</sup> Id. at 143–145.

<sup>16</sup> Id. at 144.

<sup>17</sup> Id. at 33.

<sup>18</sup> Id.

<sup>19</sup> Id. at 6.

<sup>20</sup> Id.

<sup>21</sup> Id. at 8.

<sup>22</sup> Republic Act No. 10752 (2016).

<sup>23</sup> *Rollo*, pp. 51 and 84.

<sup>24</sup> Id. at 111.

On even date, the Regional Trial Court issued an Order giving Lee time to file his comment to the objection of the City of Olongapo's counsel:

In today's hearing for the affirmative allegations and defenses of the defendant, Atty. Prudencio Jalandoni called to the witness stand Mr. Jose Co Lee, the defendant in this case and he identified his Judicial Affidavit. However, Atty. Ronila Roxas, collaborating counsel for Plaintiff Olongapo City objected to the presentation of the said the witness on the ground that it is being offered not for the purpose of proving the affirmative defenses of the defendant.

The plaintiff's counsel has already made her objection to the counsel and that Atty. Jalandoni is given ten (10) days from receipt of the Order to file his comment and Atty. Roxas is given five (5) days to file her reply, after which the incident will be submitted for resolution.<sup>25</sup>

In its June 30, 2016 Order, the Regional Trial Court stated that the case was deemed submitted for resolution.<sup>26</sup>

The Regional Trial Court issued an Order,<sup>27</sup> dismissing Lee's affirmative defenses and declared that the City of Olongapo has a lawful right to expropriate his property:

WHEREFORE, in view of the foregoing, the affirmative/special defenses set up by defendant Jose Co Lee are dismissed and the Court hereby declares that the plaintiff has a lawful right to expropriate the property of defendant Jose Co Lee and to take possession thereof upon deposit with the Office of the Clerk of Court, Regional Trial Court, Olongapo City the additional amount of Two Hundred Thirty Five Thousand and Five Hundred Sixty Pesos (Php235,560.00).

The parties are also directed to submit to the Court the names of two persons each desired by them to be appointed as commissioners for the purpose of determination of the just compensation for the said property.

SO ORDERED.<sup>28</sup>

Lee moved for reconsideration, but it was denied.<sup>29</sup>

In its assailed Decision,<sup>30</sup> the Court of Appeals affirmed the Regional Trial Court's ruling that the City of Olongapo complied with all the

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<sup>25</sup> Id. at 111-112.

<sup>26</sup> Id. at 35.

<sup>27</sup> Id. at 75-80. The Order was penned by Judge Roline M. Ginez-Jabalde of Regional Trial Court, Olongapo City, Branch 74.

<sup>28</sup> Id. at 79-80.

<sup>29</sup> Id. at 81-89. The Order was penned by Judge Roline M. Ginez-Jabalde of Branch 74, Regional Trial Court, Olongapo City.

<sup>30</sup> Id. at 31-55.

requisites necessary for a valid expropriation.<sup>31</sup>

The Court of Appeals held that Ordinance No. 15 clothed Mayor Paulino with authority to initiate expropriation proceedings on behalf of the City of Olongapo. Meanwhile, Ordinance No. 12 as amended by Ordinance No. 19 proved that the purpose of the expropriation is for public use, particularly, for the construction of a mixed-use civic center complex. It likewise held that the City of Olongapo deposited the amount of PHP 475,320.00, which was necessary to enable it to take immediate possession of Lee's property. It also stressed that the offer of sale and its denial were proven by the letters sent to Lee by Balde on behalf of City of Olongapo.<sup>32</sup>

The Court of Appeals also brushed aside Lee's affirmative defenses. It cited Ordinance No. 15 and held that Mayor Paulino had the authority to institute the Complaint and to sign on behalf of City of Olongapo. It also ruled that since there was no valid sale between the parties by reason of their failure to agree on the amount of consideration, the institution of the expropriation proceeding was necessary for the City of Olongapo to acquire possession and ownership of the property.<sup>33</sup>

On the allegation that the expropriation was not for public use, the Court of Appeals noted that the document Lee attached to prove his assertion was a mere photocopy of the alleged lease agreement between the City of Olongapo and SM Prime Holdings, Inc., which Lee was not a signatory of. Not being a party to the lease agreement, Lee cannot truthfully attest to its genuineness and due execution, thus with no probative value.<sup>34</sup>

It also clarified that contrary to Lee's contention, The Right of Way Act does not apply when the one initiating the expropriation proceedings is a local government unit.<sup>35</sup>

Finally, the Court of Appeals dismissed Lee's argument of denial of due process. It ruled that the City of Olongapo "was able to provide sufficient justification and proof that it had the right to expropriate the subject property and that it complied with the procedural rules stated in Section 19 [of the Local Government Code]."<sup>36</sup>

In its Resolution,<sup>37</sup> the Court of Appeals denied the Motion for Reconsideration<sup>38</sup> filed by Lee.

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<sup>31</sup> Id. at 41.

<sup>32</sup> Id. at 42-46.

<sup>33</sup> Id. at 46-49.

<sup>34</sup> Id. at 49-50.

<sup>35</sup> Id. at 51-53.

<sup>36</sup> Id. at 53-54.

<sup>37</sup> Id. at 57-59.

<sup>38</sup> Id. at 60-72.

Thus, the present Petition for Review.<sup>39</sup>

Petitioner argues that the Court of Appeals erred in ruling that respondent has the lawful right to expropriate his property.<sup>40</sup> He claims that he was denied due process when no hearing was conducted by the trial court to determine the necessity of expropriation<sup>41</sup> and without receiving evidence on his claims.<sup>42</sup> He insists that the expropriation of his property was not for public use but for the benefit of SM Prime Holdings, Inc.<sup>43</sup>

Petitioner also maintains that there was no valid offer from the City of Olongapo since Balde had no authority to negotiate for the purchase of the property.<sup>44</sup> He adds that Ordinance No. 15 does not give Mayor Paulino authority to file the Complaint for Expropriation and sign its verification and certificate of nonforum shopping.<sup>45</sup>

Petitioner avers that the trial court erred when it allowed the City of Olongapo to take immediate possession of the property only upon the deposit of the additional amount of PHP 235,560.00. He insists that under The Right of Way Act, immediate possession of the property sought to be expropriated may only be permitted when “an amount equivalent of 100% of the value of the land based on the Current Relevant Valuation of the Bureau of Internal Revenue[,]” among others, had been deposited with the court.<sup>46</sup>

Countering the same, respondent insists that there was no denial of petitioner’s right to procedural due process. It argues that petitioner was permitted to identify his judicial affidavit, but the trial court sustained its objection to the presentation of his testimony based “on the ground that they were not made to prove his affirmative defenses[.]”<sup>47</sup> It stresses that petitioner was given an opportunity to be heard since he filed his Answer containing his affirmative defenses.<sup>48</sup>

Respondent also denies that the taking of petitioner’s property was for a propriety purpose. It contends that the property will be used for the development of its new civic center complex and that his property was not even covered by the lease agreement between City of Olongapo and SM Prime Holdings, Inc.<sup>49</sup>

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<sup>39</sup> Id. at 4–27.

<sup>40</sup> Id. at 13.

<sup>41</sup> Id. at 16–17.

<sup>42</sup> Id. at 16–17, 23.

<sup>43</sup> Id. at 17.

<sup>44</sup> Id. at 19–22.

<sup>45</sup> Id. at 24–26.

<sup>46</sup> Id. at 22–23.

<sup>47</sup> Id. at 114.

<sup>48</sup> Id.

<sup>49</sup> Id. at 115–116.

As to Balde's alleged lack of authority, respondent argues that his actions were done in the regular performance of his duties and that no bad faith nor ill will can be imputed against him when he negotiated with petitioner.<sup>50</sup>

Respondent also maintains that Ordinance No. 15 is sufficient to clothe Mayor Paulino with the legal personality to sign the complaint for expropriation and its verification and certification of nonforum shopping.<sup>51</sup>

Lastly, respondent contends that a local government unit can take immediate possession of the property subject of expropriation upon filing of the complaint and depositing with the proper court the amount equivalent to 15% of the property's fair market value based on its current tax declaration, all of which, the City of Olongapo complied with.<sup>52</sup>

For this Court's resolution is whether the Court of Appeals erred in affirming the trial court's order holding that the respondent City of Olongapo has the lawful right to expropriate and take possession of the property owned by petitioner Jose Co Lee.

We find that the Petition is meritorious.

While we affirm the lower courts' finding that Mayor Paulino had authority to file the Complaint for Expropriation, we hold that respondent City of Olongapo failed to comply with the requirements for a valid expropriation.

Moreover, petitioner's right to due process was also violated when the Regional Trial Court overruled his affirmative defenses without conducting trial and hearing. With such violation of basic constitutional right, the trial court is ousted from its jurisdiction.

The power of eminent domain has been defined as "the inherent power of a sovereign state to appropriate private property to particular uses to promote public welfare."<sup>53</sup> It "is lodged in the legislative branch of government, which may delegate the exercise thereof to [local government units], other public entities and public utilities."<sup>54</sup>

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<sup>50</sup> Id. at 117-118.

<sup>51</sup> Id. at 119-120.

<sup>52</sup> Id. at 120-123.

<sup>53</sup> *Republic v. Court of Appeals*, 494 Phil. 494, 502 (2005) [Per J. Carpio, First Division].

<sup>54</sup> *Municipality of Parañaque v. V.M. Realty Corp.*, 354 Phil. 684, 691 (1998) [Per J. Panganiban, First Division].

Section 19 of the Local Government Code of 1991 serves as basis for the local government units' exercise of the power of eminent domain.<sup>55</sup> It "prescribes the delegation by Congress of the power of eminent domain to local government units and lays down the parameters for its exercise[:]"<sup>56</sup>

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, 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 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 expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

In *Municipality of Parañaque v. V.M. Realty Corp.*,<sup>57</sup> this Court enumerated the essential requisites before a local government unit can exercise the power of eminent domain:

1. An ordinance is enacted by the local legislative council authorizing the local chief executive, [on] behalf of the LGU, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property.
2. The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless.
3. There is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws.
4. A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.<sup>58</sup> (Citations omitted.)

In this case, we find that the first requisite is present. Mayor Paulino has the authority to initiate the expropriation proceeding and to sign the verification and certification of nonforum shopping.

Section 455 of the Local Government Code enumerates the powers of the chief executive of a city:

<sup>55</sup> *Heirs of Suguitan v. City of Mandaluyong*, 384 Phil. 676, 689 (2000) [Per J. Gonzaga-Reyes, Third Division].

<sup>56</sup> *Masikip v. City of Pasig*, 515 Phil. 364, 373 (2006) [Per J. Sandoval-Gutierrez, Second Division].

<sup>57</sup> 354 Phil. 684 (1998) [Per J. Panganiban, First Division].

<sup>58</sup> *Id.* at 692.



SEC. 455. *Chief Executive; Powers, Duties and Compensation.* —

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(b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the city government and in this connection, shall:

.....

(iv) Represent the city in all its business transactions and sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the *sangguniang panlungsod* or pursuant to law or ordinance[.]

On this note, the *Sangguniang Panlungsod* passed Ordinance No. 15 expressly authorizing Mayor Paulino to expropriate parcels of land situated in East Tapinac, City of Olongapo, including petitioner's property.<sup>59</sup> It also provides:

SECTION 1. It is necessary to authorize City Mayor, Honorable Rolan C. Paulino to institute expropriation proceeding as regards to the above mentioned properties for the realization, implementation, and for the materialization of the noble purposes for the people and the City of Olongapo.<sup>60</sup>

Contrary to what petitioner claims, Mayor Paulino has the authority under Ordinance No. 15 to not only institute the expropriation proceedings but also sign the verification and certification against forum shopping.

To the mind of this Court, it would be incongruous to allow Mayor Paulino, exercising his prerogative as chief executive of the city and authorized by a valid ordinance, to initiate an expropriation proceeding, but deny him of the authority to sign the verification and certification of nonforum shopping that is part of the Complaint for Expropriation.

As such, we agree with the Regional Trial Court and the Court of Appeals that Ordinance No. 15 is sufficient to clothe Mayor Paulino authority to file the Complaint without the need for another Sangguniang Panlungsod resolution authorizing him to sign the verification and

<sup>59</sup> *Rollo*, p. 143.

<sup>60</sup> *Id.* at 144.

certification of nonforum shopping.<sup>61</sup>

While the first requisite is present, we find that the fourth element of a valid and definite offer was lacking in this case.

Article 35 of the Implementing Rules and Regulations of the Local Government Code<sup>62</sup> provides for the manner on how the offer to buy is effectuated:

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.

(b) If the owner or owners accept the offer in its entirety, a contract of sale shall be executed and payment forthwith made.

(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.<sup>63</sup>

*Jesus is Lord Christian School Foundation Inc. v. Municipality (now City) of Pasig*<sup>64</sup> explained the purpose of this requisite:

The purpose of the requirement of a valid and definite offer to be first made to the owner is to encourage settlements and voluntary acquisition of property needed for public purposes in order to avoid the expense and delay of a court action. The law is designed to give to the owner the opportunity to sell his land without the expense and inconvenience of a protracted and expensive litigation. This is a substantial right which should be protected in every instance. It encourages acquisition without litigation and spares not only the landowner but also the condemnor, the expenses and delays of litigation. It permits the landowner to receive full compensation, and the entity acquiring the property, immediate use and enjoyment of the property. A reasonable offer in good faith, not merely perfunctory or pro forma offer, to acquire the property for a reasonable price must be made to the owner or [their] privy. A single *bona fide* offer that is rejected by the owner will suffice.<sup>65</sup>

<sup>61</sup> Id. at 48, 87.

<sup>62</sup> Administrative Order No. 270 (1992), sec. 35.

<sup>63</sup> We retain the use of generic “he” pronoun in this citation. However, the use of gender sensitive language has been observed in other parts of this resolution.

<sup>64</sup> 503 Phil. 845 (2005) [Per J. Callejo, Sr., Second Division].

<sup>65</sup> Id. at 865–866.

In *City of Manila v. Alegar Corp.*,<sup>66</sup> this Court elucidated 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. The government must exhaust all reasonable efforts to obtain by agreement the land it desires.”<sup>67</sup>

Here, there is no evidence on record that after petitioner rejected the offer sent on March 24, 2014, Balde or respondent exerted effort to renegotiate with petitioner.

Considering that respondent failed to prove that it exhausted all reasonable efforts to acquire by mutual agreement the property sought to be expropriated, this Court finds that it failed to comply with the required valid and definite offer before instituting the expropriation proceeding.

We also find that petitioner’s right to procedural due process was violated when no hearing on his affirmative defenses was conducted.

None other than the Constitution guarantees that “[n]o person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.”<sup>68</sup>

In *Alliance for the Family Foundation, Philippines, Inc. v. Garin*,<sup>69</sup> we expounded on the two aspects of due process:

Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both the substantive and the procedural requirements thereof.

Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property. Procedural due process, on the other hand, means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.<sup>70</sup>

The manner on how expropriation proceeds is outlined in Rule 67 of the Rules of Court:

Section 1. The complaint. — The right of eminent domain shall be exercised by the filing of a verified complaint which shall state with

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<sup>66</sup> 689 Phil. 31 (2012) [Per J. Abad, Third Division].

<sup>67</sup> Id. at 40.

<sup>68</sup> CONST. art. III, sec. 1.

<sup>69</sup> 793 Phil. 831 (2016) [Per J. Mendoza, Second Division].

<sup>70</sup> Id. at 850.

certainty the right and purpose of expropriation, describe the real or personal property sought to be expropriated, and join as defendants all persons owning or claiming to own, or occupying, any part thereof or interest therein, showing, so far as practicable, the separate interest of each defendant. If the title to any property sought to be expropriated appears to be in the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify who are the real owners, averment to that effect shall be made in the complaint.

Section 3. Defenses and objections. — If a defendant has no objection or defense to the action or the taking of his property, he may file and serve a notice of appearance and a manifestation to that effect, specifically designating or identifying the property in which he claims to be interested, within the time stated in the summons. Thereafter, he shall be entitled to notice of all proceedings affecting the same.

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. No counterclaim, cross-claim or third-party complaint shall be alleged or allowed in the answer or any subsequent pleading.

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from the filing thereof. However, at the trial of the issue of just compensation whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award.

From the foregoing, an action for expropriation starts with the filing of a complaint, “which shall state with certainty the right and purpose of expropriation[,]” among others.<sup>71</sup> If the property owner objects to the expropriation proceeding, they may file an answer, which shall specifically state the property owner’s “objections and defenses to the taking of [their] property[.]”<sup>72</sup>

In *Robern Development Corp. v. Quitain*,<sup>73</sup> this Court suggested that affirmative defenses necessitating the presentation of evidence *aliunde* shall be addressed by the trial court in a full-blown trial and hearing:

To be exact, the issues raised by the petitioner are affirmative defenses that should be alleged in an answer, since they require presentation of evidence *aliunde*. Section 3 of Rule 67 provides that “if a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property,” he

<sup>71</sup> RULES OF COURT, rule 67, sec. 1.

<sup>72</sup> RULES OF COURT, rule 67, sec. 3.

<sup>73</sup> 373 Phil. 773 (1999) [Per J. Panganiban, En Banc].

should include them in his answer. Naturally, these issues will have to be fully ventilated in a full-blown trial and hearing. It would be precipitate to dismiss the Complaint on such grounds as claimed by the petitioner. Dismissal of an action upon a motion to dismiss constitutes a denial of due process if, from a consideration of the pleadings, it appears that there are issues that cannot be decided without a trial of the case on the merits.<sup>74</sup>

In this case, the trial court overruled petitioner's affirmative defenses without conducting trial and hearing in violation of his right to due process.

A review of petitioner's defenses reveals that these are matters that should be addressed in a full-blown trial and hearing.

In particular, petitioner's assertion that the taking of his property was not for public use but for the benefit of SM Prime Holdings, Inc. requires the presentation of evidence. Accordingly, when the trial court overruled petitioner's affirmative defenses without conducting trial, petitioner was not given the opportunity to be heard and his right to procedural due process was violated.

It has been held "that where there is a violation of basic constitutional rights, the courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will."<sup>75</sup>

Where, as in this case, a decision was rendered in violation of a party's fundamental right to due process, we have no choice but to consider the same void for lack of jurisdiction.<sup>76</sup>

With the failure to comply with the requirements for a valid expropriation, we need not delve on the issue of whether respondent may take immediate possession of the property.

Nonetheless, for clarity, this Court shall discuss the correlation between The Right-of-Way Act and the Local Government Code.

The Right of Way Act governs the acquisition by the government of "real property needed as right-of-way site or location for any national government infrastructure project through donation, negotiated sale, expropriation, or any other mode of acquisition as provided by law."<sup>77</sup>

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<sup>74</sup> Id. at 791-792.

<sup>75</sup> *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, 793 Phil. 831, 853 (2016) [Per J. Mendoza, Second Division].

<sup>76</sup> Id.

<sup>77</sup> Republic Act No. 10752 (2016), sec. 4 provides:

SECTION 4. Modes of Acquiring Real Property. – The government may acquire real property needed as right-of-way site or location for any national government infrastructure project through donation,

Its Section 3 defines national government projects as:

Section 3. National Government Projects. – As used in this Act, the term “national government projects” shall refer to all national government infrastructure projects and its public service facilities, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the “Build-Operate-and-Transfer Law”, and other related and necessary activities, such as site acquisition, supply or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding. *Subject to the provisions of Republic Act No. 7160, otherwise known as the “Local Government Code of 1991”, local government units (LGUs) may also adopt the provisions of this Act for use in the acquisition of right-of-way for local government infrastructure projects.* (Emphasis supplied)

Particularly on expropriation, the Act states that upon the filing of a complaint for expropriation, the implementing agency is duty bound to deposit with the court in favor of the property owner an amount equivalent to “[100 percent] of the value of the land based on the current relevant zonal valuation of the Bureau of Internal Revenue . . . issued not more than three (3) years prior to the filing of the expropriation complaint[.]”<sup>78</sup>

Meanwhile, the Local Government Code provides that before a local government unit may be permitted to take immediate possession of the property sought to be expropriated, it shall be required to deposit to the Regional Trial Court “at least [15 percent] of the fair market value. . . based on the current tax declaration of the property to be expropriated[.]”<sup>79</sup>

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negotiated sale, expropriation, or any other mode of acquisition as provided by law.

<sup>78</sup> Republic Act No. 10752 (2016), sec. 6 (a)(1) provides:

SECTION 6. Guidelines for Expropriation Proceedings. – Whenever it is necessary to acquire real property for the right-of-way site or location for any national government infrastructure through expropriation, the appropriate implementing agency, through the Office of the Solicitor General, the Office of the Government Corporate Counsel, or their deputize government or private legal counsel, shall immediately initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint or at any time thereafter, and after due notice to the defendant, the implementing agency shall immediately deposit to the court in favor of the owner the amount equivalent to the sum of:

(1) One hundred percent (100%) of the value of the land based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR) issued not more than three (3) years prior to the filing of the expropriation complaint subject to subparagraph (c) of this section[.]

<sup>79</sup> Republic Act No. 7160 (1991), sec. 19 provides:

Section 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

Harmonizing these provisions, The Right of Way Act applies only when the purpose of the expropriation is for the construction of a right-of-way site or national infrastructure project.

However, when the purpose of the acquisition is not considered a national infrastructure project as defined by the said Act and a local government unit is involved, immediate possession of the property may be permitted upon deposit with court of at least 15 percent of the fair market value based on the current tax declaration of the property.

**FOR THESE REASONS**, the Petition is **GRANTED**. The September 27, 2018 Decision and March 15, 2019 Resolution of the Court of Appeals in CA-G.R. CV No. 109714 are **REVERSED** and **SET ASIDE**.

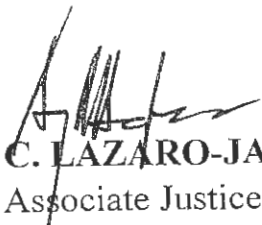
Let this case be **REMANDED** to the Regional Trial Court for further proceedings on the affirmative and special defenses set up by petitioner Jose Co Lee.

**SO ORDERED.**

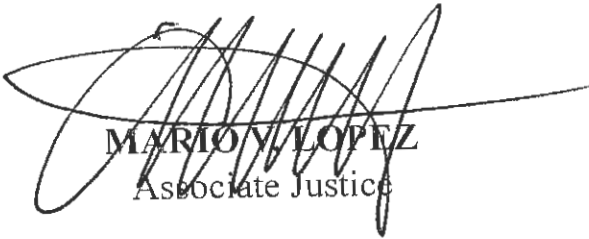


MARVIC M.V.F. LEONEN  
Senior Associate Justice


WE CONCUR:



AMY C. LAZARO-JAVIER  
Associate Justice



MARIO V. LOPEZ  
Associate Justice



JHOSEP Y. LOPEZ  
Associate Justice

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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.



**ANTONIO T. KHO, JR.**  
Associate Justice

### ATTESTATION

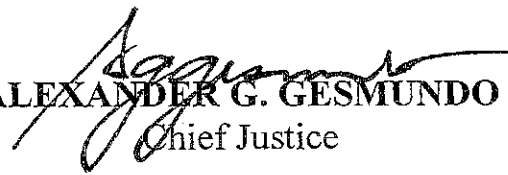
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Chairperson

### CERTIFICATION

Pursuant to Article VIII, Section 13 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.



**ALEXANDER G. GESMUNDO**  
Chief Justice