



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES, represented by the
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
(DPWH),

Petitioner,

Present:

VELASCO, JR., J., *Chairperson*,
PERALTA,
*BERSAMIN,
MENDOZA, and
LEONEN, JJ.

-versus-

ORTIGAS AND COMPANY LIMITED PARTNERSHIP,
Respondent.

Promulgated:
March 3, 2014

X-----*Maapeant*-----X

DECISION

LEONEN, J.,

Owners whose properties were taken for public use are entitled to just compensation.

This is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking to nullify and set aside the Court of Appeals' resolution dated October 14, 2005. The Court of Appeals' resolution dismissed petitioner Republic of the Philippines' appeal from the decision of the Regional Trial Court granting private respondent Ortigas' petition for

* Associate Justice Lucas P. Bersamin was designated as Acting Member of the Third Division, vice Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

authority to sell. This petition also seeks to nullify the Court of Appeals' resolution dated February 9, 2006, which denied petitioner Republic of the Philippines' motion for reconsideration.

Respondent, Ortigas and Company Limited Partnership, is the owner of a parcel of land known as Lot 5-B-2 with an area of 70,278 square meters in Pasig City.¹

Upon the request of the Department of Public Works and Highways, respondent Ortigas caused the segregation of its property into five lots and reserved one portion for road widening for the C-5 flyover project.² It designated Lot 5-B-2-A, a 1,445-square-meter portion of its property, for the road widening of Ortigas Avenue.³ Respondent Ortigas also caused the annotation of the term "road widening" on its title. The title was then inscribed with an encumbrance that it was for road widening and subject to Section 50 of Presidential Decree No. 1529 or the Property Registration Decree.⁴

The C-5-Ortigas Avenue flyover was completed in 1999, utilizing only 396 square meters of the 1,445-square-meter allotment for the project.⁵

Consequently, respondent Ortigas further subdivided Lot 5-B-2-A into two lots: Lot 5-B-2-A-1, which was the portion actually used for road widening, and Lot 5-B-2-A-2, which was the unutilized portion of Lot 5-B-2-A.⁶

On February 14, 2001, respondent Ortigas filed with the Regional Trial Court of Pasig a petition for authority to sell to the government Lot 5-B-2-A-1.⁷ Respondent Ortigas alleged that the Department of Public Works and Highways requested the conveyance of the property for road widening purposes.⁸ The case was raffled to Branch 267.⁹

In an order dated March 9, 2001,¹⁰ the Regional Trial Court set the case for hearing on April 27, 2001, giving opportunity to any interested person to appear, oppose, and show cause why respondent Ortigas' petition may not be granted. In the same order, respondent Ortigas was directed to cause the publication of both the Regional Trial Court's order and

¹ *Rollo*, p. 7.

² *Id.* at 96.

³ *Id.* at 7.

⁴ *Id.* at 93.

⁵ *Id.*

⁶ *Id.* at 8.

⁷ *Id.*

⁸ *Id.* at 8 and 82.

⁹ *Id.* at 8.

¹⁰ *Id.* at 91.

respondent Ortigas' petition. The trial court also directed the Sheriff to serve copies of its order and respondent Ortigas' petition to the Office of the Solicitor General, Office of the City Prosecutor, Department of Public Works and Highways, City Engineer of Pasig, and the Register of Deeds of Pasig.

Despite due notice to the public, including the Office of the Solicitor General and the Department of Public Works and Highways, no one appeared to oppose respondent Ortigas' petition in the hearing on April 27, 2001.¹¹ Respondent Ortigas was able to establish the jurisdictional facts of the case and was allowed to present evidence *ex parte* before the appointed Commissioner, the Branch Clerk of Court, Atty. Edelyn M. Murillo.¹²

Respondent Ortigas presented Mr. Romulo Rosete to support its allegations in its petition for authority to sell to the government.¹³ Rosete was respondent Ortigas' liaison officer who represented respondent Ortigas in government transactions.¹⁴ He testified that he was aware of respondent Ortigas' ownership of the 70,278-square-meter property in Pasig and its subdivision for the purpose of designating an area for the C-5-Ortigas Avenue flyover project.¹⁵ He also testified that only 396 square meters of the 1,445-square-meter designated lot was actually utilized after the road had been finished being constructed in 1999.¹⁶ This caused respondent Ortigas to further subdivide the designated property into two lots.¹⁷ Rosete presented a certified true copy of the title of the utilized portion of the lot to prove respondent Ortigas' ownership.¹⁸ He also alleged that respondent Ortigas was not compensated for the use of its property, and respondent Ortigas was requested by the Department of Public Works and Highways to convey the utilized property to the government.¹⁹ Hence, to facilitate the processing of its compensation, respondent Ortigas filed a petition with the Regional Trial Court.²⁰

Finding merit in respondent Ortigas' petition, the Regional Trial Court issued an order on June 11, 2001, authorizing the sale of Lot 5-B-2-A-1 to petitioner Republic of the Philippines.²¹

On June 27, 2001, petitioner Republic of the Philippines, represented by the Office of the Solicitor General, filed an opposition, alleging that respondent Ortigas' property can only be conveyed by way of donation to the

¹¹ Id. at 92.

¹² Id.

¹³ Id. at 93.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 9, 92-94.

government, citing Section 50 of Presidential Decree No. 1529, also known as the Property Registration Decree.²²

On June 29, 2001, petitioner Republic of the Philippines filed a motion for reconsideration of the Regional Trial Court order dated June 11, 2001, reiterating its argument in its opposition.²³

In an order dated October 3, 2001, the Regional Trial Court denied petitioner Republic of the Philippines' motion for reconsideration.²⁴

Petitioner Republic of the Philippines filed a notice of appeal on October 24, 2001, which reads:

The REPUBLIC OF THE PHILIPPINES, by counsel, hereby respectfully serves notice of appeal to the Court of Appeals from this Honorable Court's Order dated **October 3, 2001** (copy of which was received by the Office of the Solicitor General on October 15, 2001) on the ground that said Order is contrary to law and evidence.²⁵ (Emphasis supplied)

In its appellant's brief, petitioner Republic of the Philippines argued that the Regional Trial Court erred in granting respondent Ortigas the authority to sell its property to the government because the lot can only be conveyed by donation to the government.²⁶

In a resolution dated October 14, 2005, the Court of Appeals dismissed petitioner Republic of the Philippines' appeal on the ground that an order or judgment denying a motion for reconsideration is not

²² Id. at 9; Presidential Decree No. 1529 (1978), Sec. 50 reads:

Section 50. *Subdivision and consolidation plans.* Any owner subdividing a tract of registered land into lots which do not constitute a subdivision project has defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or with the Bureau of Lands a subdivision plan of such land on which all boundaries, streets, passageways and waterways, if any, shall be distinctly and accurately delineated.

If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner's duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: **Provided, however, that the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of the national government, province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated.** (Emphasis supplied)

²³ *Rollo*, p. 10.

²⁴ Id. at 95-96.

²⁵ Id. at 10.

²⁶ Id. at 103.

appealable.²⁷

Petitioner Republic of the Philippines filed a motion for reconsideration of the Court of Appeals' resolution. In its motion for reconsideration, petitioner Republic of the Philippines pointed out that its reference in the notice of appeal to the October 3, 2001 order denying the motion for reconsideration of the trial court's decision was merely due to inadvertence. In any case, Rule 37, Section 9 of the Rules of Procedure contemplates as non-appealable only those orders which are not yet final. The October 3, 2001 order was already final as it confirmed the June 11, 2001 judgment of the court.²⁸

In its resolution dated February 9, 2006, the Court of Appeals denied the motion for reconsideration on the ground of lack of jurisdiction. The Court of Appeals noted that even if the order denying the motion for reconsideration was appealable, the appeal was still dismissible for lack of jurisdiction because petitioner Republic of the Philippines raised only a question of law.²⁹

The issues for our consideration are the following:³⁰

- a) Whether the Court of Appeals gravely erred in denying petitioner Republic of the Philippines' appeal based on technicalities;
- b) Whether the Court of Appeals gravely erred in dismissing the appeal from the trial court order granting respondent Ortigas authority to sell the land to the Republic of the Philippines.

The Office of the Solicitor General argued that strict application of the rules of procedure overrides substantial justice, in this case, to the detriment of petitioner Republic of the Philippines.³¹

On the trial court's grant of authority to respondent Ortigas to sell its property to the government, the Office of the Solicitor General stated while citing *Young v. City of Manila*³² that respondent Ortigas' subdivision of its land for road widening automatically withdrew the land from the commerce of man.³³ Further, a piece of land segregated by a private owner for public use may only be conveyed by donation to the government based on Section

²⁷ Id. at 7-12.

²⁸ Id. at 13-19.

²⁹ Id. at 20-25.

³⁰ Id. at 37-38.

³¹ Id. at 39-41.

³² 73 Phil. 537, 552 (1941).

³³ *Rollo*, pp. 45-46.

50 of Presidential Decree No. 1529.³⁴ “Presently, said land is already being used by the public as part of the ‘widened’ road beside the C-5 [flyover] x x x.”³⁵

In its comment dated July 25, 2006, respondent Ortigas argued that the Office of the Solicitor General committed a fatal mistake when it brought by way of appeal the denial of its motion for reconsideration before the Court of Appeals.³⁶

This petition lacks merit.

Appeals from the Regional Trial Court to the Court of Appeals under Rule 41 must raise both questions of fact and law

Section 2 of Rule 50 of the Rules of Court provides that appeals taken from the Regional Trial Court to the Court of Appeals raising only pure questions of law are not reviewable by the Court of Appeals. In which case, the appeal shall not be transferred to the appropriate court. Instead, it shall be dismissed outright.

Appeals from the decisions of the Regional Trial Court, raising purely questions of law must, in all cases, be taken to the Supreme Court on a petition for review on certiorari in accordance with Rule 45.³⁷ An appeal by notice of appeal from the decision of the Regional Trial Court in the exercise of its original jurisdiction to the Court of Appeals is proper if the appellant raises questions of fact or both questions of fact and questions of law.³⁸

There is a question of law when the appellant raises an issue as to what law shall be applied on a given set of facts.³⁹ Questions of law do “not involve an examination of the probative value of the evidence presented.”⁴⁰ Its resolution rests solely on the application of a law given the circumstances.⁴¹ There is a question of fact when the court is required to

³⁴ Id. at 45.

³⁵ Id. at 42.

³⁶ Id. at 136-138.

³⁷ RULES OF COURT, Rule 41, sec. 2 (c).

³⁸ See *Badillo v. Court of Appeals*, 578 Phil. 404, 416-417 (2008) [Per J. Carpio, First Division; C.J. Puno, JJ. Corona, Azcuna, and Leonardo-De Castro, concur], citing *Sevilleno v. Carilo*, 559 Phil. 789, 791-792 (2007) [Per J. Sandoval-Gutierrez, First Division].

³⁹ See *Macababbad, Jr. v. Masirag*, 596 Phil. 76, 89 (2009) [Per J. Brion, Second Division].

⁴⁰ See *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 46 [Per J. Reyes, Second Division; JJ. Carpio, Brion, Perez, and Sereno, concur].

⁴¹ Id. at 46-47.

examine the truth or falsity of the facts presented.⁴² A question of fact “invites a review of the evidence.”⁴³

The sole issue raised by petitioner Republic of the Philippines to the Court of Appeals is whether respondent Ortigas’ property should be conveyed to it only by donation, in accordance with Section 50 of Presidential Decree No. 1529. This question involves the interpretation and application of the provision. It does not require the Court of Appeals to examine the truth or falsity of the facts presented. Neither does it invite a review of the evidence. The issue raised before the Court of Appeals was, therefore, a question purely of law. The proper mode of appeal is through a petition for review under Rule 45. Hence, the Court of Appeals did not err in dismissing the appeal on this ground.

Nevertheless, we take time to emphasize that Rule 41, Section 1, paragraph (a) of the Rules of Court, which provides that “[n]o appeal may be taken from [a]n order denying a x x x motion for reconsideration,” is based on the implied premise in the same section that the judgment or order does not completely dispose of the case. The pertinent portion of Rule 41, Section 1 provides:

Section 1. *Subject of appeal.* – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

In other words, what Section 1 of Rule 41 prohibits is an appeal taken from an interlocutory order. An interlocutory order or judgment, unlike a final order or judgment, does “not completely dispose of the case [because it leaves to the court] something else to be decided upon.”⁴⁴ Appeals from interlocutory orders are generally prohibited to prevent delay in the administration of justice and to prevent “undue burden upon the courts.”⁴⁵

Orders denying motions for reconsideration are not always interlocutory orders. A motion for reconsideration may be considered a final decision, subject to an appeal, if “it puts an end to a particular matter,”⁴⁶ leaving the court with nothing else to do but to execute the decision.

“An appeal from an order denying a motion for reconsideration of an

⁴² See *Macababbad, Jr. v. Masirag*, 596 Phil. 76, 90 (2009) [Per J. Brion, Second Division].

⁴³ *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 47 [Per J. Reyes, Second Division; JJ. Carpio, Brion, Perez, and Sereno, concur].

⁴⁴ *Jose v. Javellana, et al.*, G.R. No. 158239, January 25, 2012, 664 SCRA 11, 19 [Per J. Bersamin, First Division; JJ. Corona, Leonardo-De Castro, Abad, and Villarama, concur], quoting *Pahila-Garrido v. Tortogo*, G.R. No. 156358, August 17, 2011, 655 SCRA 553.

⁴⁵ See *Nabua v. Lu Ym*, 594 Phil. 515, 527 (2008) [Per J. Reyes, R.T., Third Division; JJ. Ynares-Santiago, Austria-Martinez, Chico-Nazario, Nachura, concur].

⁴⁶ *Id.* at 528.

order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.”⁴⁷ It is an appeal from a final decision or order.

The trial court’s order denying petitioner Republic of the Philippines’ motion for reconsideration of the decision granting respondent Ortigas the authority to sell its property to the government was not an interlocutory order because it completely disposed of a particular matter. An appeal from it would not cause delay in the administration of justice. Petitioner Republic of the Philippines’ appeal to the Court of Appeals, however, was properly dismissed because the former used the wrong mode of appeal.

In any event, we resolve the substantive issue on whether respondent Ortigas may not sell and may only donate its property to the government in accordance with Section 50 of Presidential Decree No. 1529.

Section 50 of Presidential Decree No. 1529 does not apply in a case that is the proper subject of an expropriation proceeding

Respondent Ortigas may sell its property to the government. It must be compensated because its property was taken and utilized for public road purposes.

Petitioner Republic of the Philippines insists that the subject property may not be conveyed to the government through modes other than by donation. It relies on Section 50 of the Property Registration Decree, which provides that delineated boundaries, streets, passageways, and waterways of a subdivided land may not be closed or disposed of by the owner except by donation to the government. It reads:

Section 50. Subdivision and consolidation plans. Any owner subdividing a tract of registered land into lots which do not constitute a subdivision project as defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or the Bureau of Lands a subdivision plan of such land on which **all boundaries, streets, passageways and waterways**, if any, shall be distinctly and accurately delineated.

If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner’s duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further

⁴⁷ Id., citing *Quelnan v. VHF Philippines, Inc.*, G.R. No. 145911, July 7, 2004, 433 SCRA 631, 638.

court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: Provided, however, that the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that **except by way of donation in favor of the national government, province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated.** (Emphasis supplied)

Petitioner Republic of the Philippines' reliance on Section 50 of the Property Registration Decree is erroneous. Section 50 contemplates roads and streets in a subdivided property, not public thoroughfares built on a private property that was taken from an owner for public purpose. A public thoroughfare is not a subdivision road or street.

More importantly, when there is taking of private property for some public purpose, the owner of the property taken is entitled to be compensated.⁴⁸

There is taking when the following elements are present:

1. The government must enter the private property;
2. The entrance into the private property must be indefinite or permanent;
3. There is color of legal authority in the entry into the property;
4. The property is devoted to public use or purpose;
5. The use of property for public use removed from the owner all beneficial enjoyment of the property.⁴⁹

All of the above elements are present in this case. Petitioner Republic of the Philippines' construction of a road — a permanent structure — on respondent Ortigas' property for the use of the general public is an obvious permanent entry on petitioner Republic of the Philippines' part. Given that the road was constructed for general public use stamps it with public character, and coursing the entry through the Department of Public Works and Highways gives it a color of legal authority.

As a result of petitioner Republic of the Philippines' entry, respondent Ortigas may not enjoy the property as it did before. It may not anymore use the property for whatever legal purpose it may desire. Neither may it occupy, sell, lease, and receive its proceeds. It cannot anymore prevent other persons

⁴⁸ See *DESAMA v. Gozun*, 520 Phil. 457, 477 (2006) [Per J. Chico-Nazario, First Division; C.J. Panganiban, JJ. Ynares-Santiago, Austria-Martinez, Callejo, Sr., concur].

⁴⁹ *Republic v. Vda. de Castellvi, et al.*, 157 Phil. 329, 345-347 (1974) [Per J. Zaldivar, En Banc].

from entering or using the property. In other words, respondent Ortigas was effectively deprived of all the bundle of rights⁵⁰ attached to ownership of property.

It is true that the lot reserved for road widening, together with five other lots, formed part of a bigger property before it was subdivided. However, this does not mean that all lots delineated as roads and streets form part of subdivision roads and streets that are subject to Section 50 of the Property Registration Decree. Subdivision roads and streets are constructed primarily for the benefit of the owners of the surrounding properties. They are, thus, constructed primarily for private use — as opposed to delineated road lots taken at the instance of the government for the use and benefit of the general public.

In this case, the lot was reserved for road widening at the instance of petitioner Republic of the Philippines. While the lot segregated for road widening used to be part of the subdivided lots, the intention to separate it from the delineated subdivision streets was obvious from the fact that it was located at the fringes of the original lot⁵¹ — exactly at petitioner Republic of the Philippines' intended location for the road widening project. Moreover, petitioner Republic of the Philippines' intention to take the property for public use was obvious from the completion of the road widening for the C-5 flyover project and from the fact that the general public was already taking advantage of the thoroughfare.

Delineated roads and streets, whether part of a subdivision or segregated for public use, remain private and will remain as such until conveyed to the government by donation or through expropriation proceedings.⁵² An owner may not be forced to donate his or her property even if it has been delineated as road lots because that would partake of an illegal taking.⁵³ He or she may even choose to retain said properties.⁵⁴ If he or she chooses to retain them, however, he or she also retains the burden of maintaining them and paying for real estate taxes.

An owner of a subdivision street which was not taken by the

⁵⁰ CIVIL CODE, Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it. See A. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 2 45-46 [2004] enumerates the bundle of rights: 1) the right to enjoy which includes the right to receive from the thing what it produces or *jus utendi*, and the right to consume the thing by its use or *jus abutendi*; 2) the right to dispose or *jus disponendi*; and 3) the right to exclude others from the possession of the thing or *jus vindicandi*.

⁵¹ See map, *rollo*, p. 75.

⁵² See also *White Plains v. Court of Appeals*, 358 Phil. 184, 207 (1998) [Per J. Martinez, Second Division; (Acting) C.J. Regalado, JJ. Melo, and Mendoza, concur] [J. Puno, no part due to close relation with some parties], citing *Young v. City of Manila*, 73 Phil. 537 (1941).

⁵³ Id. at 201.

⁵⁴ Id. at 203.

government for public use would retain such burden even if he or she would no longer derive any commercial value from said street. To remedy such burden, he or she may opt to donate it to the government. In such case, however, the owner may not force the government to purchase the property. That would be tantamount to allowing the government to take private property to benefit private individuals. This is not allowed under the Constitution, which requires that taking must be for public use.⁵⁵

Further, since the Constitution proscribes taking of private property without just compensation,⁵⁶ any taking must entail a corresponding appropriation for that purpose. Public funds, however, may only be appropriated for public purpose.⁵⁷ Employment of public funds to benefit a private individual constitutes malversation.⁵⁸ Therefore, private subdivision streets not taken for public use may only be donated to the government.

In contrast, when the road or street was delineated upon government request and taken for public use, as in this case, the government has no choice but to compensate the owner for his or her sacrifice, lest it violates the constitutional provision against taking without just compensation, thus:

Section 9. Private property shall not be taken for public use without just compensation.⁵⁹

As with all laws, Section 50 of the Property Registration Decree cannot be interpreted to mean a license on the part of the government to disregard constitutionally guaranteed rights.

The right to compensation under Article III, Section 9 of the Constitution was put in place to protect the individual from and restrain the State's sovereign power of eminent domain,⁶⁰ which is the government's power to condemn private properties within its territory for public use or purpose.⁶¹ This power is inherent and need not be granted by law.⁶² Thus, while the government's power to take for public purpose is inherent,

⁵⁵ CONSTI., art. III, sec. 9; *See also Brgy. Sindalan v. Court of Appeals*, 547 Phil. 542, 558 (2007) [Per J. Velasco, Jr., Second Division; JJ. Quisumbing (Chairperson), Carpio, Carpio-Morales, and Tinga, concur].

⁵⁶ CONSTI., art. III, sec. 9.

⁵⁷ *Pascual v. Secretary of Public Works*, 110 Phil. 331, 340 (1960) [Per J. Concepcion, En Banc; C. J. Parás, JJ. Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Gutiérrez David, Paredes, and Dizon, concur].

⁵⁸ *See also Brgy. Sindalan v. Court of Appeals*, 547 Phil. 542, 559 (2007) [Per J. Velasco, Jr., Second Division; JJ. Quisumbing (Chairperson), Carpio, Carpio-Morales, and Tinga, concur].

⁵⁹ CONSTI., art. III.

⁶⁰ *See Manapat v. Court of Appeals*, 562 Phil. 31, 47 (2007) [Per J. Nachura, Third Division; JJ. Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, concur].

⁶¹ *DESAMA v. Gozun*, 520 Phil. 457, 476 (2006) [Per J. Chico-Nazario, First Division; C.J. Panganiban, JJ. Ynares-Santiago, Austria-Martinez, Callejo, Sr., concur].

⁶² *Id.*; *See Manapat v. Court of Appeals*, 562 Phil. 31, 47 (2007) [Per J. Nachura, Third Division; JJ. Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, concur].

immense, and broad in scope, it is delimited by the right of an individual to be compensated. In a nutshell, the government may take, but it must pay.

Respondent Ortigas, immediately upon the government's suggestion that it needed a portion of its property for road purposes, went so far as to go through the process of annotating on its own title that the property was reserved for road purposes. Without question, respondent Ortigas allowed the government to construct the road and occupy the property when it could have compelled the government to resort to expropriation proceedings and ensure that it would be compensated. Now, the property is being utilized, not for the benefit of respondent Ortigas as a private entity but by the public. Respondent Ortigas remains uncompensated. Instead of acknowledging respondent Ortigas' obliging attitude, however, petitioner Republic of the Philippines refuses to pay, telling instead that the property must be given to it at no cost. This is unfair.

In the parallel case of *Alfonso v. Pasay City*⁶³ wherein Alfonso was deprived of his property for road purposes, was uncompensated, and was left without any expropriation proceeding undertaken, this court said:

When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates, in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are first initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and difficulty for the Government, but all of its own making.⁶⁴

“There is nothing that can more speedily and effectively embitter a citizen and taxpayer against his Government and alienate his faith in it, than an injustice and unfair dealing like the present case.”⁶⁵

Title to the subject lot remains under respondent Ortigas' name. The government is already in possession of the property but is yet to acquire title to it. To legitimize such possession, petitioner Republic of the Philippines must acquire the property from respondent Ortigas by instituting expropriation proceedings or through negotiated sale, which has already been recognized in law as a mode of government acquisition of private property for public purpose.⁶⁶

In a negotiated sale, the government offers to acquire for public

⁶³ 106 Phil. 1017 (1960) [Per J. Montemayor].

⁶⁴ Id. at 1021.

⁶⁵ *Herrera v. Auditor General*, 102 Phil. 875, 882 (1958) [Per J. Montemayor].

⁶⁶ See for example Republic Act No. 8974 (2000), Sec. 3; Executive Order No. 1035 (1985), Secs. 6-7.

purpose a private property, and the owner may accept or reject it. A rejection of the offer, however, would most likely merely result in the commencement of an expropriation proceeding that would eventually transfer title to the government. Hence, the government's offer to acquire for public purpose a private property may be considered as an act preparatory to an expropriation proceeding. Therefore, a private owner's initiative to segregate a property to accommodate government needs saves the government from a long and arduous expropriation proceeding. This is a commendable act on the part of the owner. It must be encouraged, not dampened by threats of property deprivation without compensation.

Respondent Ortigas, which merely accommodated petitioner Republic of the Philippines' request, remains uncompensated for the taking of its property. Respondent Ortigas could have brought action to recover possession of the property, but it instead chose to sell its property to petitioner Republic of the Philippines. This is both fair and convenient as the road construction had long been completed, and the road is already being utilized by the public.

Taking of private property without just compensation is a violation of a person's property right. In situations where the government does not take the trouble of initiating an expropriation proceeding, the private owner has the option to compel payment of the property taken, when justified. The trial court should continue to proceed with this case to determine just compensation in accordance with law.


WHEREFORE, the petition is **DENIED**. The decision of the Court of Appeals is **AFFIRMED**. The trial court is directed to proceed with the case with due and deliberate dispatch in accordance with this decision.

SO ORDERED.




MARVIC MARIO VICTOR F. LEONEN
Associate Justice


WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice




LUCAS P. BERSAMIN
Associate Justice



JOSE CATRAL MENDOZA
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.



ANTONIO T. CARPIO
Acting Chief Justice