



Republic of the Philippines
Supreme Court
Manila

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SUPREME COURT OF THE PHILIPPINES
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EQUITABLE PCI BANK, INC. G.R. No. 202384
(now BANCO DE ORO
UNIBANK, INC.),

Petitioner,

- versus -

SOUTH RICH ACRES, INC., TOP
SERVICE, INC. and the CITY OF
LAS PIÑAS,

Respondents.

X-----X

SOUTH RICH ACRES, INC. and G.R. No. 202397
TOP SERVICE, INC.,

Petitioners, Present:

GESMUNDO, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
DELOS SANTOS,
GAERLAN,
ROSARIO, and
LOPEZ, J., JJ.

- versus -

EQUITABLE PCI BANK, INC.
(NOW BANCO DE ORO UNIBANK, INC.). Promulgated:

Respondent. May 4, 2021

X-----*Antonio S. Aguirre*-----X

DECISION

INTING, J.:

This case involves the following consolidated petitions: (1) Petition for Review¹ filed by Equitable PCI Bank, Inc. (EPCIB) (now Banco de Oro Unibank, Inc. (BDO) docketed as G.R. No. 202384; and (2) Petition for Review on *Certiorari*² under Rule 45 of the Rules of Court filed by South Rich Acres, Inc. (SRA) and Top Service, Inc., (Top Service) docketed as G.R. No. 202397. Both petitions assail the Decision³ dated March 9, 2012 and the Resolution⁴ dated June 20, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 91117.

The Antecedents

SRA and Top Service are corporations duly organized and existing under the laws of the Republic of the Philippines.⁵

On the other hand, the City of Las Piñas is a corporate entity duly recognized and existing under the laws of the Republic of the Philippines, particularly Republic Act No. (RA) 7160, otherwise known as the “*Local Government Code of 1991*.”⁶

On July 2, 1997, the *Sangguniang Panlungsod* of the City of Las Piñas enacted City Ordinance No. 343-97, Series of 1997 (City Ordinance No. 343-97), which declared Marcos Alvarez Avenue as a public road.⁷ The Ordinance reads:

¹ *Rollo* (G.R. No. 202384), pp. 9-21

² *Rollo* (G.R. No. 202397), pp. 28-38.

³ *Id.* at 23-39; penned by Associate Justice Isaias P. Dicedican with Associate Justices Jane Aurora C. Lantion and Amy C. Lazaro-Javier (now a member of the Court), concurring.

⁴ *Id.* at 41-42.

⁵ *Id.* at 24.

⁶ *Id.*

⁷ *Id.*

AS

CITY ORDINANCE NO. 343-97
Series of 1997

“AN ORDINANCE DECLARING MARCOS ALVAREZ AVENUE FROM CONGRESSMAN FELIMON C. AGUILAR AVENUE (ALABANG-ZAPOTE ROAD) TO THE BOUNDARY OF THE MUNICIPALITY OF BACOR, CAVITE AS PUBLIC ROAD.

“WHEREAS, Marcos Alvarez has become a busy avenue due to the volume of motor vehicles using the same as alternative road from the Province of Cavite;

“WHEREAS, the constant use of Marcos Alvarez Avenue by motorists coming from the Province of Cavite has aggravated the wear and tear of the same thereby necessitate [*sic*] the constant repair and maintenance;

“WHEREAS, the status of Marcos Alvarez Avenue has long been accepted by the residents as well as transients as public road;

“NOW, THEREFORE:

“BE IT ORDAINED by the Sangguniang Panglungsod of Las Piñas, Metro Manila, in session assembled that:

SECTION 1. *The whole length of Marcos Alvarez Avenue from Congressman Felimon C. Aguilar Avenue (Alabang-Zapote Road) to the boundary of the Municipality of Bacoor, Province of Cavite, is hereby declared Public Road.*

SECTION 2. This Ordinance shall take effect upon its approval.

x x x⁸ (Italics supplied.)

Subsequently, SRA and Top Service filed a Petition for Declaratory Relief and Damages with a Prayer for Preliminary Injunction⁹ with Branch 253, Regional Trial Court (RTC), Las Piñas City against the City of Las Piñas, docketed as Civil Case No. LP-97-0190 seeking to annul City Ordinance No. 343-97.¹⁰

⁸ *Id.* at 24-25.

⁹ Records, Vol. I, pp. 1-13.

¹⁰ *Rollo* (G.R. No. 202384), p. 25.

The petition alleged the following: SRA is the present legal owner of the seven parcels of land (subject lots) which formed part of a private road network, collectively referred to as Marcos Alvarez Avenue which stretches from Alabang-Zapote Road to the boundary of Brgy. Molino, Bacoor, Cavite.¹¹

SRA acquired the subject lots from Top Service through a legal assignment. On the other hand, Top Service acquired the subject lots through a series of purchases from different private owners dating back to 1959. Of the seven parcels of land, SRA and Top Service were able to present three Transfer Certificates of Title (TCT) in the name of Top Service, particularly TCT No. S-34609,¹² TCT No. 413759,¹³ and TCT No. 2309184¹⁴ and deeds of absolute sale pertaining to the other lots.¹⁵

Since 1960, other landowners and developers whose properties would necessarily make access through Marcos Alvarez Avenue had secured from SRA and Top Service a right of way authority and paid due compensation therefor.¹⁶ This further supports their theory of ownership of Marcos Alvarez Road.

On September 10, 1997, the City of Las Piñas filed its Answer.¹⁷ It did not deny that the subject lots were private properties. However, it asserted that Marcos Alvarez Avenue was already government property, having been withdrawn from the commerce of man as an open space.¹⁸

In the meantime, the Royal South Subdivision makes use of Marcos Alvarez Avenue for ingress and egress.¹⁹ Thus, on September 29, 1997, Royal Asia Multi-Properties, Inc. (RAMPI) filed a Motion for Leave of Court to File Answer in Intervention²⁰ on the ground that it has legal interest in the upholding of the validity and constitutionality of City Ordinance No. 343-97 because SRA and Top Service had been

¹¹ *Id.*

¹² Records, Vol. I, p. 16.

¹³ *Id.* at 28.

¹⁴ *Id.* at 29-31.

¹⁵ *Rollo* (G.R. No. 202384), pp. 25-26.

¹⁶ *Id.* at 26.

¹⁷ Records, Vol. I, pp. 296-303.

¹⁸ *Rollo* (G.R. No. 202384), pp. 27, 70.

¹⁹ *Id.* at 69.

²⁰ Records, Vol. I, pp. 320-323.

unjustifiably demanding payment from them for the use of Marcos Alvarez Avenue.²¹ Specifically, RAMPI alleged that it was the owner and developer of the Royal South Subdivision Project located at *Sitio Mulawin*, Bo. Talon, Pamplona, Las Piñas which uses Marcos Alvarez Avenue. RAMPI further alleged that it was being accused by SRA and Top Service of violating their rights as it relied on City Ordinance No. 343-97 instead of paying for the use of Marcos Alvarez Avenue.²²

Although the RTC denied the motion in its Resolution dated October 6, 1997, it reconsidered and set it aside in another Resolution dated January 12, 1998.²³

Attached to the aforesaid motion was RAMPI's Answer in Intervention [with Motion to Dismiss and opposition to the Prayer for Preliminary Injunction].²⁴ RAMPI asserted that City Ordinance 343-97 was enacted pursuant to Presidential Decree No. (PD) 1216²⁵ which amended PD 957, otherwise known as *The Subdivision And Condominium Buyers' Protective Decree*. For RAMPI, under PD 1216, the open spaces and roads in residential subdivisions are beyond the commerce of men, having been automatically and directly identified for public use and vested in favor of the then Municipality of Las Piñas. It also cited the case of *White Plains Ass'n., Inc. v. Judge Legaspi*,²⁶ promulgated in 1991, to support its theory that, although the properties were registered in the name of other private entities, open spaces of residential subdivisions are, by operation of law, owned by the City of Las Piñas.²⁷

On October 17, 1997, the RTC issued a Resolution which granted SRA and Top Service's prayer for the issuance of a writ of preliminary injunction to enjoin the effectivity and implementation of City Ordinance No. 343-97.²⁸

²¹ *Rollo* (G.R. No. 202384), p. 27.

²² *Id.* at 13; see also *rollo* (G.R. No. 202397), p. 33.

²³ *Rollo* (G.R. No. 202384), p. 27.

²⁴ Records, Vol. I, pp. 324-325.

²⁵ Entitled, "Defining 'Open Space' In Residential Subdivisions and Amending Section 31 of Presidential Decree No. 957 Requiring Subdivision Owners to Provide Roads, Alleys, Sidewalks and Reserve Open Space for Parks or Recreational Use," approved on October 14, 1997.

²⁶ 271 Phil. 806 (1991).

²⁷ *Rollo* (G.R. No. 202384), p. 27.

²⁸ *Id.* at 28.

On July 24, 2000, SRA and Top Service filed a Motion for Substitution of Parties with Motion to Annotate *Lis Pendens*.²⁹ The RTC granted the motions in its Resolution dated October 5, 2000. Consequently, EPCIB substituted RAMPI as intervenor-defendant because all the rights and interests over the Royal South Subdivision had already been transferred, conveyed, and assigned by RAMPI to EPCIB. Likewise, the Register of Deeds of Las Piñas was directed to annotate a notice of *lis pendens* in all the titles of Royal South Subdivision project.³⁰

Subsequently, EPCIB filed its Answer on May 4, 2001.³¹

Meanwhile, the case proceeded to pre-trial, followed by trial on the merits.³²

The RTC Ruling

In a Decision³³ dated April 30, 2004, the RTC, *first*, declared City Ordinance No. 343-97 as invalid and unconstitutional for taking the property without just compensation;³⁴ and *second*, denied the claim of SRA and Top Service for damages against EPCIB for lack of merit.³⁵

SRA and Top Service filed a Motion for Partial Reconsideration³⁶ dated May 25, 2004. On the other hand, EPCIB filed a Notice of Appeal³⁷ dated May 27, 2004 and a Motion to Cancel Notice of *Lis Pendens*³⁸ dated March 23, 2005. SRA and Top Service filed their Comment/Opposition (Re: Motion to Cancel Notice of *Lis Pendens*)³⁹ dated April 29, 2005.

²⁹ Records, Vol. II, pp. 21-23.

³⁰ *Rollo* (G.R. No. 202384), p. 28.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 69-73; penned by Presiding Judge Jose F. Caoibes, Jr.

³⁴ *Id.* at 73.

³⁵ *Id.* at 29.

³⁶ Records, Vol. II, pp. 279-283.

³⁷ *Id.* at 285-286.

³⁸ *Id.* at 300-309.

³⁹ *Id.* at 312-315.

Thereafter, in its Consolidated Order⁴⁰ dated October 18, 2005, the RTC denied SRA and Top Service's and EPCIB's respective motions and directed the transmission of the entire records to the CA in view of EPCIB's Notice of Appeal.

EPCIB then filed its Partial Motion for Reconsideration [Re: Consolidated Order dated October 18, 2005].⁴¹ On the other hand, SRA and Top Service filed their Notice of Appeal⁴² dated November 10, 2005.

In another Order⁴³ dated January 10, 2006, the RTC: (a) denied EPCIB's Motion for Partial Reconsideration of the Consolidated Order dated October 18, 2005, (b) noted SRA and Top Service's Notice of Appeal, and (c) ordered the transmission of the records to the CA.⁴⁴

In its Appellant's Brief⁴⁵ filed before the CA on April 3, 2009 BDO, formerly EPCIB, maintained that the RTC erred in: (a) invalidating City Ordinance No. 343-97; and (b) denying BDO's motion to lift or cancel the notice of *lis pendens* on all certificates of title covering the affected Royal South Subdivision properties.⁴⁶

Meanwhile, the CA rendered a Resolution⁴⁷ dated April 28, 2009 dismissing SRA and Top Service's appeal as the CA deemed it abandoned for failure to file the appellant's brief within the reglementary period.⁴⁸ The Resolution became final and executory on May 20, 2009.⁴⁹

The CA Ruling

In the Decision⁵⁰ dated March 9, 2012, the CA in CA-G.R. CV No. 91117 found BDO's appeal to be partially meritorious.

⁴⁰ *Id.* at 316-317; penned by Acting Presiding Justice Elizabeth Yu-Guray.

⁴¹ *Id.* at 320-327.

⁴² *Id.* at 318-319.

⁴³ *Id.* at 330; penned by Acting Presiding Justice Elizabeth Yu-Guray.

⁴⁴ *Id.*

⁴⁵ CA *rollo*, pp. 47-62.

⁴⁶ *Id.* at 51; see also *rollo* (G.R. No. 202384), p. 29.

⁴⁷ *Id.* at 75.

⁴⁸ See Partial Entry of Judgment (For South Rich Acres, Inc. and Top Service, Inc., Only), *id.* at 100.

⁴⁹ *Id.*

⁵⁰ *Rollo* (G.R. No. 202384) pp. 23-39.

The CA affirmed the RTC's: (a) declaration that City Ordinance No. 343-97 is unconstitutional, and (b) finding that because the lots belonging to SRA and Top Service were neither expropriated nor donated in favor of the City of Las Piñas, City Ordinance No. 343-97 violated the rights of SRA and Top Service against confiscation of property without just compensation.⁵¹

The CA dismissed BDO's invocation of police power to maintain the constitutionality of City Ordinance No. 343-97. It ruled that the City of Las Piñas never raised in its Answer the allegation that the enactment of City Ordinance No. 343-97 was pursuant to the exercise of the local government unit's police power. It further explained that when there is a taking or confiscation of private property for public use, the State exercises not police power but some other inherent power, *i.e.*, eminent domain.⁵²

The CA then declined to pass upon BDO's insinuation that as a result of declaring City Ordinance No. 343-97 unconstitutional, an absurd situation will arise such that 1/3 portion of Marcos Alvarez Avenue is classified as privately-owned, while the rest is classified as public property. The records do not indicate that Marcos Alvarez Avenue only covered 1/3 of the properties of SRA and Top Service.⁵³

The CA also did not give credence to BDO's contention that the ownership of the lots was automatically vested in favor of the City of Las Piñas purportedly by virtue of the obligation of owners and developers of a subdivision under PD 1216 to provide adequate roads, alleys, and sidewalks; and that for subdivision projects comprising of one hectare or more, the owners and developers must reserve 30% of the gross area for open space which, upon completion, shall be donated to the city or municipality.⁵⁴ In dismissing BDO's contention, the CA relied on the subsequent 1998 Decision of the Court in *White Plains Homeowners Asso., Inc. v. CA*,⁵⁵ wherein the Court quoted the discussion of the CA therein of the relevant provisions of PD 957 and

⁵¹ *Id.* at 36.

⁵² *Id.* at 31-32.

⁵³ *Id.* at 34.

⁵⁴ *Id.*

⁵⁵ 358 Phil. 184 (1998).

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PD 1216 and ruled that a private owner cannot be compelled to transfer, or donate one's property to the government.⁵⁶

However, the CA found the annotation of notice of *lis pendens* on the titles of BDO's properties improper because only the particular properties subject of litigation, which in this case are the properties of SRA and Top Service, may be covered by a notice of *lis pendens*.⁵⁷

The dispositive portion of the CA Decision provides:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby partially GRANTED. Accordingly, the assailed Decision dated April 30, 2004 of Branch 253 of the Regional Trial Court of the National Capital Judicial Region in Las Piñas City, Metro Manila in Civil Case No. LP-97-0190 with respect to the declaration that City Ordinance No. 343-97 issued by the city of Las Piñas is invalid and unconstitutional is hereby AFFIRMED. However, this Court ORDERS the Register of Deeds of Las Piñas City to cancel the notices of *lis pendens* annotated on all of the transfer certificates of titles of the Royal South Subdivision project of the respondent-appellant Equitable PCI Bank, now Banco de Oro Unibank, Inc..

SO ORDERED.⁵⁸

BDO, and SRA and Top Service filed their separate Motions for Partial Reconsideration⁵⁹ of the CA Decision dated March 9, 2012. However, the CA denied the motions in its Resolution⁶⁰ dated June 20, 2012.

The Petitions

G.R. No. 202384

BDO maintains that the CA in CA-G.R. CV No. 91117 erred in finding City Ordinance No. 343-97 unconstitutional. BDO argues that City Ordinance No. 343-97 is a valid exercise of police power without the need to pay just compensation as it served the interest of the public

⁵⁶ *Rollo* (G.R. No. 202384), pp. 34-36.

⁵⁷ *Id.* at 36-38.

⁵⁸ *Id.* at 38.

⁵⁹ *Id.* at 97-102, 104-107.

⁶⁰ *Id.* at 41-42.

in general and was reasonably necessary for the accomplishment of its intended purpose.⁶¹

G.R. No. 202397

SRA and Top Service maintain that the CA correctly upheld the trial court's invalidation of City Ordinance No. 343-97 of the City of Las Piñas. SRA and Top Service argue that the City of Las Piñas did not appeal from the RTC Decision dated April 30, 2004 which declared City Ordinance No. 343-97 unconstitutional. Thus, as far as the City of Las Piñas is concerned, the RTC Decision dated April 30, 2004 is already final and executory. On the other hand, BDO did not even have the personality to question the RTC Decision dated April 30, 2004.⁶²

However, SRA and Top Service argue that the CA erred in finding the *lis pendens* pertaining to the case improper and in ordering the Register of Deeds of Las Piñas City to cancel the notices of *lis pendens* annotated on all the TCTs of BDO on the Royal South Subdivision project. For SRA and Top Service, the directive of the CA to cancel the *lis pendens* deviates from the purpose and objective of an annotation of *lis pendens* which is to protect the general public by giving notice about the pending controversy which necessarily affects real properties, and thus, save innocent persons from any involvement in any future litigation concerning the properties. Moreover, the RTC Resolution⁶³ dated October 5, 2000 which allowed the annotation of the notice of *lis pendens* had long become final and executory and could not be overturned in a regular appeal.⁶⁴

The parties then filed their respective comments to the petitions.⁶⁵

The Court's Ruling

The Court denies both petitions.

⁶¹ *Id.* at 15-16.

⁶² *Rollo* (G.R. No. 202397), pp. 29-31.

⁶³ Records, Vol. II, pp. 49-51; penned by Presiding Judge Jose P. Caoibes, Jr..

⁶⁴ *Rollo* (G.R. No. 202397), pp. 32-34.

⁶⁵ *Rollo* (G.R. No. 202384), pp. 118-125; *rollo* (G.R. No. 202397), pp. 62-68.

At the outset, the Court finds that the RTC Decision⁶⁶ dated April 30, 2004 which declared City Ordinance No. 343-97 unconstitutional has not yet attained finality. While the City of Las Piñas did not appeal the RTC Decision, RAMPI, who was BDO's predecessor-in-interest and the Royal South Subdivision's developer, successfully intervened in the trial court proceedings. Thereafter, BDO appealed the RTC Decision.⁶⁷ Suffice it to state that RAMPI and BDO had a legal interest in the validity and constitutionality of City Ordinance No. 343-97 considering that the Royal South Subdivision makes use of Marcos Alvarez Avenue for ingress and egress.

City Ordinance No. 343-97 is unconstitutional as it constitutes taking of the privately owned lots of SRA without just compensation.

The Court finds City Ordinance No. 343-97 as unconstitutional for being an invalid exercise of police power. A discussion on the distinctions between police power and eminent domain is proper.

Police power is defined as "the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare."⁶⁸ Thus, "[u]nder the police power of the State, 'property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government.'"⁶⁹ However, "[p]olice power does not involve the taking or confiscation of property, with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting peace and order and of promoting the general welfare; for instance, the confiscation of an illegally possessed article, such as opium and firearms."⁷⁰

On the other hand, eminent domain is defined as "the inherent power of the State to take or appropriate private property for public

⁶⁶ *Rollo* (G.R. No. 202384), pp. 69-73.

⁶⁷ *Id.*

⁶⁸ *Manila Memorial Park Inc., et al. v. Sec. of the Dep't. of Social Welfare and Dev't., et al.*, 722 Phil. 538, 575 (2013), citing *Gerochi v. Department of Energy (DOE)*, 554 Phil. 563, 579 (2007).

⁶⁹ *Id.*, citing *Social Justice Society (SJS), et al. v. Hon. Atienza, Jr.*, 568 Phil. 658, 703 (2008).

⁷⁰ *Office of the Solicitor General v. Ayala Land, Inc., et al.*, 616 Phil. 587, 613 (2009), citing *City Gov't. of Quezon City, et al. v. Hon. Judge Ericta, etc., et al.*, 207 Phil. 648, 654 (1983).

use.”⁷¹ It must be emphasized however that as provided under Section 9, Article III of the 1987 Constitution, “[p]rivate property should not be taken for public use without just compensation.” Thus, the exercise of eminent domain requires the payment of just compensation to the owner.⁷²

The Court explained in *Manila Memorial Park, Inc., et al. v. Secretary of the Department of Social Welfare and Dev't., et al.*⁷³ the distinctions between police power and eminent domain, as follows:

Traditional distinctions exist between police power and eminent domain.

In the exercise of police power, a property right is impaired by regulation, or the use of property is merely prohibited, regulated or restricted to promote public welfare. In such cases, there is no compensable taking, hence, payment of just compensation is not required. Examples of these regulations are property condemned for being noxious or intended for noxious purposes (e.g., a building on the verge of collapse to be demolished for public safety, or obscene materials to be destroyed in the interest of public morals) as well as zoning ordinances prohibiting the use of property for purposes injurious to the health, morals or safety of the community (e.g., dividing a city's territory into residential and industrial areas). It has, thus, been observed that, in the exercise of police power (as distinguished from eminent domain), although the regulation affects the right of ownership, none of the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public.

On the other hand, in the exercise of the power of eminent domain, property interests are appropriated and applied to some public purpose which necessitates the payment of just compensation therefor. Normally, the title to and possession of the property are transferred to the expropriating authority. Examples include the acquisition of lands for the construction of public highways as well as agricultural lands acquired by the government under the agrarian reform law for redistribution to qualified farmer beneficiaries. However, it is a settled rule that the acquisition of title or total destruction of the property is not essential for "taking" under the power of eminent domain to be present. Examples of these include

⁷¹ *Manila Memorial Park Inc., et al. v. Sec. of the Dep't. of Social Welfare and Dev't., et al.*, *supra* note 68 at 576, citing *Apo Fruits Corp., et al. v. Land Bank of the Phils.*, 647 Phil. 251, 269 (2010).

⁷² *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development, et al.*, 809 Phil. 315, 389 (2017).

⁷³ *Manila Memorial Park Inc., et al. v. Sec. of the Dep't. of Social Welfare and Dev't., et al.*, *supra* note 68.

establishment of easements such as where the land owner is perpetually deprived of his proprietary rights because of the hazards posed by electric transmission lines constructed above his property or the compelled interconnection of the telephone system between the government and a private company. In these cases, although the private property owner is not divested of ownership or possession, payment of just compensation is warranted because of the burden placed on the property for the use or benefit of the public.⁷⁴

Thus, in police power, while the regulation affects the right of ownership, none of the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public.⁷⁵ However, when there is already a taking or confiscation of private property for public use, the State is no longer exercising police power, but eminent domain for which just compensation must be paid.⁷⁶

It bears emphasis that as observed by the CA in CA-G.R. CV No. 91117, before the enactment of the city ordinance, SRA and Top Service retained ownership of the parcels of land. There is nothing in the records to show that the subject lots have been donated or conveyed to, or legally acquired by the City of Las Piñas. In fact, the City of Las Piñas did not contest SRA and Top Service's ownership of the parcels of land prior to the city ordinance's enactment.

Notably, BDO relies on the CA's pronouncement in its Decision⁷⁷ dated April 23, 2003 in *South Rich Acres, Inc. v. Royal Asia Multi-Properties*, docketed as CA-G.R. SP No. 53392 wherein the CA appeared to have made a finding of fact that Marcos Alvarez Avenue is being used by the public. BDO quoted the CA Decision dated April 23, 2003 as follows:

We find no cogent reason to disturb the findings of fact made by the Office of the President in this case. The Office of the President had, in fact, conducted an ocular inspection of the Marcos-Alvarez Avenue in order to determine the veracity of the fraudulent sale alleged by the petitioners.

⁷⁴ *Id.* at 576-577. Citations omitted.

⁷⁵ *Id.*, citing Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003), p. 421.

⁷⁶ See *Office of the Solicitor General v. Ayala Land, Inc., et al.*, *supra* note 70 at 613.

⁷⁷ Records, Vol. II, pp. 261-273; penned by Associate Justice Amelita G. Tolentino with Associate Justices Ruben T. Reyes and Renato C. Dacudao. concurring.

In its Decision, the Office of the President, stated the following findings, to wit:

“x x x Moreover we find the HLURB decision to be purely conjectural and cannot pass the substantiality of the evidence. Although the HLURB’s lack of jurisdiction would have sufficed to dispose of appellee’s opposition to the License to Sell, the dearth of concrete evidence of a fraudulent sale impels this Office to set aside the HLURB’s decision. For an ocular inspection will readily show that the Marcos-Alvarez Avenue is being used by the public. In fact, public utility vehicles, such as jeepneys, taxis, tricycles, etc., freely traverse the road. As a vital link between the City of Las Piñas and the Province of Cavite, the Marcos-Alvarez Avenue is being used not only by residents of both Cavite and Las Piñas but also by anybody wanting to pass the road. Therefore, this is the status quo. The City of Las Piñas has treated the same as a municipal public road use.”⁷⁸

The parties did not apprise the Court of the status or subsequent history of CA-G.R. SP No. 53392. However, suffice it to state that a perusal alone of the CA Decision dated April 23, 2003 in CA-G.R. SP No. 53392 shows nothing to indicate that the CA in CA-G.R. SP No. 53392 determined the City of Las Piñas to be the owner of the lots subject of this case.

CA-G.R. SP No. 53392 originated from RAMPI’s application with the *Sangguniang Bayan* of the then Municipality of Las Piñas for the issuance of a Location Clearance and Development Permit with respect to its Royal South Subdivision Project. SRA filed an opposition thereto, alleging that RAMPI was unlawfully using or intended to use its private road network, Marcos Alvarez Avenue. Subsequently, the *Sangguniang Bayan* of the then Municipality of Las Piñas granted RAMPI’s application. Thereafter, RAMPI filed an application for a License to Sell which was granted by the HLURB Arbiter despite SRA’s opposition. SRA elevated the matter to the HLURB Board of Commissioners which, on March 6, 1997, reversed the HLURB Arbiter’s decision, and ordered the suspension of RAMPI’s License to Sell. However, the Office of the President (OP), on appeal, ruled in favor of RAMPI. The OP ruled that the HLURB was bereft of

⁷⁸ *Id.* at 271.

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jurisdiction to resolve the issue on the ownership of lands, and thus, declared the HLURB Board of Commissioners Decision without force and effect.⁷⁹

Thus, SRA filed a petition for review with the CA. It must be emphasized that the CA in CA-G.R. SP No. 53392 resolved the issue of whether the absence of a grant of right of way in favor of RAMPI was a justifiable ground to suspend, deny and/or revoke RAMPI's Certificate of Registration and License to Sell.⁸⁰

In the petition, one of SRA's arguments is that since Marcos Alvarez Avenue is a private road and, in the absence of a right of way agreement, the lot buyers of RAMPI have no means of ingress and egress, and thus, the sale to lot buyers is tantamount to fraudulent sale as the lot-buyers will necessarily be prejudiced.⁸¹

However, the CA dismissed the petition. It particularly found SRA's above-stated argument as untenable. The CA did not give merit to SRA's contention that the absence of a right of way agreement could be concluded as a deliberate omission by RAMPI to defraud its subdivision lot buyers. Thus, the CA found no reason to disturb the findings of the OP which include the following: (1) there is no concrete evidence of a fraudulent sale being conducted by RAMPI; (2) an ocular inspection shows that Marcos Alvarez Avenue is being used by the public; and (3) that the City of Las Piñas has treated Marcos Alvarez Avenue for municipal public road use.⁸²

Evidently, the CA's pronouncement in CA-G.R. SP No. 53392 that Marcos Alvarez Avenue is being used by the public and that the City of Las Piñas has treated Marcos Alvarez Avenue for municipal public road use is not determinative of the issue of whether SRA ceased to own the lots where Marcos Alvarez Avenue is situated.

Equally important, the CA in CA-G.R. CV No. 91117 is correct in ruling that BDO cannot rely on PD 957, as amended by PD 1216, in arguing that the ownership of the subject lots was automatically

⁷⁹ *Id.* at 262-264.

⁸⁰ *Id.* at 265.

⁸¹ *Id.* at 270.

⁸² *Id.* at 271.

vested in favor of the City of Las Piñas. Section 31 of PD 957, as amended by PD 1216, provides:

SEC. 31. *Roads, Alleys, Sidewalks and Open Spaces.* — The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty percent (30%) of the gross area for open space. Such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:

- a. 9% of gross area for high density or social housing (66 to 100 family lot per gross hectare).
- b. 7% of gross area for medium-density or economic housing (21 to 65 family lot per gross hectare).
- c. 3.5 % of gross area low-density or open market housing (20 family lots and below per gross hectare).

These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.

Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds *shall be donated* by the owner or developer to the city or municipality and *it shall be mandatory for the local governments to accept*; provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes. (Italics supplied.)

The third paragraph of Section 31 provides that upon completion of the subdivision project, the owner or developer shall donate the roads, alleys, sidewalks and playgrounds to the city or municipality which shall accept the donation.⁸³

⁸³ *Rep. of the Phils. v Sps. Llamas*, 804 Phil. 264, 275 (2017).

However, in *Rep. of the Phils. v. Sps. Llamas*,⁸⁴ the Court explained that the compulsion on the part of the owner or developer to donate the roads, alleys, sidewalks and playgrounds in favor of the city or municipality as provided under Section 31 of PD 957, as amended by PD 1216, cannot be sustained as valid. The Court ruled that the more reasonable and logical position which maintains the harmony between laws is that which maintains the subdivision owner's or developer's freedom to donate or not to donate.

Thus, the Court sees no reason to disturb the findings of the CA in CA-G.R. CV No. 91117.

Given the foregoing, the Court finds that the declaration of the entirety of Marcos Alvarez Avenue as a public road despite the fact that the subject lots are owned by SRA is an act of unlawful taking of SRA's property. As correctly ruled by the CA in CA-G.R. CV No. 91117, the taking of SRA's property without just compensation amounts to confiscation which is beyond the ambit of police power. While BDO argues that the enactment of City Ordinance No. 343-97 is for the benefit of the public particularly the residents of Las Piñas and Cavite, the constitutional prohibition on the taking of private property for public use without just compensation prevents the City of Las Piñas from doing so.

In *Woodridge School, Inc. v. ARB Construction Co. Inc.*,⁸⁵ the Court adopted its ruling in *Abellana, Sr. v. Court of Appeals*⁸⁶ that "the road lots in a private subdivision are private property, hence, the local government should first acquire them by donation, purchase, or expropriation, if they are to be utilized as a public road."⁸⁷ Otherwise, they remain to be private properties of the owner-developer."⁸⁸ Further, the Court ruled that "the use of the subdivision roads by the general public does not strip it of its private character. The road is not converted into public property by mere tolerance of the subdivision owner of the public's passage through it."⁸⁹

⁸⁴ *Id.*

⁸⁵ 545 Phil. 83 (2007).

⁸⁶ 284 Phil. 449 (1992).

⁸⁷ *Woodridge School, Inc. v. ARB Construction Co. Inc.*, *supra* note 85 at 88, citing *Abellana, Sr. v. Court of Appeals*, *supra* note 86 at 454.

⁸⁸ *Id.*

⁸⁹ *Id.* at 89.

Here, considering that City Ordinance No. 343-97 in effect deprived SRA of its ownership over the subject lots without just compensation, the CA correctly upheld the RTC ruling that declared City Ordinance No. 343-97 unconstitutional.

The cancellation of the Notice of Lis Pendens on all the TCTs of the Royal South Subdivision Project of BDO is proper.

In *Rep. of the Phils. v. Ravelo, et al.*,⁹⁰ the Court explained that “[l]is pendens literally means 'a pending suit,' while a notice of *lis pendens*, inscribed in the certificate of title, is an announcement to the whole world that the covered property is in litigation, serving as a warning that one who acquires interest in the property does so at his own risk and subject to the results of the litigation.”⁹¹ A notice of *lis pendens* is “[f]ounded upon public policy and necessity”⁹² and “is intended to keep the properties in litigation within the power of the court until the litigation is terminated, and to prevent the defeat of the judgment or decree by subsequent alienation.”⁹³

The rules governing the notice of *lis pendens* are found in Section 14, Rule 13 of the Rules of Court, and Sections 76 and 77 of PD 1529, viz.:

SECTION 14. *Notice of lis pendens.* — In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing of such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

⁹⁰ 583 Phil. 199 (2008).

⁹¹ *Id.* at 214. Citations omitted.

⁹² *J. Casim Construction Supplies, Inc. v. Registrar of Deeds of Las Piñas*, 636 Phil. 725, 733 (2010).

⁹³ *Id.* Citations omitted.

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

X X X X

SECTION 76. *Notice of lis pendens.* — No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

SECTION 77. *Cancellation of lis pendens.* — Before final judgment, a notice of *lis pendens* may be cancelled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused registration thereof.

At any time after final judgment in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of *lis pendens* has been registered as provided in the preceding section, the notice of *lis pendens* shall be deemed canceled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.

A litigant may avail himself of the notice of *lis pendens* in any of the following cases: (a) an action to recover possession of real estate; (b) an action to quiet title thereto; (c) an action to remove clouds thereon; (d) an action for partition; and (e) any other proceedings of any kind in Court directly affecting the title to the land or the use or occupation thereof or the building thereon.⁹⁴

⁹⁴ *Hernudd v. Lofgren*, 560 Phil. 477, 487 (2007).


SRA's argument that the order of the RTC to annotate the notice of *lis pendens* on BDO's titles has attained finality, and thus, can no longer be cancelled, is erroneous. As expressly provided under Section 77 of PD 1529, before final judgment, the notice of *lis pendens* may be cancelled upon order of the court after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

On the other hand, after final judgment, the notice of *lis pendens* is rendered *functus officio*.⁹⁵ Thus, under Section 77 of PD 1529, in cases where there is already a final judgment, the notice of *lis pendens* may be cancelled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.


Here, before final judgment, the CA in CA-G.R. CV No. 91117 ordered the cancellation of the annotation of the notice of *lis pendens* on BDO's titles. The Court affirms the disposition of the CA. The Court finds that the annotation of the notice of *lis pendens* on BDO's titles is improper because the lots owned by BDO are not the properties subject of litigation in this case and the annotation of the notice of *lis pendens* on BDO's titles is not necessary to protect the rights of SRA. As correctly ruled by the CA in CA-G.R. CV No. 91117, the issue involved in this case is the constitutionality of City Ordinance No. 343-97 which declared Marcos Alvarez Avenue as a public road. Thus, the properties in litigation in this case are the subject lots where Marcos Alvarez Avenue is situated and not the lots in the Royal South Subdivision project which are owned by BDO.

WHEREFORE, the petitions in G.R. Nos. 202384 and 202397 are **DENIED**. The Decision dated March 9, 2012 and the Resolution dated June 20, 2012 of the Court of Appeals in CA-G.R. CV No. 91117 are **AFFIRMED**.

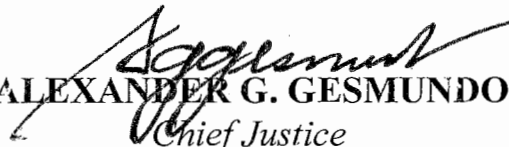
⁹⁵ See *J. Casim Construction Supplies, Inc. v. Registrar of Deeds of Las Piñas*, *supra* note 92 at 737.

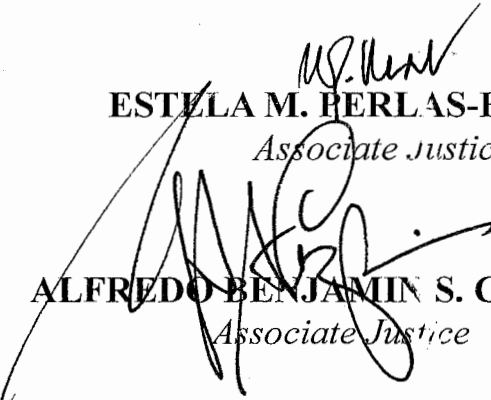


SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

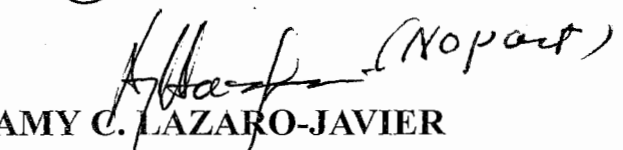

ESTELLA M. BERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

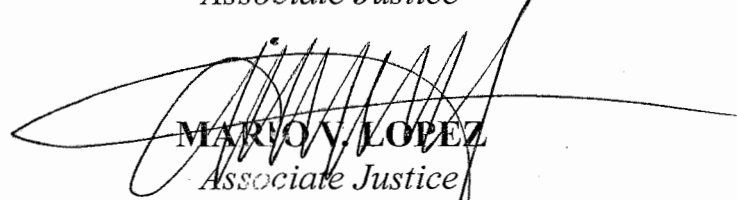

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice



ROSLARI D. CARANDANG
Associate Justice

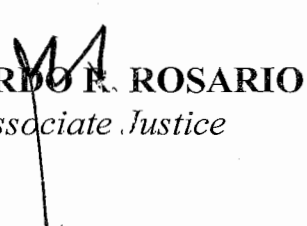

AMY C. LAZARO-JAVIER
Associate Justice (No part)


RODIL V. ZALAMEDA
Associate Justice


MARION V. LOPEZ
Associate Justice


EDGARDO L. DE LOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

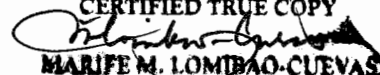

RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIFE M. LOMBAO-CUEVAS
Clerk of Court
Supreme Court