Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), Petitioner,	**G.R. No. 194190** Present: CARPIO, *Chairperson,* PERALTA, MENDOZA, LEONEN, and JARDELEZA, *JJ.*
-versus-	
SPOUSES FRANCISCO R. LLAMAS AND CARMELITA C. LLAMAS, Respondents.	**Promulgated:** 25 JAN 2017

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DECISION

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] praying that the assailed October 14, 2010 Decision[2] of the Fifth Division of the Court of Appeals in CA-G.R. SP No. 104178 be reversed and set aside, and that in lieu of it, the Orders dated October 8, 2007[3] and May 19, 2008[4] of Branch 257 of the Regional Trial Court of Parañaque City be reinstated.

The Regional Trial Court's October 8, 2007 Order required the Department of Public Works and Highways to pay respondents Francisco

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1 *Rollo*, pp. 35–132. The Petition was filed under Rule 45 of the Rules of Court.

2 Id. at 134–146. The Decision was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon of the Fifth Division, Court of Appeals, Manila.

3 Id. at 478–485. The Order was signed by Judge Rolando G. How.

4 Id. at 531–532. The Order was signed by Judge Rolando G. How.

and Carmelita Llamas (the Llamas Spouses) ₱12,000.00 per square meter as compensation for the expropriated 41-square-meter portion of a lot that they owned.[5] The same Order denied the Llamas Spouses' prayer that they be similarly compensated for two (2) expropriated road lots.[6] The Regional Trial Court's May 19, 2008 Order denied the Llamas Spouses' Motion for Reconsideration.[7]

In its assailed Decision, the Court of Appeals set aside the Regional Trial Court's October 8, 2007 and May 19, 2008 Orders and required the Department of Public Works and Highways to similarly compensate the Llamas Spouses for the two (2) road lots at ₱12,000.00 per square meter.[8]

On April 23, 1990, the Department of Public Works and Highways initiated an action for expropriation for the widening of Dr. A. Santos Ave. (also known as Sucat Road) in what was then the Municipality of Parañaque, Metro Manila.[9] This action was brought against 26 defendants, none of whom are respondents in this case.[10]

On November 2, 1993, the Commissioners appointed by the Regional Trial Court in the expropriation case submitted a resolution recommending that just compensation for the expropriated areas be set to ₱12,000.00 per square meter.[11]

On January 27, 1994, the Llamas Spouses filed before the Regional Trial Court a "Most Urgent and Respectful Motion for Leave to be Allowed Intervention as Defendants-Intervenors-Oppositors."[12] They claimed that they were excluded from the expropriation case despite having properties affected by the road widening project. After a hearing on this Motion, the Regional Trial Court allowed the Llamas Spouses to file their Answer-in-Intervention.[13]

The Llamas Spouses filed their Answer-in-Intervention on March 21, 1994.[14] In it, they claimed that a total area of 298 square meters was taken from them during the road widening project:

(1) 102 square meters from a parcel of land identified as Lot 4, Block 3, covered by Transfer Certificate of Title (TCT) No.

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5 Id. at 485.
6 Id.
7 Id. at 532.
8 Id. at 145–146.
9 Id. at 38–39. The expropriation case was docketed as Civil Case No. 90-1069.
10 Id.
11 Id. at 40.
12 Id.
13 Id. at 41.
14 Id. at 42.

217167;

(2) 84 square meters from a parcel of land identified as Lot 1, covered by TCT No. 179165; and

(3) 112 square meters from a parcel of land identified as Lot 2, also covered by TCT No. 179165.[15]

On August 2, 1994, the Llamas Spouses filed a "Most Urgent Motion for the Issuance of [a]n Order Directing the Immediate Payment of 40% of Zonal Value of Expropriated Land and Improvements."[16]

On December 9, 1994, the Department of Public Works and Highways filed its Comment/Opposition to the Llamas Spouses' August 2, 1994 Motion.[17] It noted that, from its verification with the project engineer, only 41 square meters in the parcel of land covered by TCT No. 179165 was affected by the road widening project. Thus, it emphasized that the Llamas Spouses were entitled to just compensation only to the extent of those 41 square meters. It added that the Llamas Spouses failed to adduce evidence of any improvements on the affected area. It interposed no objection to the ₱12,000.00 per square meter as valuation of just compensation.[18]

On May 29, 1996, the Regional Trial Court issued the Order[19] directing the payment of the value of the lots of the defendants in the expropriation case. The lots subject of the Llamas Spouses' intervention were not included in this Order.[20]

After years of not obtaining a favorable ruling, the Llamas Spouses filed a "Motion for Issuance of an Order to Pay and/or Writ of Execution dated May 14, 2002."[21] In this Motion, the Llamas Spouses faulted the Department of Public Works and Highways for what was supposedly its deliberate failure to comply with the Regional Trial Court's previous Orders and even with its own undertaking to facilitate the payment of just compensation to the Llamas Spouses.[22] In response, the Department of Public Works and Highways filed a Comment dated October 25, 2002.[23]

On November 28, 2002, the Department of Public Works and Highways and the Llamas Spouses filed a Joint Manifestation and Motion seeking to suspend the Llamas Spouses' pending Motions.[24] This Joint

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15 Id. at 42.
16 Id. at 43.
17 Id. at 44.
18 Id. at 45–46.
19 Id. at 573–575.
20 Id. at 46–47.
21 Id. at 55–56.
22 Id.
23 Id. at 56.
24 Id. at 78.

Motion stated that the Department of Public Works and Highways and the Llamas Spouses had an understanding that the resolution of the latter's claims required the submission of: (1) certified true copies of the TCTs covering the lots; and (2) certified true copies of the tax declarations, tax clearances, and tax receipts over the lots.[25] It added that the Llamas Spouses had undertaken to submit these documents as soon as possible.[26]

In an August 8, 2005 hearing, the Department of Public Works and Highways manifested that the non-payment of the Llamas Spouses' claims was due to their continued failure to comply with their undertaking.[27] On the same date, the Llamas Spouses filed a Manifestation seeking the payment of their claims.[28]

The Department of Public Works and Highways then filed a Comment/Opposition asserting that, from its inquiries with the City Assessor's Office and the Parañaque City Registry of Deeds, the documents the Llamas Spouses submitted "did not originate from the concerned offices."[29]

On October 8, 2007, the Regional Trial Court issued the Order[30] directing the payment to the Llamas Spouses of just compensation at ₱12,000.00 per square meter for 41 square meters for the lot covered by TCT No. 217267. It denied payment for areas covered by TCT No. 179165 and noted that these were subdivision road lots, which the Llamas Spouses "no longer owned"[31] and which "belong[ed] to the community for whom they were made."[32] In the Order dated May 19, 2008, the Regional Trial Court denied the Llamas Spouses' Motion for Reconsideration.[33]

The Llamas Spouses then filed before the Court of Appeals a Petition for Certiorari.

In its assailed October 14, 2010 Decision,[34] the Court of Appeals reversed and set aside the assailed Orders of the Regional Trial Court and ordered the Department of Public Works and Highways to pay the Llamas Spouses ₱12,000.00 per square meter as just compensation for a total of 237 square meters across three (3) lots, inclusive of the portions excluded by the Regional Trial Court.[35] The Court of Appeals added that the amount due to

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25 Id. at 77.
26 Id.
27 Id. at 78–79.
28 Id. at 79–80.
29 Id. at 80.
30 Id. at 478–485.
31 Id. at 483.
32 Id.
33 Id. at 531–532.
34 Id. at 134–146.
35 Id. at 145–146.

the Llamas Spouses was subject to 12% interest per annum from the time of the taking.[36]

The Court of Appeals reasoned that the disputed area (covered by TCT No. 179165) did not lose its private character, the easement of right of way over it notwithstanding.[37] Further, it anchored its ruling on interest liability on Rule 67, Section 10 of the 1997 Rules of Civil Procedure.[38]

For resolution is the issue of whether just compensation must be paid to respondents Francisco and Carmelita Llamas for the subdivision road lots covered by TCT No. 179165.

I

The Department of Public Works and Highways insists that the road lots are not compensable since they have "already been withdrawn from the commerce of man."[39] It relies chiefly on this Court's 1991 Decision in *White Plains Association, Inc. v. Legaspi*,[40] which pertained to "the widening of the Katipunan Road in the White Plains Subdivision in Quezon City."[41] More specifically, it capitalizes on the following statement in the 1991 *White Plains* Decision that shows a compulsion for subdivision owners to set aside open spaces for public use, such as roads, and for which they need not be compensated by government:

> Subdivision owners are mandated to set aside such open spaces before their proposed subdivision plans may be approved by the government authorities, and that such open spaces shall be devoted exclusively for the use of the general public and the subdivision owner need not be compensated for the same. A subdivision owner must comply with such requirement before the subdivision plan is approved and the authority to sell is issued.[42]

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36 Id. at 146.

37 Id. at 140.

38 RULES OF COURT, Rule 67, sec. 10 provides:
Section 10. Rights of Plaintiff After Judgment and Payment. — Upon payment by the plaintiff to the defendant of the compensation fixed by the judgment, with legal interest thereon from the taking of the possession of the property, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter upon the property expropriated and to appropriate it for the public use or purpose defined in the judgment, or to retain it should he have taken immediate possession thereof under the provisions of section 2 hereof. If the defendant and his counsel absent themselves from the court, or decline to receive the amount tendered, the same shall be ordered to be deposited in court and such deposit shall have the same effect as actual payment thereof to the defendant or the person ultimately adjudged entitled thereto.

39 *Rollo*, p. 94.

40 271 Phil. 806 (1991) [Per J. Gancayco, First Division].

41 Id. at 807.

42 Id. at 817.

Under this compulsion, the dispositive portion of the 1991 *White Plains* Decision proceeds to state:

> **WHEREFORE**, the petition is GRANTED. The questioned orders of respondent judge dated July 10, 1990 and September 26, 1990 are hereby reversed and set aside. *Respondent QCDFC is hereby directed to execute a deed of donation of the remaining undeveloped portion of Road Lot 1 consisting of about 18 meters wide in favor of the Quezon City government, otherwise, the Register of Deeds of Quezon City is hereby directed to cancel the registration of said Road Lot 1 in the name of respondent QCDFC under TCT No. 112637 and to issue a new title covering said property in the name of the Quezon City government.* Costs against respondent QCDFC.
>
> **SO ORDERED.**[43] (Emphasis supplied)

The Department of Public Works and Highways is in grave error.

Petitioner's reliance on the 1991 *White Plains* Decision is misplaced. The same 1991 Decision was not the end of litigation relating to the widening of Katipunan Road. The owner and developer of White Plains Subdivision, Quezon City Development and Financing Corporation (QCDFC), went on to file motions for reconsideration. The second of these motions was granted in this Court's July 27, 1994 Resolution.[44] This Resolution expressly discarded the compulsion underscored by the Department of Public Works and Highways, and the dispositive portion of the 1991 *White Plains* Decision was modified accordingly. As this Court recounted in its 1998 Decision in *White Plains Homeowners Association, Inc. v. Court of Appeals*:[45]

> [T]he dictum in G.R. No. 95522, White Plains Association, Inc. *vs.* Legaspi[,] that the developer can be compelled to execute a deed of donation of the undeveloped strip of Road Lot 1 and, in the event QCDFC refuses to donate the land, that the Register of Deeds of Quezon City may be ordered to cancel its old title and issue a new one in the name of the city was questioned by the respondent QCDFC as contrary to law. We agree with QCDFC that ***the final judgment in G.R. No. 95522 is not what appears in the published on February 7, 1991 decision in White Plains Association, Inc. vs. Legaspi***. [Rather, it] is the following resolution issued three (3) years later, on July 27, 1991 [sic], which states, *inter alia*:
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> > ". . . (T)he Court is constrained to grant the Instant Motion for Reconsideration but only insofar as the motion seeks to delete from the dispositive portion of the decision of 07 February 1991 the order of this Court requiring the execution of the deed of donation in question and directing

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43 Id. at 818–819.

44 *White Plains Association, Inc. v. Legaspi*, 358 Phil. 184, 190 (1998) [Per J. Martinez, Second Division].

45 358 Phil. 184 (1998) [Per J. Martinez, Second Division].

> the Register of Deeds of Quezon City, in the event that such deed is not executed, to cancel the title of QCDFC and to issue a new one in the name of the Quezon City government. It may well be that the public respondents would not be aversed [sic] to such modification of the Court's decision since they shall in effect have everything to gain and nothing to lose.
>
> WHEREFORE the second motion for reconsideration is hereby partly granted by MODIFYING the dispositive portion of this Court's decision of 07 February 1991 and to now read as follows:
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> > 'WHEREFORE the petition is GRANTED. The questioned orders of respondent judge dated July 10, 1990 and September 25 1990 are hereby reversed and set aside. . . . Costs against respondent QCDFC.
> >
> > SO ORDERED.'"[46] (Emphasis supplied)

The 1998 *White Plains* Decision unequivocally repudiated the 1991 *White Plains* Decision's allusion to a compulsion on subdivision developers to cede subdivision road lots to government, so much that it characterized such compulsion as an "illegal taking."[47] It did away with any preference for government's capacity to compel cession and, instead, emphasized the primacy of subdivision owners' and developers' freedom in retaining or disposing of spaces developed as roads. In making its characterization of an "illegal taking," this Court quoted with approval the statement of the Court of Appeals:

> Only after a subdivision owner has developed a road may it be donated to the local government, if it so desires. On the other hand, a subdivision owner may even opt to retain ownership of private subdivision roads, as in fact is the usual practice of exclusive residential subdivisions for example those in Makati City.[48]

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[46] Id. at 200–201.

[47] Id. at 201. N.b., From *Republic v. Ortigas*, G.R. No. 171496, March 3, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/march2014/171496.pdf> 9 [Per J. Leonen, Third Division]:

> 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.

[48] Id. at 202–203.

II

In insisting on a compulsion on subdivision owners and developers to cede open spaces to government, the Department of Public Works and Highways references Presidential Decree No. 957, as amended by Presidential Decree No. 1216, otherwise known as the Subdivision and Condominium Buyer's Protective Decree.

The first paragraph of Section 31 of Presidential Decree No. 957 spells out the minimum area requirement for roads and other open spaces in subdivision projects. Its second paragraph spells out taxonomic or classification parameters for areas reserved for parks, playgrounds, and for recreational use. It also requires the planting of trees. The last paragraph of Section 31 *requires*—note the use of the word "shall"—subdivision developers to donate to the city or municipality with territorial jurisdiction over the subdivision project all such roads, alleys, sidewalks, and open spaces. It also imposes upon cities and municipalities the concomitant *obligation* or compulsion to accept such donations:

> 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:
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> 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).
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> 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.
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> 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. (Emphasis supplied)

The last paragraph of Section 31 is oxymoronic. One cannot speak of a donation and compulsion in the same breath.

A donation is, by definition, "an act of liberality." Article 725 of the Civil Code provides:

> Article 725. Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.

To be considered a donation, an act of conveyance must necessarily proceed freely from the donor's own, unrestrained volition. A donation cannot be forced: it cannot arise from compulsion, be borne by a requirement, or otherwise be impelled by a mandate imposed upon the donor by forces that are external to him or her. Article 726 of the Civil Code reflects this commonsensical wisdom when it specifically states that conveyances made in view of a "demandable debt" cannot be considered true or valid donations.[49]

In jurisprudence, *animus donandi* (that is, the intent to do an act of liberality) is an indispensable element of a valid donation, along with the reduction of the donor's patrimony and the corresponding increase in the donee's patrimony.[50]

Section 31's compulsion to donate (and concomitant compulsion to accept) cannot be sustained as valid. Not only does it run afoul of basic legal concepts; it also fails to withstand the more elementary test of logic and common sense. As opposed to this, the position that not only is more reasonable and logical, but also maintains harmony between our laws, is that which maintains the subdivision owner's or developer's freedom to donate or not to donate. This is the position of the 1998 *White Plains* Decision. Moreover, as this 1998 Decision has emphasized, to force this donation—and to preclude any compensation—is to suffer an illegal taking.

III

The Court of Appeals correctly stated that a "positive act"[51] must first be made by the "owner-developer before the city or municipality can acquire dominion over the subdivision roads."[52] As there is no such thing as an automatic cession to government of subdivision road lots, an actual transfer must first be effected by the subdivision owner: "subdivision streets belonged to the owner until donated to the government or until expropriated

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49 CIVIL CODE, art. 726 provides:
Article 726. When a person gives to another a thing or right on account of the latter's merits or of the services rendered by him to the donor, provided they do not constitute a demandable debt, or when the gift imposes upon the donee a burden which is less than the value of the thing given, there is also a donation.

50 *Tayoto v. Heirs of Kusop*, 263 Phil. 269, 280 (1990) [Per C.J. Fernan, Third Division].

51 *Rollo*, p. 141.

52 Id.

upon payment of just compensation."[53] Stated otherwise, "the local government should first acquire them by donation, purchase, or expropriation, if they are to be utilized as a public road."[54]

This Court's 2014 Decision in *Republic v. Ortigas*[55] succinctly captures all that we have previously stated:

> 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. 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. He or she may even choose to retain said properties.[56]

The Department of Public Works and Highways makes no claim here that the road lots covered by TCT No. 179165 have actually been donated to the government or that their transfer has otherwise been consummated by respondents. It only theorizes that they have been automatically transferred. Neither has expropriation ever been fully effected. Precisely, we are resolving this expropriation controversy only now.

Respondents have not made any positive act enabling the City Government of Parañaque to acquire dominion over the disputed road lots. Therefore, they retain their private character (albeit all parties acknowledge them to be subject to an easement of right of way). Accordingly, just compensation must be paid to respondents as the government takes the road lots in the course of a road widening project.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed October 14, 2010 Decision of the Fifth Division of the Court of Appeals in CA-G.R. SP No. 104178 is **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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53 *Albon v. Fernando*, 526 Phil. 630, 637 (2006) [Per J. Corona, Second Division].

54 *Abellana, Sr. v. Court of Appeals*, 284 Phil. 449, 453 (1992) [Per J. Grino-Aquino, First Division]. *See also Woodridge School, Inc. v. ARB Construction Co., Inc.*, 545 Phil. 83, 88 (2007) [Per J. Corona, First Division].

55 G.R. No. 171496, March 3, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/march2014/171496.pdf> [Per J. Leonen, Third Division].

56 Id. at 10, *citing White Plains v. Court of Appeals*, 358 Phil. 184, 207 (1998) [Per J. Martinez, Second Division].

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice