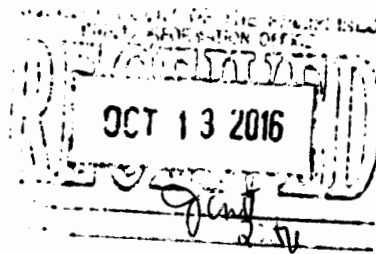




Republic of the Philippines  
**Supreme Court**  
**Manila**



**FIRST DIVISION**

**PERCY MALONESIO, in his  
 capacity as General Manager  
 of AIR TRANSPORTATION  
 OFFICE (ATO),**

Petitioner,

- versus -

**ARTURO M. JIZMUNDO,**  
 Respondent.

**G.R. No. 199239**

Present:

SERENO, *CJ.*,  
 Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PERLAS-BERNABE, and  
 CAGUIOA, *JJ.*

Promulgated:

**AUG 24 2016**

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**RESOLUTION**

**LEONARDO-DE CASTRO, J.:**

This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court seeks to set aside the Decision<sup>2</sup> dated November 30, 2010 and the Resolution<sup>3</sup> dated October 7, 2011 of the Court of Appeals in CA-G.R. CEB-SP. No. 02831.

On July 4, 2006, respondent Arturo M. Jizmundo (Jizmundo) filed an action for **Unlawful Detainer with Preliminary Injunction** against petitioner Percy Malonesio, in the latter's capacity as General Manager of the Air Transportation Office (ATO). The case was docketed as Civil Case No. 2735 in the Municipal Trial Court (MTC) of Kalibo, Aklan.

The property subject of the case is a parcel of land designated as Lot 4857-B of the Kalibo Cadastre situated in Barangay Pook, Kalibo, Aklan and covered by Transfer Certificate of Title (TCT) No. T-18445.

<sup>1</sup> *Rollo*, pp. 19-51.

<sup>2</sup> Id. at 53-65; penned by Associate Justice Pampio A. Abarintos with Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez concurring.

<sup>3</sup> Id. at 66-68; penned by Associate Justice Pampio A. Abarintos with Associate Justices Myra V. Garcia-Fernandez and Ramon Paul L. Hernando concurring.

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In a **Decision<sup>4</sup>** dated **September 11, 2006**, the MTC made the following findings of fact:

[T]here is no question that the subject property is registered and declared for taxation purposes in the name of the heirs of the late Bartola Marquez, one of whom is [Jizmundo] in his capacity as one of the grandchildren of the said deceased. It is shown that since 1985 up to the present, defendant Air Transportation Office has been, and is still occupying and utilizing the land as airport parking area without any formal agreement or payment of rentals to [Jizmundo] or any of his co-heirs. [Jizmundo] and his co-owners appear to have tolerated [the ATO's] long occupation of the lot in question because of its promise to them that they will be paid the reasonable value of their land. Taking this fact into account, it appears that when [the ATO] occupied [Jizmundo's] subject property sometime in 1985, [Jizmundo] was already aware that the [ATO] intended to acquire not only the physical possession of the land but also the legal right to possess and ultimately to own the subject property, shown by its promise to pay the just compensation therefor. Disconsolately, said promise was not made good by the [ATO].

[Jizmundo], for himself and in behalf of his other co-owners, now seeks to eject the [ATO] from the land, alleging that the [ATO] has become a deforciant illegally withholding from [Jizmundo] the possession thereof when it refused to vacate the premises after [Jizmundo's] last demand (Annex "C"), which it received on June 5, 2006 (Annex "D"). [Jizmundo] filed the instant case on July 4, 2006, very well within one year from the date he made the last demand to vacate.<sup>5</sup>

The ATO belatedly filed its answer to the complaint, raising special and affirmative defenses such as the failure to implead the Republic of the Philippines as an indispensable party and the doctrine of estoppel by laches. Jizmundo, thereafter, filed a Motion to Render Judgment, which the MTC granted in its Order dated August 23, 2006.

In the above-quoted Decision dated September 11, 2006, the MTC, however, dismissed Jizmundo's complaint. The MTC ruled that the named defendant was Malonesio, who was sued in his capacity as the General Manager of the ATO. As such, any claim against him or the ATO is in reality a claim against the Republic of the Philippines as it is the public in general who has a direct interest over the subject matter of this case. Thus, the Republic of the Philippines is an indispensable party and Jizmundo's failure to implead it as a party defendant in the complaint gave the MTC no authority to validly and effectively grant the reliefs prayed for.

Jizmundo appealed the MTC ruling to the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 4, which appeal was docketed as Civil Case No. 7925. Jizmundo argued that the failure to implead an indispensable party is not a ground for the dismissal of the complaint. In such a case, it is the duty

<sup>4</sup> Id. at 69-71; penned by Acting Presiding Judge Eva Vita V. Ta-ay Tejada.

<sup>5</sup> Id. at 70.

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of the MTC to stop the trial and order the inclusion of the indispensable party. Jizmundo also averred that the ATO is not immune from suit as it is performing proprietary functions.

In a **Decision<sup>6</sup> dated April 17, 2007**, the RTC affirmed the judgment of the MTC. The trial court brushed aside the argument of Jizmundo on non-joinder of parties, ruling that the same was inapplicable under the Rule on Summary Procedure given that there is a limited period of time for such proceedings. The RTC also ruled that the ATO is immune from suit as it is an instrumentality of the Republic of the Philippines.

Jizmundo sought the reversal of the above RTC ruling in a Petition for Review under Rule 42 of the Rules of Court filed before the Court of Appeals. The petition was docketed as CA-G.R. CEB-SP. No. 02831.

While the petition was pending before the appellate court, the Civil Aviation Authority Act of 2008<sup>7</sup> was passed on March 4, 2008. In accordance therewith, the ATO was abolished and all its powers were transferred to the Civil Aviation Authority of the Philippines (CAAP).

On November 30, 2010, the Court of Appeals rendered its assailed decision, which decreed:

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The Decision dated 17 April 2007 of the Regional Trial Court, Branch 4, Kalibo, Aklan in Civil Case No. 7925, affirming *in toto* the Decision dated 11 September 2006 of the Municipal Trial Court of Kalibo, Aklan in Civil Case No. 2735 for Unlawful Detainer With Preliminary Injunction, is hereby **REVERSED** and **SET ASIDE**.

The respondent is ordered to restore to petitioner possession of the property.

No pronouncement as to costs.<sup>8</sup>

The appellate court cited the ruling of the Court in *Civil Aeronautics Administration v. Court of Appeals*,<sup>9</sup> which declared that “as the CAA was created to undertake the management of airport operations which primarily involve proprietary functions, it cannot avail of the immunity from suit accorded to government agencies performing strictly governmental functions.” Being the successor-in-interest of the CAA, thus inheriting its functions, the Court of Appeals ruled that the ATO was also not immune from suit. Thus, there was no reason to hold that the Republic of the Philippines was an indispensable party in the case at bar.

<sup>6</sup> Id. at 73-75; penned by Judge Narciso M. Aguilar.

<sup>7</sup> Republic Act No. 9497.

<sup>8</sup> Id. at 64-65.

<sup>9</sup> 249 Phil. 27, 35 (1988).

The Court of Appeals further ruled that if possession is by tolerance, such possession becomes illegal upon demand to vacate should the possessor refuse to comply with such demand. When Jizmundo made a demand on the ATO to vacate the subject property, the forbearance ceased and the occupancy of ATO became unlawful. Jizmundo's act of filing the ejectment suit was, thus, a proper remedy against the ATO. The Court of Appeals also denied for being uncorroborated the claim of Jizmundo of ₱20,000.00 per month as rental or reasonable compensation for the use and occupation of the subject property.

Malonesio filed a motion for reconsideration but the same was denied in the assailed Resolution dated October 7, 2011.

Malonesio, thus, filed this **petition for review on certiorari**, arguing that the Court of Appeals erred: (1) in ordering the ATO to surrender possession of the subject property that is presently used for the operation of the Kalibo, Aklan Domestic and International Airport; and (2) in reversing the dismissal of the case, which dismissal was grounded on the fact that the Republic of the Philippines was not impleaded as an indispensable party.

Malonesio insists that the ATO (now CAAP) is an institution without a personality that is separate and distinct from the government such that any action against the ATO must be brought against the government and not the ATO alone. Thus, the action should have been brought against the real party-in-interest – the Republic of the Philippines. Malonesio posits that the joinder of indispensable parties is mandatory and a complaint may be dismissed if an indispensable party is not impleaded in the complaint.

Malonesio further avers that the Court of Appeals judgment of ordering the restoration of the possession of the subject property to Jizmundo is contrary to public policy and existing jurisprudence as the property is where the ATO's (now CAAP) existing facilities and structures are located. Said facilities and structures are vital to the country's civil aviation and airport operation as they are used by the public for international and domestic travel, which is a public purpose.

Lastly, Jizmundo was arguably estopped from questioning the CAAP's occupation and possession over the subject property since for more than 20 years, Jizmundo neither bothered to question the said possession nor did he raise his objections when the ATO constructed clearly visible permanent improvements.

In his comment to the petition, Jizmundo pointed out that the courts *a quo* found that the ATO's possession of the subject property was by mere tolerance and had never been adverse. Jizmundo claims that Malonesio failed to present any evidence to prove that Jizmundo was guilty of laches. Jizmundo also argues that he cannot be deprived of his property for the sake

of public convenience. He insists that in *Air Transportation Office v. Ramos*,<sup>10</sup> the Court ruled that the ATO could be sued without the State's consent.

Finally, Jizmundo pleads that the continued occupation of the subject property by the ATO without the payment of rental or just compensation despite the income derived therefrom is unjustly causing grave and irreparable damage to the lawful owners of the subject property. Thus, it is necessary that the Court of Appeals' order to restore the possession of the subject property be immediately executed.

The Court grants the petition.

Firstly, the Court agrees with Jizmundo that the ATO may not claim immunity from suit such that there would be a need to implead the Republic of the Philippines as the real party-in-interest. Indeed, in *Air Transportation Office v. Ramos*,<sup>11</sup> the Court definitively ruled on this issue in this wise:

In our view, the [Court of Appeals] thereby correctly appreciated the juridical character of the ATO as an agency of the Government *not performing a purely governmental or sovereign function*, but was instead involved in the management and maintenance of the Loakan Airport, an activity that was not the exclusive prerogative of the State in its sovereign capacity. **Hence, the ATO had no claim to the State's immunity from suit.** x x x. (Emphasis supplied.)

Moreover, the Court also held in the above case that the issue of whether the ATO could be sued without the State's consent had been rendered moot by the passage of the Civil Aviation Authority Act of 2008,<sup>12</sup> which abolished the ATO and transferred all its powers, duties and rights to the CAAP. Under Section 23(a) of Republic Act No. 9497,<sup>13</sup> one of the corporate powers vested in the CAAP was the power to sue and be sued.

In *Deutsche Gesellschaft Für Technische Zusammenarbeit v. Court of Appeals*,<sup>14</sup> we declared that:

State immunity from suit may be waived by general or special law. The special law can take the form of the original charter of the incorporated government agency. Jurisprudence is replete with examples of incorporated government agencies which were ruled not entitled to invoke immunity from suit, owing to provisions in their charters manifesting their consent to be sued. These include the National Irrigation Administration, the former Central Bank, and the National Power

<sup>10</sup> 659 Phil. 104, 115-116 (2011).

<sup>11</sup> Id. at 114.

<sup>12</sup> Republic Act No. 9497.

<sup>13</sup> Section 23 of Republic Act No. 9497 pertinently reads:

SECTION 23. Corporate Powers. — The Authority, acting through the Board, shall have the following corporate powers:

(a) To succeed in its corporate name, to sue and be sued in such corporate name, and to adopt, use and alter its corporate seal, which shall be judicially noticed[.]

<sup>14</sup> 603 Phil. 150, 167 (2009).

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Corporation. In *SSS v. Court of Appeals*, the Court through Justice Melencio-Herrera explained that by virtue of an express provision in its charter allowing it to sue and be sued, the Social Security System did not enjoy immunity from suit x x x. (Citations omitted.)

Therefore, by virtue of the express provision of Section 23(a) of Republic Act No. 9497, the CAAP also does not enjoy immunity from suit.

Secondly, we cannot uphold Malonesio's contention that Jizmundo and his co-heirs may no longer question the ATO's ownership or possession of the subject property on the ground of laches or estoppel. Time and again, we have held that the owner of registered land does not lose his rights over the property on the ground of laches as long as the opposing claimant's possession was merely tolerated by the owner. In *Ocampo v. Heirs of Bernardino Dionisio*, we explained:

Equally untenable is the petitioners' claim that the respondents' right to recover the possession of the subject property is already barred by laches. As owners of the subject property, the respondents have the right to recover the possession thereof from any person illegally occupying their property. This right is imprescriptible. Assuming *arguendo* that the petitioners indeed have been occupying the subject property for a considerable length of time, the respondents, as lawful owners, have the right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all.

Jurisprudence consistently holds that "prescription and laches can not apply to registered land covered by the Torrens system" because "under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession."<sup>15</sup>

We find no reason to disturb the MTC's factual finding, which was affirmed by the Court of Appeals, that the ATO's possession of the subject property was, and continues to be, by mere tolerance of the heirs of the registered owner.

Be that as it may, we find that, contrary to the ruling of the Court of Appeals, Jizmundo no longer has the right to recover the possession of the subject property, through an action for ejectment, given that the same is now devoted to public use as it forms part of the Kalibo, Aklan Domestic and International Airport. Instead, Jizmundo and his co-heirs, as lawful owners, have the right to be compensated for the value thereof.

To recall, the courts *a quo* found that since 1985, the ATO occupied and possessed the subject property as an airport parking area without any formal agreement or the payment of rentals to Jizmundo or his co-heirs. Jizmundo and his co-heirs tolerated the ATO's possession in view of the latter's promise that the heirs would be paid the value of their property.

<sup>15</sup> G.R. No. 191101, October 1, 2014, 737 SCRA 381, 394.

However, said promise was not fulfilled. Demands were made for the ATO to vacate the subject property, but the same went unheeded. After Jizmundo's final demand for the ATO to vacate the subject property in June 2006, he filed the case for unlawful detainer.

Clearly, the ATO occupied and possessed the subject property from 1985 up to present without first undertaking the process of expropriating the same or entering into a similar agreement with its rightful owners.

In the very case relied upon by petitioner, *Forfom Development Corporation v. Philippine National Railways*,<sup>16</sup> the Court cited cases that involved the taking of private property without the benefit of expropriation proceedings, the conversion thereof to public use, the failure of the landowner to question the taking after such conversion, and the remedy of the landowner in such a situation. Thus –

In *Manila Railroad Co. v. Paredes*, the first case in this jurisdiction in which there was an attempt to compel a public service corporation, endowed with the power of eminent domain, to vacate the property it had occupied without first acquiring title thereto by amicable purchase or expropriation proceedings, we said:

x x x whether the railroad company has the capacity to acquire the land in dispute by virtue of its delegated power of eminent domain, and, if so, whether the company occupied the land with the express or implied consent or acquiescence of the owner. **If these questions of fact be decided in the affirmative, it is uniformly held that an action of ejectment or trespass or injunction will not lie against the railroad company, but only an action for damages, that is, recovery of the value of the land taken, and the consequential damages, if any.** The primary reason for thus denying to the owner the remedies usually afforded to him against usurpers is the irremedial injury which would result to the railroad company and to the public in general. **It will readily be seen that the interruption of the transportation service at any point on the right of way impedes the entire service of the company and causes loss and inconvenience to all passengers and shippers using the line. Under these circumstances, public policy, if not public necessity, demands that the owner of the land be denied the ordinarily remedies of ejectment and injunction** x x x. There is also something akin to equitable estoppel in the conduct of one who stands idly by and watches the construction of the railroad without protest. x x x But the real strength of the rule lies in the fact that it is against public policy to permit a property owner, under such circumstances, to interfere with the service rendered to the public by the railroad company. x x x (I)f a landowner, knowing that a railroad company has entered upon his land and is engaged in constructing its road without having

<sup>16</sup> 594 Phil. 10, 28-30 (2008).

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complied with a statute requiring either payment by agreement or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejection for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages.

Further, in *De Ynchausti v. Manila Electric Railroad & Light Co.*, we ruled:

The owner of land, who stands by, without objection, and sees a public railroad constructed over it, can not, after the road is completed, or large expenditures have been made thereon upon the faith of his apparent acquiescence, reclaim the land, or enjoin its use by the railroad company. In such a case *there can only remain to the owner a right of compensation.*

X X X X

One who permits a railroad company to occupy and use his land and construct its roads thereon without remonstrance or complaint, cannot afterwards reclaim it free from the servitude he has permitted to be imposed upon it. His acquiescence in the company's taking possession and constructing its works under circumstances which made imperative his resistance, if he ever intended to set up illegality, will be considered a waiver. But while this presumed waiver is a bar to his action to dispossess the company, he is not deprived of his action for damages for the value of the land, or for injuries done him by the construction or operation of the road.

X X X X

We conclude that x x x the complaint in this action praying for possession and for damages for the alleged unlawful detention of the land in question, should be dismissed x x x but that such dismissal x x x should be without prejudice to the right of the plaintiff to institute the appropriate proceedings to recover the value of the lands actually taken, or to compel the railroad corporation to take the necessary steps to secure the condemnation of the land and to pay the amount of the compensation and damages assessed in the condemnation proceedings.

In *Ansaldo v. Tantuico, Jr.*, a case involving the takeover by the Government of two private lots to be used for the widening of a road without the benefit of an action for expropriation or agreement with its owners, we held that the owners therein, having been silent for more than two decades, were deemed to have consented to such taking — although they knew that there had been no expropriation case commenced — and therefore had no reason to impugn the existence of the power to expropriate or the public purpose for which that power had been exercised. **In said case, we directed the expropriator to forthwith institute the**

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**appropriate expropriation action over the land, so that just compensation due the owners may be determined in accordance with the Rules of Court.** (Citations omitted; emphasis supplied.)

In the instant case, it had been more or less thirty-one (31) years since the ATO occupied and possessed the subject property without first expropriating the same. Jizmundo and his co-heirs were well aware of this fact for, as the courts *a quo* found, it is the nonpayment of the value of the subject property that caused them to file ejectment proceedings.

As things now stand, the property still forms part of the Kalibo, Aklan Domestic and International Airport. In the instant petition, Malonesio states that:

It bears stressing that the property sought to be restored to Jizmundo is exactly where the ATO's (now CAAP) existing facilities and structures are presently located. These facilities and structures are vital to the country's civil aviation and airport operation as they are used by the public for international and domestic travel and transportation, undoubtedly a public purpose.

As the country's premier agency in charge of implementing policies on civil aviation, air safety and promotion of air travel in the Philippines and abroad, [the] ATO has the right to remain in peaceful possession over the property, not only by reason of public policy, but by public necessity as well.<sup>17</sup>

Under the circumstances, an action for ejectment would not be proper. Verily, it is not farfetched to presume that the grant of the unlawful detainer case against the CAAP and the transfer of the possession of the subject property in favor of Jizmundo would result in the interruption of the services provided by the CAAP and would lead to the inconvenience of the passengers and personnel that makes use of the said airport.

In accordance with *Forfom*, the recovery of possession of Jizmundo can no longer be allowed so as not to hamper the said airport's services to the public. The remedy left to Jizmundo and his co-heirs is the right to be compensated the reasonable value of the subject property, which the CAAP admittedly still uses for what it deems to be a vital public purpose. The CAAP must now institute the required action for expropriation over the subject property for the proper determination of the just compensation due to the owners thereof.<sup>18</sup>


<sup>17</sup> *Rollo*, p. 28.

<sup>18</sup> See also *Eusebio v. Luis*, 618 Phil. 586 (2009).


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**WHEREFORE**, the Decision dated November 30, 2010 and the Resolution dated October 7, 2011 of the Court of Appeals in CA-G.R. CEB-SP. No. 02831 are hereby **SET ASIDE**. The Civil Aviation Authority of the Philippines is **DIRECTED** to institute the appropriate expropriation action over the property subject of this case within fifteen (15) days from finality of this Decision, in order that the just compensation due to its proper owners may be determined. No costs.


**SO ORDERED.**

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson


  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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