

THIRD DIVISION

G.R. No. 203386 – Metropolitan Manila Development Authority,
Petitioner, v. Diamond Motor Corporation, Respondent.

Promulgated:

October 11, 2023

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SEPARATE CONCURRING AND DISSENTING OPINION

SINGH, J.:

I express concurrence with the *ponencia*'s ultimate disposition to deny the Petition for Review on *Certiorari* (**Petition**) considering the surrounding circumstances in the present case. However, I respectfully express my reservation with the finding that the “[p]etitioner was not given the power of eminent domain for the purpose of implementing flood control measures within Metro Manila.”


A finding that the Metro Manila Development Authority (MMDA) has no power to expropriate makes it toothless in fulfilling its mandate over flood control in Metro Manila

At the outset, I concur that the Petition must be denied, though not for all the reasons set out in the *ponencia*. I agree that the demolition intended by the MMDA is an exercise of expropriation, for which the MMDA did not undertake the proper procedures for its execution. That is, providing just compensation, and proving the necessity of the expropriation.

To recall, the MMDA was created under Republic Act (R.A.) No. 7924,¹ Section 2 of which provides that:

SECTION 2. *Creation of the Metropolitan Manila Development Authority.* — The affairs of Metropolitan Manila shall be administered by the Metropolitan Manila Development Authority, hereinafter referred to as the MMDA, to replace the Metro Manila Authority (MMA) organized under Executive Order No. 392 series of 1990.

¹ Entitled “AN ACT CREATING THE METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDING THEREFOR AND FOR OTHER PURPOSES,” approved on March 1, 1995.



The MMDA shall perform planning, monitoring and coordinative functions, and in the process exercise regulatory and supervisory authority over the delivery of metro-wide services within Metro Manila without diminution of the autonomy of the local government units concerning purely local matters. (Emphasis supplied)

Under Section 3 of the same law, the scope of the MMDA services include “[f]lood control and sewerage management which include the formulation and *implementation of policies, standards, programs and projects for an integrated flood control, drainage and sewerage system.*”²

Further, under Section 5, the following are the Functions and Powers of the MMDA:

SECTION 5. *Functions and Powers of the Metropolitan Manila Development Authority.* — The MMDA shall:

(a) Formulate, coordinate and regulate the implementation of medium and long-term plans and programs for the delivery of metro-wide services, land use and physical development within Metropolitan Manila, consistent with national development objectives and priorities;

(b) Prepare, coordinate and regulate the implementation of medium-term programs for metro-wide services which shall indicate sources and uses of funds for priority programs and projects, and which shall include the packaging of projects and presentation to funding institutions;

(c) Undertake and manage on its own metro-wide programs and projects for the delivery of specific services under its jurisdiction, subject to the approval of the Council. For this purpose, MMDA can create appropriate project management offices;

(d) Coordinate and monitor the implementation of such plans, programs and projects in Metro Manila; identify bottlenecks and adopt solutions to problems of implementation;

....

(g) Perform other related functions required to achieve the objectives of the MMDA, including the undertaking of delivery of basic services to the local government units, when deemed necessary subject to prior coordination with and consent of the local government unit concerned.³ (Emphasis supplied)

² R.A. No. 7924, Sec. 3. *Scope of MMDA Services.* – Metro-wide services under the jurisdiction of the MMDA are those services which have no metro-wide impact and transcend local political boundaries or entail huge expenditures such that it would not be viable for said services to be provided by the individual local government units (LGUs) comprising Metro Manila. These services shall include:

....
(d) Flood control and sewerage management which include the formulation and implementation of policies, standards, programs and projects for an integrated flood control, drainage and sewerage system.
....

³ R.A. No. 7924, sec. 5.

The *ponencia* focuses on the lack of an express provision providing the MMDA the power to expropriate under R.A. No. 7924. However, I point to the scope of the MMDA services clearly providing flood control responsibilities, and the assigned functions allowing the MMDA to undertake and manage its own metro-wide program. Taken together with Section 17 of the Implementing Rules and Regulations of R.A. No. 7924, which provides that “the [Department of Public Works and Highways (DPWH)] and [Metropolitan Waterworks and Sewerage System] will effect the gradual turn-over to the Authority of the planning, construction, and operation and maintenance of flood control and drainage facilities, as well as water supply and sewerage system, as may be mutually agreed upon by the parties concerned,”⁴ I submit that there is sufficient basis to hold that the MMDA has limited expropriation powers, if only to fulfill its mandate of providing metro-wide services, specifically in the area of flood control.

As provided in *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*⁵ (**Manila Bay**), on July 9, 2002, a Memorandum of Agreement was entered into between the DPWH and MMDA, whereby MMDA was made the agency primarily responsible for flood control in Metro Manila. For the rest of the country, the DPWH shall remain as the implementing agency for flood control services. The mandate of the MMDA and the DPWH on flood control and drainage services shall include the removal of structures, constructions, and encroachments built along rivers, waterways, and *esteros* (drainages) in violation of R.A. No. 7279,⁶ Presidential Decree No. 1067,⁷ and other pertinent laws.⁸

The *ponencia* states that:

First. The Court’s directive to petitioner in Manila Bay to “dismantle and remove all structures, constructions, and other encroachments established or built in violation of RA No. 7279, and other applicable laws along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and esteros in Metro Manila”, was not intended to be a *carte blanche* authority to impose any and all easements or burdens outside of the existing and future obstructions and encroachments built along waterways that have contributed to the worsening condition of the Manila Bay. The subject matter of the case was confined to a specific problem, albeit its far-reaching implications.

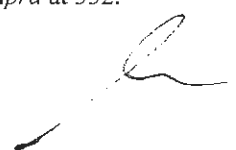
⁴ Implementing Rules and Regulations of R.A. No. 7924, sec. 17.

⁵ 595 Phil. 305 (2008).

⁶ Entitled “AN ACT TO PROVIDE FOR A COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES,” approved on March 24, 1992.

⁷ Entitled “A DECREE INSTITUTING A WATER CODE, THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIATION, UTILIZATION, EXPLOITATION, DEVELOPMENT, CONSERVATION AND PROTECTION OF WATER RESOURCES,” signed on December 31, 1976.

⁸ *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, *supra* at 332.



Second. The basis for the Court's directive to petitioner proceeds from its own charter, RA No. 7279, the Water Code, RA No. 9003, and the 2002 Memorandum of Agreement it had entered with the Department of Public Works and Highways, all of which qualify and identify it as the "lead agency and implementor of programs and projects for flood control projects and drainage services" as well as for sanitation and landfill concerns within Metro Manila. The Court did not expand the wording of the foregoing laws, it merely tasked the MMDA to faithfully execute their provisions to alleviate the worsening pollution and environmental conditions of the Manila Bay.

I respectfully disagree with the *ponencia's* holding that the Court's directive therein was "confined to a specific problem" because at its core, the *Manila Bay* case was about the obligations and mandate of government bodies, and their duty to perform them. The dispositive portion in the *Manila Bay* case is clear:

(8) *The MMDA, as the lead agency and implementor of programs and projects for flood control projects and drainage services in Metro Manila, in coordination with the DPWH, DILG, affected LGUs, PNP Maritime Group, Housing and Urban Development Coordinating Council (HUDCC), and other agencies, shall dismantle and remove all structures, constructions, and other encroachments established or built in violation of RA 7279, **and other applicable laws** along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and esteros in Metro Manila.*⁹ (Emphasis and underscoring supplied)

As such, considering that it is now the MMDA that has the responsibility of undertaking flood control measures in Metro Manila, it must be read into the transfer of responsibilities, the simultaneous transfer of power of the DPWH to expropriate, albeit in a limited capacity.

I submit that a narrow reading of the mandate of the MMDA will cause insufficient services over the recurring threat of flooding. It is a matter of judicial notice that the worsening floods that the country experiences have cost not only the loss of billions of pesos in properties as well as services, but also the lives of many citizens. Thus, the Court cannot ignore the practical and deleterious consequences that a blanket pronouncement like this can have to the public at large.

The 10-meter easement is reasonable considering the area required for flood control operations

⁹ *Id.* at 350-351.

On the matter of reasonableness of the ten (10)-meter easement sought to be imposed by the MMDA, I respectfully submit that the testimony of Engr. Enrico C. Capistrano (**Engr. Capistrano**), District Operation Engineer of the Second East Metro Manila Flood Control Operation, should have been given more weight.

Engr. Capistrano testified that:

[The] MMDA took into consideration in the proposed maintenance road the flood control requirements in the area, methodology used for maintenance operations, as well as *the mobility aspect of the machineries and equipment to be used* for maintenance and cleaning operations of the San Juan River and the accessibility by cleaning and maintenance personnel. *These machineries and equipment would include cranes, backhoes and barges, trucks and others. If the paved road, gutter and sidewalk would be less than 10 meters, the machineries and equipment could not pass through and the cleaning and maintenance operations would be seriously hampered.* Flood situation in the area will not be contained and the danger and economic disadvantages of flooding sought to be remedied will remain.¹⁰ (Emphasis supplied)

Given the size of the equipment needed for dredging, cleaning operations, and the like, a ten (10)-meter easement is far more reasonable than a three (3)-meter easement, as specifically provided in the Water Code.¹¹ In any event, the Water Code itself, under Article 55, allows for a wider legal easement as necessary for flood control measures.

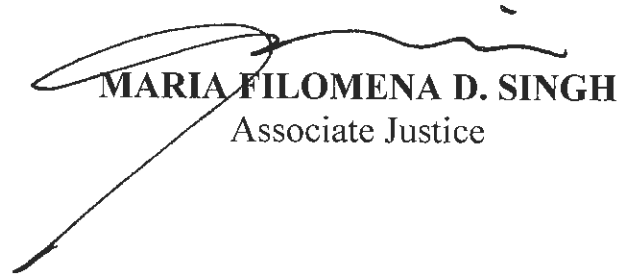
With that said, I nevertheless concur with the *ponencia's* finding that the MMDA was unable to prove the necessity of its intended taking considering it failed to prove that the maintenance road must be constructed on Diamond Motor Corporation's property and not on the other side of the riverbank.

Considering the foregoing, while I submit my reservation regarding the blanket declaration that the MMDA possesses no power to expropriate, I concur with the ultimate disposition in the case to deny the Petition given the particular circumstances described in the *ponencia*.

¹⁰ *Rollo*, p. 302.

¹¹ Entitled "A DECREE INSTITUTING A WATER CODE, THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIATION, UTILIZATION, EXPLOITATION, DEVELOPMENT, CONSERVATION AND PROTECTION OF WATER RESOURCES," signed on December 31, 1976.





MARIA FILOMENA D. SINGH
Associate Justice