NATIONAL POWER CORPORATION, PLAINTIFF-APPELLANT, VS. HEIRS OF FROILAN MONTAÑO, DEFENDANTS-APPELLEES.

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HERNANDO, J:

Before Us is an appeal[1] from the Decision[2] dated October 21, 2011 rendered by the Regional Trial Court (RTC), Branch 36 of Carigara, Leyte in Sp. Civil Action No. 10, a case for Eminent Domain. The dispositive portion of the assailed Decision states:

> WHEREFORE, judgment is hereby rendered ORDERING the plaintiff to pay unto the defendants the amount of Php393,250.00 as just compensation for Lots 890 and 897 both owned by the defendant which are both located in Brgy. Rizal (now Tagak), Carigara, Leyte. Plaintiff is also ORDERED to pay the defendant 6% per annum of interest rate, to be computed from 1997, which is the date of the filing of this case until fully paid. Plaintiff is further ORDERED to pay the Chairperson of the Board of Commissioners the sum of Seven Thousand Pesos (Php7,000.00) and the sum of Five Thousand Pesos (Php5,000.00) for each of the two members.
>
> SO ORDERED.[3]

The Antecedents:

Culled from the records are the following undisputed facts:

Plaintiff-appellant National Power Corporation (NPC) is a government-owned and controlled corporation created and existing by virtue of Republic Act No. 6395, as amended, for the purpose of undertaking the development of hydroelectric generation power throughout the Philippines. To carry out said purpose, NPC is authorized to exercise the power of eminent domain.

Pursuant to said power, NPC thus lodged a Complaint[4] for Eminent Domain before the Regional Trial Court (RTC), Branch 36 of Carigara, Leyte against defendants-appellees Heirs of Froilan Montaño, represented by Gil A. Montaño (now deceased), the registered/declared owners of two parcels of land, namely, Lot No. 890 and Lot No. 897. The Complaint sought the expropriation of 1,044 square-meter portion, out of the 1,499 square-meter area of Lot No. 890 and 1,329 square-meter portion of Lot No. 897, which entire area measures 2,076 square meters, to be used as easement of right of way for NPC's proposed Leyte-Luzon Interconnection Project which is authorized by law to be undertaken by it.

NPC deposited[5] the amount of Php2,110.62 with the Philippine National Bank, Tacloban Branch, representing the assessed value of the area affected as appearing in the Tax Declarations Nos. 11038-00160 and 11038-00160, subject to the order and final disposition of the trial court.

On March 4, 1997, NPC filed an Urgent Ex-parte Motion for Issuance of Writ of Possession.[6]

After summons was served[7], defendants subsequently filed their Answer[8] where they moved for the dismissal of the Complaint on the ground, among others, that the intended installation of high-transmission lines on the subject properties posed a serious health hazard and other injurious biological effects on the people living within

the area. They also argued that although NPC only claims an easement of right-of-way without loss of title or possession of the subject properties, they should be paid the just compensation for the entire properties.[9]

The case was then referred[10] for mediation in the Philippine Mediation Center but this was returned to the trial court after the parties failed to agree on terms beneficial to both of them. Thereafter, preliminary conference and pre-trial ensued.

Meanwhile, NPC filed a Motion for Issuance of Order of Expropriation[11] on February 27, 2007 which was later granted by the trial court in an Order[12] dated July 2, 2008. In that same Order, the trial court ordered the parties to submit at least three names of nominees who would constitute the Board of Commissioners which would determine thereafter the fair and just compensation of the subject properties.

On November 6, 2008, the trial court appointed[13] the Board of Commissioners consisting of: (1) Branch Clerk of Court of RTC, Branch 36 of Carigara, Leyte, as the Chairperson; and (2) Jose Joel C. Villarojo of the Visayas Transmission Project, National Transmission Corporation, Nasipit, Talamban, Cebu City; as well as (3) Municipal Assessor of Carigara, Leyte, as members. Thereafter, the three court-appointed Commissioners took their Oath of Office[14].

On October 15, 2010, the Commissioners conducted an ocular inspection on the subject properties with the presence of counsels of both parties and the representative of the defendants. Subsequently, they issued a Commissioner's Report[15] where they incorporated their findings and recommendations, to wit:

> x x x x x x x x x
>
> Description and other particulars of Property
>
> Under the tax declarations attached to the complaint, the two lots are classified as irrigated rice land and first class. With respect to Lot No. 890, its market value is Php3,747.50; while with respect to Lot No. 897, its market value is Php5,190.00, both tax declarations in the year 1994.
>
> Ocular Inspection
>
> x x x x x x x x x
>
> The result of the ocular inspection confirmed the following facts:
>
> 1. that defendant's land is classified as agricultural land, owing to the fact that during the ocular inspection the same was planted with rice;
>
> 2. that the location of the subject property is less than 200 meters from the national highway;
>
> 3. that defendants actually possesses of the subject land, they having a tenant to oversee and enjoy the fruits thereof;
>
> 4. that the subject land is irrigated rice land; and
>
> 5. that the tenants harvests rice twice in a year;
>
> x x x x x x x x x
>
> Conclusion
>
> After weighing the factors above-mentioned, the Board therefore proposes that the just compensation due to the plaintiff on the affected area be computed based on the zonal value of the Bureau of Internal Revenue of Brgy. Rizal (now Brgy. Tagak) Carigara, Leyte, which is pegged at 110.00 per square meters and is computed as follows:

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LOT NO.

WHOLE AREA

AREA AFFECTED x 110.00/square meters

PROPOSED JUST COMPENSATION

890

1,499 Square meters

1,044 x P110.00/ Square meters

P114,840.00

897

2,076 Square meters

1,329 x P110.00/ Square meters

P146,190.00

TOTAL

AMOUNT OF

JUST COMPENSATION

P261,030.00

This proposed value is more than the assessed value of the subject properties which is merely summed up at P3,180.00. The Board would not propose the same amount to be paid to the defendants, as the same value is merely for taxation purposes.

The Board likewise proposes that plaintiffs be ordered to pay the defendants legal interest from the time of the taking up to the time the full amount is paid by the plaintiff to the defendant.

On April 6, 2011, NPC opposed the Commissioner's Report[16] on the ground that it failed to establish that the recommended just compensation corresponds with the fair market value of the subject properties at the time of taking. It further argued that although the Board found the subject properties to be irrigated riceland, the latter based the valuation on the zonal valuation of the BIR for residential lots.[17]

On October 21, 2011, the trial court rendered the assailed Decision. It adopted the recommendation of the Board of Commissioners with respect to the proposed value of the subject lots but modified it and ordered NPC to pay not only the affected portion but the entire value of Lot Nos. 890 and 897. In so ruling, the trial court opined that:

> The Court is convinced that the BIR valuation of Php110.00 per square meters is acceptable and just. Going through the bone of contention, plaintiff asserts that the just compensation be paid on the affected area only of the two parcels of land passed through by the installed transmission lines of plaintiff. For the defendant, they demand for the payment of just compensation for the whole area of the two parcels of land. The Court is also aware through the Commissioner's Report that the subject rice lands are actually utilized by the defendant, harvesting palay thereon twice in a year. Simply put, the utility and use of the property by the defendant was not totally affected or rendered useless by the installation of the transmission lines within the estates. While defendant is still actually enjoying the use of the properties subject matter of the case, the Court is of view that when they demanded for the payment of just compensation for the whole area of the two parcels of land, there

> must be a corresponding voluntary waiver on the defendant's part of the title and possession of the two parcels of land unto the plaintiff. With respect to the difference between the affected area and the remaining unaffected area, the same is only minimal and negligible that is deemed by the Court to be proper that the two parcels of land be condemned and paid for by the plaintiff.[18]

Hence, this appeal by the Office of the Solicitor General (OSG) as counsel for plaintiff-appellant NPC based on the following issues:

Issues[19]:

> I.
>
> WHETHER OR NOT THE JUST COMPENSATION OF THE SUBJECT PROPERTIES SHOULD BE BASED ON THE ZONAL VALUATION OF AN IRRIGATED RICE LAND AS APPEARING IN THE ZONAL VALUATION OF THE BIR;
>
> II.
>
> WHETHER OR NOT APPELLANT SHOULD PAY THE JUST COMPENSATION OF THE AFFECTED AREAS ONLY OF THE SUBJECT PROPERTIES.

Court's Ruling:

The petition is partly meritorious.

The main issue to be resolved in the present case is the amount of just compensation that should be received by defendants-appellees for their properties.

It has been well-established that in expropriation proceedings, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss.[20] The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.[21] The constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.[22]

NPC assails the trial court's adoption of the Commissioner's Report with respect to the recommended amount of just compensation over the subject lots and argues that the proposed valuation of Php110.00 per square meter had no basis. It points out that the subject lots were indisputably classified as irrigated rice land and that the actual use of the property should be considered in determining the just compensation. As such, based on the BIR zonal valuation presented by the Board as basis in arriving at the proposed value of the subject lots, the just compensation thereof should be the amount of Php12.00 per square meter and not the recommended Php110.00 per square meter as the same pertains to a residential land.

Appellees counter that the subject properties are not only considered first class irrigated rice lands but also part of the zonal classification for regular residential areas. In fact, the subject properties are beside the national highway.

Appellant's point is well-taken.

It is noteworthy that the court-appointed Commissioners actually performed their tasks assigned to them by conducting an ocular inspection on the affected subject parcels of land and that from their inspection, they found that the subject lots were classified as agricultural land as these were planted with rice; that the same were

irrigated rice land; that the location thereof was less than 200 meters from the national highway; that the appellees actually possessed the same; and that the tenants employed by appellees harvested rice from those lots twice a year. On the basis of these findings, the Commissioners concluded and proposed that the just compensation of the subject properties be computed based on the zonal value as determined by the Bureau of Internal Revenue (BIR) on the barangay where the subject lots were situated, which is pegged at Php110.00 per square meter. In support of their Report, the Commissioners appended the BIR zonal valuation which was taken from the internet.

Regrettably, after a careful examination of said Commissioner's Report, We find and so hold that it falls short and is insufficient to be made as mere basis for the determination of just compensation.

It has been the consistent ruling of the Supreme Court that just compensation cannot be arrived at arbitrarily. Several factors must be considered, such as, but not limited to, acquisition cost, current market value of like properties, tax value of the condemned property, its size, shape, and location.[23] But before these factors can be considered and given weight, the same must be supported by documentary evidence.[24]

Here, other than the BIR zonal valuation, the Board failed to proffer any other piece of documentary evidence purportedly to prove that the other factors that they had considered were actually based on a reliable and actual data.

In National Power Corporation v. Diato-Bernal[25], the High Court emphasized that the "just"-ness of the compensation could only be attained by using reliable and actual data as bases for fixing the value of the condemned property.[26] The reliable and actual data referred to in that case were the sworn declarations of realtors in the area, as well as tax declarations and zonal valuation from the BIR.[27] In disregarding the Committee Report assailed by the National Power Corporation in the said case, the Supreme Court ruled:

> It is evident that the above conclusions are highly speculative and devoid of any actual and reliable basis. First, the market values of the subject property’s neighboring lots were mere estimates and unsupported by any corroborative documents, such as sworn declarations of realtors in the area concerned, tax declarations or zonal valuation from the Bureau of Internal Revenue for the contiguous residential dwellings and commercial establishments. The report also failed to elaborate on how and by how much the community centers and convenience facilities enhanced the value of respondent’s property. Finally, the market sales data and price listings alluded to in the report were not even appended thereto.
>
> As correctly invoked by NAPOCOR, a commissioners’ report of land prices which is not based on any documentary evidence is manifestly hearsay and should be disregarded by the court.
>
> The trial court adopted the flawed findings of the commissioners hook, line, and sinker. It did not even bother to require the submission of the alleged "market sales data" and "price listings." Further, the RTC overlooked the fact that the recommended just compensation was gauged as of September 10, 1999 or more than two years after the complaint was filed on January 8, 1997. It is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint. Clearly, the recommended just compensation in the commissioners’ report is unacceptable.

Furthermore, the proposed amount of Php110.00 per square meter taken from the BIR zonal valuation appears to be unreliable and must be rejected for the following reasons:

Firstly, it bears stressing that the zonal valuation of the BIR does not, or, not at all times represent the full fair market value of the property. Hence, it would be highly doubtful if said valuation actually refers to the full and fair equivalent value of the subject properties.

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Secondly, this Court takes judicial notice of Department Order (D.O) No. 47-96 dated February 5, 1996[28], the same BIR zonal valuation which was made the basis of the Commissioners in their Report. In said D.O., the definition of terms as well as the Code and Classification were properly spelled out. The Code "RR" meant Residential Regular while "A1" referred as Irrigated Riceland. As correctly pointed out by appellant, the amount pegged at Php110.00 per square meter actually refers to "RR", Residential Regular and the A1 or the Irrigated Riceland was pegged at Php12.00.

This notwithstanding, this Court however cannot grant for want of sufficient basis appellant's prayer that the just compensation should be in the amount of Php12.00 per square meter. Under pain of being repetitious, the BIR zonal valuation does not, or, not at all times represent the full and fair market value of the property. At most, the appellant's proposed amount could only serve as one of the factors in the judicial evaluation of just compensation, along with several other considerations.

Under Section 8[29], Rule 67 of the Rules of Court, the trial court may accept or reject, whether in whole or in part, the Commissioner's Report which is merely advisory and recommendatory in character.[30] It may also recommit the report or set aside the same and appoint new commissioners.[31]

In the present case, the trial court opted to adopt the Report submitted by the Commissioners insofar as the just compensation is concerned notwithstanding that it was flawed and insufficient as already discussed above. The trial court neither considered nor required the submission of additional evidence to support the recommended Php110.00 per square meter as just compensation. Hence, We cannot sustain the ruling of the trial court with respect to the matter of just compensation.

Anent the second issue, appellant asserts that the payment should be limited only to the area affected. It argues that the measure for determining just compensation is the loss of the owner due to the expropriation of his property and that the term "loss" should be limited to the portion actually affected by the expropriation considering that the remaining area, as in this case, could still be properly used.

This argument fails to persuade Us.

In so ruling, We are guided by prevailing jurisprudence where the High Court ruled that high-tension electric current passing through the transmission lines will perpetually deprive the property owners of the normal use of their land and that it is only just and proper to require Napocor to recompense them for the full market value of their property.[32]

Also, in National Power Corporation v. Manubay Agro-Industrial Development Corporation[33], a case involving an easement of a right-of-way over a parcel of land that would be traversed by high-powered transmission lines, the Supreme Court held that the nature and effect of the installation of power lines and the limitations on the use of the land for an indefinite period should be considered, as the owners of the properties would be deprived of the normal use of their properties.[34]

Moreover, in National Power Corporation v. Aguirre-Paderanga[35], the High Court said:

> It cannot be gainsaid that NPC's complaint merely involves a simple case of mere passage of transmission lines over Dilao, et al.'s property. Aside from the actual damage done to the property traversed by the transmission lines, the agricultural and economic activity normally undertaken on the entire property is unquestionably restricted and perpetually hampered as the environment is made dangerous to the occupant's life and limb.

Even if the issue in those cases is not squarely similar to the present case as the former principally involves the issue of whether or not only an easement fee of 10% of the market value of the expropriated properties should be paid to the affected owners, which the Supreme Court answered in the negative, We nonetheless take notice of

those cases and make them Our reference insofar as the adverse effects and damages that these transmission lines can do not only to the property but also to the people therein. It is for this reason that We agree with the trial court's findings on the matter, thus:

> x x x Going through the bone of contention, plaintiff asserts that the just compensation be paid on the affected area only of the two parcels of land passed through by the installed transmission lines of plaintiff. For the defendant, they demand for the payment of just compensation for the whole area of the two parcels of land. The Court is also aware through the Commissioner's Report that the subject rice lands are actually utilized by the defendant, harvesting palay thereon twice in a year. Simply put, the utility and use of the property by the defendant was not totally affected or rendered useless by the installation of the transmission lines within the estates. While defendant is still actually enjoying the use of the properties subject matter of the case, the Court is of view that when they demanded for the payment of just compensation for the whole area of the two parcels of land, there must be a corresponding voluntary waiver on the defendant's part of the title and possession of the two parcels of land unto the plaintiff. With respect to the difference between the affected area and the remaining unaffected area, the same is only minimal and negligible that is deemed by the Court to be proper that the two parcels of land be condemned and paid for by the plaintiff.[36]

Finally, it must be emphasized too that the settled rule is that just compensation should be computed based on the fair value of the subject property at the time of its taking or the filing of the complaint, whichever comes first.[37]

WHEREFORE, in view of all the foregoing, the instant appeal is PARTIALLY GRANTED insofar only as the determination of the just compensation is concerned. Accordingly, this case is hereby REMANDED to the Regional Trial Court, Branch 36 of Carigara, Leyte for the proper determination of just compensation in conformity with this Decision. In all other respects, the Decision of the trial court appealed from is hereby AFFIRMED.

SO ORDERED.

Lopez,[*] and Azcarraga-Jacob, JJ., concur.

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[*] Acting Senior Member in lieu of Justice Ma. Luisa Quijano-Padilla per Office Order No. 08-14-GTI dated April 28, 2014.

[1] Per Notice of Appeal; Record, pp. 355.

[2] Penned by Presiding Judge Lauro A.P. Castillo, Jr; Record, pp. 328-345.

[3] Ibid, p. 345.

[4] Record, pp. 1-6.

[5] Per Certification issued by the Philippine National Bank dated February 14, 1997; Record, p. 11.

[6] Record, pp. 30-32.

[7] Per Return of Summons dated December 6, 2004; Record, p. 43.

[8] Record, pp. 54-58.

[9] Based on Statements of Facts and Relevant Proceedings; Brief for Plaintiff-Appellant, Rollo, p. 26.

[10] Per Order dated November 16, 2005; Record, p. 123.

[11] Record, pp. 229-231.

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[12] Record, pp. 247-249.

[13] Per Order dated November 6, 2008; Record, pp. 259.

[14] Record, pp. 261, 263 and 270.

[15] Record, pp. 295-297.

[16] Per Comment to Commissioner's Report dated March 25, 2011; Record, pp. 310-315.

[17] Based on Brief for Plaintiff-Appellant; Rollo, p. 29.

[18] Record, Decision, p. 345.

[19] Rollo, Brief for Plaintiff-Appellant p. 30.

[20] Republic v. Rural Bank of Kabacan, Inc., et. al., G.R. No. 185124, January 25, 2012.

[21] Ibid.

[22] Ibid.

[23] National Power Corporation v. Spouses Rodolfo Zabala and Lilia Baylon, G.R. No. 173520, January 30, 2013.

[24] Ibid.

[25] G.R. No. 180979, 15 December 2010 cited in Republic v. Rural Bank of Kabacan, Inc., et. al., G.R. No. 185124, January 25, 2012.

[26] Republic v. Rural Bank of Kabacan, Inc., et. al., G.R. No. 185124, January 25, 2012.

[27] Ibid.

[28] Subject: "Implementation of the Initial Zonal Value of Real Properties in the Municipalities of Carigara, Naval and Palo, Leyte Under Revenue District Office No. 88 (Tacloban City), Revenue Region No. 14 (Tacloban City) for Internal Revenue Tax Purposes".

[29] Sec. 8. Action upon commissioners' report. - Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after all the interested parties have filed their objections to the report or their statement of agreement therewith, the court may, after hearing, accept the report and render judgment in accordance therewith; or, for cause shown, it may recommit the same to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.

[30] National Power Corporation v. Spouses Zabala and Baylon, G.R. No. 173520, January 30, 2013.

[31] Ibid.

[32] Ibid.

[33] G.R. No. 150936, August 18, 2004 cited in Republic v. Spouses Libunao and Sanopo, et. al., G.R. No. 166553, July 30, 2009.

[34] Ibid.

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[35] Cited in Republic v. Spouses Libunao and Sanopo, et. al., G.R. No. 166553, July 30, 2009.

[36] Record, Decision, p. 345.

[37] National Power Corporation v. Spouses Zabala and Baylon, G.R. No. 173520, January 30, 2013.

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