

ENGR. YUSOPH DIANALAN, PLAINTIFF-APPELLEE, VS. NATIONAL POWER CORPORATION, DEFENDANT-APPELLANT.

Ponente: BORJA, J.

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BORJA, J.:

For the Court's consideration are two cases consolidated before it, namely:

1. CA G.R. SP 04205-MIN. This is a Petition for Certiorari filed by the National Power Corporation (NPC or Napocor) under Rule 65 of the Rules of Court seeking to set aside the following issuances of the Regional Trial Court (RTC), Branch 9, Lanao del Sur, in Civil Case No. 1729-99, entitled "Engr. Yusoph M. Dianalan vs. National Power Corporation:"

(i)

The Order dated April 13, 2011 granting Yusoph Dianalan's Motion for Issuance of Writ of Execution dated March 28, 2011;[1]

(ii)

The Writ of Execution dated April 13, 2011 which ordered the levy of goods and chattels of Napocor and/ or any person or corporation taking charge of Napocor's properties and assets including, but not limited to, the Power Sector Assets and Liabilities Management (PSALM) Corporation;[2]

(iii)

The Sheriff's Demand Letter upon Napocor for payment of the total amount of P93,403,635.96;[3] and

(iv)

The Notice of Garnishment dated April 14, 2011 and other issuances in the implementation of the assailed writ of execution.[4]

2. CA G.R. No. CV 02531. This is an appeal by Napocor under Rules 41 and 44 of the Rules of Court from the following Orders of the said RTC in Civil Case No. 1729-99:

(i) the Order dated March 24, 2011 adopting in toto the Commissioners' Report on the determination of just compensation, ordered Napocor to pay Yusoph Dianalan the amount of P2,500.00 per square meter or a total of P66,657,450.00, representing the value of the 26,462.98-square meter property of Dianalan taken by Napocor plus 6% legal interest; [5] and

(ii) the Order dated April 12, 2011 which denied Napocor's motion for reconsideration.[6]

The Facts of the Case

The subject of these cases are two parcels of land described respectively as –

(a)

A parcel of land situated at Barrio Rorogagus, Marawi City, covered by Original Certificate of Title (OCT) No. P-276 issued on December 24, 1975 by the Registry of Deeds of Lanao del Sur to the late Hadji Amer Dianalan. Sometime on April 16, 1997, Hadji Amer Dianalan executed a deed of donation giving the said parcel of land to Engr. Yusoph Dianalan. The land contains a total area of 28,333 square meters. Of this, a 553.02-square-meter portion had been previously sold by Hadji Amer Dianalan to Napocor on July 18, 1988 at P10.00 per square meter. Of the same property, a 5,400-square-meter portion property was the subject of litigation under Civil Case No. 343-90 before the RTC of Lanao del Sur. Thus, the area actually donated to Yusoph Dianalan is 22,379.98 square meters; [7] and

(b)

A parcel of land situated at Matampay, Marawi City with an area of 4,083.00 square meters, covered by OCT No. PAF-1081-A issued on October 13, 1981.[8]

The aggregate area subject of the case is thus 26,462.98 square meters.

In 1978, Napocor constructed underneath the subject properties subterranean Twin-Rail Tunnels for its Agus I Hydroelectric Power Plant in Marawi City in order to create a diversion of flow of the Agus River in order to run several turbines of the Agus 1 Power Generators. Yusoph Dianalan asserts that, aside from posing a serious danger to his life and property, the construction of these underground tunnels constituted unlawful taking of his properties without just compensation. Thus, on November 18, 1999, Dianalan filed a complaint[9] against Napocor before the RTC, Branch 9, Marawi City, for “Damages and Recovery of Possession with Alternative Prayer for Just Compensation”. He alleged that in 1978, or thereabout, Napocor constructed the said subterranean tunnels in evident bad faith and without his consent; that he and his father discovered these tunnels only in 1996, when his father donated to him the land covered by OCT No. P-276; that he contracted out the installation of a motorized deep well on the property but had to put off the plan when he discovered the underground tunnels. The said tunnels also turned away or scared off prospective developers from investing their capital in the area since the tunnels posed a serious threat to lives and properties above the tunnels; that, consequently, he was deprived of his properties for which Napocor should be liable for damages in the form of rents and recovery of possession or, in the alternative, for just compensation.[10]

In its answer, Napocor countered that it had no knowledge whether there were any tunnels constructed underneath the lands claimed by Dianalan. Napocor contended that, even assuming that tunnels were constructed under Dianalan’s properties, Napocor was not liable for damages since Dianalan was not deprived of the beneficial use of his property; that Dianalan still had free use his properties subject only to servitudes and other limitations imposed by law; that Napocor’s construction of tunnels in the subsoil is sanctioned by Republic Act No. 6395 and is a valid limitation imposed by law on Dianalan’s property.[11]

On February 21, 2005, the trial court rendered a Decision disposing as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff:

- Ordering defendant National Power Corporation (NPC) to pay plaintiff Yusoph Dianalan the sum of Twenty-Seven Million Eight Hundred Three Thousand (P27,883,000.00) Pesos as actual or compensatory damages for defendant’s use of plaintiff’s two (2) parcels of land covering an area of twenty-seven thousand

eight hundred eighty-three (27,883) sq. meters at Tampilong, Rorogagus and Malampay, Marawi City;

- Ordering defendant NPC to Pay the further sum of One Hundred Thousand (P100,000.00) Pesos as attorney's fees; and

- Ordering defendant NPC to pay unto plaintiff the further sum of Three Million Three Hundred Forty-Five Thousand Nine Hundred Sixty (P3,345,900.00) Pesos unto the plaintiff corresponding to 12% legal interest of the sum awarded by this decision computed from the date of issuance of this decision.

SO ORDERED.[12]

Napocor appealed to this Court where the appeal was docketed as CA G.R. CV No. 00521-MIN. In its Decision of October 22, 2009, this Court partially affirmed the RTC Decision decreeing thus:

WHEREFORE, the appeal is PARTIALLY GRANTED. The RTC assailed Decision February 21, 2005 is affirmed so far as appellant NPC is liable to pay for just compensation to appellee Dianalan, with legal interest of 6% of the total amount of just compensation, but only covering an area of 26,662.98 square meters located at Tampilong, Rorogagus and Malampay, Marawi City. The case is however REMANDED to the court of origin, for the proper determination of just compensation.

SO ORDERED.[13]

In ordering the remand of the case to the court of origin, this Court expounded thus –

On the matter of fixing just compensation, appellant contends that the trial court erred in holding that it is liable to pay appellee the amount of P27,833,000.00 as actual and compensatory damages. Considering that on July 18, 1988, appellant bought a portion of the same property at P10.00 per square meter, appellant NPC insists that this Honorable Court should seriously look into the court's basis of computing the award of P27,833,000.00 at P1,000.00 per square meter, in as much as the total area taken away was only 26,662.98.

Indeed, worth Our attention is how the trial court computed P27,833,000.00 at P1,000.00 per square meter where the total area taken was only 26,662.98 square meters, or a total of only P26,662,980.00, if at P1,000.00 per square meter. Apparently, the trial court, in fixing the just compensation, based it on Civil Case No. 1298-95 entitled "Ibrahim vs. NPC" (also known as G.R. No. 168732, June 29, 2007 entitled "NPC vs. Ibrahim, et al., decided by the Supreme Court on June 29, 2007), where the High Court sustained the amount of compensation fixed by the trial court and later on appeal, affirmed by this Court, at P1,000.00 per square meter, in accordance with National Power Corporation vs. Court of Appeals and Macapantan Mangondato. In Ibrahim case, it was found out that the award of just compensation was not excessive considering that the finding of P1,000.00 per square meter as the fair market value therein was the market value as sustained in Mangondato case, both subjects of the expropriation involved adjoining lots: a portion of Lot 1 of the subdivision plan (LRC) PSD 116159 which is adjacent to Lots 2 and 3 of the same subdivision plan.

Just compensation is the fair value of the property as between one who receives, and one who desires to sell, fixed at the time of the actual taking by the government. This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation. The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner. In determining just compensation, all the facts as to the condition of the property and its surroundings, its improvements and capabilities, should be considered.

In the present case, the trial court determined just compensation without considering the differences in the nature and character or condition of the property compared to the other properties in the province which appellant NPC had purchased. It simply relied on the fact that appellant NPC paid P1,000.00 per square meter to the other landowners whose lands had been taken as a result of expropriation. But a perusal of the Deeds of Donation shows that one subject parcel of land (OCT No. P-276) is located at Barrio Rorogagus, Marawi City,

and the other one (OCT No. PAF-1081-A) is located at Barrio Matampay, Marawi City, as shown in the original certification of title itself, whereas the subject lands in Ibrahim and Mangondato cases are located in Saduc, Marawi City. Indeed, the trial court had sweepingly assessed the value of the lots in question based on erroneous application of Ibrahim case. It must be stressed that although the determination of the amount of just compensation is within the court's discretion, it should not be done arbitrarily or capriciously. It must be based on all established rules, upon correct legal principles and competent evidence.

In addition, appellant NPC insists that in an expropriation case where the principal issue is the determination of just compensation, a trial or hearing before Commissioners is indispensable to allow the parties to present evidence on the issue.

Harping on the requirement of trial by commissioner in accordance with Section 5 of Rule 67, on this point, Rule 67 need not be followed where the expropriator has violated procedural requirements. This is clearly expressed in *Republic v. Court of Appeals*. In the said case, the National Irrigation Administration (NIA) contended that it was deprived of due process when the trial court determined just compensation without the assistance of commissioners. The Court held as follows:

Rule 67, however, presupposes that NIA exercised the right of eminent domain by filing a complaint for that purpose before the appropriate court. Judicial determination of the propriety of the exercise of the power of eminent domain and the just compensation for the subject property then follows. The proceedings give the property owner the chance to object to the taking of his property and to present evidence on its value and on the consequential damage to other parts of his property.

Respondent was not given those opportunities, as NIA did not observe the procedure in Rule 67. Worse, NIA refused to pay respondent just compensation. The seizure of one's property without payment, even though intended for public use, is a taking without due process of law and a denial of the equal protection of the laws. NIA, not respondent, transgressed the requirements of due process.

When a government agency itself violates procedural requirements, it waives the usual procedure prescribed in Rule 67. This Court ruled in the recent case of *National Power Corporation ("NPC") v. Court of Appeals*, to wit:

We have held that the usual procedure in the determination of just compensation is waived when the government itself initially violates procedural requirements. NPC's taking of Pobre's property without filing the appropriate expropriation proceedings and paying him just compensation is a transgression of procedural due process.

Like in NPC, the present case is not an action for expropriation. NIA never filed expropriation proceedings although it had ample opportunity to do so. Respondent's complaint is an ordinary civil action for the recovery of possession of the Property or its value, and damages. Under these circumstances, a trial before commissioners is not necessary.

In *National Power Corporation v. Court of Appeals*, the Court clarified that when there is no action for expropriation and the case involves only a complaint for damages or just compensation, the provisions of Rule 67 would not apply, thus:

In this case, NPC appropriated Pobre's Property without resort to expropriation proceedings. NPC dismissed its own complaint for the second expropriation. At no point did NPC institute expropriation proceedings for the lots outside the 5.554 square-meter portion subject of the second expropriation. The only issues that the trial court had to settle were the amount of just compensation and damages that NPC had to pay Pobre.

This case ceased to be an action for expropriation when NPC dismissed its complaint for expropriation. Since this case has been reduced to a simple case of recovery of damages, the provisions of the Rules of Court on the ascertainment of the just compensation to be paid were no longer applicable. A trial before commissioners, for

instance, was dispensable.

Obviously, the determination by the trial court in Ibrahim and Mangondato cases on just compensation was based on the market value of the subject lands which were set at P1,000.0 per square meter. The court and the parties-appointed commissioners did not abuse their authority in evaluating the evidence submitted to them nor misappreciate the clear preponderance of evidence. Thus, when the City Assessor's Office fixed the just compensation of the land at P1,000.00, the Supreme Court sustained those awards. At bench, where no commissioners were appointed, reliance on the above principle on valuation cannot be sustained. While tax values can serve as guide, standing alone, the same cannot be absolute substitutes for just compensation.

In sum, We find that the trial court erred in fixing the amount of just compensation to appellee at P1,000.00 per square meter without considering the differences in the nature, character and condition of the subject property compared to other properties in the province which appellant NPC had acquired. For this reason, this Court has no alternative but to remand the case to the trial court for the proper determination of just compensation.

[Underscoring, italics, and

bold fonts in the original]

The Court's Decision in CA G.R. CV No. 00521-MIN attained finality on December 11, 2009 per Certificate of Entry of Judgment dated February 4, 2010.[14]

Notwithstanding the Court's order remanding the case to the court of origin, Dianalan filed before the latter court a "Motion for Issuance of a Writ of Execution with Prayer to include as Party Defendant the Power Sector Asset, Liabilities and Management Corporation [PSALM]", setting the motion for hearing on February 11, 2010.[15] The trial court granted the motion, issued a writ of execution and ordered Napocor to pay Dianalan the sum of P34,661,874.00, plus 6% legal interest p. a. starting February 21, 2005 until the date of payment.[16]

Napocor filed a petition for certiorari before this Court (docketed CA G.R. SP No. 03520-MIN) assailing the RTC's Order of March 8, 2010 granting Dianalan's motion for execution. This Court granted Napocor's prayer for a temporary restraining order enjoining the trial court, or its agent, from implementing the March 8, 2010 Order and March 11, 2010 writ of execution. Subsequently, however, in its Resolution of August 10, 2010, this Court considered the petition for certiorari as withdrawn and terminated in view of the parties' agreement to jointly file a motion in the trial court to set Civil Case No. 1729-99 for hearing on the issue of just compensation.[17]

Pursuant to the parties' agreement in Civil Case No. 1729-99, the trial court appointed five (5) Commissioners, who eventually submitted their reports recommending the payment of just compensation at P66,657,450.00, or at P2,500.00 per square meter, for the 26,462.98-square-meter lot.[18] On March 24, 2011, the trial court issued an Order adopting the Commissioners' Report fixing just compensation of the subject property at P2,500.00 per square meter plus 6% p.a. legal interest.[19]

On April 8, 2011, Napocor moved for a reconsideration of the March 24, 2011 Order.[20] Dianalan, on the other hand, filed a Motion for Issuance of Writ of Execution claiming that the March 24, 2011 Order was already a final order issued conformably with the final and executory October 22, 2009 Decision of the Court of Appeals in CA G.R. CV No. 00521-MIN. In the said motion, Dianalan also impleaded as party defendant PSALM, as assignee of Napocor's assets and liabilities under the law.

The trial court denied Napocor's motion for reconsideration.[21] On April 13, 2011, the trial court issued an Order granting the private respondent's motion to execute the March 24, 2011 Order and, on even date, issued a Writ of Execution.[22] Pursuant thereto, respondent Sheriff issued a Demand Letter requiring Napocor to pay

P93,403,635.96, representing the amount as just compensation for the subject properties; P23,996,682.00 of legal interest; P2,719,503.96 as Sheriff's Commission fees; and the amount of P30,000.00 as Sheriff's fees.

The Order dated April 13, 2011, the writ of execution, the Sheriff's Demand Letter and the Order dated April 12, 2011 denying Napocor's motion for reconsideration were simultaneously served on Napocor at its Head Office in Quezon City on April 18, 2011. The following day, April 19, 2011, Napocor received a letter from the Land Bank of the Philippines (LBP) informing Napocor of the Notice of Garnishment the LBP had received.

Napocor filed the present petition for certiorari against the Hon. Gamor Disalo, Acting Presiding Judge of the RTC of Lanao del Sur, Branch 9; Palao Diamala, Sheriff of the said Branch of the RTC; and Yusoph Dianalan (CA G.R. SP 04205-MIN), challenging the lower court's Order of April 13, 2011, the writ of execution also of April 13, 2011, the Sheriff's Demand Letter, and the Notice of Garnishment dated April 18, 2011. The case was raffled to the Former Special Twenty-First Division of the Court.[23]

In its petition, Napocor asserts that:

I

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDER DATED APRIL 13, 2011 IN GRANTING, WITH UNDUE HASTE, PRIVATE RESPONDENT'S MOTION FOR EXECUTION OF THE ORDER DATED MARCH 24, 2011 WHICH HAS NOT YET ATTAINED FINALITY. ACCORDINGLY, THE WRIT OF EXECUTION, THE SHERIFF'S DEMAND LETTER AND NOTICE OF GARNISHMENT ISSUED PURSUANT TO THE ORDER DATED APRIL 13, 2011 ARE NULL AND VOID; and

II

THE NOTICE OF GARNISHMENT IS BASELESS AND CONTRARY TO LAW.[24]

In the said petition, Napocor prayed for the issuance of a temporary restraining order and a writ of preliminary injunction. In its Resolution of October 19, 2012, the Court issued a temporary restraining order enjoining the public respondents to cease and desist from enforcing its Order and Writ of Execution, both of April 13, 2011. On February 26, 2011, the Court issued a writ of preliminary injunction enjoining until further notice public respondent from enforcing the said Order and Writ of Execution.[25]

Napocor also filed the present appeal from the trial court's Orders of March 24, 2011 and April 12, 2011.[26] The appeal was raffled to the regular Twenty-first Division of the Court.[27]

In its appeal brief, Napocor contends that –

THE TRIAL COURT ERRED IN FIXING THE AMOUNT OF JUST COMPENSATION FOR THE SUBJECT PROPERTIES AT P2,500.00 PER SQUARE METER IN CONTRAVENTION OF THE PROVISIONS OF LAW.[28]

In its Resolution of August 12, 2013, the regular Twenty-first Division consolidated CA G.R. No. CV 02531 with CA G.R. No. SP 04205.[29]

The Ruling of the Court

In CA G.R. SP No. 04205-MIN

The issues in the certiorari case may be reduced to the following:

First. Napocor basically contends that the trial court gravely erred in issuing the writ of execution of the Order dated March 24, 2011, which adopted the Commissioners' Report fixing the just compensation of the subject properties at P2,000.00 per square meter. Napocor contends that the said Order has not attained finality and, in fact, is the subject of Napocor's appeal in CA G.R. CV No. 02531-MIN. Consequently, all subsequent issuances, i.e., Sheriff's Demand Letter and Notice of Garnishment, are considered null and void.

Second. Napocor contends that its assets are not susceptible to garnishment. It is the thesis of Napocor that even as it had consented to be sued, it cannot be held liable to garnishment of its funds and properties. Any suit for payment of monies should be filed with the Commission on Audit.[30]

The Court addresses the second issue first.

Napocor's contention is that Dianalan's claim against it constitutes a claim against the government. Thus, under the Article VI, Section 29(1) of the Constitution –

No money shall be paid out of the treasury except in pursuance of an appropriation made by law.

Napocor further cites Section 84, paragraph 1, of P.D. No. 1445, and Sections 11 and 45 of Executive Order No. 292 (the Administrative Code of 1987) in support of this thesis.

The Court is not persuaded.

Napocor's funds and properties are subject to garnishment. Napocor's error lies in its identifying itself with the state or the government. In the case of *NHA v. Heirs of Guivelondo*,[31] the High Court held that –

In order to resolve the issue of the propriety of the garnishment against petitioner's funds and personal properties, there is a need to first determine its true character as a government entity. Generally, funds and properties of the government cannot be the object of garnishment proceedings even if the consent to be sued had been previously granted and the state liability adjudged.[32]

The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public Funds from their legitimate and specific objects, as appropriated by law.[33]

However, if the funds belong to a public corporation or a government-owned or controlled corporation which is clothed with a personality of its own, separate and distinct from that of the government, then its funds are not exempt from garnishment.[34] This is so because when the government enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation.[35]

Clearly, then, Napocor's funds are subject to garnishment.

Nonetheless, in addressing the first of the issues raised in the certiorari case, the Court finds that there is merit to Napocor's contention that the lower court's decision on the determination of just compensation had not yet attained finality.

There are two stages in an expropriation proceeding: first, the determination of the validity of the expropriation, and, second, the determination of just compensation. In *Tan v. Republic*,[36] the High Court expounded on these two stages in this manner:

(1) Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, with condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned for the public use or purpose described in the complaint, upon payment of just compensation. An order of expropriation is final. An order of dismissal, if this be ordained, would be a final one, as it finally disposes of the action and leaves nothing more to be done by the courts on the merits. The order of expropriation would also be a final one for after its issuance, no objection to the right of condemnation shall be heard. The order of expropriation may be appealed by any party aggrieved thereby by filing a record on appeal.

(2) Determination by the court of the just compensation for the property sought to be taken with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before the court and findings of the commissioners would likewise be a final one, as it would leave nothing more to be done by the court regarding the issue. A second and separate appeal may be taken from this order fixing the just compensation.

When the case was first elevated to this Court in CA G.R. CV No. 00521, this Court held that Napocor was liable for just compensation but, finding no basis to impose the P1,000.00 per square meter as value of just compensation, ordered the remand of the case to the court of origin for further proceeding on that issue. There being no further appeal from the Court's Decision to the Supreme Court, the Court of Appeal's Decision became final on December 11, 2009. After hearing the matter of just compensation, the trial court rendered the assailed Order of March 24, 2011 fixing just compensation.

Obviously, what was alluded to by Dianalan as final and executory was the ruling of this Court upholding the validity of the expropriation but NOT the amount of just compensation. Clearly, then, the trial court's grant of execution of the March 24, 2011 Order was premature. The lower court's determination of just compensation had become final and appealable but NOT final and executory .[37]

Even if the Court were to grant, *arguendo*, that the assailed Order was in the nature of an execution pending appeal, such execution would nonetheless be unwarranted. Discretionary execution may only issue only upon good reasons to be stated in a special order after due hearing.[38] No such good reasons to justify execution pending appeal have been alleged or duly established in this case.

In CA G.R. CV No. 02531-MIN

In fixing just compensation for the subject properties, the lower court relied entirely on the Commissioners' finding of just compensation. Said the lower court:

X X X [I]t is our opinion that Two Thousand Five Hundred (P2,500.00) [pesos] per square meter or a total amount of Sixty Six Million Six Hundred Fifty Seven Thousand Four Hundred Fifty (P66,657,450.00) Pesos represents the Just Compensation /Value of the property subject of the commissioners' report consisting an area of 26,662.98 square meters."

Majority of the commissioners numbering Three (3) voted for the foregoing valuation while the other two abstain[ed]; one opted for a lower amount and the other for a higher assessment;

The commissioners' report is a result of a faithful, realistic and systematic if not logical compliance of the pertinent rule and being done regularly and in accord with the standard valuation. This supplied the court the required data sufficient enough to be the basis of a fair and precise determination of the just compensation due to plaintiff Engr. Yusoph Dianalan. The court heretofore considered and admitted the said report;

Parties' counsel after the hearing submitted their opposition and comment on the report. Pertinent matters and issues were [dealt] accordingly and in conclusion the court adapts and levels the midstream focal valuation of

the commissioners on the value of the property involved in the total sum of Two Thousand Five Hundred (P2,500.00) per square meter and not the too high and too low appreciation of the parties' counsel.[39]

[Citations omitted]

Napocor assails the lower court's finding for being reliant on the Commissioners' Report which, appellant insists, was "seriously flawed". Napocor contends that –

A perusal of the Commissioners' Report (Report) reveals that the basis for the valuation of the subject properties is the "market data approach," adopting the so-called Philippine valuation standards. The commissioners stated that "in this approach, the value of the land is based on recorded sales and listings (or asking prices) of comparable properties registered within the vicinity." The recommendation of the Commissioners is seriously flawed. First, it appears that the only basis for the valuation of the subject properties are the recent Deeds of Sale of certain properties in Matampay, Marawi City executed sometime in 2008 and 2009. The Report also made mention of a certification from the Assessor's Office dated April 2007, regarding the "assessed value of the Class B lands in Matampay." Noteworthy, these documents relied upon by the Commissioners are of recent vintage. In relying on these [sic] type of documents, the commissioners utterly disregarded the rules that the gauge of just compensation is at the time of taking, which, in these case, was in 1980 when the construction of the project commenced.

X X X

In the present case, the construction of the project was sometime in 1980. As could be gleaned from the annotation at the back of OCT No. P-276, an affidavit of quitclaim over the property covered by said title was executed in favor of NPC in 1980, when the construction of the project started. This was even in the allegations of Dianalan's complaint stating that the construction of the underground tunnel was sometime in 1978 or thereabouts. Thus, the basis for the valuation should be the year 1980 when the property was deemed taken. However, in the present case, the determination of the market value of the subject land was based on the present valuation, and not at the time of the taking of the property in 1980, which is contrary to law.

Worse, the Report even failed to indicate the market value of the subject properties at the time of taking in 1980 or at the time of the filing of the complaint in 1999. This, notwithstanding the earlier insistence by NPC that said data be incorporated in the Report.[40]

It is undisputed that Napocor constructed the subject underground tunnels without initiating an action for expropriation. For this reason, it was Dianalan who commenced an inverse condemnation proceeding to recover damages or just compensation.[41] The fact that appellant failed to file an action for expropriation is rife with consequences.

One such consequence is that the provisions of Rule 67 of the Rules of Court do not apply and the determination of just compensation by commissioners is not mandatory. This had already been pointed out by the Court in CA G.R. CV No. 00521 (Dianalan v. NPC), the precursor of the current cases. The doctrine bears reiterating: in *National Power Corporation v. Court of Appeals*[42] the High Court held –

In this case, NPC appropriated Pobre's Property without resort to expropriation proceedings. NPC dismissed its own complaint for the second expropriation. At no point did NPC institute expropriation proceedings for the lots outside the 5,554 square-meter portion subject of the second expropriation. The only issues that the trial court had to settle were the amount of just compensation and damages that NPC had to pay Pobre.

This case ceased to be an action for expropriation when NPC dismissed its complaint for expropriation. Since this case has been reduced to a simple case of recovery of damages, the provisions of the Rules of Court on the ascertainment of the just compensation to be paid were no longer applicable. A trial before commissioners, for instance, was dispensable.

Parenthetically, the lower court's appointment of commissioners, while not indispensable, was not improper either. In the present case, the Court appreciates the lower court's need for such commissioners to aid it in arriving at the amount of just compensation. The lower court was not, after all, bound by the recommendation of the Commissioners; it had the discretion to adopt their valuation or to substitute its own estimate of the value gleaned from the records.[43]

The issue now before this Court in this appeal is whether the lower court was correct in adopting the recommendation of the commissioners. Napocor assails the Commissioners' Report for having been based on data "of recent vintage" and for disregarding the rule that "the gauge of just compensation is at the time of taking, which, in this case, was in 1980 when the construction of the project commenced". Stated otherwise, the issue is: should just compensation be based on the land values at the time of the "taking" which, Napocor alleges, occurred with the construction of the project in 1980?

Rule 67, Section 1, of the Rules of Court provides –

SECTION 4. Order of expropriation. — If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

[Italics added for emphasis]

x x x

Napocor invokes as well Section 3 (h) of Republic Act No. 6395, "An Act Revising the Charter of the National Power Corporation," which provides thus –

Sec. 3. Powers and General Functions of the Corporation. — The powers, functions, rights and activities of the Corporation shall be the following:

x x x

(h) To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created: Provided, That in case a right of way is necessary for its transmission lines, easement of right of way shall only be sought: Provided, however, That in case the property itself shall be acquired by purchase, the cost thereof shall be the fair market value at the time of the taking of such property.

[Italics added for emphasis]

In *National Power Corporation v. Court of Appeals and Mangondato*,[44] the Supreme Court held that –

The general rule in determining "just compensation" in eminent domain is the value of the property as of the date of the filing of the complaint, as follows [45] :

"Sec. 4. Order of Condemnation. When such a motion is overruled or when any party fails to defend as required by this rule, the court may enter an order of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint. . . "

(Emphasis supplied).

Normally, the time of the taking coincides with the filing of the complaint for expropriation. Hence, many rulings

of this Court have equated just compensation with the value of the property as of the time of filing of the complaint consistent with the above provision of the Rules. So too, 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.[46]

The general rule, however, admits of an exceptions; where this Court fixed the value of the property as of the date it was taken and not at the date of the commencement of the expropriation proceedings.

In the old case of *Provincial Government of Rizal vs. Caro de Araullo*,[47] the Court ruled that " . . . the owners of the land have no right to recover damages for this unearned increment resulting from the construction of the public improvement (lengthening of Taft Avenue from Manila to Pasay) for which the land was taken. To permit them to do so would be to allow them to recover more than the value of the land at the time when it was taken, which is the true measure of the damages, or just compensation, and would discourage the construction of important public improvements."

In subsequently cases[48], the Court, following the above doctrine, invariably held that the time of taking is the critical date in determining lawful or just compensation. Justifying this stance, Mr. Justice (later Chief Justice) Enrique Fernando, speaking for the Court in *Municipality of La Carlota vs. The Spouses Felicidad Baltazar and Vicente Gan*[49] , said, ". . . the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of the taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantee just compensation. It would be an injustice to him certainly if from such a period, he could not recover the value of what was lost. There could be on the other hand, injustice to the expropriator if by a delay in the collection, the increment in price would accrue to the owner. The doctrine to which this Court has been committed is intended precisely to avoid either contingency fraught with unfairness."

Simply stated, the exception finds application where the owner would be given undue incremental advantages arising from the use to which the government devotes the property expropriated — as for instance, the extension of a main thoroughfare as was the case in *Caro de Araullo*. In the instant case, however, it is difficult to conceive of how there could have been an extra-ordinary increase in the value of the owner's land arising from the expropriation, as indeed the records do not show any evidence that the valuation of P1,000.00 reached in 1992 was due to increments directly caused by petitioner's use of the land. Since the petitioner is claiming an exception to Rule 67, Section 4, 17 it has the burden of proving its claim that its occupancy and use — not ordinary inflation and increase in land values — was the direct cause of the increase in valuation from 1978 to 1992.

In the present case, the Court is at a loss in conceiving how Dianalan could reap an "extraordinary increase in value" for his land because of Napocor's construction of the subterranean tunnels. If anything, the construction produced incremental damage to the subject properties. At any rate, Napocor has failed to discharge the burden of proving that its construction of these tunnels – and not ordinary inflation and increase in land values - produced the increase in the value of the subject properties.

But, more to the point, the Court discerns Napocor's insistence on 1980 values to be unfair and inequitable. This is so because the construction of the tunnels, which began in 1980, does not fall squarely within the concept of "taking" as understood in eminent domain cases. In the *Mangondato* case, *supra*, the Supreme Court stated that –

This Court has defined the elements of "taking" as the main ingredient in the exercise of power of eminent domain,[50] in the following words:

"A number of circumstances must be present in the 'taking' of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the

property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way to oust the owner and deprive him of all beneficial enjoyment of the property." (Emphasis supplied)

In this case, the petitioner's entrance in 1978 was without intent to expropriate or was not made under warrant or color of legal authority, for it believed the property was public land covered by Proclamation No. 1354. When the private respondent raised his claim of ownership sometime in 1979, the petitioner flatly refused the claim for compensation, nakedly insisted that the property was public land and wrongly justified its possession by alleging it had already paid "financial assistance" to Marawi City in exchange for the rights over the property. Only in 1990, after more than a decade of beneficial use, did the petitioner recognize private respondent's ownership and negotiate for the voluntary purchase of the property. A Deed of Sale with provisional payment and subject to negotiations for the correct price was then executed. Clearly, this is not the intent nor the expropriation contemplated by law. This is a simple attempt at a voluntary purchase and sale. Obviously, the petitioner neglected and/or refused to exercise the power of eminent domain.

Only in 1992, after the private respondent sued to recover possession and petitioner filed its Complaint to expropriate, did petitioner manifest its intention to exercise the power of eminent domain. Thus, the respondent Court correctly held:

"If We decree that the fair market value of the land be determined as of 1978, then We would be sanctioning a deceptive scheme whereby NAPOCOR, for any reason other than for eminent domain would occupy another's property and when later pressed for payment, first negotiate for a low price and then conveniently expropriate the property when the land owner refuses to accept its offer claiming that the taking of the property for the purpose of eminent domain should be reckoned as of the date when it started to occupy the property and that the value of the property should be computed as of the date of the taking despite the increase in the meantime in the value of the property."

The facts in Mangondato are on all fours with the present one: Napocor 1) started construction of the underground tunnels as early as 1980; 2) never informed Dianalan of the construction; 3) never filed a complaint for expropriation; and, 4) when pressed for payment insisted that the value of the properties be computed as of the date of taking which it equated with the start of the construction of the tunnels.

The Court thus rejects Napocor's thesis. The date it started constructing the tunnels cannot be the reckoning point for the determination of just compensation. Given the facts peculiar to the present case, the unfairness of this thesis is palpable.

What then should be the reckoning point for determining just compensation?

In the case of *Heirs of Padacan and Eigo v. Air Transportation Office (ATO)*,^[51] the High Court, taking exception of the "time-of-taking" rule blind obedience to which would result in unfairness and grave injustice,^[52] held –

In this case, it is undisputed that petitioners' private property was converted into an airport by respondent ATO. As a consequence, petitioners were completely deprived of beneficial use and enjoyment of their property. Clearly, there was taking in the concept of expropriation as early as 1948 when the airport was constructed on petitioners' private land.

As a rule, the determination of just compensation in eminent domain cases is reckoned from the time of taking. In this case, however, application of the said rule would lead to grave injustice. Note that the ATO had been using petitioners' property as airport since 1948 without having instituted the proper expropriation proceedings. To peg the value of the property at the time of taking in 1948, despite the exponential increase in its value considering the lapse of over half a century, would be iniquitous. We cannot allow the ATO to conveniently invoke the right of eminent domain to take advantage of the ridiculously low value of the property at the time

of taking that it arbitrarily chooses to the prejudice of petitioners.

In this particular case, justice and fairness dictate that the appropriate reckoning point for the valuation of petitioners' property is when the trial court made its order of expropriation in 2001.

Civil Case No. 1729-99 was not, technically speaking, an expropriation proceeding but a complaint for “Just Compensation and Damages” and the fallo of the trial court therein not the “Order of Expropriation” contemplated in the Rules. Still, applying the ruling in the *Padacan v. ATO* case, *supra*, the Court finds that the reckoning point for the valuation of the subject properties should be February 21, 2005, the date when the trial court rendered its decision in Civil Case No. 1729-99. After all, the aforecited fallo does sustain Napocor’s lawful right to take the subject properties.

The Court finds that the RTC’s determination of just compensation on the basis of 2008 / 2009 data overshoots the point of reckoning which should be 2005. Scanning the records of the case, the Court finds that it is unable to determine just compensation at the reckoning point of the year 2005. The Court is loathed to remand the case once more to the trial court to determine just compensation based precisely on the year 2005 but is constrained nonetheless to do so.

WHEREFORE, the Court REMANDS the case subject of the appeal in CA G.R. CV No. 02531-MIN to the court of origin, to determine the just compensation based on the value of the subject properties as of the year 2005, plus 6% legal rate of interest of the total amount of just compensation. The Orders subject of the petition for certiorari in CA G.R. SP No. 04205-MIN are SET ASIDE.

SO ORDERED.

Lopez and Inting, JJ., concur.

[1] Records in CA G.R. CV No. 02531, p. 693

[2] Id. pp. 747-749.

[3] Id. p. 721.

[4] Id. p. 758.

[5] Id. pp. 750-753.

[6] Id. p. 687.

[7] Id. pp. 538-539.

[8] Id. p. 114.

[9] Id. pp. 1-6.

[10] Id. pp. 1-3.

[11] Id. pp. 13-17.

[12] Id. pp. 264-280.

[13] Rollo in CA G.R. CV No. 02531, pp. 35-59

[14] Records in CA G.R. CV No. 02531, p. 377

- [15] Id., pp. 337-340
- [16] Id., p. 381
- [17] Id., pp. 456-457
- [18] Id, pp. 635-644
- [19] Id., pp. 657-660
- [20] Id., pp. 662-665
- [21] Id., p. 687
- [22] Id., pp. 694-696
- [23] Composed of Associate Justices Borja, Lopez and Inting.
- [24] Rollo in CA G.R. SP No. 04205-MIN, p. 19
- [25] Id., at p. 600.
- [26] see Rollo in CA G.R. CV No. 02531, pp. 113-142
- [27] Composed of Associate Justices Borja, Francisco and Badelles.
- [28] Id., p. 131
- [29] In accordance with the Court's Resolution dated August 12, 2013, Rollo in CA G.R. SP No. 04205-MIN, pp. 624-626
- [30] Rollo in CA G.R. SP No. 04205-MIN, pp. 30-31
- [31] G.R. No. 154411, June 19, 2003
- [32] Republic v. Villasor, G.R. No. L-30671, 28 November 1973, 54 SCRA 83, 87; Republic v. Palacio, 132 Phil. 369 [1968].
- [33] Commissioner of Public Highways v. San Diego, G.R. No. L-30098, 18 February 1970, 31 SCRA 616, at 625.
- [34] Philippine National Bank v. Pabalan, G.R. No. L-33112, 15 June 1978, 83 SCRA 595, 598.
- [35] Rizal Commercial Banking Corporation v. De Castro, G.R. No. L-34548, 29 November 1988, 168 SCRA 49, 60.
- [36] G.R. No. 170740, May 25, 2007
- [[37]] Estate of Salud Jimenez v. Philippine Export Processing Zone, G.R. No. 137285, January 16, 2001
- [38] Sec. 2, Rule 39 of the Rules of Court
- [39] Decision, Records in CA G.R. CV No. 02531-MIN, pp. 751-752
- [40] Rollo in CA G.R. CV No. 02531-MIN, pp. 133-135 (OSG's Brief for Napocor)
- [41] NAPOCOR v. Heirs of Macabangkit Sangkay, G.R. No. 165828, August 24, 2011, citing 29A CJS, Eminent Domain, §381, states that: "Inverse condemnation is a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal

exercise of the power of eminent domain has been attempted by the taking agency. While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such formal proceedings. The phrase "inverse condemnation," as a common understanding of that phrase would suggest, simply describes an action that is the "inverse" or "reverse" of a condemnation proceeding."

[42] G.R. No. 106804. August 12, 2004

[43] Section 8 of Rule 67 of the 1997 Rules of Civil Procedure provides that, "the court may . . . 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."

[44] G.R. No. 113194, March 11, 1996. The doctrine was reiterated in *National Power Corporation v. Ibrahim*, G.R. No 168732, June 29, 2007 (see *supra*).

[45] Section 4, Rule 67 of the Revised Rules of Court.

[46] *B. H. Berkenkotter & Co. vs. Court of Appeals*, 216 SCRA 584, 587 (December 14, 1992); *Republic of the Philippines vs. Philippine National Bank*, 1 SCRA 957 (April 21, 1961).

[47] 48 Phil. 308, 316 (August 16, 1933).

[48] 48 Phil. 308, 316 (August 16, 1933).

[49] 45 SCRA 235 (May 30, 1972).

[50] *Republic vs. Vda. de Castellvi*, 58 SCRA 336, 337 (August 15, 1974).

[51] G.R. No. 162779, June 15, 2007

[52] See also *NAPOCOR v. Ong Co*, G.R. 166973, February 10, 2009

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