

NATIONAL POWER CORPORATION, PLAINTIFF-APPELLANT, VS. MAURA GERTES, DEFENDANT-APPELLEE.

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PAREDES, J.:[*]

THE CASE

THIS IS ON THE APPEAL filed by plaintiff-appellant National Power Corporation (NAPOCOR) from the Order[1] dated February 21, 2011, issued by the Regional Trial Court (RTC), Branch 7, Batangas City, in Civil Case No. 5495 for Eminent Domain.

THE ANTECEDENTS

On November 22, 1999, NAPOCOR filed a Complaint[2] for Eminent Domain against defendant-appellee Maura Gertes (appellee), and spouses Lorenzo Amparo and Juana Velasquez, and spouses Pablo Abaya and Nazaria Doce[3]. It alleged that: NAPOCOR, an entity created for the purpose of undertaking the development of hydro-electric generation of power and production of electricity from any and all sources, is authorized by law to enter private property in the performance of its business provided the owner of such property is indemnified for any actual damage caused thereby and to exercise the right of eminent domain; appellee is the registered owner of a parcel of land with the following specifications:

Lot No.

Tax Dec. No.

Total Area
(sq.m.)

Area Affected
(sq.m.)

Location
of Property

Classification of
Land

8792-A

047-00318

9012

4096

Dumantay,
Batangas City

Agricultural
(Hortland)

to enable NAPOCOR to construct and maintain its 500 KV Ilijan Associated Transmission Line Project, it is necessary and urgent to acquire an easement right-of-way over a portion of defendant's property measuring 4,096 sq. m. with an assessed value of P3,181.53 (subject property); the subject property has not been applied to or expropriated for any public use and was selected by NAPOCOR in a manner compatible with the greatest public good and causing the least private injury; it has negotiated with appellee for the acquisition of an easement right of way over the subject property at a price prescribed by law but they have failed to reach an agreement; and, NAPOCOR is willing to deposit the amount representing the assessed value for taxation purposes of the subject property. NAPOCOR prayed that: (1) in the event appellee refuses to allow NAPOCOR to enter and undertake construction of its project despite compliance with the requirements under the law, an Order of Writ of Possession issue, authorizing NAPOCOR to enter and take possession and control, and acquire an easement right of way over the subject property to be expropriated and with the power and authority to demolish all improvements thereon; (2) should the appellee fail to submit an Answer within the time specified in the summons, or fail to defend as required by the Rules of Court, to forthwith issue an Order of Expropriation condemning the subject property together with its improvements; (3) three commissioners be appointed to hear the parties, view the premises, assess the damage and report to the RTC the just compensation to be paid to appellee; (4) after determination of just compensation, to authorize the payment thereof after deducting the sums due the government for unpaid real estate taxes and other imposts; and (5) the RTC adjudge NAPOCOR to have a lawful right to enter, take possession and acquire an easement right of way over the subject property together with the improvements, free from any and all liens and encumbrances.

After depositing an amount representing the assessed value of the subject property, NAPOCOR served appellee with a Notice to Take Possession[4] dated Januar 7, 2000, and filed, on January 19, 2000, an Urgent Ex-Parte Motion[5] for the Issuance of a Writ of Possession. After hearing, the RTC directed[6] NAPOCOR to deposit the amount equivalent to the value of the improvements on the land. After NAPOCOR's compliance[7] therewith, appellee filed a Manifestation[8] with the RTC claiming that the initial amount of P341,286.53 deposited by NAPOCOR was insufficient on account of new improvements introduced on the subject property. On June 21, 2001, the RTC ordered[9] the issuance of a Writ of Possession for appellee's property subject to the deposit of the amount for the additional improvement. After depositing[10] the additional amount of P162,340.00, the Writ of Possession[11] was issued.

Thereafter, appellee filed a Motion[12] with Manifestation with the RTC for the issuance of an order directing Land Bank of the Philippines (LBP), the depository bank, to allow her to withdraw the full amount deposited by NAPOCOR as payment for the improvements on her property. This was followed by a Joint Manifestation[13] and Motion by appellee and NAPOCOR, again praying that the RTC direct the LBP to release the deposit and pay the same to appellee. On February 21, 2002, the RTC issued an Order[14] for the release of the amount after completion of the necessary documents. Likewise, counsels of defendant and NAPOCOR were directed to nominate representatives to comprise the members of a Committee of Appraisers (the Committee) which will ascertain the just compensation for the subject property, with the RTC appointing the City of Assessor of Batangas City, Ms. Emelinda Atienza (Ms. Atienza), as committee chairman.

Subsequently, NAPOCOR named[15] Engr. Eladio Taupa (Engr. Taupa) as its representative and moved for the dropping of spouses Lorenzo Amparo and Juana Velasquez, and spouses Pablo Abaya and Nazaria Doce, as party defendants, as it had reached an amicable settlement with them. The appointment was noted, and the motion for the dropping as party defendants, was granted[16] by the RTC on April 11, 2002. For failure of appellee's counsel

to appoint a representative, the RTC ordered[17] NAPOCOR to submit another nominee to the Committee to complete its membership. In compliance, NAPOCOR nominated[18] Ms. Celina Rillas-Encarnacion (Ms. Encarnacion).

The RTC issued an Order[19] of expropriation on June 27, 2002, followed by an Order[20] on July 2, 2002, for the constitution of a Board of Commissioners which will ascertain and report to the RTC on its findings and recommendation on the proper amount for just compensation.

Meanwhile, NAPOCOR filed a Manifestation and Ex-Parte Motion[21] with RTC claiming that the additional amount of P162,349.00 representing the value of the improvements on the subject property was still being verified; hence, the release of the total amount deposited by NAPOCOR was held in abeyance[22].

On November 27, 2002, NAPOCOR moved[23] that the amount of P91,572.25 be adopted as the additional amount for the improvements. This was opposed[24] by appellee. After hearing, the RTC resolved[25] to create a Committee of Appraisers (Committee on improvements), composed of Atty. Jose C. Corales as chairman and Mr. Gandhi Caranza and Engr. Hernando Santos as members, to ascertain the just compensation for the affected crops, plants and other improvements in the subject property. In their Report[26], the Committee on improvements affirmed that the amount of P162,349.00 was the proper amount corresponding to the improvements in the subject property. The Report was approved[27] by the RTC and, after motion[28] filed by appellee, the RTC directed[29] the release, with interest, of the full amount deposited by NAPOCOR.

Ms. Atienza submitted an undated Commissioners' Report[30] with a recommendation that the amount of P150.00 per sq. m. be adopted as the just compensation of the subject property; while Engr. Taupa submitted his own Report[31] with a recommendation that the just compensation be fixed at P12.50 per sq. m.. Ms. Encarnacion failed to file her report. An ocular inspection was thereby conducted by the Branch Clerk of Court and a Report (Ocular Inspection Report)[32], recommending[33] the amount of P125.00 per sq. m., was submitted. NAPOCOR submitted its comment[34] to the Ocular Inspection Report and the Report of Ms. Atienza claiming, in the main, that the report submitted by Ms. Atienza was not substantiated by documentary evidence. The RTC issued an Order[35] dated October 26, 2010, addressed to the current City Assessor, Ms. Atienza, or her duly authorized representative, to submit the necessary documents to substantiate her Report and recommendation; compliance[36] was effected on November 11, 2010.

Thereafter, the RTC issued the assailed Order[37], the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, this Court hereby fixes the value of the expropriated property, with an area of Four Thousand Ninety Six (4,096) square meters, as alleged in the complaint, at One Hundred Fifty Pesos (P150.00) per square meter, as just compensation, to be paid by the plaintiff National Power Corporation to the defendant (appellee) Maura Gertes. Upon payment of the just compensation, the plaintiff (NAPOCOR) is entitled to have lawful right to enter and to take possession of the subject property, together with the improvements thereon, free from any and all liens and encumbrances.

SO ORDERED.

NAPOCOR appeals and ascribes a single error to the RTC, thus:

THE LOWER COURT GRAVELY ERRED IN ADOPTING THE RECOMMENDATION OF MS. ATIENZA FIXING THE AMOUNT OF ONE HUNDRED FIFTY (150) PESOS PER SQUARE METER AS JUST COMPENSATION FOR FOUR THOUSAND NINETY SIX (4,096) SQUARE METERS OF LAND SINCE THE REPORT DOES NOT INDICATE IF THE VALUATION OF THE SUBJECT LAND WAS AS OF THE TIME OF TAKING[38]

THE COURT'S RULING

The appeal lacks merit.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed that the measure is not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, ample^[39]. 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^[40]. Furthermore, it is settled that just compensation is to be ascertained as of the time of the taking^[41]. 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^[42].

NAPOCOR claims^[43] that the Commissioners' Report of Ms. Atienza, relied upon by the RTC in fixing just compensation, did not indicate the valuation of the subject property at the time of taking, and that the report was not supported by reliable documentary evidence. We disagree.

Although the findings of Ms. Atienza stated that the Report was based on the "current and fair market value per sq. meter of agricultural land wherein the subject property is classified thereat"^[44], the recommended just compensation was gauged as of October 2002^[45], at or near the time when the Committee was constituted to determine just compensation, but taking into consideration lot valuations in the area, Barangay Dumantay, covering the periods 1997, 1998, and 2002. The complaint was filed on November 22, 1999.

The documentary evidence^[46], submitted to substantiate the Commissioners' Report of Ms. Atienza, was arrived at by averaging the following factors: (a) opinion value; (b) sales data; (c) BIR Zonal Valuation; and (d) City Assessor's Office-Summary of Market Values (SMV). The opinion value of P190.00 per sq. m. was based on the valuation^[47] of land owners in Brgy. Dumantay, while the sales data^[48] of P240.00 per sq. m. is based on the amount of consideration for the sale of property in the same barangay in the years 1997, 1998 and 2002. The BIR Zonal Valuation^[49] of P100.00 per sq. m. covers all types of land in the concerned barangay, while the City Assessor's-SMV^[50] of P50.00 per sq. m., made comparative valuations of market values per square meter of residential lots for the years covering the periods 1985 and 1994. The City Assessor's-SMV valuation is the only residential valuation albeit pegged at the lowest value of P50.00 per square meter and, being one of four bases, accounts for only 1/4^[th] of the total average.

The recommendation^[51] of the branch clerk of court sustaining, as it does, the recommendation of Ms. Atienza, was made after an ocular inspection and a comparative study of the reports of Ms. Atienza and Engr. Taupa.

On the other hand, We cannot accept the report of Engr. Taupa fixing the just compensation of the subject property at P12.50 per sq. m., equivalent to 10%^[52] of the market value of the subject property because it involved only an easement of right of way^[53]. This reasoning has already been addressed by the Supreme Court in the case of NAPOCOR vs. Spouses Baylon^[54] in this manner:

... In *National Power Corporation v. Bagui*, where the same petitioner also invoked the provisions of Section 3A of RA No. 6395, we held that:

Moreover, Section 3A-(b) of R.A. No. 6395, as amended, is not binding on the Court. It has been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function and that any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of

the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.

This ruling was reiterated in *Republic v. Lubinao*, *National Power Corporation v. Tuazon* and *National Power Corporation v. Saldares* and continues to be the controlling doctrine. Notably, in all these cases, Napocor likewise argued that it is liable to pay the property owners for the easement of right-of-way only and not the full market value of the land traversed by its transmission lines. But we uniformly held in those cases that since the high-tension electric current passing through the transmission lines will perpetually deprive the property owners of the normal use of their land, it is only just and proper to require Napocor to recompense them for the full market value of their property. (Citations omitted; Emphasis ours)

The Atienza Commissioners' Report for just compensation based its valuation on a more comprehensive, comparative, rational, sound, and time-appropriate premise, while the Engr. Taupa Report was found to be too limited, and based on a jurisprudentially unsound premise.

Finally, the Atienza Commissioners' Report is more attuned to the settlement made by the original defendants, spouses Amparo and spouses Doce, with NAPOCOR. For spouses Amparo, whose property covered an area of 5,567 square meters, the settlement dated September 28, 1998, was for the amount of: (1) for relocation[55], P203,824.10; and (2) for improvements[56], P460,544.10, for a Total of: P664,368.20, or P119.34 per square meter. For spouses Doce, whose property covered 1,048 square meters, the settlement dated November 24, 1998, were for the amount of: (1) for relocation[57], P34,522.90; and (2) for crops/improvements[58], P140,330.92, for a Total of: P174,853.82, or P166.84 per square meter.

WHEREFORE, the appeal is DENIED. The Order dated February 21, 2011 of the Regional Trial Court, Branch 7, Batangas City, in Civil Case No. 5495, is AFFIRMED.

SO ORDERED.

Dicdican (Chairperson) and Galapate-Laguilles, [**] JJ., concur.

[*] Acting Senior Member per Office Order No. 258-14-ABR dated June 2, 2014.

[**] Acting Junior Member per Office Order No. 258-14-ABR dated June 2, 2014.

[1] Record, pp. 383-5.

[2] Record, pp. 1-6 (exclusive of annexes).

[3] Spouses Lorenzo Amparo and Juana Velasquez and spouses Pablo Abaya and Nazaria Doce were dropped as defendants. See Order dated April 11, 2002, Record, pp. 168-9.

[4] Record, pp. 38-9.

[5] Record, pp. 34-7.

[6] Order dated May 3, 2001, Record, p. 92.

[7] Record, pp. 95-8.

[8] Record, pp. 102-5.

[9] Record, p. 106.

[10] Record, pp. 111-3.

[11] Record, pp. 108-9.

[12] Record, pp. 115-6.

[13] Record, p. 125.

[14] Record, pp. 152, 191.

[15] Record, pp. 154-7.

[16] Record, pp. 168-9

[17] Record, p. 170.

[18] Record, pp. 179-80.

[19] Record, pp. 182-3.

[20] Record, pp. 184-6.

[21] Record, pp. 187-9

[22] Record, p. 191.

[23] Record, pp. 203-5.

[24] Record, pp. 243-5.

[25] Record, p. 278.

[26] Record, pp. 283-5.

[27] Record, p. 293.

[28] Record, pp. 294-6.

[29] Record, pp. 301-2.

[30] Record, pp. 193-5.

[31] Record, pp. 223-41.

[32] Record, pp. 325-7.

[33] Record, pp. 370-2.

[34] Record, pp. 336-7; 361-6.

[35] Record, p. 374.

[36] Record, pp. 375-9.

[37] Record, pp. 383-5, 384-5.

[38] Rollo, p. 26.

[39] See Hacienda Luisita, Inc. vs. Presidential Agrarian Reform Council, G.R. No. 171101, November 22, 2011, citing Association of Small Landowners in the Philippines vs. Secretary of Agrarian Reform, G.R. Nos. 78742,

79310, 79744, and 79777, July 14, 1989.

[40] Republic vs. Rural Bank of Kabacan, Inc., G.R. No. 185124, January 25, 2012.

[41] See Sy vs. Local Government of Quezon City, G.R. No. 202690, June 5, 2013.

[42] National Power Corporation vs. YCLA Sugar Development Corp., G.R. No. 193936, December 11, 2013.

[43] Rollo, pp. 26-30.

[44] Record, p. 194

[45] The Report was not dated but the same was submitted to the RTC on October 8, 2002.

[46] Record, pp. 376-80.

[47] Record, p. 377.

[48] Record, p. 375.

[49] Record, p. 379.

[50] Record, p. 378.

[51] Record, pp. 370-2.

[52] Section 3A of Republic Act No. 6395 (An Act Revising the Charter of the National Power Corporation), as amended, reads:

Sec. 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall

(a) With respect to the acquired land or portion thereof, not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; Provided, that in cases any buildings, houses and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation; Provided, further, that such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just

compensation therefor.

[53] Record, p. 224.

[54] G.R. No. 173520, January 30, 2013.

[55] Record, p. 13.

[56] Record, p. 14.

[57] Record, p. 15.

[58] Record, p. 16.

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