

**JANE L. GARCIA, MAYORICO P. SANDICO, BELEN R. GARCIA AND
DANILO DIOKNO, PETITIONERS, VS. COURT, OF APPEALS (SPECIAL
TENTH DIVISION) AND NATIONAL POWER CORPORATION,
RESPONDENTS.**

G.R. No. L-47553. January 31, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari instituted by Jane L. Garcia, Mayorico P. Sandico, Belen R. Garcia, and Danilo Diokno against the Court of Appeals (Special Tenth Division), and the National Power Corporation seeking the following relief:

"WHEREFORE, premises considered, it is most respectfully prayed of the Court:

"1. That the Decision of the Court of Appeals respecting Block 19, wherein it has adjudged private respondent entitled to acquire title and ownership over the property by paying a compensation of P0.07 per square meter be reversed and that the Decision of the Court of First Instance of Pampanga adjudging the private respondent to compensate herein petitioners for Block 19 in the amount of P15.00 per square meter with interest at the legal rate from June 30, 1954 be upheld;

"2. That, in the alternative to the petition next preceding, the private respondent be adjudged to pay rentals for the use of Block 19 at the rate of P2.00 per square meter per annum from June 30, 1954 until the same is vacated by it;

"Petitioners further pray for such other reliefs as may be just and equitable in the premises.

"Quezon City for Manila, Philippines January 31, 1978.[1]

The record discloses that on August 8, 1969, the private respondent National Power Corporation filed a complaint for eminent domain with the Court of First Instance of Pampanga, Branch Five, docketed as Civil Case No. 3584[2] praying that it be allowed to acquire right of way easements over the property of petitioners consisting of two adjoining parcels of land (Lots Nos. 633 and 634) with a total area of 15.98 hectares; that the said complaint alleges that the proposed right-of-way is needed to construct the 69 KV Mexico-Balibago power line which will encompass some 2,835 square meters of petitioner's property[3]; that on March 2, 1970, the defendants,

petitioners herein, filed an answer asking that the complaint for expropriation be dismissed and on the first and second counter-claims praying for the following:

"1. Under the first cause of action, sentencing the plaintiff to pay the defendants rentals at the annual rate of P2.00 per square meter for the use and occupancy of Block 19 with a total area of not less than 20,439 square meters, starting from the year 1957 and for as long as plaintiff uses and occupies the same; back rentals to bear interest at the rate of 12% per annum, until paid.

"2. Under the second cause of action, sentencing plaintiff alternatively, i.e., in the event that expropriation be granted as prayed for in the complaint — to pay defendants as compensation for the total encompassed in Block 10 (not less than 6,000 square meters) at the price of P20.00 per square meter, with 12% interest computed from date of possession, until paid."[4]

that on March 30, 1970, the plaintiff was placed in possession of the property sought to be expropriated[5] upon a previous deposit on March 12, 1970 of a provisional amount of P5,670;[6] that after the issues were joined evidence was submitted by both parties to the Clerk of Court, Andres B. Paras, as lone Commissioner, who submitted his Report[7] with the following recommendation:

"CONCLUSION

"All told this Commissioner respectfully recommends that judgment be rendered;

"(1) Expropriating the areas covered by Block 19 (20,439 sq. meters) and Block 10 (6,190 sq. meters) of the subdivision plan (Exhibit 3) of the defendant's properties in favor of the plaintiff;

(2) Ordering plaintiff to pay the defendants Juana Garcia Sandico, Belen Garcia Diokno and Bienvenido Garcia (a) by way of just compensation, the amount of P15.00 per square meter for the Total area encompassed in Block 19 and Block 10, supra, with 6% interest computed from March 16, 1970, until paid, (b) an amount to be fixed by the Court as and for attorney's fees.

"San Fernando, Pampanga, September 8, 1971.

"RESPECTFULLY SUBMITTED:

"(Sgd) ANDRES B. PARAS
"Commissioner"[8]

that mainly on the basis of the above report, the lower court rendered a decision, the dispositive part of which reads:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

"a) Expropriating the area covered by Block 10 (6,190 square meters) and Block 19 (20,439 square meters) of the subdivision plan of defendants' properties, with an aggregate area of 26,629 square meters, in favor of the plaintiff;

"b) Ordering the plaintiff to pay the defendants Juana Garcia Sandico, Belen Garcia Diokno and Bienvenido Garcia the amount of P15.00 per square meter for the area herein expropriated which totals P399,435.00, with interest at the legal rate computed as follows:

"A) For the area covered by Block 10, from June 30, 1954;

"B) For the area covered by Block 19, from March 30, 1970,

until fully paid and to pay Five (5%) percent of the amount involved as and for attorney's fees and expenses of litigation, and to pay the costs of the suit.

"SO ORDERED.

"San Fernando, Pampanga, November 16, 1971,

(Sgd) HONORIO ROMERO
Judge"[9]

that the plaintiff, private respondent National Power Corporation, appealed to the Court of Appeals;[10] that on October 28, 1977, the Court of Appeals rendered its decision modifying the trial court's decision as follows:

"Wherefore, judgment is hereby rendered:

"1. Expropriating in favor of the plaintiff the area covered by Block 10 (6,190 square meters) and Block 19 (20,439 square meters) of the subdivision plan of the defendants' property;

"2. Ordering the plaintiff to pay the defendants Juana Garcia Sandico, Belen Garcia Diokno and Bienvenido Garcia the purchase price of Block 10 (6,190 square meters) in the amount of P87,180.00 at P15.00 per square

meter and at the same time ordering the Provincial Treasurer of Pampanga to release to the said defendants the amount of P5,670 deposited with him on February 26, 1970 as evidenced by Official Receipt No. 2497123 dated March 11, 1970 with interest at the legal rate on the amount of P87,180.00 from March 30, 1970;

"3. Ordering the plaintiff to pay to the same defendants the amount of P14,511.69 as the market value for Block 19 (20,439 square meters) at P0.07 per square meter with legal interest from July 1, 1957.

"The judgment of the lower court awarding attorney's fees and costs are hereby eliminated.

"SO ORDERED.[11]

that on November 24, 1977, the petitioners filed a motion for reconsideration of the decision of the Court of Appeals which

was denied in its resolution dated December 13, 1977;[12] and that the petitioners appealed to this Court assigning as sole error allegedly committed by the Court of Appeals the following:

"THE COURT OF APPEALS IN ITS DECISION OF OCTOBER 28, 1977 IN CA-GR NO. 55720-R ERRED IN FIXING THE AMOUNT OF JUST COMPENSATION AT P0.07 PER SQUARE METER, WHEN THE LOWER COURT FINDS THIS TO BE P15.00 PER SQUARE METER."[13]

The facts, as found by the Court of Appeals, are:

"The defendants own Lot 633 and Lot 634 located in Mexico, Pampanga. Lot 633 has an area of 85,212 square meters. Lot 634 has an area of 74,613 square meters. Total area is 159,825 square meters.

"According to the defendants' pleadings (p. 34, Record on Appeal), not denied in the plaintiff's pleading, the National Power Corporation occupied as early as 1957 portions of the two (2) lots for the construction of 'steel towers and high power lines for 230 KV Ambuklao-Manila Line and 69 KV Mexico-Tarlac Line.' The portions of the two (2) lots occupied has an area of 20,439 square meters. It is designated as Block 19 in the sketch plan (Exhibit 3). Up to now the plaintiff has not paid anything for the portion occupied, either as rental or as purchase price.

"As early as March 10, 1960 these two (2) lots were surveyed for the purpose of converting them into 'Conching Subdivision' (Exhibit 3) for residential purposes. The two (2) lots were subdivided into 19 blocks (Block No. 1 to 19). Except Block 19 which has been occupied by the NPC since 1957, the other blocks were subdivided into residential lots, totalling 350 lots in all. Block 19 occupied by the NPC was not subdivided into lots because of the steel towers and the power lines of the NPC, which make the said block dangerous for residential purposes.

"The plan and the technical descriptions were duly approved by the court as early as August 23, 1962 (Exhibit

2-A). The subdivision plan was in turn approved by the Land Registration Commission on July 23, 1962 and by the Municipal Council of Mexico, Pampanga on January 22, 1962 (Exhibit 4).

"After the subdivision plan was approved, steps were taken to improve the property. Asphalted roads and gutters have been constructed. According to the Commissioner's Report, 'there are men working in the construction of an asphalt road and work is being done in full blast.¹ The same report states that there are 'more or less 25 houses of strong materials constructed in the area.'

"According to the defendants' evidence, not rebutted by the plaintiff, there are about 100 to 150 willing buyers of lots in the subdivision.

"On May 8, 1969 the NPC instituted the instant action for expropriation of a 'right-of-way easement' over a portion of the two (2) lots. In Lot 633 the plaintiff wants to expropriate a portion consisting of 1470 square meters. In Lot 634 the area to be expropriated is 2835 square meters. Total area to be expropriated is 2835 square meters (Exhibit A). The entire area to be expropriated is within Block 10 of Conching Subdivision (Exhibit 3) which is adjacent to Block 19. (Vide, Exhibit 3). The plaintiff intends to use the area to be expropriated for the construction and maintenance of its 69 KV Mexico-Balibago Transmission Line.' The plaintiff offers to pay to the defendants an easement fee in the nominal sum of P1.00 and 10.00 for its power to be constructed." [14]

Anent the error assigned by the petitioners, the pertinent portions of the decision of the Court of Appeals are:

"The final question involves the determination of the just compensation. Just compensation is the market value of the property. It should be determined at the time of the taking. K is the price which it will command where it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of having it. (Manila Railway Co. vs. Velasquez, 32, Phil., 286; Manila Railroad Co. vs. Caligsihan, 40 Phil., 326).

"The market value must be determined as of the time the plaintiff takes possession. Thus when possession is ahead of the filing of the complaint, the date of possession determines the market value. (Republic vs. PNB, L-14158, 41261).

"We first determine the market value of Block 10 consisting of 6,190 square meters. The defendants' witnesses, namely, Garcia Sandico (tsn., January 9, 1971, p. 27), Gonzalo Magpayo (tsn., Feb. 6, 1971), Igino Sason (tsn., Feb. 6, 1971), Igino Sason (tsn., May 8, 1971), and Jose Angeles (tsn., May 15, 1975) all testified that the prices of the residential lots in the subdivision as of 1971 was P15.00 to P20.00 per square meter. The contract to sell dated November 18, 1965 (Exhibit 5) shows that the price per square meter is P15.00. Another contract to sell dated October 9, 1967 (Exhibit 5-A) shows a purchase price of P15.00 per square meter. A request for reservation dated July 6, 1970 (Exhibit 6) shows a purchase price of P17.00 per square meter. Other requests for reservation in 1969 and 1970 show a purchase price ranging from P15.00 to P17.00 per square meter (Exhibits 6-A to 6-H, inclusive.)

On the other hand, the plaintiff presented only a tax declaration to prove the market value. A tax declaration is only prima facie evidence of market value which may be overcome by satisfactory evidence presented by the owners of the property to be expropriated.

"We therefore agree with the finding of the lower court that the price of Block 10 consisting of 6,190 square meters at P15.00 per square meter is P92,850.00. It appears, however, that as of February 26, 1970 the plaintiff deposited with the Provincial Treasurer of Pampanga the amount of P5,670 for the compensation of the property. Deducting P5,670 from P92,850.00 the unpaid balance for Block 10 is P87,180.00.

"Block 19 presents a different problem. Said property was occupied, according to the allegations of the defendants' counterclaim not denied in the plaintiff's reply thereto, in 1957 by the plaintiff. In other words, the possession of the property took place 13 years before the defendants filed their counterclaim praying for the damages with respect to the occupation of Block 19. The defendants did not present evidence as to the market value of Block 19 as of 1957. The tax declaration therefore should constitute the prima facie evidence of the market value for the purpose of determining the just compensation. (Province of Jlocos Norte vs. Compania General de Tabacos, L-7361, April 20, 1956, 53 O.G. 7687). As per tax declaration (Exhibits B, B-1) the market value should be P.07 per square meter or a total amount of P14,511.69 for Block 19 which consists of 20,439 square meters." [15]

The error raised refers solely to Block 19 of the petitioners' property.

It is apparent that the substantial reduction of what compensation has to be paid for Block 19 came about as a result of the application of the doctrine enunciated in the case of the Republic vs. Phil. National Bank, et al., [16] clarifying the question as to what date the market value of condemned property should be fixed, that "where the taking of the property precedes the institution of the condemnation proceedings, the value should be fixed as of the time of the taking." A careful reading of this case and the cases [17] mentioned therein shows certain material facts which are not identical to the case at bar, to wit: the properties in question became the subject of expropriation proceedings initiated by the plaintiff Government, and that the possession or "taking" of the Government of the properties in question, whether it was made before or after the filing of the complaint for expropriation v/as made for purposes of eminent domain or with the intent to expropriate. [18] Hence, the Court of Appeals, in reducing the amount from P15.00 per square meter to P0.07 per square meter, made the value stated in the tax declaration of Block 19 in 1957 its basis on the assumption that in the said year 1957 the private respondent had taken possession of the land for the purpose of eminent domain and on the further presumption that subsequent thereto an action for expropriation was entered in court over this property. However, these facts assumed by the Court of Appeals are not borne by the evidence on record.

Civil Case No. 3584 of the Court of First Instance of Pampanga, Branch V, entitled "National Power Corporation vs. Jane L. Garcia, et al.," is an action for expropriation but what was sought to be expropriated in the action was a right of way for the use of private respondent in the construction of its 69 KV Mexico-Balibago transmission line. This purpose of private respondent is stated in paragraph 5 of the Complaint [19] and indicated and shaded in red on the sketch attached to the complaint as Annex "A". [20] Said paragraph reads:

"The plaintiff needs right-of-way easements over portions of the parcels of land hereinabove described for the consideration and maintenance of its KV Mexico-Balibago transmission line, which portions are indicated and shaded in red on the sketches attached hereto, marked as Annex "A"

The writ of possession directed the Sheriff "to place the plaintiff National Power Corporation in immediate possession of what is needed of the defendants' lands, for a right-of-way easement subject of this expropriation proceedings." [21] The Ambuklao-Manila and Mexico-Tarlac transmission lines established as early as 1953 and 1957 traversing properties covered by Block 19 were not the subject matter of the said action.

Moreover, in the second paragraph of private respondents' answer to defendant's compulsory counterclaim, [22] it is alleged that the construction of the Ambuklao-Manila and Mexico-Tarlac transmission lines were with the permission of petitioners' predecessor-in-interest, their father, Eutiquiano Garcia. As shown by the transcript of the stenographic notes of the proceedings of June 26, 1971, [23] Mr. Eladio Espiritu, a witness of the private respondent, attempted to establish that the entry of private respondent to petitioners' property was with the consent of their predecessor. Likewise, as found by the Commissioner in his Report, [24] all that the plaintiff, private respondent herein, could show was an alleged authority to construct the Ambuklao-Manila line only, allegedly signed by defendants' father (Exhibit "M"), pending completion of the negotiation of the compensation to be paid. Exhibit "M", in clear and unmistakable terms, states the nature of the possession that the private respondent was granted at the time. The title of this document is "PERMISSION TO OCCUPY LAND" which undoubtedly grants to the National Power Corporation a privilege and the same is subject to the terms and conditions embodied in the document. [25] As the private respondent's entry was gained through permission, it did not have the intention to acquire ownership either by voluntary purchase or by the exercise of eminent domain. And the fact remains that the private respondent never completed the negotiation as to compensation. Not only this, private respondent went on to construct another line — the 69 KV Mexico-Tarlac without defendants' permission nor a court authorization. [26] All these prove the private respondent's intention not to expropriate Block 19, as it did not seek so in the action it instituted on August 8, 1969. Neither did it have the intention to do so in 1953 as shown by the terms in Exhibit "M". It is clear, therefore, that the private respondent not only did not take possession with intent to expropriate Block 19, but that it did not institute expropriation proceedings over the same.

Consequently, since the areas covered by Block 19 were never entered into or possessed for purposes of eminent domain, nor did they become the subject of an action for eminent domain, neither the date of entry nor the filing of the action by private respondent for expropriation of a "right-of-way" easement on December 8, 1969 could be reckoned with as the basis for the determination of just compensation.

Hence, the conclusion of the Court of Appeals that the fair market value of the property in question based on the tax assessment in 1957 is an error of law, as it is a conclusion predicated on the wrong assumption that there was a taking or possession of Block 19 in 1957 for purposes of expropriation and that there was an action for expropriation of the same.

It is significant that the expropriation of Block 19 came about only when the trial court declared that inasmuch as the private respondent cannot acquire easement of right-of-way over Block 19, much less own it through prescription, the only way for the private respondent to justify its continued occupation of Block 19 is to expropriate the same. This declaration of the trial court was affirmed by the Court of Appeals. The petitioners cannot legally impugn now for the first time on appeal to this Court the trial court's directive to expropriate Block 19 for public use. Well settled is the rule that questions now raised in the lower court cannot now be raised for the first time on appeal. [27] Hence, the expropriation of Block 19 is final.

By virtue of the special and peculiar circumstances of the case at bar, there being no taking of the property in question for purposes of eminent domain nor condemnation proceedings instituted over the same to speak of, the time as of which the market value should be fixed is the time when the trial court made its order of expropriation. It is the date of appropriation or the investing date which as everyone knows required more than a day, sometimes weeks to carry through as would an ordinary real estate purchase and sale. Hence, in estimating the market value,

all the capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in the time and the use to which it is then applied by the owner. All the facts as to the condition of the property and its surroundings, its improvements and capabilities may be shown and considered in estimating its value.

Anent the compensation to be paid for Block 19, the reasons relied upon by the trial court which appear just, equitable, and in consonance with established jurisprudence are:

"In the mind of the Court, the contentions so advanced by the plaintiff cannot be maintained, and the authority just cited is not applicable in the instant case. In the first place, it was clearly shown by the defendants that the properties herein involved have been converted into a subdivision way back in 1962. In support of this, the defendants presented the order of this Court approving the subdivision plan, which was likewise approved by the Land Registration Commission, and the resolution of the municipal council of Mexico, Pampanga relative to the same subdivision. Moreover, as earlier discussed the Court is guided by the Commissioner's Report and Findings of the ocular inspection in determining the nature of the properties involved. In effect, therefore, the Court is of the opinion that the evidence presented by the defendants outweigh the evidence presented for the plaintiff by preponderance.

"Furthermore, by the testimonies of the witnesses, it was established that the properties, being converted into a subdivision sell at P15.00 to P20.00 per square meter and there are many willing buyers at this price range. However, the plaintiff, in an effort to contradict this claim, presented the appraisal made by the provincial appraisal committee for the province of Pampanga which appraisal gave the valuation of P6.00 to P8.00 per square meter for lots adjoining the lots of defendants. These prices or valuation, however, in the opinion of the Court, cannot be and are not the determinative factors in determining the value of the defendants' properties. It has been established by the evidence on record and confirmed by the report of the Commissioner, that the Couching Subdivision, where the subject properties form pans, are located along the national highway; that it is near the town proper of Mexico, Pampanga where the school and church sites are situated. In giving valuation to properties, these factors, namely, the relation or distance of the premises towards the national highway, to the town proper, and to other commercial sites such as schools and churches, must be given consideration. In this particular case, the properties, being along the national highway, near the town proper of Mexico, Pampanga and likewise near the school and church sites, must be given valuation commensurate to its standing. This being the case, the Court believes that the value of P15.00 per square meter is reasonable to be given to the defendants' properties. The defendants therefore are entitled to the payment of P15.00 per square meter for their properties object of this expropriation proceedings which are Blocks 10 and 19 of the subdivision plan with an aggregate area of 26,439 square meters."

The fair market value of Block 19 should be fixed at P15.00 per square meter.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. No. 55720-R is hereby modified as to Block 19 of the subdivision plan of petitioners' property and the private respondent, National Power Corporation, is ordered to pay to the petitioners the amount of P306,585.00 as the market value for Block 19 (20,439 square meters) at P15.00 per square meter with legal interest from March 30, 1970. No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, De Castro and Melencio-Herrera, JJ., concur.

- [1] Petition, p. 10, Rollo, p. 18.
- [2] Annex "A", Record on Appeal, pp. 15-20; Rollo, p. 41.
- [3] Ibid.
- [4] Record on Appeal, pp. 36-37; Rollo, p. 41.
- [5] Ibid., pp. 49-51.
- [6] Ibid., pp. 42-43.
- [7] Commissioner's Report, Annex "O", Record on Appeal, pp. 83-111; Rollo, p. 41.
- [8] Ibid., p. 110.
- [9] CFI Decision, Record on Appeal, pp. 139-140; Rollo, p. 41. Typographical errors were corrected in an Order of the CFI of Pampanga, dated January 3, 1972, Record on Appeal, pp. 146-147; Rollo, p. 41.
- [10] Docketed as Civil Case No. CA-G.R. No. 55720-R.
- [11] Annex "A", Petition, Rollo, p. 33. Decision of the Court of Appeals was written by Justice Vicente Ericeta and concurred in by Justice Ameurfina Melencio-Herrera and Justice Guardson R. Lood.
- [12] Petition, p. 6; Rollo, p. 14.
- [13] Brief for the Petitioners, p. 4; Rollo, p. 102.
- [14] CA Decision, pp. 1-3; Rollo, pp. 21-23.
- [15] Ibid., pp. 10-13; Rollo, pp. 30-32.

[16] 1 SCRA 957.

- [17] Provincial Government of Rizal vs. Caro de Araullo, 58 Phil. 308 and Republic vs. Lara 50 O.G. 5778 (1954).
- [18] To constitute "taking for purposes of eminent domain the ff. circumstances must concur: 1) the expropriator must enter upon the private property; 2) [he entrance must not be for a momentary period, that is, the entrance must be permanent; 3) the entry must be under warrant or color of legal authority; 4) the property must be devoted to public use or otherwise informally appropriated or injuriously affected; and 5) the utilization of the property must be in such a way as to oust the owner and deprive him of ai! beneficial enjoyment of the property, Republic vs. Vda. de Castellvi, 58 SCRA 336, 350-352 (August 15, 1974).
- [19] Record on Appeal, p. 17, Rollo, p. 41.
- [20] Exhibit "A", Folder of Exhibits.
- [21] The Writ of Possession (Annex "K") issued by the lower court on March 16, 1970, together with the Sheriff's Return (Annex "J") of March 30, 1970, are additional proofs of what properties were covered by the action for expropriation, pp. 47-50, Record on Appeal, Rollo, p. 41.
- [22] Record on Appeal, p. 40; Rollo, p. 41.
- [23] Pp. 20-32.
- [24] Annex "O", Record on Appeal, pp. 108-109; Rollo, p. 41.

[25] Reply to Respondent's Comment, p. 4; Rollo, p, 77.

[26] Commissioner's Report, Record on Appeal, p. 109.

[27] Ferrer vs. Commissioner of Internal Revenue, 5 SCRA 1022.

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