

NATIONAL POWER CORPORATION, PETITIONER, VS. COURT OF APPEALS AND ANTONINO POBRE, RESPONDENTS.

G.R. No. 106804. August 12, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before us is a petition for review[1] of the 30 March 1992 Decision[2] and 14 August 1992 Resolution of the Court of Appeals in CA-G.R. CV No. 16930. The Court of Appeals affirmed the Decision[3] of the Regional Trial Court, Branch 17, Tabaco, Albay in Civil Case No. T-552.

The Antecedents

Petitioner National Power Corporation (“NPC”) is a public corporation created to generate geothermal, hydroelectric, nuclear and other power and to transmit electric power nationwide.[4] NPC is authorized by law to acquire property and exercise the right of eminent domain.

Private respondent Antonino Pobre (“Pobre”) is the owner of a 68,969 square-meter land (“Property”) located in Barangay Bano, Municipality of Tiwi, Albay. The Property is covered by TCT No. 4067 and Subdivision Plan 11-9709.

In 1963, Pobre began developing the Property as a resort-subdivision, which he named as “Tiwi Hot Springs Resort Subdivision.” On 12 January 1966, the then Court of First Instance of Albay approved the subdivision plan of the Property. The Register of Deeds thus cancelled TCT No. 4067 and issued independent titles for the approved lots. In 1969, Pobre started advertising and selling the lots.

On 4 August 1965, the Commission on Volcanology certified that thermal mineral water and steam were present beneath the Property. The Commission on Volcanology found the thermal mineral water and steam suitable for domestic use and potentially for commercial or industrial use.

NPC then became involved with Pobre’s Property in three instances.

First was on 18 February 1972 when Pobre leased to NPC for one year eleven lots from the approved subdivision plan.

Second was sometime in 1977, the first time that NPC filed its expropriation case against Pobre to acquire an 8,311.60 square-meter portion of the Property.[5] On 23 October 1979, the trial court ordered the expropriation of the lots upon NPC’s payment of P25 per square meter or a total amount of P207,790. NPC began drilling operations and construction of steam wells. While this first expropriation case was pending, NPC dumped waste materials beyond the site agreed upon by NPC with Pobre. The dumping of waste materials altered the topography of some portions of the Property. NPC did not act on Pobre’s complaints and NPC continued with its dumping.

Third was on 1 September 1979, when NPC filed its second expropriation case against Pobre to acquire an additional 5,554 square meters of the Property. This is the subject of this petition. NPC needed the lot for the construction and maintenance of Naglagbong Well Site F-20, pursuant to Proclamation No. 739[6] and Republic Act No. 5092.[7] NPC immediately deposited P5,546.36 with the Philippine National Bank. The deposit represented 10% of the total market value of the lots covered by the second expropriation. On 6 September 1979, NPC entered the 5,554 square-meter lot upon the trial court's issuance of a writ of possession to NPC.

On 10 December 1984, Pobre filed a motion to dismiss the second complaint for expropriation. Pobre claimed that NPC damaged his Property. Pobre prayed for just compensation of all the lots affected by NPC's actions and for the payment of damages.

On 2 January 1985, NPC filed a motion to dismiss the second expropriation case on the ground that NPC had found an alternative site and that NPC had already abandoned in 1981 the project within the Property due to Pobre's opposition.

On 8 January 1985, the trial court granted NPC's motion to dismiss but the trial court allowed Pobre to adduce evidence on his claim for damages. The trial court admitted Pobre's exhibits on the damages because NPC failed to object.

On 30 August 1985, the trial court ordered the case submitted for decision since NPC failed to appear to present its evidence. The trial court denied NPC's motion to reconsider the submission of the case for decision.

NPC filed a petition for certiorari[8] with the then Intermediate Appellate Court, questioning the 30 August 1985 Order of the trial court. On 12 February 1987, the Intermediate Appellate Court dismissed NPC's petition but directed the lower court to rule on NPC's objections to Pobre's documentary exhibits.

On 27 March 1987, the trial court admitted all of Pobre's exhibits and upheld its Order dated 30 August 1985. The trial court considered the case submitted for decision.

On 29 April 1987, the trial court issued its Decision in favor of Pobre. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendant and against the plaintiff, ordering the plaintiff to pay unto the defendant:

(1) The sum of THREE MILLION FOUR HUNDRED FORTY EIGHT THOUSAND FOUR HUNDRED FIFTY (P3,448,450.00) PESOS which is the fair market value of the subdivision of defendant with an area of sixty eight thousand nine hundred sixty nine (68,969) square meters, plus legal rate of interest per annum from September 6, 1979 until the whole amount is paid, and upon payment thereof by the plaintiff the defendant is hereby ordered to execute the necessary Deed of Conveyance or Absolute Sale of the property in favor of the plaintiff;

(2) The sum of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS for and as attorney's fees.

Costs against the plaintiff.

SO ORDERED.[9]

On 13 July 1987, NPC filed its motion for reconsideration of the decision. On 30 October 1987, the trial court issued its Order denying NPC's motion for reconsideration.

NPC appealed to the Court of Appeals. On 30 March 1992, the Court of Appeals upheld the decision of the trial court but deleted the award of attorney's fees. The dispositive portion of the decision reads:

WHEREFORE, by reason of the foregoing, the Decision appealed from is AFFIRMED with the modification that the award of attorney's fees is deleted. No pronouncement as to costs.

SO ORDERED.[10]

The Court of Appeals denied NPC's motion for reconsideration in a Resolution dated 14 August 1992.

The Ruling of the Trial Court

In its 69-page decision, the trial court recounted in great detail the scale and scope of the damage NPC inflicted on the Property that Pobre had developed into a resort-subdivision. Pobre's Property suffered "permanent injury" because of the noise, water, air and land pollution generated by NPC's geothermal plants. The construction and operation of the geothermal plants drastically changed the topography of the Property making it no longer viable as a resort-subdivision. The chemicals emitted by the geothermal plants damaged the natural resources in the Property and endangered the lives of the residents.

NPC did not only take the 8,311.60 square-meter portion of the Property, but also the remaining area of the 68,969 square-meter Property. NPC had rendered Pobre's entire Property useless as a resort-subdivision. The Property has become useful only to NPC. NPC must therefore take Pobre's entire Property and pay for it.

The trial court found the following badges of NPC's bad faith: (1) NPC allowed five years to pass before it moved for the dismissal of the second expropriation case; (2) NPC did not act on Pobre's plea for NPC to eliminate or at least reduce the damage to the Property; and (3) NPC singled out Pobre's Property for piecemeal expropriation when NPC could have expropriated other properties which were not affected in their entirety by NPC's operation.

The trial court found the just compensation to be P50 per square meter or a total of P3,448,450 for Pobre's 68,969 square-meter Property. NPC failed to contest this valuation. Since NPC was in bad faith and it employed dilatory tactics to prolong this case, the trial court imposed legal interest on the P3,448,450 from 6 September 1979 until full payment. The trial court awarded Pobre attorney's fees of P150,000.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the decision of the trial court. However, the appellate court deleted the award of attorney's fees because Pobre did not properly plead for it.

The Issues

NPC claims that the Court of Appeals committed the following errors that warrant reversal of the appellate court's decision:

- In not annulling the appealed Decision for having been rendered by the trial court with grave abuse of discretion and without jurisdiction;
- In holding that NPC had "taken" the entire Property of Pobre;
- Assuming *arguendo* that there was "taking" of the entire Property, in not excluding from the Property the 8,311.60 square-meter portion NPC had previously expropriated and paid for;
- In holding that the amount of just compensation fixed by the trial court at P3,448,450.00 with interest from September 6, 1979 until fully paid, is just and fair;
- In not holding that the just compensation should be fixed at P25.00 per square meter only as what NPC and

Pobre had previously mutually agreed upon; and

- In not totally setting aside the appealed Decision of the trial court.[11]

Procedural Issues

NPC, represented by the Office of the Solicitor General, insists that at the time that it moved for the dismissal of its complaint, Pobre had yet to serve an answer or a motion for summary judgment on NPC. Thus, NPC as plaintiff had the right to move for the automatic dismissal of its complaint. NPC relies on Section 1, Rule 17 of the 1964 Rules of Court, the Rules then in effect. NPC argues that the dismissal of the complaint should have carried with it the dismissal of the entire case including Pobre's counterclaim.

NPC's belated attack on Pobre's claim for damages must fail. The trial court's reservation of Pobre's right to recover damages in the same case is already beyond review. The 8 January 1985 Order of the trial court attained finality when NPC failed to move for its reconsideration within the 15-day reglementary period. NPC opposed the order only on 27 May 1985 or more than four months from the issuance of the order.

We cannot fault the Court of Appeals for not considering NPC's objections against the subsistence of Pobre's claim for damages. NPC neither included this issue in its assignment of errors nor discussed it in its appellant's brief. NPC also failed to question the trial court's 8 January 1985 Order in the petition for certiorari[12] it had earlier filed with the Court of Appeals. It is only before this Court that NPC now vigorously assails the preservation of Pobre's claim for damages. Clearly, NPC's opposition to the existence of Pobre's claim for damages is a mere afterthought. Rules of fair play, justice and due process dictate that parties cannot raise an issue for the first time on appeal.[13]

We must correct NPC's claim that it filed the notice of dismissal just "shortly" after it had filed the complaint for expropriation. While NPC had intimated several times to the trial court its desire to dismiss the expropriation case it filed on 5 September 1979,[14] it was only on 2 January 1985 that NPC filed its notice of dismissal.[15] It took NPC more than five years to actually file the notice of dismissal. Five years is definitely not a short period of time. NPC obviously dilly-dallied in filing its notice of dismissal while NPC meanwhile burdened Pobre's property rights.

Even a timely opposition against Pobre's claim for damages would not yield a favorable ruling for NPC. It is not Section 1, Rule 17 of the 1964 Rules of Court that is applicable to this case but Rule 67 of the same Rules, as well as jurisprudence on expropriation cases. Rule 17 referred to dismissal of civil actions in general while Rule 67 specifically governed eminent domain cases.

Eminent domain is the authority and right of the state, as sovereign, to take private property for public use upon observance of due process of law and payment of just compensation.[16] The power of eminent domain may be validly delegated to the local governments, other public entities and public utilities[17] such as NPC. Expropriation is the procedure for enforcing the right of eminent domain.[18] "Eminent Domain" was the former title of Rule 67 of the 1964 Rules of Court. In the 1997 Rules of Civil Procedure, which took effect on 1 July 1997, the prescribed method of expropriation is still found in Rule 67, but its title is now "Expropriation."

Section 1, Rule 17 of the 1964 Rules of Court provided the exception to the general rule that the dismissal of the complaint is addressed to the sound discretion of the court.[19] For as long as all of the elements of Section 1, Rule 17 were present the dismissal of the complaint rested exclusively on the plaintiff's will.[20] The defending party and even the courts were powerless to prevent the dismissal.[21] The courts could only accept and record the dismissal.[22]

A plain reading of Section 1, Rule 17 of the 1964 Rules of Court makes it obvious that this rule was not intended to supplement Rule 67 of the same Rules. Section 1, Rule 17 of the 1964 Rules of Court, provided that:

SECTION 1. Dismissal by the plaintiff. — An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. A class suit shall not be dismissed or compromised without approval of the court.

While Section 1, Rule 17 spoke of the “service of answer or summary judgment,” the Rules then did not require the filing of an answer or summary judgment in eminent domain cases.[23] In lieu of an answer, Section 3 of Rule 67 required the defendant to file a single motion to dismiss where he should present all of his objections and defenses to the taking of his property for the purpose specified in the complaint.[24] In short, in expropriation cases under Section 3 of Rule 67, the motion to dismiss took the place of the answer.

The records show that Pobre had already filed and served on NPC his “motion to dismiss/answer”[25] even before NPC filed its own motion to dismiss. NPC filed its notice of dismissal of the complaint on 2 January 1985. However, as early as 10 December 1984, Pobre had already filed with the trial court and served on NPC his “motion to dismiss/answer.” A certain Divina Cerela received Pobre’s pleading on behalf of NPC.[26] Unfortunately for NPC, even Section 1, Rule 17 of the 1964 Rules of Court could not save its cause.

NPC is in no position to invoke Section 1, Rule 17 of the 1964 Rules of Court. A plaintiff loses his right under this rule to move for the immediate dismissal of the complaint once the defendant had served on the plaintiff the answer or a motion for summary judgment before the plaintiff could file his notice of dismissal of the complaint.[27] Pobre’s “motion to dismiss/answer,” filed and served way ahead of NPC’s motion to dismiss, takes the case out of Section 1, Rule 17 assuming the same applies.

In expropriation cases, there is no such thing as the plaintiff’s matter of right to dismiss the complaint precisely because the landowner may have already suffered damages at the start of the taking. The plaintiff’s right in expropriation cases to dismiss the complaint has always been subject to court approval and to certain conditions.[28] The exceptional right that Section 1, Rule 17 of the 1964 Rules of Court conferred on the plaintiff must be understood to have applied only to other civil actions. The 1997 Rules of Civil Procedure abrogated this exceptional right.[29]

The power of eminent domain is subject to limitations. A landowner cannot be deprived of his right over his land until expropriation proceedings are instituted in court.[30] The court must then see to it that the taking is for public use, there is payment of just compensation and there is due process of law.[31]

If the propriety of the taking of private property through eminent domain is subject to judicial scrutiny, the dismissal of the complaint must also pass judicial inquiry because private rights may have suffered in the meantime. The dismissal, withdrawal or abandonment of the expropriation case cannot be made arbitrarily. If it appears to the court that the expropriation is not for some public use,[32] then it becomes the duty of the court to dismiss the action.[33] However, when the defendant claims that his land suffered damage because of the expropriation, the dismissal of the action should not foreclose the defendant’s right to have his damages ascertained either in the same case or in a separate action.[34]

Thus, NPC’s theory that the dismissal of its complaint carried with it the dismissal of Pobre’s claim for damages is baseless. There is nothing in Rule 67 of the 1964 Rules of Court that provided for the dismissal of the defendant’s claim for damages, upon the dismissal of the expropriation case. Case law holds that in the event of

dismissal of the expropriation case, the claim for damages may be made either in a separate or in the same action, for all damages occasioned by the institution of the expropriation case.[35] The dismissal of the complaint can be made under certain conditions, such as the reservation of the defendant's right to recover damages either in the same or in another action.[36] The trial court in this case reserved Pobre's right to prove his claim in the same case, a reservation that has become final due to NPC's own fault.

Factual Findings of the Trial and Appellate Courts Bind the Court

The trial and appellate courts held that even before the first expropriation case, Pobre had already established his Property as a resort-subdivision. NPC had wrought so much damage to the Property that NPC had made the Property uninhabitable as a resort-subdivision. NPC's facilities such as steam wells, nag wells, power plants, power lines, and canals had hemmed in Pobre's Property. NPC's operations of its geothermal project also posed a risk to lives and properties.

We uphold the factual findings of the trial and appellate courts. Questions of facts are beyond the pale of Rule 45 of the Rules of Court as a petition for review may only raise questions of law.[37] Moreover, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court.[38] We thus find no reason to set aside the two courts' factual findings.

NPC points out that it did not take Pobre's 68,969 square-meter Property. NPC argues that assuming that it is liable for damages, the 8,311.60 square-meter portion that it had successfully expropriated and fully paid for should have been excluded from the 68,969 square-meter Property that Pobre claims NPC had damaged.

We are not persuaded.

In its 30 October 1987 Order denying NPC's motion for reconsideration, the trial court pointed out that the Property originally had a total area of 141,300 square meters.[39] Pobre converted the Property into a resort-subdivision and sold lots to the public. What remained of the lots are the 68,969 square meters of land.[40] Pobre no longer claimed damages for the other lots that he had before the expropriation.

Pobre identified in court the lots forming the 68,969 square-meter Property. NPC had the opportunity to object to the identification of the lots.[41] NPC, however, failed to do so. Thus, we do not disturb the trial and appellate courts' finding on the total land area NPC had damaged.

NPC must Pay Just Compensation for the Entire Property

Ordinarily, the dismissal of the expropriation case restores possession of the expropriated land to the landowner.[42] However, when possession of the land cannot be turned over to the landowner because it is neither convenient nor feasible anymore to do so, the only remedy available to the aggrieved landowner is to demand payment of just compensation.[43]

In this case, we agree with the trial and appellate courts that it is no longer possible and practical to restore possession of the Property to Pobre. The Property is no longer habitable as a resort-subdivision. The Property is worthless to Pobre and is now useful only to NPC. Pobre has completely lost the Property as if NPC had physically taken over the entire 68,969 square-meter Property.

In *United States v. Causby*,[44] the U.S. Supreme Court ruled that when private property is rendered uninhabitable by an entity with the power to exercise eminent domain, the taking is deemed complete. Such taking is thus compensable.

In this jurisdiction, the Court has ruled that if the government takes property without expropriation and devotes the property to public use, after many years the property owner may demand payment of just compensation.[45] This principle is in accord with the constitutional mandate that private property shall not be taken for public use without just compensation.[46]

In the recent case of *National Housing Authority v. Heirs of Isidro Guivelondo*,[47] the Court compelled the National Housing Authority (“NHA”) to pay just compensation to the landowners even after the NHA had already abandoned the expropriation case. The Court pointed out that a government agency could not initiate expropriation proceedings, seize a person’s property, and then just decide not to proceed with the expropriation. Such a complete turn-around is arbitrary and capricious and was condemned by the Court in the strongest possible terms. NHA was held liable to the landowners for the prejudice that they had suffered.

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.

We have held that the usual procedure in the determination of just compensation is waived when the government itself initially violates procedural requirements.[48] 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.

From the beginning, NPC should have initiated expropriation proceedings for Pobre’s entire 68,969 square-meter Property. NPC did not. Instead, NPC embarked on a piecemeal expropriation of the Property. Even as the second expropriation case was still pending, NPC was well aware of the damage that it had unleashed on the entire Property. NPC, however, remained impervious to Pobre’s repeated demands for NPC to abate the damage that it had wrought on his Property.

NPC moved for the dismissal of the complaint for the second expropriation on the ground that it had found an alternative site and there was stiff opposition from Pobre.[49] NPC abandoned the second expropriation case five years after it had already deprived the Property virtually of all its value. NPC has demonstrated its utter disregard for Pobre’s property rights.

Thus, it would now be futile to compel NPC to institute expropriation proceedings to determine the just compensation for Pobre’s 68,969 square-meter Property. Pobre must be spared any further delay in his pursuit to receive just compensation from NPC.

Just compensation is the fair and full equivalent of the loss.[50] The trial and appellate courts endeavored to meet this standard. The P50 per square meter valuation of the 68,969 square-meter Property is reasonable considering that the Property was already an established resort-subdivision. NPC has itself to blame for not contesting the valuation before the trial court. Based on the P50 per square meter valuation, the total amount of just compensation that NPC must pay Pobre is P3,448,450.

The landowner is entitled to legal interest on the price of the land from the time of the taking up to the time of full payment by the government.[51] In accord with jurisprudence, we fix the legal interest at six per cent (6%) per

annum.[52] The legal interest should accrue from 6 September 1979, the date when the trial court issued the writ of possession to NPC, up to the time that NPC fully pays Pobre.[53]

NPC's abuse of its eminent domain authority is appalling. However, we cannot award moral damages because Pobre did not assert his right to it.[54] We also cannot award attorney's fees in Pobre's favor since he did not appeal from the decision of the Court of Appeals denying recovery of attorney's fees.[55]

Nonetheless, we find it proper to award P50,000 in temperate damages to Pobre. The court may award temperate or moderate damages, which are more than nominal but less than compensatory damages, if the court finds that a party has suffered some pecuniary loss but its amount cannot be proved with certainty from the nature of the case.[56] As the trial and appellate courts noted, Pobre's resort-subdivision was no longer just a dream because Pobre had already established the resort-subdivision and the prospect for it was initially encouraging. That is, until NPC permanently damaged Pobre's Property. NPC did not just destroy the property. NPC dashed Pobre's hope of seeing his Property achieve its full potential as a resort-subdivision.

The lesson in this case must not be lost on entities with eminent domain authority. Such entities cannot trifle with a citizen's property rights. The power of eminent domain is an extraordinary power they must wield with circumspection and utmost regard for procedural requirements. Thus, we hold NPC liable for exemplary damages of P100,000. Exemplary damages or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.[57]

WHEREFORE, we DENY the petition for lack of merit. The appealed Decision of the Court of Appeals dated 30 March 1992 in CA-G.R. CV No. 16930 is AFFIRMED with MODIFICATION. National Power Corporation is ordered to pay Antonino Pobre P3,448,450 as just compensation for the 68,969 square-meter Property at P50 per square meter. National Power Corporation is directed to pay legal interest at 6% per annum on the amount adjudged from 6 September 1979 until fully paid. Upon National Power Corporation's payment of the full amount, Antonino Pobre is ordered to execute a Deed of Conveyance of the Property in National Power Corporation's favor. National Power Corporation is further ordered to pay temperate and exemplary damages of P50,000 and P100,000, respectively. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the 1964 Rules of Court.

[2] Penned by Associate Justice Fermin A. Martin, Jr. with Associate Justices Luis A. Javellana and Artemon D. Luna concurring.

[3] Penned by Judge Oscar B. Pimentel.

[4] By virtue of Republic Act No. 6395, "An Act Revising the Charter of the National Power Corporation," as amended.

[5] Docketed as Civil Case No. T-50 in the then Court of First Instance, Branch VI, Tabaco, Albay.

[6] "Tiwi Geothermal Reservation."

[7] "An Act to Promote and Regulate the Exploration, Development, Exploitation and Utilization of Geothermal Energy, Natural Gas and Methane Gas, to Encourage its Conservation, and for other Purposes."

[8] Docketed as CA-G.R. SP No. 07682.

[9] Rollo, p. 109.

[10] Ibid., p. 139.

[11] Rollo, pp. 234-235.

[12] Supra note 8.

[13] Cruz v. Court of Appeals, G.R. No. 108738, 17 June 1994, 233 SCRA 301.

[14] Records, pp. 38-39, 43.

[15] Ibid., p. 45.

[16] Visayan Refining Co. v. Camus, 40 Phil. 550 (1919).

[17] Moday v. Court of Appeals, G.R. No. 107916, 20 February 1997, 268 SCRA 586.

[18] OSCAR M. HERRERA, REMEDIAL LAW, Vol. III, 1999 ed., 311.

[19] BA Finance Corporation v. Co, G.R. No. 105751, 30 June 1993, 224 SCRA 163.

[20] Ibid.

[21] Ibid.

[22] Ibid.

[23] Section 3, Rule 67 of the 1997 Rules of Civil Procedure now requires the filing of an answer in expropriation cases.

[24] Section 3, Rule 67 of the 1997 Rules of Civil Procedure reads:

SEC. 3. Defenses and objections. — If a defendant has no objection or defense to the action or the taking of his property, he may file and serve a notice of appearance and a manifestation to that effect, specifically designating or identifying the property in which he claims to be interested, within the time stated in the summons. Thereafter, he shall be entitled to notice of all proceedings affecting the same.

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. No counterclaim, cross-claim or third-party complaint shall be alleged or allowed in the answer or any subsequent pleading.

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from the filing thereof. However, at the trial of the issue of just compensation, whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award.

[25] Records, pp. 40-42.

[26] Ibid., p. 42.

[27] Go v. Cruz, G.R. No. 58986, 17 April 1989, 172 SCRA 247.

[28] See *Republic of the Philippines v. Baylosis*, 109 Phil. 580 (1960); *Metropolitan Water District v. De Los Angeles*, 55 Phil. 776 (1931).

[29] Section 1, Rule 17 of the 1997 Rules of Civil Procedure no longer makes the dismissal of the complaint automatic. The right of the plaintiff to dismiss his action before the defendant has filed his answer or asked for summary judgment must be first confirmed by the court in an order issued by it. The new provision reads:

SEC. 2. Dismissal upon motion of plaintiff. — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon the approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

[30] *Ibid.*

[31] *Visayan Refining Co. v. Camus*, *supra* note 16.

[32] *Metropolitan Water District v. De Los Angeles*, *supra* note 28.

[33] *Ibid.*

[34] *Ibid.*

[35] *Ibid.*

[36] *Ibid.*

[37] *Inland Trailways, Inc. v. Court of Appeals*, 325 Phil. 457 (1996).

[38] *Fuentes v. Court of Appeals*, G.R. No. 109849, 26 February 1997, 268 SCRA 703.

[39] *Records*, p. 253.

[40] *Ibid.*

[41] *TSN*, 5 February 1985, pp. 14-22.

[42] *Metropolitan Water District v. De Los Angeles*, *supra* note 28.

[43] *Militante v. Court of Appeals*, 386 Phil. 522 (2000); *Amigable v. Cuenca*, 150 Phil. 422 (1972); *Ministerio v. Court of First Instance of Cebu*, 148-B Phil. 474 (1971); *Alfonso v. Pasay City*, 106 Phil. 1017 (1960).

[44] 328 U.S. 256 (1946).

[45] *Supra* note 43.

[46] Section 2, Article IV of the 1973 Constitution is now enshrined in Section 9, Article III of the 1987 Constitution.

[47] G.R. No. 154411, 19 June 2003, 404 SCRA 389.

[48] *Rocamora v. RTC-Cebu (Branch VIII)*, No. L-65037, 23 November 1988, 167 SCRA 615.

[49] *Records*, p. 45.

[50] Manila Railroad Co. v. Velasquez, 32 Phil. 286 (1915).

[51] De Los Santos v. Intermediate Appellate Court, G.R. Nos. 71998-99, 2 June 1993, 223 SCRA 11; National Power Corporation v. Court of Appeals, 214 Phil. 583 (1984); Amigable v. Cuenca, 150 Phil. 422 (1972).

[52] National Power Corporation v. Court of Appeals, 214 Phil. 583 (1984).

[53] Ibid.

[54] People v. Adora, 341 Phil. 441 (1997).

[55] National Power Corporation v. Court of Appeals, supra note 52.

[56] Article 2224, Civil Code.

[57] Article 2229, Civil Code.

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