

**CAMARINES NORTE ELECTRIC COOPERATIVE, INC. (CANORECO),
PETITIONER, VS. COURT OF APPEALS, HON. LUIS L. DICTADO,
PRESIDING JUDGE, RTC, BRANCH 39, DAET, CAMARINES NORTE,
EDUARDO R....**

G.R. No. 109338. November 20, 2000

Ponente: PARDO, J.

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PARDO, J.:

The acquisition of an easement of a right-of-way falls within the purview of the power of eminent domain.

We have before the Court for consideration a petition for review on certiorari of the decision of the Court of Appeals,[1] and its resolution,[2] which denied petitioner's motion for reconsideration.[3]

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

On May 18, 1989, Conrad L. Leviste filed with the Regional Trial Court, Daet, Camarines Norte, a complaint[4] for collection of a sum of money and foreclosure of mortgage against Philippine Smelter Corporation (PSC).

For failure to file an answer to the complaint, the trial court declared PSC in default and allowed plaintiff Leviste to present evidence ex-parte.

On November 23, 1989, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendant ordering the latter...

"1. to pay the plaintiff the sum of P1,798,750.00 with interest thereon at the rate of 12% per annum from November, 1989 until the whole amount shall have been fully paid;

"2. to pay the plaintiff the sum of P11,500.00 as attorney's fees;

to pay the plaintiff the sum of P5,000.00 as expenses incidental to this litigation; and

"3. to pay the costs of this suit.

"IT IS SO ORDERED."[5]

When the decision became final and executory, the trial court issued a writ of execution and respondent sheriff Eduardo R. Moreno levied upon two (2) parcels of land covered TCT Nos. T-13505 and T-13514 issued by the Registrar of Deeds in the name of PSC. On April 24, 1990, the parcels of land were sold at public auction in favor of Vines Realty Corporation (Vines Realty). On April 25, 1990, the Clerk of Court, as ex-officio Provincial Sheriff, issued a Certificate of Sale,[6] which Judge Luis D. Dictado, in his capacity as executive judge, approved.

On June 23, 1992, Vines Realty moved for the issuance of a writ of possession over said property. On June 25, 1992, the trial court granted the motion.[7]

On August 7, 1992, copy of the writ of possession was served on petitioner as owner of the power lines standing on certain portions of the subject property. Later, on August 12, 1992, Vines Realty filed an amended motion for an order of demolition and removal^[8] of improvements on the subject land.

Among the improvements for removal were the power lines and electric posts belonging to petitioner.

Petitioner opposed the motion^[9] on the ground, among other reasons, that petitioner was not a party to the case and therefore not bound by the judgment of the trial court and that it had subsisting right-of-way agreements over said property.

The trial court^[10] set the hearing on the amended motion on September 29, 1992 but the hearing was re-scheduled on October 28, 1992, and then again on November 10, 1992.^[11] On all these dates, no hearing was conducted.

Then the case was re-raffled to Branch 39 of the regional trial court presided over by respondent judge.

On November 27, 1992, the trial court^[12] set the hearing on the amended motion for demolition. However, instead of adducing evidence for petitioner, its counsel^[13] manifested that he was withdrawing his appearance since the authority given him by petitioner was only for the filing of the opposition to the amended motion. The trial court proceeded with the hearing despite the fact that petitioner had no counsel present. Thus, only Vines Realty presented its evidence.

On the same date, November 27, 1992, the trial court ordered the issuance of a writ of demolition directing and deputizing Lt. Col. Rufino Chavez, Jr. and Capt. Alfredo Borja to constitute an augmentation force for the immediate implementation of the writ.^[14]

On December 7, 1992, petitioner filed with the Court of Appeals a petition for prohibition with restraining order and preliminary injunction.^[15] Petitioner argued that the trial court acted without or in excess of its jurisdiction or with grave abuse of discretion in issuing the order dated November 27, 1992.

On December 10, 1992, the Court of Appeals sent telegrams to respondents informing them of the issuance of a restraining order. On the same day, however, the trial court issued a writ of demolition.^[16] The court addressed the writ to sheriff Eduardo de los Reyes,^[17] who was not a respondent in the petition before the Court of Appeals, so that the latter can implement the writ on the pretext that he was not covered by the restraining order.

On December 11, 1992, the trial court issued another order directing the National Power Corporation sub-unit in Camarines Norte to shut off the power lines energizing the New Lucena Oil Products Corporation, one of the consumers serviced by petitioner, as shown by the radiogram^[18] of Simeon P. Zaño III, OIC Labo, NPC. Mr. Zaño filed a manifestation^[19] with the trial court that if NPC would shut off said power supply before the sub-station of petitioner, it would deprive Benguet Mining Corporation of electricity and endanger the lives of its miners.

On the same day, December 11, 1992, respondent Vines Realty cut down petitioner's electric posts professedly using a chainsaw^[20] and resulting in a loud blast affecting the area. Philippine National Police desk officer Bianito Cobacha^[21] of Barangay Jose Panganiban Police Station entered in the police blotter that on December 11, 1992, at about 2 p.m., men led by the provincial sheriff felled petitioner's electric posts along the cemetery of Bagumbayan.

Even the members of the Sangguniang Bayan at San Jose appealed to respondent Sheriff to desist from proceeding with the demolition due to a restraining order but to no avail.

On January 4, 1993, Vines Realty filed with the trial court a motion for the issuance of an alias writ of

demolition.[22] The hearing was scheduled on January 12, 1993, at 8:30 a. m. but petitioner's lawyer, Atty. Jose Mañacop, received a copy only on January 11, 1994.

Atty. Bienvenido A. Paita made a special appearance for petitioner through a manifestation with motion for reconsideration[23] dated January 21, 1993. Atty. Paita declared it was impossible for him to appear and file an opposition to the motion on very short notice. He said that petitioner was not a party to the case, that the restraining order of the Court of Appeals was good until further orders, and the writ of execution was executed on December 11, 1992. Petitioner manifested that it was denied its day in court.

On January 25, 1993,[24] the trial court denied the motion for reconsideration on the ground that the appearance of Atty. Paita was irregular and that Atty. Mañacop as the counsel in the appellate court must first make an entry of appearance with the trial court.

On January 26, 1993, the trial court issued an alias writ of demolition.[25]

The sheriff, at the request of Vines Realty demolished the remaining electric posts resulting in the cutting off of power supply to various business establishments and barangays.

Meantime, on January 19, 1993, the Court of Appeals, promulgated a decision[26] dismissing the petition for lack of merit.

"WHEREFORE, the present petition is DISMISSED for lack of merit.

"Let it be stated that the temporary restraining order which was issued by this Court on December 9, 1992 has a limited life of twenty (20) days from date of issue (Carbungco vs. CA, 181 SCRA 313) and has therefore become void at the expiration of the said twenty (20) days (Ilaw at Buklod ng Manggagawa vs. NLRC, 198 SCRA 586).

"SO ORDERED."

On February 19, 1993, petitioner's new counsel, Gancayco Law Offices, filed with the Court of Appeals an Urgent Appearance And Motion To Admit Supplemental Petition.[27] This was a new petition for certiorari and prohibition with prayer for issuance of a writ of mandatory injunction.[28]

On March 15, 1993, the Court of Appeals denied the motion for reconsideration as well as the admission of the supplemental petition on the ground that the petition had been decided.[29]

Meanwhile, in response to the public's urgent basic need, petitioner re-constructed its power lines along the provincial road leading to the Port of Osmeña upon authority of the District Engineer of the Department of Public Works and Highways [DPWH].

On April 23, 1993, however, petitioner received a letter dated April 10, 1993, stating that Vines Realty was the owner of the roadside and that petitioner could not construct power lines therein without its permission. Petitioner promptly replied that the power lines were constructed within the right of way of the provincial road leading to the port of Osmeña as granted by the District Engineer of DPWH.

Hence, this petition.[30]

At issue is whether petitioner is entitled to retain possession of the power lines located in the land sold at public auction as a result of extra-judicial foreclosure of mortgage.

The most basic tenet of due process is the right to be heard.[31] A court denies a party due process if it renders its orders without giving such party an opportunity to present its evidence.[32]

We find that petitioner was denied due process. Petitioner could have negated private respondent's claims by showing the absence of legal or factual basis therefor if only the trial court in the exercise of justice and equity reset the hearing instead of proceeding with the trial and issuing an order of demolition on the same day.

It is incumbent upon the trial court to receive evidence on petitioner's right over the property to be demolished.

The essence of due process is an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[33] Due process is equally applicable in a case involving public utilities, where a strict application of the rules would bring about catastrophic inconveniences to the public. Hence, the act would do more harm than good to the public, which the government seeks to protect. Damages and losses of a considerable amount of time (about 8 years) could have been prevented if the trial court did not gravely abuse its discretion on the matter.

Well aware that the counsel was not authorized, the trial court could have stretched its liberality a little to ensure that it would serve the ends of justice well for the people of Camarines Norte. Petitioner must be given the chance to prove its position.

We cannot conceive how, knowing fully well that destroying the power lines and electric posts would cause overwhelming losses to a lot of business establishments and a great inconvenience to a lot of people, the trial court still ordered the demolition of the property. Their personal motives aside, the Court finds that the trial court gravely abused its discretion in hastily ordering the removal of the electric posts.

We are not a trier of facts. We cannot determine whether petitioner's Agreements of Right of Way[34] or that of the authorization[35] of the OIC District Engineer to construct electric posts within the limits of the road right of way were genuine instruments. We can, however, determine the legality of the acts of the trial court in issuing the writs of demolition over the property.

The trial court failed to appreciate the nature of electric cooperatives as public utilities.

Among the powers granted to electric cooperatives by virtue of Presidential Decree No. 269[36] are:

"Section 16 Powers-

(j) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways; Provided, that such shall not prevent or unduly impair the primary public uses to which such lands and thoroughfares are otherwise devoted;

"(k) To exercise the power of eminent domain in the manner provided by law for the exercise of such power by other corporations constructing or operating electric generating plants and electric transmission and distribution lines or systems."

Electric cooperatives, like CANORECO, are vested with the power of eminent domain.

The acquisition of an easement of a right-of-way falls within the purview of the power of eminent domain. Such conclusion finds support in easements of right-of-way where the Supreme Court sustained the award of just compensation for private property condemned for public use.[37] The Supreme Court, in *Republic vs. PLDT*[38] thus held that:

"Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right-of-way."

However, a simple right-of-way easement transmits no rights, except the easement.[39] Vines Realty retains full ownership and it is not totally deprived of the use of the land. It can continue doing what it wants to do with the land, except those that would result in contact with the wires.

The acquisition of this easement, nevertheless, is not gratis. Considering the nature and effect of the installation power lines, the limitations on the use of the land for an indefinite period deprives private respondents of its ordinary use. For these reasons, Vines Realty is entitled to payment of just compensation,[40] which must be neither more nor less than the money equivalent of the property.

Just compensation has been understood to be the just and complete equivalent of the loss, which the owner of the res expropriated has to suffer by reason of the expropriation.[41] The value of the land and its character at the time it was taken by the Government are the criteria for determining just compensation.[42] No matter how commendable petitioner's purpose is, it is just and equitable that Vines Realty be compensated the fair and full equivalent for the taking of its property, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity.[43]

Moreover, CANORECO only sought the continuation of the exercise of its right-of-way easement and not ownership over the land. Public utilities' power of eminent domain may be exercised although title is not transferred to the expropriator.[44]

Consequently, we rule that a court's writ of demolition can not prevail over the easement of a right-of-way which falls within the power of eminent domain.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals promulgated on January 19, 1993, and the resolution adopted on March 15, 1993, in CA-G. R. SP No. 29624, are SET ASIDE. The orders of the trial court dated November 27, 1992, December 10, 1992, January 18, 1993, and January 25, 1993 and the writs of demolition issued on December 11, 1992, and January 26, 1993, are ANNULLED.

Private respondents are ordered to restore or restitute petitioner's electric posts and power lines or otherwise indemnify petitioner for the cost of the restoration thereof. Finally, private respondents are permanently enjoined or prohibited from disturbing or interfering with the operation and maintenance of the business of petitioner.

Costs against private respondents.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1]In CA-G.R. SP No. 29624, promulgated on January 19, 1993, Paras, J., ponente, Victor and Martin, Jr., JJ., concurring, Petition, Annex "A", Rollo, pp. 41-46.

[2]Adapted on March 15, 1993, Rollo, pp. 48-49.

[3]Dated February 1, 1993, Rollo, pp. 119-121.

[4]Petition, Annex "C", Rollo, pp. 50-52.

[5] Petition, Annex "D", Rollo, pp. 53-56.

[6] Petition, Annex "E", Rollo, pp. 57-58.

[7] Petition, Annex "F", Rollo p. 59.

- [8] Petition, Annex "G", Rollo, pp. 60-61.
- [9] Petition, Annex "H", Rollo, p. 62.
- [10] Regional Trial Court, Camarines Norte, Branch 38, Judge Sancho Dames II, presiding.
- [11] Reply, Annex "A", Rollo, pp. 307-308. Judge Sancho Dames II voluntarily inhibited himself from trying the case and its incidents due to his receipt of CANORECO's Special Citation.
- [12] Regional Trial Court, Camarines Norte, Branch 39, respondent Judge Luis L. Dictado, presiding.
- [13] Atty. Bienvenido Paita.
- [14] Petition, Annex "I", Rollo, p. 63.
- [15] Petition, Annex "J", Rollo, pp. 64-76.
- [16] Petition, Annex "L", Rollo, p. 82.
- [17] Sheriff IV, RTC Daet, Camarines Norte, Branch 39.
- [18] Petition, Annex "L", Rollo, p. 84.
- [19] Petition, Annex "O", Rollo, p. 85
- [20] Petition, Annex "P", Affidavit of resident Winifredo D. Reyes, Rollo, p. 86.
- [21] Petition, Annex "Q", Rollo, p. 87, Certification that Eng. Tomas Juego of CANORECO and Exequiel Santos of New Lucena Oil Product Inc., reported the demolition.
- [22] Petition, Annex "S", Rollo, p. 90.
- [23] Supplemental Petition, Annex "N-1", CA Rollo, pp. 129-130.
- [24] Petition, Annex "U", Rollo, p. 93.24
- [25] Petition, Annex "V", Rollo, 94-96.
- [26] Rollo, pp. 42-46.
- [27] CA Rollo, pp. 94-95.
- [28] CA Rollo, pp. 97-119.
- [29] Rollo, pp. 48-49.
- [30] Petition filed on May 10, 1993, Rollo, pp. 7-39; On August 10, 1994, we gave due course to the petition, Rollo, p. 334.
- [31] Moslares v. Court of Appeals, 291 SCRA 440 [1998]; Philippine National Construction Corporation v. National Labor Relations Commission, 292 SCRA 266 [1998].
- [32] Philippine National Bank v. Sayo, Jr., 292 SCRA 202 [1998] .
- [33] Morales v. COMELEC, 315 SCRA 175 [1999]; Oil and Natural Gas Commission v. Court of Appeals, 293 SCRA 26 [1998].
- [34] Annexes C - L to Reply, Rollo, pp. 310-328.

[35] Dated May 26, 1993, Rollo, p. 331.

[36] Which was done on August 6, 1973.

[37] NAPOCOR v. Gutierrez, 193 SCRA 1, [1991], citing NAPOCOR v. Court of Appeals, 129 SCRA 665[1984]; Garcia v. Court of Appeals, 102 SCRA 597[1981].

[38] 136 Phil. 20 [1969].

[39] NAPOCOR v. Gutierrez, supra.

[40] Robern Development Corp. v. Quitain, 315 SCRA 150 [1999]; Republic v. Salem Investment, G. R. No. 137569, June 23, 2000.

[41] Province of Tayabas v. Perez, 66 Phil. 467 [1938]; Manaay v. Juico, 175 SCRA 343 [1989].

[42] NAPOCOR v. Court of Appeals, 129 SCRA 665, [1984].

[43] EPZA v. Dulay, 149 SCRA 305 [1987]; Mun. of Daet v. Court of Appeals, 93 SCRA 503 [1979].

[44] NAPOCOR v. Gutierrez, supra.

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