

FORFOM DEVELOPMENT CORPORATION, PETITIONER, VS. PHILIPPINE NATIONAL RAILWAYS, RESPONDENT.

G.R. No. 124795. December 10, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court which seeks to set aside the Decision[1] of the Court of Appeals dated 24 April 1996.

Petitioner Forfom Development Corporation (Forfom) is a domestic corporation duly organized and existing under the laws of the Philippines with principal office at Cabuyao, Laguna, while respondent Philippine National Railways (PNR) is a government corporation engaged in proprietary functions with principal office at the PNR Railway Station, C.M. Recto Avenue, Tutuban, Binondo, Manila.

The facts, stripped of the non-essentials, are as follows:

Forfom is the registered owner of several parcels of land in San Vicente, San Pedro, Laguna under Transfer Certificates of Title (TCT) Nos. T-34384, T-34386 and 34387, all of the Registry of Deeds of Laguna. Said parcels of land were originally registered in the name of Felix Limcaoco, predecessor-in-interest of Forfom, under Original Certificates of Title (OCT) Nos. (0-326) 0-384 and (0-328) 0-386.

In a cabinet meeting held on 1 November 1972, then President Ferdinand E. Marcos approved the Presidential Commuter Service Project, more commonly known as the Carmona Project of the President. Per Resolution No. 751 dated 2 November 1972 of the PNR Board of Directors, its General Manager was authorized to implement the project. The San Pedro-Carmona Commuter Line Project was implemented with the installation of railroad facilities and appurtenances.

During the construction of said commuter line, several properties owned by private individuals/corporations were traversed as right-of-way. Among the properties through which the commuter line passed was a 100,128 square-meter portion owned by Forfom covered by TCT Nos. T-34384, T-34386 and T-34387.

On 24 August 1990, Forfom filed before the Regional Trial Court (RTC) of Binan, Laguna a complaint[2] for Recovery of Possession of Real Property and/or Damages. It alleged that PNR, with the aid of military men, and without its consent and against its will, occupied 100,128 square meters of its property located in San Pedro, Laguna and installed thereon railroad and railway facilities and appurtenances. It further alleged that PNR rented out portions of the property to squatters along the railroad tracks. Despite repeated verbal and written demands for the return of the property or for the payment of its price, PNR failed to comply. It prayed that PNR be ordered to vacate the property and to cause the eviction of all shanties and squatters that PNR had taken in as lessees, and that it be restored to the peaceful occupation and enjoyment thereof. It likewise asked that Forfom be ordered to pay (a) P1,000.00 per month per hectare from occupation of the property until the same is vacated as rentals plus interest at 24% per annum; (b) P1,600,000.00 as unrealized income from occupation of the property up to the

present plus 12% interest per annum until fully paid; (c) P150,000.00 for actual damages on account of the destruction of crops and improvements on the property when the occupation of the property commenced plus 12% interest per annum until fully paid; (d) at least P100,000.00 as exemplary damages; (e) P100,000.00 plus 15% of the amount and properties to be recovered as attorney's fees; and (f) costs of the suit.[3]

In its Amended Answer,[4] PNR alleged that, per authority granted by law (Presidential Decree No. 741), it acquired parcels of land used in the construction of the railway track to Carmona, Cavite. It, however, denied that the property acquired from Forfom was leased to tenants. It likewise denied that the acquisition of Forfom's property was made without the consent of Dr. Felix Limcaoco, the former owner of the property. It stressed that the acquisition of the properties used in the project was done through negotiations with the respective owners. It asserted that no crop was damaged when it acquired the property subject of the case. Further, it denied liability for unrealized income, exemplary damages and attorney's fees.

PNR explained that former President Ferdinand E. Marcos approved what was known to be the Carmona Project -- a 5.1 kilometer railroad extension line from San Pedro, Laguna to San Jose, Carmona, Cavite to serve the squatters' resettlement area in said localities. It claimed that it negotiated with the respective owners of the affected properties and that they were paid just compensation. Dr. Felix Limcaoco, it said, was not paid because he failed to present the corresponding titles to his properties. It claimed that the right to and just compensation for the subject property was the declared fair market value at the time of the taking which was P0.60 per square meter. It disclosed that in a meeting with the representatives of Dr. Limcaoco, the price agreed upon was P1.25 per square meter, the amount the adjoining owners was paid. It prayed that the instant complaint be dismissed, and that the owner of the properties involved be compelled to accept the amount of P1.25 per square meter as price for the properties.

In an Order dated 29 October 1990, the pre-trial conference on the case was set.[5] On 13 March 1991, for failure of the parties to reach any agreement, pre-trial was terminated and trial of the case scheduled.[6] Thereafter, trial on the merits ensued.

The following witnesses testified for Forfom: (1) Leon Capati; (2) Marites Dimaculangan; (3) Marilene L. de Guzman; (4) Gavino Rosas de Claro; and (5) Jose Elazegui.

Mr. Leon Capati,[7] employee of Forfom, testified that he knew Dr. Felix Limcaoco, Sr. because he worked for him since 1951 until his death. He knew Forfom Development Corporation to be a corporation formed by the children of Dr. Limcaoco and owner of the properties left behind by said doctor. He said he worked as overseer in Hacienda Limcaoco in San Pedro, Laguna owned by Dr. Limcaoco. Said hacienda was converted to the Olympia Complex Subdivision now owned by Forfom. Being a worker of Forfom, he disclosed that in 1972, the PNR forcibly took portions of the property of Forfom. Armed men installed railroads and even used bulldozers which caused the destruction of around eleven hectares of sugar land. Since 1972, he said PNR used the property for its benefit and even leased part of it to people living near the railroad. At that time, he claimed that the value of sugarcane was P200.00 per piko and that the plantation harvested sixty (60) tons annually worth P224,000.00. In all, from 1972 to 1985, he claimed Forfom lost P2,917,200.00 in ruined sugar, unrealized harvest, excluding unrealized harvest for nine mango trees which yielded 60 kaings per tree per harvest.

Ms. Marites Dimaculangan,[8] an officer of Forfom, corroborated the testimony of Mr. Leon Capati. She presented documents[9] showing that Hacienda Limcaoco was previously owned by Dr. Felix Limcaoco, then the ownership was transferred to Forfom. As proof that Hacienda Limcaoco was converted into a low-cost housing subdivision known as the Olympia Complex Subdivision, she presented permits from the Human Settlements Regulatory Commission and from the Municipality of San Pedro.[10] She also adduced in evidence several

letters[11] allegedly showing that PNR occupied the property owned by the Limcaocos. As a result, around eleven hectares of the sugar cane plantation were destroyed.[12] From 1972 to 1985, she claimed that part of the property taken by PNR was leased to squatters beside the railroad tracks. She added that Forfom incurred a loss totaling P2,917,200.00. She claimed that the current price of land contiguous to the parcels taken by PNR was P1,000.00 per square meter.

Ms. Marilene L. De Guzman,[13] Executive Vice-President of Forfom and daughter of the Late Dr. Felix Limcaoco, corroborated the testimonies of Mr. Capati and Ms. Dimaculangan. She disclosed that his father died on 25 March 1973. She learned from her father and from Mr. Leon Capati that when the armed men took a portion of their property, the armed men did not show any court order or authority from any agency of the government. The armed men used bulldozers destroying 11 hectares of sugarcane and some mango trees. She said those taken over were used as railroad tracks and a portion beside the tracks were being leased to squatters. She revealed that the present fair market value of land at Olympia Complex is P1,400.00 per square meter.[14] If the land is not developed, same can be sold for P800.00 per square meter. She said from the time their property was taken over by PNR, her family has been writing to PNR regarding compensation for their land.[15]

Ms. De Guzman said the property was still in the name of Dr. Felix Limcaoco, Sr. and Mrs. Olympia Limcaoco when the PNR took over a portion of their properties. She said she was not informed by Mr. Capati that the PNR took the said property over pursuant to a Presidential Mandate in order to provide transportation for relocated squatters. She explained that her father and Mr. Capati were not advised to harvest their crops and were surprised by the taking over of the land.

Mr. Gavino Rosas de Claro,[16] Land Register Examiner of the Register of Deeds of Calamba, Laguna, testified as representative of the Register of Deeds. He brought in Court the originals of TCT Nos. T-34384[17] and T-34386,[18] both in the name of Forfom Development Corporation and OCT Nos. (O-326) O-384[19] and (O-328) O-386, both in the name of Dr. Felix Limcaoco, Sr.[20] Thereafter, photocopies thereof were compared with the originals which were found to be faithful reproductions of the same.

Jose Elazegui,[21] Supervisor, Southern Tagalog Facoma, Inc. was presented to show the production of sugar and molasses on the property of Forfom. He presented duplicate original copies of Tuos ng inaning Tubo for the years 1984-1985, 1985-1986, 1986-1987 and 1987-1988.[22] The documents showed the production (average yield per area per picul) in other properties owned by Forfom other than the properties subject matter of this case.

For the defendant, Mrs. Edna Ramos, Department Manager of the Real Estate Department of the PNR, took the stand.[23] She testified that she was familiar with the acquisition by the PNR of the right of way for the San Pedro-Carmona Commuter Line. It was acquired and established by Presidential Mandate and pursuant to the authority of the PNR to expropriate under its charter (Presidential Decree No. 741).[24] She explained that President Ferdinand E. Marcos authorized the PNR to acquire said right of way in a Cabinet Meeting on 1 November 1972 as evidenced by an excerpt of the minutes of the meeting of the PNR Board of Directors on Resolution No. 751.[25] The right of way was acquired to provide a cheap, efficient and safe means of transportation to the squatters who were relocated in Cavite. The commuter line, she said, was primarily for service rather than profit. As shown by the letter[26] dated 30 April 1974 of Nicanor T. Jimenez, former General Manager of the PNR, to Mrs. Olympia Hemedes Vda. de Limcaoco, the acquisition of the right of way was with the knowledge and consent of Dr. Felix Limcaoco, Sr.

Mrs. Ramos disclosed that the total area acquired by the PNR for the San Pedro-Carmona Commuter Line was 15.7446 hectares or sixteen (16) lots in all owned by seven (7) private landowners and three (3) corporations. Among the private landowners were Isabel Oliver, Leoncia Blanco, Catalina Sanchez, Tomas Oliver, Alejandro

Oliver and Antonio Sibulo. Per record of PNR, they were paid P1.25 per square meter for their lands. They executed Absolute Deeds of Sale in favor of the PNR, as a result of which, titles to the lands were transferred to PNR.[27] The remaining 9 lots belonging to the three private corporations - Forfom Development Corporation, Alviar Development Manufacturing & Trading Supply Corp. and Life Realty Development Corporation - were not paid for because these corporations were not able to present their respective titles, which had been used as loan collaterals in the Philippine National Bank and the Government Service Insurance System.[28] The unit price per square meter, which the negotiating panel of the PNR and the representatives of the three corporations was considering then, was P1.25. In a letter dated 3 October 1975, Mr. Felix Limcaoco, Jr. of Forfom was asking for P12.00 per square meter for their land and P150,000.00 for damaged sugar crops and mango trees.[29] She likewise said she had the minutes of the conference between Mr. Limcaoco and the PNR Chief Construction Engineer held at the PNR General Manager's Office on 24 July 1979.[30]

Mrs. Ramos clarified that as a matter of policy, PNR employees and other persons were not allowed to settle on the PNR's right of way. Squatting along the right of way had never been encouraged. To prevent its proliferation, special contracts were entered into with selected parties under strict conditions to vacate the property leased upon notice. She explained that the leasing of PNR's right of way was an incidental power and was in response to the government's social housing project.

In its decision dated 29 October 1992, the trial court ruled generally in favor of plaintiff, the dispositive portion reading:

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

- Just compensation of the subject real properties consisting of 100,128 square meters and covered by TCT Nos. T-34387, T-34384 and T-34386 at P10.00 per square meter, with legal interest from the time of actual taking of plaintiff's real properties until payment is made by the defendant;
- The amount of P4,480,000.00 as unearned income of plaintiff from 1972 up to the current year, and thereafter, the amount of P224,000 yearly, with legal interest until payment is made;
- Actual damages in the amount of P150,000 corresponding to sugarcane crops and mango trees destroyed or damaged as a result of the unlawful taking of plaintiff's real properties, with legal interest until payment is made;
- The amount of P100,000 as and for attorney's fees;
- The amount of P150,000 for litigation expenses plus the costs of this suit.

Plaintiff's claim for recovery of possession and the other prayers in the complaint are hereby dismissed for want of merit.[31]

The trial court found that the properties of Forfom were taken by PNR without due process of law and without just compensation. Although the power of eminent domain was not exercised in accordance with law, and PNR occupied petitioner's properties without previous condemnation proceedings and payment of just compensation, the RTC ruled that, by its acquiescence, Forfom was estopped from recovering the properties subject of this case. As to its right to compensation and damages, it said that the same could not be denied. The trial court declared that P10.00 per square meter was the fair and equitable market value of the real properties at the time of the taking thereof.

Not contented with the decision, both parties appealed to the Court of Appeals by filing their respective Notices of Appeal.[32] PNR questioned the trial court's ruling fixing the just compensation at P10.00 per square meter and

not the declared value of P0.60 per square meter or the fair market value of P1.25 paid to an adjacent owner. It likewise questioned the award of actual damages and unearned income to Forfom.

On 24 April 1996, the appellate court disposed of the case as follows:

WHEEFORE, the decision appealed from is hereby AFFIRMED insofar as (1) it denies plaintiff's claim for recovery of possession and (2) it awards just compensation at the rate of P10.00 per square meter which defendant must pay to plaintiff, but with legal rate of interest thereon hereby specifically fixed at six (6) percent per annum starting from January of 1973 until full payment is made. However, the appealed decision is MODIFIED in the sense that plaintiff's claim for damages is DENIED for lack of merit.

No pronouncement as to costs.[33]

Except for the deletion of the award of damages, attorney's fees and litigation expenses, the appellate court agreed the with trial court. We quote:

There is no dispute that defendant neither commenced an expropriation proceedings nor paid just compensation prior to its occupation and construction of railroad lines on the subject property. Nevertheless, plaintiff's prayer to recover the property cannot be granted. Immediately after the occupation, or within a reasonable time thereafter, there is no showing that the same was opposed or questioned by plaintiff or its representatives on the ground that defendant never filed an expropriation proceedings and that no just compensation was ever paid. Neither is there a showing that plaintiff sought to recover the property because the taking was done forcibly with the aid of armed men. Instead, and this is borne out by certain communications between the parties through their respective officers or representatives, what plaintiff actually did was to negotiate with defendant for the purpose of fixing the amount which the latter should pay as just compensation and, if there be any, damages. x x x.

x x x x

Clearly, a continuing negotiation between the parties took place for the purpose only of fixing the amount of just compensation and not because plaintiff wanted to recover the subject property. Thus, the failure of defendant to first file an expropriation proceedings and pay just compensation is now beside the point. And even if the contention of plaintiff that defendant used force is true, the former can no longer complain at this time. What controls now is the fact that by its own act of negotiating with defendant for the payment of just compensation, plaintiff had in effect made representations that it acquiesced to the taking of its property by defendant. We therefore agree with the lower court that plaintiff, by its acquiescence, waived its right, and is thus estopped, from recovering the subject property or from challenging any supposed irregularity in its acquisition.

x x x x

Plaintiff's right to recover just compensation, however, remains. On this matter, we agree with the P10.00 per square meter valuation fixed by the trial court x x x.

x x x x

With the long delay in the payment of just compensation however, defendant should pay interest thereon at the legal rate of six (6) percent per annum from the time of occupation until payment is made. x x x.[34]

Still unsatisfied with the decision, Forfom filed the instant petition for review on certiorari raising the following issues:

- THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER CANNOT RECOVER POSSESSION OF ITS LAND DESPITE THE ADMISSION THAT IT WAS FORCIBLY TAKEN (DURING THE MARTIAL LAW ERA) WITHOUT ANY EXPROPRIATION PROCEEDING OR

PAYMENT OF COMPENSATION SIMPLY BECAUSE PETITIONER DID NOT OPPOSE THE ARMED AND FORCIBLE TAKING THEREOF:

- THE HONORABLE COURT OF APPEALS EMPLOYED DOUBLE STANDARD OF JUSTICE IN ADMITTING HEARSAY EVIDENCE OF PNR YET REJECTING THAT OF PETITIONER WHICH IS PROPERLY IDENTIFIED WITH ABUNDANT CROSS EXAMINATION CONDUCTED ON THE BASIS OF PETITIONER'S REJECTED EVIDENCE:

- THE HONORABLE COURT OF APPEALS ERRED GRIEVOUSLY IN HOLDING THAT IN THIS ACTION "THE FAILURE OF DEFENDANT TO FIRST FILE AN EXPROPRIATION PROCEEDINGS AND PAY JUST COMPENSATION (FOR THE PROPERTY OF PETITIONER FORCIBLY TAKEN BY PRIVATE RESPONDENT) IS (NOW) BESIDE THE POINT."

- THE HONORABLE COURT OF APPEALS ERRED IN AGREEING WITH THE RTC IN FIXING THE COMPENSATION FOR THE LAND FORCIBLY TAKEN BY PNR AT A RIDICULOUS, OUTRAGEOUS, AND ABSURD PRICE OF P10.00 PER SQUARE METER DESPITE THE EVIDENCE SHOWING THAT THE PRICE OF LAND IN THE ADJACENT AND SURROUNDING AREAS IS MORE THAN P1,500.00 PER SQUARE METER:

- THE HONORABLE COURT OF APPEALS ERRED IN IGNORING THE EVIDENCE ESTABLISHING THE RIGHT OF THE PETITIONER TO BE AWARDED ACTUAL OR COMPENSATORY DAMAGES, ATTORNEY'S FEES, AND UNREALIZED INCOME:

- THE HONORABLE COURT OF APPEALS ERRED IN AND ABUSED ITS DISCRETION IN ADOPTING DOUBLE STANDARD IN ITS EVALUATION OF THE EVIDENCE AND IN ADMITTING PNR's PATENTLY HEARSAY EVIDENCE WHILE REJECTING PETITIONER'S RELEVANT - MATERIAL AND ADMISSIBLE EVIDENCE:

- THE HONORABLE COURT OF APPEALS DEVIATED FROM ESTABLISHED JURISPRUDENCE IN UNJUSTIFIABLY IGNORING AND SETTING ASIDE THE FINDINGS OF FACTS OF THE TRIAL COURT THAT ARE IN FACT SUPPORTED BY ABUNDANT EVIDENCE:

- THE HONORABLE COURT OF APPEALS APPARENTLY SUPPRESSED THE EVIDENCE THAT PRIVATE RESPONDENT PNR APART FROM FORCIBLY TAKING THE LAND OF PETITIONER WITH THE EMPLOYMENT OF ARMED MEN, RENTED OUT PORTIONS OF SAID LAND TO ITS TENANTS WHO PAID HEFTY RENTALS FOR THE USE OF THE SAME AS RESIDENTIAL LOTS (AND NOT FOR PUBLIC PURPOSES).[35]

On the other hand, PNR accepted the decision of the Court of Appeals and no longer appealed.

The primary question to be resolved is: Can petitioner Forfom recover possession of its property because respondent PNR failed to file any expropriation case and to pay just compensation?

The power of eminent domain is an inherent and indispensable power of the State. Being inherent, the power need not be specifically conferred on the government by the Constitution.[36] Section 9, Article III states that private property shall not be taken for public use without just compensation. The constitutional restraints are public use and just compensation.[37]

The fundamental power of eminent domain is exercised by the Legislature. It may be delegated by Congress to the local governments, other public entities and public utilities.[38] In the case at bar, PNR, under its charter,[39] has the power of expropriation.

A number of circumstances must be present in the taking of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a

momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public purpose or otherwise informally, appropriately or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.[40]

In the case at bar, the expropriator (PNR) entered the property of Forfom, a private land. The entrance into Forfom's property was permanent, not for a fleeting or brief period. PNR has been in control, possession and enjoyment of the subject land since December 1972 or January 1973. PNR's entry into the property of Forfom was with the approval of then President Marcos and with the authorization of the PNR's Board of Directors. The property of Forfom measuring around eleven hectares was devoted to public use - railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service. With the entrance of PNR into the property, Forfom was deprived of material and beneficial use and enjoyment of the property. It is clear from the foregoing that there was a taking of property within the constitutional sense.

Forfom argues that the property taken from it should be returned because there was neither expropriation case filed by PNR nor just compensation paid for the same.

It can be gathered from the records that Forfom accepted the fact of the taking of its land when it negotiated with PNR for just compensation, knowing fully well that there was no expropriation case filed at all. Forfom's inaction for almost eighteen (18) years to question the absence of expropriation proceedings and its discussions with PNR as to how much petitioner shall be paid for its land preclude it from questioning the PNR's power to expropriate or the public purpose for which the power was exercised. In other words, it has waived its right and is estopped from assailing the takeover of its land on the ground that there was no case for expropriation that was commenced by PNR.

In *Manila Railroad Co. v. Paredes*,^[41] the first case in this jurisdiction in which there was an attempt to compel a public service corporation, endowed with the power of eminent domain, to vacate the property it had occupied without first acquiring title thereto by amicable purchase or expropriation proceedings, we said:

x x x whether the railroad company has the capacity to acquire the land in dispute by virtue of its delegated power of eminent domain, and, if so, whether the company occupied the land with the express or implied consent or acquiescence of the owner. If these questions of fact be decided in the affirmative, it is uniformly held that an action of ejectment or trespass or injunction will not lie against the railroad company, but only an action for damages, that is, recovery of the value of the land taken, and the consequential damages, if any. The primary reason for thus denying to the owner the remedies usually afforded to him against usurpers is the irremedial injury which would result to the railroad company and to the public in general. It will readily be seen that the interruption of the transportation service at any point on the right of way impedes the entire service of the company and causes loss and inconvenience to all passengers and shippers using the line. Under these circumstances, public policy, if not public necessity, demands that the owner of the land be denied the ordinarily remedies of ejectment and injunction. The fact that the railroad company has the capacity to eventually acquire the land by expropriation proceedings undoubtedly assists in coming to the conclusion that the property owner has no right to the remedies of ejectment or injunction. There is also something akin to equitable estoppel in the conduct of one who stands idly by and watches the construction of the railroad without protest. x x x. But the real strength of the rule lies in the fact that it is against public policy to permit a property owner, under such circumstances, to interfere with the service rendered to the public by the railroad company. x x x. (I)f a landowner, knowing that a railroad company has entered upon his land and is engaged in constructing its road without having complied with a statute requiring either payment by agreement or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejectment for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages.

Further, in *De Ynchausti v. Manila Electric Railroad & Light Co.*,^[42] we ruled:

The owner of land, who stands by, without objection, and sees a public railroad constructed over it, can not, after the road is completed, or large expenditures have been made thereon upon the faith of his apparent acquiescence, reclaim the land, or enjoin its use by the railroad company. In such a case there can only remain to the owner a right of compensation.

x x x x

One who permits a railroad company to occupy and use his land and construct its roads thereon without remonstrance or complaint, cannot afterwards reclaim it free from the servitude he has permitted to be imposed upon it. His acquiescence in the company's taking possession and constructing its works under circumstances which made imperative his resistance, if he ever intended to set up illegality, will be considered a waiver. But while this presumed waiver is a bar to his action to dispossess the company, he is not deprived of his action for damages for the value of the land, or for injuries done him by the construction or operation of the road.

x x x x

We conclude that x x x the complaint in this action praying for possession and for damages for the alleged unlawful detention of the land in question, should be dismissed x x x but that such dismissal x x x should be without prejudice to the right of the plaintiff to institute the appropriate proceedings to recover the value of the lands actually taken, or to compel the railroad corporation to take the necessary steps to secure the condemnation of the land and to pay the amount of the compensation and damages assessed in the condemnation proceedings.

In *Ansaldo v. Tantuico, Jr.*,^[43] a case involving the takeover by the Government of two private lots to be used for the widening of a road without the benefit of an action for expropriation or agreement with its owners, we held that the owners therein, having been silent for more than two decades, were deemed to have consented to such taking -- although they knew that there had been no expropriation case commenced -- and therefore had no reason to impugn the existence of the power to expropriate or the public purpose for which that power had been exercised. In said case, we directed the expropriator to forthwith institute the appropriate expropriation action over the land, so that just compensation due the owners may be determined in accordance with the Rules of Court.

From the afore-cited cases, it is clear that recovery of possession of the property by the landowner can no longer be allowed on the grounds of estoppel and, more importantly, of public policy which imposes upon the public utility the obligation to continue its services to the public. The non-filing of the case for expropriation will not necessarily lead to the return of the property to the landowner. What is left to the landowner is the right of compensation.

Forfom argues that the recovery of its property is justified because PNR failed to pay just compensation from the time its property was taken. We do not agree. It is settled that non-payment of just compensation does not entitle the private landowners to recover possession of their expropriated lot.^[44]

Forfom contends that since there is enormous proof that portions of the property taken by PNR were being leased to third parties there was enough justification for the Court of Appeals to order the return to petitioner of the leased portions as well as the rents received therefrom.

We find such contention to be untenable. As ruled above, Forfom's inaction on and acquiescence to the taking of its land without any expropriation case being filed, and its continued negotiation with PNR on just compensation for the land, prevent him from raising any issues regarding the power and right of the PNR to expropriate and the public purpose for which the right was exercised. The only issue that remains is just compensation. Having no right to further question PNR's act of taking over and the corresponding public purpose of the condemnation,

Forfom cannot now object to PNR's lease of portions of the land to third parties. The leasing out of portions of the property is already a matter between PNR and third persons in which Forfom can no longer participate. The same no longer has any bearing on the issue of just compensation.

Forfom further avers that the leasing out of portions of the property to third persons is beyond the scope of public use and thus should be returned to it. We do not agree. The public-use requisite for the valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. At present, it may not be amiss to state that whatever is beneficially employed for the general welfare satisfies the requirement of public use.[45] The term "public use" has now been held to be synonymous with "public interest," "public benefit," "public welfare," and "public convenience." [46] It includes the broader notion of indirect public benefit or advantage.[47] Whatever may be beneficially employed for the general welfare satisfies the requirement of public use.[48]

In the instant case, Mrs. Ramos of the PNR explains that the leasing of PNR's right of way is an incidental power and is in response to the government's social housing project. She said that to prevent the proliferation of squatting along the right of way, special contracts were entered into with selected parties under strict conditions to vacate the property leased upon notice. To the court, such purpose is indeed public, for it addresses the shortage in housing, which is a matter of concern for the state, as it directly affects public health, safety, environment and the general welfare.

Forfom claims it was denied due process when its property was forcibly taken without due compensation for it. Forfom is not being denied due process. It has been given its day in court. The fact that its cause is being heard by this Court is evidence that it is not being denied due process.

We now go to the issue of just compensation.

Under Section 5 of the 1997 Rules of Civil Procedure, the court shall appoint not more than three competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property. Though the ascertainment of just compensation is a judicial prerogative,[49] the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. While it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. Thus, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all." [50]

In the case before us, the trial court determined just compensation, but not in an expropriation case. Moreover, there was no appointment of commissioners as mandated by the rules. The appointment of commissioners is one of the steps involved in expropriation proceedings. What the judge did in this case was contrary to what the rules prescribe. The judge should not have made a determination of just compensation without first having appointed the required commissioners who would initially ascertain and report the just compensation for the property involved. This being the case, we find the valuation made by the trial court to be ineffectual, not having been made in accordance with the procedure provided for by the rules.

The next issue to be resolved is the time when just compensation should be fixed. Is it at the time of the taking or, as Forfom maintains, at the time when the price is actually paid?

Where actual taking was made without the benefit of expropriation proceedings, and the owner sought recovery of the possession of the property prior to the filing of expropriation proceedings, the Court has invariably ruled that

it is the value of the property at the time of taking that is controlling for purposes of compensation.[51] In the case at bar, the just compensation should be reckoned from the time of taking which is January 1973. The determination thereof shall be made in the expropriation case to be filed without delay by the PNR after the appointment of commissioners as required by the rules.

Admittedly, the PNR's occupation of Forfom's property for almost eighteen (18) years entitles the latter to payment of interest at the legal rate of six (6%) percent on the value of the land at the time of taking until full payment is made by the PNR.[52]

For almost 18 years, the PNR has enjoyed possession of the land in question without the benefit of expropriation proceedings. It is apparent from its actuations that it has no intention of filing any expropriation case in order to formally place the subject land in its name. All these years, it has given Forfom the runaround, failing to pay the just compensation it rightly deserves. PNR's uncaring and indifferent posture must be corrected with the awarding of exemplary damages, attorney's fees and expenses of litigation. However, since Forfom no longer appealed the deletion by both lower courts of said prayer for exemplary damages, the same cannot be granted. As to attorney's fees and expenses of litigation, we find the award thereof to be just and equitable. The amounts of P100,000.00 as attorney's fees and P50,000.00 as litigation expenses are reasonable under the premises.

As explained above, the prayer for the return of the leased portions, together with the rental received therefrom, is denied. Unearned income for years after the takeover of the land is likewise denied. Having turned over the property to PNR, Forfom has no more right to receive any income, if there be any, derived from the use of the property which is already under the control and possession of PNR.

As to actual damages corresponding to the sugarcane and mango trees that were allegedly destroyed when PNR entered and took possession of the subject land, we find that the same, being a question of fact, is better left to be determined by the expropriation court where the PNR will be filing the expropriation case. Evidence for such claim may be introduced before the condemnation proceedings.[53]

WHEREFORE, the instant petition is **PARTIALLY DENIED** insofar as it denies Forfom Development Corporation's prayer for recovery of possession (in whole or in part) of the subject land, unearned income, and rentals. The petition is **PARTIALLY GRANTED** in that attorney's fees and litigation expenses in the amounts of P100,000.00 and P50,000.00, respectively, are awarded. The Philippine National Railways is **DIRECTED** to forthwith institute the appropriate expropriation action over the land in question, so that just compensation due to its owner may be determined in accordance with the Rules of Court, with interest at the legal rate of six (6%) percent per annum from the time of taking until full payment is made. As to the claim for the alleged damaged crops, evidence of the same, if any, may be presented before the expropriation court. No costs.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Romeo A. Brawner with Associate Justices Alfredo L. Benipayo and Buenaventura J. Guerrero, concurring; CA rollo, pp. 164-173.

[2] Raffled to Branch 24.

[3] Records, pp. 1-6.

[4] Id. at 77-80.

- [5] Id. at 38.
- [6] Id. at 90.
- [7] Id. at 507-510.
- [8] Id. at 125-129.
- [9] Id. at 137-149.
- [10] Id. at 204-207.
- [11] Id. at 150-177.
- [12] Id. at 178-203.
- [13] Id. at 340-344.
- [14] Id. at 599-612.
- [15] Id. at 532-549.
- [16] TSN, 2 October 1991, pp. 2-17.
- [17] Records, pp. 513-514.
- [18] Id. at 517-518.
- [19] Id. at 515-516.
- [20] Id. at 519-520.
- [21] TSN, 2 October 1991, pp. 18-34.
- [22] Records, pp. 591-594.
- [23] Id. at 709-712.
- [24] Id. at 681-691.
- [25] Id. at 692-693.
- [26] Id. at 696.
- [27] Id. at 699-703.
- [28] Id. at 704-705.
- [29] Id. at 706-707.
- [30] Id. at 708.
- [31] Id. at 727.
- [32] Id. at 728 and 730.
- [33] CA rollo, p. 172.
- [34] Id. at 167-170.
- [35] Rollo, pp. 11-12.

- [36] Manapat v. Court of Appeals, G.R. No. 110478, 15 October 2007, 536 SCRA 32, 47-48.
- [37] Reyes v. National Housing Authority, 443 Phil. 603, 610 (2003).
- [38] National Power Corporation v. Court of Appeals, 479 Phil. 850, 860 (2004).
- [39] Republic Act No. 4156, as amended by Republic Act No. 6366 and Presidential Decree No. 741.
- [40] Heirs of Mateo Pidacan and Romana Eigo v. Air Transportation Office, G.R. No. 162779, 15 June 2007, 524 SCRA 679, 686-687.
- [41] 32 Phil. 534, 537-538 (1915).
- [42] 36 Phil. 908, 911-912 (1917).
- [43] G.R. No. 50147, 3 August 1990, 188 SCRA 300.
- [44] Reyes v. National Housing Authority, *supra* note 37 at 613.
- [45] Manapat v. Court of Appeals, G.R. No. 110478, 15 October 2007, 536 SCRA 32, 55.
- [46] Reyes v. National Housing Authority, *supra* note 37 at 610.
- [47] Didipio Earth-Savers' Multi-Purpose Association, Incorporated (DESAMA) v. Gozun, G.R. No. 157882, 30 March 2006, 485 SCRA 586, 613.
- [48] Heirs of Juancho Ardon v. Hon. Reyes, 210 Phil. 187, 203-204 (1983).
- [49] Export Processing Zone Authority v. Dulay, G.R. No. L-59603, 29 April 1987, 149 SCRA 305, 311.
- [50] National Power Corp. v. dela Cruz, G.R. No. 156093, 2 February 2007, 514 SCRA 56, 70.
- [51] Manila International Airport Authority v. Rodriguez, G.R. No. 161836, 28 February 2006, 483 SCRA 619, 627.
- [52] National Power Corporation v. Angas, G.R. Nos. 60225-26, 8 May 1992, 208 SCRA 542, 548-549; Urtula v. Republic, 130 Phil. 449, 454-455 (1968).
- [53] Philippine Oil Development Co., Inc. v. Go, 90 Phil. 692, 696 (1952).

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