HEIRS OF MACABANGKIT SANGKAY, NAMELY, CEBU BATOWA-AN, SAYANA, NASSER, MANTA, EDGAR, PUTRI, MONKOY AND AMIR, ALL SURNAMED MACABANGKIT, PETITIONERS, VS. NATIONAL POWER CORPORATION...

G.R. NO. 141447. May 04, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before this Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 54889 which set aside the Special Order[2] dated September 7, 1999 issued by the Regional Trial Court (RTC) of Iligan City, Branch 61 in Civil Case No. 4094, as well as the Resolution dated November 12, 1999 denying the motion for reconsideration thereof. The said Special Order of the RTC granted the Urgent Motion for Execution Pending Appeal filed by plaintiffs therein of its Decision and Supplemental Decision, thus obliging the National Power Corporation (NAPOCOR) to pay plaintiffs P79,472.750.00 as just compensation.

The antecedents are as follows:

Macabangkit Sangkay was the owner of a 227,065-square-meter parcel of land located in Iligan City. When he died intestate, the property was subdivided into nine parcels and subsequently titled to his heirs, namely:

Name Title No.

1) Edgar Macabangkit - OCT No. P-1003

2) Nasser Macabangkit - OCT No. P-1004

3) Sayana Macabangkit - OCT No. P-1005

4) Manta Macabangkit - OCT No. P-1007

5) Cebu Macabangkit - OCT No. P-1008

6) Batowa-an Macabangkit - OCT No. P-1010

7) Amir Macabangkit - OCT No. P-1012

8) Monkoy Macabangkit - OCT No. P-1027

9) Putri Macabangkit - OCT No. P-1028[3]

The said Heirs declared their properties for taxation purposes in their respective names.[4]

In 1979, NAPOCOR constructed an underground three-kilometer long tunnel traversing the properties of the Heirs, about 100 meters beneath the surface. The tunnel was used to siphon water and divert the flow of the Agus River for the operation of NAPOCOR's Hydro-Electric Project in Agus V, VI, and VII, at Ditucalan and Fuentes,

Iligan City. A transmission line also traversed the property. The Heirs were not informed that such underground tunnel had been constructed; neither did NAPOCOR compensate them for the use of their property.[5]

The Heirs filed a complaint for damages and recovery of possession of the property with alternative prayer for just compensation against NAPOCOR before the RTC of Iligan City, alleging the following in their complaint:

> - In the early part of 1996, plaintiffs entered into a Memorandum of Agreement with Global Asia Management and Resource Corporation for the sale of their property. On July 5, 1996, plaintiffs received a letter from the Global Asia Management and Resource Corporation, refusing the plaintiffs' land due to the presence of defendant's underground tunnel. Copy of the Memorandum of Agreement and the subsequent withdrawal of Global Asia Management and Resource Corporation, from the agreement are attached herewith as ANNEXES "W" and "X," forming as part hereof;
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> - On October 10, 1996, plaintiffs offered their land as collateral for a loan applied with the Al-Amanah Islamic Investment Bank of the Philippines, Iligan City Branch, and again the said parcels of land were not accepted as collateral due to the presence of defendant's underground tunnel, copy of the letter of the said Bank, dated October 10, 1996 is herewith attached and marked as ANNEX "Y," forming as part hereof;
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> - That the act of defendant is equivalent to unlawful taking and condemnation of plaintiffs' parcels of land, without just compensation and/or reasonable rental since 1979. Written and oral demands were made for defendant to vacate and remove its tunnel, or, in the alternative, to pay just compensation and rental of plaintiffs' parcels of land, but defendant refused and continuously refuses, sans any valid ground. Copy of plaintiffs' demand letter is attached herewith as ANNEX "Z" forming as part hereof. Also, the answer of defendant to plaintiffs' demand letter is also attached herewith and marked as ANNEX "Z-1," forming as part hereof;
>
> - That, as a consequence of defendant's unlawful taking and condemnation of plaintiffs' properties and the illegal construction of defendant's underground tunnel, the defendant were deprived of the agricultural, commercial, industrial and residential value of their land aforesaid;
>
> So also, by the same reason aforestated, the surface of plaintiffs' land became unsafe for habitation as the defendant's tunnel will someday collapse, and the surface will be carried by the current of the water. Those of plaintiffs and workers with houses on the surface were forced to transfer to a safer site in 1996, as they were continuously disturb day and night, because of fear and the danger, coupled by the sound being produce by the water flow and which sometime shake the surface;
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> - That the current aggregate assessed value of plaintiffs, parcels of land as indicated in their respective Tax Declarations is ONE HUNDRED SIX THOUSAND AND SEVEN HUNDRED TEN (P106,710.00) PESOS, more or less;
>
> - That defendant must be held liable for damages in the form of rental and other damages starting [from] 1979 when the defendant's underground tunnel was constructed up to the present, plus additional damages beyond 1997, should defendant continue to illegally stay on plaintiffs' land, in such amount as may be determined and deemed just and equitable by the Honorable Court;
>
> - That it is necessary for defendant to dismantle its underground tunnel illegally constructed beneath the lands of plaintiffs and to deliver possession of the same to plaintiff the subterrain illegally occupied by defendant;
>
> - The construction of the tunnel by defendant beneath plaintiffs' parcels of lands have caused danger to their lives and properties; sleepless nights, serious anxiety, and shock, thereby entitling them to recover moral damages in the amount of TWO HUNDRED THOSUAND (P200,000.00) PESOS. And by way of example to deter persons similarly minded and for public good, defendant may be held liable for exemplary damages, also in the amount of TWO HUNDRED THOUSAND (P200,000.00) PESOS. Or in both cases, in such amount as

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may be determined by the Honorable Court;

- That to protect the interest of the plaintiffs and for purposes of filing the instant case, they were compelled to engage the services of counsel, in the amount equivalent to TWO [HUNDRED] THOUSAND (P200,000.00), plus court appearance fee of ONE THOUSAND (P1,000.00), as and by way of attorney's fees.[6]

They prayed that judgment be rendered in their favor after due proceedings, to wit:

WHEREFORE, premises considered, plaintiffs pray that judgment be rendered as follows:

- Directing defendants to remove and dismantle its underground tunnel constructed beneath the land of plaintiffs and to deliver possession of the subterrain area illegally occupied by defendant;

- To pay plaintiffs a monthly rental from 1979 up to the time the defendant vacates the subterrain of the land of plaintiffs, in such amount as may be considered reasonable by the Honorable Court;

- In the alternative, if and when the removal of defendant's underground tunnel is not legally possible, to pay plaintiffs of the just compensation of their land in the amount as may be deemed reasonable by the Honorable Court. But, in either case, (either by the removal of the tunnel or by paying just compensation) to pay plaintiffs a reasonable rental;

- To pay moral damages in the amount of TWO HUNDRED THOUSAND (P200,00.00) PESOS and exemplary damages of another TWO HUNDRED THOUSAND (P200,000.00) PESOS, or in such respective amount as may be determined by the Honorable Court;

- Pay attorney's fees in the amount of TWO HUNDRED THOUSAND (P200,000.00), plus appearance fee of ONE THOUSAND (P1,0000.00) PESOS, as and by way of attorney's fees;

- Such other relief deemed just and equitable under the circumstance.[7]

In its answer to the complaint, NAPOCOR interposed the following special and affirmative defenses:

- That while it is true that under Article 437 of the New Civil Code, the owner of a parcel of land is the owner of its surface and everything under it and can therefore construct thereon any work or make any plantation and excavation which he may deem proper, yet, such exercise of right is without detriment to servitude and is subject to other limitations imposed either by special law or ordinances;

- That under Section 3, paragraph (f) of Republic Act 6395, as amended, which, by its nature, is a special law, defendant herein is authorized to take water from any public stream, river, creek, lake, spring or waterfall in the Philippines for the purposes specified therein; to intercept and divert the flow of water from lands of riparian owners and from persons owning or interested in water which are or may be necessary to said purposes, upon payment of just compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or continuous to its works or any part thereof; thus, the construction of tunnel by defendant is legal and sanctioned by law;

- That assuming arguendo, without admitting, that a tunnel was indeed constructed in 1979 under the land claimed by the plaintiffs, their cause of action against the defendant is barred not only by prescription but also by estoppel and laches. Under our laws and jurisprudence, easement of aqueduct canals and tunnels are apparent and continuous easement and any action arising therefrom prescribes in five (5) years which prescriptive period is to be reckoned from its accrual. In the instant case, the cause of action of the plaintiffs, if any, has accrued in 1979 and yet they only filed the complaint in 1997 or after the lapse of almost eighteen (18) years;[8]

The Heirs adduced in evidence the Certificate issued by the City Assessor's Office stating that the property had an assessed value of P400.00 to P500.00 per square meter. Witnesses testified that the adjacent parcels of land were

sold at P700.00 and P750.00 per square meter and that the area where the property is located is classified as industrial, and residential and adjacent to subdivisions with industrial classification.[9]On August 13, 1999, the RTC rendered judgment in favor of the Heirs. The fallo of the decision reads:

> WHEREFORE, premises considered:
>
> 1. The prayer for the removal or dismantling of defendant's tunnel is denied[.] However, defendant is hereby directed and ordered:
>
> a) To pay plaintiffs' land with a total area of 227,065 square meters, at the rate of FIVE HUNDRED (P500.00) PESOS per square meter, or a total of ONE HUNDRED THIRTEEN MILLION FIVE HUNDRED THIRTY TWO THOUSAND AND FIVE HUNDRED (P113,532,500.00) PESOS, plus interest, as actual damages or just compensation;
>
> b) To pay plaintiffs a monthly rental of their land in the amount of THIRTY THOUSAND (P30,000.00) PESOS from 1979 up to July 1999 with 12% interest per annum;
>
> c) To pay plaintiffs the sum of TWO HUNDRED THOUSAND (P200,000.00) PESOS, as moral damages;
>
> d) To pay plaintiffs, the sum of TWO HUNDRED THOUSAND (P200,000.00) PESOS, as exemplary damages;
>
> e) To pay plaintiffs, the sum equivalent to 15% of the total amount awarded, as attorney's fees, and to pay the cost.
>
> SO ORDERED.[10]

The RTC declared that the construction of the underground tunnel affected the entire area of the Heirs' property. Consequently, plaintiffs lost the agricultural, industrial, commercial and residential value of the land.

On August 18, 1999, the RTC rendered a Supplemental Decision, the dispositive portion of which reads:

> Therefore, paragraph 1(a) of the dispositive portion of the original decision should read, as follows:
>
> a) To pay plaintiffs' land with a total area of 227,065 square meters, at the rate of FIVE HUNDRED (P500.00) PESOS per square meter, or a total of ONE HUNDRED THIRTEEN MILLION FIVE HUNDRED THIRTY TWO THOUSAND AND FIVE HUNDRED (P113,532,500.00) PESOS, plus interest, as actual damages or just compensation; Consequently, plaintiffs' land or properties are hereby condemned in favor of defendant National Power Corporation, upon payment of the aforesaid sum;
>
> This supplemental decision shall be considered as part of paragraph 1(a) of the dispositive portion of the original decision.[11]

Before NAPOCOR was served with a copy of said Decision, the Heirs filed an Urgent Motion for Execution of Judgment Pending Appeal, alleging that execution pending appeal was justified, considering the trial court's finding that it (NAPOCOR) had acted in bad faith in constructing the tunnel. They pointed out that it had been illegally occupying their land for a long period of time without any compensation or rental having been paid to them, and that to prolong the execution of the decision would likewise prolong its illegal act. The Heirs pointed out that once they received their share of the money judgment, they would be able to purchase safer lands and build new houses thereon. They insisted that any appeal which may be taken by NAPOCOR would be dilatory and frivolous.

The Heirs appended to their motion their Joint Affidavit wherein they alleged that they constantly feared that an earthquake could happen at any time, and that the tunnel could collapse or cave in, which would necessarily cause

serious injuries or even death.[12]NAPOCOR opposed the motion. It contended that the Heirs failed to prove that it acted in bad faith when it constructed the tunnel; hence, there was no justification to grant their motion. It pointed out that the Heirs were never deprived of the beneficial use of their land; in fact, there was no evidence on record that they ever attempted to use the affected portion of the property. NAPOCOR claimed that the Heirs' demand for rentals was without factual and legal basis.

NAPOCOR further alleged that the Heirs' claim that the tunnel exposed them to danger was belied by the testimony of Nasser Macabangkit. On cross-examination, he testified that only two of his siblings, Sayana and Edgar Macabangkit, starter to reside in the subject property in 1998, after the complaint was filed on November 21, 1987. It further alleged that it had already filed an appeal, which, as gleaned from the evidence and the applicable jurisprudence, was not a mere dilatory tactic.[13]

On September 7, 1997, the trial court issued the Special Order granting the motion for execution pending appeal and awarded 70% of the money judgment, or P79,472,750.00, upon the filing of a P1,000,000.00 bond. The dispositive portion of the Order reads:

> WHEREFORE, premises considered, the Motion for Execution Pending Appeal is therefore granted, but only for the amount equivalent to SEVENTY PERCENT (70%) of the amount awarded as fair market value of plaintiffs land or for a total of SEVENTY-NINE MILLION FOUR-HUNDRED SEVENTY-TWO THOUSAND AND SEVEN HUNDRED FIFTY (P79,472,750.00) PESOS, Philippine Currency, subject to the condition that plaintiffs shall file an execution bond duly approved by this Court, either in cash, surety or property in the amount of ONE MILLION (P1,000,000.00) PESOS, which bond is in addition to plaintiffs land already condemned in favor of the defendant, to answer for any damage that defendant may suffer as a result of the execution of the decision pending appeal, should it later on be ruled on appeal that plaintiffs be not entitled to it and the decision be reversed.
>
> Monthly rentals, moral and exemplary damages, attorney's fee and cost are excluded from the execution pending appeal.
>
> Let the corresponding Writ of Execution Pending appeal be issued upon the posting and approval of the aforesaid execution bond. Mr. Montoy Lomondot, Sheriff-IV, RTC, Lanao del Norte is hereby commanded to cause the implementation and execution of the portion of the aforesaid decision in accordance with the Rules of Court, together with his lawful fees for the service of the Writ. He shall be assisted by the other deputy sheriffs assigned to this Court or in another branch after securing the consent of the presiding Judge thereof. He shall likewise be assisted by Atty. Cairoding Maruhom, Ex-officio Provincial/City Sheriff of Lanao del Sur-Marawi City, and Palao Diamla, Sheriff-IV, RTC, Lanao del Sur, subject to the consent of the Presiding Judge concerned.
>
> The Clerk of Court is hereby ordered to assess and collect the corresponding additional filing fee from the judgment award.
>
> SO ORDERED.[14]

The trial court declared that among the good reasons to grant the motion for execution pending appeal was the fact that NAPOCOR had occupied the property and had used it in bad faith since 1979 without having paid just compensation therefor. Moreover, the construction of the tunnel rendered the subject property unfit for industrial, residential, or commercial use because of the danger it posed; neither could the Heirs dispose of the property. Thus, they had the right to compel NAPOCOR to pay the price of the land or the proper rent under Article 450 of the New Civil Code. The trial court also declared that the appeal of defendant was dilatory and frivolous, which was resorted to so that it could continue enjoying and using the property for free. It also stated execution of judgment pending appeal would not cause prejudice or irreparable damage to defendant, since the amount of just

compensation sought to be executed was equivalent to the fair market value of the Heirs' land, while the rentals were for NAPOCOR'S use of the land. It also ruled that the Heirs could file their motion for execution pending appeal even before NAPOCOR received a copy of the decision.[15]The RTC thereafter issued the Writ of Execution[16] on September 9, 1999.

NAPOCOR assailed the trial court's Special Order and Writ of Execution before the CA via petition for review on certiorari under Rule 65, claiming that respondent Judge acted without or in excess of jurisdiction and gravely abused his discretion in granting the Motion for Execution Pending Appeal and issuing the concomitant writ despite the absence of compelling reasons therefor.[17] It cited Aquino v. Santiago[18] to support its argument. It claimed that it was not in danger of being insolvent as would justify execution of the decision pending appeal. It further posited that since Republic Act No. 6395, as amended, was a special law which recognized the construction of water pipes to divert the flow of water for purposes of generating electricity as a limitation to ownership of property.

NAPOCOR further claimed that the assailed Special Order rendered nugatory its right to appeal the decision sought to be executed. It insisted that it should not be obliged to pay the alleged market value of the property since it was not entirely affected by the support tunnel.

For their part, the Heirs averred that execution pending appeal is a matter addressed to the second discretion of the trial court and cannot be nullified by the appellate court unless grave abuse of discretion amounting to excess or lack of jurisdiction is shown. They claimed that NAPOCOR failed to prove that the trial court was guilty of grave abuse of discretion in granting their motion for execution pending appeal. They pointed out that it was justified by good reasons, and that they adduced proof of the fair market value of the property and posted the required P1,000,000.00 bond. The Heirs cited the ruling of the CA in National Power Corporation v. Ibrahim[19] and Municipality of Biñan, Laguna v. Court of Appeals.[20]The appellate court heard the parties on oral argument. On November 12, 1999, the CA rendered judgment granting the petition and set aside the assailed orders of the trial court.[21] According to the appellate court, even assuming NAPOCOR's bad faith in constructing its tunnel beneath the surface of the property, it was not an urgent and compelling reason to grant the motion for execution pending appeal. The matter goes into the merits of the case, which the CA should resolve on appeal. Moreover, it was not for the trial court to rule on whether NAPOCOR's appeal was dilatory; the merits of the appeal should be resolved first, considering the other matters involved in the appeal aside from the fact that the total amount of the award was P113,532,500.00.

According to the CA, under Section 3(i) of Republic Act No. 6395, the act revising the charter of NAPOCOR, any action by any person claiming compensation and/or damages shall be filed within five (5) years after the right-of-way, transmission lines, substations, plants or other facilities shall have been established; after the said period, no suit can be brought to question the same. It stressed that the effect of this proviso on the decision of the trial court can be better addressed in the appeal.

The Heirs filed a Motion for Reconsideration,[22] which the trial court denied for lack of merit on January 13, 2000;[23] hence, the instant petition.

Petitioners allege that the CA erred in granting the writ of certiorari in favor of respondent NAPOCOR on its finding that the trial court committed grave abuse of its discretion in issuing the Special Order. Petitioners maintain that the trial court's finding that respondent NAPOCOR acted in bad faith and that its appeal was dilatory was supported by the evidence on record and the pleadings of the parties. They insisted that the appellate court should not substitute its findings for those of the trial court. Its reliance on Section 3(i) of Republic Act No. 6395 was misplaced because the law does not apply to the construction of a tunnel underneath the surface of their

property. Petitioners further aver that the CA should have applied its ruling in National Power Corporation v. Ibrahim.[24] By its decision, the CA condoned the unjust enrichment of private respondent at their expense.

The issue for resolution is whether the CA erred in finding that the trial court committed grave abuse of its discretion in granting petitioners' motion for execution pending appeal of its decision and supplemental decision in the amount of P79,472,750.00.

The petition is dismissed for lack of merit.

The rule is that execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceedings upon the expiration of the period to appeal therefrom if no appeal has been perfected.[25] However, the trial court may grant execution before the expiration of the period to appeal upon motion of the prevailing party provided that it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, and there are good reasons for such execution to be stated in a special order after due hearing. The rule does not proscribe the prevailing party from filing such motion even before the losing party has received his copy of the decision or final order of the trial court. Such motion for execution pending appeal may be filed by the prevailing party at any time before the expiration of the period to appeal. It may happen that, upon service on the prevailing party of a copy of the decision or final order of the trial court, he files a motion for execution pending appeal but the losing party files a motion for reconsideration of the decision or final order within the required 15-day period under Rule 39 of the Revised Rules of Court. In such a case, the motion of the prevailing party for execution pending appeal may be held in abeyance pending final resolution of the losing party's motion for reconsideration of the decision or final order. Upon the other hand, if the losing party does not appeal the decision or final order, the execution of the decision becomes a matter of right on the part of the prevailing party. In such case, the motion for execution pending appeal becomes moot and academic, as the prevailing party may file a motion for a writ of execution of the decision or final order.

As provided in Section 2, Rule 39 of the Revised Rules of Court, execution of the judgment or final order pending appeal is discretionary. It is the exception to the rule that only a final judgment may be executed, hence, must be strictly construed. Execution pending appeal should not be granted routinely but only in extraordinary circumstances.[26] However, if the trial court grants execution pending appeal in the absence of good reasons therefor, it is incumbent upon the CA to issue a writ of certiorari; failure to do so would constitute grave abuse of discretion on its part.[27]

The CA ruled correctly when it held that the trial court acted with grave abuse of its discretion amounting to excess or lack of jurisdiction when it granted private respondents' motion for execution pending appeal in the absence of good reasons to justify the grant of said motion.

The Rules of Court do not enumerate the circumstances which would justify the execution of the judgment or decision pending appeal.[28] However, this Court has held that "good reasons" consist of compelling or superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment or final order. Were the rule otherwise, execution pending appeal may well become a tool of oppression and inequity instead of an instrument of solicitude and justice.[29]

The existence of good reasons is what confers discretionary power on a court to issue a writ of execution pending appeal. These reasons must be stated in the order granting the same. Unless they are divulged, it would be difficult to determine whether judicial discretion has been properly exercised in the case. The mere posting of a bond will not justify execution pending appeal. Furthermore, a combination of circumstances is the dominant consideration which impels the grant of immediate execution. The requirement of a bond is imposed merely as an additional factor for the protection of the defendant's creditor; otherwise, execution pending appeal could be obtained

through the mere filing of such bond.[30]Petitioners insist that, as gleaned from their Joint Affidavit, when they discovered the existence of respondent's tunnel in 1996, they were impelled to transfer their residence; they then lived with one of their brothers-in-law, Camama Ibrahim in Mahayahay, Iligan City. They assert that there is nothing in the testimony of petitioner Nasser Macabangkit which would negate the urgency to buy properties located in a safe area. The relevant portion of the Joint Affidavit reads:

> - That we constantly fear that an earthquake may happen at any time which would could cause the collapse or caving in of the tunnel with the resultant violent destruction of our houses, and would necessarily cause us serious injuries, or even our death or those of the members of our family. The recent incident of erosion and landslide at Cherry Hills, Antipolo City, is not remote possibility, that it may had happen to us. May God forbid.
>
> - That our fear has been aggravated by the fact that we often feel the vibration of the area beneath our houses whenever the volume of the water that passes through the tunnel increases, especially at midnight. Thus, we have been suffering from sleepless nights or, at least troubled sleep, for countless times ever since the tunnel was illegally constructed by the defendant;
>
> - That as a result of the very real danger that we have been exposed to, we have long decided to leave our houses and reside at the residence of our brother-in-law, one Camama Ibrahim, at Mahayahay, Iligan City, and suffered a humiliating condition, as well as the congestion. As soon as we have the financial means, we have to liberate our family from the same humiliation and congestion, by purchasing a lot and construct a house. We are entitled to a humane, dignified and decent shelter which commensurate to our social standing in the community.
>
> - That we, therefore, need money very badly right now and, if we received our share in the damages awarded to us in the decision, we would readily use it for a suitable land far from the area where the tunnel exists, and build our houses thereon, so that we may be freed from the ever-present fear of a very real danger to ourselves, our families and our properties, which we have been subjected to for many years due to the illegal acts of the National Power Corporation.[31]

On the other hand, in their Complaint filed before the RTC on November 11, 1997, petitioners alleged that the construction of the tunnel by the respondent caused danger to their lives and properties, and gave them sleepless nights, serious anxiety and shock. The Court rules, however, that this claim of petitioners was merely an afterthought and is barren of merit.

Petitioner Nasser Macabangkit testified before the trial court on December 1, 1998, and declared that only two of the petitioners, Edgar and Sayana Macabangkit, resided in the property starting only in 1998:

> Q Was there anyone of your brothers and sisters who have actually visited/resided in this land in question?
>
> A As of now, there is, Sir.
>
> Q Will you tell us the name of your brother or sister who is now residing in this land of yours?
>
> A Edgar and Sayana Macabangkit.
>
> Q Do you know when was it when they started residing in that land of yours?
>
> A This year, Sir.
>
> COURT:
>
> Q This year 1998?
>
> A Yes, Your Honor. (TSN, December 1, 1998, pp. 21-23)[32]

What the Court cannot fathom is the fact that shortly after filing their complaint on November 11, 1997, petitioners Edgar and Sayana Macabangkit still dared to establish their residence in the property. Indeed, it is incredible that after discovering the existence of the tunnel and finding the area "very dangerous," petitioners would still choose to live therein. If petitioners truly believed that the tunnel posed danger to their property and their very lives, any decision to stay on would be short of suicidal on their part.

Thus, the Court holds that the trial court committed grave abuse of discretion when it ordered the execution of its Decision and Supplemental Decision pending appeal, compelling respondent to remit P70,472,750.00 to petitioners simply because petitioners Edgar and Sayana Macabangkit needed their share (P11,353,370.00 each) just so they could buy land and establish their new homes.

Petitioners insist, however, that the "good reasons" cited by the trial court for granting their motion for execution pending appeal are based on the trial court's findings of facts, i.e, respondent acted in bad faith in constructing a three-kilometer long tunnel underneath petitioners' property without their knowledge and consent; respondent had not compensated the petitioners for its use of the property since 1979; respondent profited from its use of their properties; the existence of the tunnel rendered petitioners' property unfit for industrial, residential or commercial use due to the danger posed by it, and no one was willing to buy the property; and the fair market value of the property had been amply proved by evidence.

For its part, respondent avers that, it acted in good faith based on Section 3(f) and (g) of Republic Act No. 6395,[33] as amended. Respondent posits that it is incredible that petitioners failed to discover the tunnel when it was constructed in 1979; hence, petitioners slept on their rights for 18 years or so. It further averred that the precise amount due to petitioners for the respondent's use of the tunnel, by way of compensation, is another contentious issue on appeal. Even assuming that petitioners are entitled to compensation or reasonable rentals for the portion appropriated by respondent, the appellate court still has to resolve the issue of whether, as claimed by the respondent, petitioners' claim is barred by Section 3(i)[34] of Republic Act No. 6395.

The well-established rule is that it is not for the trial court to determine the merits of the decision it rendered and use the same as basis for its order allowing execution pending appeal. The authority to determine the merits of the appeal and the correctness of the findings and conclusions of the trial court is lodged in the appellate court. The trial court cannot preempt the decision of the appellate court and use its own decision as basis for affirming the trial court's order of execution pending appeal.[35]Neither is the trial court justified to order execution pending appeal, on its assertion that the appeal of the respondent is a dilatory tactic. As the Court held in Manacop v. Equitable PCI Bank:[36]

> Besides, that the appeal is merely dilatory is not a good reason for granting execution pending appeal. As held in BF Corporation v. Edsa Shangri-la Hotel:
>
> ... it is not for the trial judge to determine the merit of a decision he rendered as this is the role of the appellate court. Hence, it is not within competence of the trial court, in resolving a motion for execution pending appeal, to rule that the appeal is patently dilatory and rely on the same as basis for finding good reasons to grant the motion. Only an appellate court can appreciate the dilatory intent of an appeal as an additional good reason in upholding an order for execution pending appeal...

Petitioners' reliance on the ruling of the CA in National Power Corporation v. Ibrahim,[37] is misplaced. We agree with the following ratiocination of the CA in its decision:

> We note that in support of its case, private respondents cited the case of National Power Corporation v. Hon. Amer Ibrahim, et al. (CA-G.R. SP No. 41897) which was decided by the Special Seventeenth Division of this Court. In the said case, the discretionary execution granted by the public respondent was upheld. While we are

> not unmindful of the findings in the said case, it is our opinion that based on the circumstances obtaining in this case, it would best serve the ends of justice if the appeal on the merits of the case is first resolved without any execution pending appeal, not only because the total amount involved is quite substantial - ONE HUNDRED THIRTEEN MILLION FIVE HUNDRED THIRTY-TWO THOUSAND AND FIVE HUNDRED PESOS (P113,532,500.00), but also because of the other matters involved in the appeal.(citation omitted)[38]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioners.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Eubulo G. Verzola (deceased), with Associate Justices Artemio G. Tuquero (retired) and Elvi John S. Asuncion, concurring; rollo, pp. 176-187.

[2] Penned by Judge Mamindiara P. Mangotara.

[3] Rollo, p. 44.

[4] Id. at 40.

[5] Id. at 20-28.

[6] Id. at 33-35.

[7] Id. at 35.

[8] Id. at 38.

[9] Id. at 46-47.

[10] Id. at 59-60.

[11] Id. at 61.

[12] Id. at 68.

[13] Rollo, pp. 70-76.

[14] Id. at 77-87.

[15] Id. at 85.

[16] Id. at 88-90.

[17] Id. at 98.

[18] 61 SCRA 570.

[19] CA-G.R. SP No. 41897.

[20] 219 SCRA 69.

[21] Rollo, pp. 176-187.

[22] Id. at 188-193.

[23] Id. at 195-196.

[24] Supra.

[25] Section 1, Rule 39, REVISED RULES OF COURT.

[26] Corona International, Inc. v. Court of Appeals, 397 Phil. 575.582-585 (2000).

[27] Philippine Bank of Communications v. Court of Appeals, 344 Phil. 777,789 (1997).

[28] Flexo Manufacturing Corporation v. Columbus Foods, Incorporated, et al., G.R. No. 164857, April 11, 2005, 455 SCRA 272, 277.

[29] Intramuros Tennis Club, Inc. v. Philippine Tourism Authority, 395 Phil. 278, 296 (2000)

[30] See note 28, pp.279-280.

[31] Rollo, pp. 68-69.

[32] Id. at 102.

[33] Section 3. - Powers and General Functions of the Corporation. - The powers, functions, rights and activities of the corporation shall be the following:

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(f) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines, for the purposes specified in this Act; to intercept and divert the flow of waters from lands or riparian which are or may be necessary for said purposes, upon payment of just compensation therefore; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof; Provided, That just compensation shall be paid to any person or persons whose property is directly or indirectly, adversely affected or damaged thereby;

(g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof; to acquire, construct, install, maintain, operate and improve gas, oil, or stream engines, and/or other prime movers, generators and machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting systems for the transmission and utilization of its power generation;

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[34] Sec. 3. Powers and General Functions of the Corporation.

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Provided, further, That any action by any person claiming compensation and/or damages shall be filed within five (5) years after the right-of-way, transmission lines, sub-stations, plants or other facilities shall have been established; Provided, finally, That after the said period no suit shall be brought to question the said rights-of-way, transmission lines, substations, plants or other facilities nor the amounts of compensation and/or damages involved.

[35] Marcopper Mining Corporation v. Solidbank Corporation, G.R. No. 134049, June 17, 2004, 432 SCRA 360, 391.

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[36] G.R. Nos. 162814-17, August 25, 2005, 468 SCRA 256, 277.

[37] G.R. No. 41897 (SP)

[38] Rollo, p. 185.

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