

**THE REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE
NATIONAL IRRIGATION ADMINISTRATION, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS AND FRANCISCO DIAZ, IN HIS
CAPACITY AS ADMI...**

G.R. NO. 147245. March 31, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari[1] assailing the Decision[2] of 26 January 2001 of the Court of Appeals in CA-G.R. CV No. 57493. The Court of Appeals modified the Decision[3] of 28 November 1996 of the Regional Trial Court of Cabanatuan City, Branch 28 in Civil Case No. 1593-AF, but affirmed the trial court's award of P4 million to respondent.

Antecedent Facts

Manuel Diaz owned approximately 172 hectares of tenanted agricultural land ("Property") devoted to the planting of palay. The Property was located in La Fuente, Sta. Rosa, Nueva Ecija, and allegedly yielded between 132 to 200 cavans of palay per hectare every year. After Manuel Diaz's death, his son, Francisco Diaz ("respondent"), was appointed administrator of the Property.

In 1972, the National Irrigation Administration ("NIA") bulldozed about ten (10) hectares of the Property to build two irrigation canals ("canals"). Although the canals when finished occupied only a portion of the 10 hectares, the entire area became prone to flooding two months out of every year because of the side-burrow method NIA used in the construction of the canals.[4] NIA completed the canals without instituting expropriation proceedings or indemnifying the Property's owners.

Respondent sought compensation from NIA for the land affected by the canals, as well as for losses due to unrealized profits. He submitted various documents requested by NIA officials and even traveled to NIA's Manila office to present his claims.

In 1980, NIA belatedly offered to buy the portions of the Property occupied by the canals pursuant to NIA's expansion program. Respondent and then NIA Acting Administrator Pelagio Gamad, Jr. signed three deeds of sale[5] ("1980 deeds of sale") on 24 December 1980 to convey 15,677, 1,897 and 4,499 square meters, or a total of 22,073 square meters, of the Property to NIA. For reasons that neither party has adequately explained, NIA and respondent did not push through with the sale. The 1980 deeds of sale were never implemented. Respondent did not receive any consideration pursuant to these deeds.

On 20 August 1993, respondent, as administrator of the Property, filed an action for damages and just compensation against NIA. Respondent sought P10 million from NIA as just compensation, P3 million as

unrealized profits or lucro cessante, P1 million attorney's fees, and costs of suit. Respondent later filed an Amended Complaint,[6] in which respondent additionally prayed that, in the alternative, the court order NIA to vacate and surrender the Property to respondent, and to pay damages, interest, attorney's fees and costs of suit. The trial court accepted and gave due course to the Amended Complaint in its Order of 22 July 1994.

NIA countered that respondent's right to bring the action had prescribed in accordance with Republic Act No. 3601 ("RA 3601"), as amended by Presidential Decree No. 552[7] ("PD 552"). NIA also argued that respondent's failure to pursue the implementation of the 1980 deeds of sale amounted to laches.

The Ruling of the Trial Court

The trial court found that NIA took between 9 to 11 hectares of the Property. NIA never paid respondent for the use of the land or for the subsequent loss of crops.

The trial court also ruled that respondent's right to seek damages had not lapsed. The trial court's Decision of 28 November 1996 ("trial court's decision") reads in part:

xxx Defendant should not waylay the plaintiff by prolonging the negotiation and then later on invoked (sic) prescription of action as a defense, this is a plain and simple way of defrauding others which Courts of Justice should not countenance. While it is true that R.A. No. 3601 is (sic) amended by PD 552 sets a limit on [or] capped the time within which to file the claims against acts and/or usurpation by the NIA, running of the prescriptive period should not be absolute but must be dependent on the circumstances attendant to each case, because of the confiscatory nature of the law.

IN VIEW OF THE ABOVE FINDINGS AND DISCUSSION of the matters relevant to the instant case, the Court finds for the plaintiff and judgment is hereby rendered directing the defendant to pay the plaintiff the following:

- the sum of Four Million Pesos (P4,000,000.00) representing payment to the 11 hectares of riceland occupied by the irrigation canal that traversed on the property of the Diazes;
- the sum of Six Million Six Hundred Seventy Nine Thousand Two Hundred Pesos (P6,679,200.00) representing the loss of 23,396 cavans of palay on account of the destruction made when the two irrigation canals were constructed on the property of the plaintiff through side-burrow instead of the earthfilling method, thus resulting further depression on the lots of the plaintiffs where during rainy season water stays for months and (sic) cannot be planted with palay;
- the sum of P500,000.00 by way of attorney's fees; and defendant is likewise directed to pay the costs of the suit.

SO ORDERED.[8]

NIA appealed the trial court's decision to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals found that NIA bulldozed approximately 10 hectares of the Property without paying compensation. Like the trial court, the appellate court rejected NIA's argument that respondent's claims had prescribed under PD 552. The Court of Appeals held that the 5-year prescriptive period mandated by PD 552 did not apply because respondent and NIA were in deep negotiations during that period, and because NIA itself had stalled respondent's attempts to present his claims.

The Court of Appeals upheld the trial court's award of P4 Million. Citing *Garcia v. Court of Appeals*,[9] the appellate court held that the rule requiring just compensation to be fixed as of the time of the taking was

inapplicable to the present case. However, the appellate court struck down the award of P6,679,200 on the ground that respondent failed to adequately prove lost earnings. The appellate court also set aside the award of attorney's fees for lack of sufficient basis.

The dispositive portion of the Court of Appeals' Decision of 26 January 2001 ("CA Decision") states:

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court of Cabanatuan City is hereby AFFIRMED, with the MODIFICATION that the lower court's award of P6,679,200.00 representing loss of earnings and attorney's fees of P500,000.00 is hereby DELETED.

SO ORDERED.[10]

Respondent did not appeal the CA Decision. NIA elevated the case to this Court.

The Issues

NIA, through the Solicitor General, raises the following issues:

I. The Court of Appeals committed Grave Error in awarding P4,000,000.00 in just compensation without taking into consideration that just compensation must be ascertained at the time of taking in 1972 of the property, not at the time of the commencement of the filing of the complaint by respondent which, if not corrected, would result in a miscarriage of justice and grave and irreparable damage to petitioner/NIA.

II. The Court of Appeals gravely erred when it affirmed the trial court's decision awarding just compensation of P4,000,000.00 to respondent on the basis of respondent's Sinumpaang Salaysay dated September 20, 1995 and a letter of respondent, through counsel, dated February 8, 1994.

III. The Court of Appeals gravely erred in not remanding the case to the trial court and in not directing it to appoint at least three commissioners selected by the parties, to hear, review, view the property and thereafter to assess the amount for the just compensation.[11]

NIA no longer argues that respondent's claim has prescribed under PD 552, but maintains that respondent is guilty of laches. NIA also assails the lower courts' award of P4 million. NIA claims that the construction of the canals affected only 96,655 square meters of the Property. NIA computes the just compensation due to respondent at P1.39 per square meter, the price NIA and respondent agreed on in 1980. In sum, NIA contends that it should only pay respondent P134,350.45, and legal interest of 6% per annum from 1972 until the amount is fully paid, for 96,655 square meters of the Property.

The appellate court's denial of the awards for loss of earnings and attorney's fees are no longer in issue as respondent chose not to appeal the CA Decision. The remaining questions for resolution by this Court are: (1) whether laches bars respondent's claims; (2) whether this case should be remanded to the trial court for the appointment of commissioners; and (3) whether the Court of Appeals erred in affirming the award of P4 million to respondent.

The Ruling of the Court

The petition is partly meritorious.

Respondent's Action Not Barred by Laches

Having failed for three decades to pay respondent just compensation, NIA would now have respondent's complaint dismissed on the ground that too much time has passed for respondent to pursue his claim. NIA first argued before the trial and appellate courts that respondent's action had prescribed under PD 552. Although NIA has dropped its argument of prescription before this Court, NIA still contends that respondent slept on his rights

and laches now bars his action.

Laches is principally a doctrine of equity. Courts apply laches to avoid recognizing a right when to do so would result in a clearly inequitable situation or in an injustice.[12] The principle of laches finds no application in the present case. There is nothing inequitable in giving due course to respondent's claim for compensation. Both equity and the law direct that a property owner should be compensated if his property is taken for public use.

Eminent domain is the inherent power of a sovereign state to appropriate private property to particular uses to promote public welfare.[13] No one questions NIA's authority to exercise the delegated power of eminent domain. However, the power of eminent domain is not limitless. NIA cannot exercise the power with wanton disregard for property rights. One basic limitation on the State's power of eminent domain is the constitutional directive that, "[p]rivate property shall not be taken for public use without just compensation." [14]

The thirteen-year interval between the execution of the 1980 deeds of sale and the filing of the complaint in 1993 does not bar respondent's claim for compensation. In *National Power Corporation v. Campos, Jr.*, [15] this Court reiterated the long-standing rule "that where private property is taken by the Government for public use without first acquiring title thereto either through expropriation or negotiated sale, the owner's action to recover the land or the value thereof does not prescribe." [16]

Thus, in *Ansaldo v. Tantuico, Jr.* [17] the Court allowed the landowners to seek compensation twenty-six years after the government took their land. In *Amigable v. Cuenca, etc., et al.*, [18] Amigable filed an action to claim compensation more than thirty years after the government constructed the roads on her lot. In both cases, the property owners were silent for several years before finally bringing their claims to the attention of the authorities. In contrast, in the present case, respondent has steadfastly pursued his claim with NIA since 1972.

NIA faults respondent for "desisting from claiming just compensation from NIA in 1980," [19] referring to the 1980 deeds of sale which were never implemented. NIA conveniently fails to mention that, as the other party to the 1980 deeds of sale, it was equally delinquent when it failed to perform its obligations under the deeds.

NIA is partly to blame for the delay in this case. The trial and appellate courts found that NIA stalled and prolonged negotiations with respondent. Eight years passed before NIA even offered to buy the area occupied by the canals. More than three decades later, respondent has yet to receive an iota of compensation from NIA. In the meantime, NIA has been charging respondent and the other farmers in the area irrigation fees for the beneficial use of these canals. [20]

NIA's conduct shows callous disregard for the rights of the Property's owners and for NIA's own duties under the law. As the expropriating agency in this case, NIA should have instituted the proceedings necessary to acquire the private property it took for public purpose and to compensate the Property's owners. Section 2(e) of RA 3601, as amended by PD 552, expressly states that the NIA should "exercise the right of eminent domain in the manner provided by law for the institution of expropriation proceedings." [21]

The exercise of eminent domain entails payment of just compensation. Otherwise, title over the expropriated property cannot pass to the government. [22] Following its own enabling law, NIA should have taken steps to acquire the affected portion of the Property either through "any mode of acquisition" or "the institution of expropriation proceedings." [23] RA 3601, as amended, does not authorize NIA to simply appropriate part of the Property without instituting legal proceedings or compensating respondent.

Whether this Case Should be Remanded to the Trial Court for the Appointment of Commissioners

NIA contends that it was deprived of due process when the trial court determined the compensation due to respondent without the assistance of commissioners. NIA refers to the procedure found in Section 5, Rule 67 of

the 1964 Rules of Court applicable at the time, to wit:

SEC. 5. Ascertainment of compensation. – Upon the entry of the order of condemnation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken. The order of appointment shall designate the time and place of the first session of the hearing to be held by the commissioners and specify the time within which their report is to be filed with the court.

Rule 67, however, presupposes that NIA exercised its right of eminent domain by filing a complaint for that purpose before the appropriate court.[24] Judicial determination of the propriety of the exercise of the power of eminent domain and the just compensation for the subject property then follows.[25] The proceedings give the property owner the chance to object to the taking of his property and to present evidence on its value and on the consequential damage to other parts of his property.[26]

Respondent was not given these opportunities, as NIA did not observe the procedure in Rule 67. Worse, NIA refused to pay respondent just compensation. The seizure of one's property without payment, even though intended for public use, is a taking without due process of law and a denial of the equal protection of the laws.[27] NIA, not respondent, transgressed the requirements of due process.

When a government agency itself violates procedural requirements, it waives the usual procedure prescribed in Rule 67. This Court ruled in the recent case of National Power Corporation ("NPC") v. Court of Appeals,[28] to wit:

We have held that the usual procedure in the determination of just compensation is waived when the government itself initially violates procedural requirements. NPC's taking of Pobre's property without filing the appropriate expropriation proceedings and paying him just compensation is a transgression of procedural due process.[29] (Emphasis supplied.)

Like in NPC, the present case is not an action for expropriation. NIA never filed expropriation proceedings although it had ample opportunity to do so. Respondent's complaint is an ordinary civil action for the recovery of possession of the Property or its value, and damages. Under these circumstances, a trial before commissioners is not necessary.[30]

The records show that NIA had every opportunity to argue its case before the trial court. NIA presented a witness, cross-examined respondent's witnesses, and submitted documentary evidence.[31] NIA's officers even went with respondent on an ocular inspection of the Property. The trial court took into account the inspection in arriving at its decision. However, NIA never raised the appointment of commissioners as an issue before the trial court.

Though NIA actively participated in the proceedings below, it did not move for the appointment of commissioners or object to their absence at any time. A party cannot raise for the first time on appeal an issue not raised in the trial court.[32] NIA is thus estopped from belatedly protesting the lack of commissioners.

Whether the Court of Appeals Erred in Affirming the Trial Court's Award of P4 Million

Jurisprudence clearly provides for the remedies available to a landowner when his land is taken by the government for public use. The owner may recover his property if its return is feasible, or, if it is not, the aggrieved owner may demand payment of just compensation for the land taken.[33] In this case, the trial court found that respondent is entitled to compensation of P4 Million for 11 hectares of the Property, or P36.36 per square meter.

NIA assails the lower courts' award on two grounds. First, NIA claims that the affected area of the Property is 96,655 square meters and not 10 or 11 hectares. Second, NIA maintains that the just compensation for the 96,655

square meters is P1.39 per square meter, the price agreed upon by the parties in 1980. On the other hand, respondent argues that these are questions of fact, which are not the province of this Court.

True, factual findings of the Court of Appeals are generally binding on this Court. However, there are exceptions to this rule, such as when the factual findings of the Court of Appeals and the trial court are contradictory, or when the findings are not supported by the evidence on record.[34] These exceptions obtain in the present case.

At first glance, it would appear that the Court of Appeals affirmed the trial court's findings that served as basis for the award of P4 Million. A closer reading of the Court of Appeals' and trial court's decisions reveals otherwise. The trial court awarded P4 Million as "payment [for] the 11 hectares of land,"[35] but the appellate court found that only "approximately ten (10) hectares [were] bulldozed by the defendant." [36] These findings of the trial court and Court of Appeals are actually contradictory.

Further, respondent himself alleged in a demand letter[37] to NIA dated 8 February 1994 that the total area affected by the construction of the canals was 96,655 square meters. The trial court based its finding of 11 hectares on the testimony of retired NIA Engineer Agapito Panahon ("Engineer Panahon"), the area engineer who headed the construction of the canals in 1972. However, Engineer Panahon merely testified that the area of the Property affected by the construction was "(m)ore or less 9 to 11 hectares"[38] Respondent testified that the bulldozed area was "about 10 hectares, more or less." [39]

These testimonies, in conjunction with respondent's demand letter, NIA's own allegations, and other evidence, suffice to establish that NIA took or damaged 96,655 square meters of the Property. The area of 96,655 square meters, or about 9.67 hectares, falls within the "9 to 11 hectares" range estimated by Engineer Panahon, and is near enough to "10 hectares, more or less." However, Engineer Panahon's and respondent's estimates, standing alone, cannot prove with any certainty that a larger area of 10 or 11 hectares was damaged.

The lower courts likewise erred in awarding P4 Million to respondent.

Just compensation is "the fair value of the property as between one who receives, and one who desires to sell, x x x fixed at the time of the actual taking by the government." [40] This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation.[41]

In affirming the trial court's award, the Court of Appeals cited *Garcia v. Court of Appeals*, [42] which provides an exception to the rule. In *Garcia*, the Court held that when the government takes property, not for the purpose of eminent domain, and the government does not initiate condemnation proceedings or other attempts to acquire such property, just compensation should be reckoned not at the time of taking but at the time the trial court made its order of expropriation.[43]

However, the *Garcia* ruling does not apply to the present case. The 15,677, 1,897 and 4,499 square meter portions – a total of 22,073 square meters ("Canal Sites") – of the Property identified in the 1980 deeds of sale are occupied by irrigation canals. There is no dispute that the Canal Sites serve a public purpose because the canals provide much-needed irrigation to farms in the locality. There is also no dispute that when NIA actually took over the Canal Sites, the purpose was to exercise NIA's delegated power of eminent domain.

Just compensation for the Canal Sites must thus be computed as of the time of taking. In this case, respondent does not contest that NIA's valuation of P1.39 per square meter was the approximate fair market value of the Property in 1972. Respondent even agreed to this price when he signed the 1980 deeds of sale. At the least, P1.39 per square meter was "that sum of money which a person, desirous but not compelled to buy, and an owner, willing but not compelled to sell, would agree on as a price." [44]

Respondent protests that to value the Canal Sites at this rate would hardly be just to him, considering that he has waited for more than thirty years to be compensated.

The Court finds it no less reprehensible that NIA has denied respondent's valid claim for compensation for so long. Just compensation means not only the correct determination of the amount due to the property owner but also payment to him of the amount due within a reasonable time from the taking.[45] Respondent is certainly entitled to legal interest and damages by reason of NIA's inexcusable delay.

The concept of just compensation, however, does not imply fairness to the property owner alone. Compensation must be just not only to the property owner, but also to the public which ultimately bears the cost of expropriation. The property owner is entitled to compensation only for what he actually loses, and what he loses is only the actual value of the property at the time of the taking.[46]

Respondent is thus entitled to just compensation for the 22,073 square meter Canal Sites at P1.39 per square meter, with legal interest from the time of the taking of the Canal Sites in 1972 until the amount due is fully paid. In line with current jurisprudence,[47] we set the legal interest at 12% per annum in order to eliminate the usual issue of the constant fluctuation and inflation of the value of currency over time.

The remaining 74,582 square meters ("surrounding land") encircling the Canal Sites is another matter. NIA took the surrounding land when NIA bulldozed the area and rendered it useless for the planting of palay for several years. Taking occurs not only when the government actually deprives or dispossesses the property owner of his property or of its ordinary use, but also when there is a practical destruction or material impairment of the value of his property.[48]

NIA never filed proceedings to expropriate the surrounding land, nor did it exhibit intent, or attempt, to purchase it. The 1980 deeds of sale referred only to the 22,073 square meters comprising the Canal Sites. There is no showing that the surrounding land served, or continues to serve, some public purpose.

In awarding compensation for the surrounding land affected by NIA's construction activities in 1972, however, the lower courts overlooked respondent's prayer for recovery of possession. As we pointed out earlier, possession of the unpaid property may be returned to the aggrieved landowner if the circumstances permit it.[49]

In this case, the return to respondent of a substantial portion of his Property, specifically, the 74,582 square meters surrounding the Canal Sites, is indeed feasible. The ocular inspection authorized by the trial court revealed "that there were signs of planting and harvesting on the land xxx except that portion occupied by the irrigation canal(s)."[50] This indicates that the surrounding land has recovered, and can be devoted again to the planting of palay. Respondent affirmed this fact in his testimony.[51] Certainly, respondent would not seek the return of a parcel of land that is no longer of any use to him.

Respondent's prayer for recovery of possession should thus be granted. NIA should immediately vacate the 74,582 square meters of the Property surrounding the Canal Sites. NIA should turn over to respondent possession of the surrounding land without further delay.

Award of Temperate and Exemplary Damages

The Court will not award attorney's fees in light of respondent's choice not to appeal the CA Decision striking down the award.[52] However, we find it proper to award temperate and exemplary damages in light of NIA's misuse of its power of eminent domain. Any arm of the State that exercises the delegated power of eminent domain must wield that power with circumspection and utmost regard for procedural requirements.[53] A government instrumentality that fails to observe the constitutional guarantees of just compensation and due

process abuses the authority delegated to it, and is liable to the property owner for damages.

Temperate or moderate damages may be recovered if pecuniary loss has been suffered but the amount cannot be proved with certainty from the nature of the case.[54] Here, the trial and appellate courts found that the owners were unable to plant palay on 96,655 square meters of the Property for an unspecified period during and after NIA's construction of the canals in 1972. The passage of time, however, has made it impossible to determine these losses with any certainty. NIA also deprived the owners of the Property of possession of a substantial portion of their land since 1972. Considering the particular circumstances of this case, an award of P150,000 as temperate damages is reasonable.

NIA's irresponsible exercise of its eminent domain powers also deserves censure. For more than three decades, NIA has been charging irrigation fees from respondent and other landowners for the use of the canals built on the Property, without reimbursing respondent a single cent for the loss and damage. NIA exhibits a disturbingly cavalier attitude towards respondent's property rights, rights to due process of law and to equal protection of the laws. Worse, this is not the first time NIA has disregarded the rights of private property owners by refusing to pay just compensation promptly.[55] To dissuade NIA from continuing this practice and to set an example for other agencies exercising eminent domain powers, NIA is directed to pay respondent exemplary damages[56] of P250,000.

WHEREFORE, we AFFIRM the Decision of 26 January 2001 of the Court of Appeals in CA-G.R. CV No. 57493 with the following MODIFICATIONS:

- The National Irrigation Authority shall immediately return possession and control of the 74,582 square meter portion of the Property surrounding, but not occupied by, the irrigation canals to the Estate of the late Manuel Diaz, represented by its Administrator, respondent Francisco Diaz;
- We reduce the award of P4 Million and instead order the National Irrigation Authority to pay the Estate of Manuel Diaz, through respondent Administrator, P30,681.47 or P1.39 per square meter as just compensation for the 15,677, 1,897 and 4,499 square meter portions of the Property occupied by the irrigation canals, as well as legal interest of 12% per annum on the amount adjudged from 1972 until fully paid. The National Irrigation Authority shall further pay respondent temperate and exemplary damages of P150,000 and P250,000, respectively, and costs of suit; and
- Upon receipt of full payment, the Estate of Manuel Diaz shall convey the 22,073 square meter portion of the Property occupied by the irrigation canals to the National Irrigation Authority.

SO ORDERED.

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

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 30-38. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Ramon A. Barcelona and Alicia L. Santos, concurring.

[3] Ibid., pp. 45-50. Penned by Judge Adriano I. Tuason.

[4] Ibid.

[5] Records, pp. 176-184.

[6] Records, pp. 32-35.

[7] P.D. No 552 (1974) added the following paragraph to Republic Act No. 3601 (“An Act Creating the National Irrigation Administration”):

(e) To acquire, by any mode of acquisition, real and personal properties, and all appurtenant rights, easements, concessions and privileges, whether the same are already devoted to private or public use in connection with the development of projects by the NIA;

The National Irrigation Administration is empowered to exercise the right of eminent domain in the manner provided by law for the institution of expropriation proceedings.

xxx

All actions for the recovery of compensation and damages against the National Irrigation Administration under paragraphs (1), (2) and (3) hereof, shall be filed with a competent court within five (5) years from the date of entry of the land or destruction of the improvements or crops, after which period, the right of possession and/or ownership of the National Irrigation Administration shall be considered vested and absolute. All other actions for the recovery of compensation and damages to private property and improvements occasioned by the construction, operation and maintenance of irrigation facilities and other hydraulic structures under the administration of the National Irrigation Administration, which have accrued ten (10) or more years prior to the approval of this decree are deemed to have prescribed and are barred forever.

[8] Rollo, pp. 49-50.

[9] G.R. No. L-47553, 31 January 1981, 102 SCRA 597.

[10] Rollo, p. 38.

[11] Ibid., p. 14.

[12] Associated Bank v. CA, 353 Phil. 702 (1998).

[13] Heirs of Alberto Suguitan v. City of Mandaluyong, 384 Phil. 676 (2000).

[14] Article III, Section 1 of the 1935 Constitution. The same provision appears in Article IV, Section 2 of the 1973 Constitution and Article III, Section 9 of the 1987 Constitution.

[15] G.R. No. 143643, 27 June 2003, 405 SCRA 194.

[16] Ibid., citing *Lopez v. The Auditor General, et al.*, 127 Phil. 38 (1967).

[17] G.R. No. 50147, 3 August 1990, 188 SCRA 300.

[18] 150 Phil. 422 (1972).

[19] Rollo, p. 238.

[20] Ibid., p. 11; Exhibits “4” to “4-N,” Records, pp. 154-168.

[21] See note 7.

[22] *Republic of the Philippines v. Salem Investment Corporation*, 389 Phil. 658 (2000).

[23] See note 7.

[24] Section 1, Rule 67 of the 1964 Rules of Court. Rule 67 was then titled “Eminent Domain.”

[25] Republic of the Philippines v. Salem Investment Corporation, supra note 22.

[26] Sections 3 and 6 of the 1964 Rules of Court.

[27] Cosculluela v. Court of Appeals, G.R. No. L-77765, 15 August 1988, 164 SCRA 393, citing Province of Pangasinan v. CFI Judge of Pangasinan, Branch VIII, G.R. No. L-38587, 28 October 1977, 80 SCRA 117.

[28] G.R. No. 106804, 12 August 2004.

[29] Ibid., at p. 21.

[30] Ibid.

[31] NIA called NIA Operational Engr. Irineo Pascual as a witness, and submitted Exhibits “1” to “4.”

[32] Lim v. Queensland Tokyo Commodities, Inc., 424 Phil. 35 (2002) citing Sanchez v. The Hon. Court of Appeals, 345 Phil. 155 (1997).

[33] NPC v. Court of Appeals, supra note 28, citing Militante v. Court of Appeals, 386 Phil. 522 (2000); Amigable v. Cuenca, supra note 18; Ministerio, et al., v. CFI of Cebu, etc., et al., 148-B Phil. 474 (1971); Alfonso v. Pasay City, 106 Phil. 1017 (1960).

[34] Changco v. Court of Appeals, 429 Phil. 336 (2002).

[35] Rollo, p. 50.

[36] Ibid., p. 31.

[37] Exhibits “I” and “I-1,” records, pp. 113-114.

[38] TSN, 20 September 1995, p. 7. Engr. Panahon testified that:

Q: All in all what is the whole area affected?

A: 9 to 11 hectares, sir.

Court: In laymans (sic) language, could you tell this Court the exten[t] of the area affected by the construction of [the] irrigation canal over the property of Mr. Diaz?

A: More or less 9 to 11 hectares, sir.

[39] TSN, 17 October 1995, p. 9. Respondent testified that:

Q: How big is that area that is affected by NIA irrigation canal?

A: The canal itself is composed of about 3 hectares, more or less, sir.

Q: How about the entire area which were bulldozed by the NIA?

A: The area which were bulldozed by the NIA is about 10 hectares, more or less.

Court:

Q: Why was the portion bulldozed by the NIA?

A: Because they need the portion in construction of the main canal or main irrigation, sir.

[40] Republic of the Phils. v. Court of Appeals, 433 Phil. 106 (2002) citing Manila Railway Co. v. Fabie, 17 Phil. 206 (1910).

[41] Eslaban, Jr. v. Vda. de Onorio, 412 Phil. 667 (2001) citing Commissioner of Public Highways v. Burgos, G.R. No. L-36706, 31 March 1980, 96 SCRA 831.

[42] Supra note 9.

[43] Ibid.

[44] Eslaban, Jr. v. Vda. de Onorio, supra note 41.

[45] Ibid., citing Cosculluela v. Court of Appeals, supra note 27.

[46] Ibid., citing Republic of the Philippines v. Lara, et al., 96 Phil. 170 (1954).

[47] Reyes v. National Housing Authority, G.R. No. 147511, 20 January 2003, 395 SCRA 494; Republic of the Philippines v. Court of Appeals, 433 Phil. 106 (2002).

[48] Ansaldo v. Tantuico, Jr., supra note 17.

[49] Cosculluela v. Court of Appeals, supra note 27, quoting Provincial Government of Sorsogon v. Vda. de Villaroya, G.R. No. L-64037, 27 August 1987, 153 SCRA 291.

[50] Rollo, p. 47.

[51] TSN, 17 October 1995, p. 22. On cross-examination, respondent testified as follows:

Atty. Tomas

Q: Now, you know for a fact that sometime on December 15, 1994, you and company of this representation (sic), Engr. Collado and representatives of this Court conducted an ocular inspection on the property subject matter of this case, do you remember that?

A: Yes, sir.

Q: And in that ocular inspection, do you also affirmed that we actually noticed signs of palay plantation and harvest thereof, do you also affirmed (sic) that?

A: The 47, hectares, sir the rest are being planted to palay except the area taken by the NIA.

Q: So it is clear that only the area traversed by the canal is the area not planted to palay?

A: Yes, sir.

[52] National Power Corporation v. Court of Appeals, supra note 28.

[53] Ibid.

[54] Civil Code, Article 2224.

[55] See Eslaban, Jr. v. Vda. de Onorio, supra note 41; Cosculluela v. Court of Appeals, supra note 27.

[56] Civil Code, Article 2229.

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