

NATIONAL POWER CORPORATION, PETITIONER, VS. MANUBAY AGRO-INDUSTRIAL DEVELOPMENT CORPORATION, RESPONDENT.

G.R. No. 150936. August 18, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

How much just compensation should be paid for an easement of a right of way over a parcel of land that will be traversed by high-powered transmission lines? Should such compensation be a simple easement fee or the full value of the property? This is the question to be answered in this case.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the November 23, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 60515. The CA affirmed the June 24, 1998 Decision[3] of the Regional Trial Court[4] (RTC) of Naga City (Branch 26), directing the National Power Corporation (NPC) to pay the value of the land expropriated from respondent for the use thereof in NPC's Leyte-Luzon HVDC Power Transmission Project.

The Facts

The CA summarized the antecedents of the case as follows:

"In 1996, [Petitioner] NATIONAL POWER CORPORATION, a government-owned and controlled corporation created for the purpose of undertaking the development and generation of hydroelectric power, commenced its 350 KV Leyte-Luzon HVDC Power Transmission Project. The project aims to transmit the excess electrical generating capacity coming from Leyte Geothermal Plant to Luzon and various load centers in its vision to interconnect the entire country into a single power grid. Apparently, the project is for a public purpose.

"In order to carry out this project, it is imperative for the [petitioner's] transmission lines to cross over certain lands owned by private individuals and entities. One of these lands, [where] only a portion will be traversed by the transmission lines, is owned by [respondent] MANUBAY AGRO-INDUSTRIAL DEVELOPMENT CORPORATION.

"Hence, on 03 December 1996, [petitioner] filed a complaint for expropriation before the Regional Trial Court of Naga City against [respondent] in order to acquire an easement of right of way over the land which the latter owns. The said land is situated at Km. 8, Barangay Pacol, Naga City, Camarines Sur and described with more particularity, as follows:

TCT/OCT NO. TOTAL AREA IN SQ.M. AFFECTED IN SQ.M. AREA CLASS. OF LAND

17795 490,232

21,386.16

Agri.

17797 40,848

1,358.17

Agri.

17798 5,279

217.38

Agri.

TOTAL

22,961.71

“On 02 January 1997, [respondent] filed its answer. Thereafter, the court a quo issued an order dated 20 January 1997 authorizing the immediate issuance of a writ of possession and directing Ex-Officio Provincial Sheriff to immediately place [petitioner] in possession of the subject land.

“Subsequently, the court a quo directed the issuance of a writ of condemnation in favor of [petitioner] through an order dated 14 February 1997. Likewise, for the purpose of determining the fair and just compensation due to [respondent], the court appointed three commissioners composed of one representative of the petitioner, one for the respondent and the other from the court, namely: OIC-Branch Clerk of Court Minda B. Teoxon as Chairperson and Philippine National Bank-Naga City Loan Appraiser Mr. Isidro Virgilio Bulao, Jr. and City Assessor Ramon R. Albeus as members.

“On 03 and 06 March 1997, respectively, Commissioners Ramon Albeus and Isidro Bulao, Jr. took their oath of office before OIC Branch Clerk of Court and Chairperson Minda B. Teoxon.

“Accordingly, the commissioners submitted their individual appraisal/valuation reports. The commissioner for the [petitioner], Commissioner Albeus, finding the subject land irregular and sloppy, classified the same as low density residential zone and recommended the price of P115.00 per square meter. On the other hand, Commissioner Bulao, commissioner for the [respondent], recommended the price of P550.00 per square meter. The court’s Commissioner and Chairperson of the Board Minda Teoxon, on the other hand, found Commissioner Albeus’ appraisal low as compared to the BIR Zonal Valuation and opted to adopt the price recommended by Commissioner Bulao. On the assumption that the subject land will be developed into a first class subdivision, she recommended the amount of P550.00 per square meter as just compensation for the subject property, or the total amount of P12,628,940.50 for the entire area affected.”[5]

Taking into consideration the condition, the surroundings and the potentials of respondent’s expropriated property, the RTC approved Chairperson Minda B. Teoxon’s recommended amount of P550 per square meter as just compensation for the property. The trial court opined that the installation thereon of the 350 KV Leyte-Luzon HVDC Power Transmission Project would impose a limitation on the use of the land for an indefinite period of time, thereby justifying the payment of the full value of the property.

Further, the RTC held that it was not bound by the provision cited by petitioner -- Section 3-A[6] of Republic Act 6395[7], as amended by Presidential Decree 938. This law prescribes as just compensation for the acquired easement of a right of way over an expropriated property an easement fee in an amount not exceeding 10 percent of the market value of such property. The trial court relied on the earlier pronouncements of this Court that the determination of just compensation in eminent domain cases is a judicial function. Thus, valuations made by the executive branch or the legislature are at best initial or preliminary only.

Ruling of the Court of Appeals

Affirming the RTC, the CA held that RA 6395, as amended by PD No. 938, did not preclude expropriation. Section 3-A thereof allowed the power company to acquire not just an easement of a right of way, but even the

land itself. Such easement was deemed by the appellate court to be a “taking” under the power of eminent domain.

The CA observed that, given their nature, high-powered electric lines traversing respondent’s property would necessarily diminish -- if not damage entirely -- the value and the use of the affected property; as well as endanger lives and limbs because of the high-tension current conveyed through the lines. Respondent was therefore deemed entitled to a just compensation, which should be neither more nor less than the monetary equivalent of the property taken. Accordingly, the appellate found the award of P550 per square meter to be proper and reasonable.

Hence, this Petition.[8]

Issues

In its Memorandum, petitioner submits this lone issue for our consideration:

“Whether or not the Honorable Court of Appeals gravely erred in affirming the Decision dated June 24, 1998 of the Regional Trial Court, Branch 26, Naga City considering that its Decision dated November 23, 2001 is not in accord with law and the applicable decisions of this Honorable Court.”[9]

The Court’s Ruling

The Petition is devoid of merit.

Sole Issue:

Just Compensation

Petitioner contends that the valuation of the expropriated property -- fixed by the trial court and affirmed by the CA -- was too high a price for the acquisition of an easement of a mere aerial right of way, because respondent would continue to own and use the subject land anyway. Petitioner argues that in a strict sense, there is no “taking” of property, but merely an imposition of an encumbrance or a personal easement/servitude under Article 614[10] of the Civil Code. Such encumbrance will not result in ousting or depriving respondent of the beneficial enjoyment of the property. And even if there was a “taking,” petitioner points out that the loss is limited only to a portion of the aerial domain above the property of respondent. Hence, the latter should be compensated only for what it would actually lose.

We are not persuaded.

Petitioner averred in its Complaint in Civil Case No. RTC 96-3675 that it had sought to acquire an easement of a right of way over portions of respondent’s land -- a total area of 22,961.71 square meters.[11] In its prayer, however, it also sought authority to enter the property and demolish all improvements existing thereon, in order to commence and undertake the construction of its Power Transmission Project.

In other words, the expropriation was not to be limited to an easement of a right of way. In its Answer, respondent alleged that it had already authorized petitioner to take possession of the affected portions of the property and to install electric towers thereon.[12] The latter did not controvert this material allegation.

Granting arguendo that what petitioner acquired over respondent’s property was purely an easement of a right of way, still, we cannot sustain its view that it should pay only an easement fee, and not the full value of the property. The acquisition of such an easement falls within the purview of the power of eminent domain. This conclusion finds support in similar cases in which the Supreme Court sustained the award of just compensation for private property condemned for public use.[13] Republic v. PLDT[14] held thus:

“x x x. Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way.”[15]

True, an easement of a right of way transmits no rights except the easement itself, and respondent retains full ownership of the property. The acquisition of such easement is, nevertheless, not gratis. As correctly observed by the CA, considering the nature and the effect of the installation power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land.[16]

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker’s gain, but the owner’s loss. The word “just” is used to intensify the meaning of the word “compensation” and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.[17]

In eminent domain or expropriation proceedings, the just compensation to which the owner of a condemned property is entitled is generally the market value. Market value is “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 to be given and received therefor.”[18] Such amount is not limited to the assessed value of the property or to the schedule of market values determined by the provincial or city appraisal committee. However, these values may serve as factors to be considered in the judicial valuation of the property.[19]

The parcels of land sought to be expropriated are undeniably undeveloped, raw agricultural land. But a dominant portion thereof has been reclassified by the Sangguniang Panlungsod ng Naga -- per Zoning Ordinance No. 94-076 dated August 10, 1994 --as residential, per the August 8, 1996 certification of Zoning Administrator Juan O. Villegas Jr.[20] The property is also covered by Naga City Mayor Jesse M. Robredo’s favorable endorsement of the issuance of a certification for land use conversion by the Department of Agrarian Reform (DAR) on the ground that the locality where the property was located had become highly urbanized and would have greater economic value for residential or commercial use.[21]

The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner.[22] All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered.[23]

In fixing the valuation at P550 per square meter, the trial court had considered the Report of the commissioners and the proofs submitted by the parties. These documents included the following: (1) the established fact that the property of respondent was located along the Naga-Carolina provincial road; (2) the fact that it was about 500 meters from the Kayumanggi Resort and 8 kilometers from the Naga City Central Business District; and a half kilometer from the main entrance of the fully developed Naga City Sports Complex -- used as the site of the Palarong Pambansa -- and the San Francisco Village Subdivision, a first class subdivision where lots were priced at P2,500 per square meter; (3) the fair market value of P650 per square meter proffered by respondent, citing its recently concluded sale of a portion of the same property to Metro Naga Water District at a fixed price of P800 per square meter; (4) the BIR zonal valuation of residential lots in Barangay Pacol, Naga City, fixed at a price of P220 per square meter as of 1997; and (5) the fact that the price of P430 per square meter had been determined by the RTC of Naga City (Branch 21)[24] as just compensation for the Mercados’ adjoining property, which had been expropriated by NPC for the same power transmission project.

The chairperson of the Board of Commissioners, in adopting the recommendation of Commissioner Bulaos, made a careful study of the property. Factors considered in arriving at a reasonable estimate of just compensation for respondent were the location; the most profitable likely use of the remaining area; and the size, shape, accessibility as well as listings of other properties within the vicinity. Averments pertaining to these factors were supported by documentary evidence.

On the other hand, the commissioner for petitioner -- City Assessor Albeus -- recommended a price of P115 per square meter in his Report dated June 30, 1997. No documentary evidence, however, was attached to substantiate the opinions of the banks and the realtors, indicated in the commissioner's Report and computation of the market value of the property.

The price of P550 per square meter appears to be the closest approximation of the market value of the lots in the adjoining, fully developed San Francisco Village Subdivision. Considering that the parcels of land in question are still undeveloped raw land, it appears to the Court that the just compensation of P550 per square meter is justified.

Inasmuch as the determination of just compensation in eminent domain cases is a judicial function,[25] and the trial court apparently did not act capriciously or arbitrarily in setting the price at P550 per square meter -- an award affirmed by the CA -- we see no reason to disturb the factual findings as to the valuation of the property. Both the Report of Commissioner Bulao and the commissioners' majority Report were based on uncontroverted facts supported by documentary evidence and confirmed by their ocular inspection of the property. As can be gleaned from the records, they did not abuse their authority in evaluating the evidence submitted to them; neither did they misappreciate the clear preponderance of evidence. The amount fixed and agreed to by the trial court and respondent appellate court has not been grossly exorbitant or otherwise unjustified.[26]

Majority Report of Commissioners Sufficient

Deserving scant consideration is petitioner's contention that the Report adopted by the RTC and affirmed by the CA was not the same one submitted by the board of commissioners, but was only that of its chairperson. As correctly pointed out by the trial court, the commissioner's Report was actually a decision of the majority of the board. Note that after reviewing the Reports of the other commissioners, Chairperson Teoxon opted to adopt the recommendation of Commissioner Bulao. There has been no claim that fraud or prejudice tainted the majority Report. In fact, on December 19, 1997, the trial court admitted the commissioner's Report without objection from any of the parties.[27]

Under Section 8 of Rule 67 of the Rules of Court, the court may "accept the report and render judgment in accordance therewith; or for cause shown, it may recommit the same to the commissioners for further report of facts, or it may set aside the report and appoint new commissioners, or it may accept the report in part and reject it in part; x x x." In other words, the reports of commissioners are merely advisory and recommendatory in character, as far as the courts are concerned.[28]

Thus, it hardly matters whether the commissioners have unanimously agreed on their recommended valuation of the property. It has been held that the report of only two commissioners may suffice, even if the third commissioner dissents.[29] As a court is not bound by commissioners' reports it may make such order or render such judgment as shall secure for the plaintiff the property essential to the exercise of the latter's right of condemnation; and for the defendant, just compensation for the property expropriated. For that matter, the court may even substitute its own estimate of the value as gathered from the evidence on record.[30]

WHEREFORE, the Petition is DENIED, and the assailed Decision AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Corona, and Carpio-Morales, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[1] Rollo, pp. 8-32.

[2] Id., pp. 33-41. Fourteenth Division. Penned by Justice Romeo A. Brawner (Division chair) and concurred in by Justices Elvi John S. Asuncion and Juan Q. Enriquez Jr. (members).

[3] Id., pp. 42-46.

[4] Presided by Judge Edgar S. Surtida.

[5] CA Decision, pp. 2-4; rollo, pp. 34-36.

[6] “SEC. 3-A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or a portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

“In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall –

(a) With respect to the acquired land or portion thereof, not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

“In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; Provided, That in cases any buildings, houses, and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation; Provided, further, That such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor.”

[7] Entitled “An Act Revising the Charter of the National Power Corporation.”

[8] This case was deemed submitted for decision on May 9, 2003, upon this Court’s receipt of respondent’s Memorandum, signed by Atty. Michael G. Jornales. Petitioner’s Memorandum, signed by Solicitors Renan E. Ramos and Arleen Q. Tadeo-Reyes of the Office of the Solicitor General (OSG), was received by this Court on April 30, 2003.

[9] Petitioner’s Memorandum, p. 5; rollo, p. 123. Original in upper case.

[10] Art. 614. Servitudes may also be established for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong.

[11] Records, p. 2.

[12] *Id.*, p. 20.

[13] *National Power Corporation v. Chiong*, 404 SCRA 527, June 20, 2003; *Eslaban Jr. v. Vda de Onorio*, 360 SCRA 230, June 28, 2001; *Camarines Norte Electric Cooperative, Inc. v. Court of Appeals*, 345 SCRA 85, November 20, 2000 (citing *National Power Corporation v. Gutierrez*, 193 SCRA 1, January 18, 1991; *National Power Corporation v. Court of Appeals*, 325 Phil. 29, March 11, 1996).

[14] 136 Phil. 20, January 27, 1969.

[15] *Id.*, pp. 29-30, per Reyes, J.B.L., J.

[16] *Camarines Norte Electric Cooperative, Inc. v. Court of Appeals*, *supra*.

[17] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343, July 14, 1989.

[18] *National Power Corporation v. Chiong*, *supra*, per Quisumbing, J.; *Eslaban Jr. v. Vda. de Onorio*, *supra*.

[19] *Republic v. Ker and Company Limited*, 383 SCRA 584, July, 2, 2002; *Republic v. Court of Appeals*, 154 SCRA 428, September 30, 1987.

[20] Records, pp. 134-136.

[21] *Id.*, p. 137.

[22] *National Power Corporation v. Chiong*, *supra*.

[23] *Export Processing Zone Authority v. Dulay*, 149 SCRA 305, April 29, 1987.

[24] Records, pp. 146-151.

[25] *National Power Corporation vs. CA*, *supra*, (citing *National Power Corporation v. Jocson*, 206 SCRA 520, February 25, 1992).

[26] *Ibid.* *Manila Electric Company v. Pineda*, 206 SCRA 196, February 13, 1992.

[27] Records, p. 180.

[28] *Republic v. Intermediate Appellate Court*, 185 SCRA 572, May 21, 1990.

[29] *National Power Corporation v. Chiong*, *supra*; *Republic v. Intermediate Appellate Court*, *supra*.

[30] *Republic v. Intermediate Appellate Court*, *supra*; *Republic v. Santos*, 141 SCRA 30, January 8, 1986.

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