

NATIONAL POWER CORPORATION, PETITIONER, VS. HON. SYLVA G. AGUIRRE PADERANGA, PRESIDING JUDGE, REGIONAL TRIAL COURT OF DANA O CITY, BRANCH 25, PETRONA O. DILAO, FEDIL T. OSMEÑA, I...

G.R. No. 155065. July 28, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Court of Appeals Decision[1] dated June 6, 2002, as well as its Resolution[2] dated August 30, 2002, affirming the decision[3] of the Regional Trial Court of Danao City, Branch 25 which granted the complaint for expropriation filed by herein petitioner National Power Corporation (NPC) against herein respondents "Petrona Dilao et al." are being assailed in the present Petition for Review on Certiorari.

To implement its Leyte-Cebu Interconnection Project, the NPC filed on March 19, 1996 before the Regional Trial Court of Danao City a complaint for expropriation[4] of parcels of land situated at Baring and Cantumog, Carmen, Cebu[5] against the following defendants:

NAMES ADDRESS

1. Petrona O.[6] Dilao Poblacion, Carmen, Cebu

2. Fidel T. Osmeña

-do-

3. Isabel T. Osmeña

-do-

4. Celestina O. Galon

-do-

5. Potenciana O. Batucan

-do-

6. Trinidad T. Osmeña

-do-

7. Lulia T.Osmeña

-do-

8. Lourdes O. Daffon

-do-

9. Victoria O. Barriga

-do-

10. Juan T. Osmeña, Jr.

-do-

11. Estefania Enriquez Marijoy Realty Corp.

Natalio Bacalso Ave.

Mambaling, Cebu City[7]

(Underscoring supplied)

The complaint covers (a) 7,281 square meters of the 25,758 square meters of land co-owned by herein respondents Petrona O. Dilao (Dilao) and the above-listed defendant Nos. 2-10 who are her siblings, and (b) 7,879 square meters of the 17,019 square meters of land owned by Estefania Enriquez (Enriquez).[8]

A day after the complaint was filed or on March 20, 1996, NPC filed an urgent ex parte motion for the issuance of writ of possession of the lands.

Dilao filed her Answer with Counterclaim on April 19, 1996.[9] Enriquez did not.[10]

On May 9, 1996, Branch 25 of the RTC Danao, issued an Order[11] granting NPC's motion for the issuance of writ of possession. It then appointed a Board of Commissioners to determine just compensation.[12]

The commissioners submitted on April 15, 1999 their report[13] to the trial court containing, among other things, their recommended appraisal of the parcel of land co-owned by defendants Dilao and her siblings at P516.66 per square meter.

To the Commissioners' Report, the NPC filed its Comment/Opposition[14] assailing the correctness of the appraisal for failing to take into account Republic Act (R.A.) No. 6395 (AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION), as amended, specifically Section 3A[15] thereof which provides that the just compensation for right-of-way easement (for which that portion of the Dilao property is being expropriated) shall be equivalent to ten percent (10%) of the market value of the property. The traversed land, NPC asserted, could still be used for agricultural purposes by the defendants, subject only to its easement. It added that the lots were of no use to its operations except for its transmission lines.[16]

By Decision of November 10, 1999, the trial court rendered a decision on the complaint, adopting the commissioners' recommended appraisal of the land co-owned by Dilao and her siblings. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered condemning the property of Petrona Dilao et al. which has been affected by 7,281 square meters in favor of plaintiff; declaring in favor of defendants for plaintiff to pay the fair market value of said area affected at P516.66 per square or a total of P3,761,801.40 plus P250,000.00 for the value of the improvements affected by herein expropriation.

SO ORDERED.[17] (Emphasis and underscoring supplied).

Copy of the decision was received by NPC on November 18, 1999.[18]

NPC filed a Notice of Appeal[19] but the trial court, by Order of January 17, 2000, denied the same for NPC's failure to file and perfect it within the reglementary period, it having failed to file a record on appeal.[20] To the Order, NPC filed a motion for reconsideration,[21] contending that a record on appeal was not required as the trial court rendered judgment against all the defendants including Enriquez as shown, so it claimed, by the dispositive portion of the decision referring to "Petrona Dilao et al."

By Resolution[22] of March 7, 2000, the trial court denied NPC's motion for reconsideration, clarifying that the reference to "Petrona Dilao et al." in the dispositive portion of its decision was meant to cover only Dilao and her co-owner-siblings.[23]

NPC subsequently filed before the trial court a petition for relief from the denial of its appeal on the ground that its failure to file a record on appeal was due to honest mistake and excusable neglect, it having believed that a record on appeal was not required in light of the failure of the other defendant, Enriquez, to file an answer to the complaint.[24]

The trial court denied NPC's petition for relief for lack of factual and legal basis.[25]

On August 17, 2001, the trial court granted Dilao et al.'s motion for execution of judgment.[26] NPC thereupon filed a petition for certiorari with the Court of Appeals with prayer for temporary restraining order and a writ of preliminary injunction[27] assailing the trial court's order denying its appeal and other orders related thereto, as well as the order granting Dilao et al.'s motion for execution. The appellate court, however, denied NPC's petition,[28] it holding that under Rule 41, Section 2 of the 1997 Rules of Civil Procedure, the filing of a record on appeal is required in special proceedings and other cases of multiple or separate appeals, as in an action for expropriation in which the order determining the right of the plaintiff to expropriate and the subsequent adjudication on the issue of just compensation may be the subject of separate appeals.[29]

Aggrieved, NPC challenged the appellate court's decision via the present petition,[30] it contending that the trial court's questioned orders "effectively deprived it of its constitutional right to due process."

NPC argues that a complaint for expropriation is a Special Civil Action under Rule 67 of the Rules of Civil Procedure, not a "special proceeding" as contemplated under Rule 41, Section 2 of the Rules of Civil Procedure; that there is no law or rules specifically requiring that a record on appeal shall be filed in expropriation cases; and of the two sets of defendants in the present case, the Dilaos and Enriquez, the first, while they filed an answer, did not appeal the trial court's decision, while with respect to the second, there is no showing that summons was served upon her, hence, the trial court did not acquire jurisdiction over her and, therefore, no appeal could arise whatsoever with respect to the complaint against her. Ergo, petitioner concludes, no possibility of multiple appeals arose from the case.

The petition fails.

Rule 41, Section 2 of the 1997 Rules of Civil Procedure, as amended, clearly provides:

SEC. 2. Modes of Appeals. —

(a) Ordinary appeal. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

x x x (Emphasis and underscoring supplied).

While admittedly a complaint for expropriation is not a special proceeding, the above-quoted rule requires the filing of a record on appeal in "other cases of multiple or separate appeal."

Jurisprudential law, no doubt, recognizes the existence of multiple appeals in a complaint for expropriation.[31] The case of Municipality of Biñan v. Garcia[32] vividly expounds on the matter, viz:

- There are two (2) stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint." An order of dismissal, if this be ordained, would be a final one, of course, since it finally disposes of the action and leaves nothing more to be done by the Court on the merits. So, too, would an order of condemnation be a final one, for thereafter, as the Rules expressly state, in the proceedings before the Trial Court, "no objection to the exercise of the right of condemnation (or the propriety thereof) shall be filed or heard.

The second phase of the eminent domain action is concerned with the determination by the Court of "the just compensation for the property sought to be taken." This is done by the Court with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too. It would finally dispose of the second stage of the suit, and leave nothing more to be done by the Court regarding the issue. Obviously, one or another of the parties may believe the order to be erroneous in its appreciation of the evidence or findings of fact or otherwise. Obviously, too, such a dissatisfied party may seek reversal of the order by taking an appeal therefrom. (Underscoring supplied).

Thus, in Municipality of Biñan, this Court held that in actions for eminent domain, since no less than two appeals are allowed by law, the period for appeal from an order of condemnation is thirty days counted from notice thereof and not the ordinary period of fifteen days prescribed for actions in general.[33] As such, the complaint falls under the classification of "other cases of multiple or separate appeal where the law or these rules so require" in above-quoted Section 2(a) of Rule 41 of the Rules of Civil Procedure in which a record on appeal is required to be filed and served.

Respecting NPC's claim that the trial court did not acquire jurisdiction over the other defendant, Enriquez, there being no evidence that summons was served on her and, therefore, no appeal with respect to the case against her arose, the trial court's Order[34] of May 9, 1996 belies said claim:

x x x

In the letter-appeal by defendant Estefania V. Enriquez addressed to the Court, defendant did manifest no opposition to the right of plaintiff to the use of her land but only wick (sic) that payment be based on the actual market value of the property sought to be expropriated. In comment to said letter-appeal, plaintiff stressed that the amount deposited was purely to secure a writ of possession as provided under PD 42. It agreed with defendant that the fair market value or actual market value shall be the basis for the just compensation of the property.

x x x (Emphasis and underscoring supplied)

That the defendant Enriquez did not file an answer to the complaint did not foreclose the possibility of an appeal arising therefrom. For Section 3 of Rule 67 provides:

Sec. 3. Defenses and objections. - If a defendant has no objection or defense to the action or the taking of his property, he may file and serve a notice of appearance and a manifestation to that effect, specifically

designating or identifying the property in which he claims to be interested, within the time stated in the summons. Thereafter, he shall be entitled to notice of all proceedings affecting the same.

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. No counterclaim, cross-claim or third-party complaint shall be alleged or allowed in the answer or any subsequent pleading.

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from the filing thereof. However, at the trial of the issue of just compensation, whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. (Emphasis and underscoring supplied).

In other words, once the compensation for Enriquez' property is placed in issue at the trial, she could, following the third paragraph of the immediately-quoted Section 3 of Rule 67, participate therein and if she is not in conformity with the trial court's determination of the compensation, she can appeal therefrom.

Multiple or separate appeals being existent in the present expropriation case, NPC should have filed a record on appeal within 30 days from receipt of the trial court's decision. The trial court's dismissal of its appeal, which was affirmed by the appellate court, was thus in order.

En passant, glossing over NPC's failure to file record on appeal, its appeal would still not prosper on substantive grounds.

NPC anchored its appeal^[35] on the alleged overvalued appraisal by the commissioners of the compensation to be awarded to Dilao et al., the commissioners having allegedly lost sight of the already mentioned 10% limit provided under Section 3A of R.A. No. 6395.

In *National Power Corporation v. Chiong*,^[36] petitioner similarly argued therein that the Court of Appeals gravely erred in upholding the RTC order requiring it to pay the full market value of the expropriated properties, despite the fact that it was only acquiring an easement of right-of-way for its transmission lines. It pointed out, as it does in the present case, that under Section 3A of RA No. 6395, as amended, where only an easement of right-of-way shall be acquired, with the principal purpose for which the land is actually devoted is unimpaired, the compensation should not exceed ten percent (10%) of the market value of the property. Upholding the trial court and the Court of Appeals's approval of the commissioners' recommendation in that case, this Court declared:

In fixing the valuation at P500.00 per square meter, the Court of Appeals noted that the trial court had considered the reports of the commissioners and the proofs submitted by the parties. This includes the fair market value of P1,100.00 per square meter proffered by the respondents. This valuation by owners of the property may not be binding upon the petitioner or the court, although it should at least set a ceiling price for the compensation to be awarded. The trial court found that the parcels of land sought to be expropriated are agricultural land, with minimal improvements. It is the nature and character of the land at the time of its taking that is the principal criterion to determine just compensation to the landowner. Hence, the trial court accepted not the owner's valuation of P1,100 per square meter but only P500 as recommended in the majority report of the commissioners.

x x x

In finding that the trial court did not abuse its authority in evaluating the evidence and the reports placed before

it nor did it misapply the rules governing fair valuation, the Court of Appeals found the majority report's valuation of P500 per square meter to be fair. Said factual finding of the Court of Appeals, absent any showing that the valuation is exorbitant or otherwise unjustified, is binding on the parties as well as this Court. (Emphasis and underscoring supplied).

Indeed, expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession. The right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines, as in the present case, also falls within the ambit of the term "expropriation." As explained in *National Power Corporation v. Gutierrez*,^[37] viz:

The trial court's observation shared by the appellate court show that "x x x While it is true that plaintiff [is] only after a right-of-way easement, it nevertheless perpetually deprives defendants of their proprietary rights as manifested by the imposition by the plaintiff upon defendants that below said transmission lines no plant higher than three (3) meters is allowed. Furthermore, because of the high-tension current conveyed through said transmission lines, danger to life and limbs that may be caused beneath said wires cannot altogether be discounted, and to cap it all, plaintiff only pays the fee to defendants once, while the latter shall continually pay the taxes due on said affected portion of their property."

The foregoing facts considered, the acquisition of the right-of-way easement falls within the purview of the power of eminent domain. Such conclusion finds support in similar cases of easement of right-of-way where the Supreme Court sustained the award of just compensation for private property condemned for public use (See *National Power Corporation vs. Court of Appeals*, 129 SCRA 665, 1984; *Garcia vs. Court of Appeals*, 102 SCRA 597, 1981). The Supreme Court, in *Republic of the Philippines vs. PLDT*, thus held that:

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

In the case at bar, the easement of right-of-way is definitely a taking under the power of eminent domain. Considering the nature and effect of the installation of the 230 KV Mexico-Limay transmission lines, the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use. (Emphasis and underscoring supplied).

From the Commissioners' Report^[38] chronicling the following findings:

x x x

- The parcel of land owned by the defendant PETRONA O. DILAO, et al. is very fertile, plain, suited for any crops production, portion of which planted with coco trees and mango trees, portion planted with corn, sometimes planted with sugar cane, the said land has a distance of about 1 kilometer from the trading center, about 100 meters from an industrial land (Shemberg Biotech Corp.) adjacent to a Poultry Farm and lies along the Provincial Road.

x x x

IMPROVEMENTS AFFECTED

Per ocular inspection made on lot own by PETRONA O. DILAO, et al. traversed by a transmission line of NPC and with my verification as to the number of improvements, the following trees had been damaged.

- 55 coco trees productive
- 10 mango trees productive

- 30 cacao trees productive
 - 110 bananas
 - 400 ipil-ipil trees
- x x x,[39]

it cannot be gainsaid that NPC's complaint merely involves a simple case of mere passage of transmission lines over Dilao et al.'s property. Aside from the actual damage done to the property traversed by the transmission lines, the agricultural and economic activity normally undertaken on the entire property is unquestionably restricted and perpetually hampered as the environment is made dangerous to the occupant's life and limb.

The determination of just compensation in expropriation proceedings being a judicial function,[40] this Court finds the commissioners' recommendation of P516.66 per square meter, which was approved by the trial court, to be just and reasonable compensation for the expropriated property of Dilao and her siblings.

In fine, the appeal sought by NPC does not stand on both procedural and substantive grounds.

WHEREFORE, the petition is hereby DENIED.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.
Garcia, J., no part.

[1] Rollo at 38-42.

[2] Id. at 44-45.

[3] Id. at 81-86.

[4] Id. at 46-51.

[5] Id. at 39 and 69.

[6] "O" for Osmeña.

[7] Rollo at 47.

[8] Id. at 39.

[9] Id. at 66.

[10] Id. at 39.

[11] Id. at 67.

[12] Id. at 40.

[13] Id. at 73. The commissioners' recommendation are as follows:

1. Sebastian T. Ocon P480.00 per square meter
2. Jeffrey Opone 600.00 per square meter
3. Fortunato C. Ligutom 470.00 per square meter

TOTAL P1,550.00/3 = P516.6

[14] Id. at 77.

[15] Section 4 of Presidential Decree No. 938 - FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE ENTITLED, "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION," AS AMENDED BY PRESIDENTIAL DECREES NOS. 380, 395 AND 758 provides:

SECTION 4. A new section shall be inserted to be known as Section 3A of the same Act to read as follows:

"Sec. 3A. 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 itself or portions 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 to exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market values 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 to 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 to the 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 improvement 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." (Emphasis supplied).

[16] Rollo at 79-80.

[17] Id. at 86.

[18] Id. at 40.

[19] Id. at 87. NPC's Notice of Appeal reads:

"Notice is hereby given that Plaintiff National Power Corporation hereby appeals to the Court of Appeals from the Decision made and entered into by this Court on November 10, 1999 in favor of plaintiff, condemning the property of Petrona Dilao et al which has been affected by 7,281 square meters in favor of plaintiff; declaring in favor of defendants for plaintiff to pay the fair market value of said area affected at P516.66 per square or a total of P3,761,801.40 plus P250,000.00 for the value of the improvements affected by herein expropriation." (Emphasis supplied).

[20] Id. at 91.

[21] Id. at 92-94.

[22] Id. at 97. See also Rollo at 40.

[23] Id. at 98. Resolution of the lower court to NPC's Motion for Reconsideration.

[24] Id. at 99-100.

[25] Id. at 107.

[26] Id. at 117.

[27] CA Rollo at 2.

[28] Rollo at 38-41.

[29] Id. at 40-41.

[30] Id. at 12-36.

[31] Roman Catholic Archbishop of Manila v. Court of Appeals, 258 SCRA 186, 194 (1996).

[32] 180 SCRA 576, 583-584 (1989).

[33] Id. at 587.

[34] CA Rollo at 58.

[35] CA Rollo at 100.

[36] 404 SCRA 527, 537-539 (2003).

[37] 193 SCRA 1, 6-8 (1991).

[38] Annex H, Rollo at 73-75.

[39] Rollo at 73.

[40] National Power Corporation v. Jocson, 206 SCRA 520, 540 (1992) citing Export Processing Zone Authority v. Dulay, 149 SCRA 305, 316 (1987).

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