NATIONAL POWER CORPORATION, PETITIONER, VS. LUCMAN G. IBRAHIM, OMAR G. MARUHOM, ELIAS G. MARUHOM, BUCAY G. MARUHOM, FAROUK G. MARUHOM, HIDJARA G. MARUHOM, ROCANIA G. MARUHOM, PO...

G.R. NO. 168732. June 29, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to annul the Decision[1] dated June 8, 2005 rendered by the Court of Appeals (CA) in C.A.-G.R. CV No. 57792.

The facts are as follows:

On November 23, 1994, respondent Lucman G. Ibrahim, in his personal capacity and in behalf of his co-heirs Omar G. Maruhom, Elias G. Maruhom, Bucay G. Maruhom, Mamod G. Maruhom, Farouk G. Maruhom, Hidjara G. Maruhom, Rocania G. Maruhom, Potrisam G. Maruhom, Lumba G. Maruhom, Sinab G. Maruhom, Acmad G. Maruhom, Solayman G. Maruhom, Mohamad M. Ibrahim and Caironesa M. Ibrahim, instituted an action against petitioner National Power Corporation (NAPOCOR) for recovery of possession of land and damages before the Regional Trial Court (RTC) of Lanao del Sur.

In their complaint, Ibrahim and his co-heirs claimed that they were owners of several parcels of land described in Survey Plan FP (VII-5) 2278 consisting of 70,000 square meters, divided into three (3) lots, i.e. Lots 1, 2, and 3 consisting of 31,894, 14,915, and 23,191 square meters each respectively. Sometime in 1978, NAPOCOR, through alleged stealth and without respondents' knowledge and prior consent, took possession of the sub-terrain area of their lands and constructed therein underground tunnels. The existence of the tunnels was only discovered sometime in July 1992 by respondents and then later confirmed on November 13, 1992 by NAPOCOR itself through a memorandum issued by the latter's Acting Assistant Project Manager. The tunnels were apparently being used by NAPOCOR in siphoning the water of Lake Lanao and in the operation of NAPOCOR's Agus II, III, IV, V, VI, VII projects located in Saguiran, Lanao del Sur; Nangca and Balo-i in Lanao del Norte; and Ditucalan and Fuentes in Iligan City.

On September 19, 1992, respondent Omar G. Maruhom requested the Marawi City Water District for a permit to construct and/or install a motorized deep well in Lot 3 located in Saduc, Marawi City but his request was turned down because the construction of the deep well would cause danger to lives and property. On October 7, 1992, respondents demanded that NAPOCOR pay damages and vacate the sub-terrain portion of their lands but the latter refused to vacate much less pay damages. Respondents further averred that the construction of the underground tunnels has endangered their lives and properties as Marawi City lies in an area of local volcanic and tectonic activity. Further, these illegally constructed tunnels caused them sleepless nights, serious anxiety and shock thereby entitling them to recover moral damages and that by way of example for the public good, NAPOCOR must be held liable for exemplary damages.

Disputing respondents' claim, NAPOCOR filed an answer with counterclaim denying the material allegations of the complaint and interposing affirmative and special defenses, namely that (1) there is a failure to state a cause of action since respondents seek possession of the sub-terrain portion when they were never in possession of the same, (2) respondents have no cause of action because they failed to show proof that they were the owners of the property, and (3) the tunnels are a government project for the benefit of all and all private lands are subject to such easement as may be necessary for the same.[2]

On August 7, 1996, the RTC rendered a Decision, the decretal portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered:
>
> - Denying plaintiffs' [private respondents'] prayer for defendant [petitioner] National Power Corporation to dismantle the underground tunnels constructed between the lands of plaintiffs in Lots 1, 2, and 3 of Survey Plan FP (VII-5) 2278;
>
> - Ordering defendant to pay to plaintiffs the fair market value of said 70,000 square meters of land covering Lots 1, 2, and 3 as described in Survey Plan FP (VII-5) 2278 less the area of 21,995 square meters at P1,000.00 per square meter or a total of P48,005,000.00 for the remaining unpaid portion of 48,005 square meters; with 6% interest per annum from the filing of this case until paid;
>
> - Ordering defendant to pay plaintiffs a reasonable monthly rental of P0.68 per square meter of the total area of 48,005 square meters effective from its occupancy of the foregoing area in 1978 or a total of P7,050,974.40.
>
> - Ordering defendant to pay plaintiffs the sum of P200,000.00 as moral damages; and
>
> - Ordering defendant to pay the further sum of P200,000.00 as attorney's fees and the costs.
>
> SO ORDERED.[3]

On August 15, 1996, Ibrahim, joined by his co-heirs, filed an Urgent Motion for Execution of Judgment Pending Appeal. On the other hand, NAPOCOR filed a Notice of Appeal by registered mail on August 19, 1996. Thereafter, NAPOCOR filed a vigorous opposition to the motion for execution of judgment pending appeal with a motion for reconsideration of the Decision which it had received on August 9, 1996.

On August 26, 1996, NAPOCOR filed a Manifestation and Motion withdrawing its Notice of Appeal purposely to give way to the hearing of its motion for reconsideration.

On August 28, 1996, the RTC issued an Order granting execution pending appeal and denying NAPOCOR's motion for reconsideration, which Order was received by NAPOCOR on September 6, 1996.

On September 9, 1996, NAPOCOR filed its Notice of Appeal by registered mail which was denied by the RTC on the ground of having been filed out of time. Meanwhile, the Decision of the RTC was executed pending appeal and funds of NAPOCOR were garnished by respondents Ibrahim and his co-heirs.

On October 4, 1996, a Petition for Relief from Judgment was filed by respondents Omar G. Maruhom, Elias G. Maruhom, Bucay G. Maruhom, Mamod G. Maruhom, Farouk G. Maruhom, Hidjara G. Maruhom, Potrisam G. Maruhom and Lumba G. Maruhom asserting as follows:

> 1) they did not file a motion to reconsider or appeal the decision within the reglementary period of fifteen (15) days from receipt of judgment because they believed in good faith that the decision was for damages and rentals and attorney's fees only as prayed for in the complaint:
>
> 2) it was only on August 26, 1996 that they learned that the amounts awarded to the plaintiffs represented not only rentals, damages and attorney's fees but the greatest portion of which was payment of just compensation

which in effect would make the defendant NPC the owner of the parcels of land involved in the case;

3) when they learned of the nature of the judgment, the period of appeal has already expired;

4) they were prevented by fraud, mistake, accident, or excusable negligence from taking legal steps to protect and preserve their rights over their parcels of land in so far as the part of the decision decreeing just compensation for petitioners' properties;

5) they would never have agreed to the alienation of their property in favor of anybody, considering the fact that the parcels of land involved in this case were among the valuable properties they inherited from their dear father and they would rather see their land crumble to dust than sell it to anybody.[4]

The RTC granted the petition and rendered a modified judgment dated September 8, 1997, thus:

WHEREFORE, a modified judgment is hereby rendered:

1) Reducing the judgment award of plaintiffs for the fair market value of P48,005,000.00 by 9,526,000.00 or for a difference by P38,479,000.00 and by the further sum of P33,603,500.00 subject of the execution pending appeal leaving a difference of 4,878,500.00 which may be the subject of execution upon the finality of this modified judgment with 6% interest per annum from the filing of the case until paid.

2) Awarding the sum of P1,476,911.00 to herein petitioners Omar G. Maruhom, Elias G. Maruhom, Bucay G. Maruhom, Mahmod G. Maruhom, Farouk G. Maruhom, Hidjara G. Maruhom, Portrisam G. Maruhom and Lumba G. Maruhom as reasonable rental deductible from the awarded sum of P7,050,974.40 pertaining to plaintiffs.

3) Ordering defendant embodied in the August 7, 1996 decision to pay plaintiffs the sum of P200,000.00 as moral damages; and further sum of P200,000.00 as attorney's fees and costs.

SO ORDERED.[5]

Subsequently, both respondent Ibrahim and NAPOCOR appealed to the CA.

In the Decision dated June 8, 2005, the CA set aside the modified judgment and reinstated the original Decision dated August 7, 1996, amending it further by deleting the award of moral damages and reducing the amount of rentals and attorney's fees, thus:

WHEREFORE, premises considered, herein Appeals are hereby partially GRANTED, the Modified Judgment is ordered SET ASIDE and rendered of no force and effect and the original Decision of the court a quo dated 7 August 1996 is hereby RESTORED with the MODIFICATION that the award of moral damages is DELETED and the amounts of rentals and attorney's fees are REDUCED to P6,888,757.40 and P50,000.00, respectively.

In this connection, the Clerk of Court of RTC Lanao del Sur is hereby directed to reassess and determine the additional filing fee that should be paid by Plaintiff-Appellant IBRAHIM taking into consideration the total amount of damages sought in the complaint vis-á-vis the actual amount of damages awarded by this Court. Such additional filing fee shall constitute a lien on the judgment.

SO ORDERED.[6]

Hence, this petition ascribing the following errors to the CA:

(a) RESPONDENTS WERE NOT DENIED THE BENEFICIAL USE OF THEIR SUBJECT PROPERTIES TO ENTITLE THEM TO JUST COMPENSATION BY WAY OF DAMAGES;

(b) ASSUMING THAT RESPONDENTS ARE ENTITLED TO JUST COMPENSATION BY WAY OF DAMAGES, NO EVIDENCE WAS PRESENTED ANENT THE VALUATION OF RESPONDENTS'

> PROPERTY AT THE TIME OF ITS TAKING IN THE YEAR 1978 TO JUSTIFY THE AWARD OF ONE THOUSAND SQUARE METERS (P1000.00/SQ. M.) EVEN AS PAYMENT OF BACK RENTALS IS ITSELF IMPROPER.

This case revolves around the propriety of paying just compensation to respondents, and, by extension, the basis for computing the same. The threshold issue of whether respondents are entitled to just compensation hinges upon who owns the sub-terrain area occupied by petitioner.

Petitioner maintains that the sub-terrain portion where the underground tunnels were constructed does not belong to respondents because, even conceding the fact that respondents owned the property, their right to the subsoil of the same does not extend beyond what is necessary to enable them to obtain all the utility and convenience that such property can normally give. In any case, petitioner asserts that respondents were still able to use the subject property even with the existence of the tunnels, citing as an example the fact that one of the respondents, Omar G. Maruhom, had established his residence on a part of the property. Petitioner concludes that the underground tunnels 115 meters below respondents' property could not have caused damage or prejudice to respondents and their claim to this effect was, therefore, purely conjectural and speculative.[7]

The contention lacks merit.

Generally, in an appeal by certiorari under Rule 45 of the Rules of Court, the Court does not pass upon questions of fact. Absent any showing that the trial and appellate courts gravely abused their discretion, the Court will not examine the evidence introduced by the parties below to determine if they correctly assessed and evaluated the evidence on record.[8] The jurisdiction of the Court in cases brought to it from the CA is limited to reviewing and revising the errors of law imputed to it, its findings of fact being as a rule conclusive and binding on the Court.

In the present case, petitioner failed to point to any evidence demonstrating grave abuse of discretion on the part of the CA or to any other circumstances which would call for the application of the exceptions to the above rule. Consequently, the CA's findings which upheld those of the trial court that respondents owned and possessed the property and that its substrata was possessed by petitioner since 1978 for the underground tunnels, cannot be disturbed. Moreover, the Court sustains the finding of the lower courts that the sub-terrain portion of the property similarly belongs to respondents. This conclusion is drawn from Article 437 of the Civil Code which provides:

> ART. 437. The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation.

Thus, the ownership of land extends to the surface as well as to the subsoil under it. In Republic of the Philippines v. Court of Appeals,[9] this principle was applied to show that rights over lands are indivisible and, consequently, require a definitive and categorical classification, thus:

> The Court of Appeals justified this by saying there is "no conflict of interest" between the owners of the surface rights and the owners of the sub-surface rights. This is rather strange doctrine, for it is a well-known principle that the owner of a piece of land has rights not only to its surface but also to everything underneath and the airspace above it up to a reasonable height. Under the aforesaid ruling, the land is classified as mineral underneath and agricultural on the surface, subject to separate claims of title. This is also difficult to understand, especially in its practical application.
>
> Under the theory of the respondent court, the surface owner will be planting on the land while the mining locator will be boring tunnels underneath. The farmer cannot dig a well because he may interfere with the mining operations below and the miner cannot blast a tunnel lest he destroy the crops above. How deep can the

> farmer, and how high can the miner go without encroaching on each others rights? Where is the dividing line between the surface and the sub-surface rights?
>
> The Court feels that the rights over the land are indivisible and that the land itself cannot be half agricultural and half mineral. The classification must be categorical; the land must be either completely mineral or completely agricultural.

Registered landowners may even be ousted of ownership and possession of their properties in the event the latter are reclassified as mineral lands because real properties are characteristically indivisible. For the loss sustained by such owners, they are entitled to just compensation under the Mining Laws or in appropriate expropriation proceedings.[10]

Moreover, petitioner's argument that the landowners' right extends to the sub-soil insofar as necessary for their practical interests serves only to further weaken its case. The theory would limit the right to the sub-soil upon the economic utility which such area offers to the surface owners. Presumably, the landowners' right extends to such height or depth where it is possible for them to obtain some benefit or enjoyment, and it is extinguished beyond such limit as there would be no more interest protected by law.[11]

In this regard, the trial court found that respondents could have dug upon their property motorized deep wells but were prevented from doing so by the authorities precisely because of the construction and existence of the tunnels underneath the surface of their property. Respondents, therefore, still had a legal interest in the sub-terrain portion insofar as they could have excavated the same for the construction of the deep well. The fact that they could not was appreciated by the RTC as proof that the tunnels interfered with respondents' enjoyment of their property and deprived them of its full use and enjoyment, thus:

> Has it deprived the plaintiffs of the use of their lands when from the evidence they have already existing residential houses over said tunnels and it was not shown that the tunnels either destroyed said houses or disturb[ed] the possession thereof by plaintiffs? From the evidence, an affirmative answer seems to be in order. The plaintiffs and [their] co-heirs discovered [these] big underground tunnels in 1992. This was confirmed by the defendant on November 13, 1992 by the Acting Assistant Project Manager, Agus 1 Hydro Electric Project (Exh. K). On September 16, 1992, Atty. Omar Maruhom (co-heir) requested the Marawi City Water District for permit to construct a motorized deep well over Lot 3 for his residential house (Exh. Q). He was refused the permit "because the construction of the deep well as (sic) the parcels of land will cause danger to lives and property." He was informed that "beneath your lands are constructed the Napocor underground tunnel in connection with Agua Hydroelectric plant" (Exh. Q-2). There in fact exists ample evidence that this construction of the tunnel without the prior consent of plaintiffs beneath the latter's property endangered the lives and properties of said plaintiffs. It has been proved indubitably that Marawi City lies in an area of local volcanic and tectonic activity. Lake Lanao has been formed by extensive earth movements and is considered to be a drowned basin of volcano/tectonic origin. In Marawi City, there are a number of former volcanoes and an extensive amount of faulting. Some of these faults are still moving. (Feasibility Report on Marawi City Water District by Kampsa-Kruger, Consulting Engineers, Architects and Economists, Exh. R). Moreover, it has been shown that the underground tunnels [have] deprived the plaintiffs of the lawful use of the land and considerably reduced its value. On March 6, 1995, plaintiffs applied for a two-million peso loan with the Amanah Islamic Bank for the expansion of the operation of the Ameer Construction and Integrated Services to be secured by said land (Exh. N), but the application was disapproved by the bank in its letter of April 25, 1995 (Exh. O) stating that:
> "Apropos to this, we regret to inform you that we cannot consider your loan application due to the following reasons, to wit:
>
> That per my actual ocular inspection and verification, subject property offered as collateral has an existing underground tunnel by the NPC for the Agus I Project, which tunnel is traversing underneath your property,

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> hence, an encumbrance. As a matter of bank policy, property with an existing encumbrance cannot be considered neither accepted as collateral for a loan."

All the foregoing evidence and findings convince this Court that preponderantly plaintiffs have established the condemnation of their land covering an area of 48,005 sq. meters located at Saduc, Marawi City by the defendant National Power Corporation without even the benefit of expropriation proceedings or the payment of any just compensation and/or reasonable monthly rental since 1978.[12]

In the past, the Court has held that if the government takes property without expropriation and devotes the property to public use, after many years, the property owner may demand payment of just compensation in the event restoration of possession is neither convenient nor feasible.[13] This is in accordance with the principle that persons shall not be deprived of their property except by competent authority and for public use and always upon payment of just compensation.[14]

Petitioner contends that the underground tunnels in this case constitute an easement upon the property of respondents which does not involve any loss of title or possession. The manner in which the easement was created by petitioner, however, violates the due process rights of respondents as it was without notice and indemnity to them and did not go through proper expropriation proceedings. Petitioner could have, at any time, validly exercised the power of eminent domain to acquire the easement over respondents' property as this power encompasses not only the taking or appropriation of title to and possession of the expropriated property but likewise covers even the imposition of a mere burden upon the owner of the condemned property.[15] Significantly, though, landowners cannot be deprived of their right over their land until expropriation proceedings are instituted in court. The court must then see to it that the taking is for public use, that there is payment of just compensation and that there is due process of law.[16]

In disregarding this procedure and failing to recognize respondents' ownership of the sub-terrain portion, petitioner took a risk and exposed itself to greater liability with the passage of time. It must be emphasized that the acquisition of the easement is not without expense. The underground tunnels impose limitations on respondents' use of the property for an indefinite period and deprive them of its ordinary use. Based upon the foregoing, respondents are clearly entitled to the payment of just compensation.[17] Notwithstanding the fact that petitioner only occupies the sub-terrain portion, it is liable to pay not merely an easement fee but rather the full compensation for land. This is so because in this case, the nature of the easement practically deprives the owners of its normal beneficial use. Respondents, as the owners of the property thus expropriated, are entitled to a just compensation which should be neither more nor less, whenever it is possible to make the assessment, than the money equivalent of said property.[18]

The entitlement of respondents to just compensation having been settled, the issue now is on the manner of computing the same. In this regard, petitioner claims that the basis for the computation of the just compensation should be the value of the property at the time it was taken in 1978. Petitioner also impugns the reliance made by the CA upon National Power Corporation v. Court of Appeals and Macapanton Mangondato[19] as the basis for computing the amount of just compensation in this action. The CA found that "the award of damages is not excessive because the P1000 per square meter as the fair market value was sustained in a case involving a lot adjoining the property in question which case involved an expropriation by [petitioner] of portion of Lot 1 of the subdivision plan (LRC) PSD 116159 which is adjacent to Lots 2 and 3 of the same subdivision plan which is the subject of the instant controversy."[20]

Just compensation has been understood to be the just and complete equivalent of the loss[21] and is ordinarily determined by referring to the value of the land and its character at the time it was taken by the expropriating authority.[22] There is a "taking" in this sense when the owners are actually deprived or dispossessed of their

property, where there is a practical destruction or a material impairment of the value of their property, or when they are deprived of the ordinary use thereof. There is a "taking" in this context when the expropriator enters private property not only for a momentary period but for more permanent duration, for the purpose of devoting the property to a public use in such a manner as to oust the owner and deprive him of all beneficial enjoyment thereof.[23] Moreover, "taking" of the property for purposes of eminent domain entails that the entry into the property must be under warrant or color of legal authority.[24]

Under the factual backdrop of this case, the last element of taking mentioned, i.e., that the entry into the property is under warrant or color of legal authority, is patently lacking. Petitioner justified its nonpayment of the indemnity due respondents upon its mistaken belief that the property formed part of the public dominion.

This situation is on all fours with that in the Mangondato case. NAPOCOR in that case took the property of therein respondents in 1979, using it to build its Aqua I Hydroelectric Plant Project, without paying any compensation, allegedly under the mistaken belief that it was public land. It was only in 1990, after more than a decade of beneficial use, that NAPOCOR recognized therein respondents' ownership and negotiated for the voluntary purchase of the property.

In Mangondato, this Court held:

> The First Issue: Date of Taking or Date of Suit?
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> The general rule in determining "just compensation" in eminent domain is the value of the property as of the date of the filing of the complaint, as follows:
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> "Sec. 4. Order of Condemnation. When such a motion is overruled or when any party fails to defend as required by this rule, the court may enter an order 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. x x x" (Italics supplied).
>
> Normally, the time of the taking coincides with the filing of the complaint for expropriation. Hence, many ruling of this Court have equated just compensation with the value of the property as of the time of filing of the complaint consistent with the above provision of the Rules. So too, where the institution of the action precedes entry to the property, the just compensation is to be ascertained as of the time of filing of the complaint.
>
> The general rule, however, admits of an exception: where this Court fixed the value of the property as of the date it was taken and not the date of the commencement of the expropriation proceedings.
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> In the old case of Provincial Government of Rizal vs. Caro de Araullo, the Court ruled that "x x x the owners of the land have no right to recover damages for this unearned increment resulting from the construction of the public improvement (lengthening of Taft Avenue from Manila to Pasay) from which the land was taken. To permit them to do so would be to allow them to recover more than the value of the land at the time it was taken, which is the true measure of the damages, or just compensation, and would discourage the construction of important public improvements."
>
> In subsequent cases, the Court, following the above doctrine, invariably held that the time of taking is the critical date in determining lawful or just compensation. Justifying this stance, Mr. Justice (later Chief Justice) Enrique Fernando, speaking for the Court in Municipality of La Carlota vs. The Spouses Felicidad Baltazar and Vicente Gan, said, "x x x the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantees just compensation. It would be injustice to him certainly if from such a period, he could not recover the value of what was lost. There could be on the other hand, injustice to the expropriator if

by a delay in the collection, the increment in price would accrue to the owner. The doctrine to which this Court has been committed is intended precisely to avoid either contingency fraught with unfairness."

Simply stated, the exception finds the application where the owner would be given undue incremental advantages arising from the use to which the government devotes the property expropriated -- as for instance, the extension of a main thoroughfare as was in the case in Caro de Araullo. In the instant case, however, it is difficult to conceive of how there could have been an extra-ordinary increase in the value of the owner's land arising from the expropriation, as indeed the records do not show any evidence that the valuation of P1,000.00 reached in 1992 was due to increments directly caused by petitioner's use of the land. Since the petitioner is claiming an exception to Rule 67, Section 4, it has the burden in proving its claim that its occupancy and use -- not ordinary inflation and increase in land values -- was the direct cause of the increase in valuation from 1978 to 1992.

Side Issue: When is there "Taking" of Property?

But there is yet another cogent reason why this petition should be denied and why the respondent Court should be sustained. An examination of the undisputed factual environment would show that the "taking" was not really made in 1978.

This Court has defined the elements of "taking" as the main ingredient in the exercise of power of eminent domain, in the following words:

"A number of circumstances must be present in "taking" of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way to oust the owner and deprive him of all beneficial enjoyment of the property."(Italics supplied)

In this case, the petitioner's entrance in 1978 was without intent to expropriate or was not made under warrant or color of legal authority, for it believed the property was public land covered by Proclamation No. 1354. When the private respondent raised his claim of ownership sometime in 1979, the petitioner flatly refused the claim for compensation, nakedly insisted that the property was public land and wrongly justified its possession by alleging it had already paid "financial assistance" to Marawi City in exchange for the rights over the property. Only in 1990, after more than a decade of beneficial use, did the petitioner recognize private respondent's ownership and negotiate for the voluntary purchase of the property. A Deed of Sale with provisional payment and subject to negotiations for the correct price was then executed. Clearly, this is not the intent nor the expropriation contemplated by law. This is a simple attempt at a voluntary purchase and sale. Obviously, the petitioner neglected and/or refused to exercise the power of eminent domain.

Only in 1992, after the private respondent sued to recover possession and petitioner filed its Complaint to expropriate, did petitioner manifest its intention to exercise the power of eminent domain. Thus the respondent Court correctly held:

"If We decree that the fair market value of the land be determined as of 1978, then We would be sanctioning a deceptive scheme whereby NAPOCOR, for any reason other than for eminent domain would occupy another's property and when later pressed for payment, first negotiate for a low price and then conveniently expropriate the property when the land owner refuses to accept its offer claiming that the taking of the property for the purpose of the eminent domain should be reckoned as of the date when it started to occupy the property and that the value of the property should be computed as of the date of the taking despite the increase in the meantime in the value of the property."

In Noble vs. City of Manila, the City entered into a lease-purchase agreement of a building constructed by the

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> petitioner's predecessor-in-interest in accordance with the specifications of the former. The Court held that being bound by the said contract, the City could not expropriate the building. Expropriation could be resorted to "only when it is made necessary by the opposition of the owner to the sale or by the lack of any agreement as to the price." Said the Court:
>
> "The contract, therefore, in so far as it refers to the purchase of the building, as we have interpreted it, is in force, not having been revoked by the parties or by judicial decision. This being the case, the city being bound to buy the building at an agreed price, under a valid and subsisting contract, and the plaintiff being agreeable to its sale, the expropriation thereof, as sought by the defendant, is baseless. Expropriation lies only when it is made necessary by the opposition of the owner to the sale or by the lack of any agreement as to the price. There being in the present case a valid and subsisting contract, between the owner of the building and the city, for the purchase thereof at an agreed price, there is no reason for the expropriation." (Italics supplied)
>
> In the instant case, petitioner effectively repudiated the deed of sale it entered into with the private respondent when it passed Resolution No. 92-121 on May 25, 1992 authorizing its president to negotiate, inter alia, that payment "shall be effective only after Agus I HE project has been placed in operation." It was only then that petitioner's intent to expropriate became manifest as private respondent disagreed and, barely a month, filed suit.[25]

In the present case, to allow petitioner to use the date it constructed the tunnels as the date of valuation would be grossly unfair. First, it did not enter the land under warrant or color of legal authority or with intent to expropriate the same. In fact, it did not bother to notify the owners and wrongly assumed it had the right to dig those tunnels under their property. Secondly, the "improvements" introduced by petitioner, namely, the tunnels, in no way contributed to an increase in the value of the land. The trial court, therefore, as affirmed by the CA, rightly computed the valuation of the property as of 1992, when respondents discovered the construction of the huge underground tunnels beneath their lands and petitioner confirmed the same and started negotiations for their purchase but no agreement could be reached.[26]

As to the amount of the valuation, the RTC and the CA both used as basis the value of the adjacent property, Lot 1 (the property involved herein being Lots 2 and 3 of the same subdivision plan), which was valued at P1,000 per sq. meter as of 1990, as sustained by this Court in Mangondato, thus:

> The Second Issue: Valuation
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> We now come to the issue of valuation.
>
> The fair market value as held by the respondent Court, is the amount of P1,000.00 per square meter. In an expropriation case where the principal issue is the determination of just compensation, as is the case here, a trial before Commissioners is indispensable to allow the parties to present evidence on the issue of just compensation. Inasmuch as the determination of just compensation in eminent domain cases is a judicial function and factual findings of the Court of Appeals are conclusive on the parties and reviewable only when the case falls within the recognized exceptions, which is not the situation obtaining in this petition, we see no reason to disturb the factual findings as to valuation of the subject property. As can be gleaned from the records, the court-and-the-parties-appointed commissioners did not abuse their authority in evaluating the evidence submitted to them nor misappreciate the clear preponderance of evidence. The amount fixed and agreed to by the respondent appellate Court is not grossly exorbitant. To quote:
>
> "Commissioner Ali comes from the Office of the Register of Deeds who may well be considered an expert, with a general knowledge of the appraisal of real estate and the prevailing prices of land in the vicinity of the land in question so that his opinion on the valuation of the property cannot be lightly brushed aside.
>
> "The prevailing market value of the land is only one of the determinants used by the commissioners' report the

> other being as herein shown:
>
> x x x
>
> x x x
>
> "Commissioner Doromal's report, recommending P300.00 per square meter, differs from the 2 commissioners only because his report was based on the valuation as of 1978 by the City Appraisal Committee as clarified by the latter's chairman in response to NAPOCOR's general counsel's query."
>
> In sum, we agree with the Court of Appeals that petitioner has failed to show why it should be granted an exemption from the general rule in determining just compensation provided under Section 4 of Rule 67. On the contrary, private respondent has convinced us that, indeed, such general rule should in fact be observed in this case.[27]

Petitioner has not shown any error on the part of the CA in reaching such a valuation. Furthermore, these are factual matters that are not within the ambit of the present review.

WHEREFORE, the petition is DENIED and the Decision of the Court of Appeals in C.A.-G.R. CV No. 57792 dated June 8, 2005 is AFFIRMED.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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[1] Rollo, pp. 114-133.

[2] Id. at 117-118.

[3] Id. at 118-119.

[4] Id. at 121-122.

[5] Id. at 122-123.

[6]Id. at 132-133.

[7] Id. at 95-98.

[8] Concepcion v. CA, G.R. No. 120707, January 31, 2000, 324 SCRA 85.

[9]G.R. No. L-43938, April 15, 1988, 160 SCRA 228.

[10] Id.

[11] TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE, Vol. II, p. 90.

[12] Rollo, pp. 152-154.

[13] Militante v. Court of Appeals, 386 Phil. 522 (2000).

[14] CONSTITUTION, Art. III, Sec. 9. See also CIVIL CODE, Art. 435.

[15]Republic v. PLDT, 136 Phil. 20 (1969).

[16] NAPOCOR v. CA, G.R. No. 106804, August 12, 2004, 436 SCRA 195.

[17] NAPOCOR v. Gutierrez, G.R. No. 60077, January 18, 1991, 193 SCRA 1.

[18] Id.

[19] G.R. No. 113194, March 11, 1996, 254 SCRA 577.

[20] Rollo, p. 130.

[21] Supra note 16.

[22] Supra note 17.

[23] Republic of the Philippines v. Sarabia, G.R. No. 157847, August 25, 2005, 468 SCRA 142.

[24] Supra note 19.

[25] Supra, note 19 at 588-592; Emphasis supplied, italics in the original.

[26] See RTC decision of August 7, 1996, Rollo, p. 158.

[27] See, supra note 19 at 592-593.

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