NATIONAL POWER CORPORATION, PETITIONER, VS. SPS. MARGARITO ASOQUE AND TARCINIA ASOQUE, RESPONDENTS.

G.R. No. 172507. September 14, 2016

Ponente: LEONEN, J.

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LEONEN, J.:

Article III, Section 9[1] of the Constitution provides a substantive guarantee that private property that is taken by the state for public use should be paid for with just compensation. If the state does not agree with the property owner on a price, the state, through the competent government agency, should file the proper expropriation action under Rule 67 of the Revised Rules of Court.

In case of a taking without the proper expropriation action filed, the property owner may file its own action to question the propriety of the taking or to compel the payment of just compensation. Among these inverse condemnation actions is a complaint for payment of just compensation and damages.

When an inverse condemnation is filed, the provisions for the appointment of commissioners under Rule 32—not Sections 5, 6, 7, or 8 of Rule 67 of the Rules of Court—will be followed.

This resolves a Petition for Review on Certiorari[2] filed by the National Power Corporation to nullify and set aside the November 21, 2005 Decision[3] and May 3, 2006 Resolution[4] of the Court of Appeals in CA-G.R. CV No. 76313. The assailed Decision affirmed with modification the judgment of Branch 31 of the Regional Trial Court, Calbayog City, which, in turn, directed the National Power Corporation to pay the value of the 4,352-square-meter portion of Spouses Margarito and Tarcinia Asoque's (Spouses Asoque) land utilized in its Leyte-Luzon Transmission Line Project.[5] The assailed Resolution denied the National Power Corporation's Motion for Reconsideration.[6]

Spouses Asoque are the registered owners of a parcel of coconut land located in Barangay Bugtong, Calbayog City. The parcel of land has an area of 59,099 square meters and is covered by Original Certificate of Title No. 2376.[7]

Sometime in November 1995, the National Power Corporation entered the Spouses Asoque's land to install transmission lines for its 350 KV Leyte-Luzon HVDC Power Transmission Line Project.[8] The National Power Corporation utilized 4,352 square meters for the project.[9]

Spouses Asoque allege that beforehand, they were made to understand that the National Power Corporation would pay them the value of the portion of the land used and all improvements that would be destroyed for the National Power Corporation's project.[10] Spouses Asoque incurred actual damages as a result of the National Power Corporation's cutting off some coconut trees and other fruit- and non-fruit-bearing plants during the construction.[11] They were also prohibited from introducing on the 4,352-square-meter area any improvement that could rise by a few meters from the ground.[12]

Upon Spouses Asoque's demand for just compensation, the National Power Corporation only paid for the

improvements destroyed and refused to pay for the actual value of the 4,352-square-meter area utilized for the project.[13] The National Power Corporation claimed that it was only liable to pay for right of way at 10% of the market value under Section 3-A of Republic Act No. 6395,[14] as amended.[15]

On September 20, 1999, Spouses Asoque filed before the Regional Trial Court of Calbayog City a Complaint[16] for payment of just compensation and damages against the National Power Corporation. The case was docketed as Civil Case No. 737 and was raffled to Branch 31.

In its Answer[17] dated February 7, 2000, the National Power Corporation denied Spouses Asoque's claims that it had illegally utilized their property. It alleged that it entered the property with Spouses Asoque's consent, as shown by the acknowledgment receipt[18] for P9,897.00 as payment for damaged improvements and waiver of claims to improvements damaged.[19] By virtue of the acknowledgement receipt and the waiver, the National Power Corporation claimed that there was no more need for it to institute an expropriation proceeding.[20]

When Civil Case No. 737 was called for pre-trial on May 8, 2000, the case was ordered dismissed by the trial court due to the non-appearance of both parties and their counsel.[21] However, the case was reinstated after Spouses Asoque's counsel explained to the trial court the reason why he arrived late. The pre-trial of the case was reset to May 24, 2000.[22]

On May 24, 2000, the trial court, noting the absence of the National Power Corporation and its counsel, allowed Spouses Asoque to present their evidence ex parte before a court-appointed Commissioner. It simultaneously dismissed the National Power Corporation's counterclaim.[23]

On June 6, 2000, the trial court denied National Power Corporation's Urgent Manifestation and Motion to Reset Pre-trial, finding it to have been filed out of time and also moot and academic.[24] National Power Corporation's subsequent Motion for Reconsideration was denied in the trial court's Order dated June 21, 2000.[25]

"On June 22, July 24[,] and August 28, 2000, Spouses Asoque presented evidence ex parte before Atty. Ferdinand S. Arpon, Branch Clerk of Court, who was appointed Commissioner by the trial court."[26] Spouses Asoque then filed their Formal Offer of Documentary Exhibits[27] on September 6, 2000, to which the National Power Corporation filed its Comment/Objection[28] on October 13, 2000, citing the inadmissibility of the exhibits presented.[29]

On July 20, 2001, the Commissioner submitted to the trial court his Commissioner's Report dated July 19, 2001.[30] He recommended that the fair market value of the land be placed at P800.00 per square meter and that the schedule of prevailing market value of the trees, plants, and crops prepared by the Office of the Provincial Agriculturist, Catbalogan, Samar be adopted to compute the amount of compensation for the damaged improvements.[31]

On August 21, 2001, the trial court received the National Power Corporation's Comment/Opposition to Commissioner's Report, to which Spouses Asoque filed their Rejoinder on September 20, 2001.[32]

The National Power Corporation and Spouses Asoque filed their respective memoranda on February 5, 2002 and April 1, 2002. Thereafter, the case was deemed submitted for decision.[33]

On June 25, 2002, the Regional Trial Court rendered the Decision[34] in favor of Spouses Asoque and ordered the National Power Corporation to pay them the amounts of:

(1)

P3,481,600.00 as just compensation of the land containing an area of 4,352 square meters at P800.00 per square meter, with legal interest from November 1995 until fully paid; and

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(2)

P158,369.00 as compensation for the improvements on the land, with interest at the legal rate from November 1995 until fully paid.

Aggrieved, the National Power Corporation filed an appeal before the Court of Appeals.[35]

The Court of Appeals denied[36] the National Power Corporation's appeal in its Decision dated November 21, 2005. It affirmed with modification the Regional Trial Court Decision by deleting the amount of P158,369.00 as compensation for the damaged improvements for lack of legal and factual basis.[37]

The Court of Appeals found no impropriety on the part of the Regional Trial Court in allowing Spouses Asoque to present their evidence ex parte and in appointing the Branch Clerk of Court as Commissioner to receive Spouses Asoque's evidence ex parte.[38] It also found no irregularity in the trial court's adoption of the Commissioner's report/recommendation, which was found to be comprehensive and supported by evidence.[39]

Rejecting the National Power Corporation's stance that only an easement of right of way was acquired at 10% of the market value under Section 3-A of Republic Act No. 6395, the Court of Appeals ruled that the determination of just compensation is a judicial function and cannot be diminished by Republic Act No. 6395, as amended.[40]

Finally, the Court of Appeals found that Spouses Asoque have already been properly compensated for the damaged improvements per disbursement vouchers in the total amount of P17,133.50, and Spouses Asoque failed to present competent proof that they were entitled to an additional award of actual damages.[41]

The National Power Corporation moved for reconsideration, but the Motion was denied in the Resolution dated May 3, 2006.

Hence, petitioner National Power Corporation filed the present Petition, assigning the following errors purportedly committed by the appellate court:

> [1] The appellate court erred in affirming respondents' presentation of evidence ex parte[;]
>
> [2] The appellate court erred in affirming the trial court's appointment of a commissioner, and validating the proceedings he conducted[;]
>
> [3] The appellate court erred in affirming the trial court's directive to petitioner NPC to compensate respondents for the value of the land notwithstanding that only an easement thereon was acquired[;] [and]
>
> [4] Assuming that petitioner NPC is liable to pay just compensation for the subject property and the improvements thereon, the trial court nonetheless erred in the determination of the values thereof.[42]

This Court outright denied the Petition for lack of a verified statement of material date of filing of the Motion for Reconsideration of the assailed judgment under Rule 45, Sections 4(b) and 5, in relation to Rule 56, Section 5(d).[43] However, on petitioner's Motion for Reconsideration,[44] this Court reinstated[45] the Petition and required respondents to comment.

Respondents Spouses Margarito and Tarcinia Asoque filed their Comments[46] on October 25, 2006, and petitioner filed its Reply[47] on April 17, 2007. Pursuant to this Court's Resolution[48] dated June 25, 2007, petitioner and respondents filed their respective memoranda on December 14, 2007[49] and November 29, 2007.[50]

On February 11, 2008, this Court noted the memoranda of the parties.[51]

Petitioner contends that it was not given a reasonable opportunity to be heard, which is the essence of due

process.[52] Only a very short notice was given to its counsel to attend the pre-trial, even though petitioner's lawyers were based in Cebu.[53] In contrast, respondents' counsel held office in Catbalogan City, where the trial court sits.[54]

The May 24, 2000 pre-trial setting was allegedly too close to May 8, 2000, the date of the Order that set it, as to afford petitioner a reasonable opportunity to make arrangements for it.[55] The May 8, 2000 Order, which was served by registered mail, was received by petitioner only on May 22, 2000, just two (2) days before the pre-trial on May 24, 2000.[56] By then, both of petitioner's lawyers were out of town (one was in Manila and the other was in San Isidro, Northern Samar) on official business.[57] Petitioner contends that despite having been informed through the Urgent Manifestation and Motion to Reset Pre-trial dated May 24, 2000 and the Motion for Reconsideration dated June 8, 2000 of the reason for the failure of petitioner's counsel to appear at the May 24, 2000 pre-trial, the trial court refused to reconsider its default order; thus, the trial court deprived petitioner of its right to due process.[58]

Petitioner further argues that the trial court's appointment of a commissioner and the latter's appraisal of the fair market value of the property and the improvements made were defective and ultra vires.[59] It contends that Rule 18, Section 2(f) of the Rules of Court does not give the Commissioner such authority but merely allows him to assist in defining the issues to be resolved during the trial.[60] Petitioner also points out that the May 8, 2000 Order merely designated a commissioner to receive respondents' evidence and nothing more.[61] There is likewise no showing that the Commissioner took an oath before performing his function, as required by the Rules.[62]

As to the third and fourth assigned errors, petitioner claims that it is liable to pay only an easement fee under Section 3-A of its Charter, which is computed as 10% of the fair market value of the affected portion of respondents' land based on the valuation (P3.31 per square meter) specified in Tax Declaration No. 96-03023-00104.[63] Petitioner contends that the three (3) expropriation cases decided in 1997 by other branches of the Regional Trial Court of Catbalogan City, which were cited by the trial court in adopting the Commissioner's recommendation, were not reliable bases for determining the fair market value of respondents' property. This is because the parcels of land in the three (3) expropriation cases were located in other barangays of Calbayog City and there is no showing that the decisions therein have attained finality.[64] Finally, petitioner submits that the City Assessor's valuation of the subject property appearing in Tax Declaration No. 96-03023-00104 should prevail over that determined by the Commissioner—the Branch Clerk of Court—who does not have the expertise or competence to conduct property appraisals as required under Rule 67, Section 5.[65]

Respondents aver that the trial court was justified in allowing them to present evidence ex parte because (1) petitioner and its counsel failed to appear at the pre-trial on May 24, 2000; and (2) petitioner's Urgent Manifestation and Motion to postpone the pre-trial setting on May 24, 2000 was filed late.[66] They add that due process was satisfied in the court a quo as petitioner was afforded the fair and reasonable opportunity to defend its side and to move for the reconsideration of the trial court ruling.[67]

As to the appointment of the Branch Clerk of Court as Commissioner, respondents aver that this was proper and sanctioned by the Rules; that the Commissioner's preliminary determination of just compensation was merely recommendatory and did not make the ex parte proceedings invalid; and that the final determination of the amount of just compensation still rests on the trial judge.[68]

Lastly, respondents contend that Section 3-A of Republic Act No. 6395 cannot defeat the trial court's determination of the just compensation of their property; that the determination of just compensation is a judicial function; and that it has been ruled in previous cases that the acquisition of right-of-way easement is a taking

under the power of eminent domain and the owner is entitled to the money equivalent of the property expropriated.[69]

The issues for resolution are:

First, whether petitioner was deprived of due process when respondents were allowed to present evidence ex parte;

Second, whether the appraisal of the property was valid and the court-appointed Commissioner exceeded his authority when he conducted an appraisal of the property and recommended a valuation for just compensation;

Third, whether petitioner should be made to pay simple easement fee or full compensation for the land traversed by its transmission lines; and

Lastly, whether the trial court erred in its determination of the amount of just compensation to be paid to respondents.

The Petition lacks merit.

I

The Regional Trial Court did not err in allowing respondents to present their evidence ex parte. The action of the trial court is expressly allowed under Rule 18, Section 5 of the 1997 Rules of Civil Procedure. Section 5 provides that if it is the defendant who fails to appear, then the plaintiff may be allowed "to present his evidence ex parte and the court to render judgment on the basis thereof." Petitioner's stance that it was deprived of due process because it was not given the reasonable opportunity to attend the second pre-trial setting is likewise untenable.

Petitioner and its counsel were absent during the first pre-trial setting on May 8, 2000. Respondents' counsel attended, although he was late. Had petitioner and its counsel appeared on the first setting, they would have been reasonably notified then and there of the second pre-trial resetting on May 24, 2000 and would have had the opportunity to ask for a later date. Nonetheless, petitioner's counsel should have tried to inquire from the court the next schedule of the pre-trial.

Attendance by the party and its counsel during a pre-trial conference is mandatory as expressly stated under Rule 18, Section 4 of the 1997 Rules of Civil Procedure.[70] Petitioner alleges that it filed a motion for postponement of the first pre-trial setting. This notwithstanding, it was still its duty to appear at the pre-trial first set on May 8, 2000. A motion for postponement should never be presumed to be granted.[71]

Petitioner does not refute respondents' argument that its Urgent Manifestation and Motion, although dated May 24, 2000, was filed only one (1) day after the scheduled pre-trial sought to be postponed, on May 25, 2000. The trial court was, therefore, justified in denying petitioner's motion for postponement for having been filed out of time. A motion for postponement should be filed on or before the lapse of the day sought to be postponed.[72] In any case, "the matter of postponement of a hearing is addressed to the sound discretion of the court [and] unless there is a grave abuse of discretion in the exercise thereof the same should not be disturbed on review."[73]

Petitioner's counsel received the Regional Trial Court Order resetting the pre-trial to May 24, 2000 on May 22, 2000. Assuming its counsel was unable to appear at the second pre-trial setting, petitioner could and should have sent a representative on May 24, 2000 to ask for postponement of the second pre-trial setting. During the second pre-trial setting, it was not only petitioner's counsel who failed to appear, but petitioner as well.

Under the circumstances, petitioner cannot claim that it was denied due process. "Parties are presumed to have known the governing rules and the consequences for the violation of such rules."[74] Moreover, the essence of

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due process is an opportunity to be heard. Petitioner was given that opportunity. Yet, it failed to appear at the two (2) pre-trial settings. A pre-trial cannot be taken for granted for it serves a vital objective: the simplification and expedition of the trial, if not its dispensation. Non-appearance of a party may only be excused for a valid cause. We see none in this case.

In Air Philippines Corporation v. International Business Aviation Services Philippines, Inc.,[75] the petitioner and its counsel did not appear during the scheduled pre-trials and did not file a pre-trial brief even after filing a motion to extend the date for filing. Hence, the respondent was allowed to adduce its evidence ex parte. The petitioner moved for reconsideration, but the motion was denied. After the ex parte presentation of the respondent's evidence, the trial court rendered a judgment in favor of the respondent. The petitioner moved for new trial arguing that it was deprived of its day in court due to the gross negligence of its counsel, but the trial court denied the motion. Affirming the trial court, this Count ruled that the petitioner and its counsel's lapses showed a plain disregard of the duty imposed by law. Ruling that there was no denial of due process, this Court held:

> "The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense." Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course," "there is no denial of procedural due process." Petitioner has been given its chance, and after being declared in default, judgment has not been automatically "rendered in favor of the non-defaulting party." Rather, judgment was made only after carefully weighing the evidence presented. Substantive and adjective laws do complement each other "in the just and speedy resolution of the dispute between the parties."[76] (Citations omitted)

Similarly, petitioner in this case was not deprived of its day in court. Petitioner was able to file a Motion for Reconsideration, participate in further proceedings, and was allowed to submit its objections to respondents' evidence and to the Commissioner's recommendation before the trial court rendered judgment. It must, therefore, bear the consequences of its lapses.

II

On the second issue, we likewise find petitioner's arguments untenable.

The procedure of designating the clerk of court as commissioner to receive and report evidence to the court is likewise sanctioned by Rule 32, Sections 2 and 3 of the 1997 Rules of Civil Procedure. Section 3 of the same Rule, speaking of the authority that may be granted to a Commissioner, provides:

> RULE 32
> Trial by Commissioner
>
> . . . .
>
> SEC. 3. Order of reference; powers of the commissioner. — When a reference is made, the clerk shall forthwith furnish the commissioner with a copy of the order of reference. The order may specify or limit the powers of the commissioner, and may direct him to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only, and may fix the date for beginning and closing the hearings and for the filing of his report. Subject to the specifications and limitations stated in the order, the commissioner has and shall exercise the power to regulate the proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may issue subpoenas and subpoenas duces tecum, swear witnesses, and unless otherwise provided in the order of reference, he may rule upon the admissibility of evidence. The trial or hearing before him shall proceed in all respects as it would if held before the court.

Furthermore, after the hearing before the Commissioner, the Commissioner must file a written report, which may

contain his or her factual findings and conclusions of law:

> RULE 32
> Trial by Commissioner
>
> . . . .
>
> SEC. 9. Report of commissioner. - Upon the completion of the trial or hearing or proceeding before the commissioner, he shall file with the court his report in writing upon the matters submitted to him by the order of reference. When his powers are not specified or limited, he shall set forth his findings of fact and conclusions of law in his report. He shall attach thereto all exhibits, affidavits, depositions, papers and the transcript, if any, of the testimonial evidence presented before him.

With respect to the proceedings in the court a quo, the Court of Appeals observed that:

> The report of the commissioner shows clearly that he received and evaluated [respondents'] evidence which were adduced ex parte. His preliminary determination of the just compensation of the property [in] issue would not necessarily render invalid the ex parte proceedings conducted by him. The valuations suggested by the commissioner as just compensation for [respondents'] land that was utilized by [petitioner] were merely recommendatory. The final determination of just compensation was left to the court a quo as it rests within the exclusive domain of the latter. Simply stated, the court a quo was still at liberty to reject or adopt the recommendations of the commissioner.[77] (Emphasis in the original)

Hence, absent any express limitation in the order of reference, Branch Clerk of Court Arty. Ferdinand S. Arpon, as the court-appointed Commissioner, may make factual findings and recommendations on the valuation of the property. Indeed, the Commissioner's recommendation could have been necessarily rejected had it been an ultra vires act.

Besides, the proceedings before the Regional Trial Court were not for expropriation—for which petitioner itself claims that there is no need—but were for recovery of just compensation and damages initiated by respondents. Hence, Rule 67, Section 5 on the ascertainment of the just compensation to be paid was no longer applicable. A trial before commissioners, for instance, was dispensable.[78]

In Republic of the Philippines v. Court of Appeals,[79] the National Irrigation Administration took possession of the property without the benefit of expropriation proceedings. The property owner subsequently filed a case for recovery of possession or its value and damages. This Court held that Rule 67 presupposes a prior filing of a complaint by the expropriator for eminent domain with the appropriate court. If no such complaint is filed, the expropriator is considered to have violated procedural requirements and, hence, waived the usual procedure prescribed in Rule 67. This includes the appointment of commissioners to ascertain just compensation, thus:

> 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[.]
>
> . . . .
>
> Rule 67, however, presupposes that NIA exercised its right of eminent domain by filing a complaint for that purpose before the appropriate court. Judicial determination of the propriety of the exercise of the power of eminent domain and the just compensation for the subject property then follows. 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.
>
> Respondent was not given these opportunities, as NIA did not observe the procedure in Rule 67. Worse, NIA

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> refused to pay respondent just compensation. The seizure of ones 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. 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, 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.

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. Respondents' 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.[80] (Emphasis in the original, citations omitted)

We hold that the non-appointment of three (3) Commissioners in the court a quo does not render infirm the entire proceedings. Neither do we find improper the trial court's appointment of the Branch Clerk of Court as Commissioner to receive and report on respondents' evidence. The trial court is not bound by the Commissioner's recommended valuation of the property. It still has the discretion on whether to adopt the Commissioner's recommendation or to make its own independent valuation as gathered from the evidence reported by the Commissioner.

III

Petitioner is liable to pay respondents just compensation and not merely an easement fee on the basis that its acquisition of a right-of-way easement over the portion of respondents' land was a taking under the power of eminent domain.

While expropriation normally involves a taking of title to and possession of the property, an easement of right of way on a private property can be considered a taking under eminent domain under certain conditions. In Republic v. PLDT:[81]

> 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.[82]

There is taking in the context of the state's power of eminent domain when the following elements are present:

(1)

The expropriator enters a private property;

(2)

The entrance into the private property is indefinite or permanent;

(3)

There is color of legal authority in the entry into the property;

(4)

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The property is devoted to public use or purpose; and

(5)

The use of property for public use removed from the owner all beneficial enjoyment of the property.[83]

A right-of-way easement or burden becomes a "taking" under eminent domain when there is material impairment of the value of the property or prevention of the ordinary uses of the property for an indefinite period.[84] The intrusion into the property must be so immediate and direct as to subtract from the owner's full enjoyment of the property and to limit his or her exploitation of it.

In Republic v. Andaya,[85] the enforcement by the Republic of its legal easement on Andaya's property for concrete levees and floodwalls would render the remaining property unusable and uninhabitable. This Court held that there was a taking of the remaining area of Andaya's property:

> We are, however, unable to sustain the Republic's argument that it is not liable to pay consequential damages if in enforcing the legal easement on Andaya's property, the remaining area would be rendered unusable and uninhabitable. "Taking," in the exercise of the power of eminent domain, 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. Using this standard, there was undoubtedly a taking of the remaining area of Andaya's property. True, no burden was imposed thereon and Andaya still retained title and possession of the property. But, as correctly observed by the Board and affirmed by the courts a quo, the nature and the effect of the Jloodwalls would deprive Andaya of the normal use of the remaining areas. It would prevent ingress and egress to the property and turn it into a catch basin for the floodwaters coming from the Agusan River.[86] (Emphasis supplied, citations omitted)

National Power Corporation v. Heirs of Sangkay[87] held that the National Power Corporation's surreptitious construction of a tunnel underneath the respondents' land adversely affected the respondent's rights and interests. This is because the National Power Corporation's subterranean intervention prevented the respondents from introducing any developments on the surface and from disposing of the land or any portion of it. Hence, there was a taking of the land as to entitle the owners to just compensation:

> We agree with both the RTC and the CA that there was a full taking on the part of NPC, notwithstanding that the owners were not completely and actually dispossessed. It is settled that the taking of private property for public use, to be compensable, need not be an actual physical taking or appropriation. Indeed, the expropriator's action may be short of acquisition of title, physical possession, or occupancy but may still amount to a taking. Compensable taking includes destruction, restriction, diminution, or interruption of the rights of ownership or of the common and necessary use and enjoyment of the property in a lawful manner, lessening or destroying its value. It is neither necessary that the owner be wholly deprived of the use of his property, nor material whether the property is removed from the possession of the owner, or in any respect changes hands.[88] (Citations omitted)

The right-of-way easement resulting in a limitation on property rights over the land traversed by transmission lines also falls within the ambit of the term "expropriation."[89]

In National Power Corporation v. Spouses Gutierrez,[90] the petitioner argued that it should only be made to pay easement fees instead of the full market value of the land traversed by its transmission lines. In striking down the petitioner's argument and ruling that the property owners were entitled to the full market value of the land in question, the Court ruled that:

> 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[.]
>
> . . . .
>
> 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.[91]

In National Power Corporation v. Judge Paderanga,[92] despite the National Power Corporation's protestation that the traversed land could still be used for agricultural purposes, subject only to its easement, this Court nevertheless held that the right-of-way easement was a taking under the power of eminent domain:

> From the Commissioners Report chronicling the following findings:
>
> . . . .
>
> IMPROVEMENTS AFFECTED
>
> Per ocular inspection made on lot own[ed] 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.
> 1. 55 coco trees productive
>
> 2. 10 mango trees productive
>
> 3. 30 cacao trees productive
>
> 4. 110 bananas
>
> 5. 400 ipil-ipil trees

. . . .

it cannot be gainsaid that NPCs 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 occupants' life and limb.[93]

In National Power Corporation v. Tiangco:[94]

> While the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property, no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of the condemned property, without loss of title and possession. However, if the easement is intended to perpetually or indefinitely deprive the owner of his proprietary rights through the imposition of conditions that affect the ordinary use, free enjoyment and disposal of the property or through restrictions and limitations that are inconsistent with the exercise of the attributes of ownership, or when the introduction of structures or objects which, by their nature, create or increase the probability of injury, death upon or destruction of life and property found on the land is necessary, then the owner should be compensated

> for the monetary equivalent of the land, in accordance with our ruling in NPC v. Manubay Agro-Industrial:
>
> . . . .
>
> The evidence suggests that NPCs transmission line project that traverses the respondents' property is perpetual, or at least indefinite, in nature. Moreover, not to be discounted is the fact that the high-tension current to be conveyed through said transmission lines evidently poses a danger to life and limb; injury, death or destruction to life and property within the vicinity. As the Court held in NPC v. Chiong, it is not improper to assume that NPC will erect structures for its transmission lines within the property. What is sought to be expropriated in this case is, at its longest extent, 326.34 meters, and through it may be built several structures, not simply one[.][95] (Emphasis supplied, citations omitted)

Hence, due to the nature of the easement, which will deprive the normal use of the land for an indefinite period and expose the property owners' lives and limbs to danger, just compensation must be based on the full market value of the affected property.[96]

Section 3(a) of Republic Act No. 6395, as amended, states that only 10% of the market value of the property is due the owner of the property subject to a right-of-way easement. However, this rule is not binding on the Court. Well-settled is the rule that the determination of just compensation for property taken in expropriation is a judicial prerogative.[97] Such discretion cannot be curtailed by legislation.

In Export Processing Zone Authority v. Dulay:[98]

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[99] (Emphasis supplied)

Therefore, the Regional Trial Court was correct when it adjudged the National Power Corporation liable to pay the value of the 4,352-square-meter portion of respondents' land that was used for its transmission line project.

IV

As regards the amount of just compensation, factual issues pertaining to the valuation of the expropriated property are generally beyond the pale of review under a Rule 45 petition.[100] Factual findings of the trial and appellate courts will not be disturbed by this Court unless they are grounded entirely on speculations, surmises, or conjectures, among others,[101] which do not obtain in this case.

Just compensation has been defined as the "fair and fall equivalent of the loss."[102] In National Power Corporation v. YCLA Sugar Development Corporation:[103]

> 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. The constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.[104]

The value and character of the land at the time it was taken by government are the criteria for determining just compensation.[105] "All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must thus be considered."[106]

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Some factors that have been previously considered by the courts were acquisition cost, current value of like properties, its actual or potential uses, its size, shape, and location, and the tax declarations on the property.[107] In this regard, the standards enumerated in statutes such as Section 5[108] of Republic Act No. 8974[109] are merely recommendatory, and courts are not bound to consider all of them.[110]

In this case, the Branch Clerk of Court as Commissioner reported that an inquiry with the Register of Deeds, Calbayog City involving transfer of realties from January 1998 to December 2000 showed that no transaction involved a parcel of land located at Barangay Bugtong or its adjacent barangays of Tinaplacan and Caglanipao Sur.[111] On the other hand, he found Exhibits F and G not sufficient to prove respondents' claim that their land was worth P1,000.00 per square meter as the properties in Exhibits F and G were located several kilometers away from respondents' land and were of a different classification.[112]

Furthermore, the Branch Clerk of Court as Commissioner stated that one high-ranking personnel of the City Assessor's Office of Calbayog observed that the market value of respondents' land in the Tax Declaration is a very low appraisal.[113] As such, when he made the recommendation, he considered other factors such as the accessibility of the property, availability of basic services in the area, land valuation trend in the City of Calbayog (which was somewhere between P600.00 and P3,000.00 per square meter),[114] and interviews with some landowners of the adjacent lots stating that they would not sell their lands lower than P500.00 per square meter.[115]

The Regional Trial Court found the amount recommended by the Commissioner as just compensation for the property to be reasonable, thus:

> [T]he Court finds the amount recommended by the commissioner as just compensation of the property expropriated by defendant to be reasonable and fairly based on the evidence adduced by plaintiff. Exhibits "F" and series, "G" and series, and "H" and series show the comparative value of the lands in Western Samar. The Court takes note that in the three cases of expropriation involving lands in Catbalogan, Samar, the National Power Corporation was adjudged to pay the value of the properties from Php2,000.00 to Php2,200.00 per square meter, and these were cases decided in 1997. Likewise, this Court takes cognizance of the fact that the commissioner may avail or consider certain factors in determining the fair market value of the property apart from the preferred documentary evidences. Thus, the factors taken into account by the commissioner in arriving at the recommended fair market value of the property at Php800.00 per square meter, aside from the evidence available, were valid criteria or gauge in the determination of the just compensation of the subject property.[116]

The determination of just compensation being a judicial function, we find no compelling reason to disturb the valuation set by the Regional Trial Court and approved by the Court of Appeals. It has not been sufficiently shown to be grossly exorbitant or otherwise unjustified.[117]

WHEREFORE, the Petition is DENIED. The November 21, 2005 Decision of the Court of Appeals in CA-G.R CV No. 76313 is AFFIRMED. Petitioner National Power Corporation is ORDERED to pay respondents Spouses Margarito and Tarcinia Asoque the amount of P3,481,600.00 as just compensation for the 4,352-square-meter property, with legal interest at 6% per annum from November 1995 until fully paid. Upon petitioner's payment of the full amount, respondents are ORDERED to execute a Deed of Conveyance of the 4,352-square-meter property in favor of petitioner.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Mendoza, JJ., concur.

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[1] CONST., art. III, sec. 9 provides:

SECTION 9. Private property shall not be taken for public use without just compensation.

[2] Rollo, pp. 7-31.

[3] Id. at 32-42. The Decision was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. of the Twentieth Division, Court of Appeals, Cebu.

[4] Id. at 43-44. The Resolution was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. of the Twentieth Division, Court of Appeals, Cebu.

[5] Id. at 41.

[6] Id. at 44.

[7] RTC records, p. 114.

[8] Id. at 2, Complaint.

[9] Id.

[10] Id.

[11] Rollo, p. 33.

[12] Id.

[13] RTC records, p. 2.

[14] Republic Act No. 6395 is otherwise known as the Charter of the National Power Corporation. Rep. Act No. 6395, as amended by Pres. Decree No. 938, sec. 3-A provides:

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 portion thereof will be needed for the projects or works, such land or portion thereof as necessaryshall 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 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 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. (Emphasis supplied)

[15] Rollo, p. 106.

[16] RTC records, pp. 1-5.

[17] Id. at 29-34.

[18] Id. at 35.

[19] Id. at 36.

[20] Id. at 32.

[21] Rollo, p. 34.

[22] Id. at 111.

[23] Id. at 111-112.

[24] Id. at 112.

[25] Id.

[26] Id.

[27] RTC records, pp. 108-113.

[28] Id. at 150-151.

[29] Rollo, pp. 112-114.

[30] RTC records, pp. 156-164.

[31] Rollo, pp. 114-115.

[32] Id. at 115.

[33] Id. at 115-116.

[34] RTC records, pp. 197-213. The Decision was penned by Acting Presiding Judge Rosario B. Bandal of Branch 31, Regional Trial Court, Calbayog City.

[35] Rollo,p. 117.

[36] Id. at 32-41.

[37] Id. at 41.

[38] Id. at 36-37.

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[39] Id. at 37-38.

[40] Id. at 38-40.

[41] Id. at 40-41.

[42] Id. at 19.

[43] Id. at 47.

[44] Id. at 48-54.

[45] Id. at 56.

[46] Id. at 57-66.

[47] Id. at 81-87.

[48] Id. at 88-89.

[49] Id. at 104-128.

[50] Id. at 130-143.

[51] Id. at 148.

[52] Id. at 118.

[53] Id. at 119.

[54] Id.

[55] Id. at 119.

[56] Id. at 119-120.

[57] Id. at 120.

[58] Id.

[59] Id. at 121-122.

[60] Id. at 121.

[61] Id. at 122.

[62] Id.

[63] Id. at 123-124.

[64] Id. at 125-126.

[65] Id. at 124-125.

[66] Id. at 136-140.

[67] Id.

[68] Id. at 140-142.

[69] Id.

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[70] RULES OF COURT, Rule 18, sec. 4 provides:

SECTION 4. Appearance of Parties. — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

[71] In re Presbitero, Sr. v. Court of Appeals, 291 Phil. 387, 395-396 (1993) [Per J. Davide, Jr., Third Division]. See also Heirs ofGayares v. Pacific Asia Overseas Shipping Corp., 691 Phil. 46, 55 (2012) [Per J. Del Castillo, First Division] citing Ramos v. Dajoyag, Jr., 428 Phil. 267, 278 (2002) [Per J. Mendoza, Second Division].

[72] In Linis v. Roviro, 61 Phil. 137, 139 (1935) [Per J. Imperial, En Banc], the trial court denied the motion for postponement of a hearing on the ground that it was presented out of time and the reason alleged therein was insufficient. This Court affirmed the trial court, thus: "The postponement of the hearing of a case, which had been previously set and of which the parties and their attorneys had already been notified, is not an absolute right of the litigants nor of their attorneys. The granting of a motion for postponement depends entirely upon the discretion of the courts, in the exercise of which all the attending circumstances and the rights of all the parties appearing therein should be taken into account. If the postponement would manifestly prejudice some of the parties, or, if the motion for postponement had been presented too late to prevent them from notifying their witnesses not to appear, thus causing them considerable trouble and expense, as probably would have happened in the present case, it is the duty of the courts to deny it."

In Macabingkil v. People's Homesite and Housing Corp., 164 Phil. 328, 341 (1976) [Per J. Antonio, Second Division]: "These provisions of the Rules of Court prescribing the time within which certain acts must he done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial businesses. The time can be extended only if a motion for extension is filed within the time or period provided therefor."

[73] Belstar Transportation, Inc. v. Board of Transportation, 260 Phil. 219, 223 (1990) [Per J. Gancayco, First Division].

[74] Paredes v. Verano, 535 Phil. 274, 285 (2006) [Per J. Tinga, Third Division].

[75] 481 Phil. 366 (2004) [Per J. Panganiban, Third Division].

[76] Id. at 386.

[77] Rollo, p. 37.

[78] National Power Corporation v. Sta. Low vda. De Capin, et al., 590 Phil. 665, 680 (2008) [Per J. Chico-Nazario, Third Division]; National Power Corporation v. Bongbong, 549 Phil. 93, 109 (2007) [Per J. Callejo, Sr., Third Division]; and National Power Corporation v. Court of Appeals and Antonino Pobre, 479 Phil. 850, 867 (2004) [Per J. Carpio, First Division].

[79] 494 Phil. 494 (2005) [Per J. Carpio, First Division].

[80] Id. at 504-506.

[81] 136 Phil. 20 (1969) [Per J. J.B.L. Reyes, En Banc].

[82] Id. at 29-30.

[83] Republic v. Vda. de Castellvi, et al., 157 Phil. 329, 345-347 (1974) [Per J. Zaldivar, En Banc].

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[84] Heirs of Pidacan v. ATO, 552 Phil. 48, 55-56 (2007) [Per J. Quisumbing, Second Division]; Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun, 520 Phil. 457, 480-481 (2006) [Per J. Chico-Nazario, First Division].

[85] 552 Phil. 40 (2007) [Per J. Quisumbing, Second Division].

[86] Id. at 45-46.

[87] 671 Phil. 569 (2011) [Per J. Bersamin, First Division].

[88] Id. at 595-596.

[89] See National Power Corporation v. Suarez, 589 Phil. 219 (2008) [Per J. Carpio-Morales, Second Division]; National Power Corporation v. Tiangco, 543 Phil. 637 (2007) [Per J. Garcia, First Division]; National Power Corp. v. Manubay Agro-Industrial Development Corp., 480 Phil. 470 (2004) [Per J. Panganiban, Third Division]; Camarines Norte Electric Cooperative, Inc. v. Court of Appeals, 398 Phil. 886 (2000) [Per J. Pardo, First Division].

[90] 271 Phil. 1 (1991) [Per J. Bidin, Third Division].

[91] Id. at 6-7.

[92] 502 Phil. 722 (2005) [Per J. Carpio Morales, Third Division].

[93] Id. at 735-736.

[94] 543 Phil. 637 (2007) [Per J. Garcia, First Division]. National Power Corporation v. Tiangco was also cited in Spouses Cabahug v. National Power Corporation, 702 Phil. 597, 606 (2013) [Per J. Perez, Second Division].

[95] Id. at 649-650.

[96] National Power Corporation v. Spouses Saludares, 686 Phil. 967, 976-978 (2012) [Per J. Sereno, Second Division]; National Power Corporation v. Tuazon, 668 Phil. 301, 314 (2011) [Per J. Brion, Second Division]; National Power Corporation v. Co, 598 Phil. 58, 73 (2009) [Per J. Tinga, Second Division]; National Power Corporation v. Bagui, 590 Phil. 429, 434 (2008) [Per J. Tinga, Second Division], citing National Power Corporation v. Manubay Agro-Industrial Development Corp., 480 Phil. 470, 480 (2004) [Per J. Panganiban, Third Division] and National Power Corporation v. Bongbong, 549 Phil. 93, 111 (2007) [Per J. Callejo, Sr., Third Division]; Natonal Power Corporation v. Tiangco, 543 Phil. 637, 648 (2007) [Per J. Garcia, First Division].

[97] National Power Corporation v. Spouses Rodolfo Zabala and Lilia Baylon, 702 Phil. 491, 499-500 (2013) [Per J. Del Castillo, Second Division] citing Land Bank of the Philippines v. Celada, 515 Phil. 467,477 (2006) [Per J. Ynares-Santiago, First Division].

[98] 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc].

[99] Id. at 326.

[100] Land Bank of the Philippines v. Spouses Costo, 700 Phil. 290, 300 (2012) [Per J. Peralta, Third Division].

[101] In Westmont Investment Corp. v. Francia, Jr., 678 Phil. 180, 191 (2011) [Per J. Mendoza, Third Division], jurisprudence recognize other exceptions, namely: "(2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when

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the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record."

[102] National Power Corporation v. Court of Appeals and Antonino Pobre, 479 Phil. 850 (2004) [Per J. Carpio, First Division].

[103] 723 Phil. 616 (2013) [Per J. Reyes, First Division].

[104] Id. at 623. See Republic v. Rural Bank ofKabacan, Inc., 680 Phil. 247, 256-257 (2012) [Per J. Sereno, Second Division].

[105] National Power Corporation v. Spouses Chiong, 452 Phil 649, 664 (2003) [Per J. Quisumbing, Second Division].

[106] National Power Corporation v. Suarez, 589 Phil. 219, 225 (2008) [Per J. Carpio Morales, Second Division]; National Power Corporation v. Manubay Agro-Industrial Development Corporation, 480 Phil. 470, 480 (2004) [Per J. Panganiban, Third Division].

[107] Republic v. Court of Appeals, 612 Phil. 965, 977 (2009) [Per J. Carpio, First Division]; Republic v. Ker & Company Ltd., 433 Phil. 70, 77 (2002) [Per J. Austria-Martinez, First Division].

[108] SECTION 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a)

The classification and use for which the property is suited;

(b)

The developmental costs for improving the land;

(c)

The value declared by the owners;

(d)

The current selling price of similar lands in the vicinity;

(e)

The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of the improvements thereon;

(f)

The size, shape or location, tax declaration and zonal valuation of the land;

(g)

The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h)

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Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

[109] An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes.

[110] Republic v. Heirs of Spouses Bautista, 702 Phil. 284, 298 (2013) [Per J. Del Castillo, Second Division].

[111] RTC records, pp. 160 and 163.

[112] Id. at 160.

[113] Id.

[114] Id. at 164.

[115] Id. at 161-162.

[116] RTC records, p. 210.

[117] National Power Corporation v. Spouses Chiong, 452 Phil. 649, 664 (2003) [Per J. Quisumbing, Second Division].

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