

NATIONAL POWER CORPORATION, PETITIONER, VS. SANTA LORO VDA. DE CAPIN AND SPS. JULITO QUIMCO AND GLORIA CAPIN, RESPONDENTS.*G.R. No. 175176. October 17, 2008*

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-175176/>**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to review, reverse, and set aside the Decision[1] dated 21 April 2006 and Resolution[2] dated 27 October 2006 of the Court of Appeals in CA-G.R. CV No. 73656. In its assailed Decision, the appellate court affirmed the Resolution[3] dated 16 April 2001, as modified by the Order[4] dated 24 August 2001, of the Regional Trial Court (RTC), 7[th] Judicial Region, Branch 25, Danao City, in Civil Case No. DNA-547, awarding in favor of herein respondents Santa Loro Vda. De Capin and spouses Julito Quimco and Gloria Capin (Spouses Quimco) damages, in the total amount P1,434,207.67 (at the rate of P448.33 per square meter), for the 3,199-square-meter portion of their lots taken by herein petitioner National Power Corporation (NAPOCOR). In its assailed Resolution, the appellate court denied petitioner's Motion for Reconsideration.

The present controversy arose from the following facts:

Petitioner is a government-owned and controlled corporation duly organized under Philippine laws and vested with the power of eminent domain by its Charter under Republic Act No. 6395,[5] as amended by Presidential Decree No. 938.[6] Pursuant to its 230 KV Leyte-Cebu Interconnection Project (Interconnection Project), petitioner expropriated several parcels of land in the Municipality of Carmen and City of Danao in the Province of Cebu, which will be traversed and affected by its transmission towers and lines.

Among the lots affected by the petitioner's Interconnection Project were those owned by the respondents located in Dawis Sur, Carmen, Cebu. Respondent Santa Loro Vda. De Capin's lot has an area of 16,193 square meters, covered by Tax Declaration No. 15-22196 (1994);[7] while respondent-Spouses Quimco's lot has an area of 3,298 square meters, covered by Tax Declaration No. 31376 (1996).[8] To be able to enter the said properties, petitioner obtained from each of the respondents Santa Loro Vda. De Capin and Spouses Quimco a "Permission to Enter for Construction of Transmission Line Project," dated 14 June 1994[9] and 11 December 1996,[10] respectively. The permits were signed by the respondents upon representation by the petitioner that it would pay them just compensation for the intrusion into their properties.

Thereafter, petitioner began to construct on respondents' properties its power lines and transmission towers, which were completed in 1996. Petitioner's Interconnection Project affected portions of respondents' properties, with a combined area of 3,199 square meters. Upon its completion of the construction of the power lines and transmission towers, petitioner imposed several restrictions upon the respondents on the use of their lands, which included the prohibition against planting or building anything higher than three meters below the area traversed by its transmission lines as the high tension electric current passing through said lines pose danger to life and limbs.

Additionally, respondent-Spouses Quimco, holder of a Small Scale Quarry Permit, Series of 1995, were also prohibited from continuing their quarry business near petitioner's transmission towers because of the great possibility that the quarry might weaken the foundation of the transmission towers. In other words, respondents lost substantial amount of income due to the restriction imposed on their properties by the petitioner.

Petitioner then paid respondents Santa Loro Vda. De Capin and Spouses Quimco the amounts of P8,015.90[11] and P5,350.49,[12] respectively, for the portions of their lots affected by the Interconnection Project. Only later did respondents discover that in comparison to the measly sums they were paid by petitioner, the other landowners within their area who resisted the expropriation of their properties in court or who entered into compromise agreements with the petitioner were paid by petitioner the amount of P448.30 to P450.00 per square meter as just compensation for the portions of their properties similarly affected by the petitioner's Interconnection Project.

Accordingly, respondents filed a Complaint[13] for Rescission of Agreement, Recovery of Possession of Parcels of Land, Removal of Tower and Transmission Lines, Damages and Other Reliefs, against the petitioner before the RTC, where it was docketed as Civil Case No. DNA-547.

Petitioner, in its Answer, countered that respondents' claim for compensation for the full value of their properties traversed by its transmission lines was repugnant to Section 3-A[14] of its Charter, according to which, petitioner is obligated only to pay the easement fee equivalent to 10% of the market value of the land as just compensation, plus the cost of damaged improvements.

During the Pre-trial Conference, the parties conceded that there was no dispute as to the material fact that petitioner had taken portions of respondents' lots, with a combined area of 3,199 square meters, for use in its Interconnection Project. They also agreed that the only issue for resolution by the RTC was the determination of the amount of just compensation due the respondents for the portions of their land taken by the petitioner. Thus, respondents assented that they would file a Motion for Summary Judgment.

On 4 September 2000, the RTC issued an Order[15] giving the respondents 30 days within which to file their Motion for Summary Judgment. The petitioner was also given 20 days from receipt of a copy of respondents' Motion for Summary Judgment to interpose or file its Opposition thereto.

In compliance with the 4 September 2000 Order of the RTC, respondents filed their Motion for Summary Judgment, with several documentary evidence and affidavits of witnesses attached, on 10 October 2000.

In an Order[16] dated 17 November 2000, the RTC gave petitioner a 15-day period from receipt of the said Order to file its Opposition to or Comment on respondents' Motion for Summary Judgment.

On 21 December 2000, petitioner filed a Motion for Extension of Time to File Comment on Motion for Summary Judgment. It averred that (1) it was not inclined to oppose respondents' Motion for Summary Judgment, except that the area of 3,199 square meters of respondents' lots alleged to have been traversed by petitioner's transmission lines was still being verified as to its correctness by its Right of Way Officers; and (2) upon confirmation that the area was correct, it would join respondents' Motion for Summary Judgment.[17] In an Order[18] dated 29 December 2000, the RTC granted petitioner's motion and gave it an extension of 15 days within which to file its Comment to respondents' Motion for Summary Judgment.

Despite the extension given the petitioner, it still failed to file its Comment. Hence, in an Order[19] dated 23 February 2001, the RTC deemed respondents' Motion for Summary Judgment submitted for resolution.

On 16 April 2001, the RTC rendered a Resolution in favor of the respondents, the decretal portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the [herein respondents], ordering the [herein petitioner] to pay damages in the amount of FOUR HUNDRED FORTY EIGHT & 33/100 PESOS (P448.33) PER SQUARE METER or the total amount of ONE MILLION FOUR HUNDRED THIRTY FOUR AND TWO HUNDRED SEVEN & 67/100 PESOS (P1,434,207.67) for the 3,199 square meters of [respondents'] lots taken by the [petitioner], with interest thereon at the rate of 14% per annum computed since 1996 when the [petitioner] took said portions from the [respondents].[20]

Petitioner filed a Motion for Reconsideration praying that the aforesaid Resolution of the RTC be set aside and the amount of just compensation be reduced to P25.00 per square meter. Petitioner also filed a Supplemental Motion for Reconsideration seeking the reduction of the interest rate imposed by the RTC from 14% per annum to 6% per annum.

Acting on petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration, the RTC issued an Order[21] dated 24 August 2001, affirming its Resolution dated 16 April 2001, with the modification that the imposable rate of interest was reduced to 6% per annum from the filing of the complaint, and 12% per annum from the time the judgment has become final and executory until fully satisfied. According to the dispositive portion of the RTC Order:

WHEREFORE, the resolution of this Court dated [16 April 2001] is hereby affirmed with modification that the imposable rate of interest of the monetary judgment in favor of [respondents] should be 6% per annum from the filing of the complaint and 12% per annum from the time the judgment has become final and executory until fully satisfied, using the amount adjudged as the actual base for the computation.[22]

Still refusing to accept the judgment of the RTC, petitioner appealed the 16 April 2001 Resolution and 24 August 2001 Order of the said trial court to the Court of Appeals. Petitioner's appeal was docketed as CA-G.R. CV No. 73656.

On 21 April 2006, the appellate court rendered a Decision affirming the Resolution dated 16 April 2001, as modified by the Order dated 24 August 2001, both by the RTC.

Petitioner moved for the reconsideration of the appellate court's Decision, but it was denied by the same court in a Resolution dated 27 October 2006.

Hence, petitioner filed the present Petition before this Court, raising the following issues:

- Whether or not the Court of Appeals committed reversible error in upholding the propriety of the trial court's resort to summary judgment in determining the amount of just compensation for the properties of respondents affected by petitioner's transmission line project.
- Whether or not the Court of Appeals committed reversible error in affirming the finding of the trial court that the total area of respondents' lands affected by petitioner's transmission line project is 3,199 square meters.
- Whether or not the Court of Appeals committed reversible error in ruling that the decision in Civil Case No. DNA-379 provides sufficient basis for fixing the fair market value of the affected properties of respondents at P448.33 per square meter.
- Whether or not the Court of Appeals committed reversible error in not ruling that under petitioner's Charter, R.A. No. 6395, as amended, respondents are only entitled to simple easement fees.[23]

Petitioner argues that although the Complaint filed by the respondents before the RTC was one for rescission of agreement and/or damages, it was subsequently transformed into one for "reversed eminent domain"[24] where the determination of the amount of just compensation was the issue. In fact, respondents' Motion for Summary Judgment focused only on the payment of just compensation. Resultantly, the RTC erred in resolving the

respondents' Complaint on the basis of the provisions of the Rules of Court on Summary Judgment. The rules on summary judgment apply only to ordinary taking of properties. Instead of granting respondents' Motion for Summary Judgment, the RTC should have appointed commissioners who would ascertain the amount of just compensation for the subject properties, pursuant to Section 5, Rule 67 of the Revised Rules of Court.[25] Thus, the determination of just compensation by the RTC based only on the pleadings submitted, was palpably void.

The Resolution dated 16 April 2001 of the RTC in Civil Case No. DNA-547, fixing the fair market value for the portions of respondents' lots affected by the Interconnection Project at P448.33 per square meter, is based on the Decision dated 25 May 1998 also of the RTC in Civil Case No. DNA-379;[26] which, petitioner contends, is based on another Decision dated 5 May 1998 of the same RTC in Civil Case No. DNA-373.[27] In its 5 May 1998 Decision in Civil Case No. DNA-373, the RTC considered the opinion values of the Committee on Appraisal in determining the fair market value of the properties involved therein. The said Decision, however, did not contain a description of the properties involved therein and their land classification at the time of the filing of the complaint and/or their taking. Therefore, the Decision dated 25 May 1998 in Civil Case No. DNA-379 did not provide sufficient basis for pegging the fair market value of respondents' properties at P448.33 per square meter in Civil Case No. DNA-547.

Petitioner maintains that the RTC did not discuss in its Resolution dated 16 April 2001 its factual and legal bases for fixing the amount of damages payable to respondents. Respondents likewise failed to demonstrate that their properties, at the time of their taking, were of the same classification as the properties belonging to other landowners which were similarly traversed by petitioner's Interconnection Project and for which petitioner paid more. Finally, petitioner insists that it only acquired an easement of right of way on respondents' properties for the construction of its transmission lines. The respondents still retained ownership of their properties despite the imposition of an easement of right of way thereon. Consequently, petitioner is liable only to pay respondents an easement fee, not exceeding 10% of the fair market value of the portions of their properties actually affected by the petitioner's Interconnection Project, in accordance with Section 3-A(b) of petitioner's Charter, as amended.

The Petition is bereft of merit.

Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in a trial. Even if the pleadings appear, on their face, to raise issues, summary judgment may still ensue as a matter of law if the affidavits, depositions and admissions show that such issues are not genuine. The presence or absence of a genuine issue as to any material fact determines, at bottom, the propriety of summary judgment.[28]

Sections 1 and 3, Rule 35 of the Revised Rules of Civil Procedure provide:

SECTION 1. Summary judgment for claimant. - A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

x x x x

SEC. 3. Motion and proceedings thereon. - The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Under the afore-quoted procedural rules, for a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Where, on the basis of the pleadings of a moving party, including documents appended thereto, no genuine issue as to a material fact exists, the burden to produce a genuine issue shifts to the opposing party. If the opposing party fails, the moving party is entitled to a summary judgment.[29]

A "genuine issue" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.[30]

In this case, during the Pre-trial Conference, petitioner already admitted that it had taken portions of respondents' lands for the construction of its power lines and transmission towers pursuant to its Interconnection Project. However, the parties could not agree on the amount of just compensation or damages that petitioner should pay respondents for the lands taken. Respondents insist that they be paid the full market value of the portions of their lots taken by the petitioner, while petitioner believed that it was only bound to pay respondents easement fees, which was equivalent to 10% of the market value of the respondents' lots as indicated in their tax declarations, pursuant to Section 3-A of petitioner's Charter. Evidently, based on the foregoing, what remained for the determination of the RTC was the proper amount of damages due the respondents for the portions of their lots taken by the petitioner.

Accordingly, respondents filed a Motion for Summary Judgment before the RTC, where they specifically alleged that:

"4. Portions of the above-described parcels of land with a total area of 3,199 square meters were affected by the aforesaid [petitioner's] 230 KV Leyte-Cebu Interconnection Project and were taken by [petitioner] in 1996, is shown by a Sketch Plan hereto attached as Annex C which is also made an integral part of this motion." [31] (Emphasis supplied.)

Petitioner, in turn, filed its Motion for Extension of Time to File Comment, which was granted by the RTC. In its Motion, petitioner stated that it was not inclined to oppose respondents' Motion for Summary Judgment, except that its officers were still verifying whether the area of respondents' lots traversed by petitioner's transmission lines was indeed 3,199 square meters; and the moment the area is confirmed to be correct, petitioner will join respondents' Motion for Summary Judgment. However, despite the ample opportunities given to petitioner by the RTC, it never filed any Opposition to or Comment on respondents' Motion for Summary Judgment. It did not submit to the RTC the results of its supposed verification of the area of respondents' lots actually traversed by its transmission lines. Petitioner only raised the issue on the area actually taken after the RTC had rendered summary judgment directing petitioner to pay damages for the 3,199 square meters it took from respondents.

As correctly and clearly ratiocinated by the Court of Appeals in its appealed Decision:

[Petitioner] did not present the alleged communication of its Project Manager or the sketch plans for the RTC's perusal despite the extension of time given by the court a quo. In view thereof, it is quite clear that the [petitioner] was given sufficient time to verify the area affected by [petitioner's] tower and transmission lines and to inform the court of the result thereof. Furthermore, the sketch plans [32] were not even signed by the

geodetic engineer who supposedly conducted the survey and its preparation which makes these documents of doubtful credibility. As such without any comment filed by the [petitioner] and without any evidence to the contrary, the court a quo correctly relied on the evidence submitted by the [respondents]. x x x. The [petitioner] cannot now raise any issue as to any material fact in the case at bar when through its own fault and inaction, it chose to remain silent when the motion for summary judgment was filed with the RTC. Such an actuation speaks of a dilatory tactic on the part of the [petitioner] in the payment of the just compensation due the [respondents].[33] (Emphasis supplied.)

In light of the foregoing, the issue on the area of respondents' lots actually affected by petitioner's Interconnection Project was not timely or validly raised as an issue before the RTC. Except for the amount of damages to which the respondents were entitled to as a matter of law, there was no other genuine issue as to any material fact involved in Civil Case No. DNA-547. Hence, the RTC was justified in resorting to summary judgment.

Equally futile is petitioner's insistence that respondents' Complaint is actually for "reversed eminent domain," which requires the appointment of commissioners for the determination of just compensation, as provided under Section 5, Rule 67 of the Revised Rules of Court, rather than the promulgation of a summary judgment.

It should be emphasized that the present case stemmed from a Complaint for Rescission of Agreement, Recovery of Possession of Parcels of Land, Removal of Tower and Transmission Lines, Damages and Other Reliefs filed by the respondents against the petitioner. It was an ordinary civil action for the rescission of respondents' agreement with petitioner, as well as recovery of the possession of the lots taken, for failure of petitioner to comply with its obligation to pay just compensation for the respondents' properties. Payment of just compensation or damages was an alternative remedy, akin to specific performance by the petitioner of its obligation under its agreement with respondents, which would prevent the rescission of the agreements altogether and the return of the possession of the properties to respondents. The parties, at the Pre-Trial Conference, implicitly agreed to pursue the remedy for payment of damages rather than rescission of the agreement. Clearly, the proceedings before the RTC were not for expropriation, but were for damages, to which Section 5, Rule 67 of the Revised Rules of Court is irrelevant.

Reference may be made to *National Power Corporation v. Court of Appeals*.^[34] In the said case, after therein petitioner NAPOCOR withdrew its second Petition for Expropriation, what was left for the trial court's determination was the counterclaim of therein private respondent Antonino Pobre, contained in his Motion to Dismiss, for damages. The Court ruled therein:

"In this case, NPC appropriated [private respondent's] Property without resort to expropriation proceedings. NPC dismissed its own complaint for the second expropriation. At no point did NPC institute expropriation proceedings for the lots outside the 5,554 square-meter portion subject of the second expropriation. The only issues that the trial court had to settle were the amount of just compensation and damages that NPC had to pay [private respondent].

This case ceased to be an action for expropriation when NPC dismissed its complaint for expropriation. Since this case has been reduced to a simple case of recovery of damages, the provisions of the Rules of Court on the ascertainment of the just compensation to be paid were no longer applicable. A trial before commissioners, for instance, was dispensable." (Emphasis supplied.)

Petitioner herein cannot hide behind the mantle of protection of procedural laws when it has so arbitrarily violated respondents' right to just compensation for their properties taken for public use.

Petitioner assured respondents that it will pay them just compensation for the portions of their lots needed for the Interconnection Project, on the basis of which respondents agreed in good faith to allow petitioner to already enter their properties and build thereon. Yet, instead of paying respondents just compensation for the portions of their

lots taken, they were paid negligible amounts as easements fees.

More lopsided is the fact that the other landowners within their area who resisted the taking of their properties were paid by petitioner way more than respondents who voluntarily dealt with petitioner. Petitioner had to bring some of the resisting landowners to court in expropriation proceedings where petitioner willingly paid just compensation for the said landowners' properties, as determined by a panel of commissioners. Petitioner entered into compromise agreements with the other resisting landowners in which it likewise paid just compensation for the latter's properties. There is no rhyme or reason why respondents were the only ones paid with easement fees, which were of much lesser values.

The Decision dated 25 May 1998 of the RTC in Civil Case No. DNA-379[35] provides sufficient basis for the same RTC in Civil Case No. DNA-547 to award just compensation to respondents, equivalent to the fair market value of their affected properties at a rate of P448.33 per square meter.

In its 25 May 1998 Decision in Civil Case No. DNA-379, the RTC therein ordered the petitioner to pay just compensation in the amount of P448.33 per square meter for the lot owned by the heirs of Tomas Gingco, which was similarly traversed by petitioner's transmission lines. Said Decision became final and executory on 3 December 1998.[36] Although it is a Decision in another case, the RTC in Civil Case No. DNA-547 can take cognizance thereof when respondents presented the same for its consideration.

The lot of the heirs of Tomas Gingco and those of the herein respondents are all located within the same area in Dawis Sur, Carmen, Cebu and, are in fact, separated only by a lot owned jointly by Epifanio, Edilberto and Josefa, all surnamed Loro. The lots owned by the respondents are even more advantageously situated than the lot owned by the heirs of Tomas Gingco since respondents' properties are traversed by a barangay road and near the quarry areas of Llyons Richfield Industrial Corporation. The lots of the heirs of Tomas Gingco and of the respondents were all affected by the Interconnection Project and were taken by the petitioner at about the same time. The lots of respondents were effectively taken in June 1996, while the lot of the heirs of Tomas Gingco was acquired only a month later, in July 1996. Since the personalities and properties in both Civil Case No. DNA-379 and Civil Case No. DNA-547 were essentially in similar situations, then the just compensation awarded for the property in the former case was a logical and reasonable basis for fixing or determining the just compensation due in the latter.

Furthermore, petitioner attached to their Motion for Summary Judgment several pieces of document in support of their allegations therein, and they furnished petitioner copies of the same. The petitioner was given ample time to study, challenge, and controvert respondents' evidences, yet it failed to do so. The RTC only rightfully proceeded, based on its evaluation of the evidence on record, to render a Decision awarding to the respondents just compensation or damages for the taking of their lots, equivalent to the fair market value thereof at the rate of P448.33 per square meter.

Finally, petitioner cannot insist that it only acquired an easement of right of way on the properties of the respondents and that it was liable to pay respondents only an easement fee not exceeding 10% of the fair market value of the portions of their property actually affected by the Interconnection Project, pursuant to Section 3-A(b) of its Charter.

Expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession. The right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines also falls within the ambit of the term "expropriation." [37]

After petitioner's transmission lines were fully constructed on portions of respondents' lots, petitioner imposed

restrictions thereon such as the prohibition against planting or building anything higher than three meters below the area traversed by said lines. In addition, respondent-Spouses Quimco, holders of a Small Scale Quarry Permit, Series of 1995,[38] were also prohibited from continuing their quarry business near petitioner's transmission towers because of the great possibility that it could weaken the foundation thereof. Hence, the respondent-spouses Quimco suffered substantial loss of income. It is clear then that petitioner's acquisition of an easement of right of way on the lands of the respondents amounted to an expropriation of the portions of the latter's properties and perpetually deprived the respondents of their proprietary rights thereon and for which they are entitled to a reasonable and just compensation. Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.[39]

As the Court thoroughly explained in *National Power Corporation v. Gutierrez*,[40] viz:

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

The foregoing facts considered, the acquisition of the right-of-way easement falls within the purview of the power of eminent domain. Such conclusion finds support in similar cases of easement of right-of-way where the Supreme Court sustained the award of just compensation for private property condemned for public use (See *National Power Corporation vs. Court of Appeals*, 129 SCRA 665, 1984; *Garcia vs. Court of Appeals*, 102 SCRA 597, 1981). The Supreme Court, in *Republic of the Philippines vs. PLDT*, thus held that: "Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right-of-way."

In the case at bar, the easement of right-of-way is definitely a taking under the power of eminent domain. Considering the nature and effect of the installation of the 230 KV Mexico-Limay transmission lines, the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use.[41] (Emphasis supplied.)

Having established that petitioner's acquisition of right-of-way easement over the portions of respondents' lots was definitely a taking under the power of eminent domain, petitioner then is liable to pay respondents just compensation and not merely an easement fee. The Court quotes with affirmation the ruling of the Court of Appeals on this matter:

The [herein petitioner] vehemently insists that its Charter [Section 3A (b) of R.A. 6395] obliges it to pay only a maximum of 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. To uphold such a contention would not only interfere with a judicial function but would also render as useless the protection guaranteed by our Constitution in Section 9, Article III of our Constitution that no private property shall be taken for public use without payment of just compensation.

Moreover, the valuation of a property in the tax declaration cannot be an absolute substitute to just compensation. Stated differently, the market value stated in the tax declaration of the condemned property is

no longer conclusive.[42] It is violative of due process to deny to the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. It is also repulsive to the basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court which is promulgated only after expert commissioners have actually viewed the property, after evidence, arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judicially evaluated.[43] 10% of the market value of the expropriated property cannot in any way be considered as the fair and full equivalent to the loss sustained by the owner of the property, such would be 90% less than what is due him. Thus, we are of the conclusion that Section 3A of [petitioner's] Charter cannot prevail over the mandate of our Constitution on the payment of just compensation. The court a quo did not commit an error when it held that the [petitioner's] charter encroached on the function of the court in determining just compensation.[44]

WHEREFORE, premises considered, the instant Petition is hereby DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 73656, dated 21 April 2006 and 27 October 2006, respectively, are hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio,[*] Austria-Martinez, and Azcuna,**] JJ., concur.

* Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 22 September 2008.

** Per Special Order No. 521, dated 29 September 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Adolfo S. Azcuna to replace Associate Justice Ruben T. Reyes, who is on official leave.

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Arsenio J. Magpale and Vicente L. Yap, concurring; rollo, pp. 34-46.

[2] Penned by Arsenio J. Magpale, with Associate Justices Arlene Gonzales-Sison and Antonio L. Villamor; concurring; rollo, pp. 48-49.

[3] Penned by Acting Presiding Judge Meinrado P. Paredes; rollo, pp. 50-63.

[4] Penned by Presiding Judge Sylvia G. Aguirre Paderanga; rollo, pp. 64-66.

[5] An Act Revising the Charter of the National Power Corporation. It was approved on 10 September 1971.

[6] It was signed into law on 27 May 1976.

[7] Rollo, p. 67.

[8] Id. at 68.

[9] Id. at 69.

[10] Id. at 70.

[11] As evidenced by disbursement voucher dated 27 June 1996; records, p. 74.

[12] As evidenced by disbursement voucher dated 27 December 1996; id. at 75.

[13] Records, pp. 2-9.

[14] "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 necessary shall be acquired.

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

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

[15] Rollo, p. 136.

[16] *Id.* at 137.

[17] Records, pp. 139-140.

[18] Rollo, p. 140.

[19] *Id.* at 141.

[20] *Id.* at 63.

[21] *Id.* at 64-66.

[22] *Id.* at 66.

[23] *Id.* at 223.

[24] For the government to exercise its power of eminent domain, it must first initiate expropriation proceedings before the proper court and pay just compensation before taking the private property for public use. Apparently, petitioner considered the process reversed herein when it was respondents, the landowners, who filed a case, after their properties have already been taken for determination of the just compensation therefor.

[25] SEC. 5. Ascertainment of compensation. - Upon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken. x x x.

[26] The case, entitled *National Power Corporation v. Heirs of Pedro D. Sepulva, Sr.*, represented by Socorro S. Lawas (Administrator), *Heirs of Tomas Gingco*, represented by Joselito Gingco, was an action for expropriation filed by therein plaintiff NPC against therein defendants Heirs of Pedro D. Sepulva, Sr., and the Heirs of Tomas Gingco. The plaintiff sought to enter and take possession of defendants' properties for its 230 KV Leyte-Cebu Interconnection Project. The negotiations for a settlement on the issue of just compensation between plaintiff and defendant Heirs of Pedro D. Sepulveda were unsuccessful upon the former's discovery that the latter's property was classified as agricultural and was being claimed by someone else. As to the value of the property of the defendant Heirs of Tomas Gingco, the Commissioners' Report submitted in Civil Case No. DNA 373 was adopted by the RTC. Said Commissioners' Report in Civil Case No. DNA-373 recommended the average price of P448.333 per square meter for the property of the defendant being expropriated therein. The RTC held that since

the property of defendant Heirs of Tomas Gingco in Civil Case No. DNA-379 and that of the defendant in Civil Case No. DNA-373 were adjacent to each other, there was no reason why the former, which is of the same locality and of the same kind as the latter, should be appraised less.

[27]The case, entitled *National Power Corporation v. Francisco V. Camara, and Michael Poultry Farm, Inc.*, represented by Lydia Lim, President, was an action for expropriation filed by therein plaintiff NPC against therein defendants Francisco Camara and Michael Poultry Farm, Inc. The plaintiff wanted to acquire defendants' properties to be used for its 230 KV Leyte-Cebu Interconnection Project. Upon motion by plaintiff and defendant Francisco Camara, the RTC created a Committee on Appraisal. During the hearing, both defendants manifested that they would rely on the Commissioners' Report already submitted and they adopted the same as their evidence. The RTC used as basis the opinion values of the Committee on Appraisal in determining the just compensation due the defendants, thus, it adjudged that the just compensation of the area taken by the plaintiff from the defendants should be P448.33 per square meter.

[28] *Yuchengco v. Sandiganbayan*, G.R. No. 149802, 20 January 2006, 479 SCRA 1, 132-133.

[29] *Rivera v. Solidbank Corporation*, G.R. No. 163269, 19 April 2006, 487 SCRA 512, 535.

[30]*Tan v. De la Vega*, G.R. No. 168809, 10 March 2006, 484 SCRA 538, 551.

[31] Records, p. 52.

[32] Rollo, pp. 78-80.

[33]*Id.* at 40-41.

[34]G.R. No. 106804, 12 August 2004, 436 SCRA 195, 210.

[35] The said case was entitled *National Power Corporation v. Heirs of Pedro D. Sepulveda, Sr.*, represented by Socorro S. Lawas (Administrator), Heirs of Tomas Gingco, represented by Joselito Gingco; rollo, pp. 81-83.

[36] As evidenced by an Entry of Final Judgment dated 22 December 1998; *id.* at 84.

[37]*National Power Corporation v. Aguirre-Paderanga*, G.R. No. 155065, 28 July 2005, 464 SCRA 481, 493-494.

[38]Records, pp. 123-125.

[39]*National Power Corporation v. Manubay Agro-Industrial Development Corporation*, G.R. No. 150936, 18 August 2004, 437 SCRA 60, 68.

[40] G.R. No. 60077, 18 January 1991, 193 SCRA 1, 6-8.

[41]*Supra* note 35.

[42]*Sumulong v. Guerrero*, G.R. No. L-48685, 30 September 1987, 154 SCRA 461.

[43] *Export Processing Zone Authority v. Dulay*, G.R. No. L-59603, 29 April 1987, 149 SCRA 305.

[44] Rollo, pp. 42-43.

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