

**NATIONAL POWER CORPORATION, PETITIONER, VS. SPS.
MISERICORDIA GUTIERREZ AND RICARDO MALIT AND THE
HONORABLE COURT OF APPEALS, RESPONDENTS.**

G.R. No. 60077. January 18, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari filed by the National Power Corporation (NPC) seeking the reversal or modification of the March 9, 1986 Decision of the Court of Appeals in CA-G.R. No. 54291-R, entitled "National Power Corporation v. Sps. Misericordia Gutierrez and Ricardo Malit", affirming the December 4, 1972 Decision of the then Court of First Instance of Pampanga, Fifth Judicial District, Branch II, in Civil Case No. 2709, entitled "National Power Corporation v. Matias Cruz, et al.".

The undisputed facts of the case, as found by the Court of Appeals, are as follows:

Plaintiff National Power Corporation, a government owned and controlled entity, in accordance with Commonwealth Act No. 120, is invested with the power of eminent domain for the purpose of pursuing its objectives, which among others is the construction, operation, and maintenance of electric transmission lines for distribution throughout the Philippines. For the construction of its 230 KV Mexico-Limay transmission lines, plaintiff's lines have to pass the lands belonging to defendants Matias Cruz, Heirs of Natalia Paule and spouses Misericordia Gutierrez and Ricardo Malit covered by tax declarations Nos. 907, 4281 and 7582, respectively.

Plaintiff initiated negotiations for the acquisition of right of way easements over the aforementioned lots for the construction of its transmission lines but unsuccessful in this regard, said corporation was constrained to file eminent domain proceedings against the herein defendants on January 20, 1965.

Upon filing of the corresponding complaint, plaintiff corporation deposited the amount of P973.00 with the Provincial Treasurer of Pampanga, tendered to cover the provisional value of the land of the defendant spouses Ricardo Malit and Misericordia Gutierrez. And by virtue of which, the plaintiff corporation was placed in possession of the property of the defendant spouses so it could immediately proceed with the construction of its Mexico-Limay 230 KV transmission line. In this connection, by the trial court's order of September 30, 1965, the defendant spouses were authorized to withdraw the fixed provisional value of their land in the sum of P973.00.

The only controversy existing between the parties litigants is the reasonableness and adequacy of the disturbance or compensation fee of the expropriated properties.

Meanwhile, for the purpose of determining the fair and just compensation due the defendants, the court appointed three commissioners, comprised of one representative of the plaintiff, one for the defendants and the other from the court, who then were empowered to receive evidence, conduct ocular inspection of the premises, and thereafter, prepare their appraisals as to the fair and just compensation to be paid to the owners of the lots. Hearings were consequently held before said commissioners and during their hearings, the case of

defendant Heirs of Natalia Paule was amicably settled by virtue of a Right of Way Grant (Exh. C) executed by Guadalupe Sangalang for herself and in behalf of her co-heirs in favor of the plaintiff corporation. The case against Matias Cruz was earlier decided by the court, thereby leaving only the case against the defendant spouses Ricardo Malit and Misericordia Gutierrez still to be resolved. Accordingly, the commissioners submitted their individual reports. The commissioner for the plaintiff corporation recommended the following: 'x x x that plaintiff be granted right of way easement over the 760 square meters of the defendants Malit and Gutierrez land for plaintiff transmission line upon payment of an easement fee of P1.00 therefor. x x x' (Annex M)

The commissioner for the defendant spouses recommended the following:

'x x x that Mr. and Mrs. Ricardo Malit be paid as disturbance compensation the amount of P10.00 per sq. meter or the total amount of P7,600.00' (Annex K)

The Court's commissioner recommended the following:

'x x x, the payment of Five (P5.00) Pesos per square meter of the area covered by the Right-of-way to be granted, x x x' (Annex L)

The plaintiff corporation urged the Court that the assessment as recommended by their commissioner be the one adopted. Defendant spouses, however, dissented and objected to the price recommended by both the representative of the court and of the plaintiff corporation.

With these reports submitted by the three commissioners and on the evidence adduced by the defendants as well as the plaintiff for the purpose of proving the fair market value of the property sought to be expropriated, the lower court rendered a decision the dispositive portion of which reads as follows:

'WHEREFORE, responsive to the foregoing considerations, judgment is hereby rendered ordering plaintiff National Power Corporation to pay defendant spouses Ricardo Malit and Misericordia Gutierrez the sum of P10.00 per square meter as the fair and reasonable compensation for the right-of-way easement of the affected area, which is 760 squares, or a total sum of P7,600.00 and P800.00 as attorney's fees.' (Record on Appeal, p. 83)

Dissatisfied with the decision, the plaintiff corporation filed a motion for reconsideration which was favorably acted upon by the lower court, and in an order dated June 10, 1973, it amended its previous decision in the following tenor:

'On the basis of an ocular inspection made personally by the undersigned, this court finally classified the land of the spouses Ricardo Malit and Misericordia to be partly commercial and partly agricultural, for which reason the amount of P10.00 per sq. meter awarded in the decision of December 4, 1972 is hereby reduced to P5.00 per square meter as the fair and reasonable market value of the 760 square meters belonging to the said spouses.

There being no claim and evidence for attorney's fees, the amount of P800.00 awarded as attorney's fees, in the decision of December 4, 1972 is hereby reconsidered and set aside.' (Annex S)

Still not satisfied, an appeal was filed by petitioner (NPC) with the Court of Appeals but respondent Court of Appeals in its March 9, 1982 Decision, sustained the trial court, as follows:

"WHEREFORE, finding no reversible error committed by the court a quo, the appealed judgment is hereby affirmed with costs against the plaintiff-appellant."

Hence, the instant petition.

The First Division of this Court gave due course to the petition and required both parties to submit their respective memoranda (Resolution of January 12, 1983). It also noted in an internal resolution of August 17, 1983 that petitioner filed its memorandum while the respondents failed to file their memorandum within the period which expired on February 24, 1983; hence, the case was considered submitted for decision.

The sole issue raised by petitioner is -

WHETHER PETITIONER SHOULD BE MADE TO PAY SIMPLE EASEMENT FEE OR FULL COMPENSATION FOR THE LAND TRAVERSED BY ITS TRANSMISSION LINES.

It is the contention of petitioner that the Court of Appeals committed gross error by adjudging the petitioner liable for the payment of the full market value of the land traversed by its transmission lines, and that it overlooks the undeniable fact that a simple right-of-way easement (for the passage of trans-mission lines) transmits no rights, except that of the easement. Full ownership is retained by the private respondents and they are not totally deprived of the use of the land. They can continue planting the same agricultural crops, except those that would result in contact with the wires. On this premise, petitioner submits that if full market value is required, then full transfer of ownership is only the logical equivalent.

The petition is devoid of merit. The resolution of this case hinges on the determination of whether the acquisition of mere right-of-way is an exercise of the power of eminent domain contemplated by law.

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

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

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

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

For these reasons, the owner of the property expropriated is entitled to a just compensation, which should be neither more nor less, whenever it is possible to make the assessment, than the money equivalent of said property. Just compensation has always been understood to be the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation (*Province of Tayabas vs. Perez*, 66 Phil. 467 [1938]; *Assoc. of Small Land Owners of the Phils., Inc. vs. Secretary of Agrarian Reform*, G.R. No. 78742;

Acuna vs. Arroyo, G.R. No. 79310; Pabrico vs. Juico, G.R. No. 79744; Manaay v. Juico, G.R. No. 79777. 14 July 1989. 175 SCRA 343 [1989]). The price or value of the land and its character at the time it was taken by the Government are the criteria for determining just compensation (National Power Corp. v. Court of Appeals, 129 SCRA 665, [1984]). The above price refers to the market value of the land which may be the full market value thereof. According to private respondents, the market value of their lot is P50.00 per square meter because the said lot is adjacent to the National and super highways of Gapan, Nueva Ecija and Olongapo City.

Private respondents recognize the inherent power of eminent domain being exercised by NPC when it finally consented to the expropriation of the said portion of their land, subject however to payment of just compensation. No matter how laudable NPC's purpose is, for which expropriation was sought, it is just and equitable that they be compensated the fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity (EPZA v. Dulay, 149 SCRA 305 [1987]; Mun. of Daet v. Court of Appeals, 93 SCRA 503 [1979]).

It appearing that the trial court did not act capriciously and arbitrarily in setting the price of P5.00 per square meter of the affected property, the said award is proper and not unreasonable.

On the issue of ownership being claimed by petitioner in the event that the price of P5.00 per square meter be sustained, it is well settled that an issue which has not been raised in the court a quo cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process x x x (Filipino Merchants v. Court of Appeals, G.R. No. 85141, November 8, 1989, 179 SCRA 638; Commissioner of Internal Revenue v. Procter and Gamble Philippines Manufacturing Corporation, 160 SCRA 560 [1988]; Commissioner of Internal Revenue v. Wander Philippines, Inc., 160 SCRA 573 [1988]). Petitioner only sought an easement of right-of-way, and as earlier discussed, the power of eminent domain may be exercised although title was not transferred to the expropriator.

WHEREFORE, the assailed decision of the Court of Appeals is AFFIRMED.
SO ORDERED.

Fernan, C.J., (Chairman), and Feliciano, JJ., concur.

Gutierrez, Jr., J., concur but believe payment should be P10.00 a square meter at the very least.

[*] 26 SCRA 620 (1969)

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