

THIRD DIVISION

[G.R. NO. 164079, April 03, 2007]

**NATIONAL POWER CORPORATION, PETITIONER, VS. DR.
ANTERO BONGBONG AND ROSARIO BONGBONG, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

Before the Court is a Petition for Review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 65913 dated May 23, 2003, and the Resolution^[2] dated April 12, 2004 denying the motion for reconsideration thereof.

Spouses Antero and Rosario Bongbong are the registered owners of a 364,451-square-meter parcel of land situated at *Barangay Sambulawan, Villaba, Leyte*. The property is covered by Original Certificate of Title (OCT) No. R-2189 of the Register of Deeds of the Province of Leyte.

As early as 1996, the National Power Corporation (NPC) negotiated with the spouses Bongbong to use a portion of the property for the construction of a 230 KV LCIP Malitbog-Tabango CETL TWR SITE 1046 for the Leyte-Cebu Interconnection Project. When the spouses Bongbong agreed, NPC occupied a 25,100-sq-m portion of the property.

On April 22, 1996, NPC paid the spouses Bongbong the amount of P33,582.00 representing the value of the improvements that were damaged by the construction of the project. The voucher for the payment of easement fee was prepared. However, when NPC offered a check for P163,150.00 (representing 10% of the total market value of the area affected) as payment for the easement fee, Antero refused to accept the amount and demanded that NPC pay the full value of the 25,100-sq-m portion it had occupied. On October 28, 1997, the spouses Bongbong received the P163,150.00 under protest.^[3]

On October 3, 1997, the spouses Bongbong demanded that the NPC pay P8,748,448.00 which they alleged to be the just and reasonable value for their land and improvements. The refusal of NPC to heed their demands prompted the spouses Bongbong to file a complaint^[4] for just compensation before the Regional Trial Court (RTC) of Palompon, Leyte. The case against NPC was docketed as Civil Case No. PN-0207.

In the complaint, the spouses Bongbong alleged that NPC was given the authority to enter the property due to its assurances and promises that it would pay just compensation, but it never did. It pointed out that nearby landowners were paid P300.00 per sq m; considering that the price of land has increased with the devaluation of the peso, the amount of P250.00 per sq m was reasonable. They prayed, among others, that commissioners be appointed to determine the fair

market value of the land as well as the improvements thereon; and to recommend that the total amount due and payable to them be at least P7,493,448.00 (P250.00 per square meter), and that they be paid 10% of the proceeds as attorney's fees, and P100,000.00 as litigation expenses.

In its Answer, NPC claimed that its obligation towards the spouses Bongbong had already been extinguished when it paid the amount of P33,582.15 for the damaged improvements on April 22, 1996, and the easement fee pursuant to Republic Act (R.A.) No. 6395, as amended by Presidential Decree (P.D.) No. 938, in the amount of P163,150.00 on October 28, 1997.

On May 21, 1999, the spouses Bongbong filed a Motion to Admit as Supplement to the Amended Complaint the New Reappraisal of Plaintiffs' Real Property and Improvements,^[5] dated February 8, 1999. In the said Reappraisal, which was issued by the Provincial Appraisal Committee (PAC) of Leyte (Resolution No. 03-99), the lot was valued at P300.00 per sq m.

NPC opposed the motion, alleging that the payment of just compensation should be based on the market value of the property at the time of its taking in 1997; pursuant to its charter, it paid only an easement fee.^[6]

On July 2, 1999, the trial court issued another Order admitting the PAC Reappraisal.^[7] On August 2, 1999, the trial court directed the spouses Bongbong to submit in writing their proposal on the amount of just compensation, and to furnish a copy thereof to Atty. Marianito delos Santos, NPC's counsel, who was given ten days to comment thereon.^[8]

On August 18, 1999, the spouses Bongbong filed a Motion to Resolve the Market Value of Plaintiffs' Property and Improvements,^[9] praying that the court declare the value of the land at P350.00 per sq m or the total amount of P8,785,000.00, and declare the value of the improvements to be P1,218,448.00, a total of P10,003,448.00.

Among the pertinent documents the spouses Bongbong submitted to the court were the following:

1. List of Affected Improvements for the Province of Leyte affected by the NPC Transmission Lines Project.^[10]
2. Original Certificate of Title No. N-2189 over the subject property;^[11]
3. Tax Declaration No. ARP No. 00034 covering the subject property;^[12]
4. Disbursement Voucher for the payment of the easement fee of P163,150.00;^[13]
5. Certification dated October 24, 1997, acknowledging receipt under protest of the payment of P163,150.00 as easement fee;^[14]

6. Resolution No. 11-97 of the Provincial Appraisal Committee dated May 2, 1997, finding the value of the subject property consisting of 25,100 square meters to be P1,631,500.00 at P65.00 per square meter;^[15]
7. Letter dated January 21, 1999 of Dante Poloso, Project Manager of NPC, to Atty. Rafael Iriarte, Leyte Provincial Assessor, requesting for the reappraisal of the subject property;^[16]
8. Reappraisal by the Provincial Appraisal Committee dated February 8, 1999, finding the market value of the subject property to be P7,530,000.00 at P300.00 per square meter;^[17]
9. Letter dated October 3, 1997 of Antero Bongbong to NPC, demanding payment of P7,530,000.00 for the 25,100 square meters of land plus P1,218,448.00 for coconuts and other damages;^[18]
10. Permission to Enter Property for Construction of Transmission Line Project;^[19]
11. Deed of Absolute Sale dated January 16, 1997 between NPC and Spouses Felipe and Mercedes Larrazabal over a portion of a parcel of land situated in Naghalin, Kananga, Leyte consisting of 11,281 square meters for P3,384,300.00 at P300.00 per square meter;^[20]
12. Deed of Absolute Sale dated January 16, 1997 between NPC and Melchor Larrazabal, in behalf of Faustino Larrazabal, over a portion of a parcel of land situated in Naghalin, Kananga, Leyte consisting of 5,027 square meters for P1,508,000.00 at P300.00 per square meter;^[21]
13. Deed of Absolute Sale dated January 16, 1997 between NPC and Fedelina L. Tuazon over a portion of a parcel of land situated in Naghalin, Kananga, Leyte consisting of 5,700 square meters for P1,710,000.00 at P300.00 per square meter;^[22]
14. Deed of Absolute Sale dated July 8, 1997 between NPC and Merlo Aznar, as representative of Aznar Enterprises, over a portion of a parcel of land situated in Tabango, San Isidro, Leyte consisting of 61,008 square meters for P18,302,400.00 at P300.00 per square meter;^[23]
15. Deed of Absolute Sale dated January 16, 1997 between NPC and Florence Tan over a portion of a parcel of land situated in Naghalin, Kananga, Leyte consisting of 4,075 square meters for P1,426,250.00 at P350.00 per square meter;^[24]
16. Deed of Absolute Sale dated March 4, 1997 between NPC and Yolinda O. Beduya over a portion of a parcel of land situated in Campokpok, Tabango, Leyte consisting of 2,109 square meters for P632,700.00 at P300.00 per square meter;^[25] and

17. Deed of Absolute Sale dated March 4, 1997 between NPC and Trinidad O. Palanas over a parcel of land situated in Campokpok, Tabango, Leyte consisting of 2,109 square meters for P632,700.00 at P300.00 per square meter.^[26]

On November 5, 1999, the trial court issued an Order^[27] fixing the just compensation due to respondent, thus:

WHEREFORE, all the foregoing premises considered, this Court has determined that the value of the plaintiffs' property at the time of taking in 1997 is THREE HUNDRED (P300.00) PESOS per square meter or the total amount of SEVEN MILLION FIVE HUNDRED THIRTY THOUSAND (P7,530,000.00) PESOS.

SO ORDERED.^[28]

The trial court stressed that just compensation should be reckoned from 1997 — when the taking took place. It noted that, in 1997, NPC consistently paid P300.00 per square meter to the spouses Felipe and Mercedes Larrazabal, Melchor Larrazabal, Fedelina Tuazon, Aznar Enterprises, Inc., Yolinda Beduya, and Trinidad Palanas for the properties it acquired for its transmission lines. It held that NPC should not discriminate against the spouses Bongbong, who should thus be paid the same rate.

NPC elevated the case to the CA through a notice of appeal. On May 23, 2003, the CA rendered a Decision^[29] affirming the RTC decision, thus:

WHEREFORE, the assailed November 5, 1999 Order of the Regional Trial Court of Palompon, Leyte is AFFIRMED in its entirety.

SO ORDERED.^[30]

The CA found no cogent reason to reverse the finding of the trial court. It agreed with the trial court that the spouses Bongbong should not be discriminated against in the determination of just compensation. Considering therefore that NPC had paid P300.00 per square meter for properties belonging to other landowners in the Province of Leyte for the construction of its transmission line, it should pay respondents the same amount. The appellate court stressed that the value of the property at the time the government took possession of the land, not the increased value resulting from the passage of time, represents the true value to be paid as just compensation for the property taken.^[31]

Moreover, the CA held that Section 5, Rule 67 of the Revised Rules of Civil Procedure on the creation of a board of commissioners does not apply to the present case since it is not an expropriation proceeding.^[32]

On April 12, 2004, the CA resolved to deny NPC's motion for reconsideration.^[33]

NPC, now petitioner, filed the instant petition seeking the reversal of the CA decision on the following grounds:

1. The Court of Appeals seriously and grossly erred in failing to consider: (a) the value of the land (which was P65.00 per square meter as of May 2, 1997) and its character (which was and still is agricultural) at the time of its taking by NAPOCOR in early 1997; and (b) that the P300.00 per square meter valuation thereof is the post-taking reappraisal value made by the Provincial Appraisal Committee (PAC) on February 8, 1999, and as such is inapplicable and cannot be given retroactive effect.
2. The Court of Appeals seriously and grossly erred in ignoring and in not applying NAPOCOR's Charter RA No. 6395, as amended, as legal basis for the payment of just compensation which should consist of simple right-of-way easement fee of ten [percent] (10%) of the value of the land, instead of full compensation, as the reasonable and adequate disturbance or compensation fee for the right-of-way easement on agricultural land of respondents traversed by its overhead transmission lines.
3. Assuming *arguendo* that full compensation, instead of simple easement fee is proper, the Court of Appeals seriously and grossly erred in not ordering the transfer of the title and ownership over the subject parcel of land in favor of NAPOCOR.^[34]

Petitioner argues that the deeds of sale relied upon by the trial court involve parcels of land 20 to 40 kilometers away from Villaba, Leyte, and as such are classified and declared as either residential, industrial or commercial lots. On the other hand, respondents' property is classified as agricultural. It asserts that the value of the land and its character at the time it was taken by the government should be the criteria in determining just compensation; hence, it should not have been based on the reappraisal made by the PAC on February 8, 1999.^[35]

Petitioner further contends that it should only pay an easement fee and not the full value of the property since it acquired only a simple right-of-way easement for the passage of its overhead transmission lines; respondents retained the full ownership and right to use the land. It points out that under Sec. 3-A^[36] of R.A. No. 6395, as amended by P.D. No. 938, it is only authorized to acquire a right-of-way easement where a portion of a land will be traversed by transmission lines, and to pay only an easement fee — 10% of the market value of the land.^[37]

Finally, petitioner submits that the CA should have ordered the transfer of the title and ownership over the subject portion of the land to petitioner after it had adjudged the latter liable for the full market value of the property.^[38]

Respondents, for their part, aver that the present petition should be dismissed for having been filed out of time. Petitioner's Motion for Extension to File a Petition for Review should have been filed on or before June 30, 2004, that is, fifteen days from its receipt of the notice denying its motion for reconsideration; respondent filed the petition only on July 8, 2006. The Court, in effect, granted no extension of time since petitioner failed to file its motion for extension of time.^[39]

Respondents further contend that the court *a quo* and the CA did not err in fixing the value of the land at P300.00 per sq m, the "reappraisal price" determined by the PAC of Leyte. They aver that, since petitioner did not file an expropriation case, it