

## SECOND DIVISION

[ G.R. Nos. 231655 and 231670, July 02, 2018 ]

**FELISA AGRICULTURAL CORPORATION, PETITIONER, V.  
NATIONAL TRANSMISSION CORPORATION (HAVING BEEN  
SUBSTITUTED IN LIEU OF THE NATIONAL POWER  
CORPORATION), RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari* <sup>[1]</sup> assailing the Amended Decision<sup>[2]</sup> dated May 26, 2016 and the Resolution<sup>[3]</sup> dated March 17, 2017 of the Court of Appeals (CA) in CA-G.R. CEB SP. Nos. 06204 and 06286, which nullified and set aside the Orders dated May 7, 2010<sup>[4]</sup> and May 11, 2011<sup>[5]</sup> (RTC Orders) of the Regional Trial Court of Bacolod City, Branch 54 (RTC) in Civil Case No. 01-11356 directing the National Power Corporation (NPC) or its assignee to compensate petitioner the amount of P7,845,000.00 representing the 100% zonal value of the subject land as initial payment.

### The Facts

The instant case stemmed from a Complaint<sup>[6]</sup> for recovery of possession with damages or payment of just compensation dated January 9, 2001 filed by petitioner Felisa Agricultural Corporation (petitioner) against NPC before the RTC, docketed as Civil Case No. 01-11356. Petitioner claimed that in 1997, it discovered that the NPC's transmission towers and transmission lines were located within a 19,635-square meter (sq. m.) portion (subject land) of its lands situated in Brgy. Felisa, Bacolod City. Further verification revealed that the transmission towers were constructed sometime before 1985 by NPC which entered the subject land without its knowledge and consent.<sup>[7]</sup>

For its part,<sup>[8]</sup> NPC denied having entered the subject land without any authority, and claimed that petitioner's President, Jovito Sayson, granted it the permit to enter<sup>[9]</sup> on September 21, 1989 for the construction of the 138 KV Mabinay-Bacolod Transmission Line. It further countered that since the transmission lines have been in existence for more than ten (10) years, a continuous easement of right of way has already been established. Considering, however, that the action was brought beyond the five-year prescriptive period to do so in accordance with the NPC Charter, the claim is barred by prescription.<sup>[10]</sup>

In the course of the proceedings, the parties agreed to narrow down the issue to the payment of just compensation and agreed to settle the case at the price of P400.00/sq. m. but the proposed compromise did not push through in view of the failure of the Office of the Solicitor General (OSG) to act on the Deed of Sale entered into by the parties.<sup>[11]</sup> Subsequently, petitioner moved that NPC be

immediately ordered to pay the amount of P7,845,000.00<sup>[12]</sup> representing the 100% zonal value of the subject land<sup>[13]</sup> in accordance with Republic Act No. (RA) 8974.<sup>[14]</sup> NPC opposed the motion, contending that the said law only applies to expropriation cases initiated by the government to acquire property for any national government infrastructure project.<sup>[15]</sup>

### **The RTC Ruling**

In an Order<sup>[16]</sup> dated May 7, 2010, the RTC granted the motion and directed NPC or its assignee to compensate petitioner in the amount of P7,845,000.00 as initial payment.<sup>[17]</sup> It likewise denied the NPC's motion for reconsideration<sup>[18]</sup> in an Order<sup>[19]</sup> dated May 11, 2011, explaining further that the "initial payment is not the [j]ust [c]ompensation that is determined in the decision that shall dispose the case. The law so provides to obviate the long litigation and the landowner is partially paid."<sup>[20]</sup>

Unperturbed, NPC filed a petition for *certiorari*<sup>[21]</sup> before the CA, docketed as CA-G.R. CEB SP. Nos. 06204 and 06286.<sup>[22]</sup>

### **The CA Ruling**

In a Decision<sup>[23]</sup> dated June 27, 2014, the CA granted the *certiorari* petition, thereby nullifying and setting aside the RTC Orders.<sup>[24]</sup> It ruled that RA 8974 finds no application to the recovery of possession case as it only applies to an expropriation proceeding.<sup>[25]</sup>

Dissatisfied, petitioner moved for reconsideration,<sup>[26]</sup> contending that RA 8974 applies even if the government failed or refused to file an expropriation case considering that: (a) the recovery of possession case partakes of the nature of an inverse expropriation proceedings; and (b) the initiatory complaint was filed after its effectivity.<sup>[27]</sup>

Subsequently, respondent National Transmission Corporation (respondent), which assumed the electrical transmission function and the transmission-related cases of NPC, was substituted as party respondent in the case.<sup>[28]</sup>

In an Amended Decision<sup>[29]</sup> dated May 26, 2016, the CA denied the motion.<sup>[30]</sup> It ruled that since the taking of the property occurred sometime in 1985, RA 8974 which was approved and took effect subsequent thereto does not apply, and the provisions of Rule 67 of the Rules of Court should govern the case.<sup>[31]</sup> Accordingly, it remanded the case to the RTC for the determination of just compensation plus legal interest reckoned from the time of the taking of the subject land.<sup>[32]</sup>

Petitioner filed a partial motion for reconsideration,<sup>[33]</sup> which was, however, denied in a Resolution<sup>[34]</sup> dated March 17, 2017; hence, this petition.

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA was correct in holding that Rule 67 of the Rules of Court and not RA 8974 should govern the case.

## The Court's Ruling

Preliminarily, it bears pointing out that the RTC Orders subject of the *certiorari* petition before the CA merely pertained to the preliminary or provisional determination of the value of the subject land. At that time, the first stage of the expropriation proceedings, *i.e.*, the determination of the validity of the expropriation, has not been completed since no order of expropriation has yet been issued by the RTC, albeit it is not contested that the NPC's entry in the subject land was done for a public purpose,<sup>[35]</sup> *i.e.*, the construction/installation of transmission towers and lines which fall within the term "national government projects."<sup>[36]</sup> It is settled that there is no need to determine with reasonable certainty the final amount of just compensation until after the trial court ascertains the provisional amount to be paid.<sup>[37]</sup>

The general rule is that upon the filing of the expropriation complaint, the plaintiff has the right to take or enter into possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property. An exception to this procedure is provided by RA 8974 with respect to national government projects, which requires the payment of 100% of the zonal value of the property to be expropriated as the provisional value.<sup>[38]</sup> It must be emphasized, however, that whether a deposit is made under Rule 67 of the Rules of Court or the provisional value of the property is paid pursuant to RA 8974,<sup>[39]</sup> the said amount serves the double-purpose of: (a) pre-payment if the property is fully expropriated, and (b) indemnity for damages if the proceedings are dismissed.<sup>[40]</sup>

Section 2, Rule 67 of the Rules of Court requires the expropriator to deposit the amount equivalent to the assessed value of the property to be expropriated prior to entry. The assessed value<sup>[41]</sup> of a real property constitutes a mere percentage of its fair market value based on the assessment levels fixed under the pertinent ordinance passed by the local government where the property is located.<sup>[42]</sup> In contrast, RA 8974 requires the payment of the amount equivalent to 100% of the current zonal value<sup>[43]</sup> of the property, which is usually a higher amount.

In *Republic of the Philippines v. Judge Gingoyon*,<sup>[44]</sup> the Court recognized that while expropriation proceedings have always demanded just compensation in exchange for private property, the deposit requirement under Rule 67 of the Rules of Court **"impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed."**<sup>[45]</sup> Thus, it categorically declared that **"[i]t is the plain intent of [RA] 8974 to supersede the system of deposit under Rule 67 with the scheme of 'immediate payment' in cases involving national government infrastructure projects."**<sup>[46]</sup> The same case further ruled:

It likewise bears noting that **the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of [RA] 8974. Specifically, this prescribes the new standard in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the payment of the**

**provisional value as a prerequisite to the issuance of a writ of possession.** Of course, rules of procedure, as distinguished from substantive matters, remain the exclusive preserve of the Supreme Court by virtue of Section 5(5), Article VIII of the Constitution. Indeed, Section 14 of the Implementing Rules recognizes the **continued applicability of Rule 67 on procedural aspects** when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court."<sup>[47]</sup> (Emphases supplied)

**Indubitably, a matter is substantive when it involves the creation of rights to be enjoyed by the owner of the property to be expropriated.** The right of the owner to receive just compensation prior to acquisition of possession by the State of the property is a proprietary right, appropriately classified as a substantive matter and, thus, within the sole province of the legislature to legislate on.<sup>[48]</sup>

Statutes are generally applied prospectively unless they expressly allow a retroactive application.<sup>[49]</sup> It is well known that the principle that a new law shall not have retroactive effect only governs rights arising from acts done under the rule of the former law. **However, if a right be declared for the first time by a subsequent law, it shall take effect from that time even though it has arisen from acts subject to the former laws, provided that it does not prejudice another acquired right of the same origin.**<sup>[50]</sup>

In this case, the government had long entered the subject land and constructed the transmission towers and lines. However, petitioner initiated inverse condemnation proceedings after the effectivity of RA 8974 on November 26, 2000;<sup>[51]</sup> hence, procedurally and substantially, the said law should govern. Notably, the payment of the provisional value of the subject land equivalent to 100% of its *current* zonal value is declared for the first time by the said law which is evidently more favorable to the landowner than the mere deposit of its assessed value<sup>[52]</sup> as required by Rule 67. Accordingly, the application of the provisions of RA 8974 to the instant case is beyond cavil. Besides, there is no legal impediment to the issuance of a writ of possession in favor of respondent, as successor of NPC, despite entry to the subject land long before the filing of the inverse condemnation proceedings before the RTC because **physical possession gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership thereon.** In *Republic v. Hon. Tagle*,<sup>[53]</sup> the Court explained:

**The expropriation of real property does not include mere physical entry or occupation of land.** Although eminent domain usually involves a taking of title, there may also be compensable taking of only some, not all, of the property interests in the bundle of rights that constitute ownership.

x x x [M]ere physical entry and occupation of the property fall short of the taking of title, which includes all the rights that may be exercised by an owner over the subject property. Its actual occupation, which renders academic the need for it to enter, does not by itself include its acquisition of all the rights of ownership. x x x.

x x x **Ineludibly, [the] writ [of possession] is both necessary and practical, because mere physical possession that is gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership over, or even the right to possess, the expropriated property.**<sup>[54]</sup> (Emphases supplied)

Section 1 of RA 8974 declares the State's policy to ensure that owners of real property acquired for national government infrastructure projects are **promptly** paid just compensation. However, the sad truth is that several cases reached this Court wherein various government agencies, including respondent, had constructed transmission lines, tunnels, and other infrastructure before it decided to expropriate the properties upon which they built the same. Still, in other cases, the property owners were compelled to initiate inverse condemnation proceedings due to the government's long inaction to commence expropriation proceedings to acquire their land. As early as the 1960 case of *Alfonso v. Pasay City*,<sup>[55]</sup> the Court had pronounced its disapproval of such practice and its vigilance in the defense of the rights of the unpaid landowner who has been deprived of possession, thus:

This Tribunal does not look with favor on the practice of the Government or any of its branches, of taking away property from a private landowner, especially a registered one, without going through the legal process of expropriation or a negotiated sale and paying for said property without delay. The private owner is usually at a great and distinct disadvantage. He has against him the whole Government, central or local, that has occupied and appropriated his property, summarily and arbitrarily, sometimes, if not more often, against his consent. There is no agreement as to its price or its rent. In the meantime, the landowner makes requests for payment, rent, or even some understanding, patiently waiting and hoping that the Government would soon get around to hearing and granting his claim. The officials concerned may promise to consider his claim and come to an agreement as to the amount and time for compensation, but with the not infrequent government delay and red tape, and with the change in administration, specially local, the claim is pigeon holed and forgotten and the papers lost, [or] mislaid x x x. And when finally losing patience and hope, he brings a court action and hires a lawyer to represent him in the vindication of his valid claim, he faces the government represented by no less than the Solicitor General or the Provincial Fiscal or City Attorney, who blandly and with self-assurance, invokes prescription. The litigation sometimes drags on for years. In our opinion, that is neither just nor fair. When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates, in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are first initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and difficulty for the Government, but all of its own making.<sup>[56]</sup>

Notably, in its Answer,<sup>[57]</sup> NPC invoked prescription of petitioner's claim,<sup>[58]</sup> and despite the agreement to settle the case at the price of P400.00/ sq. m., the proposed compromise did not push through in view of the failure of the OSG for a number of years to duly act on the Deed of Sale entered into by the parties,<sup>[59]</sup>