

## SECOND DIVISION

**[ G.R. No. 172507, September 14, 2016 ]**

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

### DECISION

**LEONEN, J.:**

Article III, Section 9<sup>[1]</sup> 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<sup>[2]</sup> filed by the National Power Corporation to nullify and set aside the November 21, 2005 Decision<sup>[3]</sup> and May 3, 2006 Resolution<sup>[4]</sup> 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.<sup>[5]</sup> The assailed Resolution denied the National Power Corporation's Motion for Reconsideration.<sup>[6]</sup>

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.<sup>[7]</sup>

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.<sup>[8]</sup> The National Power Corporation utilized 4,352 square meters for the project.<sup>[9]</sup>

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.<sup>[10]</sup> 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.<sup>[11]</sup> 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.<sup>[12]</sup>

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.<sup>[13]</sup> 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,<sup>[14]</sup> as amended.<sup>[15]</sup>

On September 20, 1999, Spouses Asoque filed before the Regional Trial Court of Calbayog City a Complaint<sup>[16]</sup> 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<sup>[17]</sup> 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<sup>[18]</sup> for P9,897.00 as payment for damaged improvements and waiver of claims to improvements damaged.<sup>[19]</sup> 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.<sup>[20]</sup>

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.<sup>[21]</sup> 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.<sup>[22]</sup>

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.<sup>[23]</sup>

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.<sup>[24]</sup> National Power Corporation's subsequent Motion for Reconsideration was denied in the trial court's Order dated June 21, 2000.<sup>[25]</sup>

"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."<sup>[26]</sup> Spouses Asoque then filed their Formal Offer of Documentary Exhibits<sup>[27]</sup> on September 6, 2000, to which the National Power Corporation filed its Comment/Objection<sup>[28]</sup> on October 13, 2000, citing the inadmissibility of the exhibits presented.<sup>[29]</sup>

On July 20, 2001, the Commissioner submitted to the trial court his Commissioner's Report dated July 19, 2001.<sup>[30]</sup> 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.<sup>[31]</sup>

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.<sup>[32]</sup>

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.<sup>[33]</sup>

On June 25, 2002, the Regional Trial Court rendered the Decision<sup>[34]</sup> 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
- (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.<sup>[35]</sup>

The Court of Appeals denied<sup>[36]</sup> 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.<sup>[37]</sup>

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.<sup>[38]</sup> 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.<sup>[39]</sup>

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.<sup>[40]</sup>

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.<sup>[41]</sup>

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.<sup>[42]</sup>

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).<sup>[43]</sup> However, on petitioner's Motion for Reconsideration,<sup>[44]</sup> this Court reinstated<sup>[45]</sup> the Petition and required respondents to comment.

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

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

Petitioner contends that it was not given a reasonable opportunity to be heard, which is the essence of due process.<sup>[52]</sup> Only a very short notice was given to its counsel to attend the pre-trial, even though petitioner's lawyers were based in Cebu.<sup>[53]</sup> In contrast, respondents' counsel held office in Catbalogan City, where the trial court sits.<sup>[54]</sup>

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.<sup>[55]</sup> 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.<sup>[56]</sup> 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.<sup>[57]</sup> 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.<sup>[58]</sup>

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*.<sup>[59]</sup> 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.<sup>[60]</sup> Petitioner also points out that the May 8, 2000 Order merely designated a commissioner to receive respondents' evidence and nothing more.<sup>[61]</sup> There is likewise no showing that the Commissioner took an oath before performing his function, as required by the Rules.<sup>[62]</sup>

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.<sup>[63]</sup> 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.<sup>[64]</sup> 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.<sup>[65]</sup>

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.<sup>[66]</sup> 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.<sup>[67]</sup>

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.<sup>[68]</sup>

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