

## FIRST DIVISION

[ G.R. No. 165354, January 12, 2015 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE  
NATIONAL POWER CORPORATION, PETITIONER, VS. HEIRS OF  
SATURNINO Q. BORBON, AND COURT OF APPEALS,  
RESPONDENTS.**

### D E C I S I O N

**BERSAMIN, J.:**

The expropriator who has taken possession of the property subject of expropriation is obliged to pay reasonable compensation to the landowner for the period of such possession although the proceedings had been discontinued on the ground that the public purpose for the expropriation had meanwhile ceased.

#### **Antecedents**

The National Power Corporation (NAPOCOR) is a government-owned and -controlled corporation vested with authority under Republic Act No. 6395, as amended, to undertake the development of hydro-electric generation of power, production of electricity from any and all sources, construction, operation and maintenance of power plants, auxiliary plants, dams, reservoirs, pipes, main transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, lake, creek, spring and waterfalls in the Philippines and to supply such power to the inhabitants thereof.<sup>[1]</sup>

In February 1993, NAPOCOR entered a property located in Barangay San Isidro, Batangas City in order to construct and maintain transmission lines for the 230 KV Mahabang Parang-Pinamucan Power Transmission Project.<sup>[2]</sup> Respondents heirs of Saturnino Q. Borbon owned the property, with a total area of 14,257 square meters, which was registered under Transfer Certificate of Title No. T-9696 of the Registry of Deeds of Batangas.<sup>[3]</sup>

On May 26, 1995, NAPOCOR filed a complaint for expropriation in the Regional Trial Court in Batangas City (RTC),<sup>[4]</sup> seeking the acquisition of an easement of right of way over a portion of the property involving an area of only 6,326 square meters, more or less,<sup>[5]</sup> alleging that it had negotiated with the respondents for the acquisition of the easement but they had failed to reach any agreement; and that, nonetheless, it was willing to deposit the amount of P9,790.00 representing the assessed value of the portion sought to be expropriated.<sup>[6]</sup> It prayed for the issuance of a writ of possession upon deposit to enable it to enter and take possession and control of the affected portion of the property; to demolish all improvements existing thereon; and to commence construction of the transmission line project. It likewise prayed for the appointment of three commissioners to

determine the just compensation to be paid.<sup>[7]</sup>

In their answer with motion to dismiss,<sup>[8]</sup> the respondents staunchly maintained that NAPOCOR had not negotiated with them before entering the property and that the entry was done without their consent in the process, destroying some fruit trees without payment, and installing five transmission line posts and five woodpoles for its project;<sup>[9]</sup> that the area being expropriated only covered the portion directly affected by the transmission lines; that the remaining portion of the property was also affected because the transmission line passed through the center of the land, thereby dividing the land into three lots; that the presence of the high tension transmission line had rendered the entire property inutile for any future use and capabilities;<sup>[10]</sup> that, nonetheless, they tendered no objection to NAPOCOR's entry provided it would pay just compensation not only for the portion sought to be expropriated but for the entire property whose potential was greatly diminished, if not totally lost, due to the project;<sup>[11]</sup> and that their property was classified as industrial land. Thus, they sought the dismissal of the complaint, the payment of just compensation of P1,000.00/square meter, and attorney's fees;<sup>[12]</sup> and to be allowed to nominate their representative to the panel of commissioners to be appointed by the trial court.<sup>[13]</sup>

In the pre-trial conference conducted on December 20, 1995, the parties stipulated on: (1) the location of the property; (2) the number of the heirs of the late Saturnino Q. Borbon; (3) the names of the persons upon whom title to the property was issued; and (4) the ownership and possession of the property.<sup>[14]</sup> In its order of that date, the RTC directed the parties to submit the names of their nominees to sit in the panel of commissioners within 10 days from the date of the pre-trial.<sup>[15]</sup>

The RTC constituted the panel of three commissioners. Two commissioners submitted a joint report on April 8, 1999,<sup>[16]</sup> in which they found that the property was classified as industrial land located within the Industrial 2 Zone;<sup>[17]</sup> that although the property used to be classified as agricultural (i.e., horticultural and pasture land), it was reclassified to industrial land for appraisal or taxation purposes on June 30, 1994; and that the reclassification was made on the basis of a certification issued by the Zoning Administrator pursuant to Section 3.10 (d) of the Amended Zoning Ordinance (1989) of the City of Batangas.<sup>[18]</sup> The two commissioners appraised the value at P550.00/square meter.<sup>[19]</sup> However, the third commissioner filed a separate report dated March 16, 1999,<sup>[20]</sup> whereby he recommended the payment of "an easement fee of at least ten percent (10%) of the assessed value indicated in the tax declaration<sup>[21]</sup> plus cost of damages in the course of the construction, improvements affected and tower occupancy fee."<sup>[22]</sup>

The parties then submitted their respective objections to the reports. On their part, the respondents maintained that NAPOCOR should compensate them for the entire property at the rate of P550.00/square meter because the property was already classified as industrial land at the time NAPOCOR entered it.<sup>[23]</sup> In contrast, NAPOCOR objected to the joint report, insisting that the property was classified as agricultural land at the time of its taking in March 1993; and clarifying that it was only seeking an easement of right of way over a portion of the property, not the

entire area thereof, so that it should pay only 10% of the assessed value of the portion thus occupied.<sup>[24]</sup>

In the judgment dated November 27, 2000,<sup>[25]</sup> the RTC adopted the recommendation contained in the joint report, and ruled thusly:

The price to be paid for an expropriated land is its value at the time of taking, which is the date when the plaintiff actually entered the property or the date of the filing of the complaint for expropriation. In this case, there is no evidence as to when the plaintiff actually entered the property in question, so the reference point should be the date of filing of the complaint, which is May 5, 1995.

On this date, the property in question was already classified as industrial. So, the Joint Report (Exhibit "1") is credible on this point. The two Commissioners who submitted the Joint Report are government officials who were not shown to be biased. So, that their report should be given more weight than the minority report submitted by a private lawyer representing the plaintiff. In view of these, the Court adopts the Joint Report and rejects the minority report. The former fixed the just compensation at P550.00 per square meter for the whole lot of 14,257 square meters.<sup>[26]</sup>

Accordingly, the RTC ordered NAPOCOR to pay the respondents: (1) just compensation for the whole area of 14,257 square meters at the rate of P550.00/square meter; (2) legal rate of interest from May 5, 1995 until full payment; and (3) the costs of suit.<sup>[27]</sup>

NAPOCOR appealed (CA-G.R. No. 72069).

On April 29, 2004,<sup>[28]</sup> the CA promulgated its decision, viz:

WHEREFORE, premises considered, the Decision dated November 27, 2000 of Branch I of the Regional Trial Court of Batangas City, is hereby AFFIRMED with the MODIFICATION that plaintiff-appellant shall pay only for the occupied 6,326 square meters of the subject real property at the rate of P550.00 per square meter and to pay legal interest therefrom until fully paid.

SO ORDERED.<sup>[29]</sup>

Hence, this appeal by NAPOCOR.

### **Issue**

On December 3, 2012, during the pendency of the appeal, NAPOCOR filed a Motion to Defer Proceedings stating that negotiations between the parties were going on with a view to the amicable settlement of the case.<sup>[30]</sup>

On January 3, 2014, NAPOCOR filed a Manifestation and Motion to Discontinue Expropriation Proceedings,<sup>[31]</sup> informing that the parties failed to reach an amicable agreement; that the property sought to be expropriated was no longer necessary for public purpose because of the intervening retirement of the transmission lines installed on the respondents' property;<sup>[32]</sup> that because the public purpose for which such property would be used thereby ceased to exist, the proceedings for expropriation should no longer continue, and the State was now duty-bound to return the property to its owners; and that the dismissal or discontinuance of the expropriation proceedings was in accordance with Section 4, Rule 67 of the *Rules of Court*. Hence, NAPOCOR prayed that the proceedings be discontinued "under such terms as the court deems just and equitable,"<sup>[33]</sup> and that the compensation to be awarded the respondents be reduced by the equivalent of the benefit they received from the land during the time of its occupation, for which purpose the case could be remanded to the trial court for the determination of reasonable compensation to be paid to them.<sup>[34]</sup>

In light of its Manifestation and Motion to Discontinue Expropriation Proceedings, NAPOCOR contends that the expropriation has become without basis for lack of public purpose as a result of the retirement of the transmission lines; that if expropriation still proceeds, the Government will be unduly burdened by payment of just compensation for property it no longer requires; and that there is legal basis in dismissing the proceedings, citing *Metropolitan Water District v. De los Angeles*<sup>[35]</sup> where the Court granted petitioner's prayer for the quashal of expropriation proceedings and the eventual dismissal of the proceedings on the ground that the land sought to be expropriated was no longer "indispensably necessary" in the maintenance and operation of petitioner's waterworks system.

The issue to be considered and resolved is whether or not the expropriation proceedings should be discontinued or dismissed pending appeal.

### **Ruling of the Court**

The dismissal of the proceedings for expropriation at the instance of NAPOCOR is proper, but, conformably with Section 4,<sup>[36]</sup> Rule 67 of the *Rules of Court*, the dismissal or discontinuance of the proceedings must be upon such terms as the court deems just and equitable.

Before anything more, we remind the parties about the nature of the power of eminent domain.

The right of eminent domain is "the ultimate right of the sovereign power to appropriate, not only the public but the private property of all citizens within the territorial sovereignty, to public purpose."<sup>[37]</sup> But the exercise of such right is not unlimited, for two mandatory requirements should underlie the Government's exercise of the power of eminent domain, namely: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner.<sup>[38]</sup> These requirements partake the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.<sup>[39]</sup>

Public use, in common acceptation, means "use by the public." However, the concept has expanded to include utility, advantage or productivity for the benefit of the public.<sup>[40]</sup> In *Asia's Emerging Dragon Corporation v. Department of Transportation and Communications*,<sup>[41]</sup> Justice Corona, in his dissenting opinion said that:

To be valid, the taking must be for public use. The meaning of the term "public use" has evolved over time in response to changing public needs and exigencies. Public use which was traditionally understood as strictly limited to actual "use by the public" has already been abandoned. "Public use" has now been held to be synonymous with "public interest," "public benefit," and "public convenience."

It is essential that the element of public use of the property be maintained throughout the proceedings for expropriation. The effects of abandoning the public purpose were explained in *Mactan-Cebu International Airport Authority v. Lozada, Sr.*,<sup>[42]</sup> to wit:

More particularly, with respect to the element of public use, the expropriator should commit to use the property pursuant to the purpose stated in the petition for expropriation filed, failing which, it should file another petition for the new purpose. If not, it is then incumbent upon the expropriator to return the said property to its private owner, if the latter desires to reacquire the same. Otherwise, the judgment of expropriation suffers an intrinsic flaw, as it would lack one indispensable element for the proper exercise of the power of eminent domain, namely, the particular public purpose for which the property will be devoted. Accordingly, the private property owner would be denied due process of law, and the judgment would violate the property owner's right to justice, fairness and equity.<sup>[43]</sup>

A review reveals that *Metropolitan Water District v. De los Angeles*<sup>[44]</sup> is an appropriate precedent herein. There, the Metropolitan Water District passed a board resolution requesting the Attorney-General to file a petition in the Court of First Instance of the Province of Rizal praying that it be permitted to discontinue the condemnation proceedings it had initiated for the expropriation of a parcel of land in Montalban, Rizal to be used in the construction of the Angat Waterworks System. It claimed that the land was no longer indispensably necessary in the maintenance and operation of its waterworks system, and that the expropriation complaint should then be dismissed. The Court, expounding on the power of the State to exercise the right of eminent domain, then pronounced:

There is no question raised concerning the right of the plaintiff here to acquire the land under the power of eminent domain. That power was expressly granted it by its charter. The power of eminent domain is a right reserved to the people or Government to take property for *public use*. It is the right of the state, through its regular organization, to reassert either temporarily or permanently its dominion over any portion