

## FIRST DIVISION

[ G.R. No. 161219, October 06, 2008 ]

**MARINDUQUE MINING AND INDUSTRIAL CORPORATION AND INDUSTRIAL ENTERPRISES, INC., PETITIONERS, VS. COURT OF APPEALS AND NATIONAL POWER CORPORATION, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This petition for review<sup>[1]</sup> seeks the reversal of the 27 February 2003 Decision<sup>[2]</sup> and 17 November 2003 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 72402. In its 27 February 2003 Decision, the Court of Appeals set aside the 15 May 2002<sup>[4]</sup> and 24 June 2002<sup>[5]</sup> Orders of Judge Mamindiara P. Mangotara, Presiding Judge of the Regional Trial Court of Lanao del Norte, Branch 1, Iligan City (trial court), and ordered the trial court to give due course to respondent National Power Corporation's (NAPOCOR) appeal. In its 17 November 2003 Resolution, the Court of Appeals denied the motion for reconsideration of petitioners Marinduque Mining and Industrial Corporation and Industrial Enterprises, Inc. (petitioners).

#### The Facts

On 1 June 1999, NAPOCOR filed a complaint<sup>[6]</sup> for expropriation against petitioners for the construction of the AGUS VI Kauswagan 69 KV Transmission Line Project. NAPOCOR sought to expropriate 7,875 square meters of petitioners' property covered by Transfer Certificate of Title Nos. T-955 and T-956.<sup>[7]</sup>

Petitioners filed their answer<sup>[8]</sup> with counterclaim and alleged that the expropriation should cover not only 7,875 square meters but the entire parcel of land. Petitioners claimed that the expropriation would render the remaining portion of their property valueless and unfit for whatever purpose.

In its 5 December 2001 Decision,<sup>[9]</sup> the trial court fixed the fair market value of the 7,875-square meter lot at P115 per square meter.<sup>[10]</sup> The trial court also directed the commissioners to submit a report and determine the fair market value of the "dangling area," consisting of 58,484 square meters, affected by the installation of NAPOCOR's transmission lines.

NAPOCOR filed a motion for reconsideration. In its Order dated 4 February 2002,<sup>[11]</sup> the trial court denied NAPOCOR's motion.

In its 19 March 2002 Supplemental Decision,<sup>[12]</sup> the trial court declared that the "dangling area" consisted of 48,848.87 square meters and fixed its fair market value at P65 per square meter. The trial court ruled that petitioners are entitled to consequential damages because NAPOCOR's expropriation impaired the value of the "dangling area" and deprived petitioners of the ordinary use of their property.

NAPOCOR filed a motion for reconsideration. In its Order dated 24 June 2002,<sup>[13]</sup> the trial court denied the motion for being moot and academic because on 2 April 2002, NAPOCOR filed a Notice of Appeal<sup>[14]</sup> of the 19 March 2002 Supplemental Decision.

On the other hand, petitioners moved for the execution of the trial court's 5 December 2001 Decision and 19 March 2002 Supplemental Decision. In its 26 April 2002 Order, the trial court partially granted petitioners' motion and, on 2 May 2002, issued the writ of execution for the 5 December 2001 Decision.

On 29 April 2002, petitioners filed a "motion to strike out or declare as not filed the notice of appeal dated April 2, 2002; to declare the supplemental decision as final and executory; and to issue the corresponding writ of execution thereon." Petitioners argued that NAPOCOR violated Section 11, Rule 13<sup>[15]</sup> of the Rules of Court because NAPOCOR filed and served the notice of appeal by registered mail. According to petitioners, NAPOCOR had all the vehicles and manpower to personally serve and file the notice of appeal.

NAPOCOR opposed petitioners' motion and alleged that its legal office is "severely undermanned" with only one vehicle and one employee, acting as secretary, handling 300 active cases in Mindanao. NAPOCOR also added that it was highly irregular for petitioners to question its mode of service and filing only at this stage of the proceedings because since the inception of the case, NAPOCOR had resorted to registered mail instead of personal service.

In its 15 May 2002 Order, the trial court granted petitioners' motion and denied NAPOCOR's notice of appeal. The trial court gave more credence to petitioners' allegations and declared that NAPOCOR's explanation was a "patent violation" of the Rules. The trial court considered the notice of appeal as not filed at all and, since the period of appeal had already expired, declared its 19 March 2002 Supplemental Decision final and executory.

NAPOCOR filed a motion for reconsideration.<sup>[16]</sup> In its 24 June 2002 Order, the trial court denied NAPOCOR's motion.

On 23 August 2002, NAPOCOR filed a special civil action for certiorari with a prayer for a temporary restraining order before the Court of Appeals. NAPOCOR argued that the trial court acted without or in excess of jurisdiction and gravely abused its discretion when it denied NAPOCOR's notice of appeal of the 19 March 2002 Supplemental Decision on the sole ground that it was not filed and served personally.

### **The Ruling of the Court of Appeals**

In its 27 February 2003 Decision, the Court of Appeals ruled in NAPOCOR's favor

and set aside the trial court's 15 May 2002 and 24 June 2002 Orders. The Court of Appeals also ordered the trial court to give due course to NAPOCOR's appeal. The Court of Appeals declared that the trial court acted whimsically and capriciously when it denied the notice of appeal and declared the 19 March 2002 Supplemental Decision final and executory. The Court of Appeals noted that service by registered mail was previously resorted to by both parties and yet, this was the first time petitioners questioned NAPOCOR's mode of service. The Court of Appeals added that the trial court should have given due course to NAPOCOR's appeal because of the large amount of public funds involved considering the significant disparity between the area sought to be expropriated and the "dangling area." The Court of Appeals also said that the Rules should be liberally construed to effect substantial justice.

Petitioners filed a motion for reconsideration. In its 17 November 2003 Resolution, the Court of Appeals denied petitioners' motion.

Hence, this petition.

### **The Issues**

Petitioners raise the following issues:

1. Whether the Court of Appeals erred in ruling that the trial court's issuance of the 15 May 2002 and 24 June 2002 Orders was attended with grave abuse of discretion amounting to lack of jurisdiction; and
2. Whether the Court of Appeals erred in ruling that the 19 March 2002 Supplemental Decision is not final and executory.

### **The Ruling of the Court**

The petition has no merit.

#### ***On NAPOCOR's failure to comply with Section 11, Rule 13 of the Rules of Court***

Petitioners maintain that the trial court had the "wide latitude of discretion" to consider the notice of appeal as not filed at all because NAPOCOR failed to comply with the Rules.

On the other hand, NAPOCOR argues that the Rules allow resort to other modes of service and filing as long as the pleading was accompanied by a written explanation why service or filing was not done personally. NAPOCOR maintains that it complied with the Rules because the notice of appeal contained an explanation why NAPOCOR resorted to service and filing by registered mail - due to lack of manpower to effect personal service.<sup>[17]</sup> NAPOCOR also insists that petitioners are estopped from questioning its mode of service and filing because since the inception of the case, NAPOCOR had resorted to registered mail and yet, petitioners only raised this issue when the notice of appeal was filed.

Under Section 11, Rule 13 of the Rules, personal service of pleadings and other papers is the general rule while resort to the other modes of service and filing is the