

FIRST DIVISION

[G.R. No. 170846, February 06, 2007]

**NATIONAL POWER CORPORATION, PETITIONER, VS.
AURELLANO S. TIANGCO, LOURDES S. TIANGCO AND NESTOR S.
TIANGCO, RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner National Power Corporation (NPC) seeks the annulment and setting aside of the Decision^[1] dated March 14, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 53576, as reiterated in its Resolution^[2] of December 2, 2005 which denied the petitioner's motion for reconsideration. The assailed decision modified that of the Regional Trial Court (RTC) of Tanay, Rizal, Branch 80, by increasing the amount of just compensation due the respondents in an expropriation case filed against them by the petitioner.

The facts:

Herein respondents Aurellano, Lourdes and Nestor, all surnamed Tiangco, are the owners of a parcel of land with an area of 152,187 square meters at Barangay Sampaloc, Tanay, Rizal and registered in their names under TCT No. M-17865 of the Registry of Deeds of Rizal.

On the other hand, petitioner NPC is a government-owned and controlled corporation created for the purpose of undertaking the development and generation of power from whatever source. NPC's charter (Republic Act No. 6395) authorizes the corporation to acquire private property and exercise the right of eminent domain.

NPC requires 19,423 square meters of the respondents' aforementioned property, across which its *500Kv Kalayaan-San Jose Transmission Line Project* will traverse. NPC's *Segregation Plan*^[3] for the purpose shows that the desired right-of-way will cut through the respondents' land, in such a manner that 33,392 square meters thereof will be left separated from 99,372 square meters of the property. Within the portion sought to be expropriated stand fruit-bearing trees, such as mango, avocado, jackfruit, *casuy*, *santol*, *calamansi*, *sintones* and coconut trees.

On November 20, 1990, after repeated unsuccessful negotiations with the respondents, NPC filed with the RTC of Tanay, Rizal a complaint for expropriation^[4] against them. In time, the respondents filed their answer.

On March 14, 1991, the trial court issued a Condemnation Order, granting NPC the right to take possession of the area sought to be expropriated. In the same Order,

the court directed the parties to nominate their respective commissioners, with a third member to be nominated and appointed by the court itself, to determine the proper amount of just compensation to be paid to the respondents. As constituted in the manner thus indicated, the board of commissioners was composed of the following: for NPC, Atty. Restituto Mallo of its Legal Department; for the respondents, Mr. Basilio Afuang, a geodetic engineer and a real estate broker by profession; and for the court, Clerk of Court V Ms. Amelia de Guzman Carbonell.

On April 5, 1991, the trial court issued an order directing NPC to pay and deposit with the Rizal Provincial Treasurer the amount of P81,204.00, representing the temporary provisional value of the area subject of the expropriation prior to the taking of possession thereof. On April 22, 1991, with NPC having complied with the deposit requirement, a writ of possession was issued in its favor.

Thereafter, an ocular inspection of the premises was conducted and hearings before the board of commissioners were held, during which the Municipal Assessor of Tanay, Rizal was presented. He submitted a record of the Schedule of Values for taxation purposes and a certification to the effect that the unit value of the respondents' property is P21,000.00 per hectare.

On August 7, 1993, commissioner Basilio Afuang for the respondents filed his report. He pegged the price of the area sought to be expropriated at P30.00 per square meter or P582,690.00^[5] in the aggregate; and for the improvements thereon, Afuang placed a valuation of P2,093,950.00. The figures are in contrast with the respondents' own valuation of P600,600.00, for the area, and P4,935,500.00, for the improvements.

On September 14, 1993, NPC filed an amended complaint to acquire only 19,423 square meters of the respondents' property. The original area of 20,220 square meters initially sought to be expropriated under the original complaint turned out to be in excess of the area required.

For its part, NPC made it clear that it is interested only in acquiring an easement of right-of-way over the respondents' property and that ownership of the area over which the right-of-way will be established shall remain with the respondents. For this reason, NPC claims that it should pay, in addition to the agreed or adjudged value of the improvements on the area, *only* an easement fee in an amount equivalent to ten *per cent* (10%) of the market value of the property as declared by the respondents or by the Municipal Assessor, whichever is lower, as provided for under Section 3-A of Republic Act No. 6395, as amended by Presidential Decree 938.^[6]

The court-appointed commissioner, Ms. Amelia de Guzman Carbonell, found that the risk and dangerous nature of the transmission line project essentially deprive the respondents of the use of the area. Nonetheless, she recommended that the determination of just compensation should be relegated to "expert appraisers."^[7]

From the evidence before it, the trial court made a determination that the market value of the property is P2.09 per square meter, or P40,594.07 for the entire 19,423 square meters needed by NPC, and not the P30.00 per square meter claimed by the respondents. Neither did the trial court consider NPC's reliance on Section 3-A of

Republic Act No. 6395, as amended by Presidential Decree 938, the court placing more weight on the respondents' argument that expropriation would result in the substantial impairment of the use of the area needed, even though what is sought is a mere aerial right-of-way. The court found as reasonable the amount of P324,750.00 offered by NPC for the improvements, as the same is based on the official current schedule of values as determined by the Municipal Assessor of Tanay, Rizal.

Hence, in its decision^[8] of February 19, 1996, the trial court rendered judgment as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. Expropriating in favor of [NPC] a parcel of land covering a total area of 19,423 sq.m. covered by TCT No. M-17860 owned by the [respondents];
2. Ordering the amount of P40,594.07 as just compensation for the 19,423 square meters of land affected by the expropriations; and the amount of P324,750.00 as reasonable compensation for the improvements on the land expropriated with legal interest from the time of possession by the plaintiff. No pronouncement as to costs.

SO ORDERED. (Words in brackets supplied.)

The respondents moved for reconsideration, presenting for the first time a document entitled "Bureau of Internal Revenue Circular of Appraisal," which shows that for the year 1985, lands in Barangay Sampaloc were valued at P30.00 per square meter; for the year 1992, at P80.00 per square meter; and for year 1994, at P100.00 per square meter. Respondents maintain that the price of P30.00 per square meter for the needed area of 19,423 square meters is the reasonable amount and should be the basis for fixing the amount of just compensation due them. The trial court denied the motion, stating that the BIR circular in question was belatedly filed and therefore NPC could not have opposed its presentation.

From the aforesaid decision of the trial court, both NPC and the respondents went on appeal to the CA whereat the separate appeals were consolidated and docketed as *CA-G.R. CV No. 53576*. The appellate court found merit in the respondents' appeal, and disregarded the P2.09 per square meter valuation of the trial court, which was based on a **1984** tax declaration. Instead, the CA placed reliance upon a **1993** tax declaration, "being only two years removed from the time of taking."^[9] The appellate court determined the time of taking to be in 1991. Thus, the greater value of P913,122.00 as declared in Tax Declaration No. 011-2667 dated July 23, 1993 should be the basis for determining just compensation. With regard to the value of improvements, the appellate court found NPC's valuation more favorable, being based on the current (1991) schedule of values for trees in the provinces of Rizal and Laguna. Hence, in its decision^[10] of March 14, 2005, the CA rendered judgment, to wit:

WHEREFORE, the instant Appeal is **GRANTED**. The decision of the Regional Trial Court of Tanay, Rizal, Branch 80 dated February 19, 1996 is hereby **MODIFIED** and the compensation awarded for the 19,423 square meters of land affected is increased to P116,538.00, and the reasonable

compensation for the improvements thereon is likewise increased to P325,025.00, with legal interest from the time of possession by the plaintiff-appellee NAPOCOR. No pronouncement as to costs.

SO ORDERED.

NPC moved for reconsideration, but its motion was denied by the appellate court in its resolution^[11] of December 2, 2005.

Hence, NPC's instant petition for review, submitting for our resolution only the following issues with respect to the *amount of just compensation* that must be paid the respondents for the expropriated portion (19,423 square meters) of their property:

1. Is it to be based on the 1984 or the 1993 valuation?

2. Should NPC pay for the value of the land being taken, or should it be limited to what is provided for under P.D. 938, that is, ten per cent (10%) of its market value as declared by the owner or the assessor (whichever is lower), considering that the purpose for which the property is being taken is merely for the establishment of a safe and free passage for its overhead transmission lines?

There is no issue as to the improvements. Since the P325,025.00 valuation therefor is the very price set by the NPC commissioner, to which the corporation did not object but otherwise adopts, the Court fixes the amount of P325,025.00 as just compensation for the improvements.

We now come to the more weighty question of what amount is just by way of compensation for the 19,423 square-meter portion of the respondents' property.

In eminent domain cases, the time of taking is the filing of the complaint, if there was no actual taking prior thereto. Hence, in this case, the value of the property at the time of the filing of the complaint on November 20, 1990 should be considered in determining the just compensation due the respondents. So it is that in *National Power Corporation v. Court of Appeals, et al.*,^[12] we ruled:

Normally, the time of the taking coincides with the filing of the complaint for expropriation. Hence, many rulings of this Court have equated just compensation with the value of the property as of the time of filing of the complaint consistent with the above provision of the Rules. So too, where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.

The trial court fixed the value of the property at its **1984** value, while the CA, at its **1993** worth. Neither of the two determinations is correct. For purposes of just compensation, the respondents should be paid the value of the property as of the time of the filing of the complaint which is deemed to be the time of taking the property.

It was certainly unfair for the trial court to have considered a property value several