

## THIRD DIVISION

[ G.R. No. 150936, August 18, 2004 ]

**NATIONAL POWER CORPORATION, PETITIONER, VS. MANUBAY  
AGRO-INDUSTRIAL DEVELOPMENT CORPORATION,  
RESPONDENT.**

**DECISION**

**PANGANIBAN, J.:**

How much just compensation should be paid for an easement of a right of way over a parcel of land that will be traversed by high-powered transmission lines? Should such compensation be a simple easement fee or the full value of the property? This is the question to be answered in this case.

**The Case**

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to reverse and set aside the November 23, 2001 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-GR CV No. 60515. The CA affirmed the June 24, 1998 Decision<sup>[3]</sup> of the Regional Trial Court<sup>[4]</sup> (RTC) of Naga City (Branch 26), directing the National Power Corporation (NPC) to pay the value of the land expropriated from respondent for the use thereof in NPC's Leyte-Luzon HVDC Power Transmission Project.

**The Facts**

The CA summarized the antecedents of the case as follows:

"In 1996, [Petitioner] NATIONAL POWER CORPORATION, a government-owned and controlled corporation created for the purpose of undertaking the development and generation of hydroelectric power, commenced its 350 KV Leyte-Luzon HVDC Power Transmission Project. The project aims to transmit the excess electrical generating capacity coming from Leyte Geothermal Plant to Luzon and various load centers in its vision to interconnect the entire country into a single power grid. Apparently, the project is for a public purpose.

"In order to carry out this project, it is imperative for the [petitioner's] transmission lines to cross over certain lands owned by private individuals and entities. One of these lands, [where] only a portion will be traversed by the transmission lines, is owned by [respondent] MANUBAY AGRO-INDUSTRIAL DEVELOPMENT CORPORATION.

"Hence, on 03 December 1996, [petitioner] filed a complaint for expropriation before the Regional Trial Court of Naga City against [respondent] in order to acquire an easement of right of way over the

land which the latter owns. The said land is situated at Km. 8, Barangay Pacol, Naga City, Camarines Sur and described with more particularity, as follows:

TCT/OCT NO.	TOTAL AREA IN SQ.M.	AFFECTED IN SQ.M.	AREA CLASS. OF LAND
17795	490,232	21,386.16	Agri.
17797	40,848	1,358.17	Agri.
17798	5,279	<u>217.38</u>	Agri.
	<b>TOTAL</b>	<b>22,961.71</b>	

"On 02 January 1997, [respondent] filed its answer. Thereafter, the court *a quo* issued an order dated 20 January 1997 authorizing the immediate issuance of a writ of possession and directing Ex-Officio Provincial Sheriff to immediately place [petitioner] in possession of the subject land.

"Subsequently, the court *a quo* directed the issuance of a writ of condemnation in favor of [petitioner] through an order dated 14 February 1997. Likewise, for the purpose of determining the fair and just compensation due to [respondent], the court appointed three commissioners composed of one representative of the petitioner, one for the respondent and the other from the court, namely: OIC-Branch Clerk of Court Minda B. Teoxon as Chairperson and Philippine National Bank-Naga City Loan Appraiser Mr. Isidro Virgilio Bulao, Jr. and City Assessor Ramon R. Albeus as members.

"On 03 and 06 March 1997, respectively, Commissioners Ramon Albeus and Isidro Bulao, Jr. took their oath of office before OIC Branch Clerk of Court and Chairperson Minda B. Teoxon.

"Accordingly, the commissioners submitted their individual appraisal/valuation reports. The commissioner for the [petitioner], Commissioner Albeus, finding the subject land irregular and sloppy, classified the same as low density residential zone and recommended the price of P115.00 per square meter. On the other hand, Commissioner Bulao, commissioner for the [respondent], recommended the price of P550.00 per square meter. The court's Commissioner and Chairperson of the Board Minda Teoxon, on the other hand, found Commissioner Albeus' appraisal low as compared to the BIR Zonal Valuation and opted to adopt the price recommended by Commissioner Bulao. On the assumption that the subject land will be developed into a first class subdivision, she recommended the amount of P550.00 per square meter as just compensation for the subject property, or the total amount of P12,628,940.50 for the entire area affected."<sup>[5]</sup>

Taking into consideration the condition, the surroundings and the potentials of respondent's expropriated property, the RTC approved Chairperson Minda B. Teoxon's recommended amount of P550 per square meter as just compensation for the property. The trial court opined that the installation thereon of the 350 KV Leyte-Luzon HVDC Power Transmission Project would impose a limitation on the use of the land for an indefinite period of time, thereby justifying the payment of the full

value of the property.

Further, the RTC held that it was not bound by the provision cited by petitioner -- Section 3-A<sup>[6]</sup> of Republic Act 6395<sup>[7]</sup>, as amended by Presidential Decree 938. This law prescribes as just compensation for the acquired easement of a right of way over an expropriated property an easement fee in an amount not exceeding 10 percent of the market value of such property. The trial court relied on the earlier pronouncements of this Court that the determination of just compensation in eminent domain cases is a judicial function. Thus, valuations made by the executive branch or the legislature are at best initial or preliminary only.

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

Affirming the RTC, the CA held that RA 6395, as amended by PD No. 938, did not preclude expropriation. Section 3-A thereof allowed the power company to acquire not just an easement of a right of way, but even the land itself. Such easement was deemed by the appellate court to be a "taking" under the power of eminent domain.

The CA observed that, given their nature, high-powered electric lines traversing respondent's property would necessarily diminish -- if not damage entirely -- the value and the use of the affected property; as well as endanger lives and limbs because of the high-tension current conveyed through the lines. Respondent was therefore deemed entitled to a just compensation, which should be neither more nor less than the monetary equivalent of the property taken. Accordingly, the appellate found the award of P550 per square meter to be proper and reasonable.

Hence, this Petition.<sup>[8]</sup>

### **Issues**

In its Memorandum, petitioner submits this lone issue for our consideration:

"Whether or not the Honorable Court of Appeals gravely erred in affirming the Decision dated June 24, 1998 of the Regional Trial Court, Branch 26, Naga City considering that its Decision dated November 23, 2001 is not in accord with law and the applicable decisions of this Honorable Court."<sup>[9]</sup>

### **The Court's Ruling**

The Petition is devoid of merit.

#### **Sole Issue:**

#### **Just Compensation**

Petitioner contends that the valuation of the expropriated property -- fixed by the trial court and affirmed by the CA -- was too high a price for the acquisition of an easement of a mere aerial right of way, because respondent would continue to own and use the subject land anyway. Petitioner argues that in a strict sense, there is no "taking" of property, but merely an imposition of an encumbrance or a personal easement/servitude under Article 614<sup>[10]</sup> of the Civil Code. Such encumbrance will not result in ousting or depriving respondent of the beneficial enjoyment of the

property. And even if there was a "taking," petitioner points out that the loss is limited only to a portion of the aerial domain above the property of respondent. Hence, the latter should be compensated only for what it would actually lose.

We are not persuaded.

Petitioner averred in its Complaint in Civil Case No. RTC 96-3675 that it had sought to acquire an easement of a right of way over portions of respondent's land -- a total area of 22,961.71 square meters.<sup>[11]</sup> In its prayer, however, it also sought authority to enter the property and demolish all improvements existing thereon, in order to commence and undertake the construction of its Power Transmission Project.

In other words, the expropriation was not to be limited to an easement of a right of way. In its Answer, respondent alleged that it had already authorized petitioner to take possession of the affected portions of the property and to install electric towers thereon.<sup>[12]</sup> The latter did not controvert this material allegation.

Granting *arguendo* that what petitioner acquired over respondent's property was purely an easement of a right of way, still, we cannot sustain its view that it should pay only an easement fee, and not the full value of the property. The acquisition of such an easement falls within the purview of the power of eminent domain. This conclusion finds support in similar cases in which the Supreme Court sustained the award of just compensation for private property condemned for public use.<sup>[13]</sup> *Republic v. PLDT*<sup>[14]</sup> held thus:

"x x x. Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way."<sup>[15]</sup>

True, an easement of a right of way transmits no rights except the easement itself, and respondent retains full ownership of the property. The acquisition of such easement is, nevertheless, not gratis. As correctly observed by the CA, considering the nature and the effect of the installation power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land.<sup>[16]</sup>

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.<sup>[17]</sup>

In eminent domain or expropriation proceedings, the just compensation to which the owner of a condemned property is entitled is generally the market value. Market value is "that sum of money which a person desirous but not compelled to buy, and