

# SPECIAL TWELFTH DIVISION

[ CA-G.R. CV No. 96906, June 05, 2014 ]

**NATIONAL POWER CORPORATION, PLAINTIFF-APPELLANT, VS.  
MAURA GERTES, DEFENDANT-APPELLEE.**

## DECISION

**PAREDES, J.:[\*]**

### THE CASE

THIS IS ON THE APPEAL filed by plaintiff-appellant National Power Corporation (NAPOCOR) from the Order<sup>[1]</sup> dated February 21, 2011, issued by the Regional Trial Court (RTC), Branch 7, Batangas City, in Civil Case No. 5495 for Eminent Domain.

### THE ANTECEDENTS

On November 22, 1999, NAPOCOR filed a Complaint<sup>[2]</sup> for Eminent Domain against defendant-appellee Maura Gertes (*appellee*), and spouses Lorenzo Amparo and Juana Velasquez, and spouses Pablo Abaya and Nazaria Doce<sup>[3]</sup>. It alleged that: NAPOCOR, an entity created for the purpose of undertaking the development of hydro-electric generation of power and production of electricity from any and all sources, is authorized by law to enter private property in the performance of its business provided the owner of such property is indemnified for any actual damage caused thereby and to exercise the right of eminent domain; appellee is the registered owner of a parcel of land with the following specifications:

Lot No.	Tax Dec. No.	Total Area (sq.m.)	Area Affected (sq.m.)	Location of Property	Classification of Land
8792-A	047-00318	9012	4096	Dumantay, Batangas City	Agricultural (Hortland)

to enable NAPOCOR to construct and maintain its 500 KV Ilijan Associated Transmission Line Project, it is necessary and urgent to acquire an easement right-of-way over a portion of defendant's property measuring 4,096 sq. m. with an assessed value of P3,181.53 (*subject property*); the subject property has not been applied to or expropriated for any public use and was selected by NAPOCOR in a manner compatible with the greatest public good and causing the least private injury; it has negotiated with appellee for the acquisition of an easement right of way over the subject property at a price prescribed by law but they have failed to reach an agreement; and, NAPOCOR is willing to deposit the amount representing the assessed value for taxation purposes of the subject property. NAPOCOR prayed that: (1) in the event appellee refuses to allow NAPOCOR to enter and undertake construction of its project despite compliance with the requirements under the law, an Order of Writ of Possession issue, authorizing NAPOCOR to enter and take

possession and control, and acquire an easement right of way over the subject property to be expropriated and with the power and authority to demolish all improvements thereon; (2) should the appellee fail to submit an Answer within the time specified in the summons, or fail to defend as required by the Rules of Court, to forthwith issue an Order of Expropriation condemning the subject property together with its improvements; (3) three commissioners be appointed to hear the parties, view the premises, assess the damage and report to the RTC the just compensation to be paid to appellee; (4) after determination of just compensation, to authorize the payment thereof after deducting the sums due the government for unpaid real estate taxes and other imposts; and (5) the RTC adjudge NAPOCOR to have a lawful right to enter, take possession and acquire an easement right of way over the subject property together with the improvements, free from any and all liens and encumbrances.

After depositing an amount representing the assessed value of the subject property, NAPOCOR served appellee with a Notice to Take Possession<sup>[4]</sup> dated January 7, 2000, and filed, on January 19, 2000, an Urgent *Ex-Parte* Motion<sup>[5]</sup> for the Issuance of a Writ of Possession. After hearing, the RTC directed<sup>[6]</sup> NAPOCOR to deposit the amount equivalent to the value of the improvements on the land. After NAPOCOR's compliance<sup>[7]</sup> therewith, appellee filed a Manifestation<sup>[8]</sup> with the RTC claiming that the initial amount of P341,286.53 deposited by NAPOCOR was insufficient on account of new improvements introduced on the subject property. On June 21, 2001, the RTC ordered<sup>[9]</sup> the issuance of a Writ of Possession for appellee's property subject to the deposit of the amount for the additional improvement. After depositing<sup>[10]</sup> the additional amount of P162,340.00, the Writ of Possession<sup>[11]</sup> was issued.

Thereafter, appellee filed a Motion<sup>[12]</sup> with Manifestation with the RTC for the issuance of an order directing Land Bank of the Philippines (*LBP*), the depository bank, to allow her to withdraw the full amount deposited by NAPOCOR as payment for the improvements on her property. This was followed by a Joint Manifestation<sup>[13]</sup> and Motion by appellee and NAPOCOR, again praying that the RTC direct the LBP to release the deposit and pay the same to appellee. On February 21, 2002, the RTC issued an Order<sup>[14]</sup> for the release of the amount after completion of the necessary documents. Likewise, counsels of defendant and NAPOCOR were directed to nominate representatives to comprise the members of a Committee of Appraisers (*the Committee*) which will ascertain the just compensation for the subject property, with the RTC appointing the City Assessor of Batangas City, Ms. Emelinda Atienza (*Ms. Atienza*), as committee chairman.

Subsequently, NAPOCOR named<sup>[15]</sup> Engr. Eladio Taupa (*Engr. Taupa*) as its representative and moved for the dropping of spouses Lorenzo Amparo and Juana Velasquez, and spouses Pablo Abaya and Nazaria Doce, as party defendants, as it had reached an amicable settlement with them. The appointment was noted, and the motion for the dropping as party defendants, was granted<sup>[16]</sup> by the RTC on April 11, 2002. For failure of appellee's counsel to appoint a representative, the RTC ordered<sup>[17]</sup> NAPOCOR to submit another nominee to the Committee to complete its membership. In compliance, NAPOCOR nominated<sup>[18]</sup> Ms. Celina Rillas-Encarnacion (*Ms. Encarnacion*).

The RTC issued an Order<sup>[19]</sup> of expropriation on June 27, 2002, followed by an Order<sup>[20]</sup> on July 2, 2002, for the constitution of a Board of Commissioners which will ascertain and report to the RTC on its findings and recommendation on the proper amount for just compensation.

Meanwhile, NAPOCOR filed a Manifestation and Ex-Parte Motion<sup>[21]</sup> with RTC claiming that the additional amount of P162,349.00 representing the value of the improvements on the subject property was still being verified; hence, the release of the total amount deposited by NAPOCOR was held in abeyance<sup>[22]</sup>.

On November 27, 2002, NAPOCOR moved<sup>[23]</sup> that the amount of P91,572.25 be adopted as the additional amount for the improvements. This was opposed<sup>[24]</sup> by appellee. After hearing, the RTC resolved<sup>[25]</sup> to create a Committee of Appraisers (*Committee on improvements*), composed of Atty. Jose C. Corales as chairman and Mr. Gandhi Caranza and Engr. Hernando Santos as members, to ascertain the just compensation for the affected crops, plants and other improvements in the subject property. In their Report<sup>[26]</sup>, the Committee on improvements affirmed that the amount of P162,349.00 was the proper amount corresponding to the improvements in the subject property. The Report was approved<sup>[27]</sup> by the RTC and, after motion<sup>[28]</sup> filed by appellee, the RTC directed<sup>[29]</sup> the release, with interest, of the full amount deposited by NAPOCOR.

Ms. Atienza submitted an undated Commissioners' Report<sup>[30]</sup> with a recommendation that the amount of P150.00 per sq. m. be adopted as the just compensation of the subject property; while Engr. Taupa submitted his own Report<sup>[31]</sup> with a recommendation that the just compensation be fixed at P12.50 per sq. m.. Ms. Encarnacion failed to file her report. An ocular inspection was thereby conducted by the Branch Clerk of Court and a Report (*Ocular Inspection Report*)<sup>[32]</sup>, recommending<sup>[33]</sup> the amount of P125.00 per sq. m., was submitted. NAPOCOR submitted its comment<sup>[34]</sup> to the Ocular Inspection Report and the Report of Ms. Atienza claiming, in the main, that the report submitted by Ms. Atienza was not substantiated by documentary evidence. The RTC issued an Order<sup>[35]</sup> dated October 26, 2010, addressed to the current City Assessor, Ms. Atienza, or her duly authorized representative, to submit the necessary documents to substantiate her Report and recommendation; compliance<sup>[36]</sup> was effected on November 11, 2010.

Thereafter, the RTC issued the assailed Order<sup>[37]</sup>, the dispositive portion of which reads:

**IN VIEW OF THE FOREGOING**, this Court hereby fixes the value of the expropriated property, with an area of Four Thousand Ninety Six (4,096) square meters, as alleged in the complaint, at One Hundred Fifty Pesos (P150.00) per square meter, as just compensation, to be paid by the plaintiff National Power Corporation to the defendant (*appellee*) Maura Gertes. Upon payment of the just compensation, the plaintiff (*NAPOCOR*) is entitled to have lawful right to enter and to take possession of the subject property, together with the improvements thereon, free from any and all liens and encumbrances.

SO ORDERED.

NAPOCOR appeals and ascribes a single error to the RTC, thus:

THE LOWER COURT GRAVELY ERRED IN ADOPTING THE RECOMMENDATION OF MS. ATIENZA FIXING THE AMOUNT OF ONE HUNDRED FIFTY (150) PESOS PER SQUARE METER AS JUST COMPENSATION FOR FOUR THOUSAND NINETY SIX (4,096) SQUARE METERS OF LAND SINCE THE REPORT DOES NOT INDICATE IF THE VALUATION OF THE SUBJECT LAND WAS AS OF THE TIME OF TAKING<sup>[38]</sup>

### **THE COURT'S RULING**

#### ***The appeal lacks merit.***

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed that 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" to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, ample<sup>[39]</sup>. The constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property, as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government<sup>[40]</sup>. Furthermore, it is settled that just compensation is to be ascertained as of the time of the taking<sup>[41]</sup>. 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<sup>[42]</sup>.

NAPOCOR claims<sup>[43]</sup> that the Commissioners' Report of Ms. Atienza, relied upon by the RTC in fixing just compensation, did not indicate the valuation of the subject property at the time of taking, and that the report was not supported by reliable documentary evidence. ***We disagree.***

Although the findings of Ms. Atienza stated that the Report was based on the "*current and fair market value per sq. meter of agricultural land wherein the subject property is classified thereat*"<sup>[44]</sup>, the recommended just compensation was gauged as of October 2002<sup>[45]</sup>, at or near the time when the Committee was constituted to determine just compensation, but taking into consideration lot valuations in the area, Barangay Dumantay, covering the periods 1997, 1998, and 2002. The complaint was filed on November 22, 1999.

The documentary evidence<sup>[46]</sup>, submitted to substantiate the Commissioners' Report of Ms. Atienza, was arrived at by averaging the following factors: (a) opinion value; (b) sales data; (c) BIR Zonal Valuation; and (d) City Assessor's Office-Summary of Market Values (SMV). The opinion value of P190.00 per sq. m. was based on the valuation<sup>[47]</sup> of land owners in Brgy. Dumantay, while the sales data<sup>[48]</sup> of P240.00 per sq. m. is based on the amount of consideration for the sale of property in the same barangay in the years 1997, 1998 and 2002. The BIR Zonal Valuation<sup>[49]</sup> of P100.00 per sq. m. covers all types of land in the concerned barangay, while the City Assessor's-SMV<sup>[50]</sup> of P50.00 per sq. m., made comparative valuations of market values per square meter of residential lots for the