

## THIRD DIVISION

[ G.R. NO. 151973, July 23, 2009 ]

**NATIONAL POWER CORPORATION, PETITIONER, VS. SPOUSES LORENZO L. LAOHOO AND VISITACION LIM-LAOHOO; AND LUZ LOMUNTAD-MIEL, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated January 25, 2002 in CA-G.R. SP No. 49383.

Petitioner National Power Corporation (NAPOCOR) is a government-owned and controlled corporation created under Republic Act (RA) No. 6395, as amended, with the mandate to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis.<sup>[2]</sup> Petitioner decided to acquire an easement of right-of-way over respondents' properties located at *Barangay* San Andres and Poblacion, Municipality of Catbalogan, Samar for its proposed 350 KV LEYTE-LUZON HVDC POWER TL PROJECT.

On October 2, 1996, petitioner filed two complaints before the Regional Trial Court (RTC) of Catbalogan, Samar, docketed as Civil Case No. 6890,<sup>[3]</sup> entitled *National Power Corporation v. Sps. Lorenzo L. Laohoo and Visitacion Lim* and Civil Case No. 6891,<sup>[4]</sup> entitled *National Power Corporation v. Sps. Ernesto Miel and Luz Lomuntad*. Both actions seek to acquire an easement of right-of-way over portions of respondents' properties consisting of 3,258 square meters for the properties of spouses Lorenzo Laohoo and Visitacion Lim-Laohoo (the Spouses Laohoo) and 4,738 square meters for the properties of spouses Ernesto Miel and Luz Lomuntad-Miel (the Spouses Miel).

Petitioner then filed an Urgent *Ex-Parte* Motion for the Issuance of a Writ of Possession<sup>[5]</sup> in both cases.

On November 5, 1996, the Spouses Laohoo in Civil Case No. 6890 filed their Answer to the complaint acknowledging petitioner's right to expropriate their property, but prayed for payment of just compensation, damages and attorney's fees.<sup>[6]</sup>

The RTC issued two Orders,<sup>[7]</sup> both dated November 13, 1996, directing the Sheriff of the RTC to place petitioner in possession of the premises upon deposit with the Philippine National Bank (PNB) of the amount of P8,000,000.00, as provisional value fixed by the trial court in Civil Case No. 6891 and the amount of P6,000,000.00, as provisional value fixed by the trial court in Civil Case No. 6890.

On November 27, 1996, the Spouses Miel filed a Motion to Dismiss the complaint. They alleged that petitioner could ignore their property and use another land instead. However, in case their property was condemned, they prayed for payment for the improvements on their land, just compensation, damages and attorney's fees.<sup>[8]</sup>

On January 31, 1997, petitioner filed an Urgent Joint Motion to Reduce Amount of Report,<sup>[9]</sup> praying that the provisional deposit fixed in both cases be reduced to a reasonable amount, as determined by the trial court. During the hearing on the motion to reduce amount of report, the Spouses Laohoo manifested their willingness to reduce the amount of provisional deposit to P5,500,000.00. The trial court set the case for further hearing to give the petitioner time to consider the proposal of the Spouses Laohoo. Eventually, the provisional amounts of deposit were reduced to P2,500,000.00 in Civil Case No. 6890 and P3,000,000.00 in Civil Case No. 6891. Petitioner deposited the aforementioned amounts with the PNB Catbalogan, Samar Branch. Thus, on February 28, 1997, the RTC issued an Order<sup>[10]</sup> allowing the petitioner to enter the subject properties.

On February 13, 1997, the RTC appointed three (3) commissioners, namely: Provincial Assessor Engineer Leo N. Dacaynos, Architect Gilbert C. Cinco, and Mr. Eulalio C. Yboa for the purpose of determining the fair and just compensation due the respondents relative to petitioner's installation of its electric transmission lines on their properties. On April 2, 1997, the Commissioners submitted their appraisal report<sup>[11]</sup> and recommended an amount not lower than P1,900.00 per square meter as the fair market value of the properties in controversy.

During the hearing on April 3, 1997, respondents moved that the market value of P1,900.00 per square meter recommended by the commissioners be increased to P2,200.00 per square meter in Civil Case No. 6890 and to P2,500.00 per square meter in Civil Case No. 6891. The trial court set the case for further hearing to give petitioner the opportunity to be heard on the matter. In the meantime, upon motion of the Spouses Laohoo in Civil Case No. 6890, the RTC, on April 8, 1997, issued an Order<sup>[12]</sup> allowing them to withdraw P2,000,000.00 from the amount deposited by petitioner at PNB. Upon a similar motion of the Spouses Miel in Civil Case No. 6891, the RTC issued an Order<sup>[13]</sup> dated April 8, 1997 allowing the Spouses Miel to withdraw P2,500,000.00 from the amount deposited by petitioner at PNB.

On July 2, 1997, petitioner, through Atty. Neon Cinco, filed its Comment and/or Opposition<sup>[14]</sup> to the commissioner's report. The petitioner prayed that the amount of just compensation be based on the average of the prices as recommended by the Provincial Appraisal Committee of the Province of Samar and as certified by the Provincial Assessor, the average of which was much lower than the amount determined by the commissioners.

On September 15, 1997, the trial court issued two Orders<sup>[15]</sup> requiring the petitioner to pay the amount fixed as just compensation at P2,000.00 per square meter or the total amount of P6,616,000.00 for Civil Case No. 6890 and P9,476,000.00 for Civil Case No. 6891.

On October 2, 1997, petitioner filed Motions for Reconsideration<sup>[16]</sup> in both cases, which the RTC denied in an Order<sup>[17]</sup> dated October 14, 1997.

Petitioner filed Notices of Appeal,<sup>[18]</sup> which were dismissed by the trial court in an Order<sup>[19]</sup> dated December 10, 1997, for being filed out of time.

On March 13, 1998, the trial court issued two Orders<sup>[20]</sup> directing petitioner to deposit with PNB the balance of the just compensation for the properties of the respondents in the amounts of P4,116,000.00 in Civil Case No.6890 and P6,476,000.00 in Civil Case No. 6891. Petitioner filed a Motion for Reconsideration<sup>[21]</sup> of the Orders dated December 10, 1997 and March 13, 1998, praying that its notices of appeal be admitted. The said Motion was denied in a Resolution<sup>[22]</sup> dated July 2, 1998.

On August 27, 1998, the trial court issued two separate Orders<sup>[23]</sup> reiterating its previous orders for petitioner to deposit with PNB the amounts adjudged as just compensation on or before September 16, 1998.

During the hearing on September 29, 1998,<sup>[24]</sup> the trial court was informed by the manager of PNB, Catbalogan, Samar Branch, that petitioner had not yet deposited the prescribed amounts with the PNB. On October 1, 1998, the RTC directed the issuance of the writs of execution for the enforcement of the court's judgment dated September 15, 1997,<sup>[25]</sup> on the premise that the judgment of the RTC ordering petitioner to pay respondents the amounts due them, as payment for their expropriated property, had become final and executory. On October 2, 1998, the RTC issued the Writs of Execution<sup>[26]</sup> in Civil Case Nos. 6890 and 6891, and also issued Notices of Garnishment<sup>[27]</sup> on the petitioner's accounts with the Land Bank of the Philippines (LBP). On October 13, 1998, petitioner received copies of the RTC Orders dated October 1, 1998.

On October 27, 1998, petitioner filed a Petition for *Certiorari*, Prohibition and Preliminary Injunction with Prayer for a Temporary Restraining Order with the CA, docketed as CA-G.R. SP No. 49383.<sup>[28]</sup> In a Decision<sup>[29]</sup> dated January 25, 2002, the CA dismissed the petition for late filing. It ruled that:

It appears from the records of this case that Petitioner's Notice of Appeal was denied by Respondent Court in an Order dated December 10, 1997, a copy of which was received by Petitioner on December 23, 1997 (**Annex "2" of Private Respondents' Consolidated Comments on the Petition**). Accordingly, pursuant to Section 4, Rule 65 of the 1997 Rules on Civil Procedure, Petitioner had sixty (60) days from December 23, 1997 within which to assail the Respondents Court's denial of its Notice of Appeal via Petition for certiorari as in the present recourse. Petitioner, however, instituted the present recourse only on October 27, 1998, which is way beyond the sixty (60)-day reglementary period provided by law.

From the foregoing disquisitions, the instant petition must perforce be denied due course for having been filed out of time.

Hence, the instant petition assigning the following errors:

THE COURT OF APPEALS' QUESTIONED DECISION DATED JANUARY 25, 2002 IS NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE CONSIDERING THAT:

I

THE DETERMINATION OF THE AMOUNT OF JUST COMPENSATION WAS SPECULATIVE, ARBITRARY AND DEVOID OF ANY FACTUAL OR LEGAL BASIS.

II

THE DISMISSAL OF THE PETITION FOR CERTIORARI ON A MERE TECHNICALITY IS CONTRARY TO THE TIME HONORED DOCTRINE THAT LITIGATION IS NOT A GAME OF TECHNICALITIES AND THERE IS NO VESTED RIGHT IN IT BECAUSE THE GENERAL AIM OF PROCEDURAL LAW IS TO FACILITATE THE APPLICATION OF JUSTICE TO THE PARTY-LITIGANTS.

The petition is not meritorious.

Although the dismissal of the petition by the CA was based on the failure to timely file the petition, such dismissal was not merely based on technicality, but on petitioner's failure to perfect its appeal on time with the RTC.

Records show that, on September 15, 1997, the RTC, in both civil cases, issued orders directing the petitioner to pay the amount fixed as just compensation. Petitioner, through its counsel, received the said Orders on September 25, 1997. On October 2, 1997, petitioner filed by registered mail, a Motion for Reconsideration of the said Orders which the RTC denied in an Order dated October 14, 1997.

On October 30, 1997, petitioner filed a Notice of Appeal by registered mail for the two civil cases. Respondent Spouses Laohoo filed their Comment and Opposition to the notice of appeal, contending that the said appeal was filed six days late.

Petitioner argued that it was only on October 23, 1997 that the Office of the Regional Legal Counsel, NPC-Visayas Region in Cebu City, received a copy of the Order of October 14, 1997 denying its motion for reconsideration. By computing the remaining eight days reckoned from the date of receipt on October 23, 1997 of the RTC's Order dated October 14, 1997, petitioner insisted that it had until October 31, 1997 within which to file the notice of appeal and, thus, the filing thereof on October 30, 1997 was well within the 15-day reglementary period for taking an appeal as provided by the rules.

In an Order dated December 10, 1997, the RTC dismissed the petitioner's appeal and ruled that:

It appears from the record that the National Power Corporation received the resolution of this court dated October 14, 1997 denying their motion for reconsideration through their lawyer, Atty. Neon Cinco, on October 15, 1997. It is not, therefore, true that NAPOCOR received the order of denial of said motion for reconsideration on October 23, 1997 as alleged by Atty. Marianito delos Santos.

WHEREFORE, and it appearing that plaintiff's notice of appeal was filed six (6) days beyond the reglementary period, it is ordered that plaintiff's appeal be, and is hereby, dismissed.

There appears to be a controversy between the petitioner and the respondents as to when the petitioner received the RTC Order dated October 14, 1997 denying the petitioner's motion for reconsideration. This issue needs to be settled, because the remaining period (*i.e.*, eight days) within which to appeal is reckoned from the actual date of receipt of the RTC's Order of denial. The determination as to whether petitioner's notice of appeal was filed on time crucial, because if it was seasonably filed, then the RTC gravely abused its discretion in dismissing the same. On the contrary, if it was filed out of time, then the RTC correctly dismissed the notice of appeal and the RTC's Order dated September 15, 1997 had already become final and executory.

This Court finds that the petitioner's appeal before the RTC was filed out of time.

In the Order dated December 10, 1997 dismissing the petitioner's appeal, the RTC made a finding that its counsel, Atty. Neon Cinco, received the Order denying its motion for reconsideration on October 15, 1997. The date of receipt by petitioner, as found by the RTC, was based on the records of the case. Petitioner failed to disprove what was reflected in the records of the RTC that Atty. Cinco received the Order dated October 14, 1997 on October 15, 1997. If the records of the RTC do not show that Atty. Cinco received the same on October 15, 1997, the petitioner could have presented certified true copies of the records of the case in order to disprove the trial court's finding. In the absence of such evidence, the trial court's declaration should be taken as true on its face, as it enjoys the presumption of regularity in the performance of its official duties.<sup>[30]</sup> Because of the foregoing, We are inclined to rule that petitioner's counsel, Atty. Neon Cinco, received the Order on October 15, 1997.

The trial court's Order dated September 15, 1997 was a final order fixing the just compensation for the expropriated lots of the respondents and, thus, completely disposed of the controversy between the party litigants. Petitioner should have timely appealed the assailed RTC Order under Section 1, Rule 41 of the Rules of Court. In this case, petitioner received on September 25, 1997 a copy of the Order of the trial court dated September 15, 1997 fixing the amount of just compensation on the respondents' properties. On October 2, 1997, or on the seventh day from receipt of the Order dated September 15, 1997, petitioner filed a motion for