

## FIRST DIVISION

[ G.R. NO. 170945, September 26, 2006 ]

**NATIONAL POWER CORPORATION, PETITIONER, VS. MARIA MENDOZA SAN PEDRO, REPRESENTED BY VICENTE, HERMINIA AND FRANCISCO, ALL SURNAMED SAN PEDRO, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 72860, and its Resolution<sup>[2]</sup> denying the motion for reconsideration thereof.

#### The Antecedents

The National Power Corporation (NPC) is a government-owned-and-controlled corporation created to undertake the development of hydro-electric generation of power and the production of electricity from any and all sources; and particularly the construction, operation, and maintenance of power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, lake, creek, spring and waterfalls in the Philippines and supplying such power to the inhabitants thereof.<sup>[3]</sup> Under Republic Act No. 6395, as amended, the NPC is authorized to enter private property provided that the owners thereof shall be indemnified for any actual damage caused thereby.<sup>[4]</sup>

For the construction of its San Manuel-San Jose 500 KV Transmission Line and Tower No. SMJ-389, NPC negotiated with Maria Mendoza San Pedro, then represented by her son, Vicente, for an easement of right of way over her property, Lot No. 2076. The property, which was partly agricultural and partly residential land, was located in *Barangay* Partida, Norzagaray, Bulacan and covered by Tax Declaration No. 00386. On June 19, 1997, Maria executed a Right of Way Grant<sup>[5]</sup> in favor of NPC over the lot for P1,277,886.90. The NPC paid her P524,635.50 for the damaged improvements thereon.<sup>[6]</sup>

The payment voucher for the residential portion of the lot valued at P6,000,000.00 (at P600.00 per square meter) was then processed.<sup>[7]</sup> However, the NPC Board of Directors approved Board Resolution No. 97-246<sup>[8]</sup> stating that it would pay only P230.00 per sq m for the residential portion and P89.00 per sq m for the agricultural portion, on the following premises:

A) The proposed land valuations were evaluated and analyzed using the joint appraisal report on fair market value of lands by Cuervo Appraisal, Inc., Development Bank of the Philippines, and the Land Bank of the

Philippines and the fair market values established by the respective Provincial Appraisal Committee (PAC) of Zambales, Pangasinan, Nueva Ecija, Pampanga and Bulacan as well as the City Appraisal Committee (CAC) of San Carlos and Cabanatuan.

B) For lot acquisition, adopt PAC or CUERVO Appraisal, whichever is lower; if there is a problem of acceptance, refer same to the Board;

C) For easement over agricultural lands, adopt median or average if there are several amounts involved; and

D) Always oppose any proposals for conversion of agricultural lands.<sup>[9]</sup>

On January 15, 1998, the NPC filed a complaint<sup>[10]</sup> for eminent domain in the Regional Trial Court (RTC) of Bulacan against Maria and other landowners. The case was docketed as Civil Case No. 28-M-98. According to NPC, in order to construct and maintain its Northwestern Luzon Transmission Line Project (San Manuel-San Jose 500 KV Transmission Line Project), it was necessary to acquire several lots in the Municipalities of San Jose del Monte and Norzagaray, Bulacan for an easement of right of way in the total area of more or less 35,288.5 sq m. The owners of the affected areas and their corresponding assessed values are:

<b>OWNER/ CLAIMANT</b>	<b>LOT/ BLK. NO.</b>	<b>TAX DEC. NO.</b>	<b>TITLE NO.</b>	<b>TOTAL AREA</b>	<b>AREA AFFECTED IN SQ. M.</b>	<b>ASSESSED VALUE OF AREA AFFECTED</b>	<b>CLASSIFI- CATION OF LAND</b>
Ma. Mendoza San Pedro rep. by Vicente San Pedro	2076	00386		122,821.32	17,195	P 18,555.75	Agricultural
				10,000	6,565	P147,712.50	Residential
Lorenza Manuel / Sps. Raul & Edna Lagula	1250	96- 21017- 00084	T- 28392- P-(M)	5,700	51,666.5	P 13,481.03	Agricultural
Sps. Segundo & Maxima Manuel / Sps. Raul & Edna Lagula	1251	96- 21017- 00083	P-3965 (M)	6,362	6,362	P 16,210.00	Agricultural

Maria San Pedro filed her Answer<sup>[11]</sup> on February 2, 1998, alleging that there had already been an agreement as to the just compensation for her property. She prayed, among others, that she should be paid the consideration stated in the Right

of Way Grant, P600.00 per sq m for the residential portion of the land as agreed upon by her and NPC, and to base the values from Resolution No. 97-005<sup>[12]</sup> of the Provincial Appraisal Committee.

Meanwhile, Maria San Pedro filed an Amended Answer<sup>[13]</sup> in which she alleged that NPC had resorted to deceit, trickery and machination to induce her to grant a right of way by assuring her that it would also pay for the residential portion of the property at P600.00 per sq m.

On August 10, 1998, the RTC issued a writ of possession against Maria San Pedro.<sup>[14]</sup> When she passed away on August 22, 1998,<sup>[15]</sup> she was substituted by her heirs, Vicente, Herminia and Francisco, all surnamed San Pedro, on September 11, 1998.<sup>[16]</sup>

During the pre-trial on January 25, 1999, the parties agreed that the only issue for resolution was the just compensation for the property. The court appointed a committee of commissioners to ascertain and recommend to the trial court the just compensation for the properties, composed of Atty. Josephine L. Sineneng-Baltazar, the Clerk of Court, as chairperson; and Engr. Oscar C. Cruz, Provincial Assessor of Bulacan, and Atty. Henry P. Alog of the Litigation Department of NPC to serve as members-commissioners thereof.<sup>[17]</sup>

On July 12, 1999, Atty. Baltazar and Engr. Cruz submitted their report,<sup>[18]</sup> recommending as payment for just compensation P800.00 per sq m for the residential lot and P700.00 per sq m for the agricultural lot.<sup>[19]</sup> The majority report reads:

#### I. Description of the Property

A parcel of land with a total area of 132,821.32 square meters located at Partida, Norzagaray, Bulacan and declared for taxation purposes in the name of Maria Mendoza San Pedro is sought to be expropriated by plaintiff National Power Corporation for the construction and maintenance of its Northwestern Luzon Transmission Line Project (San Miguel-San Jose 500 KV Transmission Line Project), to wit:

<u>Lot No.</u>	<u>Tax Dec. No.</u>	<u>Total Area</u>	<u>Area Affected in sq. m.</u>	<u>Classification</u>
2076	01337	122,821.32 10,000.00	17,195 6,565	Agricultural Residential

The pertinent tax declaration is hereto attached as Annex "A."

The residential lot is not affected by NPC's project in its entirety. Around 2,000 sq. m. remains on each side of the residential lot.

Likewise, only a portion or 17,195 sq. m. of (*sic*) more than 12 hectares agricultural land, (*sic*) is affected by the project. A sketch plan of the affected area is attached

hereto as Annex "B."

## II. Claims of the Parties

Defendants allege that they had signed a Right of Way Grant Contract dated June 19, 1997 which plaintiff itself prepared and was notarized by Atty. Marcelo Aure; that, among others, defendants and plaintiff agreed that the price of the residential land is P600.00 per square meter, based on the Provincial Appraisals Committee (PAC) Resolution No. 97-005; that, on December 6, 1997, plaintiff informed them that the NPC Board passed Resolution No. 97-246 dated October 27, 1997, pursuant to which the board approved price for acquisition of subject property is P230.00 per sq. m. for residential and P89.00 per sq. m. for agricultural lot. Defendants did not accept the new offer.

On the other hand, plaintiff alleges that the price for residential land is P230.00 per sq. m. as approved by NPC's Board and not P600.00 per sq. m. being asked by defendants. It further recommended the appointment of commissioners to report to the Court the just compensation to be paid to the defendants.

## III. Observations

The Commissioners went to the site on May 11, 1999 and were able to observe that:

(1) The residential lot of Vicente San Pedro is not affected by NPC's project in its entirety. Around 2,000 sq. m. remains on each side of the residential lot. There are no existing structures or improvements on said residential lot, which is situated along the all-weather (gravel) road. Defendants are afraid to utilize the said remaining portions for residential purposes because of the reported constant loud buzzing and exploding sounds emanating from the towers and transmission lines, especially on rainy days. The two children of Vicente San Pedro had wanted to construct their residential houses on said land, but decided against it now because of fear that the large transmission lines looming not far above their land and the huge tower in front of their lot will affect their safety and health. Moreover, there is a slim chance now that somebody will still buy the remaining portions on each side of the residential lot affected by the project, to the damage of the defendant, both as to future actual use of the land and financial gains to be derived therefrom.

(2) Likewise only a portion, or 17,195 sq. m. of the 122,821.32 square meter agricultural land, is affected by the transmission line project. It was not planted with *palay* at the time of the inspection. According to the defendants, their farm helpers are already afraid to work on the land because of the buzzing and cracking sounds coming from the tower and transmission lines.

(3) The site is located in a highly developed area about 1.5 kms. away from Norzagaray Municipal Building. The vast land owned by Jesus Is Lord congregation is on the same side of the road as subject property. Opposite the road is an ongoing resort project, the Falcon Crest Resort

about - kilometers away, and the proposed Catholic Retreat House about 200 meters away. Attached as Annex "C" is the Location Plan of said lot.

#### IV. Available Data

(1) Based on the Zoning Certificate issued by the Municipal Mayor, subject parcel of land has been classified as residential pursuant to the proposed Comprehensive Land Use Plan of local government unit. Copy of said Zoning Certificate is hereto attached as Annex "D."

(2) Based on the BIR Zonal Valuation attached as Annex "E," subject land has a zonal value of P60.00/sq. m. for residential and P30.00/sq. m. for agricultural lot. However, it is common knowledge that zonal valuation provided by BIR cannot be made as basis for the purpose of determining just compensation in eminent domain cases because it is only for the purpose of computing internal revenue taxes.

(3) Opinion values gathered by the Provincial Assessor on the price of the property are as follows:

Residential - P1,075.00 / sq. m.

Agricultural - P 643.00 / sq. m.

The summary of Opinion Values is hereto attached as Annex "F."

(4) There are no available sales data on properties within the vicinity of subject land for the years 1996 and 1997, approximate time of the taking.

#### IV. Recommendation

*The Commissioners, after considering the location of the subject property in a highly developed area and accessibility thru the all-weather road (gravel); its potential for full development as shown by the existence of building projects in the vicinity; and the long- term effect the expropriation will have on the lives, comfort and financial condition of herein defendants, respectfully recommend the following amounts as payment for the affected portions of subject property.*

P800. / sq. m. -for the residential lot

P700. / sq. m. -for the agricultural lot [20]

However, Atty. Alog, who represented NPC, dissented from the report, claiming that it was merely based on "opinion values," and the self-serving declarations and opinions of defendants. He maintained that, in determining just compensation, the trial court should instead consider the appraisal report of Cuervo Appraisers, Inc., upon which Resolution No. 97-246 of NPC was based. He likewise argued that the property involved was actually and principally used as agricultural, though declared as agricultural/residential lots; hence, only the easement fee of right of way should be paid, as the principal purpose for which the lot was devoted would not be impaired by the construction of transmission lines. His report reads: