

SECOND DIVISION

[G.R. No. 210218, August 17, 2016]

NATIONAL POWER CORPORATION, PETITIONER, VS. HEIRS OF ANTONINA RABIE, REPRESENTED BY ABRAHAM R. DELA CRUZ, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

This petition for review on certiorari^[1] assails the 28 November 2013 Decision^[2] of the Court of Appeals in CA-G.R. SP No. 131335, dismissing the petition for certiorari filed by petitioner National Power Corporation (NAPOCOR).

The Facts

NAPOCOR is a government-owned and controlled corporation created pursuant to Republic Act No. 6395,^[3] as amended. Under the EPIRA,^[4] NAPOCOR was tasked to perform the missionary electrification function and to provide power generation and its associated power delivery systems in areas that are not connected to the transmission system.

On 1 December 2009, NAPOCOR filed a complaint for expropriation^[5] against respondents Heirs of Antonina Rabie (respondents) for the acquisition of the 822-square meter portion of Lot No. 1439, a residential lot located in Barangay Lewin, Lumban, Laguna consisting of 12,657 square meters and covered by Original Certificate of Title No. P-9196, to be used as access road for the Caliraya Hydro Electric Power Plant of the Caliraya-Botocan-Kalayaan Build Rehabilitate and Operate Transfer Project of the NAPOCOR. The case was raffled to Regional Trial Court, Branch 91, Sta. Cruz, Laguna (trial court) and docketed as Civil Case No. SC-4842.

On 25 February 2010, respondents filed a Verified Answer,^[6] claiming that the then current market value of the property was PI 0,000 per square meter on the inner portion and P12,000 per square meter near the highway. Respondents prayed, among others, for a just compensation in the amount of P1,250,700, representing the Bureau of Internal Revenue (BIR) zonal valuation for the "actual area to be occupied" by NAPOCOR which is 2,274 square meters, instead of 822 square meters only. In addition, respondents sought payment for NAPOCOR's alleged unauthorized entry and use of the property from 1940 to date.

On 5 July 2010, NAPOCOR deposited with the Land Bank of the Philippines (Land Bank) the amount of P411,000 representing the BIR zonal valuation of the affected portion of the subject property, which was P500 per square meter.

Respondents filed a Motion to Withdraw Deposit dated 15 November 2010,^[7] which the trial court granted in an Order dated 17 November 2010.^[8]

NAPOCOR filed a Motion to Issue Order of Expropriation dated 18 March 2011.^[9] NAPOCOR also filed a Motion for Annotation/Registration of Partial Payment dated 7 June 2011.^[10]

In an Order dated 5 October 2011 ,^[11] the trial court granted the motions and constituted the Board of Commissioners to assist the trial court in the determination of just compensation for the affected portion of the subject property.

On 8 February 2012, the Board of Commissioners submitted its Report. On 17 May 2012, NAPOCOR filed its Comment/Opposition to the Commissioners' Report objecting to the recommendation that the affected portion of the subject property consists of 2,274 square meters and that the value per square meter is PI 1,000. NAPOCOR also questioned the Commissioners' recommendation on the payment of rentals and the fact that NAPOCOR was not given the opportunity to be heard and to argue as to the amount of just compensation.

On 29 January 2013, the trial court issued an Order, the dispositive portion of which reads:

WHEREFORE, the Eight Hundred Twenty Two (822) square meters of the land owned by the defendants is hereby expropriated in favor of the National Power Corporation effective December 2009 upon payment of the fair market value of the property at Eleven Thousand (PI 1,000.00) Pesos per square meter or a total of Nine Million Forty-Two Thousand (P9,042,000.00) Pesos. Defendants' claim that said property was occupied by plaintiff since 1940 is un rebutted, hence, reasonable rentals of Twelve Thousand Pesos (PI2,000.00) yearly is hereby awarded to defendants from the year 1940 to the present at a twelve percent (12%) annual interest rate, until fully paid.

SO ORDERED.^[12]

On 8 March 2013, NAPOCOR filed a Motion for Reconsideration of the Order. However, the trial court denied the motion in an Order dated 30 April 2013^[13] which was received by NAPOCOR on 23 May 2013 and by respondents on 15 May 2013.

On 22 May 2013, respondents filed a Motion for Execution Pending Appeal.^[14] NAPOCOR filed its Comment/Opposition thereto on 4 June 2013.

On 6 June 2013, NAPOCOR filed its Notice of Appeal and Record on Appeal.^[15]

In an Order dated 18 June 2013,^[16] the trial court gave due course to NAPOCOR's Notice of Appeal and directed the transmittal of the records of the case to the Court of Appeals.

The trial court set for hearing respondents' Motion for Execution Pending Appeal on 10 July 2013.

On 11 July 2013, the trial court issued an Order granting respondents' Motion for Execution Pending Appeal.^[17] The trial court held:

In determining the propriety of execution of its Order dated January 29, 2013, pending appeal, showing good reasons as stated in the motion and while the Court has its jurisdiction over the case and still in possession of original record thereof or the record on appeal, the Court grants the "Motion for Execution Pending Appeal."^[18]

On 12 July 2013, the trial court's Officer-in-Charge issued a Writ of Execution.^[19] Sheriff Raymundo P. Claveria issued a Notice^[20] addressed to the President of NAPOCOR demanding payment of P9,042,000 and P12,000 yearly rentals plus 12% interest from 1940 up to the present until fully paid within ten days from receipt thereof.

On 30 July 2013, NAPOCOR received a letter from the LBP-NAPOCOR Extension Office informing NAPOCOR of its receipt of a Notice of Garnishment in the amount of P14,873,999.28 issued by Sheriff Claveria.

Aggrieved, NAPOCOR filed with the Court of Appeals a petition for certiorari under Rule 65, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

On 28 November 2013, the Court of Appeals rendered a Decision dismissing the petition.

Hence, this petition filed on 23 January 2014.

On 22 October 2014, respondents filed an Omnibus Motion (to Dismiss and to Cite Petitioner in Contempt), contending that NAPOCOR is guilty of forum-shopping considering that there is another petition^[21] filed by NAPOCOR before this Court (docketed as G.R. No. 214070). Respondents alleged that G.R. No. 214070 involves the same parties and the same facts and seeks the same relief of preventing the implementation of the trial court's Order dated 11 July 2013 granting execution pending appeal and the Order dated 29 January 2013 ordering NAPOCOR to pay just compensation to respondents.

In its 19 November 2014 Resolution, the Court noted the motion.

In its 29 September 2014 Resolution, the Court dismissed the petition in G.R. No. 214070 for NAPOCOR's failure to sufficiently show that the assailed resolutions of the Court of Appeals, dated 15 April 2014 and 8 August 2014, are tainted with grave abuse of discretion. The 15 April 2014 Resolution of the Court of Appeals assailed in G.R. No. 214070 ordered NAPOCOR to submit an affidavit containing a list of its assets and ordered Land Bank to submit a bank certification containing a list of NAPOCOR's bank deposits with Land Bank.

The Court of Appeals' Ruling

The Court of Appeals held that the trial court still had jurisdiction when respondents

filed their motion for execution pending appeal on 22 May 2013, or seven days after their receipt of the trial court's order denying their Motion for Partial Reconsideration. Hence, respondents' motion for execution pending appeal was timely filed.

The Court of Appeals ruled that there exists good reasons for the trial court's order granting execution pending appeal. The Court of Appeals agreed with respondents' invocation of *Borja v. Court of Appeals*^[22] where petitioner's advanced age, together with the posting of a supersedeas bond, justified the execution pending appeal.

The Court of Appeals rejected NAPOCOR's argument that the alleged physical and financial conditions of respondents do not outweigh the damages that it would suffer in the event that the Order subject of the writ of execution is later reversed, and that such conditions increase the risk that respondents would not be able to reimburse the amounts fixed in the Order. The CA held that "where the executed judgment is reversed, x x x the trial court may, on motion, issue such orders of restitution or reparation of damages x x x."^[23]

The Court of Appeals also held that NAPOCOR's funds may be garnished as "it would be absurd to rule that petitioner's funds may not be garnished x x x considering that the winning party would not enjoy the fruits of his victory, x x x."^[24] The Court of Appeals cited *Coscolluela v. Court of Appeals*,^[25] where the Court held that "[i]t is arbitrary and capricious for a government agency to initiate expropriation proceedings x x x and then refuse to pay on the ground that there are no appropriations for the property earlier taken x x x."^[26]

The Issues

The issues in this case are: (1) whether the trial court still had jurisdiction when it ruled on the Motion for Execution Pending Appeal; (2) whether there exists good reasons for the execution of the trial court's decision pending appeal; and (3) whether the NAPOCOR's funds may be garnished or be the subject of execution.

The Court's Ruling

We grant the petition.

Trial court had jurisdiction to resolve motion for discretionary execution

Execution pending appeal, also called discretionary execution under Section 2(a), Rule 39 of the Rules of Court, is allowed upon good reasons to be stated in a special order after due hearing. Section 2(a), Rule 39 provides:

SEC. 2. *Discretionary execution.* -

(a) *Execution of a judgment or a final order pending appeal.* - On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the

time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

In this case, the motion for execution pending appeal was filed by respondents seven days after their receipt of the trial court's order denying the motions for reconsideration filed by both parties. Clearly, respondents filed the motion for execution pending appeal before the lapse of the period to file an appeal, which is fifteen days from notice of the order denying the motion for reconsideration.^[27] Therefore, the trial court still had jurisdiction when respondents filed their motion for execution pending appeal.

Further, prior to transmittal of the records of the case, the trial court does not lose jurisdiction over the case and in fact, may issue an order for execution pending appeal. Section 9, Rule 41 of the Rules of Court provides:

SEC. 9. Perfection of appeal; effect thereof. A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, **prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39,** and allow withdrawal of the appeal. (Emphasis supplied)

In this case, the trial court issued its Order granting the motion for execution pending appeal on 11 July 2013. That Order expressly stated that the trial court was still in possession of the original record of the case at the time. In fact, the records were transmitted to the Court of Appeals on 19 July 2013.^[28] In other words, the trial court issued the Order granting the motion for execution pending appeal before the transmittal of the records to the Court of Appeals. Hence, contrary to