

THIRD DIVISION

[G.R. No. 211731, December 07, 2016]

**NATIONAL POWER CORPORATION, PETITIONER, V. SPOUSES
CONCHITA MALAPASCUA-MALIJAN AND LAZARO MALIJAN,
RESPONDENTS.**

[G.R. No. 211818, December 7, 2016]

**CONCHITA MALAPASCUA-MALIJAN AND HEIRS OF LAZARO
MALIJAN, PETITIONERS, V. NATIONAL POWER CORPORATION,
RESPONDENT.**

DECISION

PERALTA, J.:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated May 11, 2014 of Conchita Malapascua-Malijan and Heirs of Lazaro Malijan in G.R. No. 211818 which seeks to set aside the Decision^[1] dated June 13, 2012 of the Court of Appeals (CA) and its subsequent Resolution dated March 12, 2014 reversing the Decision^[2] dated February 22, 2008 of the Regional Trial Court (RTC), Branch 6, Tanauan City, Batangas in an expropriation case, and the Petition for Review on *Certiorari* under Rule 45 dated April 21, 2014 of National Power Corporation that seeks the modification of the same Decision dated June 13, 2012 of the CA.

The facts follow.

National Power Corporation (NAPOCOR) sought to expropriate a 3,907-square-meter portion of a property owned by the Spouses Conchita Malapascua-Malijan and Lazaro Malijan (*the Spouses Malijan*) located at Barangay San Felix, Sto. Tomas, Batangas and covered by Tax Declaration No. 15032. An expropriation case was, therefore, filed with the RTC, Branch 6 of Tanauan City, Batangas.

The Spouses Malijan did not interpose any objection to the expropriation of the property, hence, the sole issue that needed to be resolved was the determination of the just compensation.

In an Order dated August 22, 2007, the RTC created a Board of Commissioners that would recommend the amount of just compensation. In the Commissioner's Report submitted by the same Board, the recommended price of the property was P3,500.00 per square meter or a total amount of Thirteen Million Six Hundred Seventy-Four Thousand Five Hundred Pesos (P13,674,500.00). Such amount of just compensation was based on the ocular inspection made on the property; the local market condition; and the standards set in Section 5 of the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 8974. In view of the presence and proliferation of the several commercial and industrial establishments near the

subject property, the Commissioners found it more prudent and reasonable to appraise the property as commercial or industrial.

It was also shown in the Commissioner's Report that at present the property is being used as main access road leading to NAPOCOR's Mak-ban Geothermal Power Plant.

NAPOCOR opposed the Board's recommendation for being excessive, unconscionable, exorbitant and without legal basis and claimed that they entered the subject property in 1972. Based on the provisions of Section 4, Rule 67 of the Rules of Court, the just compensation of the property should be based on the value of the property at the time the taking of the same or the filing of the complaint, whichever came first, thus:

Rule 67, Section 4. x x x payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

According to NAPOCOR, the taking of the property occurred in 1972 whereas the institution of the complaint was made thirty-four (34) years after, hence, the just compensation should be based on the value of the property in 1972.

The Spouses Malijan, on the other hand, argued that the above-cited provision merely applies in situations wherein the time of the taking coincides with the filing of the complaint and that since NAPOCOR is claiming the exception provided in Section 4, Rule 67 of the Rules of Court, it has the burden of proving its claim that its occupancy and use was the direct cause of the increase in valuation. The Spouses Malijan claimed that NAPOCOR has belatedly argued that it entered the property in 1972 and that such fact was not alleged in the complaint.

The RTC, on February 22, 2008, rendered its Decision denying NAPOCOR's plea that the just compensation be based on the value of the property in 1972, thus:

WHEREFORE, premises considered, judgment is hereby rendered condemning the 3,907-square-meter portion of the property of the Spouses Conchita Malapascua-Malijan and Lazaro Malijan covered by Tax Declaration No. 15032 which is the subject matter of this case in favor of plaintiff National Power Corporation and thus ordering the plaintiff to pay the defendants-owners the amount of PhP3,500.00 per square meter or a total amount of Thirteen Million Six Hundred Seventy-Four Thousand Five Hundred Pesos (PhP13,676,500.00) representing the just compensation of the affected area.

SO ORDERED.

NAPOCOR elevated the case to the CA insisting that it is not liable for the payment of just compensation in the amount of P3,500.00 per square meter or a total amount of P13,676,500.00 pertaining to the affected area of the subject property; instead, it is only liable for an amount equivalent to the fair market value of the same property at the time it was taken in 1972. On June 13, 2012, the CA rendered the assailed Decision in favor of NAPOCOR, thus:

WHEREFORE, in view of the foregoing, the instant Appeal is GRANTED. Accordingly, the challenged Decision dated 22 February 2008 is hereby SET ASIDE.

The Regional Trial Court of Tanauan City, Batangas, Branch 6, is hereby DIRECTED to immediately determine the just compensation due to appellees Spouses Lazaro and Conchita Malijan based on the fair market value of the subject property at the time it was taken in 1972 with legal interest at the rate of six (6%) percent *per annum* from the time of taking until full payment is made.

Appellant National Power Corporation is ORDERED to pay appellees the amounts of P200,000.00 as exemplary damages and P100,00.00 as attorney's fees.

SO ORDERED.

Hence, the present petitions. Conchita Malapascua-Malijan and the heirs of Lazaro Malijan, in their petition, raised the following arguments:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW IN HOLDING THAT THE SUBJECT PROPERTY WAS TAKEN IN 1972, AS THE COMPLAINT FOR EXPROPRIATION ITSELF IS BEREFT OF ANY SUCH ALLEGATION. ADDITIONALLY, THERE IS NO EVIDENCE ON RECORD THAT WILL SHOW THAT RESPONDENT HAS COMPLETELY TAKEN THE PROPERTY UNDER WARRANT OR COLOR OF LEGAL AUTHORITY SO AS TO OUST THE OWNER OF ALL BENEFICIAL ENJOYMENT OF THE PROPERTY.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW WHEN IT HELD IN THE QUESTIONED DECISION THAT JUST COMPENSATION BE BASED IN 1972 WHEN THE SUBJECT PROPERTY WAS ALLEGEDLY TAKEN.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW WHEN IT APPLIED THE CASE OF EUSEBIO V. LUIS TO JUSTIFY ITS DECISION, SIMPLY BECAUSE, THERE IS NO SIMILARITY OF THE FACTUAL MILIEU IN THE EUSEBIO CASE WITH THE INSTANT CASE. ON THE CONTRARY, THE INSTANT CASE IS MORE IN ALL FOURS WITH THE HEIRS OF MATEO PINDACAN, ET AL. V. ATO.

NAPOCOR, on the other hand, assigned the following error in its petition:

THE AWARD OF EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO RESPONDENT-SPOUSES LAZARO AND CONCHITA MALIJAN IS WITHOUT ANY FACTUAL AND LEGAL BASIS.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.^[3] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"^[4] when supported by substantial evidence.^[5] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.^[6]

This court's Decision in *Cheesman v. Intermediate Appellate Court*^[7] distinguished questions of law from questions of fact:

As distinguished from a question of law - which exists "when the doubt or difference arises as to what the law is on a certain state of facts" - "there

is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."^[8]

Seeking recourse from this Court through a petition for review on *certiorari* under Rule 45 bears significantly on the manner by which this Court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts."^[9]

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded.^[10] At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:^[11]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.^[12]

In this case, the findings of the CA are contrary to those of the trial court, therefore, there is a need for this Court to finally settle the issues presented before it.

This Court shall first resolve the petition filed by Conchita Malapascua-Malijan and the heirs of Lazaro Malijan.

Conchita Malapascua-Malijan, *et al.*, insist that there is no single evidence on record that would show that NAPOCOR had completely taken the property in 1972. Thus, they argue that NAPOCOR is in estoppel to make a belated claim of taking in its Comment and Opposition to the Commissioner's Report. Furthermore, they claim that the right of way that NAPOCOR had been enjoying was only due to the long tolerance on their part and not by complete dominion by NAPOCOR to the exclusion of others.

Highly instructive is the case of *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson*^[13] where this Court addressed situations in which the government took control and possession of properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time

to question such government act and later instituted actions for recovery of possession with damages. This Court ruled that just compensation is the value of the property at the time of taking and that is what is controlling for purposes of compensation, thus:

Just compensation is "the fair value of the property as between one who receives, and one who desires to sell, x x x fixed at the time of the actual taking by the government." This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation.^[14]

The issue in this case is not novel.

In *Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR]*,^[15] PNR entered the property of Forfom in January 1973 for public use, that is, for railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service without initiating expropriation proceedings.^[16] In 1990, Forfom filed a complaint for recovery of possession of real property and/or damages against PNR. In *Eusebio v. Luis*,^[17] respondent's parcel of land was taken in 1980 by the City of Pasig and used as a municipal road now known as A. Sandoval Avenue in Pasig City without the appropriate expropriation proceedings. In 1994, respondent demanded payment of the value of the property, but they could not agree on its valuation prompting respondent to file a complaint for reconveyance and/or damages against the city government and the mayor. In *Manila International Airport Authority v. Rodriguez*,^[18] in the early 1970s, petitioner implemented expansion programs for its runway necessitating the acquisition and occupation of some of the properties surrounding its premises. As to respondent's property, no expropriation proceedings were initiated.*lawphil* In 1997, respondent demanded the payment of the value of the property, but the demand remained unheeded prompting him to institute a case for *accion reivindicatoria* with damages against petitioner. In *Republic v. Sarabia*,^[19] sometime in 1956, the Air Transportation Office (ATO) took possession and control of a portion of a lot situated in Aklan, registered in the name of respondent, without initiating expropriation proceedings. Several structures were erected thereon including the control tower, the Kalibo crash fire rescue station, the Kalibo airport terminal and the headquarters of the PNP Aviation Security Group. In 1995, several stores and restaurants were constructed on the remaining portion of the lot. In 1997, respondent filed a complaint for recovery of possession with damages against the storeowners where ATO intervened claiming that the storeowners were its lessees.

The Court in the above-mentioned cases was confronted with common factual circumstances where the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. The Court thus determined the landowners' right to the payment of just compensation and, more importantly, the amount of just compensation.