

FIRST DIVISION

[G.R. No. 106804, August 12, 2004]

NATIONAL POWER CORPORATION, PETITIONER, VS. COURT OF APPEALS AND ANTONINO POBRE, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

Before us is a petition for review^[1] of the 30 March 1992 Decision^[2] and 14 August 1992 Resolution of the Court of Appeals in CA-G.R. CV No. 16930. The Court of Appeals affirmed the Decision^[3] of the Regional Trial Court, Branch 17, Tabaco, Albay in Civil Case No. T-552.

The Antecedents

Petitioner National Power Corporation ("NPC") is a public corporation created to generate geothermal, hydroelectric, nuclear and other power and to transmit electric power nationwide.^[4] NPC is authorized by law to acquire property and exercise the right of eminent domain.

Private respondent Antonino Pobre ("Pobre") is the owner of a 68,969 square-meter land ("Property") located in Barangay Bano, Municipality of Tiwi, Albay. The Property is covered by TCT No. 4067 and Subdivision Plan 11-9709.

In 1963, Pobre began developing the Property as a resort-subdivision, which he named as "Tiwi Hot Springs Resort Subdivision." On 12 January 1966, the then Court of First Instance of Albay approved the subdivision plan of the Property. The Register of Deeds thus cancelled TCT No. 4067 and issued independent titles for the approved lots. In 1969, Pobre started advertising and selling the lots.

On 4 August 1965, the Commission on Volcanology certified that thermal mineral water and steam were present beneath the Property. The Commission on Volcanology found the thermal mineral water and steam suitable for domestic use and potentially for commercial or industrial use.

NPC then became involved with Pobre's Property in three instances.

First was on 18 February 1972 when Pobre leased to NPC for one year eleven lots from the approved subdivision plan.

Second was sometime in 1977, the first time that NPC filed its expropriation case against Pobre to acquire an 8,311.60 square-meter portion of the Property.^[5] On 23 October 1979, the trial court ordered the expropriation of the lots upon NPC's

payment of P25 per square meter or a total amount of P207,790. NPC began drilling operations and construction of steam wells. While this first expropriation case was pending, NPC dumped waste materials beyond the site agreed upon by NPC with Pobre. The dumping of waste materials altered the topography of some portions of the Property. NPC did not act on Pobre's complaints and NPC continued with its dumping.

Third was on 1 September 1979, when NPC filed its second expropriation case against Pobre to acquire an additional 5,554 square meters of the Property. This is the subject of this petition. NPC needed the lot for the construction and maintenance of Naglagbong Well Site F-20, pursuant to Proclamation No. 739^[6] and Republic Act No. 5092.^[7] NPC immediately deposited P5,546.36 with the Philippine National Bank. The deposit represented 10% of the total market value of the lots covered by the second expropriation. On 6 September 1979, NPC entered the 5,554 square-meter lot upon the trial court's issuance of a writ of possession to NPC.

On 10 December 1984, Pobre filed a motion to dismiss the second complaint for expropriation. Pobre claimed that NPC damaged his Property. Pobre prayed for just compensation of all the lots affected by NPC's actions and for the payment of damages.

On 2 January 1985, NPC filed a motion to dismiss the second expropriation case on the ground that NPC had found an alternative site and that NPC had already abandoned in 1981 the project within the Property due to Pobre's opposition.

On 8 January 1985, the trial court granted NPC's motion to dismiss but the trial court allowed Pobre to adduce evidence on his claim for damages. The trial court admitted Pobre's exhibits on the damages because NPC failed to object.

On 30 August 1985, the trial court ordered the case submitted for decision since NPC failed to appear to present its evidence. The trial court denied NPC's motion to reconsider the submission of the case for decision.

NPC filed a petition for certiorari^[8] with the then Intermediate Appellate Court, questioning the 30 August 1985 Order of the trial court. On 12 February 1987, the Intermediate Appellate Court dismissed NPC's petition but directed the lower court to rule on NPC's objections to Pobre's documentary exhibits.

On 27 March 1987, the trial court admitted all of Pobre's exhibits and upheld its Order dated 30 August 1985. The trial court considered the case submitted for decision.

On 29 April 1987, the trial court issued its Decision in favor of Pobre. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendant and against the plaintiff, ordering the plaintiff to pay unto the defendant:

(1) The sum of THREE MILLION FOUR HUNDRED FORTY EIGHT THOUSAND FOUR HUNDRED FIFTY (P3,448,450.00) PESOS which is the fair market value of the subdivision of defendant

with an area of sixty eight thousand nine hundred sixty nine (68,969) square meters, plus legal rate of interest per annum from September 6, 1979 until the whole amount is paid, and upon payment thereof by the plaintiff the defendant is hereby ordered to execute the necessary Deed of Conveyance or Absolute Sale of the property in favor of the plaintiff;

(2) The sum of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS for and as attorney's fees.

Costs against the plaintiff.

SO ORDERED.^[9]

On 13 July 1987, NPC filed its motion for reconsideration of the decision. On 30 October 1987, the trial court issued its Order denying NPC's motion for reconsideration.

NPC appealed to the Court of Appeals. On 30 March 1992, the Court of Appeals upheld the decision of the trial court but deleted the award of attorney's fees. The dispositive portion of the decision reads:

WHEREFORE, by reason of the foregoing, the Decision appealed from is AFFIRMED with the modification that the award of attorney's fees is deleted. No pronouncement as to costs.

SO ORDERED.^[10]

The Court of Appeals denied NPC's motion for reconsideration in a Resolution dated 14 August 1992.

The Ruling of the Trial Court

In its 69-page decision, the trial court recounted in great detail the scale and scope of the damage NPC inflicted on the Property that Pobre had developed into a resort-subdivision. Pobre's Property suffered "permanent injury" because of the noise, water, air and land pollution generated by NPC's geothermal plants. The construction and operation of the geothermal plants drastically changed the topography of the Property making it no longer viable as a resort-subdivision. The chemicals emitted by the geothermal plants damaged the natural resources in the Property and endangered the lives of the residents.

NPC did not only take the 8,311.60 square-meter portion of the Property, but also the remaining area of the 68,969 square-meter Property. NPC had rendered Pobre's entire Property useless as a resort-subdivision. The Property has become useful only to NPC. NPC must therefore take Pobre's entire Property and pay for it.

The trial court found the following badges of NPC's bad faith: (1) NPC allowed five years to pass before it moved for the dismissal of the second expropriation case; (2) NPC did not act on Pobre's plea for NPC to eliminate or at least reduce the damage to the Property; and (3) NPC singled out Pobre's Property for piecemeal expropriation when NPC could have expropriated other properties which were not affected in their entirety by NPC's operation.

The trial court found the just compensation to be P50 per square meter or a total of P3,448,450 for Pobre's 68,969 square-meter Property. NPC failed to contest this valuation. Since NPC was in bad faith and it employed dilatory tactics to prolong this case, the trial court imposed legal interest on the P3,448,450 from 6 September 1979 until full payment. The trial court awarded Pobre attorney's fees of P150,000.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the decision of the trial court. However, the appellate court deleted the award of attorney's fees because Pobre did not properly plead for it.

The Issues

NPC claims that the Court of Appeals committed the following errors that warrant reversal of the appellate court's decision:

1. In not annulling the appealed Decision for having been rendered by the trial court with grave abuse of discretion and without jurisdiction;
2. In holding that NPC had "taken" the entire Property of Pobre;
3. Assuming arguendo that there was "taking" of the entire Property, in not excluding from the Property the 8,311.60 square-meter portion NPC had previously expropriated and paid for;
4. In holding that the amount of just compensation fixed by the trial court at P3,448,450.00 with interest from September 6, 1979 until fully paid, is just and fair;
5. In not holding that the just compensation should be fixed at P25.00 per square meter only as what NPC and Pobre had previously mutually agreed upon; and
6. In not totally setting aside the appealed Decision of the trial court.^[11]

Procedural Issues

NPC, represented by the Office of the Solicitor General, insists that at the time that it moved for the dismissal of its complaint, Pobre had yet to serve an answer or a motion for summary judgment on NPC. Thus, NPC as plaintiff had the right to move for the automatic dismissal of its complaint. NPC relies on Section 1, Rule 17 of the 1964 Rules of Court, the Rules then in effect. NPC argues that the dismissal of the complaint should have carried with it the dismissal of the entire case including Pobre's counterclaim.

NPC's belated attack on Pobre's claim for damages must fail. The trial court's reservation of Pobre's right to recover damages in the same case is already beyond review. The 8 January 1985 Order of the trial court attained finality when NPC failed to move for its reconsideration within the 15-day reglementary period. NPC opposed the order only on 27 May 1985 or more than four months from the issuance of the order.

We cannot fault the Court of Appeals for not considering NPC's objections against the subsistence of Pobre's claim for damages. NPC neither included this issue in its assignment of errors nor discussed it in its appellant's brief. NPC also failed to question the trial court's 8 January 1985 Order in the petition for certiorari^[12] it had earlier filed with the Court of Appeals. It is only before this Court that NPC now vigorously assails the preservation of Pobre's claim for damages. Clearly, NPC's opposition to the existence of Pobre's claim for damages is a mere afterthought. Rules of fair play, justice and due process dictate that parties cannot raise an issue for the first time on appeal.^[13]

We must correct NPC's claim that it filed the notice of dismissal just "shortly" after it had filed the complaint for expropriation. While NPC had intimated several times to the trial court its desire to dismiss the expropriation case it filed on 5 September 1979,^[14] it was only on 2 January 1985 that NPC filed its notice of dismissal.^[15] It took NPC more than five years to actually file the notice of dismissal. Five years is definitely not a short period of time. NPC obviously dilly-dallied in filing its notice of dismissal while NPC meanwhile burdened Pobre's property rights.

Even a timely opposition against Pobre's claim for damages would not yield a favorable ruling for NPC. It is not Section 1, Rule 17 of the 1964 Rules of Court that is applicable to this case but Rule 67 of the same Rules, as well as jurisprudence on expropriation cases. Rule 17 referred to dismissal of civil actions in general while Rule 67 specifically governed eminent domain cases.

Eminent domain is the authority and right of the state, as sovereign, to take private property for public use upon observance of due process of law and payment of just compensation.^[16] The power of eminent domain may be validly delegated to the local governments, other public entities and public utilities^[17] such as NPC. Expropriation is the procedure for enforcing the right of eminent domain.^[18] "Eminent Domain" was the former title of Rule 67 of the 1964 Rules of Court. In the 1997 Rules of Civil Procedure, which took effect on 1 July 1997, the prescribed method of expropriation is still found in Rule 67, but its title is now "Expropriation."

Section 1, Rule 17 of the 1964 Rules of Court provided the exception to the general rule that the dismissal of the complaint is addressed to the sound discretion of the court.^[19] For as long as all of the elements of Section 1, Rule 17 were present the dismissal of the complaint rested exclusively on the plaintiff's will.^[20] The defending party and even the courts were powerless to prevent the dismissal.^[21] The courts could only accept and record the dismissal.^[22]

A plain reading of Section 1, Rule 17 of the 1964 Rules of Court makes it obvious that this rule was not intended to supplement Rule 67 of the same Rules. Section 1, Rule 17 of the 1964 Rules of Court, provided that:

SECTION 1. *Dismissal by the plaintiff.* — An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when