

SPECIAL TWENTIETH DIVISION

[CA-G.R. CEB-CV NO. 04212, April 29, 2014]

**NATIONAL POWER CORPORATION, PLAINTIFF-APPELLANT, VS.
HEIRS OF FROILAN MONTAÑO, DEFENDANTS-APPELLEES.**

DECISION

HERNANDO, J:

Before Us is an appeal^[1] from the Decision^[2] dated October 21, 2011 rendered by the Regional Trial Court (RTC), Branch 36 of Carigara, Leyte in Sp. Civil Action No. 10, a case for Eminent Domain. The dispositive portion of the assailed Decision states:

WHEREFORE, judgment is hereby rendered **ORDERING** the plaintiff to pay unto the defendants the amount of **Php393,250.00** as just compensation for Lots 890 and 897 both owned by the defendant which are both located in Brgy. Rizal (now Tagak), Carigara, Leyte. Plaintiff is also **ORDERED** to pay the defendant 6% per annum of interest rate, to be computed from 1997, which is the date of the filing of this case until fully paid. Plaintiff is further **ORDERED** to pay the Chairperson of the Board of Commissioners the sum of Seven Thousand Pesos (Php7,000.00) and the sum of Five Thousand Pesos (Php5,000.00) for each of the two members.

SO ORDERED.^[3]

The Antecedents:

Culled from the records are the following undisputed facts:

Plaintiff-appellant National Power Corporation (NPC) is a government-owned and controlled corporation created and existing by virtue of Republic Act No. 6395, as amended, for the purpose of undertaking the development of hydroelectric generation power throughout the Philippines. To carry out said purpose, NPC is authorized to exercise the power of eminent domain.

Pursuant to said power, NPC thus lodged a Complaint^[4] for Eminent Domain before the Regional Trial Court (RTC), Branch 36 of Carigara, Leyte against defendants-appellees Heirs of Froilan Montaña, represented by Gil A. Montaña (now deceased), the registered/declared owners of two parcels of land, namely, Lot No. 890 and Lot No. 897. The Complaint sought the expropriation of 1,044 square-meter portion, out of the 1,499 square-meter area of Lot No. 890 and 1,329 square-meter portion of Lot No. 897, which entire area measures 2,076 square meters, to be used as easement of right of way for NPC's proposed Leyte-Luzon Interconnection Project which is authorized by law to be undertaken by it.

NPC deposited^[5] the amount of Php2,110.62 with the Philippine National Bank, Tacloban Branch, representing the assessed value of the area affected as appearing in the Tax Declarations Nos. 11038-00160 and 11038-00160, subject to the order and final disposition of the trial court.

On March 4, 1997, NPC filed an Urgent Ex-parte Motion for Issuance of Writ of Possession.^[6]

After summons was served^[7], defendants subsequently filed their Answer^[8] where they moved for the dismissal of the Complaint on the ground, among others, that the intended installation of high-transmission lines on the subject properties posed a serious health hazard and other injurious biological effects on the people living within the area. They also argued that although NPC only claims an easement of right-of-way without loss of title or possession of the subject properties, they should be paid the just compensation for the entire properties.^[9]

The case was then referred^[10] for mediation in the Philippine Mediation Center but this was returned to the trial court after the parties failed to agree on terms beneficial to both of them. Thereafter, preliminary conference and pre-trial ensued.

Meanwhile, NPC filed a Motion for Issuance of Order of Expropriation^[11] on February 27, 2007 which was later granted by the trial court in an Order^[12] dated July 2, 2008. In that same Order, the trial court ordered the parties to submit at least three names of nominees who would constitute the Board of Commissioners which would determine thereafter the fair and just compensation of the subject properties.

On November 6, 2008, the trial court appointed^[13] the Board of Commissioners consisting of: (1) Branch Clerk of Court of RTC, Branch 36 of Carigara, Leyte, as the Chairperson; and (2) Jose Joel C. Villarojo of the Visayas Transmission Project, National Transmission Corporation, Nasipit, Talamban, Cebu City; as well as (3) Municipal Assessor of Carigara, Leyte, as members. Thereafter, the three court-appointed Commissioners took their Oath of Office^[14].

On October 15, 2010, the Commissioners conducted an ocular inspection on the subject properties with the presence of counsels of both parties and the representative of the defendants. Subsequently, they issued a Commissioner's Report^[15] where they incorporated their findings and recommendations, to wit:

x x x x x x x x x

Description and other particulars of Property

Under the tax declarations attached to the complaint, the two lots are classified as irrigated rice land and first class. With respect to Lot No. 890, its market value is Php3,747.50; while with respect to Lot No. 897, its market value is Php5,190.00, both tax declarations in the year 1994.

Ocular Inspection

x x x x x x x x x

The result of the ocular inspection confirmed the following facts:

1. that defendant's land is classified as agricultural land, owing to the fact that during the ocular inspection the same was planted with rice;
2. that the location of the subject property is less than 200 meters from the national highway;
3. that defendants actually possesses of the subject land, they having a tenant to oversee and enjoy the fruits thereof;
4. that the subject land is irrigated rice land; and
5. that the tenants harvests rice twice in a year;

x x x x x x x x x

Conclusion

After weighing the factors above-mentioned, the Board therefore proposes that the just compensation due to the plaintiff on the affected area be computed based on the zonal value of the Bureau of Internal Revenue of Brgy. Rizal (now Brgy. Tagak) Carigara, Leyte, which is pegged at 110.00 per square meters and is computed as follows:

LOT NO.	WHOLE AREA	AREA AFFECTED x 110.00/square meters	PROPOSED JUST COMPENSATION
890	1,499 Square meters	1,044 x P110.00/ Square meters	P114,840.00
897	2,076 Square meters	1,329 x P110.00/ Square meters	P146,190.00
TOTAL	AMOUNT OF	JUST COMPENSATION	P261,030.00

This proposed value is more than the assessed value of the subject properties which is merely summed up at P3,180.00. The Board would not propose the same amount to be paid to the defendants, as the same value is merely for taxation purposes.

The Board likewise proposes that plaintiffs be ordered to pay the defendants legal interest from the time of the taking up to the time the full amount is paid by the plaintiff to the defendant.

On April 6, 2011, NPC opposed the Commissioner's Report^[16] on the ground that it failed to establish that the recommended just compensation corresponds with the fair market value of the subject properties at the time of taking. It further argued that although the Board found the subject properties to be irrigated riceland, the latter based the valuation on the zonal valuation of the BIR for residential lots.^[17]

On October 21, 2011, the trial court rendered the assailed Decision. It adopted the recommendation of the Board of Commissioners with respect to the proposed value of the subject lots but modified it and ordered NPC to pay not only the affected portion but the entire value of Lot Nos. 890 and 897. In so ruling, the trial court opined that:

The Court is convinced that the BIR valuation of Php110.00 per square meters is acceptable and just. Going through the bone of contention, plaintiff asserts that the just compensation be paid on the affected area only of the two parcels of land passed through by the installed transmission lines of plaintiff. For the defendant, they demand for the payment of just compensation for the whole area of the two parcels of land. The Court is also aware through the Commissioner's Report that the subject rice lands are actually utilized by the defendant, harvesting palay thereon twice in a year. Simply put, the utility and use of the property by the defendant was not totally affected or rendered useless by the installation of the transmission lines within the estates. While defendant is still actually enjoying the use of the properties subject matter of the case, the Court is of view that when they demanded for the payment of just compensation for the whole area of the two parcels of land, there must be a corresponding voluntary waiver on the defendant's part of the title and possession of the two parcels of land unto the plaintiff. With respect to the difference between the affected area and the remaining unaffected area, the same is only minimal and negligible that is deemed by the Court to be proper that the two parcels of land be condemned and paid for by the plaintiff.^[18]

Hence, this appeal by the Office of the Solicitor General (OSG) as counsel for plaintiff-appellant NPC based on the following issues:

Issues^[19]:

I.

WHETHER OR NOT THE JUST COMPENSATION OF THE SUBJECT PROPERTIES SHOULD BE BASED ON THE ZONAL VALUATION OF AN IRRIGATED RICE LAND AS APPEARING IN THE ZONAL VALUATION OF THE BIR;

II.

WHETHER OR NOT APPELLANT SHOULD PAY THE JUST COMPENSATION OF THE AFFECTED AREAS ONLY OF THE SUBJECT PROPERTIES.

Court's Ruling:

The petition is partly meritorious.

The main issue to be resolved in the present case is the amount of just compensation that should be received by defendants-appellees for their properties.

It has been well-established that in expropriation proceedings, just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss.^[20] The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.^[21] The constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the

property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.^[22]

NPC assails the trial court's adoption of the Commissioner's Report with respect to the recommended amount of just compensation over the subject lots and argues that the proposed valuation of Php110.00 per square meter had no basis. It points out that the subject lots were indisputably classified as irrigated rice land and that the actual use of the property should be considered in determining the just compensation. As such, based on the BIR zonal valuation presented by the Board as basis in arriving at the proposed value of the subject lots, the just compensation thereof should be the amount of Php12.00 per square meter and not the recommended Php110.00 per square meter as the same pertains to a residential land.

Appellees counter that the subject properties are not only considered first class irrigated rice lands but also part of the zonal classification for regular residential areas. In fact, the subject properties are beside the national highway.

Appellant's point is well-taken.

It is noteworthy that the court-appointed Commissioners actually performed their tasks assigned to them by conducting an ocular inspection on the affected subject parcels of land and that from their inspection, they found that the subject lots were classified as agricultural land as these were planted with rice; that the same were irrigated rice land; that the location thereof was less than 200 meters from the national highway; that the appellees actually possessed the same; and that the tenants employed by appellees harvested rice from those lots twice a year. On the basis of these findings, the Commissioners concluded and proposed that the just compensation of the subject properties be computed based on the zonal value as determined by the Bureau of Internal Revenue (BIR) on the *barangay* where the subject lots were situated, which is pegged at Php110.00 per square meter. In support of their Report, the Commissioners appended the BIR zonal valuation which was taken from the internet.

Regrettably, after a careful examination of said Commissioner's Report, We find and so hold that it falls short and is insufficient to be made as mere basis for the determination of just compensation.

It has been the consistent ruling of the Supreme Court that just compensation cannot be arrived at arbitrarily. Several factors must be considered, such as, but not limited to, acquisition cost, current market value of like properties, tax value of the condemned property, its size, shape, and location.^[23] But before these factors can be considered and given weight, the same must be supported by documentary evidence.^[24]

Here, other than the BIR zonal valuation, the Board failed to proffer any other piece of documentary evidence purportedly to prove that the other factors that they had considered were actually based on a reliable and actual data.

In *National Power Corporation v. Diato-Bernal*^[25], the High Court emphasized that the "just"-ness of the compensation could only be attained by using reliable and actual data as bases for fixing the value of the condemned property.^[26] The reliable and actual data referred to in that case were the sworn declarations of realtors in