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SECOND DIVISION

[G.R. No. 265153. April 12, 2023]

ILOILO GRAIN COMPLEX CORPORATION, *Petitioner*, *v.* **HON. MA. THERESA N. ENRIQUEZ-GASPAR, in her capacity as Presiding Judge of RTC-Iloilo City, Branch 33, and NATIONAL GRID CORPORATION OF THE PHILIPPINES,** *Respondents.*

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for *Certiorari* and Prohibition with Very Urgent Application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction[1] assails the following dispositions of the Regional Trial Court (RTC)-Branch 33, Iloilo City in Special Civil Action No. 22-35139, entitled *National Grid Corporation of the Philippines v. Iloilo Grain Complex Corporation, viz.*:

1) Order[2] dated December 12, 2022, granting the Motion for Actual Issuance of Writ of Possession of respondent National Grid Corporation of the Philippines (NGCP); and

2) Order[3] dated January 20, 2023, denying the Motion for Reconsideration of petitioner Iloilo Grain Complex Corporation (IGCC).

Antecedents

IGCC is a private corporation registered under the laws of the Philippines. It is engaged in the business of agriculture, specifically

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1 *Rollo*, pp. 3–42.

2 *Id.* at 43–45. Penned by Presiding Judge Ma. Theresa N. Enriquez-Gaspar of the Regional Trial Court, Branch 33, Iloilo City.

3 *Id.* at 253–259. Penned by Presiding Judge Ma. Theresa N. Enriquez-Gaspar of the Regional Trial Court, Branch 33, Iloilo City.

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in farming of rice, soya beans, flour feed meals, coffee, and the like, production, management, operation and development of agricultural estate, and construction of dams, dikes, wharf, canals, reservoir, etc.[4] It owns 35,682 square meters (sq. m.) of industrial property known as Lot No. 3429-B-1, situated in Barangay Ingore, La Paz, Iloilo City.[5]

On the other hand, NGCP is also a private corporation registered under the laws of the Philippines. It is the holder of a national franchise to operate and maintain the transmission assets and facilities of the National Transmission Corporation (TransCo) under Republic Act No. 9511.[6] Section 4[7] of said law vests NGCP the right of eminent domain subject to the limitations and procedures prescribed by law.[8]

By Letter[9] dated January 14, 2022, NGCP offered to buy 11,137 sq. m. of IGCC's industrial property in Iloilo City at PHP 1,075.00 per sq. m. for the construction of its Ingore Cable Terminal Station and Panay-Guimaras 138kV Transmission Line Project.[10] In its

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[4] *Id.* at 184.

[5] *Id.* at 8.

[6] An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-bone System of Interconnected Transmission Lines, Substations and Related Facilities, and for other purposes. Approved on December 01, 2008.

[7] *Id.*, Section 4. *Right of Eminent Domain*. — Subject to the limitations and procedures prescribed by law, the Grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the construction, expansion, and efficient maintenance and operation of the transmission system and grid and the efficient operation and maintenance of the subtransmission systems which have not yet been disposed by TRANSCO. The Grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: *Provided*, That the applicable law on eminent domain shall be observed, particularly, the prerequisites for taking of possession and the determination and payment of just compensation.

[8] *Id.* at 18–19.

[9] *Id.* at 21–22.

[10] *Id.* at 21–22.

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Reply Letter[11] dated January 20, 2022, however, IGCC informed NGCP that the current fair market value of the subject property was already PHP 10,000.00 per sq. m., hence, it was unable to accept the offer for a price way below this amount.[12] NGCP then relayed to IGCC its desire to expropriate the property, albeit it made a last offer of PHP 5,000.00 per sq. m. equivalent to the residential zonal value of the property.[13]

On September 30, 2022, NGCP filed its Complaint for expropriation with urgent prayer for issuance of writ of possession entitled *National Grid Corporation of the Philippines v. Iloilo Grain Complex Corporation*. It was raffled to RTC-Branch 33, Iloilo City and docketed as Special Civil Action No. 22-35139.[14]

On November 11, 2022, IGCC filed its Answer with motion for preliminary hearing on affirmative defenses.[15] The preliminary hearing was sought for the purpose of determining the necessity of expropriating the property vis-à-vis the project's alleged lack of approval by the Energy Regulatory Commission (ERC);[16] lack of negotiation in good faith for the purchase of the subject property;[17] adoption by NGCP of a curved line instead of a straight line option in the taking of the property;[18] unnecessary burden or damage the curved line option would cause to IGCC;[19] and imminent violation of its right to due process and equal protection of law should a writ of possession be issued in favor of NGCP.[20] IGCC further claimed to have indefinitely postponed

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11 *Id.* at 23.

12 *Id.* at 23.

13 *Id.* at 24–25.

14 *Id.* at 12 and 43.

15 *Id.* at 138–162.

16 *Id.* at 140–143.

17 *Id.* at 143.

18 *Id.* at 151–152.

19 *Id.*

20 *Id.* at 153.

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the intended construction of a Storage and Warehouse Facility on its property which was supposed to accommodate the expanding needs of its affiliate company, the La Filipina Uy Gongco Corporation, relative to its adjacent private port operations.[21]

The trial court set the case for hearing on December 9, 2022 and January 20, 2023, but these supposed hearings did not actually take place. On December 20, 2022, IGCC received a copy of NGCP's Manifestation with Motion for Actual Issuance of Writ of Possession dated November 23, 2022.[22]

Ruling of the Regional Trial Court

By Order[23] dated December 12, 2022, the trial court ordered the issuance of a writ of possession without hearing, *viz.*:[24]

> After due consideration of the Motion for Actual Issuance of Writ of Possession, the Court finds merit therein, hence the relief prayed for is **GRANTED**.
>
> **ACCORDINGLY**, in view of the compliance with Section 2, Rule 67, Rules of Court and payment of legal fees, let a writ of possession be issued in plaintiff's favor authorizing it to enter and take possession of the portion of Lot No. 3429-B-1, subject of this Complaint, that will be affected by the construction and implementation of the Ingore Cable Terminal Station and Panay-Guimaras 138kV Transmission Line Project; and if necessary, order the Philippine National Police of Iloilo City, to assist the Sheriff in the enforcement of the writ.
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> **SO ORDERED.**[25] Emphasis in the original.

It held that under Office of the Court Administrator (OCA) Circular No. 113-2019, the issuance of a writ of possession had become ministerial in nature upon the filing of the complaint for expropriation and NGCP's payment of the deposit in the amount

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[21] *Id.* at 8.

[22] *Id.* at 12.

[23] *Id.* at 43–45.

[24] *Id.*

[25] *Id.* at 45.

of PHP 111,370,000.00 equivalent to the full zonal value of the subject property.[26]

Under Order[27] dated January 20, 2023, the trial court, still without conducting any hearing, denied IGCC's affirmative defenses, and its subsequent Motion for Reconsideration and Motion to Stay writ of possession. It held that the ERC approval is neither a jurisdictional nor an indispensable requisite in an action for expropriation.[28] For NGCP had sufficiently alleged its authority to expropriate the subject property and complied with the requirements for issuance of the writ of possession.[29]

The Present Petition

Citing violation of its right to due process based on a pure question of law, IGCC consequently filed directly with the Court the present Petition for *Certiorari* and Prohibition with Application for TRO and/or Writ of Preliminary Injunction.[30]

Under Resolution[31] dated February 13, 2023, the Court issued a TRO, enjoining the trial court and the NGCP, and all persons acting on their behalf, from implementing the writ of possession and other related orders pending adjudication of the petition on the merits.

IGCC seeks affirmative relief from the Court and prays that the assailed dispositions of the trial court be nullified, and a new one rendered, permanently enjoining the implementation of the writ of possession.[32] In the main, it asserts that the trial court committed grave abuse of discretion when it ordered the issuance of the assailed writ of possession.[33]

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[26] *Id.* at 43–44.

[27] *Id.* at 253–259.

[28] *Id.* at 254.

[29] *Id.* at 237–239.

[30] *Id.* at 3–37.

[31] *Id.* at 240–241.

[32] *Id.* at 35–36.

[33] *Id.* at 15.

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First, the issuance of the writ is not ministerial in this case since NGCP failed to comply with the requirements of its franchise, i.e., the expropriation must be made in compliance with pre-requisites set by law like Section 9(d) of Republic Act No. 9136[34] or the Electric Power Industry Reform Act of 2001 (EPIRA), which requires prior approval by the ERC of any plan for expansion or improvement of the facilities of the TransCo;[35]

Second, there was no honest to goodness prior negotiation for the proposed purchase of the subject property by NGCP in violation of the procedural requirements of Republic Act No. 10752;[36]

Third, the line path chosen by NGCP for its project is not reasonably necessary. The NGCP's Sketch Plan[37] attached to the complaint shows there is an alternative straight-line path from NGCP's substation to the public highway which is shorter than NGCP's chosen line path;[38] and

Fourth, IGCC has no other plain, speedy, and adequate remedy in the ordinary course of law since only the Court may issue the temporary restraining order prayed for under Section 3(a) of Republic Act No. 8975.[39]

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[34] Section 9. *Functions and Responsibilities*. — Upon the effectivity of this Act, the TRANSCO shall have the following functions and responsibilities: x x x

(d) Improve and expand its transmission facilities, consistent with the Grid Code and the Transmission Development Plan (TDP) to be promulgated pursuant to this Act, to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system: *Provided*, That TRANSCO shall submit any plan for expansion or improvement of its facilities for approval by the ERC.

[35] *Rollo*, pp. 19–20.

[36] Otherwise known as The Right-of-Way Act, Approved on March 07, 2016.

[37] *Rollo*, p. 108.

[38] *Id.* at 26–31.

[39] Section 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Mandatory Injunctions*. — No court, except the Supreme

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In its Comment with Motion to Lift TRO,[40] NGCP counters that the issuance of the writ of possession is a ministerial duty of the trial court[41] in view of NGCP's full compliance with the requisites for its issuance.[42] IGCC's arguments, on the other hand, all refer to the propriety of expropriation which are irrelevant to the issuance of the Writ[43] and which must be properly threshed out during the hearing on the merits.[44] In fine, the trial court did not commit grave abuse of discretion when it issued the assailed writ of possession.[45]

At any rate, it is not true that it has no ERC approval for the Ingore Cable Terminal Station and the Panay-Guimaras 138kV Transmission Line Project. If necessary, it shall present the same during the hearing on the merits before the trial court.[46] Too, IGCC was never amenable to the taking of the property as it does not want the property to be taken for public use. NGCP has thus exhausted

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Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government direction, to restrain, prohibit or compel the following acts:

a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

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(An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations thereof, and for other purposes. Approved on November 07, 2000).

40 *Id.* at 274–292.

41 *Id.* at 277–280.

42 *Id.* at 280.

43 *Id.* at 281–282.

44 *Id.* at 282–284.

45 *Id.* at 284–285.

46 *Id.* at 286.

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all means to negotiate with IGCC.[47] More important, its chosen line path is reasonably necessary for the project since IGCC's proposed alternative straight-line path will run through an area with live transmission line and permanent structures.[48] Finally, the Petition must be dismissed outright for IGCC's failure to observe the doctrine of hierarchy of courts.[49]

Issues

1) Did the filing of the Petition for *Certiorari* and Prohibition directly with the Court violate the doctrine of hierarchy of courts?

2) Did the trial court commit grave abuse of discretion when it issued the assailed writ of possession?

Our Ruling

The Petition is meritorious.

The case involves a pure legal question excepted from the doctrine of hierarchy of courts

The doctrine of hierarchy of courts dictates that litigants must, as a rule, file their petitions before the lower-ranked court[50] since a direct recourse to the Court is generally improper.[51] It guides the litigants as to the proper venue of appeals or the appropriate forum for issuance of the extraordinary writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus* over which the Court, the Court of Appeals, and the RTC have concurrent original jurisdiction.[52]

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47 *Id.*

48 *Id.*

49 *Id.* at 289.

50 See *Gios-Samar, Inc. v. DOTC*, 849 Phil. 120 (2019), [Per J. Jardeleza, *En Banc*].

51 See *Dy v. Bibat-Palamos*, 717 Phil. 776, 782 (2013), [Per J. Mendoza, Third Division].

52 Supra note 48.

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It is a constitutional imperative[53] founded principally on two reasons: *first*, the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, allowing it to devote its time and attention to matters within its exclusive jurisdiction and to prevent the overcrowding of its docket;[54] and *second*, the Supreme Court is not a trier of facts. It is not equipped — either by structure or rule — to receive and evaluate evidence in the first instance as these are the primary functions of lower courts or regulatory agencies.[55] Disregard of the hierarchy of courts merits the immediate dismissal of the action.[56]

IGCC, however, takes exception to this rule. It justifies direct resort to the Court since its prayer for TRO or writ of preliminary injunction against the implementation of the writ of possession allegedly falls within the exclusive authority of the Court by virtue of Section 3 of Republic Act No. 8975, *viz.*:

Section 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Mandatory Injunctions*. — No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government direction, to restrain, prohibit or compel the following acts:

(a) **Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;**
(b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
(c) Commencement prosecution, execution, implementation, operation of any such contract or project;

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[53] *Id.*

[54] Supra note 49 at 782.

[55] Supra note 48.

[56] See *Palafox v. Mendiola*, G.R. No. 209551, February 15, 2021, [Per J. Hernando, Third Division].

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(d) Termination or rescission of any such contract/project; and
(e) The undertaking or authorization of any other lawful activity necessary for such contract/project. . . . (Emphasis supplied)

It posits that since the act sought to be enjoined is the taking of its property for the acquisition, clearance, and development of a right-of-way for the Ingore Cable Terminal Station and the Panay-Guimaras 138kV Transmission Line Project, a national government infrastructure, both its principal action for *Certiorari* and Prohibition along with its prayer for the issuance of a TRO or Preliminary Injunction may be filed only with the Court.

On this score, We reiterate our pronouncement in *Spouses Soller v. Singson*,[57] *viz.*:

In the case of *Philco Aero, Inc. v. Secretary Tugade*, this Court recognized the remedy of resorting directly before this Court in cases covered under R.A. No. 8975. Section 3 of R.A. No. 8975 was explicit in excluding other courts in the issuance of injunctive writs. However, in the case of *Bases Conversion and Development Authority v. Uy*, this Court clarified that the prohibition applies only to TRO and preliminary injunction, *viz.*:

> A perusal of these aforequoted provisions readily reveals that all courts, except this Court, are proscribed from issuing TROs and writs of preliminary injunction against the implementation or execution of specified government projects. **Thus, the ambit of the prohibition covers only temporary or preliminary restraining orders or writs but NOT decisions on the merits granting permanent injunctions.** Considering that these laws trench on judicial power, they should be strictly construed. Therefore, while courts below this Court are prohibited by these laws from issuing temporary or preliminary restraining orders pending the adjudication of the case, said statutes however do not explicitly proscribe the issuance of a permanent injunction granted by a court of law arising from an adjudication of a case on the merits.[58] (Emphasis supplied, citations omitted)

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[57] G.R. No. 215547, February 3, 2020, [Per J. Reyes, Jr., First Division].

[58] *Id.*

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In fine, the prohibition circumscribed under Section 3 of Republic Act No. 8975 applies to the issuance by lower courts of temporary or preliminary injunctive writs *alone*, but does not preclude them from issuing *permanent* injunction arising from an adjudication of the case *on the merits*.

Thus, in *Dynamic Builders & Construction Co. v. Presbitero*,[59] the Court dismissed the petition for prohibition with application for issuance of a TRO or writ of preliminary injunction for violating the doctrine of hierarchy of courts since what was prayed for was an injunction against the implementation of the government infrastructure project itself, which the RTC is not precluded from resolving under Republic Act No. 8975. In fine, the injunction relates to the validity of the project itself.

Similarly, in *Spouses Soller*,[60] the Court ordained that it was the trial court which had jurisdiction over the petition for injunction with prayer for issuance of TRO or preliminary injunction since the permanent injunction requested pertains to the implementation and validity of the government project in question.

The same is not true in this case.

The subject of the present Petition and Application for TRO or Writ of Preliminary Injunction does *not* pertain to the merits of the main case for expropriation, which is yet to be heard on the merits by the trial court. What IGCC seeks to enjoin is only the implementation of the writ of possession and related issuances[61] in order to protect itself from being *peremptorily* ousted from its own property without due process of law. Verily, IGCC correctly invoked the application of Section 3 of Republic Act No. 8975 to justify its direct recourse to the Court.

In any event, the doctrine of hierarchy of courts is not an iron-clad rule. It admits of exceptions. In *Diocese of Bacolod v. COMELEC*,[62] the Court acknowledged that it has full discretionary

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[59] 757 Phil. 454 (2015), [Per J. Leonen, *En Banc*].

[60] *Id.*

[61] *Id.* at 35–36.

[62] 751 Phil. 301, 330 (2015), [Per J. Leonen, *En Banc*].

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power to take cognizance of and assume jurisdiction over special civil actions filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition.

We further analyzed the commonality of the exceptions to the doctrine in *Gios-Samar v. Department of Transportation and Communication*,[63] where we finally clarified that the determinative factor to be considered whether to allow direct recourse to this Court is the **nature** of the question at hand, and not the mere invocation of compelling reasons, thus:

> **A careful examination of the jurisprudential bases of the foregoing exceptions would reveal a common denominator — the issues for resolution of the Court are purely legal.** Similarly, the Court in *Diocese* decided to allow direct recourse in said case because, just like *Angara*, what was involved was the resolution of a question of law, namely, whether the limitation on the size of the tarpaulin in question violated the right to free speech of the Bacolod Bishop.
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> **We take this opportunity to clarify that the presence of one or more of the so-called "special and important reasons" is not the decisive factor** considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. **Rather, it is the *nature* of the question raised by the parties in those "exceptions" that enabled us to allow the direct action before us.**[64] (Emphases supplied)

Here, IGCC raises a *pure legal* question: Did the trial court commit grave abuse of discretion amounting to lack or excess of jurisdiction when it issued a writ of possession, albeit the very authority of NGCP to expropriate the subject property has been incipiently assailed at the earliest opportunity? In other words, is the issuance of a writ of possession in expropriation cases ministerial upon the trial court where the authority of petitioner to expropriate is in question?

To be sure, this is a question of law which the Court may take cognizance of by way of exception to the doctrine of hierarchy of

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[63] Supra note 48.

[64] *Id.*

courts especially since it seeks to clarify our pronouncement in *Municipality of Cordova v. Pathfinder Development Corporation*,[65] the enforcement of which is ordained per OCA Circular No. 113-2019,[66] as reiterated in OCA Circular No. 68-2022.[67]

The trial court committed grave abuse of discretion when it issued the writ of possession, albeit NGCP's authority to expropriate the subject property is in question

The right of persons to life, liberty, or property is constitutionally protected. No one can be deprived of the same without due process of law.[68] For this reason, Section 9, Article III of the Constitution limits the inherent power of the State itself in the taking of private property, *viz.*:

> Section 9. Private property shall not be taken for public use without just compensation.

This is the power of eminent domain. It is defined as the right of the government to take and appropriate private property for public use, whenever the public exigency requires it, which can be done only on condition of providing reasonable compensation therefor.[69] It is inseparable from sovereignty and inherent in the State. It is, however, primarily lodged with Congress as the legislative branch of the government. Congress, however,

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[65] 788 Phil. 622 (2016), [Per J. Peralta, Third Division].

[66] Re: Clarification on Expropriation Cases, Acquisition of Right-of-Way, Issuance of Writs of Possession, and Entitlement to Interest Pursuant to Republic Act No. 10752, Approved on March 07, 2016.

[67] Re: Expeditious Resolution of Expropriation Cases and other Related Processes, Approved on March 25, 2022.

[68] Const., art. III, sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[69] See *Masikip v. City of Pasig*, 515 Phil. 364, 373 (2006), [Per J. Sandoval-Gutierrez, Second Division], citing *U.S. v. Toribio*, G.R. No. L-5060, January 26, 1910, [Per J. Carson, First Division].

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may delegate the exercise of the power of eminent domain to local government units, other public entities, and *public utility corporations*, subject only to Constitutional limitations.[70]

In the hands of government agencies, local governments, public utilities, and other persons and entities, the right to expropriate is not inherent and is only a delegated power.[71] On this score, it is undisputed that the legislature *via* Republic Act No. 9511 granted NGCP not only the franchise to operate, manage, maintain, and develop the country's state-owned power grid and to engage in electricity transmission service but also the right to eminent domain, *viz.*:

> SECTION 4. *Right to Eminent Domain*. — **Subject to the limitations and procedures prescribed by law**, [NGCP] is **authorized to exercise the right of eminent domain** insofar as it may be **reasonably necessary** for the construction, expansion, and efficient maintenance and operation of the transmission system and grid and the efficient operation and maintenance of the subtransmission systems which have not yet been disposed by TRANSCO. [NGCP] may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: ***Provided*, That the applicable law on eminent domain shall be observed, particularly, the prerequisites of taking of possession and the determination and payment of just compensation.**[72] (Emphases supplied)

As clearly indicated, NGCP's right to eminent domain, being a mere delegated power, is subject to several restrictions: *first*, it must conform to limitations prescribed by law; and *second*, it must be exercised in accordance with the proper procedure for expropriation.

NGCP must exercise its delegated power of expropriation in *strict* compliance with these conditions. For it is settled that the right of eminent domain, not being an inherent, but a mere delegated power of NGCP, its right to expropriate is restrictively

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[70] *Id.*

[71] See *PNOC Alternative Fuels Corp. v. NGCP*, G.R. No. 224936, September 4, 2019, [Per J. Caguioa, Second Division].

[72] *Id.*

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limited to the confines of the delegating law. The scope of its delegated power is thus necessarily narrower than that of the delegating authority.[73]

IGCC argues that NGCP failed to abide by the restrictions imposed by its franchise, hence, the issuance of the writ of possession based on the questionable exercise of its right to expropriate was highly improper, nay, tainted with grave abuse of discretion or such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[74]

We agree.

The trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the writ of possession without first determining whether NGCP has in fact complied with the requirements of the law for a valid exercise of its delegated power to expropriate, among them, the existence of a *genuine necessity* for the taking of the subject property, compliance with the required ERC approval for the project, and compliance with the requirement that the expropriation and the manner by which it is sought to be implemented is least burdensome to the landowner.

Under Rule 67 of the Rules of Court, the exercise of the power of eminent domain has two stages: *first*, the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the surrounding facts; and *second*, the taking of the land by the State or its agency subject to payment of just compensation. The first stage ends, if not in a dismissal of the action, with an order of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for public use.[75]

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[73] *Id.*

[74] See *Lee v. Sandiganbayan*, G.R. Nos. 234664-67, January 12, 2021, [Per J. Peralta, First Division].

[75] See *National Power Corporation v. Posada*, 755 Phil. 613, 624 (2015), [Per J. Leonen, Second Division].

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In *National Power Corporation v. Posada*[76] citing *Vda. De Ouano, et al. v. Republic, et al.*,[77] we explained that in expropriation cases, the Court must first reckon with the first part, i.e., any question on the validity of the exercise of the power of eminent domain which primarily pertains to its necessity, *viz.*:

> In *esse*, expropriation is forced private property taking, the landowner being really without a ghost of a chance to defeat the case of the expropriating agency. **In other words, in expropriation, the private owner is deprived of property against his [or her] will. Withal, the mandatory requirement of due process ought to be strictly followed, such that the state must show, at the minimum, a genuine need, an exacting public purpose to take private property, the purpose to be specifically alleged or at least reasonably deducible from the complaint.**[78] (Emphases supplied)

The State or its agents may not proceed to the second part without complying with the first. As stated, genuine necessity is a condition *sine qua non* to the taking of one's private property. In the landmark case of *City of Manila v. Chinese Community of Manila*,[79] the Court categorically decreed:

> The very foundation of the right to exercise eminent domain is a genuine necessity, and that necessity must be of a public character. **The ascertainment of the necessity must precede or accompany, and not follow, the taking of the land.**[80] (Emphasis and underscoring supplied)

In *De la Paz Masikip v. City of Pasig*,[81] We further emphasized why the existence of genuine necessity *prior* to taking must be shown before private individuals can be deprived of their property, *viz.*:

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[76] *Id.* at 638.

[77] G.R. Nos. 168770 and 168812, February 9, 2011, [Per J. Velasco, Jr., First Division].

[78] *Id.*

[79] 40 Phil. 349 (1919), [Per J. Johnson, First Division].

[80] *Id.* at 368.

[81] Supra note 67.

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> The right to own and possess property is one of the most cherished rights of [people]. It is so fundamental that it has been written into organic law of every nation where the rule of law prevails. **Unless the requisite of genuine necessity for the expropriation of one's property is clearly established, it shall be the duty of the courts to protect the rights of individuals to their private property.** Important as the power of eminent domain may be, the inviolable sanctity which the Constitution attaches to the property of the individual requires not only that the purpose for the taking of private property be specified. **The genuine necessity for the taking, which must be of public character, must also be shown to exist.**[82] (Emphases supplied)

When a question thus arises on whether the entity exercising the right to expropriate does so in conformity with its delegating law, the same should be heard and determined by the court pursuant to its vested authority, *viz.*:

> . . . The necessity for conferring the authority upon a municipal corporation to exercise the right of eminent domain is *admittedly within the power of the legislature*. **But whether or not the municipal corporation or entity is exercising the right in a particular case under the conditions imposed by the general authority, is a question which the courts have the right to inquire into.**[83] (Emphasis supplied)

Here, the trial court never heard the issue of necessity incipiently raised by IGCC in relation to the alleged absence of the required ERC clearance, lack of a genuine negotiation in good faith on the part of NGCP, and lack of any showing that the choice of the subject property is the least burdensome to the landowner. Notably, these were promptly raised in IGCC's answer, by way of affirmative defenses. The same were set for hearing by the trial court, albeit it was reset several times but eventually, no hearing actually took place. What took place was the peremptory issuance of the writ of possession dated December 12, 2022, which NGCP sought *via* a Motion for Actual Issuance of writ of possession which was instantly granted, sans the benefit of any hearing either.[84]

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[82] *Id.* at 375–376.

[83] Supra note 77.

[84] *Id.* at 12.

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We now reckon with Section 2, Rule 67 of the Rules of Court, *viz.*:

> **Section 2.** *Entry of plaintiff upon depositing value with authorized government depositary*. — Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he [or she] deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.
>
> If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.
>
> After such deposit is made the court shall order the sheriff or other proper court officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties.

OCA Circular No. 113-2019, as reiterated by OCA Circular No. 68-2022 cites the case of *Cordova*[85] as basis for directing lower courts to immediately issue a writ of possession in expropriation cases once the following twin requisites are satisfied: (1) sufficiency of the complaint in form and substance; and (2) the required provisional deposit, *viz.*:

> Pathfinder and Topanga contend that the trial court issued an Order of Condemnation of the properties without previously conducting a proper hearing for the reception of evidence of the parties. **However, no hearing is actually required for the issuance of a writ of possession, which demands only two requirements: (a) the sufficiency in form and substance of the complaint, and (b) the required provisional deposit. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations in the complaint.**[86] (Emphases supplied)

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[85] Supra note 63.

[86] *Id.* at 632.

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We focus on the first requisite, that is, the complaint must be sufficient both in form and *substance*.

In *Spouses Munsalud v. National Housing Authority*,[87] we explained that a pleading is sufficient in form when it follows the required form provided by the Rules of Court. Substance, on the other hand, comprehends all of the essential or material elements necessary to sufficiently state a good cause of action invulnerable to attack by general demurrer. In fine, it is determinative of whether a cause of action exists and whether jurisdiction has been conferred upon the court.

Therefore, to be deemed sufficient in substance, a complaint for expropriation must clearly set forth the following requisites for the valid exercise of eminent domain: (1) the property taken must be private property; (2) *there must be genuine necessity* to take the private property; (3) the taking must be for public use; (4) there must be payment of just compensation; and (5) the taking must *comply with due process*.[88] Indubitably, for entities exercising a mere delegated power of expropriation, they must likewise demonstrate that they do have the authority to exercise such power of expropriation.[89]

On this score, we turn to Section 9(d) of the EPIRA which requires ERC's prior approval of any plan to expand or improve TransCo's facilities now being operated and maintained by NGCP, thus:

> SECTION 9. *Functions and Responsibilities*. — Upon the effectivity of this Act, the TRANSCO shall have the following functions and responsibilities: x x x
>
> (d) Improve and expand its transmission facilities, consistent with the Grid Code and the Transmission Development Plan (TDP) to be promulgated pursuant to this Act, to adequately serve generation companies, distribution utilities and suppliers requiring

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87 595 Phil. 750 (2008), [Per J. Reyes, Third Division].

88 See *Manapat v. Court of Appeals*, 562 Phil. 31, 47–48 (2007), [Per J. Nachura, Third Division].

89 *Id.*

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transmission service and/or ancillary services through the transmission system: ***Provided*, That TRANSCO shall submit any plan for expansion or improvement of its facilities for approval by the ERC** . . . (Emphasis supplied)

In fine, before NGCP may take any concrete action for expansion, e.g., expropriating private land for such project, it must first secure prior approval from the ERC. Lacking this pre-requisite, it cannot be said that a genuine necessity exists for the taking of petitioner's land simply because there is yet no approved project for the use of such land.

Remarkably, NGCP does not deny that prior ERC approval is required before it can conduct preliminary activities for its transmission line projects. It even admitted the necessity thereof in its Comment.[90] For the first time here and now, however, NGCP denies petitioner's claim that it is not a holder of the requisite ERC approval for its Ingore Cable Terminal Station and the Panay-Guimaras 138kV Transmission Line Project. NGCP has even pledged to present its ERC approval during the hearing on the merits below.[91] Interestingly though, NGCP did not attach this document to its Comment.

In any case, NGCP's failure to allege in its complaint that it had secured the requisite ERC approval and that the expropriation sought, as well as its choice of the portion to be expropriated is the least burdensome to the landowner renders the complaint insufficient in substance. To reiterate, for a complaint for expropriation to be sufficient in substance, there is a need to, at the minimum allege that the expropriating agency possesses the authority to exercise the power of eminent domain,[92] which includes allegations that all restrictions provided by the delegating law have been complied with. In this case, Section 4 of Republic Act No. 9511 expressly required NGCP to exercise its right of eminent domain "insofar as it may be reasonably necessary"

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[90] *Rollo*, p. 285.

[91] *Id.*

[92] *Id.*

and to acquire private property as is "actually necessary for the realization of the purposes for which the franchise is granted." This, NGCP failed to allege, as well.

Notably, these matters essentially hinge on the issue of necessity vis-à-vis the expropriator's compliance with the statutory requirements for a valid exercise of the power of eminent domain. Consequently, the insufficiency of the complaint as to substance precludes the trial court from proceeding to the second stage, that is, the taking of the property which commences with the issuance of the writ of possession. In light of these attendant circumstances, therefore, the trial court cannot rightly claim to have been vested with the ministerial duty to order its issuance.

It is dutybound, however, to revert to the first stage of the expropriation proceedings and hear the parties on the authority of NGCP to expropriate the subject property. Specifically, it must determine at first instance whether NGCP is armed with the required ERC approval, whether it initiated and pursued an honest to goodness negotiation with IGCC before filing the case for expropriation, and whether its chosen line path is reasonably necessary for the public purpose intended to be served and proved to be the least burdensome to the landowner.[93] It is only after the trial court shall have determined all these questions in the affirmative may it advance to the second stage of taking, starting off with the issuance of the writ of possession so long as the twin requisites therefor are present; otherwise, the complaint should be dismissed.

So must it be.

ACCORDINGLY, the Petition for *Certiorari* and Prohibition with Very Urgent Application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction is **GRANTED**. The Orders dated December 12, 2022 and January 20, 2023 of the Regional Trial Court, Branch 33, Iloilo City in Special Civil Action No. 22-35139 are **NULLIFIED**.

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[93] *Id.* at 26–31.

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Respondent Hon. Ma. Theresa N. Enriquez-Gaspar, in her capacity as Presiding Judge of the Regional Trial Court, Branch 33, Iloilo City, and respondent National Grid Corporation of the Philippines, and all other persons acting on their behalf, are **PERMANENTLY PROHIBITED** from executing and/or implementing the writ of possession dated December 12, 2022 and other orders related thereto.

Further, respondent Presiding Judge Hon. Ma. Theresa N. Enriquez-Gaspar of the Regional Trial Court, Branch 33, Iloilo City is **ORDERED** to determine, upon due notice and hearing, the authority of the National Grid Corporation of the Philippines to expropriate the subject property vis-à-vis the specific matters heretofore stated.

The Motion to Lift Temporary Restraining Order dated February 28, 2023 filed by the National Grid Corporation of the Philippines is considered academic.

SO ORDERED.

Leonen, S.A.J. (Chairperson), M. Lopez, J. Lopez, and *Kho, Jr., JJ.*, concur.

APPEARANCES OF COUNSEL

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Teresita A. Laborte-Ildesa for respondent.