Supreme Court E-Library

entitling her to this award.[62] The award of ₱50,000 as civil indemnity is similarly proper and is in fact mandatory upon the finding of rape.[63]

WHEREFORE, premises considered, we *AFFIRM* the decision dated March 17, 2005 of the CA in CA-G.R.-H.C. No. 00633 finding accused-appellant Fajardo Napudo *GUILTY* beyond reasonable doubt of the crime of rape by using force and intimidation as defined and penalized under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended. Costs against the accused-appellant.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 175725. October 8, 2008]

NATIONAL POWER CORPORATION, *petitioner, vs.* **ANGEL SUAREZ, CARLOS SUAREZ, MARIA THERESA SUAREZ, and ROSARIO SUAREZ,** *respondents.*

SYLLABUS

CIVIL LAW; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; EASEMENT OF RIGHT OF WAY; JUST COMPENSATION; FULL VALUE OF THE LAND

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[62] *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 352.

[63] *People v. Limos*, G.R. Nos. 122114-17, January 20, 2004, 420 SCRA 183, 205.

Supreme Court E-Library

MUST BE PAID IN CASE AT BAR.— In issue in the present petition is whether petitioner, the National Power Corporation, in its acquisition of an easement of right of way (aerial) over a parcel of land, only a fee, not the full value of the land, must be paid. Petitioner contends that since it merely seeks an aerial easement over the property, the decision of the appellate court affirming the trial court's order for the payment of just compensation in the amount of ₱783,860.46 representing the total value of the property and excluding the application of Section 3A (b) of RA 6395 is erroneous. Petitioner's plea for the application of Section 3A(b) of RA 6395 which directs the payment of an amount equivalent to only 10% of the market value of the property as just compensation for an easement of right of way does not lie. Petitioner's assertion that respondents can still make use of the property by planting corn, rice, root crops and similar plants fails to consider that the property was originally tilled and suited for, as reflected in the Commissioners' Report, 234 fruit bearing coconut trees, 617 abaca plants, 50 *madre de cacao* and 23 jackfruit trees. That petitioner prohibited respondents from planting trees higher than three meters clearly shows that the easement had impaired respondents' beneficial enjoyment of their property to warrant the imposition of payment of its full value. The measure is thus not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to thereby convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample. The nature, as well as the character of the land at the time of taking is thus the principal criterion in determining just compensation. All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must thus be considered.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Roberto T. Labitag for respondents.

Supreme Court E-Library

D E C I S I O N

CARPIO MORALES, *J.*:

In issue in the present petition is whether petitioner, the National Power Corporation, in its acquisition of an easement of right of way (aerial) over a parcel of land, only a fee, not the full value of the land, must be paid.

In order to implement its 350 KV Leyte Luzon HDVC Power Transmission Project which aims to transmit the excess electrical generating capacity from the Leyte Geothermal Plant to Luzon and various load centers, petitioner filed before the Regional Trial Court (RTC) of Sorsogon, Sorsogon, a complaint on August 23, 1996[1] for expropriation of a parcel of land (the property) in Brgy. Bibincahan, Sorsogon, Sorsogon registered in the names of Angel Suarez, Carlos Suarez, Ma. Teresa Suarez and Rosario Suarez (respondents).

In accordance with Section 2 of Presidential Decree No. 42,[2] petitioner deposited with the Philippine National Bank, Legazpi City Branch the amount of ₱7,465.71 "representing the provisional value" of the property,[3] alleged to cover an area of 24,350 square meters. On September 23, 1996, it served a Notice to Take Possession of the property to respondents.

On petitioner's *Ex-Parte* Motion, Branch 52 of the Sorsogon RTC issued a Writ of Possession.

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[1] Records, pp. 1-5.

[2] P.D. 42 (AUTHORIZING THE PLAINTIFF IN EMINENT DOMAIN PROCEEDINGS TO TAKE POSSESSION OF THE PROPERTY INVOLVED UPON DEPOSITING THE ASSESSED VALUE, FOR PURPOSES OF TAXATION) Section 2. Upon filing of the petition for expropriation and the deposit in the Philippine National Bank at its main office or any of its branches of an amount equivalent to ten percent (10%) of the amount of compensation provided in Section 1 hereof, the government or its authorized instrumentality agency or entity shall be entitled to immediate possession, control and disposition of the real property and the improvements thereon, including the power of demolition if necessary, notwithstanding the pendency of the issues before the courts. (Underscoring supplied)

[3] Records, p. 11.

Supreme Court E-Library

Respondents filed on May 5, 1997 their Answer with Counterclaim, alleging that the property covers an area of 34,950, not 24,350 square meters, and that petitioner had already constructed two transmission towers in the middle of the property, cut down more or less 737 trees of different varieties (169 fruit bearing coconut trees, 11 coconut trees seven years old and below, 36 various species of fruit trees, 89 bamboo trees, 77 banana trees, 39 shade trees and 50 *madre de cacao* trees)[4] and an estimated 562.86 board feet of hardwood trees and 706.80 board feet of softwood trees.[5] They thus moved for the determination of just compensation which was granted by the court which appointed commissioners for the purpose.

From the Commissioners' Report[6] dated September 11, 1997, the commissioners determined the just compensation by using "Market Data Analysis, Income Productivity and Zonal Valuation" of the property and arrived at the following:

FINAL VALUE:

Since the subject land is surrounded by residential subdivisions, and the development thereof to a residential subdivision is what the owners thereof are mulling, the following computation was arrived to reflect said consideration, to wit:

1. MARKET DATA ANALYSIS	₱990,071.00 (70%)	=	₱693,049.70
2. INCOME PRODUCTIVITY	₱335,481.44 (20%)	=	₱ 67,096.28
3. ZONAL VALUATION	₱237,144.88 (10%)	=	₱ 23,714.48
			₱ 783,860.46

After considering all the limitations, the herein undersigned commissioners respectfully manifest that the just compensation of the land in question is in the amount of **₱783,860.46**. (Emphasis supplied)

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[4] *Id.* at 33 (Annex B to the Answer with Counterclaim entitled "Report on the Count of Improvements").

[5] *Id.* at 27.

[6] *Id.* at 70-74.

Supreme Court E-Library

In its Manifestation/Comments by way of Opposition to the Commissioners' Report,[7] petitioner assailed the report as bereft of legal basis, the Market Data Analysis and Income Productivity approaches being mere assumptions, whereas the Zonal Valuation approach is being used only for real estate tax purposes.

By Decision of April 15, 1999,[8] the trial court adopted as basis for determining just compensation the recommendation of the Commissioners. Thus it disposed:

WHEREFORE, premises considered, judgment is hereby rendered to wit:

a. Fixing the just compensation of the entire 24,350 sq.m. taken by the plaintiff as right-of-way easement from the defendants in the total amount of Seven Hundred Thousand Eight Hundred Three (*sic*) and Eight Hundred Sixty Pesos & 46/100 (₱783,860.46) Philippine Currency.

b. Ordering the plaintiff National Power Corporation (NPC) to pay the defendants the amount of ₱783,860.46 as the just compensation for the property taken less the amount of ₱7,465.71 representing the provisional value of the property which was deposited at the Philippine National Bank and other sums due the Government for unpaid real estate taxes and other imposts.

c. Ordering the dismissal of the counterclaim.

d. Without pronouncement as to cost.

SO ORDERED. (Underscoring supplied)

The Court of Appeals affirmed the trial court's decision, hence petitioner's present Petition for Review.

Petitioner contends that since it merely seeks an aerial easement over the property, the decision of the appellate court affirming the trial court's order for the payment of just compensation in the amount of ₱783,860.46 representing the total value of the

[7] *Id.* at 77.

[8] *Id.* at 90-96.

Supreme Court E-Library

property and excluding the application of Section 3A (b) of RA 6395[9] is erroneous.

Petitioner's plea for the application of Section 3A(b) of RA 6395 which directs the payment of an amount equivalent to only 10% of the market value of the property as just compensation for an easement of right of way does not lie.

Granting *arguendo* that what petitioner acquired over respondent's property was purely an easement of a right of way, still, we cannot sustain its view that it should pay only an easement fee and not the full value of the property. The acquisition of such an easement falls within the purview of the power of eminent domain. This conclusion finds support in similar cases in which the Supreme Court sustained the award of just compensation for private property condemned for public use. x x x

True, an easement of right of way transmits no rights except the easement itself, and respondent retains full ownership of the property. The acquisition of such easement is, nevertheless, not *gratis*. As correctly observed by the CA, considering the **nature and the effect of the installation of power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property.** For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land.[10] (Emphasis and underscoring supplied).

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[9] Sec. 3-A of R.A. 6395 (REVISED CHARTER OF THE NATIONAL POWER CORPORATION), as amended, provides:

In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof, will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land itself or portions thereof will be needed for the propject or works, such land or portion thereof as necessary shall be acquired.

In addition to the just compensation for the easement of right of way, the owner of the land or owner of the improvement, as the case may be shall be compensation for the improvement actually damaged by the construction and maintenance of the transmission lines x x x. (Emphasis and undersigned in the original)

Supreme Court E-Library

Petitioner's assertion that respondents can still make use of the property by planting corn, rice, root crops and similar plants[11] fails to consider that the property was originally tilled and suited for, as reflected in the Commissioners' Report, 234 fruit bearing coconut trees, 617 abaca plants, 50 *madre de cacao* and 23 jackfruit trees.[12] That petitioner prohibited respondents from planting trees higher than three meters clearly shows that the easement had impaired respondents' beneficial enjoyment of their property to warrant the imposition of payment of its full value.

The measure is thus not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to thereby convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.[13]

The nature, as well as the character of the land at the time of taking is thus the principal criterion in determining just compensation. All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must thus be considered.

WHEREFORE, the Petition is *DENIED*.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.[14]

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[10] *National Power Corporation v. Manubay Agro-Industrial Development Corporation*, G.R. No. 150936, Aug. 18, 2004, 437 SCRA 60, 67.

[11] *Rollo*, p. 32.

[12] *Id.* at 89.

[13] *Supra* note 10 at 68; *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343.

[14] *Export Processing Zone Authority v. Dulay*, G.R. No. 59603, April 29, 1987, 149 SCRA 305, 315.