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IN VIEW WHEREOF, the *Decision* of the Court of Appeals dated 2 September 2005, in CA G.R. CR HC No. 01139, is hereby AFFIRMED insofar as the conviction of accused-appellant EDNA MALNGAN *Y* MAYO is concerned. The sentence to be imposed and the amount of damages to be awarded, however, are MODIFIED. In accordance with Sec. 5 of Presidential Decree No. 1613, accused-appellant is hereby sentenced to *RECLUSION PERPETUA*. Accused-appellant is hereby ordered to pay the heirs of each of the victims ₱50,000.00 as civil indemnity.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Garcia, and *Velasco, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 170945. September 26, 2006]

NATIONAL POWER CORPORATION, *petitioner, vs.* **MARIA MENDOZA SAN PEDRO, represented by VICENTE, HERMINIA and FRANCISCO, all surnamed SAN PEDRO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION; LIMITATION; PRINCIPAL CRITERION.— The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be 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

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desires to sell it, fixed at the time of the actual taking by the government. To determine the just compensation to be paid to the landowner, the nature and character of the land at the time of its taking is the principal criterion.

2. ID.; ID.; ID.; ID.; FACTORS TO CONSIDER.— The lone fact that there was no available sales data on properties within the vicinity of respondent's land for 1996 and 1997 and that the BIR zonal value was ₱60.00 per sq.m. for residential and ₱30.00 per sq.m. for agricultural did not proscribe the commissioners and the trial court from making their own reasonable estimates of just compensation, after considering all the facts as to the condition of the property and its surroundings, its improvements and capabilities. As had been amply explained by this Court in *Export Processing Zone Authority v. Dulay*: *Various factors can come into play in the valuation of specific properties singled out for expropriation. The values given by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts, or other crops.* Very often land described as "cogonal" has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct. *Tax values can serve as guides but cannot be absolute substitutes for just compensation.* To say that the owners are estopped to question the valuations made by assessors since they had the opportunity to protest is illusory. The overwhelming mass of land owners accept unquestioningly what is found in the tax declarations prepared by local assessors or municipal clerks for them. They do not even look at, much less analyze, the statements. The idea of expropriation simply never occurs until a demand is made or a case filed by an agency authorized to do so. *It is violative of due process to deny to the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential*

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to a fair and just determination have been judiciously evaluated. Conformably with the rulings of this Court, the majority report took into account the most profitable likely use of the remaining area; and the size, shape, accessibility, as well as listings of other properties within the vicinity.

3. **ID.; ID.; ID.; ID.; IF REASONABLE AND SUPPORTED BY THE EVIDENCE ON RECORD, THE VALUATION OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS WILL NOT BE DISTURBED.**— The trial court fixed the just compensation for the property as follows: (1) ₱499.00 per sq m on the 17,195 sq.m. agricultural portion of the subject land; and (2) ₱800.00 per sq m on the 6,565 sq.m. residential portion of the lot. Noticeably, the trial court did not blindly accept the recommendation of majority of the commissioners of ₱800.00 per sq.m. for the residential lot and ₱700.00 per sq.m. for the agricultural lot. Indeed, the trial court took into account the evidence of the parties, in tandem with the findings and recommendation of the majority of the commissioners. Considering that such valuation of the trial court as affirmed by the CA is reasonable as it is and supported by the evidence on record, we find no compelling reason to disturb the same.

4. **ID.; ID.; ID.; ACQUISITION OF THE RIGHT-OF-WAY EASEMENT FALLS WITHIN THE AMBIT OF EXPROPRIATION.**— On the question as to whether petitioner shall pay only an easement fee to respondent's heirs, the following pronouncement in *National Power Corporation v. Aguirre-Paderanga* is enlightening: Indeed, expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession. *The right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines, as in the present case, also falls within the ambit of the term "expropriation." xxx.* In the case at bar, the easement of right-of-way is definitely a taking under the power of eminent domain. Considering the nature and effect of the installation of the 230 KV Mexico-Limay transmission lines, the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use. Similarly, in this case, the commissioners' observation on the reported constant loud buzzing and exploding sounds emanating

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from the towers and transmission lines, especially on rainy days; the constant fear on the part of the landowners that the large transmission lines looming not far above their land and the huge tower in front of their lot will affect their safety and health; and the slim chance that no one would be interested to buy the remaining portions on each side of the residential lot affected by the project, to the damage of the landowners, both as to future actual use of the land and financial gains to be derived therefrom, makes the instant case fall within the ambit of expropriation.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Danilo C. Cunanan for respondents.

D E C I S I O N

CALLEJO, SR., *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 72860, and its Resolution[2] denying the motion for reconsideration thereof.

The Antecedents

The National Power Corporation (NPC) is a government-owned-and-controlled corporation created to undertake the development of hydro-electric generation of power and the production of electricity from any and all sources; and particularly the construction, operation, and maintenance of power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, lake,

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Martin S. Villarama, Jr. and Edgardo F. Sundiam, concurring; CA *rollo*, pp. 162-177.

[2] *Id.* at 195-196.

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creek, spring and waterfalls in the Philippines and supplying such power to the inhabitants thereof.[3] Under Republic Act No. 6395, as amended, the NPC is authorized to enter private property provided that the owners thereof shall be indemnified for any actual damage caused thereby.[4]

For the construction of its San Manuel-San Jose 500 KV Transmission Line and Tower No. SMJ-389, NPC negotiated with Maria Mendoza San Pedro, then represented by her son, Vicente, for an easement of right of way over her property, Lot No. 2076. The property, which was partly agricultural and partly residential land, was located in Barangay Partida, Norzagaray, Bulacan and covered by Tax Declaration No. 00386. On June 19, 1997, Maria executed a Right of Way Grant[5] in favor of NPC over the lot for ₱1,277,886.90. The NPC paid her ₱524,635.50 for the damaged improvements thereon.[6]

The payment voucher for the residential portion of the lot valued at ₱6,000,000.00 (at ₱600.00 per square meter) was then processed.[7] However, the NPC Board of Directors approved Board Resolution No. 97-246[8] stating that it would pay only ₱230.00 per sq m for the residential portion and ₱89.00 per sq.m. for the agricultural portion, on the following premises:

> A) The proposed land valuations were evaluated and analyzed using the joint appraisal report on fair market value of lands by Cuervo Appraisal, Inc., Development Bank of the Philippines, and the Land Bank of the Philippines and the fair market values established by the respective Provincial Appraisal Committee (PAC) of Zambales, Pangasinan, Nueva Ecija, Pampanga and Bulacan as well as the City Appraisal Committee (CAC) of San Carlos and Cabanatuan.

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[3] Records, p. 2.

[4] *Id.*

[5] *Id.* at 16.

[6] *Id.* at 17-18.

[7] *Id.* at 21.

[8] *Id.* at 29-30.

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B) For lot acquisition, adopt PAC or CUERVO Appraisal, whichever is lower; if there is a problem of acceptance, refer same to the Board;

C) For easement over agricultural lands, adopt median or average if there are several amounts involved; and

D) Always oppose any proposals for conversion of agricultural lands.[9]

On January 15, 1998, the NPC filed a complaint[10] for eminent domain in the Regional Trial Court (RTC) of Bulacan against Maria and other landowners. The case was docketed as Civil Case No. 28-M-98. According to NPC, in order to construct and maintain its Northwestern Luzon Transmission Line Project (San Manuel-San Jose 500 KV Transmission Line Project), it was necessary to acquire several lots in the Municipalities of San Jose del Monte and Norzagaray, Bulacan for an easement of right of way in the total area of more or less 35,288.5 sq m. The owners of the affected areas and their corresponding assessed values are:

OWNER/ CLAIMANT	LOT/ BLK. NO.	TAX DEC. NO.	TITLE NO.	TOTAL AREA	AREA AFFEC-TED IN SQ. M.	ASSESSED VALUE OF AREA AFFECTED	CLASSIFI-CATION OF LAND
Ma.Mendoza San Pedro rep. by Vicente San Pedro	2076	00386		122,821.32	17,195	₱ 18,555.75	Agricultural
				10,000	6,565	₱147,712.50	Residential
Lorenza Manuel/ Sps. Raul & Edna Lagula	1250	96-21017-00084	T-28392-P-(M)	5,700	51,666.5	₱ 13,481.03	Agricultural
Sps. Segundo & Maxima Manuel/ Sps. Raul & Edna Lagula	1251	96-21017-00083	P-3965 (M)	6,362	6,362	₱ 16,210.00	Agricultural

[9] *Id.* at 133.

[10] *Id.* at 1-8.

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Maria San Pedro filed her Answer[11] on February 2, 1998, alleging that there had already been an agreement as to the just compensation for her property. She prayed, among others, that she should be paid the consideration stated in the Right of Way Grant, ₱600.00 per sq m for the residential portion of the land as agreed upon by her and NPC, and to base the values from Resolution No. 97-005[12] of the Provincial Appraisal Committee.

Meanwhile, Maria San Pedro filed an Amended Answer[13] in which she alleged that NPC had resorted to deceit, trickery and machination to induce her to grant a right of way by assuring her that it would also pay for the residential portion of the property at ₱600.00 per sq m.

On August 10, 1998, the RTC issued a writ of possession against Maria San Pedro.[14] When she passed away on August 22, 1998,[15] she was substituted by her heirs, Vicente, Herminia and Francisco, all surnamed San Pedro, on September 11, 1998.[16]

During the pre-trial on January 25, 1999, the parties agreed that the only issue for resolution was the just compensation for the property. The court appointed a committee of commissioners to ascertain and recommend to the trial court the just compensation for the properties, composed of Atty. Josephine L. Sinenenq-Baltazar, the Clerk of Court, as chairperson; and Engr. Oscar C. Cruz, Provincial Assessor of Bulacan, and Atty. Henry P. Alog of the Litigation Department of NPC to serve as members-commissioners thereof.[17]

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[11] *Id.* at 12-15.

[12] *Id.* at 19-20 and 258.

[13] *Id.* at 65-70.

[14] *Id.* at 93-94.

[15] *Id.* at 115.

[16] *Id.* at 116.

[17] *Id.* at 161.

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On July 12, 1999, Atty. Baltazar and Engr. Cruz submitted their report,[18] recommending as payment for just compensation ₱800.00 per sq m for the residential lot and ₱700.00 per sq.m. for the agricultural lot.[19] The majority report reads:

I. Description of the Property

A parcel of land with a total area of 132,821.32 square meters located at Partida, Norzagaray, Bulacan and declared for taxation purposes in the name of Maria Mendoza San Pedro is sought to be expropriated by plaintiff National Power Corporation for the construction and maintenance of its Northwestern Luzon Transmission Line Project (San Miguel-San Jose 500 KV Transmission Line Project), to wit:

Lot No.	Tax Dec. No.	Total Area	Area Affected in sq. m.	Classification
2076	01337	122,821.32	17,195	Agricultural
		10,000.00	6,565	Residential

The pertinent tax declaration is hereto attached as Annex "A".

The residential lot is not affected by NPC's project in its entirety. Around 2,000 sq. m. remains on each side of the residential lot.

Likewise, only a portion or 17,195 sq. m. of (*sic*) more than 12 hectares agricultural land, (*sic*) is affected by the project. A sketch plan of the affected area is attached hereto as Annex "B".

II. Claims of the Parties

Defendants allege that they had signed a Right of Way Grant Contract dated June 19, 1997 which plaintiff itself prepared and was notarized by Atty. Marcelo Aure; that, among others, defendants and plaintiff agreed that the price of the residential land is ₱600.00 per square meter, based on the Provincial Appraisals Committee (PAC) Resolution No. 97-005; that, on December 6, 1997, plaintiff informed them that the NPC Board passed Resolution No. 97-246 dated October 27, 1997, pursuant to which the board approved price

[18] *Id.* at 240-242.

[19] *Id.* at 242.

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for acquisition of subject property is ₱230.00 per sq. m. for residential and ₱89.00 per sq. m. for agricultural lot. Defendants did not accept the new offer.

On the other hand, plaintiff alleges that the price for residential land is ₱230.00 per sq. m. as approved by NPC's Board and not ₱600.00 per sq. m. being asked by defendants. It further recommended the appointment of commissioners to report to the Court the just compensation to be paid to the defendants.

III. Observations

The Commissioners went to the site on May 11, 1999 and were able to observe that:

(1) The residential lot of Vicente San Pedro is not affected by NPC's project in its entirety. Around 2,000 sq. m. remains on each side of the residential lot. There are no existing structures or improvements on said residential lot, which is situated along the all-weather (gravel) road. Defendants are afraid to utilize the said remaining portions for residential purposes because of the reported constant loud buzzing and exploding sounds emanating from the towers and transmission lines, especially on rainy days. The two children of Vicente San Pedro had wanted to construct their residential houses on said land, but decided against it now because of fear that the large transmission lines looming not far above their land and the huge tower in front of their lot will affect their safety and health. Moreover, there is a slim chance now that somebody will still buy the remaining portions on each side of the residential lot affected by the project, to the damage of the defendant, both as to future actual use of the land and financial gains to be derived therefrom.

(2) Likewise only a portion, or 17,195 sq. m. of the 122,821.32 square meter agricultural land, is affected by the transmission line project. It was not planted with *palay* at the time of the inspection. According to the defendants, their farm helpers are already afraid to work on the land because of the buzzing and cracking sounds coming from the tower and transmission lines.

(3) The site is located in a highly developed area about 1.5 kms. away from Norzagaray Municipal Building. The vast land owned by Jesus Is Lord congregation is on the same side of

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the road as subject property. Opposite the road is an ongoing resort project, the Falcon Crest Resort about ½ kilometers away, and the proposed Catholic Retreat House about 200 meters away. Attached as Annex "C" is the Location Plan of said lot.

IV. Available Data

(1) Based on the Zoning Certificate issued by the Municipal Mayor, subject parcel of land has been classified as residential pursuant to the proposed Comprehensive Land Use Plan of local government unit. Copy of said Zoning Certificate is hereto attached as Annex "D".

(2) Based on the BIR Zonal Valuation attached as Annex "E", subject land has a zonal value of ₱60.00/sq. m. for residential and ₱30.00/sq. m. for agricultural lot. However, it is common knowledge that zonal valuation provided by BIR cannot be made as basis for the purpose of determining just compensation in eminent domain cases because it is only for the purpose of computing internal revenue taxes.

(3) Opinion values gathered by the Provincial Assessor on the price of the property are as follows:

Residential - ₱1,075.00 / sq. m.
Agricultural - ₱ 643.00 / sq. m.

The summary of Opinion Values is hereto attached as Annex "F".

(4) There are no available sales data on properties within the vicinity of subject land for the years 1996 and 1997, approximate time of the taking.

IV. Recommendation

The Commissioners, after considering the location of the subject property in a highly developed area and accessibility thru the all-weather road (gravel); its potential for full development as shown by the existence of building projects in the vicinity; and the long-term effect the expropriation will have on the lives, comfort and financial condition of herein defendants, respectfully recommend the following amounts as payment for the affected portions of subject property.

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₱800. / sq. m. - for the residential lot
₱700. / sq. m. - for the agricultural lot[20]

However, Atty. Alog, who represented NPC, dissented from the report, claiming that it was merely based on "opinion values," and the self-serving declarations and opinions of defendants. He maintained that, in determining just compensation, the trial court should instead consider the appraisal report of Cuervo Appraisers, Inc., upon which Resolution No. 97-246 of NPC was based. He likewise argued that the property involved was actually and principally used as agricultural, though declared as agricultural/residential lots; hence, only the easement fee of right of way should be paid, as the principal purpose for which the lot was devoted would not be impaired by the construction of transmission lines. His report reads:

I. FINDINGS

The ocular inspection and research conducted by the undersigned Commissioner on May 12, 1999 disclosed the following pertinent information and data:

1) The subject lots can be reached through a 1.4 km two lane concrete road, from the Sta. Maria-Norzagaray National Highway intersection at Poblacion, Norzagaray, Bulacan (refer to Annex "B");

2) The low lying northern portion of the property is presently used as riceland and the rest planted with assorted trees (refer to Annex "C", pictures);

3) The property is a portion of hill in the area with sides sloping downward on the northern eastern boundaries (refer to Annex "C");

4) There is no visible structural development in the area except for:

   a) a two lane concrete road adjacent to the property at the northwest boundaries going to San Jose Del Monte, Bulacan;

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[20] *Id.* at 240-242.

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b) newly constructed steel towers of NPC;

c) barbed wire fence with wooden post covering the northwestern portion of the lot adjacent to the concrete road to San Jose Del Monte, Bulacan and a bamboo fence that covers the southern portion (refer to Annex "C"); and

d) residential house approximately 200 meters from affected area.

5) During the ocular inspection, it is noted that they still use the affected area for agricultural purposes;

6) The Falcon Crest Resort is approximately 1 km. from the affected property;

7) Price data gathered are as follows (in square meter unless specified):

	Agri-Orchard (Interior)	Riceland Unirrigated (Interior)	Subd. along Sta. Maria (Garay)	Res'l	Agr'l
Provincial Appraisal Committee – Bulacan (Res. No. 97-005) (Annex "D")				₱600.00	₱400.00
NP Board Resolution No. 97-246 (Annex "E")	₱89.00	₱80.00	₱230.00		
Cuervo Appraisers, Inc. (Annex "F")	₱890,000/ha.	₱800,000/ha.	₱230.00[21]		

Atty. Alog also recommended that only **₱2,640,274.70** be paid to defendants by way of just compensation, broken down as follows:

Eight Hundred Two Thousand Three Hundred Sixty Eight Pesos and 50/100 **(₱802,368.50)**	- Payment for damaged crops/plants/trees
One Hundred Sixty Two Thousand Eight Hundred Sixty Five Pesos and 65/100 **(₱162,865.65)**	- Payment for structures

[21] *Id.* at 245-246.

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One Million Five Hundred Nine Thousand Nine Hundred Fifty Pesos **(₱1,509,950.00)** - Payment for residential portion of lot

One Hundred Fifty One Thousand Six Hundred Ninety One Pesos and 60/100 **(₱151,691.60)** - Easement fee for agricultural portion of lot

Thirteen Thousand Three Hundred Ninety Eight and 95/100 **(₱13,398.95)**[22] - Tower Occupancy Fee

On October 28, 1999, the RTC rendered judgment,[23] declaring as well-grounded, fair and reasonable the compensation for the property as recommended by Atty. Baltazar and Engr. Cruz. The *fallo* of the RTC decision reads:

WHEREFORE, premises considered, this Court hereby orders the above-described 5,700-square meter lot from Lot No. 1250 of defendants Spouse (*sic*) Raul (*sic*) and the afore-described 6,362-square meter lot from Lot No. 1251 of same defendants, subject to the covering Compromise Agreements; and the above-described 17,195-square meter lot from Lot No. 2076 of defendant Maria Mendoza San Pedro, CONDEMNED and/or EXPROPRIATED for the construction and maintenance of plaintiff's Northwestern Luzon Transmission Line Project (San Manuel - San Jose 500 KV Transmission Line Project), a project for public purpose.

Accordingly, this Court hereby fixes the just compensation for the expropriated lots, as follows:

OWNERS	LOT NO.	AREA EXPROPRIATED	PRICE/ S.Q. METER	JUST COMPEN-SATION
Sps. Raul & Edna Lagula	-1250	5,700 sq. m.	- ₱499.00 -	₱2,844,300.-
Sps. Raul & Edna Lagula	- 1251	6,362 sq. m.	- 499.00 -	2,174,638.-

[22] *Id.* at 250.

[23] *Id.* at 202-211.

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Ma. Mendoza San Pedro her heirs	- 2076	17,195 sq. m.	- 800.00 -	13,756,000.-

Hence, plaintiff is ordered to pay, as soon as possible, herein defendants the just compensation enumerated above for their respective lots aforementioned. For this purpose, plaintiff may withdraw the sum of money deposited with the Land Bank of the Philippines or any other banks pursuant to Section 2 of Rule 67 of the Rules of Court, as amended by P.D. No. 42.

FURTHER, defendants are ordered to clear and vacate the lots in question within 30 days from receipt hereof and to surrender possession thereof to the plaintiff.

The fees for the 3 Commissioners of the Appraisal Committee in the sum of ₱6,000.00 for the Chairman and ₱5,000.00 each for the 2 members, shall be paid by the plaintiff.

SO ORDERED.[24]

On November 19, 1999, the heirs of Maria San Pedro filed a Manifestation and Motion[25] for the partial reconsideration of the decision on the ground that the court failed to include in its decision the just compensation for the 6,565-square-meter residential portion of their land, with prayer for attorney's fees equivalent to 10% of the total amount to be awarded to them.

On December 3, 1999, NPC filed its motion for reconsideration,[26] insisting that the just compensation awarded to defendants was without legal and factual basis, and that it should only be made to pay an easement fee.

On June 6, 2001, the trial court issued an Order granting the motion of the heirs and denied that of NPC.[27] The RTC declared that the just compensation for the residential portion of the property should be the same as that of the spouses Lagula's

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[24] *Id.* at 210-211.

[25] *Id.* at 212.

[26] *Id.* at 215-218.

[27] CA *rollo*, pp. 76-78.

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property, which was ₱499.00 per sq m. On the claim of NPC in its motion for reconsideration that it should be made to pay only an easement fee, the trial court ruled that Lot No. 2076 should be treated the same way as NPC treated the properties of the spouses Lagula. It was pointed out that in the compromise agreements executed by plaintiff and spouses Lagula, plaintiff paid ₱499.00 per sq m on the basis of a straight sale of their agricultural land, and not merely an easement fee for a right of way thereon. The *fallo* of the amended decision reads:

WHEREFORE, in the light of the foregoing, the Court hereby:

1. Grants the motion of defendant Maria Mendoza San Pedro and thus orders that the 1st paragraph of page 8 of the Decision be amended to read as follows:

> "Plaintiff is expropriating portions of defendants' above-described properties to give way to the construction and maintenance of its Northern Luzon Transmission Line Project (San Manuel - San Jose 500 KV Transmission Line Project), a project for public purpose. The area of the lots sought to be expropriated from the lot of defendant Maria Mendoza San Pedro, represented by her heirs, are 17,195 square meters more or less of agricultural land and 6,565 square meters of residential land, while the area of the land sought to be expropriated from the two lots of defendants Sps. Raul and Edna Lagula are only 5,166.50 square meters, more or less, from Lot No. 1250 and 6,363 (*sic*) square meters, more or less, from Lot No. 1251.

Furthermore, the second paragraph of the dispositive portion of the Decision should be amended as follows:

"Accordingly, this Court hereby fixes the just compensation for the expropriated lots, as follows:

OWNERS	LOT NO.	AREA EXPROPRIATED	PRICE/ S.Q. METER	JUST COMPEN-SATION
Sps. Raul & Edna Lagula	1250	5,700 sq. m.	₱499.00	₱2.844,300.00
Sps. Raul & Edna Lagula	1251	6,362 sq. m.	499.00	3,174,638.00

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Ma. Mendoza San Pedro her heirs	2076	17,195 sq. m.	499.00	8,580,305.00
Ma. Mendoza San Pedro her heirs		6,565 sq. m.	800.00	5,252,000.00"

2. Denies the plaintiff's Motion for Reconsideration for lack of merit.

SO ORDERED.[28]

NPC appealed the amended decision to the CA, asserting that:

THE LOWER COURT GRAVELY ERRED IN FIXING ₱800.00 AND ₱499.00 PER SQUARE METER AS JUST COMPENSATION FOR APPELLEE'S 6,565 SQUARE METERS OF RESIDENTIAL LAND AND 17,195 SQUARE METERS OF AGRICULTURAL LAND, RESPECTIVELY.[29]

On September 28, 2005, the CA rendered judgment dismissing the appeal. The CA ruled that the July 12, 1999 majority report was based on uncontroverted facts, supported by documentary evidence and confirmed by the commissioners' ocular inspection of the subject properties. To arrive at a reasonable estimate of just compensation, the commissioners considered factors such as the location, the most profitable likely use of the remaining area, size, shape, accessibility, as well as listings of other properties within the vicinity. Citing *National Power Corporation v. Manubay Agro-Industrial Development Corporation*,[30] the CA found as unpersuasive NPC's argument that it should only pay an easement fee. It ruled that considering the nature and effect of the installation of power lines, the limitations on the use of land for an indefinite period deprives the owner of its normal use. The *fallo* of the CA decision reads:

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[28] *Id.* at 77-78.

[29] *Id.* at 55.

[30] G.R. No. 150936, August 18, 2004, 437 SCRA 60.

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WHEREFORE, the *Appeal* is hereby DENIED. The assailed *Decision* and *Order* dated 28 October 1999 and 6 June 2001, respectively, are AFFIRMED.

SO ORDERED.[31]

NPC filed a Motion for Reconsideration,[32] which the CA denied in its Resolution[33] dated December 22, 2005; hence, the instant petition based on the following ground:

THE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT UPHELD THE DECISION OF THE TRIAL COURT FIXING THE JUST COMPENSATION FOR RESPONDENT'S 6,565 SQ. METERS OF RESIDENTIAL LAND AND 17,195 SQUARE METERS OF AGRICULTURAL LAND, AT PHP800.00 AND PHP499.00 PER SQUARE METER RESPECTIVELY, INSTEAD OF THE EASEMENT FEE AS PRAYED FOR IN THE COMPLAINT AND PROVIDED UNDER REPUBLIC ACT NO. 6395, AS AMENDED, OTHERWISE KNOWN AS THE REVISED NPC CHARTER.[34]

The Ruling of the Court

The petition is denied for lack of merit.

The CA found no reversible error in the trial court's finding of just compensation. Inasmuch as the determination of just compensation in eminent domain cases is a judicial function and factual findings of the CA are conclusive on the parties and reviewable only when the case falls within the recognized exceptions, which does not obtain in this case, we see no reason to disturb the factual findings as to the valuation of the subject property.[35]

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[31] CA *rollo*, p. 176.

[32] *Id.* at 178-189.

[33] *Id.* at 195-196.

[34] *Id.* at 22.

[35] *National Power Corporation v. Court of Appeals*, G.R. No. 113194, March 11, 1996, 254 SCRA 577, 592.

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Petitioner avers that the rulings of the trial court affirmed by the appellate court, based on the majority report on the subject property's just compensation, is not supported by documentary evidence. It avers that in the majority report, Commissioners Atty. Baltazar and Engr. Cruz, even admit that there were no available sales data on properties within the vicinity of the subject property for the years 1996 and 1997. Moreover, the Bureau of Internal Revenue (BIR) valued the property at ₱60.00 per sq m for residential, and ₱30.00 per sq m for agricultural lot.[36]

Petitioner further argues that respondents have not shown that the condition of the adjoining properties or improvements thereon had increased their land's economic value.[37] The valuation, thus, of the trial court, as affirmed by the CA, was exorbitant and devoid of factual and legal basis.[38]

We are not persuaded.

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be 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.[39] To determine the just compensation to be paid to the landowner, the nature and character of the land at the time of its taking is the principal criterion.[40]

In the July 12, 1999 Majority Report, the commissioners found that the property was located in a highly-developed area and was accessible through an all-weather road. The fact that

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[36] *Rollo*, pp. 23-24.

[37] *Id.* at 25.

[38] *Id.* at 26.

[39] *Republic of the Philippines v. Court of Appeals*, 433 Phil. 106, 122 (2002).

[40] *Napocor v. Sps. Igmedio*, 452 Phil. 649, 664 (2003).

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the property had potential for full development as shown by the existence of building projects in the vicinity, and the long-term effect of the expropriation on the lives, comfort and financial condition of petitioners was likewise considered. The report also took into account the ocular inspection conducted by the commissioners on May 11, 1999. The tax declaration of the subject property,[41] the NPC sketch plan,[42] the location plan,[43] the zoning certificates,[44] the zonal valuation of the BIR,[45] and the opinion values[46] were also considered.

The lone fact that there was no available sales data on properties within the vicinity of respondent's land for 1996 and 1997 and that the BIR zonal value was ₱60.00 per sq.m. for residential and ₱30.00 per sq m for agricultural did not proscribe the commissioners and the trial court from making their own reasonable estimates of just compensation, after considering all the facts as to the condition of the property and its surroundings, its improvements and capabilities. As had been amply explained by this Court in *Export Processing Zone Authority v. Dulay*:[47]

> *Various factors can come into play in the valuation of specific properties singled out for expropriation. The values given by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts, or other crops.* Very often land described as "cogonal" has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate

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[41] *Id.* at 236.

[42] *Id.* at 238.

[43] *Id.* at 239.

[44] *Id.* at 226-227.

[45] *Id.* at 224.

[46] *Id.* at 228-234.

[47] No. 59603, April 29, 1987, 149 SCRA 305.

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than correct. *Tax values can serve as guides but cannot be absolute substitutes for just compensation.*

To say that the owners are estopped to question the valuations made by assessors since they had the opportunity to protest is illusory. The overwhelming mass of land owners accept unquestioningly what is found in the tax declarations prepared by local assessors or municipal clerks for them. They do not even look at, much less analyze, the statements. The idea of expropriation simply never occurs until a demand is made or a case filed by an agency authorized to do so.

It is violative of due process to deny to the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated.[48]

Conformably with the rulings of this Court, the majority report took into account the most profitable likely use of the remaining area; and the size, shape, accessibility, as well as listings of other properties within the vicinity.[49]

As gleaned from the location plan[50] of the property in the case at bar, Lot No. 2076 is connected via a cemented road to the National Road, 1.5 kilometers away. The same is likewise strategically located at a junction of the barrio road leading to the Provincial Road, the National Road and to Sapang Palay. The lot is also on the same side of the road as the land owned by the Jesus Is Lord Congregation and the Partida Elementary School. The ocular inspection of the commissioners also reveals that opposite the road, about half a km away, is an ongoing

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[48] *Id.* at 315-316.

[49] *National Power Corporation v. Manubay Agro-Industrial Development Corporation,* G.R. No. 150936, August 18, 2004, 437 SCRA 60, 69.

[50] Records, p. 239.

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resort project, the Falcon Crest Resort, and, about 200 meters away, the proposed Catholic Retreat House. While there are no existing structures or improvements on the residential portion of the lot, the same is situated along the all-weather (gravel) road and is fronting the property. On the agricultural portion thereof, the same appears to have been cultivated prior to the taking, as petitioner offered to compensate respondent's heirs' damages to the crops, plants and trees.

The trial court fixed the just compensation for the property as follows: (1) ₱499.00 per sq m on the 17,195 sq.m. agricultural portion of the subject land; and (2) ₱800.00 per sq.m. on the 6,565 sq.m. residential portion of the lot. Noticeably, the trial court did not blindly accept the recommendation of majority of the commissioners of ₱800.00 per sq.m. for the residential lot and ₱700.00 per sq.m. for the agricultural lot. Indeed, the trial court took into account the evidence of the parties, in tandem with the findings and recommendation of the majority of the commissioners. Considering that such valuation of the trial court as affirmed by the CA is reasonable as it is and supported by the evidence on record, we find no compelling reason to disturb the same.[51]

The Court is not persuaded by petitioner's argument that respondents had not shown that the condition of the adjoining properties, *i.e.*, improvements, had increased their land's economic value. It bears stressing that there is absence of any available sales data on properties within the vicinity of respondent's land for the years 1996 and 1997, the time of the taking. The property of respondent was the first to be sold. It is thus an exercise in futility for respondents to require evidence of sales of properties in the vicinity when no such transactions took place.

Petitioner's contention that the trial court should have based the fixing of just compensation on the appraisal report of Cuervo Appraisers, Inc. (where petitioner based its Resolution No. 97-246) is likewise untenable. *Petitioner failed to present*

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[51] *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 160890, November 10, 2004, 441 SCRA 637, 644.

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the so-called report of the Cuervo Appraisers, Inc. as evidence. We note that annexed to NPC Resolution No. 97-246 is a data of the NPC Board Appraisal on the Fair Market Value of residential lands along the concrete road in Sapang Palay, San Jose Del Monte, valued at ₱499.00 per sq m, which, however, is not signed nor authenticated. If, at all, the values indicated therein are self-serving to petitioner.

Parenthetically, petitioner has not explained why it agreed on paying just compensation of ₱499.00 per sq.m. on the *agricultural* lands of the spouses Lagula, when the purported Cuervo Appraisal Report indicates that the fair market value of unirrigated riceland along the road is only ₱110.00 per sq.m., and for an unirrigated interior only ₱85.00 per sq.m.[52] Had petitioner really believed Cuervo's appraisal, then, it should have likewise insisted on the values therein when it dealt with the spouses Lagulas.

Notably, the lower court's valuations of respondent's property — ₱499.00 per sq.m. on the agricultural portion and ₱800.00 per sq.m. on the residential portion of the lot — are near the estimates made by the following: (1) the Provincial Appraisal Committee, in its Resolution No. 97-005, which are ₱400.00 for agricultural and ₱600.00 for residential;[53] (2) the recommendation in the majority report of the commissioners (₱700.00 for agricultural and ₱800.00 for residential); and (3) the opinion values, which are ₱643.00 for agricultural and ₱1,075.00 for residential. On the other hand, the valuations made by Atty. Alog, ₱89.00 for agricultural and ₱230.00 for residential, are unconscionably low, understandably so because he works for petitioner.

On the question as to whether petitioner shall pay only an easement fee to respondent's heirs, the following pronouncement in *National Power Corporation v. Aguirre-Paderanga*[54] is enlightening:

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[52] Records, p. 34.

[53] *Id.* at 20 and 258.

[54] G.R. No. 155065, July 28, 2005, 464 SCRA 481.

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Indeed, expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession. *The right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines, as in the present case, also falls within the ambit of the term "expropriation."* As explained in *National Power Corporation v. Gutierrez, viz:*

> The trial court's observation shared by the appellate court show that "x x x While it is true that plaintiff [is] only after a right-of-way easement, *it nevertheless perpetually deprives defendants of their proprietary rights* as manifested by the imposition by the plaintiff upon defendants that below said transmission lines no plant higher than three (3) meters is allowed. Furthermore, *because of the high-tension current conveyed through said transmission lines, danger to life and limbs that may be caused beneath said wires cannot altogether be discounted, and to cap it all, plaintiff only pays the fee to defendants once, while the latter shall continually pay the taxes due on said affected portion of their property."*
>
> *The foregoing facts considered, the acquisition of the right-of-way easement falls within the purview of the power of eminent domain.* Such conclusion finds support in similar cases of easement of right-of-way where the Supreme Court sustained the award of just compensation for private property condemned for public use (See *National Power Corporation v. Court of Appeals,* 129 SCRA 665, 1984; *Garcia v. Court of Appeals,* 102 SCRA 597, 1981). The Supreme Court, in *Republic of the Philippines v. PLDT,* thus held that:
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> "Normally, of course, *the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession.* It is unquestionable that real property may, through expropriation, be subjected to an easement of right-of-way."

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In the case at bar, the easement of right-of-way is definitely a taking under the power of eminent domain. Considering the nature and effect of the installation of the 230 KV Mexico-Limay transmission lines, the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use.[55]

Similarly, in this case, the commissioners' observation on the reported constant loud buzzing and exploding sounds emanating from the towers and transmission lines, especially on rainy days; the constant fear on the part of the landowners that the large transmission lines looming not far above their land and the huge tower in front of their lot will affect their safety and health; and the slim chance that no one would be interested to buy the remaining portions on each side of the residential lot affected by the project, to the damage of the landowners, both as to future actual use of the land and financial gains to be derived therefrom, makes the instant case fall within the ambit of expropriation.

WHEREFORE, premises considered, the appeal is hereby *DENIED* for lack of merit. The ruling of the Court of Appeals in CA-G.R. CV No. 72860 is *AFFIRMED.*

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Chico-Nazario, JJ.,* concur.

FIRST DIVISION

[A.C. No. 5321. September 27, 2006.]

RAMON C. GONZALEZ, *complainant, vs.* **ATTY. ARNEL C. ALCARAZ,** *respondent.*

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[55] *Id.* at 493-494.