Supreme Court E-Library

SECOND DIVISION

[G.R. No. 191945. March 11, 2015]

NATIONAL POWER CORPORATION, *petitioner, vs.* **SOCORRO T. POSADA, RENATO BUENO, ALICE BALIN, ADRIAN TABLIZO, TEOFILO TABLIZO, and LYDIA T. OLIVO, substituted by her heirs, ALFREDO M. OLIVO, ALICIA O. SALAZAR, ANITA O. ORDONO, ANGELITA O. LIM, and ADELFA O. ESPINAS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; EMINENT DOMAIN; EXPROPRIATION PROCEEDINGS FOR NATIONAL INFRASTRUCTURE GOVERNED BY RULE 67 OF THE RULES OF COURT AND RA 8974.— Expropriation proceedings for national infrastructure projects are governed by Rule 67 of the Rules of Court and Republic Act No. 8974. The power of eminent domain is an inherent competence of the state. x x x Expropriation, the procedure by which the government takes possession of private property, is outlined primarily in Rule 67 of the Rules of Court. It undergoes two phases. The first phase determines the propriety of the action. The second phase determines the compensation to be paid to the landowner. x x x The first phase of expropriation commences with the filing of the complaint. It ends with the order of the trial court to proceed with the expropriation and determination of just compensation. During the pendency of the complaint before the trial court, the state may already enter and possess the property subject to the guidelines in Rule 67 of the Rules of Court. x x x Republic Act No. 8974 [which] governs the expropriation of private property for national government infrastructure projects, qualifies the manner by which the government may enter and take possession of the property to be expropriated. x x x Section 4 of Republic Act No. 8974 requires *immediate payment to the landowner* of 100% of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue. x x x The law also requires the immediate payment of the value of the

Supreme Court E-Library

improvements and/or structures on the land before the trial court can issue the Writ of Possession. x x x According to the law, it is the *implementing agency*, not the commissioners, that determines the proffered value of the improvements and structures. A Writ of Possession may be issued once there is confirmation by the trial court of the proffered value.

2. **ID.; ID.; ID.; THE RECALL OF A WRIT OF POSSESSION FOR FAILURE TO COMPLY WITH GUIDELINES OF RA 8974 IS NOT THE SAME AS THE ISSUANCE OF AN INJUNCTIVE WRIT; DISCUSSED.—** The recall of a Writ of Possession for failure to comply with the guidelines of Section 4 of Republic Act No. 8974 is not the same as the issuance of an injunctive writ. The first is an action by the trial court to correct an erroneous issuance while the second is an ancillary remedy to preserve rights. For an injunctive writ to be issued, parties must specifically pray for its issuance. Under Rule 58, Section 4(a) of the Rules of Civil Procedure, a preliminary injunction or temporary restraining order may be granted only when, among other requisites, the applicant is entitled to the relief demanded. x x x In expropriation cases involving national infrastructure projects, the trial court issues a Writ of Possession upon compliance by the implementing agency of the guidelines stated in Section 4 of Republic Act No. 8974. If it is later found that the guidelines were not complied with, the trial court recalls the Writ of Possession for being improperly issued. When a trial court recalls a Writ of Possession in an expropriation proceeding, the parties do not revert to *status quo*, i.e. the status of the parties before the expropriation complaint was filed. The trial court's order of condemnation stands regardless of whether a Writ of Possession was already issued.

3. **ID.; ID.; ID.; WHERE THE AMOUNT OF JUST COMPENSATION WAS ALREADY DETERMINED BY THE COURT BEFORE THE TAKING OF POSSESSION, THE SAME MUST BE PAID INSTEAD OF THE PROVISIONAL VALUE REQUIRED BY RA 8974.—** Just compensation as required by the Constitution is different from the provisional value required by Republic Act No. 8974. x x x The National Power Corporation was only required to pay the provisional value so that it could take possession of respondents' properties. Ordinarily, the government, in

Supreme Court E-Library

accordance with Rule 67 or Republic Act No. 8974, would have already taken possession of the property before the proper amount of just compensation could be determined by the court. However, the trial court had already determined the amount of just compensation even before the National Power Corporation could take possession of the properties. Payment of the provisional value is not anymore enough. x x x Once the amount of just compensation has been determined, it stands to reason that this is the amount that must be paid to the landowner as compensation for his or her property.

4. **ID.; ID.; VALIDITY OF THE EXERCISE OF THE POWER OF EMINENT DOMAIN PERTAIN TO NECESSITY.—** Before the issue of just compensation can even be considered by this court, any question on the validity of the exercise of the power of eminent domain must first pertain to its necessity. x x x It is the state that bears the burden of proving that the taking of private property is for a public purpose. If it fails in discharging this burden, it must return the property to the private owner, subject to whatever damages were incurred in the course of the taking.

5. **ID.; ID.; WITHDRAWAL OF PETITION TO EXPROPRIATE PRIVATE PROPERTY NO LONGER NEEDED FOR PUBLIC USE; CONSEQUENCE THEREOF.—** Considering that eminent domain is the taking of private property *for public use*, no expropriation proceeding can continue if the property to be expropriated will not be for public use. x x x Considering that the National Power Corporation is no longer using respondents' properties for the purpose of building the Substation Project, it may be allowed to discontinue with the expropriation proceedings, subject to the approval of the court. However, the grant of the Motion to Withdraw carries with it the necessary consequence of making the trial court's order of condemnation final and executory. x x x The rule, therefore, is that expropriation proceedings must be dismissed when it is determined that it is not for a public purpose, except when: First, the trial court's order already became final and executory; Second, the government already took possession of the property; and Lastly, the expropriation case already caused prejudice to the landowner. The expropriation case is not automatically dismissed when the property ceases to be for public use. x x x It is now the burden of the National Power Corporation

Supreme Court E-Library

to plead and prove to the trial court its reasons for discontinuing with the expropriation. Respondents may also plead and prove damages incurred from the commencement of the expropriation, if any.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Alfred M. Aquino for respondents.

D E C I S I O N

LEONEN, *J.*:

When the taking of private property is no longer for a public purpose, the expropriation complaint should be dismissed by the trial court. The case will proceed only if the trial court's order of expropriation became final and executory and the expropriation causes prejudice to the property owner.

Before this court is a Motion[1] filed by the National Power Corporation seeking to withdraw its Petition for Review[2] dated June 4, 2010. The Petition sought to reverse the Decision[3] of the Court of Appeals dated August 7, 2009, which affirmed the trial court's Decision recalling the Writ of Possession issued in the National Power Corporation's favor.

The National Power Corporation instituted expropriation proceedings for the acquisition of a right-of-way easement over parcels of land located in Barangay Marinawa, Bato, Catanduanes owned by respondents Socorro T. Posada, Renato Bueno, Alice Balin, Adrian Tablizo, Teofilo Tablizo, and Lydia Tablizo.[4]

---

[1] *Rollo*, pp. 160-164.

[2] *Id*. at 10-38.

[3] *Id*. at 42-56. The Decision, docketed as CA-G.R. CV No. 89342, was penned by Associate Justice Jose L. Sabio, Jr. (Chair) and concurred in by Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario of the Sixth Division.

[4] *Id*. at 42-43.

Supreme Court E-Library

The expropriation was for the construction and maintenance of its Substation Island Grid Project.[5] The case was docketed as Civil Case No. 0008.[6] The National Power Corporation offered the price of ₱500.00 per square meter. In their Answer, respondents objected to the offer and alleged that the value of the properties was ₱2,000.00 per square meter.[7]

In the Order dated December 16, 2002, Branch 43[8] of the Regional Trial Court of Virac, Catanduanes confirmed the National Power Corporation's right to expropriate the properties and ordered the creation of a commission to determine the amount of just compensation to be paid to respondents.[9]

On January 28, 2003, the National Power Corporation filed a Notice to Take Possession before the court on the basis of Rule 67, Section 2[10] of the Rules of Court. It alleged that it was entitled to a Writ of Possession in view of its deposit with the Land Bank of the Philippines in the amount of ₱3,280.00, alleging that it represented the provisional value of the properties.[11]

On July 10, 2003, the court-appointed commissioners recommended a fair market value of ₱1,500.00 per square meter based on the following considerations:

---

[5] *Id.* at 43.

[6] *Id.* at 163.

[7] *Id.* at 43.

[8] *Id.* at 163.

[9] *Id.* at 43.

[10] RULES OF CIVIL PROCEDURE, Rule 67, Sec. 2 provides:

Sec. 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 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.

[11] *Rollo*, p. 44.

Supreme Court E-Library

a. The location of the subject parcels of land, which is along the highway, within a fast-growing community, ideal both for residential and business purposes, about 3 ½ kilometers from the capital town of Virac, a stones-throw from the seashore of Cabugao Bay and not too distant from "Maribina Falls", a tourist attraction;

b. The prevailing market value of the properties along the national highway ranges from ₱1,500.00 to ₱2,000.00 per square meter as per interview with the residents of the place;

c. Structures and improvements consisting of the residential houses of [respondents] and others can be found on the property, hence if the expropriation proceeds, [respondents] would be constrained to leave their homes to relocate.[12]

The National Power Corporation opposed the recommendation of the commissioners, arguing that:

a. the opinion given by the persons who live in the area should not be given weight because they are not experts in real estate appraisal;

b. the value of the land at the time of taking and not its potential as a building site is the criteria for determination of justcompensation[;]

c. The Provincial Appraisal Committee valued the lot at ₱500.00 per square meter;

d. The approved zonal values of real properties in Catanduanes classified as Residential Regular (RR) is ₱105.00;

e. The Schedule of Fair Market Values prescribed ₱160.00 for all lots along the national road from Marinawa Bridge to FICELCO;

f. Only an easement of right-of-way shall be acquired over the properties of the other defendants which remain classified as cocoland and as provided in [Republic Act No.] 6395 (NPC Charter), shall not exceed 10% of the market value declared by the owner or administrator or anyone having legal interest in

---

[12] *Id*. at 44-45.

Supreme Court E-Library

the property, or as determined by the assessor, whichever is lower.[13]

On November 19, 2003, the National Power Corporation amended its Complaint stating that it needed to acquire portions of the properties, instead of just an easement of right of way, for the construction of the Substation Island Grid Project. For this reason, it deposited with Land Bank of the Philippines the amount of ₱580,769.93, alleging that this represented the value of the ₱3,954 square meters sought to be expropriated.[14]

The National Power Corporation filed an Urgent Ex Parte Motion for the Issuance of a Writ of Possession.[15] It also served respondents with a Notice to Take Possession stating that "it shall enter and take possession of the property on September 26, 2005."[16]

In the Order dated July 14, 2005, the trial court granted the Urgent Ex Parte Motion for the Issuance of a Writ of Possession and issued a Writ of Possession.[17]

Respondents filed a Motion to Lift and/or Suspend the Issuance of the Writ of Possession, which the trial court denied.[18]

Undaunted, respondents filed an Urgent Motion to Grant Defendants Time to Remove their Houses and Improvements as well as Additional Deposit for Use in Land Acquisition and Expenses for Transfer of their Respective Residential Houses.[19]

The trial court granted respondents' Motion in its Order dated June 5, 2006. It fixed the value of the structures and improvements

---

[13] *Id*. at 45.

[14] *Id*. at 46.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

Supreme Court E-Library

on the land in the amount of ₱827,000.00, based on the value determined by the commissioners. It ordered the National Power Corporation to deposit an additional amount of ₱262,639.17.[20] The trial court stated that this amount was the difference between value of structures and improvements determined by the trial court (₱827,000.00) and the amount initially deposited by the National Power Corporation (₱564,360.83).[21]

The National Power Corporation failed to deposit the additional amount. The trial court issued an Order during the November 22, 2006 hearing for the National Power Corporation to make the necessary deposit. The issue on the amount of just compensation was also submitted for decision.[22]

On November 27, 2006, the trial court resolved the issue of just compensation as follows:

> WHEREFORE, all factors carefully evaluated and considered, *this Court, hereby, fixes the just compensation at TWO THOUSAND PESOS (₱2,000.00) per square meter* for the taking of the properties of [respondents] by [petitioner].
>
> LIKEWISE, in view of NPC's failure to comply with the Court's order dated June 5, 2006 and for misleading this Court when it filed its Motion for the Issuance of Writ of Possession, *this Court, hereby, RECALLS its order granting said Motion and CANCELS the Writ of Possession*.
>
> AND, AS A FINAL NOTE, the amount determined by the Court in said Order represents only the value of the structures and improvements and does not include the value of the land. Even if said amount is fully paid by NPC, still it would not be entitled to a Writ of Possession until it has paid the value of the land. And what should be its value? Is it the zonal valuation of the Bureau of Internal Revenue? Under Section 4 of Rep. [A]ct. No. 8974,

---

[20] This amount, however, appears to be incorrect since the National Power Corporation alleged that it deposited ₱580,769.93 while the trial court stated that the National Power Corporation deposited ₱564,360.83.

[21] *Rollo*, p. 47.

[22] *Id*. at 48.

Supreme Court E-Library

payment of one hundred [percent] (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue is required upon the filing of the complaint, and after due notice to the defendant. This Court believes that this basis is used because the just compensation is yet to be determined during the second stage of the expropriation proceeding. In the instant case, the complaint has long been filed, and the just compensation has already been determined above. Therefore, it should now be the basis for the re-issuance of a Writ of Possession – nay, even the transfer of ownership if fully paid.

SO ORDERED.[23] (Emphasis supplied)

The National Power Corporation appealed the trial court's Decision to the Court of Appeals.[24] On August 7, 2009,[25] the Court of Appeals rendered a Decision denying the appeal.[26] It held that the trial court committed no reversible error "in adopting the recommendation of the appointed commissioners insofar as the value of the subject property is concerned."[27]

The Court of Appeals also held that "the writ of possession was correctly recalled by the lower court."[28] Citing *Republic v. Judge Gingoyon*,[29] it held that the National Power Corporation must first pay respondents the amount determined by the trial court.[30] In the absence of proof that respondents were paid, the National Power Corporation cannot take possession of the property.[31]

---

[23] *Id.* at 48-49.

[24] *Id.* at 50.

[25] *Id.* at 42.

[26] *Id.* at 55.

[27] *Id.* at 51.

[28] *Id.* at 53.

[29] 514 Phil. 657 (2005) [Per *J.* Tinga, *En Banc*].

[30] *Rollo*, pp. 53-55.

[31] *Id.* at 55.

Supreme Court E-Library

The National Power Corporation filed a Motion for Reconsideration, but this was denied in the Resolution[32] dated April 14, 2010. Hence, it filed a Petition for Review on Certiorari before this court.

Respondents filed their Comment[33] on September 17, 2010. The National Power Corporation filed its Reply[34] to the Comment, substantially reiterating the arguments in its Petition.

During the pendency of the case before this court, the National Power Corporation filed an Urgent Motion for the Issuance of a Temporary Restraining Order[35] dated December 13, 2012, which was received by this court on January 7, 2013. Respondents, in turn, filed their Comments and Opposition to the Urgent Motion for Issuance of a Temporary Restraining Order.[36]

On March 11, 2013, this court issued a Resolution[37] deferring action on the Motion for the Issuance of a Temporary Restraining Order.

On May 17, 2013, the National Power Corporation filed a Very Urgent Motion to Resolve[38] stating that "the delay in the possession of the subject properties – intended for the Marinawa 10 MVA Sub-Station Project – would adversely affect the implementation of the Codon-Virac Transmission Lines[.]"[39]

In a turn of events, the National Power Corporation informed its counsel on July 24, 2014 that it no longer needed the properties as it was set to acquire an alternative site.[40] It also requested

---

[32] *Id*. at 57.

[33] *Id*. at 65-73.

[34] *Id*. at 81-92.

[35] *Id*. at 100-108.

[36] *Id*. at 113-117.

[37] *Id*. at 147-A.

[38] *Id*. at 148-151.

[39] *Id*. at 149.

[40] *Id*. at 167.

its counsel to withdraw Civil Case No. 0008 before the trial court because "it [was] impractical to pursue the acquisition of the original site[.]"[41]

Thus, the National Power Corporation, through counsel, filed the present Motion to Withdraw Appeal,[42] praying for the withdrawal of its appeal before this court and, ultimately, for its Amended Complaint before the trial court to be dismissed.[43]

We are asked to decide whether the National Power Corporation may be allowed to withdraw its Petition for Review and whether the withdrawal has the effect of dismissing its Amended Complaint before the trial court.

We grant the Motion to Withdraw the Petition for Review.

I

Expropriation proceedings for national infrastructure projects are governed by Rule 67 of the Rules of Court and Republic Act No. 8974.[44]

The power of eminent domain is an inherent competence of the state. It is essential to a sovereign. Thus, the Constitution does not explicitly define this power but subjects it to a limitation: that it be exercised only for public use and with payment of just compensation.[45] Whether the use is public or whether the compensation is constitutionally just will be determined finally by the courts.

However, the manner of its exercise such as which government instrumentality can be delegated with the power to condemn, under what conditions, and how may be limited by law. Republic Act No. 8974 does these, but it should not be read as superseding

---

[41] *Id*. at 170.

[42] *Id*. at 160-164.

[43] *Id*. at 163.

[44] An Act to Facilitate the Acquisition of Right-of-way, Site or Location for National Government Infrastructure Projects and for Other Purposes (2000).

[45] CONST., Art. III, Sec. 9.

Supreme Court E-Library

the power of this court to promulgate rules of procedure. Thus, our existing rules should be read in conjunction with the law that limits and conditions the power of eminent domain.

Expropriation, the procedure by which the government takes possession of private property, is outlined primarily in Rule 67 of the Rules of Court. It undergoes two phases. The first phase determines the propriety of the action. The second phase determines the compensation to be paid to the landowner. Thus:

> *There are two (2) stages in every action for expropriation. The first is concerned with 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 facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint."* An order of dismissal, if this be ordained, would be a final one, of course, since it finally disposes of the action and leaves nothing more to be done by the Court on the merits. So, too, would an order of condemnation be a final one, for thereafter, as the Rules expressly state, in the proceedings before the Trial Court, "no objection to the exercise of the right of condemnation (or the propriety thereof) shall be filed or heard.["]

The second phase of the eminent domain action is concerned with the determination by the Court of "the just compensation for the property sought to be taken." This is done by the Court with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too. It would finally dispose of the second stage of the suit, and leave nothing more to be done by the Court regarding the issue. Obviously, one or another of the parties may believe the order to be erroneous in its appreciation of the evidence or findings of fact or otherwise. Obviously, too, such a dissatisfied party may seek a reversal of the order by taking an appeal therefrom.[46] (Emphasis supplied, citations omitted)

---

[46] *Municipality of Biñan v. Judge Garcia*, 259 Phil. 1058, 1068-1069 (1989) [Per *J.* Narvasa, First Division].

Supreme Court E-Library

The first phase of expropriation commences with the filing of the complaint. It ends with the order of the trial court to proceed with the expropriation and determination of just compensation. During the pendency of the complaint before the trial court, the state may already enter and possess the property subject to the guidelines in Rule 67 of the Rules of Court.

Rule 67 of the Rules of Court, however, is not the only set of rules that governs the first phase of expropriation. On November 7, 2000, Congress enacted Republic Act No. 8974 to govern the expropriation of private property for national government infrastructure projects. The law qualifies the manner by which the government may enter and take possession of the property to be expropriated.

Rule 67, Section 2 of the Rules of Court states:

> Sec. 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 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. (Emphasis supplied)

Section 4 of Republic Act No. 8974, on the other hand, mandates:

> **Section 4.** *Guidelines for Expropriation Proceedings.* – Whenever it is necessary to acquire real property for the right-of-way or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:
>
> (a) Upon the filing of the complaint, and after due notice to the defendant, *the implementing agency shall immediately pay the owner of the property* the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property

Supreme Court E-Library

based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;

. . . . . .

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project. (Emphasis supplied)

As stated in *Gingoyon*, Republic Act No. 8974 "provides for a procedure eminently more favorable to the property owner than Rule 67"[47] since it requires the *immediate payment* of the zonal value and the value of the improvements on the land to the property owner before the trial court can allow the government to take possession. In contrast, Rule 67 only requires the government to deposit the assessed value of the property for it to enter and take possession.

In its Petition, the National Power Corporation argues that the amount of just compensation at ₱2,000.00 per square meter is excessive since the zonal valuation of the Bureau of Internal Revenue classifies the property as *cocoland*[48] pegged at ₱4.15 per square meter, and the commissioners merely "engaged in speculation and guess-work"[49] when they arrived at the amount.[50]

The National Power Corporation argues that the Writ of Possession should not have been recalled because it already deposited ₱580,769.93, the provisional amount required by Republic Act No. 8974. It argues that the amount ordered by the trial court to be paid to respondents was the amount of *just compensation*, which should have been distinguished from the provisional amount required for the issuance of a Writ of

---

[47] *Republic v. Judge Gingoyon*, 514 Phil. 657 (2005) [Per *J.* Tinga, *En Banc*].

[48] *Rollo*, p. 28.

[49] *Id.* at 26.

[50] *Id.* at 23-26.

Supreme Court E-Library

Possession. The deposit of the provisional amount was sufficient to be granted a Writ of Possession and to take possession of the property.[51]

In their Comment, respondents argue that the Court of Appeals did not err in sustaining the amount of just compensation determined by the trial court since the value was based on location, costs of improvements, prevailing market values of the properties similarly located, and opinions of the residents in the area.[52]

Respondents also argue that the Court of Appeals correctly upheld the trial court's recall of the Writ of Possession because there was no showing that any payment was made to respondents, as required by *Gingoyon*.[53]

The purpose for the taking of private property was for the construction of the National Power Corporation's Substation Island Grid Project. According to the Implementing Rules and Regulations of Republic Act No. 8974, projects related to "power generation, transmission and distribution"[54] are national infrastructure projects covered by the law. The National Power Corporation must first comply with the guidelines stated in Republic Act No. 8974 before it can take possession of respondents' property.

The trial court allowed the National Power Corporation to take possession of the properties because of its deposit with Land Bank of the Philippines of the alleged provisional value. However, the trial court recalled the Writ of Possession because the National Power Corporation failed to deposit the additional amount.

We find that the trial court erred, not in recalling the Writ of Possession, but in granting the Writ of Possession in the first place.

---

[51] *Id*. at 28-33.

[52] *Id*. at 69.

[53] *Id*. at 70-71.

[54] Implementing Rules and Regulations of Rep. Act No. 8974 (2000), Sec. 2(d).

Supreme Court E-Library

Section 4 of Republic Act No. 8974, unlike Rule 67, Section 2 of the Rules of Civil Procedure, requires *immediate payment to the landowner* of 100% of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue. It is the Bureau of Internal Revenue, not the court, which determines the zonal value.

The law also requires the immediate payment of the value of the improvements and/or structures on the land before the trial court can issue the Writ of Possession.

Thus, the trial court committed two errors. First, it based the value of the improvements on the property on the determination made by the commissioners, and not on the determination made by the National Power Corporation, contrary to the requirements of Section 7 of Republic Act No. 8974:

Section 7. *Valuation of Improvements and/or Structures.* – The Department of Public Works and Highways and other implementing agencies concerned, in coordination with the local government units concerned in the acquisition of right-of-way, site or location for any national government infrastructure project, are hereby mandated to adopt within sixty (60) days upon approval of this Act, the necessary implementing rules and regulations for the equitable valuation of the improvements and/or structures on the land to be expropriated.

The Implementing Rules and Regulations of Republic Act No. 8974 clarifies:

Section 10. Valuation of Improvements and/or Structures – *Pursuant to Section 7 of the Act, the Implementing Agency shall determine the valuation of the improvements and/or structures on the land to be acquired using the replacement cost method.* The replacement cost of the improvements/structures is defined as the amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/ structures. In the valuation of the affected improvements/structures, the Implementing Agency shall consider, among other things, the kinds and quantities of materials/equipment used, the location, configuration and other physical features of the properties, and prevailing construction prices. (Emphasis supplied)

Supreme Court E-Library

According to the law, it is the *implementing agency*, not the commissioners, that determines the proffered value of the improvements and structures. A Writ of Possession may be issued once there is confirmation by the trial court of the proffered value.

The second error of the trial court occurred when it issued a Writ of Possession on the basis of the National Power Corporation's deposit of the alleged provisional value with Land Bank of the Philippines, not on its actual payment to respondents. Even if the deposit of ₱580,769.93 was the correct provisional value, it cannot be considered as compliance with Section 4 of Republic Act No. 8974. In *Gingoyon*:

> [T]he law plainly requires direct payment to the property owner, and not a mere deposit with the authorized government depositary. *Without such direct payment, no writ of possession may be obtained*.[55] (Emphasis supplied)

There are, of course, instances when immediate payment cannot be made even if the implementing agency is willing to do so. The owner of the property is not precluded from contesting the power of the implementing agency to exercise eminent domain, the necessity of the taking, the public character of its use, or the proffered value by the implementing agency. In these instances, the implementing agency may deposit the proffered value with the trial court having jurisdiction over the expropriation proceedings.

Considering that the National Power Corporation failed to comply with the guidelines in Republic Act No. 8974, a Writ of Possession should not have been issued.

II

The recall of an improperly issued Writ of Possession is not the same as an injunction.

---

[55] *Republic v. Judge Gingoyon*, 514 Phil. 657, 700 (2005) [Per *J.* Tinga, *En Banc*].

Supreme Court E-Library

In its Urgent Motion for the Issuance of a Temporary Restraining Order, the National Power Corporation argued that it was unable to commence the Substation Project as it was paralyzed by the trial court's Decision dated November 27, 2006 recalling the issuance of the Writ of Possession in its favor.[56]

The National Power Corporation manifested that the project was "intended to resolve the six (6) to eight (8) hours of daily brownouts being suffered by the residents of the province."[57] It cited Section 3 of Republic Act No. 8975[58] and argued that the project cannot be restrained by the recall of a previously issued Writ of Possession because this amounted to an injunctive writ expressly prohibited by Section 4 of Republic Act No. 8975.[59]

Respondents, on the other hand, filed their Comments and Opposition to the Urgent Motion for Issuance of a Temporary Restraining Order. They argued that records of the First Catanduanes Electric Cooperative, Inc. (FICELCO)[60] showed that brownouts in the entire province only averaged 2.97 hours per day and not 6 to 8 hours as claimed by the National Power Corporation. Contrary to the National Power Corporation's claims, respondents never filed any motion for the issuance of a restraining order or injunctive writ against the National Power Corporation. They argued that the trial court recalled the Writ of Possession upon a finding that the National Power Corporation misled the trial court by making its own interpretation of Section 4 of Republic Act No. 8974, in that a provisional deposit

---

[56] *Rollo*, p. 101.

[57] *Id*.

[58] 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.

[59] *Rollo*, pp. 102-103.

[60] FICELCO is the only electric power distributor in the Province of Catanduanes.

Supreme Court E-Library

was sufficient compliance when the law requires immediate payment to the owner of the property.[61]

The National Power Corporation's argument that the recall of a Writ of Possession amounts to an injunctive writ prohibited under Section 3 of Republic Act No. 8975 is without merit.

Section 3 of Republic Act No. 8975 states:

> Sec. 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and 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's 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* (Emphasis supplied)

The recall of a Writ of Possession for failure to comply with the guidelines of Section 4 of Republic Act No. 8974 is not the same as the issuance of an injunctive writ. The first is an action by the trial court to correct an erroneous issuance while the second is an ancillary remedy to preserve rights.

For an injunctive writ to be issued, parties must specifically pray for its issuance. Under Rule 58, Section 4(a)[62] of the Rules of Civil Procedure, a preliminary injunction or temporary restraining order may be granted only when, among other requisites, the applicant is entitled to the relief demanded. In

---

[61] *Rollo*, pp. 114-115.

[62] RULES OF CIVIL PROCEDURE, Rule 58, Sec. 4(a) provides:

> Sec. 4. Verified application and bond for preliminary injunction or temporary restraining order. — A preliminary injunction or temporary restraining order may be granted only when:
> (a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded. . . .

Supreme Court E-Library

Nerwin Industries Corporation v. PNOC-Energy Development Corporation:[63]

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or person, to refrain from a particular act or acts. It is an ancillary or preventive remedy resorted to by a litigant to protect or preserve his rights or interests during the pendency of the case. As such, it is issued only when it is established that:

(*a*) The applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; or

(*b*) The commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(*c*) A party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.[64]

Section 3 of Republic Act No. 8975 contemplates only the *issuance* of an injunctive writ by lower courts. In *Republic v. Nolasco*:[65]

What is expressly prohibited by the statute is the issuance of the provisional reliefs of temporary restraining orders, preliminary injunctions, and preliminary mandatory injunctions. It does not preclude the lower courts from assuming jurisdiction over complaints or petitions that seek as ultimate relief the nullification or implementation of a national government infrastructure project. A statute such as Republic Act No. 8975 cannot diminish the

---

[63] 669 Phil. 173 (2012) [Per *J.* Bersamin, First Division].

[64] *Id.* at 186, *citing* RULES OF CIVIL PROCEDURE, Rule 58, Secs. 1 and 3.

[65] 496 Phil. 853 (2005) [Per *J.* Tinga, Second Division].

Supreme Court E-Library

constitutionally mandated judicial power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.[66] (Emphasis supplied)

Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.[67] adds:

[I]t is settled that the sole object of a preliminary injunction, may it be prohibitory or mandatory, is to preserve the *status quo* until the merits of the case can be heard and the final judgment rendered. The *status quo* is the last actual peaceable uncontested status which preceded the controversy.[68]

In expropriation cases involving national infrastructure projects, the trial court issues a Writ of Possession upon compliance by the implementing agency of the guidelines stated in Section 4 of Republic Act No. 8974. If it is later found that the guidelines were not complied with, the trial court recalls the Writ of Possession for being improperly issued.

When a trial court recalls a Writ of Possession in an expropriation proceeding, the parties do not revert to status quo, i.e. the status of the parties before the expropriation complaint was filed. The trial court's order of condemnation stands regardless of whether a Writ of Possession was already issued.

The National Power Corporation was not able to take possession of the property because it failed to comply with Republic Act No. 8974. Respondents did not file an application for the issuance of a writ of preliminary injunction or temporary restraining order against it. The trial court did not issue any injunctive writ. In other words, it was the National Power Corporation's own acts that prevented it from implementing its infrastructure project.

---

[66] *Id*. at 869, *citing* CONST., Art. VIII, Sec. 1.

[67] 501 Phil. 646 (2005) [Per *J*. Chico-Nazario, Second Division].

[68] *Id*. at 664, citing *Capitol Medical Center, Inc. v. Court of Appeals*, 258-A Phil. 271, 282 (1989) [Per *J*. Griño-Aquino, First Division].

Supreme Court E-Library

III

In accordance, however, with Rule 67, Section 4 of the Rules of Civil Procedure,[69] the trial court proceeded with the second phase of expropriation, that is, the determination of just compensation.

Just compensation as required by the Constitution is different from the provisional value required by Republic Act No. 8974. In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*:[70]

> Upon compliance with the requirements, a petitioner in an expropriation case . . . is entitled to a writ of possession as a matter of right and it becomes the ministerial duty of the trial court to forthwith issue the writ of possession. No hearing is required and the court neither exercises its discretion or judgment in determining the amount of the provisional value of the properties to be expropriated as the legislature has fixed the amount under Section 4 of R.A. 8974.
>
> To clarify, the *payment of the provisional value* as a prerequisite to the issuance of a writ of possession **differs** from the *payment of just compensation* for the expropriated property. While the provisional value is based on the current relevant zonal valuation, just compensation is based on the prevailing fair market value of the property. As the appellate court explained:

---

[69] RULES OF CIVIL PROCEDURE, Rule 67, Sec. 2 provides:

> Sec. 4. Order of expropriation. — If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.
>
> A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. *Such appeal, however, shall not prevent the court from determining the just compensation to be paid*. (Emphasis supplied)

[70] 539 Phil. 644 (2006) [Per *J*. Carpio Morales, Third Division].

Supreme Court E-Library

> *The first refers to the preliminary or provisional determination of the value of the property*. It serves a double-purpose of pre-payment if the property is fully expropriated, and of an indemnity for damages if the proceedings are dismissed. It is ***not a final*** *determination of just compensation* and may not necessarily be equivalent to the prevailing fair market value of the property. Of course, it may be a factor to be considered in the determination of just compensation.
>
> *Just compensation, on the other hand, is the* ***final*** *determination of the fair market value of the property*. It has been described as "the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation." Market values, has [sic] also been described in a variety of ways as the "price fixed by the buyer and seller in the open market in the usual and ordinary course of legal trade and competition; the price and value of the article established as shown by sale, public or private, in the ordinary way of business; the fair value of the property between one who desires to purchase and one who desires to sell; the current price; the general or ordinary price for which property may be sold in that locality.

There is no need for the determination with reasonable certainty of the final amount of just compensation before the writ of possession may be issued.[71] (Emphasis and underscoring in the original, citation omitted)

The statutory requirement to pay a provisional amount equivalent to the full Bureau of Internal Revenue zonal valuation does not substitute for the judicial determination of just compensation. The payment to the property owner of a preliminary amount is one way to ensure that property will not be condemned arbitrarily. It allows frontloading the costs of the exercise so that it is the government instrumentality that bears the burden and not the owner whose property is taken.

---

[71] *Id*. at 659-660, citing *City of Iloilo v. Judge Legaspi*, 486 Phil. 474, 490 (2004) [Per *J*. Chico-Nazario, Second Division] and *Republic v. Judge Gingoyon*, 517 Phil. 1, 13 (2006) [Per *J*. Tinga, *En Banc*].

Supreme Court E-Library

The payment of a provisional value may also serve as indemnity for damages in the event that the expropriation does not succeed. In *City of Manila v. Alegar Corporation*:[72]

[T]he advance deposit required under Section 19 of the Local Government Code[73] constitutes an advance payment only in the event the expropriation prospers. *Such deposit also has a dual purpose: as pre-payment if the expropriation succeeds and as indemnity for damages if it is dismissed*. This advance payment, a prerequisite for the issuance of a writ of possession, should not be confused with payment of just compensation for the taking of property even if it could be a factor in eventually determining just compensation. If the proceedings fail, the money could be used to indemnify the owner for damages.[74] (Emphasis supplied)

The National Power Corporation was only required to pay the provisional value so that it could take possession of respondents' properties. Ordinarily, the government, in accordance

---

[72] G.R. No. 187604, June 25, 2012, 674 SCRA 378 [Per *J*. Abad, Third Division].

[73] LOCAL GOVT. CODE, Sec. 19 provides:

SECTION 19. Eminent Domain. – A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

[74] *City of Manila v. Alegar Corporation*, G.R. No. 187604, June 25, 2012, 674 SCRA 378 [Per *J*. Abad, Third Division], citing *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*, 539 Phil. 644, 660 (2006) [Per *J*. Carpio Morales, Third Division] and *Visayan Refining Company v. Camus and Paredes*, 40 Phil. 550, 563 (1919) [Per *J*. Street, *En Banc*].

Supreme Court E-Library

with Rule 67 or Republic Act No. 8974, would have already taken possession of the property before the proper amount of just compensation could be determined by the court.

However, the trial court had already determined the amount of just compensation even before the National Power Corporation could take possession of the properties. Payment of the provisional value is not anymore enough. In *Export Processing Zone Authority v. Judge Dulay*:[75]

> *The determination of "just compensation" in eminent domain cases is a judicial function*. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[76] (Emphasis supplied)

Once the amount of just compensation has been determined, it stands to reason that this is the amount that must be paid to the landowner as compensation for his or her property. In the exercise of the power of eminent domain, taking of private property necessarily includes its possession. Government, then, must pay the proper amount of just compensation, instead of the provisional value in order to enter and take the private property.

IV

Before the issue of just compensation can even be considered by this court, any question on the validity of the exercise of the power of eminent domain must first pertain to its necessity. In *Vda. de Ouano, et al. v. Republic, et al.*:[77]

---

[75] 233 Phil. 313 (1987) [Per *J.* Gutierrez, Jr., *En Banc*].

[76] *Id*. at 326.

[77] 657 Phil. 391 (2011) [Per *J.* Velasco, Jr., First Division].

Supreme Court E-Library

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 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 least reasonably deducible from the complaint.

Public use, as an eminent domain concept, has now acquired an expansive meaning to include any use that is of "usefulness, utility, or advantage, or what is productive of general benefit [of the public]." If the genuine public necessity—the very reason or condition as it were—allowing, at the first instance, the expropriation of a private land ceases or disappears, then there is no more cogent point for the government's retention of the expropriated land. The same legal situation should hold if the government devotes the property to another public use very much different from the original or deviates from the declared purpose to benefit another private person. It has been said that the direct use by the state of its power to oblige landowners to renounce their productive possession to another citizen, who will use it predominantly for that citizen's own private gain, is offensive to our laws.

A condemnor should commit to use the property pursuant to the purpose stated in the petition for expropriation, failing which it should file another petition for the new purpose. If not, then it behooves the condemnor to return the said property to its private owner, if the latter so desires. The government cannot plausibly keep the property it expropriated in any manner it pleases and, in the process, dishonor the judgment of expropriation. This is not in keeping with the idea of fair play[.][78] (Emphasis supplied)

It is the state that bears the burden of proving that the taking of private property is for a public purpose. If it fails in discharging this burden, it must return the property to the private owner, subject to whatever damages were incurred in the course of the taking.

---

[78] *Id*. at 418-419, *citing* FR. JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 391 (2003) and *Heirs of Moreno v. Mactan-Cebu International Airport Authority*, 459 Phil. 948 (2003) [Per *J.* Bellosillo, Second Division].

Supreme Court E-Library

In *Heirs of Moreno v. Mactan-Cebu International Airport Authority*,[79] private property was expropriated for the proposed expansion of Lahug Airport in 1949.[80] The property owners were assured that they would be given a right to repurchase once Lahug Airport is closed or its operations are transferred to Mactan Airport.[81] In 1991, Lahug Airport ceased operations when Mactan Airport became fully operational. The former owners filed a Complaint for Reconveyance to compel the repurchase of the expropriated properties.[82]

This court considered the case "difficult" as it called for "a difficult but just solution."[83] In allowing the reconveyance, this court stated:

> *Mactan-Cebu International Airport Authority* [*v. Court of Appeals*] is correct in stating that one would not find an express statement in the Decision in Civil Case No. R-1881 to the effect that "the [condemned] lot would return to [the landowner] or that [the landowner] had a right to repurchase the same if the purpose for which it was expropriated is ended or abandoned or if the property was to be used other than as the Lahug Airport." This omission notwithstanding, and while the inclusion of this pronouncement in the judgment of condemnation would have been ideal, such precision is not absolutely necessary nor is it fatal to the cause of petitioners herein. No doubt, the return or repurchase of the condemned properties of petitioners could be readily justified as the manifest legal effect or consequence of the trial court's underlying presumption that "Lahug Airport will continue to be in operation" when it granted the complaint for eminent domain and the airport discontinued its activities.
>
> The predicament of petitioners involves a constructive trust, one that is akin to the implied trust referred to in Art. 1454 of the Civil Code, "If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the

---

[79] 459 Phil. 948 (2003) [Per *J.* Bellosillo, Second Division].

[80] *Id.* at 956.

[81] *Id.*

[82] *Id.* at 957.

[83] *Id.* at 960.

Supreme Court E-Library

grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him." In the case at bar, petitioners conveyed Lots Nos. 916 and 920 to the government with the latter obliging itself to use the realties for the expansion of Lahug Airport; failing to keep its bargain, the government can be compelled by petitioners to reconvey the parcels of land to them, otherwise, petitioners would be denied the use of their properties upon a state of affairs that was not conceived nor contemplated when the expropriation was authorized.

Although the symmetry between the instant case and the situation contemplated by Art. 1454 is not perfect, the provision is undoubtedly applicable. For, as explained by an expert on the law of trusts: "The only problem of great importance in the field of constructive trusts is to decide whether in the numerous and varying fact situations presented to the courts there is a wrongful holding of property and hence a threatened unjust enrichment of the defendant." Constructive trusts are fictions of equity which are bound by no unyielding formula when they are used by courts as devices to remedy any situation in which the holder of the legal title may not in good conscience retain the beneficial interest.

. . . . . .

The rights and obligations between the constructive trustee and the beneficiary, in this case, respondent MCIAA and petitioners over Lots Nos. 916 and 920, are echoed in Art. 1190 of the Civil Code, "When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received. . . . In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return. . . ."

Hence, respondent MCIAA as representative of the State is obliged to reconvey Lots Nos. 916 and 920 to petitioners who shall hold the same subject to existing liens thereon, i.e., leasehold right of DPWH. In return, petitioners as if they were plaintiff-beneficiaries of a constructive trust must restore to respondent MCIAA what they received as just compensation for the expropriation of Lots Nos. 916 and 920 in Civil Case No. R-1881, i.e., ₱7,065.00 for Lot No. 916 and ₱9,291.00 for Lot No. 920 with consequential damages

Supreme Court E-Library

by way of legal interest from 16 November 1947. Petitioners must likewise pay respondent MCIAA the necessary expenses it may have incurred in sustaining the properties and the monetary value of its services in managing them to the extent that petitioners will be benefited thereby. The government however may keep whatever income or fruits it may have obtained from the parcels of land, in the same way that petitioners need not account for the interests that the amounts they received as just compensation may have earned in the meantime. As a matter of justice and convenience, the law considers the fruits and interests as the equivalent of each other.

Under Art. 1189 of the Civil Code, "If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor . . .," the creditor being the person who stands to receive something as a result of the process of restitution. Consequently, petitioners as creditors do not have to settle as part of the process of restitution the appreciation in value of Lots Nos. 916 and 920 which is the natural consequence of nature and time.

Petitioners need not also pay for improvements introduced by third parties, *i.e.*, DPWH, as the disposition of these properties is governed by existing contracts and relevant provisions of law. As for the improvements that respondent MCIAA may have made on Lots Nos. 916 and 920, if any, petitioners must pay respondent their prevailing free market price in case petitioners opt to buy them and respondent decides to sell. In other words, if petitioners do not want to appropriate such improvements or respondent does not choose to sell them, the improvements would have to be removed without any obligation on the part of petitioners to pay any compensation to respondent MCIAA for whatever it may have tangibly introduced therein.[84] (Emphasis supplied)

Heirs of Moreno illustrates the difficulty of determining the respective rights of the parties once it has been determined that the expropriated properties will no longer be devoted for a public purpose. Matters involving the dismissal of an expropriation

---

[84] *Id*. at 965-968, citing *Mactan-Cebu International Airport Authority v. Court of Appeals,* 399 Phil. 695, 706 (2000) [Per *J*. Gonzaga-Reyes, Third Division], G. G. BOGERT, *HANDBOOK OF THE LAW OF TRUSTS*, 208-210 (1963), CIVIL CODE, Art. 1187, and *Coleongco v. Regalado and Montilla*, 92 Phil. 387, 392-393 (1952) [Per *J*. Felix, *En Banc*].

Supreme Court E-Library

case or the return of expropriated property must be determined on a case-to-case basis.

V

The National Power Corporation now requests this court for leave to withdraw this Petition on the ground that it was in the process of acquiring a vacant lot owned by FICELCO. Considering that eminent domain is the taking of private property *for public use*, no expropriation proceeding can continue if the property to be expropriated will not be for public use.

Respondents filed a Motion for Leave to File Comment to Petitioner's Motion to Withdraw Appeal.[85] They argue that the grant of a Motion to Withdraw would be unjust. From their point of view, the National Power Corporation cannot resort to a withdrawal of an appeal in order to invalidate a judgment duly rendered by the trial court and affirmed by the Court of Appeals. They state that they have no objection to the withdrawal of the appeal, but they object to the dismissal of the Amended Complaint before the trial court. They propose that the effect of withdrawing the Petition for Review is to make the Court of Appeals' Decision final and executory.[86]

In *National Housing Authority v. Heirs of Guivelondo*:[87]

> In the early case of *City of Manila v. Ruymann*, the Court was confronted with the question: May the petitioner, in an action for expropriation, after he has been placed in possession of the property and before the termination of the action, dismiss the petition? It resolved the issue in the affirmative and held:
>
> > The right of the plaintiff to dismiss an action with the consent of the court is universally recognized with certain well-defined exceptions. *If the plaintiff discovers that the action which he commenced was brought for the purpose of enforcing a right or a benefit, the advisability or necessity of which he later*

---

[85] *Rollo*, pp. 172-175.

[86] *Id.* at 173-174.

[87] 452 Phil. 481 (2003) [Per *J.* Ynares-Santiago, First Division].

> *discovers no longer exists, or that the result of the action would be different from what he had intended, then he should be permitted to withdraw his action, subject to the approval of the court*. The plaintiff should not be required to continue the action, subject to some well-defined exceptions, when it is not to his advantage to do so. Litigation should be discouraged and not encouraged. Courts should not require parties to litigate when they no longer desire to do so. Courts, in granting permission to dismiss an action, of course, should always take into consideration the effect which said dismissal would have upon the rights of the defendant.

Subsequently, in *Metropolitan Water District v. De Los Angeles*, the Court had occasion to apply the above-quoted ruling when the petitioner, during the pendency of the expropriation case, resolved that the land sought to be condemned was no longer necessary in the maintenance and operation of its system of waterworks. It was held:

> It is not denied that the purpose of the plaintiff was to acquire the land in question for a public use. *The fundamental basis then of all actions brought for the expropriation of lands, under the power of eminent domain, is public use. That being true, the very moment that it appears at any stage of the proceedings that the expropriation is not for a public use, the action must necessarily fail and should be dismissed, for the reason that the action cannot be maintained at all except when the expropriation is for some public use. That must be true even during the pendency of the appeal of [sic] at any other stage of the proceedings*. If, for example, during the trial in the lower court, it should be made to appear to the satisfaction of the court that the expropriation is not for some public use, it would be the duty and the obligation of the trial court to dismiss the action. And even during the pendency of the appeal, if it should be made to appear to the satisfaction of the appellate court that the expropriation is not for public use, then it would become the duty and the obligation of the appellate court to dismiss it.[88] (Emphasis supplied)

---

[88] *Id*. at 489-491, citing *City of Manila v. Ruymann*, 37 Phil. 421, 424-425 (1918) [Per *J*. Johnson, *En Banc*] and *Metropolitan Water District v. De los Angeles*, 55 Phil. 776, 782 (1931) [Per *J*. Johnson, *En Banc*].

Supreme Court E-Library

Considering that the National Power Corporation is no longer using respondents' properties for the purpose of building the Substation Project, it may be allowed to discontinue with the expropriation proceedings, subject to the approval of the court.

However, the grant of the Motion to Withdraw carries with it the necessary consequence of making the trial court's order of condemnation final and executory. In *National Housing Authority*:

> Notably, [*City of Manila* and *Water District*] refer to the dismissal of an action for eminent domain at the instance of the plaintiff during the pendency of the case. The rule is different where the case had been decided and the judgment had already become final and executory.
>
> . . . . . .
>
> In the case at bar, petitioner did not appeal the Order of the trial court dated December 10, 1999, which declared that it has a lawful right to expropriate the properties of respondent Heirs of Isidro Guivelondo. Hence, the Order became final and may no longer be subject to review or reversal in any court. A final and executory decision or order can no longer be disturbed or reopened no matter how erroneous it may be. Although judicial determinations are not infallible, judicial error should be corrected through appeals, not through repeated suits on the same claim.
>
> . . . . . .
>
> *Respondent landowners had already been prejudiced by the expropriation case. Petitioner cannot be permitted to institute condemnation proceedings against respondents only to abandon it later when it finds the amount of just compensation unacceptable.* Indeed, our reprobation in the case of *Cosculluela v. Court of Appeals* is apropos:
>
> > *It is arbitrary and capricious for a government agency to initiate expropriation proceedings, seize a person's property, allow the judgment of the court to become final and executory and then refuse to pay on the ground that there are no appropriations for the property earlier taken and profitably used. We condemn in the strongest possible terms the cavalier attitude of*

government officials who adopt such a despotic and irresponsible stance.[89] (Emphasis supplied)

The rule, therefore, is that expropriation proceedings must be dismissed when it is determined that it is not for a public purpose, except when:

First, the trial court's order already became final and executory;

Second, the government already took possession of the property; and

Lastly, the expropriation case already caused prejudice to the landowner.

The expropriation case is not automatically dismissed when the property ceases to be for public use. The state must first file the appropriate Motion to Withdraw before the trial court having jurisdiction over the proceedings. The grant or denial of any Motion to Withdraw in an expropriation proceeding is always subject to judicial discretion.

Respondents have not yet been deprived of their property since the National Power Corporation was never able to take possession. We cannot determine whether damages have been suffered as a result of the expropriation. This case needs to be remanded to the trial court to determine whether respondents have already been prejudiced by the expropriation.

The withdrawal of the Petition before this court will have no practical effect other than to make the trial court's order of condemnation final and executory. In order to prevent this absurdity, the National Power Corporation should file the proper Motion to Withdraw before the trial court. It is now the burden of the National Power Corporation to plead and prove to the trial court its reasons for discontinuing with the expropriation.

---

[89] *Id*. at 491-495, citing *Padillo v. Court of Appeals*, 422 Phil. 334, 353 (2001) [Per *J*. De Leon, Jr., Second Division], *Manila Electric Company v. Philippine Consumers Foundation, Inc.*, 425 Phil. 65, 83 (2002) [Per *J*. Sandoval-Gutierrez, *En Banc*], and *Cosculluela v. Court of Appeals*, 247 Phil. 359, 367 (1988) [Per *J*. Gutierrez, Jr., Third Division].

Supreme Court E-Library

Respondents may also plead and prove damages incurred from the commencement of the expropriation, if any.

WHEREFORE, the Motion to Withdraw Appeal dated August 28, 2014 is **GRANTED** insofar as it withdraws the Petition for Review dated June 4, 2010. The Motion for Leave to File Comment (to Petitioner's Motion to Withdraw Appeal) dated September 30, 2014 is **NOTED**. This case is **REMANDED** to the Regional Trial Court of Virac, Catanduanes, Branch 43 for appropriate action.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 192284. March 11, 2015]

ALEX TIONCO *y* ORTEGA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— The well-established rule is "that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary and unsupported conclusions can be gathered from such findings." "[T]he determination by the trial court of the credibility of