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FIRST DIVISION

[G.R. No. 56378. June 22, 1984]

NATIONAL POWER CORPORATION, *petitioner, vs.* THE COURT OF APPEALS; B.E. SAN DIEGO, INC., *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; PRICE OR VALUE OF THE PROPERTY AT THE TIME OF TAKING, BASIS FOR JUST COMPENSATION.-** It is now settled doctrine, following the leading case of Alfonso *vs.* Pasay (106 Phil. 1017 [1960]), that to determine due compensation for lands appropriated by the Government, the basis should be the price or value at the time it was taken from the owner and appropriated by the Government.

2. **ID.; ID.; ID.; NATURE OF THE LAND AT THE TIME OF TAKING, PRINCIPAL CRITERION FOR DETERMINING VALUE.—** The convertibility of the property into a subdivision, the criterion relied upon by respondent Court, is not controlling. The case of Manila Electric Company *vs.* Tuason, 60 Phil. 663, 668, cited in Municipal Govt. of Sagay *vs.* Jison (104 Phil. 1026 [1958]), has categorically ruled that it is the time of taking and not as "potential building" site that is the determining factor. The doctrines in the cases of City *vs.* Corrales, 32 Phil. 85 (1915) and Republic *vs.* Venturanza, 17 SCRA 322 (1966) relied upon by respondent Court must be deemed to have been superseded not only by the *Alfonso, Carlota* and *Sagay* cases but also by Republic *vs.* Narciso, 99 Phil. 1031 (1956); Republic *vs.* Philippine National Bank,1 SCRA 957 (1961); and Republic *vs.* Juan, 92 SCRA 26 (1979), all of which held that the nature of the land at the time of the taking by the Government is the principal criterion for awarding compensation to the landowner. The subdivision was not in existence when NPC entered the land.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Sison, Sison, Resurreccion & Associates for respondents.

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DECISION

MELENCIO-HERRERA, *J.:*

This is a Petition for Review on Certiorari of the Decision of the then Court of Appeals, promulgated on December 24, 1980, in CA-G.R. No. 55959-R, entitled "National Power Corporation, Plaintiff-Appellant, *versus* B.E. San Diego, Inc., Defendant-Appellant."

In 1961, petitioner National Power Corporation (NPC, for short), commenced negotiations with the spouses Esteban Sadang and Maria Lachica, then the registered owners, for the purchase of a portion of 8,746 sq. ms. of the latter's parcel of land of 62,285 sq. ms., situated in Barrio San Mateo, Norzagaray, Bulacan, for the purpose of constructing an access road to its Angat River Hydroelectric Project. Although the negotiations were not yet concluded, NPC nevertheless obtained permission from said spouses to begin construction of the access road, which it did in November 1961.

On December 7, 1962, B.E. San Diego, Inc. a realty firm and private respondent herein (SAN DIEGO, for short), acquired the parcel of land at a public auction sale and was issued a title.

On February 14, 1963, NPC instituted proceedings for eminent domain against the spouses Sadang in the Court of First Instance of Bulacan (Civil Case No. 2725), later amended on June 20, 1963, with leave of Court, to implead SAN DIEGO. The Motion to Amend was only granted on June 21, 1968. On March 19, 1969, the Trial Court appointed three Commissioners, one for each of the parties and another for the Court, to receive the evidence and determine the just compensation to be paid for the property sought to be expropriated. After the Commissioners had submitted their individual Reports and after evaluating the evidence adduced, the Trial Court rendered a Decision on March 28, 1973, the dispositive portion of which reads:

"WHEREFORE, judgment is rendered:

a) Declaring to plaintiff the full and legal right to acquire by eminent domain the absolute ownership over the portion of the land referred

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to in Paragraphs 4 and 9 of the Amended Complaint, consisting of 8,746 square meters, access road of the plaintiff to its Angat River Hydroelectric Project;

b) Authorizing the payment by plaintiff to defendant of the amount of P31,922.00 as full indemnity for the property at the rate of P3.75 per square meter, with interest at 12% per annum from March 11, 1963 until fully paid;

c) A final Order of Condemnation over the property and improvements therein is entered, for the purpose set forth, free from all liens and encumbrances;

d) Ordering the registration of this Act of Expropriation, at plaintiff's expense, with the Register of Deeds of Bulacan at the back of defendant's title to the whole property.

SO ORDERED."

Both parties appealed to the then Court of Appeals, which rendered a Decision on December 24, 1980, decreeing:

"Considering the peculiar facts and circumstances obtaining in the present case, it is our considered view that the just and reasonable compensation for the property in question is P7.00 per square meter.

ACCORDINGLY, the judgment appealed from is hereby modified as indicated above. No costs.

SO ORDERED."

Reconsideration having been denied, NPC availed of the present recourse, to which due course was given. SAN DIEGO did not appeal from the Appellate Court judgment although it filed a Brief.

The issues presented are whether or not respondent Court erred (1) in fixing the amount of P7.00 per square meter as just compensation for the portion of land sought to be expropriated based on its planned convertibility into a residential subdivision; and (2) in not reducing the rate of interest payable by NPC from twelve (12%) per cent to six (6%) per cent per annum.

The Trial Court and respondent Court assessed the conflicting evidence in different lights. Reproduced below are partial findings of the Trial Court:

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"The plaintiff's commissioner, to begin with, recommended a price of P0.50 per square meter; defendant's commissioner indicated P20.00 per square meter, while the commissioner of the Court pegged the value at P4.00 per square meter. The total road area consists of 8,746 square meters (Exhibits 4-4-c, inclusive). Against the sketch (Exhibit D-1) presented by plaintiff, the former should prevail.

There is competent testimony, too, that the land was *cogonales* at the time of the occupancy. During rainy season, according to Celedonio Juarez, Instrumentman of Survey Team of the plaintiff, the proposed road could only be passable by animal drawn sledges; that in contrast, the access-way under its present condition is fully paved. Shaped to a curve, the thoroughfare should provide a marked improvement to the flourishing housing subdivision managed by the defendant.

Also, the prevailing market price of residential lots in the area, according to the reputable C.M. Montano Realty, is P20.00 per square meter. Even taking the face value of the appraisal made, it would be unfair to compel plaintiff to pay the same price after constructing a 30-meter wide road through the property a decade ago which enhanced its commercial value, not to mention the aesthetic gain. Safe to say, therefore, except for the cost of the land area encompassed by the road, there is negligible, if any, consequential damage to speak of.

Defendant's contention, on the other hand, that the location of the road is burdensome appears to be more idealistic than meritorious. *The right of way as now built is more beneficial to the adjoining subdivision owner (defendant) in the sense that the residential lot on both flanks of the road could command a higher price. This may not hold true if the access road were to be built on the east side boundary as proposed by the defendant because only one side of the road may be devoted to the housing area.* x x x Related is evidence from defendant that the plaintiff had once negotiated to purchase the property at P5.00 per square meter. At first glance, this would appear significant and in keeping with the fair market value. But noticeably, the offer was made some nine (9) years after actual taking. It is pertinent to point out, the spouses Sadang when first contacted by the plaintiff in 1961, offered to part with the piece of property at P4.00 per square meter. The difference in the price could be reasonably traced to the fact that the couple then may not have any concrete plan to develop the area into a subdivision until the defendant came into the picture. But the Sadangs were the registered owners at the time of actual occupancy, defendant's mortgage lien notwithstanding. Being so, they were

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clothed with legal personality to enter into any transaction with the plaintiff. *The property was agricultural, in use as well as for taxation purposes.* (Exhibits A and B). Privy to this fact, the spouses were presumably aware of the reasonableness of their offer to sell.

"Thus, 'the fair market value of the land sought to be expropriated,' according to the Supreme Court, should be determined either at the time of actual taking or at the time of the 'filing of the complaint, whichever is earlier. The future convertibility of the property into some other classification does not affect the nature of property.' (Alfonso *vs.* Pasay City, G.R. No. L-12754, January 30, 1960).

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"ALL CONSIDERED, P3.75 a square meter is and represents the fair market value" (*Italics* supplied)

On the other hand, respondent Court reasoned thus:

"It has been amply shown that the defendant purchased the land for the purpose of converting the same into a first class residential subdivision. The court's commissioner and the trial court itself took cognizance of such project of the defendant (pp. 130-131, 163, Record on Appeal). It is worthwhile to note that, before the access road was constructed on the property, plaintiff had already known of the defendant's plan of converting the land into a subdivision, since plaintiff had in his custody a copy of defendant's subdivision plan, Exhibit 7. In point of fact, Exhibit 7 was produced in court by the plaintiff from its own record (p. 97, Record on Appeal). Evidence has also been adduced to show that, as appraised by C.M. Montano Realty, the prevailing market price of residential lots in the vicinity of defendant's land was P20.00 per square meter (p. 163, *Ibid*).

"Defendant further maintains that because the access road was not constructed in a straight line, the property was unnecessarily divided into three separate and irregular segments (Exhibit 4). According to the court's commissioner, *the road, as actually laid out, had rendered the owner's plan of converting the land into a subdivision 'futile.'*

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"Needless to state, plaintiff should have given heed to the above legal prescription (Art. 650, Civil Code) by having constructed the road in a straight line in order to cover the shortest distance, and thus cause the least prejudice to the defendant. Plaintiff failed to

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observe this rule, and no explanation has been offered for such neglect. *These facts contradict the conclusion of the lower court that 'except for the cost of the land encompassed by the road, there is negligible, if any, consequential damage to speak of.'* (p. 164, Record on Appeal).

"It is noted that the only basis of the court a quo in assessing the just compensation of the property at the price of P3.75 per square meter is that at the time of actual occupancy by the plaintiff, 'the property was agricultural in use as well as for taxation purposes (Exhibits A and D (p. 165 Record on Appeal).' But such posture is hardly in accord with the settled rule that 'in determining the value of the land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry, in such cases, must always be not what the property is worth in the market, viewed not merely as to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adopted; that is to say, what is its worth from its availability for valuable uses?' (City of Manila *vs.* Corrales, 32 Phil. 85, 98). It has also been held 'that the owner has a right to its value for the use for which it would bring the most in the market' (City of Manila *vs.* Corrales, *supra;* Republic *vs.* Venturanza, et al. 17 SCRA 322, 327).

Indeed, we cannot lightly brush aside the evidence showing that plaintiff's failure to observe the rule for laying out the right of way easement in a straight line had prevented the defendant from carrying out its plan of converting the property into a housing subdivision. This consequential damage must be taken into account in the assessment of the just compensation of the property" (*Italics* supplied)

After a review of the records, we are of the considered opinion that the findings of the Trial Court merit our approval for several reasons:

(1) Both documentary and oral evidence indicate that the land in question, at the time of taking by NPC in 1961, was agricultural in use as well as for taxation purposes. In fact, it was described as "cogonales."

(2) SAN DIEGO's contention that the location and direction of the access road is burdensome is not borne out by the evidence. The Report of the Commissioner of the Court revealed that NPC merely improved a pre-existing mining road on the premises,

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which was only accessible by carabao-drawn sledge during the rainy season.[1] As concluded by the Trial Court, which had the benefit of autoptic observation:

"Defendant's contention, on the other hand, that the location of the road is burdensome appears to be more idealistic than meritorious. The right of way as now built is more beneficial to the adjoining subdivision owner (defendant) in the sense that the residential lot on both flanks of the road could command a higher price. This may not hold true if the access road were to be built on the east side boundary as proposed by the defendant because only one side of the road may be devoted to the housing area."

(3) The finding of the Trial Court that "there is negligible, if any, consequential damage to speak of" thus becomes readily tenable. SAN DIEGO was not, as was the belief of respondent Court, "prevented from carrying out the plan of converting the property into a housing subdivision." On the contrary, the Trial Court observed that "the thoroughfare should provide a marked improvement to the *flourishing housing subdivision* managed by defendant (private respondent)."

(4) The appraisal by a realty firm of P20.00 per square meter, the price that SAN DIEGO stresses the property should command, is not, to our minds, a fair market value. The former owners, the Sadang spouses, offered to part with the property at P4.00 per sq. meter. SAN DIEGO had purchased the entire property of 62,285 square meters at public auction for P10,000.00, or at P0.16 per square meter. Previous to that, or in 1957, the property was mortgaged to the Development Bank of the Philippines for P20,000.00 and subsequently in 1958 to SAN DIEGO, by way of second mortgage, for P30,000.00. The observation of the Trial Court, on this point, is decidedly apropos:

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"A very important point: On the basis of a recognized policy of lending institutions to grant a maximum mortgage loan corresponding to 60% of the appraised value of the real estate

[1] p. 123, Record on Appeal.

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collaterals, the twenty thousand mortgage loan extended by the Development Bank of the Philippines to the spouses Sadang would roughly place the approximate value of the property at P33,330 or roughly P0.51 per square meter. And at this ratio, by granting a second mortgage of P30,000, the defendant impliedly placed the recoverable value of the property within P83,333.33 for the area of 62,285 square meters or about P1.33 per square meter. That was in 1958, the year of the second mortgage (Exhibit 12), or an annual increase in price at the rate of P0.81 per square meter. From 1958 to 1961 (date of actual taking) represents three years, or an aggregate increase of P2.43 per square meter. Add P1.32 to this thus making a total of P3.75 per square meter."

The price of P12.00 to P15.00, which respondent Court observed as the just compensation awarded in two civil suits for lands condemned in the immediate vicinity, cannot be a fair gauge since said Court neither adopted the same, and specially considering that the property was "cogonal" at the time NPC constructed its access road in 1961. Moreover, NPC also presented contrary evidence indicating prices of P.05 and P.06 per square meter at around the time it had entered the property. In fact, in respect of sales within the locality, the Trial Court had this to say:

"While sales of properties within the locality in the same year or thereabout may serve as a guiding factor in ascertaining a fair market value yet there appears want of proof to show that the alluded sales (Exhibits I-1, J, K, and L) referred to properties of similar nature nor was proximity to the land in question properly shown."

(5) And most importantly, on the issue of just compensation, it is now settled doctrine, following the leading case of Alfonso *vs.* Pasay,[2] that to determine due compensation for lands appropriated by the Government, the basis should be the price or value at the time it was taken from the owner and appropriated by the Government.

"The owner of property expropriated by the State is entitled to how much it was worth at the time of the taking. This has been clarified in Republic *vs.* PNB (1 SCRA 957) thus: 'It is apparent from the foregoing that, when plaintiff takes possession before the institution of

[2] 106 Phil. 1017 (1960).

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the condemnation proceedings, the value should be fixed as of the time of the taking of said possession, not of filing of the complaint, and that the latter should be the basis for the determination of the value, when the taking of the property involved coincides with or is subsequent to, the commencement of the proceedings. Indeed, otherwise, the provision of Rule 69, Section 3, directing that compensation 'be determined as of the date of the filing of the complaint' would never be operative."[3]

In the case at bar, the taking by NPC occurred in November 1961, when it constructed the access road on the expropriated property at time when it was still "cogonal" and owned by the spouses Sadang. The Complaint was filed only in 1963.

The convertibility of the property into a subdivision, the criterion relied upon by respondent Court, is not controlling. The case of Manila Electric Co. *vs.* Tuason, 60 Phil. 663, 668, cited in Municipal Govt. of Sagay *vs.* Jison,[4] has categorically ruled that it is the time of taking and not as "potential building" site that is the determining factor,

"x x x if the property to be expropriated was agricultural, the adaptability thereof for conversion in the future into a residential site does not affect its nature when plaintiff assumed possession of the property, although it is a circumstance that should be considered in determining its value at that time, as an 'agricultural' land."[5]

The doctrines in the cases of City *vs.* Corrales, 32 Phil. 85 (1915) and Republic *vs.* Venturanza, 17 SCRA 322 (1966) relied upon by respondent Court must be deemed to have been superseded not only by the *Alfonso, Carlota,* and *Sagay* cases but also by Republic *vs.* Narciso, 99 Phil. 1031 (1956); Republic *vs.* Philippine National Bank, 1 SCRA 957 (1961); and Republic *vs.* Juan, 92 SCRA 26 (1979), all of which held that the nature of the land at the time of taking by the Government is the principal criterion for awarding compensation to the landowner. The subdivision was not in existence when NPC entered the land.

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[3] Mun. of La Carlota *vs.* The Spouses Baltazar, et al., 45 SCRA 235 (1972).

[4] 104 Phil. 1026 (1958).

[5] Mun. Govt. of Sagay *vs.* Jison, *ibid.*

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Since SAN DIEGO bought the land in question in the interim and was issued a title only on December 7, 1962, the "taking" as to it should commence only from said date.

On the issue of legal interest in expropriation proceedings, we held in Amigable *vs.* Cuenca, 43 SCRA 360 (1972), that:

"As regards the claim for damages, the plaintiff is entitled thereto in the form of legal interest on the price of the land from the time it was taken up to the time that payment is made by the government. In addition, the government should pay for attorneys fees, the amount of which should be fixed by the trial court after hearing."

In the case at bar, legal interest should accrue from December 7, 1962, the time of taking as far as SAN DIEGO is concerned, at six per cent (6%) per annum, up to the time that payment is made by NPC.

Not having appealed from the Decision of respondent Court, SAN DIEGO cannot ask for its modification by way of increasing the amount of compensation and including an award for attorney's fees.[6]

WHEREFORE, the judgment of respondent Appellate Court, dated December 24, 1980, is hereby set aside, and the Decision of the then Court of First Instance of Bulacan, Branch I, in Civil Case No. 2725, authorizing payment of P31,922.00 as full indemnity for the property at the rate of P3.75 per square meter is reinstated. Petitioner is directed to pay interest at six per cent (6%) per annum on the amount adjudged from December 7, 1962, until fully paid. No costs.

SO ORDERED.

Teehankee (Chairman), Plana, Relova, Gutierrez, Jr., and *De la Fuente, JJ.*, concur.

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[6] Aparri *vs.* Court of Appeals, 13 SCRA 611 (1965).