



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

NATIONAL POWER CORPORATION,  
Petitioner,

G.R. No. 210218

Present:

- versus -

CARPIO, J., Chairperson,  
BRION,\*  
DEL CASTILLO,  
MENDOZA, and  
LEONEN, JJ.

HEIRS OF ANTONINA RABIE,  
represented by  
ABRAHAM R. DELA CRUZ,  
Respondents.

Promulgated:  
17 AUG 2016

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DECISION

CARPIO, J.:

The Case

This petition for review on certiorari<sup>1</sup> assails the 28 November 2013 Decision<sup>2</sup> of the Court of Appeals in CA-G.R. SP No. 131335, dismissing the petition for certiorari filed by petitioner National Power Corporation (NAPOCOR).

The Facts

NAPOCOR is a government-owned and controlled corporation created pursuant to Republic Act No. 6395,<sup>3</sup> as amended. Under the EPIRA,<sup>4</sup> NAPOCOR was tasked to perform the missionary electrification function and to provide power generation and its associated power delivery systems in areas that are not connected to the transmission system.

\* On leave.  
<sup>1</sup> Under Rule 45 of the Rules of Court.  
<sup>2</sup> *Rollo*, pp. 46-59. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring.  
<sup>3</sup> An Act Revising the Charter of the National Power Corporation.  
<sup>4</sup> Republic Act No. 9136 or the *Electric Power Industry Reform Act of 2001*.

On 1 December 2009, NAPOCOR filed a complaint for expropriation<sup>5</sup> against respondents Heirs of Antonina Rabie (respondents) for the acquisition of the 822-square meter portion of Lot No. 1439, a residential lot located in Barangay Lewin, Lumban, Laguna consisting of 12,657 square meters and covered by Original Certificate of Title No. P-9196, to be used as access road for the Caliraya Hydro Electric Power Plant of the Caliraya-Botocan-Kalayaan Build Rehabilitate and Operate Transfer Project of the NAPOCOR. The case was raffled to Regional Trial Court, Branch 91, Sta. Cruz, Laguna (trial court) and docketed as Civil Case No. SC-4842.

On 25 February 2010, respondents filed a Verified Answer,<sup>6</sup> claiming that the then current market value of the property was ₱10,000 per square meter on the inner portion and ₱12,000 per square meter near the highway. Respondents prayed, among others, for a just compensation in the amount of ₱1,250,700, representing the Bureau of Internal Revenue (BIR) zonal valuation for the “actual area to be occupied” by NAPOCOR which is 2,274 square meters, instead of 822 square meters only. In addition, respondents sought payment for NAPOCOR’s alleged unauthorized entry and use of the property from 1940 to date.

On 5 July 2010, NAPOCOR deposited with the Land Bank of the Philippines (Land Bank) the amount of ₱411,000 representing the BIR zonal valuation of the affected portion of the subject property, which was ₱500 per square meter.

Respondents filed a Motion to Withdraw Deposit dated 15 November 2010,<sup>7</sup> which the trial court granted in an Order dated 17 November 2010.<sup>8</sup>

NAPOCOR filed a Motion to Issue Order of Expropriation dated 18 March 2011.<sup>9</sup> NAPOCOR also filed a Motion for Annotation/Registration of Partial Payment dated 7 June 2011.<sup>10</sup>

In an Order dated 5 October 2011,<sup>11</sup> the trial court granted the motions and constituted the Board of Commissioners to assist the trial court in the determination of just compensation for the affected portion of the subject property.

On 8 February 2012, the Board of Commissioners submitted its Report. On 17 May 2012, NAPOCOR filed its Comment/Opposition to the Commissioners’ Report objecting to the recommendation that the affected portion of the subject property consists of 2,274 square meters and that the

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<sup>5</sup> *Rollo*, pp. 91-95.

<sup>6</sup> *Id.* at 102-112.

<sup>7</sup> *Id.* at 113-115.

<sup>8</sup> *Id.* at 117.

<sup>9</sup> *Id.* at 118-121.

<sup>10</sup> *Id.* at 122-125.

<sup>11</sup> *Id.* at 126-127.

value per square meter is ₱11,000. NAPOCOR also questioned the Commissioners' recommendation on the payment of rentals and the fact that NAPOCOR was not given the opportunity to be heard and to argue as to the amount of just compensation.

On 29 January 2013, the trial court issued an Order, the dispositive portion of which reads:

WHEREFORE, the Eight Hundred Twenty Two (822) square meters of the land owned by the defendants is hereby expropriated in favor of the National Power Corporation effective December 2009 upon payment of the fair market value of the property at Eleven Thousand (₱11,000.00) Pesos per square meter or a total of Nine Million Forty-Two Thousand (₱9,042,000.00) Pesos. Defendants' claim that said property was occupied by plaintiff since 1940 is un rebutted, hence, reasonable rentals of Twelve Thousand Pesos (₱12,000.00) yearly is hereby awarded to defendants from the year 1940 to the present at a twelve percent (12%) annual interest rate, until fully paid.

SO ORDERED.<sup>12</sup>

On 8 March 2013, NAPOCOR filed a Motion for Reconsideration of the Order. However, the trial court denied the motion in an Order dated 30 April 2013<sup>13</sup> which was received by NAPOCOR on 23 May 2013 and by respondents on 15 May 2013.

On 22 May 2013, respondents filed a Motion for Execution Pending Appeal.<sup>14</sup> NAPOCOR filed its Comment/Opposition thereto on 4 June 2013.

On 6 June 2013, NAPOCOR filed its Notice of Appeal and Record on Appeal.<sup>15</sup>

In an Order dated 18 June 2013,<sup>16</sup> the trial court gave due course to NAPOCOR's Notice of Appeal and directed the transmittal of the records of the case to the Court of Appeals.

The trial court set for hearing respondents' Motion for Execution Pending Appeal on 10 July 2013.

On 11 July 2013, the trial court issued an Order granting respondents' Motion for Execution Pending Appeal.<sup>17</sup> The trial court held:

In determining the propriety of execution of its Order dated January 29, 2013, pending appeal, showing good reasons as stated in the motion and while the Court has its jurisdiction over the case and still in

<sup>12</sup> Id. at 151. Penned by Judge Divinagracia G. Bustos-Ongkeko.

<sup>13</sup> Id. at 161.

<sup>14</sup> Id. at 162-170.

<sup>15</sup> Id. at 184-190.

<sup>16</sup> Id. at 191.

<sup>17</sup> Id. at 84-85.

possession of original record thereof or the record on appeal, the Court grants the “Motion for Execution Pending Appeal.”<sup>18</sup>

On 12 July 2013, the trial court’s Officer-in-Charge issued a Writ of Execution.<sup>19</sup> Sheriff Raymundo P. Claveria issued a Notice<sup>20</sup> addressed to the President of NAPOCOR demanding payment of ₱9,042,000 and ₱12,000 yearly rentals plus 12% interest from 1940 up to the present until fully paid within ten days from receipt thereof.

On 30 July 2013, NAPOCOR received a letter from the LBP-NAPOCOR Extension Office informing NAPOCOR of its receipt of a Notice of Garnishment in the amount of ₱14,873,999.28 issued by Sheriff Claveria.

Aggrieved, NAPOCOR filed with the Court of Appeals a petition for certiorari under Rule 65, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

On 28 November 2013, the Court of Appeals rendered a Decision dismissing the petition.

Hence, this petition filed on 23 January 2014.

On 22 October 2014, respondents filed an Omnibus Motion (to Dismiss and to Cite Petitioner in Contempt), contending that NAPOCOR is guilty of forum-shopping considering that there is another petition<sup>21</sup> filed by NAPOCOR before this Court (docketed as G.R. No. 214070). Respondents alleged that G.R. No. 214070 involves the same parties and the same facts and seeks the same relief of preventing the implementation of the trial court’s Order dated 11 July 2013 granting execution pending appeal and the Order dated 29 January 2013 ordering NAPOCOR to pay just compensation to respondents.

In its 19 November 2014 Resolution, the Court noted the motion.

In its 29 September 2014 Resolution, the Court dismissed the petition in G.R. No. 214070 for NAPOCOR’s failure to sufficiently show that the assailed resolutions of the Court of Appeals, dated 15 April 2014 and 8 August 2014, are tainted with grave abuse of discretion. The 15 April 2014 Resolution of the Court of Appeals assailed in G.R. No. 214070 ordered NAPOCOR to submit an affidavit containing a list of its assets and ordered Land Bank to submit a bank certification containing a list of NAPOCOR’s bank deposits with Land Bank.

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<sup>18</sup> CA rollo, p. 29.

<sup>19</sup> Rollo, pp. 86-87.

<sup>20</sup> Id. at 88.

<sup>21</sup> G.R. No. 214070 entitled *National Power Corporation v. Court of Appeals (Former Second Division) and Heirs of Antonina Rabie, represented by Abraham R. Dela Cruz*.

### **The Court of Appeals' Ruling**

The Court of Appeals held that the trial court still had jurisdiction when respondents filed their motion for execution pending appeal on 22 May 2013, or seven days after their receipt of the trial court's order denying their Motion for Partial Reconsideration. Hence, respondents' motion for execution pending appeal was timely filed.

The Court of Appeals ruled that there exists good reasons for the trial court's order granting execution pending appeal. The Court of Appeals agreed with respondents' invocation of *Borja v. Court of Appeals*,<sup>22</sup> where petitioner's advanced age, together with the posting of a supersedeas bond, justified the execution pending appeal.

The Court of Appeals rejected NAPOCOR's argument that the alleged physical and financial conditions of respondents do not outweigh the damages that it would suffer in the event that the Order subject of the writ of execution is later reversed, and that such conditions increase the risk that respondents would not be able to reimburse the amounts fixed in the Order. The CA held that "where the executed judgment is reversed, x x x the trial court may, on motion, issue such orders of restitution or reparation of damages x x x."<sup>23</sup>

The Court of Appeals also held that NAPOCOR's funds may be garnished as "it would be absurd to rule that petitioner's funds may not be garnished x x x considering that the winning party would not enjoy the fruits of his victory, x x x."<sup>24</sup> The Court of Appeals cited *Cosculluela v. Court of Appeals*,<sup>25</sup> where the Court held that "[i]t is arbitrary and capricious for a government agency to initiate expropriation proceedings x x x and then refuse to pay on the ground that there are no appropriations for the property earlier taken x x x."<sup>26</sup>

### **The Issues**

The issues in this case are: (1) whether the trial court still had jurisdiction when it ruled on the Motion for Execution Pending Appeal; (2) whether there exists good reasons for the execution of the trial court's decision pending appeal; and (3) whether the NAPOCOR's funds may be garnished or be the subject of execution.

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<sup>22</sup> 274 Phil 258 (1991).

<sup>23</sup> *Rollo*, p. 57.

<sup>24</sup> *Id.*

<sup>25</sup> 247 Phil. 359, 367 (1988).

<sup>26</sup> *Rollo*, p. 58.

### **The Court's Ruling**

We grant the petition.

#### ***Trial court had jurisdiction to resolve motion for discretionary execution***

Execution pending appeal, also called discretionary execution under Section 2(a), Rule 39 of the Rules of Court, is allowed upon good reasons to be stated in a special order after due hearing. Section 2(a), Rule 39 provides:

SEC. 2. *Discretionary execution.* –

(a) *Execution of a judgment or a final order pending appeal.* – On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

In this case, the motion for execution pending appeal was filed by respondents seven days after their receipt of the trial court's order denying the motions for reconsideration filed by both parties. Clearly, respondents filed the motion for execution pending appeal before the lapse of the period to file an appeal, which is fifteen days from notice of the order denying the motion for reconsideration.<sup>27</sup> Therefore, the trial court still had jurisdiction when respondents filed their motion for execution pending appeal.

Further, prior to transmittal of the records of the case, the trial court does not lose jurisdiction over the case and in fact, may issue an order for execution pending appeal. Section 9, Rule 41 of the Rules of Court provides:

SEC. 9. *Perfection of appeal; effect thereof.* A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

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<sup>27</sup> Section 3, Rule 41 of the Rules of Court provides:

SEC. 3. *Period of ordinary appeal.* – The appeal shall be taken within fifteen (15) days from notice of judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. x x x.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, **prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39,** and allow withdrawal of the appeal. (Emphasis supplied)

In this case, the trial court issued its Order granting the motion for execution pending appeal on 11 July 2013. That Order expressly stated that the trial court was still in possession of the original record of the case at the time. In fact, the records were transmitted to the Court of Appeals on 19 July 2013.<sup>28</sup> In other words, the trial court issued the Order granting the motion for execution pending appeal before the transmittal of the records to the Court of Appeals. Hence, contrary to NAPOCOR's contention, the Court of Appeals correctly ruled that the trial court still had jurisdiction when the motion for execution pending appeal was filed and when the trial court resolved such motion.

***Discretionary execution does not apply  
to eminent domain proceedings***

While the trial court still had jurisdiction when it issued the order granting execution pending appeal, the Court holds that discretionary execution does not apply to eminent domain proceedings. In *Spouses Curata v. Philippine Ports Authority*,<sup>29</sup> where movants alleged advanced age as ground for their motion for discretionary execution, the Court found the trial court to have committed grave abuse of discretion in issuing the order granting execution pending appeal. The Court held that discretionary execution is not applicable to expropriation proceedings, thus:

The Court rules that discretionary execution of judgments pending appeal under Sec. 2(a) of Rule 39 does not apply to eminent domain proceedings.

<sup>28</sup> CA rollo (G.R. No. 214070), p. 4.

<sup>29</sup> 608 Phil. 9 (2009).

As early as 1919 in *Visayan Refining Co. v. Camus and Paredes*, the Court held:

When the Government is plaintiff the judgment will naturally take the form of an order merely requiring the payment of the award as a condition precedent to the transfer of the title, as a personal judgment against the Government could not be realized upon execution.

In *Commissioner of Public Highways v. San Diego*, no less than the eminent Chief Justice Claudio Teehankee explained the rationale behind the doctrine that government funds and properties cannot be seized under a writ of execution, thus:

The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimants action only up to the completion of proceedings anterior to the stage of execution and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

PPA's monies, facilities and assets are government properties. Ergo, they are exempt from execution whether by virtue of a final judgment or pending appeal.

PPA is a government instrumentality charged with carrying out governmental functions through the management, supervision, control and regulation of major ports of the country. It is an attached agency of the Department of Transportation and Communication pursuant to PD 505.

x x x x

Therefore, an undeniable conclusion is that the funds of PPA partake of government funds, and such may not be garnished absent an allocation by its Board or by statutory grant. **If the PPA funds cannot be garnished and its properties, being government properties, cannot be levied via a writ of execution pursuant to a final judgment, then the trial court likewise cannot grant discretionary execution pending appeal, as it would run afoul of the established jurisprudence that government properties are exempt from execution. What cannot be done directly cannot be done indirectly.**

From the above discussion, we find that the RTC committed grave abuse of discretion in its July 24, 2000 Order directing the execution of the First Compensation Order (July 10, 2000 Order) pending appeal.<sup>30</sup> (Emphasis supplied)

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<sup>30</sup> Id. at 86-88.



The Court of Appeals' reliance on the case of *Borja v. Court of Appeals*<sup>31</sup> is misplaced. *Borja* involved a complaint for sum of money totalling ₱78,325 representing unpaid commissions and damages. On the other hand, this case involves expropriation proceedings, where the trial court fixed the just compensation for the subject property at ₱9,042,000 and yearly rentals at ₱12,000 since 1940 plus 12% interest *per annum* for a total award of ₱14,873,999.28. The difference in the nature of the actions and the amounts involved in *Borja* and in this case justifies the non-application of the rule on discretionary execution.

### ***Non-existence of good reasons for the execution pending appeal***

The trial court also committed grave abuse of discretion when it failed to specify and discuss any good reason required for granting execution pending appeal.

In *Villamor v. NAPOCOR*,<sup>32</sup> the Court discussed the requisites for execution pending appeal, thus:

Execution pending appeal requires the observance of the following requisites: (a) there must be a motion therefor by the prevailing party; (b) there must be a good reason for issuing the writ of execution; and (c) the good reason must be stated in a special order.

The prevailing doctrine as provided for in Section 2, paragraph 3 of Rule 39 of the Rules of Civil Procedure is that discretionary execution is permissible only when good reasons exist for immediately executing the judgment before finality or pending appeal or even before the expiration of the period to appeal. Good reasons consist of compelling circumstances justifying immediate execution lest judgment becomes illusory, or the prevailing party after the lapse of time be unable to enjoy it, considering the tactics of the adverse party who may have apparently no cause but to delay. Such reasons must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment. Were it otherwise, execution pending appeal may well become a tool of oppression and inequity instead of an instrument of solicitude and justice.

**The execution of judgment pending appeal is an exception to the general rule and must, therefore, be strictly construed. So, too, it is not to be availed of and applied routinely, but only in extraordinary circumstances.**

**This rule is strictly construed against the movant, for courts look with disfavor upon any attempt to execute a judgment which has not acquired a final character. In the same vein, the Court has held that such execution is “usually not favored because it affects the rights of the parties which are yet to be ascertained on appeal.”**

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<sup>31</sup> Supra note 22.

<sup>32</sup> 484 Phil. 298, 312-314 (2004).

The exercise of the power to grant or deny immediate or advance execution is addressed to the sound discretion of the trial court. However, the existence of good reasons is indispensable to the grant of execution pending appeal. Absent any such good reason, the special order of execution must be struck down for having been issued with grave abuse of discretion. (Emphasis supplied)

In this case, the trial court granted the motion for execution pending appeal based on “good reasons as stated in the motion,” without identifying and discussing any of these alleged good reasons. A mere statement of “good reasons as stated in the motion” does not suffice to justify execution pending appeal. It is basic that the trial court should make a finding on whether the allegations in the motion for execution pending appeal constitute good reasons as required in Section 2 of Rule 39. The trial court should have expressed clearly and distinctly the facts and law on which the order granting the motion for execution pending appeal was based, but it did not. Without such finding, the allegations in the motion for execution pending appeal remain as allegations. Consequently, the trial court committed grave abuse of discretion in granting discretionary execution without stating and explaining clearly the basis therefor.

In view of the foregoing, the Court deems it unnecessary to discuss the issue of garnishment of NAPOCOR’s funds.

**WHEREFORE**, the petition is **GRANTED**. The 28 November 2013 Decision of the Court of Appeals in CA-G.R. SP No. 131335 is **SET ASIDE**.

**SO ORDERED.**

  
**ANTONIO T. CARPIO**  
Associate Justice

**WE CONCUR:**

(on leave)  
**ARTURO D. BRION**  
Associate Justice


  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice


**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice