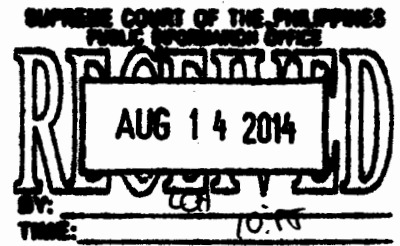




Republic of the Philippines
Supreme Court
Manila
THIRD DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated July 30, 2014, which reads as follows:

“G.R. No. 204831 (*Natividad Lim v. National Power Corporation*). – This petition for *certiorari* under Rule 45 of the Rules of Court filed by Natividad Lim (*Lim*) seeks the review and reversal of the June 4, 2012 Decision¹ and the December 7, 2012 Resolution² of the Court of Appeals (*CA*). in CA-G.R. CV No. 85688, involving an expropriation case.

The CA rulings denied the appeal of Lim, thus, affirming *in toto* the December 29, 2004 Order³ and the March 2, 2005 Order⁴ of the Regional Trial Court, Branch 37, Lingayen, Pangasinan (*RTC*), in two consolidated expropriation cases filed by the National Power Corporation (*NPC*), docketed as Civil Case Nos. 17352 and 17354.

The Court is being asked to determine whether the CA committed a reversible error in affirming the RTC rulings which upheld the legality and propriety of NPC’s expropriation of the subject properties.

The Facts:

In 1995, NPC filed the two complaints for eminent domain with the RTC for the purpose of expropriating certain properties owned by Lim in line with the construction and maintenance of its Coal-Fired Thermal Power Plant Project.

¹ *Rollo*, pp. 69-87. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring.

² *Id.* at 88-89. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring.

³ *Id.* at 394-401. Penned by Judge Emma P. Buazon

⁴ *Id.* at 420.

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The first case, docketed as Civil Case No. 17352, covered Lots 2373 and 2374, owned or claimed by Lim. The second case, docketed as Civil Case No. 17354, covered Lot No. 2372, owned or claimed by Lim and the Heirs of Jose Caguioa.

On December 29, 2004, the RTC rendered the assailed order declaring as follows:

WHEREFORE, premises well-considered, the properties described in the Complaint (Civil Case Nos. 17352 and 17354) are ordered **condemned**. The plaintiff National Power Corporation is hereby declared as having lawful right to take the property described in the Complaint, upon the payment of just compensation to be determined as of the date of the Complaint.

Let three (3) commissioners be appointed to determine and report to the Court the just compensation to be paid to the defendant who shall have been declared by the Court as the exclusive owners of the condemned properties.

In the meantime, let the hearing on the issue of ownership between contesting defendants proceed on February 25, 2005 at 9:00 o'clock in the morning and on March 3, 2005 at 8:30 o'clock in the morning.

SO ORDERED.”⁵

[Emphasis supplied]

Lim was constrained to move for reconsideration of the said order, but the RTC denied the motion in its March 2, 2005 Order.

Aggrieved, Lim elevated the matter to the CA *via* appeal under Section 4 of Rule 67 (Expropriation).

Lim argued that the RTC erred in concluding that NPC had the right to file the complaints for expropriation when existing law provided otherwise. Specifically, NPC failed to follow the procedures required to be observed by the national, provincial or municipal government pursuant to Section 3 (j) or Republic Act (R.A.) No. 6395 (*NPC Charter, revised*) and Section 19 of R.A. No. 7160, known as the Local Government Code, which required the approval of the provincial board or the municipal council before expropriation may be had by NPC. Lim also questioned the wisdom of establishing a power plant in the heart of Lingayen Gulf considering that there were alternative properties. She also questioned the issuance of a writ

⁵ Id. at 400-401.

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of possession without the benefit of a hearing and considering that her petition for *certiorari* was still pending in the CA.

The CA Ruling

In the questioned Decision, dated June 4, 2012, the CA dismissed the appeal filed by Lim for lack of merit. It explained that NPC needed no approval of the provincial or municipal council before expropriation could proceed. Citing *Robern Development Corporation v. Judge Jesus V. Quitain and National Power Corporation*,⁶ the CA held that NPC sufficiently established the necessity of the expropriation sought considering that the issue had assumed the nature of a political question; that the properties sought to be acquired would be eventually used for the public purpose of generating electricity for general consumption; that the issuance of the writ of possession was in order following the requirements laid down by Rule 67 of the Rules of Court and *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*,⁷ where the Court stated that the issuance of the said writ was a ministerial duty of the trial court, thus, no prior hearing was required; and that the *certiorari* proceedings filed by Lim did not bar the expropriation proceedings since no writ of preliminary injunction or temporary restraining order was issued in the earlier *certiorari* case. The dispositive portion reads:

WHEREFORE, in view of the foregoing, the appeal is hereby **DENIED**. The assailed Orders dated December 29, 2004 and March 2, 2005 of the Regional Trial Court of Lingayen, Pangasinan, Branch 37, in Civil Case Nos. 17354 and 17352 are hereby **AFFIRMED**.

SO ORDERED.⁸

Lim moved for reconsideration. In its December 7, 2012 Resolution, the CA denied her motion.

Hence, this petition.

⁶ 373 Phil. 773 (1999).

⁷ 460 Phil. 493 (2003).

⁸ *Rollo*, p. 86.

ASSIGNMENT OF ERRORS

- I. THE COURT *A QUO* COMMITTED A REVERSIBLE ERROR OF LAW IN DENYING PETITIONER'S APPEAL BY RELYING HEAVILY ON *ROBERN DEVELOPMENT CORPORATION V. JUDGE JESUS V. QUITAIN, ET AL.* (G.R. NO. 135042, SEPTEMBER 23, 1999) WHEN THE CONCLUSION MADE THEREIN CANNOT BE USED AS A DEFINITIVE RULING ON THE MATTER AT HAND.
- II. THE COURT *A QUO* COMMITTED A REVERSIBLE ERROR OF LAW WHEN IT RULED THAT JUDICIAL REVIEW OF THE EXERCISE OF EMINENT DOMAIN IS LIMITED TO THE FOLLOWING AREAS OF CONCERN: (A) THE ADEQUACY OF THE COMPENSATION; (B) THE NECESSITY OF THE TAKING; AND (C) THE PUBLIC USE CHARACTER OF THE PURPOSE OF THE TAKING.
- III. THE COURT *A QUO* COMMITTED A REVERSIBLE ERROR OF LAW WHEN IT FAILED TO DECLARE THAT THE ISSUANCE OF WRITS OF POSSESSION IN 1995 WERE NULL AND VOID SINCE THERE WAS NO HEARING CONDUCTED FOR PURPOSES OF DETERMINING THE AMOUNT TO BE DEPOSITED BY NAPOCOR.
- IV. THE COURT *A QUO* COMMITTED A REVERSIBLE ERROR OF LAW WHEN IT DECLARED THAT WHEN THE POWER IS EXERCISED BY THE LEGISLATURE, THE QUESTION OF NECESSITY OF TAKING IS ESSENTIALLY A POLITICAL QUESTION WHICH THE COURTS CANNOT REVIEW.
- V. THE COURT *A QUO* COMMITTED A REVERSIBLE ERROR OF LAW WHEN IT FOUND NO ERROR ON THE PART OF THE LOWER COURT IN CONDEMNING ALL THE PROPERTIES INCLUDING LOT 2374 DESPITE THE PENDENCY OF PETITIONER'S PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS DOCKETED AS C.A. G.R. NO. 52842 AND WHICH IS NOW PENDING BEFORE THE SUPREME COURT DOCKETED AS G.R. NO. 178789 BY WAY OF A PETITION FOR REVIEW ON *CERTIORARI*, IN VIOLATION OF THE RULE ON "JUDICIAL COURTESY" THAT SHOULD BE EXTENDED BY AN INFERIOR COURT TO A SUPERIOR COURT AS DECLARED BY THE SUPREME COURT IN *ETERNAL GARDENS MEMORIAL PARK CORPORATION V. COURT OF APPEALS* (G.R. NO. L-50054 AUGUST 17, 1988)

VI. THE COURT *A QUO* COMMITTED A REVERSIBLE ERROR OF LAW WHEN IT FAILED TO PASS UPON ALL THE ISSUES RAISED BY PETITIONER IN HER APPEAL MAKING ITS ASSAILED DECISION INCOMPLETE.⁹

Essentially, Lim submits that the CA affirmation of the RTC ruling was tantamount to a perpetuation of NPC's violation of her right to due process, alleging that the expropriation of her property was not effected in a manner prescribed by Section 19 of R.A. No. 160 and the case of *Municipality of Parañaque v. V.M. Realty Corporation*. Specifically, Lim argues, among others:

- that the complaint for expropriation was not filed by a real party-in-interest considering that no proof exists that the approval of NPC Board of Directors was secured prior to its filing and considering further that the verification and certificate of non-forum shopping was not signed by an authorized representative;
- that NPC failed to give a definitive offer before taking hold of the properties;
- that the writs of possession were invalidly issued since no hearing was conducted to determine the amount of NPC's deposit required before the intended date of taking;
- that the construction and maintenance of the power plant along the Bay of Pangasinan cannot be considered as intended for public purpose contending that such was not a blessing but an instrument of mass destruction of the environment and its people; and
- that the CA erred in affirming the condemnation of all the subject properties despite the pendency of a *certiorari* proceedings in the CA with respect to the matter questioning the RTC order of default against her for failure to file her answer to the complaint-in-intervention filed in Civil Case No. 17352.

⁹ Id. at 40-41.

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NPC, on the other hand, contends otherwise and prays for the dismissal of the petition for the following reasons:

First, the attached verification and certification of non-forum shopping to the petition was not signed by Lim herself but by her lawyer who did not show any previous authority to perform the act;

Second, the NPC Charter which required that an exercise of the power of eminent domain be done in the manner provided by law for instituting condemnation proceedings by the national, provincial or municipal governments under Section 19 of R.A. No. 7160, cannot be construed to mean as requiring NPC to obtain first the approval of the national, provincial or municipal governments before expropriation may be pursued, citing the case of *Robern Development Corporation v. Judge Jesus V. Quitain*,¹⁰

Third, NPC validly took possession of the properties involved pursuant to the writs of possession issued, without the need of any hearing, to determine the amount to be deposited, citing *National Power Corporation v. Hon. Enrique T. Jocson*,¹¹ where the Court ruled that courts were given the discretion to determine the provisional value to be deposited by the plaintiff to enable it to take or enter upon the possession of the property;

Fourth, NPC substantially complied with the rules in instituting the condemnation proceedings as the complaint was filed and signed by a number of officials acting on behalf of the Solicitor General, with its verification and certificate of non-forum shopping signed by its Project Manager;

Fifth, the public use character of the expropriation of the properties is present because the construction of power plants has been undoubtedly recognized as one for public use and the questions on the necessity of taking are essentially technical and political in character as held in *Estate of Salud Jimenez v. Philippine Export Processing Zone*.¹²

¹⁰ Supra note 6.

¹¹ G.R. Nos. 94193-99, February 25, 1992, 206 SCRA 520.

¹² 402 Phil. 271 (2001).

Sixth, the RTC did not err in condemning the properties despite the filing of a petition for *certiorari* in the CA following Section 7 of Rule 65 of the Rules of Court which provides that the filing of such petition shall not interrupt the course of the principal case if not temporary restraining order or a writ of preliminary injunction is issued against the RTC; and

Seventh. Lim was given the opportunity to present her side prior to the issuance of the order declaring the condemnation of the lots involved in Civil Case Nos. 17352 and 17354.

Lim replies that her failure to sign the verification and certification of non-forum shopping should not be a ground to deny her petition since a justifiable and compelling reason exists as to why it was her counsel who signed the same. Citing *Clavecilla v. Quitain*¹³ and *Donato v. Court of Appeals*,¹⁴ where this Court held that the signing of the certification by a representative even without a special power of attorney could be deemed sufficient compliance, Lim seeks the same liberality in her case considering that as explained in the footnote of the verification and certification, her counsel was left without a choice but to sign on her behalf in order to fulfill his "bounden duty to assert the rights of [his] client."¹⁵ Lim likewise asserts that the question of necessity of the expropriation is a justiciable question especially when the power of eminent domain is exercised by a delegate such as NPC.

After thoroughly sifting through all the submissions of both parties, the Court is called to resolve the following:

ISSUES

- 1] Whether justifiable reason exists as to relax the rule on verification and certification against forum shopping.
- 2] Whether the CA erred when it ruled that the taking of the subject properties was for public use and necessity on the justification that the issue is a political question.
- 3] Whether the CA erred when it ruled that NPC exercised its delegated power of eminent domain in a manner consistent with the applicable laws, rules and procedures.

¹³ 518 Phil. 53 (2006).

¹⁴ 426 Phil. 676 (2003).

¹⁵ *Rollo*, p. 652.

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The Court first resolves the procedural issue of whether liberality with respect to the rule on verification and certification against forum shopping can be applied in this case.

NPC seeks the outright dismissal of the petition, contending that the verification and certification against forum shopping should have been signed and executed by Lim, and not by her counsel. Lim, thus, prays that her case be given due course despite the fact that her required signature did not appear in the petition's verification and certification against forum shopping.

The Court denies the plea for the relaxation of the rules.

The verification is intended to secure an assurance that the allegations in the pleadings are true and correct, and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith; while the certification against forum shopping is an assurance given to the court that no other pending cases involving basically the same parties, issues and causes of action, are pending with the other tribunals.¹⁶ Both are peculiar personal representation on the part of the principal party¹⁷ as the signatory assures the Court that he has read the pleadings and that the allegations therein are true and correct and of his personal knowledge or based on authentic records¹⁸ and that no other case is pending before any tribunal.

Thus, the rule in this jurisdiction is that the verification and certification against forum shopping should be signed by the party pleader.¹⁹ That to avert the dismissal of the petition on the failure to follow the said rule, the pleader must thus execute a special power of attorney (*SPA*) designating the counsel of record to sign in her behalf should the latter be unable to sign for reasons that are justifiable.²⁰

Lim, however, failed in this regard. To the Court, her disregard of the rules does not fall under the application of the substantial compliance rule.

Worth noting is the admission of Lim that the counsel's decision to sign in her behalf was occasioned by her inability to coordinate and communicate with the law firm. This does not justify her failure to sign the said certificate or at least execute the required SPA. To start with, **Lim had a total of 45 days**, which included the 30-day period of extension granted by

¹⁶ *Expertravel & Tours, Inc. v. Court of Appeals*, 498 Phil. 191 (2005).

¹⁷ *The United Residents Dominican Hill, Inc. v. COSLAP*, 406 Phil. 354 (2001).

¹⁸ Rules of Court, Section 4, Rule 7.

¹⁹ *Oldarico S. Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*, 614 Phil. 222 (2009).

²⁰ *Fuentebella v. Castro*, 526 Phil. 668 (2006).

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the Court on top of the 15-day reglementary period provided for by the Rules to file this petition. In *Anderson v. Ho*,²¹ the Court considered the failure of the petitioner therein to execute an SPA as unjustified within the same 45-day period given to finally complete the requirements.

Lim is mistaken in relying on *Donato v. Court of Appeals*.²² In *Donato*, the Court stated that it was impossible for the petition to have been prepared and sent to therein petitioner in the USA; for him to travel from Virginia to the nearest Philippine Consulate in Washington D.C.; and for the petition to be sent back to the Philippines all *within the 15-day reglementary period*. In this case, Lim clearly had 45 days to do what should have been done.

Lim is reminded that procedural rules are required to be “followed except only when for the most persuasive of reasons they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.”²³ While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. Justice eschews anarchy.²⁴

The petition being dismissible, the Court need not elaborate on the second and third issues. Suffice it to state that the Court can take judicial notice of the fact that the Sual Coal-Fired Thermal Power Plant has been existing and operating and that the expropriation of the subject properties was necessary for its construction. The only remaining step is the determination of the ownership of the contested lot and the just compensation for the taking of the said properties.

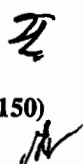
WHEREFORE, the petition is **DENIED**. (*Villarama, Jr., J., designated Acting Member in view of the vacancy in the Third Division, per Special Order No. 1691, dated May 22, 2014*)

²¹ G.R. No. 172590, January 7, 2013, 668 SCRA 8.

²² *Supra* note 14.

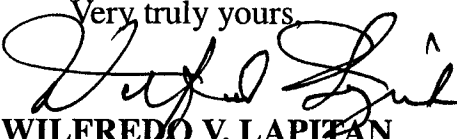
²³ *Spouses Bergonia and Castillo v. Court of Appeals*, G.R. No. 189151, January 25, 2012, 664 SCRA 322, citing *Asian Spirit Airlines v. Spouses Bautista*, 491 Phil. 476 (2005), citing further *Galang v. Court of Appeals*, G.R. No. 76221, July 29, 1991, 199 SCRA 683.

²⁴ *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*, 574 Phil. 20 (2008).



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SO ORDERED.”

Very truly yours,

WILFREDO V. LAPITAN
Division Clerk of Court
8/11/14
RLT

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