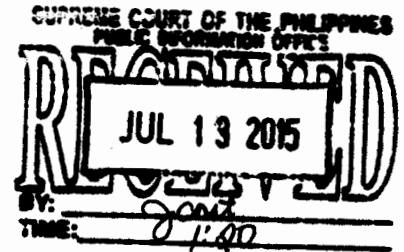




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 22 June 2015 which reads as follows:*

***GR. No. 211238 – National Power Corporation, petitioner, versus Apolonio V. Marasigan, Francisco V. Marasigan, Lilia V. Marasigan, Benito V. Marasigan and Alicia V. Marasigan, respondents.***

This is a petition for review on *certiorari* seeking to reverse and set aside the October 1, 2013 Decision<sup>1</sup> and the February 7, 2014 Resolution<sup>2</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 121361, which affirmed the August 24, 2011 Order<sup>3</sup> of the Regional Trial Court of Camarines Sur, Branch 32 (RTC), docketed as SCA No. P-110-2006, granting execution pending appeal.

National Power Corporation (NPC) sought to acquire easement of right of way over four (4) parcels of land in Camarines Sur for the construction of its transmission lines. The subject properties had a total area of 49,173 square meters, and were registered in the names of Apolonio, Francisco, Benito, Lilia, and Alicia, all surnamed Marasigan (*respondents*). NPC was willing to pay the amount of ₱299,559.00, representing the BIR zonal valuation for agricultural land. Respondents, however, refused the offer. Consequently, on January 23, 2006, NPC filed a complaint for expropriation against the properties of respondents.<sup>4</sup>

In their Answer with Counterclaims,<sup>5</sup> the respondents contended that the said parcels of land had already been reclassified as industrial, commercial and residential as early as 1993. Thus, the provisional value of the land, *based on the BIR zonal valuation*, should be ₱47,064,400.00. Further, a total of 41,869 square meters would be rendered useless to respondents. These dangling lots were valued at ₱44,457,800.00.

*The RTC Ruling*

On December 20, 2010, the RTC rendered its decision, adopting the Commissioner's Reports, dated August 9, 2006 and November 24, 2008, and granting the motion for execution pending appeal filed by respondents. Specifically, the dispositive portion reads:

<sup>1</sup> *Rollo* pp. 60-71; Penned by Associate Justice Danton Q. Bueser with Associate Justice Amelita G. Tolentino and Associate Justice Ramon R. Garcia, concurring.

<sup>2</sup> *Id.* at 74-75.

<sup>3</sup> *Id.* at 126-128.

<sup>4</sup> *Id.* at 274-284.

<sup>5</sup> *Id.* at 154.

*mlyro*

Wherefore, judgment is hereby rendered:

1. Approving and adopting the Commissioner's Report dated August 9, 2006 and November 24, 2008;
2. The payment of the provisional value (on May 19, 2006 when plaintiff made the deposit) of ₱47,064,400.00 as just compensation for the 49,173 square meters area directly affected by the transmission lines is the payment for the just compensation with 12% interest per annum (Marina Z. Reyes, et al. vs. National Housing Authority, G.R. No. 147511, January 20, 2003), from the date of filing of this case until paid;
3. Condemning plaintiff to pay defendants the amount of ₱22,227,800.00 as consequential damages with interest at 12% interest per annum from January 23, 2006 until fully paid;
4. To pay ₱20,000.00 attorney's fees.

SO ORDERED.<sup>6</sup>

On January 12, 2011, NPC moved for reconsideration.<sup>7</sup> In the Order,<sup>8</sup> dated May 2, 2011, the RTC modified its December 20, 2010 decision with respect to the interest rate to be paid by NPC.

On May 25, 2011, NPC filed the Notice of Appeal.<sup>9</sup>

Meanwhile, respondents filed their Urgent Motion for Execution Pending Appeal,<sup>10</sup> dated May 25, 2011.

Respondents averred that it was public knowledge that the transmission facilities and assets of NPC related to transmission operations had been transferred to Power Sector Assets and Liabilities Management Corporation (*PSALM*). They added that judicial knowledge could be taken that the financial obligations of NPC had not diminished despite the creation of *PSALM*. It further, stated that the corporate existence of *PSALM* would end in 2036, but there was no assurance that the financial obligations of NPC would be liquidated by that time. Respondents, already in the twilight of their years, claimed that they were shackled from enjoying the full use and benefit of their property.<sup>11</sup>

NPC filed its Opposition,<sup>12</sup> arguing that the government was never insolvent; that the payment of its obligation was assured by no less than the State; that the reasons cited by respondents in their motion did not constitute

<sup>6</sup> Id. at 287-288.

<sup>7</sup> Id. at 289-299.

<sup>8</sup> Id. at 301-303.

<sup>9</sup> Id. at 304-306.

<sup>10</sup> Id. at 308-312.

<sup>11</sup> Id. at 309-311.

<sup>12</sup> Id. at 314-320.

*mlg*

superior circumstances demanding urgency; and that neither was there any guarantee that respondents, who claimed to be in their twilight years, could reimburse the government in the event of a reversal of judgment.

On June 27, 2011, respondents filed their Supplement to the Urgent Motion for Execution Pending Appeal.<sup>13</sup> They cited Sections 49<sup>14</sup> and 50<sup>15</sup> of Republic Act (R.A.) No. 9136, or the *EPIRA Law*, as legal basis that PSALM was privy to NPC in the case.

NPC filed its Comment,<sup>16</sup> opposing the supplement as it ran afoul of the precepts of fair play and due process. It stated that PSALM was not a party in the case and respondents were aware of this fact and that, as such, PSALM could not be bound by any judgment against NPC.

In its Omnibus Reply,<sup>17</sup> respondents contended that NPC never presented any countervailing data to rebut the issue of its insolvency. They also reiterated that some of them were either octogenarians or nonagenarians.

In the August 24, 2011 hearing, the RTC issued two orders. In the first order,<sup>18</sup> it stated that although NPC and its counsel failed to appear despite notice, it had already filed its opposition. Thus, the motion for execution pending appeal was deemed submitted for resolution. In the second order,<sup>19</sup> the trial court granted the motion for execution pending appeal, explaining that respondents' special reasons that they were already "in the twilight of their years and on the verge of meeting their Creator and have long been deprived of the full benefit and enjoyment of their property xxx."<sup>20</sup> Thus, fairness and justice required that respondents' demand be satisfied before they die so they could fully enjoy the fruits of their labor.

Not in conformity, NPC appealed to the CA via a petition for *certiorari* and prohibition<sup>21</sup> under Rule 65 of the Rules of Court to annul and set aside the August 24, 2011 Order of the RTC, and to prohibit the Branch Clerk and Branch

<sup>13</sup> Id. at 324-325.

<sup>14</sup> Sec. 49. Creation of Power Sector Assets and Liabilities Management Corporation.- There is hereby created a government-owned and controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation", herein referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

<sup>15</sup> Sec. 50. Purpose and Objective, Domicile and Term of Existence.- The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of the NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

<sup>16</sup> *Rollo*. Pp. 327-329.

<sup>17</sup> Id. at 331- 338.

<sup>18</sup> Id. at 339.

<sup>19</sup> Id. at 126-128.

<sup>20</sup> Id. at 127.

<sup>21</sup> Id. at 76-121.

Sheriff from implementing the Writ of Execution<sup>22</sup> and Notice of Garnishment,<sup>23</sup> both dated August 24, 2011.

### The Ruling of the CA

The CA denied the petition for *certiorari* and prohibition. Anent the petition for prohibition, the appellate court explained that the garnished amount had already been delivered to respondents. Evidently, the remedy of prohibition was no longer appropriate as prohibition did not lie to restrain an act that was already *fait accompli*.<sup>24</sup>

As to the petition for *certiorari*, the CA found no grave abuse of discretion on the part of the RTC. It ruled that the imminent danger of insolvency of the defeated party was a good reason to justify discretionary execution. Notably, it took judicial notice of NPC's insolvency. It reminded the parties that all courts were bound to take judicial notice, without introduction of evidence, of the law in force in the Philippines, including the official acts of its legislative, executive and judicial departments. Thus, when the RTC took cognizance of the EPIRA Law and the Resolutions of the Senate and the House of Representatives and its Committee on Rules Report, it only meant that it was dispensing with the traditional form of presentation of evidence.<sup>25</sup>

On the issue of the advance age of respondents, the CA stated that the failure of NPC to refute such claim was an implied admission thereof.<sup>26</sup>

NPC filed a motion for reconsideration,<sup>27</sup> dated October 17, 2013. Respondents filed a supplemental comment, dated October 17, 2013, wherein they attached the *death certificates* of respondents *Apolonio* and *Alicia*.<sup>28</sup>

The CA, in its Resolution, dated February 7, 2014, denied the motion for reconsideration.

Hence, this petition.

### ISSUE

**THE COURT OF APPEALS ERRED IN UPHOLDING THE LOWER COURT'S ORDER DATED AUGUST 24, 2011 WHICH ALLOWED THE EXECUTION OF ITS DECISION PENDING APPEAL WITHOUT GOOD REASONS AND DUE HEARING, IN VIOLATION OF RULE**

<sup>22</sup> Id. at 129-130.

<sup>23</sup> Id. at 131.

<sup>24</sup> Id. at 16.

<sup>25</sup> Id. at 68.

<sup>26</sup> Id. at 70.

<sup>27</sup> Id. at 426-431.

<sup>28</sup> *CA Rollo* pp. 808-817.

*mlyp*

**39, SECTION 2 (a) OF THE RULES OF COURT AND JURISPRUDENCE.<sup>29</sup>**

NPC contends that it is the applicant who has the burden of proving the basis for allowing the execution pending appeal. It avers that both the CA and the RTC acted contrary to the basic rule that evidence is required for every litigated motion; that the CA was not even provided with the documents cited in respondents' Urgent Motion for Execution Pending Appeal; and that there was neither any documentary evidence presented to prove old age. NPC reiterates that the government is never insolvent.<sup>30</sup>

In their Comment,<sup>31</sup> respondents averred that NPC did not refute its insolvency in its opposition, which was duly established by Sections 8, 49 and 50 of the EPIRA Law, Senate Resolution No. 57 of the 15<sup>th</sup> Congress, House of Representatives Committee on Rules Report No. 57, PSALM Comments on House Resolution No. 97 and 106, House Resolution No. 97 of the 15<sup>th</sup> Congress and House Resolution No. 106 of the 15<sup>th</sup> Congress. As these are sources of official acts of the legislative department, judicial notice can be taken. At any rate, insolvency was already proved and established as a good reason to grant the execution pending appeal.

Respondents further asserted that they were already of old age and this was conceded by NPC when it interposed no objection.

In its Reply,<sup>32</sup> NPC stated that the allegation of its insolvency was a mere conclusion of law. It claimed that respondents only cited Senate resolutions and House reports, which tended to show that NPC had incurred indebtedness. These documents, however, did not amount to evidence of insolvency.

**The Court's Ruling**

The Court denies due course to the petition for failure of NPC to show any reversible error in the challenged decision as to warrant the exercise of the Court's discretionary appellate jurisdiction.

In petitions for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by this Court. This is because the Court is not a trier of fact. The findings of fact of the CA, particularly if they coincide with the RTC, and when supported by substantial evidence, are entitled to great weight and respect, and even finality, unless it is shown that the evidence of the parties was arbitrarily disregarded. As long as their decisions are devoid of any unfairness or arbitrariness in the

<sup>29</sup> *Rollo p. 37.*

<sup>30</sup> *Id.* at 46.

<sup>31</sup> *Id.* at 460-480.

<sup>32</sup> *Id.* at 487-497.

*mlg*

process of their deduction from the evidence proffered by the parties, all that is left is for the Court to stamp its affirmation and declare its finality.<sup>33</sup>

In this case, the Court agrees with the RTC and the CA that the respondents deserve a grant of their motion for execution pending appeal.

It is elementary that discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.<sup>34</sup> The exercise of the power to grant or deny a motion for execution pending appeal is addressed to the sound discretion of the trial court. The requisites for the grant of an execution of a judgment pending appeal are the following: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be good reasons for execution pending appeal; and (c) the good reasons must be stated in the special order.<sup>35</sup>

The existence of good reasons is indispensable to the grant of execution pending appeal.<sup>36</sup> As the exception to the general rule, the court's discretion in allowing execution pending appeal must be strictly construed and firmly grounded on the existence of good reasons. It has been held that good reasons consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment.<sup>37</sup>

The Court has explained that if the judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, oftentimes damages may arise which cannot be fully compensated. Accordingly, execution should be granted only when these considerations are clearly outweighed by superior circumstances demanding urgency, and the provision contained in Section 2, Rule 39 of the Rules of Court, requires a statement of these circumstances as a security for their existence.<sup>38</sup>

In the present case, both the RTC and the CA granted the motion for execution pending appeal on two grounds: (1) insolvency of NPC; and (2) old age of respondents. In this regard, NPC avers that the good reasons cited by respondents to substantiate their motion for execution pending appeal were not properly established.

Although a government cannot be insolvent, the CA was correct in concluding that NPC was heavily indebted, taking judicial notice of the EPIRA

<sup>33</sup> *Maximum Security & Services Corp. and Virgilio Gonzales vs. Señeres*, G.R. No. 153712, March 14, 2007.

<sup>34</sup> Section 2, Rule 39, Rule of Civil Procedure.

<sup>35</sup> *GSIS v. Prudential Guarantee and Assurance, Inc.*, G.R. No. 165585, November 20, 2013, 710 SCRA 337, 349.

<sup>36</sup> *Stronghold Insurance v. Hon. Felix*, 538 Phil. 207, 214 (2006).

<sup>37</sup> *Florendo v. Paramount Insurance*, 624 Phil. 373, 381 (2010).

<sup>38</sup> *Valencia v. Court of Appeals*, 263 Phil. 501, 508 (1990).

*mlg*

Law and reasoning that it was an official act of the legislative branch which NPC did not refute. Under Section 1 of Rule 129 of the Rules of Court, a court can take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

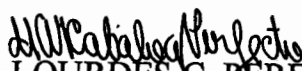
The Court also agrees with the CA that old age is a good reason to grant an execution pending appeal. NPC did not dispute that respondents were either octogenarians or nonagenarians. Indeed NPC's failure to dispute the claim of old age is an implied admission thereof.

In fact, records show that, among the five respondents, Apolonio and Alicia, have already passed away based on the death certificates submitted before the CA. The Court need not wait for the death of the other three to grant the motion. To do so would be to hand them an empty victory.

**WHEREFORE**, the petition is **DENIED**. (*Leonen, J., on official leave; Jardeleza, J., designated Acting Member, per Special Order No. 2056, dated June 10, 2015; Brion, J., on leave; Perez, J., designated Acting Member, per Special Order No. 2067, dated June 22, 2015*)

**SO ORDERED.**

Very truly yours,

  
MA. LOURDES C. PERFECTO  
Division Clerk of Court *jlw 7/13*

-PAGE 7-

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

ATTY. MIRIAM O. DIPASUPIL-GESTIADA  
(reg)  
Counsel for Respondents  
M. De Camarines Street  
Daet, 4600 Camarines Norte

ATTY. RIZZA E. BALLEBAR (reg)  
Clerk of Court  
Regional Trial Court, Branch 32  
Pili, 4418 Camarines Sur

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 32  
Pili, 4418 Camarines Sur

COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. SP No. 121361

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
[For uploading pursuant to A.M. No. 12-7-1-SC]

OFFICE OF THE CHIEF ATTORNEY (x)  
OFFICE OF THE REPORTER (x)  
Supreme Court, Manila

JUDGMENT DIVISION (x)  
Supreme Court, Manila

*Please notify the Court of any change in your address.*  
GR211238. 06/22/15(164&373[b])URES *06/22/15*