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SUPREME COURT OF THE PHILIPPINES  
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**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**SECOND DIVISION**

**PNOC ALTERNATIVE FUELS CORPORATION,**

Petitioner,

**G.R. No. 224936**

Present:

- versus -

CARPIO, J., *Chairperson*,  
CAGUIOA,  
J. REYES, JR.,  
LAZARO-JAVIER, and  
ZALAMEDA, JJ.

**NATIONAL GRID CORPORATION OF THE PHILIPPINES,**

Respondent.

Promulgated:

04 SEP 2019

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**DECISION**

**CAGUIOA, J.:**

Before the Court is an appeal *via* a Petition for *Certiorari*<sup>1</sup> (Petition) under Rule 45 of the Rules of Court filed by petitioner PNOC Alternative Fuels Corporation (petitioner PAFC), assailing the Order<sup>2</sup> dated February 11, 2016 (assailed Order of Expropriation) of the Regional Trial Court (RTC) of Mariveles, Bataan, Branch 4 in SCA Case No. 104-ML entitled *National Grid Corporation of the Philippines v. PNOC Alternative Fuels Corporation, et al.*

**The Facts and Antecedent Proceedings**

The instant case stems from a Complaint<sup>3</sup> for Expropriation (Complaint) filed by respondent National Grid Corporation of the Philippines (respondent NGCP) on February 9, 2011 against petitioner PAFC, Orica Philippines, Inc. (Orica), Edgardo P. Manieda, Winy P. Manieda, Mercedes P. Manieda, Nemy Manieda Amado, Danilo P. Manieda, the Heirs of

<sup>1</sup> *Rollo*, pp. 12-27.

<sup>2</sup> *Id.* at 33-35. Issued by Presiding Judge Emmanuel A. Silva.

<sup>3</sup> *Records* (Vol. 1), pp. 1-9.

Leonardo Serios,<sup>4</sup> and Cresencia Toribio Soriano, represented by Imelda S. Villareal.

In the Complaint, respondent NGCP claims that it is a private corporation engaged in the business of transmitting electric power from generating plants of power producers to distributors.<sup>5</sup> Respondent NGCP was granted a “franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, system operations, and other activities that are necessary to support the safe and reliable operation of the transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines”<sup>6</sup> under Republic Act (R.A.) No. 9511.

Respondent NGCP likewise alleged that, in order for it to construct and maintain the Mariveles-Limay 230 kV Transmission Line Project, it sought to expropriate, upon payment of just compensation, a certain area of a parcel of land situated at Barangay Batangas II, Mariveles, Bataan and Barangay Lamao, Limay, Bataan, having a total area of 101,290.42 square meters, more or less (the subject property). The subject property is part of the Petrochemical Industrial Park.<sup>7</sup>

The Petrochemical Industrial Park was originally part of a parcel of land of the public domain having an approximate area of 621 hectares reserved by the government for the Lamao Horticultural Experiment Station through Executive Order (E.O.) No. 48, series of 1919.<sup>8</sup>

Subsequently, in 1968, Presidential Proclamation (P.P.) No. 361 was issued, withdrawing 418 out of the 621 hectares of land of the public domain from the coverage of E.O. No. 48, and declaring the same as an industrial reservation to be administered by the National Power Corporation (NPC).<sup>9</sup>

In 1969, P.P. No. 630 was issued amending P.P. No. 361. P.P. No. 630 enlarged the area covered by P.P. No. 361 and reserved the same for industrial purposes, including the establishment of an industrial estate under the administration of the National Development Company (NDC) or a subsidiary thereof organized for such purposes.<sup>10</sup>

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<sup>4</sup> Leonarda S. vda. de Serios, Rolando S. Serios, Maximo S. Serios, Herlina S. Francisco, Solita S. Serios, Rosemarie S. Cotejar, Danilo S. Serios, and Luzviminda S. Fernandez.

<sup>5</sup> *Rollo*, pp. 14-15.

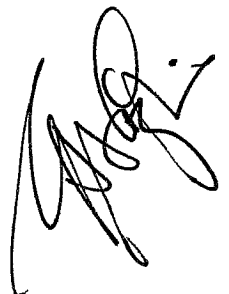
<sup>6</sup> Records (Vol. I), pp. 1-2.

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> *Rollo*, p. 15.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*



In 1976, Presidential Decree (P.D.) No. 949 was issued, which transferred the administration, management, and ownership of the parcel of land of the public domain located at Lamao, Limay, Bataan covered by P.P. No. 361, as amended by P.P. No. 630, to the Philippine National Oil Company (PNOC).

According to P.D. No. 949, the PNOC shall manage, operate and develop the parcel of land as a petrochemical industrial zone and will establish, develop and operate or cause the establishment, development and operation thereof of petrochemical and related industries by itself or its subsidiaries or by any other entity or person it may deem competent alone or in joint venture.<sup>11</sup>

Subsequently, in 1981, P.D. No. 1803 was issued, enlarging the area reserved for the Petrochemical Industrial Zone established under P.D. No. 949.<sup>12</sup>

In 1993, petitioner PAFC, which originally had the name PNOC Petrochemicals Development Corporation (PPDC), was incorporated as a subsidiary of PNOC for the primary purpose of administering and operating the Petrochemical Industrial Zone. In 2006, the articles of incorporation of PPDC were amended, changing the name of PPDC to PNOC Alternative Fuels Corporation.<sup>13</sup>

Subsequently, in 2011, respondent NGCP filed its Complaint seeking to expropriate the subject property from petitioner PAFC. According to respondent NGCP, it sought to exercise its right of eminent domain over the subject property because negotiations conducted between petitioner PAFC and respondent NGCP on the establishment of transmission lines on the subject property were unsuccessful. Respondent NGCP invoked its general authority to exercise the right of eminent domain under Section 4 of R.A. No. 9511, which reads:


Section 4. *Right of Eminent Domain.* - Subject to the limitations and procedures prescribed by law, the Grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the construction, expansion, and efficient maintenance and operation of the transmission system and grid and the efficient operation and maintenance of the subtransmission systems which have not yet been disposed by TRANSCO. The Grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: *Provided*, That the applicable law on eminent domain shall be observed, particularly, the prerequisites of taking of possession and the determination and payment of just compensation.

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<sup>11</sup> Id. at 15-16.

<sup>12</sup> Id. at 16.

<sup>13</sup> Id.



Orica filed its Answer<sup>14</sup> on April 25, 2011, alleging that it is a lessee of a portion of the Petrochemical Industrial Park, where it put up a manufacturing plant that produces commercial blasting explosives and initiating systems products. In its Answer, Orica raised several special affirmative defenses to oppose respondent NGCP's Complaint. For its part, petitioner PAFC filed its Answer<sup>15</sup> on May 3, 2011, alleging, in sum, that several statutes and issuances limit respondent NGCP's right to expropriate and that "the land sought to be appropriated is already devoted to a public purpose, specifically to petrochemical and petrochemical related industries which is considered as essential to the national interest"<sup>16</sup> and that "[i]t is only the Congress of the Philippines which has the power to exercise the right of eminent domain over the subject property as it is already devoted for a public purpose."<sup>17</sup> Respondent NGCP filed its Reply<sup>18</sup> on May 12, 2011, defending its authority to exercise the right of eminent domain over the subject property.

During the pendency of the expropriation case, in 2013, R.A. No. 10516 was passed by Congress. The said law expanded the use of the Petrochemical Industrial Park to include businesses engaged in energy and energy-allied activities or energy-related infrastructure projects, or of such other business activities that will promote its best economic use.

On June 6, 2013, the Department of Energy (DOE) issued Department Circular No. DC2013-06-0011 or the Implementing Rules and Regulations (IRR) of R.A. No. 10516. The said IRR stated that the PNOC, pursuant to its duty to manage, operate and develop the subject parcel of land as an industrial zone, had organized petitioner PAFC and assigned ownership of the property to petitioner PAFC *via* Deed of Assignment dated August 11, 1994. Further, petitioner PAFC, as owner of the property, was mandated to manage, operate and develop the property in accordance with R.A. No. 10516 and its IRR.

Subsequently, the RTC issued the assailed Order of Expropriation and ruled that respondent NGCP has a lawful right to expropriate the subject property upon payment of just compensation. The dispositive portion of the assailed Order of Expropriation reads:

**WHEREFORE**, the affirmative defense of defendants PNOC-AFC and Orica Philippines, Inc. are hereby denied for lack of merit. Parties are hereby directed to submit the names of the three (3) Commissioners to be appointed by the Court. Set this case for the reception of evidence to establish defendants' valid claim of ownership to be entitled for the payment of just compensation.

SO ORDERED.<sup>19</sup>

<sup>14</sup> Records (Vol. I), pp. 54-65.

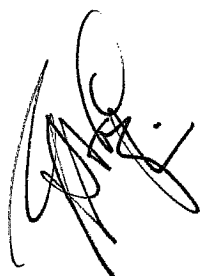
<sup>15</sup> Id. at 201-212.

<sup>16</sup> Id. at 207.

<sup>17</sup> Id. at 208.

<sup>18</sup> Id. at 222-234.

<sup>19</sup> *Rollo*, pp. 34-35.



In issuing the assailed Order of Expropriation, the RTC held that “[n]owhere in the annals of legislation and jurisprudence is it stated that a property already devoted to public use or purpose is invulnerable to expropriation. Neither has it once been held by the Constitution (*sic*) any law or particular jurisprudence that a property already expropriated, (*sic*) may no longer be subject to another expropriation. Justice Isagani Cruz, one of the foremost constitutionalists in the country holds that property already devoted to public use is still be (*sic*) subject to expropriation provided that it is done directly by the national legislature or under a specific grant of authority to the delegate.”<sup>20</sup>

In relation to the foregoing, the RTC stressed that under R.A. No. 9511, respondent NGCP “has a legislative franchise to engage in the business of conveying or transmitting electricity throughout the country. Under this law, [respondent NGCP] was given the authority to exercise the power of eminent domain. Hence, and pursuant to Sec[.] 4[,] Rule 67 of the Revised Rules of Court, the Court believes that [respondent NGCP] has a lawful right to take the property sought to be expropriated for the public use or purpose described in the complaint, upon payment of just compensation.”<sup>21</sup>

Petitioner PAFC filed its Motion for Reconsideration<sup>22</sup> of the RTC’s assailed Order of Expropriation, which was denied by the RTC in its Order<sup>23</sup> dated April 18, 2016.

Hence, the instant appeal before the Court under Rule 45 of the Rules of Court. Petitioner PAFC prays that the Court set aside the RTC’s Orders dated February 11, 2016 and April 18, 2016 and “hold that [respondent] NGCP’s expropriation of [petitioner] PAFC’s property is improper and without legal basis.”<sup>24</sup>

Respondent NGCP filed its Comment<sup>25</sup> dated January 26, 2017, alleging, in sum, that the issues raised in the Petition are not considered legal questions because their determination requires the findings of facts, that petitioner PAFC’s direct recourse before the Court is improper, and that land already devoted to public use can still be expropriated for another public purpose.

In response, petitioner PAFC filed its Reply<sup>26</sup> dated July 14, 2017, reiterating its argument that R.A. No. 9511 clearly limits respondent NGCP’s right of eminent domain to private property.

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<sup>20</sup> Id. at 34.

<sup>21</sup> Id.

<sup>22</sup> Id. at 36-42.

<sup>23</sup> Id. at 43-44.

<sup>24</sup> Id. at 23.

<sup>25</sup> Id. at 47-58.

<sup>26</sup> Id. at 63-68.



### Issue

Stripped to its core, the instant Petition presents two main issues for the Court's disposition: (1) whether petitioner PAFC was correct in filing its Rule 45 Petition directly before the Court, and (2) whether the RTC was correct in issuing the assailed Order of Expropriation, which held that respondent NGCP is empowered to expropriate the subject property under R.A. No. 9511.

### The Court's Ruling

In deciding the merits of the instant Petition, the Court resolves the aforementioned issues *ad seriatim*.

#### **I. The Appeal Of An Order Of Expropriation**

According to Section 4, Rule 67 of the Rules of Court, if the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, 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.

In the assailed Order of Expropriation, the RTC denied the objections and defenses raised by petitioner PAFC and Orica for lack of merit. The RTC held that respondent NGCP "has a lawful right to take the property sought to be expropriated for the public use or purpose described in the complaint, upon payment of just compensation."<sup>27</sup> The RTC also ordered the parties to submit the names of three Commissioners to be appointed by the RTC, and set the case for reception of evidence with respect to payment of just compensation.

Section 4 of Rule 67 further states that a final order sustaining the right to expropriate the property, such as the assailed Order of Expropriation, may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid. It is clear from the foregoing that the proper remedy of a defendant in an expropriation case who wishes to contest an order of expropriation is **not to file a certiorari petition** and allege that the RTC committed grave abuse of discretion in issuing the order of expropriation. **The remedy is to file an appeal of the order of expropriation.**

Hence, under the aforementioned provision of the Rules of Court, petitioner PAFC had the right to appeal the assailed Order of Expropriation. The Court holds that the instant appeal, although mistakenly worded by

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<sup>27</sup> Id. at 34.



petitioner PAFC as a “Petition for *Certiorari*”, is for all intents and purposes a petition for review on *certiorari* under Rule 45. It must be noted that petitioner PAFC repeatedly invoked Rule 45 in filing the instant appeal, alleging that the instant appeal is “pursuant to Rule 45 of the Rules of Court raising a pure question of law to set aside or nullify the [assailed Order of Expropriation].”<sup>28</sup>

It can be surmised from the instant Petition that petitioner PAFC resorted to filing its appeal directly before the Court instead of the Court of Appeals (CA) because it believed that the instant Petition only involved pure questions of law. Under Rule 41 of the Rules of Court, in all cases where only questions of law are raised or involved, the appeal shall be filed directly before the Court, not *via* a notice of appeal or record on appeal, but through a petition for review on *certiorari* in accordance with Rule 45.

The critical question, therefore, is whether the instant Petition raises pure questions of law, which warrants the direct filing of the appeal before the Court.

Contrary to the view of respondent NGCP, the Court holds that the instant Petition may be decided by dealing purely with questions of law.

The Court has previously held that “a question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.”<sup>29</sup> The Court further explained that for a question to be one of law, “the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.”<sup>30</sup>

Here, petitioner PAFC raises the argument that the expropriation of the subject property by respondent NGCP is invalid because such exercise of eminent domain was neither done directly by Congress nor pursuant to a specific grant of authority. It is readily apparent that this primary argument is legal in nature. To be sure, the Court will be able to decide on the validity of the assailed Order of Expropriation by merely looking at the applicable law and jurisprudence on eminent domain, as well as the law granting respondent NGCP the right of eminent domain, *i.e.*, R.A. No. 9511. The Court need not review the evidence on record to assess the correctness of the assailed Order of Expropriation.

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<sup>28</sup> Id. at 13.

<sup>29</sup> *Briones v. People*, 715 Phil. 638, 647 (2013).

<sup>30</sup> Id. at 647.



In fine, the Court rules that petitioner PAFC did not commit a procedural error in filing the instant appeal *via* a Rule 45 petition directly before the Court.

## II. The Validity Of The RTC's Assailed Order Of Expropriation

Having disposed of the procedural issue, the Court now resolves the substantive merits of the instant Petition.

### *The Concept Of The Right Of Eminent Domain*

The power of eminent domain, which is also called the power of expropriation, is the inherent right of the State to condemn private property for public use upon payment of just compensation.<sup>31</sup>

The right of eminent domain has been described as “the highest and most exact idea of property remaining in the government’ that may be acquired for some public purpose through a method ‘in nature of a compulsory sale to the State.’”<sup>32</sup> The right of eminent domain is an ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose. The exercise of this power, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. Hence, it is considered to be one of the harshest proceedings known to the law.<sup>33</sup>

Because the right of eminent domain is a power inherent in sovereignty, it is a power which need not be granted by any fundamental law.<sup>34</sup> Hence, Article III, Section 9 of the 1987 Constitution, which states that “private property shall not be taken for public use without just compensation” is not a grant, but only a limitation of the State’s power to expropriate.<sup>35</sup>

The expropriation of property consists of two stages. The first stage 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.”<sup>36</sup> The second stage 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.”<sup>37</sup>

<sup>31</sup> *Asia's Emerging Dragon Corp. v. Department of Transportation and Communications*, 575 Phil. 59, 187 (2008)

<sup>32</sup> Isagani A. Cruz, CONSTITUTIONAL LAW, 2015 ed., p. 129, citing Black's Law Dictionary, 4<sup>th</sup> ed., 616.

<sup>33</sup> *Jesus is Lord Christian School Foundation Inc. v. Municipality (now City) of Pasig*, 503 Phil. 845, 862 (2006).

<sup>34</sup> Joaquin G. Bernas, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 2009 ed., p. 397.

<sup>35</sup> *Supra* note 32 at 130.

<sup>36</sup> *Spouses Arrastia v. National Power Corp.*, 555 Phil. 263, 273 (2007).

<sup>37</sup> *Id.* at 273.



*Who Wields The Power To  
Expropriate*

Considering that the right of eminent domain has been described as one of the great, inherent powers of the State, is the exercise of this right exclusive to the State?

It has been held that, as an inherent sovereign prerogative, the power to expropriate pertains primarily to the legislature. The power of eminent domain is lodged in the legislative branch of government.<sup>38</sup>

However, the power to expropriate is not exclusive to Congress. The latter may delegate the exercise of the power to government agencies, public officials and quasi-public entities.<sup>39</sup> According to eminent constitutionalist and one of the framers of the 1987 Constitution, Fr. Joaquin G. Bernas, S.J., “[t]he authority of the legislature to delegate the right of eminent domain to private entities operating public utilities has never been questioned.”<sup>40</sup>

In the hands of government agencies, local governments, public utilities, and other persons and entities, the right to expropriate is not inherent and is only a delegated power. In fact, even as to municipal corporations, it has been held that they can exercise the right of eminent domain only if some law exists conferring the power upon them.<sup>41</sup>

Hence, with the right of eminent domain not being an inherent power for private corporations, whose right to expropriate is granted by mere legislative *fiat*, the delegate’s exercise of the right of eminent domain is restrictively limited to the confines of the delegating law. The scope of this delegated legislative power is necessarily narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law.<sup>42</sup>

*Respondent NGCP May Only  
Expropriate Private Property.*

Therefore, with respondent NGCP’s power to expropriate being a mere delegated power from Congress by virtue of R.A. No. 9511, respondent NGCP’s exercise of the right of eminent domain over the subject property must conform to the limits set under the said law. What then is the type of property that may be expropriated by respondent NGCP under R.A. No. 9511?

<sup>38</sup> *Municipality of Parañaque v. V.M. Realty Corp.*, 354 Phil. 684, 691 (1998).

<sup>39</sup> *Metropolitan Cebu Water District v. J. King and Sons Co., Inc.*, 603 Phil. 471, 480 (2007).

<sup>40</sup> *Supra* note 34 at 398.

<sup>41</sup> *City of Manila v. Chinese Community of Manila*, 40 Phil. 349, 358, (1919).

<sup>42</sup> *Heirs of Suguitan v. City of Mandaluyong*, 384 Phil. 676, 689 (2000).

Upon a simple perusal of Section 4 of R.A. No. 9511, it states in no equivocal terms that “[t]he Grantee (referring to respondent NGCP) may acquire such ***private property*** as is actually necessary for the realization of the purposes for which this franchise is granted[.]”

The Court has previously held that under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the *maxim, index animi sermo est* (speech is the index of intention) “rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently.”<sup>43</sup>

**Section 4 of R.A. No. 9511 is clear, plain, and free from any ambiguity. Respondent NGCP is allowed to exercise the right of eminent domain only with respect to private property.** Therefore, this unequivocal provision of the law must be given its literal meaning and applied without any other interpretation.

*Land of Public Dominion v. Private Property*

Considering that respondent NGCP is empowered to expropriate private properties exclusively, the concept of private property *vis-à-vis* land of the public dominion must be distinguished.

Article 419 of the Civil Code classifies property as either of (1) **public dominion** (*dominio publico*) or (2) of **private ownership** (*propiedad privado*).<sup>44</sup>

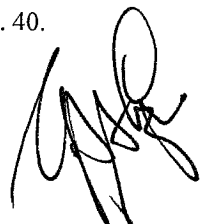
Article 420, in turn, identifies lands of public dominion as either (1) those intended for **public use**, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; or (2) those which belong to the State, without being for public use, and are intended for some **public service** or for the **development of the national wealth**.

Hence, based on Article 420 of the Civil Code, there are three kinds of property of public dominion: (1) those for public use, which may be used by anybody, such as roads and canals; (2) those for public service, which may be used only by certain duly authorized persons, although used for the benefit of the public; and (3) those used for the development of national wealth, such as our natural resources.<sup>45</sup>

<sup>43</sup> *Victoria v. Commission on Elections*, 299 Phil. 263, 268 (1994).

<sup>44</sup> Edgardo L. Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, 17<sup>th</sup> ed., 2013, Vol. II, p. 40.

<sup>45</sup> *Id.* at 41.



There are certain *defining characteristics* of properties of the public dominion that distinguish them from private property.

Land of the public domain is **outside the commerce of man** and, thus, **cannot be leased, donated, sold, or be the object of any contract**, except insofar as they may be the object of repairs or improvements and other incidental things of similar character.<sup>46</sup> Hence, **they cannot be appropriated or alienated.**<sup>47</sup> **Inalienability is an inherent characteristic of property of the public dominion.** This characteristic necessarily clashes with an express declaration of alienability and disposability, in that when public land is explicitly declared by the State to be subject to disposition, it ceases to be land of the public dominion. Necessarily, as lands of public dominion are inalienable, they cannot be acquired through prescription and cannot be registered under the Land Registration Law and be the subject of a Torrens Title.<sup>48</sup>

Properties owned by the State which do not have the aforementioned characteristics of a land of public dominion are **patrimonial properties of the State.**<sup>49</sup> Patrimonial properties are properties owned by the State in its **private or proprietary capacity.**<sup>50</sup>

As explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, “[o]ver this kind of property[,] the State has the same rights and has the same power of disposition as private individuals in relation to their own property, but of course, subject to rules and regulations. The purpose of this property is in order that the State may attain its economic ends, to serve as a means for its subsistence and preservation and in that way to be able to better fulfill its primary mission.”<sup>51</sup> Examples of patrimonial property of the State are those properties acquired by the government in execution or tax sales and mangrove lands and mangrove swamps. Even public agricultural lands that are made alienable and disposable by the State are considered patrimonial properties.<sup>52</sup> In fact, in our jurisprudence, despite dealing with the management of water, which is a natural resource and an essential public utility, waterworks have been categorized as property owned by municipal corporations in their proprietary character.<sup>53</sup>

Even if patrimonial property refers to land owned by the State or any of its instrumentalities, such is still deemed private property as *it is property held by the State in its private and proprietary capacity, and not in its public capacity, in order to attain economic ends.* As recently explained by the Court

<sup>46</sup> Id. at 47, citing *Municipality of Cavite v. Rojas*, 30 Phil. 602 (1915).

<sup>47</sup> Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, 3<sup>rd</sup> ed., 1966, Vol. II, pp. 31-32, citing *Meneses v. El Commonwealth de Filipinas*, 69 Phil. 647 (1940).

<sup>48</sup> *Supra* note 44 at 47-48.

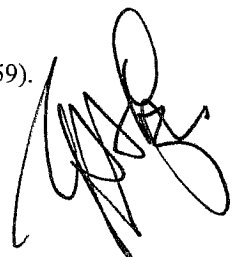
<sup>49</sup> CIVIL CODE, Art. 421.

<sup>50</sup> *Supra* note 44 at 61.

<sup>51</sup> *Supra* note 47 at 36.

<sup>52</sup> Id. at 36-37.

<sup>53</sup> *City of Baguio v. National Waterworks and Sewerage Authority*, 106 Phil. 144, 153 (1959).



in *Republic v. Spouses Alejandre*,<sup>54</sup> the Civil Code classifies property of private ownership into three categories: (1) patrimonial property of the State under Articles 421 and 422 of the Civil Code; (2) patrimonial property of Local Government Units under Article 424; and (3) property belonging to private individuals under Article 425.<sup>55</sup>

Hence, the mere fact that a parcel of land is owned by the State or any of its instrumentalities does not necessarily mean that such land is of public dominion and not private property. *If land owned by the State is considered patrimonial property, then such land assumes the nature of private property.*

As further held in *Republic v. Spouses Alejandre*,<sup>56</sup> patrimonial property are either: (1) “by nature or use” or those covered by Article 421, which are *not* property of public dominion or imbued with public purpose based on the State's current or intended use; or (2) “by conversion” or those covered by Article 422, which previously assumed the nature of property of public dominion by virtue of the State’s use, but which are no longer being used or intended for said purpose.

Furthermore, the aforesaid case holds that “**upon the declaration of alienability and disposability x x x the land ceases to possess the characteristics inherent in properties of public dominion** that they are outside the commerce of man, cannot be acquired by prescription, and cannot be registered under the land registration law, **and accordingly assume the nature of patrimonial property of the State that is property owned by the State in its private capacity.**”<sup>57</sup> Simply stated, land of the public dominion expressly deemed by the State to be alienable and disposable, susceptible to the commerce of man through sale, lease, or any other mode of disposition, assumes the nature of patrimonial property.

In *Sps. Modesto v. Urbina*,<sup>58</sup> the Court held that private persons can claim possessory rights over a particular property once it is declared alienable and disposable. This illustrates that once property of public dominion is declared by the State as alienable and disposable, it becomes subject of private rights, such as possessory claims, since such declaration operates to convert property of public dominion, which is inalienable property, to patrimonial property held by the State in its private capacity.

<sup>54</sup> G.R. No. 217336, October 17, 2018.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> Id., emphasis and underscoring supplied.

<sup>58</sup> 647 Phil. 706 (2010).

*The Subject Property Is Patrimonial Property That Assumes The Nature of Private Property.*

The next issue that must be resolved is the characterization of the subject property.

Petitioner PAFC posits the argument that the subject property is a land of the public domain as it is devoted to public use or purpose, *i.e.*, the development of the petrochemical industry which, it argues, is a matter of national interest. Thus, according to petitioner PAFC, the subject property is not private property. Hence, since respondent NGCP is only allowed to expropriate private property, necessarily, it has no authority to expropriate the subject property.

The Court disagrees with petitioner PAFC. The subject property, though owned by a State instrumentality, is considered patrimonial property that assumes the nature of private property.

First and foremost, it is admitted by all parties that the subject property, sitting within the Petrochemical Industrial Park, is an **industrial zone**. In fact, the crux of petitioner PAFC's Petition is the argument that since the Petrochemical Industrial Park has been declared by law as an industrial zone dedicated to the development of the petrochemical industry, it should be deemed a land dedicated to public use, *i.e.*, a land of public dominion.

However, in *Republic v. East Silverlane Realty Development Corp.*,<sup>59</sup> the Court held that **when the subject property therein was classified by the government as an industrial zone, the subject property therein "had been declared patrimonial and it is only then that the prescriptive period began to run."**<sup>60</sup>

Further, it is apparent from R.A. No. 10516 and its IRR that the industrial estate is being owned, managed, and operated by the State, not in its sovereign capacity, but rather in its private capacity. Simply stated, the management and operation of the industrial estate is proprietary in character, serving the economic ends of the State.

P.D. No. 949, as amended by R.A. No. 10516, calls for the development of the industrial estate by introducing "**business activities that will promote its best economic use.**"<sup>61</sup> In addition, in the IRR of the said law, the Petrochemical Industrial Park was described as an **industrial and commercial estate**, wherein private sector investment is encouraged in the development of "**industrial and commercial activities/enterprises in said**

<sup>59</sup> 682 Phil. 376, 391 (2012).

<sup>60</sup> Id. at 391; emphasis and underscoring supplied.

<sup>61</sup> Section 2, P.D. No. 949, as amended by R.A. No. 10516; emphasis supplied.



**Industrial Estate.**<sup>62</sup> According to the IRR, the industrial estate may be used in any manner to achieve its best economic use, allowing “any activity or series of activities regularly engaged in as a means of livelihood or with a view to profit.”<sup>63</sup> Hence, it is crystal clear that the management of the land where the subject property is located is commercial in nature and that the State, through petitioner PAFC, is operating the said property in its proprietary capacity in order to serve economic, and not sovereign, ends.

Petitioner PAFC’s insistence that the petrochemical industry is an industry endowed with national interest is unconvincing. The sheer fact that one of the allowable activities inside the industrial estate pertains to the development of the petrochemical industry is not enough to characterize the subject property as land of the public domain. To reiterate, the Court has previously characterized waterworks as patrimonial property despite the fact that such properties deal with the management of an important natural resource and an essential public utility, for the reason that the operations of waterworks by municipal corporations are often in the nature of a business venture.<sup>64</sup> In the instant case, it is apparent from P.D. No. 949, as amended by R.A. No. 10516, that the Petrochemical Industrial Park is intended and accordingly devoted by law as a commercial and business venture.

Furthermore, as already discussed at length, the defining characteristic of land of public domain is *inalienability*. To reiterate, upon the explicit declaration of alienability and disposability, the land ceases to possess the characteristics inherent in properties of public dominion, namely, that they are outside the commerce of man, cannot be acquired by prescription, and cannot be registered under the land registration law, and accordingly assume the nature of patrimonial property of the State, that is property owned by the State in its private capacity. Hence, an express declaration of alienability and disposability by the State negates the characterization of property as land of public dominion.

Applying the foregoing in the instant case, the laws governing the subject property have unequivocally declared that **the subject property is alienable, disposable, appropriable, may be conveyed to private persons or entities, and is subject to private rights.**

Under P.D. No. 949, **the Petrochemical Industrial Park was explicitly made alienable and disposable for lease, sale, and conveyance to private entities or persons for the conduct of related industrial activities:**

Section 2. The Philippine National Oil Company shall manage, operate and develop the said parcel of land as a petrochemical industrial zone and will establish, develop and operate or cause the establishment,

<sup>62</sup> Sections 2.1 and 2.2, Department Circular No. DC2013-06-0011; emphasis supplied.

<sup>63</sup> Id. at Section 3.4.

<sup>64</sup> *National Waterworks & Sewerage Authority v. Dator*, 128 Phil. 338, 342 (1967).

development and operation thereof of petrochemical and related industries by itself or its subsidiaries or by any other entity or person it may deem competent alone or in joint venture; Provided, that, where any petrochemical industry is operated by private entities or persons, whether or not in joint venture with the Philippine National Oil Company or its subsidiaries, **the Philippine National Oil Company may lease, sell and/or convey such portions of the petrochemical industrial zone to such private entities or persons.**<sup>65</sup>

The alienable and disposable nature of the Petrochemical Industrial Park was further expanded when P.D. No. 949 was subsequently amended by R.A. No. 10516. The said law allowed **the lease, sale, and conveyance of the Petrochemical Industrial Park for purposes of commercial utilization by private sector investors:**

SECTION 2. *Purpose of Land Use.* – The PNOC shall manage, operate and develop the said parcel of land as an industrial zone and will establish, develop and operate or cause the establishment, development and operation thereof of petrochemical and related industries, as well as of businesses engaged in energy and energy-allied activities or energy-related infrastructure projects, or **of such other business activities that will promote its best economic use**, as determined by the PNOC Board of Directors, by itself or its subsidiaries or by any other entity or person it may deem competent alone or in joint venture: *Provided, That, where any petrochemical or energy-related industry or any such other business as determined by the PNOC is operated by private entities or persons, whether or not in joint venture with the PNOC or its subsidiaries, the PNOC may lease, sell and/or convey such portions of the industrial zone to such private entities or persons.*<sup>66</sup>

Petitioner PAFC's argument that the subject property is strictly confined and restricted to the development of the petrochemical industry is manifestly erroneous. The law itself unequivocally allows the establishment of businesses engaged in energy and energy-allied activities or energy-related infrastructure projects, which obviously includes the establishment of transmission towers. The law permits, and even highly encourages, the conduct of commercial activities in the industrial estate by allowing the transfer of the subject property to private investors.

Hence, with the subject property expressly declared by law, *i.e.*, P.D. No. 949, as amended by R.A. No. 10516, to be an industrial and commercial estate **that may be transferred or conveyed to private persons** so that business activities may be conducted therein, there is no doubt in the mind of the Court that the subject property is patrimonial property. In other words, respondent NGCP has the authority under Section 4 of R.A. No. 9511 to expropriate the subject property.

<sup>65</sup> Section 2, P.D. No. 949; emphasis and underscoring supplied.

<sup>66</sup> Section 2, P.D. No. 949, as amended by R.A. No. 10516; emphasis and underscoring supplied.



*Reasonableness And Necessity Of The Expropriation*

The determination of the validity of the assailed Order of Expropriation does not stop with the identification of the subject property as patrimonial property. As previously discussed at length, the delegated power to exercise the right of eminent domain may only be exercised in strict compliance within the terms of the delegating law.

Under Section 4 of R.A. No. 9511, respondent NGCP's right to expropriate must be "reasonably necessary for the construction, expansion, and efficient maintenance and operation of the transmission system and grid and the efficient operation and maintenance of the subtransmission systems."<sup>67</sup> The said provision likewise states that "[respondent NGCP] may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted[.]"<sup>68</sup>

Even without the foregoing provision of the law, considering that the expropriation is done, not directly, but by another government agency or a municipal corporation, and by virtue of an authorizing statute which does not specify the property to be taken, jurisprudence holds that the courts may look into the necessity of the taking.<sup>69</sup>

In its Amended Complaint, respondent NGCP alleged that "[t]o enable plaintiff to construct and maintain the Mariveles-Limay 230 kV Transmission Line Project, it is both necessary and urgent to acquire, upon payment of just compensation, the above-described portions of the subject property to ensure stability and reliability of power supply in the provinces of Bataan and Zambales, and in the future, in other parts of the country."<sup>70</sup> Respondent NGCP also alleged that during the negotiations conducted between the parties, petitioner PAFC proposed another route (at the back portion of the subject property), which was found to be not technically sound.<sup>71</sup>

It must be stressed that in the instant Petition, petitioner PAFC does not allege that the Mariveles-Limay 230 kV Transmission Line Project is unnecessary and unreasonable. It only alleges that the subject property is already devoted by law for a specific purpose and that it is a property devoted to public use.

The Court also observes that petitioner PAFC, in its Answer to Amended Complaint,<sup>72</sup> did not make any specific denial as to the allegations

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<sup>67</sup> Section 4, R.A. No. 9511.

<sup>68</sup> Id.

<sup>69</sup> Supra note 34 at 427-428, citing *City of Manila v. Chinese Community of Manila*, 40 Phil. 349 (1919) and *Republic v. La Orden de PP. Benedictinos de Filipinas*, 111 Phil. 230 (1961).

<sup>70</sup> Records (Vol. II), p. 280.

<sup>71</sup> Id.

<sup>72</sup> Id. at 338-348.





made by respondent NGCP in its Amended Complaint that the Mariveles-Limay 230 kV Transmission Line Project is necessary and urgent to ensure the stability and reliability of power supply in the provinces of Bataan and Zambales, and that the alternative route proposed by petitioner PAFC to respondent NGCP was not found to be technically feasible.

It is an elementary rule in remedial law that material averments in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied.<sup>73</sup>

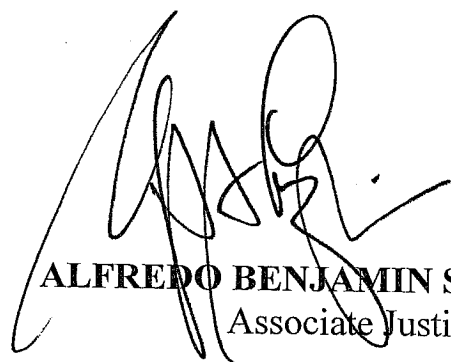
It is also telling that after the Complaint was filed in 2011, the parties entered into a Tripartite Agreement<sup>74</sup> on August 17, 2012, whereby the parties, including petitioner PAFC, acknowledged that it was necessary for respondent NGCP to establish the Mariveles-Limay 230 kV Transmission Line Project due to the increased demand for electricity in the provinces of Bataan and Zambales, and that the technical teams of the parties already agreed on a revised route that provided for a safe and viable route for the transmission lines, taking into consideration the safety and security concerns of Orica.<sup>75</sup>

Therefore, the Court is sufficiently convinced that respondent NGCP's act of expropriating the subject property was reasonably necessary for the realization of the purposes for which its franchise is granted.

Premises considered, the Court upholds the assailed Order of Expropriation issued by the RTC, considering that respondent NGCP validly expropriated the subject property.

**WHEREFORE**, the instant appeal is **DENIED**. The Order dated February 11, 2016 of the Regional Trial Court of Mariveles, Bataan, Branch 4 issued in SCA Case No. 104-ML is **AFFIRMED**.

**SO ORDERED.**



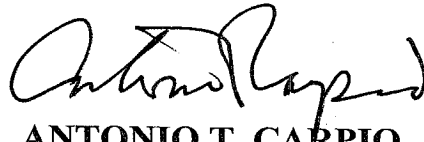
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

<sup>73</sup> RULES OF COURT, Rule 8, Sec. 11.

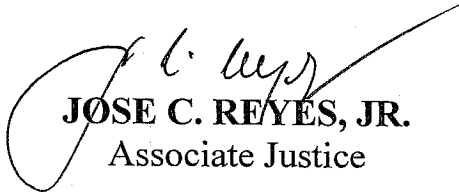
<sup>74</sup> Records (Vol. V), pp. 75-88.

<sup>75</sup> Id. at 75-76.

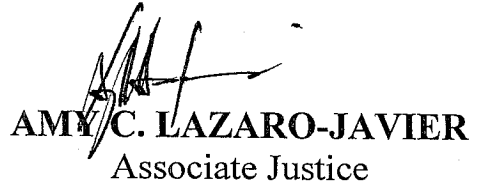
WE CONCUR:



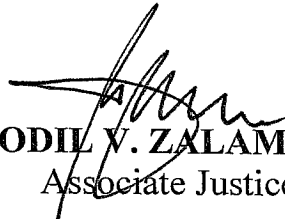
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice



**RODIL V. ZALAMEDA**  
Associate Justice

**ATTESTATION**

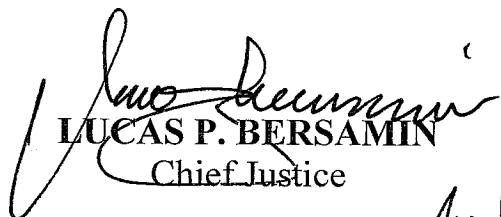
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**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.



**LUCAS P. BERSAMIN**  
Chief Justice

