



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

THIRD DIVISION

LLOYDS RICHFIELD G.R. No. 190207  
INDUSTRIAL CORPORATION  
(now merged with and known as  
REPUBLIC CEMENT  
CORPORATION),  
Petitioner,

-versus-

NATIONAL POWER  
CORPORATION,  
Respondent.

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NATIONAL POWER G.R. No. 190213  
CORPORATION,  
Petitioner,

Present:

LEONEN, *Chairperson*,  
HERNANDO,  
INTING,  
ROSARIO\*, and  
LOPEZ, J.Y., *JJ.*

-versus-

LLOYDS RICHFIELD  
INDUSTRIAL CORPORATION,  
Respondent.

Promulgated:  
June 30, 2021

Mis+PCBatt

X-----X

**DECISION****LEONEN, J.:**

A true easement of right of way imposes burdens on another's property without depriving the owner of its use and enjoyment. When the burden is too cumbersome as to indefinitely restrict the owner from using the property, the easement is considered a taking within the meaning of Constitution—in which case, full just compensation, not just an easement fee, must be paid.

This Court resolves the consolidated Petitions for Review on Certiorari<sup>1</sup> both partly assailing the Decision<sup>2</sup> and Resolution<sup>3</sup> of the Court of Appeals, which affirmed the Regional Trial Court Decision<sup>4</sup> to condemn 11 parcels of land owned by Lloyds Richfield Industrial Corporation (Lloyds Richfield) in favor of the National Power Corporation. However, the Court of Appeals remanded the case for the trial court to redetermine the just compensation, and deleted the award of just compensation for the value of the limestone deposits.

Lloyds Richfield is a cement manufacturing corporation. With a plant site in Danao City, it purchased parcels of land within its vicinity and quarried limestones from these areas, which would then be used to manufacture cement.<sup>5</sup>

Among those parcels of land it purchased were adjoining lots in Dawis Norte and Dawis Sur, Carmen, Cebu.<sup>6</sup> These properties were covered by Tax Declaration Nos. 1501100012, 150110001, 1501100039, 15001100038, 1500110042, 151100041, and 1501100005.<sup>7</sup>

Sometime before June 25, 1996,<sup>8</sup> the National Power Corporation entered into negotiations with Lloyds Richfield to create an easement of right of way over the parcels of land. Transmission lines would be

\* Designated additional member per Special Order No. 2833.

<sup>1</sup> *Rollo* (G.R. No. 190207), pp. 15–43 and *rollo* (G.R. No. 190213), pp. 9–31.

<sup>2</sup> *Rollo* (G.R. No. 190207), pp. 384–407 and *rollo* (G.R. No. 190213), pp. 41–64. The December 3, 2008 Decision was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Francisco P. Acosta and Stephen C. Cruz of the Special Eighteenth Division of the Court of Appeals, Cebu City.

<sup>3</sup> *Rollo* (G.R. No. 190207), pp. 408–411 and *rollo* (G.R. No. 190213), pp. 65–68. The October 16, 2009 Resolution was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Manuel M. Barrios and Samuel H. Gaerlan (now a member of this Court) of the Twentieth Division of the Court of Appeals, Cebu City.

<sup>4</sup> *Rollo* (G.R. No. 190207), pp. 256–272 and *rollo* (G.R. No. 190213), pp. 69–85. The December 13, 1999 Decision was penned by Judge Esperidion C. Rivala of the Regional Trial Court of Danao City, Branch 25.

<sup>5</sup> *Rollo* (G.R. No. 190207), p. 385 and *rollo* (G.R. No. 190213), p. 42, Court of Appeals Decision.

<sup>6</sup> *Id.*

<sup>7</sup> *Rollo* (G.R. No. 190207), p. 76, Complaint.

<sup>8</sup> *Id.* at 75. The Complaint for expropriation was filed on this date.

constructed over the parcels of land for the 230 KV Leyte-Cebu Interconnection Project.<sup>9</sup> A location map drawn by the National Power Corporation depicted the lots that would be affected by the project, with the lots owned by Lloyds Richfield denominated as Lot Nos. 1859, 1861, 1860, 1833, 1832, 1830, and 1829.<sup>10</sup>

When negotiations failed, the National Power Corporation filed a Complaint<sup>11</sup> for expropriation before the Regional Trial Court of Danao City. It also filed an *ex parte* motion, upon which the trial court issued a Writ of Possession allowing it to take immediate possession of Lloyds Richfield's properties.<sup>12</sup>

Lloyds Richfield initially moved to dismiss the case, but the trial court denied it.<sup>13</sup> It then filed its Answer,<sup>14</sup> demanding by way of compulsory claim that the National Power Corporation pay the fair market value of the parcels of land, since the construction of transmission lines over its properties would render the properties useless to it. It also demanded to be paid the fair market value of the limestone deposits in the parcels of land.<sup>15</sup>

A Committee on Appraisal was then convened to determine the just compensation for the parcels of land and the limestone deposits. Alexander G. Parilla, Sr. (Parilla), the Danao City assessor, was appointed as the committee chair, while Sebastian Ocon (Ocon) and Henry Gallego (Gallego), representatives of the National Power Corporation and Lloyds Richfield, respectively, served as members.<sup>16</sup>

Upon the Committee's motion, the Department of Environment and Natural Resources, through its geodetic engineer, was ordered to survey the lots and determine the approximate value of the limestones extractable from them. It was also ordered to determine the safety zone, or the distance from the properties where dynamite blasting may be safely conducted to quarry the limestones.<sup>17</sup>

The Committee on Appraisal later submitted a Report to the trial court, and the parties were directed to comment on it.<sup>18</sup>

As Lloyds Richfield noted, the Committee recommended an increase in the safety zone from the original 20 meters to 200 meters on each side,

<sup>9</sup> *Rollo* (G.R. No. 190207), p. 385 and *rollo* (G.R. No. 190213), p. 42.

<sup>10</sup> *Rollo* (G.R. No. 190207), p. 94, Annex "A" of Motion to Dismiss, and *rollo* (G.R. No. 190213), p. 75.

<sup>11</sup> *Rollo* (G.R. No. 190213), pp. 75-80.

<sup>12</sup> *Rollo* (G.R. No. 190207), p. 386 and *rollo* (G.R. No. 190213), p. 43.

<sup>13</sup> *Id.*

<sup>14</sup> *Rollo* (G.R. No. 190207), pp. 100-107.

<sup>15</sup> *Id.* at 103-105.

<sup>16</sup> *Rollo* (G.R. No. 190207), p. 386 and *rollo* (G.R. No. 190213), p. 43.

<sup>17</sup> *Rollo* (G.R. No. 190207), p. 387 and *rollo* (G.R. No. 190213), p. 44.

<sup>18</sup> *Id.*

totaling 400 meters. This increase would require the National Power Corporation to expropriate four more lots that were not originally cited in the Complaint.<sup>19</sup>

The Report, however, did not delineate the boundaries of the areas affected by the increased safety zone. It also did not contain annexes, such as documents supporting its recommendations on the value of the limestones in the property. Thus, Lloyds Richfield moved to require the commissioners to amend the Report, which the trial court granted.<sup>20</sup>

In its Amended Commissioners' Report, the Committee on Appraisal recommended ₱450.00 per square meter as the just compensation for the lands expropriated. It also recommended ₱26.00 per ton as the fair market value of the limestone deposits in the properties.<sup>21</sup>

In addition, the Committee recommended to increase the number of lots to be expropriated from seven to 11, to include Lot Nos. 1824, 1831, 1862, and 1863 as depicted in the location map.<sup>22</sup> As to the total volume of the limestones extractable from the lots, it arrived at 3,651,092.40 tons.<sup>23</sup>

Only Parilla and Gallego signed the Amended Commissioners' Report. Ocon, the National Power Corporation's representative, filed a dissenting opinion.<sup>24</sup>

The National Power Corporation opposed the Amended Commissioners' Report. It insisted that expropriating 11 lots would be improper since, as it had said in its Complaint, only seven were needed to build the transmission lines. It added that it could not be made to pay just compensation for the limestone deposits as these were minerals, which were owned not by Lloyds Richfield, but by the State. Lastly, it contended that it may only acquire an easement of right of way over the parcels of land pursuant to Republic Act No. 6395, and thus, may only pay an easement fee equivalent to 10% of the market value of the lands to be expropriated.<sup>25</sup>

In its December 13, 1999 Decision,<sup>26</sup> the Regional Trial Court ordered the 11 lots condemned in favor of the National Power Corporation.

The trial court said Lloyds Richfield was entitled to an amount equivalent to the fair market value of the lands to be expropriated, not just an

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<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> *Rollo* (G.R. No. 190207), p. 94, Location Map, and *rollo* (G.R. No. 190213), p. 75.

<sup>23</sup> *Rollo* (G.R. No. 190207), p. 387 and *rollo* (G.R. No. 190213), p. 44.

<sup>24</sup> Id.

<sup>25</sup> *Rollo* (G.R. No. 190207), pp. 387-388 and *rollo* (G.R. No. 190213), pp. 44-45.

<sup>26</sup> *Rollo* (G.R. No. 190207), pp. 255-272 and *rollo* (G.R. No. 190213), pp. 69-85.

easement fee. Citing *National Power Corporation v. Gutierrez*,<sup>27</sup> it said the easement the National Power Corporation sought was not an easement at all, because the restrictions on the property would totally deprive Lloyds Richfield of the use of its lands. Once the transmission lines have been constructed, Lloyds Richfield would be perpetually deprived of its proprietary rights over the lands, specifically, of quarrying for limestones used in its cement manufacturing business. Consequently, declared the trial court, a mere easement fee would not suffice.<sup>28</sup>

The trial court added that the National Power Corporation must pay just compensation for all of Lloyds Richfield's 11 lots, not just the original seven prayed for in the Complaint. With the safety zone increased based on the Amended Commissioners' Report, not only would Lloyds Richfield be deprived of conducting blasting works in the seven lots, but also in the other four lots, namely, Lot Nos. 1824, 1831, 1862, and 1863.<sup>29</sup>

The trial court also noted that the National Power Corporation may not refuse to expropriate these four additional lots, considering that it had been given several chances to present evidence controverting the safety zone increase, but still failed to do so.<sup>30</sup>

As to whether the National Power Corporation should pay just compensation for the limestone deposits, the trial court said that while the State owned minerals found in Philippine soil, it allowed Lloyds Richfield to quarry the limestones found in the parcels of land to be expropriated. Since, if not for the transmission lines, it would not have to acquire limestones from some other source, Lloyds Richfield was deemed indefinitely deprived of its right over the limestone deposits in its properties, for which it must be compensated. The trial court cited *Benguet Consolidated Mining v. Republic*,<sup>31</sup> where this Court would have allegedly allowed the payment of just compensation for the gold deposits in Benguet Consolidated had they been found of commercial value.<sup>32</sup>

On the value of just compensation, the trial court determined that the recommended ₱450.00 per square meter for the 11 parcels of land and ₱26.00 per ton for the limestone deposits were fair and reasonable. It noted that the ₱450.00 valuation was based on the previous purchases made by the National Power Corporation, while the ₱26.00 valuation was based on the recommended value by the Regional Director of the Mines and Geosciences Bureau in Region VII.<sup>33</sup>

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<sup>27</sup> 271 Phil. 1 (1991) [Per J. Bidin, Third Division].

<sup>28</sup> *Rollo* (G.R. No. 190207), pp. 260–265 and *rollo* (G.R. No. 190213), pp. 73–78, Trial Court Decision.

<sup>29</sup> *Rollo* (G.R. No. 190207), p. 94, Location Map, and *rollo* (G.R. No. 190213), p. 75.

<sup>30</sup> *Rollo* (G.R. No. 190207), pp. 265–266 and *rollo* (G.R. No. 190213), pp. 78–79.

<sup>31</sup> 227 Phil. 422 (1986) [Per J. Gutierrez, Jr., Second Division].

<sup>32</sup> *Rollo* (G.R. No. 190207), pp. 266–267 and *rollo* (G.R. No. 190213), pp. 79–80.

<sup>33</sup> *Rollo* (G.R. No. 190207), pp. 271–272 and *rollo* (G.R. No. 190213), pp. 84–85.

The dispositive portion of the trial court's Decision reads:

WHEREFORE, facts and law considered, the Court hereby renders judgment condemning [Lloyds Richfield]'s lot Nos. 1859, 1863, 1862, 1861, 1860, 1833, 1832, 1831, 1830, 1829, and 1824 in favor of the [National Power Corporation]; ordering [the National Power Corporation] to pay [Lloyds Richfield] the fair market value of aforesaid lots condemned by this expropriation proceedings at ₱450.00 per square meter, and ₱26.00 per ton for the value of the limestone deposits found thereon, computed as follows:

1. ₱39,628,800.00 or ₱450.00 per square meter as just compensation for the total area of 88,064 square meters covered by the aforestated lots; and
2. ₱94,928,402.40 as just compensation for the value of the limestone deposits on the said lots, computed at ₱26.00 per ton at the determined volume of 3,651,092.40 tons.

SO ORDERED.<sup>34</sup>

The Court of Appeals agreed that just compensation must be paid for all 11 parcels of land, not just an easement fee. It cited a long line of cases<sup>35</sup> in striking down the argument that the National Power Corporation was only allowed to acquire easements. It similarly cited *Gutierrez* and held that “[i]f the easement is intended to *perpetually* or *indefinitely* deprive the owner of his proprietary rights through the imposition of conditions that affect the ordinary use, free enjoyment and disposal of the property . . . then the owner should be compensated for the monetary equivalent of the land”<sup>36</sup>—as in *Lloyds Richfield's* case.<sup>37</sup>

The Court of Appeals likewise agreed with the trial court that the number of parcels of land to be expropriated was properly increased from seven to 11. As the National Power Corporation failed to rebut the recommendation to increase the safety zone, the Court of Appeals said it was “left with no other logical conclusion but to accept the same.”<sup>38</sup>

However, unlike the trial court, the Court of Appeals held that Lloyds Richfield was not entitled to just compensation for the value of the limestone deposits. Regardless of the Mineral Production Sharing Agreement entered into between Lloyds Richfield and the Republic of the Philippines, the Court

<sup>34</sup> *Rollo* (G.R. No. 190207), p. 272 and *rollo* (G.R. No. 190213), p. 85.

<sup>35</sup> *National Power Corporation v. Tiangco*, 543 Phil. 637 (2007) [Per J. Garcia, First Division] citing *Dipidio Earth-Savers' Multi-Purpose Association, Inc. (DESAMA) v. Gozun*, 520 Phil. 457 (2006) [Per J. Chico-Nazario, First Division]; *National Power Corporation v. Paderanga*, 502 Phil. 722 (2005) [Per J. Carpio Morales, Third Division]; *National Power Corporation v. Chiong*, 452 Phil. 649 (2003) [Per J. Quisumbing, Second Division]; *National Power Corporation v. Gutierrez*, 271 Phil. 1 (1991) [Per J. Bidin, Third Division]; and *Camaringes Norte Electric Cooperative, Inc. (CANORECO) v. Court of Appeals*, 398 Phil. 886 (2000) [Per J. Pardo, First Division].

<sup>36</sup> *Rollo* (G.R. No. 190207), p. 389 and *rollo* (G.R. No. 190213), p. 46.

<sup>37</sup> *Rollo* (G.R. No. 190207), pp. 389–390 and *rollo* (G.R. No. 190213), pp. 46–47.

<sup>38</sup> *Rollo* (G.R. No. 190207), pp. 403–406 and *rollo* (G.R. No. 190213), pp. 61–63.

of Appeals emphasized that minerals such as limestones are owned by the State. More, it noted that per the agreement, Lloyds Richfield could “only acquire land or surface rights over the mining area but not any title over the contract or mining area itself.”<sup>39</sup>

The Court of Appeals discussed how Lloyds Richfield’s right over the limestone deposits, if any, was in the concept of an income or opportunity loss. It explained that the limestone deposits were merely “indispensable product cost.”<sup>40</sup> This, to the Court of Appeals, meant that Lloyds Richfield was forced to source its limestones elsewhere because expropriation was not compensable, since the increase in the cost of acquiring limestones was a business risk inherent in its business. The Court of Appeals opined that to compensate Lloyds Richfield for its production cost would unjustly enrich it.<sup>41</sup>

The Court of Appeals then explained at length how Lloyds Richfield may not rely on *Benguet Consolidated* to claim compensation for the limestone deposits. It said the issue of State ownership over the minerals was never raised in *Benguet Consolidated*, and the issue only came about because the properties’ valuation there was ridiculously low. Here, the ₱450.00 valuation was based on the fair market value of the properties, and hence, was just compensation. Further, it noted that the valuation of the limestone deposits here was suspect, as the Committee on Appraisal had inappropriately requested a fee contingent on the amount of just compensation for Lloyds Richfield. Finally, at the time of the taking, *Benguet Consolidated*’s mining claim was an established fact, unlike here, where Lloyds Richfield’s mining claim was belated, made three years after the taking.<sup>42</sup>

As to the ₱450.00 per square meter valuation, the Court of Appeals said the trial court erred in affirming this value. It said the Committee on Appraisal arrived at this amount based solely on the deeds of sale of other lots that were of considerable distance and of a different nature from the properties here.<sup>43</sup> Noting that it was “apparently inadequate”<sup>44</sup> to make the deeds the lone basis for just compensation, the Court of Appeals remanded the case to the trial court to reevaluate the just compensation payable to Lloyds Richfield.<sup>45</sup>

The dispositive portion of the Court of Appeals’ December 3, 2008 Decision<sup>46</sup> reads:

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<sup>39</sup> *Rollo* (G.R. No. 190207), p. 395 and *rollo* (G.R. No. 190213), p. 52.

<sup>40</sup> *Rollo* (G.R. No. 190207), p. 398 and *rollo* (G.R. No. 190213), p. 55.

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

<sup>42</sup> *Rollo* (G.R. No. 190207), pp. 398–401 and *rollo* (G.R. No. 190213), pp. 55–58.

<sup>43</sup> *Rollo* (G.R. No. 190207), pp. 393–394 and *rollo* (G.R. No. 190213), pp. 50–51.

<sup>44</sup> *Rollo* (G.R. No. 190207), p. 393 and *rollo* (G.R. No. 190213), p. 50.

<sup>45</sup> *Rollo* (G.R. No. 190207), p. 394 and *rollo* (G.R. No. 190213), p. 51.

<sup>46</sup> *Rollo* (G.R. No. 190207), pp. 383–407 and *rollo* (G.R. No. 190213), pp. 41–64.

**WHEREFORE**, in view of all the foregoing, the appeal is **PARTIALLY GRANTED**.

The order of the trial court in Civil Case No. DNA-384 condemning [Lloyds Richfield's] Lot Nos. 1859, 1863, 1862, 1861, 1860, 1833, 1832, 1831, 1830, 1829, and 1824; and payment of just compensation thereof in favor of [the National Power Corporation] is **AFFIRMED**.

Accordingly, the records of this case is **REMANDED** to the Regional Trial Court, 7<sup>th</sup> Judicial Region, Branch 25 of Danao City for the proper determination of just compensation, in conformity with this Decision. To forestall any further delay in the resolution of this case, the trial court is hereby ordered to fix the just compensation within six (6) months from its receipt of this Decision; and afterwards to report to this Court its compliance.

The finding of the trial court awarding just compensation for the value of the limestone deposits of the aforesaid lots is hereby **DELETED**.

No pronouncement as to costs.

**SO ORDERED.**<sup>47</sup> (Emphasis in the original)

The National Power Corporation and Lloyds Richfield each moved for reconsideration, but both of them were denied in the Court of Appeals' October 16, 2009 Resolution.<sup>48</sup>

The first to file its Petition for Review on Certiorari before this Court was Lloyds Richfield, with its Petition<sup>49</sup> docketed as G.R. No. 190207. The National Power Corporation followed suit, with its Petition<sup>50</sup> docketed as G.R. No. 190213. Since the Petitions assail the same Court of Appeals Decision and Resolution, they were consolidated through a September 27, 2010 Resolution. After the filing of Comments and Replies, the parties were ordered to file their respective Memoranda.

Lloyds Richfield argues that it is entitled to an amount equivalent to the fair market value of its properties expropriated by the National Power Corporation. It points out that this Court has long rejected the 10% easement fee argument, more recently in the cases of *National Power Corporation v. Santa Loro vda. de Capin*<sup>51</sup> and *National Power Corporation v. Villamor*.<sup>52</sup> In these cases also involving the construction of transmission lines for the 230 KV Leyte-Cebu Interconnection Project, this Court said the owners of the lands expropriated must be paid the full amount of just

<sup>47</sup> *Rollo* (G.R. No. 190207), p. 406 and *rollo* (G.R. No. 190213), p. 63.

<sup>48</sup> *Rollo* (G.R. No. 190207), pp. 408–411 and *rollo* (G.R. No. 190213), pp. 66–68.

<sup>49</sup> *Rollo* (G.R. No. 190207), pp. 15–43.

<sup>50</sup> *Rollo* (G.R. No. 190213), pp. 9–31.

<sup>51</sup> 590 Phil. 665 (2008) [Per J. Chico-Nazario, Third Division].

<sup>52</sup> 607 Phil. 670 (2009) [Per J. Carpio, First Division].

compensation as they would be indefinitely deprived of the use and enjoyment of their properties, not to mention the danger to their life and limb.<sup>53</sup>

Lloyds Richfield adds that the four lots affected by the increased safety zone were correctly added to the lots to be expropriated. It says the lower courts' rulings on this issue "conforms to [this Court's] observations in [*Santa Loro vda. de Capin and Villamor*] that [the National Power Corporation's] transmission lines are dangerous."<sup>54</sup> It adds that "simple common sense is enough" to determine that dynamite blasting cannot be done too close to the transmission lines.<sup>55</sup>

Lloyds Richfield contends that the Court of Appeals erred in deleting the award of just compensation for the limestone deposits. The ruling that the State owns all minerals in Philippine soil is allegedly contrary to Article 437<sup>56</sup> of the Civil Code, which states that the owner of a parcel of land is the owner of its surface and everything under it.<sup>57</sup> It then cites *Benguet Consolidated*, where this Court held that the filing of an expropriation proceeding means that the property is no longer part of the public domain but private property.<sup>58</sup>

Lloyds Richfield refutes the Court of Appeals' ruling on the supposed distinctions between *Benguet Consolidated* and this case, saying these distinctions are without basis in fact and contrary to law and jurisprudence. It argues that in *Benguet Consolidated*, there was indeed an attempt to resolve the mineral claims, only that the value could not be determined because the gold deposits there were not of commercial value. Here, the value of the mineral deposits was determined, which meant they had commercial value, for which just compensation should be paid.<sup>59</sup>

Finally, Lloyds Richfield maintains that the ₱450.00 per square meter and ₱26.00 per ton of limestone deposits was based not only on the deeds of sale covering the lots adjacent to the ones owned by Lloyds Richfield, but also those paid by the National Power Corporation for other lot owners affected by the transmission lines. Lloyds Richfield points out that the case has been pending for too long, making a case remand unnecessary. It argues that this Court can take judicial notice of the just compensation paid in *Santa*

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<sup>53</sup> *Rollo* (G.R. No. 190207), pp. 508–509 and *rollo* (G.R. No. 190213), pp. 169–170, Memorandum for Lloyds Richfield Industrial Corporation.

<sup>54</sup> *Rollo* (G.R. No. 190207), p. 510 and *rollo* (G.R. No. 190213), p. 198.

<sup>55</sup> *Id.*

<sup>56</sup> CIVIL CODE, art. 437 provides:

ARTICLE 437. The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation.

<sup>57</sup> *Rollo* (G.R. No. 190207), p. 491 and *rollo* (G.R. No. 190213), p. 181.

<sup>58</sup> *Rollo* (G.R. No. 190207), p. 492 and *rollo* (G.R. No. 190213), p. 492.

<sup>59</sup> *Rollo* (G.R. No. 190207), p. 497.

*Loro vda. de Capin and Villamor*, also pegged at ₱450.00 per square meter, as the properties involved there were also in Dawis Sur, Carmen, Cebu and were expropriated for the 230 KV Leyte-Cebu Interconnection Project.<sup>60</sup>

The National Power Corporation counters that under its charter, it may only acquire easements of right of way for its transmission lines since title to the property expropriated remains with the landowner. Thus, it says it only needs to pay an easement fee equivalent to 10% of the market value of the land expropriated.<sup>61</sup>

The National Power Corporation cites an ongoing World Health Organization study, which says that “scientific evidence is still inconclusive on the [adverse] effect on human health of exposure to electric fields generated by transmission lines[.]”<sup>62</sup> It then argues that with no conclusive evidence as to the alleged danger to life and limb caused by the transmission lines, it cannot be compelled to acquire ownership of Lloyds Richfield’s properties and pay the full amount of just compensation.<sup>63</sup>

As to the additional four lots, the National Power Corporation argues that their inclusion is “without legal basis since it springs from the mistaken notion that [Lloyds Richfield] is entitled to payment of just compensation for the mineral deposits found below the surface area traversed by [the] transmission lines.”<sup>64</sup>

The National Power Corporation heavily cites the Court of Appeals Decision on deleting the award of just compensation for the limestone deposits, implying that Lloyds Richfield has no right to just compensation as the State owns these limestone deposits.<sup>65</sup>

Lastly, the National Power Corporation agrees with the Court of Appeals that the ₱450.00 per square meter valuation was erroneous for being exclusively based on the deeds of sale of the properties not of the same nature and location as those of Lloyds Richfield’s. It thus calls for the case’s remand for a reevaluation.<sup>66</sup>

The issues for this Court’s resolution are:

<sup>60</sup> *Rollo* (G.R. No. 190207), pp. 503–508 and *rollo* (G.R. No. 190213), pp. 193–196.

<sup>61</sup> *Rollo* (G.R. No. 190207), pp. 520–525 and *roilo* (G.R. No. 190213), pp. 221–226.

<sup>62</sup> *Rollo* (G.R. No. 190207), p. 524 and *rollo* (G.R. No. 190213), p. 225.

<sup>63</sup> *Rollo* (G.R. No. 190207), pp. 521–525 and *rollo* (G.R. No. 190213), pp. 222–226.

<sup>64</sup> *Rollo* (G.R. No. 190207), p. 534 and *rollo* (G.R. No. 190213), p. 235.

<sup>65</sup> *Rollo* (G.R. No. 190207), pp. 526–534 and *rollo* (G.R. No. 190213), pp. 227–235.

<sup>66</sup> *Rollo* (G.R. No. 190207), p. 535 and *rollo* (G.R. No. 190213), p. 236.

First, whether or not Lloyds Richfield Industrial Corporation is entitled to just compensation equivalent to the fair market value of the properties expropriated, not just a 10% easement fee;

Second, whether or not the four other lots covered by the increased safety zone was properly included in the properties to be expropriated;

Third, whether or not Lloyds Richfield Industrial Corporation is entitled to just compensation for the value of the limestone deposits found in its lots; and

Finally, whether or not the Court of Appeals erred in remanding the case to the Regional Trial Court to determine anew the amount of just compensation payable to Lloyds Richfield Industrial Corporation.

The Petition in G.R. No. 190207, filed by Lloyds Richfield Industrial Corporation, is partly granted. On the other hand, the Petition in G.R. No. 190213, filed by the National Power Corporation, is denied.

## I

No less than the Constitution mandates the payment of just compensation for the taking of private property for public use. Section 9 of the Bill of Rights provides:

SECTION 9. Private property shall not be taken for public use without just compensation.

Just compensation is “the full and fair equivalent of the property taken from its owner by the expropriator.”<sup>67</sup> “Just” means the compensation given to the owner for the taking of the property must be “real, substantial, full and ample.”<sup>68</sup> In monetary terms, just compensation is the fair market value of the property taken.<sup>69</sup> It is that “sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property.”<sup>70</sup>

Expropriation, however, is not limited to the taking of property with the corresponding transfer of title from the landowner to the expropriator.

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<sup>67</sup> *National Power Corporation v. Santa Loro vda. de Capin*, 590 Phil. 665, 682 (2008) [Per J. Chico-Nazario, Third Division].

<sup>68</sup> *Id.*

<sup>69</sup> *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, 256 Phil. 777, 817 (1989) [Per J. Cruz, En Banc].

<sup>70</sup> *Id.* at 818 citing *J.M. Tuazon Co. v. Land Tenure Administration*, 142 Phil. 393 (1970) [Per J. Fernando, Second Division].

Easements of right of way fall within the purview of expropriation, allowed when the restrictions on the landowner's property rights are not perpetual or indefinite.<sup>71</sup> In such a case, a mere easement fee may suffice.

Here, expropriation by creating an easement of right of way is impossible. Constructing transmission lines over the expropriated properties placed an indefinite and perpetual restriction on Lloyds Richfield's proprietary rights. This is especially true since Lloyds Richfield has been perpetually prohibited from conducting dynamite blasting and quarrying activities in the properties expropriated, or else the transmission lines would be damaged or completely destroyed, endangering lives and properties. Therefore, the National Power Corporation has no choice but to expropriate the properties in the traditional sense—to take the properties and acquire title, for which it must pay the full market value of the properties as just compensation.

The National Power Corporation's oft-cited basis for refusing to pay the full market value as just compensation—Section 3A of Republic Act No. 6395—has long been rejected by this Court.<sup>72</sup> Section 3A of the law<sup>73</sup> states:

SECTION 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired *when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.*

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall

(a) With respect to the acquired land or portion thereof, not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

<sup>71</sup> *National Power Corporation v. Villamor*, 607 Phil. 670 (2009) [Per J. Carpio, First Division].

<sup>72</sup> *National Power Corporation v. Tiangco*, 543 Phil. 637 (2007) [Per J. Garcia, First Division] *citing* *Dipidio Earth-Savers' Multi-Purpose Association, Inc. (DESAMA) v. Gozun*, 520 Phil. 457 (2006) [Per J. Chico-Nazario, First Division]; *National Power Corporation v. Paderanga*, 502 Phil. 722 (2005) [Per J. Carpio Morales, Third Division]; *National Power Corporation v. Chiong*, 452 Phil. 649 (2003) [Per J. Quisumbing, Second Division]; *National Power Corporation v. Gutierrez*, 271 Phil. 1 (1991) [Per J. Bidin, Third Division]; *Camarines Norte Electric Cooperative, Inc. (CANORECO) v. Court of Appeals*, 398 Phil. 886 (2000) [Per J. Pardo, First Division].

<sup>73</sup> As amended by Presidential Decree No. 938 (1976).

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; Provided, that in case any buildings, houses and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation; Provided, further, that such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor. (Emphasis supplied)

Section 3A provides that “only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired[.]” Here, constructing transmission lines over Lloyds Richfield’s properties impairs the principal purpose for which the parcels of expropriated land were actually devoted: quarrying activities. Consequently, a right-of-way easement will not suffice. This Court similarly said so in *National Power Corporation v. Gutierrez*,<sup>74</sup> which also involved constructing transmission lines over expropriated properties:

The trial court’s observation shared by the appellate court show that “. . . While it is true that plaintiff are (sic) only after a right-of-way easement, it nevertheless perpetually deprives defendants of their proprietary rights as manifested by the imposition by the plaintiff upon defendants that below said transmission lines no plant higher than three (3) meters is allowed. Furthermore, because of the high-tension current conveyed through said transmission lines, danger to life and limbs that may be caused beneath said wires cannot altogether be discounted, and to cap it all, plaintiff only pays the fee to defendants once, while the latter shall continually pay the taxes due on said affected portion of their property.”

The foregoing facts considered, the acquisition of the right-of-way easement falls within the purview of the power of eminent domain. Such conclusion finds support in similar cases of easement of right-of-way where the Supreme Court sustained the award of just compensation for private property condemned for public use[.] The Supreme Court, in *Republic of the Philippines vs. PLDT*, thus held that:

“Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right-of-way.”

<sup>74</sup> 271 Phil. 1 (1991) [Per J. Bidin, Third Division].

In the case at bar, the easement of right-of-way is definitely a taking under the power of eminent domain. Considering the nature and effect of the installation of the 230 KV Mexico-Limay transmission lines, the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use.

For these reasons, the owner of the property expropriated is entitled to a just compensation, which should be neither more nor less, whenever it is possible to make the assessment, than the money equivalent of said property. Just compensation has always been understood to be the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation[.] The price or value of the land and its character at the time it was taken by the Government are the criteria for determining just compensation[.] The above price refers to the market value of the land which may be the full market value thereof. According to private respondents, the market value of their lot is ₱50.00 per square meter because the said lot is adjacent to the National and super highways of Gapan, Nueva Ecija and Olongapo City.

Private respondents recognize the inherent power of eminent domain being exercised by NPC when it finally consented to the expropriation of the said portion of their land, subject however to payment of just compensation. No matter how laudable NPC's purpose is, for which expropriation was sought, it is just and equitable that they be compensated the fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity[.]<sup>75</sup> (Citations omitted)

Reiterating *Gutierrez*, this Court in *National Power Corporation v. Villamor*<sup>76</sup> succinctly stated:

[The National Power Corporation] contends that under Section 3A of its charter, RA 6395, where private property will be traversed by transmission lines, [it] shall only acquire an easement of right of way since the landowner retains ownership of the property and can devote the land to farming and other agricultural purposes. . . .

....

[The National Power Corporation's] reliance on Section 3A of RA 6395 has been struck down by this Court in a number of cases. Easement of right of way falls within the purview of the power of eminent domain. In installing the 230 KV Talisay-Compostela transmission lines which traverse respondent's lands, a permanent limitation is imposed by petitioner against the use of the lands for an indefinite period. This deprives respondent of the normal use of the lands. In fact, not only are the affected areas of the lands traversed by petitioner's transmission lines but a portion is used as the site of its transmission tower. Because of the danger to life and limbs that may be caused beneath the high-tension live

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<sup>75</sup> Id. at 6-8.

<sup>76</sup> 607 Phil. 670 (2009) [Per J. Carpio, First Division].

wires, the landowner will not be able to use the lands for farming or any agricultural purposes.<sup>77</sup> (Citations omitted)

All told, Lloyds Richfield is entitled to the full market value of the properties as just compensation, not just an easement fee, for the taking of its properties.

## II

Furthermore, the four additional lots covered by the increased safety zone were properly included in the lots condemned in favor of the National Power Corporation. While the National Power Corporation only sought to expropriate Lot Nos. 1859, 1861, 1860, 1833, 1832, 1830, and 1829, the construction of the transmission lines would likewise render Lot Nos. 1824, 1831, 1862, and 1863 useless to Lloyds Richfield. As the Mines and Geosciences Bureau in Region VII had recommended, a 200-meter safety zone around the transmission lines must be maintained. Lloyds Richfield may not conduct dynamite blasting or quarrying activities within these lots, restricting its proprietary rights, for which it must be paid just compensation.

In any case, the National Power Corporation cannot assail the increase in the number of lots it must expropriate. Given that the Committee on Appraisal, in its Amended Commissioners' Report, recommended an increase in the safety zone, the trial court gave the National Power Corporation several opportunities, even continuances, to present evidence on why the four additional lots need not be expropriated. Despite these, it still failed to present any evidence to refute the recommendation.<sup>78</sup>

On this score, Rule 10, Section 5 of the 1997 Rules of Civil Procedure, before its latest amendment, provides:

### RULE 10

#### *Amended and Supplemental Pleadings*

SECTION 5. *Amendment to conform to or authorize presentation of evidence. — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings.* Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial

<sup>77</sup> Id. at 679–680.

<sup>78</sup> Rollo (G.R. No. 190207), p. 265 and rollo (G.R. No. 190213), p. 78.

justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made. (Emphasis supplied)

Under Rule 10, Section 5, therefore, the issue of whether the four lots should be included in the properties to be expropriated is deemed to have been tried with the National Power Corporation's consent.

### III

Lloyds Richfield, however, is not entitled to just compensation for the limestone deposits in its properties.

Under Article XII, Section 2<sup>79</sup> of the Constitution, the State owns all minerals found in Philippine soil. While Lloyds Richfield has title to the properties, it does not own the minerals underneath them, as shown by the permits and the Mineral Production Sharing Agreement it had to secure from the government to conduct quarrying activities in its properties.

Article 437<sup>80</sup> of the Civil Code, which provides that the owner of a parcel of land is the owner of its surface and everything under it, is not without limitations. For one, it is a statute that cannot trump a constitutional provision. Article 437 itself provides that it is "subject to special laws and ordinances." Certainly, the Constitution can be considered a special law, if not the fundamental law, to which all statutes must conform.

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<sup>79</sup> CONST., art. XII, sec. 2 provides:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

<sup>80</sup> CIVIL CODE, art. 437 provides:

ARTICLE 437. The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation.

Furthermore, in *Republic v. Court of Appeals*,<sup>81</sup> this Court held that an owner of a parcel of land may even be ousted of ownership of their land should minerals be found underneath it, in which case, they shall be paid just compensation for the taking of the land—not for the taking of the minerals underneath it. Said this Court:

The rule simply reserves to the State all minerals that may be found in public and even private land devoted to “agricultural, industrial, commercial, residential or (for) any purpose other than mining.” Thus, *if a person is the owner of agricultural land in which minerals are discovered, his ownership of such land does not give him the right to extract or utilize the said minerals without the permission of the State to which such minerals belong.*

... [O]nce minerals are discovered in the land, whatever the use to which it is being devoted at the time, such use may be discontinued by the State to enable it to extract the minerals therein in the exercise of its sovereign prerogative. The land is thus converted to mineral land and may not be used by any private party, including the registered owner thereof, for any other purpose that will impede the mining operations to be undertaken therein. For the loss sustained by such owner, he is of course entitled to just compensation under the Mining Laws or in appropriate expropriation proceedings.<sup>82</sup> (Emphasis supplied, citation omitted)

It is true that this Court, in *National Power Corporation v. Ibrahim*,<sup>83</sup> applied Article 437 of the Civil Code to order the National Power Corporation to pay just compensation to the property owners. In that case, a tunnel was built underneath the owners’ property without their knowledge.

*Ibrahim*, however, does not apply here. There was no extraction of minerals conducted in *Ibrahim*, unlike here, which involved the quarrying of limestones, a mineral.

Even *Benguet Consolidated Mining v. Republic*<sup>84</sup> cannot be made basis for the award of just compensation for the limestone deposits. Unlike Lloyds Richfield’s mineral claim, which was made in 1993—under the regime of 1987 Constitution—Benguet Consolidated’s mineral claim was made as early as 1909, under the Philippine Bill of 1902. The organic act stated that minerals may still be claimed by private individuals.<sup>85</sup> In other words, Benguet Consolidated’s mining claim had become a vested right.<sup>86</sup> But even then, as Lloyds Richfield pointed out, no just compensation was

<sup>81</sup> 243 Phil. 381 (1988) [Per J. Cruz, First Division].

<sup>82</sup> Id. at 392.

<sup>83</sup> 553 Phil. 136 (2007) [Per J. Azcuna, First Division].

<sup>84</sup> 227 Phil. 422 (1986) [Per J. Gutierrez, Jr., Second Division].

<sup>85</sup> Philippine Bill of 1902, sec. 21 provides:

SECTION 21. All valuable mineral deposits in public lands in the Philippine Islands both surveyed and unsurveyed are hereby declared to be free and open to exploration, occupation and purchase and the land in which they are found to occupation and purchase by the citizens of the United States, or of said islands.

<sup>86</sup> See *Republic v. Court of Appeals*, 243 Phil. 381 (1988) [Per J. Cruz, First Division].

ultimately given to Benguet Consolidated because the gold deposits were not of commercial value.

Therefore, the Court of Appeals correctly deleted the award of just compensation for the limestone deposits.

#### IV

Finally, as Lloyds Richfield argued, there is no need to remand the case for the trial court to redetermine the value of just compensation. This order was based on the erroneous finding that the ₱450.00 per square meter valuation was, in turn, based solely on the deeds of sale of other lots of considerable distance from Lloyds Richfield's properties, allegedly without regard to other factors like land classification and location.

Lloyds Richfield correctly pointed out that the ₱450.00 fair market value was also based, among others, on the fair market value arrived at in other expropriation cases, such as *National Power Corporation v. Santa Loro vda. de Capin*<sup>87</sup> and *National Power Corporation v. Carlos Villamor*.<sup>88</sup> These cases likewise involved parcels of land in Dawis Sur expropriated for the 230 KV Leyte-Cebu Interconnection Project. There is also no reason to not rely on the deeds of sale of the other properties near Lloyds Richfield, as the amount of just compensation approved in *Santa Loro vda. de Capin* and *Villamor* was likewise based on these deeds of sale.

With no sufficient reason to remand the case, we affirm the ₱450.00 per square meter valuation arrived at by the trial court as the value of just compensation.

**WHEREFORE**, the Petition for Review on Certiorari in G.R. No. 190207 is **PARTLY GRANTED**, while that in G.R. No. 190213 is **DENIED**. The Court of Appeals' December 3, 2008 Decision and October 16, 2009 Resolution in CA-G.R. CV No. 66804 are **AFFIRMED with MODIFICATION**.

Lot Nos. 1859, 1863, 1862, 1861, 1860, 1833, 1832, 1831, 1830, 1829, and 1824, all owned by Lloyds Richfield Industrial Corporation, are ordered **CONDEMNED** in favor of the National Power Corporation. In turn, the National Power Corporation is **ORDERED** to pay Lloyds Richfield Industrial Corporation the fair market value of the 11 condemned lots as just compensation, valued at ₱450.00 per square meter or ₱39,628,800.00 for the total area of 88,064 square meters.

<sup>87</sup> 590 Phil. 665 (2008) [Per J. Chico-Nazario, Third Division].

<sup>88</sup> 607 Phil. 670 (2009) [Per J. Carpio, First Division].

The Court of Appeals' deletion of the award of just compensation for the value of limestone deposits is **AFFIRMED**.

Finally, the Court of Appeals' order remanding the case to the Regional Trial Court of Danao City, Branch 25, for the proper determination of just compensation is **DELETED**.

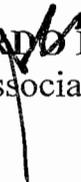
**SO ORDERED.**

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

WE CONCUR:

  
~~**RAMON PAUL L. HERNANDO**~~  
Associate Justice

  
**HENRY JEAN PAUL B. INTING**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

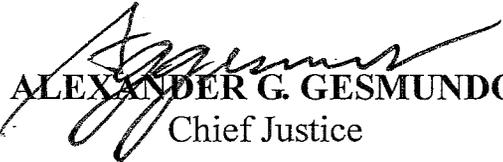
**ATTESTATION**

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.

  
**MARVIC M.V.F. LEONEN**  
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.



**ALEXANDER G. GESMUNDO**  
Chief Justice