



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

NATIONAL
 CORPORATION
 OF THE
 PHILIPPINES,

GRID OF THE

G.R. No. 232120

Present:

Petitioner,

PERLAS-BERNABE, S.A.J.,
Chairperson,

- versus -

HERNANDO,
 INTING,
 DELOS SANTOS, and
 BALTAZAR-PADILLA,* JJ.

CLARA C. BAUTISTA, married
 to REY R. BAUTISTA,

Promulgated:

Respondent.

30 SEP 2020

X ----- X

DECISION

INTING, J.:

For resolution of the Court is the Petition for Review on *Certiorari* filed by National Grid Corporation of the Philippines (petitioner) seeking to reverse and set aside the Resolutions dated July 26, 2016² and May 16, 2017³ of the Court of Appeals (CA) in CA-G.R. CV No. 04229-MIN. The assailed Resolutions dismissed the appeal of petitioner for failure to file an Appellant's Brief within the reglementary period.

* On leave.

¹ *Rollo*, pp. 19-39.

² *Id.* at 42-44; penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo A. Camello and Maria Filomena D. Singh, concurring.

³ *Id.* at 45-48; penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring.

The Antecedents

In its bid to improve the capacity of its transmission system and meet the increasing demand for electricity, petitioner entered into the Kirahon-Maramag 230 KV Transmission Line Project which required the acquisition of Clara C. Bautista's (respondent) 1,314-square meter (sq. m.) property located in Brgy. North Poblacion, Maramag, Bukidnon registered under Transfer Certificate of Title No. T-76986.⁴ Pursuant to Section 4 of Republic Act No. 9511, petitioner filed a Complaint⁵ for Expropriation against respondent. It alleged that the Bureau of Internal Revenue (BIR) zonal valuation for the property is ₱10.00 per sq. m. or ₱13,140.00, while the cost of the improvement stands at ₱40,679.36 for a total price of ₱53,819.36.⁶

Respondent opposed the petition and countered that the BIR zonal valuation is less than the property's fair market value.⁷ She further asserted that although the property is classified as agricultural, its actual use is residential and the lots adjacent thereto are already industrial in character.⁸

After the requisite provisional deposit of the valuation of the property, Branch 8, Regional Trial Court (RTC), City of Malaybalay issued a Writ of Possession⁹ to petitioner. The RTC then appointed Commissioners to determine the fair market value of the property: (1) Evelyn A. Lantong (Commissioner Lantong), Municipal Assessor of Maramag, Bukidnon as Chairperson; (2) Francisco Y. Cipriano, Jr. (Commissioner Cipriano), Chief of the Municipal Planning and Development Office of Maramag, Bukidnon, as Member; and (3) Engr. Gilbert Polloso (Commissioner Polloso) from petitioner's office in Iligan City, also as Member.¹⁰

Based on the Court Commissioner's Report¹¹ prepared by Commissioner Lantong and Commissioner Cipriano, the fair market

⁴ *Id.* at 71-72.

⁵ *Id.* at 64-70.

⁶ *Id.* at 94-95; as culled from the Judgment dated August 20, 2015 of Branch 8, Regional Trial Court, City of Malaybalay.

⁷ *Id.* at 95.

⁸ *Id.* at 105.

⁹ *Id.* at 93.

¹⁰ *Id.* at 95.

¹¹ *Id.* at 115.

of the property is at ₱3,000.00 per sq. m. on the basis of the current average sales for commercial and industrial land, including the highest and best use of the land and the valuation of sales and direct comparison, the unit base market value computation, and the deed of sale and conformity involving the property. They likewise explained that the actual ocular inspection of the property indicated that its use is industrial or built-up.¹²

However, Commissioner Poloso submitted his own Commissioner's Report¹³ wherein he recommended that the just compensation for the property is only at ₱25.00 per sq. m. upon considering its extent and character, zoning value, current land classification in the locality, its assessment value, and highest and best use. He further indicated that the property is classified as an agricultural land based on its tax declaration and zoned as "agricultural protection" per Municipal Zoning Ordinance No. 04, Series of 2008. But he also noted that in another certification, the property identified as Lot No. 653-A-2-A, Psd-10-028431 with an area of 3,365 sq. m. is classified as "built-up".

Ruling of the RTC

On August 20, 2015, the RTC rendered a Judgment,¹⁴ the dispositive portion of which reads:

ACCORDINGLY, in view of all the foregoing, judgment is hereby rendered ordering plaintiff NGCP to pay defendants the following:

1. Just compensation in the amount of P600.00 per square meter or a total of P788,400.00, for the area expropriated, which shall bear six percent (6%) interest per annum from the time of taking until fully paid.
2. Commissioners' fees to Evelyn A. Lantong, chairperson of the panel of commissioners, and Francisco Y. Cipriano, Jr., member of the panel of commissioners, in the amount of P1,500.00 each as part of the costs, pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure and Section 16, A.M. No. 04-2-04-SC.

¹² *Id.* See also Commissioner's Appraisal & Assessment Report, *id.* at 116.

¹³ *Id.* at 130-131.

¹⁴ *Id.* at 94-112; penned by Presiding Judge Isobel G. Barroso.

3. Cost of the suit.

SO ORDERED.

The RTC found that the valuation of the property at ₱25.00 per sq. m. is too low, impractical, and unreasonable;¹⁵ that, in the same manner, the ₱10.00 per sq. m. valuation of the BIR for taxation purposes is long overdue for revision;¹⁶ that, on the other hand, respondent's ₱3,000.00 per sq. m. valuation is too high and speculative as it is based only on one deed of sale and the proposed Comprehensive Land Use Plan of the Municipality of Maramag, Bukidnon.¹⁷ Thus, the RTC took judicial notice of the other expropriation cases pending therein that involved properties similarly located in Brgy. North Poblacion, Maramag, Bukidnon classified as agricultural land and yet, upon ocular inspection, were industrial and/or zoned as "built-up" wherein the recommended amounts for just compensation were ₱220.00 and ₱600.00 per sq. m.¹⁸

Upon petitioner's Motion for Reconsideration,¹⁹ the RTC only deleted the award for cost of suit in an Order²⁰ dated October 30, 2015.

Dissatisfied, petitioner appealed to the Court of Appeals.²¹

Ruling of the CA

The CA declared that despite the receipt of the Notice to File Brief addressed to the counsel of petitioner, the latter failed to file an Appellant's Brief. Thus, pursuant to Section 7, Rule 44 of the Rules of Court, the CA, in a Resolution²² dated July 26, 2016, ruled that petitioner's failure to file an Appellant's Brief was an abandonment of its appeal which caused its dismissal.²³

Petitioner filed an Urgent Omnibus Motion for Reconsideration Cum Clarification,²⁴ but the CA denied it in a Resolution²⁵ dated May

¹⁵ *Id.* at 111.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 110.

¹⁹ *Id.* at 141-145.

²⁰ *Id.* at 146-147.

²¹ See Notice of Appeal dated November 26, 2015, *id.* at 148.

²² *Id.* at 42-44.

²³ *Id.* at 43.

²⁴ *Id.* at 49-50.

²⁵ *Id.* at 46-48.

16, 2017. It found petitioner's explanation of not having been properly notified regarding the Appellant's Brief as insufficient considering the Letter Tracer dated June 1, 2016 that the Notice to File Brief sent to petitioner's counsel was duly received by one Grepah Crisen Ilogon on April 6, 2016.²⁶

Hence, the petition.

Issues Before the Court

Petitioner questions the CA's automatic dismissal of the appeal based on a mere failure to file an Appellant's Brief within the reglementary period which the rules only made discretionary. It also alleges the existence of overriding public interest which requires that the discretion to dismiss of the CA be exercised with liberality. Furthermore, petitioner posits that the CA failed to recognize that the RTC overvalued the expropriated property as an industrial land despite the zoning ordinance which classified the property as agricultural.

Our Ruling

The petition must fail.

Preliminarily, records of the case reveal that respondent failed to comply with the Court's Resolutions dated July 9, 2018²⁷ and December 5, 2018²⁸ that required her to submit a soft copy in compact disc, USB, or e-mail containing the PDF file of the signed Comment within the period which expired on April 9, 2019.²⁹ Nevertheless, petitioner filed its Reply (To the Comment on Petition for *Certiorari*)³⁰ to respondent's Comment in compliance with the Court Resolution dated July 9, 2018.

Section 7, Rule 44 of the Rules of Court provides:

SEC. 7. *Appellant's brief* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his

²⁶ *Id.* at 47.

²⁷ *Id.* at 171.

²⁸ *Id.* at 175-178.

²⁹ *Id.* at 186-187.

³⁰ *Id.* at 220-222.

legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

The CA has the discretion to dismiss or not to dismiss an appeal for non-filing of an Appellant's Brief under Section 1(e), Rule 50 of the Rules of Court:

Section 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

The Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing with technicalities whenever compelling reasons so warrant or when the purpose of justice requires it.³¹ The usage of the word *may* in the aforementioned provision indicates that the dismissal of the appeal upon failure to file the Appellant's Brief is only discretionary and not mandatory.³² Failure to serve and file the required number of copies of the Appellant's Brief within the time provided by the Rules of Court does not have the immediate effect of causing the outright dismissal of the appeal.³³ When the circumstances so warrant its liberality, the CA is bound to exercise its sound discretion and allow the appeal to proceed despite the late filing of the Appellant's Brief upon taking all the pertinent circumstances into due consideration.³⁴ With that affirmation comes the caution that such discretion must be a sound one exercised in accordance with the tenets of justice and fair play having in mind the circumstances obtaining in each case.³⁵

The Court finds no reason to disturb the CA's exercise of discretion in dismissing the appeal. The explanation proffered by petitioner is not compelling as to convince the Court to reverse the CA.

³¹ *Aguam v. Court of Appeals*, 388 Phil. 587, 593-594 (2000); *Philippine Merchant Marine School, Inc. v. Court of Appeals*, 432 Phil. 733, 740-741 (2002), citing *Rep. of the Phil. v. Imperial, Jr.*, 362 Phil. 466, 477 (1999), further citing *Republic v. Court of Appeals*, 172 Phil. 741, 766 (1978).

³² *Sibayan v. Costales*, 789 Phil. 1, 8 (2016), citing *Diaz v. People, et al.*, 704 Phil. 146, 157 (2013).

³³ *Id.*

³⁴ *Id.*

³⁵ *PNB v. Philippine Milling Co., Inc., et al.*, 136 Phil. 212, 215 (1969) as cited in *Philippine Merchant Marine School, Inc. v. Court of Appeals*, *supra* note 31 at 741-742.

In *Beatingo v. Bu Gasis*,³⁶ the Court clarified the CA's discretionary power of dismissal of an appeal for failure to file Appellant's Brief in this wise:

The question of whether or not to sustain the dismissal of an appeal due to petitioner's failure to file the Appellant's Brief had been raised before this Court in a number of cases. In some of these cases, we relaxed the Rules and allowed the belated filing of the Appellant's Brief. In other cases, however, we applied the Rules strictly and considered the appeal abandoned, which thus resulted in its eventual dismissal. In *Government of the Kingdom of Belgium v. Court of Appeals*, we revisited the cases which we previously decided and laid down the following guidelines in confronting the issue of non-filing of the Appellant's Brief:

(1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;

(2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;

(3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;

(4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency[.], it is imperative that:

(a) the circumstances obtaining warrant the court's liberality;

(b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;

(c) no material injury has been suffered by the appellee by the delay;

(d) there is no contention that the appellee's cause was prejudiced;

(e) at least there is no motion to dismiss filed.

(5) In case of delay, the lapse must be for a reasonable period; and

(6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:

³⁶ 657 Phil. 552 (2011).

(a) where the reckless or gross negligence of counsel deprives the client of due process of law;

(b) when application of the rule will result in outright deprivation of the client's liberty or property; or

(c) where the interests of justice so require.³⁷

In the present case, there is no showing that petitioner filed an Appellant's Brief despite receipt of a Notice to File Brief. As a consequence, the CA dismissed the appeal for failure to file an Appellant's Brief. It now devolved upon petitioner to refute the presumption of regularity and convince the Court that a reversal of the dismissal is warranted. Petitioner notably failed to prove this.

Contrary to petitioner's assertion, the CA justified that a Notice to File Brief was sent and duly received by petitioner's counsel of record, Atty. Zaldy Cataluña Lim (Atty. Lim).³⁸

Petitioner likewise improperly invoked the case of *Aguam v. Court of Appeals*³⁹ wherein the Court ruled that the Notice to File Appellant's Brief should be given to the party appellant and not to the counsel for the *rationale* was not served in the instant case considering that there was no showing that petitioner changed its counsel after filing its Notice of Appeal. Records reveal that Atty. Lim was retained as petitioner's counsel as indicated by the latter's filing of the Urgent Omnibus Motion for Reconsideration Cum Clarification of the CA's dismissal on the ground of abandonment of appeal.⁴⁰

More importantly, petitioner's harping on "public interest" as a reason for the Court to exercise its liberality is anathema to the intent and purpose of procedural rules which is to provide a just, speedy, and inexpensive disposition of every action or proceeding, when circumstances would show an attempt or design to circumvent the rules. The liberality with which the Court exercises equity jurisdiction is always anchored on the basic consideration that it must be warranted by the circumstances obtaining in each case. With petitioner's explanation less than worthy of credence and without evidentiary support, the Court is constrained to adhere strictly to the procedural rules on the timeliness

³⁷ *Id.* at 559-560.

³⁸ *Rollo*, pp. 46-48.

³⁹ 388 Phil. 587 (2000).

⁴⁰ *Rollo*, p. 26.

of submission before the court. As the Court held in *Viva Shipping Lines, Inc. v. Keppel Phils. Marine, Inc., et al.*:⁴¹

*x x x Liberality in the application of the rules is not an end in itself. It must be pleaded with factual basis and must be allowed for equitable ends. There must be no indication that the violation of the rule is due to negligence or design. Liberality is an extreme exception, justifiable only when equity exists.*⁴² (Italics supplied.)

Nevertheless, to put an end to the controversy in the case, the Court upholds the findings of the RTC that just compensation for the expropriated property should be valued at ₱600.00 per sq. m.

Zonal valuation is simply one of the indices of the fair market value of real estate.⁴³ By itself, this index cannot be the sole basis of just compensation in expropriation cases since the standard is not the taker's gain but the owner's loss.⁴⁴ The insistence of petitioner to base the value of the subject property solely on the BIR zonal valuation at ₱10.00 per square meter is misplaced considering that it is only one of the several factors which the court may consider to facilitate the determination of just compensation. Zonal value alone of the properties in the area whether of recent or vintage years does not equate to just compensation.⁴⁵ Otherwise, the determination of just compensation would cease to be judicial in nature which negates the exercise of judicial discretion.⁴⁶

With respect to petitioner's assertion that the subject property must be valued as an agricultural land, courts enjoy sufficient judicial discretion to determine the classification of lands because such classification is one of the relevant standards for the assessment of the value of lands subject of expropriation proceedings.⁴⁷ Thus, despite the subject property's zonal classification as agricultural in the tax declaration and municipal zoning ordinance, the zoning classification made by the designated Municipal Zoning Administrator, Commissioner Cipriano, backed by the Municipal Assessor, Commissioner Lantong, is more persuasive considering that an actual ocular inspection of the

⁴¹ 781 Phil. 95 (2016).

⁴² *Id.* at 99.

⁴³ *Leca Realty Corp. v. Rep. of the Phils.*, 534 Phil. 693, 696 (2006).

⁴⁴ *Id.*

⁴⁵ *Republic v. Spouses Darlucio*, G.R. No. 227960, July 24, 2019.

⁴⁶ *Id.*

⁴⁷ *National Power Corp. v. Marasigan, et al.*, 820 Phil. 1107, 1127 (2017).

subject property indicated that it has become a “built-up”⁴⁸ area based on the present development trend of the land and use pattern.⁴⁹

There is also no cogent reason for the Court to annul and set aside the amount fixed herein as just compensation on the ground that the RTC took judicial notice of other expropriation cases involving properties similarly situated. The RTC did not merely adopt by reference the commissioner’s reports in the other cited expropriation cases, but took it into account in assessing just compensation because the properties subject of the other cases were situated in the same place. As opined by Associate Justice Edgardo L. Paras, “[a] court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court.”⁵⁰ In any case, it was not the only factor considered by the RTC. As can be gleaned from the RTC Decision, the court also factored in the subject property’s actual use, its location, and its current market value. Between the valuation submitted by petitioner’s commissioner at a measly sum of ₱25.00 per sq. m., and that of the other two commissioners at ₱3,000.00 per sq. m. based on the purchase price of a single deed of sale, the RTC’s computation is more in accord with the principle that payment of just compensation for private property taken for public use, as guaranteed no less by our Constitution and is included in the Bill of Rights, should be measured not by the taker’s gain, but the owner’s loss and that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.⁵¹

WHEREFORE, the instant petition is **DENIED**. The Resolutions dated July 26, 2016 and May 16, 2017 of the Court of Appeals in CA-G.R. CV No. 04229-MIN are **AFFIRMED**. The denial of the appeal due to the non-filing of an Appellant’s Brief pursuant to Section 1(e), Rule 50 of the Rules of Court is hereby declared **FINAL**.


SO ORDERED.

⁴⁸ “Built-up” areas are areas that have ten or more dwelling units within the vicinity. *Rollo*, p. 102, as culled from the RTC Decision.

⁴⁹ *Rollo*, p. 101; as culled from the RTC Decision.

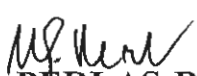
⁵⁰ *Rep. of the Phils. v. CA*, 343 Phil. 428, 437 (1997), citing Graham on Evidence, 1986 ed.

⁵¹ *National Power Corp. v. Spouses Zabala*, 702 Phil. 491, 499-500 (2013). Citations omitted.




HENRI JEAN PAUL B. INTING
Associate Justice


WE CONCUR:



ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice

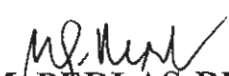


EDGARDO L. DELOS SANTOS
Associate Justice


(On leave)
PRISCILLA J. BALTAZAR-PADILLA
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.



ESTELA M. PERLAS-BERNABE
Senior 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.

**DIOSDADO M. PERALTA***Chief Justice*