



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
M a n i l a

NATIONAL POWER CORPORATION,
Petitioner-Appellant,

-versus-

CBAA CASE NO. M-26
Re: LBAA Case No. 001-08

THE LOCAL BOARD OF ASSESSMENT
APPEALS OF THE PROVINCE OF
LANAO DEL SUR,
Appellee,

-and-

THE PROVINCIAL ASSESSOR OF
LANAO DEL SUR,
Respondent-Appellee.

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DECISION

This appeal, received by this Board on June 30, 2008, via registered mail, is from the Resolution rendered on April 21, 2008 by the Local Board of Assessment Appeals for the Province of Lanao del Sur in LBAA Case No. 001-08, the dispositive portion of which resolution reads:

“WHEREFORE, premises considered, the said petition is hereby dismissed for lack of merit. The special rate of Assessment imposed by the Province of Lanao del Sur and its Municipalities (Especially Saguiaran) is hereby approved and executory, the same being very reasonable, justified, practicable and very minimal.”

It appears that NPC is the registered owner of several parcels of land situated in the Municipality of Saguiaran, Province of Lanao del Sur. These parcels of land (henceforth, “NPC Land”) consisted of about 2,075,700 square meters and covered by Tax Declaration No. D-1239 which took effect in the year 1993 and showing a market value of ₱90.00 per square meter with an assessment level of 10% as “Special Class” of real property.

All the machinery, buildings and other improvements located within the NPC Land (covered by Tax Declarations Numbered from D-1221 to D-1237, inclusive) were, starting the year 1993, also classified as “Special Class” of real property.

Respondent Provincial Assessor informed the NPC of the revisions of assessments on NPC’s real properties above-described, effective the year 2005, through letters dated February 10, 2005 and May 31, 2005. The revisions were made on the strength of Ordinance Nos. 04-2002, 05-2002 and 06-2002, all enacted by the Sangguniang Panlalawigan of Lanao del Sur on 23 December 2002.

NPC filed an appeal with the Local Board of Assessment Appeals of the Province of Lanao del Sur, although the records do not show an acknowledgment from the Local Board as to the date of its filing. The Petition was dated 18th July 2005, accompanied: (1) by a Verification and Certification of Non-Forum Shopping signed on 22nd July 2005 by Pasayud M. Macarambun, Ph. D., and sworn to by him before Notary Public Mr. Alex E. Macabangkit on 26 July 2005; and (2) by a Secretary’s Certificate (as to the authority of Dr. Pasayud M. Macarambun) signed and sworn to by a Mr. Victor Gaudencio C. Garcia on 16th June 2005 before Notary Public Natalia Oliverio-Guinto. In said Petition NPC alleged that:

1. The increase in the assessment of the land from ₱90.00 to ₱1,000.00 per square meter of the land “is confiscatory, excessive and exorbitant, making it very unconstitutional as it is tantamount to taking of property without due process”;
2. Resolution No. 88-02-A2 and Ordinance No. 05-2002 enacted by the Sangguniang Panlalawigan of Lanao del Sur “only mentions the applicable assessment levels which will determine the taxable value of a property based on the existing market value. Hence, since there is no revision of the schedules of market values, the action of the Office of the Provincial Assessor of Lanao del Sur has no legal effect and factual basis” since the provisions of Articles 303 and 310 of the Rules and Regulations Implementing the Local Government Code of 1991 and the

provisions of Local Assessment Regulations No. 1-92 dated October 6, 1992 were not followed;

3. Portions of the NPC Land which are vacant, or used for agricultural purposes or as watershed cover should be appraised and assessed either as agricultural or residential – instead of “industrial” – pursuant to the provisions of Article 308 of the said Implementing Rules;
4. The new assessments failed to consider allowances for depreciation on buildings pursuant to the provisions of Section 40 of Local Assessment Regulations No. 1-92;
5. The NPC Land and all the buildings, machineries and other equipment found thereon are “Special Classes” of real property pursuant to the provisions of Section 216 of the Local Government Code and, therefore, should only be subject to the assessment level of 10% pursuant to the provisions of Section 218(d) of the same Code; and
6. The Provincial Assessor, without considering depreciation and without notice and hearing, increased the market value of the Plant Perimeter Fence and Gate from ₱958,610.00 in 1993 to ₱6,854,000.00 in 2003.

In his Comments dated January 23, 2008, Respondent Provincial

Assessor stated that:

- a. That worthy to note that RA #7160 mandated the revision of the assessment values of real properties (after its enactment) and every three (3) years thereafter, to keep abreast and cope up with the spiraling fair market values of not only real properties, its improvements but practically everything in its high-tech modern world.
- b. That it is nice to stress that, the petitioner is being assessed for the FIRST TIME with his realistic and updated fair market value of its real properties located in Lanao del Sur, after the enactment of the Local Government Code of 1991.
- c. That the said newly-implemented increased and updated assessment as laid down and mandated by ORDINANCE #04-2003 which was the subject of RESOLUTION No. 88-02-A1 was the aftermath of scientific researchers (*sic*) and study and were subjected to strictest public scrutiny, debates and deliberations by the Sangguniang Panlalawigan and was duly approved in accordance with laws and rules.
- d. That the allegations that the increase is confiscatory, excessive and exorbitant are not only baseless, conjectures and conclusions but also very unfair and incredible because so far, it is the lowest as compared to other assessments imposed by other provinces and/or places where NPC-Plants and properties are located.
- e. That the 10% assessment level actually served as Special Class of assessment which is very realistic, justified and very reasonable thus completely belied and set aside the petitioner’s allegations that the same is confiscatory, excessive and exorbitant. Said allegations are purely out of context and baseless.

In its Resolution of April 21, 2008, the Local Board of Assessment Appeals of the Province of Lanao del Sur considered three (3) major issues, to wit:

1. Whether ordinance Nos. 04-2002, No. 05-002 and ordinance 06-2002 which are all relevant to this case are valid enactment of the Sangguniang Panlalawigan of Lanao del Sur.
2. Whether the sudden increase in the assessment as embodied in the above ordinance is exorbitant, confiscatory and excessive amounting to taking of property without due process of law.
3. Whether the assessed fair market value as embodied in the above-ordinance shall apply to all the real property of petitioner considering that portions thereof are not being used for industrial purposes but for agricultural, residential, watershed and vacant lots and that said property rent be appraised and assessed for its actual use.

The Local Board dismissed NPC's petition specifically on the following grounds, namely:

- A. Ordinance Nos. 04-2002, 05-2002 and 06-2002 are valid enactments of the Sangguniang Panlalawigan of Lanao del Sur.
- B. The increase in the fair market value of the land in question is justified because it is based on the first revision eleven (11) years after the LGC took effect.
- C. The contention "that real property of petitioner must be appraised and assessed on its actual use, this contention is not tenable. The dominant use of the petitioner's property is for industrial purposes and the use of portions of the properties for other purposes were only incidental and temporary for these portions of property are ready to be used at anytime for industrial purposes. Petitioner must have waived the right to classify the use of their property through inaction in not availing their privilege and duty to declare the classification and value of their property as mandated by the Local Government Code . . ."
- D. The rate imposed against the NPC with regards to its properties in the province of Lanao del Sur including its improvements is a 'SPECIAL RATE' which is realistic, justified and reasonable.

Alleging that it received a copy of the questioned Resolution on May 16, 2008, Petitioner-Appellant National Power Corporation ("NPC" for brevity) assigned the following issues, viz:

WHETHER OR NOT THE ASSESSMENT MADE BY THE PROVINCE OF LANA DEL SUR IS VALID WITHOUT HAVING A GENERAL REVISION OF MARKET VALUE OF PROPERTIES IN THE PROVINCE.

WHETHER OR NOT ARTICLE 303 OF THE RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE IN RELATION TO

DEPARTMENT OF FINANCE REGULATIONS WERE FOLLOWED BY THE PROVINCE IN DETERMINING THE CORRECT AND LOGICAL ASSESSMENTS.

In discussing the above-assigned issues jointly, NPC alleges that:

1. It appears from the assailed resolution that the issues raised by petitioner-appellant were not properly addressed. Clearly, petitioner-appellant raise(d) the procedural lapses in the passage of the new assessment;
2. The Local Board “failed to appreciate the import of Article 303 of the Rules and Regulations Implementing the Local Government Code of 1991 (which) specifically provides, to wit-

Preparation of Schedule of Fair Market Values. – (a) **Before any general revision of property assessment is made pursuant to the provisions of the Rule, there shall be prepared a schedule of fair market values by the provincial and city assessors, and the municipal assessors of the municipalities within MMA for the different classes of real property situated in their respective LGUs for enactment by ordinance of the sanggunian concerned.** The schedule of fair market values shall be published in a newspaper of general circulation in the province, city, or municipality concerned, or in the absence thereof, shall be posted in the provincial capitol, city or municipal hall and in two (2) other conspicuous public places therein. [b] In the preparation of schedule of fair market values, the provincial and city assessors and the municipal assessors of the municipalities within MMA shall be guided by the rules and regulations issued by DOF. [underlining supplied for emphasis]

3. Paragraph c of Article 310 of said Implementing Rules provides–

The general revision of assessments and property classification **shall commence upon the enactment of an ordinance by the sanggunian concerned adopting the schedule of fair market values** but not later than two (2) years from the effectivity of the Code. Thereafter, the provincial, city or municipal assessor shall undertake the general revision of real property assessment and property classification once every three (3) years. [underlining supplied]

4. From the foregoing provisions of the law, what is clear is that there must be at first a general revision of market value of properties in the province before any assessment may be made by the Provincial Assessor. In the instant case, there is none. Resolution No. 88-02-A2 and Ordinance No. 05-2002 enacted by the Sangguniang Panlalawigan of Lanao del Sur did not contain a general revision of market values. It only mentions the applicable assessment levels which will determine the taxable value of a property based on the existing market values. Hence, since there is no revision of the schedules of market values, the action of the Office of the Provincial Assessor of Lanao del Sur has no legal and factual basis since the same was unilaterally and capriciously issued without color of authority.
5. Further, in a summary of Section 2 of Local Assessment Regulations No. 1-92 dated October 6, 1992 issued by the Department of Finance will show the following requirements-

Section 2. Assessment Calendar – For the purpose of the general revision of property assessments as provided for herein, and once every three years thereafter, the assessment process and its component activities shall be governed by the assessment calendar herein prescribed, as follows:

- a. Acceptance of sworn statements declaring true values of real property to be filed by real property owners/administrators which shall be done from January 1 to June 30 of the first year;
 - b. Gathering and analysis of data and preparation of preliminary Schedule of Market Values from July 1 to September of the first year and is being done by the Office of the Provincial Assessor;
 - c. Preparation of final Schedules of Market Values by the Provincial Assessor not later than October 15 of the first year;
 - d. Submittal by said office of the Schedules of Market Values to the Sangguniang Panlalawigan for enactment by Ordinance not later than October 31 of the first year;
 - e. Not later than January 31 of the second year, the Sangguniang Panlalawigan shall enact the ordinance adopting the Schedules of Market Values.
6. Finally, the contention of the Province of Lanao del Sur and precisely adopted by the members of the Honorable Board that the increase in the assessment of the Province of Lanao del Sur is lesser compared with the assessment made by the adjacent province and city is a blatant lie and without being substantiated by any document. It was merely based on the speculation and conjecture of the province being alleged in their comment to the petition. In fact, Lanao del Norte had increased their assessment but only to the maximum of 872%. On the other hand, in Iligan City where petitioner-appellant has a power plant had likewise increased its assessment to only 200% for industrial and 167% agricultural. Compared to the increase of assessment being implemented by the Province of Lanao del Sur, it is clear as daylight that it is very exorbitant and confiscatory in consideration of the increases of the adjacent local government units. In other words therefore, the assessment that is being insisted to be implemented by the province as they are now demanding for its payment is unconstitutional as it is tantamount to taking of property without due process of law.

Essentially, the first issue raised by Petitioner NPC is that the questioned revisions of property assessment were made by Respondent Assessor without the **Revised Schedule of Fair Market Value** duly adopted by the Sangguniang Panlalawigan of Lanao del Sur through the enactment of a corresponding ordinance.

The record shows that, at the request of the Chairman of the Local Board of Assessment Appeals of Lanao del Sur, Respondent Provincial Assessor furnished the Local Board with copies of the following documents, to wit:

1. 1st Indorsement dated October 15, 2002 and signed by HADJA SAIRAH C. BARAMBANGAN-BOLOTO, then Provincial Assessor of Lanao del Sur, forwarding therewith the “proposed Schedule of Market Value of all properties and their improvements of the thirty-eight (38) municipalities of this province for your action and approval”, with the following attachments:
 - a. “Schedule of Base Unit Market Value” for land and trees, with Land Classification and Productivity Classification.
 - b. “Schedule of Base Unit Cost for Building” with Classification of Buildings and Other Improvements, Schedule of Depreciation.
2. 1st Indorsement dated March 10, 2003 and signed by ATTY. COSAIN M. MACARAMBON, Secretary to the Sanggunian of Lanao del Sur, forwarding to the Provincial Assessor of Lanao del Sur copies of the following:
 - a. ORDINANCE NO. 04-2002 entitled “AN ORDINANCE FIXING THE SCHEDULE OF FAIR MARKET VALUE FOR THE DIFFERENT CLASSES OF PROPERTY/IES IN THE PROVINCE OF LANA DEL SUR” adopted by the Sangguniang Panlalawigan of Lanao del Sur on 23 December 2002, thereby approving the Schedule of Fair Market Value prepared and submitted by the office of the Provincial Assessor.
 - b. ORDINANCE NO. 05-2002 entitled “AN ORDINANCE PRESCRIBING A GENERAL REVISION OF REAL PROPERTY ASSESSMENTS IN THE PROVINCE OF LANA DEL SUR IN 2002 TO TAKE EFFECT IN 2003 AND FIXING THE ASSESSMENTS LEVELS FOR THE DIFFERENT CLASSES OF REAL PROPERTY TO DETERMINE ITS ASSESSED OF TAXABLE VALUE”, prescribing the assessments levels of real properties in Lanao del Sur and adopted by the Sangguniang Panlalawigan of Lanao del Sur on 23 December 2002.
 - c. ORDINANCE NO. 06-2002 entitled “AN ORDINANCE FIXING THE RATES OF LEVY OF THE ADVALOREM TAX ON REAL PROPERTY, BOTH FOR THE BASIC REAL PROPERTY AND SPECIAL EDUCATION FUND (SEF) OF THE PROVINCE OF LANA DEL SUR” fixing the Basic real Property Tax at One percent (1%) of the Assessed Value and the Special Educational Fund tax at One percent (1%) of the Assessed Value and approved by the Sangguniang Panlalawigan of Lanao del Sur on 23 December 2002.

Respondent Provincial Assessor, in his Comments on NPC’s Petition before the Local Board of Assessment Appeals mentioned Lanao del Sur’s

Ordinance No. 04-2002 under paragraph 4(c) on page 2 of his said Comments, thus:

“c. That the said newly-implemented increase and updated assessments as laid down and mandated by ORDINANCE #04-2002 which was the subject of RESOLUION NO. 88-02-A1 was the aftermath of scientific researchers and study and were subjected to strictest public scrutiny, debates and deliberations by the Sangguniang Panlalawigan and was duly approved in accordance with laws and rules.”

Respondent Local Board itself, on the third paragraph on Page 5 of the questioned Resolution, also discussed the serial numbers and purposes of the three (3) ordinances, thus:

“AS TO THE FIRST ISSUE, *it is noted that ordinance No. 04-2002, refers to an ordinance fixing the schedule of fair market value for the different classes of properties in the Province of Lanao del Sur. Ordinance No. 05-2002 refers to an ordinance prescribing a general Revision of Real Property Assessment in the Province of Lanao del Sur in 2002 to take effect in 2003 and fixing the assessment levels for the different classes of real Property to determine its assessed taxable value. Ordinance No. 06-2002 refers to an ordinance fixing the rates of levy of the advalorem tax on real property tax on real property both for the basic real property and Special Educational Fund (SEF) of the Province of Lanao del Sur.”*

This Board, therefore, is at a loss as to why NPC continues to deny the existence of Ordinance Nos. 04-2002 and 06-2002 when, in fact, the above-quoted Paragraph 4(c) of Respondent’s Comments was copied verbatim (except for 1 typographical error: “3” instead of “#”) by NPC on Page 9 of Petitioner’s Appeal Memorandum filed with this Board. Assuming that NPC was not officially furnished copies of Ordinance Nos. 04-2002 and 06-2002, NPC should have exerted serious efforts to obtain copies of the same ordinances as it (NPC) did with Ordinance No. 05-2002. NPC gave much weight to Ordinance No. 05-2002. There is no reason why it should not give the same amount of weight to Ordinance Nos. 04-2002 and 06-2002.

NPC made an illogical “shortcut” with its first issue when it asked whether or not the disputed assessments are valid **in the absence** of a Schedule of Fair

Market Values of real properties duly adopted by the Sangguniang Panlalawigan of Lanao del Sur.

Since, as borne by the records, a Schedule of Fair Market Values for the real properties in the Province of Lanao del Sur in 2002 was prepared by Respondent Provincial Assessor and adopted by the Sangguniang Panlalawigan of Lanao del Sur through Ordinance No. 04-2002, all in accordance with the Local Government Code of 1991, the second issue raised by Petitioner NPC is rendered moot and academic.

WHEREFORE, premises considered, the instant Appeal is hereby DISMISSED for lack of merit.

Manila, Philippines, September4, 2009.

(Signed)

CESAR S. GUTIERREZ
Chairman

(Signed)

ANGEL P. PALOMARES
Member

(Signed)

RAFAEL O. CORTES
Member