TAKING PRIVATE PROPERTY FOR PUBLIC PURPOSE*

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I. HISTORICAL BACKGROUND

A. *Early Times*

The power of eminent domain was exercised by the Romans in the construction of roads, aqueducts, and similar public works. However, until the rights of individuals against the state began to be recognized, it was not necessary to analyze this power, since every order which the government had the power to enforce was considered valid.[1]

B. *The Middle Ages*

The term "eminent domain" is the English translation of the Latin phrase "*dominum eminens*".[2] The Latin phrase was coined by Hugo Grotius in 1625 to designate the power of a sovereign state to take or to authorize the taking of any property within its jurisdiction for public use without the consent of the owner.[3]

Hugo Grotius expounded on the power of eminent domain in the following words:

> At this point, in addition to the difficulties previously met with, a special difficulty is presented by the right of passing laws and the right of eminent domain over the property of subjects; the right belongs to the state, and is exercised in its name by the one who holds supreme authority. If in fact this right covers all the possession of subjects, why does it not cover also the right arising from a promise in war? If this be conceded, it appears that all such agreements will be void, and therefore there will be no hope of ending a war excepting through victory.
>
> But, on the contrary, we must note that recourse is had to the right of eminent domain, not indiscriminately, but only insofar as this is to the common advantage in a civil government, which,

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* *Cite as* 45 ATENEO L.J. I (2000).

1 18 AM JUR. *Eminent Domain* § 2 (1938).

2 JOSE AGATON SIBAL, PHILIPPINE LEGAL ENCYCLOPEDIA 270 (1986).

3 18 AM JUR., *supra* note 1.

even when regal, is not despotic. But in most cases it is the common advantage that such agreements be kept; and what we have said elsewhere about the existing government applies here also. An additional point is that, when circumstances demand the enforcement of the right, compensation ought to be given, as will be explained later.[4]

Hugo Grotius added:

1. This question also is frequently discussed in the effort to secure peace, what conclusions regarding the property of subjects may be adopted by kings who have no other right over the property of their subjects than that inhering in the royal power?

   I have said elsewhere that the property of subjects belongs to the state under the right of eminent domain; in consequence the state, or he who represents the state, can use the property of subjects, and even destroy it or alienate it, not only in case of direct need, which grants even to private citizens a measure of right over other's property, but also for the sake of the public advantage, and to the public advantage those very persons who formed the body politic should be considered as desiring that private advantage should yield.

2. But, we must add, when this happens, the state is bound to make good at public expense the damage to those who lose their property; and to this public levy the person himself who suffered the loss will contribute, if there is need.

   The state, furthermore, will not be relieved of this burden if perchance it is not equal to the payment at the time, but whenever the means shall be at hand the obligation will reassert itself as if merely held in suspension.[5]

Other writers disagreed with Hugo Grotius. Cornelius Van Bynkershoek preferred the term *imperium eminens*, since it more accurately expressed the idea of supreme power. He considered either necessity or convenience as sufficient ground for the exercise of this power. He also urged that compensation should be paid not merely for taking but also for consequential damages

[4] HUGO GROTIUS, DE JURE BELLI AC PACIS, BK. II, CH. XIX 796-97 (Francis Kelsey trans., 1964).

[5] *Id.* Ch. XX at 807.

by writing that the owner should be paid for every loss which private persons bear for the common necessity or utility.[6]

Like Van Bynkershoek, Samuel Puffendorf preferred to use the term "*imperium eminens*", as being more accurate. He divided control into *dominium* as used with respect to what one owns and *imperium* as used with respect to what belongs to others.[7]

Sharing the same sentiment Heinneccius wrote: "We confess that this use of the word is not quite apt, for the conception of '*dominium*' and that of '*imperium*' are different things; it is the latter and not the former which belongs to rulers." He conceded, "As there is no doubt about the absolute right, it is useless to condemn the word when once it has been accepted."[8]

All writers agreed that the power of eminent domain is exercised as an attribute of sovereignty.

Emmerich de Vattel thus wrote:

> In political society everything must give way to the common good; and if even the person of the citizen is subject to this rule, their property cannot be excepted. The state cannot live or continue to administer public affairs in the most advantageous manner, if it have not the power on occasion, to dispose of every kind of property under its control. It should be presumed that when the nation takes possession of a country, property in specific things is given up to individuals only upon this reservation.[9]

C. *England*

Sir William Blackstone discussed the power of eminent domain in the following words:

> So great, moreover, is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person,

[6] 1 BOUVIER'S LAW DICTIONARY 1008 (8th ed. 1914).

[7] *Id.*

[8] *Id.*

[9] *Id.*

> it might perhaps be extremely beneficial to the public, but the law permits no man, or set of men, to do this without the consent of the owner of the land. In vain may it be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or not. Besides, the public good is in nothing more essentially interested than in the protection of every individual's private right, as modeled by the municipal law. In this and similar cases, the legislature alone can, indeed frequently does, interpose and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner, but by giving him a full indemnification and equivalent for the injury sustained. The public is now considered as an individual, treating with an individual for an exchange. All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price, and even this is an exertion of power, which the legislature indulges with caution, and which nothing but the legislature can perform.[10]

The earliest act passed by the English Parliament providing for expropriation is one for supplying Gloucester with water in 1541-42 entitled "The Bill for the Conduyttes at Gloucester." A similar law was passed in 1543-44 for rebuilding London after the Great Fire.[11]

D. America

The common law of England was the law of the original thirteen colonies at the time of the American Revolution.[12] The power of eminent domain existed in the original thirteen colonies.[13]

The original text of the Constitution of the United States approved by the Constitutional Convention in 1787 did not contain a Bill of Rights. This omission was one of the most controversial issues during the debates before the ratification of the Constitution of the United States. In 1789, Congress adopted a Bill of Rights by approving the first Ten Amendments, which were ratified that same year.

[10] WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 240-42 (William Carey Jones ed., 1916).

[11] 1 BOUVIER'S LAW DICTIONARY 1009.

[12] ALFRED JAHR, LAW OF EMINENT DOMAIN 2 (1963).

[13] 26 AM JUR. 2d *Eminent Domain* § 2 (1966).

The Fifth Amendment provides in part:

> [N]or shall private property be taken for public use without just compensation.

Until the beginning of the nineteenth century, the power of eminent domain was not a very important topic in American colonies and states. The only objects of the exercise of the power of eminent domain were roads and grist mills, and the properties taken for such purpose were generally wild and of little value. When the United States became industrialized and factories, railroads, and other commercial and industrial activities began extending throughout the United States, the power of eminent domain assumed a new importance and began producing a distinctive line of jurisprudence.[14]

E. Spain

When Isabela II was overthrown from the Spanish throne in 1868, the Cortes assembled and approved a new Constitution. Article 14, Title I of the Constitution of 1869 provided:

> Nadie podra ser expropriady de sus bienes sino por causa de utilidad comun y en virtud de mandamiento judicial, que no se ejecutara sin previa indemnizacion regulada for el Juez, con intervencion del interesado.

When the Bourbons returned to power with the ascent of Alfonso XII to the Spanish throne, the Cortes adopted another constitution in 1876. Article 10, Title I of the 1876 Constitution read:

> No se impondra jamas la pena de confiscacion de bienes y nadie ser privado de su propiedad sino por autoridad competente Y por causa justificada de utilidad publica, previa siempre la correspondiente indemnizacion. Si no precediere este requisito, los jueces ampararan y en su caso reintegraran en la posesion del expropriado.

Article 349 of the Civil Code adopted in 1889 stated:

> Nadie podra ser privado de su propiedad sino por autoridad competente y por causa justificada de utilidad publica, previa siempre la correspondiente indemnizacion.
>
> Si no precediere este requisito, los Jueses ampararan, y en su caso, reintegraran en la posesion al expropriado.

[14] *Id.*

This provision traced its origins to Law 2, Title I, Partida 2 and Law 31, Title XVIII, Partida 3, the Law of July 31, 1836, various constitutional provisions especially Article IV, Title I of the Constitution of 1876, and the Law of Compulsory Expropriation of January 10, 1879 and the Regulation for its Execution of June 13, 1879.[15]

F. The Philippines

The Civil Code of Spain was extended to the Philippines by the Royal Decree of July 31, 1889.[16]

After the outbreak of the Philippine Revolution, the Malolos Congress adopted a constitution for the Revolutionary Government on January 20, 1899. The next day Emilio Aguinaldo, the President of the Revolutionary Government proclaimed the Philippine Constitution.[17]

Article 17, Title IV of the Malolos Constitution provided:

> Nadie podra ser expropriado de sus bienes sino por la autoridad correspondientem, mediante indeminzacion al proprietario, con anticipacion a la expropriation.

When Spain ceded the Philippines to the United States by virtue of the Treaty of Paris upon the conclusion of the Spanish-American War, the Philippines was initially governed by the American colonial authorities by virtue of the authority of the President of the United States as Commander-in-Chief of the army and the navy. On April 7, 1900, President William McKinley issued his Instructions to the Second Philippine Commission which ordered:

> Upon every division and branch of the Government of the Philippines, therefore, must be imposed these inviolable rules:
>
> xxx xxx xxx
>
> That private property shall not be taken for public use without just compensation.

Shortly afterwards, the Congress of the United States provided for the administration of the Philippines. On July 1, 1902, it enacted the Philippine Bill of 1902, which replaced the Instructions of President

[15] 3 JOSE MARIA MANRESA Y NAVARRO, COMMENTARIOS AL CODIGO CIVIL ESPAÑOL 222 (7th ed., 1952); 6 QUINTUS MUCIUS SCAEVOLA, CODIGO CIVIL 474-76 (5th ed., 1949).

[16] Benedicto v. De la Rama, 3 Phil. 34, 36 (1903).

[17] NICOLAS ZAFRA, THE MALOLOS CONGRESS 8 (1963).

William McKinley in the Second Philippine Commission as the fundamental law of the Philippines. Section 63 of the Philippine Bill of 1902 provided:

> That the Government of the Philippine Islands is hereby authorized, subject to the limitations and conditions prescribed in the Act; to acquire, receive, hold, maintain, and convey title to real and personal property, and may acquire real estate for public uses by the exercise of the right of eminent domain.

When the Philippine Bill of 1902 was superceded by the Autonomy Act, popularly known as the Jones Law, on August 29, 1916, Section 3 provided:

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

Public Act No. 127, popularly known as the Tydings- McDuffie Law, was approved on March 24, 1934. It authorized the Philippine Legislature to call a constitutional convention to draft a constitution. The Philippine Legislature called a constitutional convention by enacting Public Act No. 4125.

Section 1 (2), Article III of the 1935 Constitution provides:

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

In addition, Section 4, Article XIII of the 1935 Constitution reads:

> The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals.

Section 6, Article XIII of the 1935 Constitution also provided:

> The State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

When Congress enacted the Civil Code of the Philippines, it incorporated Article 349 of the Civil Code of Spain as Article 435, which states:

> No person shall be deprived of his property except by competent authority and for public use and always upon payment of just compensation.

> Should this requirement be not first complied with, the courts shall protect and, in a proper case, restore the owner in his possession.

On March 16, 1967, Congress passed Resolution No. 2, which called for a constitutional convention. The Constitutional Convention convened on June 1, 1971 to draft a new Constitution. On September 23, 1972, President Ferdinand Marcos proclaimed martial law throughout the Philippines. Under the shadow of martial law, on November 29, 1972, the Constitutional Convention hastily approved the draft of a new constitution. Although the draft was never ratified by the people, on January 17, 1973, President Ferdinand Marcos issued Proclamation No. 1102, which announced that the 1973 Constitution was now in force.

Section 2, Article IV of the 1973 Constitution reproduced verbatim Section 1 (2), Article III of the 1935 Constitution. Section 6, Article XIV of the 1973 Constitution also reproduced verbatim Section 6, Article XIII of the 1935 Constitution.

In addition, Section 12, Article XIV of the 1973 Constitution provided:

> The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in the Constitution.
>
> Such program may include the grant or distribution of alienable and disposable lands of the public domain to qualified tenants, farmers and other landless citizens in areas which the President may by or pursuant to laws reserve from time to time, not exceeding the limitations fixed in accordance with the immediately preceding Section.
>
> The State shall moreover undertake an urban land reform and social housing program to provide deserving landless, homeless or inadequately sheltered low-income resident citizens reasonable opportunity to acquire land and decent housing consistent with Section 2, Article IV of this Constitution.

Likewise, Section 13, Article XIV of the 1973 Constitution read:

> The Batasang Pambansa may authorize, upon payment of just compensation, the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens.

After a controversial election marred by rampant fraud on the part of former President Ferdinand Marcos, President Corazon C. Aquino assumed office on February 25, 1986 through a bloodless revolution.

After proclaiming a revolutionary government, she issued Proclamation No. 9 on April 23, 1986, which created a constitutional commission to draft a new Constitution. The 1987 Constitution was ratified by the people during the plebiscite held on February 2, 1987.

Section 9, Article III of the 1987 Constitution reproduced verbatim Section 1 (2), Article III of the 1935 Constitution.

Section 18, Article XII of the 1987 Constitution now provides:

> The State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership public utilities and other private enterprises to be operated by the Government.

In addition, Section 4, Article XIII of the 1987 Constitution states:

> The State shall, by law, undertake an agrarian reform program founded on the right of the farmers, and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity consideration, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Likewise, Section 9, Article XIII of the 1987 Constitution reads:

> The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such programs, the State shall respect the rights of small property owners.

Finally, Section 22, Article XVIII of the 1987 Constitution provides:

> At the earliest possible time, the Government shall expropriate idle or abandoned agricultural lands as may be deemed by law, for distribution to the beneficiaries of the agrarian reform program.

II. NATURE

A. *Definition and Attributes*

The power of eminent domain is the right of the government to take and appropriate private property for public use whenever public exigency requires. This can be done only on condition of providing a reasonable compensation for it.[18] It is "the highest and most exact idea of property remaining in the government that may be acquired for some public purpose through a method in the nature of a forced purchase by the State".[19]

The power of eminent domain is inherent in sovereignty. No law or constitutional provision is necessary. The reference to eminent domain in the Constitution merely limits it by prescribing the conditions for its exercise.[20] In exercising the power of eminent domain, the state exercises its *jus imperii*, as distinguished from its proprietary rights or *jus gestionis*.[21]

B. *Exercise*

The right to authorize the exercise of the power of eminent domain is exclusively legislative. Thus, in the absence of an enabling statue, the Commission on Elections cannot compel the print media to grant it print space for political advertisements.[22] Likewise, a private individual who was not granted the power of eminent domain cannot file an action to compel the owner of the lot on the opposite side of the street to grant him one and a half meters to widen the alley to enable his automobile to pass through the alley.[23]

[18] United States v. Toribio, 15 Phil. 85, 93 (1910).

[19] Manosca v. Court of Appeals, 252 SCRA 412, 418 (1996); Moday v. Court of Appeals, 268 SCRA 586, 592 (1987).

[20] Visayan Refining Company v. Camus, 40 Phil. 550, 558-89 (1919); Ardona v. Reyes, 125 SCRA 220, 231 (1983); Manotok v. National Housing Authority, 150 SCRA 89, 99 (1987); Cosculuella v. Court of Appeals, 164 SCRA 393, 398 (1988); Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, 175 SCRA 343, 376 (1989); *Manosca*, 252 SCRA at 418; Gatlin v. Republic, CA-G.R. No. 24387-R (21 May 1935) May 21, 1955; Municipality of Lubao v. Sebastian, 22 C.A. REP 2d 984, 988 (1977).

[21] Republic v. Sandiganbayan, 204 SCRA 212, 231 (1991); De los Santos v. Intermediate Appellate Court, 223 SCRA 11, 17 (1993).

[22] Philippine Free Press Institute, Inc. v. Commission on Elections, 244 SCRA 272, 280 (1995).

[23] Pascual v. Eugenio, 4 C.A.REP 2d 360, 364 (1963).

Once a general authority has been granted, expropriation proceedings may be filed without the need of special legislative authority every time any property will be expropriated.[24] The authority granted the power to exercise the power of eminent domain may then decide whether or not to exercise the power and to what extent to exercise it.[25]

The exercise of the power of eminent domain by the delegate must be based on the express terms of the statute or by clear implication. The implication cannot arise unless it is based on absolute necessity absent which the grant of authority will be defeated.[26] Thus, it was held that the City of Manila, authorized by its charter to expropriate private property for public use, could not expropriate for the purpose of extending a street a cemetery used by the general community, since its use by the general community made the cemetery public property.[27] Likewise, the Manila Railroad Company, authorized to expropriate land for the construction, operation and maintenance of a railroad, could not appropriate land to open a rock quarry.[28] On the other hand, the grant of the power of eminent domain cannot be restricted by implication.[29]

C. *Delegation*

§ 12, Chapter 4, Book III of the Administrative Code of 1987 has authorized the President to exercise the power of eminent domain. It provides:

> The President shall determine when it is necessary or advantageous to exercise the power of eminent domain in behalf of the National Government, and direct the Solicitor General, whenever he deems the action advisable, to institute the expropriation proceedings in the proper court.

While the power of eminent domain is inherent in the State, it is not inherent in local government units. Local government units may only exercise it if they have been granted such authority by the legislature.[30]

[24] *Visayan*, 40 Phil. at 557-58.

[25] Republic v. Juan, 92 SCRA 26, 40 (1979).

[26] Manila Railroad Company v. Hacienda Benito, Inc. 37 O.G. 1957, 1958 (1939).

[27] City of Manila v. Chinese Community of Manila, 40 Phil. 349, 369-70 (1919).

[28] *Hacienda Benito*, 37 O.G. at 1958.

[29] Siojo v. City of Cabanatuan, G.R. No. 128693 (30 Apr. 1997).

[30] Province of Camarines Sur v. Court of Appeals, 222 SCRA 173, 179 (1993); Municipality of Parañaque v. V.M. Realty Corp., 292 SCRA at 687; *Lubao*, 22 C.A.REP 2d at 988.

The Local Government Code of 1991 has granted all local government units the power of eminent domain. § 19, Chapter 2, Book I of the Local Government Code of 1991 provides in part:

> A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws.

If a local government unit will expropriate a parcel of agricultural land to be devoted to a different purpose, it need not get the prior approval of the Secretary of Agrarian Reforms.

In the *Province of Camarines Sur v. Court of Appeals*, the Supreme Court reversed the Court of Appeals. It reasoned:

> To sustain the Court of Appeals would mean that the local government units can no longer expropriate agricultural lands needed for the construction of roads, bridges, schools, hospitals, etc., without first applying for conversion of the use of the lands with the Department of Agrarian Reform, because all of these projects would naturally involve a change in the land use. In effect, it would then be the Department of Agrarian Reform to scrutinize whether the expropriation is for a public purpose or public use.[31]

This was reiterated in *Siojo v. City of Cabanatuan*, G.R. 128693, April 30, 1987.

The power of eminent domain may also be delegated to private individuals and corporations engaged in promoting the public interest or furnishing public service like railroads, telegraph and telephone companies, public service plants, and other public utilities.[32] In such case, the expropriated property should be devoted to public use. It does not require that the ownership be public.

D. Effect of Contracts

When the legislature delegates the power of eminent domain, it may impose restrictions upon its exercise. However, the limitations must be

[31] 222 SCRA at 181.

[32] Manila Railroad Company v. Paredes, 32 Phil. 534, 538 (1915); *Moday*, 268 SCRA at 592; *Parañaque*, 292 SCRA at 687.

expressed clearly.[33] When the power of eminent domain is not inherent and the exercise of the power is challenged, the courts must find that (1) a law exists for the exercise of the power of eminent domain; and (2) the power is being exercised in accordance with the law, in deciding the issue.[34]

A subsisting contract between two private parties involving the property sought to be expropriated can not bar the expropriation of the property.[35] Two private parties cannot bargain away the sovereign power of eminent domain of the State between themselves. However, if there is valid and subsisting contract of sale between the expropriating authority and the owner for the purchase of the property sought to be expropriated, the expropriating authority cannot file an action for expropriation. There is no basis for the expropriation as it lies only when made necessary by the owner's objection to the sale of the property to the expropriating authority.[36]

Absent a suggestion that the members of the print media do not wish to sell print space at normal rates for election purposes, they cannot be compelled to grant print space to the Commission on Elections.[37] However, in *Manosca v. Court of Appeals*, the Supreme Court ruled that the State could expropriate the property where Felix Manalo, the founder of the Iglesia ni Cristo was born, because of its historical interest. This despite a perfected contract of exchange between the owner of the property and the Iglesia ni Cristo. Since the government itself was not a party to the contract of exchange, it could not be bound by it.[38] This is what distinguishes this case from the earlier case of *Noble v. City of Manila*, 67 Phil. 1(1938). In that case the perfected contract was between the expropriating authority and the owner of the property sought to be expropriated.

If the property sought to be expropriated by the government is mortgaged, the owner should be required to cancel the mortgage. It is the right of the government to acquire the property free from encumbrance.[39]

[33] *Camarines Sur*, 227 SCRA at 179-80.

[34] *Chinese Community*, 40 Phil. at 358.

[35] *Ardona*, 125 SCRA at 238.

[36] Noble v. City of Manila, 67 Phil. 1, 6 (1938).

[37] *Philippine Press Institute*, 244 SCRA at 280.

[38] 252 SCRA at 423-24.

[39] Republic v. Phil National Bank, 1 SCRA 957, 965 (1961); *Lichauco*, 46 SCRA 305, 338 (1972).

III. THE ELEMENTS OF TAKING

A. *Concept*

Taking, under the power of eminent domain may be defined as entering upon private property for more than a momentary period under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as to substantially oust the owner and deprive him of all beneficial enjoyment of it.[40]

Thus, the following elements must be present for taking to occur:

1. The expropriator must enter a private property;
2. The entrance into the private property must be for more than a momentary period;
3. The entry into the property should be under warrant or color of legal authority;
4. The property must be devoted to a public use or otherwise informally appropriated or injuriously affected ;
5. The utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.[41]

The word "momentary" when applied to possession or occupancy of real property means a limited period, not indefinite or permanent.[42]

In *Republic v. Castellvi*, 58 SCRA 336, the main issue that cropped up was the date of the taking. This issue became of paramount importance because the just compensation was based on the fair market value of the property at the time of taking.

The Republic of the Philippines had been leasing the property involved in the case on a year-to-year basis since July 1, 1947 and using it as an air base. Upon expiration of the lease on June 30, 1956, the owner refused to renew the lease and filed an ejectment case. On June 26, 1959, the Republic of the Philippines filed an expropriation case. The trial court ordered that the Republic of the Philippines be placed in possession of the property, and the Republic of the Philippines was actually placed in possession on August 10, 1959.

[40] Republic v. Castellvi, 58 SCRA 336, 350 (1974).

[41] *Castellvi*, 58 SCRA at 350-52; *Small Landowners*, 175 SCRA at 379; National Power Corporation v. Court of Appeals, 254 SCRA 574, 590 (1996).

[42] *Castellvi*, 58 SCRA at 350.

The Republic of the Philippines argued that just compensation should be based on the fair market value of the property on July 1, 1947, since the taking occurred on the day it occupied the property because of the lease.

The Supreme Court rejected the argument of the Republic of the Philippines because the second and the fifth elements of taking were lacking. The entry into the property because of the lease was merely temporary. The owner was not deprived of all the beneficial enjoyment of the property because the Republic of the Philippines kept paying the stipulated monthly rentals.[43]

The same issue cropped up in the case of *National Power Corporation v. Court of Appeals*, 254 SCRA 577 (1996).

In 1978, the National Power Corporation (Napocor) took possession of a parcel of land under the mistaken belief that it was part of the public land reserved by Proclamation No. 1354 issued by the President for the construction of a hydroelectrical plant. When the National Power Corporation started the construction of the hydro-electrical plant in 1979, Macapanton Mangondato came forward, claimed ownership of the property and demanded just compensation. The National Power Corporation rejected his demand.

In 1990, the Napocor's finally recognized the ownership of Macapanton Mangondato and negotiated to purchase the property. In March, 1992, the parties signed a deed of absolute sale with a provision at price of one hundred pesos per square meter without prejudice to the claim of Macapanton Mangondato for just compensation. As the parties could not agree on the just compensation, the National Power Corporation filed an expropriation case on July 27, 1992.

In determining the just compensation, the Supreme Court used the fair market value of the property in 1992 as the basis. It explained at great length:

> In this case, the petitioner's entrance in 1978 was *without intent to expropriate or was not made under warrant or color of legal authority*, for it believed the property was public land covered by Proclamation No. 1354. When the private respondent raised his claim of ownership sometime in 1979, the petitioner flatly refused the claim for compensation, nakedly insisted that the property was public land and wrongly justified its possession by alleging, it had already paid "financial assistance" to Marawi City in

[43] *Id.* at 351-52.

> exchange for the rights over the property. Only in 1990, after more than a decade of beneficial use, did the petitioner recognize private respondent's ownership and negotiate for the voluntary purchase of the property. A deed of sale with provisional payment subject to negotiations for its correct price was then executed. Clearly, this is not the intent nor the expropriation contemplated by law. This is a simple attempt at a voluntary purchase and sale. Obviously, the petitioner neglected and/or refused to exercise the power of eminent domain (italics supplied).
>
> Only in 1992, after the private respondent sued to recover possession and petitioner filed its complaint to expropriate did petitioner manifest its intention to exercise the power of eminent domain.[44]

Thus, rationalizing that taking did not occur before 1992 in this case, the Supreme Court focused on the lack of the intent of the Napocor to expropriate the property when it took possession before that date.

Taking is not limited to instances where the owner is outright deprived of his property. There is taking by virtue of the power of eminent domain in the following instances: (1) when the owner is actually deprived or dispossessed of his property; (2) when there is a practical destruction or a material impairment of his property; and (3) when he is deprived of the ordinary use of his property.[45]

B. *Instances of Taking*

There are numerous cases where it is unquestionable that private property has been taken. The entry into private property for the purpose of constructing a road constitutes taking.[46] Bulldozing a parcel of land to widen a river to prevent the waters from overflowing the bridge in case of flood likewise constituted taking.[47] However, there was a twist to this in the case of the *National Power Corporation v. Court of Appeals*, 129 SCRA 665 (1984).

[44] *Napocor*, 254 SCRA at 590-91.

[45] Ansaldo v. Tantuico, 188 SCRA 300, 304 (1990); Republic v. Domingo, 21 C.A. REP 2d 515, 325 (1976).

[46] *Ansaldo*, 188 SCRA at 305; Daroca v. Pepito, C.A.-G.R. No. 22392-R (23 Jan. 1967); Entote v. City of Manila, C.A.-G.R. No. 31094-R (24 Aug. 1964).

[47] Guazon v. Mercado, 6 CARA 875, 876 (1989).

In 1961, the Napocor negotiated with the owners of a parcel land to purchase a portion of it to build an access road to its hydro-electric plant. Although the negotiations were not concluded, the owners allowed the Napocor to begin constructing the access road the same year. At that time, the land was agricultural and planted with cogon.

On December 7, 1962, a realty company acquired the property at a public auction with the intention of converting it to a residential subdivision and was issued a title. On February 14, 1963, the Napocor filed an expropriation case.

The Supreme Court ruled that taking occurred in 1961 when the Napocor constructed the access road. Hence, it was the fair market value of the property when it was still agricultural land which the Supreme Court used as basis for determining the just compensation.[48]

However, the Supreme Court was faced with a problem. The owner to be paid the just compensation was not yet the owner at the time of the taking. The owner at the time of the taking did not own the property anymore. To solve the problem, the Supreme Court considered the date of the acquisition of the property on December 7, 1962 as the date of the taking insofar as the new owner was concerned.[49] Thus, the Supreme Court used the fair market value of the property in 1961 as the basis for assessing the just compensation but awarded interest on the just compensation to the realty company as the new owner, only from December 7, 1962. The realty company was not yet the owner in 1961 and was not therefore entitled to any interest from 1961.

It is difficult to reconcile the two cases. In both instances, the Napocor took possession of the land without intent to expropriate the same before the filing of the expropriation cases. Likewise, the Napocor negotiated with the owner to acquire the land voluntarily. Nevertheless, in the first case, the Supreme Court considered the taking to have occurred on the date the expropriation case was filed. Whereas, in the second case, the Supreme Court considered taking to have occurred on the date the Napocor entered the land to construct the access road. In the first case, at the time of the entry into the property, the Napocor mistakenly believed that it was public land. In the second case, the Napocor knew from the very beginning that the land was private property. This is the only possible deduction one can draw to justify the different conclusions reached in those two cases.

[48] *Napocor*, 129 SCRA 665, 663-74 (1984).

[49] Napocor, 129 SCRA at 674.

In *Garcia v. Court of Appeals*, 102 SCRA 597, 608 (1981), where the Napocor filed an action for right of way and was granted permission by the court to occupy the land but the court rule that the Napocor could continue occupying the land only through expropriation, the taking was deemed to have occurred when the court rendered its decision. Before that, there was no taking for purposes of expropriation.

The acquisition of private agricultural land to implement the agrarian reform program of the government is definitely taking. It is not a mere limitation of the use of the land, what is required is the surrender of the title to the land, its physical possession and all beneficial rights accruing to the owner in favor of the beneficiary.[50]

Confiscation of property, although euphemistically called a forced donation, is actually taking. Thus, in *Philippine Press Institute, Inc. v. Commission on Elections*, 244 SCRA 272 (1995), the Supreme Court ruled that to compel publishers of newspapers to give at least one-half page for printing the political advertisements of candidates and political parties amounted to taking.[51] Likewise, the Supreme Court held that a Quezon City ordinance which compelled private memorial parks to donate at least six percent of the total area of the cemetery for the burial of pauper residents of Quezon City on pain of having their permit to operate revoked also amounted to taking. The Supreme Court dismissed the feeble attempt of Quezon City to defend the ordinance as an exercise of police power. It quoted with approval the following portions of the decision of the trial court:

> It will be seen from the foregoing authorities that police power is usually exercised in the form of mere regulation or restriction in the use of liberty or property for the promotion of the general welfare. It does not involve the taking or confiscation of property with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare as for instance, the confiscation of an illegally possessed article, such as opium and firearm.
>
> It seems to the court that Section 9 of Ordinance No. 6118, Series of 1964 of Quezon City is not a mere police regulation but an outright confiscation. It deprives a person of his private property without due process of law, nay, even without compensation.[52]

[50] *Small Landowners*, 175 SCRA at 373-74.

[51] *Philippine Press Institute*, 244 SCRA at 279.

[52] City Government of Quezon City v. Ericta, 122 SCRA 759, 764 (1983).

In National Development Company vs. Philippine Veterans Bank, 192 SCRA 257 (1990), the Supreme Court struck down Presidential Decree No. 1717, which cancelled all mortgages and liens on the properties of the Agrix group of companies and all accrued interests, penalties and charges pertaining to the debts of the Agrix group of companies after the collapse of the pyramiding scheme of Agrix Marketing, Inc.

The Supreme Court considered the provision as a patent case of taking without just compensation. It explained:

> A mortgage lien is a property right derived from contract and so comes under the protection of the Bill of Rights. So do interests on loans, as well as penalties and charges, which are also vested rights once they accrue. Private property cannot simply be taken by law from one person and given to another without compensation and any known public purpose. This is plain arbitrariness and is not permitted under the Constitution.[53]

Another arbitrary decree struck down by the Supreme Court was Presidential Decree No. 293. Carmel Farms, Inc. bought several parcels of land from the Bureau of Land. It developed the parcels of land into a residential subdivision and sold the lots to the public. With one stroke of the pen, former President Ferdinand Marcos annulled the titles of Carmel Farms, Inc. by issuing Presidential Decree No. 293 on the ground that Carmel Farms, Inc. did not pay the price in full. He also declared the lots available for disposition to the members of the Malacañang Homeowners Association, Inc.

In scathing words, the Supreme Court condemned Presidential Decree No. 293 as a stratagem for taking private property without due process and without just compensation.[54]

In *People v. Fajardo*, 104 Phil. 443 (1958), the Supreme Court nullified Ordinance No. 7, Series of 1950, enacted by the Municipality of Baao. The ordinance prohibited the construction of any building that would destroy the view of the public plaza. It reasoned:

> As the case the now stands, every structure that may be erected on appellants' land, regardless of its own beauty, stands condemned under the ordinance in question, because it would interfere with the view of the public plaza from the highway. The appellants would, in effect, be constrained to let their land

[53] National Development Company v. Philippine Veterans Bank, 192 SCRA 257, 263 (1990).

[54] Tuason v. Register of Deeds, 157 SCRA 613, 623 (1988).

remain idle and unused for the obvious purpose for which, it is best suited, being urban in character. To legally achieve their result, the municipality must give appellant just compensation and an opportunity to be heard.[55]

Thus, Ordinance No. 4, Series of 1950 effectively deprived the owner of the land of the right to construct. This distinguishes the case from the earlier case of *Churchill v. Rafferty*, 32 Phil. 580 (1915), where the Supreme Court upheld Act No. 2339, which authorized the removal of "*offensive*" billboards.[56] Act No. 2339 did not prohibit the construction of all kinds of buildings and structures. Thus, Act No 2339 merely regulated the use of the property, while Ordinance No. 7, Series of 1950 prohibited all legitimate use of the property.

In *Teresa Realty, Inc. v. Potenciano*, the Supreme Court nullified Republic Act No. 1599, which indefinitely prohibited the filing of ejectment cases and the continuation of pending ejectment cases against tenants of landed estates in Manila, even if no case had been filed for the expropriation of the landed estate.[57] The prohibition amounted to taking without payment of just compensation, since it stripped the owners of their rights of dominion. Republic Act. No. 3453, of the same tenor, suffered the same fate.[58]

A landowner can be prohibited from ejecting his tenants only if an action for expropriation has actually been filed; the government has taken possession of the land; and just compensation has been paid.[59]

The Supreme Court also repeatedly held that Republic Act No. 1383, which transferred to the National Waterworks and Sewerage Authority the jurisdiction, supervision, and control of the waterworks systems of cities and municipalities, deprived the cities and municipalities of their property without just compensation. Without possession, control and enjoyment, the ownership of the cities and municipalities became an

[55] People v. Fajardo, 104 Phil. 443, 448 (1958).

[56] *Churchill*, 32 Phil. at 608.

[57] 5 SCRA 211, 217 (1962); Tuazon v. Alberto, C.A.-G.R. No. 29109-R (7 Aug. 1962); Sanvictores v. Caluag, C.A.-G.R. No. 30892-R 31 Aug. 1962); J.M. Tuason and Company, Inc. v. Cabildo, 6 SCRA 477, 481 (1962).

[58] Cuatico v. Court of Appeals, 6 SCRA 595, 599 (1962).

[59] Teresa Realty, Inc. v. State Construction and Supply Company, 105 Phil. 353, 356 (1959); *Cuatico* 6 SCRA at 601; J.M. Tuason and Company, Inc. v. Jaramillo, 9 SCRA 189, 197 (1963); Familara v. J.M. Tuason and Company, Inc., 49 SCRA 338, 342 (1973).

empty shell.[60] Likewise, the National Waterworks and Sewerage Authority could not take over the collection of the fees paid by the consuming public for the water supplied by the waterworks system owned by cities and municipalities.[61]

In 1991, the Supreme Court finally ruled that the acquisition of a right of way for the construction of electric transmission wires constituted taking. It perpetually deprived the owners of the servient estates of their property rights, since they could not plant any tree whose branches might get entangled with the high-tension wires or go near the high-tension wires.[62]

The Court of Appeals had made a similar pronouncement way back in 1963.[63] In the same year, the Court of Appeals handed down a contrary ruling when it held that the construction of the electrical transmission lines entailed merely the grant of a right of way and not an expropriation.[64] However, in subsequent decisions, the Court of Appeals consistently ruled that the construction of the elective transmission lines involved taking.[65] This represents the weight of authority and the better view.

This is in line with an earlier ruling by the Supreme Court that the imposition of an easement upon private land constituted expropriation.[66] The Supreme Court later held that by virtue of the power of eminent domain of the government, the Bureau of Telecommunications could compel a private telephone company to interconnect with the government telephone system, for this was similar to an easement. If the government could acquire title to the telephone system of the private telephone

[60] Municipality of La Carlota v. National Waterworks and Sewerage Authority, 12 SCRA 104, 167 (1964); Municipality of San Juan v. National Waterworks and Sewerage Authority, 20 SCRA 1210, 1213 (1967).

[61] National Waterworks and Sewerage Authority v. Dator, 21 SCRA 355, 358 (1967).

[62] National Power Corporation v. Gutierrez, 193 SCRA 1, 7 (1991).

[63] National Power Corporation v. Domestic and Foreign Mission Society of the Protestant Episcopal Church of the United States of America, 4 C.A. REP 2d 762, 771-72 (1963).

[64] National Power Corporation v. Rivera, 4 C.A. REP 2d 1040, 1047, 1048 – 49 (1963).

[65] National Power Corporation v. Bernal, 14 C.A. REP 2d 987, 997 (1969); National Power Corporation v. Robes-Francisco Realty Corporation, CA-G.R. No. 44038-R (5 Dec. 1974); National Power Corporation v. Morales, CA-G.R. No. 49864-R (11 July, 1975); National Power Corporation v. Villaluz, CA-G.R. No. 49765-R (24 Nov. 1975).

[66] Ayala de Roxas v. City of Manila, 9 Phil. 219, 221 (1907); Heirs of Malfore v. Director of Forestry, 109 Phil. 586, 591 (1960).

company by wielding its power of eminent domain, it could allow the private telephone company to retain title to the telephone system but impose a burden upon it.[67]

The common theme running through these decisions is that taking is not limited to outright deprivation of ownership. It includes any divestment of the substantial attributes of ownership.

C. *Absence of Taking*

In some instances, there is no taking. The ejectment of the stallholders from a public market because of the expiration of their lease does not constitute expropriation even if the improvements they introduced would be forfeited without just compensation. They knew all along that their occupation of the stalls was temporary.[68]

Similarly, the transfer to a national agency of the administration and disposition of communal land previously allotted to a city does not entitle the city to any just compensation. There is no appropriation. The property belonged to the government. It merely granted a usufruct over it to the city and was now manifesting its right to deal with its own property.[69]

D. *Exercise of Police Power*

If what the government is exercising is not the power of eminent domain but police power, the owner of the property affected by the action of the government is not entitled to just compensation. Police regulations do not involve taking of property for public use but merely regulation for the sake of public interest.

This principle is embodied in Article 436 of the Civil Code, which provides:

> When property is condemned or seized by competent authority in the interest of health, safety or security, the owner thereof shall not be entitled to compensation unless he can show that such condemnation or seizure is unjustified.

Thus, the enactment of a zoning ordinance, which restricts the uses of real property for the sake of the public welfare, is an exercise of police

[67] Republic v. Philippine Long Distance and Telephone Company, 26 SCRA 620, 628 (1969).

[68] Salgado v. De la Fuente, 87 Phil. 343, 347 (1950).

[69] Salas v. Jarencio, 46 SCRA 734, 752 (1972).

power. It does not involve taking and does not entitle the owners adversely affected to just compensation.[70]

Neither does a prohibition against the slaughter of carabaos which are still fit for agricultural work entitle the owners of carabaos to just compensation, because it is not an exercise of the power of eminent domain but of police power. It merely limits the rights of ownership.[71]

For the sake of public safety, the government can order the destruction of a house falling to decay, the demolition of properties to prevent the spread of fire, the slaughter of diseased cattle, and the destruction of decayed and unwholesome food.[72] Similarly, to prevent the spread of *kadang-kadang*, the government can order the destruction of coconut trees.[73] Obscene materials can be ordered destroyed to protect public morals.[74]

Demolishing gates which hindered the use of a public street does not entitle the owner of the gates to just compensation. This was a case of abatement of a nuisance, since the gates impaired the property.[75]

The inconvenience suffered by the owner of a residential property because of the closure of the road fronting his house does not entitle him to just compensation, because his property was not expropriated.[76]

In the case of *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, 289 SCRA 337 (1998), a split Supreme Court upheld the constitutionality of Section 92 of the Omnibus Election Code, which amended the franchises of all radio and television stations by requiring them to give free time for political advertisements during the campaign period.

Falling back on Section 11, Article XII of the Constitution, the majority decision penned by Justice Vicente Mendoza reasoned:

[70] Seng Kee and Company v. Earnshaw, 56 Phil. 204, 214 (1931); Tan Chat v. Municipality of Iloilo, 60 Phil. 465, 480 (1934).

[71] *Toribio*, 15 Phil. at 93-4.

[72] *Small Landowners*, 175 SCRA at 370; 2 ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 89 (edition 1992).

[73] JOAQUIN G. BERNAS, S.J. THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 380 (1996).

[74] *Small Landowners*, 175 SCRA at 370.

[75] Sangalang v. Intermediate Appellate Corut, 176 SCRA 719, 732 (1989).

[76] Cabrera v. Court of Appeals, 195 SCRA 314, 321 (1991).

> All broadcasting, whether by radio or by television stations, is licensed by the government. Airwave frequencies have to be allocated as there are more individuals who want to broadcast than there are frequencies to assign. A franchise is thus a privilege subject, among other things, to amendment by Congress in accordance with the constitutional provision that 'any such franchise or right granted...shall be subject to amendment, alteration or repeal by the Congress when the common good so requires.[77]

On the other hand, Justice Artemio Panganiban, who dissented, relied on Section 9, Article III of the Constitution:

> Once granted, a franchise (not the air lanes) together with the concomitant private rights, becomes property of the grantee. It is regarded by law precisely as other property and, as any other property, it is safeguarded by the Constitution from arbitrary revocation or impairment. The rights under a franchise can be neither taken nor curtailed for public use or purpose, even by the government as the grantor, without payment of just compensation as guaranteed under our fundamental law.[78]

IV. PUBLIC USE

A. *Meaning*

Public use has traditionally been identified with beneficial use for the community. Public use is one which confers some benefit or advantage to the public.[79] Public use does not require that the benefit extend to the whole public or a considerable portion of it, or that each individual member of the community have the same degree of interest in such use. The fact that use or benefit is limited to the residents of a small locality or that the number of persons expected to avail themselves of it is small, is immaterial.[80] Public use is measured in terms of the right of the public to use the proposed facilities for which condemnation is sought and, so long as the public has the right of use, whether exercised by one or many members of the public, a public advantage or benefit accrues sufficient to constitute a public use.[81]

[77] 289 SCRA 347 (1998).

[78] 289 SCRA at 373-74.

[79] Seña v. Manila Railroad Company, 42 Phil. 102, 105 (1921); *Manosca*, 252 SCRA at 421.

[80] *Manosca*, 252 SCRA at 419-20; City of Zamboanga v. Alvarez, 16 C.A. REP 2d 821, 827 (1971).

[81] *Manosca*, 252 SCRA at 420.

B. *Traditional Concept*

Certain traditional purposes have indisputably been recognized as public use, such as, the construction of roads, bridges, ports, waterworks, schools, electric and telecommunications systems, power plants, public markets, slaughterhouses, parks, hospitals, government offices, and flood control and irrigation systems.[82]

The following uses have also been upheld as public:

1. Military base[83]
2. Railroad[84]
3. Military academy[85]
4. Waste dumpsite[86]

C. *Social Reforms*

Initially, the Supreme Court ruled that the expropriation of a parcel of land which is not a large estate to be subdivided and resold for residential purposes is not for a public purpose, since it would benefit a few families only.

In the 1949 case of *Guido v. Rural Progress Administration*, 84 Phil. 847, 893-824, a unanimous Supreme Court held:

> In a broad sense, expropriation of large estates, trusts in perpetuity, and land that embraces a whole town, or a large section of a town or city, bears direct relation to the public welfare. The size of the land expropriated, the large number of people benefited, and the extent of social and economic reform secured by the condemnation, clothes the expropriation with public interest and public use. The expropriation in such cases tends to abolish economic slavery, feudalistic practices, endless conflicts between landlords and tenants, and other evils inimical to community prosperity and contentment and public peace and

[82] Municipality of Albay v. Benito, 43 Phil. 576, 581 (1922); *Ardona*, 125 SCRA at 232-33; *Cosculluela*, 164 SCRA 393, 400 (1988); *Alvarez*, 16 C.A. REP 2d at 827; Macapundag v. City Court of Marawi, C.A.-G.R. No. 50980-R (12 Aug. 1982).

[83] *Visayan*, 40 Phil. at 558; *Castellvi*, 58 SCRA at 352.

[84] *Seña*, 42 Phil. at 105–6.

[85] Benguet Consolidated, Inc. v. Republic, 143 SCRA 466, 472 (1986).

[86] Esteban v. Court of First Instance of Negros Occidental, 17 C.A. REP 2d 758, 763 (1972).

order. Although courts are not in agreement as to the tests to be applied in determining whether the use is public or not, some go so far in the direction of a liberal construction as to hold that public use is synonymous with public benefit, public utility, or public advantage, and to authorize the exercise of the power of eminent domain to promote such public benefit, etc., especially where the interests involved are of considerable magnitude. (29 C.J.S. 823, 824. See also People of Puerto Rico vs. Eastern Sugar Associates, 156 Fed. [2nd], 316.) In some instances, slumsites have been acquired by condemnation. The highest court of New York State has ruled that slum clearance and erection of houses for low-income families were public purposes for which New York City Housing authorities could exercise the power of condemnation. And this decision was followed by similar ones in other states. The underlying reasons for these decisions are that the destruction of congested areas and unsanitary dwellings diminishes the potentialities of epidemics, crime and waste, prevents the spread of crime and diseases to unaffected areas, enhances the physical and moral value of the surrounding communities, and promotes the safety and welfare of the public in general. (Murray vs. La Guardia, 52 N.E. [2nd], 884; General Development Coop. Vs. City of Detroit, 33 N.W. [2nd], 919; Weizner vs. Stichman, 64 N.Y.S. [2nd], 50.) But it will be noted that in all these cases and others of similar nature, extensive areas were involved and numerous people and the general public benefited by the action taken.

> The condemnation of a small property in behalf of 10, 20 or 50 persons and their families does not inure to the benefit of the public to a degree sufficient to give the use public character. The expropriation proceedings at bar have been instituted for the economic relief of a few families devoid of any consideration of public health, public peace and order, or other public advantage. What is proposed to be done is to take plaintiff's property, which for all we know she acquired by sweat and sacrifice for her and her family's security, and sell it at cost to a few lessees who refuse to pay the stipulated rent or leave the premises.[87]

In all these cases, the Supreme Court stressed the smallness of the area of the parcel of land sought to be expropriated.

[87] Commonwealth of the Philippines vs. De Borja, 85 Phil. 51, 57-8 (1949); City of Manila vs. Arellano Law Colleges, Inc., 85 Phil. 663, 665-66 (1950); Lee Tay & Lee Chay, Inc. vs. Choco, 87 Phil. 814, 817 (1950); Urban Estates, Inc. vs. Montesa, 88 Phil 348, 352 (1951); Pangilinan vs. Peña, 89 Phil. 122, 125 (1951); and Repulic vs. Samia, 89 Phil 483, 486 (1951).

However, in *Rural Progress Administration v. Reyes*, G.R. No. L-4703, October 8, 1953, a split Supreme Court allowed the expropriation of three lots with a total area of around ten hectares. The Supreme Court shifted its focus from the area of the parcels of land sought to be expropriated to the problem of social unrest. The lots sought to be expropriated previously formed part of a large estate and had been occupied by the present occupants and their ancestors since time immemorial.

Fulminating with rhetoric, Justice Guillermo Pablo wrote for the majority:

> Cuando todas las familias tengan un pedazo de tierra que laborar y un hogar que defender, nadie pensara en abrazar la doctrina perniciosa del comunismo o en hacerse Huk. En los campos como en las ciudades reina el hambre entre las masas mientras frequentan los festines de la clase acomodada. Esa desigualdad es la que atiza el fuego del odio de clase aqui como en todas partes y en todas las edades. Ese es la problema social que la ley de expropriacion se propone resolver. La extension del terreno no es el unico factor que determina su expropiabilidad.

The triumph of the viewpoint of Justice Guillermo Pablo was short-lived. The following year, a unanimous Supreme Court, which included Justice Guillermo Pablo, reverted to its previous ruling when it decided the case of the *Municipality of Caloocan v. Manotok Realty, Inc.*, 94 Phil. 1003, 1005 (1954).

In its next decision in the *Municipal Government of Caloocan v. Choan Huat and Company*, 96 Phil. 88, 92-3 (1954), the Supreme Court again followed its ruling in the Guido case. This time Justice Guillermo Pablo dissented. He cited Section 4, Article XIII of the 1935 Constitution, which authorized the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals and warned:

> Si a los filipinos pobres no se les proporciona la oportunidad de poseer un pedazo de terreno en que leventar su casucha, tendran que remontarse y adoptar la vida nomada de los negritos y tinguianes, o identificarse con los Huks, o tendran que vivir en balsas sobre los esteros o en 'barongbarongs' en los parques o terrenos del gobierno.[88]

In this case, Justice Guillermo Pablo was the sole dissenter.

In the next case of *Republic vs. Baylosis*, 96 Phil. 461, 479-80 (1955), while the majority stuck to its rule in the Guido case, two other justices joined Justice Guillermo Pablo in his dissent.

[88] *Choan Huat*, 96 Phil. at 97.

In his dissenting opinion, Justice J.B.L. Reyes relied principally on Section 4, Article XIII of the 1935 Constitution:

> The propriety of exercising the power of eminent domain under Article XIII, section 4 of our Constitution cannot be determined on a purely quantitative or area basis. Not only does the constitutional provision speak of *lands* instead of *landed estates*, but I see no cogent reason why the government, in its quest for social justice and peace, should exclusively devote attention to conflicts of large proportion, involving a considerable number of individuals, and eschew small controversies and wait until they grow into a major problem before taking remedial action.[89] (italics supplied)

The dissents of the minority proved futile. The Supreme Court and the Court of Appeals consistently followed the *Guido* ruling in their later decisions until 1970.[90]

Then came the case of *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 31 SCRA 413 (1970), which involved the constitutionality of Republic Act No. 2616.

Republic Act No. 2616 provided for the expropriation of the Tatalon Estate to be subdivided and sold at cost to the *bona fide* occupants. J.M.Tuason and Company, Inc. questioned the constitutionality of the law. The trial court decided in favor of J.M. Tuason and Company, Inc.

The Supreme Court reversed the decision of the trial court. The main opinion penned by Justice Enrique Fernando relied greatly on the dissenting opinion of Justice J.B.L. Reyes in *Baylosis*.[91] However, only four justices concurred without qualification in the main opinion. Justice Querube Macalintal concurred in the result. Justice Claudio Teehankee wrote a concurring and dissenting opinion. Four justices, including Justice J.B.L. Reyes, concurred in the opinion of Justice Claudio Teehankee.

[89] *Baylosis*, 96 Phil. at 502. (Italics supplied by Justice J.B.L. Reyes).

[90] Province of Rizal v. Bartolome San Diego, Inc., 105 Phil. 33, 38 (1959); National Resettlement and Rehabilitation Administration v. De Francisco, 109 Phil. 764, 768 (1960); De Cases v. Peyer, 5 SCRA 1165, 1170 (1962); Republic v. Prieto, 7 SCRA 1004, 1008-1009 (1963); Province of Bulacan v. B.E. San Diego, Inc., 11 SCRA 640, 642 (1964); Philippine Realtors, Inc. v. Santos, 12 SCRA 267, 269 (1964); Republic v. Manotok Realty, Inc., 12 SCRA 640, 642 (1964); Gabriel v. Reyes, 16 SCRA 952, 956-7 (1966); J.M. Tuazon & Co., Inc. v. Bancod, CA-G.R. No. 30436-R (12 Dec. 1963).

[91] *Land Tenure*, 31 SCRA at 427-28.

In his separate opinion, Justice Claudio Teehankee stressed the prematurity of undertaking a re-examination of *Baylosis*, since two factual issues should first be determined, namely, what was the area of the property authorized to be appropriated by Republic Act No. 2616 and whether the beneficiaries of the law were *bona fide* occupants or squatters.[92]

Thus, the pronouncement in the main seemed to be inconclusive.

In any event, the *Baylosis* ruling should be abandoned. Echoing Justice J.B.L. Reyes's dissent, the main opinion in *J.M. Tuason and Company, Inc. v. Land Tenure Administration* stated that the authority granted by Section 4, Article XIII of the 1935 Constitution upon Congress to expropriate land to be subdivided into small lots and conveyed at cost to individual referred to lands and not landed estates. For his part, Justice Antonio Barredo alluded in his concurring opinion to the debates in the Constitutional Convention.[93]

Indeed, Section 4, Article XIII of the 1935 Constitution should be interpreted as conferring upon Congress the power to direct the expropriation of lands which it could not otherwise have ordered under Section 1(2), Article III of the 1935 Constitution. To give the two provisions the same meaning and scope will render Section 4, Article XIII superfluous.

In subsequent cases, the Supreme Court has consistently authorized the expropriation of lands, even if they were not large estates, to be subdivided and resold to individuals.[94]

Recognizing that socialized housing is public use, the Supreme Court said:

> Housing is a basic human need. Shortage in housing is a matter of state concern since it directly and significantly affects public health, safety, the environment and in sum, the general welfare. The public character of housing measures does not change because units in housing projects cannot be occupied by all but only by those who satisfy prescribed qualifications. A beginning has to be made, for, it is not possible to provide housing for all who need it, all at once.[95]

[92] *Land Tenure*, 31 SCRA at 508.

[93] *Land Tenure*, 31 SCRA at 445-46.

[94] Mataas na Lupa Tenants Association, Inc. v. Dimayuga, 130 SCRA 30, 40-1 (1984); Sumulong v. Guerrero, 154 SCRA 461, 471 (1987); *Camarines Sur*, 222 SCRA 173, 178 (1993); Philippine Columbian Association v. Panis, 228 SCRA 668, 673 (1993).

[95] *Sumulong*, 159 SCRA at 468-69.

Although Section 4, Article of the 1935 Constitution has not been reproduced in the 1987 Constitution, Congress can still authorize the expropriation of lands to be subdivided and sold for residential purposes. It was not the intention of the Constitutional Commission to withhold this power from Congress.

Section 9, Article XIII of the 1987 Constitution provides in part:

> The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizen in urban centers and resettlement areas.

While socialized housing constitutes public use, the land sought to be expropriated for the socialized housing program of the government must itself be used for residential purposes. The property cannot be used to operate a commercial center whose profits will be used to finance low-cost housing projects.[96] To satisfy the requirement of public use, the property must be directly devoted to socialized housing. To use it to raise funds to finance socialized housing is an indirect use and does not satisfy the requirement of public use.

While the parcel of land need not be a large estate in order that it may be subject to expropriation for socialized housing, small lots cannot be expropriated.

Section 9, Article XIII of the 1987 Constitution states:

> In the implementation of such program, the state shall respect the rights of small property owners.

Thus, the Court of Appeals ruled that a parcel of land measuring 1,500 square meters was so small that it could not be expropriated for a low-cost housing project.[97]

However, the power of the government to expropriate private lands for socialized housing has been restricted by the order of priorities laid down in Section 9 of the Urban Development and Housing Act,[98] which provides:

[96] *Manotok*, 150 SCRA at 104.

[97] Municipality of Porac v. Escoto, 4 CARA 511, 515-16 (1988).

[98] Republic Act No. 7279 (1992).

> Lands for socialized housing shall be acquired in the following order:
>
> (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;
>
> (b) Alienable lands of the public domain;
>
> (c) Unregistered or abandoned and idle lands;
>
> (d) Those within the declared Areas for Priority Development, Land Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
>
> (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and
>
> (f) Privately-owned lands.
>
> Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands."

Thus, in *Filstream International, Inc. v. Court of Appeals*, the Supreme Court disallowed the expropriation of private land for socialized housing on the basis of this provision, saying:

> Petitioner, Filstream's properties were expropriated and ordered condemned in favor of the City of Manila sans any showing that resort to the acquisition of other lands listed under Sec. 9 of R.A. 7279 have proved futile.[99]

The expropriation of agricultural land pursuant to an agrarian reform program is also for public use.

Section 4, Article XIII of the 1987 Constitution provides in part:

> The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or,

[99] 284 SCRA 716, 732 (1998).

in the case of other farmworkers, to receive a just share of the units thereof. To this end, the state shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation.

Since the 1987 Constitution itself requires the government to undertake an agrarian reform, the question of whether the taking of agricultural land for such purpose has been foreclosed.

Thus, the Supreme Court held:

> As earlier observed, the requirement for public use has already been settled for us by the Constitution itself. No less than the 1987 Charter calls for agrarian reform, which is the reason why private agricultural lands are to be taken from their owners, subject to the prescribed maximum retention limits.[100]

D. Progressive Concept

As early as 1921, the Supreme Court recognized that the concept of public use is constantly growing because of the increasing social demands.[101] The Supreme Court reaffirmed this principle when it allowed the expropriation of land for development into a tourist resort. It rejected the argument that the taking was not for a public use since the tourist resort would be let to private parties by saying:

> The petitioner's contention that the promotion of tourism is not public use because private concessionaires would be allowed to maintain various facilities such as restaurants, hotels, stores, etc. inside the tourist complex is impressed with even less merit. Private bus firms, taxicab fleets, roadside restaurants, and other private businesses using public streets and highways do not diminish in the least bit the public character of expropriations for roads and streets.[102]

The Supreme Court considered the taking of land for the establishment of a pilot development center for agriculture, fishing, and cottage industry as for public use.[103]

[100] *Small Landowners*, 175 SCRA at 378.

[101] *Seña*, 42 Phil. at 105.

[102] *Ardona*, 125 SCRA at 235.

[103] *Camarines Sur*, 222 SCRA at 178.

The use of the print media to inform the public of the identities, qualifications, and programs of candidates for elective office is public in character.[104] The expropriation of the place of birth of Felix Manalo, the founder of the Iglesia ni Cristo, satisfied the requirement of public use. The site is vested with historical interest because of his contribution to Philippine history and culture.[105]

E. Judicial Review

Since the 1987 Constitution requires that expropriation be for a public use, the courts can review whether or not the use is in fact public. This is a judicial question.[106] However, if the use is public, the courts cannot review the wisdom of the policy to expropriate the property for that purpose. This is no longer a judicial question but a political question.[107]

V. CHOICE OF THE PROPERTY

A. Kinds of Property

The power of eminent domain is all-encompassing. It covers all forms of private property, real or personal, tangible or intangible, including rights attached to land. Thus, the fact that a mining claim has been perfected over a parcel of land does not bar its expropriation.[108] Even property devoted to religious worship can be expropriated.[109]

B. Selection by the Legislature

In *J.M. Tuazon and Company, Inc. v. Land Tenure Administration*, 31 SCRA 413 (1970), the Supreme Court upheld the validity of Republic Act No. 2616, which provided for the expropriation of the Tatalon Estate, despite the challenge mounted against it that the law violated equal protection. J.M. Tuason and Company, Inc. argued that the law singled out its property for expropriation and did not include other lands which were similarly situated.

[104] *Philippine Press Institute*, 244 SCRA at 280.

[105] *Manosca*, 252 SCRA at 422.

[106] *Chinese Community*, 40 Phil. at 364; *Manotok*, 160 SCRA at 101.

[107] Pulido v. Court of Appeals, 122 SCRA 63, 73 (1983).

[108] Benguet Consolidated, Inc. v. Ramirez, 143 SCRA 466, 478 (1986).

[109] Barlin v. Ramirez, 7 Phil. 41, 56 (1906).

The main opinion repelled the attack by reasoning:

> Moreover, there is nothing to prevent Congress in view of the public funds at its disposal to follow a system of priorities. It could then determine what lands would first be the subject of expropriation. This it did under the challenged legislative act. As already noted, Congress was moved to act in view of what it considered a serious social and economic problem. The solution which for it was most acceptable was the authorization of the authorization of the expropriation of the Tatalon Estate.[110]

While agreeing with the main opinion, Justice Claudio Teehankee expressed reservations in his concurring and dissenting opinion:

> It is noted that this is the first case where Congress has singled out a particular property for condemnation under the constitutional power conferred upon it. Does this square with the due process and equal protection clauses of the Constitution? Is the explanatory note of the bill later enacted as Republic Act 2616, without any evidence as to a hearing with the affected parties having been given the opportunity to be heard, and citing merely the population increase of Quezon City and the land-for-the-landless programs sufficient guarantees? Rather, does not the need for a more serious scrutiny as to the power of Congress to single out a particular piece of property for expropriation, acknowledged in the main opinion, call for judicial scrutiny, with all the facts in, as to the need for the expropriation for full opportunity to dispute the legislative appraisal of the matter? And who should bear the burden of demonstrating that the equal protection guarantee had been observed, the state or the owner whose property has been singled out?[111]

However, in *Manotok v. National Housing Authority*, 150 SCRA 59 (1987), the Supreme Court struck down Presidential Decree Nos. 1669 and 1670, which directly expropriated the Tambunting Estate and the Sunog-Apog area, respectively. Presidential Decree Nos. 1669 and 1670 sought to justify the expropriation of these areas on the ground that they were blighted areas, which should be covered by the urban land reform program.

The Supreme Court pointed out that the factual bases of Presidential Decree No. 1669 and 1670 were unfounded. The Tambunting Estate was a valuable commercial area, while the Sunog-Apog area was a well-developed residential subdivision.[112] The Supreme Court then concluded that Presidential Decree Nos. 1669 and 1670 violated due process:

[110] *Land Tenure*, 31 SCRA at 439.

[111] *Land Tenure*, 31 SCRA at 509.

[112] *Manotok*, 150 SCRA at 104-5.

> The decrees, do not, by themselves, provide for any form of hearing or procedure by which the petitioners can question the propriety of the expropriation of their properties or the reasonableness of the just compensation.[113]

In his concurring opinion, Chief Justice Claudio Teehankee explained the impact of the decision of the Supreme Court:

> The Court now clearly rules that such singling out of properties to be expropriated by Presidential Decree is in the case at bar, or by act of legislature as in *Tuason*, does not foreclose judicial scrutiny and determination as to whether such expropriation by legislative act transgresses the due process and equal protection; and just compensation guarantees of the Constitution.[114]
>
> Diametrically opposed conclusions were reached in the Tuason and Manotok cases. Can these two decisions be reconciled at all?

The import of the concurring opinion of Chief Justice Claudio Teehankee in *Manotok* is that the legislature can pass a law singling out a certain piece of property for expropriation. However, the selection of the property is subject to judicial review and may be nullified if it is arbitrary. To this extent, the decisions in the two cases are consistent.

Conflicting conclusions were reached in the two cases because of two distinctions. In *Tuason*, Congress enacted Republic Act No. 2616 in response to a social problem. The occupants of the Tatalon Estate bought the lots in good faith from the Veterans Subdivision, whom J.M. Tuazon, and Company, Inc. led the occupants to believe represented the real owner. On the other hand, in *Manotok*, the Supreme Court found that there was no social problem besetting the Tambunting Estate and the Sunog-Apog area, as they were not blighted areas. Moreover, Section 2 of Republic Act No. 2616 provided for the filing of the necessary expropriation cases. On the other hand, Presidential Decree Nos. 1669 and 1670 did not provide for the filing of any condemnation proceedings. It expropriated the Tambunting Estate and the Sunog-Apog area outright. In the process, it did not afford the owners a chance to be heard and deprived them of due process.

C. *Selection by the Expropriating Authority*

[113] *Manotok*, 150 SCRA at 105.

[114] *Manotok*, 150 SCRA at 112.

As a rule, the expropriating authority has the discretion to choose the property that will be expropriated. Its choice will not be interfered with by the courts unless it is tainted with bad faith and is capricious, wantonly injurious, or beyond the authority delegated by law.[115] Thus, the owner of a parcel of land sought to be expropriated for the expansion of a park could not question the selection of his property, because some other lots could be expropriated instead.[116]

In *De Knecht v. Bautista*, 100 SCRA 660 (1980), the Supreme Court branded with the stigma of grave abuse of discretion the extension of Epifanio de los Santos Avenue along Fernando Rein and Del Pan Streets. The Department of Public Highways deviated from the original plan to construct the extension along Cuneta Avenue. From the engineering and traffic management viewpoint, the alignment of the extension along Cuneta Avenue was straighter and shorter. Moreover, the buildings to be affected by the extension along Cuneta Avenue were mostly motels, while the Fernando Rein and Del Pan Streets were lined with houses of substantial value.[117]

The victory of Cristina de Knecht proved to be empty. Since the Supreme Court did not enjoin the construction of extension during the pendency of the case, the Department of Public Highways continued with the construction. When it lost the case, the Batasang Pambansa enacted Batas Pambansa Blg. 340, which specifically expropriated the very properties involved in the case.

The Supreme Court bowed to the will of the Batasang Pambansa. It justified its stance by reasoning that supervening events had overtaken the finality of its decision. All residents in the area with the sole exception of Cristina de Knecht had been relocated. Batas Pambansa Blg. 340 simply recognized the supervening event.[118]

The *Municipality of Meycauayan v. Intermediate Appellate Court*, 157 SCRA 640 (1988) had a happier ending. The Municipality of Meycauayan filed an action to expropriate a strip of land belonging to the Philippine Pipes and Merchandising Corporation to convert it into a public road which would connect two roads and ease the traffic. The strip of land

[115] Municipality of Naic v. Poblete, 55 O.G. 8138, 8139 (1955); Municipality of Daet v. Li Seng Giap and Company, Inc., 13 C.A. REP 2d 860, 875 (1968).

[116] *Alvarez*, 16 C.A. REP 2d at 826.

[117] De Knecht v. Bautista, 100 SCRA 650, 671 (1980).

[118] Republic v. De Knecht, 182 SCRA 142, 149 (1990).

was narrow and could accommodate only a one-way traffic. There was an adjoining parcel of idle land whose area was more than three times and which the owner was offering to sell. Although the idle lot was ideal for the connecting road, the Municipality of Meycauayan insisted on expropriating the property of Philippine Pipes and Merchandising Corporation. Since the idle land was more suitable for the proposed connecting road and was being offered for sale, the Supreme Court considered the selection of the property of the Philippine Pipes and Merchandising Corporation as arbitrary and ordered the dismissal of the expropriation case.[119]

Likewise, the Court of Appeals ordered the dismissal of an expropriation case filed to expropriate a fishpond to build a canal to serve as an outlet for stagnant waters in the vicinity, since a fishpond is not suitable for building a canal.[120]

The Court of Appeals took a similar course of action when the proposed expropriation of a parcel of land was tainted with sinister motives.[121] It ordered the dismissal of a case filed to expropriate a parcel of riceland for a school site since it was not suitable for a school. To reach the school, the students would have to cross the national highway and pass through a wooden bridge consisting of a single piece of lumber placed over an irrigation ditch. There were several parcels of land which were nearer and more accessible. The father-in-law of the councilor who sponsored the expropriation of the riceland had earlier threatened to have it expropriated when the owner refused to give it to the foster daughter of the father-in-law. This was a case in which the councilor abused his public office.[122]

If only a portion of a parcel of land will be expropriated, the owner cannot choose which part will be expropriated.[123]

VI. NECESSITY OF THE TAKING

The basis of the exercise of the power of eminent domain is necessity. The taking of private property not required by necessity is an unreasonable exercise of the power of eminent domain.[124] The court can

[119] *Meycauayan*, 157 SCRA at 647.

[120] Municipality of San Fabian v. Abrogar, 24 C.A. REP 2d 18, 22-3 (1979).

[121] *Escoto*, 4 CARA at 515.

[122] *Naic*, 55 O.G. at 8140-41.

[123] Land Tenure Administration v. Ascue, 1 SCRA 1244, 1248 (1961).

[124] *Chinese Community*, 40 Phil. at 363.

review whether or not there is a genuine necessity for the taking of a particular property for a particular purpose.[125]

For a time, a cloud was cast over the continuing validity of this principle because of the following dictum in a decision of the Supreme Court penned by Justice Enrique Fernando.

> As could be discerned, however, in the Arellano Law College decision, it was the antiquarian view of Blackstone with the sanctification of the right to one's estate on which such an observation was based. As did appear in his Commentaries: 'So great is the regard of the law for private property that it will not authorize the least violation of it, even for the public good, unless there exists a very great necessity thereof.' Even the most cursory glance at such well-nigh absolutist concept of property would show its obsolete character at least for Philippine Constitutional Law. It cannot survive the test of the 1935 Constitution with its mandates on social justice and protection to labor.[126]

This aberration has been corrected in the subsequent decisions of the Supreme Court.

Necessity does not mean absolute but reasonable necessity. It is enough if the expropriating authority can show reasonable or practical necessity according to the circumstances of the case.[127] It means reasonable or practical necessity such as will combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and property owner consistent with such benefit.[128] Necessity is shown if the property sought to be condemned will conduce to some extent to the accomplishment of the public object to which it will be devoted.[129]

If there is a perfected contract of sale between the expropriating authority and the owner of the property sought to be expropriated, there is no necessity

[125] *Chinese Community*, 40 Phil. at 363; Republic v. La Orden de Padres Benedictinos de Filipinas, 1 SCRA 646, 649 (1961); *Meycauayan*, 157 SCRA at 647; *Philippine Press Institute*, 244 SCRA at 280; *Moday*, 268 SCRA at 595; Santiago v. Muñoz, 7 C.A. REP 2d 311, 315 (1965).

[126] Arce v. Genato, 69 SCRA 544, 548-49 (1976).

[127] Manila Railroad Company v. Mitchell, 50 Phil. 832, 837 (1923); Province of Ilocos Norte v. Compaña General de Tobacos de Filipinas, 98 Phil. 831, 835 (1956); *Manotok*, 150 SCRA at 103.

[128] City of Manila v. Arellano Law Colleges, Inc., 85 Phil. 663, 667 (1950); *Alvarez*, 16 C.A. REP 2d at 826.

[129] *Mitchell*, 50 Phil. at 838.

for the expropriation.[130] The same holds true if the owner is willing to sell the property to the expropriating authority.[131] It also applies if somebody else is willing to donate or will to the expropriating another property. which is equally or more suitable for the intended purpose.[132]

VII. JUST COMPENSATION

A. *Meaning and Determination*

Just compensation should not be based on the gain of the condemnor but on the loss of the owner. Thus, the fact that the buying power of the farmer who is the beneficiary of the expropriation is weak and that the just compensation is exempt from tax cannot be taken into consideration.[133] Just compensation is the full and fair equivalent of the property sought to be expropriated.[134] Just compensation refers to the fair market value of the property sought to be expropriated.[135] This is the sum of money which a person, desirous but not compelled to buy and an owner willing but not compelled to sell, will agree upon as the price to be given and received for it.[136]

Thus, the compensation the expropriating authority paid for other properties which were expropriated cannot be the basis for determination of the just compensation, because it is not based on voluntary sales.[137]

[130] *Noble*, 67 Phil. at 6.

[131] *Philippine Press Institute*, 244 SCRA at 230.

[132] *Chinese Community*, 40 Phil. at 371; *Meycauayan*, 157 SCRA at 647.

[133] Republic v. Lara, 96 Phil. 170, 184 (1954); *Small Landowners*, 175 SCRA at 379 (1989); B.H. Berkenkotter and Company v. Court of Appeals, 216 SCRA 584, 586 (1992).

[134] *Small Landowners*, 175 SCRA at 378; *Berkenkotter*, 216 SCRA at 586.

[135] City of Manila v. Estrada, 25 Phil. 208, 214 (1913); City of Manila v. Corrales, 32 Phil, 85, 92 (1915); Deyran v. Auditor General, 16 SCRA 762, 771 (1966); *Guazon*, 6 CARA at 871.

[136] *Estrada*, 25 Phil. at 214-215; Manila Railroad Company v. Velasquez, 32 Phil. 286, 316 (1915); Manila Railroad Company v. Alano, 36 Phil, 500, 505 (1917); Republic v. Gonzales, 94 Phil. 956, 960 (1954); Perez v. Araneta, 6 SCRA 457, 461-62 (1962); J.M. Tuazon and Company, Inc. v. Land Tenure Administration, 31 SCRA at 432; *Lichauco*, 46 SCRA at 321; *Small Landowners* 175 SCRA at 384; *Berkenkotter* , 216 SCRA at 587; Municipality of Pilar v. Guamil, 45 O.G. Supp. No. 5, 205, 210 (1947); Republic v. Hufana, 2 C.A. REP 2d 92, 98 (1962); Municipality of Bastos v. Santos, C.A. – G.R. No. 22547-R (29 June 1962); Bernal, 14 C.A. REP 2d 987, 996 (1969); National Power Corporation v. Baetiong, C.A. – G.R. No. 50522-R (27 Sept. 1973); Cadavedo, 72 O.G. 4253, 4256 (1975); *Guazon* 6 CARA at 871-72.

[137] *Estrada*, 25 Phil. at 222; *Alano*, 36 Phil. at 505.

The same holds true of execution sales and foreclosure sales. Likewise, the sale of properties made in contemplation of their expropriation cannot serve as basis for determination of the just compensation, since it was made because of the prospect of condemnation.[138] A price which is the result of a compromise cannot also be considered, as it is not based on a sale in the open market.[139]

In one case, the compensation for two houses included in the expropriation was based on the cost of construction, plus the cost of repairs, but adjusted for depreciation based on the age of the house.[140] This is an erroneous approach. The fair market value differs from the book value. The actual fair market value of the houses might have increased or decreased because of intervening commercial factors.

In determining fair market value, a *bona fide* sale made in the ordinary course of business of properties of the same character in the immediate vicinity made sufficiently near in point of time of the expropriation should be considered. The sale should be near in point in time to the expropriation to exclude general increases or decreases in the value of properties due to changed commercial conditions.[141] In determining whether the property sold is similar to the property sought to be expropriated, the soil condition, accessibility, existence of improvements, and climate may be considered.[142] Thus, the sale of property outside the vicinity or not of same character should be disregarded.[143] The selling price of small lots cannot be considered, because usually the price of

[138] Municipality of San Fernando v. Valencia, 50 O.G. 2120, 2123 (1954); Republic v. Vitug, 53 O.G. 3799, 3803 (1957).

[139] Republic v. Narciso, G.R. No. L-6594 (18 May 1956).

[140] City of Davao v. Dacudao, G.R. No. L-3741 (28 May 1952).

[141] Manila Railroad Company v. Fabie, 17 Phil. 206, 208 (1910); *Estrada*, 25 Phil. at 218; Manila Railroad Company v. Velasquez, 32 Phil. at 308-10; Manila Railroad Company v. Attorney General, 41 Phil. 163, 170 (1920); Manila Railroad Company v. Buenconsejo, 41 Phil. 178, 183 (1920); Mitchell, 50 Phil. at 805; Metropolitan Water District v. Director of Lands, 57 Phil. 293, 295 (1932); *Gonzales*, 94 Phil. at 960-61; *Lara*, 96 Phil. at 178; Province of Ilocos Norte v. Compañia General de Tobacos de Filipina, 98 Phil. at 836; Republic v. Deleste, G.R. No. L-7208 (23 May 1956); *Araneta*, 6 SCRA at 462; *Land Tenure*, 31 SCRA at 432; *Lichauco*, 46 SCRA at 320; *Guamil*, 45 O.G. Supp. No. 5 at 213; *Vitug*, 53 O.G. at 3803; Republic v. Apilado, 53 O.G. 8594, 8598 (1957); Republic v. Supana, C.A. – G.R. No. 14932-R (25 July 1958); *Hufana*, 2 C.A. Rep 2d at 98; City of Cebu v. Del Rosario, 61 O.G. 1032, 1035 (1964); National Power Corporation v. Velasco, C.A. – G.R. No. 24447-R (8 April 1964); Inocentes de la Rama, Inc. vs. City of Bacolod, C.A. – G.R. No. 33195-R (14 April 1966); *Bernal*, 14 C.A. Rep 2d 987, 1001 (1969); *Cadavedo*, 72 O.G. at 4256.

[142] *Lichauco*, 14 SCRA at 687-88.

[143] Republic v. Yaptinchay, 108 Phil. 1046, 1051 (1960); Republic Atlas Consolidated Mining and Development Corporation v. De La Cerna, 25 C.A. Rep 2d 206, 209 (1980).

land becomes smaller as the size of the land becomes larger.[144] Sales made at least three years before the expropriation cannot be taken into consideration, since they are not contemporaneous with the condemnation.[145]

The mere fact that the sale was between relatives is not sufficient basis for disregarding it in the absence of a showing that it is not a *bona fide* transaction.[146] However, mere offers to purchase cannot be considered. Offers can be fabricated and multiplied, and it would be difficult to show that they are not *bona fide* offers.[147]

One line of decisions hold that in determining the value of the property sought to be expropriated, the nature of the land at the time of taking and not its potential for conversion to some other use is what should be considered.[148] Another line of decisions states that it is not only the actual use to which the property is devoted at the time of taking but other uses to which it is plainly adopted in the light of the existing business or wants of the community or which may reasonably be expected in the immediate future which should be considered.[149] The latter represents the better view. For this purpose, the size, shape, and location of the land should be considered.[150] Thus, even if a parcel of land is agricultural, if there are several commercial establishments nearby, it should not merely be appraised as agricultural.[151]

[144] *Araneta*, 6 SCRA at 462.

[145] *Lara*, 96 Phil. at 178; Republic v. Court of Appeals, 154 SCRA 428, 436 (1987); Municipality of San Francisco v. Valencia, 50 O.G. at 2123.

[146] City of Cebu v. Ledesma, 14 SCRA 666, 670 (1965).

[147] *Estrada*, 25 Phil. at 217; City of Davao v. Dacudao, G.R. No. L-3741 (28 May 1952); *Lara*, 96 Phil. at 178; *Araneta*, 6 SCRA at 461-62; *Lichauco*, 14 SCRA at 687; Inocente de la Rama, Inc. v. City of Bacolod, C.A.-G.R. No. 33195-R (14 April 1966).

[148] Manila Electric Company v. Tuason, 60 Phil. 663, 668 (1934); Municipality of Sagay v. Jison, 104 Phil. 1026, 1033 (1958); *Juan*, 92 SCRA 26, 55 (1979); *Napocor*, 129 SCRA 665, 674 (1984); Gutierrez, 193 SCRA at 8; Henson, 200 SCRA at 256; City of Iloilo v. Jison, C.A.-G.R. No. 28265-R (28 March 1962); Bernal, 14 C.A.Rep 2d at 1001; Manila Railroad Company v. Rotaeche, C.A.-G.R. No. 39558-R (18 March 1971); *Cadavedo*, 72 O.G. at 4256; National Power Corporation v. Abello, C.A.-G.R. No. 51472-R (18 February 1976); National Power Corporation v. Hijal-El Park Subdivision, Inc., C.A.-G.R. No. 54892-R (31 May 1976).

[149] *Estrada*, 25 Phil at 215-16; *Corrales*, 32 Phil. at 98; *Velasquez*, 32 Phil. at 315; *Castellvi*, 58 SCRA at 356; Garcia v. Court of Appeals, 102 SCRA 397, 608 (1981); Municipality of Batangas v. Babao, 54 O.G. 2199, 2202 (1954); Republic v. Guia, C.A.-G.R. No. 51737-R (17 November 1975).

[150] *Berkenkotter*, 216 SCRA at 587.

[151] Republic v. Court of Appeals, 154 SCRA 428, 435 (1987).

On the other hand, if it will take a long time before a parcel of agricultural land can be converted to commercial use, such potential should be disregarded.[152] Likewise, it is not proper to consider to what use the owner is intending to devote his property or what plans he has for its improvement.[153]

In any event, the fact that the owner of a piece of residential land used its vacant portions for planting crops does not convert its nature to agricultural land.[154] The planting of the crops is merely incidental and does not detract from the primary use to which the land is devoted.

The rental value of the property cannot be used as basis for fixing the just compensation. The rental value is not constant. The amount which a tenant will pay depends on numerous variable factors, such as, the particular needs of the tenant at that time, change of centers of population and business, and business cycles.[155] Much less can the assessed value of the property be used as the basis for pegging the just compensation. It is matter of judicial notice and public knowledge that the assessed value is lower than the fair market value.[156] Sentimental value cannot be included in the determination of the just compensation.[157]

If a parcel of land owned in common has been partitioned, each lot should be valued separately. It is erroneous to make a lump-sum valuation of the entire property and then divide the amount among the owners, because there is no unity of ownership.[158]

[152] *Henson*, 200 SCRA at 757; Republic v. Belarmino, C.A.-G.R. No. 25184-R (21 April 1965).

[153] *Velasquez*, 33 Phil. at 318.

[154] National Power Corporation v. Arellano, C.A.-G.R. No. 50402-R (14 May 1975); National Power Corporation v. Villaluz, C.A.-G.R. No. 49765-R (24 November 1975).

[155] *Corrales*, 32 Phil. at 97.

[156] *Alano*, 36 Phil at 506; Municipality of Tarlac v. Besa, 55 Phil. 423, 426 (1930); Commonwealth of the Philippines v. Batac, 76 Phil 233, 235 (1946); Republic v. Mortera, G.R. No. L-5776 (14 April 1954); *Lara*, 96 Phil. at 178; Republic v. Urtula, 110 Phil. 262, 264 (1960); *Ledesma*, 14 SCRA at 670; *Land Tenure*, 31 SCRA at 432; *Castellvi*, 58 SCRA at 360; National Power Corporation v. Intermediate Appellate Court, 147 SCRA 152, 154 (1987); *Manotok*, 150 SCRA at 109; Republic v. Court of Appeals, 154 SCRA at 436; *Guamiel*, 45 O.G. Supp. No. 5 at 214; City of Cebu v. Del Rosario, 61 O.G. 1032, 1034 (1964); Republic v. Ombac, CA-G.R. No. 26767-R (13 December 1969); Municipality of Daet v. Li Sieng Giap and Company, Inc., C.A.-G.R. No. 45663-R (18 October 1972).

[157] *Lara*, 96 Phil. at 185; *Yaptinchay*, 108 Phil at 1053; Lichauco, 46 SCRA at 332.

[158] *Lichauco*, 46 SCRA at 330-31.

The valuation made by the owner of the property sought to be expropriated should set a ceiling on the just compensation to be accredited to him, because it is an admission against interest.[159] However, it will not be conclusive upon the owner if it is unjust, because the Constitution requires the payment of just compensation.[160]

There is no need to ascertain the just compensation if the expropriating authority and the owner have agreed upon it.[161] However, if the stipulated price is excessive, its payment can be disallowed by the Commission on Audit.[162] The Anti-Graft and Corrupt Practices Act also makes it a crime to give any private party an unwarranted benefits through manifest partiality, evident bad faith or gross inexcusable negligence and to enter into any contract which is manifestly and grossly disadvantageous to the government.[163]

As a rule, the just compensation should be based on the fair market value of the property at the time of taking, because the owner should be compensated only for what he lost and what he lost is the fair market value of the property at the time of the taking.[164] Indeed, in ascertaining the just compensation, the increase in the fair market value of the property sought to be expropriated brought about by improvements introduced by the expropriating authority should not be included. Otherwise, the owner will receive more than the value of the property taken.[165] For this reason, if the taking of the property preceded the filing of the action for

[159] Republic v. Narciso, G.R. No. L-6594 (8 May 1956); PNB., 1 SCRA 957, 963 (1961); *Juan*, 97 SCRA at 46-7; Manila Railroad Company v. Rolaeche, C.A.-G.R. No. 39558-R (18 March 1971).

[160] *Juan*, 92 SCRA at 52.

[161] Rocamora v. Regional Trial Court, 167 SCRA 615, 625 (1988).

[162] PHIL. CONST., IX-D, §3 (2); Sambeli v. Province of Isabela, 210 SCRA 80, 84 (1992).

[163] Republic Act No. 3019, §3 (e) (j).

[164] Republic v. Narciso, G.R. No. L-6594 (18 May 1956); Alfonso v. Pasay City, 106 Phil. 1017, 1022-23 (1960); Capitol Subdivision, Inc. v. Province of Negros Occidental, 7 SCRA 60, 71 (1963); J.M. Tuason and Company, Inc., v. Land Tenure Administration, 31 SCRA at 431; Commissioner of Public Highways v. Burgos, 96 SCRA 831, 837 (1980); *Napocor*, 129 SCRA at 673; *Ansaldo*, 188 SCRA 300, 305 (1990); *Berkenkotter* 216 SCRA at 587; Republic v. Court of Appeals, 292 SCRA 243 at 2526 (998); Juanillo v. National Power Corporation, C.A.-G.R. No. 8429-R (25 June 1954); *Hufana*, 2 C.A.Rep 2d at 98; Municipality of Daet v. Li Sieng Giap and Company, Inc., C.A.-G.R. No. 45663-R (18 October 1972); Lubao, 22 C.A.Rep 2d 984, 994 (1977).

[165] Manila Railroad Company v. Caligsihan, 40 Phil. 326, 329 (1919); Provincial Government of Rizal v. Caro de Araullo, 58 Phil. 308, 316 (1933); Republic v. Narciso, G.R. No. L-6594, May 18, 1956.

expropriation, it is the date of the taking that should be used as basis for determining the just compensation.[166] In the reverse, the expropriation might depress the value of the property.[167]

If the taking coincided with the filing of the action for expropriation, the just compensation should be based on the value of the property at the time of the commencement of the case.[168]

If the taking occurred after the filing of the expropriation case, the just compensation should likewise be based on the value of the property at the time of the institution of the action.[169]

In three decisions, the Supreme Court stated that if the taking occurred after the filing of the expropriation, the just compensation should be based on the value of the property at the time of taking of the property or the promulgation of the judgment, whichever occurs first.[170] These decisions are isolated and do not represent the weight of authority.

Section 4, Rule 67 of the Rules of Court provides in part:

> If the objections to and the defenses against the rights of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

The three decisions of the Supreme Court render this provision nugatory. Besides, it is not a workable formula. The reception of the evidence as to the fair market value of the property precedes the promulgation of the decision. There is a time gap between the hearing of

[166] *Caro de Araullo*, 58 Phil. at 317; *Lara*, 96 Phil. at 177; PNB, 1 SCRA at 961; Municipality of La Carlota v. Baltazar, 45 SCRA at 240; *Ansaldo*, 188 SCRA at 304; *Napocor*, 254 SCRA at 589.

[167] *Lara*, 96 Phil. at 177.

[168] PNB, 1 SCRA at 961; *La Carlota*, 95 SCRA at 241; *Napocor*, 254 SCRA at 588; Libmanan v. Castroverde, C.A.-G.R. No. 39855-R (17 October 1974).

[169] PNB, 1 SCRA at 961; *La Carlota*, 45 SCRA at 241; *Castellvi*, 58 SCRA at 354; *Napocor*, 254 SCRA at 588; *Cadovedo*, 72 O.G. at 4255.

[170] *Municipality of Daet*, 93 SCRA at 519; *Manotok*, 150 SCRA at 107; Republic v. Intermediate Appellate Court, 185 SCRA 572, 583 (1990).

the evidence and the rendition of judgment. Between these two points in time, the fair market value of the property can change.

B. *Consequential Damages and Consequential Benefits*

In the determination of the just compensation, the consequential damages should be included. However, the consequential benefits should be deducted from the consequential benefits.[171]

Section 6, Rule 67 of the Rules of Court reads in part:

> The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages, the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation, or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.

The consequential damages cannot be deducted from the value of property taken. Otherwise, the owner might be deprived of his property without any compensation at all, as when only a small strip of land is taken from a large estate and there will be incidental benefits to the rest.[172]

Consequential damages refer to the damages to, or the destruction of, property not actually taken; and they arise when property is not actually taken or entered but an injury to it occurs as the result of an act lawfully done by another.[173]

Thus, even if only a portion of a parcel of land was taken, if the remainder is worthless to the owner because of the smallness of its size or the irregularity of its shape, the owner should be paid for the entire property.[174] Likewise, if the fair market value of the rest of the property

[171] *Estrada*, 25 Phil. at 2341; *Velasquez*, 32 Phil. at 314; *Besa*, 55 Phil. at 425; PNB, 1 SCRA at 965; Capitol Subdivision, Inc. v. Province of Negros Occidental, 75 SCRA at 71; *Guamil*, 45 O.G. Supp. No. 5 at 210; *Vitug*, 53 O.G. at 3807; National Power Corporation v. Hyd-Ed Park Subdivision, Inc., C.A.-G.R. No. 54892-R (31 May 1976).

[172] Zobel v. City of Manila, 42 Phil. 169, 179 (1922); *Berkenkotter*, 216 SCRA at 586-87; Republic v. Ombac, C.A.-G.R. No. 26767-R (13 December 1965).

[173] VICENTE FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES, SPECIAL CIVIL ACTIONS 433 (1972).

[174] Tenorio v. Manila Railroad Company, 22 Phil. 411, 418-19 (1912); *Lara*, 96 Phil. at 182-83; *Guazon*, 6 CARA at 876.

was diminished, the owner should be compensated for the reduction of the value.[175]

Decisions of the Supreme Court and of the Court of Appeals have held that the following items should be included in the computation of the consequential damages:

1. Destruction of irrigation system[176]
2. Standing crops and fruit trees[177]
3. Payment to a contractor for construction materials purchased and excavation work done for a proposed building whose construction was discontinued.[178]
4. Cost of the remainder of the house which had to be demolished, cost of tearing it down, and cost of remodeling what was left of a building.[179]
5. Permanent Improvements.[180]

On the other hand, consequential damages which are speculative and uncertain cannot be recovered.[181] The Supreme Court has consistently ruled that the owner is not entitled to be indemnified for the cost of transferring his house. Otherwise, he would be paid more than the value of his house.[182]

The Court of Appeals has rendered a contrary ruling.[183] The decision of the Court of Appeals is erroneous and must yield to the jurisprudence on the matter.

[175] *Estrada*, 25 Phil at 223; National Power Corporation v. Baetiong, C.A.-G.R. No. 50522-R (27 September 1973).

[176] *Batac*, 76 Phil. at 236.

[177] *Batac*, 76 Phil. at 236; Philippine Executive Commission v. Estacio, 78 Phil. 218, 219 (1956); Zaballero v. National Housing Authority, 155 SCRA 224, 236 (1987).

[178] City of Davao v. Dacudao, G.R. No. L-3741 (28 May 1952).

[179] Republic v. Mortera, G.R. No. L-5776 (14 April 1954).

[180] *Zaballero*, 155 SCRA at 236; Municipality of Daet v. Li Sieng Giap and Company, Inc. 13 C.A.Rep 2d at 880.

[181] Michell, 49 Phil. at 807; *Protestant Episcopal Church*, 4 C.A.Rep 2d at 773.

[182] Province of Tayabas v. Perez, 66 Phil. 467, 470 (1938); *Lara*, 96 Phil at 185.

[183] National Housing Authority v. Catimbuhan, 1 CARA 504, 515 (1986).

If a portion of a parcel of land was expropriated and the rest can be used for residential purposes, the owner is not entitled to payment for consequential damages. What was left is not worthless.[184] Likewise, a tobacco company whose warehouse was expropriated could not ask for indemnity for the loss of the use of the warehouse, where it actually had other warehouses which were sufficient for its own purpose and was in fact leasing the warehouse to third parties.[185]

The owner cannot ask that he be compensated for future rentals accruing from the expropriated property which was being leased. The interest on the just compensation takes care of that.[186] On the other hand, the increase in the value of land bordering a road constructed on the property expropriated because of its ensuing suitability for commercial and material purposes constitutes consequential benefits.[187]

However, consequential benefits must be actual and not speculative. They must be the direct and proximate result of the improvements introduced by the expropriating authority. Remote benefits must be disregarded.[188] Thus alleged benefits to the adjoining owners of the construction of a railway, if unproven, cannot be considered.[189]

C. *Judicial Determination*

After proclaiming martial law, former President Ferdinand Marcos issued Presidential Decree Nos. 26, 464, 794, and 1533, which provided that in expropriation cases, the just compensation should be the fair market value, as declared by the owner or determined by the assessor, whichever is lower.

A Supreme Court that dared not cross the path of former President Ferdinand Marcos gave this formula for determining the just compensation its blessings by saying:

> The Decree having spoken so clearly and unequivocally calls for obedience. It is repeating a common place to state that on a

[184] *Protestant Episcopal Church*, 4 C.A.Rep 2d at 775.

[185] *Compaña General de Tabacos*, 98 Phil at 837.

[186] *Lara*, 96 Phil. at 184189; Republic v. Garcellano, 103 Phil. 231, 237 (1958); Valdehueza v. Republic, 17 SCRA 107, 113 (1966); *Vitug*, 53 O.G. at 3805-06.

[187] *Besa*, 55 Phil. at 427; Republic v. Mortera, G.R. No. L-5776 (14 August 1954).

[188] Republic v. Mortera, G.R. No. L-5776 (14 April 1954).

[189] Manila Railroad Company v. Buenconsejo, 41 Phil. 178, 183 (1920).

matter where the applicable law speaks in no uncertain language, the court has no choice except to yield to its command.[190]

The Supreme Court was not satisfied with paying obeisance to former President Ferdinand Marcos. It quoted with fulsome praise the arguments of the Presidential Legal Assistant:

> The courts should recognize that the rule introduced by P.D. No. 76 and reiterated in subsequent decrees does not upset the establish concepts of justice or the constitutional provision on just compensation, for, precisely the owner is allowed to make his own valuation of his property.[191]

Justices Claudio Teehankee, Ramon Aquino and Pacifico de Castro took no part in the decision. This ruling was reiterated in *Dajao v. Court of Appeals*, 133 SCRA 781 (1984).

The rule before was that the assessed value for real estate tax purposes cannot be considered conclusive proof of the value of the property.[192]

After the overthrow of the Marcos administration, a reorganized Supreme Court let the hammer fall heavily on Presidential Decrees No. 1933:

First, it explained why the assessment for real estate tax purposes is not a satisfactory method for fixing the just compensation:

> Various factors came into play in the valuation of specific properties singled out for expropriation. The values given by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts or other crops. Very often land described as 'cogonal' has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct.[193]

[190] National Housing Authority v. Reyes, 123 SCRA 245, 250 (1983).

[191] *Reyes*, 123 SCRA at 251.

[192] National Power Corporation v. Robes-Francisco Realty Corporation, C.A.-G.R. No. 440038-R (5 December 1974); Republic v. Guia, C.A.-G.R. No. 51757-R (17 November 1975); National Power Corporation v. Abello, C.A.-G.R. No. 51472-R (18 February 1976).

[193] Export Processing Zone Authority v. Dulay, 149 SCRA 305, 315 (1987).

It then condemned Presidential Decree No. 1533 for denying property owners due process:

> It is violative of due process to deny the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidences and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judicially evaluated.[194]

The Supreme Court then restated that the determination of just compensation is a judicial function:

> The determination of 'just compensation' in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determination but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the 'justness' of the decreed compensation.[195]

The Supreme Court and the Court of Appeals have consistently adhered to this landmark decision in subsequent cases.[196] Some landowners whose properties were being expropriated pursuant to the agrarian reform program tried to invoke this doctrine. Section 16(d) of the Comprehensive Agrarian Reform Law provided:

[194] *EPZA*, 149 SCRA at 315-16.

[195] *EPZA*, 149 SCRA at 316.

[196] *Manotok*, 150 SCRA at 119; Ignacio v. Guerrero, 150 SCRA 369, 376 (1987); Lagunzad v. Court of Appeals, 154 SCRA 199, 207 (1987); *Sumulong* , 154 SCRA 461, 479 (1989). Leyva v. Intermediate Appellate Court, 155 SCRA 39, 45 (1987); *Zaballero*, 155 SCRA at 235; City Government of Toledo City v. Fernandos, 160 SCRA 285, 288 (1988); Belen v. Court of Appeals, 160 SCRA 291, 273 (1988); Arias v. Sandiganbayan, 180 SCRA 309, 315 (1989); Marabeles v. Court of Appeals, 181 SCRA 105, 109 (1990); Municipality of Talisay v. Ramirez, 183 SCRA 528, 531 (1990); Republic v. Intermediate Appellate Court, 185 SCRA 572, 583 (1990); Ansaldo v. Tantuico, 188 SCRA 300, 303 (1990); Province of Camarines Sur v. Court of Appeals, 222 SCRA 173, 182 (1993); Republic v. Arvisu, 5 CARA 545, 550 (1988).

In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

The landowners argued that since it is the Department of Agrarian Reform and not the courts who would determine the just compensation, Section 16(d) of the Comprehensive Agrarian Reform Law is unconstitutional.

The Supreme Court brushed aside the argument of the landowners:

> Although the proceedings are described as summary, the landowner and other interested parties are nevertheless allowed an opportunity to submit evidence on the real value of the property. But more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon any landowner or any other interested party, for Section 16(f) clearly provides:
>
> > 'Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.'
>
> The determination made by the DAR is only *preliminary* unless accepted by all concerned. Otherwise, the courts of justice will still have the right to review *with finality* the said determination in the exercise of what is admittedly a judicial function.[197]

Thus, there were two important distinctions between Section 16(d) of the Comprehensive Agrarian Reform Law and Presidential Decree Nos. 76, 464, 794 and 1533 which served to remove it from the ambit of the ruling in *Export Processing Zone Authority v. Dulay*.[198] First, Section 16(d) of the Comprehensive Agrarian Reform Law gave the landowner a chance to present evidence on the fair market value of the property. Second, the valuation made by the Department of Agrarian Reform is subject to judicial review.

[197] *Small Landowners*, 175 SCRA at 381-82. (Italics supplied by the Supreme Court); *see also* Republic v. Court of Appeals, G.R. No. 122256 (30 October 1996).

[198] 149 SCRA 305 (1987).

D. The Role of Commissioners

Rule 67 of the Rules of Court provides for the appointment of commissioners to assist the court in determining the just compensation.

Section 5, Rule 67 of the Rules of court provides in part:

> Upon rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken.

The authority of the court over the report of the commissioners is defined in Section 8, Rule 67 of the Rules of Court, which reads:

> Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after all the interested parties have filed their objections to the report or their statement of agreement therewith, the court may, after hearing, accept the report and render judgment in accordance therewith, or, for cause shown, it may recommend the same to the commissioners for further report of facts; or it may set aside the report and appoint new commissioner, as it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.

The right to a trial with the aid of commissioners is a substantive right.[199] The court may immediately appoint commissioners if the defendant acknowledges the right of the plaintiff to expropriate his property.[200] The parties have no right to choose the commissioners and it is not required that a party be represented by a commissioner of his choice.[201] The fact that a commissioner is a politician is not a ground to disqualify him in the absence of a showing that he is biased.[202]

[199] Manila Electric Company v. Pineda, 206 SCRA 196, 204 (1992).

[200] Municipality of San Pedro v. Castillo, 65 Phil. 240, 245 (1937).

[201] *Castillo*, 65 Phil. at 246; Barrio Liloan v. Mejia, C.A.-G.R. No. 37164-R (5 August 1971).

[202] Barrio Liloan v. Mejia, C.A.-G.R. No. 37164-R (5 August 1971).

The report of the commissioners should be based on the evidence presented by the parties rather than be based on the personal experience or private opinion of the commissioners.[203] It should state the value of the property, otherwise it is defective.[204] The report should also set forth the reasons for its conclusions.[205]

The report of the commissioners should be set for hearing.[206] However, the fact that the case was decided without the report for hearing does not affect the validity of the decision. By not asking for a reconsideration and allowing the decision to become final, the aggrieved party should be deemed to have waived his right to a hearing on the report.[207]

The report of the commissioners is merely advisory and is not conclusive upon the court.[208] Otherwise, it is the commissioners and not the court who will be determining just compensation. The court may disregard the report of the commissioners if they applied illegal principles to the evidence, they used improper rules of assessment, they disregarded the clear preponderance of evidence, or the amount determined as the just compensation in grossly inadequate or excessive.[209] The court may set aside the report, accept it in part, or reject it in part.[210] It may increase or reduce any or all of the items.[211] The court may also make its own estimate on the basis of the records.[212]

[203] Republic v. Mortera, G.R. No. L-5776 (14 April 1954); City of Cabanatuan v. Santos, C.A.-G.R. No.40864-R (27 August 1974).

[204] Manila Railroad Company v. Rodriguez, 13 Phil. 347, 353 (1909).

[205] *Estrada*, 25 Phil. at 321; *Velasquez*, 32 Phil. at 301; Republic v. Mortera, G.R. No. L-5776 (14 April 1954); Republic v. Ombac, C.A.-G.R. No. 26767-R (13 December 1965).

[206] *Perez*, 66 Phil. at 259; Republic v. Ng Chu Ri, C.A.-G.R. No. 24318-R (30 August 1965).

[207] San Juan v. Tan, 94 Phil. 497, 500 (1954).

[208] *Estrada*, 25 Phil. at 240; Republic v. Dimalanta, 54 O.G. 2561, 2562; Municipal Council of Nueva Caceres v. Isaac, 41 Phil. 908, 911 (1920); *Ledesma*, 14 SCRA at 669; *Castellvi*, 58 SCRA at 362; *Municipality of Daet* , 93 SCRA 503, 522 (1979); Republic v. Santos, 141 SCRA 30, 36 (1986); Republic v. Intermediate Appellate Court, 185 SCRA 572, 580 (1990); *Berkenkotter*, 216 SCRA at 590; *Robes-Francisco Realty*, C.A.-G.R. No. 44038-R (5 December 1974).

[209] *Velasquez*, 72 Phil. at 305; *Caligsihan*, 40 Phil. at 328; Provincial Governor of Bulacan v. Aduna, 42 Phil. 248, 250 (1921); *Mortera*, G.R. No. L-4776 (14 April 1954); *Castellvi*, 58 SCRA at 362; *Municipality of Daet*, 93 SCRA at 523; *Pineda*, 206 SCRA at 204.

[210] Municipality of San Fernando v. Valencia, 50 O.G. 2120, 2122 (1954); Sebastian, 22 C.A. Rep. 2d at 991-992.

[211] *Velasquez*, 32 Phil. at 296; *Valencia*, 50 O.G. at 2122.

[212] *Aduna*, 42 Phil. at 250; Philippine Railway Company v. Solon, 13 Phil. 34, 39 (1909); *Estrada*, 25 Phil. at 238.

However, the court should not reject the report of the commissioners without valid reason.[213] It can adopt the recommendations of the commissioners if there is no evidence to the contrary.[214] The Court of Appeals has ruled that if all the parties accept the report of the commissioners and ask the court to approve it, it is the duty of the court to affirm the report, because the conformity of the parties is tantamount to a stipulation that judgment be rendered in accordance with the terms of the report.[215] This should not apply if the compensation is excessive.

The court may also recommit the report to the commissioners for reception of additional evidence.[216]

Whatever course of action the court may take, the principle that should guide it is that it must make sure that the owner of the property is paid a just compensation.

E. Form of Payment

The Supreme Court has held that the National Waterworks and Sewerage Authority could not pay for the waterworks systems of cities and municipalities it took over with its assets.[217]

A novel issue arose because of Section 18 of the Comprehensive Agrarian Reform Law, which provided for the following method for the payment of just compensation:

> The compensation shall be paid in one of the following modes, at the option of the landowner:
>
> (1) Cash payment, under the following terms and conditions:
>
> (a) For lands above fifty (50) hectares, insofar as the excess hectarage is concerned—Twenty-five percent (25%) cash, the balance to be paid in government financial instruments negotiable at any time.

[213] Republic v. Narciso, G.R. No. L-6954 (18 May 1956); National Waterworks and Sewerage Authority v. Araneta, C.A.-G.R. No. 31215-R (16 November 1965); Republic v. Ombac, C.A.-G.R. No. 26767-R (13 December 1965).

[214] *Protestant Episcopal Church*, 4 C.A.Rep 2d at 772-773.

[215] Municipality of Dinalupihan v. Arnas, C.A.-G.R. No. 43780 (29 December 1937).

[216] *Estrada*, 25 Phil. at 243; *Velasquez*, 32 Phil. at 298-99; Municipality of Legaspi v. Yamson, C.A.-G.R. No. 43780, January 27, 1939; Municipality of Daet v. Li Seng Giap and Company, Inc., C.A.-G.R. No. 45663-R (18 October 1972).

[217] City of Cebu v. National Waterworks and Sewerage Authority, 107 Phil. 1112, 1118 (1960); Municipality of Paete v. National Waterworks and Sewerage Authority, 33 SCRA 122, 129 (1970).

(b) For lands above twenty-four (24) hectares and up to fifty (50) hectares—Thirty percent (30%) cash, the balance to be paid in government financial instruments negotiable at any time.

(c) For lands twenty-four (24) hectares and below—Thirty five percent (35%) cash, the balance to be paid in government financial instruments negotiable at any time.

(2) Shares of stock in government-owned or controlled corporations, LBP preferred shares, physical assets or other qualified investments in accordance with guidelines set by the PARC;

(3) Tax credits which can be used against any tax liability;

(4) LBP bonds, which shall have the following features:

(a) Market interest rates aligned with 91-day treasure bill rates. Ten percent (10%) of the face value of the bonds shall mature every year from the date of issuance until the tenth (10^{th}) year: Provided, That should the landowner choose to forego the cash portion, whether in full or in part, he shall be paid correspondingly in LBP bonds;

(b) Transferability and negotiability. Such LBP bonds may be used by the landowner, his successors-in-interest or his assigns, up to the amount of their face value, for any of the following:

(i) Acquisition of land or other real properties of the government, including assets under the Asset Privatization Program and other assets foreclosed by government financial institutions in the same province or region where the lands for which the bonds were paid are situated;

(ii) Acquisition of shares of stock of government-owned or controlled corporations or shares of stock owned by the government in private corporations;

(iii) Substitution for surety or bail bonds for the provisional release of accused persons, or for performance bonds;

(iv) Security for loans with any government financial institution, provided the proceeds of the loans shall be invested in an economic enterprise, preferably in a small and medium-scale industry, in the same province or region as the land for which the bonds are paid;

(v) Payment for various taxes and fees to government: Provided, That the use of these bonds for these purposes will be limited to a certain percentage of the outstanding balance of the financial instruments; Provided, further, that the PARC shall determine the percentages mentioned above;

(vi) Payment for tuition fees of the immediate family of the general bondholder in government universities, colleges, trade schools, and other institutions;

(vii) Payment for fees of the immediate family of the original bondholder in government hospitals; and

(viii) Such other uses as the PARC may from time to time allow.

This was assailed by the landowners on the ground that to be just, the compensation must be paid in money only.

The Supreme Court conceded that ordinarily, just compensation should be paid in money. However, it created an exception in the case of agrarian reform.

> It cannot be denied from these cases that the traditional medium for the payment of just compensation is money and no other. And so, conformably, has just compensation been paid in the past solely in that medium. However, we do not deal here with the *traditional* exercise of the power of eminent domain. This is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose. What we deal here is a *revolutionary* kind of expropriation.
>
> The expropriation before us affects *all* private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or a small segment of the population but of the entire Filipino nation, from all levels of our society, from the impoverished farmer to the land-glutted owner. Its purpose

does not cover only the whole territory of this country but goes beyond in time to the foreseeable future, which it hopes to secure and edify with the vision and the sacrifice of the present generation of Filipinos. Generations yet to come are as involved in this program as we are today, although hopefully only as beneficiaries of a richer and more fulfilling life we will guarantee to them tomorrow through our thoughtfulness today. And, finally, let it not be forgotten that it is no less than the Constitution itself that has ordained this revolution in the farms, calling for 'a just distribution' among the farmers of lands that have heretofore been the prison of their dreams but can now become the key at least to their deliverance.

Such a program will involve not mere millions of pesos. The cost will be tremendous. Considering the vast areas of land subject to expropriation under the laws before us, we estimate that hundreds of billions of pesos will be needed, far more indeed than that amount of P50 billion initially appropriated, which is already staggering as it is by our present standards. Such amount is in fact not even fully available at this time.

We assume that the framers of the Constitution were aware of this difficulty when they called for agrarian reform as a top priority project of the government. It is a part of this assumption that when they envisioned the expropriation that would be needed, they also intended that the just compensation would have to be paid not in the orthodox way but a less conventional if more practical method. There can be no doubt that they were aware of the financial limitations of the government and had no illusions that there would be enough money to pay in cash and in full for the lands they wanted to be distributed among the farmers. We may therefore assume that their intention was to allow such manner of payment as is now provided for by the CARP Law, particularly the payment of the balance (if the owner cannot be paid fully with money), or indeed of the entire amount of the just compensation, with other things of value.[218]

Be that as it may, the Supreme Court disallowed the payment of the just compensation for agricultural land expropriated pursuant to the agrarian reform program by opening trust accounts.

Section 16(e) of the Comprehensive Agrarian Reform Law provides in part:

[218] *Small Landowners*, 175 SCRA at 385-87 (Italics supplied by the Supreme Court).

> Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designation by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines.

The Department of Agrarian Reform issued Administrative Order No. 9, Series of 1990, which permitted the Land Bank of the Philippines to earmark the compensation in a trust account instead of depositing with an accessible bank the compensation in cash or in bonds.

The Supreme Court annulled Administrative Order No. 9, Series of 1990, because the opening of a trust account with the Land Bank of the Philippines was not among the methods of payment prescribed by the law.[219]

F. Time of Payment

While Section 9, Article III of the 1987 Constitution requires the payment of just compensation in case of expropriation of private property, it does not require that the just compensation be paid before taking possession of the property. Because of the absence of such a requirement, the expropriating authority can take possession of the property without first paying the just compensation.[220]

During the drafting of the 1935 Constitution, Delegate Clemente Diaz proposed that payment of the just compensation be required before taking the property to be expropriated. However, after a heated debate, the proposal was rejected by other delegates for fear that it would paralyze the efforts of the government.[221]

The Supreme Court has injected timeliness of the payment as an element of the just compensation by ruling that it must be paid within a reasonable time from the taking. Unless the compensation is paid promptly, it cannot be considered just.[222] However, if the compensation

[219] Land Bank of the Philippines v. Court of Appeals, 249 SCRA 149, 157 (1995); Land Bank of the Philippines v. Court of Appeals, 258 SCRA 404, 407 (1996).

[220] Manila Railroad Company v. Paredes, 31 Phil. 118, 134 (1915); *Visayan Refining Company*, 40 Phil. at 561.

[221] 3 VICENTE FRANCISCO, JOURNAL OF THE CONSTITUTIONAL CONVENTION 1082–1089 (1963).

[222] *Cosculluela*, 164 SCRA 393, 400 (1988); *Small Landowners*, 175 SCRA at 381; Municipality of Makati v. Court of Appeals, 190 SCRA 206, 213-14 (1990).

is not paid promptly, all that the dispossessed owner will get is the nominal interest of six percent a year and words of condemnation from the Supreme Court. Words of reproach, unlike sticks and stones, will not hurt the delinquent expropriating authority and much less break its bones.

The owner whose property was expropriated is entitled to the payment of legal interest on the just compensation from the time of the taking until full payment of the just compensation. Legal interest begins to run from the time of the taking, because from that time the owner is deprived of the use of the property. The compensation will not be just if no legal interest will be awarded from the time of the taking.[223] Interest will stop running on the just compensation if it is deposited in court.[224]

Section 10, Rule 67 of the Rules of Court provides in part:

> If the defendant and his counsel absent themselves from the court, or decline to receive the amount tendered the same shall be ordered to be deposited in court and such deposit shall have the same effect as actual payment thereof to the defendant or the person ultimately adjudged entitled thereto.

Thus, if the expropriating authority is willing to pay the just compensation but did not know whom to pay because of a dispute as to the ownership of the property, it is not liable for interest from the time it deposited the just compensation in court. The delay in the payment of the just compensation to the actual owner is not due to its fault but due to the dispute among the rival claimants.[225]

[223] Philippine Railway Company v. Solon, 13 Phil. 34, 41 (1909); Philippine Railway Company v. Duran, 33 Phil. 156, 158-59 (1916); Manila Railroad Company v. Attorney General, 41 Phil. 163, 178 (1920); Osorio v. Bennet, 41 Phil. 301, 306 (1920); *Caro de Araullo*, 58 Phil. at 339; Republic v. Gonzales, 94 Phil. at 963; *Estacio*, 98 Phil. at 219; Republic v. Deleste, G.R. No. L-7208 (23 May 1956); *Compañia General de Tabacos*, 98 Phil. at 837; Herrera v. Auditor General, 102 Phil. 875, 883 (1958); Alfonso v. Pasay City, 106 Phil. at 1023; Capitol Subdivision, 7 SCRA at 71; Republic v. Tayengco, 19 SCRA 898, 900 (1967); *Municipality of La Carlota*, 45 SCRA at 239; *National Power Corporation*, 29 SCRA at 674; Dayao v. Court of Appeals, 133 SCRA 781, 783-84; Republic v. Santos, 141 SCRA 30, 36 (1986); *Benguet Consolidated*, 143 SCRA at 478; *Ansaldo*, 188 SCRA at 305; De los Santos v. Intermediate Appellate Court, 223 SCRA 11, 18 (1993); Henson, 300 SCRA at 757-58; *Guamil*, 45 O.G. Supp. No. 5 at 214, Commonwealth of the Philippines v. De Guzman, C.A.-G.R. No. 20358-R (29 December 1959); *Hufana*, 2 C.A.Rep 2d at 103; *Protestant Episcopal Church*, 4 C.A.Rep 2d at 777; *Bernal*, 14 C.A.Rep 2d at 1002; Municipality of Lubao v. Sebastian, 22 C.A.Rep 2d at 994; *Atlas Consolidated Mining*, 25 C.A.Rep 2d at 210; *Mercado*, 6 CARA at 826-72.

[224] *Duran*, 33 Phil. at 156; Attorney General, 41 Phil. at 178; *Estacio*, 98 Phil. at 219; Republic v. Deleste, G.R. No. 1-7208 (23 May 1956); Republic v. Garcellano, 103 Phil. at 1273; Tayengco, 19 SCRA at 900.

[225] Manila Railroad Company v. Rodriguez, 29 Phil. 336, 339 (1915).

Likewise, the amount deposited in court to enable the expropriating authority to immediately take possession of the property sought to be expropriated will stop earning interest upon its deposit in court.[226] However, if the judgment did not award any interest, the owner cannot recover any interest.[227]

The right of the owner is not based on contract but on law, as it is part of the just compensation required to be paid.[228]

Article 2209 of the Civil Code reads:

> If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum.

Circular No. 416, issued by the Central Bank of the Philippines, raised the legal interest to twelve percent a year. The Supreme Court has ruled that the legal interest in case of expropriation is six percent and not twelve percent a year, because Circular No. 416 applies only to loans or forbearance of money.[229] However, the Supreme Court has held that even if the obligation to pay a sum of money is not based on a loan or forbearance of money, upon finality of the judgment awarding it, the legal interest should be twelve percent a year from finality of the judgment until the payment.

Upon finality of judgment, the obligation is deemed to be a forbearance of money.[230] This doctrine should also be applied to judgment in expropriation cases. Upon finality of the judgment of condemnation, the obligation to pay just compensation becomes a forbearance of money.[231]

The Supreme Court has held that even if the value of Philippine currency depreciated from the time of the taking of the property expropriated until the time of the payment of just compensation, the owner is not entitled to any adjustment in the just compensation. The

[226] *Lara*, 96 Phil. at 184, *Estacio*, 98 Phil. at 220; Republic v. Garcellano, 103 Phil. at 237; *Yaptinchay*, 108 Phil. at 1053; *Lichauco*, 26 SCRA at 338; Republic v. Supana, C.A.-G.R. No. 14932-R (25 July 1958).

[227] *Alano*, 36 Phil. at 509-510.

[228] *Urtula*, 22 SCRA at 480; *Juan*, 92 SCRA at 56-7.

[229] National Power Corporation v. Angas, 208 SCRA 542, 548 (1992).

[230] Eastern Shipping Lines, Inc. v. Court of Appeals, 234 SCRA 78, 94 (1994).

[231] *Henson*, 200 SCRA at 759.

Supreme Court tried to console owners by claiming that the depreciation in the value of money is taken care of by the award of legal interest.[232]

The justification given by the Supreme Court is fallacious. First, the legal interest is supposed to compensate the owner for the deprivation of the possession of the property expropriated from the time of its taking until the time of the payment of the just compensation. The legal interest is not supposed to compensate for the depreciation of the value of money. Second, the rate of depreciation of the value of money may be higher than the rate of the legal interest.

Even if inflation should supervene, the owner is not entitled to an adjustment of the just compensation. Article 1250 of the Civil Code provides:

> In case of an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary.

The Supreme Court and the Court of Appeals have ruled that this is not applicable to the obligation of an expropriating authority to pay just compensation, because Article 1250 of the Civil Code applies to contracts only and the obligation to pay just compensation in case of expropriation is not based on contract.[233]

G. Prescription

If the government takes private property without filing an expropriation case, the obligation of the government to pay for it does not prescribe, because title to the property sought to be expropriated remains in the owner.[234] However, if the government acquired title to the property, the action to collect payment prescribes in ten (10) years. All that remains is the payment of the just compensation to the owner.[235]

[232] *Juan*, 92 SCRA at 56.

[233] Commissioner of Public Highways v. Burgos, 96 SCRA 831, 837 (1980); National Power Corporation v. Calupitan, 7 C.A.Rep 2d 114, 120 (1965); *Mercado*, 6 CARA at 873.

[234] Herrera v. Auditor General, 102 Phil. 875, 881 (1958); Alfonso v. Pasay City, 106 Phil. 1017, 1020 (1960); Degran v. Auditor General, 16 SCRA 762, 769 (1966); Lopez v. Auditor General, 20 SCRA 655, 657 (1967); Castro v. Auditor General, 25 SCRA 926, 930 (1968); Buenafe v. Jacob, C.A.-G.R. No. 37797-R (21 June 1973).

[235] Jaen v. Agregado, G.R. No. L-7921 (28 September 1955); *Lopez*, 20 SCRA at 657.

H. Waiver of State Immunity from Suit

When the government files an expropriation case, it submits to the jurisdiction of the court and waives its immunity from suit.[236]

If the government takes private property without paying just compensation, the owner can sue it to recover the just compensation. Otherwise, the constitutional guarantee against the taking of private property without payment of just compensation will be rendered nugatory.[237]

The Supreme Court has explained the basis for the doctrine:

> It is unthinkable then that precisely because there was a failure to abide by what the law requires, the government would stand to benefit. It is just as important, if not more so, that there be fidelity to legal norms on the part of officialdom, if the rule of law were to be maintained. It is not too much to say that any property for public use which is conditioned upon the payment of just compensation, to be judicially ascertained, it makes manifest that it submit to the jurisdiction of the court. There is no thought then that the doctrine of immunity from suit could still be appropriately invoked.[238]

VIII. PROPERTIES OF LOCAL GOVERNMENT UNITS

The patrimonial properties of provinces, cities, municipalities and barangays, such as, waterworks system, are protected by the constitutional guarantee against the taking of private property for public

[236] *Visayan*, 40 Phil. at 562; Commissioner of Public Highways v. San Diego, 31 SCRA 616, 624 (1970).

[237] Ministerio v. Court of First Instance of Cebu, 40 SCRA 464, 470-71 (1971); Amigable v. Cuenca, 43 SCRA 360, 364 (1972); Gascon v. Arroyo, 178 SCRA 582, 587 (1989); De los Santos v. Intermediate Appellate Court, 223 SCRA 11, 15 (1993); Republic v. Domingo, 21 C.A.Rep 2d 315, 323 (1976).

[238] *Ministerio*, 40 SCRA at 470-71.

use without payment of just compensation. Hence, they cannot be expropriated without payment of just compensation.[239]

However, the properties for public use of provinces, cities, municipalities and barangays are subject to the control of Congress, and can be taken away by law without the need of paying just compensation.[240]

For purposes of expropriation, in determining whether a certain property of a local government unit is patrimonial property or property for public use, it is not Article 424 of the Civil Code but the principle of the Law of Municipal Corporation that should be applied.[241] The properties for public use of local government units include the courthouse, public schools, the provincial capitol or the municipal hall, the police station, and public hospitals.[242]

The Supreme Court explained why the properties for public use of local government units cannot be taken away by law without the need of just compensation in the following words:

> It may, therefore, be laid down as a general rule that regardless of the source or classification of land in the possession of a municipality, excepting those acquired with its own funds in its private or corporate capacity, such property is held in trust for the State for the benefit of its inhabitants, whether it be for governmental or proprietary purposes. It holds such lands subject to the paramount power of the legislature to dispose of the same, for after all it owes its creation to it as an agent for the

[239] City of Baguio v. National Waterworks and Sewerage Authority, 106 Phil. 144, 154 (1959); Cebu City v. National Waterworks and Sewerage Authority, 107 Phil. at 1117-18; Municipality of Lukban v. National Waterworks and Sewerage Authority, 3 SCRA 208, 212 (1961); Municipality of Naguilian v. National Waterworks and Sewerage Authority, 9 SCRA 570, 572 (1963); Municipality of La Carlota v. National Waterworks and Sewerage Authority, 12 SCRA 164, 167 (1964); Municipality of Compostela v. National Waterworks and Sewerage Authority, 18 SCRA 988, 990 (1966); National Waterworks and Sewerage Authority v. Catolico, 19 SCRA 980, 983-84 (1921); Municipality of San Juan v. National Waterworks and Sewerage Authority, 20 SCRA 1210, 1212 (1967); *Dator*, 21 SCRA at 358; Province of Zamboanga del Norte v. City of Zamboanga, 22 SCRA 1339, 1343 (1968); National Waterworks and Sewerage Authority v. Piguing, 25 SCRA 462, 467 (1968); Municipality of Paete v. National Waterworks and Sewerage Authority, 33 SCRA 122, 127 (1970).

[240] *Province of Zamboanga*, 22 SCRA at 1341-43; *Salas*, 46 SCRA at 747; Rabuco v. Villegas, 55 SCRA 656, 665-66 (1974).

[241] *Province of Zamboanga*, 22 SCRA at 1346.

[242] *Province of Zamboanga*, 22 SCRA at 1342-43.

> performance of a part of the public work, the municipality being but a subdivision or instrumentality thereof for purposes of local administration. Accordingly, the legal situation is the same as if the State itself holds the property and puts it to a different use (2 McQuillin, Municipal Corporations, 3rd ed., p.197, citing *Monagham v. Armatage*, 318 Minn, 27, 15 N.W. 2nd 241).[243]

The Supreme Court added:

> The subdivision of the land and conveyance of the resulting subdivision lots to the occupants of Congressional authorization does not operate as an exercise of the power of eminent domain without just compensation in violation of Section 1, subsection (2), Article III of the Constitution, but simply as a manifestation of its right and power to deal with state property.[244]

IX. PROCEDURES

A. *Pre-requisites to Filing of Action*

1. Previous Negotiation

Since the power of the government to expropriate private property through the courts is a sovereign and inherent right of the State, it cannot be restricted by the President by requiring negotiations with the owner as a condition precedent for the filing of an expropriation case.[245]

However, in the case of local government units, Section 11 of the Local Government Code requires that a valid and definite offer be made to the owner and that the offer be rejected before the filing of the expropriation case.

Article 33(a), Rule VI of the Rules and Regulations Implementing the Local Government Code reads:

> The offer to buy private property shall be in writing. It shall specify the property sought to be acquired, the reasons for its acquisition, and the price offered.

[243] *Salas*, 46 SCRA at 742.

[244] *Salas*, 46 SCRA at 752.

[245] *Juan*, 92 SCRA at 40.

Local government units may be required by law to negotiate with the owner of the property before filing an expropriation case. They do not possess the power of eminent domain inherently. It is merely delegated, consequently, the law can impose conditions for its exercise.

2. Enactment of Enabling Ordinance

Before the head of a local government unit can file a case for the expropriation of a specific property there must be an ordinance authorizing him to do so. Section 19 of the Local Government Code provides in part:

> A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws.

For this purpose, a resolution is not sufficient. An ordinance is not synonymous with a resolution, which merely expresses the sentiment of the local legislature on a specific matter and which does not undergo a third reading.[246]

3. Exhaustion of Administrative Remedies

If private property was taken without paying just compensation and the payment is being unreasonably delayed, the owner may file a case in court to collect the payment without the need of exhausting all administrative remedies. The bureaucratic indecision and inaction are prejudicing him.[247] This is in keeping with the notion that for the compensation to be just, it must be paid promptly.

Likewise, an owner whose land is being expropriated for the purpose of agrarian reform can immediately ask the Regional Trial Court acting as a Special Agrarian Court to review the valuation made by the Provincial Agrarian Reform Adjudicator. He need not appeal to the Department of Agrarian Reform Adjudication Board.[248]

Section 57 of the Comprehensive Agrarian Reform Law reads in part:

> The Special Agrarian Court shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act.

[246] *V.M. Realty Corporation*, 292 SCRA at 689.

[247] *Rocamora*, 167 SCRA at 623-24.

[248] Republic v. Court of Appeals, 263 SCRA 758, 762-63 (1966).

B. *Parties*

1. Plaintiff

If the term of an incorporated agency which was given the power of eminent domain and which filed an expropriation case expires during the pendency of the case, the case should not be dismissed. The agency should be substituted by the Republic of the Philippines, because its powers reverted to the Republic of the Philippines.[249]

2. Defendants

All persons owning or claiming to own, or occupying, any part of the property sought to be expropriated or interest in it should be joined as defendants in an expropriation case.[250] Thus, not only the owner but also all those who have lawful interest in the property sought to be expropriated, such as a mortgagee, a lessee, and a vendee in possession of the property under an executory contract, and a person having an estate or interest at law or in equity in the property, should be impleaded as defendants.[251] A lessee should be included as defendant, because he is entitled to receive compensation from the expropriating authority because of his eviction from the leased premise. He cannot hold the lessor liable for damages, because the lessor is not responsible for his eviction.[252]

The failure to include in the expropriation case any person who should be included as defendant does not invalidate the proceedings.[253] Similarly, the failure of the expropriating authority to implead as defendant a person claiming interest in the standing crops does not annul the proceedings for the expropriation of the land, since he is not an indispensable party.[254]

The remedy of the person who was not joined as defendant in the expropriation case is to intervene in the case or to file a separate action

[249] Iron and Steel Authority v. Court of Appeals, 249 SCRA 338, 549-50 (1995).

[250] The Revised Rules of Court, Rule 67 §1 (1997).

[251] De Knecht v. Court of Appeals, 290 SCRA 223, 242 (1998).

[252] Sayo v. Manila Railroad Company, 43 Phil. 551, 553 (1922).

[253] *Tenorio*, 22 Phil. at 418; Alvarez, 16 C.A.Rep 2d at 824.

[254] *Gatlin*, C.A.-G.R. No. 24387-R (21 May 1955).

for payment of just compensation.[255] However, the former owner of a parcel of land which was sold because of his failure to pay for the real estate tax who failed to redeem the land cannot intervene in the expropriation case, since he has no more rights.[256]

C. *Venue*

If the land sought to be expropriated lies partly in one province and partly in another province, the expropriation case may be filed in either of them. However, the defendant in each province may compel the expropriating authority to file separate cases in their respective provinces. It is not fair to compel them to undergo the hardships of litigating in another province and to have the valuation of the land determined by commissioners in another province. Of course, if a defendant does not object to the venue, he waives his right to have a separate case filed in his own province.[257]

D. *Pleadings*

1. Complaint

The complainant in an expropriation case should state with certainty the right and purpose of the expropriation and describe the real or personal property sought to be expropriated.[258] However, if the power of eminent domain of the expropriating authority was conferred upon it by a special law, the complainant need not allege its right to expropriate, because the courts should take judicial notice of the law.[259] The complaint should be verified.[260]

2. Answer

Previously, Section 3 Rule 67 of the Rules of Court required the defendant to file a motion to dismiss instead of an answer. In 1997, this was amended to read in part as follows:

> If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons.

Since the only issue that can be raised in the answer is whether or not the plaintiff has the authority to exercise the power of eminent domain to take the property of the defendant for the use or purpose specified in the complaint, the defendant cannot place in issue the lack of financial capacity of the plaintiff to pay just compensation.[261]

The answer should state all objections and defenses to the taking of the property of the defendant. All defenses and objections not raised in the answer are deemed waived. However, in the interest of justice, the court may permit amendments to the answer to be made not later than ten (10) days after its filing.[262] No counterclaim, cross-claim or third party complaint is allowed in the answer or any subsequent pleading.[263] Even if the defendant does not file an answer, he may still present evidence as to the just compensation.[264]

If the defendant files a counterclaim, the plaintiff need not answer it like a counterclaim in an ordinary action, and the plaintiff cannot be declared in default for not answering the counterclaim.[265] The reason for this is that since Section 9, Article III of the Constitution requires the payment of just compensation in case of expropriation of private property, the question of just compensation has already been placed in issue in the case by the Constitution itself.

E. *Immediate Possession*

1. Determination of Right to Immediate Possession

There are supposed to be two stages in every expropriation case. The first stage is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the case. It ends with an order of dismissal of the action or an order of condemnation. The second

[255] *Tenorio*, 22 Phil. at 418; *De Knecht*, 290 SCRA at 242; *Alvarez*, 16 C.A.Rep 2d at 824.

[256] *De Knecht*, 290 SCRA at 243.

[257] *Attorney General*, 20 Phil. at 560-62.

[258] The Revised Rules of Court, Rule 67, §1 (1997).

[259] Mitchell, 50 Phil. at 841.

[260] The Revised Rules of Court, Rule 67, §1 (1997).

[261] *Li Sieng Giap*, 13 C.A.Rep 2d at 877.

[262] The Revised Rules of Court, Rule 67, §1 (1997); Robern Development Corporation v. Quitain, G.R. No. 1350421 (23 September 1999).

[263] The Revised Rules of Court, Rule 67, §1 (1997).

[264] Robern Development Corporation v. Quitain, G.R. No. 1350421, September 23, 1999.

[265] Philippine Oil Development Company, Inc. v. Go, 90 Phil. 692, 695 (1952).

stage is concerned with the determination by the court of the just compensation for the property to be taken.[266]

Section 4, Rule 67 of the Rules of Court provides in part:

> If the objection to and the defense against the right of the plaintiff to expropriate are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

On the basis of this, it became settled that the objections and offenses of the defendant must first be resolved, before the court can authorize the plaintiff to take possession of the property sought to be expropriated.[267] Since necessity is the basis of expropriation, if the defendant is questioning the necessity of the taking, this issue must first be decided.[268]

After the objections and defenses have been denied, the plaintiff shall be authorized to take possession of the property sought to be expropriated upon deposit of the provisional value of the property.

On this point, Section 2, Rule 67 of the Rules of Court previously provided as follows:

> Upon the filing of the complaint or at any time thereafter the plaintiff shall have the right to take or enter upon the possession of the real or personal property involved if he deposits with the National or Provincial Treasurer its value, as provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings, to be held by such treasurer subject to the orders and final disposition of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a depository of the Republic of the Philippines payable on demand to the National or Provincial Treasurer, as the case may be, in the amount directed by the court to be deposited. After such deposit is made the court shall order the sheriff or other officer to forthwith place the plaintiff in possession of the property involved.

Shortly after proclaiming martial law, on November 9, 1972, former President Ferdinand Marcos issued Presidential Decree No. 42, which read:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, as amended, do hereby decree and order as part of the laws of the land that, upon filing in the proper court of the complainant in eminent domain proceedings or at anytime thereafter, and after due notice to the defendant, plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the Philippine National Bank, in its main office or any of its branches or agencies, an amount equivalent to the assessed value of the property for purposes of taxation, to be held by said bank subject to the orders and final disposition of the court.
>
> The provisions of Rule 67 of the Rules of Court and of any other existing law contrary to or inconsistent herewith are hereby repealed.

Presidential Decree No. 42 has two main features. First, it authorized the plaintiff in an expropriation case to take possession of the property sought to be condemned immediately upon the filing of the case. The court need not make first a finding that the plaintiff was authorized to expropriate the property sought to be condemned. Second, the amount to be deposited as provisional value was pegged on the basis of the assessed value. Thus, there was no more need for a hearing to ascertain the provisional value of the property. In the process, Presidential Decree No. 42 repealed Section 2, Rule 67 of the Rules of Court.

The Supreme Court repeatedly recognized the validity of Presidential Decree No. 42 and applied it to expropriation cases.[269]

[266] Municipality of Biñan v. Garcia, 180 SCRA 576, 583-84 (1989); Manila Electric Company v. Pineda, 206 SCRA 196, 203 (1992); National Power Corporation v. Jocson, 206 SCRA 520, 536 (1992); Tamin v. Court of Appeals, 208 SCRA 863, 876 (1952); *Panis*, 228 SCRA at 674.

[267] Rural Progress Administration v. Guzman, 87 Phil. 176, 178 (1950); Nieto v. Ysip, 97 Phil. 31, 33 (1955); National Housing Authority v. Valenzuela, 159 SCRA 396, 398-99 (1988); *Robern Development Corporation*, G.R. No. 1350421 (23 September 1999); Esteban, 17 C.A.Rep 2d at 764.

[268] RPA v. Guzman, 87 Phil. at 178; Concepcion v. Estipona, 58 O.G. 7089, 7092 (1962); Santiago v. Muñoz, 7 C.A.Rep 2d 311, 315 (1965).

[269] *Arce*, 69 SCRA at 547; San Diego v. Valdellon, 80 SCRA 305, 312 (1977); *Municipality of Daet*, 93 SCRA at 535; *Ardona*, 125 SCRA at 240; Haguisan v. Emilia, 131 SCRA 512, 523 (1984).

However, after it struck down Presidential Decree No. 1533, which used the assessed value of real property as the basis of the just compensation, in *Export Processing Zone Authority v. Dulay*, 149 SCRA 305, the Supreme Court ruled that as a consequence, Section 2, Rule 67 of the Rules of Court was revived.[270]

Thus, the ruling of the Supreme Court en banc in *National Power Corporation v. Jocson*, 206 SCRA 520 came like a thunderbolt from the sky. In the case, after ruling that Presidential Decree No. 42 had repealed Section 2, Rule 67 of the Rules of court, the Supreme Court chastised the lower court, saying:

> Clearly, therefore, respondent Judge either deliberately disregarded P.D. No. 42 or was totally unaware of its existence and the cases applying the same.[271]

For following the ruling of the Supreme Court that Section 2, Rule 67 of the Rules of Court had been revived, the judge was reprimanded. This is not the end of the story.

Almost five (5) years later, the First Division of the Supreme Court ruled in *Panes v. Visayas State College of Agriculture*:

> Now, in the light of the declared unconstitutionality of P.D. No. 76, P.D. No. 1533 and P.D. No. 42 insofar as they sanction executive determination of just compensation in expropriation cases, it is imperative that any right to the immediate possession of the subject property, accruing to respondent VISCA, must be firmly grounded on a valid compliance with Section 2 of Rule 67, i.e., there must be a deposit with the National or Provincial Treasurer of the value of the subject property as provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings.[272]

The decision disposed of the ruling in *National Power Corporation v. Jocson*, by means of a footnote, which stated:

> Our ruling in the case of *National Power Corporation v. Jocson*, 206 SCRA 520 (1992) that P.D. No. 42, however, effectively removes the discretion of the Court in determining the provisional value

[270] *Ignacio*, 150 SCRA at 378-79; *Sumulong* , 154 SCRA at 474-75; Cardena v. Regional Trial Court of Valenzuela, 5 CARA 319, 326 (1988).

[271] National Power Corporation v. Jocson, 266 SCRA at 538.

[272] 264 SCRA 708, 721 (1996).

> being clearly inconsistent with our ruling in *EPZA v. Dulay* and its catena of subsequent cases, must now be declared abandoned.[273]

Like Banquo's ghost, the ruling in *National Power Corporation v. Jocson*, cannot easily be made to disappear through the use of a footnote by the First Division of the Supreme Court. Under Section 4 (3), Article VIII if the 1987 Constitution, only the Supreme Court *en banc* can reverse a court doctrine.

What muddles the situation further is that Section 3 of Presidential Decree No. 1533 expressly repealed Presidential Decree No. 42. Presidential Decree No. 1533 was in turn declared unconstitutional in *Export Processing Zone Authority v. Dulay*. While Presidential Decree No. 1533 expressly repealed Presidential Decree No. 42, it was intended to supersede Presidential Decree No. 42. In essence, it adopted the same formula for fixing the just compensation and mischievously reduced the provisional deposit for the immediate possession of the property sought to be expropriated to ten (10) percent of the assessed value. If Presidential Decree No. 1533 is unconstitutional law, its Siamese twin, Presidential Decree No. 42, must suffer the same fate. Hence, Section 2, Rule 67 of the Rules of Court should be deemed to have been resurrected.

What has added to the confusion is that in 1997, Section 2, Rule 67 of the Rules of Court to read as follows:

> Upon Filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the order of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.
>
> If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.
>
> After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession

[273] *Panes*, 264 SCRA at 721.

of the property involved and promptly submit a report thereof to the court with service of copies to the parties.

The first sentence of the provision was taken from Presidential Decree No. 42.[274] As Section 2, Rule 67 of the Rules of Court now stands, upon deposit with an authorized government depositary of the assessed value of the real property sought to be expropriated, it is the ministerial duty of the trial court to issue a writ of possession authorizing the plaintiff to take possession of the property.[275] The trial court need not resolve first the objections and defenses raised by the defendant. Neither is there a need for a pre-trial first.[276]

An attempt to reconcile Section 2, Rule 67 of the Rules of Court with the decision of the Supreme Court declaring Presidential Decree No. 1533 unconstitutional can be made by distinguishing the two. The valuation in Section 2, Rule 67 of the rules of Court is merely provisional for the purpose of authorizing the plaintiff to immediately take possession of the property sought to be expropriated, while the valuation in Presidential Decree No. 1533 is final and conclusive.

It should be noted that under Section 19 of the Local Government Code, local government units seeking to expropriate a piece of property should deposit at least fifteen (15%) percent of its fair market value based on the tax declaration. This is merely the minimum. The trial court can increase it.

Even if the plaintiff is in physical possession of the property sought to be expropriated because of a contract which expired on the meanwhile, the plaintiff can ask for the issuance of a writ of possession if the defendant filed an ejectment case. In filing an expropriation case, the plaintiff is not seeking to acquire not only physical possession but also juridical possession and ultimately ownership of the property.[277]

The provisional valuation of the property sought to be expropriated cannot be modified.[278]

[274] FERIA, 1997 RULES OF CIVIL PROCEDURE, 258 (1997); GUPIT, SIGNIFICANT REVISIONS IN CIVIL PROCEDURE, 77 (1998); 7 HERRERA, REMEDIAL LAW, 735 (1997).

[275] Republic v. Pasicolan, 2 SCRA 626, 631 (1962); Robern Development Corporation , G.R. No. 1350421 (23 September 1999); Antillon v. Province of Misamis Occidental, C.A.-G.R. No. 40622-R (13 January 1968).

[276] *Zaballero*, 155 SCRA at 232 (1987).

[277] *Tagle*, 299 SCRA at 559.

[278] *Paredes*, 31 Phil at 132; *Jocson*, 206 SCRA at 539.

Since Section 2, Rule 67 of the Rules of Court requires the deposit of the provisional valuation of the property sought to be expropriated, a writ of possession cannot be issued merely on the basis of the certification issued by the treasurer of a local government unit that funds have been appropriated to pay for the property and the funds are available.[279] The contrary ruling of the Court of Appeals is erroneous.[280]

The determination made by the trial court of the provisional value of the property sought to be appropriated cannot be questioned by filing a petition for certiorari.[281]

The owner of the property sought to be expropriated cannot ask that the enforcement of the writ of possession be enjoined by a higher court. Otherwise, the dedication of he property to public use will be interfered with.[282] However, if the defendant is questioning the constitutionality of the law which is the basis of the appropriation, a writ of preliminary injunction may be issued if the lawful use and enjoyment of the property by the defendant will be injuriously affected by its enforcement.[283] If the law is unconstitutional, the taking of possession by virtue of it is void.[284]

2. Disposition of the Deposit

The valuation of the property sought to be expropriated for the purpose of enabling the plaintiff to take possession of it is merely provisional. The final valuation will be made in the decision.[285] The deposit serves as prepayment of the just compensation if the property is finally expropriated and as indemnity for damages in case the expropriation case is dismissed or abandoned.[286] Hence, the plaintiff cannot withdraw the deposit if the expropriation case is dismissed.[287]

[279] City of Ormoc v. Ocubillo, C.A.-G.R. No. 36470-R (27 February 1971).

[280] Barrio Liloan v. Mejia, C.A.-G.R. No. 37164-R (5 August 1971).

[281] Iglesia Filipina Independiente v. De la Rosa, C.A.-G.R. No. 03146-R (15 July 1974).

[282] *Paredes*, 32 Phil. at 534.

[283] J.M. Tuason and Company, Inc. v. Court of Appeals, 3 SCRA 626, 704 (1961).

[284] *Belen*, 195 SCRA at 65.

[285] *Lichauco*, 46 SCRA 305, 331 (1972); *Castellvi*, 58 SCRA at 359; *Municipality of Daet* 93 SCRA at 526; *Gatlin*, C.A.-G.R. No. 243887-R (21 May 1959).

[286] *Visayan Refining Company v. Camus*, 90 Phil. at 563; Metropolitan Water District v. De los Angeles, 55 Phil. 776, 783 (1931); *Municipality of Daet* , 930 SCRA at 519; *Zaballero*, 155 SCRA at 233; Cuenco v. Municipality of Bacoor, 52 O.G. 1495, 1499 (1955); *Li Sieng Giap*, 13 C.A.Rep 2d at 878.

[287] *Baylosis*, 109 Phil. at 582.

Neither can the deposit be used as payment for rentals to the owner of the property for its immediate possession.[288]

The deposit may be withdrawn by the defendant before the determination of the just compensation for the property sought to be expropriated.[289] This is especially true if the defendant concedes the authority of the plaintiff to expropriate the property.[290] The unconditional withdrawal of the deposit by the defendant estops him from questioning the authority of the plaintiff to expropriate the property, as well as the manner and the propriety of its exercise.[291]

The deposit withdrawn by the defendant should be deducted from the just compensation.[292] Since the deposit should be paid to the defendant, the interest earned by the deposit should also be given to him.[293]

F. Order of Expropriation

1. Appeal

The trial court should resolve the objections and defenses raised by the defendant. The order sustaining the authority of the plaintiff to expropriate the authority is appealable, because it is a final order.[294]

Section 4, Rule 67 of the Rules of Court provides:

> A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid.

The contrary rulings of the Court of Appeals are erroneous.[295]

[288] Republic v. Guido, 83 Phil. 934, 741 (1949).

[289] Manila Electric Company v. Pineda, 206 SCRA 196, 205 (1992).

[290] *Zaballero*, 155 SCRA at 233.

[291] *Pasicolan*, 2 SCRA at 631; *Juan*, 92 SCRA at 41.

[292] Republic v. Narciso, G.R. No. 1-6594 (18 May 1954); *Pasicolan*, 2 SCRA at 631.

[293] *Dajao*, 133 SCRA at 784.

[294] Uriarte v. Teodoro, 86 Phil. 196, 203 (1950); Municipality of Biñan v. Garcia, 180 SCRA 576, 587 (1989); Municipality of San Juan v. Ramos, 5 C.A.Rep 2d 1102, 1106 (1964).

[295] Municipality of Imus v. Espiritu, C.A. G.R. No. 5249-R (9 February 1951); *Esteban*, 17 C.A.Rep 2d at 766 .

Since an expropriation case is one in which multiple appeals are allowed, if the appeal will involve questions of fact, the appeal will be made to the Court of Appeals, a record on appeal will be required, and the period to party desiring to appeal will have thirty (30) days to perfect his appeal.[296]

If the defendant withdraws the deposit, he does not lose the right to appeal. The law permits him to withdraw the deposit. To deprive him of his right to appeal is unfair and unjust.[297]

If the order of expropriation is reversed on appeal, the case should be remanded to the trial court so that the defendant may be restored to the possession of the property and may recover damages because of the possession of the property by the plaintiff.[298]

Section 11, Rule 67 of the Rules of Court provides:

> The right of the plaintiff to enter upon the property of the defendant and appropriate the same for public use or purpose shall not be delayed by an appeal from the judgment. But if the appellate court determines that plaintiff has no right of expropriation, judgment shall be rendered ordering the Regional Trial Court to forthwith enforce the restoration to the defendant of the possession of the property, and to determine the damages which the defendant sustained and may recover by reason of the possession taken by the plaintiff.

2. Dismissal of Case

After the issuance of an order of expropriation, the plaintiff can have the case dismissed. The necessity for the expropriation may no longer exist.[299] However, the plaintiff must obtain the approval of the trial court.

Section 4, Rule 67 of the Rules of Court states:

> After the rendition of such order, the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court deems just and equitable.

[296] *Municipality of Biñan*, 180 SCRA at 587.

[297] City of Manila v. Battle, 25 Phil. 566, 573 (1913).

[298] *Baylosis*, 109 Phil. at 584-85; Commonwealth of the Philippines v. Santos, C.A.-G.R. No.4573-R (29 November 1952).

[299] City of Manila v. Ruymann, 37 Phil. 421, 425 (1918).

The reason for this is that the defendant is entitled to recover damages because of the possession of the property by the plaintiff.[300]

The claim for damages need not be ventilated in a separate action to avoid a multiplicity of suits.[301] However, the defendant may also file a separate case to recover the damage.[302] The reason for this is that the decision of the higher court reversing the order of expropriation does not constitute *res judicata* as to the claim of the defendant for damages, because the only issue involved in the appeal is the right of the plaintiff to expropriate the property involved in the case.[303]

Of course, if the plaintiff did not take possession of the property sought to be expropriated, the defendant cannot recover damages.[304]

If the plaintiff abandoned the expropriation case, the possession of the property should be restored to the owner.[305]

G. Appointment of Commissioners

After the issuance of the order of expropriation, the court should appoint commissioners to determine the just compensation.

Section 5, Rule 67 of the Rules of Court provides in part:

> Upon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken.

It is premature to appoint commissioners before the resolution of the objection and defenses of the defendant. If they are sustained, the appointment of the commissioners will become useless.[306]

[300] *Ruymann*, 37 Phil. at 428; *De los Angeles*, 55 Phil. at 780; Philippine Oil Development Company, Inc. v. Go, 90 Phil. at 696; Commonwealth of the Philippines v. Santos, C.A.-G.R. No. 4573-R, November 29, 1952; Republic v. Domingo, 21 C.A.REP 2d 315, 321 (1976).

[301] *Philippine Oil*, 90 Phil. at 696.

[302] *De los Angeles*, 55 Phil. at 783; *Domingo*, 21 C.A.Rep 2d at 321.

[303] *Baylosis*, 109 Phil. at 582-83.

[304] *Ruymann*, 37 Phil. at 428-29; *Domingo*, 21 C.A.Rep 2d at 326.

[305] Cuenco v. Municipality of Bacoor, C.A.-G.R. No. 13103-R (22 November 1955).

[306] *Nieto*, 97 Phil. at 34.

H. Judgment

1. Rights of the plaintiff

The effects of a judgment in favor of the plaintiff are laid down in Section 10, Rule 67 of the Rules of Court, which states in part:

> Upon payment by the plaintiff to the defendant of the compensation fixed by the judgment, with legal interest thereon from the taking of the possession of the property, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter upon the property expropriated and to appropriate it for the public use or purpose defined in the judgment, or to retain it should he have taken immediate possession thereof under the provisions of section 2 hereof.

2. Form of Judgment

Section 13, Rule 67 of the Rules of Court provides in part:

> The judgment entered in expropriation proceedings shall state definitely, by an adequate description, the particular property or interest therein expropriated, and the nature of the public use or purpose for which it is expropriated.

Describing the property being expropriated as a portion of the lot situated in Barrio San Julian, Malasigui, Pangasinan and covered by Transfer Certificate of Title No. 15457 of the Registry of Deeds for the Province of Pangasinan was considered sufficient where the complaint contained a sketch of the portion sought to be expropriated.[307]

3. Registration of Judgment

If the property expropriated is real estate, a certified true copy of the judgment should be recorded in the Registry of Deeds of the place in which the property is situated, and that will have effect of vesting title to the real estate in the plaintiff for the public use or purpose for which it was expropriated.[308]

[307] Province of Pangasinan v. Judge of Branch VIII of the Court of First Instance of Pangasinan, 80 SCRA 117, 122 (1977).

[308] The Revised Rules of Court, Rule 67 §13 (1997).

4. Conflicting Claims

Section 9, Rule 67 of the Rules of Court provides in part:

> If the ownership of the property taken is uncertain or there are conflicting claims to any part thereof, the court may order any sum or sums awarded as compensation for the property to be paid to the court for the benefit of the person adjudged in the same proceeding to be entitled thereto.

From this, it is clear that the court trying the expropriation case is empowered to adjudicate in the same case conflicting claims of ownership of the property sought to be expropriated.[309]

5. Payment of Compensation to the Defendant

If the judgment declares the plaintiff entitled to expropriate the property involved in the case, the defendant will be ordered to be paid the just compensation.[310] Damages which have nothing to do with the expropriation cannot be recovered in the expropriation case. Thus, the damages to the improvements on an adjoining piece of land caused by a fire which broke out when the engineers of a railroad company which filed the expropriation case were constructing the railway should be recovered in a separate action.[311]

If the defendant consents to the expropriation of the property but merely demands payment of just compensation, he can no longer ask for the return of his property.[312]

If the property expropriated is being used for a public purpose, such as a highway, the owner can only be paid just compensation, as it is not feasible to return the property to the owner.[313] This rule holds true even if the property was taken without filing an expropriation case.[314]

[309] Republic v. Court of First Instance of Pampanga, 33 SCRA 527, 532 (1970).

[310] The Revised Rules of Court, Rule 67, §10 (1997).

[311] *Attorney General*, 22 Phil. at 196.

[312] Gonzaga v. City of Bacolod, 10 C.A.rep 2d, 939, 944 (1966).

[313] Estate of Eulogio Arevalo v. Coloma, 1 CARA 492, 497 (1986); Republic v.Arvisu, 5 CARA 545, 551 (1988).

[314] *Alfonso*, 106 Phil. at 1022; Valdehueza v. Republic, 17 SCRA 107, 112 (1966); *Amigable*, 43 SCRA at 364.

However, if the just compensation cannot be paid because of lack of financial capacity of the plaintiff and the plaintiff took possession of the property, the property should be returned to the owner.[315]

6. Payment of Interest

If the decision did not award any interest to the just compensation and it became final, the owner of the property expropriated cannot file a separate case to recover it. The new case will be barred by *res judicata*.[316]

7. Payment of the Costs of Suit

The payment of the costs of suit is governed by Section 12, Rule 67 of the Rules of Court, which provides:

> The fees of the commissioners shall be taxed as a part of the cost of the proceedings. All costs, except those of rival claimants litigating their claims, shall be paid by the plaintiff, unless an appeal is taken by the owner of the property and the judgment is affirmed, in which event the costs of the appeal shall be paid by the owner.

Thus, in an expropriation case, the plaintiff is liable for the costs of suit.[317] If the plaintiff loses an appeal, the plaintiff should pay the costs of suit for the appeal.[318] The costs of suit include the fees of the commissioners.[319] However, the fees of he commissioner should not exceed the sum of one hundred pesos (P100.00) per day spent in the performance of their duties and in the preparation of their report to the court.[320]

Section 15, Rule 141 of the Rules of Court provides:

> The commissioners appointed to appraise land sought to be condemned for public use in accordance with these rules shall each receive a compensation of one hundred (P100.00) pesos per day for the time actually and necessarily employed in the

[315] *Li Seng Giap*, 13 C.A.Rep 2d at 878.

[316] *Urtula*, 22 SCRA at 481.

[317] Philippine Railway Company v. Solon, 13 Phil. 34, 44 (1909); *Gonzales*, 94 Phil. at 963 (1954).

[318] *Gonzales*, 94 Phil. at 963.

[319] Republic v. Garcia, 76 SCRA 47, 49 (1977); *Bernal*, 14 C.A.Rep 2d at 1003.

[320] *Protestant Episcopal Church*, 4 C.A.Rep 2d at 775.

performance of their duties and in making their report to the court, which fees shall be taxed as a part of the costs of the proceedings.

However, Section 1, Rule 142 of the Rules of Court states in part:

No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.

On this basis, the Supreme Court exempted the Republic of the Philippines from liability for costs of suit in expropriation cases.[321] However, the Supreme Court held in the earlier case of *Republic v. Gonzales* that the Republic of the Philippines is liable for costs of suit in expropriation cases.[322]

This earlier ruling reflects the better view. Section 12, Rule 67 of the Rules of Court should be considered as an exception to Section 1, Rule 142 of the Rules of Court. This is precisely a case where a law otherwise provided that the Republic of the Philippines is liable for costs of suit. Besides, the just compensation to be paid the owner of the property sought to be expropriated should include the costs of suit. Otherwise, it will be diminished by the costs of suit incurred in the expropriation case and in collecting the just compensation.[323]

I. Appeal

If the owner of the property sought to be expropriated wants to question the amount of the compensation awarded to him by the trial court, he should appeal. The error cannot be corrected by filing a petition for certiorari, since the fixing of the just compensation involves an exercise of jurisdiction.[324] However, the appeal will not stay the right of the plaintiff to enter and appropriate the property sought to be expropriated.

Section 11, Rule 67 of the Rules of Court reads:

The right of the plaintiff to enter upon the property of the defendant and appropriate the same for public use or purpose shall not be delayed by an appeal from the judgment. But if the

[321] *Garcia*, 76 SCRA at 49.

[322] 94 Phil. at 963.

[323] IV-B VICENTE FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES, SPECIAL CIVIL ACTIONS, 464-65 (1972).

[324] Aparicio v. Court of First Instance of Surigao de Sur, C.A.-G.R. No. SP-00721 (4 February 1972); *Esteban*, C.A.-G.R. No. SP-60527 (13 June 1972).

appellate court determines that plaintiff has no right of expropriation, judgment shall be rendered ordering the Regional Trial Court to forthwith enforce the restoration to the defendant of the possession of the property, and to determine the damages which the defendant sustained and may recover by reason of the possession taken by the plaintiff.

J. Execution

If the plaintiff in an expropriation case is the Government of the Philippines, the judgment awarding just compensation to the defendant cannot be enforced by the issuance of a writ of execution.[325]

Section 7 of Act No. 3083 provides:

No execution shall issue upon any judgment rendered by any court against the Government of the Philippine Islands under the provisions of this Act; but a copy thereof duly certified by the clerk of the Court in which judgment is rendered shall be transmitted by such clerk to the Governor-General (now President of the Philippines), within five days after the same becomes final.

If the one who filed the expropriation case is the National Government, the defendant will have to look to Congress to appropriate funds to pay for the just compensation if there has been no previous appropriation.[326]

Section 29 (1), Article VII of the 1987 Constitution provides:

No money shall be paid out of the Treasury except in pursuance of an appropriation made by laws.

If the one who filed the expropriation is a province, a city, a municipality, or a barangay, the remedy of the owner of the property expropriated is to file a petition for mandamus to compel it to appropriate money to satisfy the judgment.[327]

However, in *Cosculluela v. Court of Appeals*, 164 SCRA 393, the Supreme Court authorized the issuance of a writ of execution against the National

[325] *San Diego*, 31 SCRA at 625; Municipality of Makati v. Court of Appeals, 190 SCRA 206, 212 (1990).

[326] *San Diego*, 31 SCRA at 616, 625 (1970); *Municipality of Makati*, 190 SCRA at 212.

[327] *San Diego*, 31 SCRA at 625; *Municipality of Makati*, 190 SCRA at 213.

Irrigation Authority. The Supreme Court distinguished this case from the earlier cases, which prohibited the issuance of a writ of execution by saying:

> In the present case, the Barotac Viejo Project was a package project of government. Money was allocated for an entire project. Before bulldozers and ditch diggers tore up the place and before millions of pesos were put into the development of the project, the basic responsibility of paying the owners for property seized from them should have been met.
>
> Another distinction lies in the fact that the NIA collects fees for the use of the irrigation system constructed on the petitioner's land. It does not have to await an express act of Congress to locate funds for this specified purpose.[328]

The Supreme Court emphasized in this case that Congress had already appropriated funds to pay for the just compensation. The conclusion of the Supreme Court could have been better justified by reasoning that the National Irrigation Authority has a juridical personality separate and distinct from that of the Republic of the Philippines and is not covered by Section 7 of Act No. 3083.[329]

X. SUNDRY ISSUES

A. *Passing of Title*

The decision in an expropriation case involving real property in favor of the plaintiff should be registered with the registry of deeds of the place where the real property being expropriated is located.

Section 13, Rule 67 of the Rules of Court provides:

> When real estate is expropriated, a certified copy of such payment shall be recorded in the registry of deeds of the place in which the property is situated, and its effect shall be to vest in the plaintiff the title to the real estate so described for such public use or purpose.

[328] *Cosculluela*, 164 SCRA at 399 (1988).

[329] Fontanilla v. Maliaman, 179 SCRA 685, 693 (1989).

Title to the property sought to be expropriated does not pass to the plaintiff until the award of just compensation has been paid.[330] Once title to the property has passed to the plaintiff, the plaintiff becomes absolute owner of the property. Hence, if it subsequently abandons the public use to which the property was devoted, the title to the property will not revert to the previous owner.[331]

B. *Registration in Name of Owner*

Even if a strip of land is needed to widen a street if no expropriation case has actually been filed, the owner is entitled to have it registered in his name. It is unconstitutional to deprive the owner of the rights over it in the meanwhile.[332]

C. *Recovery of Possession*

The owner of a parcel of land is entitled to its possession and can recover its possession from someone who is illegally occupying it.

Article 428 of the Civil Code provides:

> The owner has also a right of action against the holder and possessor of the thing in order to recover it.

Consequently, if the government is contemplating to expropriate a parcel of land but has not actually filed an expropriation case, the owner of the land may file an ejectment case to recover its possession. Until an expropriation case is filed, the owner cannot be deprived of his right of possession over the land. Otherwise, the mere announcement of an intention to expropriate a parcel of land will freeze the property and deprive the owner of his rights over the land no matter how uncertain

[330] Jacinto v. Director of Lands, 49 Phil. 853, 856 (1927); Gutierrez v. Court of Tax Appeals, 101 Phil. 713, 725 (1957); *Small Landowners*, 175 SCRA at 385-391; Velarma v. Court of Appeals, 239 SCRA 400, 416 (1996).

[331] Fery v. Municipality of Cabanatuan, 42 Phil. 28, 30 (1921).

[332] Santos v. Director of Lands. 22 Phil. 424, 426 (1912).

such intention may be. This is unconstitutional.[333] If there is already a decision in the ejectment case, the decision may be executed.[334]

The ejectment case may be suspended if an expropriation case has been filed.[335] However, the mere filing of the case is not sufficient. The ejectment case should not be suspended until an order for the issuance of a writ of possession is issued.[336] However, should the expropriation case be decided in favor of the owner of the land, the suspension of the ejectment case must be lifted. Its continuation has no more basis.[337] Similarly, if the government decided not to pursue the expropriation of the land, the suspension of the ejectment case should be dissolved.[338]

On the other hand, the filing by the owner of the land of an ejectment against the government does not preclude the government from filing an expropriation case. The inherent power of eminent domain of the State cannot yield to an ejectment case.[339]

D. Collection of Rent

One of the rights of an owner of a piece of property is the right to collect rent. Article 491 of the Civil Code provides:

[333] *Baylosis*, 96 Phil. at 464; Province of Rizal v. San Diego, 105 Phil. 33, 38 (1955); Tuason v. De Asis, 107 Phil. 131, 142 (1960); Bulahan v. Tuason, 109 Phil. 251, 255 (1960); Teresa Realty, Inc. v. Potenciano, 5 SCRA 211, 215 (1962); Teresa Realty, Inc. v. Garriz, 5 SCRA 695, 699 (1962); Greater Balanga Development Corporation v. Municipality of Balanga, 239 SCRA 436, 444 (1994); Araneta v. Cacho, C.A.-G.R. No. 14523-R (23 June 1956); Reyes v. Prieto, 57 O.G. 1081, 1085 (1957); Aquino v. Geraldez, C.A.-G.R. No. 23128-R (28 July 1962); Santiago v. Yatco, 2 C.A.REP 2d 648, 665 (1962).

[334] San Jose v. Lucero, G.R. No. L-9062 (31 July 1956); Familara v. J.M. Tuason and Company, Inc. 49 SCRA 338, 341-342 (1973).

[335] Manotok Realty, Inc. v. Madlangawa, C.A.-G.R. No. 32067-R (28 November 1964).

[336] *J.M. Tuason*, 3 SCRA at 706; J.M. Tuason and Company, Inc. v. Jaramillo, 9 SCRA 189, 197-198 (1963); David v. Samta, C.A.-G.R. No. 28299-R (21 October 1969); J.M. Tuason and Company, Inc. v. Remigio, C.A.-G.R. No. 27892-R (29 December 1964); Marjajay, Inc. v. J.G. Quijano, Inc., C.A.-G.R. No. 37940-R (18 November 1966).

[337] Diaz v. Yap, G.R. No. L-5957 (29 May 1953); Samia v. Garcia, 10 SCRA 791, 793 (1964); Dee C. Chuan and Sons, Inc. v. Adia, C.A.-G.R. No. 30817-R (9 October 1964).

[338] Paz Ongsiaco, Inc. v. Abad, G.R. No. L-12147 (30 July 1957).

[339] *Tagle*, 299 SCRA at 560 (1998).

To the owner belongs:

(1) The natural fruits
(2) The industrial fruits
(3) The civil fruits

Article 492 of the Civil Code reads in part:

> Civil fruits are the rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.

Hence, while the expropriation case is pending, the owner of the property cannot be deprived of his right to collect rent.[340]

E. Construction of Improvements

If the government is planning to expropriate a parcel of land, it cannot prohibit the owner from constructing improvements on the land in the meanwhile by refusing to issue to him a building permit. This would be taking the property without just compensation. The owner would be deprived of the use of the land even before an expropriation case has been filed.[341] However, if an expropriation case has already been filed, the government can prohibit the owner of the land from constructing any improvements.[342]

F. Tax Implications

1. Payment of Real Estate Tax

Once the owner of a parcel of land has been deprived of its possession, he ceases to be liable for payment of real estate taxes for it. Since he has been deprived of the benefits of ownership, he should be relieved of corresponding burdens of ownership.[343] If the owner paid for the real estates taxes, his payment should be refunded.[344]

[340] Samia v. Reyes, 8 SCRA 135, 141 (1963).

[341] Hipolito v. City of Manila, G.R. No. L-8633 (27 April 1956); *Li Sieng Giap*, 13 C.A.Rep 2d at 882.

[342] De los Santos v. Lumbaga, 4 SCRA 224, 226 (1962).

[343] Herrera v. Auditor General, 102 SCRA 477, 482 (1968); Republic v. Hadji, C.A.-G.R. No. 23320-R (7 March 1962).

[344] City of Manila v. Roxas, 60 Phil. 215, 217-18 (1934); Commonwealth of the Philippines v. Batac, 76 Phil. 233, 235 (1946); Republic v. Butu, 58 O.G. 7078, 7083 (1962); *Bernal*, 14 C.A.Rep 2d at 1003.

2. Liability for Income Tax or Capital Gains Tax

The just compensation received by the owner of the property expropriated is subject to income tax or capital gains tax. The expropriation of the property is a sale, although the sale is involuntary. Hence, the proceeds from the sale constitute income to the owner.[345]

XI. CONCLUSION

Because of the growing complexity of society, the social demands upon the government to promote the general welfare are expanding. Since eminent domain is one of the inherent powers of the government, its use as a tool for the advancement of the common good is also increasing. That is why the concept of public use is no longer confined to the traditional view. While the courts must recognize the broadening concept of public use, they must remain vigilant in seeing to it that the exercise of the power of eminent domain strictly adheres to the Constitution. The courts should especially remain alert in reviewing the public purpose of the expropriation, the necessity of the taking, the choice of the property to be expropriated, and the determination of the just compensation.

[345] Gutierrez v. Court of Tax Appeals, 101 Phil. 713, 721 (1957).

THE SOCIAL SECURITY LAW OF 1997: CONTEXT, RAMIFICATIONS, POSSIBILITIES*

HANS LEO J. CACDAC*

INTRODUCTION

The Philippine law on the social security system establishes the program of government which relieves financial want by restoring income lost through inability to work due to death, old age, sickness, pregnancy, or disability, up to a minimum level.[1]

Mandatory social security system membership requires the shared payment of contributions between employee and employer, with self-employed members paying their premiums fully. Contributions are pooled to pay for benefits and operating costs, while excess funds are invested to meet pension and benefit payments in the future.[2] Thus, the social security program administered by the Philippine government could just as well be classified as a social insurance scheme.[3]

Prior to the initiation of this formal program, there were various ways of providing some form of social security. The most obvious was through private savings and investments. Unfortunately, habits of thrift were not widespread,[4] since

* *Cite as* 45 ATENEO L.J. 87 (2001).

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[1] HUGO E. GUTIERREZ, JR., PHILIPPINE SOCIAL SECURITY LAW AND PRACTICE 1 (1971).

[2] Social Security System President and Chief Executive Officer Carlos A. Arellano, Address at the World Bank Asia Pension Conference, Hong Kong (October 12, 1999).

[3] The principal elements of social insurance have been set out as follows: a) social insurance is financed by contributions which are normally shared between employers and workers, with, perhaps, state participation in the form of a supplementary contribution or other subsidy from the general revenue; b) participation is compulsory, with few exceptions; c) contributions are accumulated in special funds out of which benefits are paid; d) surplus funds not needed to pay current benefits are invested to earn further income; e) a person's right to benefit is secured by his contribution record without any test of need or means; f) contribution and benefit rates are often related to what the person is or has been earning; and g) employment injury schemes are usually financed wholly by employers, with the possibility of state help from general revenue. INTERNATIONAL LABOUR ORGANIZATION, INTRODUCTION TO SOCIAL SECURITY 4 (1984).

[4] Froilan M. Bacuñgan, *Non-Government Social Security Measures*, 3 PHIL. SOCIAL SECURITY BULL. 11-13 (1961).