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**G.R. No. 179334 (*Secretary of the Department of Public Works and Highways and District Engineer Celestino R. Contreras vs. Spouses Heracleo and Ramona Tecson*)**

Promulgated:

April 21, 2015

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## DISSENTING OPINION

**VELASCO, JR., J.:**

### The Case

For resolution is the Motion for Reconsideration filed by respondents herein, praying for the modification of the Decision<sup>1</sup> rendered by the Court's Third Division on July 1, 2013. Said Decision declared respondents as entitled to just compensation after their beneficial ownership over the subject 7,268-square meter lot was taken by the government, but only at the unit price of 70/100 pesos (PhP 0.70) per square meter.

### The Facts

The pertinent antecedent facts, as recited in my earlier dissent, are simple and undisputed:<sup>2</sup>

Respondent spouses Heracleo and Ramona Tecson (respondents) are the co-owners of a 7,268-square meter lot located in San Pablo, Malolos, Bulacan, and covered by Transfer Certificate of Title (TCT) No. T -43006. This parcel of land is among the private properties traversed by the MacArthur Highway, a government project undertaken sometime in 1940. The taking appears to have been made absent the requisite expropriation proceedings and without respondents' consent.

After the lapse of more than forty (40) years, respondents, in a letter dated December 15, 1994, demanded payment equivalent to the fair market value of the subject property from the Department of Public Works and Highways (DPWH). Petitioner Celestino R. Contreras (petitioner Contreras), then District Engineer of the First Bulacan Engineering District of DPWH, responded with an offer to pay just compensation at the rate of PhP 0.70 per square meter based on Resolution No. XII dated January 15, 1950 of the Provincial Appraisal Committee (PAC) of Bulacan. Respondents made a counter-offer that the government either return the subject property or pay just compensation based on the current fair market value.

As the parties failed to reach any agreement on the price, respondents filed a suit for recovery of possession with damages against

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<sup>1</sup> *Secretary of Public Works and Highways v. Tecson*, G.R. No. 179334, 700 SCRA 243.

<sup>2</sup> *Id.* at 260-261.

DPWH and petitioner Contreras (collectively referred to as "petitioners") on March 17, 1995. In their Complaint, docketed as Civil Case No. 208-M-95 and raffled to Branch 80 of the RTC of Malolos City, respondents claimed that the subject property was assessed at PhP 2,543,800.

On March 22, 2002, the RTC, Br. 80, of Malolos City rendered a Decision,<sup>3</sup> directing the Department of Public Works and Highways (DPWH) to compensate respondents for the value of the property taken at the rate of one thousand five hundred pesos (PhP 1,500.00) per square meter, adopting the recommendation of the PAC.<sup>4</sup> On appeal by petitioners, the CA affirmed with modification the RTC Decision, adding 6% interest computed from the time of the suit's filing on March 17, 1995 until full payment.<sup>5</sup>

Aggrieved, petitioner came to this Court, whose Third Division, by its July 1, 2013 assailed Decision, granted, in part, petitioner's appeal to the effect of reducing the amount to be paid to respondents, from PhP1,500.00 to PhP.070 to be precise, as just compensation. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, the petition is PARTIALLY GRANTED. The Court of Appeals Decision dated July 31, 2007 in CA-G.R. CV No. 77997 is MODIFIED, in that the valuation of the subject property owned by respondents shall be P 0.70 instead of P1,500.00 per square meter, with interest at six percent (6%) per annum from the date of taking in 1940 instead of March 17, 1995, until full payment.

In its ruling, the Court invoked the teaching in *Republic v. Lara*,<sup>6</sup> which considered the date of taking as the crucial point in determining just compensation. The Court wrote:

x x x "[T]he value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings." For where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken  
x x x.

On the theory that the reduced valuation of the property is inequitable, respondents timely moved for reconsideration.

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<sup>3</sup> *Rollo*, p. 165.

<sup>4</sup> *Id.* at 40.

<sup>5</sup> *Id.* at 124.

<sup>6</sup> *Republic v. Lara*, 96 Phil. 170, 177-178 (1954).



### The Issues

In resolving the pending motion, the *ponencia* ventures to simplify the case and narrows the issue down to the amount of just compensation respondents are entitled to, without delving into what perhaps is the more basic question of the validity of the taking. It is my humble submission that the standard for determining just compensation rests, in context, on whether or not the respondents' right to due process was violated, this fundamental matter being determinative, at the first instance, of the validity of the exercise of the power of eminent domain and, consequently, the reckoning date for property valuation for purposes of determining the amount of just compensation. Plainly, the core issue is whether or not the taking of private property is legal. If it is illegal, then the compensation shall be determined at the time of judicial demand. Consequently, the doctrine thus enunciated in *Republic v. Lara* has to be modified accordingly.

***The power of eminent domain  
is subject to constitutional  
restraints***

The power of eminent domain is inseparable from sovereignty, being essential to the existence of the State and inherent in government even in its most primitive forms.<sup>7</sup> It is usually understood to be an ultimate right of the sovereign power to appropriate any property in every form within its territorial sovereignty that it needs for a public purpose. As an old case so puts it, all separate interests of individuals in property are held under a tacit agreement or implied reservation vesting upon the sovereign the right to resume the possession of the property whenever the public interest so requires it.<sup>8</sup>

The government's exercise of eminent domain is not absolute. It is subject, first and foremost, to constitutional restrictions enshrined in the Bill of Rights, viz:

**Section 1.** No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

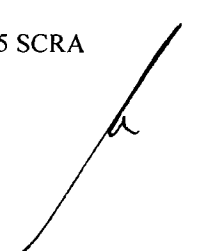
x x x x

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

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<sup>7</sup> *Heirs of Juancho Ardon v. Reyes*, Nos. L-60549, 60553 & 60555, October 26, 1983, 125 SCRA 220, 230-231.

<sup>8</sup> *Republic v. Court of Appeals*, G.R. No. 146587, July 2, 2002, 383 SCRA 611, 619.



Exactly the same sequential restrictive provisions were likewise found in Article III of the 1935 Constitution, then in force at the time the property in issue was taken.<sup>9</sup>

The Bill of Rights aims to protect the people against arbitrary and discriminatory use of political power. The basic rights and restrictions enumerated therein guarantee the preservation of our natural rights, which include personal liberty and security against invasion by the government or any of its branches or instrumentalities.<sup>10</sup> In relation to the present controversy, it extends to the citizens a sense of security in their property rights, despite the implied understanding that the sovereign can, at any time, reclaim from them the possession and ownership over portions of its territory. It, in fine, affords the citizens a mantle of protection from indiscriminate land-grabbing by the government, through the installation of defined safeguards from expropriation, without which, the exercise of the power of eminent domain can become oppressive.

***Respondents were deprived of  
their property rights without  
due process of law***

***a. The government failed to  
discharge its burden of initiating  
condemnation proceedings prior to  
taking private property***

The language of the Constitution is clear as it is categorical. The unequivocal declaration under Sec. 1, Art. III imposes a negative obligation on the state—it cannot proceed with depriving its citizens of property rights without first ensuring that compliance with due process requirements is duly observed.

At its most basic, procedural due process is described in *Albert v. University Publishing Co., Inc.*,<sup>11</sup> as follows:

By "due process of law" we mean "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. ... ." (4 Wheaton, U.S. 518, 581.); or, as this Court has said, "**Due process of law" contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property** (Lopez vs. Director of Lands, 47 Phil. 23, 32)." (Sicat vs. Reyes, L-11023, Dec. 14, 1956.) And it may not be amiss to mention here also that the "due process" clause of the Constitution is designed to secure justice as a living reality; not to sacrifice it by paying undue homage to formality. (emphasis added)

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<sup>9</sup> Section 1.

1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

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

<sup>10</sup> *Sales v. Sandiganbayan*, G.R. No. 143802, November 16, 2011, 269 SCRA 293, 310.

<sup>11</sup> *Albert v. University Publishing Co., Inc.*, No. L-19118, January 30, 1965, 13 SCRA 84.

Evidently, Sec. 1, Art. III of the Constitution requires that the act of deprivation should be preceded by compliance with procedural due process, part and parcel of which includes the filing of an expropriation case. This is so because **by filing the action for expropriation, the government, in effect, serves notice that it is taking title and possession of the property.**<sup>12</sup> Hence, without an expropriation suit, private property is being taken without due notice to the landowner, in violation of his constitutional right.

Moreover, initiating the requisite condemnation proceeding is essential for purposes of (1) determining whether or not the property is indeed being devoted or will be devoted for public use and (2) ascertaining the amount of just compensation due the private property owner. Otherwise stated, this is the avenue for the landowners to contest, with the proper forum, the validity of the taking, and for the government to prove that the requirements under Sec. 9, Art. III of the Constitution are satisfied.


It behoves the state to commence the necessary proceedings since the adverted constitutional provisions, as couched, place on the government the correlative burden of proving compliance with the imperatives of due process and just compensation prescribed under Secs. 1 and 9, Art. III of the Constitution. The rationale behind the responsibility thus placed on the government is explained in the ensuing eloquent pronouncement in *Alfonso v. City of Pasay*.<sup>13</sup>

**This Tribunal does not look with favor on the practice of the Government or any of its branches, of taking away property from a private landowner, especially a registered one, without going through the legal process of expropriation or a negotiated sale and paying for said property without delay.** The private owner is usually at a great and distinct disadvantage. He has against him the whole Government, central or local, that has occupied and appropriated his property, summarily and arbitrarily, sometimes, if not more often, against his consent. There is no agreement as to its price or its rent. In the meantime, the landowner makes requests for payment, rent, or even some understanding, patiently waiting and hoping that the Government would soon get around to hearing and granting his claim. The officials concerned may promise to consider his claim and come to an agreement as to the amount and time for compensation, but with the not infrequent government delay and red tape, and with the change in administration, specially local, the claim is pigeon holed and forgotten and the papers lost, mislaid, or even destroyed as happened during the last war. And when finally losing patience and hope, he brings a court action and hires a lawyer to represent him in the vindication of his valid claim, he faces the government represented by no less than the Solicitor General or the Provincial Fiscal or City Attorney, who blandly and with self-assurance, invokes prescription. The litigation sometimes drags on for years. In our opinion, **that is neither just nor fair.** When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates,

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<sup>12</sup> *Air Transportation Office (ATO) v. Gopuco, Jr.*, G.R. No. 158563, June 30, 2005, 462 SCRA 544, 557.

<sup>13</sup> No. L-12754, January 30, 1960.



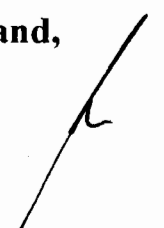
in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are first initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and difficulty for the Government, but all of its own making. (emphasis added)

Unfortunately, the bleak picture painted in *Alfonso* does not stray far from the factual milieu of the extant case. It is not disputed herein that the DPWH took the subject lot without the respondents' consent. Worse, it has been almost 70 years since the time of taking, yet the DPWH has failed, during that stretch, to institute the expropriation case as necessary, let alone pay respondents just compensation. Instead, it was the respondents themselves who, ironically, initiated the proceedings to recover just compensation while the DPWH had the audacity to traverse respondents' claim of ownership over the subject lot. What is more, as this Court has foreshadowed in *Alfonso*, petitioner made much of the fact that the respondents only filed their claim in 1995, or about 55 years from the time of taking and argued that their right to just compensation has already prescribed, as though unmindful of its obligation to initiate the proceedings itself.

Guilty of repetition, **it is the government that is mandated to satisfy the constitutional due process requirement, including initiating the condemnation proceedings.** It bears stressing that expropriation partakes of an involuntary sale, and as such, it is absurd to expect that the unwilling seller would also be the one required to additionally spend time, money, and effort to secure payment. As aptly observed in *Alfonso*, the private landowners, compared to the state, may not have the financial capacity to initiate the proceedings for just compensation themselves. The government, on the other hand, has the legal personnel and the access to the necessary funds to prosecute its case. These realities lead to the inevitable conclusion that respondents should not be the ones to suffer the adverse economic effects of the government's failure to file the expropriation proceedings. On the contrary, in such a scenario, it is the government that should bear the brunt of failing to comply with its constitutional mandate and of the prejudicial effects of an illegal, if not criminal, act of usurping real property of a private person.

*b. Failure to initiate condemnation proceedings leads to the consequent failure to lawfully take possession of the property*

The need for the government to commence condemnation proceedings as required has far-reaching ramifications that are legal as they are practical. Aside from operating as due notice to the landowner, initiating the case likewise entitles the government to acquire possession of the property, subject to the posting of a deposit. Thus, **absent an expropriation case, the requirement of posting a deposit will not come into play and,**



**consequently, the right of the government to acquire possession over the subject land will never arise.**

As prescribed under Section 2, Rule 67 of the Rules of Court:

**Section 2. Entry of plaintiff upon depositing value with authorized government depositary.** — Upon the 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 orders 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. (emphasis added)

A similar requirement of posting a deposit is likewise demanded under Sec. 19 of the Local Government Code, with respect to the exercise of a local government unit's power of eminent domain.<sup>14</sup> The purpose of the deposit is explained in *City of Manila v. Alegar Corporation*,<sup>15</sup> thusly:


But the advance deposit required under Section 19 of the Local Government Code constitutes an advance payment only in the event the expropriation prospers. **Such deposit also has a dual purpose: as pre-payment if the expropriation succeeds and as indemnity for damages if it is dismissed.** This advance payment, a prerequisite for the issuance of a writ of possession, should not be confused with payment of just compensation for the taking of property even if it could be a factor in eventually determining just compensation. If the proceedings fail, the money could be used to indemnify the owner for damages. (emphasis added)

As expounded in *City of Manila*, the deposit serves as security in favor of the landowner—that if expropriation prospers, the landowner would promptly receive, at least, partial payment based on the property's assessed value; and that if the expropriation case is dismissed, the landowner will immediately receive indemnity for having been deprived of his property. In either case, the landowner is assured that he will receive some form of compensation since the deposit, in a way, can be construed as earnest money for the sale. **Stated in the alternate, the filing of a deposit is an indication**

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<sup>14</sup> **Section 19. Eminent Domain.** - 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: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

<sup>15</sup> G.R. No. 187604, June 25, 2012.



**on the part of the government that it will not renege on its obligation to pay, whatever the outcome, when it entered into an involuntary sale.**

This further magnifies the significance of the prior filing of an expropriation case since without it, the required deposit can never be filed in court. To demonstrate, the protection accorded by the deposit requirement to the private landowners becomes illusory if it can easily be circumvented by neglecting or refusing to initiate condemnation proceedings. As in the case at bar, no amount of deposit was ever filed, owing to the absent requisite condemnation proceedings, yet this did not prevent the government from taking possession over the property.

It is then beyond cavil that prior filing of an expropriation case is a condition *sine qua non* before the government is allowed to enter the property being reclaimed and without which, the government's possession over the subject property becomes illegal. Without the necessary expropriation suit filed and the consequent deposit made, title over the land in issue cannot properly vest in favor of the government. Viewed under this perspective, the respondents remain until now, for all intents and purposes, the legitimate owners of the lot in issue. Under what authority or fiction of law then is the government occupying the same?

*c. It was the intention of the framers of the Constitution to require a deposit prior to taking as an indispensable component of "just compensation"*

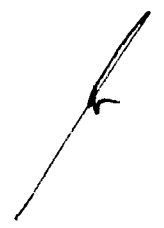
To be sure, the concept of "just compensation," as a requirement for valid taking, can likewise be found in the provisions of the Constitution on agrarian reform, particularly its Art. XIII, Sec. 4, which provides:

Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the rights of the farmers and regular farmworkers, who are landless, to own directly or collectively the land they till or, in the case of other farmworkers, 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 considerations, **and subject to the payment of just compensation**. In determining the retention limits, the State shall respect the right of small landowners. The state shall further provide incentives for voluntary land-sharing. (emphasis added)

During deliberations on the subject at hand, the members of the Constitutional Commission discussed the then proposed amendment to include the word "just" to describe "compensation," thusly:

MR. CONCEPCION. Thank you.

I think the thrust of the amendment of Commissioner Treñas is that the term "**just compensation**" is used in several parts of the Constitution,





and, therefore, it must have a **uniform meaning**. It cannot have in one part a meaning different from that which appears in the other portion. If, after all, the party whose property is taken will receive the real value of the property on just compensation, that is good enough. Any other qualification would lead to the impression that something else other than that meaning of just compensation is used in other parts of the Constitution.

x x x x

MR. RODRIGO. I was about to say what Commissioner Concepcion said. I just want to add that the phrase **“just compensation” already has a definite meaning in jurisprudence**. And, of course, I would like to reiterate the fact that “just compensation” here is not the amount paid by the farmers. **It is the amount paid to the owner, and this does not necessarily have to come from the farmer.** x x x


x x x x

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. Madam President, I propose an amendment to the proposed amendment of Commissioner Treñas. I support him in his statement that the words “just compensation” should be used there because it has jurisprudentially settled meaning, instead of putting in other ambivalent and ambiguous phrases which may be misconstrued, especially considering the fact that the words “just compensation” appear in different parts of the Constitution. However, my proposed amendment would read: “subject to THE PRIOR PAYMENT OF JUST COMPENSATION.” Let me explain. The purpose of this land distribution scheme is that **those whose properties may be under land reform may be thereby placed in a position after they have relinquished a portion of their property to invest in other gainful occupation**. That was one of the purposes mentioned by the Committee. **If we just provide for payment of just compensation without stating at what particular time that payment should be made, what happens to the landowners who has now been dispossessed of his property? Where can he make investments since he has not been given payment?** We are aware of the Land Bank bond wherein the amount is realizable only after the lapse of 20 years. It cannot be even used to pay PNB or DBP loans; it can only be used to pay taxes.

Furthermore, it is also established in jurisprudence, in the case of *Commissioner of Public Highways vs. San Diego*, L-30098, February 18, 1970, that where a property has already been thereby condemned – I used the word “condemned” in the sense of expropriation, because that is the other term – even if there is already an award, such an award, even by a judicial order, is not realizable upon execution; so the poor landowners will have to wait patiently until such time as Congress appropriates the amount.

In the case of *Commissioner of Public Highways vs. San Diego*, it was specifically stated that the judgment rendered requiring payment of the award determined as just compensation for the condemned property, and as a condition precedent for the transfer of the title to the government, cannot be realized upon execution, as the legislative must first appropriate the amount over and above the provisional deposit.



So my question here is: **If we do not require prior payment, what happens to the landowner now? Must he wait indefinitely? While in the meantime we have given priority to the landless, we have created another problem for the erstwhile landed gentry since they cannot, in any way, use either the property or the supposed proceeds from the property of which they were dispossessed.** If the landless have rights, even the landed also have rights; or, as Clarence Darrow says, "Even the rich also have rights."

We are not talking about the rich here. He is already parting with his property, and yet we go into an ephemeral, indefinite statement, "subject to the payment of just compensation." And the question is: **Where in point of time will that compensation be made?** That is why I ask that this amendment be accepted subject to prior payment of just compensation.

MR. BENGZON. Madam President.

THE PRESIDENT. Commissioner Bengzon is recognized.

MR. BENGZON. There is no need to get excited, Madam President, because the Committee is not insensitive to the needs of the landowners. **When the Committee placed this paragraph or statement here, it was the sense that the landowner would be immediately paid the just compensation. Otherwise, that compensation would not really be compensation at all.**

x x x x

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. Madam President, two points only. First, after listening to the observations of the Commissioner Ople and on the understanding that it does not exclude the possibility of subsidy, I would gladly remove that because I want to avoid a situation where we make acquisition of land so easy that, in effect, it may encourage the inefficient use of resources. So, provided that it is understood that we are not excluding subsidy whenever it is necessary, then I would be willing to limit the matter to the phrase "just compensation."

MS. NIEVA. Madam President, the Committee accepts.

THE PRESIDENT. Will the Committee please allow Commissioner Bernas to finish his statement?

FR. BERNAS. My second point is: I would object to the addition of the phrase "PRIOR COMPENSATION" because even if one looks at existing jurisprudence on expropriation, there is no requirement of immediate, prior compensation. **Just compensation simply requires that there is an assurance that compensation will be given.** Jurisprudence has not required prior compensation. So, if at this stage when we are trying to do something for the underprivileged, we make expropriation more difficult, then again we will be retrogressing.

Thank you, Madam President.



THE PRESIDENT. The original amendment of Commissioner Treñas stands.

x x x x

MR. MONSOD. Madam President, may we just read the phrase as now accepted by the Committee?

THE PRESIDENT. Please proceed.

MR. MONSOD. The phrase shall read: “and subject to the payment of just compensation.”

#### VOTING

THE PRESIDENT. We will not on the first, and then later on, if Commissioner Regalado insists on his amendment of inserting the word “PRIOR,” we will vote on that later.

As many as are in favour of the Treñas amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand)

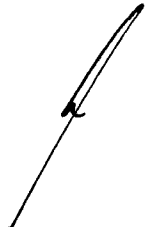
The results show 39 votes in favor and none against, the amendment is approved.

As many as are in favor of inserting the word “PRIOR” . . .

MR. REGALADO. Before we do that, Madam President, may I just explain?

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. **It is not correct to state that jurisprudence does not require prior payment. Even the recent presidential decrees of the President always require a partial deposit of a certain percentage and the rest by a guaranteed payment.** What I am after here is that, as Commissioner Bernas has said, there must at least be an assurance. That assurance may be in the form of a bond which may be redeemable later. **But to say that there has never been a situation where prior payment is not required, that is not so even under the Rules of Court as amended by presidential decrees. Even the government itself, upon entry on the land, has to make a deposit** and the rest thereafter will be guaranteed under the judgment of a court, but which judgment, as I have pointed out, is not even realizable by executor process. Does it mean to say that the government can take its own time at determining when the payment is to be made? At least simultaneously, there should be an assurance in the form of partial payment in cash or other modes of payment, and the rest thereof being guaranteed by bonds, the issuance whereof should be simultaneous with the transfer. That is my only purpose in saying that there should be prior payment – not payment in cash physically but, at least, contract for payment in the form of an assurance, a guarantee or a promissory undertaking.



THE PRESIDENT. Will Commissioner Regalado please restate his proposed amendment?

MR. REGALADO. The proposed amendment will read: "and subject to THE PRIOR PAYMENT OF just compensation."

THE PRESIDENT. It was accepted by the Committee.

MR. REGALADO. The word "payment" there should be understood in the sense that I have explained, that there must at least be an assurance on the part of the government.

FR. BERNAS. Madam President.

THE PRESIDENT. Commissioner Bernas is recognized.

FR. BERNAS. I must say, I did misunderstand Commissioner Regalado. I read him as requiring prior full compensation. **But if the intention is merely to maintain what obtains now, mainly, that it is enough that there is a partial deposit as it exists under existing law, I would agree with him that that is fine. But then I would still oppose putting it down in writing by itself because it can be construed as requiring prior full compensation.**

THE PRESIDENT. What does the Committee say?

MR. REGALADO. Madam President, **Commissioner Bengzon has just told me that anyway those remarks are already in the Record. And my remarks, according to Commissioner Bengzon, have already been taken into account and have been accepted in the sense in which they were intended. Then, provided it appears in the Record that that is the purpose of the amendment and such explanation in the Record shall stay, I withdraw the proposed amendment to the amendment.**

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. If the withdrawal is based on what was supposedly agreed with the Committee, I will still object because we will have the concept of just compensation for the farmers and farm workers more difficult than those in other cases of eminent domain. So, we should not make a distinction as to the manner of the exercise of eminent domain or expropriations and the manner that just compensation should be paid. It should be uniform in all others because if we now allow the interpretation of Commissioner Regalado to be the concept of just compensation, then we are making it hard for the farmers and the farm workers to enjoy the benefits allowed them under the agrarian reform policy.

MR. BENGZON. Madam President, as we stated earlier, **the term "just compensation" is as it is defined by the Supreme Court in so many cases and which we have accepted. So, there is no difference between "just compensation" as stated here in Section 5 and "just**

**compensation” as stated elsewhere. There are no two different interpretations.**<sup>16</sup> (emphasis added)

Clearly then, it was the intention of the framers that (1) the concept of just compensation in the country’s agrarian reform programs should be the same as in other cases of eminent domain; and that (2) the concept of just compensation requires that partial payment in the form of a deposit be made, consistent with Our ruling in *City of Manila*.

The **deposit**, as earlier discussed, **serves as the assurance** Commissioners Regalado and Bernas speak of that would guarantee that the landowner will be paid. This is so because in sales transactions, the consideration is usually based on the price that, in all probability, resulted from fair negotiations wherein the seller is willing to sell and the buyer is willing to buy. Given the involuntary nature of expropriation, however, willingness to sell on the part of the vendor landowner becomes immaterial, while the willingness to actually buy remains present. In this regard, the said willingness to buy should be evidenced at least by complying with the requisite amount of deposit. **Without it, the taking of private property should be deemed illegal for lack of just compensation, in violation of the landowner’s constitutional right to due process.** And to reiterate, this deposit requirement would only arise once the proper condemnation proceeding has been filed.

Moreover, strict observance of and compliance with the deposit requirement was the condition agreed upon by the members of the Constitutional Commission for the withdrawal of the proposed amendment requiring “prior” payment of just compensation. As per the deliberations of the Commission, they have agreed that there ought to be an assurance, in the form of deposit, that the landowner will be paid. However, to remove any ambiguity in the provision, so that it would not be misconstrued as requiring prior payment in full, the proposed amendment was withdrawn, **provided that the phrase just compensation be accepted in the sense and for the purpose it was intended, which includes the prior posting of a deposit.**

***Just compensation should be determined at the time of judicial demand if the private property was illegally taken***

We have, in a long line of jurisprudence, tolerated the practice of filing expropriation proceedings after the fact of taking and sustained the validity of the state’s occupancy over the subject property in spite of not depositing the necessary amount in court. These forbearances, however, should ought not be taken as a license or considered as an unbridled authority on the part of the government to file the requisite case at any time

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<sup>16</sup> Record of the Constitutional Commission Proceedings and Debates, Vol. 3, pp. 16-21; Minutes of the Constitutional Commission dated August 7, 1986.

it pleases or, worse, dispense with the requirement altogether. Not every taking of private property that redounds to the benefit of the public should automatically be considered as a valid exercise of eminent domain, which justifies the payment of just compensation at the time of taking. At some point, the line should be drawn between belated compliance on the one hand, and the virtual deprivation of property in violation of due process rights, crossing into the realm of illegal taking, on the other.

Pertinently, taking of property is illegal if it is without the benefit of expropriation proceedings and without payment of just compensation,<sup>17</sup> as in the instant case. To recapitulate, taking possession of the “expropriated” property without first filing condemnation proceedings violates the landowner’s right to procedural due process under Art. III, Sec. 1 of the Constitution. Additionally, without prompt payment of just compensation, or at least the required deposit under the rules, there is no sign on the part of the government that it is willing to, and will in fact, pay just compensation after taking private property, in contravention of Art. III, Sec. 9. Moreover, both constitutional safeguards will be rendered inutile if the Court will be permitted to brush them aside in every instance to uphold the primacy of the state’s power of eminent domain.


These considerations command deviation from established jurisprudence in the following wise:

1. If there is a case filed and a deposit made, just compensation should be determined from the time of taking; and
2. If there was no case filed, just compensation should be determined from the time of judicial demand by the lot owner.

The rationale for the above distinction is that it is only when an expropriation case is filed that it becomes crystal clear that the government is acquiring property in the exercise of its power of eminent domain, and is not doing so in contravention of the constitutional guarantees in favor of the landowner. Consequently, it is under this backdrop when the landowner becomes entitled to just compensation computed at the time of taking. On the other hand, in the absence of condemnation proceedings, especially after a significant lapse of time as in this case, the authority under which the government occupies the subject property becomes questionable. It does not become apparent, as in this situation, that expropriation, as a function of eminent domain, is being exercised by the government since compliance with Secs. 1 and 9 of Article III was not duly observed. Thus, the amount of just compensation, in such instances, should be determined from when payment was judicially demanded.

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<sup>17</sup> J. Velasco, Jr., Dissenting Opinion, *Secretary of Public Works and Highways v. Tecson*, supra note 1, at 270; citing *Eusebio v. Luis*, G.R. No. 162474, October 13, 2009, 603 SCRA 576.



The foregoing disquisitions are in consonance with Republic Act No. 8974 (RA 8974),<sup>18</sup> which evinces that Congress intends that the government's practice of illegally taking property be curbed, if not entirely eliminated. As provided under RA 8974:

**Section 4. Guidelines for Expropriation Proceedings.** - Whenever it is necessary to acquire real property for the right-of-way or location for any national government infrastructure project through expropriation, **the appropriate implementing agency shall initiate the expropriation proceedings before the proper court** under the following guidelines:

- (a) **Upon the filing of the complaint**, and after due notice to the defendant, the implementing agency shall **immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;**
- (b) In provinces, cities, municipalities and other areas where there is no zonal valuation, the BIR is hereby mandated within the period of sixty (60) days from the date of the expropriation case, to come up with a zonal valuation for said area; and
- (c) In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the implementing agency shall immediately pay the owner of the property its proffered value taking into consideration the standards prescribed in Section 5 hereof.

**Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.**

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

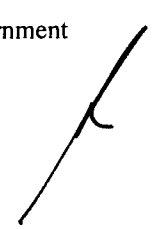
**In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case.** When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court.

As can be gleaned, the above-quoted provision echoes the requirement of a filed expropriation case prior to takeover. Additionally, Congress guaranteed, under the declared policy of RA 9874, that *"the State shall ensure that owners of real property acquired for national government infrastructure projects are promptly paid just compensation,"*<sup>19</sup> emphasizing the immediacy of initiating condemnation proceedings for without which,

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<sup>18</sup> An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes.

<sup>19</sup> Section 2, RA 8974.



payment of just compensation, or at least the posting of a security deposit, cannot be made.

Further, in determining what constitutes just compensation, RA 8974 enumerates the following factors to be taken into consideration:

**Section 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale.** - In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

- (a) The classification and use for which the property is suited;
- (b) The developmental costs for improving the land;
- (c) The value declared by the owners;
- (d) The **current selling price of similar lands in the vicinity**;
- (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;
- (f) This size, shape or location, tax declaration and zonal valuation of the land;
- (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
- (h) **Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.** (emphasis added)

Additionally, the uniformity of the concept of just compensation under the agrarian reform program with that in other eminent domain cases, as contemplated by the Constitutional Commission, becomes demonstrable by a comparison of RA 8974 with the Comprehensive Agrarian Reform Law. Similar with RA 8974, RA 9700,<sup>20</sup> which amended Sec. 17 of RA 6657,<sup>21</sup> requires that just compensation be based, in part, on the current value of like properties. As elucidated in *Land Bank of the Philippines v. Spouses Costo*:<sup>22</sup>

x x x In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. No. 6657.

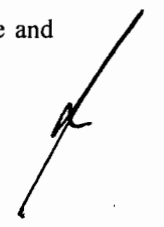
Section 17 of R.A. No. 6657 has defined the parameters for the determination of the just compensation, to wit:

Section 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the **current value of like properties**, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by

<sup>20</sup> An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as Amended, and Appropriating Funds Therefor.

<sup>21</sup> An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for Its Implementation, and for Other Purposes.

<sup>22</sup> G.R. No. 174647, December 5, 2012.





government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Thus, in determining just compensation, the RTC is required to consider the following factors: (1) the acquisition cost of the land; (2) **the current value of the properties**; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.<sup>23</sup>

From the above-cited statutes, it becomes apparent that what Congress clearly intends to be considered as just compensation is the amount with which the private landowners will be able to rehabilitate themselves from the property loss suffered. With this in mind, **it is plain to see that it is difficult, nay impossible, for respondents to acquire at this time similarly-situated lands if they are merely going to be paid at a measly unit price of PhP 0.70 per square meter 70 years after their property has been taken from them**, when the value of similarly-situated lands has already skyrocketed to PhP 1,500.00 per square meter after a significant lapse of time. As a corrective measure, the law indicates that the **current** selling price of similar lands in the vicinity should be considered in determining just compensation. "Current" should be understood to pertain to the time that the subject property comes within the jurisdiction of the court

<sup>23</sup> In *Land Bank of the Philippines v. Celada* (G.R. No. 164876, January 23, 2006), the Court ruled that the factors enumerated under Section 17 of R.A. No. 6657 had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. Thus, the Court held that the formula outlined in DAR AO No. 5, series of 1998, should be applied in computing just compensation. DAR AO No. 5, series of 1998, provides:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

$$LV = (CNI \times 0.6) + (CS \times 0.3) + (MV \times 0.1)$$

Where: LV = Land Value

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

$$LV = (CNI \times 0.9) + (MV \times 0.1)$$

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

$$LV = (CS \times 0.9) + (MV \times 0.1)$$

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

$$LV = MV \times 2$$

In no case shall the value of idle land using the formula  $MV \times 2$  exceed the lowest value of land within the same estate under consideration or within the same barangay or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder;

See also *Land Bank of the Philippines v. Spouses Costo*, G.R. No. 174647, December 5, 2012.

since it is only at that time that the property becomes susceptible to scrutiny and more accurate valuation for purposes of just and equitable compensation, rendering rehabilitation more attainable and realizable for the landowners.

The determination of the proper valuation of the land upon any other basis would not only be unjust, but would also be bordering on absurdity. For years, respondents have been deprived of the actual use and enjoyment of their landholding, yet to date, they have not received just compensation therefor.<sup>24</sup> To demonstrate in palpable terms, the *ponencia* awards in favor of herein respondents mere pittance in spite of having been deprived of their property for over 70 years without the state commencing condemnation proceedings and without being paid just compensation, as follows:

Property Valuation		70/100 pesos per sqm based on 1940 prices
Total Market Value of the 7,268 square meter property		PhP5,087.60
Interests		
January 1, 1940 to July 28, 1974	PhP10,248.23	
July 29, 1974 to March 16, 1995	12,594.95	
March 17, 1995 to June 30, 2013	220,167.99	
July 1, 2013 to September 30, 2014	19,272.99	262,284.16
Total amount due to respondents		<b>Php267,371.76</b>

The *ponencia*'s additional award of exemplary damages and attorney's fees, although a positive approach, does not cure the basic infirmity. Exemplary or corrective damages are imposed upon the wrongdoer as a deterrent to the commission of similar acts in the future.<sup>25</sup> On the other hand, the award of attorney's fees in this case is justified by the fact that respondents were compelled to litigate in view of the government's own failure to initiate, as it should have, condemnation proceedings. Lest we be misled, **these awards are more akin to penalties imposed on the government for its omission and they do not, in any way, form part of just compensation which respondents are entitled to at any event.** Without including the award for damages in the sum, it becomes readily apparent that what was awarded to respondents does not constitute real, substantial, full and ample value of the property, less than just compensation for the property unlawfully taken 70 years prior.

The inequitable outcome above demonstrated is what is now being rectified by qualifying what constitutes "*just*" compensation based on observance of the constitutional restraints on eminent domain. To be clear, the contention is not that the act of taking be nullified and that possession of the property be returned to the respondents, for recovery of possession, as a remedy, is already lost through the considerable lapse of time from taking. What is left to the landowner, as jurisprudence elucidates, is the right of

<sup>24</sup> *Landbank of the Philippines v. Vda. de Abello*, G.R. No. 168631, April 7, 2009, 584 SCRA 342, 354.

<sup>25</sup> *Rotea v. Halili*, G.R. No. 12030, September 30, 1960.

compensation.<sup>26</sup> Hence, the position herein advanced is that the valuation of just compensation be determined at the time the condemnation proceeding has been commenced or when the landowners judicially demanded payment. As correctly determined by the RTC and the CA, just compensation should be computed as follows:

Property Valuation	Php1,500 pesos per sqm based on 1995 prices
Total Market Value of the 7,268 square meter property	PhP10,902,000.00
Interests from March 17, 1995 to January 12, 2015	12,973,380.00
Total amount due to respondents	<b><u>Php23,875,380.00</u></b>

Guilty of reiteration, this point is consistent with our pronouncement in *Alfonso*:<sup>27</sup>


This Tribunal does not look with favor on the practice of the Government or any of its branches, of taking away property from a private landowner, especially a registered one, without going through the legal process of expropriation or a negotiated sale and paying for said property without delay. x x x **When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates, in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are first initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and difficulty for the Government, but all of its own making.** (emphasis added)

The *ponencia* has already cited a plethora of cases in all fours with the present scenario wherein this Court has sustained the validity of expropriation sans condemnation proceedings and the requisite deposit. To continue condoning such acts would be licensing the government to dispense with constitutional requirements in taking private property and converting into reality and norm what was then a mere foreshadowing of an evil divined in *Alfonso*, inimical to a democratic state, if not criminal. The RTC and the CA, therefore, rightly ruled that the value of the land, for purposes of just compensation, ought to be determined from the time respondents filed the initiatory complaint, earning interest therefrom. To hold otherwise, as the *ponencia* did, would validate the state's act as one of expropriation in spite of procedural infirmities, which, in turn, would amount to unjust enrichment on its part.

<sup>26</sup> *Forform Development Corporation v. Philippine National Railways*, G.R. No. 124795, December 10, 2008.

<sup>27</sup> *Supra* note 13.

In view of the foregoing, I respectfully reiterate my dissent, and vote to grant the motion for reconsideration.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice