

EN BANC

G.R. Nos. 181912 and 183347 – RAMON ALFONSO v. LAND BANK OF THE PHILIPPINES and DEPARTMENT OF AGRARIAN REFORM

Promulgated:

November 29, 2016

X-----*g. H. Dizon - Dena*-----X

CONCURRING OPINION

LEONEN, J.:

I concur in the result.

In the exercise of the judicial power to determine just compensation in cases where there is a taking of property, courts may consider — though it should not be strictly bound by — the factors that a statute may provide. It may also take into consideration formulas provided by an executive issuance or an administrative order pursuant to a provision of law. In doing so, courts have the power to determine whether, given the circumstances of a specific case, the methods of valuation of property taken by the state reasonably approximates fair market value for the owner. Should it arrive at a different method of valuation, the trial court — as in all cases — must show the reasonable fit of the formula it uses based on the facts established by evidence to determine the final value of just compensation.

Neither the law nor an administrative order may constrict courts from determining just compensation. The formula to be used as well as the amount awarded as fair market value equivalent to the constitutional requirement of just compensation is a present or contemporary value that cannot be fully encompassed by a single formula. Valuation, rather than being a science, is an act that can only be approximated given present conditions. Thus, the constitutional guarantee of payment of just compensation can only be fulfilled by judicial action.

We are asked to decide which among the Legislative, Executive, and Judicial branches have the final power to determine the just compensation to be paid to the landowner in agrarian cases. The principal issue is whether legislative and executive issuances setting parameters for the determination of just compensation in expropriation proceedings should be binding or mandatory on our courts.



The determination of just compensation — a concept provided for clearly in constitutional text — is a judicial function.<sup>1</sup>

The determination of just compensation involves the appreciation of specific facts that can only be inferred from evidence presented in a court tasked to make those determinations. Valuation requires the exercise of judicial discretion to determine the land value appropriate to replace the loss of the landowner's title. Each parcel of land taken for purposes of agrarian reform requires its own unique assessment. The factors that should be considered cannot be limited to what can be normatively prescribed. The formulas provided in statutes or in executive issuances are only recommendatory. They cannot capture the full range of options that a trial court judge may consider.

Trial courts acting as Special Agrarian Courts should not be reduced to simply affirming the actions of administrative bodies when their full discretion is required by the Constitution.

This is a Petition for Review on *Certiorari* brought through Rule 45 of our Rules impugning the validity of the Court of Appeals Decision dated July 19, 2007 and its Resolution dated March 4, 2008. The Court of Appeals set aside the Regional Trial Court Decision dated April 13, 2005, which adopted the appointed commissioner's land valuation. The Court of Appeals, in the Decision now brought before for our review, ordered that the case be remanded to the court of origin for proper determination of just compensation.

The facts, as understood from the records of the case, are as follows:

Cynthia Palomar (Palomar) was the owner of parcels of land with an aggregate area of about 28 hectares in Sorsogon City.<sup>2</sup> The Department of Agrarian Reform, pursuant to the Comprehensive Agrarian Reform Program, acquired the land.<sup>3</sup>

Land Bank of the Philippines' aggregate valuation of the land was set at ₱828,935.33.<sup>4</sup> Palomar rejected this finding.<sup>5</sup> The case was, thus, brought to the Department of Agrarian Reform Provincial Adjudication

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<sup>1</sup> See for example *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc] and *Land Bank of the Philippines v. Hon. Natividad*, 497 Phil. 738, 746 (2005) [Per J. Tinga, Second Division].

<sup>2</sup> *Rollo*, p. 25.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 55.

<sup>5</sup> *Id.* at 25.

Board of Sorsogon for a summary proceeding on the proper value of the land.<sup>6</sup>

After examining the records, the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon found that there was a need to re-compute the land valuation.<sup>7</sup> Applying the formula in Department of Agrarian Reform Administrative Order No. 5, Series of 1998, the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon pegged the aggregate value of the properties at ₱2,418,071.39.<sup>8</sup>

On April 16, 2001, Palomar sold the properties to Ramon Alfonso (Alfonso).<sup>9</sup>

Alfonso and the Land Bank of the Philippines (Land Bank) did not agree with the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon's valuation. Alfonso filed a Verified Complaint<sup>10</sup>, docketed as Civil Case No. 2002-7090, while Land Bank filed a Petition<sup>11</sup> for the determination of just compensation, docketed as Civil Case No. 2002-7073. These cases were consolidated by the trial court.<sup>12</sup>

Alfonso alleged in his Complaint that the valuation did not take the actual number of fruit-bearing trees; non-fruit-bearing trees; improvements; and the proximity of the properties to commercial centers, markets, roads, national highways, service facilities, commercial establishments, and government offices into full consideration.<sup>13</sup> Alfonso also alleged that despite the disagreement on the proper value of the properties, the Department of Agrarian Reform "already dispossessed [him], deprived him of his rightful share on [the land's] produce and [in his view, the Department of Agrarian Reform] arbitrarily awarded the property to its farmer beneficiaries."<sup>14</sup>

Land Bank, on the other hand, alleged that its valuation was correct, having based its computation on Section 18 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 5, Series of 1998.<sup>15</sup>

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<sup>6</sup> Id. at 59.

<sup>7</sup> Id. at 37.

<sup>8</sup> Id. at 38 and 50. The total is arrived at by adding ₱2,314,115.73 and ₱103,955.66.

<sup>9</sup> Id. at 59.

<sup>10</sup> Id. at 39-42.

<sup>11</sup> Id. at 54-57.

<sup>12</sup> Id. at 60.

<sup>13</sup> Id. at 40.

<sup>14</sup> Id.

<sup>15</sup> Id. at 56.

The trial court appointed Cuervo Appraisers, Inc. as the commissioner to determine the just compensation and required Cuervo Appraisers to “submit [a] report within 30 days.”<sup>16</sup>

Alfonso presented his testimony as well as that of Commissioner Amado Chua’s. Cuervo Appraisers, Inc.’s appraisal report was submitted as documentary exhibit.<sup>17</sup>

Land Bank presented as witnesses Francisco Corcuerra, Edwin Digo, and Manuel Depalac. For the documentary exhibits, it presented Field Investigation Reports, Land Use Maps, and Market Value per Ocular Inspection of the properties.<sup>18</sup>

On May 13, 2005, the trial court rendered a Decision ordering Land Bank to pay Alfonso the amount of ₱6,090,000.00 as just compensation for the taking of the parcels of land.<sup>19</sup> The amount was later amended to ₱6,093,000.00 after discovery of some typographical errors.<sup>20</sup>

The trial court’s Decision, in part, reads:

The Court after careful examination of the evidence presented by the Petitioner/Defendant LBP as well as the Private Respondent/Plaintiff, particularly the Report of the Commissioner, Amado Chua of the Cuervo Appraisers Inc. the location of the property, the current value of like properties, the improvements, its actual use, the social and economic benefits that the landholding can give to the community, the BIR zonal values of Real Properties in [B]arangay Bibincahan, Sorsogon City under Department Order No. 34-97 effective 30 April 1997, the Current Assessor’s Schedule of Market Values of Real Properties in Sorsogon City effective year 1999 and the community facilities and utilities, it is the considered Opinion of the Court that the Provincial Adjudicator did not abuse his discretion in making the valuation assailed by the Petitioner LBP, as a matter of fact the valuation made by the said Provincial Adjudicator is still very low after taking into consideration other factors which said Provincial Adjudicator failed to consider.<sup>21</sup>

The trial court adopted the commissioner’s determination of just compensation, “considering that said Commissioner is an expert in real property appraisal and considering further the facts and equities of the case and the appropriate law and jurisprudence.”<sup>22</sup> According to the trial court, it did not consider Land Bank’s and the Provincial Adjudicator’s valuation

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<sup>16</sup> Id. at 60.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 65–66.

<sup>20</sup> Id. at 11.

<sup>21</sup> Id. at 61.

<sup>22</sup> Id.

because they are “grossly very low, confiscatory and did not take into consideration that the property is very near the commercial center of the city and subdivision in the vicinity.”<sup>23</sup>

The commissioner’s use of both the Market Data Approach, which is the measure of the supply and demand conditions of real estate in the market, and the Capitalized Income Approach, which is the method used to extract the investment or income potential of the property, was noted by the trial court.<sup>24</sup> In the commissioner’s opinion, the average of the two approaches “reasonably represented the just compensation [of the subject properties].”<sup>25</sup>

Considering all the factors for the determination of just compensation enumerated in Republic Act No. 6657, the trial court ruled that the commissioner’s valuation gave a more realistic appraisal of the property.<sup>26</sup> On the other hand, Land Bank’s and the Provincial Adjudicator’s valuations were unrealistically low.<sup>27</sup>

In August 2005, Land Bank and the Department of Agrarian Reform filed a Petition for Review<sup>28</sup> of the trial court’s Decision with the Court of Appeals. They claimed that the just compensation fixed by the trial court was a clear violation of Republic Act No. 6657 and its implementing rules, particularly Department of Agrarian Reform Administrative Order No. 5, Series of 1998, “as well as the jurisprudential principles laid down by the Supreme Court in the case of [*Land Bank of the Philippines v. Spouses Banal*].”<sup>29</sup> They continued to claim that the court’s reliance on the appraisal report of Cuervo Appraisers, Inc. was a serious error since it was a violation of Administrative Order No. 5.<sup>30</sup> According to them, nothing in Section 17 of Republic Act No. 6657 provides that “capitalized income of a property can be used as basis in determining just compensation.”<sup>31</sup>

Land Bank and the Department of Agrarian Reform further insist that this Court was explicit in stating that the “actual use and income of a property at the time of its taking by the government shall be considered as the basis in determining just compensation.”<sup>32</sup> Thus, they claim that the use of capitalized income as a basis for valuation is a modification of the valuation factors in Republic Act No. 6657.<sup>33</sup> Moreover, the trial court

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<sup>23</sup> Id.

<sup>24</sup> Id. at 61 and 64.

<sup>25</sup> Id. at 64.

<sup>26</sup> Id. at 65.

<sup>27</sup> Id.

<sup>28</sup> Id. at 67–97.

<sup>29</sup> Id. at 80–81.

<sup>30</sup> Id. at 81.

<sup>31</sup> Id. at 86.

<sup>32</sup> Id. at 86–87.

<sup>33</sup> Id. at 87.

failed to consider that the taking of private property for purposes of agrarian reform is not a traditional exercise of the power of eminent domain. Citing *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform*,<sup>34</sup> Land Bank pointed out that there is a “revolutionary kind of expropriation.”<sup>35</sup>

In his Comment, Alfonso argued that “the determination of just compensation . . . is an exclusive judicial function.”<sup>36</sup>

On July 19, 2007, the Court of Appeals set aside the trial court’s Decision and ordered the cases to be “remanded to the court of origin for proper determination of just compensation.”<sup>37</sup> The Court of Appeals found it imperative to set aside the trial court’s Decision for its failure to observe the procedure under Department of Agrarian Reform Administrative Order No. 5, Series of 1998, and its guidelines.<sup>38</sup>

Alfonso filed a Motion for Reconsideration of the Court of Appeals Decision.<sup>39</sup> This was denied in a Court of Appeals Resolution dated March 4, 2008.<sup>40</sup>

Hence, this Petition was filed.

The sole issue is whether the Court of Appeals erred in ruling that adherence to Administrative Order No. 5 in determining just compensation in agrarian reform cases is mandatory, and therefore, binding on the Regional Trial Court.

Petitioner Alfonso argues that:

It would certainly be inequitable to determine just compensation based on the guideline provided by [the Department of Agrarian Reform Administrative Order No. 5, Series of 1998] without giving merits to the trial court’s due consideration to the factors enunciated by Section 17 of [Republic Act No. 6657] and several factors . . . including the documentary exhibits, testimonial evidence of all the parties . . . , the well-balanced appraisal made by the duly appointed commissioner, [and the suggested valuation of both parties.]”<sup>41</sup>

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<sup>34</sup> *Association of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

<sup>35</sup> *Id.* at 819.

<sup>36</sup> *Rollo*, p. 105.

<sup>37</sup> *Id.* at 31.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 34.

<sup>40</sup> *Id.* at 35.

<sup>41</sup> *Id.* at 15.

Petitioner Alfonso also argued that the determination of just compensation is a judicial function.<sup>42</sup> Related decrees, circulars, and executive or administrative orders serve merely as guiding posts in the determination of just compensation.<sup>43</sup> Imposing upon the court strict observance of these acts would be an encroachment on the court's judicial powers.<sup>44</sup>

Respondent Land Bank argued in its Comment that petitioner Alfonso raised questions of fact, which this Court cannot properly consider because this Court is not a trier of facts. Therefore, the Petition should be dismissed.<sup>45</sup>

Meanwhile, respondent Department of Agrarian Reform argued in their Comment that the trial court's use of the Market Data Approach was a total defiance of Section 17 and Administrative Order No. 5.<sup>46</sup> The trial court "is not at liberty to disregard the same."<sup>47</sup>

In my view, the Court of Appeals erred in ruling that the courts are mandated to adhere to the parameters set in Section 17 of Republic Act No. 6657 and in the Department of Agrarian Reform Administrative Order No. 5, Series of 1998.

## I

In *Export Processing Zone Authority v. Dulay*,<sup>48</sup> this Court declared a law<sup>49</sup> which provided for a specific method of valuation as unconstitutional, stating clearly that:

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations 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 "just-ness" of the decreed compensation.<sup>50</sup>

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<sup>42</sup> Id. at 17.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id. at 136-139.

<sup>46</sup> Id. at 156.

<sup>47</sup> Id.

<sup>48</sup> *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc].

<sup>49</sup> Presidential Decree No. 1533 (1978), Section 1. In determining just compensation for private property acquired through eminent domain proceedings, the compensation to be paid shall not exceed the value declared by the owner or administrator or anyone having legal interest in the property or determined by the assessor, pursuant to the Real Property Tax Code, whichever value is lower, prior to the recommendation or decision of the appropriate Government office to acquire the property.

<sup>50</sup> Id. at 326.

This doctrine was further reiterated in *National Power Corporation v. Spouses Baylon*:<sup>51</sup>

The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. *As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government."* Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof.<sup>52</sup> (Emphasis supplied)

Provisions in the Bill of Rights do not simply inform Congress and the President as to the limits of their powers. They contain substantive individual and collective rights which can be invoked in a proper case against a law or an executive issuance.

The right to property is protected by several layers under the present Constitution.

The first is the due process clause. Article III, Section 1 of the Constitution provides that "[n]o 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."<sup>53</sup>

The second is on the right to just compensation. Article III, Section 9 of the Constitution states that "[p]rivate property shall not be taken for public use without just compensation."<sup>54</sup>

The constitutional provision relating to agrarian reform also recognizes the landowner's right to just compensation. Article XIII, Section 4 states:

Section 4. 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, 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

<sup>51</sup> 702 Phil. 491 (2013) [Per J. Del Castillo, Second Division].

<sup>52</sup> Id. at 500.

<sup>53</sup> CONST., art. III, sec. 1.

<sup>54</sup> CONST., art. III, sec. 9.

equity considerations, 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.<sup>55</sup> (Emphasis supplied)

Republic Act No. 6657<sup>56</sup> reiterates this right of the affected landowner to just compensation:

Section 2. *Declaration of Principles and Policies.* –

....

To this end, a more equitable distribution and ownership of land, *with due regard to the rights of landowners to just compensation* and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

The agrarian reform program is founded on the right of farmers and regular farmworkers, 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 the priorities and retention limits set forth in this Act, having taken into account ecological, developmental, and equity considerations, and *subject to the payment of just compensation*. The State shall respect the right of small landowners, and shall provide incentives for voluntary land-sharing. (Emphasis supplied)

## II

Regional Trial Courts are not rubber stamps of the Executive.

I agree with Justice Carpio that reading the law in its entirety will also lead to the same conclusion as to what is constitutionally required.

Republic Act No. 6657 as amended by Republic Act No. 7881,<sup>57</sup> 7905,<sup>58</sup> 8532,<sup>59</sup> and 9700<sup>60</sup> explicitly provides under Section 57:

<sup>55</sup> CONST., art. XIII, sec. 4.

<sup>56</sup> Comprehensive Agrarian Reform Law (1988).

<sup>57</sup> An Act Amending Certain Provisions of Republic Act No. 6657 (1995).

<sup>58</sup> An Act to Strengthen the Implementation of the Comprehensive Agrarian Reform Program, and for Other Purposes (1995).

<sup>59</sup> An Act Strengthening Further the Comprehensive Agrarian Reform Program (CARP), By Providing Augmentation Fund Therefor, Amending for the Purpose Section 63 of Republic Act No. 6657, Otherwise Known as "The CARP Law of 1988" (1998).

<sup>60</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 Program Law of 1988, As Amended, and Appropriating Funds Therefor (2009).

Section 57. Special Jurisdiction – The Special Agrarian Courts 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. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act. (Emphasis supplied)

Regional Trial Courts sitting as Special Agrarian Courts have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. The jurisdiction is original. Petitions must be initiated in the Special Agrarian Court. The jurisdiction is also exclusive. No other court may exercise original jurisdiction over these cases.<sup>61</sup>

A statute should be read in its entirety. This provision of Republic Act No. 6657 as amended must also be read with Section 16(f) which provides that:

Section 16. For purposes of acquisition of private lands, the following procedures shall be followed:

- (a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof . . .
- (b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.
- (c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government . . .
- (d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land 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 . . .
- (e) 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 designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act,

<sup>61</sup> See *Ong v. Parel*, 240 Phil. 734, 742–743 (1987) [Per J. Gutierrez, Jr., Third Division] and the Separate Concurring Opinion of J. Leonen in *Limkaichong v. Land Bank of the Philippines*, G.R. No. 158464, August 2, 2016 <[http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464\\_leonen.pdf](http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464_leonen.pdf)> [Per J. Bersamin, En Banc].



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 DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

- (f) *Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation. (Emphasis supplied)*

The key word in the statute is “*final*.” Regional Trial Courts acting as a Special Agrarian Court or SAC can make a binding decision regarding land value in the exercise of its judicial discretion. The Regional Trial Court is not seen merely as an appellate court for the Department of Agrarian Reform’s determination of just compensation.

Section 57 of Republic Act No. 6657 must also be read with Section 50, the provision which outlines the scope the Department of Agrarian Reform’s jurisdiction over agrarian matters:

Section 50. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with *the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform* except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). (Emphasis supplied)

The law grants the Department of Agrarian Reform primary administrative jurisdiction over agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform. Agrarian disputes are defined under Section 3(d) of Republic Act No. 6657:

SECTION 3. Definitions. -

....

- (d) Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements.

It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor

and lessee.

As defined, an agrarian dispute includes “any controversy relating to compensation” between a landowner to a farmer, or between the landowner to a tenant, or between a landowner to an agrarian reform beneficiary. This definition does not include any conflict on compensation between the landowner *and the state*.

Under the agrarian reform program, two kinds of compensation take place. The first is just compensation, which must be paid to the landowner by the state upon the taking of the land. The second is compensation that may be paid by agrarian reform beneficiaries who acquire ownership of the land through certificate of land ownership awards. Section 3 (d) of Republic Act No. 6657 only refers to the second kind of compensation. All matters relating to just compensation by the state to the landowners remains under the exclusive and original jurisdiction of the trial court acting as a Special Agrarian Court. To rule otherwise would run counter not only to the clear and unambiguous provision of Section 57, but also to the constitutional right to just compensation.<sup>62</sup>

In *Land Bank of the Philippines v. Court of Appeals*,<sup>63</sup> this Court noted that:

It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has “original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners.” **This “original and exclusive” jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions.** Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Sec. 57 and therefore would be void. Thus, direct resort to the SAC by private respondent is valid.<sup>64</sup> (Emphasis supplied)

An examination of the statutory provision as well as the holding in *Land Bank of the Philippines v. Court of Appeals* leads to the conclusion that full and final discretion to determine whether compensation is just is strictly

<sup>62</sup> See Separate Concurring Opinion of J. Leonen in *Limkaichong v. Land Bank of the Philippines*, G.R. No. 158464, August 2, 2016 <[http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464\\_leonen.pdf](http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464_leonen.pdf)> [Per J. Bersamin, En Banc].

<sup>63</sup> *Land Bank of the Philippines v. Court of Appeals*, 376 Phil. 252 (1999) [Per J. Bellosillo, Second Division]; Also cited in *Land Bank of the Philippines v. Montalvan*, 689 Phil. 641 (2012) [Per J. Sereno, Second Division].

<sup>64</sup> Id. at 262–263.

within the ambit of the trial court sitting as a Special Agrarian Court.

The Regional Trial Court makes this determination in its first instance.

There is no point in bringing the issue of just compensation from the Department of Agrarian Reform to the trial court if the latter is merely expected to perfunctorily apply fixed rules and formulas. Issues of just compensation reaching the courts from the Department of Agrarian Reform should not become mere questions of application of the law and administrative rules rather than a continuing interpretation of what the Constitution requires in every case.

### III

Valuation cannot be exactly prescribed in law or in an executive issuance. It depends on the unique situation of every parcel of land to be taken for purposes of agrarian reform.

Just compensation must be determined based on the fair market value of the property at the time of the taking. Thus, in *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*:<sup>65</sup>

The market value of the land taken is the just compensation to which the owner of condemned property is entitled, the market value being that sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property.<sup>66</sup>

This market value is often arrived at through compromise between the buyer and the seller.<sup>67</sup> Factors affecting market value include the “time and terms of sale, relationship of the parties involved, knowledge [and evaluation] concerning the rights to be conveyed, present and possible potential uses to which the property may be put, and the immediate transferability of good and marketable title.”<sup>68</sup>

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<sup>65</sup> *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

<sup>66</sup> *Id.* at 818 citing *J.M. Tuason & Co. v. Land Tenure Administration*, 142 Phil. 393 (1970) [Per J. Fernando, Second Division].

<sup>67</sup> I STUDIES ON AGRARIAN REFORM ISSUES, Institute of Agrarian Studies, College of Economics and Management, University of the Philippines-Los Baños, Laguna citing Found 14 (1974).

<sup>68</sup> I STUDIES ON AGRARIAN REFORM ISSUES, Institute of Agrarian Studies, College of Economics and Management, University of the Philippines-Los Baños, Laguna citing Ring (1970).

Just compensation also refers to “the full and fair equivalent of the property taken from its owner by the expropriator.”<sup>69</sup> It is the “equivalent for the value of the property at the time of its taking. Anything beyond that is more and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating authority.”<sup>70</sup> In other words, the measure of just compensation “is not the taker’s gain but the owner’s loss.”<sup>71</sup>

Loss is not exclusive to physical loss of expropriated property. The property may be generating income. The income generated or may be generated must also be considered in determining just compensation. We explained in *Apo Fruits Corporation v. Land Bank of the Philippines*<sup>72</sup> that:

The owner’s loss . . . is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.<sup>73</sup>

Other factors that may be considered in judicial valuation of property are the “assessed value of the property,”<sup>74</sup> the “schedule of market values [as] determined by the provincial or city appraisal committee,”<sup>75</sup> and the “nature and character of the [property] at the time of its taking.”<sup>76</sup>

<sup>69</sup> *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 812 (1989) [Per J. Cruz, En Banc] citing *Manila Railroad Co. v. Velasquez*, 32 Phil. 286 (1915) [Per J. Trent, En Banc]. See also *National Power Corporation v. Iletto*, 690 Phil. 453 (2012) [Per J. Brion, Second Division].

<sup>70</sup> *Export Processing Zone Authority v. Dulay*, 233 Phil. 313, 319 (1987) [Per J. Gutierrez, Jr., En Banc] citing *Municipality of Daet v. Court of Appeals*, 182 Phil. 81, 96 (1979) [Per J. Guerrero, First Division].

<sup>71</sup> *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 812 (1989) [Per J. Cruz, En Banc] citing *Province of Tayabas v. Perez*, 66 Phil. 467 (1938) [Per J. Diaz, En Banc]; *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 142 Phil. 393 (1970) [Per J. Fernando, Second Division]; *Municipality of Daet v. Court of Appeals*, 182 Phil. 81 (1979) [Per J. Guerrero, First Division]; *Manotok v. National Housing Authority*, 234 Phil. 91 (1987) [Per J. Gutierrez, Jr., En Banc]. See also *National Power Corporation v. Iletto*, 690 Phil. 453 (2012) [Per J. Brion, Second Division].

<sup>72</sup> *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251 (2010) [Per J. Brion, En Banc].

<sup>73</sup> *Id.* at 276–277.

<sup>74</sup> *National Power Corporation v. Iletto*, 690 Phil. 453, 477 (2012) [Per J. Brion, En Banc].

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

In *Land Bank of the Philippines v. Orilla*,<sup>77</sup> this Court clarified that just compensation is not only about the correctness of the valuation of the property. Prompt payment is equally important, thus:

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered “just” inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.<sup>78</sup>

In *Apo Fruits*, we characterized the purpose of qualifying the word, “compensation,” found in Article III, Section 9 of the Constitution:

It is not accidental that Section 9 specifies that compensation should be “just” as the safeguard is there to ensure a balance – property is not to be taken for public use at the expense of private interests; the public, through the State, must balance the injury that the taking of property causes through compensation for what is taken, *value for value*.

Nor is it accidental that the Bill of Rights is interpreted liberally in favor of the individual and strictly against the government. The protection of the individual is the reason for the Bill of Rights’ being; to keep the exercise of the powers of government within reasonable bounds is what it seeks.<sup>79</sup>

Further, we explained in *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*<sup>80</sup> that “[t]he word ‘just’ is used to intensify the meaning of the word ‘compensation’ to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, ample.”<sup>81</sup>

Compensation cannot be just if its determination is left to the discretion of one of the parties to the expropriation proceeding. It is even more unjust if the court’s discretion to determine just compensation is removed. We noted in *National Power Corporation v. Iletto*<sup>82</sup> that “[t]he ‘just’-ness of just compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property . . . . [T]he determination of just compensation cannot be left to the self-serving discretion of the expropriating agency.”<sup>83</sup>

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<sup>77</sup> *Land Bank of the Philippines v. Orilla*, 578 Phil. 663 (2008) [Per J. Nachura, Third Division].

<sup>78</sup> *Id.* at 677.

<sup>79</sup> *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251, 269–270 (2010) [Per J. Brion, En Banc].

<sup>80</sup> 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

<sup>81</sup> *Id.* at 812 citing *City of Manila v. Estrada*, 25 Phil. 208 (1913) [Per J. Trent, First Division].

<sup>82</sup> 690 Phil. 453 (2012) [Per J. Brion, En Banc].

<sup>83</sup> *Id.* at 475–476.

The role of the Department of Agrarian Reform as an implementing agency in agrarian reform cases is to represent the state as the buyer of properties for distribution to farmers. The landowner is the seller. The procedure for the acquisition of properties to be distributed as part of the agrarian reform program allows the parties to negotiate on the valuation of the property. As the buyer, the Department of Agrarian Reform is expected to ensure that the government can purchase the property at the lowest possible price. It would be inequitable if the Department of Agrarian Reform, as the buyer, is allowed to dictate through its issuances the means by which the landowner's property would be valued.

The policy of the State to promote social justice is not a justification for the violation of fundamental rights. In *Apo Fruits Corporation v. Land Bank of the Philippines*,<sup>84</sup> we emphasized:

[S]horn of its eminent domain and social justice aspects, what the agrarian land reform program involves is the **purchase** by the government, through the LBP, of agricultural lands for sale and distribution to farmers. As a purchase, it involves an exchange of values – the landholdings in exchange for the LBP's payment. In determining the just compensation for this exchange, however, the measure to be borne in mind is not the taker's gain but the owner's loss since what is involved is the takeover of private property under the State's coercive power. . . . **in the value-for-value exchange in an eminent domain situation, the State must ensure that the individual whose property is taken is not shortchanged and must hence carry the burden of showing that the "just compensation" requirement of the Bill of Rights is satisfied.**<sup>85</sup> (Emphases supplied)

I agree with the trial court that:

[I]n the pursuit of social justice, it's not only the attainment of the goal of totally emancipating the farmers from their bondage but it is also necessary that in the pursuit of this objective, vigilance over the right of the landowners is equally important because social justice cannot be invoked to trample on the rights of property owners, who under our Constitution and laws, are also entitled to protection.<sup>86</sup>

The Department of Agrarian Reform Administrative Order No. 5, Series of 1998, acknowledges that properties have particularities that must be considered in determining just compensation. It also acknowledges the inexactness of land valuation as well as the human qualities required in its determination. Notably, its Prefatory Statement provides that just compensation:

<sup>84</sup> 647 Phil. 251(2010) [Per J. Brion, En Banc].

<sup>85</sup> Id. at 275–276.

<sup>86</sup> *Rollo*, p. 65.

[C]annot be an absolute amount disregarding particularities of productivity, distance to the marketplace **and so on**. Hence, land valuation is not an exact science but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it.”<sup>87</sup> (Emphasis supplied)

Understandably, therefore, Section 17 of Republic Act No. 6657, which contains only a finite enumeration of variables to be considered in determining just compensation, is characterized as mere “guidance on land valuation.”<sup>88</sup>

The law is not particularly exacting on equating just compensation with the economic value of the land. The administrative agencies that were assigned the task of evaluating the value of the land missed several important factors. For instance, Administrative Order No. 5, though more specific than Section 17 of Republic Act No. 6657, does not capture all factors necessary to comply with the constitutional mandate of just compensation.

The Department of Agrarian Reform considers the following formula in determining just compensation.<sup>89</sup>

$$LV = (CNI \times 60\%) + (CS \times 30\%) + (MV \times 10\%)$$

Where:

LV	=	Land Value
CNI	=	Capitalized Net Income
CS	=	Comparable Sales
MV	=	Market Value per Tax Declaration

The first component in the formula is **Capitalized Net Income**.<sup>90</sup> This refers to the difference between annual gross sales and the total cost of operations capitalized at the interest rate of 12%. This is the closest approximation of the **productivity** of the land.<sup>91</sup> The annual gross product of the land is multiplied by the average annual selling price. The cost of operation is subtracted from this amount to obtain the **Net Income**. Net income is divided by the interest rate to arrive at the **Capitalized Net Income**. In formula terms:

<sup>87</sup> DAR Adm. O. No. 5 (1998).

<sup>88</sup> DAR Adm. O. No. 5, sec. I(E).

<sup>89</sup> DAR Adm. O. No. 5, sec. II(A). This section provides for contingency formulae in case one of the factors in the equation is unavailable.

<sup>90</sup> DAR Adm. O. No. 5, sec. II(B).

<sup>91</sup> D.G. ROSSITER, ECONOMIC LAND EVALUATION: WHY AND HOW 7 (1995) <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.3.384&rep=rep1&type=pdf>> (visited November 15, 2016).

$$CNI = [(AGP \times SP) - CO] / 12\%$$

Where:

CNI	=	Capitalized Net Income
AGP	=	Annual Gross Product
SP	=	Selling Price
CO	=	Cost of Operation
12%	=	Interest Rate

However, *Capitalized Net Income* in the Department of Agrarian Reform's formula does not account for the discounted future income stream or the "net present value." This is important because when a landowner lets go of his property, he is not only letting go of income for a year, but he is also letting go of future income. It is possible that this is one major factor why landowners feel that the Department of Agrarian Reform or Land Bank assessment of just compensation is severely undervalued.

The second component is *Comparable Sales*.<sup>92</sup> This component examines prices of sales transactions of other parcels of land within the same *barangay* that have the same land use and topography. The Department of Agrarian Reform guidelines recommend the average of at least three comparable sales transactions

The problem with this is that they cannot fully account for the fact that prices per unit of land fluctuate with the size of the total parcel.<sup>93</sup> The Department of Agrarian Reform also did not give guidelines stating that similar land transactions should be alike in population density as well as the accessibility of the property in terms of road networks and commercial centers.<sup>94</sup> The requirement that it should be from the same *barangay* is less important than land use, population density, and accessibility factors.<sup>95</sup> A more comparable land transaction might be situated in a different province, which would be a better basis than a land transaction in the same *barangay* where the property has different intrinsic and extrinsic land conditions. This is a noticeable gap in the formula considering that land size, population density, and accessibility are highly influential factors in price-setting.

The Department of Agrarian Reform's issuance merely provides for sub-factors or substitutes in the event of insufficient data for comparable sales: first, the *acquisition cost* of the property; and second, the *market value based on mortgage*.

The inclusion of acquisition cost in the computation is in keeping with Section 17 of Republic Act No. 6657. On the other hand, market value

<sup>92</sup> DAR Adm. O. No. 5, sec. II(C).

<sup>93</sup> *Agricultural Land Values*, STUDIES ON AGRARIAN REFORM ISSUES 81 (1991).

<sup>94</sup> Id. at 92-93.

<sup>95</sup> Id. at 81.

based on mortgage refers to the appraised value in a mortgage contract if the property is mortgaged under certain conditions. Market value based on mortgage is used only to a limited extent.

Despite the perception that the Department of Agrarian Reform's rules and regulations try to capture the determinants enumerated under Republic Act No. 6657, most of the critical land attributes including productivity, acquisition cost, location, and accessibility factors are only *indirectly* incorporated.<sup>96</sup>

Moreover, the assigned weights to the factors included in the Department of Agrarian Reform formula are static. Understandably, these are thought of as "control mechanisms to prevent manipulation."<sup>97</sup> However, there is still room for manipulation in the formula itself. For instance, the administrative agency is still given the choice of what land transactions to include in comparable sales.

We noted in *Export Processing Zone Authority v. Dulay*<sup>98</sup> that:

[I]n estimating the market value, all the capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in the time and the use to which it is then applied by the owner. All the facts as to the condition of the property and its surroundings, its improvements and capabilities may be shown and considered in estimating its value.<sup>99</sup>

Market value is not fully determined in the Department of Agrarian Reform's formula.

For agricultural land valuation, many other factors may be considered.<sup>100</sup>

For instance, land attributes are important. In some areas, smaller parcels of land may be more costly than larger parcels. Land value per unit of land may decrease as the area of the total land area increases. Topography also matters. Flatlands for specific crops may be more valuable than those that are sloping or are located in higher terrain. Soil types affect price given the kinds of crops planted in the land. The improvements already existing in the land or surrounding it should also be considered. There can already be access to infrastructure like farm to market roads as

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<sup>96</sup> Id. at 88-89.

<sup>97</sup> Id. at 88.

<sup>98</sup> *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc].

<sup>99</sup> Id. at 319 citing *Garcia v. Court of Appeals*, 190 Phil. 518 (1981) [Per J. Fernandez, First Division].

<sup>100</sup> *Agricultural Land Values*, STUDIES ON AGRARIAN REFORM ISSUES 19-21 (1991).

well as irrigation. The alternative uses of the property other than for agriculture should also be considered.

A study of agricultural land transactions in the 1980s in Regions IV and IX showed the most significant factors affecting land values: topography, land size, value of improvements, population density, influence of agrarian reform, gross farm income, personal income, and locational/accessibility factors.<sup>101</sup>

Particularities relating to these factors cannot be addressed using only fixed parameters and formulas. The variables that affect the fair market value of a specific property can only be determined on a case-to-case basis. Each property varies in particularities that may or may not affect its value.

We cannot declare that the variables enumerated in the law are already exhaustive. It is not beyond imagination that other variables and variable relationships exist, which, due to the limited information about the particular circumstances of each case, remain undiscovered and unconsidered by the Department of Agrarian Reform. Both the law and the Department of Agrarian Reform, with their consistent revisions of formulations for valuation of land to be expropriated for agrarian reform, attest to this.

Only by considering all relevant factors can just compensation be most closely approximated, and therefore, the fundamental rights of landowners be upheld. Proper valuation of properties is a result of a complex interaction of variables, which may not be encompassed in a single formula. No single formula guarantees a fair property valuation. However, this does not mean that valuation or just compensation cannot be determined.

This is precisely why the final determination is to be done by a court of law. The judge receives a report from commissioners that were appointed following the procedure outlined in the Rules of Court.<sup>102</sup> The commissioners deliberate on the required valuation given the peculiarities of the property in question.

Hence, the trial court cannot be said to have erred when, in determining the just compensation for the subject properties, it adopted an approach different from what was laid out in Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 05, Series of 1998. According to the trial court, its valuation was based on the evidence submitted by both petitioner Alfonso and respondents Land Bank

<sup>101</sup> Id. at 51-55.

<sup>102</sup> REVISED RULES OF CIVIL PROCEDURE, Rule 67.

and Department of Agrarian Reform, the report of the appointed commissioner, the location of the property, the current value of like properties, the improvements, its actual use, the social and economic benefits of the land to the community, the Bureau of Internal Revenue zonal values, the assessor's schedule of market values, and community facilities and utilities in the area.

The trial court's adoption of the average of the Market Data Approach and Capitalized Income Approach in computing the just compensation for the subject properties was an exercise of discretion necessary in the performance of its judicial function.

Having considered the indicators available and deemed as relevant, the trial court did not arbitrarily arrive at a valuation. What the court did was to exercise its duty to determine just compensation in accordance with the available data. It cannot, therefore, be set aside for not adhering to the Department of Agrarian Reform's fixed formula without impairing judicial functions.

Moreover, we have to recognize that the administrative determination of land value will never be perfected, and not all landowners will settle for the administratively determined offer. Due to the particularities of each case, disagreement as to the valuation of land between the landowner and the expropriator will always exist.

The judicial determination of just compensation is there to break bargaining deadlocks between buyer and seller when these administrative formulations cannot be modified fast enough to accommodate the exigencies of the situation. Judicial determination will provide more flexibility in order to achieve the ideal where government, as buyer, will pay without coercion, and the landowner, as seller, will accept without compulsion.

Interpreting Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 5 as mandate to the courts is tantamount to underrating the effect of each property's peculiarities. To sanction disregard of these particularities endangers the right of landowners to just compensation. It is even inconsistent with the Prefatory Statement of Administrative Order No. 5, which emphasizes the role of these particularities in the proper determination of just compensation.<sup>103</sup>

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<sup>103</sup> DAR Adm. O. No. 5 (1998), sec. I(D).



## IV

At present, the judiciary's role as guardian of and final arbiter over transgressions of fundamental rights remains. The judiciary cannot effectively exercise such a role if its powers with respect to the determination of just compensation is restricted by laws and issuances dictating how just compensation should be determined.

We must, therefore, abandon our rulings in *Land Bank of the Philippines v. Spouses. Banal*<sup>104</sup> and *Land Bank of the Philippines v. Celada*<sup>105</sup> that executive and legislative issuances providing for the proper determination of just compensation must be adhered to by the courts. Mandating strict adherence to these executive and legislative issuances is not only tantamount to an unwarranted abdication of judicial authority, it also endangers rights against undue deprivation of property and to just compensation.

The policies adhered to by the executive branch may also change with every election period. It would be unwise to mandate that the courts follow a single formula for determining just compensation considering that the current formula of the Department of Agrarian Reform can just as easily be discontinued by another administration.

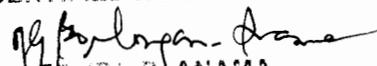
While this case should be remanded to the Special Agrarian Court for the determination of just compensation, the court should be allowed to deviate from the Department of Agrarian Reform's formulas if it finds a different method of valuation based on the evidence presented.

Accordingly, I vote to remand Civil Case No. 2002-7073 and Civil Case No. 2002-7090 to the Special Agrarian Court for the determination of just compensation.

  
MARVIC M.V.F. LEONEN  
Associate Justice

<sup>104</sup> 478 Phil. 701 (2004) [Per J. Sandoval.-Gutierrez, Third Division].  
<sup>105</sup> 515 Phil. 467 (2006) [Per J. Ynares-Santiago, First Division].

CERTIFIED XEROX COPY:

  
FELIX B. ANAMA  
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