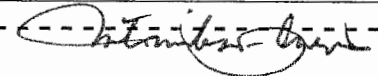


EN BANC

G.R. No. 197743 – HEIRS OF JOSE MARIANO and HELEN S. MARIANO, represented by DANILO DAVID S. MARIANO, MARY THERESE IRENE S. MARIANO, MA. CATALINA SOPHIA S. MARIANO, JOSE MARIO S. MARIANO, MA. LENOR S. MARIANO, MACARIO S. MARIANO, and HEIRS OF ERLINDA MARIANO-VILLANUEVA, represented in this act by IRENE LOURDES M. VILLANUEVA through her ATTORNEY-IN-FACT EDITHA S. SANTUYO and BENJAMIN B. SANTUYO, petitioners, versus CITY OF NAGA, respondent.

Promulgated:

October 18, 2022

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SEPARATE OPINION

CAGUIOA, J.:

The *ponencia* partially grants the Second Motion for Reconsideration<sup>1</sup> filed by respondent City of Naga (respondent) of the Decision<sup>2</sup> dated March 12, 2018 (main Decision) and Resolution<sup>3</sup> (assailed Resolution) dated July 23, 2018 rendered by the First Division of this Court.<sup>4</sup> The main Decision granted the petition and reinstated the Decision<sup>5</sup> dated June 20, 2005 of the Regional Trial Court of Naga City, Branch 26 (RTC) in the unlawful detainer case filed by petitioners against respondent and docketed as Civil Case No. RTC 2005-0030, while the assailed Resolution denied respondent's First Motion for Reconsideration. The said RTC ruling ordered respondent to, among other things, immediately vacate the subject property and pay petitioners a monthly rent<sup>6</sup> by way of reasonable compensation for the use and occupancy of such property reckoned from November 30, 2003 and until such time that respondent shall have actually vacated the same.<sup>7</sup> The herein *ponencia* partially grants the Second Motion for Reconsideration of respondent on the ground that the main Decision and the assailed Resolution failed to consider well-settled jurisprudence on the remedy of just compensation that landowners are entitled to when their properties are

<sup>1</sup> Rollo, Vol. II, pp. 978-999.

<sup>2</sup> *Heirs of Spouses Mariano, et al. v. City of Naga*, 827 Phil. 531 (2018).

<sup>3</sup> Rollo, Vol. II, pp. 832-838.

<sup>4</sup> *Ponencia*, p. 12.

<sup>5</sup> Rollo, Vol. I, pp. 439-465.

<sup>6</sup> The March 12, 2018 Decision modified or reduced in half the RTC ruling of a monthly rental compensation, which was originally pegged in the amount of ₱2,500,000.00; *Heirs of Spouses Mariano, et al. v. City of Naga*, supra note 2, at 574.

<sup>7</sup> *Heirs of Spouses Mariano, et al. v. City of Naga*, id. at 544.



taken by the government for public purpose without, however, initiating expropriation proceedings.<sup>8</sup>

I concur in the rationale of the herein *ponencia* and to the effect of its disposition, which ultimately overturns that of the main Decision. To my mind, however, the disposition in the present Second Motion for Reconsideration should be a total or full reconsideration. I offer this Separate Opinion to explain my position further.

Petitioners, in filing the unlawful detainer case, sought to recover possession of the subject property, a five-hectare piece of land that was part of a 22.9301-hectare of land registered to their predecessors-in-interest under Transfer Certificate of Title (TCT) No. 671. The subject property was donated to respondent in 1954 through a Deed of Donation, by virtue of which, respondent entered the property, constructed the government center, and declared the subject property in its name for tax purposes. Thereafter, the Land Transportation Office, the National Bureau of Investigation, the Department of Labor and Employment, the Philippine Postal Corporation, the Fire Department and other government agencies and instrumentalities entered the same property and built their offices thereon. However, as correctly found by the Court in the main Decision, the purported donation was defectively notarized and thus, lacked the formalities required for its validity. Likewise, the donation remained neither registered nor annotated on TCT No. 671. In the long years since respondent began occupying the subject property, its title has remained registered in the names of petitioners' predecessors-in-interest.<sup>9</sup>

The foregoing considerations, notwithstanding, I submit that the main Decision erroneously held that petitioners have the better right of possession over the subject property and that respondent, including all other government instrumentalities, agencies and offices claiming right of possession through and under it should perforce vacate the same and surrender and deliver its physical possession to petitioners. In the same vein, it was erroneous for the main Decision to reject the argument of respondent that payment of just compensation, in lieu of recovery of possession, was the proper remedy of petitioners. In so ruling, the main Decision held that there was no exercise of eminent domain in the instant case since the subject property "had been offered by its owners-developers, under certain terms, for donation to the City as the City Hall and market sites within the subdivision, which offer the City clearly had the option to refuse."<sup>10</sup> It went on to conclude that respondent was not impelled by the need to take the subject property for a public purpose, and that when respondent did possess the same, it was "not exercising a sovereign function as expropriator."<sup>11</sup> I disagree with this disquisition in the main Decision. Respondent took possession and occupied

<sup>8</sup> See *ponencia*, pp. 4-5.

<sup>9</sup> *Heirs of Spouses Mariano, et al. v. City of Naga*, supra note 2, at 539 and 551-554.

<sup>10</sup> *Id.* at 563.

<sup>11</sup> *Id.* at 564.

the subject property in 1954 and has since used it as a government center, with several government agencies holding offices therein. These are uncontroverted facts. Hence, there is no gainsaying that the subject property, even from the very beginning, has always been used for a public purpose and not for a commercial or proprietary purpose.<sup>12</sup>

It is also of no moment if the original intention was to donate the subject property to respondent. Again, the factual findings in the main Decision bear out that the donation was invalid and did not materialize because the condition to award the construction contract to City Heights Subdivision was not obtained. Further, the Court held that respondent cannot feign ignorance over this substantial flaw in its claim over the subject property, as in fact, then Mayor Monico Imperial (Mayor Imperial) had even proposed to purchase the subject property instead. This proposal to purchase never materialized as well; yet, respondent continued to occupy the subject property for decades.

For all intents and purposes, therefore, there was “taking” when respondent occupied the subject property in 1954<sup>13</sup> on the basis of a defective and invalid deed of donation. In *Sy v. Local Government of Quezon City*,<sup>14</sup> the Court held that the lack of proper authorization of the local government unit (LGU), *i.e.*, resolution to effect expropriation, did not change the legal character of its action as one of “taking.” It further declared that under case law, there is “taking” when the owner is actually deprived or dispossessed of his or her property; when there is a practical destruction or a material impairment of the value of his or her property or when he or she is deprived of the ordinary use thereof.<sup>15</sup> In a long line of cases, these circumstances have been expanded, to wit: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public purpose or otherwise informally, appropriately or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.<sup>16</sup>

Again here, under pain of repetition, it cannot be denied that respondent, an LGU endowed with the power of eminent domain, entered the subject private property belonging to petitioners’ predecessors-in-interest in 1954. The entry was unequivocally permanent and respondent since then has been in control, possession and enjoyment of the subject property, which

<sup>12</sup> See *Republic v. Spouses Nocom, et al.*, G.R. No. 233988, November 15, 2021.

<sup>13</sup> *Heirs of Spouses Mariano, et al. v. City of Naga*, supra note 2, at 565: “On August 11, 1954, the Municipal Board adopted Resolution No. 89 accepting the Subdivision’s July 30, 1954 offer as amended by Lopez Jr.’s oral representations in the Board’s open session as regards the financing aspect of the transaction. Consequently, Macario and Gimenez delivered possession of the subject property to the City government of Naga.” Citations omitted.

<sup>14</sup> 710 Phil. 549 (2013).

<sup>15</sup> *Id.* at 560-561.

<sup>16</sup> *Forfom Development Corp. v. Philippine National Railways*, 594 Phil. 10, 27 (2008). Citation omitted.

was devoted to public use. Consequently, petitioners and their predecessors-in-interest have been dispossessed of their property since 1954 and have been deprived to enjoy their bundle of property rights over it. To be sure, there was a taking of property within the constitutional sense.<sup>17</sup>

As well, to rule that there is no taking when a property has been taken by the government without the institution of formal expropriation proceedings would ignore the existence of an action for inverse condemnation. While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such formal proceedings.<sup>18</sup> The purpose then of an action for inverse condemnation is to recover the value of the property taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the latter.<sup>19</sup>

Having established here that there was, in fact, a taking of private property by an LGU for a public purpose, petitioners as landowners are entitled to be compensated therefor. Under the circumstances of this case and in light of related prevailing jurisprudence, the relief of recovery of possession being prayed for by petitioners should not have prospered.

In the oft-cited case of *Forfom Development Corp. v. Philippine National Railways*<sup>20</sup> (*Forfom*), the Court was confronted with the primary question of whether the landowner corporation, Forfom Development Corporation (Forfom), can recover possession of its property because respondent Philippine National Railways (PNR) failed to file any expropriation case and to pay just compensation.<sup>21</sup> The Court answered in the negative, emphasizing that neither the non-filing of the case for expropriation nor the non-payment of just compensation will necessarily lead to or entitle the landowner to the return of his or her property. What was left as a remedy to the landowner, the Court determined, was payment of just compensation.<sup>22</sup>

Notably, the factual milieu of *Forfom* is quite similar with that of the present case. PNR entered the property of Forfom, a private land, with the approval of then President Ferdinand E. Marcos and with the authorization of PNR's Board of Directors. The entrance into Forfom's property was permanent, not for a fleeting or brief period. PNR had been in control, possession and enjoyment of the subject land since such entry, devoting it to

<sup>17</sup> See *id.* at 27-28.

<sup>18</sup> *First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304, 316 (1987).

<sup>19</sup> See *National Power Corp. v. Heirs of Macabangkii Sangkay*, 671 Phil. 569, 591 (2011).

<sup>20</sup> *Supra* note 16.

<sup>21</sup> *Id.* at 26.

<sup>22</sup> *Id.* at 30-31.

public use — railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service.<sup>23</sup>

The Court further observed that Forfom had, in fact, accepted the fact of the taking of its land when it negotiated with PNR for just compensation, knowing fully well that there was no expropriation case filed at all. Forfom's inaction for almost 18 years to question the absence of expropriation proceedings and its discussions with PNR as to how much petitioner should be paid for its land had already precluded it from questioning PNR's power to expropriate or the public purpose for which the power was exercised. The Court therefore found Forfom in estoppel from assailing the takeover of its land on the ground that there was no case for expropriation that was commenced by PNR.<sup>24</sup>

The same observations can be made in the instant case. The main Decision referred to letters written by the predecessors-in-interest of petitioners to Mayor Imperial and the general manager of the subdivision in 1959 and 1968, which revealed that there were subsequent discussions about the new proposal of respondent, through Mayor Imperial, to just purchase the subject property when the original contract of donation fell through. The Court found that said letters also indicated that petitioners' predecessors-in-interest had long been waiting for respondent to act on its proposal. However, respondent had not taken any action, and worse, continued to enjoy possession of the subject property and subsequently allowed other government agencies to build their offices in the premises. **Thus, similarly with the petitioner in *Forfom*, despite filing an action for recovery of possession, what herein petitioners were really after was to be compensated for the value of their property. In other words, considering the number of years that has lapsed, petitioners should likewise be held in equitable estoppel from claiming that respondent is a mere usurper of their property.**

The Court in *Forfom* cited the 1915 case of *Manila Railroad Co. v. Paredes*<sup>25</sup> (*Manila Railroad Co.*), the first case in this jurisdiction in which there was an attempt to compel a public service corporation, endowed with the power of eminent domain, to vacate the property it had occupied without first acquiring title thereto by amicable purchase or expropriation proceedings.<sup>26</sup> *Manila Railroad Co.* sharply observed that there is "something akin to equitable estoppel in the conduct of one who stands idly by"<sup>27</sup> and watches the construction of a government project, a railroad in said case, without protest. The Court expounded that if a landowner, knowing that a railroad company has entered upon his land and is engaged in constructing its road without having complied with a statute requiring either

<sup>23</sup> Id. at 27.

<sup>24</sup> Id. at 28.

<sup>25</sup> 32 Phil. 534 (1915):

<sup>26</sup> *Forfom Development Corp. v. Philippine National Railways*, supra note 16, at 28.

<sup>27</sup> *Manila Railroad Co. v. Paredes*, supra note 25, at 537.

payment by agreement or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejection for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages.<sup>28</sup>

*Forfom* further cited *De Ynchausti v. Manila Electric Railroad & Light Co.*<sup>29</sup> (*De Ynchausti*) and *Ansaldo v. Tantuico, Jr.*<sup>30</sup> (*Ansaldo*), cases which similarly ruled on equitable estoppel against the property owners. The Court in *De Ynchausti* held:

But the railroad corporation being clothed with the right to take the land in question in condemnation proceedings, it would be a manifestly vain and useless formality to render judgment for the restoration of possession upon payment of an indemnity to reimburse the railroad corporation for its expenditures on the land—with the full knowledge that before such judgment could be executed the railroad corporation could and would take possession of the land in condemnation proceedings upon payment of compensation for the value of the land and the improvements made upon it. It is clear, therefore, that with relation to lands which a railroad corporation is authorized under its charter to have condemned for its use, and which have been entered upon and occupied by the railroad corporation, under a claim of right and in good faith, but without first instituting the appropriate condemnation proceedings, the right of election secured to the landowner in articles 361 and 453 of the Civil Code has, in substance and effect, been destroyed by the enactment of the legislation conferring the power upon the railroad corporation to take possession in condemnation proceedings. The only right secured to the landowner in such cases is the right to compensation for the lands taken, and resultant damages to his lands not taken, which right he may enforce in an ordinary action to compel the corporation to pay the value of the land under the terms of article 361 of the Code, or, if he so desires, by the institution of appropriate proceedings to compel the corporation to have the land condemned and to pay the compensation and damages assessed in the course of the condemnation proceedings.

Substantially identical results have been secured in the United States by the application of equitable principles to similar states of fact, as will appear from the following citation from a few of the leading cases.

“The owner of land, who stands by, without objection, and sees a public railroad constructed over it, can not, after the road is completed, or large expenditures have been made thereon upon the faith of his apparent acquiescence, reclaim the land, or enjoin its use by the railroad company. In such case there can only remain to the owner a right of compensation.” (*Goodin vs. Cin. and Whitewater Canal Co.*, 18 Ohio St., 169.)

“One who permits a railroad company to occupy and use his land and construct its road thereon without

<sup>28</sup> *Id.* at 537-538, as quoted in *Forfom Development Corp. v. Philippine National Railways*, *supra* note 16, at 29.

<sup>29</sup> 36 Phil. 908 (1917).

<sup>30</sup> 266 Phil. 319 (1990).

remonstrance or complaint, cannot afterwards reclaim it free from the servitude he has permitted to be imposed upon it. His acquiescence in the company's taking possession and constructing its works under circumstances which made imperative his resistance, if he ever intended to set up illegality, will be considered a waiver. But while this presumed waiver is a bar to his action to dispossess the company, he is not deprived of his action for damages for the value of the land, or for injuries done him by the construction or operation of the road." (St. Julien vs. Morgan etc., Railroad Co., 35 La. Ann., 924.)<sup>31</sup>

In *Ansaldo*, on the other hand, the Court likewise found that the owners of the properties, which were taken by the government to be used for the widening of a road without the benefit of an action for expropriation or agreement with its owners, were deemed to have consented to such taking — although they knew that there had been no expropriation case commenced — on account of their silence for more than two decades. Thus, according to the Court, said property owners had no reason to impugn the existence of the government's power to expropriate or the public purpose for which that power had been exercised.<sup>32</sup> Significantly, the Court in *Ansaldo* directed the expropriator, the Department of Public Works and Highways (DPWH), to forthwith institute the appropriate expropriation action over the land, so that just compensation due the owners may be determined in accordance with the Rules of Court (Rules).<sup>33</sup>

In a later case, *Republic v. Mendoza, et al.*,<sup>34</sup> the Court was once again confronted with the issue on the propriety of filing an ejectment suit against the government for its failure to acquire ownership of a privately-owned property that it had long used as a school site and to pay just compensation for it. Echoing *Forfom* and the cases that came before it, the Court relevantly ruled in this wise:

The Court holds that, where the owner agrees voluntarily to the taking of his property by the government for public use, he thereby waives his right to the institution of a formal expropriation proceeding covering such property. Further, as the Court also held in *Eusebio v. Luis*, **the failure for a long time of the owner to question the lack of expropriation proceedings covering a property that the government had taken constitutes a waiver of his right to gain back possession. The Mendozas' remedy is an action for the payment of just compensation, not ejectment.**

In *Republic of the Philippines v. Court of Appeals*, the Court affirmed the RTC's power to award just compensation even in the absence of a proper expropriation proceeding. It held that the RTC can determine just compensation based on the evidence presented before it in an ordinary civil action for recovery of possession of property or its value and

<sup>31</sup> *De Ynchausti v. Manila Electric Railroad & Light Co.*, supra note 299, at 910-912.

<sup>32</sup> *Ansaldo v. Tantuico, Jr.*, supra note 30, at 322.

<sup>33</sup> *Id.* at 325.

<sup>34</sup> 641 Phil. 562 (2010).



damages. As to the time when just compensation should be fixed, it is settled that where property was taken without the benefit of expropriation proceedings and its owner filed an action for recovery of possession before the commencement of expropriation proceedings, it is the value of the property at the time of taking that is controlling.

Since the MTCC did not have jurisdiction either to evict the Republic from the land it had taken for public use or to hear and adjudicate the Mendozas' right to just compensation for it, the CA should have ordered the complaint for unlawful detainer dismissed without prejudice to their filing a proper action for recovery of such compensation.<sup>35</sup> (Emphasis supplied)

It bears emphasis at this juncture that besides equitable estoppel, the Court in *Forfom* enunciated that recovery of possession by the landowner of the property that was taken without the benefit of an action for expropriation can no longer be allowed, **more importantly**, for reason of public policy. *Forfom* took its cue as well from the cases it cited, with the early case of *Manila Railroad Co.* providing the most illuminating take on the matter:

x x x whether the railroad company has the capacity to acquire the land in dispute by virtue of its delegated power of eminent domain, and, if so, whether the company occupied the land with the express or implied consent or acquiescence of the owner. If these questions of fact be decided in the affirmative, it is uniformly held that an action of ejectment or trespass or injunction will not lie against the railroad company, but only an action for damages, that is, recovery of the value of the land taken, and the consequential damages, if any. **The primary reason for thus denying to the owner the remedies usually afforded to him against usurpers is the irremedial injury which would result to the railroad company and to the public in general.** It will readily be seen that the interruption of the transportation service at any point on the right of way impedes the entire service of the company and causes loss and inconvenience to all passengers and shippers using the line. Under these circumstances, **public policy, if not public necessity, demands that the owner of the land be denied the ordinarily remedies of ejectment and injunction.** The fact that the railroad company has the capacity to eventually acquire the land by expropriation proceedings undoubtedly assists in coming to the conclusion that the property owner has no right to the remedies of ejectment or injunction. There is also something akin to equitable estoppel in the conduct of one who stands idly by and watches the construction of the railroad without protest. x x x **But the real strength of the rule lies in the fact that it is against public policy to permit a property owner, under such circumstances, to interfere with the service rendered to the public by the railroad company.** x x x<sup>36</sup> (Emphasis and underscoring supplied)

Again, as in this case, public policy, if not public necessity, demands that respondent must no longer be disturbed or ousted from its possession of

<sup>35</sup> Id. at 568-569. Citations omitted.

<sup>36</sup> *Forfom Development Corp. v. Philippine National Railways*, supra note 16, at 28-29, citing *Manila Railroad Co. v. Paredes*, supra note 25, at 536-537.



the subject property, lest the public purpose and services for which such are ineluctably being devoted to be disrupted.

From the start, the Municipal Trial Court of Naga City, Branch 1, the ejectment court in this case, should have instead resolved: (1) to dismiss the case without prejudice to the landowner filing the proper action for recovery of just compensation and consequential damages; or (2) to dismiss the case and direct respondent to institute the proper expropriation or condemnation proceedings and to pay the just compensation and consequential damages assessed therein.<sup>37</sup> Given that the case was subsequently appealed to the RTC, the latter could have also taken judicial notice of the nuances of the case and decided to treat the action as if it were an expropriation case and determine the just compensation and consequential damages pursuant to Rule 67 on Expropriation of the Rules.<sup>38</sup>

Prescinding from the foregoing discussion anent the factual circumstances of this case and the related prevailing jurisprudence, and given the new findings in the *ponencia*, I respectfully submit that the holding on laches in the main Decision that was premised on petitioners' right to recovery of possession should no longer be sustained. It appears that the partial grant of the *ponencia* is solely anchored on upholding this issue in the main Decision that, to my mind, has been rendered peripheral or already beside the point. The defense of laches and prescription against a registered property owner will never prosper be it in an ordinary civil case for recovery of possession or one for payment of just compensation. The Court has said, time and again, that the doctrine of laches finds no application in cases such as here, as both equity and the law direct that a property owner should be compensated if his or her property is taken for public use.<sup>39</sup>

Indeed, at the same time, when the Court has said that recovery of property is also an available remedy when a property is taken by the government for public use, it must be underscored that this is only under circumstances **when recovery is still feasible**; otherwise, the aggrieved owner may only demand payment of just compensation for the land taken.<sup>40</sup> Here, as correctly found by the *ponencia*, "the physical return of the subject property on which respondent's seat of government and offices of several other government agencies and instrumentalities are currently erected is no longer feasible."<sup>41</sup> It then concludes that there would be an "unwarranted and irremediable injury or damage" if the structures already established in the subject property are forfeited in favor of petitioners.<sup>42</sup> These findings are in stark contrast to what was pronounced in the main Decision, which granted the relief of recovery of possession to petitioners. Hence, as I expressed at

<sup>37</sup> See *National Transmission Corp. v. Bermuda Development Corp.*, 851 Phil. 38, 49 (2019).

<sup>38</sup> See *id.*

<sup>39</sup> *Secretary of the DPWH, et al. v. Spouses Tecson*, 713 Phil. 55, 70 (2013).

<sup>40</sup> *Id.* at 70, citing *Republic v. Court of Appeals*, 494 Phil. 494, 507 (2005).

<sup>41</sup> *Ponencia*, p. 6.

<sup>42</sup> *Id.*



the outset, what the *ponencia* ultimately does is to correctly reverse the main Decision by ruling that the recovery of the subject property is no longer possible and by ordering the deletion of the original directives in the main Decision for respondent to vacate the subject property and pay monthly rentals to petitioners. Instead, the *ponencia* now orders respondent to pay just compensation, on the strength of its new finding that there was taking of private property for public purpose all along. This should consequently result to a full reconsideration of the main Decision instead of a partial one.

Moreover, I have no reservations with the order in the *ponencia* to remand the case to the RTC for determination of the proper amount of just compensation. As I have stated, the RTC could have treated the action of petitioners as if it were an expropriation case or converted it into one of an inverse condemnation proceeding and determine the just compensation and consequential damages which petitioners are entitled to. This remains a viable route in the interests of judicial efficiency and economy, and especially in light of the new disposition of the herein *ponencia*, which, again, effectively overturns the main Decision. To stress, the elements of taking are now established in the herein *ponencia*, along with the entitlement of petitioners to the payment of just compensation, which respondent had even acknowledged and raised as an argument and alternative remedy from inception.<sup>43</sup> It also appears that even from the beginning, there was no dispute that the entire subject property was taken by respondent for public use. What is only left now, therefore, is the determination of just compensation, which the RTC, on remand, has the jurisdiction and the competence to do.

In *Secretary of the DPWH, et al. v. Spouses Tecson*<sup>44</sup> (*Spouses Tecson*), the respondents therein also filed a complaint for recovery of possession with damages before the RTC against the DPWH, praying that they be restored to the possession of the subject parcel of land which was taken by the government sometime in 1940 without the owners' consent and without the necessary expropriation proceedings and was used for the construction of the MacArthur Highway. The DPWH, prior to the filing of the complaint, offered to pay the value of the property, but the respondents were unsatisfied with the offer. The RTC initially dismissed the complaint based on the doctrine of state immunity from suit. However, on appeal, the Court of Appeals (CA) reversed the RTC ruling. The CA significantly held that recovery of compensation was the only relief available to the landowner and so to deny such relief would undeniably cause injustice to the landowner. The CA then ordered to remand the case to the RTC for the purpose of determining the just compensation in favor of the respondents.<sup>45</sup>

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<sup>43</sup> See *Heirs of Spouses Mariano, et al. v. City of Naga*, supra note 2, at 542.

<sup>44</sup> Supra note 39.

<sup>45</sup> Id. at 64-66.



In *Manila International Airport Authority v. Rodriguez*,<sup>46</sup> the original action commenced before the RTC by therein respondent was one for *accion reivindicatoria* over his property that was taken by petitioner as part of an airport runway. While the RTC ruled that petitioner had illegally taken possession of the property, it ordered the latter to purchase the property at a certain value and to pay back rentals. This ruling was chiefly affirmed by the CA on appeal.<sup>47</sup> The Court, on the other hand, determined for the first time that while the case stemmed from the *accion reivindicatoria* that respondent had filed, it essentially revolved around the taking of the subject lot by the petitioner.<sup>48</sup> The Court then held that respondent was entitled to the payment of just compensation, the value of which should be reckoned at the time of taking. Since such value did not appear from the record of the case, the Court remanded the case to the RTC to make such determination with dispatch.<sup>49</sup>

Finally, I agree that the value of the just compensation, with legal interest at the rate of six percent (6%) *per annum* on the total fair market value, shall be determined as of the date of taking. This is the long standing rule and there are no exceptional circumstances<sup>50</sup> that would justify a deviation from it.

In *Spouses Tecson*, the Court addressed situations, such as the one at bar, in which the government took control and possession of properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages.<sup>51</sup> The Court held:

Just compensation is “the fair value of the property as between one who receives, and one who desires to sell, x x x fixed at the time of the actual taking by the government.” This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation.

The issue in this case is not novel.

In *Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR]*, PNR entered the property of Forfom in January 1973 for public use, that is, for railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service without initiating expropriation proceedings. In 1990, Forfom filed a complaint for recovery of possession of real property and/or damages against PNR. In *Eusebio v. Luis*, respondent’s parcel of land was taken in 1980 by the City of Pasig and

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<sup>46</sup> 518 Phil. 750 (2006).

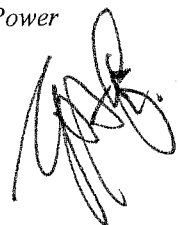
<sup>47</sup> Id. at 753-755.

<sup>48</sup> Id. at 757.

<sup>49</sup> Id. at 763-764.

<sup>50</sup> See *National Power Corporation v. Heirs of Macabangkit Sangkay*, supra note 19 and *National Power Corporation v. Spouses Saludares*, 686 Phil. 967 (2012).

<sup>51</sup> As cited in *National Power Corp. v. Spouses Malijan*, 802 Phil. 727, 737 (2016).



used as a municipal road now known as A. Sandoval Avenue in Pasig City without the appropriate expropriation proceedings. In 1994, respondent demanded payment of the value of the property, but they could not agree on its valuation prompting respondent to file a complaint for reconveyance and/or damages against the city government and the mayor. In *Manila International Airport Authority v. Rodriguez*, in the early 1970s, petitioner implemented expansion programs for its runway necessitating the acquisition and occupation of some of the properties surrounding its premises. As to respondent's property, no expropriation proceedings were initiated. In 1997, respondent demanded the payment of the value of the property, but the demand remained unheeded prompting him to institute a case for *accion reivindicatoria* with damages against petitioner. In *Republic v. Sarabia*, sometime in 1956, the Air Transportation Office (ATO) took possession and control of a portion of a lot situated in Aklan, registered in the name of respondent, without initiating expropriation proceedings. Several structures were erected thereon including the control tower, the Kalibo crash fire rescue station, the Kalibo airport terminal and the headquarters of the PNP Aviation Security Group. In 1995, several stores and restaurants were constructed on the remaining portion of the lot. In 1997, respondent filed a complaint for recovery of possession with damages against the storeowners where ATO intervened claiming that the storeowners were its lessees.

The Court in the above-mentioned cases was confronted with common factual circumstances where the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. The Court thus determined the landowners' right to the payment of just compensation and, more importantly, the amount of just compensation. The Court has uniformly ruled that just compensation is the value of the property at the time of taking that is controlling for purposes of compensation. In *Forfom*, the payment of just compensation was reckoned from the time of taking in 1973; in *Eusebio*, the Court fixed the just compensation by determining the value of the property at the time of taking in 1980; in *MIAA*, the value of the lot at the time of taking in 1972 served as basis for the award of compensation to the owner; and in *Republic*, the Court was convinced that the taking occurred in 1956 and was thus the basis in fixing just compensation. As in said cases, just compensation due respondents in this case should, therefore, be fixed not as of the time of payment but at the time of taking, that is, in 1940.

The reason for the rule has been clearly explained in *Republic v. Lara, et al.*, and repeatedly held by the Court in recent cases, thus:

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.<sup>52</sup> (Emphasis omitted)

Notably, in *National Power Corp. v. Spouses Malijan*,<sup>53</sup> respondents therein argued that just compensation must be determined at the time of the filing of the complaint since the expropriator, in taking the property 30 years ago, merely enjoyed possession of the same due to the long tolerance of the respondents and not by complete dominion over said property in exclusion of others. The Court shot down the argument, declaring that the taking of private property for public use, to be compensable, need not be an actual physical taking or appropriation. Indeed, the Court ratiocinated, the expropriator's action may be short of acquisition of title, physical possession, or occupancy but may still amount to a taking. Compensable taking includes destruction, restriction, diminution, or interruption of the rights of ownership or of the common and necessary use and enjoyment of the property in a lawful manner, lessening or destroying its value. It is neither necessary that the owner be wholly deprived of the use of his or her property, nor material whether the property is removed from the possession of the owner, or in any respect changes hands.<sup>54</sup>

Thus, here, petitioners are entitled to just compensation for the five-hectare subject property at its fair market value, with legal interest, from the time of the taking until the amount due is fully paid. The time of taking was in 1954 when petitioners' predecessors-in-interest delivered possession of the subject property to respondent.<sup>55</sup> The exact date, however, remains unclear from the facts of the case. In this light, the order to remand the case to the RTC may not only properly pertain to the purpose of arriving at the correct computation of just compensation, but of the exact date of taking, as well.

In view of the foregoing, I vote to **GRANT** respondent's Second Motion for Reconsideration, and to accordingly, **REVERSE** the Decision dated March 12, 2018 and the Resolution dated July 23, 2018 rendered by the First Division of this Court, in that:

1. The order for respondent and all government instrumentalities, agencies, and offices claiming right of possession through and under it to peacefully surrender and deliver to petitioners the physical possession of the land covered by Transfer Certificate of Title No. 671, including all improvements and structures erected thereon, is hereby **DELETED**;

<sup>52</sup> *Secretary of DPWH, et al. v. Spouses Tecson*, supra note 39, at 70-73. Citations omitted.

<sup>53</sup> Supra note 51.

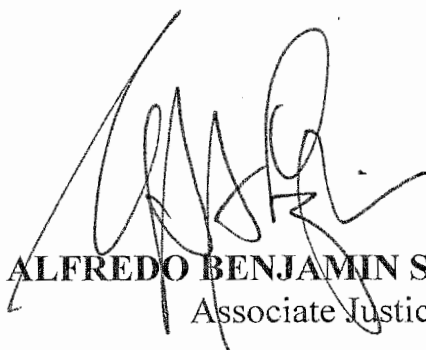
<sup>54</sup> Id. at 742-743.

<sup>55</sup> See *Heirs of Spouses Mariano, et al. v. City of Naga*, supra note 2, at 565.

2. The award of monthly rental in favor of petitioners is likewise **DELETED**;

3. Respondent is **ORDERED** to pay petitioners just compensation in accordance with this ruling on the total fair market value with legal interest of six percent (6%) *per annum* from the time of taking, until full payment is made; and

4. The case is **REMANDED** to the Regional Trial Court (RTC) of Naga City, Branch 26 for the determination of just compensation and the exact date of taking. The RTC of Naga City is **DIRECTED** to resolve the instant case with dispatch.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice