Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NATIONAL POWER CORPORATION,
Petitioner,

- versus -

SPOUSES CONCHITA MALAPASCUA-MALIJAN and LAZARO MALIJAN,
Respondents.

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CONCHITA MALAPASCUA-MALIJAN and HEIRS OF LAZARO MALIJAN,
Petitioners,

- versus –

NATIONAL POWER CORPORATION,
Respondent.

x----------x

G.R. No. 211731

G.R. No. 211818

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
BERSAMIN,*
PEREZ, and
REYES, *JJ.*

Promulgated:

December 7, 2016

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DECISION

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated May 11, 2014 of Conchita Malapascua-Malijan and Heirs of Lazaro Malijan in G.R. No. 211818 which seeks to set aside the

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* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 22, 2014.

Decision[1] dated June 13, 2012 of the Court of Appeals (*CA*) and its subsequent Resolution dated March 12, 2014 reversing the Decision[2] dated February 22, 2008 of the Regional Trial Court (*RTC*), Branch 6, Tanauan City, Batangas in an expropriation case, and the Petition for Review on *Certiorari* under Rule 45 dated April 21, 2014 of National Power Corporation that seeks the modification of the same Decision dated June 13, 2012 of the CA.

The facts follow.

National Power Corporation (*NAPOCOR*) sought to expropriate a 3,907-square-meter portion of a property owned by the Spouses Conchita Malapascua-Malijan and Lazaro Malijan (*the Spouses Malijan*) located at Barangay San Felix, Sto. Tomas, Batangas and covered by Tax Declaration No. 15032. An expropriation case was, therefore, filed with the RTC, Branch 6 of Tanauan City, Batangas.

The Spouses Malijan did not interpose any objection to the expropriation of the property, hence, the sole issue that needed to be resolved was the determination of the just compensation.

In an Order dated August 22, 2007, the RTC created a Board of Commissioners that would recommend the amount of just compensation. In the Commissioner's Report submitted by the same Board, the recommended price of the property was ₱3,500.00 per square meter or a total amount of Thirteen Million Six Hundred Seventy-Four Thousand Five Hundred Pesos (₱13,674,500.00). Such amount of just compensation was based on the ocular inspection made on the property; the local market condition; and the standards set in Section 5 of the Implementing Rules and Regulations (*IRR*) of Republic Act (*R.A.*) No. 8974. In view of the presence and proliferation of the several commercial and industrial establishments near the subject property, the Commissioners found it more prudent and reasonable to appraise the property as commercial or industrial.

It was also shown in the Commissioner's Report that at present the property is being used as main access road leading to NAPOCOR's Mak-ban Geothermal Power Plant.

NAPOCOR opposed the Board's recommendation for being excessive, unconscionable, exorbitant and without legal basis and claimed

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[1] Penned by Associate Justice Francisco P. Acosta, with the concurrence of Associate Justices Magdangal M. De Leon and Angelita A. Gacutan.

[2] Penned by Judge Arcadio I. Manigbas.

that they entered the subject property in 1972. Based on the provisions of Section 4, Rule 67 of the Rules of Court, the just compensation of the property should be based on the value of the property at the time of the taking of the same or the filing of the complaint, whichever came first, thus:

> Rule 67, Section 4. x x x payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

According to NAPOCOR, the taking of the property occurred in 1972 whereas the institution of the complaint was made thirty-four (34) years after, hence, the just compensation should be based on the value of the property in 1972.

The Spouses Malijan, on the other hand, argued that the above-cited provision merely applies in situations wherein the time of the taking coincides with the filing of the complaint and that since NAPOCOR is claiming the exception provided in Section 4, Rule 67 of the Rules of Court, it has the burden of proving its claim that its occupancy and use was the direct cause of the increase in valuation. The Spouses Malijan claimed that NAPOCOR has belatedly argued that it entered the property in 1972 and that such fact was not alleged in the complaint.

The RTC, on February 22, 2008, rendered its Decision denying NAPOCOR's plea that the just compensation be based on the value of the property in 1972, thus:

> WHEREFORE, premises considered, judgment is hereby rendered condemning the 3,907-square-meter portion of the property of the Spouses Conchita Malapascua-Malijan and Lazaro Malijan covered by Tax Declaration No. 15032 which is the subject matter of this case in favor of plaintiff National Power Corporation and thus ordering the plaintiff to pay the defendants-owners the amount of PhP3,500.00 per square meter or a total amount of Thirteen Million Six Hundred Seventy-Four Thousand Five Hundred Pesos (PhP13,676,500.00) representing the just compensation of the affected area.
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> SO ORDERED.

NAPOCOR elevated the case to the CA insisting that it is not liable for the payment of just compensation in the amount of ₱3,500.00 per square meter or a total amount of ₱13,676,500.00 pertaining to the affected area of the subject property; instead, it is only liable for an amount equivalent to the fair market value of the same property at the time it was taken in 1972. On

June 13, 2012, the CA rendered the assailed Decision in favor of NAPOCOR, thus:

> WHEREFORE, in view of the foregoing, the instant Appeal is GRANTED. Accordingly, the challenged Decision dated 22 February 2008 is hereby SET ASIDE.
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> The Regional Trial Court of Tanauan City, Batangas, Branch 6, is hereby DIRECTED to immediately determine the just compensation due to appellees Spouses Lazaro and Conchita Malijan based on the fair market value of the subject property at the time it was taken in 1972 with legal interest at the rate of six (6%) percent *per annum* from the time of taking until full payment is made.
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> Appellant National Power Corporation is ORDERED to pay appellees the amounts of ₱200,000.00 as exemplary damages and ₱100,00.00 as attorney's fees.
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> SO ORDERED.

Hence, the present petitions.

Conchita Malapascua-Malijan and the heirs of Lazaro Malijan, in their petition, raised the following arguments:

> I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW IN HOLDING THAT THE SUBJECT PROPERTY WAS TAKEN IN 1972, AS THE COMPLAINT FOR EXPROPRIATION ITSELF IS BEREFT OF ANY SUCH ALLEGATION. ADDITIONALLY, THERE IS NO EVIDENCE ON RECORD THAT WILL SHOW THAT RESPONDENT HAS COMPLETELY TAKEN THE PROPERTY UNDER WARRANT OR COLOR OF LEGAL AUTHORITY SO AS TO OUST THE OWNER OF ALL BENEFICIAL ENJOYMENT OF THE PROPERTY.
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> II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW WHEN IT HELD IN THE QUESTIONED DECISION THAT JUST COMPENSATION BE BASED IN 1972 WHEN THE SUBJECT PROPERTY WAS ALLEGEDLY TAKEN.
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> III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW WHEN IT APPLIED THE CASE OF EUSEBIO V. LUIS TO JUSTIFY ITS DECISION, SIMPLY BECAUSE, THERE IS NO SIMILARITY OF THE FACTUAL MILIEU IN THE EUSEBIO CASE WITH THE INSTANT CASE. ON THE CONTRARY, THE INSTANT CASE IS MORE IN ALL FOURS WITH THE HEIRS OF MATEO PINDACAN, ET AL. V. ATO.

NAPOCOR, on the other hand, assigned the following error in its petition:

> THE AWARD OF EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO RESPONDENT-SPOUSES LAZARO AND CONCHITA MALIJAN IS WITHOUT ANY FACTUAL AND LEGAL BASIS.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[3] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"[4] when supported by substantial evidence.[5] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[6]

This court's Decision in *Cheesman v. Intermediate Appellate Court*[7] distinguished questions of law from questions of fact:

> As distinguished from a question of law – which exists "when the doubt or difference arises as to what the law is on a certain state of facts" – "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[8]

Seeking recourse from this Court through a petition for review on *certiorari* under Rule 45 bears significantly on the manner by which this Court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts."[9]

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3 Rules of Court, Rule 45, sec. 1.

4 *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil), Inc.*, 364 Phil. 541, 546 (1999) [Per J. Pardo, First Division].

5 *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per J. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per J. Bellosillo, First Division]; and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per J. Paras, Second Division].

6 *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per J. Ynares-Santiago, Special First Division].

7 271 Phil. 89 (1991) [Per J. Narvasa, Second Division].

8 *Cheesman v. Intermediate Appealte Court, supra,* at 97-98.

9 *Frondarina v. Malazarte*, 539 Phil. 279, 290-291 (2006) [Per J. Velasco, Third Division].

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded.[10] At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[11]

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[12]

In this case, the findings of the CA are contrary to those of the trial court, therefore, there is a need for this Court to finally settle the issues presented before it.

This Court shall first resolve the petition filed by Conchita Malapascua-Malijan and the heirs of Lazaro Malijan.

Conchita Malapascua-Malijan, *et al.*, insist that there is no single evidence on record that would show that NAPOCOR had completely taken the property in 1972. Thus, they argue that NAPOCOR is in estoppel to make a belated claim of taking in its Comment and Opposition to the Commissioner's Report. Furthermore, they claim that the right of way that NAPOCOR had been enjoying was only due to the long tolerance on their part and not by complete dominion by NAPOCOR to the exclusion of others.

Highly instructive is the case of *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson*[13] where this Court addressed situations 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. This

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10 *Remedios Pascual v. Benito Burgos, et al.*, G.R. No. 171722, January 11, 2016

11 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

12 *Medina v. Mayor Asistio, Jr., supra,* at 232.

13 G.R. No. 179334, July 1, 2013, 700 SCRA 243.

Court ruled that just compensation is the value of the property at the time of taking and that is what is controlling for purposes of compensation, thus:

> 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.[14]
>
> The issue in this case is not novel.
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> In Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR],[15] 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.[16] In 1990, Forfom filed a complaint for recovery of possession of real property and/or damages against PNR. In Eusebio v. Luis,[17] respondent's parcel of land was taken in 1980 by the City of Pasig and 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,[18] 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.*lâwphil* 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 reinvindicatoria* with damages against petitioner. In Republic v. Sarabia,[19] 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.
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> 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,

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14 *Republic v. Court of Appeals*, G.R. No. 147245, March 31, 2005, 454 SCRA 516, 527.
15 G.R. No. 124795, December 10, 2008, 573 SCRA 350, 366-367.
16 *Forfom Development Corporation v. Philippine National Railways, supra* note 31, at 366.
17 G.R. No. 162474, October 13, 2009, 603 SCRA 576, 583
18 518 Phil. 750, 757 (2006).
19 G.R. No. 157847, August 25, 2005, 468 SCRA 142.

> 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.
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> The reason for the rule has been clearly explained in Republic v. Lara, et al.,[20] and repeatedly held by the Court in recent cases, thus:
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> > x x x "The 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.[21]

Clearly, the need to establish the time of the taking is necessary in order to accurately determine the amount of just compensation. NAPOCOR claims that the taking occurred in 1972. The RTC has acknowledged 1972 as the time of the taking but ruled that the just compensation must be determined at the time of the filing of the complaint because it did not deem appropriate that NAPOCOR should be given undue advantage by declaring that the just compensation be based on the property's value in 1972. It ruled:

> Given the fact that plaintiff entered the subject property in 1972, however, the Court is not convinced that plaintiff NAPOCOR should be given undue advantage by declaring that the just compensation of the property be based on its value in that year. The court wonders why after a period of more than three decades it is only now that the plaintiff is pursuing the expropriation of the subject property. The plaintiff has tended

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20 96 Phil. 170 (1954).

21 *Republic v. Lara, et al., supra*, at 177-178.

to imply that the property has not yet been taken by the plaintiff through its allegations in paragraphs 5 and 8 in its Complaint and its prayer therein to enter and take possession of the property but it opposes the recommendation made by the Board of Commissioners contending that the property was taken in 1972 and thus the just compensation must be based at that time of the taking.

The inconsistency in the claims of the plaintiff is further shown by the survey plan attached to the complaint as Annex "B". It shows that as early as 1980, when the survey plan was prepared, the plaintiff has really intended to use that portion of property of the defendant as access road. Although it has been alleged that the plaintiff has attempted to negotiate with the defendants on the price of the property (paragraph 7, Complaint), the lapse of time it filed the present complaint has made the real intention of the plaintiff doubtful. It would seem, as in this case of NAPOCOR v. CA and Mangondato, G.R. No. 113194, March 11, 1996, that NAPOCOR has neglected and/or refused to exercise the power of eminent domain by letting 34 years to pass before it filed the instant complaint, and after it has already taken possession and made use of the defendant's property.

In *Heirs of Mateo Pidacan and Romana Eigo v. ATO*, G.R. No. 162779, June 15, 2007, it was held that as a rule, the determination of just compensation in eminent domain cases is reckoned from the time of taking. It was however said that the application of the said rule would lead to grave injustice. In that case it was noted that the Air Transportation Office has been using the property of therein petitioners since 1948 without having instituted the proper expropriation proceedings. It was then held that to peg the value of the property at the time of the taking in 1948, despite the exponential increase in its value considering the lapse of over half a century, would be iniquitous. Thus, the Supreme Court said, "We cannot allow the ATO to conveniently invoke the right of eminent domain to take advantage of the ridiculously low value of the property at the time of the taking that it arbitrarily chooses to the prejudice of the petitioners."

x x x x

Clearly, the plaintiff will be given undue advantage if it will be declared that the just compensation will be based on the value of the property in 1972, at the time it entered the property because as early as that time it could have filed its complaint for expropriation and then pay the just compensation. But it chose to file the instant complaint only after more than thirty years of occupying the land. It would seem now that if that will always be the case, the NAPOCOR can conveniently occupy a property, utilize it for public purpose and then later file a complaint for expropriation and pay the value of the property at the time of its occupancy. Following the ruling in the above-cited cases of *Heirs of Mateo Pidacan and Romano Eigo v. ATO* and *NAPOCOR v. CA* and Mangondato, it would be unfair and unjust to declare that the just compensation of the subject property be based on its value in 1972 despite the considerable increase of the value of the property from the time it was occupied by the plaintiff up to the time the case for expropriation of the same was filed.

The CA also acknowledged the findings of the RTC that the taking happened in 1972, hence, its ruling that the just compensation must be computed at the time of the taking, thus:

> Evidently, it is thus clear that the court a quo gravely erred in ruling that "the [appellant] will be given undue advantage if it will be declared that the just compensation will be based on the value of the property in 1972..." However, We do not close Our eyes on the court a quo's observation that if it had ruled for the appellant, the latter "can conveniently occupy a property, utilize it for public purpose and then later file a complaint for expropriation and pay the value of the property at the time of the occupancy. In this view, and in line with the pronouncement of the Supreme Court in several expropriation cases, this Court recognizes the damage the appellee has incurred when the appellant took possession of the subject property without the benefit of the expropriation proceedings. Consequently, justice and equity dictate that the appellant be held liable for damages for taking the appellee's property without payment of just compensation.

As insisted by Conchita Malapascua-Malijan, *et al.*, it was not established that the taking happened in 1972. This is, however, belied by their own admission, as found by the RTC, that the right-of-way was already in existence for about thirty years, thus:

> x x x They commented that the plaintiff had belatedly argued that it entered the property in 1972. They pointed out that it was not alleged in the complaint that the plaintiff entered the property in 1972. It was also in the latter's comment /opposition to the commissioner's report that it alleged that the entry to the property was made on that year and claim that the just compensation must be based on the value of the property in that time of entry. Incidentally, the defendant admitted that the right of way was in existence for about thirty years now. (Order dated June 22, 2007).

In fact, Conchita Malapascua-Malijan, *et al.* argued in their petition that although there was an admission that the right-of-way was in existence for about thirty years, their admission refers only to the existence of the right-of-way, but not the fact of the complete taking. They then proceeded to discuss that the right-of-way that NAPOCOR was enjoying was only due to the long tolerance on their part and not by the complete dominion of NAPOCOR to the exclusion of others. Such argument is misleading.

It is settled that the taking of private property for public use, to be compensable, need not be an actual physical taking or appropriation.[22]

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[22] *National Power Corporation v. Heirs of Makabangkit Sangkay*, G.R. No. 165828, August 24, 2011, citing 29A CJS, *Eminent Domain*,§82, citing *Stearns v. Smith*, D.C.Tex, 551 F. Supp. 32; *Wright v. Shugrue*, 425 A.2d 549, 178 Conn. 710; *Horstein v. Barry*, App., 560 A.2d 530; and *Gasque v. Town of Conway*, 8 S.E.2d 871, 194 S.C. 15.

Indeed, the expropriator's action may be short of acquisition of title, physical possession, or occupancy but may still amount to a taking.[23] 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.[24] It is neither necessary that the owner be wholly deprived of the use of his property,[25] nor material whether the property is removed from the possession of the owner, or in any respect changes hands.[26]

Thus, there exists no reversible error on the part of the CA when it ruled that just compensation must be computed at the time of the taking in 1972.

It is noteworthy that the CA, in its Decision dated June 13, 2012, aside from directing the RTC to immediately determine the just compensation due to the Spouses Malijan based on the fair market value of the subject property at the time of the taking in 1972, it also imposed the payment of a legal interest at the rate of six percent (6%) *per annum* from the time of the taking until full payment is made. This is in accordance with this Court's ruling in *Secretary of the Department of Public Works and highways, et al. v. Spouses Heracleo and Ramona Tecson*[27] which discussed the proper rate of interest to be applied in similar cases, thus:

> On this score, a review of the history of the pertinent laws, rules and regulations, as well as the issuances of the Central Bank (*CB*) or BangkoSentralngPilipinas (*BSP*) is imperative in arriving at the proper amount of interest to be awarded herein.
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> On May 1, 1916, **Act No. 2655**[28] took effect prescribing an interest rate of six percent (6%) or such rate as may be prescribed by the Central Bank Monetary Board (*CB-MB*) for loans or forbearance of money, in the absence of express stipulation as to such rate of interest, to wit:
>
> > Section 1. The rate of interest for the loan or forbearance of any money goods, or credits and the rate

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[23] *Id.*, citing *United States v. General Motors Corporation*, Ill., 65 S Ct. 357, 323 US 373, 89 L. Ed. 311; and *Midwest Video Corporation v. F.C.C.*, C.A.8, 571 F.2d 1025, affirmed 99 S.Ct. 1435, 440 US 689, 59 L. E.2d 692.

[24] *Id.*, citing *United States v. Dickinson*, W.Va., 67 S.Ct. 1382, 331 US 745, 91 L.Ed. 1789; *Portsmouth Harbor Land & Hotel Co. v. United States*, Ct.Cl., 43 S.Ct. 135, 260 US 327, 67 L.Ed. 287; *Bernstein v. Bush*, 177 P.2d 913, 29 C.2d 773.

[25] *Id.*, citing *Eaton v. Boston, C. & M.R. Co.*, 51 N.H.504; *Lea v. Louisville, & N.R. Co.*, 188 S.W. 215, 135 Tenn. 560.

[26] *Id.*, citing *Frustuck v. City of Fairfax*, 28 Cal. Rptr. 357, 212 C.A.2d 345; *Midgett v. North Carolina State Highway Commission*, 132 S.E.2d 599, 260 N.C. 241; *Morrison v. Clakamas Country*, 18 P.2d 814, 141 Or. 564.

[27] G.R. No. 179334, April 21, 2015 (Reso).

[28] An Act Fixing Rates of Interest on Loans Declaring the Effect of Receiving or Taking Usurious, Rates and For Other Purposes.

> allowed in judgments, in the absence of express contract as to such rate of interest, ***shall be six per centum per annum or such rate as may be prescribed by the Monetary Board of the Central Bank of the Philippines for that purpose in accordance with the authority hereby granted.***

Sec. 1-a. The Monetary Board is hereby authorized to prescribe the maximum rate or rates of interest for the loan or renewal thereof or the forbearance of any money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions.

In the exercise of the authority herein granted, the Monetary Board may prescribe higher maximum rates for loans of low priority, such as consumer loans or renewals thereof as well as such loans made by pawnshops finance companies and other similar credit institutions although the rates prescribed for these institutions need not necessarily be uniform. The Monetary Board is also authorized to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries.

Under the aforesaid law, any amount of interest paid or stipulated to be paid in excess of that fixed by law is considered usurious, therefore unlawful.[29]

On July 29, 1974, the CB-MB, pursuant to the authority granted to it under the aforequoted provision, issued Resolution No. 1622. On even date, **Circular No. 416** was issued, implementing MB Resolution No. 1622, increasing the rate of interest for loans and forbearance of money to twelve percent (12%) per annum, thus:

> By virtue of the authority granted to it under Section 1 of Act No. 2655, as amended, otherwise known as the "Usury Law," the Monetary Board, in its Resolution No. 1622 dated July 29, 1974, has prescribed that the rate of interest for the loan or forbearance of any money, goods or credits and ***the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall be twelve per cent (12%) per annum.***

The foregoing rate was sustained in CB **Circular No. 905**[30] which took effect on December 22, 1982, particularly Section 2 thereof, which states:

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[29] *Spouses Puerto v. Court of Appeals,* 432 Phil. 743, 752 (2002).

[30] CB Circular 905 was issued by the Central Bank's Monetary Board pursuant to P.D. 1684 empowering them to prescribe the maximum rates of interest for loans and certain forbearances, to wit:

> Sec. 1. Section 1-a of Act No. 2655, as amended, is hereby amended to read as follows:
> Sec. 1-a. The Monetary Board is hereby authorized to prescribe the maximum rate of interest for the loan or renewal thereof or the forbearance of any money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions: Provided, That changes in such rate or rates may be effected gradually on scheduled dates announced in advance.
> In the exercise of the authority herein granted, the Monetary Board may prescribe higher maximum rates for loans of low priority, such as consumer loans or renewals thereof as well as such loans made by pawnshops, finance companies and other similar credit institutions although the rates prescribed for these institutions need not necessarily be

Sec. 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, ***shall continue to be twelve per cent (12%) per annum***.

Recently, the BSP Monetary Board (*BSP-MB*), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982, and accordingly, issued **Circular No. 799**, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

> The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
>
> ***Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.***
>
> Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
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> This Circular shall take effect on 01 July 2013.

Accordingly, the prevailing interest rate for loans and forbearance of money is six percent (6%) per annum, in the absence of an express contract as to such rate of interest.

In summary, the interest rates applicable to loans and forbearance of money, in the absence of an express contract as to such rate of interest, for the period of 1940 to present are as follows:

Law, Rule and Regulations, BSP Issuances	**Date of Effectivity**	**Interest Rate**
Act No. 2655	May 1, 1916	6%
CB Circular No. 416	July 29, 1974	12%
CB Circular No. 905	December 22, 1982	12%
CB Circular No. 799	July 1, 2013	6%

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uniform. The Monetary Board is also authorized to prescribed different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries.

> It is important to note, however, that interest shall be compounded at the time judicial demand is made pursuant to Article 2212[31] of the Civil Code of the Philippines, and sustained in *Eastern Shipping Lines v. Court of Appeals*,[32] then later on in *Nacar v. Gallery Frames*,[33] save for the reduction of interest rate to 6% for loans or forbearance of money, thus:
>
> > 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, ***a loan or forbearance of money***, the interest due should be that which may have been stipulated in writing. Furthermore, the ***interest due shall itself earn legal interest from the time it is judicially demanded***. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.[34]

Anent the award of exemplary damages and attorney's fees, subject of NAPOCOR's petition, wherein it seeks their non-inclusion or deletion in the CA's disposition, this Court finds the same to be meritorious.

Under Article 2229 of the Civil Code, "[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." As this court has stated in the past: "Exemplary damages are designed by our civil law to permit the courts to reshape behaviour that is socially deleterious in its consequence by creating negative incentives or deterrents against such behaviour."[35]

It must be remembered that in this case, it was NAPOCOR who filed a complaint for eminent domain, albeit after a long period of time. This means that NAPOCOR does not have any intention of causing any harm to the landowners nor its action can be considered as socially deleterious in its consequence. Furthermore, the cases cited by the CA to justify the award of exemplary damages and attorney's fees are inapplicable in this case, as correctly pointed out by NAPOCOR, through the Office of the Solicitor General, thus:

> It must be noted that the Court of Appeals, in holding petitioner liable for payment of exemplary damages and attorney's fees to respondents-spouses Malijan, used as basis this Honorable Court's ruling

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31 Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

32 G.R. No. 97412, July 12, 1994, 234 SCRA 78.

33 716 Phil. 267 (2013).

34 *Nacar v. Gallery Frames, supra.*

35 *Nancy S. Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, citing *Mecenas v. Court of Appeals*, 259 Phil. 556, 574 (1989) [Per J. Feliciano, Third Division].

> in Manila International Airport Authority (MIAA) v. Rodgriguez, as cited in City of Iloilo v. Contreras-Besna.
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> In said MIAA case, the landowner instituted an *accion reinvindicatoria* with damages against MIAA. This Honorable Court ordered MIAA to pay exemplary damages and attorney's fees to the landowner for occupying the latter's property for more than twenty (20) years without the benefit of expropriation proceedings and without exerting efforts to ascertain the ownership of the lot and negotiating with the owner thereof. According to this Honorable Court, such omissions on the part of MIAA constitute "wanton and irresponsible acts which should be suppressed and corrected.
>
> With all due respect, said MIAA case does not squarely apply to the present case, First, this case is a complaint for eminent domain initiated by petitioner and not an accion reinvindicatoria with damages filed by respondens-spouses. Second, there is no evident showing of bad faith or arbitrariness on the part of petitioner in occupying a portion of respondents-spouses' property. As opposed to said MIAA case., petitioner herein had been negotiating with respondents-spouses as early as 1972 for the acquisition of an easement of right-of-way over a portion of their property. It was after failing to reach an agreement with respondents-spouses for over thirty 930) years that petitioner was constrained to file a complaint for eminent domain in 2005. Definitely, there is no bad faith or wanton conduct that can be imputed to petitioner that would warrant the imposition of exemplary damages and attorney's fees inasmuch as petitioner exerted serious and continuous efforts to negotiate with respondents-spouses for the taking of their property, but to no avail.
>
> Neither does the City of Iloilo case apply because the facts therein are not on all fours with those of the present case. In the City of Iloilo case, the City of Iloilo initiated a complaint for eminent domain against the landowner sometime in 1981. After a writ of possession was issued in its favor, the City of Iloilo took physical possession of the property in the middle of 1985. However, it was discovered that despite the order of expropriation becoming final, the City of Iloilo did not deposit the required amount for the expropriation of the property. The expropriation proceedings remained dormant, and for over twenty-five (25) years, there was no indication whatsoever that the City of Iloilo compensated the landowner for the taking of his property. Indisputably, the existence of bad faith on the part of the City of Iloilo in taking possession of the landowner's property is glaring, thus warranting the imposition of exemplary damages and attorney's fees.[36]

The award of attorney's fees is also unwarranted because of the lack of factual and legal justification. An award of attorney's fees has always been the exception rather than the rule. To start with, attorney's fees are not awarded every time a party prevails in a suit.[37] Nor should an adverse

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[36] *Rollo* (G.R. No. 211731), pp. 27-28.

[37] *Ballesteros v. Abion*, February 9, 2006, 143361, 482 SCRA 23, 39; *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation,* G.R. No. 138088, January 23, 2006, 479 SCRA 404; *Filipinas*

decision *ipso facto* justify an award of attorney's fees to the winning party.[38] The policy of the Court is that no premium should be placed on the right to litigate.[39] Too, such fees, as part of damages, are assessed only in the instances specified in Article 2208[40] of the Civil Code. Indeed, attorney's fees are in the nature of actual damages.[41] But even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, attorney's fees may still be withheld where no sufficient showing of bad faith could be reflected in a party's persistence in a suit other than an erroneous conviction of the righteousness of his cause.[42] And lastly, the trial court must make *express* findings of fact and law that would bring the suit within the exception. What this demands is that the factual, legal or equitable justifications for the award must be set forth not only in the *fallo* but also in the text of the decision, or else, the award should be thrown out for being speculative and conjectural.[43]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated May 11, 2014 of Conchita Malapascua-Malijan and Heirs of Lazaro Malijan in G.R. No. 211818 is **DENIED** for lack of

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Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine, G.R. No. 141994, January 17, 2005, 448 SCRA 413.

38 *"J" Marketing Corporation v. Sia, Jr.*, 349 Phil. 513, 518.

39 *Frias v. San Diego-Sison*, G.R. No. 155223, April 3, 2009, 520 SCRA 244, 259-260; *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-purpose Cooperative, Inc.*, G.R. No. 136914, January 25, 2002, 374 SCRA 653; *Ibaan Rural Bank, Inc. v. Court of Appeals*, G.R. No. 123817, December 17, 1999, 321 SCRA 88; *Morales v. Court of Appeals,* G.R. No. 117228, June 19, 1997, 274 SCRA 282, 309; *Philippine Air Lines v. Miano*, G.R. No. 106664, March 8, 1995, 242 SCRA 235, 240; *Firestone Tire & Rubber Co. of the Phils. v. Ines Chaves & Co., Ltd.*, No. L-17106, October 19, 1966, 18 SCRA 356,358.

40 Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

41 *Fores v. Miranda*, 105 Phil. 266.

42 *Felsan Realty & Development Corporation v. Commonwealth of Australia,* G.R. No. 169656, October 11, 2007, 535 SCRA 618, 631-632; *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, January 21, 1999, 301 SCRA 572, 601.

43 *Villanueva v. Salvador,* G. R. No. 139436, January 25, 2006, 480 SCRA 39, 52; *Mindex Resources Development v. Morillo*, G.R. No. 138123, March 12, 2002, 379 SCRA 144, 157; *Valiant Machinery & Metal Corporation v. NLRC*, G.R. No. 105877, January 25, 1996, 252 SCRA 369; *Scott Consultants and Resource Development Corporation v. Court of Appeals*, G.R. No. 112916, March 16, 1995, 242 SCRA 393, 406.

merit, while the Petition for Review on *Certiorari* under Rule 45 dated April 21, 2014 of the National Power Corporation is **GRANTED**. Consequently, the Decision dated June 13, 2012 of the Court of Appeals and its subsequent Resolution dated March 12, 2014, reversing the Decision dated February 22, 2008 of the Regional Trial Court, Branch 6, Tanauan City, Batangas, are **AFFIRMED** with the modification that the award of exemplary damages and attorney's fees is **DELETED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

(Please dissenting Opinion)
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 19 2016

THIRD DIVISION

G.R. No. 211731 ***(National Power Corporation vs. Spouses Conchita Malapascua-Malijan and Lazaro Malijan)***

G.R. No. 211818 ***(Spouses Conchita Malapascua-Malijan and Lazaro Malijan vs. National Power Corporation)***

Promulgated:

December 7, 2016

x----------x

DISSENTING OPINION

VELASCO, JR., *J.*:

Regrettably, I am unable to concur with the conclusions of the *ponencia*.

I maintain my postulation in *Secretary of Public Works and Highways v. Spouses Tecson*[1] *(Tecson Case)* that a legitimate exercise of eminent domain presupposes that the filing of the complaint for expropriation preceded the actual taking. This is pursuant to the twin constitutional mandates that *"[n]o person shall be deprived of x x x property without due process of law"*[2] and that *"[p]rivate property shall not be taken for public use without just compensation."*[3] As I have discussed in my Dissenting Opinion in the *Tecson Case*:

> x x x The Constitution requires that the act of deprivation should be preceded by compliance with procedural due process, part and parcel of which includes the filing of an expropriation case. This is so because by filing the action for expropriation, the government, in effect, serves notice that it is taking title and possession of the property. Hence, without an expropriation suit, private property is being taken without due notice to the landowner, in violation of his constitutional right.
>
> x x x x
>
> It behoves the state to commence the necessary proceedings since the adverted constitutional provisions, as couched, place on the government the correlative burden of proving compliance with the imperatives of due process and just compensation prescribed under Secs. 1 and 9, Art. III of the Constitution. x x x
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> x x x x

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[1] G.R. No. 179334, April 21, 2015.
[2] Sec. 1, Article III of the 1987 Philippine Constitution.
[3] Sec. 9, id.

> The need for the government to commence condemnation proceedings as required has far-reaching ramifications that are legal as they are practical. Aside from operating as due notice to the landowner, initiating the case likewise entitles the government to acquire possession of the property, subject to the posting of a deposit. Thus, absent an expropriation case, the requirement of posting a deposit will not come into play and, consequently, the right of the government to acquire possession over the subject land will never arise.

The due process requirement, in the context of expropriation, dictates that there be sufficient notice to the landowner before the government can assume possession of his or her land. The filing of the complaint satisfies this notice requirement. Thus, until the condemnation proceeding is initiated, the government does not yet have any valid authority to intrude on the property, regardless of whether or not its intended purpose is for the public good. The failure to initiate the complaint for expropriation before the government assumes possession over the subject lot does not amount to a valid exercise of eminent domain.

In this case, it must be emphasized that though the National Power Corporation (NPC) filed a complaint for expropriation on October 25, 2005, the actual taking of the property commenced much earlier in 1972. By simple arithmetic, thirty-three (33) years have already elapsed from the time the landowners were deprived of possession of their property until the government took responsibility for its actions. This, to my mind, miserably fails to satisfy the due process requirement and is instead a circumvention of the Constitutional mandates, constitutive of unlawful taking.

I cannot therefore, in good conscience, agree with the conclusion that the landowners' entitlement to just compensation in this case should be reckoned from the date of taking in 1972, for the simple reason that the taking at that time was still unlawful. When possession over the property was wrestled from the Spouses Malijan, the government then had no color of authority to do the same. The government's right of eminent domain is not a panacea that licenses it to proceed as it pleases in taking property, for constitutional safeguards rein in the exercise of this otherwise boundless inherent power of the state.

As an alternative, I respectfully propose that **the valuation of the property should be reckoned from the date of filing of the complaint for expropriation on October 25, 2005**. It was only then when the government could have validly sought the consent of the landowners to enforce a lawful taking for a public purpose; it was only then when the intention of the state to expropriate became manifest.

The proposition is in line with our ruling in *National Power Corporation v. Court of Appeals*[4] *(NPC v. CA)* wherein the Court

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[4] G.R. No. 113194, March 11, 1996, 254 SCRA 577.

enumerated the circumstances that must be present in the taking of property for purposes of eminent domain:

> (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 use or otherwise informally appropriated 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.

Hence, in *NPC v. CA*, the determination of just compensation was based on the price of the property in 1992, when the government sued for expropriation, rather than in 1978, the date of actual taking. As we have cautioned therein:

> If We decree that the fair market value of the land be determined as of 1978, then **We would be sanctioning a deceptive scheme** whereby NAPOCOR, for any reason other than for eminent domain would occupy another's property and when later pressed for payment, first negotiate for a low price and then conveniently expropriate the property when the landowner refuses to accept its offer claiming that the taking of the property for the purpose of eminent domain should be reckoned as of the date when it started to occupy the property and that the value of the property should be computed as of the date of the taking despite the increase in the meantime in the value of the property. (emphasis added)

It is this holding in *NPC v. CA* that should be upheld in the case at bar. To rule otherwise would not only be grossly unfair to the landowner, but would also be tantamount to countenancing the **fatal omission** of the NPC when it filed its complaint for expropriation. Aptly pointed out by the Spouses Malijan was that **nowhere in the complaint was it ever mentioned that the government has already been occupying the land as early as 1972**. Such ultimate fact should have been alleged by the state in its initiatory pleading for it to be allowed to establish the claim that the valuation for just compensation should be reckoned from that year. Hoisting this argument belatedly, after the court-appointed commissioners have already come up with a report, ought to then preclude the court from determining just compensation based on the date of actual taking. The date of filing should then be controlling in this case.

Lack of opposition on the part of the Spouses Malijan cannot so casually be construed as acquiescence with the government's deed, for their inaction may merely be due to lack of options. We must take heed of the foreshadowing so eloquently pronounced in *Alfonso v. City of Pasay*:[5]

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[5] *Alfonso v. Pasay*, No. L-12754, January 30, 1960.

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

It is in view of the foregoing circumstances that I withhold my concurrence from the decision of the majority.

PRESBITERO J. VELASCO, JR.
Associate Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

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