# Republic of the Philippines
# Supreme Court
## Manila

**THIRD DIVISION**

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| **REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE REGIONAL EXECUTIVE DIRECTOR, REGION X, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS,** Petitioner, | **G.R. No. 198008** |
| -versus- | Present: PERALTA, *J., Chairperson,* LEONEN, REYES, A., JR., HERNANDO, and CARANDANG,* *JJ.* |
| **BENJOHN FETALVERO,** Respondent. | **Promulgated:** February 4, 2019 |

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## DECISION

**LEONEN, *J.*:**

Money claims against the government cannot be the subject of writs of execution absent any showing that they have been brought before the Commission on Audit, under this Court's Administrative Circular No. 10-2000[1] and Commission on Audit Circular No. 2001-002.[2]

This is a Petition for Review on Certiorari[3] praying that the July 29, 2011 Decision[4] of the Court of Appeals be reversed, and that the September

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* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

1 Supreme Court Administrative Circular No. 10-2000 (2000). Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units.

2 Commission on Audit Circular No. 2001-002 (2001) <https://www.coa.gov.ph/phocadownloadpap/userupload/Issuances/Circulars/Circ2001/COA_C2001-002.pdf> (last accessed on January 23, 2019).

3 *Rollo*, pp. 144–174.

4 Id. at 175–186. The Decision, in the case docketed as CA-G.R. SP No. 03710-MIN, was penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

22, 2009[5] and April 23, 2010[6] Orders of the Regional Trial Court be annulled.[7] Further, it is prayed that a temporary restraining order be issued to enjoin the trial court from implementing the assailed Orders. The Court of Appeals affirmed the trial court Orders, which granted the Motion for the Issuance of an Order for a Writ of Garnishment filed by Benjohn Fetalvero (Fetalvero).[8]

Fetalvero owned a 2,787-square meter parcel of land in Iligan City, Lanao del Norte. The lot was covered by Transfer Certificate of Title (TCT) No. T-25,233 (a.f.).[9]

In 1999, the Department of Public Works and Highways, Region X took 569 square meters from Fetalvero's property to be used in its flood control project. Fetalvero stated that the project's construction on that portion of land rendered the remaining part useless, so he demanded payment for the entire area at ₱15,000.00 per square meter. However, under Presidential Administrative Order No. 50, series of 1999, the just compensation Fetalvero was entitled to was only ₱2,500.00 per square meter, or a total of ₱1,422,500.00, plus 10% thereof. The rate was based on the Bureau of Internal Revenue zonal valuation in 1999, when the property was taken. Despite negotiations, the parties failed to agree on the amount of just compensation.[10]

On February 13, 2008, the Republic of the Philippines (Republic), through the Office of the Solicitor General, filed before the Regional Trial Court a Complaint[11] for expropriation against Fetalvero.[12] It prayed "for the determination and payment of the just compensation and the entry of a judgment of condemnation of the 569 square meters portion of [Fetalvero's] property."[13] The case, docketed as Civil Case No. 7118, was raffled to Branch 3 under Presiding Judge Albert B. Abragan (Judge Abragan).[14]

Subsequently, the Office of the Solicitor General sent a letter[15] dated April 10, 2008 to Atty. Earnest Anthony L. Lorea (Atty. Lorea), the Legal Staff Chief of the Department of Public Works and Highways, Region X. In its letter, the Office of the Solicitor General deputized Atty. Lorea to assist it in Civil Case No. 7118, as his authority was "subject to the reservation

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5 Id. at 211–213. The Order, in the case docketed as Civil Case No. 7118, was penned by Presiding Judge Albert B. Abragan of Branch 3, Regional Trial Court, Iligan City.

6 Id. at 214. The Order, in the case docketed as Civil Case No. 7118, was penned by Presiding Judge Albert B. Abragan of Branch 3, Regional Trial Court, Iligan City.

7 Id. at 169.

8 Id. at 213.

9 Id. at 176.

10 Id.

11 Id. at 232–236.

12 Id. at 176.

13 Id. at 176–177.

14 Id. at 175 and 177.

15 Id. at 238.

contained in the Notice of Appearance filed by [the] Solicitor General[.]"[16]

On April 16, 2008, the Office of the Solicitor General filed before the trial court a Notice of Appearance[17] dated April 10, 2008. It entered its appearance as counsel for the Republic in Civil Case No. 7118, and informed the trial court that it authorized Atty. Lorea to appear on its behalf. It emphasized that since it "retain[ed] supervision and control of the representation in [the] case and [had] to approve withdrawal of the case, non-appeal[,] or other actions which appear to compromise the interest of the Government, only notices of orders, resolutions, and decisions served on him will bind the [Republic]."[18]

On June 27, 2008, the trial court issued an Order[19] and referred the case to the Philippine Mediation Center for mediation.[20]

On September 1, 2008, the parties entered into a Compromise Agreement, which read:

> UNDERSIGNED PARTIES:
>
> Regional Executive Director, Region 10, DPWH
>
> - And –
>
> Benjohn Fetalvero
>
> AGREE as follows:
>
> 1. That the area involved is 1,428 square meters.
>
> 2. That the price per square meter is Nine Thousand Five Hundred Pesos (PHP 9,500.00) per square meter or a total of Thirteen Million Five Hundred Sixty[-]Six Thousand & 00/100 (PHP 13,566,000.00) which latter is the amount to be paid in full b[y] the plaintiff to the defendant not later than September, 2009.
>
> 3. After September, 2009, it will earn interest at 12% per annum until fully paid.
>
> 4. Expenses for documentation and transfer to the account of Plaintiff.
>
> IN WITNESS WHEREOF, the parties hereto have mutually and voluntarily agreed to the above stipulations and sign this

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16 Id. at 238.
17 Id. at 242.
18 Id.
19 Id. at 239.
20 Id. at 177.

Agreement at PMC Iligan City, on this 1st day of September, 2008 for the consideration and approval of the Honorable Court.

(Sgd) illegible..
Atty. Ernest Lorea
Plaintiff/Complainant

(Sgd) Benjohn Fetalvero
Defendant

Assisted by:

Atty. GERARDO D. PAGUIO
Mediator

ERWIN TRACY E. DACUP
Mediation Staff Asst. II
Mediation Supervisor/Coordinator[21]

Fetalvero filed before the trial court a motion to approve the Compromise Agreement and for the issuance of judgment.[22]

On October 17, 2008, the trial court issued an Order[23] approving the Compromise Agreement. On November 6, 2008, the Republic received a copy of the Order.[24]

In a letter dated May 13, 2009, Jaime A. Pacanan, Assistant Secretary and Central Right of Way Committee Chair of the Department of Public Works and Highways, Manila, requested advice from the Office of the Solicitor General regarding the Compromise Agreement's legality.[25]

In its letter[26] dated June 4, 2009, the Office of the Solicitor General replied that the government cannot be bound by the Compromise Agreement since it was not submitted to its office for review, which is a condition under the deputation letter and the Notice of Appearance. Thus, it was improper for the Department of Public Works and Highways to directly submit the Compromise Agreement to the trial court for judgment. Further, the Compromise Agreement failed to state how it arrived at the just compensation of ₱9,500.00 per square meter.[27]

Meanwhile, Fetalvero filed on July 20, 2009 a Motion for the Issuance of an Order for a Writ of Garnishment for the satisfaction of the trial court's October 17, 2008 Order.[28] He alleged that Sheriff Sandor B. Bantuas served a Writ of Execution to Atty. Lorea on June 2, 2009 and June 24, 2009. Both times, the latter ignored it and refused to comply with and satisfy the trial court's judgment. It was, therefore, necessary and just that the court issue a

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21 Id. at 240–241.
22 Id. at 240.
23 Id. at 240–241.
24 Id. at 177.
25 Id. at 177 and 243.
26 Id. at 243–245.
27 Id. at 177–178 and 244–245.
28 Id. at 178.

Writ of Garnishment in his favor.[29]

The Republic opposed the Motion, arguing that since the Compromise Agreement was not legally binding, "it cannot be the subject of a valid writ of execution or garnishment."[30] Moreover, the government still owns its funds and properties that were in official depositaries; thus, these cannot be garnished or levied.[31]

In its September 22, 2009 Order,[32] the trial court granted Fetalvero's Motion. It held:

> From the arguments of both defendant-movant and the plaintiff, the court is more inclined to agree with the observation of defendant-movant considering that the record reveals that the Office of the Solicitor General was duly furnished copy of the judgment of the court approving the Compromise Agreement dated October 17, 2008. Despite the lapse of almost a year, the Office of the Solicitor General never lift[ed] a finger to question the validity of said Compromise Agreement. The OSG is now precluded from questioning the validity of the compromise agreement. It should be noted that judgment based on compromise agreement is immediately executory. Hence, the plaintiff cannot now question the validity of the said judgment without transgressing the doctrine of immutability of judgment.[33]

The trial court further held that since the Office of the Solicitor General received a copy of the trial court's October 17, 2008 Order, the judgment was valid and binding on the Republic. Further, government funds in official depositaries remain government funds only if there was no appropriation by law. The trial court found that funds were already appropriated under SAA-SR 2009-05-001538 of the Department of Public Works and Highways "for payment of the road-rights-of-way."[34] Hence, Fetalvero's Motion should be granted.[35]

The dispositive portion of the trial court's September 22, 2009 Order read:

> WHEREFORE, finding the motion to be well-founded the same is hereby granted. The Sheriff of this Court may now proceed with the garnishment of plaintiff's funds intended for the payment of road-rights-of-way under SAA-SR 2009-05-001538 of the DPWH Main and/or Regional Office, as prayed for.

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29 Id. at 211.
30 Id. at 212.
31 Id.
32 Id. at 211–213.
33 Id. at 212.
34 Id. at 213.
35 Id.

SO ORDERED.[36]

The Republic moved for reconsideration, but its Motion was denied by the trial court in its April 23, 2010 Order.[37]

The Republic, through the Regional Executive Director of the Department of Public Works and Highways, Region X, filed before the Court of Appeals a Petition for Certiorari[38] against Fetalvero and Judge Abragan.[39] It again contended that the Compromise Agreement was not binding on the Republic since it was not submitted to the Office of the Solicitor General for review, and the basis for the amount of just compensation was not stated in it.[40] It insisted that "government funds and properties may not be seized under writs of execution or garnishment to satisfy court judgments."[41]

On July 29, 2011, the Court of Appeals rendered a Decision,[42] denying the Petition for lack of merit.[43] It found that the Office of the Solicitor General received a copy of the trial court's October 17, 2008 Order, but did not file any pleading or action to assail it. If the Office of the Solicitor General wanted to question the Compromise Agreement's validity, it should have raised the matter immediately, not when the Order was about to be executed.[44] The Court of Appeals added:

> As adverted to, records show that the OSG was served a copy of the Order dated October 17, 2008 which approved the compromise agreement. Hence, it was binding upon it. To rule otherwise would create havoc and absurdity in our procedural system wherein no judgment based on compromise would ever be final and executory despite the OSG's receipt of the same on the basis merely that the OSG did not previously receive a copy of the said compromise subject of the said decision and/or order.[45]

The Court of Appeals further held that public funds may be seized or garnished if they were "already allocated by law specifically for the satisfaction of the money judgment against the government."[46]

The dispositive portion of the Court of Appeals Decision read:

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36 Id. at 213.
37 Id. at 214.
38 Id. at 187–210.
39 Id. at 175.
40 Id. at 179–181.
41 Id. at 181.
42 Id. at 175–186.
43 Id. at 185.
44 Id. at 183–184.
45 Id. at 185.
46 Id.

> WHEREFORE, premises considered, the instant petition for certiorari is **DENIED** for lack of merit. The assailed Orders dated September 22, 2009 and April 23, 2010 are **AFFIRMED *in toto***.
>
> SO ORDERED.[47] (Emphasis in the original)

On October 6, 2011, the Republic, through the Office of the Solicitor General, filed before this Court a Petition for Review on Certiorari[48] against Fetalvero. It prayed that the July 29, 2011 Decision of the Court of Appeals be reversed and set aside.[49] Respondent submitted his Comment[50] dated February 8, 2012, while petitioner submitted its Reply[51] dated July 17, 2012.

In its January 28, 2013 Resolution,[52] this Court gave due course to the Petition and informed the parties to submit their respective memoranda. Petitioner submitted its Memorandum[53] dated April 29, 2013, while respondent submitted his Memorandum[54] on May 6, 2013.

Petitioner asserts that the Court of Appeals erred in dismissing its Petition "on a purely technical ground."[55] It argues that the Court of Appeals should have disposed the case based on its merit since it involves a substantial amount of public funds. Petitioner reiterates that the Compromise Agreement is void since it was entered into contrary to the reservation in the deputation letter and the Notice of Appearance. The Compromise Agreement was directly submitted to the trial court without the Office of the Solicitor General's prior review and approval.[56]

Petitioner avers that the just compensation is grossly disadvantageous to the government. The actual market value of properties in Mahayahay, Iligan City is ₱500.00 to ₱1,000.00 per square meter in 2003. However, the just compensation for respondent's property in the Compromise Agreement is ₱9,500.00 per square meter. Since the property was expropriated in 1999, petitioner argues that the just compensation should have been lower than the properties' selling price in 2003. Moreover, the Compromise Agreement does not indicate how the parties arrived at the just compensation.[57]

Finally, petitioner contends that despite the approval of the allocation under SAA-SR 2009-05-001538 and the partial payment of the just

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47 Id. at 185–186.
48 Id. at 144–174.
49 Id. at 169.
50 Id. at 278–292.
51 Id. at 308–318.
52 Id. at 323–324.
53 Id. at 329–348.
54 Id. at 350–362.
55 Id. at 334.
56 Id. at 334–340.
57 Id. at 340–343.

compensation to respondent, it can still question the Compromise Agreement's validity. Assuming that respondent proves that he has a claim, he cannot seize government funds by virtue of a writ of execution or garnishment. He must first file it before the Commission on Audit under Commonwealth Act No. 327, as amended by Section 26 of Presidential Decree No. 1445.[58]

On the other hand, respondent notes that the Compromise Agreement had been approved by the trial court on October 17, 2008. Thus, it had already attained finality by the time petitioner questioned its validity in June 2009. Respondent also points out that petitioner did not even avail of the remedies under the Rules of Court. It did not file an appeal, a motion for new trial, a petition for relief, or a petition to annul the trial court Orders.[59] Instead, it filed a petition for certiorari to "indirectly annul"[60] the judgments.

Respondent adds that the Court of Appeals correctly denied the Petition for Certiorari, since petitioner failed to show that Judge Abragan, in issuing the assailed Orders, committed grave abuse of discretion:[61]

> The issuance of the said orders which granted the motion for issuance of an order of writ of garnishment was not only proper, it was imperative as well because the order/judgment of the court dated October 17, 2008 approving the compromise agreement has long become final and executory, there being no motion for reconsideration or any appellate action taken by the petitioner in respect of the said order despite its receipt of the same on November 6, 2008. It is well established that a compromise agreement may be enforced by a writ of execution.[62]

Lastly, respondent states that he was issued a Release of Funds to Cover Payment of Right-of-Way Claims for Region X under SARO No. BMB-A-10-0018567 on September 23, 2010 in the amount of ₱898,266.30, and a Disbursement Voucher in the same amount as partial payment or satisfaction of the court order in Civil Case No. 7118 on November 22, 2010.[63]

The issues for this Court's resolution are:

First, whether or not the Compromise Agreement is void for not having being submitted to the Office of the Solicitor General for review;

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58 Id. at 343–345.
59 Id. at 355–359.
60 Id. at 355.
61 Id. at 359–360.
62 Id. at 360.
63 Id. at 354.

Second, whether or not the Compromise Agreement is void since the amount of just compensation is allegedly grossly disadvantageous to the government; and

Finally, whether or not government funds may be seized under a writ of execution or a writ of garnishment in satisfaction of court judgments.

**I**

Petitioner claims that the Compromise Agreement is void because: (1) it was not submitted to the Office of the Solicitor General for review; and (2) the amount of just compensation was grossly disproportionate to the property's actual market value, and its computation was not in the Compromise Agreement.

Petitioner's contentions are partly meritorious.

On petitioner's first claim, this Court takes this opportunity to reiterate our ruling in *Republic of the Philippines v. Viaje, et al.*,[64] which clarified the role of a deputized counsel in relation to the Office of the Solicitor General:

> The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." But it is likewise settled that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions. . . . The appearance of the deputized counsel did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record.[65] (Citations omitted)

Here, the Office of the Solicitor General, as the principal counsel, is shown in both the deputation letter addressed to Atty. Lorea and the Notice of Appearance filed before the trial court.

The deputation letter read:

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[64] 779 Phil. 405 (2016) [Per J. Reyes, Third Division].
[65] Id. at 413–414.

RE: Civil Case No. 7118
Regional Trial Court, Br. 03, Iligan City
REPUBLIC OF THE PHILIPPINES, Rep. by the REGIONAL EXECUTIVE DIRECTOR, REGION X, DEPT. OF PUBLIC WORKS AND HIGHWAYS (Plaintiffs)
vs. BENJOHN FETALVERO (Defendant).
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S i r :

Pursuant to Section 35(7), E.O. No. 292 and Section 11(e), P.D. No. 1275, you are hereby *deputized to assist the Solicitor General* in the above-captioned case.

*Please be informed that your authority is subject to the reservation contained in the Notice of Appearance filed by [the] Solicitor General in this case that only notices of orders, resolutions, and decisions served on him will bind the Government, the entity, agency and/or official represented.*

Upon promulgation of judgment, please submit immediately your report and recommendation to our Office for evaluation.[66] (Emphasis supplied)

Meanwhile, the Notice of Appearance stated:

**NOTICE OF APPEARANCE**

**The Branch Clerk of Court**
RTC, Iligan City

G R E E T I N G S:

*Please enter the appearance of the Office of the Solicitor General as counsel for the Republic of the Philippines in the above-entitled case, and cause all notices of hearings, orders, resolutions, decisions, and other processes to be served upon the said Office* at 134 Amorsolo St., Legaspi Village, Makati City.

Atty. Earnest Anthony L. Lorea, Chief, Legal Staff, Department of Public Works and Highways (DPWH), Region 10, Bulua, Cagayan de Oro City has been authorized to appear in this case and, therefore, should also be furnished notices of hearings, orders[,] resolutions, decisions, and other processes. *However, as the Solicitor General retains supervision and control of the representation in this case and has to approve withdrawal of the case, non-appeal or other actions which appear to compromise the interest of the Government, only notices of orders, resolutions, and decisions served on him will bind the party represented.*

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66 *Rollo*, p. 238.

> Adverse parties are likewise requested to *furnish both the Solicitor General* and the Prosecutor *with copies of their pleadings and motions.*[67] (Emphasis supplied)

In *South Pacific Sugar Corporation, et al. v. Court of Appeals, et al.*,[68] this Court explained that:

> [The] reservation to "approve the withdrawal of the case, the non-appeal, or other actions which appear to compromise the interest of the government" was *meant to protect the interest of the government in case the deputized . . . counsel acted in any manner prejudicial to government.*[69] (Emphasis supplied, citation omitted)

When Atty. Lorea entered into mediation, he only did so on behalf of the principal counsel, the Solicitor General. Mediation necessarily involves bargaining of the parties' interests, and a compromise agreement is one (1) of its consequences. Under the reservation in the Notice of Appearance, Atty. Lorea must submit the resulting Compromise Agreement to then Solicitor General Agnes VST Devanadera[70] for review and approval, especially since the amount respondent claims is significantly larger than what he was allegedly only entitled to get. Without the Solicitor General's positive action on the Compromise Agreement, it cannot be given any effect and cannot bind the Solicitor General's client, the government.

Nonetheless, despite the lack of the Solicitor General's approval, this Court holds that the government is still bound by the Compromise Agreement due to laches.

The Solicitor General is assumed to have known of the Compromise Agreement since, as principal counsel, she was furnished a copy of the trial court's June 27, 2008 Order, which referred the case to mediation. Even if she did not know that Atty. Lorea signed a Compromise Agreement, she was later informed of it through the copy of the trial court's October 17, 2008 Order, which approved the Compromise Agreement. The Solicitor General received the October 17, 2008 Order on November 6, 2008; yet, she filed no appeal or motion to contest the Order or the Compromise Agreement's validity.

Thus, based on the deputation letter, which stated that "only notices of orders, resolutions, and decisions served on [the Office of the Solicitor General] will bind the [g]overnment, the entity, agency[,] and/or official

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67 Id. at 242.
68 657 Phil. 563 (2011) [Per J. Carpio, Second Division].
69 Id. at 573.
70 *Rollo*, p. 242.

represented[,]"[71] and the Notice of Appearance, which stated that "only notices of orders, resolutions, and decisions served on [the Office of the Solicitor General] will bind the party represented[,]"[72] the Solicitor General's receipt of the October 17, 2008 Order bound petitioner to the trial court's judgment.

In *Viaje, et al.*, only the Office of the Solicitor General was furnished copies of court notices despite its request that the trial court also furnish its deputized counsel with court notices.[73] This Court held:

> It would have been more prudent for the RTC to have furnished the deputized counsel of its notices. All the same, doing so does not necessarily clear the OSG from its obligation to oversee the efficient handling of the case. *And even if the deputized counsel was served with copies of the court's notices, orders and decisions, these will not be binding until they are actually received by the OSG.* More so in this case where the OSG's Notice of Appearance and its Letter deputizing the LRA even contained the *caveat that it is only notices of orders, resolutions and decisions served on the OSG that will bind the Republic, the entity, agency and/or official represented.* In fact, *the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.* As was stated in *National Power Corporation v. National Labor Relations Commission*:
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> > The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same. As the lawyer for the government or the government corporation involved, the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.[74] (Emphasis supplied, citations omitted)

In *Republic of the Philippines v. Intermediate Appellate Court*,[75] the government failed to oppose the petition for reconstitution. This is despite receiving copies of the petition and its annexes through the Registrar of Deeds, Director of Lands, Solicitor General, and the Provincial Fiscal, and even after judgment on the compromise agreement.[76] This Court held:

> Thereafter, when judgment was rendered based on the compromise agreement without awaiting the report and recommendation of the Land Registration Administration and the verification of the Registrar of Deeds

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71 Id. at 238.
72 Id. at 242.
73 *Republic of the Philippines v. Viaje, et al.*, 779 Phil. 405, 414 (2016) [Per J. Reyes, Third Division].
74 Id. at 414–415.
75 273 Phil. 662 (1991) [Per J. Medialdea, First Division].
76 Id. at 669–670.

> concerned, its failure to file a motion to set aside the judgment of the court after due notice likewise proves that no interest of the government was prejudiced by such judgment.[77]

The Solicitor General could have contested the June 27, 2008 and October 17, 2008 Orders, but she did not. There was no explanation of her inaction in any of the pleadings. By the time petitioner filed a Petition for Certiorari, estoppel by laches has already set in.

In addition, petitioner only resorted to a petition for certiorari when it failed to appeal the case within the reglementary period. In *Nippon Paint Employees Union-Olalia v. Court of Appeals*:[78]

> It is elementary in remedial law that the use of an erroneous mode of appeal is cause for dismissal of the petition for *certiorari* and it has been repeatedly stressed that a petition for *certiorari* is not a substitute for a lost appeal. This is due to the nature of a Rule 65 petition for *certiorari* which lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law." As previously ruled by this Court:
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> > . . . We have time and again reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law." *Certiorari* can not be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for lost appeal. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[79] (Emphasis in the original, citations omitted)

Petitioner's second claim is a question of fact improper in a petition for review under Rule 45. In *DST Movers Corporation v. People's General Insurance Corporation*:[80]

> A Rule 45 petition pertains to questions of law and not to factual issues. Rule 45, Section 1 of the 1997 Rules of Civil Procedure is unequivocal:
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> > SECTION 1. Filing of Petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The

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77 Id. at 670.

78 485 Phil. 675 (2004) [Per J. Puno, Second Division].

79 Id. at 681.

80 778 Phil. 235 (2016) [Per J. Leonen, Second Division].

> petition shall raise only questions of law which must be distinctly set forth.

This court's Decision in *Cheesman v. Intermediate Appellate Court* 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."

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."[81] (Citations omitted)

Moreover, this Court held in *Gadrinab v. Salamanca, et al.*:[82]

> A judgment on compromise agreement is a judgment on the merits. It has the effect of *res judicata*, and is immediately final and executory unless set aside because of falsity or vices of consent. The doctrine of immutability of judgments bars courts from modifying decisions that have already attained finality, even if the purpose of the modification is to correct errors of fact or law.[83] (Emphasis in the original)

## II

The general rule is that government funds cannot be seized by virtue of writs of execution or garnishment.[84] This doctrine has been explained in *Commissioner of Public Highways v. San Diego*:[85]

> The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of

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81 Id. at 244–245.

82 736 Phil. 279 (2014) [Per J. Leonen, Third Division].

83 Id. at 283.

84 *Commissioner of Public Highways v. San Diego*, G.R. No. L-30098, February 18, 1970, 31 SCRA 616, 625 [Per J. Teehankee, En Banc].

85 Id.

> execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.[86]

Simply put, "no money can be taken out of the treasury without an appropriation[.]"[87] Here, the trial court already found that:

> [T]here is an appropriation intended by law for payment of road-rights-of-way. Defendant [respondent here] even called the attention of the court of the existence of SAA-SR 2009-05-001538 of the DPWH Main and/or Regional Office appertaining to the fund intended for payment of the road-rights-of-way.[88]

Even petitioner admitted in its Memorandum "the approval of allocation for payment of road right of way projects within Region 10 under SAA-SR 2009-001538[.]"[89] Since there is an existing appropriation for the payment of just compensation, and this Court already settled that petitioner is bound by the Compromise Agreement, respondent is legally entitled to his money claim. However, he still has to go through the appropriate procedure for making a claim against the Government.

In *Atty. Roxas v. Republic Real Estate Corporation*,[90] this Court elaborated on the proper process of raising money claims against the government. In that case, the trial court issued a writ of execution over the government funds for payment of land reclaimed by Republic Real Estate Corporation. This Court held:

> The case is premature. The money claim against the Republic should have been first brought before the Commission on Audit.
>
> The Writ of Execution and Sheriff De Jesus' Notice [of Execution] violate this Court's Administrative Circular No. 10-2000 and Commission on Audit Circular No. 2001-002, which govern the issuance of writs of execution to satisfy money judgments against government.
>
> Administrative Circular No. 10-2000 dated October 25, 2000 orders all judges of lower courts to observe utmost caution, prudence, and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies. This Court has emphasized that:

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86 Id.
87 *Gonzales v. Hon. Raquiza*, 259 Phil. 736, 743 (1989) [Per C.J. Fernan, Third Division].
88 *Rollo*, p. 80.
89 Id. at 344.
90 786 Phil. 163 (2016) [Per J. Leonen, Second Division].

. . . .

> . . . it is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued *in accordance with the rules and procedures laid down in P[residential] D[ecree] No. 1445*, otherwise known as the Government Auditing Code of the Philippines (Department of Agriculture v. NLRC, 227 SCRA 693, 701-02 [1993] citing Republic vs. Villasor, 54 SCRA 84 [1973]). *All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days*. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and in effect sue the State thereby (P[residential] D[ecree] [No.] 1445, Sections 49-50).

For its part, Commission on Audit Circular No. 2001-002 dated July 31, 2001 requires the following to observe this Court's Administrative Circular No. 10-2000: department heads; bureau, agency, and office chiefs; managing heads of government-owned and/or controlled corporations; local chief executives; assistant commissioners, directors, officers-in-charge, and auditors of the Commission on Audit; and all others concerned.

Chapter 4, Section 11 of Executive Order No. 292 gives the Commission on Audit the power and mandate to settle all government accounts. Thus, the finding that government is liable in a suit to which it consented does not translate to enforcement of the judgment by execution.

As a rule, public funds may not be disbursed absent an appropriation of law or other specific statutory authority. Commonwealth Act No. 327, as amended by Presidential Decree No. 1445, requires that all money claims against government must first be filed before the Commission on Audit, which, in turn, must act upon them within 60 days.

Only when the Commission on Audit rejects the claim can the claimant elevate the matter to this Court on certiorari and, in effect, sue the state. *Carabao, Inc. v. Agricultural Productivity Commission* has settled that "claimants have to prosecute their money claims against the Government under Commonwealth Act 327 . . . and that the conditions provided in Commonwealth Act 327 for filing money claims against the Government must be strictly observed."

In *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City*:

> Under Commonwealth Act No. 327, as amended by Section 26 of P.D. No. 1445, it is the C[ommission] o[n] A[udit] which has primary jurisdiction to examine, audit and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries[.]

> [Republic Real Estate Corporation's] procedural shortcut must be rejected. Any allowance or disallowance of its money claims is for the Commission on Audit to decide, subject only to [Republic Real Estate Corporation's] remedy of appeal via a petition for *certiorari* before this Court.[91] (Emphasis in the original, citations omitted)

Here, as in *Atty. Roxas*, respondent failed to show that he first raised his claim before the Commission on Audit. Without this necessary procedural step, respondent's money claim cannot be entertained by the courts through a writ of execution.

## III

Under Article III, Section 9 of the 1987 Constitution, "[p]rivate property shall not be taken for public use without just compensation."[92]

This Court notes that for almost 20 years now, petitioner had been enjoying the use of respondent's property without paying the full amount of just compensation under the Compromise Agreement. Respondent had been deprived of his property for almost two (2) decades. In keeping with substantial justice, this Court imposes the payment of legal interest on the remaining just compensation due to respondent. Consistent with this Court's ruling in *Nacar v. Gallery Frames*,[93] this Court imposes interest at the rate of twelve percent (12%) per annum from the time of taking until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until fully paid.[94]

Thus, respondent's money claim under the Compromise Agreement should be adjusted to reflect the interest rates imposed by this Court.

**WHEREFORE**, premises considered, the Petition is **PARTLY GRANTED**. The Court of Appeals July 29, 2011 Decision in CA-G.R. SP No. 03710-MIN is **REVERSED** and **SET ASIDE**, insofar as it affirmed the September 22, 2009 and April 23, 2010 Orders of the Regional Trial Court in granting respondent Benjohn Fetalvero's Motion for the Issuance of an Order for a Writ of Garnishment. This is without prejudice to his filing of adjusted money claim before the Commission on Audit.

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91 Id. at 188–192.

92 *See Land Bank of the Philippines v. Manzano, et al.*, G.R. No. 188243, January 24, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/188243.pdf> 21 [Per J. Leonen, Third Division].

93 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

94 *See Land Bank of the Philippines v. Manzano*, G.R. No. 188243, January 24, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/188243.pdf> 29 [Per J. Leonen, Third Division].

The remaining just compensation due to Benjohn Fetalvero under the Compromise Agreement is subject to interest at the rate of twelve percent (12%) per annum from the time of taking until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until the allowance of the money claim by the Commission on Audit.

**SO ORDERED.**

**MARVIC M.V.F. LEONEN**
Associate Justice

WE CONCUR:

**DIOSDADO M. PERALTA**
Associate Justice
Chairperson

**ANDRES B. REYES, JR.**
Associate Justice

**RAMON PAUL L. HERNANDO**
Associate Justice

**ROSMARI D. CARANDANG**
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.

**DIOSDADO M. PERALTA**
Associate Justice
Chairperson

## 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.

**LUCAS P. BERSAMIN**
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 26 2019