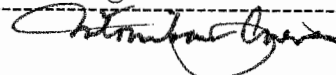


G.R. No. 197743 - Heirs of Jose Mariano and Helen S. Mariano, represented by Danilo David S. Mariano, Mary Therese Irene S. Mariano, Ma. Catalina Sophia S. Mariano, Jose Mario S. Mariano, Ma. Lenor S. Mariano, Macario S. Mariano and Heirs of Erlinda Mariano-Villanueva, represented in this act by Irene Lourdes M. Villanueva through her attorneys-in-fact Editha S. Santuyo and Benjamin B. Santuyo, petitioners, v. City of Naga, respondent.

Promulgated: October 18, 2022

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CONCURRING AND DISSENTING OPINION

GAERLAN, J.:

I agree with my esteemed colleague, Justice Japar Dimaampao, that the return of the property subject of the case to the Heirs of Jose Mariano and Helen S. Mariano and Heirs of Erlinda Mariano-Villanueva¹ (petitioners) is no longer feasible. However, I am constrained to register my dissent to the other dispositions in the *ponencia*.

The *ponencia* is not just a partial grant or modification of the Decision² dated March 12, 2018 of the Court's First Division (assailed Decision). To recall, the said Decision directed the City of Naga and other government agencies to immediately vacate the property and pay petitioners ₱1,250,000.00 monthly as rentals and ₱75,000.00 as attorney's fees. The *ponencia* deleted all the foregoing which is clearly a complete reversal of the assailed Decision.

Subsequently, the *ponencia* remanded the case to the Regional Trial Court (RTC) of Naga for determination of just compensation which, to my mind, would further delay the resolution of the complaint. Instead of remanding the case to the RTC, I agree with Justice Amy Lazaro-Javier's (Justice Lazaro-Javier's) proposal to just remand it to the Court of Appeals (CA) solely for the determination of just compensation. Thereafter, the CA should submit a report and recommendation to the Court which could be Our basis in deciding the issue of just compensation.

While I stand firm with my position that February 12, 2004 (the date of filing of the ejectment case) should be the reckoning date of just compensation, I concede that the Court has already reached a consensus that

¹ Represented by Danilo David S. Mariano, Mary Therese Irene S. Mariano, Ma. Catalina Sophia S. Mariano, Jose Mario S. Mariano, Ma. Lenor S. Mariano, Macario S. Mariano and Heirs of Erlinda Mariano-Villanueva, represented in this act by Irene Lourdes M. Villanueva through her attorneys-in-fact Editha S. Santuyo and Benjamin B. Santuyo.

² *Rollo*, pp. 694-725; penned by Associate justice Noel G. Tijam (now a Retired Member of this Court, with Associate Justices Teresita J. Leonardo-De Castro, (now a Retired Member of this Court), Mariano C. Del Castillo, (now a Retired Member of this Court) and Francis H. Jardeleza (now a Retired Member of this Court), concurring.

August 16, 1954 or the date of taking would be used in the determination of just compensation due to petitioners.³

At this juncture, I join and fully support the formula suggested by Justice Lazaro-Javier that the cost of inflation should be considered so that the true value of the loss suffered by the property owner would be justly compensated (inflation-adjusted fair market value). Thereafter, the applicable legal interest should be imposed on the inflation-adjusted fair market value of the property at the time of actual taking.

The City of Naga (respondent) should not benefit from its unconstitutional, illegal, and improper act of taking petitioners' property *sans* an expropriation proceeding. The fair market value of the property in 1954 is ridiculously low. If the Court decides to apply the present value formula proposed by Justice Marvic Leonen in his separate opinion in *Secretary of DPWH v. Spouses Tecson*⁴ (*Spouses Tecson*), the lot owner will not be fully and justly compensated. The base amount upon which the interest will be applied is small *vis-à-vis* when the base use is the inflation-adjusted fair market value of the property.

In addition, exemplary damages in the amount of ₱1,000,000.00 and attorney's fees in the amount of ₱75,000.00 must be assessed against respondent for flagrant violation of pertinent rules and jurisprudence. This is but fair considering that the rights of petitioners to recover possession of the property and to receive rentals were disregarded.

Using Justice Lazaro-Javier's formula will send a strong warning to government agencies and corporations and to local government units not to trifle with the property and ownership rights of private individuals without due process of law.

Meanwhile, for a more comprehensive and clearer picture, let us revisit the antecedents.

The present case involves respondent's Second Motion for Reconsideration⁵ (2nd MR) and Motion for Leave to File Second Motion for Reconsideration⁶ of the Decision⁷ dated March 12, 2018 of the Court's First Division. The assailed Decision ordered respondent and all other government instrumentalities, agencies, and offices claiming right of possession through and under it to vacate Blocks 25 and 26 of Transfer Certificate of Title No. 671 registered in the name of Macario A. Mariano (Mariano) and Jose A. Gimenez (Gimenez), and to peacefully surrender and deliver physical

³ On official business, October 18, 2022.

⁴ 713 Phil. 55 (2013).

⁵ *Rollo*, pp. 978-997.

⁶ *Id.* at 866-873.

⁷ *Id.* at 694-725.

possession (Order to Vacate) of the same to petitioners. Respondent was directed to pay petitioners monthly rental of ₱1,250,000.00 and attorney's fees of ₱75,000.00.

In its 2nd MR, respondent argued that: (1) petitioners are guilty of laches which bar them from recovering the property; (2) the assailed Decision would cause disastrous consequences and irreparable damage to the City of Naga whose City Hall largely occupies the property as well as against other government offices therein; and (3) recovery of possession of the property is no longer feasible so the only relief available is for respondent to pay just compensation.⁸

The *ponencia* agreed with respondent as to the second and third points.⁹ It granted reconsideration and deleted the Order to Vacate as well as the award of rentals in favor of petitioners. It directed respondent to pay: (1) just compensation pegged at the value of the property at the time of taking, that is, on August 16, 1954, subject to legal interest of six percent (6%) *per annum* from said date until full payment is made; and (2) exemplary damages in the amount of ₱1,000,000.00. The computation of just compensation shall be in accordance with the "present value" formula laid down in *Republic v. Spouses Nocom*.¹⁰ The *ponencia* ordered the remand of the case to the RTC for the determination of just compensation.

I beg to differ from the *ponencia*'s application of the present value formula, rate of interest imposed, deletion of rentals, and remand of the case to the RTC, but I concur with the deletion of the Order to Vacate and the grant of exemplary damages to petitioners.

Allow me to explain.

Remedies of a landowner when his/her property is taken for public use

The power of eminent domain is one of the three inherent powers of the Government by which the State interferes with the people's property rights.¹¹ It is the ultimate right of the sovereign power to appropriate, not only the public but the private property of all citizens within the territorial sovereignty, to public purpose.¹² Though it exists independently of the Constitution, it is

⁸ Id.

⁹ *Ponencia*, pp. 5-8.

¹⁰ G.R. No. 233988, November 15, 2021.

¹¹ Dissenting Opinion of Associate Justice Antonio T. Carpio in *Southern Luzon Drug Corp. v. Department of Social Welfare and Development*, 809 Phil. 315, 388 (2017).

¹² *Republic v. Heirs of Saturnino Borbon*, 750 Phil. 37, 48 (2015), citing Bernas, *Constitutional Rights and Social Demands: Notes and Cases*, Part II (2010 Ed.), p. 589.

limited by the constitutional fiat that, “[p]rivate property shall not be taken for public use without just compensation.”¹³

Just compensation is the full and fair equivalent of the property taken from its owner by the expropriator, the true measure of which is not the taker’s gain but the owner’s loss. To be “just,” the compensation must not only be for the correct amount but it must be made within a reasonable time from the taking of the property.¹⁴

Consequently, it is well-settled that where private property is taken by the Government for public use without first acquiring title thereto through expropriation or negotiated sale, the owner’s action to recover the land or its value is imprescriptible.¹⁵ However, the remedy of recovery of possession is not absolute, this is available only when the return of the property is feasible. When no longer feasible or convenient, the aggrieved owner is left with no choice but to demand payment for the land taken.¹⁶

Here, respondent has been in possession of the property since 1954. Sometime in 1959, the City Hall of Naga was erected thereon, which up to this date remains in the site, along with other national government offices. Respondent neither expropriated nor purchased the property through negotiated sale, hence petitioners were not paid the value thereof. Be that as it may, petitioners’ action to recover the property is no longer feasible. To order respondent and the other national government offices to vacate the property and deliver possession to petitioners would result to dire consequences. It would hamper the functioning of the local government unit and the delivery of public services to the city’s constituents. Indeed, the only remedy left for petitioners is to be paid just compensation.

The question that now arises is, at what point in time should the just compensation be reckoned from?

Just compensation should be pegged at the time of the filing of the complaint for expropriation

As a general rule, just compensation is based on the price or value of the property at the time the complaint for expropriation was filed.¹⁷ This is

¹³ 1987 PHILIPPINE CONSTITUTION, Article III, Section 9.

¹⁴ *Republic v. Jose Gamir-Consuelo Diaz Heirs Association, Inc.*, G.R. No. 218732, November 12, 2018.

¹⁵ *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, supra note 4 at 70, citing *Eusebio v. Luis*, 618 Phil. 586, 594 (2009); *Republic v. Court of Appeals*, 494 Phil. 494, 503 (2005).

¹⁶ *Id.*, citing *Republic v. Court of Appeals*, *id.* at 528.

¹⁷ *Republic v. Estate of Posadas III*, G.R. No. 214310, February 24, 2020, citing *Republic v. Court of Appeals*, 612 Phil. 965, 977-978 (2009).

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because normally the time of taking coincides with the filing of the said complaint.¹⁸

Notably, Section 4, Rule 67 of the Rules of Court reads:

Section 4. Order of expropriation. — If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, **upon the 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.** (Emphasis supplied)

Nevertheless, there are instances when the taking of private property preceded the filing of the complaint for expropriation. In such cases, the payment of just compensation is reckoned from the date of taking.¹⁹ In *Republic v. Vda. de Castellvi*,²⁰ the Court held that there is “taking” for purposes of expropriation when the following elements concur: (1) the expropriator must enter 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/her of all beneficial enjoyment of the property.²¹

Applying the foregoing parameters in this case, I submit that there was no “taking” in 1954 when respondent gained possession of the property as the donee under the Deed of Donation dated August 16, 1954. The third element of taking was missing. Respondent’s entrance in 1954 was without intent to expropriate or was not made under warrant or color of legal authority since it believed that it owns the property by virtue of the donation. This is consistent with the Court’s ruling in *National Power Corporation v. Court of Appeals and Macapanton Mangondato*²² (*Mangondato*).

In *Mangondato*, the National Power Corporation (NPC) believed that it entered a public land in 1978 so it refused just compensation when the landowners claimed ownership of the lot. The Court held that without the intent to expropriate, just compensation for the value of the property cannot be pegged in 1978 because it does not qualify as “taking” for purposes of

¹⁸ Id., citing *National Power Corporation v. Ibrahim*, 553 Phil. 136, 152 (2007).

¹⁹ *National Transmission Corp. v. Oroville Development Corp.*, 815 Phil. 91, 106 (2017).

²⁰ 157 Phil. 329 (1974).

²¹ Id. at 345-346.

²² 325 Phil. 29, 46 (1996).

expropriation. Instead, just compensation was based on the date of NPC's filing of the complaint for expropriation. The Court explained that:

In this case, the petitioner's [referring to NPC] entrance in 1978 was without intent to expropriate or was not made under warrant or color of legal authority, for it believed the property was public land covered by Proclamation No. 1354. When the private respondent raised his claim of ownership sometime in 1979, the petitioner flatly refused the claim for compensation, nakedly insisted that the property was public land and wrongly justified its possession by alleging it had already paid "financial assistance" to Marawi City in exchange for the rights over the property. Only in 1990, after more than a decade of beneficial use, did the petitioner recognize private respondent's ownership and negotiate for the voluntary purchase of the property. A Deed of Sale with provisional payment and subject to negotiations for the correct price was then executed. Clearly, this is not the intent nor the expropriation contemplated by law. This is a simple attempt at a voluntary purchase and sale. Obviously, the petitioner neglected and/or refused to exercise the power of eminent domain.

Only in 1992, after the private respondent sued to recover possession and petitioner filed its Complaint to expropriate, did petitioner manifest its intention to exercise the power of eminent domain. x x x²³ (Emphasis supplied)

Petitioners claimed that the donation did not take effect because it was subject to the condition that the construction of the City Hall of Naga would be awarded to City Heights Subdivision (CHS), which was not complied with by respondent. However, I note that it was only in 1959 when the construction of the City Hall was awarded to another contractor. Thus, it could be safely assumed that prior to this circumstance, respondent genuinely believed that the 1954 donation was valid and that it entered the property as its owner.

In 1959, after respondent failed to comply with the condition of the donation, Mayor Monico Imperial (Mayor Imperial) offered to purchase the property from its owners. In effect, he, as representative of respondent, recognized Mariano's and Gimenez's ownership of the property and the invalidity of the donation. By virtue of the voluntary offer to purchase the property, petitioners tolerated respondent's continued possession of the property. On May 14, 1968, Mariano made a follow-up on the proposal made by Mayor Imperial for the purchase of the property. His letter to Eusebio Lopez, Jr. (Lopez, Jr.), the General Manager of CHS, reads:

Please be advised to disregard all my previous letters and instructions to you regarding the donation of the city hall and market sites to the City of Naga. Kindly make immediate representation to the City Mayor and insist on the previous proposal made by Mayor Monico Imperial for the city to buy the land we offered to them.

²³ Id. at 46-47.

Considering the lapse of time and until now, no clear actions have been made by the city, I suggest you take whatever appropriate actions on this matter the soonest possible time.²⁴

Had Mariano wanted to recover possession of the property and turned his back on the previous proposal for the purchase of the property, he could have categorically instructed Lopez, Jr. to file a case in court or demand the return of the property from respondent. Yet, Mariano's first directive was for Lopez, Jr. to insist on the sale. Mariano was still hoping that respondent would make good on its offer. This is a clear sign of continuous tolerance or implied permission from Mariano for respondent to continue its possession pending the sale.

In *Tan v. Republic*,²⁵ the Court refused to recognize the entry of the Public Estates Authority (PEA) into a private property in 1985 as the "taking" contemplated by law because it was made with the permission of the owner. After entry, PEA requested the owner to donate or to sell the land to the government. Negotiations ensued but no agreement was reached. In the interim, the property was sold to a new owner, who asked the PEA for a land swapping arrangement as a form of compensation. Initially, PEA agreed but later withdrew from the deal. In 2003, it filed a complaint for expropriation. The Court held that just compensation should be determined in 2003 because there was no intent to expropriate the land in 1985, to wit:

[W]hen PEA entered petitioner's land in 1985, it was not for the purpose of expropriating it. We stress that after its entry, PEA wrote SADC requesting to donate or sell the land to the government. Indeed, there was no intention on the part of PEA to expropriate the subject property. Why did it ask permission from SADC to enter the property? Thereafter, why did it request SADC to donate or sell the land to the government? It could have simply exercised its power of eminent domain.

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We have made it clear that there was no taking of the property in 1985 by PEA for purposes of expropriation. As shown by the records, PEA filed with the RTC its petition for expropriation on September 22, 2003. The trial court, therefore, was correct in ordering respondent, through PEA, upon the filing of its complaint for expropriation, to pay petitioner just compensation on the basis of the BIR zonal valuation of the subject property at ₱20,000.00 per square meter.²⁶ (Emphasis supplied)

Notably, up to this date or specifically the filing of respondent's Second Motion for Reconsideration, respondent has not filed a case for expropriation

²⁴ See the assailed Decision of the First Division (G.R. No. 197743, March 12, 2018), *rollo*, pp. 717-718.

²⁵ 551 Phil. 200 (2007).

²⁶ *Id.* at 213-214.

of the property. Quite the contrary, petitioners had formally ceased from tolerating respondent's possession of the property when they commenced the ejectment suit against respondent in the Municipal Trial Court of Naga City on February 12, 2004. Considering that petitioners could no longer recover the physical possession of the property because it is not feasible, the Court may convert and/or "continue" the ejectment suit as if it were an action for recovery of just compensation filed by the landowner pursuant to *National Transmission Corp. v. Bermuda Development Corp.*²⁷

Treating the ejectment case as a complaint for expropriation and remanding it to the CA, as suggested by Justice Lazaro-Javier, would expedite the protracted litigation between the parties.

On remand, the proceeding before the CA would partake the nature of an "inverse condemnation." The objective of inverse condemnation is to recover the value of property taken in fact by the government, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.²⁸ The action is anchored on Section 9, Article III of the 1987 Constitution.²⁹ That it was the landowner rather than the expropriator who files the suit does not change the fact that the action is based on the State's exercise of its power of eminent domain.³⁰ It would be at the height of injustice for the Court to await respondent to file an expropriation suit considering that until now, respondent remained adamant that it acquired ownership of the property by virtue of the 1954 donation. Respondent may opt not to even file an expropriation case because it is already enjoying the rights of use and possession over the property to the extreme prejudice of petitioners.

Meanwhile, even assuming that there was "taking" of property in 1954, just compensation should still be reckoned from the time that petitioners filed the complaint.

In *National Power Corporation v. Heirs of Macabangkit Sangkay*³¹ (*Heirs of Sangkay*), the NPC constructed a tunnel without the consent and knowledge of the owners and without going through formal expropriation proceedings. The Court held that the value of the property at the time the owners commenced the inverse condemnation proceedings should be the basis of just compensation, despite the taking of the property way back in 1979. The Court's disquisition is enlightening:

We rule that the reckoning value is the value at the time of the filing of the complaint, as the RTC provided in its decision. Compensation that is reckoned on the market value prevailing at the

²⁷ G.R. No. 214782, April 3, 2019.

²⁸ *National Power Corporation v. Heirs of Macabangkit Sangkay*, 671 Phil. 569, 591 (2011).

²⁹ Private property shall not be taken for public use without just compensation.

³⁰ *National Power Corporation v. Heirs of Macabangkit Sangkay*, supra at 592.

³¹ Id.

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time either when NPC entered or when it completed the tunnel, as NPC submits, would not be just, for it would compound the gross unfairness already caused to the owners by NPC's entering without the intention of formally expropriating the land, and without the prior knowledge and consent of the Heirs of Macabangkit. NPC's entry denied elementary due process of law to the owners since then until the owners commenced the inverse condemnation proceedings. The Court is more concerned with the necessity to prevent NPC from unjustly profiting from its deliberate acts of denying due process of law to the owners. As a measure of simple justice and ordinary fairness to them, therefore, reckoning just compensation on the value at the time the owners commenced these inverse condemnation proceedings is entirely warranted.

In *National Power Corporation v. Court of Appeals*, a case that involved the similar construction of an underground tunnel by NPC without the prior consent and knowledge of the owners, and in which we held that the basis in fixing just compensation when the initiation of the action preceded the entry into the property was the time of the filing of the complaint, not the time of taking, we pointed out that there was no taking when the entry by NPC was made "without intent to expropriate or was not made under warrant or color of legal authority."³² (Emphasis supplied; citations omitted)

In *National Power Corp. v. Spouses Saludares*³³ (*Spouses Saludares*), the landowners filed an inverse condemnation proceeding against NPC alleging that the latter erected high-tension transmission lines in their property without compensating them. NPC argued that it already paid the owners in compliance with the final and executory decision in *National Power Corporation v. Pereyras*.³⁴ The Court ruled that the just compensation for the property should be determined at the time of filing of the complaint for inverse condemnation, thus:

Indeed, respondent spouses would be deprived of their right to just compensation if the value of the property is pegged back to its value in the 1970s. To reiterate, NAPOCOR should have instituted eminent domain proceedings before it occupied respondent spouses' property. Because it failed to comply with this duty, respondent spouses were constrained to file the instant Complaint for just compensation before the trial court. From the 1970s until the present, they were deprived of just compensation, while NAPOCOR continuously burdened their property with its transmission lines. This Court cannot allow petitioner to profit from its failure to comply with the mandate of the law. We therefore rule that, to adequately compensate respondent spouses from the decades of burden on their property, NAPOCOR should be made to pay the value of the property at the time of the filing of the instant Complaint when respondent spouses made a judicial demand for just compensation.³⁵ (Emphasis supplied)

³² Id. at 597-598.

³³ 686 Phil. 967, 979 (2012).

³⁴ Special Civil Case No. 135, RTC, Branch II, Tagum City.

³⁵ *National Power Corp. v. Spouses Saludares*, supra at 979-980.

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In *Heirs of Sangkay* and in *Saldares*, the Court pegged the value of the property at the time of filing of the complaint for inverse condemnation due to special circumstances. In the first case, the NPC employed stealth in entering the property instead of complying with the legal process. In the second case, the NPC refused to acknowledge the landowner's claim and insisted that it already paid just compensation, evincing that it had no intention to pay.³⁶

Similarly, it is my humble opinion that special circumstances also exist here, warranting the application of the aforementioned cases. Respondent had no intention of paying just compensation to petitioners as it insisted until now that the property was validly donated. This is despite the fact that respondent was fully aware that it did not comply with the condition attached to the donation. Worse, respondent offered to purchase petitioners' property way back in 1959 but until the institution of the ejectment suit, the sale did not materialize. Even though respondent was aware of the flaw in its possession of the property, it did not file a formal expropriation proceeding. Hence, to peg the value of the property at the time of the donation in 1954 or in the alleged cessation of tolerance in 1968 would be unfair to petitioners.

The Court's ruling in Forfom³⁷ is inapplicable.

I am aware that there is a string of cases where the Court uniformly held that the time of taking is controlling for purposes of just compensation. These are cases where the government took possession and control of the property for public use without initiating expropriation proceedings and without payment of just compensation. *Spouses Tecson* summarized these cases in this wise:

In *Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR]*, PNR entered the property of Forfom in January 1973 for public use, that is, for railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service without initiating expropriation proceedings. In 1990, Forfom filed a complaint for recovery of possession of real property and/or damages against PNR. In *Eusebio v. Luis*, respondent's parcel of land was taken in 1980 by the City of Pasig and used as a municipal road now known as A. Sandoval Avenue in Pasig City without the appropriate expropriation proceedings. In 1994, respondent demanded payment of the value of the property, but they could not agree on its valuation prompting respondent to file a complaint for reconveyance and/or damages against the city government and the mayor. In *Manila International Airport Authority v. Rodriguez*, in the early 1970s, petitioner implemented expansion programs for its runway necessitating the acquisition and occupation of some of the properties surrounding its premises. As to respondent's property, no expropriation proceedings were

³⁶ *National Transmission Corp. v. Oroville Development Corp.*, supra note 19 at 107.

³⁷ 594 Phil. 10 (2008).

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initiated. In 1997, respondent demanded the payment of the value of the property, but the demand remained unheeded prompting him to institute a case for *accion reivindicatoria* with damages against petitioner. In *Republic v. Sarabia*, sometime in 1956, the Air Transportation Office (ATO) took possession and control of a portion of a lot situated in Aklan, registered in the name of respondent, without initiating expropriation proceedings. Several structures were erected thereon including the control tower, the Kalibo crash fire rescue station, the Kalibo airport terminal and the headquarters of the PNP Aviation Security Group. In 1995, several stores and restaurants were constructed on the remaining portion of the lot. In 1997, respondent filed a complaint for recovery of possession with damages against the storeowners where ATO intervened claiming that the storeowners were its lessees.

The Court in the above-mentioned cases was confronted with common factual circumstances where the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. The Court thus determined the landowners' right to the payment of just compensation and, more importantly, the amount of just compensation. *The Court has uniformly ruled that just compensation is the value of the property at the time of taking that is controlling for purposes of compensation.*³⁸ x x x (Emphasis and italics in the original, citations omitted)

The common denominator between and among *Forfom Development Corporation v. Phil. National Railways*,³⁹ *Eusebio v. Luis*,⁴⁰ *Manila International Airport Authority v. Rodriguez*,⁴¹ and *Republic v. Sarabia*⁴² (collectively, *Forfom, et al.*) on one hand, and the present case, on the other hand, is the entry of the government into private property without the benefit of expropriation. The landowners were the ones who filed a complaint for recovery of possession and damages against the government. The difference lies, however, on the finding of the Court that in the first group of cases, the landowners stay silent or failed for a long period of time to question the government's act.⁴³ Thus, they were deemed to have acquiesced to the taking.

On the contrary, Mariano, petitioners' predecessor, had taken steps to protect his right over the property. Likewise, petitioners were able to explain the delay in the filing of their suit against respondent. This was correctly discussed in the assailed Decision, to wit:

By his September 17, 1959 and May 14, 1968 letters, Macario has been shown to have taken steps to have the City act on Mayor Imperial's

³⁸ Id. at 71-72.

³⁹ Supra note 37.

⁴⁰ Supra note 15.

⁴¹ 518 Phil. 750 (2006).

⁴² 505 Phil. 253 (2005).

⁴³ *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, supra note 4 at 71-72.

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proposal to “buy instead” the subject property. His efforts were overtaken by his death three years later in 1971. Furthermore, as the RTC found, petitioners had been engaged in litigation to establish their right to inherit from Macario and Irene, and it was Danilo’s discovery of the subject property, following the issuance to him of letters of administration over Irene’s estate in 1997, that prompted them to issue a demand for the City to vacate the premises.

Given these circumstances, the Court is not disposed to conclude that there was an unreasonable or unexplained delay that will render petitioners’ claim stale.

In contrast, the City, despite its claim of having acquired the subject property by donation in 1954, has itself failed to have the same transferred in its name for a long period of time. Indeed, the subject property remains registered in the name of petitioners’ predecessor-in-interest as co-owner.⁴⁴ (Emphasis supplied)

Considering that petitioners were not guilty of unreasonable delay in claiming ownership of their property against respondent, the ruling in *Forfom, et al.* that just compensation should be pegged at the time of taking of the property does not apply.

Nonetheless, as previously mentioned, the Court has already ruled that just compensation shall be computed from August 16, 1954, hence my position that just compensation should be reckoned as of February 12, 2004 will become the minority view.

Just Compensation

Proceeding from the Court’s ruling that just compensation should be pegged at the time of taking on August 16, 1954, I quote with approval the innovative proposition of Justice Lazaro-Javier that inflation should be included in the computation of the fair market value of the property, *viz.*:

But since **payment** of just compensation was **not made** on August 16, 1954 and will not be forthcoming until the proceedings in the present case are decided, the property’s **fair market value** on **August 16, 1954** will necessarily be adjusted according to the terms below.

Firstly, the property’s **fair market value on August 16, 1954** must be the **equivalent value of money at the time of payment**. For example **the value of P100.00 on August 16, 1954 will not be the same as the value of P100.00 at the time of payment**. What the **predecessors lost** as, say, P100.00 on August 16, 1954, or the **fair market value** of the property on this date, will **not be compensated** by paying them P100.00 or the **same face amount** of fair market value on the date of payment. This is because of **inflation**. According to the *Philippine Inflation Calculator* available online, the goods that **P100.00** could buy in 1960 would roughly cost

⁴⁴ *Rollo*, p. 720.

P12,307.11 or 12,207.11% increase at the end of 2020. The **cost of inflation** must be **factored in** so that the **true value of the loss** suffered by the predecessors (or any landowner for that matter) is justly compensated.

Secondly, while the **cost of inflation** speaks to justify compensating the **real value of the loss** suffered by the landowner, which is the **matter being compensated according to our jurisprudence**, **legal interest** must also be imposed on the **inflation-adjusted fair market value at the time of actual taking**, since there was a **forbearance of money** as a result of the **delay in the payment of just compensation**.

Thus, a **legal interest of 12% per annum** on the **inflation-adjusted fair market value at the time of accrual taking** shall **accrue** from **August 16, 1954 until June 30, 2013**. From **July 1, 2013** until the **finality** of the present **Resolution** of the Court, the **inflation-adjusted fair market value at the time of actual taking** shall **earn legal interest** at the rate of **6% per annum**. Thereafter, the **total amount of just compensation** (i.e. the **inflation-adjusted fair market value at the time of actual taking plus** legal interests) shall **earn legal interest of 6% per annum** from the finality of this Resolution until **full payment** thereof.⁴⁵

The cost of inflation formula is the more realistic mode of arriving at the actual value of the property at the time of actual taking. The Court now has the opportunity to adopt the Lazaro-Javier formula in this landmark case.

Exemplary damages and rentals

Case law teaches that the failure of the government to initiate an expropriation proceeding to the prejudice of the landowner may be corrected with the awarding of exemplary damages.⁴⁶ Hence, in *Spouses Tecson*, the Court granted ₱1,000,000.00 exemplary damages in favor of the landowners since they were deprived of beneficial ownership over their property for more than 68 years without the benefit of a timely expropriation proceedings and to serve as deterrent to the State from failing to institute proceedings within the prescribed period under the law.⁴⁷

For the same reasons stated above,⁴⁸ the Court, in *National Transmission Corp. v. Oroville Development Corp.*⁴⁹ also awarded exemplary damages in the amount of ₱1,000,000.00 to the owner of the property.⁵⁰

Accordingly, the *ponencia* correctly held that ₱1,000,000.00 exemplary damages are due to petitioners as they were deprived of the beneficial

⁴⁵ Reflections, Justice Lazaro-Javier, pp. 9-10.

⁴⁶ *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, 758 Phil. 604, 644 (2015).

⁴⁷ Id.

⁴⁸ Note in *Oroville*, the property was taken in 1983. The owner was deprived of the beneficial ownership of the property for 34 years, that is from 1983 to 2017 (year when the Decision of the Court was promulgated).

⁴⁹ Supra note 19.

⁵⁰ Id. at 113.

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ownership of their property without the benefit of a timely expropriation. Respondent was in bad faith when it continuously possessed the property knowing that it did not comply with the condition of the donation. In addition, respondent did not honor its commitment to purchase the property despite repeated follow-up from Mariano.

With respect to the award of rentals to petitioners, I maintain my position that reasonable compensation must be paid to them from 1954 up to 2004. Conversely, at the risk of being repetitious, the Court has already reached a consensus that the award of rentals shall be deleted. For now, the issue has been resolved.

Interest on the inflation-adjusted fair market value of the property

Interest is paid to the owner of the property to compensate him/her for any delay in the payment of compensation.⁵¹ It is a forbearance of money, and not indemnity for damages.⁵² At the time of the taking of the property on August 16, 1954, the interest rate applicable to loans and forbearance of money is six percent (6%) *per annum* per Act No. 2655. On July 29, 1974, the Central Bank (CB) issued CB Circular No. 416 increasing the rate to twelve percent (12%) *per annum*. This was followed by Circular No. 905 dated December 22, 1982 which maintained the 12% interest. However, on June 21, 2013, the *Bangko Sentral ng Pilipinas* issued CB Circular No. 799 reducing the rate of interest on loans and forbearance of money from 12% to 6% *per annum* effective July 1, 2013.⁵³ Hence, contrary to the *ponencia*, the just compensation in this case should be subject to 6% interest *per annum* from the date of taking on August 16, 1954 to July 28, 1974, then 12% interest per annum from July 29, 1974 to June 30, 2013, and 6% *per annum* from July 1, 2013 until finality of this Resolution.

In conformity with *Nacar v. Gallery Frames*,⁵⁴ the total amount due to petitioners (that is, the inflation-adjusted fair market value of the property at the time of actual taking with interest plus damages and attorney's fees) shall earn legal interest of 6% *per annum* from finality of the Resolution until full payment.⁵⁵

⁵¹ *Apo Fruits Corporation v. Land Bank of the Phils.*, 647 Phil. 251, 273 (2010), citing *Republic v. Court of Appeals*, 433 Phil. 106, 122-123 (2002).

⁵² *Republic v. Mupas*, 769 Phil. 21, 198 (2015).

⁵³ *Secretary of the Department of Public Works and Highways v. Spouses Tecson* (Resolution), 758 Phil. 604, 639 (2015).

⁵⁴ 716 Phil. 267 (2013).

⁵⁵ *Id.* at 281.

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Attorney's fees

Attorney's fees are due to petitioners in the amount of ₱75,000.00 since they were forced to file an ejectment complaint for the recovery of their property and in the process incurred expenses for the services of a lawyer.

Clear and definitive ruling on the issue of taking without due compensation

For the guidance of the Bench, the Bar, and the public in general, the Court must make a pronouncement on the issue of taking of private property for public use by the government or a local government unit without the benefit of a formal expropriation proceeding.


The Court should emphasize that the only constitutional and legal way of acquiring private property for public use is by filing a complaint for expropriation under Rule 67 of the Rules of Court. Without the said complaint, the taking of any private property is illegal. To fully and justly compensate the property owner for the real value of the loss he/she suffered as of the date of taking, the cost of inflation formula proposed by Justice Lazaro-Javier should be used. Aside from this, legal interest, the rate of which shall be based on the relevant CB Circular, shall be imposed in the inflation-adjusted value of the property from the date of taking until June 30, 2013. From July 1, 2013 until finality of the case, the inflation-adjusted value shall earn legal interest at the rate of 6% *per annum*. When warranted by the circumstances, exemplary damages and attorney's fees must also be granted to the property owner. Lastly, the total amount of just compensation (that is, the inflation-adjusted value plus legal interests, damages, and attorney's fees) shall earn legal interest of 6% *per annum* from finality of the decision or resolution until full payment.

All told, I vote to **GRANT** petitioners' Second Motion for Reconsideration and **REVERSE and SET ASIDE** the Decision dated March 12, 2018 and Resolution dated July 23, 2018 of the First Division of the Court, in that:

- (1) The order for respondent and all government instrumentalities, agencies, and offices claiming right of possession through and under it to peacefully surrender and deliver to petitioners the physical possession of the land covered by Transfer Certificate of Title No. 671, including all improvements and structures erected thereon, is hereby **DELETED**;
- (2) The award of monthly rental in favor of petitioners in the amount of ₱1,250,00.00 computed from January 20, 1959 until February 11, 2004 is **DELETED**;

- (3) The case is **REMANDED** to the Court of Appeals under CA-G.R. SP No. 90547 for hearing, report, and recommendation on the proper amount of just compensation. The Court of Appeals is given three (3) months from notice to submit said report and recommendation to the Court. In determining the just compensation, the Court of Appeals will use August 16, 1954 as the date of taking. The Court of Appeals shall first apply the cost of inflation formula proposed by Justice Lazaro-Javier so that the true value of the loss suffered by petitioners is justly compensated.
- (4) Respondent is **ORDERED** to pay petitioners with legal interest of six percent (6%) *per annum* from the date of taking on August 16, 1954 to July 28, 1974, then twelve percent (12%) interest *per annum* from July 29, 1974 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until finality of the Resolution.
- (5) Respondent is **ORDERED** to pay petitioners exemplary damages in the amount of ₱1,000,000.00.
- (6) Respondent is **ORDERED** to pay petitioners attorney's fees in the amount of ₱75,000.00 and costs of suit.
- (7) The total amount due to petitioners (that is, **the inflation-adjusted fair market value of the property at the time of actual taking with interest plus damages and attorney's fees**) shall earn legal interest of six percent (6%) *per annum* from finality of the Resolution until full payment.

SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice