

# THE POWER OF EMINENT DOMAIN IN THE PHILIPPINES: A CLOSER LOOK

CONRADO A. SAYAS, JR.\*

J. ANTONIO Z. CARPIO, JR.\*

THOMAS EMMANUEL R. ROMUALDO

## INTRODUCTION

The power of eminent domain has never before been invoked as frequently as it is today by the State, with all the massive government infrastructure projects geared towards the progress and development of the country. In the process, the acquisition of private property for public use becomes a necessity and thus, the resort to expropriation proceedings by the government. Clearcut examples of government acquisition of such properties are the North and South Expressways, the widening of major transportation routes in Metropolitan Manila, lands for the establishment of processing zones, the mushrooming Bagong Lipunan Sites and Services (BLISS), and Urban Land Reform Projects. To the landowners, such move by the government to expropriate their cherished landholdings constitutes an invasion of their individual rights to own private property and it is understandable that they resist such planned taking of private property. With such expropriations becoming a daily occurrence, it becomes highly relevant to examine the present system of expropriation and see whether they conform with constitutional and statutory guidelines established to safeguard the individual's right vis-a-vis the Government. It is always possible that the power might be abused and arbitrarily availed of to the detriment of the general public. It is hoped that this study, will be helpful to those concerned and affected with the exercise of the power of eminent domain.

## I. THE CONSTITUTIONAL BASIS OF EXPROPRIATION

### A. *The Due Process Clause of the Constitution:*

At the forefront of the article on the Bill of Rights is the declaration that, "No person shall be deprived of life, liberty, or *property* without due process of law. . . ."<sup>1</sup> This means, that, a person cannot be deprived of his property by the State without the proper observance of the substantive and procedural due process. It entitles the person the right to a fair, reasonable,

\* Member, Student Editorial Board, Philippine Law Journal

<sup>1</sup> CONST., art. IV, sec. 1. (Emphasis added).

just and valid expropriation law, and an opportunity of notice and hearing. Deprivation consist not only of physical taking of the property, but also when its value is destroyed or its adaptability to some particular use, or its capability for enjoyment is impaired.<sup>2</sup> This due process clause safeguards the right of every person to the thing itself and to the right over the thing. It includes the right to own, use, transmit, and even to destroy, subject to the right of the State and of other persons.

#### B. *The Power of Eminent Domain.*<sup>3</sup>

The State has three essential or inherent powers, they are: 1) police power, 2) eminent domain, and, 3) taxation. Eminent Domain is the right or power of the State, or of those to whom the power has been lawfully delegated, to take or expropriate private property for public use upon paying to the owner a just compensation to be ascertained according to law. This power is inherent in sovereignty and being essential to the existence of the State, no constitutional or statutory grant is necessary. It is founded on the law of necessity.<sup>4</sup>

Philosophers and legists may differ as to the grounds upon which the exercise of this power is to be justified, but no one can question its existence. No law, therefore is ever necessary to confer this right upon sovereignty or upon any government exercising sovereign or quasi-sovereign powers.<sup>5</sup> Nonetheless, the Constitution impliedly recognizes its existence by providing that, "Private property shall not be taken for public use without just compensation."<sup>6</sup> Other constitutional provisions which govern the power of eminent domain are discussed in the subsequent pages. The purposes mentioned in these provisions, however, are not necessarily exclusive.

#### C. *Expropriation of Utilities and Other Private Enterprises:*

The Constitution provides that, "The State may, in the interest of national welfare or defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government."<sup>7</sup> Under this Section, the Government is allowed to take utilities and other private enterprises and transfer the ownership to Government upon payment of just compensation not only when defense requires it but on all cases where the national welfare makes it imperative. The concept of "national welfare" is broad and encompassing, being defined and summarized by a well known constitutionalist as, "the

<sup>2</sup> Tenorio v. Manila Railroad Co., 22 Phil. 411 (1912).

<sup>3</sup> This would be extensively discussed in Chapters II and III.

<sup>4</sup> Visayan Refining Co. v. Camus, 40 Phil. 550 (1919).

<sup>5</sup> *Ibid.*; also U.S. v. Carmack 329, U.S. 230, 67 S. Ct. 252 (1946), as cited in SINCO. PHILIPPINE POLITICAL LAW, PRINCIPLES AND CONCEPTS 605 (1962).

<sup>6</sup> CONST., art. IV, sec. 2.

<sup>7</sup> CONST., art. XIV, sec. 6.

welfare of each and every Filipino not only in terms of protection from danger, whether internal or external, the assurance of justice, the maintenance of peace and order, but equally so in the attainment of decent living conditions."<sup>8</sup>

#### *D. Expropriation for Distribution.*

Although the power of eminent domain, as has been said is inherent in government, and need not be specifically granted by the Constitution, redistribution of land is such a matter of great urgency that both the 1935 and the 1973 Constitutions contain a special provision on expropriation of lands for distribution.<sup>9</sup> Both provisions are substantially the same except that under the New Constitution, it is conveyed to "deserving citizens", whereas under the 1935 Constitution, it is conveyed to "individuals". Thus, "The Batasang Pambansa may authorize, upon payment of just compensation, the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens".<sup>10</sup> The constitutional provision is rooted in our experience which dates back to the Spanish regime. Grants (*encomiendas*) made during that period led to the perpetuation of large estates which since then had been the cause of conflicts between the landowner and their tenants who live in virtual slavery. Thus, the main purpose of the provision is to provide the government a way of breaking up those large estates and preventing the formation of new ones and thus, put an end to the conflicts they spawn. The inclusion of the provision was therefore necessary in order to preclude any question as to the power of the government to do this.<sup>11</sup>

## II. AGENCIES WITH THE POWER OF EMINENT DOMAIN

The power of eminent domain is inherent in sovereignty. This power is vested in the legislature, as the guardian of the public weal. Thus, it has the power to authorize the exercise of the power of eminent domain. In the absence of constitutional restrictions, the legislature is free to use its discretion in the selection of agents to exercise the power.

The exercise of the power of eminent domain is traditionally lodged with the executive arm of the government. Accordingly, the executive cannot exercise the power without legislative authority expressed by law. Undoubtedly, the legislature has the power to delegate to an administrative body its authority to determine, in eminent domain proceedings, the question of the necessity of taking particular property for public use. Thus, where the intended use is public, the necessity and expediency of the taking may be determined by such agency.<sup>12</sup> Once authority is given, the matter ceases to

<sup>8</sup> FERNANDO, *THE CONSTITUTION OF THE PHILIPPINES* 78 (2nd ed., 1977).

<sup>9</sup> CONST. (1935), art. XIII, sec. 4 and CONS., art. XIV, sec. 13.

<sup>10</sup> CONST., art. XIV, sec. 13.

<sup>11</sup> See U.P. LAW CENTER, *CONSTITUTIONAL REVISION PROJECT* 766 (1970).

<sup>12</sup> 26 Am. Jur. 2d., sec. 112, p. 769.

be wholly legislative. The executive authorities may then decide whether the power will be invoked, to what extent it shall be exercised, and for what public purposes the property shall be appropriated.<sup>13</sup> Hence, Section 64 (h) of the Revised Administrative Code confers upon the Chief Executive the power to determine when it is necessary or advantageous to exercise the power of eminent domain in behalf of the Republic and to direct the Solicitor General to cause the filing of the appropriate condemnation proceedings in court. By this grant, the executive authorities may then decide whether the power will be invoked and to what extent.<sup>14</sup>

Likewise, the legislature may grant the right to expropriate in favor of entities operating public utilities.<sup>15</sup> However, the Supreme Court held, that since the exercise of the delegated authority and the prescribed mode of procedure being in derogation of general right, and conferring upon the public utility corporation exceptional privileges with regard to the property of others, the grant should be construed strictly in favor of the persons whose property is affected by its terms.<sup>16</sup>

Government owned or controlled corporations are likewise empowered to exercise this right, which power was conferred under various laws. The following is a list of some government owned or controlled corporations given the right of eminent domain:

<i>Law</i>	<i>Effectivity</i>	<i>Government Corporation</i>	<i>Purpose</i>
PD 1648	10-25-79	National Development Company	Assistance to commercial and industrial and agricultural or mining ventures
PD 681 as amended by PD 1595	6-11-78	Farms Systems Development Corporation	Rural Development, loan assistance to farmers and increase food production
PD 1346	6- 2-78	Human Settlements Development Corporation	Regulation and development of urban communities
PD 992	9- 2-76	National Fertilizer Corp. of the Phils. (FERTIPHIL)	Development of fertilizer industry
PD 977	8-11-76	Philippine Fish Marketing Authority	Development of fishing industry
PD 538	8-13-74	PHIVIDEC Industrial Authority	For purposes of the Act
RA 6395	9-10-71	National Power Corporation	For purposes of the Act
RA 6234	6-19-71	Metropolitan Waterworks and Sewerage Authority (MWSS)	Waterworks and Sewerage
RA 4850	7-18-66	Laguna Lake Development Authority	Development of Laguna Lake area
RA 4690	6-18-66	Bicol Development Company	Agro-Industrial Development
RA 4156	6-20-64	Philippine National Railways	For purposes of the Act

<sup>13</sup> Visayan Refining Co. v. Camus, 40 Phil. 560 (1919).

<sup>14</sup> Republic v. Juan, G.R. No. 24740, July 30, 1979, 92 SCRA 26, 40, (1979).

<sup>15</sup> Examples are: Construction and Development Corporation of the Philippines (CDCP) under Pres. Decree No. 1113 (1977); MERALCO, PLDT, etc. under Act No. 667 (1903).

<sup>16</sup> Tenorio v. Manila Railroad Co. 22 Phil. 411 (1912).

It is a rule then, that the grant of power must be express and will never pass by implication, unless it arises from a necessity so absolute that without it, the grant will be defeated. And when the power of eminent domain is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained.<sup>17</sup> Thus, in one case,<sup>18</sup> it was ruled that the Manila Railroad Company has no power to expropriate land for the purpose of opening a rock quarry because such power is not one of those specified by law for its exercise of the right of eminent domain.

### III. POWER OF LOCAL GOVERNMENT TO EXPROPRIATE

The legislature may confer the power of eminent domain to local governments through statutes which may either be special or general. Because of this delegated power of eminent domain of local governments, a noted writer on constitutional law described it as "power of *inferior* domain" — for it merely shares in eminent domain.<sup>19</sup> Since local governments have no inherent power to acquire property through condemnation proceedings, a statutory grant is necessary. Thus, there is only a share in the exercise of eminent domain — an inferior domain, and the power is only as broad as the principal authority would allow it to be. Local governments are mere creatures by the legislature and as such, the latter has absolute control over municipal property acquired by the local governments in their public or governmental capacity and which is devoted to public or governmental use. The State, through the legislature, at its pleasure, may modify or withdraw from the local governments the power of eminent domain and the power to hold and manage its public property. However, this power of control over the local governments is subject to the Constitution and by the nature of the rights and powers exercised by the local governments.<sup>20</sup>

The Revised Administrative Code of 1917<sup>21</sup> enumerates the purposes for which the local governments may exercise the power of expropriation. The regular provinces are only authorized to expropriate private lands for the use in and construction of: ferries, levees, wharves or piers; for the use in and construction of public buildings; the construction and extension of roads, streets, sidewalks, bridges, including school-houses, and the making of necessary improvements in connection therewith; the establishment of parks, playgrounds, plazas, market places, artesian wells or systems for the supply of water; and the establishment of cemeteries, crematories, drainage

<sup>17</sup> 3 MORAN, COMMENTS ON THE RULES OF COURT 242 (1980 ed.)

<sup>18</sup> Manila Railroad Co. v. Hacienda Benito Inc., 37 O.G. 1957 as cited in MORAN, *supra*, at 245.

<sup>19</sup> 1 BERNAS, CONSTITUTIONAL RIGHTS AND DUTIES 54 (1974).

<sup>20</sup> MARTIN, PUBLIC CORPORATIONS 28-30 (1977).

<sup>21</sup> This was supposedly repealed by the Revised Administrative Code of 1978, Presidential Decree No. 1578. However, the effectivity of the latter is suspended — copies are not yet out for publication and distribution, and it is still subject to revisions and amendments.

systems, cesspools or sewerage systems.<sup>22</sup> The provincial boards (Sangguniang Panlalawigan) can only exercise this power with the approval of the Department Head (now, the Minister of Local Governments and Community Development), by virtue of the supervision by the President over the local governments.<sup>23</sup>

Likewise, the municipalities are authorized to exercise the power of eminent domain for any of the following purposes: the construction or extension of roads, streets, sidewalks, bridges, ferries, levees, wharves or piers; the construction of buildings including schoolhouses, and the making of improvements on parks, playgrounds, plazas, market places, artesian wells, or system for the supply of water; and the establishment of cemeteries, crematories, drainage systems, cesspools, or sewage systems.<sup>24</sup> Again, the municipal councils (Sangguniang Bayan), may only exercise this power with the approval of the Minister of Local Governments and Community Development.<sup>25</sup>

Similarly, the cities are empowered to expropriate lands to be devoted for public use and upon payments of just compensation. This authority is provided for in their respective city charters.<sup>26</sup> The Sangguniang Panglungsod, like the provinces and municipalities, and subject to the approval of the Minister of Local Governments and Community Development, is authorized to acquire, take, condemn, or appropriate land and property that is needed for actual construction in connection with any capital project or improvement, like roads, streets, bridges, ferries, piers, wharves, levees, schoolhouses, market places, cemeteries, playgrounds, plazas, etc. This power is common to all Sangguniang Panglungsod.<sup>27</sup>

The barangays<sup>28</sup> may likewise exercise the power of eminent domain for the purpose of constructing and/or maintaining within its boundaries the following public works: barrio roads, bridges, viaducts, sidewalks, playgrounds and parks, schoolbuildings, watersupply, drainage, irrigation, sewerage and public toilet facilities.<sup>29</sup> The exercise of this power is subject to the approval of the Sangguniang Bayan or the Sangguniang Panglungsod, as the case maybe.<sup>30</sup> This is in accordance with the constitutional provision

<sup>22</sup> REV. ADM. CODE, sec. 2106 (f).

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, sec. 2245.

<sup>25</sup> *Ibid.*

<sup>26</sup> See, for instance, the city charters of: City of Manila, Rep. Act No. 409 (1949), sec. 100; City of Bacolod, Com. Act No. 326 (1938), sec. 67; City of Iloilo, Com. Act No. 57 (1936); City of Davao, Com. Act No. 51 (1936).

<sup>27</sup> See, PATRICIO, NOTES ON PUBLIC CORPORATIONS 436-442 (1977).

<sup>28</sup> The term "barrio" was changed to "barangay" by Pres. Decree No. 557 (1973), sec. 1.

<sup>29</sup> Rep. Act No. 3590, sec. 13 (1963), (Revised Barrio Charter, as amended).

<sup>30</sup> Special laws have likewise been enacted empowering local governments to expropriate lands. Republic Act No. 267, as amended by Republic Act No. 498, authorized cities and municipalities and provinces to purchase and/or expropriate homesites and landed estates to be subdivided and resold at cost. Republic Act No. 1165, authorized

that, "... cities and municipalities with respect to component barrios, shall ensure that the acts of their component units are within the scope of their assigned powers and functions..."<sup>31</sup>

#### IV. PROCEDURE IN EXPROPRIATION

Expropriation is the manifestation of the right of eminent domain. It is a process by which all executive agencies, the local governments and public utilities empowered with the exercise of the right of eminent domain, take or condemn private property. Expropriation proceeding is a mode of land delivery — where the courts intervene to settle rights of the parties. This is because, expropriation lies only when there is an opposition of the owner to the sale or by the lack of any agreement as to the price of the property subject to expropriation. The procedure in the expropriation proceeding is provided for in Rule 67 of the Revised Rules of Court.

Briefly, it is commenced by the filing of a complaint which shall include:

1) the right and purpose of condemnation, 2) the description of real or personal property sought to be condemned, and, 3) the defendants or persons owning or claiming to own, or occupying any part or interest in the property sought to be condemned, showing if practicable, the interest of each defendant separately. In case the title to any property sought to be condemned appears to be in the Republic of the Philippines but occupied by private individuals, or if the title is obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify the real owners, averment to that effect must be stated in the complaint.<sup>32</sup>

If in case a known owner is not joined as defendant, he is entitled to intervene in the proceeding. If the defendant is not served with a process, and the proceeding is already closed before he knew of the condemnation, he may maintain an independent action for damages.<sup>33</sup>

Section 2 of the Rule has been amended and modified by various laws. It now reads as follows:

Upon the filing of the petition for expropriation and deposit in the Philippine National Bank at its main office or any of its branches of an amount equivalent to 10% of the amount of compensation... the Govern-

the City of Manila to issue bonds for the payment of real estate expropriated or bought for the widening of all streets in Intramuros. Republic Act No. 3413, authorized the acquisition either through expropriation proceedings or purchase of certain lots in the Municipality of Biliran, Province of Leyte. Also, Republic Act No. 2000, known as the "Limited Access Highway Act", empowered the local governments for the acquisition of public property and property rights for limited access of facilities and service roads. The Local Autonomy Act (Republic Act No. 2264), authorized provinces, cities and municipalities to take and appropriate lands for public work purposes. Lastly, Act No. 667, empowered municipalities to grant franchise for an electric street railway, electric light and power or telephone lines.

<sup>31</sup> CONST., art. XI, sec. 4, par. (1).

<sup>32</sup> RULES OF COURT, Rule 67, Sec. 1.

<sup>33</sup> *Tenorio v. Manila Railroad Co.*, 22 Phil. 411 (1912), cited in 3 MORAN, *op. cit.*, note 17 at 246.

ment or its authorized instrumentality, agency, or entity, shall be entitled to immediate possession, control, and disposition of the real property and the improvements thereon, including the power of demolition if necessary, notwithstanding the pendency of the issues before the courts.<sup>34</sup>

The plaintiff, particularly the government, is now entitled to immediate possession of the property subject to condemnation, including the power of demolition upon filing of the petition and deposit with the PNB of 10% of the amount of compensation. The deposit serve the double purpose of pre-payment if the property is finally expropriated, and an indemnity to damages if the proceeding is dismissed.<sup>35</sup>

Each defendant within the time specified in the summons and in lieu of an answer, shall present in a single motion to dismiss or for other appropriate relief, all his objections and defenses to the right of the plaintiff to take his property. A copy of the motion shall be served on the plaintiff's attorney of record and filed with the court with the proof of service.<sup>36</sup> If the motion is overruled or when a party fails to defend, the court may enter an order of condemnation declaring that the plaintiff has a lawful right to take the property for the public use or purpose described in the complaint, upon payment of just compensation to be determined as of the date of filing the complaint. After the entry of the order, no objection to the exercise of the right of condemnation shall be filed or heard and the plaintiff is not permitted to dismiss or discontinue the proceeding except on the terms which the court may fix.<sup>37</sup>

Section 5 of the Rule states that, upon the entry of the order of condemnation, the court shall appoint not more than three competent and disinterested persons to act as commissioners. These commissioners would ascertain and report to the court the just compensation. The order of appointment shall contain the designation of the time and place of the first session of the hearing to be held by the commissioners. The order shall also specify the time within which the commissioner's report is to be filed with the court. We submit, however, that this section has been repealed by Section 1 of Presidential Decree No. 1533 promulgated on June 11, 1978. Section 1 of the Decree states that:

In determining just compensation for private property acquired through eminent domain proceedings, the compensation to be paid, shall not exceed the value declared by the owner or administrator or anyone having legal interest in the property or determined by the assessor, pursuant to the Real Property Tax Code, whichever value is lower, prior to the recommendation or decision of the appropriate Government office to acquire the property. (underscoring supplied).

<sup>34</sup> Pres. Decree No. 1533 (1978), sec. 2.

<sup>35</sup> Visayan Refining Co. v. Camus, 40 Phil. 550 (1919), cited in MORAN, *supra*.

<sup>36</sup> RULES OF COURT, Rule 67, Sec. 3.

<sup>37</sup> RULES OF COURT, Rule 67, Sec. 4.



Although there is no express repeal of Section 5 of the Rule, it can be inferred under Section 3 of the Decree which reads that, "... orders or rules and regulations which are inconsistent herewith are hereby repealed, amended or modified accordingly." As the law has already fixed and determined what just compensation is, there is no longer any sense for the appointment of commissioners.

Costs, except those of rival claimants litigating their claims, shall be paid by the plaintiff, unless an appeal is taken by the owner and the judgment is affirmed, in which case the costs of the appeal shall be paid by the owner.<sup>38</sup> The plaintiff, being the party who instituted the proceeding for his own benefit, should pay the costs, whether he loses or wins.

#### V. REQUISITES OF A VALID EXPROPRIATION

A valid exercise of the power to expropriate presupposes the fulfillment of certain conditions imposed by the Constitution. Thus, the following must be present:

1. The existence of public use for the taking.
2. The payment of just compensation.
3. The observance of due process in the taking.<sup>39</sup>

It is said that this power is so extensive in scope that it is not subject to any other restraint beyond the above-mentioned limitations.<sup>40</sup> The third condition of due process however, is deemed to have been complied with if the taking of property by the authority of a state is for public use and there is payment of just compensation, although there is a drastic interference with private rights of property.<sup>41</sup> Once the necessity for public use has been established and just compensation is paid for the taking of property, the landowner is considered to have been afforded of all the protection that he can claim under the law.<sup>42</sup>

There are two pivotal points, therefore, that have to be considered in testing the validity of expropriation — the concept of public use and that of just compensation. A detailed discussion of these two concepts is in order.

#### A. PUBLIC USE

##### 1. *Nature of Public Use*

Public use is said to be the universal test of a valid exercise of the right of eminent domain. There are however, two views expressed on the meaning of the term public use. One view is that, the term conveys the idea

<sup>38</sup> RULES OF COURT, Rule 67, Sec. 12.

<sup>39</sup> Republic v. Juan, G.R. No. 24740, July 20, 1979, 92 SCRA 26 (1979).

<sup>40</sup> *Ibid.*

<sup>41</sup> Slattery Co. v. U.S., 231 F. 2d. 37 (1956).

<sup>42</sup> Visayan Refining Co. v. Camus, 40 Phil. 550 (1919).

of utility and so, it is not the equivalent of mere "public enjoyment" or "public purposes" or "for the public". The second view is that public use does not necessarily mean material or practical utility. The latter view covers a wider scope in that it is sufficient that the public may have any kind of use for the property taken.<sup>43</sup>

It is submitted that the second view finds greater application within the present legal context. The term public use has assumed broader meanings, as new and ever increasing needs arise, necessitating the utilization of more properties for public use. Public use, therefore, is no longer confined to mean utility or use by the public. This narrow meaning has been rejected in favor of a wider concept which includes any use that is of utility, advantage or productivity for the public generally. It then becomes equivalent to "public welfare" in police power.<sup>44</sup> It was suggested that whatever maybe beneficially employed for the general welfare satisfies the requirement of public use.<sup>45</sup> Thus, in one case,<sup>46</sup> the Supreme Court, quoting American sources said that:

A historical search discloses the meaning of the term "public use" to be one of constant growth. As society advance, its demands upon the individual increase and each demand is a new use to which the resources of the individual maybe devoted... for whatever is beneficially employed for the community is a public use.

## 2. Coverage and Scope

No less than the Constitution provides some determinants of public use. As it has been mentioned, Article XIV, Section 13, provides for the expropriation of lands to be subdivided into small lots for resale at cost to deserving citizens. Moreover, Article XIV, Section 6, allows the transfer to public ownership of utilities and other private enterprises in the interest of national welfare or defense. Laws have been enacted and amended defining what is public use. One such law defining public use has been expanded to include "socialized housing".<sup>47</sup> The Administrative Code, on the other

<sup>43</sup> SINCO, *op. cit.*, note 5 at 607.

<sup>44</sup> BERNAS, THE 1973 PHILIPPINE CONSTITUTION REVIEWER-PRIMER 30 (1975).

<sup>45</sup> FERNANDO, *op. cit.*, *supra*, note 8 at 519.

<sup>46</sup> Sena v. Manila Railroad Co., 42 Phil. 102, 165 (1921).

<sup>47</sup> Presidential Decree No. 1224, as amended by Presidential Decree No. 1259. The concept of socialized housing is said to be sweeping in scope. As defined in the law, it shall include among others:

a) the construction and/or improvement of dwelling for the middle and lower income groups of the society, including the construction of the supporting infrastructure and other facilities;

b) slum clearance, relocation and resettlement of squatters and slum dwellers as well as the provision of related facilities and services;

c) slum improvement which consists basically, of allocating homelots to the dwellers in the area or property involved, re-arrangement and realignment of existing houses and other dwelling structures and the construction and provision of basic community facilities and services, where there are none, such as roads, footpaths, drainage, sewerage, water and power systems, schools, barangay centers, community centers, schools, clinics, open spaces, parks, playgrounds, and other recreational facilities;

hand, allows expropriation for the purpose of constructing roads, bridges, school houses, plazas, cemeteries, artesian wells, crematories, sidewalks, ferries, levees, wharves, drainage systems, sewerage systems, playgrounds and public buildings.<sup>48</sup>

The exercise of the power of eminent domain has been held to be for public use in the following cases:

1. for the purpose of constructing airports and landing fields.<sup>49</sup>
2. for the construction of markets.<sup>50</sup>
3. for terminal facilities for the Manila Railroad Company.<sup>51</sup>
4. for roads out of Church property.<sup>52</sup>
5. for additional office, storage and garage spaces adjoining a provincial capitol building.<sup>53</sup>
6. a site for a regional agricultural school.<sup>54</sup>
7. expansion and beautification of parks.<sup>55</sup>
8. the establishment of irrigation system for the improvement of a large number of areas of arid and worthless land.<sup>56</sup>
9. slum clearance and erection of houses for low-income families.<sup>57</sup>

In all these cases, it was satisfactorily shown that there was a necessity for the taking and that this necessity is of a public character. For expropriation to be valid, there must be a genuine and existing need, such need relating to public or common interests, and the private property to be taken must satisfy or meet that need.<sup>58</sup> But the required necessity does not mean an absolute but only a reasonable or practical necessity such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and property owner consistent with such benefit.<sup>59</sup>

### 3. *Properties subject to expropriation*

The scope of the power of eminent domain is like the scope of legislative power itself — plenary. It is as broad as the scope of police power

d) the provision of economic opportunities, including the development of commercial and industrial estates and such other facilities to enhance total community growth;

e) Such other activities undertaken in pursuance of the objectives to provide and maintain housing for the greatest number of people under Presidential Decree No. 757.

<sup>48</sup> REV. ADM. CODE, sec. 2245.

<sup>49</sup> *Visayan Refining Co. v. Camus*, 40 Phil. 550 (1919).

<sup>50</sup> *Municipality of Albay v. Benito*, 43 Phil. 576 (1922).

<sup>51</sup> *Manila Railroad Co. v. Mitchel*, 50 Phil. 832 (1923).

<sup>52</sup> *Provincial Government of Pampanga v. Archbishop of Manila*, 57 Phil. 1014 (1933).

<sup>53</sup> *Ilocos Norte v. Cia. General de Tabacos de Filipinas*, 98 Phil. 831 (1956).

<sup>54</sup> *Republic v. Juan*, G.R. No. 24740, July 20, 1979, 92 SCRA 26 (1979).

<sup>55</sup> *Arce v. Genato*, G.R. No. 40587, Feb. 27, 1976, 69 SCRA 544 (1976).

<sup>56</sup> *Fallbrook Irrigation District v. Bradley*, 164 U.S. 112 (1896).

<sup>57</sup> *Murray v. La Guardia*, 52 N. E. 2d. 8844, as cited in 29 CJS 850.

<sup>58</sup> 2 FERNANDEZ & SISON, *PHILIPPINE POLITICAL LAW* 765 (1975).

<sup>59</sup> *City of Manila v. Arellano Law Colleges*, 85 Phil. 663 (1950).

itself.<sup>60</sup> It can thus, reach every form of property which the State might need for public use. Thus, practically all kinds of private property, tangible, or intangible, maybe taken in the exercise of the power of eminent domain. Real and personal property, except money and rights in action which can only be available when made to produce money, is subject to it.<sup>61</sup> The Constitution itself provides for the expropriation not only of lands for subdivision into small lots but also of utilities and private enterprises in the interest of national welfare and defense.

#### 4. The land-size test for determining public use

With regard to expropriation of land for the purpose of distribution, the Court has devised a test by which to determine public use. Thus, not every land, however, regardless of its size or location, maybe the subject of a valid expropriation. In *Guido v. Rural Progress Administration*<sup>62</sup> the Court, interpreting the constitutional provision allowing the expropriation of lands for resale to deserving citizens,<sup>63</sup> ruled, that it is that piece of land which because of its size, a large number of people is benefited and the extent of social and economic reforms secured by the condemnation which clothes the expropriation with public interest and public use. Under this principle therefore, the government may expropriate only landed estates with an extensive area, specially those embracing the whole or large part of a town or city.

The facts of the *Guido* case are simple. Defendant Rural Progress Administration was the government agency in-charge of implementing the law<sup>64</sup> empowering the President to acquire private lands through expropriation to subdivide the same into homelots or small farms for resale. The land sought to be expropriated has a combined area of 22,655 square meters. The question that confronted the Court revolved on what lands did Article XIII, Section 4 of the 1935 Constitution have in view. Granting the land-owner's petition seeking to prohibit the defendant from expropriating his land, the Court adhered to the following standard:

The condemnation of a small property in behalf of 10, 20, or 50 persons and their families does not inure to the benefit of the public of a degree sufficient to give the use a public character. The expropriation proceedings at bar have been instituted for the economic relief of a few families devoid of any consideration of public health, public peace and order or other public advantage. What is proposed to be done is to take plaintiff's property, which for all we know, she acquired by sweat and sacrifice for her and her family's security, and sell it at cost to a few lessees who refuse to pay the stipulated rent or leave the premises.<sup>65</sup>

<sup>60</sup> BERNAS, *op. cit.*, *supra*, note 44 at 28.

<sup>61</sup> COOLEY, CONSTITUTIONAL LIMITATION 756-759 as cited in SINCO, *op. cit.*, note 5 at 606.

<sup>62</sup> 84 Phil. 847 (1949).

<sup>63</sup> CONST. (1935), art. XIII, sec. 4; CONST. art. XIV, sec. 13.

The Court, in effect, established a land-size test as determinant of public use. A valid expropriation should, therefore, encompass large estates, trusts in perpetuity or land that embraces a whole town or city, in order that the taking be clothed with a public character. In illuminating its point, the Court, speaking through Justice Tuazon, explained that:

In a broad sense, expropriation of large estates, trust in perpetuity, and land that embraces a whole town or a large section of a town or city, bears direct relation to the public welfare. The size of the land expropriated, the large number of people benefited, and the extent of social and economic reform secured by the condemnation, clothes the expropriation with public interest and public use. The expropriation in such cases tends to abolish economic slavery, feudalistic practices, endless conflicts between landlords and tenants and other evils inimical to community prosperity and contentment and public peace and order.<sup>66</sup>

The land size test established in the *Guido* case established a strong precedent and it was affirmed in subsequent cases. In *Commonwealth v. Borja*,<sup>67</sup> a case that immediately followed *Guido*, the complaint for expropriation was dismissed because the parcel of land involved therein contained a small area of 1,565 square meters. Expropriation was again rendered invalid in *City of Manila v. Arellano Law School*,<sup>68</sup> where the parcel of land involved comprised an area of 7,270 square meters. The same thing happened in *Lee Tay and Chay, Inc. v. Choco*,<sup>69</sup> where the parcel of land comprehended an area of 900 square meters. In these cases, the Supreme Court held that the parcels of land involved therein could not be expropriated for resale to their occupants because the same do not come within the purview of the constitutional provision which authorizes the "expropriation of lands to be subdivided into small lots and conveyed at cost to individuals". Again, in *Urban Estates, Inc. v. Montesa*,<sup>70</sup> the *Guido* doctrine was strongly affirmed and amplified in the following manner:

In brief, the Constitution contemplates large scale purchase or condemnation of lands with a view to agrarian reforms and the alleviation of acute housing shortage. There are vast social problems which the nation is vitally concerned and the solution of which redound to the common weal. Condemnation of private lands in a makeshift or piecemeal fashion, random taking of a small lot, here and a small lot there to accommodate a few tenants or squatters is a different thing. . . . The first sacrifices the rights and interest of one or a few for the good of all; the second is a deprivation of a citizen of his property for the convenience of another citizen or a few other citizens without perceptible benefits to the public. The first carries the connotation of public use; the last follows along the lines of the faith and ideology alien to the institution of property and the economic

<sup>64</sup> Com. Act No. 539, secs. 1 and 2 (1940).

<sup>65</sup> *Guido v. Rural Progress Administration*, *supra*, at 854.

<sup>66</sup> *Ibid.*, at 853.

<sup>67</sup> 85 Phil. 663 (1949).

<sup>68</sup> 85 Phil. 553 (1949).

<sup>69</sup> 87 Phil. 815 (1950).

<sup>70</sup> 88 Phil. 348 (1951).

and social systems consecrated in the Constitution and embraced by the great majority of the Filipino people.<sup>71</sup>

The ruling in *Guido* and the cases that came after it,<sup>72</sup> all denote that expropriation of land, in order that it be imbued with public use, must involve the expropriation of large and immense estates or those embracing a whole town or city. The question, then, persists on whether an expropriation of a small piece of land will qualify as a taking of property for public use.

An affirmative answer was given in *Rural Progress Administration v. Reyes*.<sup>73</sup> In this case, the land involved was a 2-hectare lot,<sup>73a</sup> of which more than half were fishponds. The lot, forming a part of a bigger area occupied from time immemorial, by various individuals, was expropriated in favor of four families. The thrust of the decision penned by Justice Pablo did not adhere to the land size norm set by *Guido*. It is true that the small lot was considered by the Court to be a part of a bigger area of friar land; the emphasis was on the aspect of social amelioration and not on the size of the land.

The *Reyes* decision, though, was overruled in the case of *Republic v. Baylosis*.<sup>74</sup> The Court was categorical in abandoning the *Reyes* decision and in reaffirming the *Guido* ruling.<sup>75</sup> Rejecting the expropriation of several smaller lots belonging to various owners, the court ruled that, "Section 4, Article XIII of the Constitution<sup>76</sup> had reference only to large estates; trusts in perpetuity and lands that embrace a whole town or a large portion of a town or city.<sup>77</sup> Having been established, it is now a well-settled rule that expropriation is not justified when the property is not a landed estate.<sup>78</sup>

The prevailing doctrine, however, is susceptible of eliciting views to the contrary. For instance, an opinion<sup>79</sup> was advanced which says that under the New Constitution, the controlling factor is not the size of the land involved but rather whether the expropriation is intended to "equitably diffuse property ownership", in accordance with Article II, Section 6, or to "implement an agrarian reform program aimed at embracing the tenant from the bondage of the soil", in accordance with Article XIV, Section 12. This

<sup>71</sup> *Ibid.*, at 352.

<sup>72</sup> Aside from those mentioned above, these will also include the following cases: *Rural Progress Administration v. Reyes*, 87 Phil. 176 (1950); *Pangilinan v. Peña*, 89 Phil. 122 (1951); *Republic v. Sanora*, 89 Phil. 483 (1951).

<sup>73</sup> Summarized in 93 Phil. 1116 (1953).

<sup>73a</sup> 2,000 square meters.

<sup>74</sup> 96 Phil. 461 (1955).

<sup>75</sup> 84 Phil. 847 (1949).

<sup>76</sup> Now Article XIV, Section 13 of the 1973 Constitution.

<sup>77</sup> *Republic v. Baylosis*, *supra*, at 479.

<sup>78</sup> *Province of Bulacan v. Vda. de Caliwán*, G.R. No. 16927, May 31, 1961, 2 SCRA 594 (1961).

<sup>79</sup> BERNAS, THE 1973 CONSTITUTION, 30 (1974).

view finds support in the fact that the Agrarian Reform Program<sup>80</sup> established under Presidential Decree No. 27 covers landholdings of over 7 hectares.<sup>80a</sup>

A land area slightly in excess of 7 hectares does not qualify as a "landed estate" or one "embracing a whole town or city or a large portion of the town or city" but by statute, it becomes a subject of legislative expropriation. The concern, therefore, is not so much as the bigness of the area sought to be expropriated but rather, the desire to emancipate the tenant from the bondage of the soil.

The authoritative view of justice J.B.L. Reyes in his dissenting opinion in the case of *Republic v. Baylosis* equally lends support to this proposition. He believed that, "The propriety of exercising the power of eminent domain under Art. XIII, Sec. 4 of our Constitution can not be determined on a purely *quantitative or area basis*. Not only does the constitutional provision speak of *lands*, instead of *landed estates* but I see no cogent reason why the government, in its quest for social justice and peace, should exclusively devote attention to conflicts of large proportions invoking a considerable number of individuals, and eschew small controversies and wait until they grow into a major problem before taking remedial action."<sup>81</sup>

With due respect to the Supreme Court ruling, to interpret "lands" in the constitutional provision to mean "landed estates" constitutes a misreading of the provision. For clearly, the oppression and injustice spawned by the landlord-tenant relationship that are sought to be solved, have occurred not only in the big landed estates but likewise, in land areas which may not qualify as such. Chief Justice Fernando's discussion in *J. M. Tuason and Co., Inc. v. The Land Tenure Administration*<sup>82</sup> is in point. He noted that the *Guido* case made reference to the speech of Delegate Miguel Cuaderno before the 1935 Constitutional Convention, which says that, "... we must not fail to prohibit the ownership of large estates, to make it the duty of the government to break up existing large estates, and to provide for their acquisition by purchase or through expropriation and sale to their occupants. . . ."<sup>83</sup> In a subsequent speech, Delegate Cuaderno went on to say that "one of the best provisions that this draft of the Constitution contains is this provision that will prevent the repetition of the history of misery, of trials and tribulations of the poor tenants throughout the length and breadth of the Philippine Islands."<sup>84</sup>

Analyzing the speech in a different light, the Chief Justice remarked that "This is not to say that such an appeal to history as disclosed by what

<sup>80</sup> This would be dealt with as a special form of expropriation in the subsequent pages, in Chapter VI.

<sup>80a</sup> See LOI No. 227 (1974).

<sup>81</sup> 96 Phil. 461, 505 (1955). Emphasis added.

<sup>82</sup> G.R. No. 21064, February 18, 1970. 31 SCRA 413 (1970).

<sup>83</sup> *Ibid.*, at 424.

<sup>84</sup> *Ibid.*, at 424-425.

could be accepted as the pronouncement that did influence the delegate to vote for such a grant of power could be utilized to restrict the scope thereof, considering the language to be employed. *For what could be expropriated are 'lands', not 'landed estates'.*<sup>85</sup>

In rejecting expropriation in the *Guido* case, the Court laid the basis that: "Evinced much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for the ages... The promotion of social justice ordained by the Constitution does not supply paramount basis for untrammelled expropriation of private lands..." This, along with several cases that toed the *Guido* line, notably the case of *City of Manila v. Arellano Law Colleges*,<sup>86</sup> is related to the antiquarian view of Blackstone with its sanctification of the right to one's estate.<sup>87</sup> But no less than the Chief Justice again has pronounced that the absolutist concept of property characterized by this view is obsolete insofar as Philippine constitutional law is concerned. Thus, in *Arce v. Genato*,<sup>88</sup> the Chief Justice remarked that the well-nigh absolutist concept of property... cannot "survive the test of the 1935 Constitution with its mandates on social justice and protection to labor. What is more, the present Constitution pays less heed to the claims of property — and rightly so, after stating that the State shall regulate the acquisition, ownership, enjoyment and disposition of private property, and equitably diffuse property ownership and profits."

Such undue stress on property rights, as said in the *J.M. Tuason* case, "failed to take into account the greater awareness exhibited by the framers of our Constitution of the social forces at work when they drafted the fundamental law. To be more specific, they were concerned with the more serious problems of inequality of wealth, with its highly divisive tendency, resulting in the generous scope accorded the police power and eminent domain prerogatives of the State, even if the exercise thereof would cover terrain previously thought of as beyond state control to promote social justice and the general welfare."<sup>89</sup> Though adopting a differing opinion to the *Guido* case, the case of *J.M. Tuason*, however, did not make an express abandonment of the doctrine held in the former but, nevertheless, provided the premises by which the doctrine can be made open to attack.

A close adherence to other constitutional provisions, therefore, will broaden the scope of public use, by which the power of eminent domain may be justifiably exercised. As these provisions refer to social justice

<sup>85</sup> *Ibid.*, at 425. (Emphasis added)

<sup>86</sup> See Note 68, *supra*.

<sup>87</sup> As did appear in Blackstone's Commentaries: "So great is the regard of the law for private property that it will not authorize the least violation of it, even for the public good, unless there exists a very grave necessity thereof." As cited in *Arce v. Genato*, G.R. No. 40587, February 27, 1976, 69 SCRA 549 (1976).

<sup>88</sup> See Note 87, at 549.

<sup>89</sup> See Note 82, at 429-430.



principles crying out for realization, the power to expropriate being one of the most effective weapons to accomplish this, must not be unduly restricted by a quantitative land-size requirement established by *Guido*. Otherwise, the government would be largely emasculated in its task of diffusing property ownership as the power to expropriate becomes hardly available to it. If the *Guido* ruling is to be continuously observed, the power to expropriate, as a means to accomplish the social justice precepts in the Constitution, becomes highly limited by the fact that: 1) there may be extensive landholdings by single owners although the land holdings may not be all in one piece, and that 2) there are a few single owner landholdings that embrace whole towns and cities<sup>90</sup> and thus, very few lands can be subject to expropriation.

A reassessment of the prevailing doctrine in public use is, therefore, proper.

#### B. JUST COMPENSATION

##### 1. *The requirement of just compensation*

The settled general rule is that private property cannot be taken away for public use without compensation made or secured.<sup>91</sup> It is, moreover, a settled rule that private property shall not be taken for public use without just compensation.<sup>92</sup> Thus, a taking without just compensation, even if it be for public use, would be unconstitutional as a taking without due process of law.<sup>93</sup>

The New Civil Code is more elaborate in affording protection to the landowner, further giving him the right to be restored in his possession. "No person shall be deprived of his property except by competent authority and for public use and always upon payment of a just compensation. Should this requirement be not first complied with, the courts shall protect and in proper case, restore the owner in possession."<sup>94</sup> The exceptions to the payment of just compensation, however, are also provided. Thus, "When any property is condemned or seized by competent authority, the owner thereof shall not be entitled to compensation unless he can show that such condemnation or seizure is unjustified."<sup>95</sup> On the other hand, if a thing in usufruct is to be expropriated for public use, "the owner shall be obliged either to replace it with another thing of the same value and of similar conditions, or to pay the usufructuary the legal interest on the amount of the indemnity for the whole period of the usufruct. If the owner chooses the latter alternative, he shall give security for the payment of the interest."<sup>96</sup>

<sup>90</sup> BERNAS, CONSTITUTIONAL RIGHTS & DUTIES 71 (1974).

<sup>91</sup> 26 Am. Jur. 2d, Sec. 150, p. 811.

<sup>92</sup> CONST., art. IV, sec. 2.

<sup>93</sup> 26 Am. Jur. 2d, Sec. 150, p. 812.

<sup>94</sup> CIVIL CODE, art. 435.

<sup>95</sup> CIVIL CODE, art. 436.

<sup>96</sup> CIVIL CODE, art. 609.

It is not necessary however, that there be an immediate and actual cash payment upon the taking of property. A mere designation of fund for compensation is enough to meet the requirement. Generally, a statute authorizing the taking of private property for public use must make provision for some definite and certain fund out of which compensation shall be paid. But, it is sufficient if payment is made a charge on the public treasury and it is unnecessary that there be a prior application of the amount required if payment is otherwise assured.<sup>97</sup> Hence, a specific form of compensation is not required. As the Constitution does not require prior compensation neither does it specify that compensation be in money. What is required is just compensation.<sup>98</sup> And just compensation is met "if a certain and adequate remedy is provided by which the owner can obtain compensation without any unreasonable delay."<sup>99</sup>

## 2. *The volatile definition of just compensation*

Before the meaning of just compensation was made definite by statute, it was expressed by Philippine jurisprudence merely in terms of general concepts. As previously defined, just compensation is the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation.<sup>100</sup>

In a subsequent case, the Supreme Court expressed it as neither more nor less than the money equivalent of property.<sup>101</sup> The High Court later described just compensation for what the landowner lost — the actual value of his property at the time it was taken. The word "just" was regarded as meaning just to the individual whose properties was taken and to the public who was to pay for it.<sup>102</sup>

Thus, just compensation has gradually come to mean "the equivalent for the value of the property at the time of the taking. Accordingly, the market value of the land taken is the just compensation to which the owner of the property is entitled."<sup>103</sup> But it is deemed proper that to this basic value must be added other factors. Hence, there must be a consideration of all the facts which made it commercially valuable. Testimonies as to the real estate transactions in the vicinity are admissible. It must be shown, though, that the property as to the use must be of similar character to the one sought to be condemned. To the market value must be added the consequential damages, if any, minus the consequential benefits.<sup>104</sup>

<sup>97</sup> 29 A.C.J.S., sec. 101, p. 413.

<sup>98</sup> BERNAS, *op. cit.*, *supra*, note 85 at 31.

<sup>99</sup> Manila Railroad Co. v. Paredes, 31 Phil. 118, 134 (1915).

<sup>100</sup> Manila Railroad Co. v. Velasquez, 32 Phil. 281 (1915).

<sup>101</sup> Province of Tayabas v. Perez, 66 Phil. 467 (1938).

<sup>102</sup> Republic v. Lara, 96 Phil. 170 (1954).

<sup>103</sup> Feliciano, Land-Use Planning in the Philippines (1980) (Typescript), citing Republic v. Lara, 96 Phil. 170 (1954); Republic v. Garcellano, 103 Phil. 231 (1958); Municipal Government of Sagay v. Jison, 104 Phil. 1026 (1958); Alfonso v. Pasay City, 106 Phil. 1017 (1960).

<sup>104</sup> *Ibid.*, at 35.

The first attempt to make a statutory description of just compensation was done with the passage of Commonwealth Act No. 503 in 1940. Section 1 of the law provides that the landowner's sworn statement of the true value of his property, if approved by a city or provincial assessor "shall be considered as the value of the property for purposes of real estate taxation, and said statement shall constitute a *prima facie* evidence of the real value of the property in expropriation proceedings by the government and its instrumentalities."

A series of Presidential Decrees, however, were promulgated in order to make a more specific way of determining the exact value of just compensation.

Section 92 of Presidential Decree No. 464,<sup>105</sup> provides that "the basis shall be the market value as declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower." But confusions arose as to how to determine the just compensation because some people alleged that the provision of Presidential Decree No. 464 is merely a basis and thus, not conclusive and binding.

Hence, it was later amended by Presidential Decree No. 794,<sup>106</sup> which provides that, "the basis for payment of just compensation in expropriation proceedings shall not exceed the market value declared by the owner or administrator or anyone, having legal interest in the property, or such market value declared by the owner or the market value as determined by the assessor whichever is lower."<sup>107</sup>

This amendment, notwithstanding, several doubts were still expressed as to the proper valuation to be followed in the determination of just compensation proceedings. Presidential Decree No. 1224 dated October 21, 1977, was issued further amending Presidential Decree No. 794 as follows:

In the determination of just compensation for such private lands and improvements to be expropriated, the Government shall choose between the value of the real property and the improvements thereon as declared by the owner or administrator thereof from time to time or the market value as maybe determined by the city or provincial assessor, whichever is lower.<sup>108</sup>

The amendment contained in this Presidential Decree was not complete. The question as to the *specific period* when the market value shall be determined remained unanswered. The reckoning time for determining the compensation is important because land, like other property, increases or decreases in value according to the general economic conditions prevailing

<sup>105</sup> Otherwise known as the Real Property Tax Code, issued on June 2, 1974.

<sup>106</sup> Promulgated on September 4, 1974.

<sup>107</sup> Pres. Decree No. 794 (1975), sec. 92.

<sup>108</sup> Pres. Decree No. 1224 (1977), sec. 2.

and for special reasons which are matters of proof.<sup>109</sup> Although Rule 67, Section 4 of the Rules of Court provides that just compensation is to be determined as of the date of the filing of the expropriation proceedings, some people still insist that the value shall be determined at the time of taking. Thus, Presidential Decree No. 1254 was issued on December 11, 1977, maintaining the method of valuation in Presidential Decree No. 1224, but adding that the value shall be determined "at the time of the filing of the expropriation complaint."

Finally, to establish a uniform basis for determining just compensation that is to be paid by the Government, Presidential Decree No. 1533 was promulgated on June 11, 1978, which provides that:

In determining just compensation for private property acquired through eminent domain proceedings, the compensation to be paid shall not exceed the value declared by the owner or administrator or anyone having legal interest in the property or determined by the assessor, pursuant to the Real Property Tax Code, whichever value is lower, *prior to the recommendation or decision of the appropriate Government Office to acquire the property.* (Emphasis added).

The amendment was enacted, presumably to prevent the landowner from overvaluing his property or to prevent collusion between the landowner and the assessor which situations may arise when the landowner is aware that his property shall be expropriated. Despite this amendment, problems still exist. A landowner, for instance, contends that the decision of the government must have to be communicated to him to be effective.<sup>110</sup> In an expropriation case in Davao, the City decided to expropriate a certain piece of property. Thereafter, the landowner asked the City Assessor to appraise his property from ₱1.2 million to ₱10 million. The City Assessor reappraised the property at ₱8 million. It was only after that time when the decision to expropriate was communicated to the owner. The lower court's decision is that, the time when the communication was made should be controlling.<sup>111</sup>

At any rate, the recent laws that have been passed serve to define a more definite value for payment, unlike the loose and general standards established by jurisprudence, which left a wide room for personal interpretation.

### 3. *When taking is prior to the payment of compensation.*

If the taking precedes the payment of compensation, the owner is entitled to such addition which will compensate, for delay or which will,

<sup>109</sup> Provincial Government of Rizal v. Caro de Araullo, 58 Phil. 308 (1933).

<sup>110</sup> GUPIT, A STUDY ON LAND DELIVERY 179 (1980).

<sup>111</sup> National Housing Authority (NHA) v. Insular Development Co. Inc., CFI (Davao) Civil Case No. 1191. This case has already ended in a compromise, as cited by GUPIT, *supra*, at 179.

produce the full equivalent of the value of the property paid contemporaneously with the taking. In *Republic v. Juan*,<sup>112</sup> the landowner-appellants urged that because the value of the peso at the time of the taking of their lots by the Government in 1963 and the value of the peso in 1979, when the just compensation to be awarded to appellants is to be paid are no longer the same, this factor should be considered in the determination of the final award to be given. The court, though admitting that the value of the peso in 1963 and in 1979 are different, ruled that it was not justified in considering this factor nor in doubling the original amount. It said that such contingency is already well taken care of by the *interest* to be awarded to appellants. The interest awarded is therefore deemed part of the just compensation to be paid to the owner.

#### VI. SPECIAL FORMS OF EXPROPRIATION

##### A. *Expropriation Under Presidential Decree No. 27*

Presidential Decree No. 27 is a decree emancipating the tenants from their bondage of tenancy, transferring to them the ownership of the land they till and providing the instruments and mechanism therefor.<sup>113</sup> Only tenanted private agricultural lands primarily devoted to rice and/or corn are covered by the Decree.<sup>114</sup> Tenant-farmers who are entitled to said land-transfer are those who actually till the land whether under share crop or leasehold tenancy. In case the share tenant or lessee employs sub-tenants or sub-lessees who actually till the land, the latter shall be considered the tenant-tillers and hence, shall be entitled to own the farmholding. In short, the determining factor here is actual cultivator or tiller.<sup>115</sup> With regard to the just compensation requirements, the Decree provides that "the value of the land shall be equivalent to two and one-half (2½) times the average harvest of three normal crop years immediately preceding the promulgation of the Decree. . . ,"<sup>116</sup> and "such total cost of the land, including interest at the rate of six (6) per centum per annum, shall be paid by the tenant in fifteen (15) years of fifteen (15) equal annual amortizations."<sup>117</sup> It should be noted however, that it is mandatory that a tenant-farmer be a member of a farmer's cooperative first before he can avail of the benefits of the said Decree.<sup>118</sup> This is primarily because in case of default, the amortization due shall be paid by the farmer's cooperative in which the defaulting farmer is a member, with the cooperative having a right of recourse against him.<sup>119</sup> It is also worth-noting that the payment of such amortizations to the land-owners are further guaranteed by the Government in the form of shares of

<sup>112</sup> G.R. No. 24740, July 20, 1979, 92 SCRA 26 (1979).

<sup>113</sup> Promulgated on October 21, 1972.

<sup>114</sup> Pres. Decree No. 27 (1972), par. 1.

<sup>115</sup> A Primer on Agrarian Reform 9 (1973).

<sup>116</sup> Pres. Decree No. 27, par. 4.

<sup>117</sup> Pres. Decree No. 27, par. 5.

<sup>118</sup> Pres. Decree No. 27, par. 8.

<sup>119</sup> Pres. Decree No. 27, par. 6.

stock in government-owned and government-controlled corporations.<sup>120</sup> The land value can furthermore be exchanged for stocks in private corporations where the government has holdings.<sup>121</sup>

The procedure for the actual acquisition of the certificate of land transfer until the final issuance of the emancipation patent can be outlined, thus:

- I. Identifying tenant-farmers and their landowners by:
  - a. Farm management technicians conduct barrio assemblies
  - b. House-to-house census by enumerators.
- II. Gathering of production data:
  - a. Enumerators undertake production survey on rice and corn based on the harvests for the last three normal crop years.
- III. Sketching of tiller's farm to determine the area cultivated:
  - a. Bureau of Land surveyors make sketches on the boundaries of each farmplot in the presence of tenant-tiller, landowner, and Ministry of Agrarian Reform (MAR) field technician.
- IV. A Land Transfer Certificate, filed by the MAR and recorded with the Land Registration Commission, is issued to the tenant-farmer only:
  - a. When landowner does not elect to retain the area cultivated if given the option to retain seven (7) hectares.
  - b. When all steps involved in the transfer of ownership have been undertaken, such as identification of the tenant-farmer, establishment of the average production based on the past normal crop years prior to Presidential Decree No. 27, parcellary mapping and sketching establishment of land value.
- V. Land valuation is determined by:
  - a. Finalizing the report on production survey of land categories by municipality.
- VI. Determining areas to be retained by landowner depends on:
  - a. The Rules and Regulations Implementing Presidential Decree No. 27.
- VII. Preparing documents needed in the issuance of certificate of title
  - a. When the land titled by the tenant-farmer is not within the area retained by the landowner.
- VIII. Land Title is prepared and issued by the Land Registration Commission if:

<sup>120</sup> Pres. Decree No. 27, par. 7.

<sup>121</sup> See Pres. Decree No. 251 (1973).

- a. Tenant-farmer is a full-fledged member of a duly recognized farmer's cooperative.
- b. Upon payment in full of the cost of the land.<sup>122</sup>

It can be gleaned from the foregoing that private estates are expropriated not by the usual method of condemnation laid down in the Rules of Court.<sup>123</sup> Instead, the ownership of the land is transferred to the tenant-farmer of private agricultural land primarily devoted to rice and corn, by virtue of a legislative enactment.<sup>124</sup> It is clear that with the fulfillment of certain obligations imposed by the Presidential Decree upon the tenant-farmers, they will then be given emancipation patents or grants which, when filed with the Registry of Deeds, shall constitute conclusive authority for the issuance of Torrens Titles in their names without need of the usual formality of a judicial application, publication, and hearing.<sup>125</sup> This deserves close scrutiny because expropriation or condemnation is the procedure or action for carrying out the right of eminent domain which is the right of the State to acquire private property for public use upon payment of just compensation.<sup>126</sup> It is settled that the right of eminent domain can be exercised only by the filing of a complaint which shall state with certainty the right and purpose of condemnation, describe the real and personal property sought to be condemned, and join as defendants all persons owning or claiming to own, or occupying any part thereof or interest therein, showing, so far as practicable, the interest of each defendant separately.<sup>127</sup> It must be recalled that any taking of private property through the exercise of the right of eminent domain by the State should satisfy both the procedural and substantive requirements of due process of law.<sup>128</sup> And in this regard, Rule 67 on Eminent Domain, specifically provides for the procedure necessary to satisfy the requirements of due process of law.<sup>129</sup> Failure to follow this procedure laid down by law at the least, casts a suspicion of irregularity and taints it with nullity. But this is not all, for under the said Decree, not only is the procedure in Rule 67 of the Rules of Court not followed, but landowners deprived of their lands will have the burden of proving that they do not fall under the coverage of said Decree; they have to content themselves with the modes of payment<sup>130</sup> predetermined by the State without their participation; and the administering arm of the government cannot truly be said to be impartial vis-a-vis the tenant-farmers and the landowners as they are duty-bound to implement the Decree at all cost.

<sup>122</sup> From Tenant-Farmer to Owner-Cultivator, Information Material from DAR, Sept. 10, 1973.

<sup>123</sup> RULES OF COURT, Rule 67.

<sup>124</sup> Pres. Decree No. 27, Preamble.

<sup>125</sup> PEÑA, LAND TITLES AND DEEDS 437 (1978); Pres. Decree No. 266 (1973).

<sup>126</sup> CONST., art. IV, sec. 2.

<sup>127</sup> RULES OF COURT, Rule 67, Sec. 1.

<sup>128</sup> CONST., art. IV, sec. 1.

<sup>129</sup> REGALADO, REMEDIAL LAW COMPENDIUM 363 (1980).

<sup>130</sup> Pres. Decree No. 251 (1973).

Indeed, expropriation by legislation and its implementation by the executive department,<sup>131</sup> is a new concept definitely foreign to expropriation through the normal judicial processes. The rationale for the Decree<sup>132</sup> maybe laudable but it is elementary that the end does not justify the means. Just on the score of having an impartial tribunal to weigh the interests of the government and the tenant-farmers and the landowners, this method of expropriation by legislation becomes questionable if not objectionable. Just the same under the present state of the law, the ownership of many private estates have already been transferred to tenant-farmers under the direction of the President through the Ministry of Agrarian Reform (MAR).<sup>133</sup> This novel idea of expropriation by Decree may be the answer to the centuries old problem of bondage but it is rather premature to judge whether its advantages outweigh its disadvantages.<sup>134</sup>

#### B. *Expropriation Under Presidential Decree No. 1517*

Under the Urban Land Reform Program, it is the declared policy of the government: a) to liberate our human communities from blight, congestion, and hazard, and to promote their development and modernization; b) to bring about the optimum use of land as a national resource for public welfare rather than as a commodity of trade subject to price speculation and indiscriminate use; c) to provide equitable access and opportunity to the use and enjoyment of the fruits of the land; d) to acquire such lands as are necessary to prevent speculative buying of land for public welfare; and, e) to maintain and support a vigorous private enterprise system responsive to community requirements in the use and development of urban lands.<sup>135</sup> In line with such policies, the President can proclaim specific parcels of urban<sup>136</sup> and urbanizable lands<sup>137</sup> as Urban Land Reform Zones,<sup>138</sup>

<sup>131</sup> Pres. Decree No. 27 (1972); CONST., art. XIV, sec. 12, provides: "The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."

<sup>132</sup> Note the fusion of legislative and executive powers under Martial Law. Aquino Jr. v. Enrile, G.R. No. 35546, September 17, 1974, 59 SCRA 183 (1974).

<sup>133</sup> On December 22, 1972, President Marcos personally signed and handed the first 422 Land Transfer Certificates to farmers-tenants from Central Luzon. See also Pres. Decree No. 84 (1972) — Authorizing the Secretary (now Minister) of Agrarian Reforms to sign on behalf of the President of the Philippines.

<sup>134</sup> Philippine Collegian, October 9, 1981, p. 1, col. 4-5.

<sup>135</sup> Pres. Decree No. 1517 (1978), sec. 2.

<sup>136</sup> *Urban Lands* refer to lands which conform to any of the following criteria:  
1. In their entirety, all cities and municipalities which have a population of at least 1,000 persons per square kilometer and where at least 50 per cent of the economically active population are engaged in non-agricultural activities.

2. All barangays comprising the former poblacion or barangay including a part of the former poblacion of cities and municipalities which have a population density of greater than 500 but less than 1,000 persons per square kilometer; and where at least 50 per cent of the economically active population are engaged in non-agricultural activities.

3. All barangays not included in items 1 and 2 above which have a population size of at least 1,000 and where at least 50 per cent of the economically active



otherwise known as Urban Zones which may include Bagong Lipunan Sites.<sup>139</sup> Upon proclamation, the Ministry of Human Settlements can now prepare the appropriate development and zoning plans and formulate the enforcement and implementing guidelines.<sup>140</sup> To facilitate the expropriation of lands, the Urban Zones Expropriation and Land Management Committee (UZELMC), has been created to exercise the power of eminent domain vested in the Ministry.<sup>141</sup>

The procedure for the acquisition of lands is as follows:

*Section 7. Acquisition of Residential Land for Existing Tenants and Residents.* In cases where the tenants and residents, referred to in Section 6 of this Decree are unable to purchase said lands, the Government shall acquire the land and/or improvements thereon by expropriating or other land acquisition technique provided for under Section 11 of this Decree.

In case of expropriation, the Government shall acquire said lands in accordance with the policies of existing law, especially Presidential Decree No. 1224 and section 1 of Presidential Decree No. 1313 as herein amended.

Upon the filing of the petition for expropriation and the deposit in the Philippine National Bank at its main office or any of its branches of the amount equivalent to ten (10%) of the declared assessment value in 1975, the Government, or its authorized agency or entity shall immediately have possession, control and disposition of the real property and the pending resolution of the issues that may be raised whether before the Court of First Instance, Court of Agrarian Relations, or the Higher Courts.<sup>142</sup>

It is worth noting that the procedure outlined above follows the usual judicial processes calling for the filing of the petition for expropriation in the proper court.<sup>143</sup> However, the Decree brings into light the so-called "land acquisition technique" which is not only an alternative to expropriation for the Government's acquisition of private lands but is the avowed priority method in acquiring such lands.<sup>144</sup> This innovative land acquisition technique<sup>145</sup> could very well be the reaction against the delay brought about by judicial proceedings. Admittedly, this can hasten the acquisition of lands to conform to time-tables set in government development projects. These

population are engaged in non-agricultural activities. (Implementing Rules and Regulations of Pres. Decree No. 1517, Rule 1, sec. 2, (p) ).

<sup>137</sup> *Urbanizable lands* refer to sites and land areas which, considering present characteristics and prevailing conditions, display a marked and high probability of becoming urban lands within the period of five to ten years. (Implementing Rules and Regulations of Pres. Decree No. 1517, Rule 1, sec. 2 (q) ).

<sup>138</sup> Pres. Decree No. 1517 (1978), sec. 4; *See* Pres. Decree No. 1767 — Declaring as an Urban Land Reform Zone a certain parcel of land in Quezon City, Metro-Manila, August 11, 1978; *See also* Pres. Decree No. 1893 — Declaring the Entire Metropolitan Manila Area as an Urban Land Reform Zone, September 11, 1979.

<sup>139</sup> As defined in Pres. Decree No. 1396 (1978).

<sup>140</sup> Pres. Decree No. 1517, sec. 4, par. 2.

<sup>141</sup> *Ibid.*, Sec. 8.

<sup>142</sup> Pres. Decree No. 1517.

<sup>143</sup> *See*, RULES OF COURT, Rule 67, sec. 1.

<sup>144</sup> As a general rule, expropriation will be availed of only as a last resort. (Implementing Rules and Regulations of Pres. Decree No. 1517, Rule VII, Sec. 25).

<sup>145</sup> Pres. Decree No. 1517, sec. 10.

innovative land acquisition techniques which are an alternative to land purchase and expropriation for the purpose of acquiring lands within the proclaimed Urban Land Reform Zones and for Bagong Lipunan Sites, include lands assembly,<sup>146</sup> land banking,<sup>147</sup> land exchange,<sup>148</sup> land consolidation and readjustment,<sup>149</sup> and joint venture arrangements.<sup>150</sup> Compared to expropriation by Decree under Presidential Decree No. 27 discussed above, these new techniques seems to solve the problem of land acquisition more democratically as landowners can avail of any method they deem appropriate under the circumstances. There is at least elbow room for choosing a method to their liking. It cannot escape the fact however, that their lands are still being expropriated for public use upon payment of just compensation without following the usual judicial proceedings.<sup>151</sup> Instead, novel means are availed of by the State to facilitate land acquisition and prevent undue delay caused by court proceedings. In this particular regard, this procedure set by Presidential Decree No. 1517 is more acceptable than the outright declaration of transfer of ownership in Presidential Decree No. 27. It should be noted however, that both are variations of the traditional method of condemnation found in the Rules of Court. It may be the case that these variations in Presidential Decrees No. 27 and 1517 are areas of development toward expropriation by means other than judicial.<sup>152</sup> But it need not be stressed that expropriation by executive branches of government following administrative processes should comply with the requisites of due process.<sup>153</sup>

<sup>146</sup> *Land Assembly* — means the acquisition of lots of varying ownership through, among other, expropriation or negotiated purchase, for the purpose of planning and development, unrestricted by individual property boundaries. (Implementing Rules and Regulations of Pres. Decree No. 1517, Rule 1, sec. 2 (f)).

<sup>147</sup> *Land Banking* refers to the acquisition of land in advance of actual need, for the purpose of acquiring lands at existing use value and of disposing them in a manner which would promote planned development and influence land price formation. (Implementing Rules and Regulations of Pres. Decree No. 1517, Rule 1, sec. 2 (g)).

<sup>148</sup> *Land Exchange* refers to the process of bartering land for another piece of land or share of stock of equal value in a government or quasi-government corporation. (Implementing Rules and Regulations of Pres. Decree No. 1517, Rule 1, sec. 2, (i)).

<sup>149</sup> *Land Consolidation and Readjustment* refers to the pooling of individual lots for the purpose of development and replotting, unrestricted by individual property boundaries, and according to an approved development plan. (Implementing Rules and Regulations of Pres. Decree No. 1517, Rule 1, sec. 2, (h)).

<sup>150</sup> *Joint Venture* refers to the commitment, for more than a limited duration, of funds, land resources, facilities and services by two or more equally separate interests to an enterprise for their mutual benefit. (Implementing Rules and Regulations of Pres. Decree No. 1517, Rule 1, sec. 2, (c)).

<sup>151</sup> Pres. Decree No. 1517, sec. 9.

<sup>152</sup> See Pres. Decree No. 1640 — Freezing the Prices of Lands in Metro Manila at Current Market Value (Sept. 21, 1979); also Pres. Decree No. 1642 — Freezing the Rates of Rental, Above Three Hundred Pesos a Month of Residential and Commercial Buildings, Houses, Apartments and Dwelling Units in Metro Manila at Current Levels (Sept. 21, 1979); also Batas Pambansa Blg. 25 — Regulating Rental of Dwelling Units or of Land (April 10, 1979).

<sup>153</sup> *Ang Tibay v. CIR*, 69 Phil. 635 (1940).

<sup>154</sup> Pres. Decree No. 1517, Sec. 8.

<sup>155</sup> Pres. Decree No. 1517, Sec. 4.

An objectionable provision, however, may be seen in Sec. 4 of Presidential Decree 1517 which provides that "no land can be disposed of or used or constructed on, unless its disposition or use conform with the development or zoning plans of the Ministry". This can be questioned as an undue restriction and an unlawful limitation of the right of ownership. The problem of undue delegation of legislative powers also surfaces because of the undefined powers vested in the Ministry,<sup>154</sup> The Urban Zones Expropriation and Land Management Committee,<sup>155</sup> and the Human Settlements Regulatory Commission.<sup>156</sup> It is observed that there is a patent lack of sufficient standards and guidelines for these agencies to follow in the exercise of their powers.<sup>157</sup>

### C. Expropriation of Public Utilities

Public utilities have always been regarded as vested with public interest and concern as they affect the entire community. Therefore, it is beyond dispute that the government may expropriate them if public welfare so demands. In this regard, the Constitution clearly provides that:

The State may in the interest of national welfare or defense, establish and operate industries and means of transportation and communication, and upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the government.<sup>158</sup>

It is also explicit from the fundamental law that in times of national emergency when the public interest so requires, the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.<sup>159</sup> It should be noted that the word "interest" covers all if not almost all of the possible grounds which can justify the State's takeover of public utilities. This is in robust obeisance to the maxim that the welfare of the people is the supreme law and the welfare of a single individual must yield to that of the majority. However, the State may not always appropriate the individual's property but merely require it to render service in the interest of the general public upon payment of just compensation and this is eloquently explained by Justice J.B.L. Reyes in the case of *Republic v. Philippine Long Distance Telephone Co.*<sup>160</sup>

The Republic may, in the exercise of the sovereign power of eminent domain, require the Telephone Company to permit interconnection of the

<sup>156</sup> Pres. Decree No. 1517, Sec. 16.

<sup>157</sup> See *Edu v. Ericta*, G.R. No. 32096, October 24, 1970 35 SCRA 481; *Pelaez v. Auditor General*, G.R. No. 23825, December 24, 1965 15 SCRA 569.

<sup>158</sup> CONST., art. XIV, sec. 6.

<sup>159</sup> CONST., art. XIV, sec. 7. See also Letter of Instruction No. 2, dated Sept. 22, 1972, which ordered the Secretary of National Defense "to take over or cause the take over of the management, control and operation of the Manila Electric Company, the Philippine Long Distance Telephone Company, the National Waterworks and Sewerage Authority, the Philippine National Railways, the Philippine Airlines, Air Manila, Filipinas Orient Airways, and such other public utilities which, in your sound judgment, you consider essential for the successful prosecution by the Government of its effort to contain, solve and end the present national emergency."

<sup>160</sup> G.R. No. 18841, January 27, 1969, 26 SCRA 620, 628 (1969).

Government Telephone System and that of PLDT, as the needs of the government service may require, subject to the payment of just compensation to be determined by the court. Normally of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation be subjected to an easement of right of way. The use of the PLDT's lines and services to allow inter-service connection between both telephone systems is not much different. In either case private property is subjected to a burden for public use and benefit. If under Section 6, Article XIII, of the Constitution, the State may in the interest of national welfare, transfer utilities to public ownership upon payment of just compensation, there is no reason why the State may not require a public utility to render services in the general interest, provided just compensation is paid therefor. Ultimately, the beneficiary of the interconnecting service would be the users of both telephone systems, so that the condemnation be for public use.

It is clear from the nature of public utilities that their disruption can easily lead to grave consequences to the life of the nation, thus, a breakdown of all communications can lead to the total isolation of the country from the outside world as intimated in the above cited case. It is easily understandable therefore, that the State should take an active role in seeing to it that these vital industries keep on functioning specially during times of emergencies. It would, therefore, be very hard for private enterprises to evade expropriation if the circumstances so warrant.

## VII. THE ROLE OF THE COURTS IN EXPROPRIATION

### A. *The Determination of Public Use as a Legislative or Judicial Function.*

One of the primary problems often encountered in expropriation cases is whether the determination of public use is a legislative or judicial prerogative. The court is not unanimous in its decisions and has in fact given different answers to this question.

An attempt to challenge the authority of the courts to review the legislative judgment of its exercise of the power to expropriate was made in *NARRA v. Francisco*.<sup>161</sup> This case involved Republic Act No. 1266 which specifically authorized the National Resettlement and Rehabilitation Administration (NARRA) to expropriate a hacienda for subdivision and resale to occupants. NARRA, asserting its power to expropriate argued that, "where the Legislature has determined the necessity of appropriating private property for a particular public improvement, the utility, necessity and expediency of the improvement of the suitability of the location are questions for the Legislature to determine and the Courts have no power

<sup>161</sup> 109 Phil. 764 (1960).

to interfere and substitute their own discretion." The Court, though not rejecting the principle enunciated, refused to sustain NARRA's argument, stating that the principle was "entirely inappropriate for the question now before the Court is not the necessity of expropriation but the power or authority to expropriate under Article XIII, Section 4 of the 1935 Constitution. The validity of the statute directing the expropriation is certainly a judicial question."<sup>162</sup>

While the issue of judicial review of the necessity of expropriation was left hanging in the *NARRA* case, the court in the subsequent case of *J. M. Tuazon and Co. v. Land Tenure Administration*<sup>163</sup> sought to directly resolve the issue. Here, the expropriation law is Republic Act No. 2616, which subjects the Tatalon Estate in Quezon City under expropriation for purposes of resale. In a categorical fashion, the Court affirmed the unlimited powers conferred upon the Legislature to determine the necessity of expropriation. "It is left to the legislative will to determine what lands may be expropriated so that they could be subdivided for resale to those in need of them. Its discretion on the matter is not to be interfered with. The recognition of the broad congressional power is undeniable. The judiciary in the discharge of its task to enforce constitutional commands and prohibitions is denied the prerogative of curtailing its well-nigh all embracing sweep."

Delineating further the limits of judicial review, Justice Barredo in his concurring opinion in the same case, further clarified the Court's decision:

The scope and limit of the power of judicial review in this regard is only to determine the existence of enabling legislation, to see to it that the facts are contemplated in the enabling act and to provide the vehicle for compliance with due process in the implementation of the congressional act.

A different doctrine was, however, expressed in several other cases.<sup>164</sup> In *Republic v. La Orden de PP. Benedictinos de Filipinas*,<sup>165</sup> what was sought to be expropriated is a portion of a bigger parcel belonging to a domestic religious corporation. The defendant moved to dismiss the complaint filed by the Government and cite as one of its arguments the ground that there is no necessity for the proposed expropriation. Confronted with this argument, the Court concluded that it is a question of fact which must exist and be shown to the Court before it can give its imprimatur to the Government's move to expropriate the property. In so doing, it asserted judicial

<sup>162</sup> *Id.*, at 768-769.

<sup>163</sup> G.R. No. 21064, February 18, 1970, 31 SCRA 413 (1970).

<sup>164</sup> Although these cases are relatively earlier than the *Tuason* case, it becomes a matter of prudence not to disregard their import, especially when no express abandonment has been made.

<sup>165</sup> G.R. No. 12792, February 28, 1961, 1 SCRA 646 (1961).

<sup>166</sup> *Id.*, at 469.

review over the necessity of taking private property. The Court, thus, found opportunity to rule that:

It is the rule in this jurisdiction that private property may be expropriated for public use and upon payment of just compensation: that condemnation of private property is justified only if it is for the public good and there is genuine necessity therefore of a public character. Consequently, the Courts have the power to inquire into the legality of the exercise of the right of eminent domain and to determine whether or not there is genuine necessity therefore.<sup>166</sup> (Emphasis added).

While the question of public use or just compensation may be initially determined by law, the final say is with the courts, possessing the power of judicial review and the prerogative of interpreting the Constitution and resolving constitutional questions.<sup>167</sup> Accordingly, as long as the right to take land for any use other than a public use, the question of whether any particular use is a public one or not is, at least, a judicial question.<sup>168</sup>

Under American jurisprudence, the prevailing view is that since the power of eminent domain is provided for in the Constitution, its validity, like all constitutional questions, is for the courts to decide. If a court can clearly see that a particular undertaking which it is proposed to clothe with the power of eminent domain has no substantial and real relation to the public use, it is the duty of the court to intervene.<sup>169</sup> By a mere enactment of a law, the Legislature can not make any use of property a public use and if it attempts to do so arbitrarily, the courts have the power to declare the enactment invalid.<sup>170</sup>

Furthermore, it must be noted that when this constitutional right to due process or to equal protection is sought to be enforced by the landowner, judicial inquiry becomes a matter of necessity. This was, in fact, given due regard even by the *Tuason* case, when it said that, "the judiciary can look into the facts, non-conclusiveness being attached to a determination of such character when reliance is had either to the due process clause which is a barrier against arbitrariness and oppressiveness and the equal protection guaranty which is an obstacle to individious discrimination."<sup>171</sup>

At this juncture, it is submitted that despite the seemingly conflicting doctrines enunciated in the preceding cases, such admits of a reconciliation. Hence, full legislative discretion must be recognized, even by the courts,

<sup>166</sup> *GUPIT, op. cit., supra*, note 105 at 26.

<sup>168</sup> *City of Manila v. Chinese Community*, 40 Phil. 356 (1919).

<sup>169</sup> *Cincinnati v. Vester*, 281 U.S. 439, 74 L. Ed. 950, 50 S. Ct. 360 (1929).

<sup>170</sup> *Am. Jur. 2d*, Sec. 38, p. 689. Other cases also serve to illustrate the power of the courts to review the determination by the Legislature of what public use is. In *Walker v. Shasta Power Co.*, 160 F. 856, it was held that the Rules of the Public Service Commission cannot prevent the courts from passing on the question as to what will constitute a public utility and a public purpose. In *Kansas City S & G. R. Co. v. Meyer*, 166 La. 663, it was held that the question of whether a spur track was for a public use was a judicial question.

<sup>171</sup> *J. M. Tuason v. Republic*, *supra*, at 417.

insofar as land-identification or determining what lands may be the subject of taking. Hence, questions as to the utility and expediency of the taking or the suitability of location are those properly addressed to the Legislature.<sup>172</sup> It is beyond the power of the Judiciary to pinpoint properties which may be included or excluded from expropriation and to prescribe its purpose. But once a piece of land has been decided to be subject to expropriation, the Courts may inquire as to the necessity or as to whether the taking is of public use. This is succinctly expressed in *City of Manila v. Chinese Community*:

Although the Legislature must necessarily determine in the first instance whether the use for which they attempt to exercise the power is a public one or not, their determination is not final, but is subject to correction by the courts, who may undoubtedly declare the statute unconstitutional, if it shall clearly appear that the use for which it is proposed to authorize the taking of private property is in reality not public but private.<sup>173</sup>

*B. The Determination of Just Compensation as a Legislative or Judicial Function.*

It has been discussed in the foregoing that the appointment of commissioners adopted by the Courts to determine the amount to be paid to the landowner is no longer necessary in view of the fact that the just compensation has already been set forth in the law, the latest being provided for in Presidential Decree No. 1533. Judicial determination of just compensation has therefore, come to an end with the passage of a law prescribing the compensation to be paid. The remaining role for the courts now is to ensure that payment shall be made in accordance with the requirement of Presidential Decree No. 1533.

Some quarters, however, have raised the idea of assailing the "justness" of the just compensation fixed by law as it provides for the lower value between the owner's declared value and the assessor's value. Several points, though, serve to sway the tide in favor of recognizing legislative discretion on the matter. The Supreme Court may uphold the constitutionality of such laws as Presidential Decree No. 1533, upon the legal ground that the power to exercise eminent domain is essentially legislative in nature.<sup>174</sup> Being such, the Legislature has the power to set the amount of compensation that may be considered just under the circumstances. The court may refuse to venture into what it may regard as an intrusion of legislative discretion. Thus, it may hesitate to promulgate its own standards in lieu of those established by the legislature, cautious of the fact that this act may be seen as an arrogant exercise of judicial legislation.

<sup>172</sup> See Note 168.

<sup>173</sup> See Note 168, at 363.

<sup>174</sup> 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 27-30, as cited by DE LEON, FUNDAMENTALS OF TAXATION, 19 (1980).

It may also be said that the law can successfully withstand challenges premised on due process and the equal protection clause. The reasonability of the law may easily be established since the landowner himself in declaring the market value of the property provides for one of the basis in fixing just compensation. On the other hand, the determination of the market value by the assessor could have been questioned by the landowner himself had he wished by appealing within 30 days to an appellate administrative agency.<sup>175</sup>

*C. Judicial Process as a Factor in Nullifying or Suspending Expropriation*

*1. Challenges to Expropriation*  
*The writ of possession*

All that the Government has to do to secure a writ of possession is to make a deposit with the Philippine National Bank in an amount equivalent to 10% of the just compensation as defined by law.<sup>176</sup> An attempt to challenge the Government's right to possess the property by the mere act of filing a deposit with the Philippine National Bank, was made in the case of *Arce v. Genato*.<sup>177</sup> The landowner here contended that there being no preliminary hearing conducted to determine the necessity of public use, there is no right on the part of the Government to take immediate possession of the property. The Supreme Court denied the landowner's petition and upheld the law giving the right of immediate possession to the condemnor.

With due respect to the Court's decision, this inevitably results in both a difficult and absurd situation for the landowner. Clearly, he is to be compelled to vacate a land *he still owns*, merely by putting a deposit with the Philippine National Bank equivalent to a mere 10% of the just compensation fixed by law. For the meantime that the expropriation case is pending, the landowner is deprived of the right to use and enjoy the land. This brings about a serious injustice to the landowner, especially when his lone residence is the subject of condemnation proceedings. By giving the right to take immediate possession, there is created a built-in presumption in favor of the government and against the landowner. The validity of the expropriation is right away presumed (at least during the pendency of the case), until the contrary is otherwise proven by the landowner.

*Non-impairment of obligation clause*

When a contract exists between the government and a private person on the sale of piece of property, expropriation cannot be resorted to by the

<sup>175</sup> GUPIT, *op. cit.*, *supra*, note 105 at 28.

<sup>176</sup> Pres. Decree No. 1313, sec. 2.

<sup>177</sup> G.R. No. 40587, February 27, 1976, 69 SCRA 544 (1976). The doctrine in this case is reiterated in *San Diego v. Valdellon*, G.R. No. 45673, November 22, 1977, 80 SCRA 305 (1977).



former as to enable it to side step its obligation under this contract. In the case of *Noble v. City of Manila*,<sup>178</sup> the City entered into a contract of lease of a building with the added stipulation that the City should buy the building. After the City failed to comply with the terms of the contract, the owner of the building filed a suit to compel the City to comply. In its answer, the City asked for the rescission of the lease and the expropriation of the property.

Judgment was rendered in favor of the landowner, the court, ruling that the City was under a contractual obligation to buy the building at an agreed price. The government having agreed to the sale, the expropriation sought by it was baseless. Expropriation lies only when it is made necessary by the opposition of the owner to the sale or by the lack of any agreement as to the price. Expropriation is based upon the consideration that it should not be an obstacle to human progress and to the development of the general welfare. Under the circumstances, however, the expropriation would depart from its own purpose and turn out to be an instrument to repudiate compliance with obligations legally and validly contracted.

#### *Direct legislative expropriation*

A special type of expropriation covering particular properties may be done by legislation, wherein the government need not go to court to accomplish the taking of property. As it has been said, this was done under the Agrarian Reform Program. Other laws, however, similarly provide for direct legislative expropriation. In Presidential Decree No. 1669,<sup>179</sup> for instance, the President declared the Tambunting Estate in Manila as expropriated with a directive for the National Housing Authority to take immediate possession.<sup>180</sup>

An automatic legislative expropriation is advantageous to the government in that it does not have to bother with a long and tedious court proceedings to expropriate properties. Expropriation, in this manner, is already considered as *fait accompli* and if the landowner wishes to contest it, it is he, not the government who will have to go to court. The landowner who does not want to convey ownership of his land, therefore, must have to assail the validity of the law in order to stop the expropriation. In the ordinary mode of expropriation, the landowner questions the decision of the executive agency undertaking the expropriation but by direct legislative expropriation, the landowner will have to question the validity of the legislative act and assumes the burden of proving the nullity of the expropriation.

<sup>178</sup> 67 Phil. 136 (1938).

<sup>179</sup> Dated January 28, 1980.

<sup>180</sup> Other examples include Presidential Decree No. 1315, dated March 26, 1978, which provided for the expropriation of a landed estate in Bagong Barrio, Caloocan City and Presidential Decree No. 1670, dated January 28, 1980, providing for the expropriation of the property along Estero de Sunog-Apo.

A direct legislative expropriation, then, will have to stand the challenge predicated on the due process clause. It may be contended that there is a pre-determination of the land as being subject of the expropriation without giving the landowner an opportunity to contest the validity of the expropriation. This may, however, be squarely met by the argument that the only limitation is that the taking of property must be for public use and with just compensation. What may be invoked further is the well settled rule that expropriation is a power inherent in the Legislature.

*Dismissal of expropriation cases*

Asserting its role as a body which has the final say in determining the validity of expropriation, the Court in some of its decisions, rejected the expropriation complaints filed by the Government. Notable among these cases is the absence of public use as an element in the taking of property. Thus, in one case,<sup>181</sup> a favorable decision was rendered for the landowner when an attempt to expropriate the property was made merely to enable the tenants and their ancestors had cleared the land and cultivated it for their landlord for many years, for such is no valid reason or justification under the Constitution to deprive the owner or landlord of his property by expropriation. In conformity with this ruling, the exercise of the power of eminent domain may be properly enjoined by the Courts if it is done in a makeshift or piecemeal fashion. The deprivation of property cannot merit judicial approval if it constitutes a random sampling of a small lot here and a small lot there to accommodate a few tenants or squatters, such being beyond the purview of the Constitution. Such merely constitutes a deprivation of a citizen of his property for the convenience of another citizen or a few others without perceptible benefit to the public.<sup>182</sup>

Accordingly, a city is not authorized to take private property by eminent domain and then sell it to a private corporation for some use which may enhance the beauty of the city streets.<sup>183</sup> Here, the public benefit is merely incidental or even insignificant so as not to justify an adverse decision against the landowner. And in a similar vein, the taking of land by a city for the purpose of selling or leasing it so as to obtain an income for the public treasury is not a lawful exercise of eminent domain. There is simply no public use involved.<sup>184</sup>

But even if it be for an alleged public use, the power to expropriate is also rejected in cases where the property is already devoted to public use. Hence, a cemetery owned by a private association for the use of its members may not be condemned for the purpose of constructing streets, because as

<sup>181</sup> Republic v. Baylosis, 96 Phil. 461 (1955); Province of Rizal v. Bartolome San Diego, Inc., 105 Phil. 33 (1959).

<sup>182</sup> Urban Estate, Inc. v. Montesa, *supra*; see also MORAN, *op. cit.*, note 17 at 245.

<sup>183</sup> Pennsylvania Mutual Life v. Philadelphia, 49 LRA (N.S.) 1062, as cited by SINCO, *supra*, at 607.

<sup>184</sup> Opinion of Justice, 204 Mass. 607, 27 LRA (N.S.) 483.

such it is already devoted to public use.<sup>185</sup> Again, in the case of *City of Manila v. Arellano Law College*<sup>186</sup> it was ruled that the Government cannot expropriate a land owned by an educational institution for the purpose of subdividing and reselling the land to the poor. Clearly considering the beneficial use of the property for education, the Court said that while a handful of people stand to profit by the expropriation, the development of a University that has a present enrollment of 9,000 students would be sacrificed. Condemnation of such property is said to contravene public policy. The right to injunctive relief, therefore, arises in favor of the landowner if the property sought to be expropriated is already devoted to a public or quasi-public purpose.<sup>187</sup>

## 2. Delay in Expropriation Proceedings

The whole process of expropriation is susceptible to delay due to factors that usually arise in any other judicial proceedings. An expropriation case for instance, was set for pre-trial on June 7, 1978 at 9:30 A.M. Despite notice, the landowner's lawyer appeared at 1:30 P.M. of that day, allegedly upon the mistaken belief as to the time. The trial court considered the landowner in default but he elevated the question to the Supreme Court. On January 28, 1980, or about one year and six months after the pre-trial, the Court reinstated the landowner's standing in court upon the overriding requirement of procedural due process.

Delays may however be brought about at the instance, not only of the landowner but also, of the judge himself. In *Santiago v. Court of Appeals*,<sup>189</sup> the expropriation case was filed by the Export Processing Zone Authority (EPZA) in Bataan which ended in a compromise between the parties. The landowner was offered a price higher than the just compensation fixed by law since EPZA wanted the land very badly. When he accepted, both parties filed a motion to dismiss on the ground that they had already arrived at an amicable settlement but the judge would not hear of it and asked the parties to submit their compromise agreement. The parties did, but the judge disapproved the agreement saying that it was contrary to law, morals, and public policy because the price was more than the amount fixed by law. The case was brought to the Court of Appeals which reversed the judge. However, the judge, of his own accord, elevated the case to the Supreme Court. It was reported the landowner had already been paid and if the compromise agreement would be nullified, the problem is how to get the money back from the landowner who does not seem to have the necessary financial capacity to reimburse the amount.

<sup>185</sup> *City of Manila v. Chinese Community*, *supra*.

<sup>186</sup> 85 Phil. 663 (1950).

<sup>187</sup> 27 Am. Jur. 2d, Sec. 486.

<sup>188</sup> *Carandang v. Republic*, G.R. No. 49052, January 28, 1980, 95 SCRA 668.

<sup>189</sup> G.R. No. 46845. This is a case pending resolution in the Supreme Court of this date; as cited in *GUPIT*, *supra*, p. 23.

But it is not only in the matter of determining the validity of expropriation that delay is encountered but likewise, in the important aspect of payment of a just compensation. An illustrative case on this point, arousing the indignation of the Court, was seen in *Province of Pangasinan v. Court of First Instance*.<sup>190</sup> Here, the complaint for expropriation was filed by the government on July 10, 1963, and the corresponding deposit made so that the government can take possession of the land. Three years later, on August 27, 1966, a motion to withdraw the deposit was filed by the landowners, which deposit shall serve as part payment due to them. But it took the lower court more than five years to issue an order for the payment of the remaining amount in favor of the landowners. This order, dated December 9, 1971, had long since then become final but it was not until the lapse of two years that a motion for execution was made to enable the landowner to receive the payment awarded to them. The order for execution was immediately made by the judge hearing the case but in spite of this, a petition for certiorari was filed by the province to nullify such order on the ground that there had been no final judgment. And it was only in 1977, fourteen years after the filing of the complaint, that the Supreme Court finally had the chance to decide the matter in favor of the landowners. The Court, speaking through Chief Justice Fernando, lamented the anomalous situation that brought prejudice to the poor landowner.

This Court has never hesitated to assure that there be just compensation. If it were otherwise, the element of arbitrariness certainly would enter. It is bad enough that an owner of a property, in the event of the exercise of this sovereign prerogative, has no choice but to yield to such a taking. It is infinitely worse if thereafter, he is denied all these years the payment to which he is entitled. This is one of the instances where law and morals speak to the same effect.

#### VIII. CONCLUSION

While taxation in the classical Chief Justice Marshall's line involves the power to destroy, the power of eminent domain, on the other hand, would involve the power to deprive not only possession but ownership as well. Again, just like taxation, a challenge to its exercise waged in the judicial forum is seldom attended to with successful results. The underlying assumption is the same. The pursuit of public interests must at times step on individual concerns, a situation not so unusual to which the latter must yield.

The drastic exercise of the power of eminent domain is thus justified by the callings of public necessity. Drastic as it is, it must only be resorted to when the advancement of public interest, welfare, utility or advantage sought to be achieved does not become a debatable matter. Moreover, the landowner must be assured not only of a just but of an immediate payment

<sup>190</sup> G.R. No. 38587, October 28, 1977, 80 SCRA 117 (1977).

of compensation. A transfer of possession from the landowner to the government merely by the latter's deposit to the Philippine National Bank, may already be a source of grievance from the landowner. What must, therefore, be provided is a fixed period by which the expropriating agency is obliged to render payment so that the impact of expropriation would not take its iniquitous toll on the landowner.

Seeing it in another light, however, it is the exercise of the power of the eminent domain that offers the most effective and the most advantageous method of land delivery in favor of the government to attain its social justice programs. As the need to equitably diffuse property ownership and distribute lands under a land reform program is recognized in the egalitarian principles of the 1973 Constitution, the restrictive *Guido* doctrine needs a reassessment. The test of public use must not stress on size but on the purpose of whether such social justice programs can be realized.

Lastly, the role of the courts in settling questions of expropriation must not be minimized. The determination of public use by the Legislature or by the expropriating agencies must be able to withstand the test of judicial scrutiny. As a guardian of individual rights against the overzealous assertion of government powers, it is incumbent upon the Courts to determine whether the deprivation of property is in accord with the requirements of law.

While the power to take property is not denied, still, it must not be exercised in a manner that is oppressive and confiscatory. The court must stand pat on its role as the ultimate recourse against the expropriators.