

J.M. TUASON & CO., INC., PETITIONER-APPELLEE, VS. THE LAND TENURE ADMINISTRATION, THE SOLICITOR GENERAL AND THE AUDITOR GENERAL, RESPONDENTS-APPELLANTS.*G.R. No. L-21064. February 18, 1970*

Ponente: FERNANDO, J.

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In this special civil action for prohibition to nullify a legislative act directing the expropriation of the Tatalon Estate, Quezon City,[1] this Court is called upon to inquire further into how far the power of Congress under the Constitution to authorize upon payment of just compensation the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals[2] may extend, the more so as this is the first time the judiciary is confronted with such a challenge addressed to the validity of a statute specifically made applicable to a particular piece of land, owned by petitioner J. M. Tuason & Co. In the leading case of *Guido v. Rural Progress*,[3] decided in 1949, this Court in passing upon the scope of the power of the President conferred by statute "to acquire private lands or any interest therein, through purchase or expropriation, and to subdivide the same into home lots or small farms for resale at reasonable prices and under such conditions as he may fix to their bona fide tenants or occupants"[4] had occasion to delineate the contours of the above constitutional provision, reconciling the undoubtedly broad grant of constitutional authority to Congress with the right of property that might be adversely affected by its exercise.

The prevailing opinion in the later case of *Republic v. Baylosis*[5] tilted the balance in favor of property. In deciding this suit, filed with the Court of First Instance of Quezon City, the lower court, as was understandable, bowed to what it considered the compulsion such an opinion carries and being unable to perceive any relevant ground for distinction, declared the challenged statute invalid. The respondents, the Land Tenure Administration, the Solicitor General and the Auditor General in this prohibition proceeding, appealed. We are possessed undoubtedly of greater discretion on the matter. Nor is it to be lost sight of, as above-mentioned, that this is the first controversy where the expropriation of a particular property authorized by Congress under the above constitutional provision is assailed as beyond its power. The opportunity is thus here present of making more definite the boundaries of such congressional competence.

As will hereafter be explained with some measure of fullness, we cannot affix the stamp of approval to the judgment of the lower court; we reach a different conclusion. There is to our mind no sufficient showing of the unconstitutionality of the challenged act. We reverse.

On August 3, 1959, Republic Act No. 2616 took effect without executive approval. It is therein provided: "The expropriation of the Tatalon Estate in Quezon City jointly owned by the J. M. Tuazon and Company, Inc., Gregorio Araneta and Company, Inc., and Florencio Deudor, et al., is hereby authorized."[6] As noted in the appealed decision: "The lands involved in this action, to which Republic Act No. 2616 refer and which constitute a certain portion of the Sta. Mesa Heights Subdivision, have a total area of about 109 hectares and are covered by

Transfer Certificates of Title Nos. 42774 and 49235 of the Registry of Deeds of Rizal (Quezon City) registered in the name of petitioner."[7]

Thereafter, on November 15, 1960, respondent Land Tenure Administration was directed by the then Executive Secretary to institute the proceeding for the expropriation of the Tatalon Estate. Not losing any time, petitioner J. M. Tuason & Co., Inc. filed before the lower court on November 17, 1960 a special action for prohibition with preliminary injunction against respondents praying that the above act be declared unconstitutional, seeking in the meanwhile a preliminary injunction to restrain respondents from instituting such expropriation proceeding, thereafter to be made permanent after trial. The next day, on November 18, 1960, the lower court granted the prayer for the preliminary injunction upon the filing of a P20,000.00 bond. After trial, the lower court promulgated its decision on January 10, 1963 holding that Republic Act No. 2616 as amended is unconstitutional and granting the writ of prohibition prayed for.

Hence this appeal by respondents, one we find meritorious. With the problem thus laid bare and with an exposition of the constitutional principles that compel a result different from that arrived at by the lower court, we cannot accept its holding that the statute thus assailed should be annulled.

1. Respondents would interpose two procedural bars sufficient in their opinion to preclude the lower court from passing on the question of validity.[8] The first is the allegation that in effect this special proceeding for prohibition is "actually a suit against the State, which is not allowed without its consent." [9] The second would require, on the assumption that the suit could proceed, that the Executive Secretary, as the real party in interest, ought to have been impleaded. Neither objection suffices to preclude the lower court from passing upon the question of validity of the statute in question.

As was held by this Court in the leading case of *Angara v. Electoral Commission*, [10] speaking through Justice Laurel, the power of judicial review is granted, if not expressly, at least by clear implication from the relevant provisions of the Constitution. [11] This power may be exercised when the party adversely affected by either a legislative or executive act, or a municipal ordinance for that matter, files the appropriate suit to test its validity. The special civil action of prohibition has been relied upon precisely to restrain the enforcement of what is alleged to be an unconstitutional statute. [12] As it is a fundamental postulate that the Constitution as the supreme law is binding on all governmental agencies, failure to observe the limitations found therein furnishes a sufficient ground for a declaration of the nullity of the governmental measure challenged. The argument then that the government is the adverse party and that therefore must consent to its being sued certainly is far from persuasive. Moreover, it is equally well-settled that for the purpose of thus obtaining a judicial declaration of nullity, it is enough if the respondents or defendants named be the government officials who would give operation and effect to official action allegedly tainted with unconstitutionality. As it cannot be denied that in 1959 the then Land Tenure Administration as well as the Solicitor General were called upon to enforce the statute now assailed, it would appear clear that the insistence on the Executive Secretary being made a party lacks support in law.

It would be then to set aside and disregard doctrines of unimpeachable authority if the plea of respondents on these procedural points raised were to meet an affirmative response. That we are not disposed to do.

2. Thus we reach the merits. It would appear, as noted at the outset, that for the purpose of deciding the question of validity squarely raised, a further inquiry into the scope of the constitutional power of Congress to authorize the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals [13] is indicated, if for no other purpose than to attain a greater degree of clarity. The question is one then of constitutional construction. It is well to recall fundamentals. The primary task is one of ascertaining and thereafter assuring the realization of the purpose of the framers and of the people in the adoption of the Constitution. [14]

We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum.

This is one of them. It does not admit of doubt that the congressional power thus conferred is far from limited. 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. Nor can it be doubted either that as to when such authority may be exercised is purely for Congress to decide. Its discretion on the matter is not to be interfered with. The language employed is not swathed in obscurity. The recognition of the broad congressional competence 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.

Reference to the historical basis of this provision as reflected in the proceedings of the Constitutional Convention, two of the extrinsic aids to construction along with the contemporaneous understanding and the consideration of the consequences that flow from the interpretation under consideration, yields additional light on the matter. The opinion of Justice Tuason, in the Guido case did precisely that. It cited the speech of delegate Miguel Cuaderno, who, in speaking of large estates and trusts in perpetuity, stated: "There has been an impairment of public tranquility, and to be sure a continuous impairment of it, because of the existence of these conflicts. In our folklore the oppression and exploitation of the tenants are vividly referred to; their sufferings at the hand of the landlords are emotionally pictured in our drama; and even in the native movies and talkies of today, this theme of economic slavery has been touched upon. In official documents these same conflicts are narrated and exhaustively explained as a threat to social order and stability." [15] He invoked likewise what happened to the family of our national hero Jose Rizal: "But we should go to Rizal for inspiration and illumination in this problem of the conflicts between landlords and tenants. The national hero and his family were persecuted because of these same conflicts in Calamba, and Rizal himself met a martyr's death because of his exposal of the cause of the tenant class, because he would not close his eyes to oppression and persecution with his own people as victims." [16] Delegate Cuaderno closed with this appeal: "If we are to be true to our trust, if it is our purpose in drafting our constitution to insure domestic tranquility and to provide for the well-being of our people, we cannot, we must not fail to prohibit the ownership of large estates, to make it the duty of the government to breakup existing large estates, and to provide for their acquisition by purchase or through expropriation and sale to their occupants, as has been provided in the Constitutions of Mexico and Jugoslavia." [17]

The above address was delivered during the early days of the convention on August 21, 1934. [18] Subsequently, the day before the above constitutional provision was voted on January 29, 1935 he reiterated what was said by him in the above address. Thus: "Mr. President, this will be my last speech in the Convention. And I just want to remind the Convention of the first speech that I delivered - the first speech I delivered before this Assembly. I believe, Mr. President, 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." [19]

This is not to say that such an appeal to history as disclosed by what could be accepted as the pronouncement that

did influence the delegates to vote for such a grant of power could be utilized to restrict the scope thereof, considering the language employed. For what could be expropriated are "lands" not "landed estates." It is well to recall what Justice Laurel would impress on us, "historical discussion while valuable is not necessarily decisive." [20] It is easy to understand why.

The social and economic conditions are not static. They change with the times. To identify the text of a written constitution with the circumstances that inspired its inclusion may render it incapable of being responsive to future needs. Precisely, it is assumed to be one of the virtues of a written constitution that it suffices to govern the life of the people not only at the time of its framing but far into the indefinite future. It is not to be considered as so lacking in flexibility and suppleness that it may be a bar to measures; novel and unorthodox, as they may appear to some, but nonetheless imperatively called for. Otherwise, it might expose itself to the risk of inability to survive in the face of complexities that time may bring in its wake.

It would thus be devoid of the character of permanency, which is the distinguishing mark of a constitution. Such was the conclusion deliberately arrived at after extensive discussion in the Constitutional Convention that the Constitution as adopted in 1935 would be good not only for the Commonwealth but for the Republic, with all the vicissitudes that time and circumstance would bring. Our people in signifying their adherence to the Constitution at the plebiscite thereafter held were of a similar persuasion.

The continuing life of a constitution was stressed by one of the chief architects of the Constitution, Manuel A. Roxas, later to be the first President of the Republic. For him it is "the essence [of such an] instrument." [21] It was his view that the constitution to be adopted by the Constitutional Convention of 1934 would "have an indefinite life, will be permanent, subject of course, to revisions, amendments and other changes that may be adopted constitutionally." [22] That would be an assurance that constitutional guarantees "will be maintained, property rights will be safeguarded and individual rights maintained immaculate and sanctified. * * *." [23] Another prominent delegate, Gregorio Perfecto, later a member of this Tribunal, aptly noted that the transitory character is essentially incompatible with the nature of laws, and necessarily so of a constitution, which is the supreme law of a people and therefore must be impressed with such attribute of permanency, much more than ordinary statutes passed under its authority. [24]

It could thus be said of our Constitution as of the United States Constitution, to borrow from Chief Justice Marshall's pronouncement in *M'Culloch v. Maryland* [25] that it is "intended to endure for ages to come and consequently, to be adapted to the various crisis of human affairs. " It cannot be looked upon as other than, in the language of another American jurist, Chief Justice Stone, "a continuing instrument of government." [26] Its framers were not visionaries, toying with speculations or theories, but men of affairs, at home in statecraft, laying down the foundations of a government which can make effective and operative all the powers conferred or assumed, with the corresponding restrictions to secure individual rights and, anticipating, subject to the limitations of human foresight, the problems that events to come in the distant days ahead will bring. Thus a constitution, to quote from Justice Cardozo, "states or ought to state not rules for the passing hour, but principles for an expanding future." [27]

To that primordial intent, all else is subordinated. Our Constitution, any constitution, is not to be construed narrowly or pedantically, for the prescriptions therein contained, to paraphrase Justice Holmes, are not mathematical formulas having their essence in their form, but are organic living institutions, the significance of which is vital not formal. There must be an awareness, as with Justice Brandeis, not only of what has been, but of what may be. The words employed by it are not to be construed to yield fixed and rigid answers but as impressed with the necessary attributes of flexibility and accommodation to enable them to meet adequately whatever problems the future has in store. It is not, in brief, a printed finality but a dynamic process.

3. The conclusion is difficult to resist that the text of the constitutional provision in question, its historical background as noted in pronouncements in the Constitutional Convention and the inexorable need for the Constitution to have the capacity for growth and ever be adaptable to changing social and economic conditions all argue against its restrictive construction. Such an approach was reflected succinctly in the dissenting opinion of Justice J. B. L. Reyes, concurred in by the present Chief Justice, in the Baylosis case. We find it persuasive.

His dissenting opinion opens thus: "I am constrained to dissent from the opinion of the majority. The reasons set forth by it against the validity of the proposed expropriation strike me as arguments against the expropriation policies adopted by the government rather than reasons against the existence and application of the condemnation power in the present case." [28] Then he stated: "The propriety of exercising the power of eminent domain under Article XIII, section 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, involving a considerable number of individuals, and eschew small controversies and wait until they grow into a major problem before taking remedial action." [29]

As to the role of the courts in the appraisal of the congressional implementation of such a power, he had this to say: "The Constitution considered the small individual land tenure to be so important to the maintenance of peace and order and to the promotion of progress and the general welfare that it not only provided for the expropriation and subdivision of lands but also opened the way for the limitation of private land holdings (Art. XIII, section 3). It is not for this Court to judge the worth of these and other social and economic policies expressed by the Constitution; our duty is to conform to such policies and not to block their realization." [30]

The above dissent, as well as that penned by the then Chief Justice Paras with whom the then Justice Pablo was in agreement, with Justice Alex Reyes writing a concurring opinion, resulted in that the main opinion of Justice Montemayor, while prevailing, failed to elicit the necessary majority vote of six. If for that reason alone its re-examination would not appear to be inappropriate. Moreover, it could not be considered as controlling the present suit, in view of the fact that the exercise of the congressional authority to expropriate land was not direct as in this case but carried out in pursuance of the statutory authority conferred on the President under Commonwealth Act No. 539.

The absence of any controlling force of such prevailing opinion can likewise be predicated on facts which would differentiate the present situation from that found in the Baylosis case. Thus Justice Montemayor noted: "The evidence shows that both Sinclair and Cirilo P. Baylosis at one time were willing to sell to some of the tenants and occupants herein involved under certain conditions and provided that they buy in groups, presumably to avoid subdivisions and the problem of dealing with many individual buyers, but the tenants failed to buy. Naturally, they may not now compel Sinclair and Cirilo P. Baylosis to sell to them through the Government by means of expropriation. Besides, the bulk of the lands that Sinclair and Cirilo P. Baylosis had formerly offered to them for sale which offer they failed to take advantage of, has now been sold to others, the other co-defendants herein, in small lots." [31] Likewise, it was noted by him: "There is another point that merits consideration. The defendants claim and correctly that many of the tenants and occupants now insisting on expropriation have lands of their own." [32]

The more fundamental reason though why we find ourselves unable to yield deference to such opinion of Justice Montemayor, well-written and tightly-reasoned as it is, is its undue stress on property rights. It thus appears then that it 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 seriously concerned with the grave 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.

This is not to say of course that property rights are disregarded. This is merely to emphasize that the philosophy of our Constitution embodying as it does what Justice Laurel referred to as its "nationalistic and socialist traits discoverable upon even a sudden dip into a variety of [its] provisions" although not extending as far as the "destruction or annihilation" of the rights to property,[33] negates the postulate which at one time reigned supreme in American constitutional law as to their well-nigh inviolable character. This is not so under our Constitution, which rejects the doctrine of laissez faire with its abhorrence for the least interference with the autonomy suppose to be enjoyed by the property owner. Laissez faire, as Justice Malcolm pointed out as far back as 1919, did not take too firm a foothold in our jurisprudence.[34] Our Constitution is much more explicit. There is no room for it for laissez faire. So Justice Laurel affirmed not only in the above opinion but in another concurring opinion quoted with approval in at least two of our subsequent decisions.[35] We had occasion to reiterate such a view in the ACCFA case, decided barely two months ago.[36]

This particular grant of authority to Congress authorizing the expropriation of land is a clear manifestation of such a policy that finds expression in our fundamental law. So is the social justice principle enshrined in the Constitution of which it is an expression, as so clearly pointed out in the respective dissenting opinions of Justice J. B. L. Reyes and Chief Justice Paras in the Baylosis case. Why it should be thus is so plausibly set forth in the ACCFA decision, the opinion being penned by Justice Makalintal. We quote: "The growing complexities of modern society, however, have rendered this traditional classification of the functions of government quite unrealistic, not to say obsolete. The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only 'because it was better equipped to administer for the public welfare than is any private individual or group of individuals,' continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the increasing social challenges of the times. Here as almost everywhere else the tendency is undoubtedly towards a greater socialization of economic forces. Here of course this development was envisioned, indeed adopted as a national policy, by the Constitution itself in its declaration of principle concerning the promotion of social justice."

It would thus appear that the prevailing opinion in the Baylosis case is far from compelling. To the extent that the conclusion reached by us in this suit proceeds from a different reading of the constitutional provision in question, it must be deemed as being possessed of less than decisive weight.

4. There need be no fear that such constitutional grant of power to expropriate lands is without limit. As in the case of the more general provision on eminent domain, there is the explicit requirement of the payment of just compensation. It is well-settled that just compensation means the equivalent for the value of the property at the time of its taking. Anything beyond that is more, and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity. The market value of the land taken is the just compensation to which the owner of condemned property is entitled, the market value being that sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property. There must be a consideration then of all the facts which make it commercially valuable. The question is what would be obtained for it on the market from parties who want to buy and would give full value. Testimonies as to real estate transactions in the vicinity are admissible. It must be shown though that the property as to use must be of similar character to the one sought to be condemned. The transaction must likewise be coeval as to time. To the market value must be added the consequential damages, if any, minus the

consequential benefits. The assessed value of real property while constituting prima facie evidence of its value in case of condemnation proceedings is not conclusive.[37]

Then, too, it is a prerequisite for the valid exercise of such a congressional power that the taking be for the public use. To quote from the Guido decision: "It has been truly said that the assertion of the right on the part of the legislature to take the property of one citizen and transfer it to another, even for a full compensation, when the public interest is not promoted thereby, is claiming a despotic power, and one inconsistent with every just principle and fundamental maxim of a free government." [38] It is on that account that we granted prohibition to restrain respondent Rural Progress Administration from proceeding with the expropriation of petitioner's land, two adjoining lots, part commercial with a combined area of slightly more than two hectares. As was stressed by Justice Tuason in his opinion: "No fixed line of demarcation between what taking is for public use and what is not can be made; each case has to be judged according to its peculiar circumstances. It suffices to say for the purpose of this decision that the case under consideration is far wanting in those elements which make for public convenience or public use." [39] Such is not the situation before us now. Nor are we disposed to dispute the legislative appraisal of the matter.

5. The failure to meet the exacting standard of due process would likewise constitute a valid objection to the exercise of this congressional power. That was so intimated in the above leading Guido case. There was an earlier pronouncement to that effect in a decision rendered long before the adoption of the Constitution under the previous organic law then in force, while the Philippines was still an unincorporated territory of the United States.[40]

It is obvious then that a landowner is covered by the mantle of protection due process affords. It is a mandate of reason. It frowns on arbitrariness, it is the antithesis of any governmental act that smacks of whim or caprice. It negates state power to act in an oppressive manner. It is, as had been stressed so often, the embodiment of the sporting idea of fair play. In that sense, it stands as a guaranty of justice. That is the standard that must be met by any governmental agency in the exercise of whatever competence is entrusted to it.[41] As was so emphatically stressed by the present Chief Justice, "acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity, * * *." [42]

It is easily understandable then why the expropriation of lots less than one hectare in *City of Manila v. Arellano* Law College,[43] *Lee Tay v. Choco*[44] and *Republic v. Samia*[45] and of lots less than two hectares in *Commonwealth v. De Borja*[46] and *Republic v. Prieto*[47] was not given the sanction of approval by this Court, the failure to meet the due process requirement being quite evident.

6. It is primarily the equal protection guaranty though that petitioner's case is made to rest. The Constitution requires that no person be denied "the equal protection of the laws." [48] A juridical being is included within its terms.

The assumption underlying such a guaranty is that a legal norm, whether embodied in a rule, principle, or standard, constitutes a defense against anarchy at one extreme and tyranny at the other. Thereby, people living together in a community with its myriad and complex problems can minimize the friction and reduce the conflicts, to assure, at the very least, a peaceful ordering of existence. The ideal situation is for the law's benefits to be available to all, that none be placed outside the sphere of its coverage. Only thus could chance and favor be excluded and the affairs of men governed by that serene and impartial uniformity, which is of the very essence of the idea of law.

The actual, given things as they are and likely to continue to be, cannot approximate the ideal. Nor is the law susceptible to the reproach that it does not take into account the realities of the situation. The constitutional

guaranty then is not to be given a meaning that disregards what is, what does in fact exist.[49] To assure that the general welfare be promoted, which is the end of law, a regulatory measure may cut into the rights to liberty and property. Those adversely affected may under such circumstances invoke the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason.

It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest.

It is precisely because the challenged statute applies only to petitioner that he could assert a denial of equal protection. As set forth in its brief: "Republic Act No. 2616 is directed solely against appellee and for this reason violates the equal protection clause of the Constitution. Unlike other laws which confer authority to expropriate landed estates in general, it singles out the Tatalon Estate. It cannot be said, therefore, that it deals equally with other lands in Quezon City or elsewhere." [50] With due recognition then of the power of Congress to designate the particular property to be taken and how much thereof may be condemned in the exercise of the power of expropriation, it is still a judicial question whether in the exercise of such competence, the party adversely affected is the victim of partiality and prejudice. That the equal protection clause will not allow.

The judiciary can look into the facts then, no 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 invidious discrimination.

We start of course with the presumption of validity, the doubts being resolved in favor of the challenged enactment.[51] As this is the first statute of its kind assailed, we should not stop our inquiry there. The occasion that called for such legislation, if known, goes far in meeting any serious constitutional objection raised. We turn to the Explanatory Note of the bill,[52] which was enacted into the challenged statute. It started with the declaration that it provides for the "expropriation of the Tatalon Estate, Quezon City, and for the sale at cost of the lots therein to their present bona fide occupants, authorizing therefor the appropriation of ten million pesos." Then it continued: "The Tatalon Estate has an area of more than ninety-six hectares and the lots therein are at present occupied by no less than one thousand five hundred heads of families, most of whom are veterans of World War II. It is the earnest desire of this group of patriotic and loyal citizens to purchase the lots at a minimum cost." Why there was such a need for expropriation was next taken up: "The population of Quezon City has considerably increased. This increase in population is posing a serious housing problem to city residents. This bill will not only solve the problem but will also implement the land-for-the-landless program of the present Administration. "

What other facts are there which would remove the alleged infirmity of the statute on equal protection grounds? The brief for respondents invited our attention to the social problem which this legislation was intended to remedy. Thus: "There is a vital point which should have great weight in the decision of this case. The petitioner led the occupants of Tatalon Estate to believe that they were dealing with the representatives of the real owners, the Veterans Subdivision, in the purchase of their lots. The occupants believed in good faith that they were dealing with the representatives of the owners of the lots. This belief was bolstered by the fact that the petitioners herein even entered into a compromise agreement on March 16, 1953 with the Deudors, agreeing to give the latter millions of pesos in settlement of their claim over the Tatalon Estate. The occupants, therefore, purchased their respective portions from the Veterans Subdivision in good faith. The petitioner allowed the Veterans Subdivision

to construct roads in the Tatalon Estate; it allowed said firm to establish an office in the Tatalon Estate and to advertise the sale of the lots inside the Tatalon Estate. Petitioner admits having full knowledge of the activities of the Veterans Subdivision and yet did not lift a finger to stop said acts. The occupants paid good money for their lots and spent fortunes to build their homes. It was after the place has been improved with the building of the roads and the erection of substantial residential homes that petitioner stepped into the picture, claiming for the first time that it is the owner of the Tatalon Estate. Some of the occupants had erected their houses as early as 1947 and 1948 * * *."[53]

The cutting edge of the above assertions could have been blunted by the brief for petitioner. This is all it did say on the matter though: "Appellants alleged that appellee 'led the occupants of Tatalon Estate to believe that they were dealing with the representatives of the real owners, the Veterans Subdivision, in the purchase of their lots' * * *. There is absolutely no evidence on record to establish this ludicrous allegation."[54] Only the alleged duplicity of petitioner was denied, leaving unanswered the rather persuasive recital of conditions that could rightly motivate Congress to act as it did. Clearly, there is no sufficient refutation of the seriousness of the problem thus underscored by respondents, the solution of which is the aim of the statute now under attack.

This is not to deny that whenever Congress points to a particular piece of property to be expropriated, it is faced with a more serious scrutiny as to its power to act in the premises. It would require though a clear and palpable showing of its having singled out a party to bear the brunt of governmental authority that may be legitimately exerted, induced, it would appear by a feeling of disapproval or ill-will to make out a case of this guaranty having been disregarded. If such were the case, then in the language of Justice Laurel, it "will be the time to make the [judicial] hammer fall and heavily. But not until then."[55] The most careful study of the matter before us however yields the conclusion that petitioner was unable to sustain the burden of demonstrating a denial of equal protection.

Moreover, there is nothing to prevent Congress in view of the public funds at its disposal to follow a system of priorities. It could thus determine what lands would first be the subject of expropriation. This it did under the challenged legislative act. As already noted, Congress was moved to act in view of what it considered a serious social and economic problem. The solution which for it was the most acceptable was the authorization of the expropriation of the Tatalon Estate. So it provided under the statute in question. It was confronted with a situation that called for correction, and the legislation that was the result of its deliberation sought to apply the necessary palliative. That it stopped short of possibly attaining the cure of other analogous ills certainly does not stigmatize its effort as a denial of equal protection. We have given our sanction to the principle underlying the exercise of police power and taxation, but certainly not excluding eminent domain, that "the legislature is not required by the Constitution to adhere to the policy of 'all or none'."[56] Thus, to reiterate, the invocation by petitioner of equal protection clause is not attended with success.

7. The other points raised may be briefly disposed of. Much is made of what the lower court considered to be the inaccuracy apparent on the face of the challenged statute as to the ownership of the Tatalon Estate. It could very well be that Congress ought to have taken greater pains to avoid such imprecision. At any rate, the lower court, unduly alarmed, would consider it a deprivation of property without due process of law.[57] Such a fear is unwarranted. In the course of the expropriation proceedings, there undoubtedly would be a judicial determination as to the party entitled to the just compensation. As of now then, such a question would appear at the very least to be premature. Reference is likewise made as to the effect of the authorized expropriation on those purchasers of lots located in the Tatalon Estate. Again, on the occasion of the expropriation, whatever contractual rights might be possessed by vendors and vendees could be asserted and accorded the appropriate constitutional protection.

8. What appears undeniable is that in the light of the broad grant of congressional power so apparent from the text

of the constitutional provision, the historical background as made clear during the deliberation for the Constitutional Convention, and the cardinal postulate underlying constitutional construction that its provisions are not to be interpreted to preclude their being responsive to future needs, the fundamental law being intended to govern the life of a nation as it unfolds through the ages, the challenged statute can survive the test of validity. If it were otherwise, then the judiciary may lend itself susceptible to the charge that in its appraisal of governmental measures with social and economic implications, its decisions are characterized by the narrow, unyielding insistence on the primacy of property rights, contrary to what the Constitution ordains. In no other sphere of judicial activity are judges called upon to transcend personal predilections and private notions of policy, lest legislation intended to bring to fruition the hope of a better life for the great masses of our people, as embodied in the social justice principle of which this constitutional provision under scrutiny is a manifestation, be unjustifiably stricken down. The appealed decision cannot stand.

WHEREFORE, the decision of the lower court of January 10, 1963 holding that Republic Act No. 2616 as amended by Republic Act No. 3453 is unconstitutional is reversed. The writ of prohibition suit is denied, and the preliminary injunction issued by the lower court set aside. With costs against petitioner.

Zaldivar, Sanchez, and Villamor, JJ., concur.

Concepcion, C.J., Reyes, J.B.L., Dizon, and Ruiz Castro, JJ., concur in the opinion of Justice Teehankee.

Makalintal, J., in the result.

Barredo, J., concurs in a separate opinion.

Teehankee, J., concurs and dissents in a separate opinion.

[1] Republic Act No. 2616 as amended (1959).

[2] Art. XIII, Sec. 4 provides: "The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."

[3] 84 Phil. 847.

[4] Corn. Act No. 539 (1940).

[5] 96 Phil. 468 (1955).

[6] Sec. 1, Republic Act No. 2616. The two succeeding sections follow: "Sec. 2. Immediately upon the appropriation of funds by the Congress of the Philippines for the payment of just compensation for the said Tatalon Estate, the Solicitor General, or any other proper Government authority shall institute the necessary expropriation proceedings before the Court of First Instance of Quezon City. Sec. 3. After the expropriation of the Tatalon Estate as provided in this Act, the lots therein shall be sold at cost to their present bona fide occupants in not more than two hundred forty equal monthly installments with interest of not more than six per centum per annum on the unpaid balance." The fourth section was thereafter amended by Republic Act No. 3453 to read thus: "Sec. 4. Upon approval of this amendatory Act, no ejectment proceedings shall be instituted or prosecuted against the present occupants of any lot in said Tatalon Estate, and no ejectment proceedings already commenced shall be continued, and such lot or any portion thereof shall not be sold by the owners of said estate to any person other than the present occupant without the consent of the latter given in a public instrument. " It was held in *Cuatico v. Court of Appeals*: "It is, therefore, imperative that we declare, as we now do, that Section 4 of Republic Act No. 3453 which prohibits the filing of an ejectment proceeding, or the continuance of one that has already been commenced, even in the absence of expropriation proceedings offends our Constitution and, hence, is unenforceable." (6 SCRA 595, 601 [1962]).

- [7] Annex A, Brief for Respondents, pp. 31-32.
- [8] Fourth and Fifth Assignments of Errors, Brief for Respondents, pp. 18-20.
- [9] Ibid, p. 18.
- [10] 63 Phil. 139 (1936).
- [11] Article VIII, Sections 8 and 10, Constitution.
- [12] Aglipay v. Ruiz, 64 Phil. 201 (1937); Co Chiong v. Cuaderno, 83 Phil. 242 (1949); Phil. Association of Colleges and Universities v. Secretary of Education, 97 Phil. 806 (1955); Macias v. Commission on Elections, 3 SCRA 1 (1961); Lopez v. Roxas, 17 SCRA 756 (1966); Philippine Constitution Asso. v. Mathay, 18 SCRA 300 (1966); Lidasan v. Commission on Elections, 21 SCRA 496 (1967).
- [13] Art. XIII, Sec. 4, Constitution.
- [14] Cf. Gold Creek Mining Corp. v. Rodriguez, 66 Phil. 259 (1938).
- [15] Guido v. Rural Progress, 84 Phil. 847, 850 (1949).
- [16] Ibid, p. 850.
- [17] Ibid.
- [18] I Proceedings of the Philippine Constitutional Convention, Laurel ed., pp. 404-409 (1966).
- [19] VI, Ibid, p. 551.
- [20] Aglipay v. Ruiz, 64 Phil. 201 (1937).
- [21] I Proceedings of the Philippine Constitutional Convention, Laurel ed., p. 566 (1966).
- [22] Ibid, p. 573.
- [23] Ibid, p. 574.
- [24] Ibid, pp. 610-611.
- [25] 4 Wheat 316 (1819).
- [26] United States v. Classic, 313 US 299 (1941).
- [27] The Nature of Judicial Process, p. 83 (1921).
- [28] 96 Phil. 461, 502 (1955).
- [29] Ibid.
- [30] Ibid, p. 504.
- [31] Ibid, p. 475.
- [32] Ibid, p. 477.
- [33] Gold Creek Mining Corp. v. Rodriguez, 66 Phil. 259, 270 (1938).
- [34] Rubi v. Provincial Board, 39 Phil. 660.
- [35] Antamok Goldfields Mining Co. v. Court of Industrial Relations, 70 Phil. 340 (1940) and Leyte Land Transp.

Co. v. Leyte Farmers' & Laborers' Union, 80 Phil. 842 (1948).

[36] ACCFA v. Confederation of Unions, L-21484, November 29, 1969.

[37] Cf. Republic v. Lara, 96 Phil. 170 (1954); Republic v. Garcellano, 103 Phil. 231 (1958); Municipal Govt. of Sagay v. Jison, 104 Phil. 1026 (1958) and Alfonso v. Pasay City, 106 Phil. 1017 (1960).

[38] Guido v. Rural Progress, 84 Phil. 847, 851 (1949).

[39] Ibid, 854.

[40] Visayan Refining Co. v. Camus, 40 Phil. 550 (1919).

[41] Cf. Ermita-Malate Hotel & Motel Operators Association v. City Mayor, 20 SCRA 849 (1967); Morfe v. Mutuc, 22 SCRA 424 (1968); Santiago v. Alikpala, 25 SCRA 356 (1968); Tinio v. Mina, 26 SCRA 512 (1968).

[42] Cuaycong v. Sengbengco, L-11837, November 29, 1960.

[43] 85 Phil. 663 (1950).

[44] 87 Phil. 814 (1950).

[45] 89 Phil. 843 (1951).

[46] 85 Phil. 51 (1949).

[47] 7 SCRA 1004 (1963). It would appear likewise that such infirmity could have been the basis for not allowing the attempted expropriation of lots less than five hectares in Urban Estates v. Montesa, 88 Phil. 348 (1951); Mun. of Caloocan v. Manotok Realty, 94 Phil. 1003 (1954); Mun. Govt. of Caloocan v. Choan Huat and Co., 96 Phil. 88 (1954); Republic v. Prieto, 7 SCRA 1004 (1963); Republic v. Samia, 8 SCRA 197 (1963); and Phil. Realtors v. Santos, 12 SCRA 267 (1964).

[48] Art. III, Sec. 1, par. 1.

[49] Cf. Tigner v. Texas, 310 US 141, 147 (1940), per Frankfurter, J. "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same."

[50] Brief for Petitioner, p. 29.

[51] This doctrine in American constitutional law dates back to Ogden v. Saunders, 12 Wheat. 213, decided in 1827, based on this principle: "It but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body, by which any law is passed to presume in favor of its validity, until its violation of the Constitution is proved beyond all reasonable doubt."

[52] House Bill No. 3570.

[53] Brief for the Respondents, pp. 13-14.

[54] Brief for Petitioner-Appellee, pp. 2-3.

[55] Zandueta v. de la Costa, 66 Phil. 615 (1931).

[56] Lutz v. Araneta, 98 Phil. 148, 153 (1955). This portion of the opinion of Justice J.B.L. Reyes, speaking for the Court, continues: "As ruled in Minnesota ex rel. Pearson v. Probate Court, 309 U.S. 270, 84 L. Ed. 744, 'if the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied; and that 'the legislative authority, exerted within its proper field, need not

embrace all the evils within its reach' (N.L.R.B. v. Jones & Laughlin Steel Corp. 301 U.S. 1, 81 L. Ed. 893). "As to American cases, cf. Carroll v. Greenwich, 199 US 401 (1905); Lindsley v. Natural Carbonic Gas Co., 220 US 61 (1911); Mutual Loan Co. v. Martell, 222 US 225 (1911); Central Lumber Co. v. South Dakota, 226 US 157 (1912); Patsone v. Pennsylvania, 232 US 138 (1914); German Alliance Ins. Co. v. Lewis, 233 US 389 (1914); Keokee Consol Coke Co. v. Taylor, 234 US 224 (1914); Truax v. Raich, 239 US 33 (1915); Armour & Co. v. North Dakota, 240 US 510 (1916); St. Louis I. M. and S.R. Co. v. Arkansas, 240 US 578 (1916); Hall v. Geiger-Jones Co., 242 US 539 (1917); Merrick v. N.W. Halsey and Co., US 568 (1917); Dominion Hotel Co. v. Arizona, 249 US 265 (1919); Perley v. North Carolina, 249 US 510 (1919); Farmers and M. Bank v. Federal Reserve Bank, 262 US 649 (1923); Whitney v. California, 274 US 357 (1927); Silver v. Silver, 280 US 117 (1929); West Coast Hotel v. Parrish, 300 US 379 (1937); United States v. Carolene Products Co., 304 US 144 (1938); Hiro-bayashi v. United States, 320 US 81 (1943); United States v. Petrillo, 332 US 1 (1947); Goesaert v. Cleary, 335 US 464 (1948); Railway Express Agency v. New York, 336 US 106 (1949); Hughes v. Superior Court, 339 US 460 (1950); Williamson v. Lee Optical, 348 (1955); Morey v. Doud, 354 US 457 (1957); Two Guys v. McGinley, 366 US 582 (1961); McLaughlin v. Florida, 379 US 184 (1964); South Carolina v. Katzenbach, 383, 301 (1966); Katzenbach v. Morgan, 384 US 641 (1966).

[57] Decision of the lower court, Annex A, Brief for Respondents, p. 29.

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CONCURRING OPINION

BARREDO, J.:

I concur, and this separate opinion is intended only to clarify two statements in the scholarly main opinion of Mr. Justice Fernando that appear to me to be quite inconsistent with each other. It is said therein that "it (the language of the constitutional provision herein involved) does not admit of doubt that the congressional power thus conferred is far from limited" (p. 6) and that it has a "well-nigh all embracing sweep", (p. 7) but at page 14 it is also said that "there need be no fear that such constitutional grant of power to expropriate is without limit". To avoid any mistake regarding my view as to which of these two statements should prevail, I would like to state categorically that I consider the power granted to Congress by the Constitution to "authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals" to be unlimited by any other provision of said Constitution. Just compensation is in reality a part of the power granted rather than a limitation thereto, just as just compensation is of the essence in any exercise of the power of eminent domain, as, otherwise, it would be plain commandeering. Withal, I hold that the power of eminent domain, in general, is an inherent power of any government, as, otherwise, it would be extremely difficult, if not impossible, for the government to adequately respond to the demands of public need and interest. What government can exist without the power to expropriate lands for streets, schools, public buildings, wharves and military reservations, to mention only some of the indispensable things that any country worthy of its name must establish as necessary means to accomplish its purposes?

As a statement of principle, it is right to reiterate as the main opinion does, that "for the valid exercise of such (the) congressional power, (to expropriate lands for the purpose indicated) that the taking be for public use", but it

is entirely a different matter to imply that in the judicial proceeding instituted towards such end, the Government is still required to present evidence of such public use as a fact. I take it that the constitutional provision itself declares the public objective, purpose or use of the expropriation contemplated, which is the amelioration of long standing socio-agrarian conditions endangering the very ideology on which our government and way of life rest, hence, it should follow that as long as a congressional legislation declares that the condemnation of a particular land is for the specific purpose stated in the Constitution, it is not for the Judiciary to inquire as to whether or not the taking of such land is for public use. The Constitution itself which is supposed to be the supreme law on private property rights declares it to be so, and leaves it to Congress, not to the judiciary, to make the choice of the lands to be taken to attain the objective the constituent assembly aimed to achieve. The scope and the limit of the power of the judiciary in this regard is only to determine the existence of enabling legislation, to see to it that the facts are as contemplated in such enabling act and to provide the vehicle for compliance with procedural due process in the implementation of the congressional act.

The concurring and dissenting opinion of Mr. Justice Teehankee, particularly because he is joined by our eminent Chief Justice Roberto Concepcion and three of my distinguished senior colleagues, Messrs. Justices Jose B. L. Reyes, Arsenio Dizon and Fred Ruiz Castro, commends itself for the deep concern it holds for individual property rights, albeit personally, I feel that the present tendency the world over is to meet the exigencies arising from the seemingly inevitable constant increase of population of all countries, the most important of which is to provide people with lands to cultivate or to live on. To paraphrase the thoughts of Mr. Justice Makalintal in *ACCFA vs. Confederation of Unions*, G. R. No. L-21484, November 29, 1969, expressed in the quotation contained in the main opinion in this case, here as almost everywhere else the irreversible trend is towards socialization of economic resources. It is my considered view that the task to cope with this challenge of the times is primarily with the political departments of our government and not with the judiciary, more so, when, as in the particular aspect of governmental powers to solve social problems, the Constitution itself more than hints a drift along the universal course I have just pointed out and in unmistakable words allocates such powers to the legislature. I am afraid that if the opinion of my brethren is pursued to its logical conclusion, there is danger that the judiciary may be overreaching the traditional boundaries of its faculties at the expense of the other departments who should be in a better position than the courts to determine the factual bases of any social action needed at any given time. To the extent, however, that Mr. Justice Teehankee holds that the matter of whether or not, in a given case, the expropriation in pursuance of an enabling law expressly stating that it should be for the purpose of subdividing a land for resale to tenants is indeed to be done for that specified objective, I agree with my learned colleague. In other words, in any instance where it is shown that contrary to the assumption of Congress, a land has already been subdivided and all or almost all of it are already the subject of conventional transactions between the owners and the occupants thereof, even if this happens after the enactment of the law and its actual implementation, I would hold that the law is inoperative, or no longer so, but not unconstitutional.

With all due respect to the writer of the main opinion whose prolific pen and capacity to make lengthy dissertations on constitutional rights in the context of the development of political, social and economic forces, from his own point of view and more, from those of great legal and judicial exponents thereof, native and foreign, with more of the latter rather often, is unequalled in this Court, in my humble view, the questions of property rights involved in this case have been so foreclosed in the letter of the constitutional precept itself, in its evident spirit and, if recourse to it is still needed, in the deliberations in the constitutional convention of 1934, as to need any lengthy discussion. On these bases, I consider the specific authority granted under the provision in question as an exception to the Bill of Rights. After all, it is not alone the judiciary that can serve as forum for the objections to the exercise of the power so granted because the landowners concerned can make their representations before Congress which as I have said is in a better position to solve social and economic problems.

No less than two of the foremost legal luminaries known to the bench and bar, Delegates Eusebio Orense of Batangas and Vicente J. Francisco of Cavite reminded their colleagues of the risks to private property rights the envisaged congressional authority entailed. Neither their lucid explanations nor their unerring logic could overcome the consensus that was formed after the appeals of Delegates Miguel Cuaderno of Bataan and Florentino Saquin of Zamboanga to the convention to put an end to the social problems pointed out in the speech of Delegate Cuaderno quoted in the main opinion. Delegate Jose B. Conejero of Albay tried to help the opponents, and subsequent to the session of January 29, 1935 when the attempt to eliminate or emasculate the proposal was debated, in the session of the succeeding day, no less than the vice-president of the convention delivered a privileged speech in a vain effort to turn the tide. So stirring was the impassioned speech of Delegate Ruperto Montinola of Iloilo that Delegate Ruperto Kapunan of Leyte attempted to move for the reconsideration of the action taken by the convention the day before, but again the convention remained immutable. By another parliamentary maneuver, Delegate Eusebio Lopez of Batangas tried to reopen the question and upon being upheld by the chair, occasion arose for Delegates Orense, Filemon Sotto of Cebu, Lopez himself, Jose Locsin of Negros Occidental and Manuel Brionest of Cebu to indulge in such an illuminating and instructive debate on practically all aspects of the matter, embellished by the complete mastery of language of the speakers, that a reading of these portions of the deliberations should settle all doubts as to where the heart of the convention was. I would have attempted to follow the usual fashion of quoting choice portions to add force and beauty to this opinion, but, I have found the try futile, as it would certainly fail to convey with adequate fidelity the wisdom, the patriotism, the social consciousness and the fullsome comprehensiveness of the consensus that prevailed, and rather than risking the pitfall of projecting individual opinions of particular members, no matter how prominent and prestigious in talent and love of country or social activism, as the intent of the convention as a whole, and in order also that all those who may read the decision and the separate opinions in this case may examine them from a fairer perspective, and more importantly, so that those who are apprehensive and jittery about the forthcoming constitutional convention may have an insight into how Filipinos, once given the responsibility, truly act as such, with only the interest of the nation uppermost in their minds and hearts, I am making as an annex of this opinion and an integral part hereof, a scanned Ricohfax copy of the complete record of the deliberations I have mentioned above which took place on January 29 and 30, 1935 on the floor of the constitutional convention of 1934, as they are reported in Vol. VI, pp. 533 to 594 (excluding pp. 559-564) of the Proceedings of the Philippine Constitutional Convention by Laurel. Indeed, no portion of this debate should be lost to history and our posterity.

It may just as well be also stated, at this juncture, in the interest of historical truth, that the social philosophy underlying the constitutional provision herein involved is neither new nor purely indigenous. Truth to tell, the idea of opening public agricultural lands for acquisition, without compensation in the case of natives who are actual occupants thereof, or lease by individuals and corporations, with such limited areas as to afford as many persons as possible the opportunity to enjoy such privilege of acquiring or leasing was already in the first legislative organic law of this country, the Philippine Bill of 1902, enacted by the Am-erican Congress. (Secs. 14 and 15) Anent the expropriation of private lands, the Philippine Bill of 1902, in its Section 64 already "authorized" the government to exercise the right of eminent domain "in respect of any lands, easements, appurtenances and hereditaments which, on the thirteenth of August, eighteen hundred and ninety eight, were owned or held by associations, corporations, communities, religious orders, or private individuals in such large tracts or parcels of land and in such manner as in the opinion of the Commission injuriously affect the peace and welfare of the people of the Philippine Islands" and our present Constitution provides parallelly in Sec. 4, Art. XIII, that "the Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at costs to individuals."

I would like to close by saying that I consider it necessary to view the question before Us beyond its

socio-economic aspect as such, and to realize that fundamentally what the Constitution envisages in the precept under discussion is to bring soonest possible to a reality the slogan of land to the landless. In the jargon of the activists, the accomplishment of this end is no longer an open option for us, it is an irreversible commitment unmistakably written by our constituent fathers.

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CONCURRING AND DISSENTING OPINION

TEEHANKEE, J.:

I concur in the result of the main opinion, insofar as it reverses the decision of the lower Court which granted petitioner-appellee's petition for a writ of prohibition and permanently enjoined respondents-appellees from instituting the proceedings for the expropriation, of the "Tatalon Estate" as specifically authorized by Republic Act No. 2616.

The result is that respondents may now properly file the corresponding expropriation proceedings for the expropriation of the "Tatalon Estate". It will be recalled that in 1961, the Court in G.R. No. L-18128 upheld the preliminary injunction issued by the lower Court enjoining the filing of such expropriation proceedings, until decision of the prohibition case on the merits.

From the various views expressed by the members of the Court during the deliberations on the case, I gather that our decision now does not foreclose petitioner from raising in the expropriation proceedings what it may deem as proper and valid objections and defenses to the action, including those it has advanced in the present case, just as respondents may therein adduce additional facts, besides, those of record, in support of the petition to be filed by them.

To the extent that the main opinion tends to prematurely judge petitioner's objections and defenses, I reserve my vote. I do not believe that all the relevant facts and circumstances are properly and adequately before the Court to enable it to rule on them now.

For purposes of this separate opinion, it shall suffice to list the principal issues which should properly be resolved, in my estimation, in the expropriation proceedings yet to be instituted.

1. To begin with, the question of what remains of the "Tatalon Estate" that may be subjected to expropriation proceedings has to be threshed out. The Solicitor General speculates in his Memorandum (at page 12) that the lower Court's finding of fact that "only 11. 68% of the Sta. Mesa Heights Subdivision remained unsold" is "deceptive", because "the remaining 11. 68% could all be inside the Tatalon Estate." On the other hand, petitioner asserts categorically in its memorandum (at page 9) that "As a matter of fact, as of February 17, 1969, of the original area of about 109 hectares, 411,968.80 square meters had already been sold. Considering that 50,612.30 square meters are reserved for public parks, 3,724.20 square meters for alleys, and 241,989.50 square meters for streets, only 388,989. 50 square meters, or less than 39 hectares, remain unsold. "

2. Similarly, the question of whether there remain "bona fide" occupants on the property, who are the express beneficiaries of Republic Act 2616 or whether such occupants are merely illegal squatters and occupants as found

by the lower court in its decision and asserted by petitioner is one of sharp conflict.

3. All these factual questions should first be determined, before the vital issues of necessity of the taking and whether it is for the public use, may be resolved. I do not think that the re-examination of the Baylosis case can properly be undertaken now without the relevant facts before us. Whatever facts these are, as found by the lower court, appear to be adverse to respondents, but respondents shall have another opportunity at the expropriation proceedings to establish the necessary facts which could bring the questioned Act within confines of constitutional limits.

4. For the main opinion quotes with favor from Justice Tuason in the leading Guido case that "no fixed line of demarcation between what taking is for public use and what is not can be made; each case has to be judged according to its peculiar circumstances" and that, "the assertion of the right on the part of the legislature to take the property of one citizen and transfer it to another, even for a full compensation, when the public interest is not promoted thereby, is claiming a despotic power, and one inconsistent with every just principle and fundamental maxim of a free government. " I share the view in the dissenting opinion of Justice J.B.L. Reyes that the constitutional provision is not necessarily limited to landed estates. (Article XIII, section 4). But that case clearly involved agrarian discontent and with the pertinent facts yet to be established, I am not prepared to say that it is in pari materia with the case at bar. We must first have the peculiar facts and circumstances governing the case at bar, before we can judge it.[1]

5. Neither do I agree with the observation that the constitutional power of Congress for the expropriation of lands is well-nigh all embracing and forecloses the courts from inquiring into the necessity for the taking of the property. It is noted that this is the first case where Congress has singled out a particular property for condemnation under the constitutional power conferred upon it. Does this square with the due process and equal protection clauses of the Constitution? Is the explanatory note of the bill later enacted as Republic Act 2616, without any evidence as to a hearing with the affected parties having been given the opportunity to be heard, and citing merely the population increase of Quezon City and the land-for-the-landless program sufficient compliance with these basic constitutional guarantees? Rather, does not the need for a more serious scrutiny as to the power of Congress to single out a particular piece of property for expropriation, acknowledged in the main opinion, call for judicial scrutiny, with all the facts in, as to the need for the expropriation for full opportunity to dispute the legislative appraisal of the matter? And who should bear the burden of demonstrating that the equal protection guarantee had been observed, the State or the owner whose property has been singled out?

6. Pertinent to note with reference to these questions is the guideline in the Guido case that "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", and the Court's admonition in the subsequent Arellano Law College case that where such limitations and conditions governing the need of taking property for public use are not present, "the National Government may not confer upon its instrumentalities authority (to expropriate) which it itself may not exercise. " This would indicate precisely that where Congress itself directly exercised the power to expropriate and singles out a specific property under the Act, rather than have the Executive agencies institute the corresponding expropriation proceeding under the general laws it has enacted in pursuance of its constitutional power, the question of its appraisal of the necessity and of the validity of its exercise of the authority to expropriate the specific property is not foreclosed from judicial scrutiny.

7. Finally, the main opinion acknowledges that existing contractual rights that have been acquired by vendor and purchasers of subdivided lots of the property shall be accorded the appropriate constitutional protection of non-impairment, at the expropriation proceedings. Importantly related to this unassailable dictum are questions not founded on primacy of property rights concepts or personal predilections or private notions of policy. These

concern the fact that the Tatalon Estate has been subdivided into lots for sale to the public, with priority after the passage of Republic Act No. 2616 to the occupants (and such purchasers may have been theretofore landless themselves), and the Court's reason in dismissing the action for condemnation in the analogous *Urban Estates, Inc.* case that "the people on whose behalf this action has been instituted could acquire the remaining lots by direct purchase from the defendant like those (direct) purchasers." [2] In view of the cardinal principle of eminent domain that just compensation of the market value of the land must be paid as well as of the constitutional limitation that the land be conveyed at cost to the individuals concerned, respondents may well consider that the objectives of the Act may be accomplished more expeditiously by a direct purchase of the available unsold lots for resale at cost to the remaining bona fide occupants in accordance with the Act's provisions or by extending financial assistance to enable them to purchase directly the unsold lots from petitioner. I do not see anything to be gained by respondents from the institution of expropriation proceedings, when petitioner-owner is actually selling the property in subdivided lots.

[1] Vide. *NARRA vs. Francisco*, L-14111, Oct. 24, 1960, in-volving 85 has. ; *Prov. of Rizal vs. San Diego, Inc.*, involving 66 has.

[2] 88 Phil. 348, 354.

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