ROBERN DEVELOPMENT CORPORATION, PETITIONER, VS. JUDGE JESUS V. QUITAIN, REGIONAL TRIAL COURT OF DAVAO CITY, BR. 15; AND NATIONAL POWER CORPORATION, RESPONDENTS.

G.R. No. 135042. September 23, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Expropriation proceedings are governed by revised Rule 67 of the 1997 Rules of Civil Procedure which took effect on July 1, 1997. Previous doctrines inconsistent with this Rule are deemed reversed or modified. Specifically, (1) an answer, not a motion to dismiss, is the responsive pleading to a complaint in eminent domain; (2) the trial court may issue a writ of possession once the plaintiff deposits an amount equivalent to the assessed value of the property, pursuant to Section 2 of said Rule, without need of a hearing to determine the provisional sum to be deposited; and (3) a final order of expropriation may not be issued prior to a full hearing and resolution of the objections and defenses of the property owner.

The Case

Before us is a Petition under Rule 45, challenging the Decision of the Court of Appeals[1] promulgated February 27, 1998 and its Resolution promulgated July 23, 1998 in CA-GR SP-46002, which (1) dismissed the action for certiorari and preliminary injunction filed by Robern Development Corporation ("Robern" for brevity); and (2) effectively affirmed the Orders (dated August 13, 1997; September 11, 1997; and November 5, 1997) and the Writ of Possession (dated September 19, 1997), all issued by the Regional Trial Court of Davao City in Civil Case No. 25356-97.

The assailed Decision disposed as follows:[2]

> "IN VIEW OF ALL THE FOREGOING, the instant petition is ordered DISMISSED. Costs against the petitioner."

In its assailed Resolution, the Court of Appeals denied reconsideration in this manner:[3]

> "There being no compelling reason to modify, reverse or reconsider the Decision rendered in the case dated February 27, 1998[;] the Motion for Reconsideration posted by petitioner on March 23, 1998 is DENIED, it appearing further that the arguments raised therein were already considered and passed upon in the aforesaid Decision."

The Facts

The following facts are undisputed.

1. Robern is the registered owner of a parcel of land with an area of about 17,746.50 square meters, which the National Power Corporation ("NPC" for brevity) is seeking to expropriate. The property forms part of a proposed low-cost housing project in Inawayan, Binugao, Toril, Davao City.

2. On June 6, 1997, NPC filed a Complaint for Eminent Domain against Robern.[4] Instead of filing an answer, petitioner countered with a Motion to Dismiss,[5] alleging (a) that the Complaint suffered a jurisdictional defect for not showing that the action bore the approval of the NPC board of directors; (b) that Nemesio S. Cañete, who signed the verification and certification in the Complaint, was not the president, the general manager or an officer specifically authorized under the NPC charter (RA 6395); (c) that the choice of property to be expropriated was improper, as it had already been intended for use in a low-cost housing project, a public purpose within the contemplation of law; and the choice was also arbitrary, as there were similar properties available within the area.

3. Before this Motion could be resolved, NPC filed a Motion for the Issuance of Writ of Possession based on Presidential Decree No. 42. On July 9, 1997, NPC deposited P6,121.20 at the Philippine National Bank, Davao Branch, as evidenced by PNB Savings Account No. 385-560728-9.[6]

4. In its Order of August 13, 1997, the trial court denied the petitioner's Motion to Dismiss in this wise:

> "This refers to the motion to dismiss. The issues raised are matters that should be dealt with during the trial proper. Suffice it to say that [NPC] has the privilege as a utility to use the power of eminent domain.
>
> "The motion is denied for lack of merit. The pre-trial conference shall be on August 27, 1997 at 2:30 P.M."[7]

5. On September 2, 1997, petitioner filed a Motion for Reconsideration, pointing out that (a) the issues raised in the Motion to Dismiss could be resolved without trial, as they could be readily appreciated on the face of the Complaint itself vis-à-vis the applicable provisions of law on the matter; and (b) the grounds relied upon for dismissing the Complaint did not require evidence aliunde.

6. On September 11, 1997, the trial court denied the Motion, as follows:

> "The xxx motion [of the petitioner] for reconsideration is denied for lack of merit. Finding the xxx motion [of NPC] to be meritorious[,] let a writ of possession issue."[8]

7. On September 22, 1997, petitioner filed a Motion for Reconsideration of the Order of September 11, 1997, arguing among others that Section 15-A of RA 6395 was virtually "amended" when Cañete was allowed to verify and sign the certificate of non-forum shopping in regard to the Complaint for expropriation filed by NPC.

8. Without awaiting the outcome of the Motion for Reconsideration, NPC filed a Motion to Implement the Writ of Possession.

9. On September 19, 1997, in spite of petitioner's opposition, the trial court issued a Writ of Possession as follows:

> "WHEREAS, the applicant National Power Corporation in the above-titled case has presented to this Court a petition praying for the issuance of a Writ of Possession of the affected property of the xxx Robern Development Corporation, described hereinbelow, as follows:
>
> TCT No.
>
> Total Area in Square Meter
>
> Area Affected in Square Meter
>
> T-251558
>
> (T-141754)

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11,469.00

3,393.00

T-251559

(T-141755)

10,000.00

2,124.00

T-251556

(T-14152)

30,000.00

3,402.00

T-251555

45,000.00

8,827.50

TOTAL

97,371.00

17,746.50– Tota laffected area

> "WHEREAS, on September 11, 1997 the court issued an Order granting the issuance of a Writ of Possession in favor of the xxx National Power Corporation for the immediate possession and control of the parcels of land owned by the [petitioner] as aforestated for the construction of the Mantanao-New-Loon 138 KV Transmission Line Project to be undertaken by the petitioner affecting 17,746.50 sq.m. of the 97,371.00 sq. meters as shown above.
>
> "NOW THEREFORE, you are hereby commanded to place [NPC] in possession and control of the affected property consisting 17,746.50 [s]quare [m]eters of the total area of 97,371.00 square meters described above and to eject therefrom all adverse occupants, Robern Development Corporation and [all other] persons xxx claiming under it."[9]

10. On November 5, 1997, before counsel for the petitioner received any order from the trial court directing the implementation of the Writ of Possession, NPC occupied the disputed property.

11. In a Petition for Certiorari before the Court of Appeals (CA), Robern assailed the Writ on the following grounds: (a) patent on the face of the complaint were its jurisdictional defect, prematurity and noncompliance with RA 6395; and (b) the issuance of the Writ of Possession was irregular, arbitrary and unconstitutional, as the trial court had yet to fix the "appropriate value for purposes of taking or entering upon the property to be

expropriated."

Ruling of the Court of Appeals
The Court of Appeals upheld the trial court on the following grounds.

First, the verification and certification of the Complaint by someone other than the president or the general manager of NPC was not a fatal jurisdictional defect. It was enough to allege that the expropriating body had the right of eminent domain. The issues of whether the expropriation was properly authorized by the board of directors and whether Cañete's verification and certification of the Complaint was likewise authorized were evidentiary and could be ruled upon only after the reception of evidence.

Second, whether the disputed property could still be expropriated even if it had already been intended to be used in a low-cost housing project and whether the choice of that lot was arbitrary and erroneous, given the availability of similar properties in the area, were factual issues that would entail presentation of evidence by both parties.

Third, the allegation in the Complaint that NPC sought to acquire an easement of right-of-way through the disputed property did not preclude its expropriation. Section 3-A of the NPC charter allowed the power company to acquire an easement of right-of-way or even the land itself if the servitude would injure the land.

Fourth, the issuance of the Writ of Possession was proper in view of NPC's compliance with Section 2, Rule 67 of the 1997 Rules of Civil Procedure, by depositing with the Philippine National Bank an amount equivalent to the assessed value of the disputed property.

Fifth, certiorari was not the proper remedy, as the Order sustaining the right to expropriate the property was not final and could still be appealed by the aggrieved party. The availability of appeal ruled out certiorari.

Hence, this Petition.[10]
The Issues
In their Memorandum,[11] petitioner raises the following issues:[12]

> "I WHETHER OR NOT THE QUESTIONED ORDER OF THE RESPONDENT JUDGE DATED SEPTEMBER 11, 1997 DIRECTING THE ISSUANCE OF A WRIT OF POSSESSION IS UNCONSTITUTIONAL, HIGHLY IRREGULAR, ARBITRARY, AND DESPOTIC.
>
> "II WHETHER OR NOT THE COMPLAINT FILED IN THE INSTANT CASE IS DISMISSIBLE ON ITS FACE FOR LACK OF JURISDICTION, BEING FLAWED WITH PREMATURITY, AND VIOLATIVE OF RA 6395.
>
> "III WHETHER OR NOT THE COURT OF APPEALS MADE A FINDING NOT BORNE OUT BY THE COMPLAINT, THUS IT EXCEEDED ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION.
>
> "IV WHETHER OR NOT THE CHOICE OF THE PROPERTY TO BE EXPROPRIATED IS ARBITRARY."

Simply stated, the petition raises the following issues:

1. Were there valid grounds to dismiss the Complaint?

2. Was the Writ of Possession validly issued, considering that the trial court had not conducted any hearing on the amount to be deposited?

This Court's Ruling
The Court of Appeals was correct in its rulings, but in the interest of substantial justice, the petitioner should be given an opportunity to file its answer.

First Issue: Grounds for Dismissal
Jurisdiction

Petitioner contends that the trial court did not acquire jurisdiction over the case because, first, Atty. Cañete who signed the verification and certification of non-forum shopping was neither the president nor the general manager of NPC; and second, under Section 15-A of RA 6395, only the NPC chief legal counsel, under the supervision of the Office of the Solicitor General is authorized to handle legal matters affecting the government power corporation. On the other hand, NPC argues that Cañete, as its regional legal counsel in Mindanao, is authorized to prepare the Complaint on its behalf.

We find the disputed verification and certification to be sufficient in form. Verification is intended to assure that the allegations therein have been prepared in good faith or are true and correct, not mere speculations.[13] Generally, lack of verification is merely a formal defect that is neither jurisdictional nor fatal. Its absence does not divest the trial court of jurisdiction.[14] The trial court may order the correction of the pleading or act on the unverified pleading, if the attending circumstances are such that strict compliance with the rule may be dispensed with in order to serve the ends of justice.

The certificate of non-forum shopping directs the “plaintiff or principal party” to attest under oath that (1) no action or claim involving the same issues have been filed or commenced in any court, tribunal or quasi-judicial agency and that, to the best of the plaintiff's knowledge, no such other action or claim is pending; (2) if there is such other pending action or claim, a complete statement of its present status shall be made; and (3) if it should be learned that the same or a similar action or claim has been filed or is pending, the plaintiff shall report this fact to the court where the complaint or initiatory pleading was filed.[15] This rule is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different forums, as this practice is detrimental to orderly judicial procedure.[16] Administrative Circular No. 04-94, which came before the 1997 Rules of Court, is deemed mandatory but not jurisdictional, as jurisdiction over the subject or nature of the action is conferred by law.[17]

In this case, the questioned verification stated that Atty. Cañete was the acting regional legal counsel of NPC at the Mindanao Regional Center in Iligan City. He was not merely a retained lawyer, but an NPC in-house counsel and officer, whose basic function was to prepare legal pleadings and to represent NPC-Mindanao in legal cases. As regional legal counsel for the Mindanao area, he was the officer who was in the best position to verify the truthfulness and the correctness of the allegations in the Complaint for expropriation in Davao City. As internal legal counsel, he was also in the best position to know and to certify if an action for expropriation had already been filed and pending with the courts.

Besides, Atty. Cañete was not the only signatory to the Complaint; he was joined by Comie P. Doromal, OIC-assistant general counsel; and Catherine J. Pablo -- both of the NPC Litigation & Land and Land Rights Department. They all signed on behalf of the solicitor general in accordance with the NPC charter.[18] Their signatures prove that the NPC general counsel and the solicitor general approved the filing of the Complaint for expropriation. Clearly then, the CA did not err in holding that the Complaint was not dismissible on its face, simply because the person who had signed the verification and certification of non-forum shopping was not the president or the general manager of NPC.

Legal Standing and Condition Precedent

Next, petitioner asserts that NPC had no legal standing to file the expropriation case, because the Complaint did not allege that its board of directors had authorized its filing. It added that under Section 6, RA 6395, only the board was vested with the corporate power to sue and be sued.

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The National Power Corporation explains that, like other corporate officers and employees whose functions are defined by the board, Atty. Cañete is authorized to file the expropriation case. Even if he is not the general counsel, he has residual authority to prepare, verify and certify the Complaint for expropriation.

We rule for the private respondent. Rule 67, Section 1 of the Rules of Court, provides:

> "SECTION 1. The complaint.—The right of eminent domain shall be exercised by the filing of a verified complaint which shall state with certainty the right and purpose of expropriation, describe the real or personal property sought to be expropriated, 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 separate interest of each defendant. xxxx."

The foregoing Rule does not require that the Complaint be expressly approved by the board of directors of a corporation. In any event, such authorization is a factual issue that can be threshed out during the trial. As held by the appellate court, "the issue of whether or not the expropriation proceedings [were] authorized by the Board of Directors or that those who signed the complaint [were] authorized representatives are evidentiary in character determinable only in [the] trial proper."

Prematurity of the Complaint

The same ruling applies to the argument alleging prematurity of the Complaint. Petitioner's insistence that NPC must secure the approval of the provincial board and the municipal council is unfounded. Section 3(j), RA 6395, merely requires that the Complaint be filed in the same manner as an expropriation case of the national, the provincial or the municipal government. At bottom, all that is needed is compliance with Rule 67 of the Rules of Court and the prevailing jurisprudence on expropriation.

Defenses and Objections

Petitioner avers that the Complaint should be dismissed, because the subject property was already committed to be used in a low-cost housing project. Besides, there were other available properties in the area. Finally, the Complaint allegedly sought only an easement of a right-of-way, not essentially an expropriation.

We disagree. Petitioner's argument in this case is premised on the old rule. Before the 1997 amendment, Section 3 of Rule 67 allowed a defendant "in lieu of an answer, [to] present in a single motion to dismiss or for other appropriate relief, all of his objections and defenses to the right of the plaintiff to take his property xxx." A motion to dismiss was not governed by Rule 15 which covered ordinary motions. Such motion was the required responsive pleading that took the place of an answer and put in issue the plaintiff's right to expropriate the defendant's property.[19] Any relevant and material fact could be raised as a defense in a condemnation proceeding, such as that which tended to show that (1) the exercise of the power to condemn was unauthorized, or (2) there was cause for not taking defendant's property for the purpose alleged in the petition, or (3) the purpose for the taking was not public in character.[20]

This old rule found basis in the constitutional provisions on the exercise of the power of eminent domain, which were deemed to be for the protection of the individual property owner against the aggressions of the government.[21] Under the old rule, the hearing of the motion and the presentation of evidence followed.

However, Rule 67 of the 1997 Rules of Civil Procedure no longer requires such extraordinary motion to dismiss. Instead, it provides:

> "SEC. 3. Defenses and objections.— x x x x
>
> "If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense

> to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. x x x x."

In his book on remedial law, Justice Florenz D. Regalado writes that the old Rule was a "bit confusing as the previous holdings under that former provision also allowed the filing of another motion to dismiss, as that is understood in Rule 16, to raise additionally the preliminary objections authorized by that Rule." Further, an answer, which is now required, gives more leeway. First, even if it still applies the omnibus motion rule, it allows amendments to be made within ten days from its filing.[22] Second, the failure to file an answer does not produce all the disastrous consequences of default in ordinary civil actions, because the defendant may still present evidence as to just compensation.[23]

When petitioner filed its Motion to Dismiss, the 1997 Rules of Civil Procedure had already taken effect. Statutes regulating procedure in the courts are applicable to actions pending and undetermined at the time those statutes were passed.[24] New court rules apply to proceedings that take place after the date of their effectivity.[25] On April 8, 1997, the Court en banc issued a Resolution in Bar Matter No. 803, declaring that the revisions in the Rules of Court were to become effective on July 1, 1997.

Accordingly, Rule 16, Section 1 of the Rules of Court, does not consider as grounds for a motion to dismiss the allotment of the disputed land for another public purpose or the petition for a mere easement of right-of-way in the complaint for expropriation. The grounds for dismissal are exclusive to those specifically mentioned in Section 1, Rule 16 of the Rules of Court, and an action can be dismissed only on a ground authorized by this provision.[26]

To be exact, the issues raised by the petitioner are affirmative defenses that should be alleged in an answer, since they require presentation of evidence aliunde.[27] Section 3 of Rule 67 provides that "if a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property," he should include them in his answer. Naturally, these issues will have to be fully ventilated in a full-blown trial and hearing. It would be precipitate to dismiss the Complaint on such grounds as claimed by the petitioner. Dismissal of an action upon a motion to dismiss constitutes a denial of due process if, from a consideration of the pleadings, it appears that there are issues that cannot be decided without a trial of the case on the merits.[28]

Inasmuch as the 1997 Rules had just taken effect when this case arose, we believe that in the interest of substantial justice, the petitioner should be given an opportunity to file its answer to the Complaint for expropriation in accordance with Section 3, Rule 67 of the 1997 Rules of Civil Procedure.

Order of Condemnation

The Court will now tackle the validity of the trial court's assailed Order of August 13, 1997, which Respondent Court affirmed in this wise:

> "xxxx The denial of Robern's Motion to Dismiss [is tantamount] to a confirmation or a determination of the authority of NPC to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the case. Under Section 4 of the present Rule 67, 1997 Rules, supra, an order sustaining the right to expropriate the property is a final one and may be appealed by any aggrieved party (Municipality of Biñan v. Garcia, 180 SCRA 576 [1989]). xxxx."[29]

We clarify. Founded on common necessity and interest, eminent domain is the inherent right of the state (and of those entities to which the power has been lawfully delegated) to condemn private property to public use upon payment of just compensation. It may appear to be harsh and encompassing, but judicial review limits the exercise

of eminent domain to the following areas of concern: (1) the adequacy of the compensation, (2) the necessity of the taking, and (3) the public-use character of the purpose of the taking.[30]

If there are objections and defenses that require the presentation of evidence and the hearing of arguments, the trial court should not immediately issue an order of expropriation. This is clearly implied in Section 4 of Rule 67, which mandates that "[i]f the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint x x x."

The Court of Appeals ruled that there were issues that required presentation of evidence during the trial proper; namely, whether the expropriation proceeding was authorized by the NPC board of directors, whether the property to be expropriated was already devoted to public use, and whether the choice of the property was arbitrary and erroneous in view of the other properties available in the area. The necessity of the taking and the public character of the purpose of the expropriation were still in issue and pending resolution by the trial court. To these we add the issue of whether the "taking" of the disputed property would require only an easement of right-of-way or would perpetually deprive Robern of its proprietary rights. Therefore, the trial court should not have issued the assailed Order of Expropriation which foreclosed any further objection to the NPC's right to expropriate and to the public purpose of the expropriation, leaving the matter of just compensation as the only remaining substantial issue.

The nullity of the Order was glaring. While the trial court correctly denied the Motion to Dismiss, as the issues raised by the petitioner should be dealt with during the trial proper, it nonetheless ruled that NPC had "the privilege as a [public] utility to use the power of eminent domain."

Second Issue Requisites of a Writ of Possession
Petitioner objects to the issuance of the Writ of Possession for being "highly irregular, arbitrary and despotic," because the Motion to Dismiss was yet to be resolved. It stresses that there was no hearing on the correct amount of just compensation for the taking of the disputed property, as required in Panes v. Visayas State College of Agriculture.[31] We cannot uphold this contention.

There is no prohibition against a procedure whereby immediate possession of the land involved in expropriation proceedings may be taken, provided always that due provision is made to secure the prompt adjudication and payment of just compensation to the owners.[32] However, the requirements for authorizing immediate entry in expropriation proceedings have changed.

To start with, in Manila Railroad Company v. Paredes,[33] the Court held that the railway corporation had the right to enter and possess the land involved in condemnation proceedings under Section 1, Act No. 1592,[34] immediately upon the filing of a deposit fixed by order of the court.

The Rules of Court of 1964[35] sanctioned this procedure as follows:

> "SEC. 2. Entry of plaintiff upon depositing value with National or Provincial Treasurer.-- Upon the filing of the complaint or at any time thereafter the plaintiff shall have the right to take or enter upon the possession of the real or personal property involved if he deposits with the National or Provincial Treasurer its value, as provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings, to be held by such treasurer subject to the orders and final dispositon of the court. xxxx." (Underscoring ours.)

Subsequently, former President Ferdinand E. Marcos signed into law Presidential Decree No. 42 and its companion decrees, which removed the court's discretion in determining the amount of the provisional value of

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the land to be expropriated and fixed the provisional deposit at its assessed value for taxation purposes. Hearing was not required; only notice to the owner of the property sought to be condemned.

On the issue of immediate possession, PD 42 (Authorizing The Plaintiff In Eminent Domain Proceedings To Take Possession Of The Property Involved Upon Depositing The Assessed Value, For Purposes of Taxation) provided:

> "WHEREAS, the existing procedure for the exercise of the right of eminent domain is not expeditious enough to enable the plaintiff to take or enter upon the possession of the real property involved as soon as possible, when needed for public purposes;
>
> x x x x x x x x x
>
> "xxx [T]hat, upon filing in the proper court of the complaint in eminent domain proceedings or at anytime thereafter, and after due notice to the defendant, plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the Philippine National Bank, xxx an amount equivalent to the assessed value of the property for purposes of taxation, to be held by said bank subject to the orders and final disposition of the court.
>
> "The provisions of Rule 67 of the Rules of Court and of any other existing law contrary to or inconsistent herewith are hereby repealed."

Paragraph 3 of PD No. 1224 (Defining The Policy On The Expropriation Of Private Property For Socialized Housing Upon Payment Of Just Compensation) also authorized immediate takeover of the property in this manner:

> "3. Upon the filing of the petition for expropriation and the deposit of the amount of just compensation as provided for herein, the Government, or its authorized agency or entity, shall immediately have possession, control and disposition of the real property and the improvements thereon even pending resolution of the issues that may be raised whether before the Court of First Instance or the higher courts."

Where the "taking" was for "socialized housing," Section 3, PD 1259 (Amending Paragraphs 1, 2, And 3 Of PD No. 1224 Further Defining The Policy On The Expropriation Of Private Property For Socialized Housing Upon Payment Of Just Compensation), amending the above-quoted paragraph, provided:

> "Upon the filing of the petition for expropriation and the deposit of the amount of the just compensation provided for in Section 2 hereof, the Government, or its authorized agency or entity, shall immediately have possession, control and disposition of the real property and the improvements thereon even pending resolution of the issues that may be raised whether before the Court of First Instance, Court of Agrarian Relations or the higher courts."

Similarly, Section 1, PD No. 1313 (Further Amending Paragraph 3 Of Presidential Decree No. 1224 As Amended By Presidential Decree No. 1259, Defining The Policy On The Expropriation Of Private Property For Socialized Housing Upon Payment Of Just Compensation), amending paragraph 3 of PD 1224, decreed:

> "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 percent (10%) of the just compensation provided for in Section 2 of Presidential Decree No. 1259, the government, or its authorized agency or entity, shall immediately have possession, control and disposition of the real property and the improvements thereon with the power of demolition, if necessary, even pending resolution of the issues that may be raised whether before the Court of First Instance, Court of Agrarian Relations, or the higher Courts."

In this connection, we also quote Section 7 of PD No. 1517 (Proclaiming Urban Land Reform In The Philippines And Providing For The Implementing Machinery Thereof), which reads:

"x x x x x x x x x

> "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 per cent (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 improvements thereon with the power of demolition, if necessary, even pending resolution of the issues that may be raised whether before the Court of First Instance, Court of Agrarian Relations, or the higher Courts."

Finally, PD 1533 (Establishing A Uniform Basis For Determining Just Compensation And The Amount Of Deposit For Immediate Possession Of The Property Involved In Eminent Domain Proceedings) mandated the deposit of only ten percent (10%) of the assessed value of the private property being sought to be expropriated, after fixing the just compensation for it at a value not exceeding that declared by the owner or determined by the assessor, whichever is lower. Section 2 thereof reads:

> "SEC. 2. 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 an amount equivalent to ten per cent (10%) of the amount of compensation provided in Section 1 hereof, the government 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."

Accordingly, in San Diego v. Valdellon,[36] Municipality of Daet v. Court of Appeals,[37] and Haguisan v. Emilia,[38] the Court reversed itself and ruled that Section 2, Rule 67 of the 1964 Rules, was repealed by Presidential Decree No. 42. The judicial duty of ascertaining and fixing the provisional value of the property was done away with, because the hearing on the matter had not been "expeditious enough to enable the plaintiff to take possession of the property involved as soon as possible, when needed for public purpose."[39]

In Daet, the Court clarified that the provisional value of the land did not necessarily represent the true and correct one but only tentatively served as the basis for immediate occupancy by the condemnor. The just compensation for the property continued to be based on its current and fair market value, not on its assessed value which constituted only a percentage of its current fair market value.

However, these rulings were abandoned in Export Processing Zone Authority v. Dulay,[40] because "[t]he method of ascertaining just compensation under the aforecited decrees constitute[d] impermissible encroachment on judicial prerogatives. It tend[ed] to render this Court inutile in a matter which under the Constitution [was] reserved to it for final determination." The Court added:

> "We return to older and more sound precedents. This Court has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. (See Salonga v. Cruz Pano, supra).
>
> "The determination of 'just compensation' in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the 'just-ness' of the decreed compensation."

In Province of Camarines Sur v. Court of Appeals,[41] the Court reaffirmed the unconstitutionality of the presidential decrees that fixed the just compensation in an expropriation case at the value given to the condemned property either by the owners or by the assessor, whichever was lower.

More precisely, Panes v. Visayas State College of Agriculture[42] ruled that the judicial determination of just compensation included the determination of the provisional deposit. In that case, the Court invalidated the Writ of Possession because of lack of hearing on the provisional deposit, as required under then Section 2 of Rule 67, pre-1997 Rules. In the light of the declared unconstitutionality of PD Nos. 76, 1533 and 42, insofar as they sanctioned executive determination of just compensation, any right to immediate possession of the property must be firmly grounded on valid compliance with Section 2 of Rule 67, pre-1997 Rules; that is, the value of the subject property, as provisionally and promptly ascertained and fixed by the court that has jurisdiction over the proceedings, must be deposited with the national or the provincial treasurer.[43]

However, the 1997 Rules of Civil Procedure revised Section 2 of Rule 67 and clearly reverted to the San Diego, Daet and Haguisan rulings. Section 2 now reads:

> "SEC. 2. Entry of plaintiff upon depositing value with authorized government depositary.—Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. xxxx
>
> x x x x x x x x x
> After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties." [Underscoring ours.]

In the present case, although the Complaint for expropriation was filed on June 6, 1997, the Motion for the Issuance of the Writ of Possession was filed on July 28, 1997; thus, the issuance of the Writ is covered by the 1997 Rules. As earlier stated, procedural rules are given immediate effect and are applicable to actions pending and undetermined at the time they are passed; new court rules apply to proceedings that take place after the date of their effectivity.[44] Therefore, Section 2, Rule 67 of the 1997 Rules of Civil Procedure, is the prevailing and governing law in this case.[45]

With the revision of the Rules, the trial court's issuance of the Writ of Possession becomes ministerial, once the provisional compensation mentioned in the 1997 Rule is deposited. Thus, in the instant case the trial court did not commit grave abuse of discretion when it granted the NPC's Motion for the issuance of the Writ, despite the absence of hearing on the amount of the provisional deposit.

The Court nonetheless hastens to add that PD 1533 is not being revived.

Under Section 2, Rule 67 of the 1997 Rules, the provisional deposit should be in an amount equivalent to the full assessed value of the property to be condemned, not merely ten percent of it. Therefore, the provisional deposit of NPC is insufficient. Since it seeks to expropriate portions, not the whole, of four parcels of land owned by Robern, the provisional deposit should be computed on the basis of the Tax Declarations of the property:[46]

> TCT No.
>
> Total Area Sq. M.
>
> Area Affected in Sq. M.
>
> Assessed Value
>
> Provisional in Deposit
>
> T-251558

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(T-141754)

11,469.00

3,393.00

P4,250.00

P1,257.32

T-251559

(T-141755)

10,000.00

2,124.00

8,960.00

1,903.10

T-251556

(T-14152)

30,000.00

3,402.00

18,910.00

2,144.39

T-251555

45,000.00

8,827.50

18,450.00

3,619.28

TOTAL

97,371.00

17,746.50

P8,924.09

Hence, the amount of the provisional deposit should be increased, in order to conform to the requirement that it should be equivalent to the assessed value of the property. In the interest of justice, NPC should in the meantime pay Robern reasonable rental, to be fixed by the trial court in its final decision, for the use and occupation of the disputed property from the date of entry until the deposit of the full assessed value of the property, as mandated by Rule 67.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-GR SP-46002 are AFFIRMED with the following MODIFICATIONS: (1) petitioner is granted a period of ten days from the finality of this Decision within which to file its answer, in accordance with Rule 67 of the 1997 Rules of Court; (2) NPC shall deposit, also within ten days from the finality if this Decision, the full amount required under the aforecited Rule; and (3) the trial court shall, in its final decision, fix the rental for the use and the occupation of the disputed property, from the date of NPC's entry until its deposit of the full amount required under the 1997 Rules. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

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[1] Eleventh Division, composed of JJ. Fermin A. Martin Jr., chairman; Conrado M. Vasquez Jr., ponente; and Artemio G. Tuquero, member.

[2] CA Decision, p. 7; rollo, p. 14.

[3] CA Resolution, rollo, p. 148.

[4] Docketed as Civil Case No. 25,356-97 and raffled to the Regional Trial Court of Davao City, Branch 15, presided by Judge Jesus V. Quitain.

[5] Dated June 30, 1997; rollo, pp. 97-109.

[6] Motion for Issuance of Writ of Possession to Confirm Plaintiff's Right Under Pres. Decree No. 42, Now Sec. 2, Rule 67, Revised Rules of Court, dated July 28, 1997; rollo, pp. 108-109.

[7] Order of August 13, 1997; rollo, p. 61.

[8] Order of September 11, 1997; rollo, p. 60.

[9] Writ of Possession; rollo, p. 57.

[10] This case was deemed submitted for resolution upon the Court's receipt on July 7, 1999, of the Memorandum for the private respondent.

[11] Signed by Atty. Bernabe B. Alabastro of Abarquez, Alabastro, Olaguer & Cabreros, counsel for the petitioner.

[12] Memorandum for the petitioner, pp. 5-6; rollo, pp. 185-186.

[13] Pampanga Sugar Development Company, Inc. v. National Labor Relations Commission, 272 SCRA 737, 743, May 29, 1997; Joson v. Torres, 290 SCRA 279, 299, May 20, 1998; Buenaventura v. Halili Uy, 149 SCRA 22, 26, March 31, 1987; and Quimpo v. Dela Victoria, 46 SCRA 139, 144, July 31, 1972.

[14] PASUDECO v. NLRC, ibid.; Joson v. Torres, id.; and Buenaventura v. Halili Uy, id.

[15] Sec. 5, Rule 7, Rules of Court; Fil-Estate Golf & Development, Inc. v. Court of Appeals, 265 SCRA 614, 635, December 16, 1996.

[16] Gabionza v. Court of Appeals, 234 SCRA 192, 196, July 18, 1994.

[17] Loyola v. Court of Appeals, 245 SCRA 477, 482-483, June 29, 1995.

[18] Complaint, pp. 4-5; rollo, pp. 65-66.

[19] Rural Progress Administration v. Guzman, 87 Phil 176, 178, August 15, 1950.

[20] Vicente J. Francisco, The Revised Rules of Court In The Philippines, Vol. IV-B, Part I, 1972 ed., pp. 405-412.

[21] Ibid., p. 412.

[22] Florenz D. Regalado, Remedial Law Compendium, Vol. I, 6th revised ed., p. 739.

[23] Ibid.

[24] Id., p. 16; Borre v. Court of Appeals, 158 SCRA 560, 564, March 14, 1988.

[25] Id., p. 16; Laguio v. Gamet, 171 SCRA 392, 397, March 21, 1989.

[26] Borje v. CFI of Misamis Occidental, Br. II, 88 SCRA 576, 581, February 27, 1979.

[27] Panes v. Visayas State College of Agriculture, 264 SCRA 708, 721, November 27, 1996.

[28] Borje v. CFI, supra, p. 584.

[29] CA Decision, p. 6; rollo, p. 144.

[30] Joaquin G. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines, 1996 ed., pp. 372-373.

[31] 264 SCRA 708, 719, November 27, 1996.

[32] Manila Railroad Company v. Paredes, 31 Phil 118, 135, March 31 & December 17, 1915.

[33] Ibid., p. 127.

[34] Act 1592 is entitled “An Act amending Act Numbered Twelve hundred and fifty-eight entitled An Act making additional provisions to those contained in Act Numbered One hundred and ninety, relating to the exercise of the right of eminent domain in cases where the exercise of such power is invoked by a railroad corporation for the purposes of constructing, extending, or operating its line.’”

[35] This provision was copied from Sec. 3, Rule 69 of the 1940 Rules of Court, which was synthesized from Sec. 2, Act 2826; Act 1592; Sec. 3, Act 1258; and Sec. 2, Act 1510.

[36] 80 Phil 305, 310, November 22, 1977.

[37] 93 SCRA 503, 525, October 18, 1979.

[38] 131 SCRA 517, 522-524, August 31, 1984.

[39] Haguisan v. Emilia, supra.

[40] 149 SCRA 305, 311 & 316, April 29, 1987 per Gutierrez Jr., J.; Municipality of Talisay v. Ramirez, 183 SCRA 528, 530, March 22, 1990.

[41] 222 SCRA 173, 182, May 17, 1993.

[42] 264 SCRA 708, 719, November 27, 1996.

[43] Supra, p. 721.

[44] Id., p. 16; Laguio v. Gamet, 171 SCRA 392, 397, March 21, 1989.

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[45] With due respect, the ponente of this Decision has reservations on the wisdom of this rule allowing entry upon the disputed property after the plaintiff has deposited an amount equivalent to the assessed value thereof. However, the 1997 Rules are clear on this point, and he has no choice but to apply them.

[46] Rollo, pp. 70, 77, 85 & 93

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