

**HEIRS OF JOSE MARIANO AND HELEN S. MARIANO, REPRESENTED
BY DANILO DAVID S. MARIANO, MARY THERESE IRENE S. MARIANO,
MA. CATALINA SOPHIA S. MARIANO, JOSE MARIO S. MARIANO, MA.
LEN...**

G.R. No. 197743. October 18, 2022

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

At the maelstrom of the instant Second Motion for Reconsideration[1] filed by the City of Naga (respondent) is the niggling controversy of who between respondent and the Heirs of Jose Mariano and Helen Mariano and the Heirs of Erlinda Mariano (petitioners) have a better right to possess the disputatious five-hectare parcel of land covered by Transfer Certificate of Title No. 671 of the Registry of Deeds of Naga City.

A diegesis of the procedural antecedents follows.

In the Decision[2] dated March 12, 2018 (First Division Decision), the Court's First Division overturned the Amended Decision[3] rendered by the Court of Appeals in CA-G.R. SP No. 90547 and reinstated, albeit with modifications, the Decision[4] of Regional Trial Court, Naga City, Branch 26 (RTC). The RTC reversed and set aside the Decision[5] of Municipal Trial Court, Naga City, Branch I, which dismissed petitioners' Complaint for Unlawful Detainer.

Au fond, the Court poked holes in the validity of the Deed of Donation purportedly executed by the registered owners of the subject realty, Macario Mariano (Mariano) and Jose A. Gimenez (Gimenez), in favor of respondent after discerning that: 1) the Deed contained a defective Acknowledgment as it was made neither by Mariano, Gimenez, their respective spouses, nor respondent through its then mayor, Monico Imperial (Mayor Imperial); and 2) Mayor Imperial's signature was affixed thereon on August 21, 1954, or four days after the Deed was notarized. Consequently, the instrument was stripped of public character and thus, a void contract.[6]

This Court likewise perceived respondent's passivity in failing to secure title over the contentious land despite the lapse of more than 50 years since the supposed execution of the Deed. Conversely, laches or prescription cannot be considered to have set in to effectively bar petitioners' claims given that: one, Mariano prodded respondent to act on Mayor Imperial's proposal to purchase the property; two, petitioners were entangled in a legal dispute to establish their right to inherit from Mariano and his spouse, Irene Mariano (Irene); and three, the disputed property was discovered only in 1997, when an administrator over Irene's estate was appointed, thereby prompting petitioners to demand respondent to vacate its premises.[7]

Respondent was ultimately adjudged to be in bad faith when it introduced improvements on the subject realty notwithstanding the failure to satisfy the condition inextricably attached to the donation, i.e., that the construction of the City Hall be awarded to City Heights Subdivision. Thence, respondent and all government instrumentalities, agencies, and offices claiming right of possession through and under it were directed to

peacefully surrender and deliver to petitioners the physical possession of the land covered by Transfer of Certificate Title No. 671, including all improvements and structures erected thereon. Therewithal, it was ordered to pay petitioners half of the monthly rental as determined by the trial court, which shall be reckoned from November 30, 2003 until respondent shall have actually vacated the subject property. Still and all, the award of attorney's fees in favor of petitioners was reduced to P75,000.00.[8]

Unfazed, respondent filed a motion for reconsideration with motion for new trial based on newly discovered evidence,[9] proffering for the first time a certified true copy of the Deed of Donation dated August 16, 1954, which was unearthed only after a certain Alexander M. Cayetano volunteered to scour anew the records of the Office of the City Civil Registrar of Naga. In the same vein, respondent avouched that petitioners' action was barred by laches and insisted that it was not a builder in bad faith.[10] A separate Motion for Reconsideration[11] was filed by respondent's collaborating counsel.

The Court's First Division denied respondent's Motions ratiocinating that the certified true copy of the Deed of Donation submitted by respondent in support of its motion for new trial only confirmed the conclusion that the donation was void as it did not bear the signatures of Mayor Imperial on the part of respondent-donee, and Gimenez, as donor, as well as that of his spouse. As such, there was neither a valid donation nor acceptance that effectively conveyed the subject property to respondent. Likewise, the certified true copy of the Deed of Donation contained the same defective acknowledgment evinced in the copy of the deed previously submitted by respondent.[12]

Respondent remained unperturbed and sought[13] this Court's leave to file a Second Motion for Reconsideration,[14] which, in point of fact, it subsequently filed. Through the present recourse, respondent intransigently maintains that due to the failure of the petitioners, through themselves and their predecessors-in-interest, to timely and vigorously pursue their rights over the land on which its seat of government is located, laches had already set in; they are barred from recovering the disputed property.

At the interstice, respondent moved[15] to refer the pending incident to the Court En Banc on the basis of the alleged failure of this Court's First Division to apply the case of *Department of Education, Division of Albay v. Oñate*,[16] which, avowedly, is tantamount to a reversal of a doctrine laid down by a division of the Court. Respondent likewise brought to the fore the conceivable 'devastating' consequences of implementing the First Division Decision. The Court, sitting En Banc, accepted the instant case.[17]

Quite palpably, the problems cast in factual setting in respondent's Second Motion for Reconsideration are: 1) whether the principle of laches has set in so as to preclude petitioners from recovering the material possession of the subject land, and 2) whether or not higher interest of justice would be better served by granting respondent's second bid for reconsideration.

THE COURT'S RULING

Respondent's Second Motion for Reconsideration is partly meritorious.

Prefatorily, it bears to accentuate that Section 2,[18] Rule 52 of the Rules of Court prohibits a second motion for reconsideration by the same party. This shopworn rule is ingeminated under Section 3, Rule 15 of the Internal Rules of Court, which succinctly provides:

Section 3. Second motion for reconsideration. — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court

en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irreparable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.

In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court En Banc.

Plain as day, a grant by the Court of a second motion for reconsideration must meet the 'higher interest of justice' threshold, which, in turn, is dependent upon the existence of two conditions: one, that the assailed decision is legally erroneous, and two, that it is patently unjust and potentially capable of causing unwarranted and irreparable injury or damage to parties.

After a perusal of the hard evidence on record and a juxtaposition of respondent's disputations with prevailing laws and jurisprudence, the Court perceives persuasive reasons to revisit and modify the First Division Decision.

The first prong of the aforementioned threshold, i.e., that the assailed decision is legally erroneous, obtains not because the First Division Decision incorrectly found against the applicability of laches to bar recovery of the dispositive property, but because it failed to consider the doctrinal rulings of the Court as to what constitutes the act of taking in relation to the State's eminent domain powers, as well as the remedies available to the landowner in instances where there is taking by the government of a private property for public purpose without first acquiring title thereto.

To be sure, petitioners' claim to recover possession over the disputed land is not barred by laches. The Court calls to mind the decisional rules laid down in the recent case of *Ebancuel v. Acierto*,^[19] where it was enunciated that as a general rule, laches shall not defeat the registered owner's right to recover his/her property. Moreover, the question of laches is not resolved by simply counting the years that passed before an action is instituted. Rather, any alleged delay must be proven to be unreasonable, and must lead to the conclusion that the claimant abandoned his/her right. As early as the case of *Supapo v. Spouses De Jesus*,^[20] this Court had pronounced that the defense of laches is evidentiary in nature and cannot be established by mere allegations in the pleadings.^[21] In the case at bench, apart from the self-serving innuendos of respondent, it failed to adduce compelling evidence to substantiate its claim of laches.

On the other hand, petitioners were able to demonstrate with sufficient proof the historical underpinnings of the instant case — beginning from the staunch efforts employed by their late patriarch, Jose Mariano, to recover the subject land, to respondent's unfulfilled offer to purchase, until finally, to the legal scuffle which retarded petitioners-heirs' discovery of the property and early institution of an appropriate action to recover its material possession of the same.

All the same, the Court finds and so rules that the First Division Decision erringly reinstated the portion of the trial court which essentially directed respondent and all government instrumentalities, agencies, and offices claiming right of possession through and under it to peacefully surrender and deliver the physical possession of the subject realty to petitioners.

Concededly, recovery of possession is an appropriate recourse in case a governmental entity, in the exercise of its eminent domain powers, takes over the possession of a property without the benefit of expropriation proceeding.^[22] This jurisprudential precept finds its progenitor in the seminal case of *Manila Railroad Co. v. Paredes* (*Manila Railroad*),^[23] which was decided by the Court sitting En Banc, and which enjoys the distinction

of being the 'first case in this jurisdiction in which it has been attempted to compel a public service corporation endowed with the power of eminent domain to vacate property occupied by it without first acquiring title thereto by amicable purchase or expropriation proceedings'.^[24] Manila Railroad annunciated that a public entity stands on an equal footing as other trespassers/intruders if it enters a private property or constructs establishments thereon without the acquiescence or consent of the owner. In such cases, it is considered a trespasser ab initio, and stands vulnerable to the same actions available against any other intruder.^[25] However, subsequent cases appear to have provided a pivotal caveat to the propriety of the action for recovery of possession in such cases — recovery may only be had if the return of the property is still feasible.^[26]

Such limitation is wanting in the case at bench.

Considering that the physical return of the subject property on which respondent's seat of government and offices of several other government agencies and instrumentalities are currently erected is no longer feasible, the second prong of the "higher interest of justice" threshold is likewise satisfied as the unwarranted and irremediable injury or damage of forfeiting the established structures in favor of petitioners and directing respondent to vacate the contentious land looms large on the horizon.

In *Sec. of the DPWH v. Spouses Tecson (Sec. of DPWH)*,^[27] the Court edifyingly elucidated that:

x x x Laches is principally a doctrine of equity which is applied to avoid recognizing a right when to do so would result in a clearly inequitable situation or in an injustice. This doctrine finds no application in this case, since there is nothing inequitable in giving due course to respondents' claim. Both equity and the law direct that a property owner should be compensated if his property is taken for public use. Neither shall prescription bar respondents' claim following the long-standing rule "that where private property is taken by the Government for public use without first acquiring title thereto either through expropriation or negotiated sale, the owner's action to recover the land or the value thereof does not prescribe.

When a property is taken by the government for public use, jurisprudence clearly provides for the remedies available to a landowner. The owner may recover his property if its return is feasible or, if it is not, the aggrieved owner may demand payment of just compensation for the land taken. For failure of respondents to question the lack of expropriation proceedings for a long period of time, they are deemed to have waived and are estopped from assailing the power of the government to expropriate or the public use for which the power was exercised. What is left to respondents is the right of compensation. The trial and appellate courts found that respondents are entitled to compensation. The only issue left for determination is the propriety of the amount awarded to respondents.^[28]

The more recent case of *Republic v. Spouses Nocom (Spouses Nocom)*^[29] echoed with approval the foregoing jurisprudential teaching, recognizing that the respondents therein "had no other remedy but to file a suit against petitioner for the recovery of possession of the property and for payment of reasonable compensation."

There can be no quibbling that here, there was "taking" when respondent, endowed with the power of eminent domain, occupied petitioners' land in 1954, which it then used as a government center. *Sy. v. Local Gov't. of Quezon City*^[30] ingeminated the jurisprudential precept that there is "taking" when the owner is actually deprived or dispossessed of his or her property; when there is a practical destruction or a material impairment of the value of his or her property or when he or she is deprived of the ordinary use thereof.^[31]

On this score, the Court rules and so holds that the taking of the property took place on August 16, 1954, when respondent admitted having entered, possessed, and started improving the property after the purported execution of the contentious Deed of Donation. Upon this point, the pronouncements of the First Division Decision are illuminating—

According to the City, the City Mayor of Naga, Monico Imperial (Mayor Imperial), and the registered landowners, Macario and Gimenez, executed a Deed of Donation on August 16, 1954, whereby the latter donated five hectares of land (subject property), two hectares of which to be used as the City Hall site, another two hectares for the public plaza, and the remaining hectare for the public market. By virtue of said Deed, the City entered the property and began construction of the government center. It also declared the five-hectare property in its name for tax purposes. Thereafter, the Land Transportation Office (LTO), the National Bureau of Investigation (NBI), the Department of Labor and Employment (DOLE), the Philippine Postal Corporation (PPC), the Fire Department and other government agencies and instrumentalities entered the same property and built their offices thereon.[32]

Whence, in fealty to Secretary of DPWH,[33] the Court rules and so holds that respondent must pay petitioners just compensation as of the time of taking of the contested land on August 16, 1954, computed in accordance with the formula laid down in *Spouses Nocom*,[34] viz.:

In *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, this Court laid down the remedies for an aggrieved private party when property is taken by the government for public use. It also enumerated cases illustrating an aggrieved party's remedy when deprived of their property without the benefit of just compensation.

x x x x

With this, the controlling doctrine is that when there is actual taking by the government without expropriation proceedings, the owner of the property is entitled to just compensation which is pegged at the value of the property at the time of taking.

x x x x

However, there are instances where this Court held that just compensation should not be reckoned from the time of taking of the properties, but from the time the property owners initiated inverse condemnation proceedings as a matter of justice and equity.

x x x x

Accordingly, it would result in great injustice if this Court grants the prayer of petitioner that the just compensation be pegged at the value of the subject properties in 1983, or the alleged time of taking of the government. To do so would reward petitioner for its disregard of procedural due process in its exercise of the power of eminent domain.

Notably, if petitioner promptly recompensed respondents for the use of their property, the latter would have the opportunity to gain profit from the amount received. The non-payment of compensation deprived respondents of the principal amount as well as its prospective fruits.

To address this dilemma, an Opinion in *Secretary of the Department of Public Works* is illuminating. There, the economic concept of present value was explained thus:

If the parties in an expropriation case would have perfect foresight, they would have known the amount of "fair market value at the time of taking." If this amount of money was deposited in a bank pending expropriation proceedings, by the time proceedings are over, the property owner would be able to withdraw the principal (fair market value at the time of taking) and the interest earnings it has accumulated over the time of the proceedings. Economists have devised a simple method to compute for the value of money in consideration of this future interest earnings.

For purposes of explaining this method, consider property owner AA who owns a piece of land. The government took his property at Year 0. Let us assume that his property had a fair market value of P100 at the time of taking. In our ideal situation, the government should have paid him P100 at Year 0. By then, AA could

have put the money in the bank so it could earn interest. Let us peg the interest rate at 5% per annum (or in decimal form, 0.05).

If the expropriation proceedings took just one year (again, another ideal situation), AA could only be paid after that year. The value of the P100 would have appreciated already. We have to take into consideration the fact that in Year 1, AA could have earned an additional P5 in interest if he had been paid in Year 0.

In order to compute the present value of P100, we have to consider this formula:

Present Value in Year 1 = Value at the Time of Taking + (Interest Earned of the Value at the Time of Taking)

In formula terms, it will look like this:

$$PV1 = V + (V * r)$$

$$PV1 = V * (1 + r)$$

PV1 = present value in Year 1

V = value at the time of taking

r = interest rate

So in the event that AA gets paid in Year 1, then:

$$PV1 = V * (1 + r)$$

$$PV1 = P100 (1 + 0.05)$$

$$PV1 = P105$$

So if AA were to be paid in Year 1 instead of in Year 0, it is only just that he be paid P105 to take into account the interest earnings he has foregone due to the expropriation proceedings. If he were to be paid in Year 2, we should take into consideration not only the interest earned of the principal, but the fact that the interest earned in Year 1 will also be subject to interest earnings in Year 2. This concept is referred to as compounding interest rates. So our formula becomes:

Present Value in Year 2 = [Present Value in Year 1] + [Interest Earned of Present Value in Year 1].

In advocating the use of present value and compounding interest, this Court meets the middle ground between established doctrine and substantial justice. Moreover, the result would be more in keeping with the concept of just compensation. By using the present value method, this Court recognizes that the value of money is not static. The amount of P552.00 in 1983 does not carry the same monetary or buying power in 1995 or in 2021. Thus, the method takes into consideration the present economic value of the property taken by the government if just compensation at the time of taking was paid promptly. It compensates for the opportunity loss due to the non--payment of a sum of money that is due and demandable.

In using this method, the powers that be (sic) would have a stronger incentive to comply with duly constituted procedures regarding the power of eminent domain instead of continuing its practice of taking property without filing the proper expropriation proceedings. At the same time, it remains consistent with the doctrine that just compensation must be reckoned from the time of actual taking. It merely directs the courts, which have the judicial function to determine the amount of just compensation, to make use of the formula to ensure that the profit loss suffered by private owners are computed for as well.

The interest prescribed above must be distinguished from legal interest which penalizes the payor for its delay in payment. Thus, it is without question that petitioner's occupation of the Subject Lots, for more than two decades without the proper expropriation proceedings also entitles respondents with the payment of legal interest at the rate of six (6%) percent on the value of the land at the time of taking until full payment is made.[35]

Without a nary of doubt, Spouses Nocom provides a more equitable and fair computation of just compensation

forasmuch as it factors in various considerations affecting the value, not only of the property at the time of taking, but also of the money which could have accrued to the aggrieved landowner's benefit had the supposed expropriator followed the prescribed procedure therefor.

Withal, in order to scourge respondent's deplorable act of establishing the now-entrenched public offices on petitioners' property despite the irrefragable invalidity of the donation, the Court hereby orders the former to pay the latter P1,000,000.00 by way of exemplary damages. This award finds jurisprudential backing in *National Power Corporation vs. Manalastas*,^[36] where this Court adjudicated thusly:

Lastly, in addition to the award for interests, Article 2229 of the Civil Code provides that "[e]xemplary or corrective damages are imposed by way of example or correction for the public good" and Article 2208 of the same code states that attorney's fees may be awarded by the court in cases where such would be just and equitable. As held in the Resolution dated April 21, 2015 in *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson*, additional compensation in the form of exemplary damages and attorney's fees should likewise be awarded as a consequence of the government agency's illegal occupation of the owner's property for a very long time, resulting in pecuniary loss to the owner. Indeed, government agencies should be admonished and made to realize that its negligence and inaction in failing to commence the proper expropriation proceedings before taking private property, as provided for by law, cannot be countenanced by the Court.^[37]

Meanwhile, the reduction of attorney's fees to P75,000.00 is sustained for the same reasons as embodied in the First Division Decision.

A final cadence. The Court is aware of the jurisdictional conundrum besetting the remand of the instant case to RTC for purposes of determining just compensation considering that the court of origin is, in point of fact, Branch I of the Municipal Trial Court of Naga City. This notwithstanding, compelling considerations of equity behoove this Court to overlook pro hac vice such procedural hurdle.

Very much so, this is not the first time that this Court is wielding its equity jurisdiction where there is a hiatus in the law and in the Rules of Court. Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate. This is apposite to Article 9 of the Civil Code, which expressly mandates the courts to make a ruling despite the "silence, obscurity or insufficiency of the laws."^[38]

Pertinently, the silence of the Rules of Court anent the determination of feasibility of returning a property in an action to recover possession, such as in this case, is undeniably deafening. In a like manner, the Rules do not provide for a definite and complete procedural framework for inverse condemnation upon which the bench, the bar, and the public may anchor their legal steps when faced with a similar situation. Suffice it to say that the aggrieved landowners, whose properties were taken by the government without any benefit of expropriation, may not be left out to dry in the aperture, which this Court itself carved out.

Thusly, in the higher interest of substantial justice and in the exercise of this Court's equity jurisdiction, as well as for judicial economy, the case must be ordered remanded to the trial court for purposes of determining just compensation in accordance with this Resolution.

THE FOREGOING DISQUISITIONS CONSIDERED, respondent City of Naga's Second Motion for Reconsideration is hereby PARTLY GRANTED. Accordingly, the Decision dated March 12, 2018 and the Resolution dated July 23, 2018 rendered by the First Division of this Court are AFFIRMED with

MODIFICATIONS in that:

1)

The order for respondent and all government instrumentalities, agencies, and offices claiming right of possession through and under it to peacefully surrender and deliver to petitioners the physical possession of the land covered by Transfer of Certificate Title No. 671, including all improvements and structures erected thereon, is hereby DELETED;

2)

The award of monthly rental in favor of petitioners is likewise DELETED;

3)

Respondent City of Naga is ORDERED to pay petitioners just compensation in accordance with this ruling, with legal interest of six percent (6%) per annum on the value of the property at the time of taking, i.e., August 16, 1954, until full payment is made; and

4)

Respondent City of Naga is ORDERED to pay petitioners exemplary damages in the amount of P1,000,000.00.

The case is REMANDED to Branch 26, Regional Trial Court of Naga City for the determination of just compensation. The said court is DIRECTED to resolve the instant case with dispatch.

SO ORDERED.

Hernando, Inting, M. Lopez, Rosario, J. Lopez, Marquez, and Kho, Jr., JJ., concur.

Gesmundo, C.J., Leonen, S.J., and Caguioa, J., see separate opinion.

Lazaro-Javier, J., with concurrence and dissent.

Zalameda,[*] J., on official leave.

Gaerlan,**] J., with concurring/dissenting opinion. On official business but left vote.

Singh,**] J., on official business.

[*] on official leave.

**] on official business.

[1] Rollo, pp. 978-999.

[2] Id. at 694-725; penned by Associate Justice Noel Gimenez Tijam, with the concurrence of Associate Justices Teresita J. Leonardo-De Castro, Mariano C. Del Castillo and Francis H. Jardeleza.

[3] Id. at 97-114; dated July 20, 2011 penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justices Josefina Guevarra-Salonga and Mariflor F. Punzalan-Castillo.

[4] Id. at 439-465; dated June 20, 2005, docketed as Civil Case No. RTC-2005-0030; penned by Judge Filomena B. Montenegro.

[5] Id. at 434-438; dated February 14, 2005; penned by Presiding Judge Jose P. Nacional.

[6] Id. at 707-708.

[7] Id. at 697 and 708.

- [8] Id. at 700 and 724.
- [9] Id. at 742-768.
- [10] Id. at 750-766.
- [11] Id. at 788-819.
- [12] Id. at 832-838. The Resolution denying the motion for reconsideration is dated July 23, 2018.
- [13] Id. at 866-876.
- [14] Id. at 978-999.
- [15] Id. at 1131-1134.
- [16] 551 Phil. 633 (2007).
- [17] Rollo, p. 1153. See Resolution dated November 12, 2019.
- [18] Section 2. Second Motion for Reconsideration. — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.
- [19] G.R. No. 214540, July 28, 2021. [Per J. Gaerlan, Second Division].
- [20] 758 Phil. 444 (2015). [Per J. Brion, Second Division].
- [21] Id. at 463.
- [22] See Sec. of the DPWH v. Sps. Tecson, 713 Phil. 55, 70 (2013). [Per J. Peralta, Third Division].
- [23] 32 Phil. 534 (1915).
- [24] Id. at 536.
- [25] Id. at 537-539.
- [26] Sec. of the DPWH v. Sps. Tecson, supra note 19.
- [27] Id.
- [28] Id. at 69-70. Emphasis supplied.
- [29] G.R. No. 233988, November 15, 2021. [Per J. Leonen, Third Division].
- [30] 710 Phil. 549 (2013). [Per J. Perlas-Bernabe, Second Division].
- [31] Id. at 560-561.
- [32] Rollo, p. 696. Emphasis supplied.
- [33] Supra note 22.
- [34] Supra note 29.
- [35] Id.
- [36] 779 Phil. 510 (2016). [Per J. Peralta, Third Division].
- [37] Id. at 519.

[38] See *Reyes vs. Lim*, 456 Phil. 1, 9-10 (2003). [Per J. Carpio, First Division].

SEPARATE OPINION

GESMUNDO, C.J.:

This case involves a parcel of land allegedly donated to the City of Naga. The City Mayor of Naga, Monico Imperial (Mayor Imperial), and the registered landowners, Macario Mariano (Macario) and Jose Gimenez (Gimenez), executed a Deed of Donation on August 16, 1954, whereby the latter donated five hectares of land (subject property) to the City of Naga. Two hectares of the subject property were to be used as the City Hall site; the other two hectares for the public plaza, and the remaining hectare for the public market.[1] The City of Naga, however, did not comply with the requirements for a valid donation, hence, petitioners claim that the donation was void. The Court initially granted the petition because there was indeed an invalid transfer of land.

The ponencia partially denies the second motion for reconsideration declaring that petitioners' claim over the subject property is not barred by laches because they continuously assailed the validity of the donation of land. Thus, since there was an invalid donation, petitioners should reclaim the land given to the City of Naga. However, the ponencia proposes, in the same case, that if the properties are not anymore feasible to be returned to petitioners since government buildings are already erected thereon, the government should simply pay petitioners just compensation, citing the case of *Secretary of DPWH v. Spouses Tecson*[2] (*Secretary of DPWH*). It was further stated that the case should be remanded to the Regional Trial Court (RTC) for the determination of just compensation.

While I agree with the ponencia that just compensation should be awarded to petitioners, I have some reservations whether the determination of just compensation should be conducted in the same case when remanded to the trial court, bearing in mind *Forom Development Corp. v. Philippine National Railways*[3] (*Forom*).

One of the inherent powers of the State is the power of eminent domain. It has been defined as "the right of a government to take and appropriate private property for public use, whenever the public exigency requires it, which can be done only on condition of providing a reasonable compensation therefor." It has also been described as the power of the State or its instrumentalities to take private property for public use and is inseparable from sovereignty and inherent in government.[4]

Once the State decides to exercise its power of eminent domain, the power of judicial review becomes limited in scope, and the courts will be left to determine the appropriate amount of just compensation to be paid to the affected landowners.[5] Pursuant thereto, Rule 67 of the Rules of Court (the "Rules") provides the manner by which the government may exercise its power of eminent domain. Notably, the Regional Trial Court has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." [6]

In *Metropolitan Cebu Water District v. J. King and Sons Co., Inc.*, [7] the Court explained the two stages in an expropriation proceeding under Rule 67 of the Rules of Court:

In an expropriation proceeding there are two stages: first, is the determination of the validity of the expropriation, and second, is the determination of just compensation. In *Tan v. Republic*, we explained the two (2) stages in an expropriation proceeding to wit:

(1) Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, with condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned for the public use or purpose described in the complaint, upon payment of just compensation. An

order of expropriation is final. An order of dismissal, if this be ordained, would be a final one, as it finally disposes of the action and leaves nothing more to be done by the courts on the merits. The order of expropriation would also be a final one for after its issuance, no objection to the right of condemnation shall be heard. The order of expropriation may be appealed by any party aggrieved thereby by filing a record on appeal.

(2) Determination by the court of the just compensation for the property sought to be taken with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before the court and findings of the commissioners would likewise be a final one, as it would leave nothing more to be done by the court regarding the issue. A second and separate appeal may be taken from this order fixing the just compensation.[8] (Citations omitted)

Nevertheless, even if the State does not institute an action for expropriation under Rule 67, the owner of the private property is still entitled to just compensation, as long the State took such private property. Article III, Section 9 of the 1987 Constitution provides that "private property shall not be taken for public use without just compensation." The fair market value of the property must be paid to the owners thereof, which has been defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample.[9]

Accordingly, if the State takes the land of a person under its power of eminent domain and the State did not institute an action for expropriation under Rule 67, the landowner's remedy is to institute an action for inverse condemnation proceeding. In said action, extensive presentation of evidence can be undertaken so that just compensation for petitioners are properly arrived at.

The action for inverse condemnation was explained in *National Power Corp. v. Heirs of Sangkay*:^[10]

The action to recover just compensation from the State or its expropriating agency differs from the action for damages. The former, also known as inverse condemnation, has the objective to recover the value of property taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency. Just compensation is the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word just is used to intensify the meaning of the word compensation in order to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. On the other hand, the latter action seeks to vindicate a legal wrong through damages, which may be actual, moral, nominal, temperate, liquidated, or exemplary. When a right is exercised in a manner not conformable with the norms enshrined in Article 19 and like provisions on human relations in the Civil Code, and the exercise results to the damage of another, a legal wrong is committed and the wrongdoer is held responsible.

The two actions are radically different in nature and purpose. The action to recover just compensation is based on the Constitution while the action for damages is predicated on statutory enactments. Indeed, the former arises from the exercise by the State of its power of eminent domain against private property for public use, but the latter emanates from the transgression of a right. The fact that the owner rather than the expropriator brings the former does not change the essential nature of the suit as an inverse condemnation, for the suit is not based on tort, but on the constitutional prohibition against the taking of property without just compensation. It would very well be contrary to the clear language of the Constitution to bar the recovery of just compensation for private property taken for a public use solely on the basis of statutory prescription.^[11] (Emphasis supplied, citations omitted)

As explained above, inverse condemnation is an action instituted by a private individual to recover the value of property taken in fact by the government, even though no formal exercise of the power of eminent domain was

attempted by the taking agency. The purpose of the action is to acquire just compensation for the full and fair equivalent of the property taken from its owner by the expropriator. The fact that the owner, rather than the expropriator, brings the action does not change the essential nature of the suit as an inverse condemnation. In *Felisa Agricultural Corp. v. National Transmission Corp.*,^[12] it was explained that property owners usually initiate inverse condemnation proceedings when the government does not commence expropriation proceedings to acquire the privately-owned lands.^[13]

Accordingly, when the power of eminent domain is exercised by the State, the latter can either institute an action for expropriation under Rule 67 of the Rules, or the private landowner can commence inverse condemnation proceeding, which is treated similarly as an action for expropriation under Rule 67. In any case, both these actions are within the original and exclusive jurisdiction of the RTC.

In *Forfom*, it was underscored that if a private person, whose property was taken by the State under its power of eminent domain, fails to institute an action to claim just compensation, i.e., inverse condemnation proceeding, the land cannot be returned to such person even if he/she files a complaint for recovery of possession of real property;^[14] rather, the land shall remain with the State, to wit:

In the case at bar, the expropriator (PNR) entered the property of *Forfom*, a private land. The entrance into *Forfom*'s property was permanent, not for a fleeting or brief period. PNR has been in control, possession and enjoyment of the subject land since December 1972 or January 1973. PNR's entry into the property of *Forfom* was with the approval of then President Marcos and with the authorization of the PNR's Board of Directors. The property of *Forfom* measuring around eleven hectares was devoted to public use – railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service. With the entrance of PNR into the property, *Forfom* was deprived of material and beneficial use and enjoyment of the property. It is clear from the foregoing that there was a taking of property within the constitutional sense.

x x x x

It can be gathered from the records that *Forfom* accepted the fact of the taking of its land when it negotiated with PNR for just compensation, knowing fully well that there was no expropriation case filed at all. *Forfom*'s inaction for almost eighteen (18) years to question the absence of expropriation proceedings and its discussions with PNR as to how much petitioner shall be paid for its land preclude it from questioning the PNR's power to expropriate or the public purpose for which the power was exercised. In other words, it has waived its right and is estopped from assailing the takeover of its land on the ground that there was no case for expropriation that was commenced by PNR.

x x x x

x x x As ruled above, *Forfom*'s inaction on and acquiescence to the taking of its land without any expropriation case being filed, and its continued negotiation with PNR on just compensation for the land, prevent him from raising any issues regarding the power and right of the PNR to expropriate and the public purpose for which the right was exercised. The only issue that remains is just compensation. Having no right to further question PNR's act of taking over and the corresponding public purpose of the condemnation, *Forfom* cannot now object to PNR's lease of portions of the land to third parties. The leasing out of portions of the property is already a matter between PNR and third persons in which *Forfom* can no longer participate. The same no longer has any bearing on the issue of just compensation.^[15] (Citations omitted)

While the Court held in *Forfom* that the private landowner was entitled to just compensation, it also underscored that the determination of just compensation should not be adjudicated in the complaint for recovery of possession of real property instituted by the landowner. Instead, the determination of just compensation should be decided in a separate action for expropriation – particularly, in the RTC – which can appoint commissioners to duly

determine such just compensation. The State, in Forfom, was directed to institute a separate expropriation action over the land in question, to wit:

Under Section 5, [Rule 67] of the 1997 Rules of Civil Procedure, the court shall appoint not more than three competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property. Though the ascertainment of just compensation is a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. While it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. Thus, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all."

In the case before us, the trial court determined just compensation, but not in an expropriation case. Moreover, there was no appointment of commissioners as mandated by the rules. The appointment of commissioners is one of the steps involved in expropriation proceedings. What the judge did in this case was contrary to what the rules prescribe. The judge should not have made a determination of just compensation without first having appointed the required commissioners who would initially ascertain and report the just compensation for the property involved. This being the case, we find the valuation made by the trial court to be ineffectual, not having been made in accordance with the procedure provided for by the rules.

x x x x

Admittedly, the PNR's occupation of Forfom's property for almost eighteen (18) years entitles the latter to payment of interest at the legal rate of six (6%) percent on the value of the land at the time of taking until full payment is made by the PNR.

For almost 18 years, the PNR has enjoyed possession of the land in question without the benefit of expropriation proceedings. It is apparent from its actuations that it has no intention of filing any expropriation case in order to formally place the subject land in its name. All these years, it has given Forfom the runaround, failing to pay the just compensation it rightly deserves. x x x

x x x x

WHEREFORE, the instant petition is PARTIALLY DENIED insofar as it denies Forfom Development Corporation's prayer for recovery of possession (in whole or in part) of the subject land, unearned income, and rentals. The petition is PARTIALLY GRANTED in that attorney's fees and litigation expenses in the amounts of [P]100,000.00 and [P]50,000.00, respectively, are awarded. The Philippine National Railways is DIRECTED to forthwith institute the appropriate expropriation action over the land in question, so that just compensation due to its owner may be determined in accordance with the Rules of Court, with interest at the legal rate of six (6%) percent per annum from the time of taking until full payment is made. As to the claim for the alleged damaged crops, evidence of the same, if any, may be presented before the expropriation court. No costs.

SO ORDERED.[16] (Emphases supplied)

Verily, in Forfom, instead of remanding the case to the RTC involving the complaint for recovery of possession of real property, the Court directed the Philippine National Railways to institute a separate expropriation action to determine the just compensation due to the landowner. To determine just compensation, the Court took into consideration the importance of instituting a separate action for expropriation in the RTC, which has the power to appoint commissioners to establish the amount of such compensation in an action for expropriation.

Accordingly, I find that the Court in this case should adopt the established procedure provided in *Forfom*. To recapitulate, in the March 12, 2018 Decision, the Court stated that this case stemmed from an unlawful detainer case instituted by petitioners against the City of Naga before the Municipal Trial Court (MTC):

When the City did not comply, petitioners, as heirs of Jose and Erlinda, filed a Complaint for unlawful detainer against the City, docketed as Civil Case No. 12334.

The Unlawful Detainer Case

In their Complaint, filed on February 12, 2004, petitioners asked the MTC to order the City and all agencies, instrumentalities or offices claiming rights under it, including the LTO, NBI, DOLE, PPC and the Fire Department, to vacate the subject property, shown in the Sketch Plan as Blocks 25 and 26 (LRC) Psd-9674, and to return possession thereof to them. In addition to attorney's fees, they asked the City to pay them a monthly rental of P2.5 million from the date it received the demand to vacate until it surrendered possession, as reasonable compensation for the use of the property.[17] (Citations omitted)

Like *Forfom*, the petitioners in this case did not institute an inverse condemnation proceeding to claim just compensation due to the taking of the State. Rather, they merely instituted an action for unlawful detainer before the MTC.

Evidently, the MTC does not have jurisdiction over an action for expropriation. Again, the original and exclusive jurisdiction to determine just compensation is lodged exclusively with the RTC, which has the authority to appoint commissioners. In this case, the court which exercised original jurisdiction over the complaint for unlawful detainer was the MTC; the RTC only exercised appellate jurisdiction when the parties appealed the decision of the MTC.

Accordingly, I cannot find sufficient basis to simply remand this case of unlawful detainer for the determination of just compensation to the RTC. To repeat, only in an action for expropriation or inverse condemnation proceeding lodged in the RTC, which exercises original and exclusive jurisdiction, can there be a determination of just compensation under Rule 67 of the Rules of Court.

The better approach, as stated in *Forfom*, would be to direct the State – particularly, the City of Naga – in the dispositive portion to forthwith institute the appropriate expropriation action over the land in question, so that just compensation due to the owners may be determined. With such directive, the City of Naga shall be compelled to institute the proper action for expropriation under Rule 67 before the RTC and the issue of determination of just compensation can be properly determined in accordance with the Rules of Court.

Notably, the ponencia cites *Secretary of DPWH*[18] and *Republic v. Spouses Nocom*[19] to justify the remand of the case to the RTC for determination of just compensation, even though this case stemmed from an action for unlawful detainer. However, I disagree that those cases are on all fours with the present case.

For one, *Secretary of DPWH* is not squarely applicable in the present situation because it was not disputed in the said case that the government did not have a valid claim over the lot involved when it took the property; thus, there was unlawful taking of land belonging to a private individual. On the contrary, the government in this case does not even recognize the right of ownership of petitioners.

Republic v. Spouses Nocom, likewise, is not applicable. In that case, the Court remanded the case to the lower court for the determination of just compensation.[20] However, it must be emphasized that there was already a separate expropriation proceeding instituted earlier therein, it just so happened that therein respondents were excluded:

On January 25, 1982, the Manila International Airport Authority instituted expropriation proceedings,

docketed as Civil Case No. 9712-P, for the acquisition of lands for the Ninoy Aquino International Airport (NAIA) expansion program. The Subject Lots, among others, were included in the Complaint for Expropriation and were to be used as additional maintenance and parking space for the aircrafts in NAIA Terminal 1 Taxiway 06/24.

On January 24, 1983, the Regional Trial Court of Pasay City issued a Writ of Possession granting the expropriation of the lots in the complaint. In 1991, due to judicial reorganization, the civil case was transferred to the Regional Trial Court of Makati. On June 21, 1991, the Regional Trial Court of Makati confirmed the expropriation of the lots, including the Subject Lots, with an order for the Manila International Airport Authority to pay just compensation equivalent to [P]552.00/sq.m., plus 6% interest from 1983 until full payment.

x x x x

During the appeal, the Manila International Airport Authority filed a Motion for Exclusion of Lots 2817-A, 2818-A, 2818-B, 2819-A, and 2819-B from the expropriation proceedings after finding a more appropriate site for their purpose. The motion was granted by the Court of Appeals in a July 21, 1992 Resolution. Thus, the Subject Lots, save for Lot 2817-B, were excluded from the expropriation judgment.[21] (Emphases supplied, citations omitted)

Evidently, while respondents in *Republic v. Spouses Nocom* were excluded, it is undeniable that there was already a separate expropriation proceeding filed before the RTC. This is in contrast with the present case where no expropriation proceeding was ever filed before the RTC pursuant to Rule 67 of the Rules of Court. Thus, in this case, the determination of just compensation simply cannot be remanded to the RTC considering that the case stemmed from an unlawful detainer case and no expropriation proceeding had ever been filed by the parties.

Indeed, there must be a separate expropriation proceeding initiated to properly determine the amount of just compensation to be awarded to herein petitioners if in case the subject property can no longer be returned by the City of Naga due to the government structures already constructed thereon and the functions undertaken therein. The second stage of the expropriation proceeding requires the full presentation of evidence from both parties to determine the just compensation due to petitioners for the portions of the subject property that cannot be returned by the City of Naga. Verily, this requires a full-blown trial in a separate proceeding, and cannot be done in the same present case.

In this manner of mandatorily requiring the City of Naga to institute a separate action for expropriation against petitioners, the City of Naga can remain on the subject property, without interruption of government functions, and petitioners will be able to receive the just compensation due them.

Finally, if the subject property cannot be returned to petitioners and an expropriation proceeding is filed to award just compensation, it is but proper that the necessary interest be imposed on the just compensation to be received by petitioners. As stated in *Republic v. Spouses Nocom*,[22] it would result in great injustice if this Court grants the prayer that the just compensation be pegged at the value of the subject properties at the alleged time of taking by the government, without any interest imposed. To do so would reward the government for its disregard of procedural due process in its exercise of the power of eminent domain.[23]

In *National Transmission Corp. v. Oroville Development Corp.*,[24] the Court explained that when the government takes private property, the owner's loss is not only his or her property but also on its income-generating potential. Thus, as a rule, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost.[25] The rationale for imposing the interest is to compensate the landowners for the income they would have made had they been properly compensated for their properties at the time of the taking.[26]

Similarly, in *Land Bank of the Philippines v. Heirs of Barrameda*,^[27] the Court held that the delay in the payment of just compensation is a forbearance of money. As such, this is necessarily entitled to earn interest. The difference in the amount between the final amount, as adjudged by the court, and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money.

Accordingly, any just compensation to be received by petitioners in a separate expropriation proceeding should have the accompanying interest computed from the time of the taking.

WHEREFORE, I vote to GRANT the second motion for reconsideration as respondent City of Naga cannot be ordered to vacate and return the subject property to petitioners. However, pursuant to *Forom Development Corp. v. Philippine National Railways*, respondent City of Naga is DIRECTED to forthwith INITIATE a separate expropriation action over the land in question, so that just compensation due to the owners may be determined in accordance with the Rules of Court, with interest at the legal rate of six (6%) percent per annum from the time of taking until full payment is made.

[1] *Heirs of Mariano v. City of Naga*, 827 Phil. 531, 538-539 (2018).

[2] 713 Phil. 55, 70 (2013).

[3] 594 Phil. 10 (2008).

[4] *Masikip v. City of Pasig*, 515 Phil. 364, 373 (2006).

[5] *Spouses Yusay v. Court of Appeals*, 662 Phil. 634, 649 (2011).

[6] *Land Bank of the Philippines v. Manzano*, 824 Phil. 339, 368 (2018).

[7] 603 Phil. 471 (2009).

[8] *Id.* at 483-484.

[9] *Land Bank of the Philippines v. Manzano*, *supra* at 369-370.

[10] 671 Phil. 569 (2011).

[11] *Id.* at 591-593.

[12] 834 Phil. 861 (2018).

[13] *Id.* at 878.

[14] *Forom Development Corp. v. Philippine National Railways*, *supra* note 3 at 30-31.

[15] *Id.* at 27-31.

[16] *Id.* at 32-35.

[17] *Heirs of Mariano v. City of Naga*, *supra* note 1 at 540-541.

[18] *Supra* note 2.

[19] G.R. No. 233988, November 15, 2021.

[20] *Id.*

[21] Id.

[22] Id.

[23] Id.

[24] 815 Phil. 91, 112 (2017).

[25] The exception wherein the just compensation is computed at the time of the filing of the inverse condemnation proceeding (not the time of taking) is discussed in *National Power Corp. v. Heirs of Sangkay*, (supra note 10 at 597) because the private owners were unaware of the taking by the government of their private properties.

[26] *National Transmission Corp. v. Oroville Development Corp.*, supra at 112.

[27] G.R. No. 221216, July 13, 2020.

SEPARATE OPINION

LEONEN, J.:

I agree with the conclusion that the Petition should be granted. However, I disagree with the application of the pro hac vice consideration. Moreover, I propose further considerations in the imposition of legal interest.

I discuss the issues in seriatim.

I

At the center of the dispute is a five-hectare parcel of land located in City Heights Subdivision, Naga City and owned by Macario Mariano (Mariano) and Jose A. Gimenez (Gimenez). The subject property has been utilized by the City Government of Naga since 1954 by virtue of a Deed of Donation executed by Mariano and Gimenez and the City Mayor.[1]

In February 2004, the heirs of Mariano filed a Complaint for Unlawful Detainer against the City of Naga before the Municipal Trial Court of Naga City.[2] On February 14, 2005, the Municipal Trial Court dismissed the complaint for lack of jurisdiction.[3] On the City's appeal, the Regional Trial Court set aside the Municipal Trial Court's dismissal and ordered the City of Naga to immediately vacate the subject properties and pay the registered owners reasonable compensation for the use and occupancy of the property, reckoned from November 30, 2003 until the City of Naga have actually vacated the subject property.[4] The ruling of the Regional Trial Court was reversed by the Court of Appeals, only to be reinstated by this Court's First Division in its March 12, 2018 Decision[5] and July 23, 2018 Resolution.[6]

In the First Division's Decision and Resolution, the Deed of Donation from which the City claims its right over the property was found to neither have been registered with the Registry of Deeds nor annotated in the Transfer Certificate Title of the subject property. In addition, the Deed of Donation had defects, which ultimately made it void. Accordingly, the First Division declared that the registered owners of the property, Macario and Gimenez, now represented by their heirs, have the better right of possession over the property. It also ordered the City of Naga to immediately vacate and surrender said property to the former.[7]

Thus, the City of Naga filed a second Motion for Reconsideration[8] before this Court, insisting on its right to the subject property where its city hall and other arms of government stand.

II

I agree with the ponencia that the second Motion for Reconsideration merits this Court's attention. While it is a general rule that a second motion for reconsideration is a prohibited pleading as embodied in Rule 52, Section 2 of the Rules of Court, this Court has laid down instances when a second motion for reconsideration may be entertained: when the assailed decision is legally erroneous, patently unjust, and capable of causing unwanted injuries to the parties.[9] In *Cristobal v. Philippine Airlines*,[10] this Court held that "[w]here a tribunal renders a decision substantially reversing itself on a matter, a motion for reconsideration seeking reconsideration of this reversal, for the first time, is not a prohibited second motion for reconsideration." [11] This applies to the present case.

In the assailed Decision and Resolution of the First Division, the Court failed to take into consideration previous rulings regarding the State's power of eminent domain and the corollary remedies afforded to private citizens. The most glaring mistake was the First Division's finding that jurisprudence on eminent domain were inapplicable because the case was not for expropriation. It was likewise an error to declare that just compensation was inappropriate given that the property was donated to respondent. Consequently, its fallo which ordered respondent to immediately vacate the premises and surrender it to its rightful owners, herein petitioners, was likewise erroneous.

To the contrary, respondent's taking of the private property cannot be denied.

In *Republic v. Vda. de Castellvi*,[12] this Court laid down the circumstances present in taking of private property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) entrance into the private property must be for more than a momentary period; (3) entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way to oust the owner and deprive him of all beneficial enjoyment of the property.[13] Such elements, which have been often repeated in our jurisprudence, were ignored in the assailed Decision and Resolution of the First Division.

There is no question that respondent's occupation of the subject lots was an exercise of its power of eminent domain. Respondent occupied the subject lots owned by petitioners in pursuit of its purpose and objectives through a defective and void Deed of Donation. The area occupied was used by the Land Transportation Office, the National Bureau of Investigation, the Department of Labor and Employment, the Philippine Postal Corporation, the Fire Department, and other government agencies and instrumentalities since 1954.[14] This undeniably made it impossible for petitioners to use their own properties.

Having established respondent's exercise of eminent domain and recognizing its failure to file for expropriation proceedings, it is necessary to examine the remedies afforded the private citizens and registered owners of the affected land. Again, the available remedies were ignored by the First Division in their assailed Decision and Resolution.

In this case, respondent took possession of the subject lots without initiating an expropriation proceeding and relied solely on the defective Deed of Donation to defend its claim. While the First Division was correct in deeming this as an invalid action of a state instrumentality, it was incorrect in finding that such was not an exercise of eminent domain. Furthermore, it erred in ordering respondent to vacate the property and surrender possession of the same to petitioners, and pay back rentals instead of just compensation. Such findings directly opposed current jurisprudence.

In *Secretary of the Department of Public Works and Highways v. Spouses Tecson*,[15] this Court stated the remedies for an aggrieved private party when its property is taken by the government for public use, more so,

when the aggrieved party is deprived of their property without the benefit of just compensation:

When a property is taken by the government for public use, jurisprudence clearly provides for the remedies available to a landowner. The owner may recover his property if its return is feasible or, if it is not, the aggrieved owner may demand payment of just compensation for the land taken. For failure of respondents to question the lack of expropriation proceedings for a long period of time, they are deemed to have waived and are estopped from assailing the power of the government to expropriate or the public use for which the power was exercised. What is left to respondents is the right of compensation. The trial and appellate courts found that respondents are entitled to compensation. The only issue left for determination is the propriety of the amount awarded to respondents.[16] (Emphasis supplied, citations omitted)

Forom Development Corporation v. Philippine National Railways[17] is likewise illustrative:

In the case at bar, the expropriator (PNR) entered the property of Forom, a private land. The entrance into Forom's property was permanent, not for a fleeting or brief period. PNR has been in control, possession and enjoyment of the subject land since December 1972 or January 1973. PNR's entry into the property of Forom was with the approval of then President Marcos and with the authorization of the PNR's Board of Directors. The property of Forom measuring around eleven hectares was devoted to public use — railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service. With the entrance of PNR into the property, Forom was deprived of material and beneficial use and enjoyment of the property. It is clear from the foregoing that there was a taking of property within the constitutional sense.

....

Where actual taking was made without the benefit of expropriation proceedings, and the owner sought recovery of the possession of the property prior to the filing of expropriation proceedings, the Court has invariably ruled that it is the value of the property at the time of taking that is controlling for purposes of compensation. In the case at bar, the just compensation should be reckoned from the time of taking which is January 1973. The determination thereof shall be made in the expropriation case to be filed without delay by the PNR after the appointment of commissioners as required by the rules.[18] (Citation omitted)

Similar to *Forom Development Corporation*, there was a taking of the property without payment of any just compensation and it is no longer feasible to return the property to petitioners. Respondents currently and continuously occupy the subject lots. Moreover, the improvements found on the landform are vital to its regular operations. Verily, ordering them to vacate the properties at this point would prove tedious and impractical. As such, what can only be given now is the payment of just compensation plus interest for the unjust delay.

III

I agree with the ponencia that instead of monthly rentals, the petitioners must be awarded just compensation. I further agree that this Court must ensure that a reasonable and just amount is awarded the petitioners.

In *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, this Court defined just compensation as the fair value of the property fixed at the time of the actual taking by the government. It expounded:

Just compensation is "the fair value of the property as between one who receives, and one who desires to sell, ... fixed at the time of the actual taking by the government." This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation.

....

The Court ... was confronted with common factual circumstances where the government took control and

possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. The Court thus determined the landowners' right to the payment of just compensation and, more importantly, the amount of just compensation. The Court has uniformly ruled that just compensation is the value of the property at the time of taking that is controlling for purposes of compensation. In *Forfom*, the payment of just compensation was reckoned from the time of taking in 1973; in *Eusebio*, the Court fixed the just compensation by determining the value of the property at the time of taking in 1980; in *MIAA*, the value of the lot at the time of taking in 1972 served as basis for the award of compensation to the owner; and in *Republic*, the Court was convinced that the taking occurred in 1956 and was thus the basis in fixing just compensation. As in said cases, just compensation due respondents in this case should, therefore, be fixed not as of the time of payment but at the time of taking, that is, in 1940.[19] (Emphasis in the original, citations omitted).

The controlling doctrine is that when there is actual taking by the government without expropriation proceedings, the owner of the property is entitled to just compensation which is pegged at the value of the property at the time of taking.[20] Such parameter is deemed a reasonable and equitable compensation to the property owner. However, this would only be fair if payment of just compensation is made promptly. Failure to pay the property owners' appropriate compensation is not only tantamount to robbing them of their property, but has the effect of taking away their potential earnings or income if they were able to utilize their property. In *Apo Fruits Corporation v. Land Bank of the Philippines*,[21] this Court held:

Apart from the requirement that compensation for expropriated land must be fair and reasonable, compensation, to be "just," must also be made without delay. Without prompt payment, compensation cannot be considered "just" if the property is immediately taken as the property owner suffers the immediate deprivation of both his land and its fruits or income.

....

The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived[.][22] (Emphasis in the original, citations omitted)

Here, respondent has been using petitioner's property since 1954 without instituting expropriation proceedings for the property owners' benefit. Just compensation was never determined nor paid. To base the value of the property at the time of taking over seven decades ago would be unjust as it does not contemplate the opportunities lost nor does it acknowledge the extreme delay in payment. Accordingly, the value of just compensation awarded to petitioners should consider not only the fair market value of the property upon taking, but also the opportunity loss petitioners suffered due to respondent's use of the property without payment.

I concur with the ponente's application of the formula for calculating just compensation in *Republic v. Spouses Nocom*. [23] The present value of the property's fair market value at the time of acquisition is considered, allowing private citizens to recover what they have lost and ensuring justice and equity.

In economics, the definition of present value is the value for an asset that yields a stream of income over time.[24] It recognizes that the value of money is not static and that a certain amount of money may be worth more in the future due to a variety of factors,[25] such as interest and inflation. It demonstrates that receiving the same amount in the future would not have the same value as receiving it today.

For example, PHP 5,000 which will be received three years from now will be worth less than PHP 5,000 received today. This is because given a specified rate of return, PHP 5,000 invested for three years would yield earnings. At the same time, waiting three years before investing the same amount of money results in three years' worth of lost interest, thereby diminishing the future value of the same amount of money.

Additionally, the passage of three years will diminish purchasing power. Given current prices, PHP 5,000 could purchase more items today, whereas three years from now, prices of basic commodities will have increased due to inflation. Consequently, the concept of present value considers the interest income a property owner could earn if compensation was received when the property was seized.[26] In addition, it considers the potential depreciation of the amount due to the passage of time between the taking of the property and the payment of just compensation.

I reiterate the formula set forth in *Secretary of the Department of Public Works and Highways v. Spouses Tecson*:

For purposes of explaining this method, consider property owner AA who owns a piece of land. The government took his property at Year 0. Let us assume that his property had a fair market value of P100 at the time of taking. In our ideal situation, the government should have paid him P100 at Year 0. By then, AA could have put the money in the bank so it could earn interest. Let us peg the interest rate at 5% per annum (or in decimal form, 0.05).

If the expropriation proceedings took just one year (again, another ideal situation), AA could only be paid after that year. The value of the P100 would have appreciated already. We have to take into consideration the fact that in Year 1, AA could have earned an additional P5 in interest if he had been paid in Year 0.

In order to compute the present value of P100, we have to consider this formula:

Present Value in Year 1 = Value at the Time of Taking + (Interest Earned of the Value at the Time of Taking)

In formula terms, it will look like this:

$$PV1 = V + (V \cdot r)$$

$$PV1 = V \cdot (1 + r)$$

PV1 = present value in Year 1

V = value at the time of taking

r = interest rate

So in the event that AA gets paid in Year 1, then:

$$PV1 = V \cdot (1 + r)$$

$$PV1 = P100 (1 + 0.05)$$

$$PV1 = P105$$

So if AA were to be paid in Year 1 instead of in Year 0, it is only just that he be paid [P]105 to take into account the interest earnings he has foregone due to the expropriation proceedings. If he were to be paid in Year 2, we should take into consideration not only the interest earned of the principal, but the fact that the interest earned in Year 1 will also be subject to interest earnings in Year 2. This concept is referred to as compounding interest rates. So our formula becomes:

Present Value in Year 2 = [Present Value in Year 1] + [Interest Earned of Present Value in Year 1].[27]

(Emphasis in the original, citations omitted)

To further clarify the concept of present value before this Court, I offered the expanded formula below:[28]

Due to compounding interests, the formula for present value at any given year becomes:

$$PV_t = V \cdot (1+r)^t$$

PV stands for the present value of the property. In order to calculate the present value of the property, the corresponding formula is used. V stands for the value of the property at the time of the taking, taking in all the considerations that the court may use in order to arrive at the fair market value in accordance with law.

This is multiplied to $(1 + r)$ where r equals the implied rate of return (average year-to-year interest rate) and raised to the exponent t . The exponent t refers to the time period or the number of years for which the value of the money would have changed. It is treated as an exponent because it is the number of times you have to multiply $(1 + r)$ to capture the effect of compounding interest rates.

So if AA were to be paid seventy-three (73) years from the time of taking, the present value of the amount he should have been paid at the time of taking would be:

$$PV_t = V \cdot (1+r)^t$$

$$PV_{73} = P100 \cdot (1+0.05)^{73}$$

$$PV_{73} = P100 \cdot (35.2224)$$

$$PV_{73} = P3,522.24^{[29]}$$
 (Emphasis in the original)

In applying the formula, just compensation will reflect not only on the value of the property during the time of the taking, but also the cost of the property today.

Given that the subject property in the current controversy did not undergo just compensation proceedings, this Court does not hold any data as to how much the property was worth during the time of the taking. Verily, this Court is unable to compute for just compensation. Accordingly, I concur with the majority that the case must be remanded to the Regional Trial Court for the determination of the appropriate amount of just compensation using the present value formula.

IV

The initial complaint for unlawful detention was filed before the Municipal Trial Court of Naga City and was later elevated to the Regional Trial Court on appeal. The majority believes a *pro hac vice* ruling is necessary for the remand of this case to the Regional Trial Court of Naga City, it not being the court of origin. I disagree.

Pro hac vice means "on this particular occasion" in Latin. It is used when the facts of a case are so exceptional that the court's decision applies only to those facts and not to other situations. It avoids setting a precedent and may lead to duplicative litigation. However, to put the issue at rest, that is, whether this Court may remand to the Regional Trial Court the determination of just compensation, our decision in this case should not only bind the parties in this case, but also future parties in similar situations.^[30]

Moreover, the *pro hac vice* application goes against the principle of judicial economy. Judicial economy refers to the effectiveness of the court system and its operations.^[31] It stipulates that cases must be resolved at the lowest possible cost to the parties and to the courts' time, effort, and resources.^[32] Here, the only issue remaining is the determination of just compensation. Given the dearth of information on the subject property's valuation, this Court is constrained to remand the case for the determination of just compensation which is well within the jurisdiction of the Regional Trial Court. To require the parties to file an entirely new case to once again and go through the process of trial would deplete the resources of both the litigants and the courts.

V

As a final point, while just compensation should ideally be provided in full to the property owner upon taking, this is rarely the case. In numerous cases, like the one at hand, the taking by the government occurs well before the filing of lawsuits for appropriate compensation. Thus, determining just compensation based on the date of the taking is insufficient to recompense the property owner for the loss suffered. Consequently, the remedy for this

delay has been the application of interest to the amount of just compensation.

In the present case, the majority ordered respondents to pay petitioners just compensation with legal interest of 6% per annum on the value of the property at the time of taking or August 16, 1954, until full payment is made. Nevertheless, the imposition of interest in expropriation or inverse condemnation must be clarified further.

In *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*[33] this Court identified two kinds of interest: conventional interest and compensatory interest. These are conceptually distinct. Conventional interest refers to the compensation paid by a borrower for the "cost of the use of money[.]"[34] This is due only if expressly stipulated in writing.[35] Compensatory interest, on the other hand, is a penalty or indemnity on monetary judgments that is demandable when the borrower incurs delay.[36] These two must be distinguished from the compounded interest used to calculate present value. The compounded interest rates are made "part of the value of the property itself and not merely the interest given by two parties entering into a loan or an interest rate given together with a monetary judgment." [37]

In *Secretary of the Department of Public Works and Highways v. Spouses Tecson*,[38] this Court discussed how interest has been imposed in expropriation cases:

In other words, the just compensation due to the landowners amounts to an effective forbearance on the part of the State—a proper subject of interest computed from the time the property was taken until the full amount of just compensation is paid—in order to eradicate the issue of the constant variability of the value of the currency over time.

....

It is important to note, however, that interest shall be compounded at the time judicial demand is made pursuant to Article 2212 of the Civil Code of the Philippines, and sustained in *Eastern Shipping Lines v. Court of Appeals*, then later on in *Nacar v. Gallery Frames*, save for the reduction of interest rate to 6% for loans or forbearance of money, thus:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.[39] (Emphasis in original, citations omitted)

Depending on the applicable Central Bank circular, the legal interest rate is either 6% or 12%. Yet, these Central Bank circulars impose rates without any explanation and exist merely to prevent the imposition of unduly high interest rates. The calculation of present value, meanwhile, depends on the average annual interest rate over time.[40] Considering the current situation does not involve a loan or forbearance for which a conventional interest rate is acceptable, it is recommended that the present value method be utilized, as it is more compatible with the notion of equitable and fair compensation.

As for compensatory interest, its application was succinctly illustrated in *Lara's Gifts & Decors*[41] as follows:

Compensatory interest, also referred to as penalty interest, indemnity, or moratory interest, is the indemnity for damages arising from delay on the part of the debtor in an obligation consisting in the payment of a sum of money. It is interest allowed by law in the absence of a promise to pay interest as compensation for delay in paying a fixed sum or a delay in assessing and paying damages.

....

.... the summary of rules on the imposition of interest, as provided in *Eastern Shipping Lines* and *Nacar*, are

amended as follows:

With regard to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

A. In obligations consisting of loans or forbearances of money, goods or credit:

1. The compensatory interest due shall be that which is stipulated by the parties in writing as the penalty or compensatory interest rate, provided it is not unconscionable. In the absence of a stipulated penalty or compensatory interest rate, the compensatory interest due shall be that which is stipulated by the parties in writing as the conventional interest rate, provided it is not unconscionable. In the absence of a stipulated penalty or a stipulated conventional interest rate, or if these rates are unconscionable, the compensatory interest shall be the prevailing legal interest rate prescribed by the Bangko Sentral ng Pilipinas. Compensatory interest, in the absence of a stipulated reckoning date, shall be computed from default, i.e., from extrajudicial or judicial demand, until full payment.

2. Interest on conventional/monetary interest and stipulated compensatory interest shall accrue at the stipulated interest rate (compounded interest) from the stipulated reckoning point or, in the absence thereof, from extrajudicial or judicial demand until full payment, provided it is not unconscionable. In the absence of a stipulated compounded interest rate or if this rate is unconscionable, the prevailing legal interest rate prescribed by the Bangko Sentral ng Pilipinas shall apply from the time of judicial demand until full payment.[42](Emphasis supplied, citations omitted)

In view of the foregoing and to properly compensate petitioners for respondent's almost seven-decade long possession of the subject lots without compensation, petitioners are entitled to payment of just compensation reflecting the present value of the amount of money owed to the property owners, and the payment of compensatory legal interest at the rate of 6% per annum from the finality of the Decision until its full payment.[43]

[1] *Heirs of Mariano v. City of Naga*, 827 Phil. 531, 539 (2018) [Per J. Tijam, First Division].

[2] *Id.* at 541.

[3] *Id.* at 543.

[4] *Id.* at 543-544.

[5] The March 12, 2018 Decision was penned by Associate Justice Noel Tijam with the concurrence of Associate Justices Teresita Leonardo-De Castro, Mariano Del Castillo, and Francis Jardeleza.

[6] Ponencia, pp. 2-3.

[7] *Heirs of Mariano v. City of Naga*, 827 Phil. 531, 551-574 (2018) [Per J. Tijam, First Division].

[8] Ponencia, p. 1.

[9] INTERNAL RULES OF THE SUPREME COURT, rule 15, section 3.

[10] 819 Phil. 343 (2017) [Per J. Leonen, Third Division].

[11] *Id.* at 344.

[12] 157 Phil. 329 (1974) [Per J. Zaldivar, En Banc].

[13] *Id.* at 345-346.

- [14] *Heirs of Mariano v. City of Naga*, 827 Phil. 531, 539 (2018) [Per J. Tijam, First Division].
- [15] 713 Phil. 55 (2013) [Per J. Peralta, Third Division].
- [16] *Id.* at 70.
- [17] 594 Phil. 10 (2008) [Per J. Chico-Nazario, Third Division].
- [18] *Id.* at 27-34.
- [19] 713 Phil. 55, 70-72 (2013) [Per J. Peralta, Third Division].
- [20] *Felisa Agricultural Corporation v. National Transmission Corporation*, 834 Phil. 861, 881-882 (2018) [Per J. Perlas-Bernabe, Second Division].
- [21] 647 Phil. 251 (2010) [Per J. Brion, En Banc].
- [22] *Id.* at 273-276.
- [23] G.R. No. 233988, November 15, 2021 [Per J. Leonen, Third Division].
- [24] PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, *ECONOMICS* 285 (19[th] ed.).
- [25] J. Leonen, Separate Opinion in *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, 713 Phil. 55, 75 (2013) [Per J. Peralta, Third Division].
- [26] J. Leonen, Separate Opinion in the *Heirs of Spouses Tria v. Land Bank of the Philippines*, 713 Phil. 1, 16-17 (2013) [Per J. Peralta, Third Division].
- [27] J. Leonen, Separate Opinion in *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, 713 Phil. 55, 75-77 (2013) [Per J. Peralta, Third Division].
- [28] 713 Phil. 55 (2013) [Per J. Peralta, Third Division].
- [29] *Id.* at 78.
- [30] *Re: Martin S. Villarama, Jr.*, 827 Phil. 152, 167 (2018) [Per J. Martires, En Banc].
- [31] *Ren Transport Corporation v. National Labor Relations Commission* (2[nd] Division), 788 Phil. 234, 244 (2016) [Per J. Sereno, First Division].
- [32] *Malixi v. Baltazar*, 821 Phil. 423, 452 (2017) [Per J. Leonen, Third Division].
- [33] G.R. No. 225433 (Resolution), September 20, 2022 [Per J. Leonen, En Banc].
- [34] *Id.* at 9. This refers to the pinpoint citation in the copy of the Resolution uploaded in the Supreme Court website.
- [35] *Sun Life of Canada (Philippines), Inc. v. Kit*, 745 Phil. 482, 491 (2014) [Per J. Del Castillo, Second Division].
- [36] *Id.* at 491.
- [37] *National Transmission Corporation v. Religious of the Virgin Mary*, G.R. No. 245266, August 1, 2022, [Per J. Leonen, Second Division] p. 18, citing J. Leonen, Dissenting Opinion in *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, 713 Phil. 55, 75 (2013) [Per J. Peralta, Third Division].
- [38] 758 Phil. 604 (2015) [Per J. Peralta, En Banc].

[39] Id. at 636-640.

[40] J. Leonen, Dissenting Opinion in Secretary of the Department of Public Works and Highways v. Spouses Tecson, 758 Phil. 604, 709 (2015) [Per J. Peralta, En Banc].

[41] G.R. No. 225433 (Resolution), September 20, 2022 [Per J. Leonen, En Banc].

[42] Id. at 8-20. This refers to the pinpoint citation in the copy of the Resolution uploaded in the Supreme Court website.

[43] Id. See also Nacar v. Gallery Frames, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

SEPARATE OPINION

CAGUIOA, J.:

The ponencia partially grants the Second Motion for Reconsideration[1] filed by respondent City of Naga (respondent) of the Decision[2] dated March 12, 2018 (main Decision) and Resolution[3] (assailed Resolution) dated July 23, 2018 rendered by the First Division of this Court.[4] The main Decision granted the petition and reinstated the Decision[5] dated June 20, 2005 of the Regional Trial Court of Naga City, Branch 26 (RTC) in the unlawful detainer case filed by petitioners against respondent and docketed as Civil Case No. RTC 2005-0030, while the assailed Resolution denied respondent's First Motion for Reconsideration. The said RTC ruling ordered respondent to, among other things, immediately vacate the subject property and pay petitioners a monthly rent[6] by way of reasonable compensation for the use and occupancy of such property reckoned from November 30, 2003 and until such time that respondent shall have actually vacated the same.[7] The herein ponencia partially grants the Second Motion for Reconsideration of respondent on the ground that the main Decision and the assailed Resolution failed to consider well-settled jurisprudence on the remedy of just compensation that landowners are entitled to when their properties are taken by the government for public purpose without, however, initiating expropriation proceedings.[8]

I concur in the rationale of the herein ponencia and to the effect of its disposition, which ultimately overturns that of the main Decision. To my mind, however, the disposition in the present Second Motion for Reconsideration should be a total or full reconsideration. I offer this Separate Opinion to explain my position further.

Petitioners, in filing the unlawful detainer case, sought to recover possession of the subject property, a five-hectare piece of land that was part of a 22.9301-hectare of land registered to their predecessors-in-interest under Transfer Certificate of Title (TCT) No. 671. The subject property was donated to respondent in 1954 through a Deed of Donation, by virtue of which, respondent entered the property, constructed the government center, and declared the subject property in its name for tax purposes. Thereafter, the Land Transportation Office, the National Bureau of Investigation, the Department of Labor and Employment, the Philippine Postal Corporation, the Fire Department and other government agencies and instrumentalities entered the same property and built their offices thereon. However, as correctly found by the Court in the main Decision, the purported donation was defectively notarized and thus, lacked the formalities required for its validity. Likewise, the donation remained neither registered nor annotated on TCT No. 671. In the long years since respondent began occupying the subject property, its title has remained registered in the names of petitioners' predecessors-in-interest.[9]

The foregoing considerations, notwithstanding, I submit that the main Decision erroneously held that petitioners have the better right of possession over the subject property and that respondent, including all other government

instrumentalities, agencies and offices claiming right of possession through and under it should perforce vacate the same and surrender and deliver its physical possession to petitioners. In the same vein, it was erroneous for the main Decision to reject the argument of respondent that payment of just compensation, in lieu of recovery of possession, was the proper remedy of petitioners. In so ruling, the main Decision held that there was no exercise of eminent domain in the instant case since the subject property "had been offered by its owners-developers, under certain terms, for donation to the City as the City Hall and market sites within the subdivision, which offer the City clearly had the option to refuse." [10] It went on to conclude that respondent was not impelled by the need to take the subject property for a public purpose, and that when respondent did possess the same, it was "not exercising a sovereign function as expropriator." [11] I disagree with this disquisition in the main Decision. Respondent took possession and occupied the subject property in 1954 and has since used it as a government center, with several government agencies holding offices therein. These are uncontroverted facts. Hence, there is no gainsaying that the subject property, even from the very beginning, has always been used for a public purpose and not for a commercial or proprietary purpose. [12]

It is also of no moment if the original intention was to donate the subject property to respondent. Again, the factual findings in the main Decision bear out that the donation was invalid and did not materialize because the condition to award the construction contract to City Heights Subdivision was not obtained. Further, the Court held that respondent cannot feign ignorance over this substantial flaw in its claim over the subject property, as in fact then Mayor Monico Imperial (Mayor Imperial) had even proposed to purchase the subject property instead. This proposal to purchase never materialized as well; yet, respondent continued to occupy the subject property for decades.

For all intents and purposes, therefore, there was "taking" when respondent occupied the subject property in 1954 [13] on the basis of a defective and invalid deed of donation. In *Sy v. Local Government of Quezon City*, [14] the Court held that the lack of proper authorization of the local government unit (LGU), i.e., resolution to effect expropriation, did not change the legal character of its action as one of "taking." It further declared that under case law, there is "taking" when the owner is actually deprived or dispossessed of his or her property; when there is a practical destruction or a material impairment of the value of his or her property or when he or she is deprived of the ordinary use thereof. [15] In a long line of cases, these circumstances have been expanded, to wit: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public purpose or otherwise informally, appropriately or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. [16]

Again here, under pain of repetition, it cannot be denied that respondent, an LGU endowed with the power of eminent domain, entered the subject private property belonging to petitioners' predecessors-in-interest in 1954. The entry was unequivocally permanent and respondent since then has been in control, possession and enjoyment of the subject property, which was devoted to public use. Consequently, petitioners and their predecessors-in-interest have been dispossessed of their property since 1954 and have been deprived to enjoy their bundle of property rights over it. To be sure, there was a taking of property within the constitutional sense. [17]

As well, to rule that there is no taking when a property has been taken by the government without the institution of formal expropriation proceedings would ignore the existence of an action for inverse condemnation. While the typical taking occurs when the government acts to condemn property in the exercise of its power of eminent domain, the entire doctrine of inverse condemnation is predicated on the proposition that a taking may occur

without such formal proceedings.[18] The purpose then of an action for inverse condemnation is to recover the value of the property taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the latter.[19]

Having established here that there was, in fact, a taking of private property by an LGU for a public purpose, petitioners as landowners are entitled to be compensated therefor. Under the circumstances of this case and in light of related prevailing jurisprudence, the relief of recovery of possession being prayed for by petitioners should not have prospered.

In the oft-cited case of *Forfom Development Corp. v. Philippine National Railways*[20] (*Forfom*), the Court was confronted with the primary question of whether the landowner corporation, *Forfom Development Corporation* (*Forfom*), can recover possession of its property because respondent *Philippine National Railways* (PNR) failed to file any expropriation case and to pay just compensation.[21] The Court answered in the negative, emphasizing that neither the non-filing of the case for expropriation nor the non-payment of just compensation will necessarily lead to or entitle the landowner to the return of his or her property. What was left as a remedy to the landowner, the Court determined, was payment of just compensation.[22]

Notably, the factual milieu of *Forfom* is quite similar with that of the present case. PNR entered the property of *Forfom*, a private land, with the approval of then President Ferdinand E. Marcos and with the authorization of PNR's Board of Directors. The entrance into *Forfom*'s property was permanent, not for a fleeting or brief period. PNR had been in control, possession and enjoyment of the subject land since such entry, devoting it to public use — railroad tracks, facilities and appurtenances for use of the *Carmona Commuter Service*.[23]

The Court further observed that *Forfom* had, in fact, accepted the fact of the taking of its land when it negotiated with PNR for just compensation, knowing fully well that there was no expropriation case filed at all. *Forfom*'s inaction for almost 18 years to question the absence of expropriation proceedings and its discussions with PNR as to how much petitioner should be paid for its land had already precluded it from questioning PNR's power to expropriate or the public purpose for which the power was exercised. The Court therefore found *Forfom* in estoppel from assailing the takeover of its land on the ground that there was no case for expropriation that was commenced by PNR.[24]

The same observations can be made in the instant case. The main Decision referred to letters written by the predecessors-in-interest of petitioners to Mayor Imperial and the general manager of the subdivision in 1959 and 1968, which revealed that there were subsequent discussions about the new proposal of respondent, through Mayor Imperial, to just purchase the subject property when the original contract of donation fell through. The Court found that said letters also indicated that petitioners' predecessors-in-interest had long been waiting for respondent to act on its proposal. However, respondent had not taken any action, and worse, continued to enjoy possession of the subject property and subsequently allowed other government agencies to build their offices in the premises. Thus, similarly with the petitioner in *Forfom*, despite filing an action for recovery of possession, what herein petitioners were really after was to be compensated for the value of their property. In other words, considering the number of years that has lapsed, petitioners should likewise be held in equitable estoppel from claiming that respondent is a mere usurper of their property.

The Court in *Forfom* cited the 1915 case of *Manila Railroad Co. v. Paredes*[25] (*Manila Railroad Co.*), the first case in this jurisdiction in which there was an attempt to compel a public service corporation, endowed with the power of eminent domain, to vacate the property it had occupied without first acquiring title thereto by amicable purchase or expropriation proceedings.[26] *Manila Railroad Co.* sharply observed that there is "something akin to equitable estoppel in the conduct of one who stands idly by"[27] and watches the construction of a government

project, a railroad in said case, without protest. The Court expounded that if a landowner, knowing that a railroad company has entered upon his land and is engaged in constructing its road without having complied with a statute requiring either payment by agreement or proceedings to condemn, remains inactive and permits it to go on and expend large sums in the work, he is estopped from maintaining either trespass or ejectment for the entry, and will be regarded as having acquiesced therein, and will be restricted to a suit for damages.[28]

Forfom further cited *De Ynchausti v. Manila Electric Railroad & Light Co.*[29] (*De Ynchausti*) and *Ansaldo v. Tantuico, Jr.*[30] (*Ansaldo*), cases which similarly ruled on equitable estoppel against the property owners. The Court in *De Ynchausti* held:

But the railroad corporation being clothed with the right to take the land in question in condemnation proceedings, it would be a manifestly vain and useless formality to render judgment for the restoration of possession upon payment of an indemnity to reimburse the railroad corporation for its expenditures on the land—with the full knowledge that before such judgment could be executed the railroad corporation could and would take possession of the land in condemnation proceedings upon payment of compensation for the value of the land and the improvements made upon it. It is clear, therefore, that with relation to lands which a railroad corporation is authorized under its charter to have condemned for its use, and which have been entered upon and occupied by the railroad corporation, under a claim of right and in good faith, but without first instituting the appropriate condemnation proceedings, the right of election secured to the landowner in articles 361 and 453 of the Civil Code has, in substance and effect, been destroyed by the enactment of the legislation conferring the power upon the railroad corporation to take possession in condemnation proceedings. The only right secured to the landowner in such cases is the right to compensation for the lands taken, and resultant damages to his lands not taken, which right he may enforce in an ordinary action to compel the corporation to pay the value of the land under the terms of article 361 of the Code, or, if he so desires, by the institution of appropriate proceedings to compel the corporation to have the land condemned and to pay the compensation and damages assessed in the course of the condemnation proceedings.

Substantially identical results have been secured in the United States by the application of equitable principles to similar states of fact, as will appear from the following citation from a few of the leading cases.

"The owner of land, who stands by, without objection, and sees a public railroad constructed over it, can not, after the road is completed, or large expenditures have been made thereon upon the faith of his apparent acquiescence, reclaim the land, or enjoin its use by the railroad company. In such case there can only remain to the owner a right of compensation." (*Goodin vs. Cin. and Whitewater Canal Co.*, 18 Ohio St., 169.)

"One who permits a railroad company to occupy and use his land and construct its road thereon without remonstrance or complaint, cannot afterwards reclaim it free from the servitude he has permitted to be imposed upon it. His acquiescence in the company's taking possession and constructing its works under circumstances which made imperative his resistance, if he ever intended to set up illegality, will be considered a waiver. But while this presumed waiver is a bar to his action to dispossess the company, he is not deprived of his action for damages for the value of the land, or for injuries done him by the construction or operation of the road." (*St. Julien vs. Morgan etc., Railroad Co.*, 35 La. Ann., 924.)[31]

In *Ansaldo*, on the other hand, the Court likewise found that the owners of the properties, which were taken by the government to be used for the widening of a road without the benefit of an action for expropriation or agreement with its owners, were deemed to have consented to such taking — although they knew that there had been no expropriation case commenced — on account of their silence for more than two decades. Thus, according to the Court, said property owners had no reason to impugn the existence of the government's power to expropriate or the public purpose for which that power had been exercised.[32] Significantly, the Court in *Ansaldo* directed the expropriator, the Department of Public Works and Highways (DPWH), to forthwith institute the appropriate expropriation action over the land, so that just compensation due the owners may be determined in accordance

with the Rules of Court (Rules).[33]

In a later case, *Republic v. Mendoza, et al.*,^[34] the Court was once again confronted with the issue on the propriety of filing an ejectment suit against the government for its failure to acquire ownership of a privately-owned property that it had long used as a school site and to pay just compensation for it. Echoing *Forfom* and the cases that came before it, the Court relevantly ruled in this wise:

The Court holds that, where the owner agrees voluntarily to the taking of his property by the government for public use, he thereby waives his right to the institution of a formal expropriation proceeding covering such property. Further, as the Court also held in *Eusebio v. Luis*, the failure for a long time of the owner to question the lack of expropriation proceedings covering a property that the government had taken constitutes a waiver of his right to gain back possession. The *Mendozas'* remedy is an action for the payment of just compensation, not ejectment.

In *Republic of the Philippines v. Court of Appeals*, the Court affirmed the RTC's power to award just compensation even in the absence of a proper expropriation proceeding. It held that the RTC can determine just compensation based on the evidence presented before it in an ordinary civil action for recovery of possession of property or its value and damages. As to the time when just compensation should be fixed, it is settled that where property was taken without the benefit of expropriation proceedings and its owner filed an action for recovery of possession before the commencement of expropriation proceedings, it is the value of the property at the time of taking that is controlling.

Since the MTCC did not have jurisdiction either to evict the Republic from the land it had taken for public use or to hear and adjudicate the *Mendozas'* right to just compensation for it, the CA should have ordered the complaint for unlawful detainer dismissed without prejudice to their filing a proper action for recovery of such compensation.^[35] (Emphasis supplied)

It bears emphasis at this juncture that besides equitable estoppel, the Court in *Forfom* enunciated that recovery of possession by the landowner of the property that was taken without the benefit of an action for expropriation can no longer be allowed, more importantly, for reason of public policy. *Forfom* took its cue as well from the cases it cited, with the early case of *Manila Railroad Co.* providing the most illuminating take on the matter:

x x x whether the railroad company has the capacity to acquire the land in dispute by virtue of its delegated power of eminent domain, and, if so, whether the company occupied the land with the express or implied consent or acquiescence of the owner. If these questions of fact be decided in the affirmative, it is uniformly held that an action of ejectment or trespass or injunction will not lie against the railroad company, but only an action for damages, that is, recovery of the value of the land taken, and the consequential damages, if any. The primary reason for thus denying to the owner the remedies usually afforded to him against usurpers is the irremedial injury which would result to the railroad company and to the public in general. It will readily be seen that the interruption of the transportation service at any point on the right of way impedes the entire service of the company and causes loss and inconvenience to all passengers and shippers using the line. Under these circumstances, public policy, if not public necessity, demands that the owner of the land be denied the ordinarily remedies of ejectment and injunction. The fact that the railroad company has the capacity to eventually acquire the land by expropriation proceedings undoubtedly assists in coming to the conclusion that the property owner has no right to the remedies of ejectment or injunction. There is also something akin to equitable estoppel in the conduct of one who stands idly by and watches the construction of the railroad without protest. x x x But the real strength of the rule lies in the fact that it is against public policy to permit a property owner, under such circumstances, to interfere with the service rendered to the public by the railroad company. x x x^[36] (Emphasis and underscoring supplied)

Again, as in this case, public policy, if not public necessity, demands that respondent must no longer be disturbed or ousted from its possession of the subject property, lest the public purpose and services for which such are

ineluctably being devoted to be disrupted.

From the start, the Municipal Trial Court of Naga City, Branch 1, the ejectment court in this case, should have instead resolved: (1) to dismiss the case without prejudice to the landowner filing the proper action for recovery of just compensation and consequential damages; or (2) to dismiss the case and direct respondent to institute the proper expropriation or condemnation proceedings and to pay the just compensation and consequential damages assessed therein.[37] Given that the case was subsequently appealed to the RTC, the latter could have also taken judicial notice of the nuances of the case and decided to treat the action as if it were an expropriation case and determine the just compensation and consequential damages pursuant to Rule 67 on Expropriation of the Rules.[38]

Prescinding from the foregoing discussion anent the factual circumstances of this case and the related prevailing jurisprudence, and given the new findings in the ponencia, I respectfully submit that the holding on laches in the main Decision that was premised on petitioners' right to recovery of possession should no longer be sustained. It appears that the partial grant of the ponencia is solely anchored on upholding this issue in the main Decision that, to my mind, has been rendered peripheral or already beside the point. The defense of laches and prescription against a registered property owner will never prosper be it in an ordinary civil case for recovery of possession or one for payment of just compensation. The Court has said, time and again, that the doctrine of laches finds no application in cases such as here, as both equity and the law direct that a property owner should be compensated if his or her property is taken for public use.[39]

Indeed, at the same time, when the Court has said that recovery of property is also an available remedy when a property is taken by the government for public use, it must be underscored that this is only under circumstances when recovery is still feasible; otherwise, the aggrieved owner may only demand payment of just compensation for the land taken.[40] Here, as correctly found by the ponencia, "the physical return of the subject property on which respondent's seat of government and offices of several other government agencies and instrumentalities are currently erected is no longer feasible." [41] It then concludes that there would be an "unwarranted and irreparable injury or damage" if the structures already established in the subject property are forfeited in favor of petitioners.[42] These findings are in stark contrast to what was pronounced in the main Decision, which granted the relief of recovery of possession to petitioners. Hence, as I expressed at the outset, what the ponencia ultimately does is to correctly reverse the main Decision by ruling that the recovery of the subject property is no longer possible and by ordering the deletion of the original directives in the main Decision for respondent to vacate the subject property and pay monthly rentals to petitioners. Instead, the ponencia now orders respondent to pay just compensation, on the strength of its new finding that there was taking of private property for public purpose all along. This should consequently result to a full reconsideration of the main Decision instead of a partial one.

Moreover, I have no reservations with the order in the ponencia to remand the case to the RTC for determination of the proper amount of just compensation. As I have stated, the RTC could have treated the action of petitioners as if it were an expropriation case or converted it into one of an inverse condemnation proceeding and determine the just compensation and consequential damages which petitioners are entitled to. This remains a viable route in the interests of judicial efficiency and economy, and especially in light of the new disposition of the herein ponencia, which, again, effectively overturns the main Decision. To stress, the elements of taking are now established in the herein ponencia, along with the entitlement of petitioners to the payment of just compensation, which respondent had even acknowledged and raised as an argument and alternative remedy from inception.[43] It also appears that even from the beginning, there was no dispute that the entire subject property was taken by respondent for public use. What is only left now, therefore, is the determination of just compensation, which the

RTC, on remand, has the jurisdiction and the competence to do.

In *Secretary of the DPWH, et al. v. Spouses Tecson*[44] (*Spouses Tecson*), the respondents therein also filed a complaint for recovery of possession with damages before the RTC against the DPWH, praying that they be restored to the possession of the subject parcel of land which was taken by the government sometime in 1940 without the owners' consent and without the necessary expropriation proceedings and was used for the construction of the MacArthur Highway. The DPWH, prior to the filing of the complaint, offered to pay the value of the property, but the respondents were unsatisfied with the offer. The RTC initially dismissed the complaint based on the doctrine of state immunity from suit. However, on appeal, the Court of Appeals (CA) reversed the RTC ruling. The CA significantly held that recovery of compensation was the only relief available to the landowner and so to deny such relief would undeniably cause injustice to the landowner. The CA then ordered to remand the case to the RTC for the purpose of determining the just compensation in favor of the respondents.[45]

In *Manila International Airport Authority v. Rodriguez*,[46] the original action commenced before the RTC by therein respondent was one for *accion reivindicatoria* over his property that was taken by petitioner as part of an airport runway. While the RTC ruled that petitioner had illegally taken possession of the property, it ordered the latter to purchase the property at a certain value and to pay back rentals. This ruling was chiefly affirmed by the CA on appeal.[47] The Court, on the other hand, determined for the first time that while the case stemmed from the *accion reivindicatoria* that respondent had filed, it essentially revolved around the taking of the subject lot by the petitioner.[48] The Court then held that respondent was entitled to the payment of just compensation, the value of which should be reckoned at the time of taking. Since such value did not appear from the record of the case, the Court remanded the case to the RTC to make such determination with dispatch.[49]

Finally, I agree that the value of the just compensation, with legal interest at the rate of six percent (6%) per annum on the total fair market value, shall be determined as of the date of taking. This is the long standing rule and there are no exceptional circumstances[50] that would justify a deviation from it.

In *Spouses Tecson*, the Court addressed situations, such as the one at bar, in which the government took control and possession of properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages.[51] The Court held:

Just compensation is "the fair value of the property as between one who receives, and one who desires to sell, x x x fixed at the time of the actual taking by the government." This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation.

The issue in this case is not novel.

In *Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR]*, PNR entered the property of Forfom in January 1973 for public use, that is, for railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service without initiating expropriation proceedings. In 1990, Forfom filed a complaint for recovery of possession of real property and/or damages against PNR. In *Eusebio v. Luis*, respondent's parcel of land was taken in 1980 by the City of Pasig and used as a municipal road now known as A. Sandoval Avenue in Pasig City without the appropriate expropriation proceedings. In 1994, respondent demanded payment of the value of the property, but they could not agree on its valuation prompting respondent to file a complaint for reconveyance and/or damages against the city government and the mayor. In *Manila International Airport Authority v. Rodriguez*, in the early 1970s, petitioner implemented expansion programs for its runway necessitating the acquisition and occupation of some of the properties surrounding its premises. As to respondent's property, no expropriation proceedings were initiated. In 1997, respondent demanded the

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

The Court in the above-mentioned cases was confronted with common factual circumstances where the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. The Court thus determined the landowners' right to the payment of just compensation and, more importantly, the amount of just compensation. The Court has uniformly ruled that just compensation is the value of the property at the time of taking that is controlling for purposes of compensation. In *Forfom*, the payment of just compensation was reckoned from the time of taking in 1973; in *Eusebio*, the Court fixed the just compensation by determining the value of the property at the time of taking in 1980; in *MIAA*, the value of the lot at the time of taking in 1972 served as basis for the award of compensation to the owner; and in *Republic*, the Court was convinced that the taking occurred in 1956 and was thus the basis in fixing just compensation. As in said cases, just compensation due respondents in this case should, therefore, be fixed not as of the time of payment but at the time of taking, that is, in 1940.

The reason for the rule has been clearly explained in *Republic v. Lara, et al.*, and repeatedly held by the Court in recent cases, thus:

x x x "[T]he value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings." For where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken x x x.[52] (Emphasis omitted)

Notably, in *National Power Corp. v. Spouses Malijan*,[53] respondents therein argued that just compensation must be determined at the time of the filing of the complaint since the expropriator, in taking the property 30 years ago, merely enjoyed possession of the same due to the long tolerance of the respondents and not by complete dominion over said property in exclusion of others. The Court shot down the argument, declaring that the taking of private property for public use, to be compensable, need not be an actual physical taking or appropriation. Indeed, the Court ratiocinated, the expropriator's action may be short of acquisition of title, physical possession, or occupancy but may still amount to a taking. Compensable taking includes destruction, restriction, diminution, or interruption of the rights of ownership or of the common and necessary use and enjoyment of the property in a lawful manner, lessening or destroying its value. It is neither necessary that the owner be wholly deprived of the use of his or her property, nor material whether the property is removed from the possession of the owner, or in any respect changes hands.[54]

Thus, here, petitioners are entitled to just compensation for the five--hectare subject property at its fair market value, with legal interest, from the time of the taking until the amount due is fully paid. The time of taking was in 1954 when petitioners' predecessors-in-interest delivered possession of the subject property to respondent.[55] The exact date, however, remains unclear from the facts of the case. In this light, the order to remand the case to

the RTC may not only properly pertain to the purpose of arriving at the correct computation of just compensation, but of the exact date of taking, as well.

In view of the foregoing, I vote to GRANT respondent's Second Motion for Reconsideration, and to accordingly, REVERSE the Decision dated March 12, 2018 and the Resolution dated July 23, 2018 rendered by the First Division of this Court, in that:

1. The order for respondent and all government instrumentalities, agencies, and offices claiming right of possession through and under it to peacefully surrender and deliver to petitioners the physical possession of the land covered by Transfer Certificate of Title No. 671, including all improvements and structures erected thereon, is hereby DELETED;
2. The award of monthly rental in favor of petitioners is likewise DELETED;
3. Respondent is ORDERED to pay petitioners just compensation in accordance with this ruling on the total fair market value with legal interest of six percent (6%) per annum from the time of taking, until full payment is made; and
4. The case is REMANDED to the Regional Trial Court (RTC) of Naga City, Branch 26 for the determination of just compensation and the exact date of taking. The RTC of Naga City is DIRECTED to resolve the instant case with dispatch.

[1] Rollo, Vol. II, pp. 978-999.

[2] Heirs of Spouses Mariano, et al. v. City of Naga, 827 Phil. 531 (2018).

[3] Rollo, Vol. II, pp. 832-838.

[4] Ponencia, p. 12.

[5] Rollo, Vol. I, pp. 439-465.

[6] The March 12, 2018 Decision modified or reduced in half the RTC ruling of a monthly rental compensation, which was originally pegged in the amount of P2,500,000.00; Heirs of Spouses Mariano, et al. v. City of Naga, supra note 2, at 574.

[7] Heirs of Spouses Mariano, et al. v. City of Naga, id. at 544.

[8] See ponencia, pp. 4-5.

[9] Heirs of Spouses Mariano, et al. v. City of Naga, supra note 2, at 539 and 551-554.

[10] Id. at 563.

[11] Id. at 564.

[12] See Republic v. Spouses Nocom, et al., G.R. No. 233988, November 15, 2021.

[13] Heirs of Spouses Mariano, et al. v. City of Naga, supra note 2, at 565: "On August 11, 1954, the Municipal Board adopted Resolution No 89 accepting the Subdivision's July 30, 1954 offer as amended by Lopez Jr.'s oral representations in the Board's open session as regards the financing aspect of the transaction. Consequently, Macario and Gimenez delivered possession of the subject property to the City government of Naga." Citations omitted.

- [14] 710 Phil. 549 (2013).
- [15] Id. at 560-561.
- [16] Forfom Development Corp. v. Philippine National Railways, 594 Phil. 10, 27 (2008). Citation omitted.
- [17] See id. at 27-28.
- [18] First English Evangelical Lutheran Church v. Los Angeles County, 482 U.S. 304, 316 (1987).
- [19] See National Power Corp. v. Heirs of Macabangkit Sangkay, 671 Phil. 569, 591 (2011).
- [20] Supra note 16.
- [21] Id. at 26.
- [22] Id. at 30-31.
- [23] Id. at 27.
- [24] Id. at 28.
- [25] 32 Phil. 534 (1915).
- [26] Forfom Development Corp. v. Philippine National Railways, supra note 16, at 28.
- [27] Manila Railroad Co. v. Paredes, supra note 25, at 537.
- [28] Id. at 537-538, as quoted in Forfom Development Corp. v. Philippine National Railways, supra note 16, at 29.
- [29] 36 Phil. 908 (1917).
- [30] 266 Phil. 319 (1990).
- [31] De Ynchausti v. Manila Electric Railroad & Light Co., supra note 299, at 910-912.
- [32] Ansaldo v. Tantuico, Jr., supra note 30, at 322.
- [33] Id. at 325.
- [34] 641 Phil. 562 (2010).
- [35] Id. at 568-569. Citations omitted.
- [36] Forfom Development Corp. v. Philippine National Railways, supra note 16, at 28-29, citing Manila Railroad Co. v. Paredes, supra note 25, at 536-537.
- [37] See National Transmission Corp. v. Bermuda Development Corp., 851 Phil. 38, 49 (2019).
- [38] See id.
- [39] Secretary of the DPWH, et al. v. Spouses Tecson, 713 Phil. 55, 70 (2013).
- [40] Id. at 70, citing Republic v. Court of Appeals, 494 Phil. 494, 507 (2005).
- [41] Ponencia, p. 6.
- [42] Id.

[43] See *Heirs of Spouses Mariano, et al. v. City of Naga*, supra note 2, at 542.

[44] Supra note 39.

[45] Id. at 64-66.

[46] 518 Phil. 750 (2006).

[47] Id. at 753-755.

[48] Id. at 757.

[49] Id. at 763-764.

[50] See *National Power Corporation v. Heirs of Macabangkit Sangkay*, supra note 19 and *National Power Corporation v. Spouses Saldares*, 686 Phil. 967 (2012).

[51] As cited in *National Power Corp. v. Spouses Malijan*, 802 Phil. 727, 737 (2016).

[52] *Secretary of DPWH, et al. v. Spouses Tecson*, supra note 39, at 70-73. Citations omitted.

[53] Supra note 51.

[54] Id. at 742-743.

[55] See *Heirs of Spouse Mariano, et al. v. City of Naga*, supra note 2, at 565.

CONCURRENCE and DISSENT

LAZARO-JAVIER, J.:

Antecedents

The facts relevant to the present second motion for reconsideration are narrated in *Heirs of Mariano v. City of Naga*, G.R. No. 197743, March 12, 2018:

On July 3, 1954, Eusebio M. Lopez, Sr., Soledad L. Dolor, Jose A. Gimenez and Eusebio Lopez, Jr. (Lopez, Jr.), as the President, Secretary, Treasurer and General Manager of the City Heights Subdivision (Subdivision), respectively, wrote to the mayor of the City of Naga (City), offering to construct the Naga City Hall within the premises of the Subdivision. Their letter indicated that the City Hall would be built on an area of not less than two hectares within the Subdivision, which would be designated as the open space reserved for a public purpose. The letter, which also indicated the terms of the construction contract, provided that the City would be free to accept another party's offer to construct the City Hall if it found the same to be more favorable.

The City's Municipal Board subsequently passed Resolution No. 75, dated July 12, 1954, asking the Subdivision for a bigger area on which the City Hall would stand. Consequently, on July 30, 1954, the Subdivision amended its offer and agreed to donate five hectares to the City. The area is a portion of the land registered in the names of Macario Mariano (Macario) and Jose A. Gimenez (Gimenez) under Transfer Certificate of Title (TCT) No. 671 of the Registry of Deeds for Naga City, measuring a total of 22.9301 hectares. Along with its amended offer to construct the City Hall, the Subdivision specified the terms of its proposal to finance the construction.

The amended offer was signed by Macario and Gimenez to indicate their "(c)onforme," and by their respective spouses, Irene P. Mariano (Irene) and Rose Fitzgerald De Gimenez (through one Josie A. Gimenez), to indicate their marital consent.

On August 11, 1954, the Municipal Board adopted Resolution No. 89 accepting the Subdivision's offer of donation and its proposed contract. The Resolution also authorized the City Mayor to execute the deed of donation on the City's behalf.

The parties submitted divergent accounts on what happened after Resolution No. 89 was passed.

According to the City, the City Mayor of Naga, Monico Imperial (Mayor Imperial), and the registered landowners, Macario and Gimenez, executed a Deed of Donation on August 16, 1954, whereby the latter donated five hectares of land (subject property), two hectares of which to be used as the City Hall site, another two hectares for the public plaza, and the remaining hectare for the public market. By virtue of said Deed, the City entered the property and began construction of the government center. It also declared the five-hectare property in its name for tax purposes. Thereafter, the Land Transportation Office (LTO), the National Bureau of Investigation (NBI), the Department of Labor and Employment (DOLE), the Philippine Postal Corporation (PPC), the Fire Department and other government agencies and instrumentalities entered the same property and built their offices thereon.

In contrast, petitioners averred that the landowners' plan to donate five hectares to the City did not materialize as the contract to build the City Hall was not awarded to the Subdivision. As early as August 23, 1954, Lopez, Jr., the Subdivision's General Manager, supposedly wrote to Macario telling him to suspend the signing of the deed of donation as the Municipal Board could not agree on the specific site where the City Hall would be built. Petitioners alleged that the construction contract was eventually awarded by the Bureau of Public Works (BPW) to a local contractor, Francisco O. Sabaria (Sabaria), who won in a public bidding. Mayor Imperial opposed the award, arguing that he and not the BPW had the authority to initiate the public bidding for the project. The BPW, however, asserted its authority to bid out and award the contract on the ground that national funds would be used for the project. Mayor Imperial and Sabaria litigated the issue, with the former losing before the trial court and subsequently withdrawing his appeal before the CA. Afterwards, the Municipal Board adopted Resolution No. 11 dated January 20, 1959 authorizing the City Mayor to enter into a contract with Sabaria for the construction of the City Hall.

Petitioners claimed that on February 5, 1959, Macario and officers of the Subdivision met with Mayor Imperial to demand the return of the five-hectare lot as the condition for the donation was not complied with. Mayor Imperial purportedly assured them that the City would buy the property from them. The purchase, however, did not materialize. Petitioners alleged that ten years later, or on May 14, 1968, Macario wrote to Lopez, Jr., instructing him to make a follow-up on the City's payment for the subject lot. On December 2, 1971, Macario died without receiving payment from the City.

In 1976, a certain Tirso Mariano filed an action for partition of Macario's estate. The action was opposed by Macario's widow, Irene, and their adopted children, Jose (Jose) and Erlinda (Erlinda) Mariano. As an offshoot of this action, a petition to annul Jose and Erlinda's adoption was instituted.

Irene died in 1988. Jose died the following year which was also when his and Erlinda's adoption was declared valid and legal by the appellate court. In 1994, Irene's marriage to one Rolando Reluccio (Reluccio) was declared bigamous and void ab initio. And after a protracted litigation, Jose, then represented by his heirs, and Erlinda were declared as Irene's heirs to the exclusion of Reluccio who was also declared to be without right to represent Irene in Macario's estate.

On March 11, 1997, the probate court issued letters of administration to one of the petitioners herein, Danilo David S. Mariano (Danilo), for the administration of Irene's estate. In September 2003, Danilo demanded upon then City Mayor of Naga, Jesse M. Robredo, to vacate and return the subject property. When the City did not comply, petitioners, as heirs of Jose and Erlinda, filed a Complaint for unlawful detainer against the City, docketed as Civil Case No. 12334.

The Unlawful Detainer Case

In their Complaint, filed on February 12, 2004, petitioners asked the MTC to order the City and all agencies, instrumentalities or offices claiming rights under it, including the LTO, NBI, DOLE, PPC and the Fire Department, to vacate the subject property, shown in the Sketch Plan as Blocks 25 and 26 (LRC) Psd-9674, and to return possession thereof to them. In addition to attorney's fees, they asked the City to pay them a monthly rental of P2.5 million from the date it received the demand to vacate until it surrendered possession, as reasonable compensation for the use of the property.

x x x x

Arguing that the issue involved is one of ownership, the City moved to dismiss the complaint for lack of jurisdiction. After the MTC denied the motion on March 22, 2004, the City filed its Answer. The parties subsequently submitted their respective Position Papers and evidence.

x x x x

In its February 15, 2005 Decision, the MTC gave weight to the Deed of Donation. Nonetheless, it dismissed the complaint on the ground of lack of jurisdiction. It reasoned that the City's defense, which involved a claim of ownership, removed the issue from the case of unlawful detainer. (Emphases supplied)

x x x x

On appeal to the Regional Trial Court, the latter reversed the first level court and granted the complaint for ejectment. The City and other government offices thereat were ordered ejected and liable for the special damages of back rentals and legal costs.

On review by the Court of Appeals, the RTC decision was at first merely modified. However, on motion for reconsideration, the Court of Appeals reversed the RTC decision and reinstated the MTC decision dismissing the case for lack of jurisdiction.

Issues

There are two issues in this second motion for reconsideration: (i) the identification of petitioners' true cause of action and remedy; and (ii) the proper relief to be awarded to them.

1.

Identification of petitioners' true cause of action and remedy

On the first issue, the ponencia holds that neither recovery of physical and/or legal possession and/or ownership nor the remedies of ejectment and/or accion publiciana and/or accion reivindicatoria are petitioners' true cause of action and remedy. It rules that the proper cause of action is inverse expropriation and the remedy is a complaint for just compensation under the Constitution itself.

I concur that this is the proper characterization of the action below based on the factual allegations in the parties' pleadings and which was established during the actions' original and appellate proceedings. After all, "[i]t is worth reminding that the actual nature of every action is determined by the allegations in the body of the pleading or the complaint itself, not by the nomenclature used to designate the same."^[1]

2.

Proper relief to petitioners

On the second issue, the key facts and law are as follows:

One, the City did not usurp the property of petitioners and their predecessors. The City entered, possessed and improved the property on the basis of its acceptance of the offer to donate made by petitioners' predecessors. This was the meeting of their minds in the beginning and for some time after.

As regards timelines, this meeting of the minds started on August 11, 1954 when the City decided to accept the predecessors' offer of donation and contract. From August 16, 1954, by the City's own admission, the donation was partially executed. Starting on this date, the City benefitted from the predecessors' property while the predecessors were deprived of and lost this property.

As to when the meeting of the minds came to an end, the facts are not established.

Petitioners claim that as early as February 5, 1959, the predecessors met with the City Mayor to demand the return of the five-hectare lot. This was reiterated almost a decade later, on May 14, 1968. Nothing came out of it until the patriarch's death on December 2, 1971.

The status quo continued probably because of the internal family disputes that took place from 1976 until the appointment of an administrator on March 11, 1997. It took a while for the administrator to collate the properties since only in September 2003 did the administrator send a notice to vacate and pay damages to the City. On February 12, 2004, the unlawful detainer complaint was filed against the City by petitioners.

Two, just compensation is reckoned from the time of actual taking. The latter occurs when the property owner is deprived of the land. On the other hand, just compensation is defined as:

x x x "the sum equivalent of the market value of the property, broadly described as the price fixed in open market by the seller in the usual and ordinary course of legal action or competition, or the fair value of the property as between one who receives and who desires to sell it, fixed at the time of the actual taking by the government." The word "just" is used to emphasize the meaning of the word "compensation" so as to convey the idea that the equivalent to be rendered for the property to be taken should be real, substantial, full and ample.

The nature and character of the land at the time of taking is thus the principal criterion in determining just compensation. All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must be considered. The "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.[2] (Emphases supplied)

The payment of compensation must also be timely and without delay — at the time of taking — in order to be just. On this score, the Court's pronouncement in *Evergreen Manufacturing Corporation v. Republic*,[3] is apropos:

Again, just compensation should be made at the time of taking, and the amount of payment should be the fair and equivalent value of the property. In this case, *Republic-DPWH* was able to take possession of the Subject Premises even before making a full and fair payment of just compensation because RA 8974 allowed for the possession of the property merely upon the initial payment which forms part of the just compensation. Thus, it is clear that the government has not yet made the full and fair payment of just compensation to *Evergreen*.

As explained by this Court in *Apo Fruits Corporation v. Land Bank of the Philippines*, the rationale for imposing interest on just compensation is to compensate the property owners for the income that they would have made if they had been properly compensated — meaning if they had been paid the full amount of just compensation — at the time of taking when they were deprived of their property. The Court held:

We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment

of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that:

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, i[f] fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

Aside from this ruling, Republic notably overturned the Court's previous ruling in *National Power Corporation v. Angas* which held that just compensation due for expropriated properties is not a loan or forbearance of money but indemnity for damages for the delay in payment; since the interest involved is in the nature of damages rather than earnings from loans, then Art. 2209 of the Civil Code, which fixes legal interest at 6%, shall apply.

In Republic, the Court recognized that the just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State. Applying the *Eastern Shipping Lines* ruling, the Court fixed the applicable interest rate at 12% per annum, computed from the time the property was taken until the full amount of just compensation was paid, in order to eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.

The delay in the payment of just compensation is a forbearance of money. As such, this is necessarily entitled to earn interest. The difference in the amount between the final amount as adjudged by the court and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money. In *Republic v. Mupas*, we stated clearly:

Contrary to the Government's opinion, the interest award is not anchored either on the law of contracts or damages; it is based on the owner's constitutional right to just compensation. The difference in the amount between the final payment and the initial payment — in the interim or before the judgment on just compensation becomes final and executory — is not unliquidated damages which do not earn interest until the amount of damages is established with reasonable certainty. The difference between final and initial payments forms part of the just compensation that the property owner is entitled from the date of taking of the property.

Thus, when the taking of the property precedes the filing of the complaint for expropriation, the Court orders the condemner to pay the full amount of just compensation from the date of taking whose interest shall likewise commence on the same date. The Court does not rule that the interest on just compensation shall commence [on] the date when the amount of just compensation becomes certain, e.g., from the promulgation of the Court's decision or the finality of the eminent domain case.

With respect to the amount of interest on the difference between the initial payment and final amount of just compensation as adjudged by the court, we have upheld in *Eastern Shipping Lines, Inc. v. Court of Appeals*, 45 and in subsequent cases thereafter, the imposition of 12% interest rate from the time of taking when the property owner was deprived of the property, until 1 July 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by BSP Circular No. 799. Accordingly, from 1 July 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum.

In the present case, Republic-DPWH filed the expropriation complaint on 22 March 2004. As this preceded the actual taking of the property, the just compensation shall be appraised as of this date. No interest shall accrue

as the government did not take possession of the Subject Premises. Republic-DPWH was able to take possession of the property on 21 April 2006 upon the agreement of the parties. Thus, a legal interest of 12% per annum on the difference between the final amount adjudged by the Court and the initial payment made shall accrue from 21 April 2006 until 30 June 2013. From 1 July 2013 until the finality of the Decision of the Court, the difference between the initial payment and the final amount adjudged by the Court shall earn interest at the rate of 6% per annum. Thereafter, the total amount of just compensation shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof. (Emphases supplied)

Lastly, the added value brought about by the improvements in the expropriated property as a result of the expropriation is discounted from the amount of just compensation:

x x x just compensation refers to the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation and is ordinarily determined by referring to the value of the land and its character at the time it was taken by the expropriating authority. In fine, just compensation is 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 authority." In other words, the measure of just compensation "is not the taker's gain but the owner's loss."

Accordingly, the State's obligation to compensate the landowner arises only if the owner suffered a loss in the hands of the State.[4] (Emphases supplied)

3. Relief in the present case

Applying the facts and the law to determine the proper relief in the present case, I reckon the date of the actual taking to be the same date when petitioners' predecessors were deprived of their property. This was on August 16, 1954 which the City admitted as the date when it entered, possessed, and started improving the property. It was on this date that petitioners' predecessors were deprived of their property. That the predecessors consented and acquiesced to this taking does not change the reality that the property was taken from them and they suffered a loss on this date.

On the amount of just compensation, the court below must determine the property's fair market value on August 16, 1954. This was the amount of loss that petitioners' predecessors and, by extension, petitioners suffered. The fair market value is the amount of money that a motivated seller will be receiving from a motivated buyer.

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

First. The property's fair market value on August 16, 1954 must be the equivalent value of money at the time of payment. For example, the value of PHP 100.00 on August 16, 1954 will not be the same as the value of PHP 100.00 at the time of payment. What the predecessors lost as say, PHP 100.00 on August 16, 1954, or the fair market value of the property on this date, will not be compensated by paying them PHP 100.00 or the same face amount of fair market value on the date of payment. The ponencia ordains that said fair market value must be computed using the formula in *Republic v. Spouses Nocom*.^[5] However, the fair market value arrived at using said formula, to my mind, does not sufficiently or justly approximate the opportunity cost of petitioners, i.e., the foregone benefits from the missed opportunity to use the property under dispute—or the monetary value locked therein—for gainful objectives. A computation based on the inflation rate from August 16, 1954 to present would yield a more equitable resolution in this regard.

According to the Philippine Inflation Calculator available online,^[6] the goods that PHP 100.00 could buy in 1960

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

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

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

Finally, the determination of just compensation, how it is to be computed and from what date it is to be reckoned, should be remanded, after the Court has finally decided the case, how it is to be computed, and from what date it is to be reckoned, to the Court of Appeals under CA-G.R. SP No. 90547, instead of the RTC. The Court of Appeals can hear evidence and pronounce judgment on this sole issue, and should there be a further appeal therefrom, it will be directly to this Court, thus removing a layer of proceedings and delay in forever settling this matter. An expeditious final settlement of this matter is all the more necessary because the literal seat of government of Naga City is endlessly imperiled so long as the issue about its existence on its heartland remains unsettled.

Conclusion

THUS, I vote to grant petitioners' second motion for reconsideration, and to reverse the Decision dated March 12, 2018 and the Resolution dated July 23, 2018 of the First Division of this Court, in this wise:

1. The order for respondent and all government instrumentalities, agencies, and offices claiming right of possession through and under it to peacefully surrender and deliver to petitioners the physical possession of the land covered by Transfer Certificate of Title. No. 671, including all improvements and structures erected thereon should be DELETED;
2. The award of monthly rental in favor of petitioners should also be DELETED;
3. Respondent should be ORDERED to pay petitioners just compensation in accordance with the above formula; and
4. The case should be REMANDED to the Court of Appeals under CA-G.R. SP No. 90547 for the determination of just compensation. The Court of Appeals should also be DIRECTED to resolve it within two months from notice.

[1] *Mandanas v. Ochoa, Jr.*, 835 Phil. 97, 135 (2018).

[2] *Rebadulla v. Republic*, 824 Phil. 982, 995 (2018).

[3] *Evergreen Manufacturing Corporation v. Republic*, 817 Phil. 1048, 1068-1071 (2017).

[4] *Philippine Veterans Bank v. Bases Conversion and Development Authority*, G.R. No. 217492, October 4,

2021.

[5] G.R. No. 233988, November 15, 2021.

[6] Philippine Inflation Calculator at <https://acesubido.net/ph-inflation-calculator/> (last accessed on August 28, 2022).

CONCURRING AND DISSENTING OPINION

GAERLAN, J.:

I agree with my esteemed colleague, Justice Japar Dimaampao, that the return of the property subject of the case to the Heirs of Jose Mariano and Helen S. Mariano and Heirs of Erlinda Mariano-Villanueva[1] (petitioners) is no longer feasible. However, I am constrained to register my dissent to the other dispositions in the ponencia.

The ponencia is not just a partial grant or modification of the Decision[2] dated March 12, 2018 of the Court's First Division (assailed Decision). To recall, the said Decision directed the City of Naga and other government agencies to immediately vacate the property and pay petitioners P1,250,000.00 monthly as rentals and P75,000.00 as attorney's fees. The ponencia deleted all the foregoing which is clearly a complete reversal of the assailed Decision.

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

While I stand firm with my position that February 12, 2004 (the date of filing of the ejectment case) should be the reckoning date of just compensation, I concede that the Court has already reached a consensus that August 16, 1954 or the date of taking would be used in the determination of just compensation due to petitioners.[3]

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

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

In addition, exemplary damages in the amount of P1,000,000.00 and attorney's fees in the amount of P75,000.00 must be assessed against respondent for flagrant violation of pertinent rules and jurisprudence. This is but fair considering that the rights of petitioners to recover possession of the property and to receive rentals were disregarded.

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

process of law.

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

The present case involves respondent's Second Motion for Reconsideration[5] (2nd MR) and Motion for Leave to File Second Motion for Reconsideration[6] of the Decision[7] dated March 12, 2018 of the Court's First Division. The assailed Decision ordered respondent and all other government instrumentalities, agencies, and offices claiming right of possession through and under it to vacate Blocks 25 and 26 of Transfer Certificate of Title No. 671 registered in the name of Macario A. Mariano (Mariano) and Jose A. Gimenez (Gimenez), and to peacefully surrender and deliver physical possession (Order to Vacate) of the same to petitioners. Respondent was directed to pay petitioners monthly rental of P1,250,000.00 and attorney's fees of P75,000.00.

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

The ponencia agreed with respondent as to the second and third points.[9] It granted reconsideration and deleted the Order to Vacate as well as the award of rentals in favor of petitioners. It directed respondent to pay: (1) just compensation pegged at the value of the property at the time of taking, that is, on August 16, 1954, subject to legal interest of six percent (6%) per annum from said date until full payment is made; and (2) exemplary damages in the amount of P1,000,000.00. The computation of just compensation shall be in accordance with the "present value" formula laid down in *Republic v. Spouses Nocom*.^[10] The ponencia ordered the remand of the case to the RTC for the determination of just compensation.

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

Allow me to explain.

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

The power of eminent domain is one of the three inherent powers of the Government by which the State interferes with the people's property rights.^[11] It is the ultimate right of the sovereign power to appropriate, not only the public but the private property of all citizens within the territorial sovereignty, to public purpose.^[12] Though it exists independently of the Constitution, it is limited by the constitutional fiat that, "[p]rivate property shall not be taken for public use without just compensation."^[13]

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

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

choice but to demand payment for the land taken.[16]

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

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

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

As a general rule, just compensation is based on the price or value of the property at the time the complaint for expropriation was filed.[17] This is because normally the time of taking coincides with the filing of the said complaint.[18]

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

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

Nevertheless, there are instances when the taking of private property preceded the filing of the complaint for expropriation. In such cases, the payment of just compensation is reckoned from the date of taking.[19] In *Republic v. Vda. de Castellvi*,[20] the Court held that there is "taking" for purposes of expropriation when the following elements concur: (1) the expropriator must enter private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him/her of all beneficial enjoyment of the property.[21]

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

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

complaint for expropriation. The Court explained that:

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

Only in 1992, after the private respondent sued to recover possession and petitioner filed its Complaint to expropriate, did petitioner manifest its intention to exercise the power of eminent domain. x x x[23] (Emphasis supplied)

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

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

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

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

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

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

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

x x x x

We have made it clear that there was no taking of the property in 1985 by PEA for purposes of expropriation. As shown by the records, PEA filed with the RTC its petition for expropriation on September 22, 2003. The trial court, therefore, was correct in ordering respondent, through PEA, upon the filing of its complaint for expropriation, to pay petitioner just compensation on the basis of the BIR zonal valuation of the subject property at P20,000.00 per square meter.[26] (Emphasis supplied)

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

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

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

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

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

We rule that the reckoning value is the value at the time of the filing of the complaint, as the RTC provided in its decision. Compensation that is reckoned on the market value prevailing at the time either when NPC entered or when it completed the tunnel, as NPC submits, would not be just, for it would compound the gross unfairness already caused to the owners by NPC's entering without the intention of formally expropriating the land, and without the prior knowledge and consent of the Heirs of Macabangkit. NPC's entry denied elementary due process of law to the owners since then until the owners commenced the inverse condemnation proceedings. The Court is more concerned with the necessity to prevent NPC from unjustly profiting from its

deliberate acts of denying due process of law to the owners. As a measure of simple justice and ordinary fairness to them, therefore, reckoning just compensation on the value at the time the owners commenced these inverse condemnation proceedings is entirely warranted.

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

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

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

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

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

The Court's ruling in *Forom* [37] is inapplicable.

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

Tecson summarized these cases in this wise:

In *Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR]*, PNR entered the property of Forfom in January 1973 for public use, that is, for railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service without initiating expropriation proceedings. In 1990, Forfom filed a complaint for recovery of possession of real property and/or damages against PNR. In *Eusebio v. Luis*, respondent's parcel of land was taken in 1980 by the City of Pasig and used as a municipal road now known as A. Sandoval Avenue in Pasig City without the appropriate expropriation proceedings. In 1994, respondent demanded payment of the value of the property, but they could not agree on its valuation prompting respondent to file a complaint for reconveyance and/or damages against the city government and the mayor. In *Manila International Airport Authority v. Rodriguez*, in the early 1970s, petitioner implemented expansion programs for its runway necessitating the acquisition and occupation of some of the properties surrounding its premises. As to respondent's property, no expropriation proceedings were initiated. In 1997, respondent demanded the payment of the value of the property, but the demand remained unheeded prompting him to institute a case for *accion reivindicatoria* with damages against petitioner. In *Republic v. Sarabia*, sometime in 1956, the Air Transportation Office (ATO) took possession and control of a portion of a lot situated in Aklan, registered in the name of respondent, without initiating expropriation proceedings. Several structures were erected thereon including the control tower, the Kalibo crash fire rescue station, the Kalibo airport terminal and the headquarters of the PNP Aviation Security Group. In 1995, several stores and restaurants were constructed on the remaining portion of the lot. In 1997, respondent filed a complaint for recovery of possession with damages against the storeowners where ATO intervened claiming that the storeowners were its lessees.

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

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

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

By his September 17, 1959 and May 14, 1968 letters, Macario has been shown to have taken steps to have the City act on Mayor Imperial's proposal to "buy instead" the subject property. His efforts were overtaken by his death three years later in 1971. Furthermore, as the RTC found, petitioners had been engaged in litigation to establish their right to inherit from Macario and Irene, and it was Danilo's discovery of the subject property, following the issuance to him of letters of administration over Irene's estate in 1997, that prompted them to issue a demand for the City to vacate the premises.

Given these circumstances, the Court is not disposed to conclude that there was an unreasonable or

unexplained delay that will render petitioners' claim stale.

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

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

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

Just Compensation

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

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

Firstly, the property's fair market value on August 16, 1954 must be the equivalent value of money at the time of payment. For example the value of P100.00 on August 16, 1954 will not be the same as the value of P100.00 at the time of payment. What the predecessors lost as, say, P100.00 on August 16, 1954, or the fair market value of the property on this date, will not be compensated by paying them P100.00 or the same face amount of fair market value on the date of payment. This is because of inflation. According to the Philippine Inflation Calculator available online, the goods that P100.00 could buy in 1960 would roughly cost P12,307.11 or 12,207.11% increase at the end of 2020. The cost of inflation must be factored in so that the true value of the loss suffered by the predecessors (or any landowner for that matter) is justly compensated.

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

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

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

Exemplary damages and rentals

Case law teaches that the failure of the government to initiate an expropriation proceeding to the prejudice of the landowner may be corrected with the awarding of exemplary damages.[46] Hence, in *Spouses Tecson*, the Court granted P1,000,000.00 exemplary damages in favor of the landowners since they were deprived of beneficial

ownership over their property for more than 68 years without the benefit of a timely expropriation proceedings and to serve as deterrent to the State from failing to institute proceedings within the prescribed period under the law.[47]

For the same reasons stated above,[48] the Court, in *National Transmission Corp. v. Oroville Development Corp.*[49] also awarded exemplary damages in the amount of P1,000,000.00 to the owner of the property.[50]

Accordingly, the ponencia correctly held that P1,000,000.00 exemplary damages are due to petitioners as they were deprived of the beneficial ownership of their property without the benefit of a timely expropriation. Respondent was in bad faith when it continuously possessed the property knowing that it did not comply with the condition of the donation. In addition, respondent did not honor its commitment to purchase the property despite repeated follow-up from Mariano.

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

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

Interest is paid to the owner of the property to compensate him/her for any delay in the payment of compensation.[51] It is a forbearance of money, and not indemnity for damages.[52] At the time of the taking of the property on August 16, 1954, the interest rate applicable to loans and forbearance of money is six percent (6%) per annum per Act No. 2655. On July 29, 1974, the Central Bank (CB) issued CB Circular No. 416 increasing the rate to twelve percent (12%) per annum. This was followed by Circular No. 905 dated December 22, 1982 which maintained the 12% interest. However, on June 21, 2013, the Bangko Sentral ng Pilipinas issued CB Circular No. 799 reducing the rate of interest on loans and forbearance of money from 12% to 6% per annum effective July 1, 2013.[53] Hence, contrary to the ponencia, the just compensation in this case should be subject to 6% interest per annum from the date of taking on August 16, 1954 to July 28, 1974, then 12% interest per annum from July 29, 1974 to June 30, 2013, and 6% per annum from July 1, 2013 until finality of this Resolution.

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

Attorney's fees

Attorney's fees are due to petitioners in the amount of P75,000.00 since they were forced to file an ejectment complaint for the recovery of their property and in the process incurred expenses for the services of a lawyer.

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

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

The Court should emphasize that the only constitutional and legal way of acquiring private property for public use

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

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

(1)

The order for respondent and all government instrumentalities, agencies, and offices claiming right of possession through and under it to peacefully surrender and deliver to petitioners the physical possession of the land covered by Transfer Certificate of Title No. 671, including all improvements and structures erected thereon, is hereby DELETED;

(2)

The award of monthly rental in favor of petitioners in the amount of P1,250,00.00 computed from January 20, 1959 until February 11, 2004 is DELETED;

(3)

The case is REMANDED to the Court of Appeals under CA--G.R. SP No. 90547 for hearing, report, and recommendation on the proper amount of just compensation. The Court of Appeals is given three (3) months from notice to submit said report and recommendation to the Court. In determining the just compensation, the Court of Appeals will use August 16, 1954 as the date of taking. The Court of Appeals shall first apply the cost of inflation formula proposed by Justice Lazaro-Javier so that the true value of the loss suffered by petitioners is justly compensated.

(4)

Respondent is ORDERED to pay petitioners with legal interest of six percent (6%) per annum from the date of taking on August 16, 1954 to July 28, 1974, then twelve percent (12%) interest per annum from July 29, 1974 to June 30, 2013, and six percent (6%) per annum from July 1, 2013 until finality of the Resolution.

(5)

Respondent is ORDERED to pay petitioners exemplary damages in the amount of P1,000,000.00.

(6)

Respondent is ORDERED to pay petitioners attorney's fees in the amount of P75,000.00 and costs of suit.

(7)

The total amount due to petitioners (that is, the inflation--adjusted fair market value of the property at the time of actual taking with interest plus damages and attorney's fees) shall earn legal interest of six percent (6%) per annum from finality of the Resolution until full payment.

SO ORDERED.

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

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

[3] On official business, October 18, 2022.

[4] 713 Phil. 55 (2013).

[5] Rollo, pp. 978-997.

[6] Id. at 866-873.

[7] Id. at 694-725.

[8] Id.

[9] Ponencia, pp. 5-8.

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

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

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

[13] 1987 PHILIPPINE CONSTITUTION, Article III, Section 9.

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

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

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

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

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

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

[20] 157 Phil. 329 (1974).

[21] Id. at 345-346.

[22] 325 Phil. 29, 46 (1996).

- [23] Id. at 46-47.
- [24] See the assailed Decision of the First Division (G.R. No. 197743, March 12, 2018), rollo, pp. 717-718.
- [25] 551 Phil. 200 (2007).
- [26] Id. at 213-214.
- [27] G.R. No. 214782, April 3, 2019.
- [28] National Power Corporation v. Heirs of Macabangkit Sangkay, 671 Phil. 569, 591 (2011).
- [29] Private property shall not be taken for public use without just compensation.
- [30] National Power Corporation v. Heirs of Macabangkit Sangkay, supra at 592.
- [31] Id.
- [32] Id. at 597-598.
- [33] 686 Phil. 967, 979 (2012).
- [34] Special Civil Case No. 135, RTC, Branch II, Tagum City.
- [35] National Power Corp. v. Spouses Saldares, supra at 979-980.
- [36] National Transmission Corp. v. Oroville Development Corp., supra note 19 at 107.
- [37] 594 Phil. 10 (2008).
- [38] Id. at 71-72.
- [39] Supra note 37.
- [40] Supra note 15.
- [41] 518 Phil. 750 (2006).
- [42] 505 Phil. 253 (2005).
- [43] Secretary of the Department of Public Works and Highways v. Spouses Tecson, supra note 4 at 71-72.
- [44] Rollo, p. 720.
- [45] Reflections, Justice Lazaro-Javier, pp. 9-10.
- [46] Secretary of the Department of Public Works and Highways v. Spouses Tecson, 758 Phil. 604, 644 (2015).
- [47] Id.
- [48] Note in Oroville, the property was taken in 1983. The owner was deprived of the beneficial ownership of the property for 34 years, that is from 1983 to 2017 (year when the Decision of the Court was promulgated).
- [49] Supra note 19.
- [50] Id. at 113.
- [51] Apo Fruits Corporation v. Land Bank of the Phils., 647 Phil. 251, 273 (2010), citing Republic v. Court of Appeals, 433 Phil. 106, 122-123 (2002).

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

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

[54] 716 Phil. 267 (2013).

[55] Id. at 281.

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