

**ELISA R. MANOTOK, PATRICIA L. TIONGSON, MARRIED TO
CAYETANO TIONGSON, PACITA L. GO MARRIED TO EDUARDO GO,
ROBERTO LAPERAL III, MIGUEL SISON, PHILIP L. MANOTOK, MARIA
TERESA L. M...**

G.R. NO. 55166. May 21, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Before us are two petitions. The first one challenges the constitutionality of Presidential Decree No. 1669 which provides for the expropriation of the property known as the "Tambunting Estate" and the second challenges the constitutionality of Presidential Decree No. 1670 which provides for the expropriation of the property along the Estero de Sunog-Apog. In both cases, the petitioners maintain that the two decrees are unconstitutional and should be declared null and void because:

"(1) They deprived the petitioners of their properties without due process of law.

"(2) The petitioners were denied their right to just compensation.

"(3) The petitioners' right to equal protection of the law was violated.

"(4) The decrees are vague, defective, and patently erroneous.

"(5) The petitioners' properties are not proper subjects for expropriation considering their location and other relevant circumstances."

On June 11, 1977, the President of the Philippines issued Letter of Instruction (LOI) No. 555 instituting a nationwide slum improvement and resettlement program (SIR). On the same date, the President also issued LOI No. 557, adopting slum improvement as a national housing policy.

In compliance with LOI No. 555, the Governor of Metro Manila issued, on July 21, 1977, Executive Order No. 6-77 adopting the Metropolitan Manila Zonal Improvement Program which included the properties known as the Tambunting Estate and the Sunog-Apog area in its priority list for a zonal improvement program (ZIP) because the findings of the representative of the City of Manila and the National Housing Authority (NHA) described these as blighted communities.

On March 18, 1978, a fire razed almost the entire Tambunting Estate. Following this calamity, the President and the Metro Manila Governor made public announcement that the national government would acquire the property for the fire victims. The President also designated the NHA to negotiate with the owners of the property for the acquisition of the same. This, however, did not materialize as the negotiations for the purchase of the property failed.

On December 22, 1978, the President issued Proclamation No. 1810 declaring all sites identified by the Metro

Manila local governments and approved by the Ministry of Human Settlements to be included in the ZIP upon proclamation of the President. The Tambunting Estate and the Sunog-Apog area were among the sites included.

On January 28, 1980, the President issued the challenged Presidential Decrees Nos. 1669 and 1670 which respectively declared the Tambunting Estate and the Sunog-Apog area expropriated.

Presidential Decree No. 1669, provides, among others:

"Section 1. The real properties known as the 'Tambunting Estate' and covered by TCT Nos. 119059, 122450, 122459, 122452 and Lots Nos. 1-A, 1-C, 1-D, 1-E, 1-F and 1-H of (LRC) Psd-230517 (Previously covered by TCT No. 119058) of the Register of Deeds of Manila with an area of 52,688.70 square meters, more or less are hereby declared expropriated. The National Housing Authority hereinafter referred to as the 'Authority' is designated administrator of the National Government with authority to immediately take possession, control, disposition, with the power of demolition of the expropriated properties and their improvements and shall evolve and implement a comprehensive development plan for the condemned properties."

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"Section 6. Notwithstanding any provision of law or decree to the contrary and for the purpose of expropriating this property pegged at the market value determined by the City Assessor pursuant to Presidential Decree No. 76, as amended, particularly by Presidential Decree No. 1533 which is in force and in effect at the time of the issuance of this decree. In assessing the market value, the City Assessor shall consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation cost. Subject to the foregoing, the just compensation for the above property should not exceed a maximum of SEVENTEEN MILLION PESOS (P17,000,000.00) which shall be payable to the owners within a period of five (5) years in five (5) equal installments."

Presidential Decree No. 1670, on the other hand, provides:

"Section 1. The real property along the Estero de Sunog-Apog in Tondo, Manila formerly consisting of Lots Nos. 55-A, 55-B and 55-C, Block 2918 of the subdivision plan Psd-11746, covered by TCT Nos. 49286, 49287 and 49288, respectively, of the Registry of Deeds of Manila, and formerly owned by the Manotok Realty, Inc., with an area of 72,428.6 square meters, more or less, is hereby declared expropriated. The National Housing Authority hereinafter referred to as the 'Authority' is designated administrator of the National Government with authority to immediately take possession, control and disposition, with the power of demolition of the expropriated properties and their improvements and shall evolve and implement a comprehensive development plan for the condemned properties."

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"Section 6. Notwithstanding any provision of law or decree to the contrary and for the purpose of expropriating this property pegged at the market value determined by the City Assessor pursuant to Presidential Decree No. 76, as amended, particularly by Presidential Decree No. 1533 which is in force and in effect at the time of the issuance of this decree. In assessing the market value, the City Assessor shall consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation cost. Subject to the foregoing, the just compensation for the above property should not exceed a maximum of EIGHT MILLION PESOS (P8,000,000.00), which shall be payable to the owners within a period of five (5) years in five equal installments."

On April 4, 1980, the National Housing Authority, through its general-manager, wrote the Register of Deeds of Manila, furnishing it with a certified copy of P.O. Nos. 1669 and 1670 for registration, with the request that the certificates of title covering the properties in question be cancelled and new certificates of title be issued in the

name of the Republic of the Philippines.

However, the Register of Deeds in her letter to NHA's general manager, requested the submission of the owner's copy of the certificates of title of the properties in question to enable her to implement the aforementioned decrees.

Subsequently, petitioner Elisa R. Manotok, one of the owners of the properties to be expropriated, received from the NHA a letter informing her that the latter had deposited, on July 16, 1980, with the Philippine National Bank the total amount of P5,000,000.00 which included the amount of P3,400,000.00 representing the first annual installment for the Tambunting Estate pursuant to P.D. No. 1669; and another P5,000,000.00 which also included the amount of P1,600,000.00 representing the first annual installment for the Sunog-Apog area under P.D. No. 1670. The petitioner was also informed that she was free to withdraw her share in the properties upon surrender by her of the titles pertaining to said properties and that if petitioner failed to avail herself of the said offer, the NHA would be constrained to take the necessary legal steps to implement the decrees.

On August 19, 1980, petitioner Elisa R. Manotok wrote a letter to the NHA alleging, inter alia, that the amounts of compensation for the expropriation of the properties of the petitioners as fixed in the decrees do not constitute the "just compensation" envisioned in the Constitution. She expressed veritable doubts about the constitutionality of the said decrees and informed the NHA that she did not believe that she was obliged to withdraw the amount of P5,000,000.00 or surrender her titles over the properties.

In the meantime, some officials of the NHA circulated instructions to the tenants-occupants of the properties in dispute not to pay their rentals to the petitioners for their lease-occupancy of the properties in view of the passage of P.D. Nos. 1669 and 1670. Hence, the owners of the Tambunting Estate filed a petition to declare P.D. No. 1669 unconstitutional. The owners of the Sunog-Apog area also filed a similar petition attacking the constitutionality of P.D. No. 1670.

On September 27, 1982, the lessees of the Tambunting Estate and the Sunog-Apog area filed a motion for leave to intervene together with their petition for intervention alleging that they are themselves owners of the buildings and houses built on the properties to be expropriated and as such, they are real parties-in-interest to the present petitions.

The petitioners maintain that the Presidential Decrees providing for the direct expropriation of the properties in question violate their constitutional right to due process and equal protection of the law because by the mere passage of the said decrees their properties were automatically expropriated and they were immediately deprived of the ownership and possession thereof without being given the chance to oppose such expropriation or to contest the just compensation to which they are entitled.

The petitioners argue that the government must first have filed a complaint with the proper court under Rule 67 of the Revised Rules of Court in order to fulfill the requirements of due process. They contend that the determination of just compensation should not have been vested solely with the City Assessor and that a maximum or fixed amount of compensation should not have been imposed by the said decrees. Petitioners likewise state that by providing for the maximum amount of just compensation and by directing the City Assessor to take into consideration the alleged existing conditions of the properties in question, namely: that no "improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation costs," the City Assessor is forced to accept, as actual and existing conditions of the property, the foregoing statements in the decrees when in fact the Sunog-Apog area has been subdivided into subdivision lots and leased to the occupants thereof under contracts of lease, making them lessees and not squatters as assumed by Presidential Decree No. 1670. Moreover, each subdivision lot is surrounded by adobe walls

constructed by the particular owner of the property; the houses were required to have septic tanks by the City Hall and the owners themselves; there is a drainage system; and there are adequate water facilities.

As far as the Tambunting Estate is concerned, the petitioners maintain that aside from the residential houses in the area, there are buildings and structures of strong materials on the lots fronting Rizal Avenue Extension, most of which are leased to proprietors of business establishments under long term contracts of lease which use the same for their furniture business from which they secure substantial income.

The Government as represented by the Solicitor-General and the NHA, on the other hand, contends that the power of eminent domain is inherent in the State and when the legislature itself or the President through his law-making prerogatives exercises this power, the public use and public necessity of the expropriation, and the fixing of the just compensation become political in nature, and the courts must respect the decision of the law-making body, unless the legislative decision is clearly and evidently arbitrary, unreasonable, and devoid of logic and reason; and that all that is required is that just compensation be determined with due process of law which does not necessarily entail judicial process.

The public respondents, further argue that since the Constitution lays down no procedure by which the authority to expropriate may be carried into effect, Rule 67 of the Revised Rules of Court which is invoked by the petitioners may be said to have been superseded by the challenged decrees insofar as they are applicable to the properties in question and, therefore, there is no need to follow the said rule for due process to be observed. Moreover, the public respondents maintain that it cannot be fairly said that the petitioners' valuations were ignored in fixing the ceiling amount of the properties in question because the only reason why the determination appeared unilateral was because said petitioners did not actually state any valuation in their sworn declaration of true market value of their respective properties, and as far as payment in installments is concerned, the same can be justified by the fact that the properties in question are only two of the four hundred and fifteen (415) slums and blighted areas in Metro Manila and two of the two hundred and fifty-one (251) sites for upgrading under the ZIP and that to immediately acquire and upgrade all those sites would obviously entail millions and millions of pesos. The financial constraints, therefore, require a system of payment of just compensation. Thus, the respondent states that the payment of just compensation in installments did not arise out of ill will or the desire to discriminate.

We start with fundamentals.

The power of eminent domain is inherent in every state and the provisions in the Constitution pertaining to such power only serve to limit its exercise in order to protect the individual against whose property the power is sought to be enforced. We pointed out the constitutional limitations in the case of *Republic v. Juan*, (92 SCRA 26, 40):

"To begin with, it must be emphasized that plaintiff-appellee in this instant case is the Republic of the Philippines which is exercising its right of eminent domain inherent in it as a body sovereign. In the exercise of its sovereign right the State is not subject to any limitation other than those imposed by the Constitution which are: first, the taking must be for a public use; secondly, the payment of just compensation must be made; and thirdly, due process must be observed in the taking, x x x"

The challenged decrees are uniquely unfair in the procedures adopted and the powers given to the respondent NHA.

The Tambunting subdivision is summarily proclaimed a blighted area and directly expropriated by decree without the slightest semblance of a hearing or any proceeding whatsoever. The expropriation is instant and automatic to take effect immediately upon the signing of the decree. No deposit before taking is required under the decree. The P3,400,000.00 appropriated from the general fund is not a deposit but constitutes an installment payment for the property, the maximum price of which is fixed so as not to exceed P17,000,000.00. There is no provision for any

interests to be paid on the unpaid installments spread out over a period of five years. Not only are the owners given absolutely no opportunity to contest the expropriation, plead their side, or question the amount of payments fixed by decree, but the decisions, rulings, orders, or resolutions of the NHA are expressly declared as beyond the reach of judicial review. An appeal may be made to the Office of the President but the courts are completely enjoined from any inquiry or participation whatsoever in the expropriation of the subdivision or its incidents.

In some decisions promulgated before the February, 1986 political upheaval, this Court presumed the validity of the beautiful "whereases" in presidential decrees governing expropriations and legitimated takings of private property which, in normal times, would have been constitutionally suspect. There were then the avowed twin purposes of martial law to first quell the Communist rebellion and second to reform society. Thus, in *Haguisan v. Emilia* (131 SCRA 517) the Court sustained the contention that prior hearing is no longer necessary under P.D. No. 42 in ascertaining the value of the property to be expropriated and before the government may take possession. There was a disregard in the decree for Section 2 of Rule 67 which requires the court having jurisdiction over the proceedings to promptly ascertain and fix the provisional value of the property for purposes of the initial taking or entry by the Government into the premises. In *National Housing Authority v. Reyes* (123 SCRA 245) the Court upheld the decrees which state that the basis for just compensation shall be the market value declared by the owner for tax purposes or such market value as determined by the government assessor, whichever is lower.

Subsequent developments have shown that a disregard for basic liberties and the shortcut methods embodied in the decrees on expropriation do not achieve the desired results. Far from disappearing, squatter colonies and blighted areas have multiplied and proliferated. It appears that constitutionally suspect methods or authoritarian procedures cannot be the basis for social justice. A program to alleviate problems of the urban poor which is well studied, adequately funded, genuinely sincere, and more solidly grounded on basic rights and democratic procedures is needed.

We re-examine the decisions validating expropriations under martial law and apply established principles of justice and fairness which have been with us since the advent of constitutional government. We return to older and more sound precedents.

The due process clause cannot be rendered nugatory every time a specific decree or law orders the expropriation of somebody's property and provides its own peculiar manner of taking the same. Neither should the courts adopt a hands-off policy just because the public use has been ordained as existing by the decree or the just compensation has been fixed and determined beforehand by a statute.

The case of *Dohany v. Rogers*, (74 L.ed. 904, 912, 281, U.S. 362-370) underscores the extent by which the due process clause guarantees protection from arbitrary exercise of the power of eminent domain.

"The due process clause does not guarantee to the citizen of a state any particular form or method of state procedure. Under it he may neither claim a right to trial by jury nor a right of appeal. Its requirements are satisfied if he has reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it. *Reetz v. Michigan*, 188 U.S. 505, 508, 47 L. ed. 563, 566, 23 Sup. Ct. Rep. 390; *Missouri ex rel. Hurwitz v. North*, 271

U.S. 40, 70 L. ed. 818, 46 Sup. Ct. Rep. 384; *Bauman v. Ross*, 167 U.S. 548, 593, 42 L. ed. 270, 289, 17 Sup. Ct. Rep. 966; *A. Backus Jr. & Sons v. Fort Street Union Depot Co.*, 169 U.S. 569, 42 L. ed. 859, 18 Sup. Ct. Rep. 445."

In other words, although due process does not always necessarily demand that a proceeding be had before a court of law, it still mandates some form of proceeding wherein notice and reasonable opportunity to be heard are given

to the owner to protect his property rights. We agree with the public respondents that there are exceptional situations when, in the exercise of the power of eminent domain, the requirement of due process may not necessarily entail judicial process. But where it is alleged that in the taking of a person's property, his right to due process of law has been violated, the courts will have to step in and probe into such an alleged violation.

Thus, certain portions of the decision in *De Knecht v. Bautista*, (100 SCRA 660, 666-667) state:

"There is no question as to the right of the Republic of the Philippines to take private property for public use upon the payment of just compensation. Section 2, Article IV of the Constitution of the Philippines provides: 'Private property shall not be taken for public use without just compensation,'"

"It is recognized, however, that the government may not capriciously or arbitrarily choose what private property should be taken. In *J.M. Tuazon & Co., Inc. v. Land Tenure Administration*, 31 SCRA 413, 433, the Supreme Court said:

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

In the same case the Supreme Court concluded:

"With due recognition then of the power of Congress to designate the particular property to be taken and how much thereof may be condemned in the exercise of the power of expropriation, it is still a judicial question whether in the exercise of such competence, the party adversely affected is the victim of partiality and prejudice. That the equal protection clause will not allow." (p. 436)"

The basis for the exercise of the power of eminent domain is necessity. This Court stated in *City of Manila v. Chinese Community of Manila* (40 Phil. 349) that "(t)he very foundation of the right to exercise eminent domain is a genuine necessity and that necessity must be of a public character."

In *City of Manila v. Arellano Law Colleges* (85 Phil. 663), we reiterated that a necessity must exist for the taking of private property for the proposed uses and purposes but accepted the fact that modern decisions do not call for absolute necessity. It is enough if the condemnor can show a reasonable or practical necessity, which of course, varies with the time and peculiar circumstances of each case.

In the instant petitions, there is no showing whatsoever as to why the properties involved were singled out for expropriation through decrees or what necessity impelled the particular choices or selections. In expropriations through legislation, there are, at least, debates in Congress open to the public, scrutiny by individual members of the legislature, and very often, public hearings before the statute is enacted. Congressional records can be examined. In these petitions, the decrees show no reasons whatsoever for the choice of the properties as housing projects. The anonymous adviser who drafted the decrees for the President's signature cannot be questioned as to any possible error or partiality, act of vengeance, or other personal motivations which may have led him to propose the direct expropriation with its onerous provisions.

The Tambunting estate or at least the western half of the subdivision fronting Rizal Avenue Extension is valuable commercial property. It is located at the junction where three main city streets converge — Rizal Avenue from

downtown Manila, Jose Abad Santos Street from Binondo, and Aurora Boulevard leading to Retiro Street and other points in Quezon City. The Libiran Furniture Company, alone, which fronts the entrance to Jose Abad Santos Street is clearly a multi-million peso enterprise. It is a foregone conclusion that the favored squatters allowed to buy these choice lots would lose no time, once it is possible to do so, to either lease out or sell their lots to wealthy merchants even as they seek other places where they can set up new squatter colonies. The public use and social justice ends stated in the whereas clauses of P.D. 1669 and P.D. 1670 would not be served thereby.

The provision of P.D. 1669 which allows NHA, at its sole option, to put portions of the expropriated area to commercial use in order to defray the development costs of its housing projects cannot stand constitutional scrutiny. The Government, for instance, cannot expropriate the flourishing Makati commercial area in order to earn money that would finance housing projects all over the country. The leading case of *Guido v. Rural Progress Administration* (84 Phil. 847) may have been modified in some ways by the provisions of the new Constitution on agrarian and urban land reform and on housing. The principle of non-appropriation of private property for private purposes, however, remains. The legislature, according to the *Guido* case, may not take the property of one citizen and transfer it to another, even for a full compensation, when the public interest is not thereby promoted. The Government still has to prove that expropriation of commercial properties in order to lease them out also for commercial purposes would be "public use" under the Constitution.

P.D. No. 1670 suffers from a similar infirmity. There is no showing how the President arrived at the conclusion that the Sunog-Apog area is a blighted community. The many pictures submitted as exhibits by the petitioners show a well-developed area subdivided into residential lots with either middle-income or upper class homes. There are no squatters. The provisions of the decree on the relocation of qualified squatter families and on the re-blocking and re-alignment of existing structures to allow the introduction of basic facilities and services have no basis in fact. The area is well-developed with roads, drainage and sewer facilities, water connections to the Metropolitan Waterworks and Sewerage System, electric connections to Manila Electric Company, and telephone connections to the Philippine Long Distance Telephone Company. There are many squatter colonies in Metro Manila in need of upgrading. The Government should have attended to them first. There is no showing for a need to demolish the existing valuable improvements in order to upgrade Sunog-Apog.

After a careful examination of the questioned decrees, we find P.D. Nos. 1669 and 1670 to be violative of the petitioners' right to due process of law and, therefore, they must fail the test of constitutionality.

The decrees, do not by themselves, provide for any form of hearing or procedure by which the petitioners can question the propriety of the expropriation of their properties or the reasonableness of the just compensation. Having failed to provide for a hearing, the Government should have filed an expropriation case under Rule 67 of the Revised Rules of Court but it did not do so. Obviously, it did not deem it necessary because of the enactment of the questioned decrees which rendered, by their very passage, any questions with regard to the expropriation of the properties, moot and academic. In effect, the properties, under the decrees were "automatically expropriated." This became more evident when the NHA wrote the Register of Deeds and requested her to cancel the certificate of titles of the petitioners, furnishing said Register of Deeds only with copies of the decrees to support its request.

This is hardly the due process of law which the state is expected to observe when it exercises the power of eminent domain.

The government states that there is no arbitrary determination of the fair market value of the property by the government assessors because if the owner is not satisfied with the assessor's action, he may within sixty (60) days appeal to the Board of Assessment Appeals of the province or city as the case may be and if said owner is still unsatisfied, he may appeal further to the Central Board of Assessment Appeals pursuant to P.D. No. 464. The

Government argues that with this procedure, the due process requirement is fulfilled.

We cannot sustain this argument.

Presidential Decree No. 464, as amended, otherwise known as the Real Property Tax Code, provides for the procedure on how to contest assessments but does not deal with questions as to the propriety of the expropriation and the manner of payment of just compensation in the exercise of the power of eminent domain. We find this wholly unsatisfactory. It cannot in anyway substitute for the expropriation proceeding under Rule 67 of the Revised Rules of Court.

Another infirmity from which the questioned decrees suffer is the determination of just compensation.

Pursuant to P.D. 1533, the basis of the just compensation is the market value of the property "prior to the recommendation or decision of the appropriate Government Office to acquire the property." (see also *Republic v. Santos*, (141 SCRA 30, 35).

In these petitions, a maximum amount of compensation was imposed by the decrees and these amounts were only a little more than the assessed value of the properties in 1978 when, according to the government, it decided to acquire said properties.

The fixing of the maximum amounts of compensation and the bases thereof which are the assessed values of the properties in 1978 deprive the petitioner of the opportunity to prove a higher value because, the actual or symbolic taking of such properties occurred only in 1980 when the questioned decrees were promulgated.

According to the government, the cut-off year must be 1978 because it was in this year that the government decided to acquire the properties and in the case of the Tambunting Estate, the President even made a public announcement that the government shall acquire the estate for the fire victims.

The decision of the government to acquire a property through eminent domain should be made known to the property owner through a formal notice wherein a hearing or a judicial proceeding is contemplated as provided for in Rule 67 of the Rules of Court. This shall be the time of reckoning the value of the property for the purpose of just compensation. A television or news announcement or the mere fact of the property's inclusion in the Zonal Improvement Program (ZIP) cannot suffice because for the compensation to be just, it must approximate the value of the property at the time of its taking and the government can be said to have decided to acquire or take the property only after it has, at the least, commenced a proceeding, judicial or otherwise, for this purpose.

In the following cases, we have upheld the determination of just compensation and the rationale behind it either at the time of the actual taking of the government or at the time of the judgment by the court, whichever came first.

Municipality of Daet v. Court of Appeals, (93 SCRA 503, 506, 519):

"x x x And in the case of *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 31 SCRA 413, the Court, speaking thru now Chief Justice Fernando, reiterated the 'well-settled (rule) that just compensation means the equivalent for the value of the property at the time of its taking. Anything beyond that is more and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity.'"

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"We hold that the decision of the Court of Appeals fixing the market value of the property to be that obtaining, at least, as of the date of the rendition of the judgment on December 2, 1969 as prayed by private respondent, which the Court fixed at P200.00 per square meter is in conformity with doctrinal rulings herein above cited that the value should be fixed as of the time of the taking of the possession of the property because firstly, at

the time judgment was rendered on December 2, 1969, petitioner had not actually taken possession of the property sought to be expropriated and secondly, We find the valuation determined by the Court of Appeals to be just, fair and reasonable."

National Power Corporation v. Court of Appeals, (129 SCRA 665, 673):

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"(5) And most importantly, on the issue of just compensation, it is now settled doctrine, following the leading case of *Alfonso v. Pasay City*, (106 Phil. 1017(1960)), that to determine due compensation for lands appropriated by the Government, the basis should be the price or value at the time it was taken from the owner and appropriated by the Government.

"The owner of property expropriated by the State is entitled to how much it was worth at the time of the taking. This has been clarified in *Republic v. PNB* (1 SCRA 957) thus: 'It is apparent from the foregoing that, when plaintiff takes possession before the institution of the condemnation proceedings, the value should be fixed as of the time of the taking of said possession, not of filing of the complaint, and that the latter should be the basis for the determination of the value, when the taking of the property involved coincides with or is subsequent to, the commencement of the proceedings. Indeed, otherwise, the provision of Rule 69, Section 3, directing that compensation 'be determined as of the date of the filing of the complaint' would never be operative." (*Municipality of La Carlota v. The Spouses Baltazar, et al*, 45 SCRA 235 (1972)).

Furthermore, the so-called "conditions" of the properties should not be determined through a decree but must be shown in an appropriate proceeding in order to arrive at a just valuation of the property. In the case of *Garcia v. Court of Appeals*, (102 SCRA 597, 608) we ruled:

"x x x Hence, in estimating the market value, all the capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in at the time and the use to which it is then applied by the owner. All the facts as to the condition of the property and its surroundings, its improvements and capabilities may be shown and considered in estimating its value."

In P.D. No. 76, P.D. No. 464, P.D. No. 794, and P.D. No. 1533, the basis for determining just compensation was fixed at the market value declared by the owner or the market value determined by the assessor, whichever is lower.

P.D.s 1669 and 1670 go further. There is no mention of any market value declared by the owner. Sections 6 of the two decrees peg just compensation at the market value determined by the City Assessor. The City Assessor is warned by the decrees to "consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation costs."

In other cases involving expropriations under P.D. Nos. 76, 464, 794, and 1533, this Court has decided to invalidate the mode of fixing just compensation under said decrees. (See *Export Processing Zone Authority v. Hon. Ceferino E. Dulay, et al.*, G.R. No. 59603). With more reason should the method in P.D.s 1669 and 1670 be declared infirm.

The market value stated by the city assessor alone cannot substitute for the court's judgment in expropriation proceedings. It is violative of the due process and the eminent domain provisions of the Constitution to deny to a property owner the opportunity to prove that the valuation made by a local assessor is wrong or prejudiced. The statements made in tax documents by the assessor may serve as one of the factors to be considered but they cannot exclude or prevail over a court determination made after expert commissioners have examined the property and all pertinent circumstances are taken into account and after the parties have had the opportunity to fully plead their

cases before a competent and unbiased tribunal. To enjoin this Court by decree from looking into alleged violations of the due process, equal protection, and eminent domain clauses of the Constitution is impermissible encroachment on its independence and prerogatives.

The maximum amounts, therefore, which were provided for in the questioned decrees cannot adequately reflect the value of the property and, in any case, should not be binding on the property owners for, as stated in the above cases, there are other factors to be taken into consideration. We, thus, find the questioned decrees to likewise transgress the petitioners' right to just compensation. Having violated the due process and just compensation guarantees, P. D. Nos. 1669 and 1670 are unconstitutional and void.

WHEREFORE, the petitions in G.R. No. 55166 and G.R. No. 55167 are hereby GRANTED. Presidential Decree Numbers 1669 and 1670 which respectively proclaimed the Tambunting Estate and the Estero de Sunog-Apog area expropriated, are declared unconstitutional and, therefore, null and void ab initio.

SO ORDERED.

Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Teehankee, C.J., files a separate concurrence.

Yap, J., on leave. Did not take part in the deliberation.

CONCURRING

TEEHANKEE, C.J.,

The judgment of the Court invalidates Presidential Decrees numbered 1669 and 1670 which unilaterally proclaimed the Tambunting Estate and the Estero de Sunog Apog area as expropriated without further recourse, for being violative of the due process and eminent domain provisions of the Constitution in the particulars stated in the opinion ably penned by Mr. Justice Gutierrez.

This is in line with my concurring and dissenting opinion in the six-to-five decision in *J.M. Tuason & Co., Inc. v. Land Tenure Administration*[1] wherein the Congress through Republic Act No. 2616 "authorized the expropriation of the Tatalon Estate" comprising about 109 hectares in Quezon City for subdivision into small lots and conveyed at cost to individuals.

I concurred with the tenuous majority's ruling there setting aside the lower court's ruling granting therein petitioner-appellee's petition to prohibit respondents-appellees from instituting proceedings for expropriation of the "Tatalon Estate" as specifically authorized by R.A. 2616, with the result that the expropriation proceedings could then be properly filed but subject to such proper and valid objections and defenses to the action as petitioner-owner may raise.

I dissented, however, from the majority ruling, insofar as it held that the constitutional power of Congress for the expropriation of lands is well-nigh all embracing and forecloses the courts from inquiring into the necessity for the taking of the property. I noted that "this is the first case where Congress has singled out a particular property for condemnation under the constitutional power conferred upon it. Does this square with the due process and equal protection clauses of the Constitution? Is the explanatory note of the bill later enacted as Republic Act 2616, without any evidence as to a hearing with the affected parties having been given the opportunity to be heard, and citing merely the population increase of Quezon City and the land-for-the- landless program sufficient compliance

with these basic constitutional guarantees? Rather, does not the need for a more serious scrutiny as to the power of Congress to single out a particular piece of property for expropriation, acknowledged in the main opinion, call for judicial scrutiny, with all the facts in, as to the need for the expropriation for full opportunity to dispute the legislative appraisal of the matter?"[2]

I added that there were prejudicial questions raised which could only be threshed out in trial court proceedings, (and not in the special civil action filed with the Court to set aside the trial court's declaring of unconstitutionality of the questioned Expropriation Act), viz., with therein petitioner maintaining that only 11.68% or less than 39 hectares of its Sta. Mesa Heights Subdivision (of which the "Tatalon Estate" formed part) remained unsold; that existing contractual rights acquired by vendors and purchasers of subdivided lots should be accorded the appropriate constitutional protection of non-impairment; and that in view of the cardinal principle of eminent domain for payment of just compensation of the market value of the land "respondents may well consider that the objectives of the Act may be accomplished more expeditiously by a direct purchase of the available unsold lots for resale at cost to the remaining bona fide occupants in accordance with the Act's provisions or by extending financial assistance to enable them to purchase directly the unsold lots from petitioner. I do not see anything to be gained by respondents from the institution of expropriation proceedings, when petitioner-owner is actually selling the property in subdivided lots."[3]

The judgment at bar now clearly overturns the majority ruling in Tuason that "the power of Congress to designate the particular property to be taken and how much thereof may be condemned in the exercise of the power of "expropriation" must be duly recognized, leaving only as "a judicial question whether in the exercise of such competence, the party adversely affected is the victim of partiality and prejudice. That the equal protection clause will not allow."[4] The Court now clearly rules that such singling out of properties to be expropriated by Presidential Decree as in the case at bar, or by act of the legislature as in Tuason, does not foreclose judicial scrutiny and determination as to whether such expropriation by legislative act transgresses the due process and equal protection,[5] and just compensation[6] guarantees of the Constitution. As we hold now expressly in consonance with my abovequoted separate opinion in Tuason: "To enjoin this Court by decree from looking into alleged violations of the due process, equal protection, and eminent domain clauses of the Constitution is impermissible encroachment on its independence and prerogatives."[7] As in all eminent domain proceedings, the State may not capriciously or arbitrarily single out specific property for condemnation and must show the necessity of the taking for public use.

[1] 31 SCRA 413, 506 (1970), The majority judgment with Fernando, ponente, was concurred in by Zaldivar, Sanchez, Barredo and Villamor, JJ. with Makalintal, J, concurring in the result. Concepcion, C.J. and Reyes, J.B.L., Dizon and Castro, JJ. concurred in my separate concurring and dissenting opinion.

[2] Idem., at page 509.

[3] Idem., at page 511.

[4] Idem., at page 436.

[5] Art. III, Bill of Rights, Sec. I. 1987 Constitution.

[6] Idem., Section 9.

[7] Majority Opinion, at page 23.

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