

B.H. BERKENKOTTER & CO., THROUGH ITS PRESIDENT GEORGE E. BERKENKOTTER, PETITIONER, VS. COURT OF APPEALS, AND THE REPUBLIC OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 89980, December 14, 1992*

Ponente: CRUZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-89980/>**CRUZ, J.:**

The sole issue for resolution in this case is the just compensation to be paid for a parcel of land sought to be expropriated for the use of the Apolinario R. Apacible School of Fisheries, a government institution, in Nasugbu, Batangas.

The property has an area of 10,640 square meters and belongs to B.H. Berkenkotter & Co., the herein petitioner. On June 18, 1982, Vicente Viray, president of the said school, sent the owner a written offer to buy the land in line with the 5-year expansion program of ARASOF. In reply, Berkenkotter expressed its willingness to sell at P50.00 per square meter payable in cash. At Viray's request, the Provincial Appraisal Committee, Office of the Provincial Assessor, Batangas City, appraised the land and fixed its market value at P32.00 per square meter. Viray then wrote Berkenkotter another letter and offered to buy the property at the said price. The latter stuck to its original valuation; later it said that the property had in fact appreciated to as much as P100.00 per square meter. Further negotiations failed to resolve the impasse between ARASOF and the petitioner. In the end, expropriation proceedings were commenced against the petitioner by the Republic of the Philippines on behalf of ARASOF.

In its complaint dated October 28, 1983; the Republic invoked the assessment made by the Provincial Appraisal Committee at P32.00 per square meter and sought possession of the property upon payment of the 10% deposit required by P.D. 48. Berkenkotter originally questioned the purpose of the expropriation but later abandoned this objection and concentrated only on what it called the under-appraisal of the subject land. On March 21, 1985, the Regional Trial Court of Batangas issued an order of condemnation and, pursuant to Rule 67, Section 5, of the Rules of Court, appointed a panel of commissioners to determine the just compensation to be paid for the land.[1]

Just compensation is defined as the full and fair equivalent of the property sought to be expropriated.[2] The measure is not the taker's gain but the owner's loss.[3] The compensation, to be just, must be fair not only to the owner but also to the taker. Even as undervaluation would deprive the owner of his property without due process, so too would its overvaluation unduly favor him to the prejudice of the public.

To determine just compensation, the trial court should first ascertain the market value of the property, to which should be added the consequential damages after deducting therefrom the consequential benefits which may arise from the expropriation.[4] If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the property should be paid in every case.[5]

The market value of the property is the price that may be agreed upon by parties willing but not compelled to enter into the contract of sale.[6] Not unlikely, a buyer desperate to acquire a piece of property would agree to pay more, and a seller in urgent need of funds would agree to accept less, than what it is actually worth. The price

agreed upon in these cases would not represent the market value of the property.

Among the factors to be considered in arriving at the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon.[7]

It is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.[8]

On September 23, 1985, the panel of commissioners submitted its report to the trial court and recommended that the property be appraised at the unit price of P85.00. The Republic objected and pointed to three contracts of sale the petitioner had concluded in 1985 whereby it sold three tracts of land similar in topography and adjacent to the property in question for the unit price of only P19.18. The trial court directed the commissioners to convene anew and receive additional evidence. It did and conducted more interviews. In its second report dated April 1, 1987, however, the panel reiterated its original recommendation for the valuation of the property at P85.00 per square meter.

Acting on this recommendation, Judge Roseo L. Venturanza rendered judgment affirming the right of the plaintiff to expropriate the subject land upon payment to the owner of just compensation at the rate of P85.00 per square meter, for a total of P904,400.00.[9]

This decision was elevated to and reversed by the Court of Appeals.[10] The respondent court noted that the three contracts of sale concluded in 1985 were practically disregarded by the trial court. Justice Jose A.R. Melo, now a member of this Court, observed that the lands covered by these deeds, which were adjacent to the subject property, were voluntarily sold by Berkenkotter for the price of only P19.18 per square meter. Moreover, the panel of commissioners relied only "on opinions and conclusions which were patently hearsay and gratuitous. Not a single document was submitted to support their recommended compensation of P85.00."

Accordingly, the respondent court set aside the compensation fixed by the trial court and ordered that the subject property be paid for at the rate of P19.18 per square meter, or a total of P204,075.20, including the amount already deposited by the Republic when it took possession of the land.

The present petition challenges the decision of the Court of Appeals on the following grounds:

1. The value of the subject property is more than P19.18 -

(a) Resolution No. 2-83 (Exh. "4"), which was passed by the Provincial Appraisal Committee, Office of the Provincial Assessor, Batangas City on April 4, 1983, provides THAT THE PREVAILING MARKET VALUE OF COMPARATIVE PROPERTIES IN THE LOCALITY WAS THIRTY-TWO PESOS (P32.00) PER SQUARE METER.

(b) Respondent REPUBLIC - through Mr. VICENTE VIRAY, Superintendent of Apolinario R. Apacible School of Fisheries - OFFERED TO PAY PETITIONER THIRTY TWO PESOS (P32.00) PER SQUARE METER for the subject property (Exh. "D").

(c) In the APPRAISAL REPORT OF G. AMBROSIO, INC., (Exh. "A"), the fair market value of the subject property was assessed at NINETY-FIVE PESOS (P95.00) per square meter, considering the various circumstances as testified to by its representative, Mr. Ernesto Ambrosio.

(d) MR. JAIME PIMENTEL, Administrator of Roxas y Compania in Nasugbu, Batangas, which company owns land within the vicinity of ARASOF, testified that lots surrounding the property subject of these

expropriation proceedings are being sold at FOUR HUNDRED (P400.00) to FIVE HUNDRED (P500.00) PESOS PER SQUARE METER.

(e) MR. JUSTINO LIM, who is engaged in the selling of the lots right across the property being expropriated, testified that the very same properties which were the subject of the Deeds of Sale (properties sold by petitioner at P19.18) presented by respondent Republic were being sold for TWO HUNDRED PESOS PER SQUARE METER.

2. The Deeds of Sale are not reliable for purposes of determining just compensation as the registrants tend to undervalue the cost of property to lower the expenses they would have to pay for the documents.

3. To disregard the report of the panel of commissioners would be to violate due process.

4. No proof was presented to show that the petitioner undervalued the sale of its properties so that it should not be penalized in these expropriation proceedings.

This is our ruling.

We do not agree that the commissioners' report was without sufficient basis as it was in fact made only after extensive interviews with persons who, although not necessarily experts, were nonetheless familiar with land values in the vicinity of the property sought to be expropriated. There was also an ocular inspection of the subject land, to give the panel a better idea of its real value. It is also not correct to say that the petitioner did not submit any documentary evidence to support its claim. The record shows that there was, among others, the appraisal report made by the reputable realty firm of G. Ambrosio, Inc., which Ambrosio himself explained at the trial.[11]

Even so, the report and recommendations of the panel of commissioners were not conclusive upon the trial court, which had the right and discretion to arrive at its own assessment of the land. The findings of the commissioners were at best only advisory and persuasive and by no means final or binding. As the Court held in the case of *Republic v. Santos*: [12]

According to Section 8 of Rule 67, the Court is not bound by the commissioners' report. It may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of condemnation, and to the defendant just compensation for the property expropriated. This Court may substitute its own estimate of the value as gathered from the record.

What mystifies the Court is why, if the property was really worth P85.00 per square meter in 1985, the petitioner agreed to sell its other lands, of the same topography as the land in dispute and separated therefrom by only a road, at only P19.18 per square meter. The sales it made in favor of three different purchasers, and for the said uniform rate, are embodied in the following evidence submitted by the Republic as:

Exhibit "1" - Deed of Sale dated July 18, 1985 between B.H. Berkenkotter and Co., Inc., as vendor, and Andrea Rodriguez Ilao, et al., as vendees. The property sold for P140,885.76 is covered by TCT 26382 with an area of 7,344 square meters.

Exhibit "2" - Deed of Sale dated July 18, 1985 between B.H. Berkenkotter and Co., Inc., as vendor, and Andrea Rodriguez Ilao, et al., as vendees. The property, sold for P107,102.60, is covered by TCT 26383 with an area of 5,583 square meters.

Exhibit "3" - Deed of Sale dated July 18, 1985 between B.H. Berkenkotter and Co., Inc., as vendor, and Andrea Rodriguez Ilao, as vendee. The property, sold for P152,011.64, is covered by TCT 26384 with an area of 7,924 square meters.

There is no showing that the petitioner had any special reason for granting each of the individual vendees the extraordinary discount amounting to as much as 75% of its claimed real value of the land. To all appearances,

they were ordinary buyers and probably even land investors or speculators who did not deserve any particular generosity or bounty from the petitioner. Given this far from extraordinary situation, we find it difficult to understand why the petitioner, while insisting that the 10,640 square meters under expropriation had a unit price of P85.00, agreed to sell as many as 7,344 square meters of similar land to the first private buyer, 5,583 square meters to the second, and 7,924 square meters to the third, and all for only P19.18 per square meter.

The price demanded by the petitioner from the Republic of the Philippines is more than 4 times the price it willingly accepted from the private vendees. It is also noteworthy that the individual buyers bought the land for their own private purposes only and not for the public purpose invoked by the Republic and admitted by the petitioner itself. And no less importantly, the petitioner has not even made any effort to differentiate the subject property from the lands sold at the lower rate, to justify the increase in its price by more than 300%.

The petitioner seeks to explain its curious conduct by claiming that it had liquidity problems and needed cash when it entered into the three contracts of sale. If it really was in that predicament, it is strange that it did not even bother to withdraw, as it had a right to do so, the 10% deposit made by the Republic when it took possession of the subject property in 1985. As strangely, it also did not accept the government's standing offer, made as early as 1983, to buy the 10,640 square meters subject of the complaint at P32.00 per square meter, for a total price of P340,480.00. This would not only have relieved its financial difficulties but could also have avoided the expense and inconvenience of litigation that up to now have delayed its recovery of the cost of its property. Also, acceptance of the offer would have been a better deal than selling 20,851 square meters for only P400,000.00, from which, let it be stressed, the capital gains tax and other expenses of documentation and registration would still have to be deducted.

The petitioner now submits that the consideration mentioned in deeds of sale is not a reliable index of just compensation because the parties "tend to undervalue the cost of the property to lower the expenses they would have to pay for the documents." The expenses presumably refer to the cost of the documentary stamps for the registration of the property and the capital gains tax to be paid by the vendor to the government. The suggestion is revealing. There is practically an admission here that the parties to the three transactions did not indicate the real consideration therefor so they could evade the legitimate taxes and fees that were due the government on the basis of the correct purchase price.

If this was the purpose of the petitioner when it executed Exhibits 1, 2 and 3, then it is surely hoist now by its own petard. And rightly so, for it cannot be allowed to profit from its own deception and claim that the subject property should be assessed at the higher rate it clandestinely agreed upon with the buyers. That is assuming the worst. But even on the assumption that the petitioner comported itself with all propriety and rectitude and did not falsify the consideration for the sales, the result would still be the same. Such a posture would signify that it seriously believed the fair price for its property to be only P19.18 per square meter, and not any lower or higher than that, whoever the purchaser might be.

The Court is disappointed that the petitioner should demand a higher price from the Republic, which needs the lands for a public purpose, when it was willing to accept less from the three individual buyers who had only their private interests to serve. But this is not only a matter of civic spirit. We recognize that the basic issue is the hard-nosed business of tit for tat. Civic altruism aside, the simple fact is that, whatever its motive, the petitioner cannot now assert that its property is worth P85.00 per square meter as far as the Republic is concerned although, by its own voluntary act, it sold similar property to private individuals for only P19.18 per square meter. There is no satisfactory explanation for this incredible discrimination. The Republic should not pay more simply because it is the Republic, as if it were a milking cow with unlimited resources to abuse.

It may be asked why the petitioner should not be paid at the rate at least of P32.00, which was the price offered by Viray and in the complaint for expropriation later filed by the Republic. The Republic had no choice then because P.D. 1533 fixed the just compensation at the valuation given by the owner or the government, whichever was lower. The price determined by the Provincial Appraisal Committee was lower. True, the decree has since been declared unconstitutional in *Export Processing Zone Authority v. Dulay*.^[13] Even so, the fact is that the petitioner rejected that offer and has up to now been insisting on its own unit price of P85.00.

We agree with the respondent court that by selling its lands in the three deeds of sale indicated as Exhibits 1, 2 and 3, at the uniform rate of P19.18 per square meter, the petitioner thereby impliedly admitted that the lands subject of the expropriation proceeding, being of the same topography and virtually in the same location as the said other lands, should also be valued at that same rate. This rule of consistency is best expressed in the familiar saying, surely not unknown to the petitioner, that what is sauce for the goose is also sauce for the gander.

WHEREFORE, the petition is DENIED, and it is hereby affirmed that the just compensation for the subject land should be computed at the rate of P19.18 per square meter. Costs against the petitioner.

SO ORDERED.

Padilla, Grino-Aquino, and Bellosillo, JJ., concur.

[1] Rollo, p. 43; Annex "F."

[2] *Manila Railroad Co. v. Velasquez*, 32 Phil. 286; *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 378.

[3] *Province of Tayabas v. Perez*, 66 Phil. 467; *Municipality of Daet v. Court of Appeals*, 93 SCRA 503; *Manotok v. National Housing Authority*, 150 SCRA 89.

[4] Cruz, *Constitutional Law*, 1991 ed., p. 74.

[5] Rule 67, Section 6, Rules of Court.

[6] *Manila Railroad Co. v. Caligsihan*, 40 Phil. 326.

[7] Cruz, *Constitutional Law*, *supra*.

[8] *Republic v. PNB*, 1 SCRA 957; *Ansaldo v. Tantuico, Jr.*, 188 SCRA 300.

[9] Rollo, pp. 92-99.

[10] *Ibid.*, pp. 140-146. Melo, J., ponente, with Pronove and Benipayo, JJ., concurring.

[11] Exhibit "A;" TSN, August 15, 1986, pp. 2-25.

[12] 141 SCRA 30.

[13] 149 SCRA 305.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.