

RAMON M. ALFONSO, PETITIONER, VS. LAND BANK OF THE PHILIPPINES AND DEPARTMENT OF AGRARIAN REFORM, RESPONDENTS.

G.R. Nos. 181912 & 183347. November 29, 2016

Ponente: JARDELEZA, J.

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JARDELEZA, J.:

The main issue presented in this case concerns the legal duty of the courts, in the determination of just compensation under Republic Act No. 6657,[1] (RA 6657), in relation to Section 17 of RA 6657 and the implementing formulas of the Department of Agrarian Reform (DAR).

The Court En Banc reaffirms the established jurisprudential rule, that is: until and unless declared invalid in a proper case, courts have the positive legal duty to consider the use and application of Section 17 and the DAR basic formulas in determining just compensation for properties covered by RA 6657. When courts, in the exercise of its discretion, find that deviation from the law and implementing formulas is warranted, it must clearly provide its reasons therefor.

The Case

This is a petition for review on certiorari of the Decision[2] and Resolution,[3] dated July 19, 2007 and March 4, 2008, respectively, of the Court of Appeals in CA-G.R. SP No. 90615 and CA-G.R. SP No. 90643. The Court of Appeals granted the individual petitions filed by the DAR and the Land Bank of the Philippines (LBP) and set aside the Decision[4] dated May 13, 2005 of the Regional Trial Court fixing the total amount of P6,090,000.00 as just compensation.[5]

The Facts

Cynthia Palomar (Palomar) was the registered owner of two (2) parcels of land. One is located in San Juan, Sorsogon City, with an area of 1.6530 hectares covered by Transfer Certificate of Title (TCT) No. T-21136,[6] and the other in Bibincahan, Sorsogon City, with an area of 26.2284 hectares covered by TCT No. T-23180.[7]

Upon the effectivity of RA 6657, the DAR sought to acquire Palomar's San Juan and Bibincahan properties at a valuation of P36,066.27 and P792,869.06,[8] respectively. Palomar, however, rejected the valuations.

Land Valuation Case Nos. 68-01 and 70-01 were consequently filed before the DAR Provincial Adjudication Board (Board) for summary determination of just compensation. In the meantime, or on April 16, 2001, Palomar sold her rights over the two properties to petitioner Ramon M. Alfonso (Alfonso).[9]

Upon orders from the Board, the parties submitted their position papers and evidence to support their respective proposed valuations. On June 20, 2002, Provincial Adjudicator Manuel M. Capellan issued Decisions[10] in Land Valuation Case Nos. 68-01 and 70-01.

Applying DAR Administrative Order No. 5, Series of 1998, (DAR AO No. 5 [1998]), Provincial Adjudicator

Capellan valued the properties as follows:

San Juan Property:

$$\text{Land Value} = \text{CNI} \times 0.9 + \text{MV} \times 0.1$$

Thus:

666.67 kls AGP / FIR

16.70 ASP / PCA data

CNI

=

$$666.67 \times 16.70 \times .70 - .12 \times 0.9$$

=

58,450.29

MV

=

$$30,600 \times 1.2 \times .90 + 70 \times 150.00 \times 1.2 \times .90 \times 0.1$$

=

4,438.80

Land Value

=

$$58,450.29 + 4,438.80$$

=

$$62,889.09 \times 1.6530 \text{ hectares}$$

=

103,955.66[11]

Bibincahan Property:

$$\text{Land Value} = \text{CNI} \times 0.9 + \text{MV} \times 0.1$$

Thus:

952 kls AGP/ FIR
16.70 ASP / PCA data

CNI

=

$952 \times 16.70 \times .70 - .12 \times 0.9$

=

83,466.59

MV

=

$30,600 \times 1.2 \times .90 + 90 \times 150.00 \times 1.2 \times .90 \times 0.1$

=

4,762.80

Land Value

=

$83,466.59 + 4,762.80$

=

$88,229.39 \times 26.2284 \text{ hectares}$

=

2,314,115.73 [12]

Respondent LBP, as the CARP financial intermediary pursuant to Section 64 of RA 6657,[13] filed a motion seeking for a reconsideration of the Provincial Adjudicator's valuations. This was denied in an Order[14] dated September 13, 2002.

Both the LBP[15] and Alfonso[16] filed separate actions for the judicial determination of just compensation of the subject properties before Branch 52 of the Regional Trial Court, sitting as Special Agrarian Court (SAC), of Sorsogon City. These actions were docketed as Civil Case No. 2002-7073 and Civil Case No. 2002-7090, respectively. Upon Alfonso's motion, the cases were consolidated on December 10, 2002[17] and Amado Chua (Chua) of Cuervo Appraisers, Inc. was appointed Commissioner who was ordered to submit his report (Cuervo Report) within thirty (30) days.[18]

Trial on the merits ensued, with each party presenting witnesses and documentary evidence to support their respective case. Aside from presenting witnesses, the LBP submitted as evidence the following documents: Field Investigation Report, Land Use Map and Market Value per Ocular Inspection for each of the affected properties.[19] Alfonso, for his part, submitted as evidence the Cuervo Report and the testimony of Commissioner

Chua.[20]

In his appraisal of the properties, Commissioner Chua utilized two approaches in valuing the subject properties, the Market Data Approach (MDA) and the Capitalized Income Approach (CIA), due to their "different actual land use." [21] He opined that "the average of the two indications reasonably represented the just compensation (fair market value) of the land with productive coconut trees": [22]

Site

Unit Land Value (Php/Sq. M.) [23]

Market Data Approach (MDA)

Capitalized Income Approach (CIA)

Average (rounded to the nearest tens)

1

Php 25

Php 18.1125

22

2

Php 22

Php 17.1275

20

He thereafter computed the final land value as follows: [24]

Area

(Sq. m.)

Unit Land Value

(Php)

Just Compensation

(Fair Market Value)

Site 1

Coconut Land

15,765

22

Php 346,830

Residential Land

600

160

96,000

Irrigation Canal

165

*

*

Total for Site 1 -

16,530

sq.m.

Php 442,830

Site 2

Coconut Land

258,534

20

Php 5,170,680

Residential Land

3,000

160

480,000

Irrigation Canal

750

*

*

Total for Site 2 -

262,284

sq.m.

Php 5,650,680

Grand Total

(Sites 1 & 2) -

278,814

sq.m.

Php 6,093,510

Say -

Php 6,094,000

Ruling of the SAC

On May 13, 2005, the SAC rendered its Decision. Finding the valuations of both the LBP and the Provincial Adjudicator to be "unrealistically low,"[25] the SAC adopted Commissioner Chua's valuation as set out in the Cuervo Report. It also held that the provisions of Section 2, Executive Order No. 228 (EO 228) were mere "guiding principles" which cannot substitute the court's judgment "as to what amount [of just compensation] should be awarded and how to arrive at such amount." [26] The dispositive portion of the SAC's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1)

Fixing the amount of FOUR HUNDRED FORTY- TWO THOUSAND EIGHT HUNDRED THIRTY PESOS ([P]442,830.00)[], Philippine currency for Site 1 with an area of 16,530 sq. m. covered by TCT No. T-21136 situated at San Juan, Sorsogon City and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND SIX HUNDRED EIGHTY [PESOS] ([P]5,650,680.00) Philippine currency for Site 2 with an area of 262,284 sq. m. covered by TCT No. T-23180 situated at Bibincahan, Sorsogon City or a total amount of SIX MILLION NINETY THOUSAND PESOS ([P]6,090,000.00) for the total area of 278,814 sq. m. in the name of Cynthia Palomar/Ramon M. Alfonso which property was taken by the government pursuant to the Agrarian Reform Program of the government as provided by R.A. 6657.

2)

Ordering the Petitioner Land Bank of the Philippines to pay the Plaintiff/Private Respondent the amount of FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED THIRTY PESOS ([P]442,830.00) and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND AND SIX HUNDRED EIGHTY PESOS ([P]5,650,680.00) or the total amount of SIX MILLION NINETY THOUSAND PESOS ([P]6,090,000.00) Philippine currency for Lots 1604 and 2161 respectively, in the manner provided by R.A. 6657 by way of full payment of the said just compensation after deducting whatever amount previously received by the private respondents from the Petitioner Land Bank of the Philippines as part of the just compensation.

3)

Without pronouncement as to costs.

SO ORDERED.[27]

In an Order[28] dated July 5, 2005, the SAC denied the motions filed by the LBP and the DAR seeking reconsideration of the Decision. These government agencies filed separate petitions for review before the Court of

Appeals.

In its petition, docketed as CA-G.R. SP No. 90615, the LBP faulted the SAC for giving considerable weight to the Cuervo Report and argued that the latter's valuation was arrived at in clear violation of the provisions of RA 6657, DAR AO No. 5 (1998), and the applicable jurisprudence.[29]

According to the LBP, there is nothing in Section 17 of RA 6657 which provides that capitalized income of a property can be used as a basis in determining just compensation. Thus, when the SAC used the capitalized income of the properties as basis for valuation, "it actually modified the valuation factors set forth by RA 6657." [30]

The DAR, for its part, imputed error on the part of the SAC for adopting "the average between the Market Data Approach and Capitalized Income Approach as the just compensation of subject landholdings." [31]

Ruling of the Court of Appeals

In its challenged Decision dated July 19, 2007, the Court of Appeals found that the SAC failed to observe the procedure and guidelines provided under DAR AO No. 5 (1998). It consequently granted the petitions filed by the LBP and the DAR and ordered the remand of the case to the SAC for the determination of just compensation in accordance with the DAR basic formula.[32]

Alfonso filed a motion seeking reconsideration of the Court of Appeals' Decision.[33] Finding no cogent reason to reverse its earlier Decision, the Court of Appeals denied Alfonso's motion.[34]

Hence, this petition.

Issue

As stated in the outset, the issue sought to be resolved in this case involves the legal duty of the courts in relation to Section 17 and the implementing DAR formulas. Otherwise stated, are courts obliged to apply the DAR formula in cases where they are asked to determine just compensation for property covered by RA 6657?

The resolution of the issue presented is fairly straightforward given the established jurisprudence on the binding character of the DAR formulas. During the course of the deliberations of this case, however, concerns were strongly raised (by way of dissents and separate concurring opinion) on the propriety of maintaining the present rule.

This case presents an opportunity for the Court en banc not only to reaffirm the prevailing doctrine, but also expound, more explicitly and unequivocally, on our understanding of the exercise of our "judicial function" in relation to legislatively-defined factors and standards and legislatively-provided regulatory schemes.

Ruling of the Court

We GRANT the petition in part.

The ruling of the Court will thus be divided into four (4) component parts.

To provide context for proper understanding, Part I will discuss the history of Philippine land reform, with emphasis on the development, over the years, of the manner of fixing just compensation, as well as the development of jurisprudence on the same.

In Part II, the Court will evaluate the challenged CA ruling based on the law and prevailing jurisprudence.

Part III will address all issues raised by way of dissents and separate concurring opinion against the mandatory

application of the DAR formulas. It will also discuss (1) primary jurisdiction and the judicial function to determine just compensation; (2) how the entire regulatory scheme provided under RA 6657 represents reasonable policy choices on the part of Congress and the concerned administrative agency, given the historical and legal context of the government's land reform program; and (3) how matters raised in the dissents are better raised in a case directly challenging Section 17 and the resulting DAR formulas. We shall also show how the current valuation scheme adopted by the DAR is at par with internationally-accepted valuation standards.

Part IV will conclude by affirming the law, the DAR regulations and prevailing jurisprudence which, save for a successful direct change, must be applied to secure certainty and stability of judicial decisions.

I. Contextual Background

A. History of Philippine land reform laws

Section 4, Article XIII of the Constitution provides:

Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Congress first attempted to provide for land reform in 1955, when it enacted Republic Act No. 1400, or the Land Reform Act of 1955 (RA 1400). Its scope was limited to the expropriation of private agricultural lands in excess of 300 hectares of contiguous area, if held by a natural person, and those in excess of 600 hectares if owned by corporations.[35] With respect to determining just compensation, it provided that the courts take into consideration the following:

- (a) Prevailing prices of similar lands in the immediate area;
- (b) Condition of the soil, topography, and climate hazards;
- (c) Actual production;
- (d) Accessibility; and
- (e) Improvements.[36]

Afterwards, Congress enacted Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code of 1963 (RA 3844). Its scope, though expanded, was limited by an order of priority based on utilization and area.[37] Just compensation under this law was based on the annual lease rental income, without prejudice to the other factors that may be considered.[38]

On October 21, 1972, then President Ferdinand Marcos issued Presidential Decree No. 27[39] (PD 27). It provided for a national land reform program covering all rice and corn lands.[40] This was a radical shift in that, for the first time in the history of land reform, its coverage was national, compulsorily covering all rice and corn lands. Even more radical, however, is its system of land valuation. Instead of providing factors to be considered in the determination of just compensation, similar to the system under RA 1400 and RA 3844, PD 27 introduced a valuation process whereby just compensation is determined using a fixed mathematical formula provided within the law itself. The formula was also exclusively production based, that is, based only on the income of the land.

Under PD 27, landowner's compensation was capped to 2.5 times the annual yield, as follows:

Land Value = Average harvest of 3 normal crop years x (2.5)

Notably, this valuation scheme under PD 27 closely resembled those applied in agrarian reform programs earlier implemented in other Asian countries. In Taiwan, for example, compensation was capped at 2.5 times the annual yield of the main crop, when the land values at the time averaged four to six times the annual yield.[41] South Korea, which commenced its land reform program sometime in the 1940s, on the other hand, capped compensation at 1.25 times the value of the annual yield, when the land values at the time averaged five times the annual yield.[42] In Japan, the price for the acquisition of agricultural land under its land reform program, at one point, "could not be greater than forty times the 'official rental value' (chintai-kakaku) of rice fields or forty-eight times the 'official rental value' of dry fields x x x." [43]

While the constitutionality of PD 27 was upheld in the cases of *De Chavez v. Zobel* [44] and *Gonzales v. Estrella*, [45] these cases did not rule on the validity of the mathematical valuation formula employed.

Under President Corazon C. Aquino's Executive Order No. 228 (EO 228) issued on July 17, 1987, the system under PD 27 was more or less retained for purposes of valuing the remaining unvalued rice and corn lands. Land value under EO 228 was computed based on the average gross production (AGP) multiplied by 2.5, the product of which shall be multiplied by either P35.00 or P31.00, the Government Support Price (GSP) for one cavan of palay or corn, respectively. Thus:

Land Value = (AGP x 2.5) x GSP [46]

On June 10, 1988, RA 6657 was enacted implementing a comprehensive agrarian reform program (CARP). Unlike PD 27 which covered only rice and corn lands, CARP sought to cover all public and private agricultural lands. It was (and remains to be) an ambitious endeavor, targeting an estimated 7.8 million hectares of land for acquisition and redistribution to landless farmer and farmworker beneficiaries.[47]

B. Regulatory scheme to determine just compensation under RA 6657

With an undertaking of such magnitude, the Congress set up a regulatory scheme for the determination of just compensation founded on four major features.

First, under Section 17 of RA 6657, Congress identified factors to be considered in the determination of just compensation in the expropriation of agricultural lands. This Section reads:

Sec. 17. Determination of Just Compensation. - In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Second, under Section 49, Congress vested the DAR and the Presidential Agrarian Reform Council (PARC)[48] with the power to issue rules and regulations, both substantive and procedural, to carry out the objects and purposes of the law:

Sec. 49. Rules and Regulations.- The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation.

It is on the basis of this section that the DAR would issue its basic formulas.

Third, under Section 16(d) and (f), Congress gave the DAR primary jurisdiction to conduct summary administrative proceedings to determine and decide the compensation for the land, in case of disagreement

between the DAR/LBP and the landowners:

Sec. 16. Procedure for Acquisition of Private Lands. – For purposes of acquisition of private lands, the following procedures shall be followed:

x x x

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

x x x

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

Fourth, to implement Section 16(f), Congress provided for the judicial review of the DAR preliminary determination of just compensation. Under Sections 56 and 57, it vested upon designated Special Agrarian Courts the special original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners:

Sec. 56. Special Agrarian Court. – The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court. The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations. The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts. The Special Agrarian Courts shall have the powers and prerogatives inherent in or belonging to the Regional Trial Courts.

Sec. 57. Special Jurisdiction. – The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

We shall later on show how this regulatory scheme provided by Congress (and implemented by the DAR) is a reasonable policy choice given the grand scale of the government's agrarian reform program.

C. Development of the DAR basic formula

On March 8, 1989, the DAR issued Administrative Order No. 6[49] (DAR AO No. 6 [1989]), its first attempt to translate the factors laid down by Congress in Section 17 into a formula.

Making use of "the multi-variable approach which subsumes the ten factors mentioned under Section 17," the DAR set out a formula to estimate "a composite value based on land market price, assessor's market value and landowner's declared value." [50] Reduced to equation form, the formulation is as follows:

$$\text{Total Land Value} = \text{MV} + \text{AMV} + \text{DV}$$

3

where:

Market Value (MV)

=

Refers to the latest and comparable transactions within the municipality/province/region, depending on availability of data.

Mortgages which take into account bank exposures shall also be considered in computing for this value.

Assessor's Market Value(AMV)

=

Refers to the assessment made by government assessors.

Declared Value (DV)

=

Refers to the landowner's declaration under EO 229 or RA 6657.[51]

Between June 1988 to December 1989, the University of the Philippines Institute of Agrarian Studies (UP-IAS) conducted an agrarian reform study, which analyzed, among others, the land valuation scheme of the government under DAR AO No.6 (1989).[52]

The UP-IAS study, which Justice Leonen cites in his dissenting opinion, criticized DAR AO No. 6 (1989) for averaging the values based on the land market price, assessor's market value and landowner's declared value. The UP-IAS study said:

If agricultural lands are to be distributed to landless farmers and farmworkers for agricultural purposes, then landowners should be compensated for their lands based on its agricultural potential. The appropriate formula, therefore, is to value land based only on production/productivity. The land valuation on PD 27, which stipulates that the value is equivalent to 2.5 x average production of three preceding normal croppings is a classic illustration of simplicity and productivity-based land valuation.[53] (Emphasis supplied.)

According to the study, the AMV component had no cut-off date, while the MV factor had no guidelines for determining comparable sales, which makes the DAR formula prone to manipulation.[54] It thus suggested control measures to prevent manipulation of the existing formula, including the setting of cut-off dates for AMV and guidelines for comparable sales.[55] It went on to suggest that "x x x major components could be assigned weights with more emphasis attached to the production-based value. Should the declared value be unavailable, then the value should be based only on the components that are available, rather than employ the maximum limit, that is, assuming DV to be equivalent to the sum of the other components. x x x"[56]

It was also around this time that the infamous Garchitorena estate deal was exposed. Under this deal, land

acquired privately for only P3.1 Million in 1988 was proposed to be purchased by the DAR a year later at "an extremely inflated price" of P62.5 Million.[57] In his book *A Captive Land: The Politics of Agrarian Reform in the Philippines*, Dr. James Putzel wrote:

Under the compensation formula finally included in the law and the early [guidelines] of DAR, landowners could secure even more than [market value] compensation for their lands. x x x With the passage of [RA 6657] in June 1988, DAR decided that the value of land would be determined by averaging three estimates of market value: the 'assessed market value' (AMV) reported in a landowner's most recent tax declaration, the 'market value' (MV) as an average of three sales of comparable land in the vicinity of a landholding inflated by the consumer price index, and the owner's own 'declaration of fair market value' (DMV) made during the government's land registration programme, Listasaka 1 and II, between 1987 and 1988. While the compensation formula included a safeguard against extreme [overvaluation] in the owner's own declaration, it still permitted compensation at up to 33 per cent more than the market value x x x.

Such a compensation formula might have guaranteed against excessive compensation, in terms of the [market value] criteria enunciated in the law, if state institutions like DAR or the tax bureau[] were immune to landowner influence. However, DAR officials were urged to demonstrate results by closing as many deals as possible with landowners. There were several ways in which the formula was abused. First, DAR officials often chose to establish market value (MV) as an average of three sales of highly-valued land, labelling the sales as 'comparable.' The arbitrary character of their choice along with the tendency for land speculation demonstrated the unsoundness of using 'comparable sales' as an element in the compensation formula. Secondly, landowners were able to pay just one tax instalment on the basis of an inflated land value and thus raise the level of 'assessed market value' (AMV). The nearer that assessed value was to the market value, the higher could be their own declared value and the resulting compensation. There was no obligation for landowners to pay unpaid tax arrears at the inflated level, but beneficiaries who received the land would be required to pay taxes at this level. Thirdly, because DAR officials discussed with landowners the level of comparable sales being chosen, landowners could both influence that choice and plan the most advantageous level for their 'declared market value' (DMV). The formula was therefore extremely susceptible to abuse by the landowners and opened the door to corrupt practices by DAR officials.[58]

Within the same year, DAR Administrative Order No. 17[59] (DAR AO No. 17 [1989]) was issued revising the land valuation formula under DAR AO No. 6 (1989). This revision appears to be a reaction to the recent developments, with the new formula reflecting lessons learned from the Garchitorea estate scandal and the UP-IAS study's comments and suggested improvements.

Under DAR AO No. 17 (1989), the DAR laid down guidelines for the determination of the Comparable Sales (CS) component,[60] provided a cut-off date for Market Value per Tax Declaration (MV),[61] and placed greater weight to productivity through the Capitalized Net Income (CNI) factor, among others. Thus:

$$\text{Land Value} = (\text{CS} \times 0.3) + (\text{CNI} \times 0.4) + (\text{MV} \times 0.3)$$

Where:

CS = Comparable Sales

CNI = Capitalized Net Income

MV = Market Value per Tax Declaration[62]

In case of unavailability of figures for the three main factors, the DAR, in keeping with the UP-IAS study, also came up with alternate formulas using the available components, always with more weight given to CNI, the production-based value.

On April 25, 1991, the capitalization rate (relevant for the CNI factor) was lowered from 20% to 16%.[63] This decrease was presumably made for the benefit of the landowners, considering a lower capitalization rate results to

a higher CNI valuation.

The next major change in the basic formula came with the issuance of DAR Administrative Order No. 6[64] (DAR AO No. 6 [1992]) on October 30, 1992, which, among others, gave even more weight to the CNI factor, and further lowering the capitalization rate to 12%.[65]

This basic formula[66] was retained under DAR AO No. 5 (1998), issued on April 15, 1998. Parenthetically, DAR AO No. 5 (1998) gave landowners the opportunity to take part in the valuation process, including participation in the DAR's field investigations[67] and submission of statements as to the income claimed to be derived from the property (whether from the crop harvest/lease of the property).[68] It is only when the landowner fails to submit the statement, or the claimed value cannot be validated from the actual inspection of the property, that the DAR and the LBP are allowed to "adopt any applicable industry data or, in the absence thereof, conduct an industry study on the specific crop which will be used in determining the production, cost and net income of the subject landholding." [69]

Recognizing that not all agricultural properties are always similarly circumstanced, the DAR also introduced alternative CNI formulas which can be applied depending on a property's peculiar situation. There were CNI formulas for when land is devoted to intercropping, or the practice of planting seasonal or other permanent crop/s between or under existing permanent or seasonal crops[70] and to account for lease contracts.[71] There are existing valuation guidelines which also take into account the types of crops found in the property sought to be covered, i.e., Cavendish bananas,[72] sugarcane,[73] rubber,[74] and standing commercial trees,[75] among others.

D. First extension of life of CARP

Ten (10) yearb after RA 6657, the CARP's Land Acquisition and Distribution component was still far from finished. Thus, in 1998, Congress enacted Republic Act No. 8532[76] (RA 8532), extending the CARP implementation for another ten (10) years and providing funds augmentation of P50 billion.[77] This additional allocation of funds expired in June 2008. In Joint Resolution No. 1 approved by both Houses of Congress in January 2009, Congress temporarily extended CARP to until June 2009.[78]

E. Republic Act No. 9700 and the amendment of Sections 17 of RA 6657

By the end of June 2009, there was still a substantial balance (about 1.6 million hectares for distribution) from the projected target.[79] So, on August 7, 2009, Congress passed Republic Act No. 9700[80] (RA 9700), extending the program to June 30, 2014. It also amended Section 17 to read:

Sec. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the value o[the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (*Italics, emphasis and underscoring supplied.*)

To implement the amendments to Section 17, the DAR issued, among others, DAR Administrative Order No. 1[81] (DAR AO No. 1 [2010]) and Administrative Order No. 7[82] (DAR AO No. 7 [2011]). Despite retaining the basic formula for valuation, these administrative orders introduced a change in the reckoning date of average

gross product (AGP) and selling rice (SP), both of which are relevant to the CNI factor, to June 30, 2009.[83] The MV factor was also amended and adjusted to the fair market value equivalent to seventy percent (70%) of the Bureau of Internal Revenue (BIR) zonal valuation.[84] The basic formula under DAR AO No. 7 (2011) appears to be the prevailing land formula to date.

F. Constitutional challenge to RA 6657

Shortly after the enactment of RA 6657, its constitutionality was challenged in a series of cases filed with the Court. Among other objections, landowners argued that entrusting to the DAR the manner of fixing just compensation violated judicial prerogatives. This claim was unanimously rejected in our landmark holding in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform (Association)*:[85]

Objection is raised, however, to the manner of fixing the just compensation, which it is claimed is entrusted to the administrative authorities in violation of judicial prerogatives. Specific reference is made to Section 16(d), which provides that in case of the rejection or disregard by the owner of the offer of the government to buy his land—

x x x [T]he DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

To be sure, the determination of just compensation is a function addressed to the courts of justice and may not be usurped by any other branch or official of the government. [EPZA v. Dulay] resolved a challenge to several decrees promulgated by President Marcos providing that the just compensation for property under expropriation should be either the assessment of the property by the government or the sworn valuation thereof by the owner, whichever was lower. In declaring these decrees unconstitutional, the Court held through Mr. Justice Hugo E. Gutierrez, Jr.:

The method of ascertaining just compensation under the aforecited decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under this Constitution is reserved to it for final determination.

Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the applicable decrees, its task would be relegated to simply stating the lower value of the property as declared either by the owner or the assessor. As a necessary consequence, it would be useless for the court to appoint commissioners under Rule 67 of the Rules of Court. Moreover, the need to satisfy the due process clause in the taking of private property is seemingly fulfilled since it cannot be said that a judicial proceeding was not had before the actual taking. However, the strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. The court cannot exercise its discretion or independence in determining what is just or fair. Even a grade school pupil could substitute for the judge insofar as the determination of constitutional just compensation is concerned.

x x x

In the present petition, we are once again confronted with the same question of whether the courts under P.D. No. 1533, which contains the same provision on just compensation as its predecessor decrees, still have the power and authority to determine just compensation, independent of what is stated by the decree and to this effect, to appoint commissioners for such purpose.

This time, we answer in the affirmative.

x x x

It is violative of due process to deny the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to the basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated.

A reading of the aforecited Section 16(d) will readily show that it does not suffer from the arbitrariness that rendered the challenged decrees constitutionally objectionable. Although the proceedings are described as summary, the landowner and other interested parties are nevertheless allowed an opportunity to submit evidence on the real value of the property. But more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon the landowner or any other interested party, for Section 16(f) clearly provides:

Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

The determination made by the DAR is only preliminary unless accepted by all parties concerned. Otherwise, the courts of justice will still have the right to review with finality the said determination in the exercise of what is admittedly a judicial function.[86] (Emphasis and underscoring supplied. Citations omitted.)

G. Controlling doctrines after Association

Since this landmark ruling in *Association*, the Court has, over the years, set forth a finely wrought body of jurisprudence governing the determination of just compensation under RA 6657. This body of precedents is built upon three strands of related doctrines.

First, in determining just compensation, courts are obligated to apply both the compensation valuation factors enumerated by the Congress under Section 17 of RA 6657,[87] and the basic formula laid down by the DAR.[88] This was the holding of the Court on July 20, 2004 when it decided the case of *Landbank of the Philippines v. Banal*[89] (*Banal*) which involved the application of the DAR-issued formulas. There, we declared:

While the determination of just compensation involves the exercise of judicial discretion, however, such discretion must be discharged within the bounds of the law. Here, the RTC wantonly disregarded R.A. 6657, as amended, and its implementing rules and regulations (DAR Administrative Order No. 6, as amended by DAR Administrative Order No. 11).

x x x In determining the valuation of the subject property, the trial court shall consider the factors provided under Section 17 of R.A. 6657, as amended, mentioned earlier. The formula prescribed by the DAR in Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Order No. 11, Series of 1994, shall be used in the valuation of the land. Furthermore, upon its own initiative, or at the instance of any of the parties, the trial court may appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute.[90] (Emphasis and underscoring supplied.)

Banal would thereafter be considered the landmark case on binding character of the DAR formulas. It would be cited in the greatest number of subsequent cases involving the issue of application of the DAR-issued formulas in the determination of just compensation.[91]

Second, the formula, being an administrative regulation issued by the DAR pursuant to its rule-making and subordinate legislation power under RA 6657, has the force and effect of law. Unless declared invalid in a case

where its validity is directly put in issue, courts must consider their use and application.[92] In *Land Bank of the Philippines v. Celada*[93] (Celada), we held:

As can be gleaned from above ruling, the SAC based its valuation solely on the observation that there was a "patent disparity" between the price given to respondent and the other landowners. We note that it did not apply the DAR valuation formula since according to the SAC, it is Section 17 of RA No. 6657 that "should be the principal basis of computation as it is the law governing the matter." The SAC further held that said Section 17 "cannot be superseded by any administrative order of a government agency," thereby implying that the valuation formula under DAR Administrative Order No. 5, Series of 1998 (DAR AO No. 5, s. of 1998), is invalid and of no effect.

While SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of RA No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. DAR AO No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. The SAC was at no liberty to disregard the formula which was devised to implement the said provision.

It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same.[94] (Emphasis and underscoring supplied.)

Third, courts, in the exercise of their judicial discretion, may relax the application of the formula to fit the peculiar circumstances of a case. They must, however, clearly explain the reason for any deviation; otherwise, they will be considered in grave abuse of discretion.[95] This rule, set forth in *Land Bank of the Philippines v. Yatco Agricultural Enterprises*[96] (Yatco), was a qualification of the application of Celada, to wit:

That the RTC-SAC must consider the factors mentioned by the law (and consequently the DAR's implementing formula) is not a novel concept. In *Land Bank of the Philippines v. Sps. Banal*, we said that the RTC-SAC must consider the factors enumerated under Section 17 of R.A. No. 6657, as translated into a basic formula by the DAR, in determining just compensation.

We stressed the RTC-SAC's duty to apply the DAR formula in determining just compensation in *Landbank of the Philippines v. Celada* and reiterated this same ruling in *Land Bank of the Philippines v. Lim*, *Land Bank of the Philippines v. Luciano*, and *Land Bank of the Philippines v. Colarina*, to name a few.

In the recent case of *Land Bank of the Philippines v. Honeycomb Farms Corporation*, we again affirmed the need to apply Section 17 of R.A. No. 6657 and DAR AO 5-98 in just compensation cases. There, we considered the CA and the RTC in grave error when they opted to come up with their own basis for valuation and completely disregarded the DAR formula. The need to apply the parameters required by the law cannot be doubted; the DAR's administrative issuances, on the other hand, partake of the nature of statutes and have in their favor a presumption of legality. Unless administrative orders are declared invalid or unless the cases before them involve situations these administrative issuances do not cover, the courts must apply them.

In other words, in the exercise of the Court's essentially judicial function of determining just compensation, the RTC-SACs are not granted unlimited discretion and must consider and apply the R.A. No. 6657 — enumerated factors and the DAR formula that reflect these factors. These factors and formula provide the uniform

framework or structure for the computation of the just compensation for a property subject to agrarian reform. This uniform system will ensure that they do not arbitrarily fix an amount that is absurd, baseless and even contradictory to the objectives of our agrarian reform laws as just compensation. This system will likewise ensure that the just compensation fixed represents, at the very least, a close approximation of the full and real value of the property taken that is fair and equitable for both the farmer-beneficiaries and the landowner.

When acting within the parameters set by the law itself, the RTC-SACs, however, are not strictly bound to apply the DAR formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion, relax the formula's application to fit the factual situations before them. They must, however, clearly explain the reason for any deviation from the factors and formula that the law and the rules have provided.

The situation where a deviation is made in the exercise of judicial discretion should at all times be distinguished from a situation where there is utter and blatant disregard of the factors spelled out by law and by the implementing rules. For in such a case, the RTC-SAC's action already amounts to grave abuse of discretion for having been taken outside of the contemplation of the law.[97] (Emphasis and underscoring supplied.)

Prescinding from *Association*, the cases of *Banal*, *Celada* and *Yatco* combined provide the three strands of controlling and unifying doctrines governing the determination of just compensation in agrarian reform expropriation.

For clarity, we restate the body of rules as follows: The factors listed under Section 17 of RA 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009 amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. It is thus entirely allowable for a court to allow a landowner's claim for an amount higher than what would otherwise have been offered (based on an application of the formula) for as long as there is evidence on record sufficient to support the award.

In Part II, we shall evaluate the challenged rulings of the Court of Appeals based on the foregoing guidelines.

II. The SAC deviated, without reason or explanation, from Sect. 17 and the DAR-issued formula when it adopted the *Cuervo* Report

Petitioner Alfonso challenges the Decision of the Court of Appeals which reversed the SAC's findings for failing to observe the procedure and guidelines provided under the relevant DAR rule.[98]

Applying DAR AO No. 5 (1998), the LBP and the DAR considered the following in its valuation of Alfonso's properties: (1) data from the Field Investigation Reports conducted on the properties;[99] (2) data from the Philippine Coconut Authority (PCA) as to municipal selling price for coconut in the Sorsogon Province;[100] and (3) the Schedule of Unit Market Value (SUMV).[101]

Due to the absence of relevant comparable sales transactions in the area,[102] the DAR and the LBP used the following formula:

$$LV = (CNI \times 0.9) + (MV \times 0.1)$$

It valued the San Juan and Bibinchan properties at P39,974.22[103] and P792,869.06,[104] respectively.

The SAC, in its Decision dated May 13, 2005, rejected this valuation for being "unrealistically low"[105] and instead adopted Commissioner Chua's Cuervo Report, which valued the San Juan and Bibinchan properties at the "more realistic" amounts of P442,830.00 and P5,650,680.00, respectively.[106]

That the SAC's adoption of the Cuervo Report valuation constitutes deviation from Section 17 and the prescribed formula is fairly evident.

Commissioner Chua employed a different formula, other than that set forth in DAR AO No. 5 (1998), to compute the valuation. While the DAR-issued formula generally uses the three (3) traditional approaches to value, each with assigned weights, Commissioner Chua chose to apply only two approaches, namely, the Market Data Approach (MDA) and the Capitalized Income Approach (CIA)[107] and averaged the indications resulting from the two approaches. He thereafter concluded that the result "reasonably represented the just compensation (fair market value) of the land with productive coconut trees." [108]

In addition, in his computation of the CNI factor, Commissioner Chua used, without any explanation, a capitalization rate of eight percent (8%),[109] instead of the twelve percent (12%) rate provided under DAR AO No. 5 (1998).

As earlier explained, deviation from the strict application of the DAR formula is not absolutely proscribed. For this reason, we find that the Court of Appeals erred in setting aside the SAC's Decision on the mere fact of deviation from the prescribed legislative standards and basic formula. *Yatco* teaches us that courts may, in the exercise of its judicial discretion, relax the application of the DAR formula, subject only to the condition that the reasons for said deviation be clearly explained.

In this case, the SAC, in adopting the Cuervo Report valuation, merely said:

Considering all these factors, the valuation made by the Commissioner and the potentials of the property, the Court considers that the valuation of the Commissioner as the more realistic appraisal which could be the basis for the full and fair equivalent of the property taken from the owner while the Court finds that the valuation of the [LBP] as well as the Provincial Adjudicator of Sorsogon in this (sic) particular parcels of land for acquisition are unrealistically low.[110] (Emphasis and underscoring supplied.)

The statement that the government's valuation is "unrealistically low," without more, is insufficient to justify its deviation from Section 17 and the implementing DAR formula.[111] There is nothing in the SAC's Decision to show why it found Commissioner Chua's method more appropriate for purposes of appraising the subject properties, apart from the fact that his method yields a much higher (thus, in its view, "more realistic") result.

The Cuervo Report itself does not serve to enlighten this Court as to the reasons behind the non-application of the legislative factors and the DAR-prescribed formula.

For example, the Cuervo Report cited a number of "comparable sales" for purposes of its market data analysis.[112] Aside from lack of proof of fact of said sales, the Report likewise failed to explain how these purported "comparable" sales met the guidelines provided under DAR AO No. 5 (1998). The relevant portion of DAR AO No.5 (1998) reads:

II. C.2 The criteria in the selection of the comparable sales transaction (ST) shall be as follows:

- When the required number of STs is not available at the barangay level, additional STs may be secured from the municipality where the land being offered/covered is situated to complete the required three comparable STs. In case there are more STs available than what is required at the municipal level, the most recent

transactions shall be considered. The same rule shall apply at the provincial level when no STs are available at the municipal level. In all cases, the combination of STs sourced from the barangay, municipality and province shall not exceed three transactions.

- The land subject of acquisition as well as those subject of comparable sales transactions should be similar in topography, land use, i.e., planted to the same crop. Furthermore, in case of permanent crops, the subject properties should be more or less comparable in terms of their stages of productivity and plant density.
- The comparable sales transactions should have been executed within the period January 1, 1985 to June 15, 1988, and registered within the period January 1, 1985, to September 13, 1988.
- STs shall be grossed up from the date of registration up to the date of receipt of CF by LBP from DAR for processing, in accordance with Item II.A.9. (Emphasis and underscoring supplied.)

To this Court's mind, a reasoned explanation from the SAC to justify its deviation from the foregoing guidelines is especially important considering that both the DAR and the LBP were unable to find sales of comparable nature.

Worse, further examination of the cited sales would show that the same far from complies with the guidelines as to the cut-off dates provided under the DAR AO No. 5 (1998). The purported sales were dated between November 28, 1989 (at the earliest) to March 12, 2002 (at the latest),^[113] whereas DAR AO No. 5 (1998) had already and previously set the cut-off between June to September of 1988. We also note that these purported sales involve much smaller parcels of land (the smallest involving only 100 square meters). We can hardly see how these sales can be considered "comparable" for purposes of determining just compensation for the subject land.

Neither was there any explanation as to the glaring discrepancies between the government and Commissioner Chua's factual findings. Where, for example, the DAR and the LBP claim an average yield of 666.67kg/ha.^[114] and 952kgs./ha.,^[115] the Cuervo Report asserts 1,656 kgs./ha. and 1,566 kgs./ha.,^[116] for the San Juan and Bibincan properties, respectively. Where the government alleges an average selling price of P5.58 for coconuts,^[117] the Cuervo Report claims P12.50.^[118] The Cuervo Report, however, is completely bereft of evidentiary support by which the SAC could have confirmed or validated the statements made therein. In contrast, the valuations submitted by the DAR and the LBP were amply supported by the relevant PCA data, SFMV and Field Investigation Reports.

Considering the foregoing, we cannot but conclude that the SAC committed the very thing cautioned about in *Yatco*, that is, "utter and blatant disregard of the factors spelled out by the law and by the implementing rules."^[119] In this sense, we AFFIRM the Court of Appeals' finding of grave abuse of discretion and order the REMAND of the case to the SAC for computation of just compensation in accordance with this Court's ruling in *Yatco*.

Part III shall now address the concerns raised in the dissents.

III. The Dissents/Separate Concurring Opinion

A. Summary of issues raised Dissents/Separate Concurring Opinion

Justice Leonen proposes that this Court abandon the doctrines in *Banal* and *Celada*, arguing that Section 17 of RA 6657 and DAR AO No. 5 (1998) are unconstitutional to the extent they suggest that the basic formula is mandatory on courts.^[120] His principal argument is grounded on the premise that determination of just compensation is a judicial function. Along the same lines, Justice Carpio cites *Apo Fruits Corporation v. Court of Appeals (Apo Fruits)*^[121] to support his view that the basic formula "does not and cannot strictly bind the courts."^[122] Justice Velasco, for his part, calls for a revisit of the decided cases because a rule mandating strict application of the DAR formula could only straitjacket the judicial function. Justice Carpio also raises an issue of

statutory construction.[123] He argues that Section 17 and DAR AO No. 5 (1998) apply only when the landowner and the tenant agree on the proffered value, but not otherwise.

B. Dissents as indirect constitutional attacks

At this juncture, we emphasize that petitioner Alfonso never himself questioned the constitutionality of Section 17 of RA No. 6657 and the DAR Administrative Order implementing the same. The main thrust of Alfonso's petition concerns itself only with the non-binding nature of Section 17 of RA 6657 and the resulting DAR formula in relation to the judicial determination of the just compensation for his properties.

Petitioner is a direct-injury party who could have initiated a direct attack on Section 17 and DAR AO No. 5 (1998). His failure to do so prevents this case from meeting the "case and controversy" requirement of Angara.[124] It also deprives the Court of the benefit of the "concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." [125]

The dissents are, at their core, indirect attacks on the constitutionality of a provision of law and of an administrative rule or regulation. This is not allowed under our regime of judicial review. As we held in *Angara v. Electoral Commission*, [126] our power of judicial review is limited:

x x x [T]o actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[127] (Emphasis supplied.)

Our views as individual justices cannot make up for the deficiency created by the petitioner's failure to question the validity and constitutionality of Section 17 and the DAR formulas. To insist otherwise will be to deprive the government (through respondents DAR and LBP) of their due process right to a judicial review made only "after full opportunity of argument by the parties." [128]

Most important, since petitioner did not initiate a direct attack on constitutionality, there is no factual foundation of record to prove the invalidity or unreasonableness of Section 17 and DAR AO No. 5 (1998). This complete paucity of evidence cannot be cured by the arguments raised by, and debated among, members of the Court. As we held in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*: [129]

It admits of no doubt therefore that there being a presumption of validity, the necessity for evidence to rebut it is unavoidable, unless the statute or ordinance is void on its face, which is not the case here. The principle has been nowhere better expressed than in the leading case of *O'Gorman & Young v. Hartford Fire Insurance Co.*, where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus: "[t]he statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute." No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and the stipulation of facts, the presumption of validity must prevail and the judgment against the ordinance set aside.[130] (Emphasis and underscoring supplied.)

Issues on the constitutionality or validity of Section 17 of RA 6657 and DAR AO No. 5 (1998) not having been raised by the petitioner, much less properly pleaded and ventilated, it behooves the Court to apply, not abandon, Banal, Celada and Yatco, and postpone consideration of the dissents' arguments in a case directly attacking Section 17 of RA 6657 and DAR AO No. 5 (1998).

If, however, left unanswered, the objections now casting Section 17 and the DAR formulas in negative light might be used as bases for the abandonment of the rule established in Banal and clarified in Yatco. The net practical effect, whether intended or not, of such a course of action would be to strip the implementing DAR regulations of all presumption of validity. We would then place upon the government the burden of proving the formula's appropriateness in every case, as against the valuation method chosen by the landowner, whatever it may be. It would allow the landowner to cherry-pick, so to speak, a factor or set of factors to support a proposed valuation method. As the case below has shown, such a process has allowed the SAC to conclude, without explanation, that Commissioner Chua's higher valuation was "more realistic" than the government's "ridiculously low" valuation and, therefore, in its opinion, more just.

Allowing the SAC to arrive at a determination of just compensation based on open-ended standards like "more realistic" and "ridiculously low" bodes ill for the future of land reform implementation. One can only imagine the havoc such a ruling, made in the name of ensuring absolute freedom of judicial discretion, would have on the government's agrarian reform program and the social justice ends it seeks to further. It could open the floodgates to the mischief of the Garchitorena estate scandal where, to borrow terms used by the SAC in this case, a property acquired at a "ridiculously low" cost of P3.1 million was proposed to be purchased by the DAR for the "more realistic" amount of P6.09 million.

We thus feel compelled to address these issues, if only to assure those directly affected, that the law and the implementing DAR regulations are reasonable policy choices made by the Legislative and Executive departments on how best to implement the law, hence, the heavy premium given their application.

C. Primary jurisdiction and the judicial power/function to determine just compensation

Section 1, Article VIII of the 1987 Constitution^[131] provides that "judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."

The right of a landowner to just compensation for the taking of his or her private property is a legally demandable and enforceable right guaranteed by no less than the Bill of Rights, under Section 9, Article III of the Constitution.^[132] The determination of just compensation in cases of eminent domain is thus an actual controversy that calls for the exercise of judicial power by the courts. This is what the Court means when it said that "[t]he determination of 'just compensation' in eminent domain cases is a judicial function."^[133]

Before RA 6657, the courts exercised the power to determine just compensation under the Rules of Court. This was true under RAs 1400 and 3844 and during the time when President Marcos in Presidential Decree No. 1533 attempted to impermissibly restrict the discretion of the courts, as would be declared void in *EPZA v. Dulay* (*EPZA*). RA 6657 changed this process by providing for preliminary determination by the DAR of just compensation.

Does this grant to the DAR of primary jurisdiction to determine just compensation limit, or worse, deprive, courts of their judicial power? We hold that it does not. There is no constitutional provision, policy, principle, value or jurisprudence that places the determination of a justiciable controversy beyond the reach of Congress' constitutional power to require, through a grant of primary jurisdiction, that a particular controversy be first referred to an expert administrative agency for adjudication, subject to subsequent judicial review.

In fact, the authority of Congress to create administrative agencies and grant them preliminary jurisdiction flows not only from the exercise of its plenary legislative power,[134] but also from its constitutional power to apportion and diminish the jurisdiction of courts inferior to the Supreme Court.[135]

Tropical Homes, Inc. v. National Housing Authority,[136] has settled that "[t]here is no question that a statute may vest exclusive original jurisdiction in an administrative agency over certain disputes and controversies falling within the agency's special expertise." [137]

In *San Miguel Properties, Inc. v. Perez*,[138] we explained the reasons why Congress, in its judgment, may choose to grant primary jurisdiction over matters within the erstwhile jurisdiction of the courts, to an agency:

The doctrine of primary jurisdiction has been increasingly called into play on matters demanding the special competence of administrative agencies even if such matters are at the same time within the jurisdiction of the courts. A case that requires for its determination the expertise, specialized skills, and knowledge of some administrative board or commission because it involves technical matters or intricate questions of fact, relief must first be obtained in an appropriate administrative proceeding before a remedy will be supplied by the courts although the matter comes within the jurisdiction of the courts. The application of the doctrine does not call for the dismissal of the case in the court but only for its suspension until after the matters within the competence of the administrative body are threshed out and determined.

To accord with the doctrine of primary jurisdiction, the courts cannot and will not determine a controversy involving a question within the competence of an administrative tribunal, the controversy having been so placed within the special competence of the administrative tribunal under a regulatory scheme. In that instance, the judicial process is suspended pending referral to the administrative body for its view on the matter in dispute. Consequently, if the courts cannot resolve a question that is within the legal competence of an administrative body prior to the resolution of that question by the latter, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative agency to ascertain technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered, suspension or dismissal of the action is proper.[139] (Emphasis and underscoring supplied.)

Rule 43 of the Revised Rules of Court, which provides for a uniform procedure for appeals from a long list of quasi-judicial agencies to the Court of Appeals, is a loud testament to the power of Congress to vest myriad agencies with the preliminary jurisdiction to resolve controversies within their particular areas of expertise and experience.

In fact, our landmark ruling in *Association* has already validated the grant by Congress to the DAR of the primary jurisdiction to determine just compensation. There, it was held that RA 6657 does not suffer from the vice of the decree voided in *EPZA*,[140] where the valuation scheme was voided by the Court for being an "impermissible encroachment on judicial prerogatives." [141] In *EPZA*, we held:

The method of ascertaining just compensation under the aforecited decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under the Constitution is reserved to it for final determination.

x x x [T]he strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. The court cannot exercise its discretion or independence in determining what is just or fair. Even a grade school pupil could substitute for the judge insofar as the determination of constitutional just compensation is concerned.[142]

Unlike *EPZA*, and in answer to the question raised in one of the dissents,[143] the scheme provided by Congress

under RA 6657 does not take discretion away from the courts in determining just compensation in agrarian cases. Far from it. In fact, the DAR valuation formula is set up in such a way that its application is dependent on the existence of a certain set of facts, the ascertainment of which falls within the discretion of the court.

Applied to the facts of this case, and confronted with the LBP/DAR valuation and the court-appointed commissioner's valuation, it was entirely within the SAC's discretion to ascertain the factual bases for the differing amounts and decide, for itself, which valuation would provide just compensation. If, in its study of the case, the SAC, for example, found that the circumstances warranted the application of a method of valuation different from that of the DAR's, it was free to adopt any other method it deemed appropriate (including the Cuervo method), subject only to the Yatco requirement that it provide a reasoned explanation therefor.

As pointed out earlier in this Opinion, however, the SAC in this case simply adopted the Cuervo valuation as the "more realistic" amount and rejected the DAR/LBP valuation for being "unrealistically low." In fact, there is nothing in its Decision to indicate that the SAC actually looked into the evidentiary bases for the opposing valuations to satisfy itself of the factual bases of each. This, in turn, explains the utter dearth of explanation for the stark inconsistencies between Commissioner Chua and the DAR/LBP's factual findings. Thus, and with all due respect, it is quite incorrect to say that the present rule requiring strict application of the DAR formula completely strips courts of any discretion in determining what compensation is just for properties covered by the CARP.

More importantly, in amending Section 17 of RA 6657, Congress provided that the factors and the resulting basic formula shall be "subject to the final decision of the proper court." Congress thus clearly conceded that courts have the power to look into the "justness" of the use of a formula to determine just compensation, and the "justness" of the factors and their weights chosen to flow into it.

In fact, the regulatory scheme provided by Congress in fact sets the stage for a heightened judicial review of the DAR's preliminary determination of just compensation pursuant to Section 17 of RA 6657. In case of a proper challenge, SACs are actually empowered to conduct a de novo review of the DAR's decision. Under RA 6657, a full trial is held where SACs are authorized to (1) appoint one or more commissioners,[144] (2) receive, hear, and retake the testimony and evidence of the parties, and (3) make findings of fact anew.[145] In other words, in exercising its exclusive and original jurisdiction to determine just compensation under RA 6657, the SAC is possessed with exactly the same powers and prerogatives of a Regional Trial Court (RTC) under Rule 67 of the Revised Rules of Court.

In such manner, the SAC thus conducts a more exacting type of review, compared to the procedure provided either under Rule 43 of the Revised Rules of Court, which governs appeals from decisions of administrative agencies to the Court of Appeals, or under Book VII, Chapter 4, Section 25[146] of the Administrative Code of 1987,[147] which provides for a default administrative review process. In both cases, the reviewing court decides based on the record, and the agency's findings of fact are held to be binding when supported by substantial evidence.[148] The SAC, in contrast, retries the whole case, receives new evidence, and holds a full evidentiary hearing.

Having established that the regulatory scheme under RA 6657 does not, in principle, detract from (but rather effectuates) the exercise of the judicial function, we shall now show how the DAR valuation process is at par with internationally-accepted valuation practices and standards.

H. DAR Valuation process is at par with international standards

Valuation is not an exact science.[149] In clear recognition of the inherent difficulty such a task entails, the DAR declared:

Just compensation in regard to land cannot be an absolute amount disregarding particularities of productivity, distance to the marketplace and so on. Hence, land valuation is not an exact science but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it. What is important ultimately is that the land value approximates, as closely as possible, what is broadly considered to be just.[150]

Nevertheless, there are existing standards which are observed to ensure the competence and integrity of valuation practice. At present, we have the Philippine Valuation Standards (PVS), or the reference standards for local government assessors and other agencies undertaking property valuations.[151] The PVS are, in turn, based on the International Valuation Standards (IVS), also known as the Generally Accepted Valuation Principles (GAVP). The IVS represents the internationally accepted best practices in the valuation profession and were formulated by the International Valuations Standards Committee (IVSC).[152]

Of note is the IVSC's stature in the valuation profession. Composed of professional valuation associations from around the world, the IVSC is a non-governmental organization (NGO) member of the United Nations which provides advice and counsel relating to valuation and seeks to coordinate its Standards and work programs with related professional discipline in the public interest, and cooperates with international agencies in determining and promulgating new standards. It was granted Roster status with the United Nations Economic and Social Council in May 1985.[153]

There also exists a process which allows for a systematic procedure[154] to be followed in answering questions about real property value:

Part One: Definition of the Problem

Identification of client/intended users

Intended use of appraisal

Purpose of appraisal (including definition of value)

Date of opinion of value

Identification of characteristics of property (including location and property rights to be valued)

Extra-ordinary assumptions

Hypo-thetical conditions

Part Two: Scope of Work

Part Three: Data Collection and Property Description

Market Analysis

Subject Property Data

Comparable Property Data

General characteristics of region, city and neighborhood

Specific characteristics of land and improvement, personal property, business assets, etc.

Sale, listings, offerings, vacancies, cost and depreciation, income and expenses, capitalization rates, etc.

Part IV. Data Analysis

Market Analysis

Highest and Best Use Analysis

Demand studies

Supply studies

Marketability studies

Site as though vacant

Ideal improvement

Property as improved

Part V. Land Value Opinion

Part VI. Application of the Approaches to Value

Cost

Sales Comparison

Income

Part VII. Reconciliation of Value Indications and Final Opinion of Value

Part VIII. Report of Defined Value

Based on the foregoing, the process involves, among others, utilizing one or more valuation approaches, with each individual approach producing a particular value indication,[155] and thereafter, reconciling the different value indications to arrive at "a supported opinion of defined value." [156]

The valuation process is applied to develop a well-supported opinion of a defined value based on an analysis of pertinent general and specific data. Appraisers develop an opinion of property value with specific appraisal procedures that reflect the different approaches to data analysis.[157]

The PVS and the IVS, discussed earlier, list three market-based valuation approaches: the sales comparison approach, the income capitalization approach and the cost approach.[158]

The sales comparison approach considers the sales of similar or substitute properties and related market data, and establishes a value estimate by processes involving comparison. In general, a property being valued is compared with sales of similar properties that have been transacted in the market.[159]

In the income capitalization approach, income and expense data relating to the property being valued are considered and value is estimated through a capitalization process. Capitalization relates income (usually a net income figure) and a defined value type by converting an income amount into a value estimate. This process may consider direct relationships (known as capitalization rates), yield or discount rates (reflecting measures of return on investment), or both.[160]

The cost approach considers the possibility that, as an alternative to the purchase of a given property, one could acquire a modern equivalent asset that would provide equal utility. In a real estate context, this would involve the cost of acquiring equivalent land and constructing an equivalent new structure. Unless undue time, inconvenience and risk are involved, the price that a buyer would pay for the asset being valued would not be more than the cost of the modern equivalent. Often the asset being valued will be less attractive than the cost of the modern

equivalent because of age or obsolescence.[161]

These approaches are used in all estimations of value.[162] Depending on the circumstances attendant to each particular case, one or more of these approaches may be used.

The final analytical step in the valuation process is the reconciliation of the value indications derived into a single peso figure or a range into which the value will most likely fall:

In the valuation process, more than one approach to value is usually applied, and each approach typically results in a different indication of value. If two or more approaches are used, the appraiser must reconcile at least two value indications. Moreover, several value indications may be derived in a single approach. x x x

x x x Resolving the differences among various value indications is called reconciliation. x x x[163] (Emphasis supplied.)

Reconciliation requires appraisal judgment and a careful, logical analysis of the procedures that lead to each value indication. Appropriateness, accuracy and quantity of evidence are the criteria with which an appraiser forms a meaningful, defensible and credible final opinion of value.[164]

The valuation process concludes with a final report/opinion of value. This reported value is the appraiser's opinion[165] and reflects the experience and judgment that has been applied to the study of the assembled data.[166]

For a well-supported opinion of a defined value, however, there must be an analysis of pertinent general and specific data[167] using an accepted and systematic valuation process. Following the generally accepted valuation process, there is an application of the appropriate approaches to value and, where multiple approaches have been employed, the reconciliation of the different value indications to arrive at a final opinion of value. Reconciliation, in large part, relies on the proper application of appraisal techniques and the appraiser's judgment and experience.[168]

The Philippines has kept abreast with the internationally-recognized and accepted standards for valuation practice.

As previously discussed, we already have the PVS used by local government assessors and other agencies in conducting property valuations.[169] There is also Republic Act No. 9646 (RA 9646), otherwise known as the Real Estate Service Act of the Philippines, which mandates the conduct of licensure examinations to ensure the technical competence, responsibility and professionalism of real estate practitioners in general (including appraisers, in particular).[170]

Actual valuation reforms to overcome the "multiplicity of fragmented policies and regulations which have previously characterized both the public and private sectors"[171] have also been undertaken. In April 2010, the Department of Finance (DOF) issued a Mass Appraisal Guidebook for the "operationalization and practical application of the Philippine Valuation Standards."[172] The PVS also appear in the Manual on Real Property Appraisal and Assessment Operations published by the DOF as guidelines to aid local assessors in discharging their functions.[173]

A Valuation Reform Act[174] is currently being proposed to harmonize valuation in both public and private sectors by providing uniform valuation standards which "shall conform with generally accepted international valuation standards and principles."[175]

The existence of these standards and measures highlights the emerging importance of valuation, not only in the context of land reform implementation, but as a profession, with high standards of competence, a distinct body of knowledge continually augmented by contributions of practitioners, and a code of ethics and standards of practice

with members willing to be subject to peer review.[176]

An examination of the terms of the DAR issuances would show that the implementing agency has indeed taken pains to ensure that its valuation system is at par with local and international valuation standards. The pertinent portion of DAR AO No. 7 (2011) reads:

Section 85. Formula for Valuation. The basic formula for the valuation of lands covered by VOS or CA shall be:

$$LV = (CNI \times 0.60) + (CS \times 0.30) + (MV \times 0.10)$$

Where:

LV

=

Land Value

CNI

=

Capitalized Net Income (based on land use and productivity)

CS

=

Comparable Sales (based on fair market value equivalent to 70% of BIR Zonal Value)

MV

=

Market Value per Tax declaration (based on Government assessment)

The CS factor refers to the Market Data Approach under the standard appraisal approaches which is based primarily on the principle of substitution where a prudent individual will pay no more for a property than it would cost to purchase a comparable substitute property. This factor is determined by the use of 70% of the BIR zonal valuation.

The CNI factor, on the other hand, refers to the Income Capitalization Approach under the standard appraisal approaches which is considered the most applicable valuation technique for income-producing properties such as agricultural landholdings. Under this approach, the value of the land is determined by taking the sum of the net present value of the streams of income, in perpetuity, that will be forgone by the LO due to the coverage of his landholding under CARP.

The MV factor is equivalent to the Market Data Approach, except that this is intended for taxation purposes only. (Emphasis and underscoring supplied.)

The administrative order's express reference to "standard appraisal approaches," namely the Market Data Approach and the Income Capitalization Approach, as discussed earlier, is in line with the PVS and the IVS/GAVP.

I. The whole regulatory scheme provided under RA 6657 (and operationalized through the DAR formulas) are reasonable policy choices to best implement the purposes of the law

The whole regulatory scheme provided under RA 6657 (and implemented through the DAR formulas) are reasonable policy choices made by the Congress and the DAR on how best to implement the purposes of the CARL. These policy choices, in the absence of contrary evidence, deserve a high degree of deference from the Court.

On the Section 17 enumeration. Congress, in adopting Section 17, opted for the enumeration of multiple factors provided under RAs 1400 and 3844, to replace the exclusively production based formula provided in PD 27. The Court cannot now fault Congress for not enumerating all possible valuation factors, a task even this Court cannot conceivably achieve, and use the Congress' limitation as a reason to void the enumeration.

On the use of a formula. In the absence of evidence of record to the contrary, it is reasonable to assume that DAR decided that a formula is a practical method to arrive at a determination of just compensation due the landowner. This became necessary considering the multiple factors laid down by the Congress in Section 17. For one, the formulas provide a concrete, uniform and consistent equation, applicable to all agricultural land nationwide, regardless of their location. It thus assures prompt, consistent and even-handed implementation by limiting the exercise of discretion by DAR officials. We have also earlier noted how formulas worked in the agrarian reform programs of other Asian countries. Finally, we have also noted how the absence of a formula resulted in the Garchitorena estate scandal. The Garchitorena estate scandal underscores the wisdom of deferring to the DAR's choice to use a formula in its judgment, "uniformity of ruling is essential to comply with the purposes of [RA 6657]."[177]

On the choice of the formula's components and their weights. DAR reformulated its formulas every so often as it gained experience in its implementation. We can see from AO No. 5 (1998) that the DAR finally settled on two approaches to value: the income capitalization approach and the sales comparison approach, represented under the CNI and CS factors, respectively. While the cost approach was excluded, market value of the land as per tax declaration of the owner (MV) is nevertheless considered. DAR also decided on the relative weights to allocate to each component.

The inclusion of the CNI as a component factor was in apparent reaction to the suggestion of the UP-IAS study, which roundly criticized DAR AO No. 6 (1989) for not having considered the production income of the land. While the same study recommended that the appropriate formula should "value land based only on production/productivity,"[178] the DAR, however, chose to also consider comparable sales and market value as per tax declaration. This is in keeping with the mandate of Section 17 which provided that "current value of like properties" and "the sworn valuation by the owner, the tax declarations," and the "assessment made by government assessors" shall also be considered.

We note that while "cost of acquisition of the land" was also included as a factor to be considered in determining just compensation, it was not included as a component in the basic formula. Again, in the absence of contrary evidence of record, it is reasonable to assume that the DAR acted, on the knowledge that most agricultural lands are inherited. This makes their acquisition cost nil. To include the same as a component of the formula would only serve to reduce the resulting value, much to the prejudice of the landowner.[179]

On the formula as DAR's expert opinion. The general function of an appraisal or valuation exercise is to develop an opinion of a certain type of value.[180] This process, though subjective, is amenable to a rigorous process that should result in a considered opinion of value. As earlier discussed, there is an application of the generally accepted approaches to value and, where multiple approaches have been employed, the reconciliation of the different value indications to arrive at a final opinion of value.[181] In this case, the DAR, applying the law and using the accepted valuation process and approaches to value, acted no different from a valuation appraiser and

gave an opinion as to what components make up the right formula.

Similar to the valuation profession which recognizes that the integrity and credibility of a valuation opinion rests in large part on the appraiser's judgment and experience,[182] the DAR's choices on the formula's component parts and their corresponding weights was based on its expertise, judgment and actual experience in the field of agrarian reform. We have taken pains to show how the DAR formula, and valuation process, is consistent and at par with recognized, international relation processes. There is no contrary evidence of record.

We shall now discuss the detailed arguments of the dissents as they relate to the DAR formulas.

J. Responses to specific arguments in the Dissents and Separate Concurring Opinion

Justice Leonen asserts that the Congress and the DAR failed to capture all the factors[183] (if not the "important,"[184] "highly influential,"[185] and "critical"[186] ones) to fully determine market value. Since the listing of factors in Section 17 is incomplete, any formula derived therefrom would also (and necessarily) be incomplete for purposes of arriving at just compensation.

We note that Justice Leonen cites the UP-IAS study in his dissent. This study analyzed the DAR formula under DAR AO No. 06 (1989). Our case now involves the DAR formula under DAR AO No. 5 (1998). Not only is the latter formula completely different from that under DAR AO No. 6 (1989), it has, as earlier discussed, already "improved" on the formula by incorporating the suggestions and recommendations of the UP-IAS study cited.

Furthermore, Justice Leonen did not point to a complete or exhaustive listing of factors upon which he based his assertion of the law's incompleteness. Neither did he show how courts are to actually approach valuation (in the absence of Section 17 and the implementing DAR formula) as to avoid "underrating the effect of each property's peculiarities." [187]

Even granting, for the sake of argument, that there is an infinite number of factors that can be considered in the valuation of property, we see no conceptual inconsistency between applying a formula to determine just compensation and giving all attendant factors due consideration.

This is evident when one considers the indispensability of the approaches to value in any estimation of value.[188] Following the generally-accepted valuation process, after all relevant market area data, subject property data and comparable property data have been gathered and analyzed,[189] the approaches to value will be applied[190] and the resulting value indications reconciled[191] to arrive at a final opinion of value. Thus, while there can arguably be an infinite number of factors that can be considered for purposes of determining a property's value, they would all ultimately be distilled into any one of the three valuation approaches. In fact, and as part of their discipline, appraisers are expected to "apply all the approaches that are applicable and for which there is data." [192]

Justice Leonen also seems to favor the use of the discounted cash flow (DCF)/discounted future income method (a variant of the yield capitalization technique) where the present DAR basic formula makes use of the direct capitalization technique.[193] He thereafter equates this to a lack of consideration for future income and ventures that, in turn, might be the reason why landowners always feel that the DAR/LBP assessment is severely undervalued.[194]

We disagree. Direct capitalization and yield capitalization are both methods used in the income capitalization approach to value.

Direct capitalization is distinct from yield capitalization x x x in that the former does not directly consider the individual cash flows beyond the first year. Although yield capitalization explicitly calculates year-by-year

effects of potentially changing income patterns, changes in the original investment's value, and other considerations, direct capitalization processes a single year's income into an indication of value. x x x[195]

In fact, and applied to the same set of facts, use of either method can be expected to produce similar results:

x x x Either direct capitalization or yield capitalization may correctly produce a supportable indication of value when based on relevant market information derived from comparable properties, which should have similar income- expense ratios, land value-to-building value ratios, risk characteristics, and future expectations of income and value changes over a typical holding period. A choice of capitalization method does not produce a different indication of value under this circumstance.[196] (Emphasis supplied.)

Selection of the appropriate income capitalization method to use depends on the attendant circumstances. While direct capitalization is used when properties are already operating on a stabilized basis, it is not useful where the property sought to be valued is going through an initial lease-up or when income and/or expenses are expected to change in an irregular pattern over time. In the latter case, yield capitalization techniques are considered to be more appropriate.[197]

In fact, the DAR uses yield capitalization methods where, based on its experience, such method is appropriate. In Joint Memorandum Circular No. 07, Series of 1999, for example, the DAR and the LBP revised their initial valuation guidelines for rubber plantations, to wit:

I. PREFATORY STATEMENT

The rubber plantation income models presented under the old rubber Land Valuation Guideline (LVG No. 6, Series of 1990) recognized the income of rubber plantations based on processed crumb rubber. However, recent consultations with rubber authorities (industry, research, etc.) disclosed that the standard income approach to valuation should measure the net income or productivity of the land based on the farm produce (in their raw forms) and not on the entire agri-business income enhanced by the added value of farm products due to processing. Hence, it is more appropriate to determine the Capitalized Net Income (CNI) of rubber plantations based on the actual yield and farm gate prices of raw products (field latex and cuplump) and the corresponding cost of production.

There is also a growing market for old rubber trees which are estimated to generate net incomes ranging between P20,000 and P30,000 per hectare or an average of about P100 per tree, depending on the remaining stand of old trees at the end of its economic life. This market condition for old rubber trees was not present at the time LVG No. 6, Series of 1990, was being prepared. (The terminal or salvage value of old rubber trees was at that time pegged at only P6,000 per hectare, representing the amount then being paid by big landowners to contractors for clearing and uprooting old trees.)

LVG No. 6, Series of 1990, was therefore revised to address the foregoing considerations and in accordance with DAR Administrative Order (AO) No. 05, Series of 1998. (Emphasis and underscoring supplied.)

What can be fairly inferred from the DAR's adoption of the direct capitalization method in its formula is the operational assumption[198] that the agricultural properties to be valued are, in general, operating on a stabilized basis, or are expected to produce on a steady basis. This choice of capitalization method is a policy decision made by the DAR drawn, we can presume, from its expertise and actual experience as the expert administrative agency.

Justice Velasco, for his part, calls for a revisit of the established rule on the ground that the same "have veritably rendered hollow and ineffective the maxim that the determination of just compensation is a judicial function." [199] According to him, the view that application of the DAR formulas cannot be made mandatory on courts is buttressed by: (1) Section 50 of RA 6657 which expressly provides that petitions for determination of

just compensation fall within the original and exclusive jurisdiction of the SACs;[200] (2) Land Bank of the Philippines v. Belista[201] which already settled that petitions for the determination of just compensation are excepted from the cases falling under the DAR's special original and exclusive jurisdiction under Section 57 of RA 6657; and (3) Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines, (Heirs of Vidad)[202] which held that the DAR's process of valuation under Section 16 of RA 6657 is only preliminary, the conclusion of which is not a precondition for purposes of invoking the SAC's original and exclusive jurisdiction to determine just compensation.

Justice Velasco correctly pointed out this Court's statement in Belista excepting petitions for determination of just compensation from the list of cases falling within the DAR's original and exclusive jurisdiction.[203] Justice Velasco is also correct when he stated that the Court, in Heirs of Vidad, summarized and affirmed rulings which "invariably upheld the [SAC's] original and exclusive jurisdiction x x x notwithstanding the seeming failure to exhaust administrative remedies before the DAR." [204] Later on, he would point out, again correctly, the seemingly conflicting rulings issued by this Court regarding the imposition upon the courts of a formula to determine just compensation.

We acknowledge the existence of statements contained in our rulings over the years which may have directly led to the inconsistencies in terms of the proper interpretation of the CARL. As adverted to earlier in this Opinion, this Court thus takes this case as a good opportunity to affirm, for the guidance of all concerned, what it perceives to be the better jurisprudential rule.

Justice Velasco reads both Belista and Heirs of Vidad as bases to show that SACs possess original and exclusive jurisdiction to determine just compensation, regardless of prior exercise by the DAR of its primary jurisdiction.

We do not disagree with the rulings in Belista and Heirs of Vidad, both of which acknowledge the grant of primary jurisdiction to the DAR, subject to judicial review. We are, however, of the view that the better rule would be to read these seemingly conflicting cases without having to disturb established doctrine.

Belista, for example, should be read in conjunction with Association, the landmark case directly resolving the constitutionality of RA 6657. In Association, this Court unanimously upheld the grant of jurisdiction accorded to the DAR under Section 16 to preliminarily determine just compensation. This grant of primary jurisdiction is specific, compared to the general grant of quasi-judicial power to the DAR under Section 50. Belista, which speaks of exceptions to the general grant of quasi-judicial power under Section 50, cannot be read to extend to the specific grant of primary jurisdiction under Section 16.

Heirs of Vidad should also be read in light of our ruling in Land Bank of the Philippines v. Martinez[205] another landmark case directly and affirmatively resolving the issue of whether the DAR's preliminary determination (of just compensation) can attain finality. While the determination of just compensation is an essentially judicial function, Martinez teaches us that the administrative agency's otherwise preliminary determination may become conclusive not because judicial power was supplanted by the agency's exercise of primary jurisdiction but because a party failed to timely invoke the same. The Court said as much in Heirs of Vidad:

It must be emphasized that the taking of property under RA 6657 is an exercise of the State's power of eminent domain. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. When the parties cannot agree on the amount of just compensation, only the exercise of judicial power can settle the dispute with binding effect on the winning and losing parties. On the other hand, the determination of just compensation in the RARAD/DARAB requires the voluntary agreement of the parties. Unless the parties agree, there is no settlement of the dispute before the RARAD/DARAB, except if the aggrieved party fails to file a petition for just compensation on time before the RTC.[206] (Emphasis and underscoring supplied.)

Considering the validity of the grant of primary jurisdiction, our ruling in *Heirs of Vidad* should also be reconciled with the rationale behind the doctrine of primary jurisdiction. In this sense, neither landowner nor agency can disregard the administrative process provided under the law without offending the already established doctrine of primary jurisdiction:

x x x [I]n cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure.[207] (Emphasis supplied.)

Arguing against the binding nature of the DAR formula, Justice Carpio, in his *Separate Concurring Opinion*, cites *Apo Fruits*[208] which held, to wit:

What is clearly implicit, thus, is that the basic formula and its alternatives—administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998)—although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. x x x[209]

The argument of *Apo Fruits* that the DAR formula is a mere administrative order has, however, been completely swept aside by the amendment to Section 17 under RA 9700. To recall, Congress amended Section 17 of RA 6657 by expressly providing that the valuation factors enumerated be "translated into a basic formula by the DAR x x x." This amendment converted the DAR basic formula into a requirement of the law itself. In other words, the formula ceased to be merely an administrative rule, presumptively valid as subordinate legislation under the DAR's rule-making power. The formula, now part of the law itself, is entitled to the presumptive constitutional validity of a statute.[210] More important, *Apo Fruits* merely states that the formula cannot "strictly" bind the courts. The more reasonable reading of *Apo Fruits* is that the formula does not strictly apply in certain circumstances. *Apo Fruits* should, in other words, be read together with *Yatco*.

Justice Carpio also raises an issue of statutory construction of Section 18 of RA 6657 in relation to Section 17. Section 18 reads:

Sec. 18. Valuation and Mode of Compensation. — The LBP shall compensate the landowner in such amounts as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land.

The Justice reads Section 18 to mean that Section 17 and the implementing DAR formula operate only to qualify the offer to be made by the DAR and the LBP to the landowner. Section 17 is not a qualifying imposition on the court in its determination of just compensation. Stated differently, where there is disagreement on the issue of just compensation, Section 17 and the basic formula do not apply.

We disagree. Sections 16, 17 and 18 should all be read together in context[211] as to give effect to the law.[212] This is the essence of the doctrines we laid down in *Banal*, *Celada* and *Yatco*.

Section 16 governs the procedure for the acquisition of private lands. The relevant provision reads:

Sec. 16. Procedure for Acquisition of Private Lands. — For purposes of acquisition of private lands, the following procedures shall be followed:

(a)

After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof. x x x (Emphasis supplied.)

It is clear from the foregoing provision that the procedure for acquisition of private land is commenced by the DAR's notice of acquisition and offer of compensation to the landowner. At such point, the DAR does not know whether the landowner will accept its offer. Section 16(a), however, states without qualification that the DAR shall make the offer in accordance with Sections 17 and 18. In case the landowner does not reply or rejects the offer, then the DAR initiates summary administrative proceedings to determine just compensation, subject to the final determination of the court. In the summary proceedings, the DAR offer remains founded on the criteria set forth in Section 17. Section 16(a) did not distinguish between the situation where the landowner accepts the DAR's offer and where he/she does not. Section 17, as amended, itself also did not distinguish between a valuation arrived at by agreement or one adjudicated by litigation. Where the law does not distinguish, we should not distinguish.[213]

Section 18, on the other hand, merely recognizes the possibility that the landowner will disagree with the DAR/LBP's offer. In such case, and where the landowner elevates the issue to the court, the court needs to rule on the offer of the DAR and the LBP. Since the government's offer is required by law to be founded on Section 17, the court, in exercising judicial review, will necessarily rule on the DAR determination based on the factors enumerated in Section 17.

Now, whether the court accepts the determination of the DAR will depend on its exercise of discretion. This is the essence of judicial review. That the court can reverse, affirm or modify the DAR/LBP's determination cannot, however, be used to argue that Section 18 excuses observance from Section 17 in cases of disagreement.

Finally, there is no cogent policy or common sense reason to distinguish. Worse, this reading flies in the face of the contemporaneous interpretation and implementation given by the DAR and the LBP to Sections 16, 17 (as amended) and 18. DAR AO No. 5 (1998) expressly provides that the basic formula applies to both voluntary offers to sell and to compulsory acquisition?[214]

K. The matters raised by the dissents are better resolved in a proper case directly challenging Section 17 of RA 6657 and the resulting DAR formulas

The following central issues of fact underlying many of the arguments raised by the dissents are better raised in a case directly impugning the validity of Section 17 and the DAR formulas:

(1)

Whether, under the facts of a proper case, the use of a basic formula (based on factors enumerated by Congress) to determine just compensation is just and reasonable.

Evidence must be taken to determine whether, given the scale of the government's agrarian reform program, the DAR and the LBP (and later, Congress) acted justly and within reason in choosing to implement the law with the enumeration of factors in Section 17 and the use of a basic formula, or, whether, under the facts, it is more just and reasonable to employ a case to case method of valuation.

A core and triable question of fact is whether the DAR and the LBP can effectively and fairly implement a large scale land reform program without some guide to canalize the discretion of its employees tasked to undertake

valuation. Otherwise stated, how can the DAR and the LBP commence CARP implementation if the different DAR and LBP employees tasked with making the offer, and spread nationwide, are each given complete discretion to determine value from their individual reading of Section 17? This will resolve the factual underpinnings of the argument advanced that the valuation factors enumerated in Section 17 apply only where there is agreement on value as between the DAR/LBP and the landowner, but not when there is disagreement.

(2)

Whether, under the facts of a proper case, the enumeration of the factors in Section 17 and the resulting formula, are themselves just and reasonable.

To resolve this, there must be a hearing to determine: (a) whether, following generally-accepted valuation principles, the enumeration under Section 17 is sufficient or under-inclusive; (2) how the DAR arrived at selecting the components of the formula and their assigned weights; (3) whether there are fairer or more just and reasonable alternatives, or combinations of alternatives, respecting valuation components and their weights; and (4) whether the DAR properly computes or recognizes net present value under the CNI factor, and whether DAR employs a fair capitalization rate in computing CNI.

All things considered, it is important that the DAR and the LBP be heard so that they can present evidence on the cost and other implications of doing away with the use of a basic formula, or using a different mix of valuation components and weights.

IV. Conclusion

The determination of just compensation is a judicial function. The "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic formula, and the "justness" of the components (and their weights) that flow into the basic formula, are all matters for the courts to decide. As stressed by Celada, however, until Section 17 or the basic formulas are declared invalid in a proper case, they enjoy the presumption of constitutionality. This is more so now, with Congress, through RA 9700, expressly providing for the mandatory consideration of the DAR basic formula. In the meantime, Yatco, akin to a legal safety net, has tempered the application of the basic formula by providing for deviation, where supported by the facts and reasoned elaboration.

While concededly far from perfect, the enumeration under Section 17 and the use of a basic formula have been the principal mechanisms to implement the just compensation provisions of the Constitution and the CARP for many years. Until a direct challenge is successfully mounted against Section 17 and the basic formulas, they and the collective doctrines in Banal, Celada and Yatco should be applied to all pending litigation involving just compensation in agrarian reform. This rule, as expressed by the doctrine of stare decisis, is necessary for securing certainty and stability of judicial decisions, thus:

Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Stare decisis et non quieta movere. Stand by the decisions and disturb not what is settled. Stare decisis simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same issue.[215]

This Court thus for now gives full constitutional presumptive weight and credit to Section 17 of RA 6657, DAR AO No. 5 (1998) and the resulting DAR basic formulas. To quote the lyrical words of Justice Isagani Cruz in Association:

The CARP Law and the other enactments also involved in these cases have been the subject of bitter attack from those who point to the shortcomings of these measures and ask that they be scrapped entirely. To be sure, these enactments are less than perfect; indeed, they should be continuously re-examined and rehoned, that they may be sharper instruments for the better protection of the farmer's rights. But we have to start somewhere. In the pursuit of agrarian reform, we do not tread on familiar ground but grope on terrain fraught with pitfalls and expected difficulties. This is inevitable. The CARP Law is not a tried and tested project. On the contrary, to use Justice Holmes's words, "it is an experiment, as all life is an experiment," and so we learn as we venture forward, and, if necessary, by our own mistakes. We cannot expect perfection although we should strive for it by all means. Meantime, we struggle as best we can in freeing the farmer from the iron shackles that have unconscionably, and for so long, fettered his soul to the soil.[216]

For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.[217]

A final note

We must be reminded that the government (through the administrative agencies) and the courts are not adversaries working towards different ends; our roles are, rather, complementary. As the United States Supreme Court said in *Far East Conference v. United States*: [218]

x x x [C]ourt and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to attain the prescribed end, and, so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action. Neither body should repeat in this day the mistake made by the courts of law when equity was struggling for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder, to be tolerated if must be, but never to be encouraged or aided by the other in the attainment of the common aim.[219] (Emphasis supplied.)

The Congress (which wrote Section 17 and funds the land reform land acquisition), the DAR (author of DAR AO No.5 [1998] and implementer of land reform), and the LBP (tasked under EO 405 with the valuation of lands) are partners to the courts. All are united in a common responsibility as instruments of justice and by a common aim to enable the farmer to "banish from his small plot of earth his insecurities and dark resentments and "rebuild in it the music and the dream." [220] Courts and government agencies must work together if we are to achieve this shared objective.

WHEREFORE, the petition is **PARTIALLY GRANTED**. Civil Case Nos. 2002-7073 and 2002-7090 are **REMANDED** to the Special Agrarian Court for the determination of just compensation in accordance with this ruling.

SO ORDERED.

Leonardo-De Castro, Brion, Peralta, Bersamin, Perez, Mendoza, Reyes, Perlas-Bernabe, and Caguioa, JJ., concur. Sereno, C.J., Carpio, and Leonen, JJ., see separate opinion.

Velasco, Jr., J., please see dissenting opinion.

Del Castillo, J., no part.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on November 29, 2016, A Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled cases, the original of which was received by this Office on January 5, 2017 at 1:35 p.m.

Very truly yours,

(SGD.) FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Comprehensive Agrarian Reform Law of 1988.

[2] Through Associate Justice Arcangelita M. Romilla-Lontok, with Justices Mariano C. Del Castillo and Romeo F. Barza concurring, rollo, pp. 24-32.

[3] Through Associate Justice Arcangelita M. Romilla-Lontok, with Justices Mariano C. Del Castillo and Romeo F. Barza concurring, id. at 34-35.

[4] By Judge Honesto A. Villamor, in Civil Cases No. 2002-7073 and 2002-7090, id. at 58-66.

[5] Id at 66.

[6] CA rollo (CA-G.R. SP No. 90615), p. 107

[7] Id at 110.

[8] Id. at 108, 111.

[9] Rollo, p. 59.

[10] CA rollo (CA-G.R. SP No. 90615). 107-112.

[11] PARAD Decision, rollo, pp. 49-50. Emphasis supplied.

[12] PARAD Decision, id. at 52-53. Emphasis supplied.

[13] Id. at 54.

[14] CA rollo (CA-G.R. SP No. 90615), p. 93.

[15] Id. at 94-98.

[16] Id. at 99-102.

- [17] Id. at 116.
- [18] Rollo, p. 26.
- [19] CA rollo (CA-G.R. SP No. 90615), pp. 121-136.
- [20] Id. at 139-140.
- [21] Cuervo Report, p. 11, records, p. 66.
- [22] Cuervo Report, p. 11, records, p. 66. Emphasis in the original.
- [23] Id.
- [24] Cuervo Report, pp. 17-18, records, p. 66. Emphasis in the original.
- [25] RTC Decision, rollo, p. 65.
- [26] Id.
- [27] RTC Decision, rollo, pp. 65-66.
- [28] CA rollo (G.R. No. 90643), p. 31.
- [29] Rollo, p. 80.
- [30] Id at 86-87.
- [31] Records, p. 190.
- [32] Id.
- [33] Records, pp. 113-118.
- [34] Id. at 34-35.
- [35] Republic Act No. 1400 (1955), Sec. 6(2).
- [36] Republic Act No. 1400 (1955), Sec. 12(2). See also Republic v. Nable-Lichauco, G.R. No. L-18001, July 30, 1965, 14 SCRA 682.
- [37] Republic Act No. 3844 (1963), Sec. 51(1) provides:
- Sec. 51. Powers and Functions. - It shall be the responsibility of the Authority:
- (1) To initiate and prosecute expropriation proceedings for the acquisition of private agricultural lands x x x tor the purpose of subdivision into economic family-size farm units and resale of said farm units to bona fide tenants, occupants and qualified farmers: Provided, That the powers herein granted shall apply only to private agricultural lands subject to the terms and conditions and order of priority hereinbelow specified:
- x x x
- c. in expropriating private agricultural lands declared by the National Land Reform Council or by the Land Authority within a land reform district to be necessary for the implementation of the provisions of this Code, tho following order of priority shall be observed:
- idle or abandoned lands;
- those whose area exceeds 1,024 hectares;

- those whose area exceeds 500 hectares but is not more than 1,024 hectares;
- those whose area exceeds 144 hectares but is not more than 500 hectares; and
- those whose area exceeds 75 hectares but is not more than 144 hectares.

[38] Republic Act No. 3844 (1963), Sec. 56 reads:

Sec. 56. Just Compensation. – In determining the just compensation of the land to be expropriated pursuant to this Chapter, the Court, in land under leasehold, shall consider as a basis, without prejudice to considering other factors also, the annual lease rental income authorized by law capitalized at the rate of six per centum per annum.

The owner of the land expropriated shall be paid in accordance with Section eighty of this Act by the Land Bank and pursuant to an arrangement herein authorized. (Emphasis supplied.)

[39] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

[40] Notably, agrarian reform first appeared, as a constitutional policy, only under the 1973 Constitution. Under Section 12, Article XIV, it was provided that: "The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."

[41] Iyer and Maurer, THE COST OF PROPERTY RIGHTS: ESTABLISHING INSTITUTIONS ON THE PHILIPPINE FRONTIER UNDER AMERICAN RULE, 1898-1918, Harvard Business School Working Paper 09-023, 2008, p. 31, citing Yager, TRANSFORMING AGRICULTURE IN TAIWAN: THE EXPERIENCE OF THE JOINT COMMISSION ON RURAL RECONSTRUCTION, 1988, Ithaca and London: Cornell University Press.

[42] Id. citing Eddy Lee, EGALITARIAN PEASANT FARMING AND RURAL DEVELOPMENT: THE CASE OF SOUTH KOREA, 1979, World Development 7, p. 508.

[43] Bernas, CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS, NOTES AND CASES, PART II, 1996 Edition, p. 1009, citing C. Tanaka v. Japan, 7 Minshui 1523 (1953).

[44] G.R. Nos. L-28609-10, January 17, 1974, 55 SCRA 26.

[45] G.R. No. L-35739, July 2, 1979, 91 SCRA 294.

[46] Executive Order No. 228 (1987), Sec. 2.

[47] Q and A on CARP < <http://www.dar.gov.ph/q-and-a-on-carp/english> > (last accessed June 14, 2016)

[48] The PARC, under Section 41 of RA 6657, is headed by the President of the Philippines as chairman, with designated department secretaries and other government officials, three (3) representatives of affected landowners to represent Visayas and Mindanao, and six (6) representatives of agrarian reform beneficiaries, as members.

[49] Rules and Procedures on Land Valuation and Just Compensation.

[50] Part IV, DAR AO No. 6 (1989)

[51] Id.

[52] Institute of Agrarian Studies, College of Economics and Management, STUDIES ON AGRARIAN REFORM ISSUES, UPLB, College, Laguna, pp. 6-7.

[53] Id. at 91.

[54] Id. at 89-90.

[55] Id. at 90-93.

[56] Id. at 92. Emphasis supplied.

[57] The Garchitorena estate was a 1,888 hectare former abaca plantation in Camarines Sur that was no longer useful for cultivation. It was bought by Sharp Marketing Inc. from the United Coconut Planters Bank (UCPB) in 1988 for P3.1 Million. Sharp, in 1989, or less than a year later, tried to sell the estate to the DAR under the CARP's VOS program for P62.5 Million. The DAR, through then Secretary Phillip Juico, approved the sale. Then LBP President Deogracias Vistan, however, refused to give his consent to the deal, saying that Sharp had overreported the productivity of the land and that the beneficiaries had been coerced to accept the value. President Vistan later reported the matter to Congress. The exposure of the deal led to a congressional investigation, the filing by Sharp of a case for mandamus (Sharp International Marketing v. Court of Appeals, G.R. No. 93661, September 4, 1991, 201 SCRA 299), and the filing of cases with the Sandiganbayan, among others. As previously noted, subsequently, under EO 405, the LBP was given primary responsibility to determine land valuation and compensation. See also Putzel, A Captive Land: The Politics of Agrarian Reform in the Philippines, 1992, Catholic Institute for International Relations (London, UK) and Monthly Review Press (New York, USA).

[58] Putzel, A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES, 1992, Catholic Institute for International Relations (London, UK) and Monthly Review Press (New York, USA), pp. 312-314.

[59] Rules and Regulations Amending Valuation of Lands Voluntarily Offered Pursuant to EO 229 and RA 6657 and Those Compulsorily Acquired Pursuant to RA 6657.

[60] I. Definition of Terms/Applicability of Factors

- Comparable Sales (CS) – This factor shall refer to the AVERAGE of three (3) comparable sales transactions, the criteria of which are as follows:

- Sale transactions shall be in the same municipality. In the absence thereof, sales transactions within the province may be considered[;]

- One transaction must involve land whose area is at least ten percent (10%) of the area being offered or acquired but in no case should it be less than one (1) hectare. The two others should involve land whose area is at least one (1) hectare each;

- The land subject of acquisition as well as those subject of comparable sales should be similar in topography, land use, i.e., planted to the same crop. Further, in case of permanent crops, the subject properties should be more or less comparable in terms of their stages of productivity and plant density; and

- The comparable sales should have occurred between the periods 1985 and June 15, 1988.

[61] E. Market Value per Tax Declaration (MV) - This shall refer to the market value per tax declaration (TD) issued before August 29, 1987 (effectivity of E.O 229). The most recent tax assessment made prior to August 29, 1987 shall be considered. x x x (Emphasis supplied.)

[62] II. Land Valuation Formula for VOS Received Before June 15, 1988 and Valued by the Municipal Agrarian Reform Officer (MARO) as of October 14, 1988. x x x.

[63] DAR Administrative Order No. 3 (1991).

[64] Rules and Regulations Amending the Valuation of Lands Voluntarily Offered and Compulsorily Acquired as Provided for Under Administrative Order No. 17, Series of 1989, as Amended, Issued Pursuant to Republic Act No. 6657.

[65] II. The following rules and regulations are hereby promulgated to amend certain provisions of Administrative Order No. 17, series of 1989, as amended by Administrative Order No. 3, [s]eries of 1991 which govern the valuation of lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA).

- There shall be one basic formula for the valuation of lands covered by VOS or CA regardless of the date of offer or coverage of the claim:

$$LV = (CNI \times 0.6) + (CS \times 0.3) + (MV \times 0.1)$$

Where:

LV

=

Land Value

CNI

=

Capitalized Net Income

CS

=

Comparable Sales

MV

=

Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

A.1

When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV

=

$$(CNI \times 0.9) + (MV \times 0.1)$$

A.2

When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV

=

$$(CS \times 0.9) + (MV \times 0.1)$$

A.3

When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV

=

$$MV \times 2$$

A.4

In all the above, the computed value using the applicable formula or the Declared Value by Landowner (DV), whichever is lower, shall be adopted as the Land Value. DV shall refer to the amount indicated in the Landowner's offer or the Listasaka declaration, whichever is lower, in case of VOS. In case of CA, this shall refer to the amount indicated in the Listasaka. Both LO's offer and Listasaka shall be grossed-up using the immediately preceding semestral Regional Consumer Price Index (RCPI), from the date of the offer or the date of Listasaka up to the date of receipt of claimfolders by LBP from DAR for processing.

- Capitalized Net Income (CNI) – This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form:

CNI

=

$$(AGP \times SP) - CO$$

$$.12$$

Where:

CNI

=

Capitalized Net Income

AGP

=

One year's Average Gross Production immediately preceding the date of offer in case of VOS or date of notice

of coverage in case of CA.

SP

=

Selling Price shall refer to average prices for the immediately preceding calendar year from the date of receipt of the claimfolder by LBP for processing secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or in their absence, from Bureau of Agricultural Statistics. If possible, SP data shall be gathered from the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO

=

Cost of Operations. Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of offer/coverage shall continue to use the 70% NIR. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

.12

=

Capitalization Rate

B.1

Industry data on production, cost of operations and selling price shall be obtained from government/private entities. Such entities shall include, but not limited to the Department of Agriculture (DA), the Sugar Regulatory Authority (SRA), the Philippine Coconut Authority (PCA) and other private persons/entities knowledgeable in the concerned industry.

B.2

The landowner shall submit a statement of net income derived from the land subject of acquisition. This shall include among others, total production and cost of operations on a per crop basis, selling price/s (farm gate) and such other data as may be required. These data shall be validated/verified by the Department of Agrarian Reform and Land Bank of the Philippines field personnel. The actual tenants/farmworkers of the subject property will be the primary source of information for purposes of verification or if not available, the tenants/farmworkers of adjoining property.

In case of failure by the landowner to submit the statement within three weeks from the date of receipt of letter-request from the Municipal Agrarian Reform Office (MARO) or the data stated therein cannot be verified/validated from the farmers, LBP may adopt any available industry data or in the absence thereof may conduct an industry study on the specific crop which will be used in determining the production, cost and net income of the subject landholding.

B.3

For landholdings planted to permanent crops which are introduced by the farmer-beneficiaries, CNI shall be equal to 25% of the annual net income capitalized at 12%. (Emphasis supplied.)

[66] $LV = (CNI \times 0.6) + (CS \times 0.3) + (MV \times 0.1)$

Where:

LV

=

Land Value

CNI

=

Capitalized Net Income

CS

=

Comparable Sales

MV

=

Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

A.1

When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV

=

$(CNI \times 0.9) + (MV \times 0.1)$

A.2

When the CNI factor is not present and CS and MV are applicable, the formula shall be:

LV

=

$(CS \times 0.9) + (MV \times 0.1)$

A.3

When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV

=

$MV \times 2$

In no case shall the value of idle land using the formula $MV \times 2$ exceed the lowest value of land within the same estate under consideration or within the same barangay or municipality (in that order) approved by L8P

within one (1) year from receipt of claimfolder.

A.4

When the land planted to permanent crops is not yet productive or not yet fruit-bearing at the time of Field Investigation (FI), the land value shall be equivalent to the value of the land plus the cumulative development cost (CDC) of the crop from land preparation up to the time of FI. In equation form:

LV

=

(MVx 2) + CDC

[67] Republic Act No. 6657, Sec. 34.

[68] Part II.B.2 of DAR AO No. 5 (1998).

[69] Part II.B.2 of DAR AO No. 5 (1998).

[70] See Part II.B.4 to II.B.5 of DAR AO No. 5 (1998).

[71] Part II.B.6 of DAR AO No. 5 (1998).

[72] Guidelines in the Determination of Valuation Inputs for Landholdings, Planted to Cavendish Banana, Joint DAR-LBP Memorandum Circular No. 06 (2007).

[73] Supplemental Guidelines on the DAR-LRP Joint Financing for Rubber Replanting Under the Credit Assistance Program for Program Beneficiaries Development (CAP-PBD), Joint DAR-LBP Memorandum Circular No. 12 (1999).

[74] Revised Valuation Guidelines for Rubber Plantations, Joint DAR-LBP Memorandum Circular No. 07 (1999); Guidelines in the Valuation of Rubber Lands Covered by DARAB's Order to Re-compute, Joint DAP-LBP Memorandum Circular No. 8 (1999).

[75] Guidelines on the Valuation of Standing Commercial Trees that are Considered as Improvement on the Land, Joint DAR-LBP Memorandum Circular No. 11 (2003).

[76] An Act Strengthening Further the Comprehensive Agrarian Reform Program (CARP) by Providing Augmentation Fund Therefor, Amending for the Purpose Section 63 of Republic Act No. 6657, Otherwise Known as "The CARP Law of 1988."

[77] With this, DAR AO No. 5 (1998) was issued, revising the rules and regulations governing the valuation of lands. The basic valuation formula under DAR AO No. 6 (1992) was, however, retained. DAR AO No. 5 (1998) was the prevailing rule at the time the controversy involving Alfonso's properties arose.

[78] Options for CARP After 2014, CPBR12D Notes No. 2014-08, Congressional Policy and Budget Research Department (House of Representative), p. 1.

[80] An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution Of All Agricultural Lands. Instituting Necessary Reforms, Amending For The Purpose Certain Provisions Of Republic Act No. 6657, Otherwise, Known As The Comprehensive Agrarian Reform Law of 1988, As Amended, And Appropriating Funds Therefor.

[81] Rules and Regulations on Valuation and Landowners Compensation Involving Tenanted Rice and Corn

Lands Under Presidential Decree (P.D.) No. 27 and Executive Order (E.O.) No. 228.

[82] Revised Rules and Procedures Governing the Acquisition and Distribution of Private Agricultural Lands Under Republic Act (R.A.) No. 6657, as Amended.

[83] Part IV. 1, DAR AO No. 1 (2010).

[84] Part IV.2, DAR AO No. 1 (2010) and Section 85, DAR AO No. 7 (2011).

[85] G.R. No. 78742, July 14, 1989, 175 SCRA 343.

[86] *Id.* at 380-382.

[87] Comprehensive Agrarian Reform Law (1988).

[88] *Landbank of the Philippines v. Banal*, G.R. No. 143276, July 20, 2004, 434 SCRA 543.

[89] *Id.*

[90] *Id.* at 554.

[91] *Land Bank of the Philippines v. Escandor*, G.R. No. 171685, October 11, 2010, 632 SCRA 504, 513-514; *Land Bank of the Philippines v. Kummasie Plantation Company, Incorporated*, G.R. Nos. 177404 & 178097, December 4, 2009, 607 SCRA 365, 369; *Land Bank of the Philippines v. Heirs of Honorato de Leon*, G.R. No. 164025, May 8, 2009, 587 SCRA 454, 462; *Allied Banking Corporation v. Land Bank of the Philippines*, G.R. No. 175422, March 13, 2009, 581 SCRA 301, 311-312; *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, November 27, 2008, 572 SCRA 108, 129; *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, G.R. No. 175175 September 29, 2008, 567 SCRA 31, 39.

[92] *Land Bank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[93] *Id.*

[94] *Id.* at 506-507.

[95] *Land Bank of the Philippines v. Yatco Agricultural Enterprises*, G.R. No. 172551, January 15, 2014, 713 SCRA 370, 382-383.

[96] *Id.*

[97] *Id.* at 381-383. Citations omitted.

[98] *Rollo*, p. 31.

[99] *Records*, pp. 85-101.

[100] *Id.* at 152-153.

[101] *Id.* at 154-159.

[102] *Id.* at 145, 149.

[103] *Id.* at 141, 145.

[104] *Id.* at 141, 150.

[105] *Id.* at 133.

- [106] Id. at 132. See also Exhibit "1-o" and "1-p," Cuervo Report, pp. 17-18, records, p. 66.
- [107] Exhibit "1-j," Cuervo Report, p. 11, records, p. 66; records, p. 129.
- [108] Exhibit "1-o," Cuervo Report, p. 17, records, p. 66; records, p. 132.
- [109] See Exhibit "1-m," Cuervo Report, p. 15, records, p. 66.
- [110] Rollo, p. 65.
- [111] Land Bank of the Philippines v. Celada, supra note 92 at 505-506.
- [112] Cuervo Report, pp. 12, 14, records, p. 66.
- [113] Cuervo Report, pp. 12, 14, records, p. 66.
- [114] Id. at 145.
- [115] Id. at 149.
- [116] Exhibit "1-n," Cuervo Report, p. 16, records, p. 66.
- [117] Id. at 149.
- [118] Exhibit "1-n," Cuervo Report, p. 16, records, p. 66.
- [119] Supra note 95 at 383.
- [120] Dissenting Opinion of Justice Leonen, p. 22.
- [121] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, December 19, 2007, 541 SCRA 117.
- [122] Separate Concurring Opinion of Justice Carpio pp. 4-5.
- [123] Dissenting Opinion of Justice Velasco, p. 20.
- [124] See also Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, G.R. Nos. 178552, 178554, 178581, 178890, 179157 & 179461, October 5, 2010, 632 SCRA 146, 176.
- [125] Association of Flood Victims v. Commission on Elections, G.R. No. 203775, August 5, 2014, 732 SCRA 100, 108-109, citing Integrated Bar of the Philippines v. Zamora, G.R. No. 141284, August 15, 2000, 338 SCRA 81, 100.
- [126] G.R. No. 45081, July 15, 1936, 63 Phil. 139.
- [127] Id. at 158-159.
- [128] Id. at 158. Cite also in Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, supra at 175-176.
- [129] G.R. No. L-24693, July 31, 1967, 20 SCRA 849.
- [130] Id. at 857. Citations omitted. Cited in Bernas, CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS, NOTES AND CASES, PART II, 1996, pp. 36-37.
- [131] Sec. 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are

legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[132] This section provides: "Private property shall not be taken for public use without just compensation."

[133] *Export Processing Zone Authority (EPZA) v. Dulay*, G.R. No. L-59603, April 29, 1987, 149 SCRA 305, 316.

[134] *Bank of Commerce v. Planters Development Bank*, G.R. Nos. 154470-71 & 154589-90, September 24, 2012, 681 SCRA 521, 564.

[135] *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.*, G.R. No. L-5694, May 12, 1954, 94 Phil. 932, 938. See also CONSTITUTION, Art. VIII, Sec. 2.

[136] G.R. No. L-48672, July 31, 1987, 152 SCRA 540.

[137] *Id.* at 548.

[138] G.R. No. 166836, September 4, 2013, 705 SCRA 38.

[139] *Id.* at 60-61.

[140] *Supra* at 133.

[141] *Id.* at 311.

[142] *Id.* at 311-312.

[143] Dissenting Opinion of Justice Velasco, p. 17.

[144] Republic Act No. 6657 (1988), Sec. 58.

[145] Republic Act No. 6657 (1988). Sec. 57.

[146] This provision reads as follows:

Sec. 25. Judicial Review.

(1)

Agency decisions shall be subject to judicial review in accordance with this chapter and applicable laws.

(2)

Any party aggrieved or adversely affected by an agency decision may seek judicial review.

(3)

The action for judicial review may be brought against the agency, or its officers, and all indispensable and necessary parties as defined in the Rules of Court.

(4)

Appeal from an agency decision shall be perfected by filing with the agency within fifteen (15) days from receipt of a copy thereof a notice of appeal, and with the reviewing court a petition for review of the order. Copies of the petition shall be served upon the agency and all parties of record. The petition shall contain a concise statement of the issues involved and the grounds relied upon for the review, and shall be accompanied with a true copy of the order appealed from, together with copies of such material portions of the records as are referred to therein and other supporting papers. The petition shall be under oath and shall how, by stating the

specific material dates, that it was filed within the period fixed in this chapter.

(5)

The petition for review shall be perfected within fifteen (15) days from receipt of the final administrative decision. One (1) motion for reconsideration may be allowed. If the motion is denied, the movant shall perfect his appeal during the remaining period for appeal reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the appellant shall have fifteen (15) days from receipt of the resolution to perfect his appeal.

(6)

The review proceeding shall be filed in the court specified by statute or, in the absence thereof, in any court of competent jurisdiction in accordance with the provisions on venue of the Rules of Court.

(7)

Review shall be made on the basis of the record taken as a whole. The findings of fact of the agency when supported by substantial evidence shall be final except when specifically provided otherwise by law.

[147] Executive Order No. 292.

[148] See Section 25(7), Chapter 4, Book VII of the Administrative Code of 1987 and *NGEI Multi-Purpose Cooperative, Inc. v. Filipinas Palmoil Plantation, Inc*, G.R. No. 184950, October 11, 2012, 684 SCRA 152, 163.

[149] Prefatory Statement, DAR AO No. 5 (1998).

[150] *Id.*

[151] See *Prescribing the Philippine Valuation Standards (1st Edition) Adoption of the IVSC Valuation Standards under Philippine Setting*, DOF Department Order No. 37-09 (2009). We also quote from *Philippine Valuation Standards, Adoption of the IVSC Valuation Standards under Philippine Setting*, 1[st] Edition, 2009, Department of Finance/Bureau of Local Government Finance, p. 1, which declares:

The publication of these Philippine Valuation Standards (1[st] Edition) – Adoption of the IVSC Valuation Standards under the Philippine Setting is part of a wider on-going program of land reform in the Philippines. The Government has made a long-term commitment to alleviate poverty and to sustain economic growth by improving the land tenure security of the Filipino people and by fostering efficient land markets. This will be achieved through a land reform program that promotes a clear, coherent and consistent set of land administration policies and laws; an efficient land administration system supported by a sustainable financing mechanism; and an effective and transparent land valuation system that is in line with internationally accepted standards. (Emphasis and underscoring supplied.)

Note also that the Securities and Exchange Commission (SEC), for example, in its Guidelines for Asset Valuations, uses the IVS in its conduct of subject valuation engagement. (SEC Memorandum Circular No. 2 (2014))

[152] "x x x By promulgating internationally accepted standards and by developing their standards only after public disclosure, debate among nations, and liaison with other international standards bodies, the IVSC offers objective, unbiased, and well-researched standards that are a source of agreement among nations and provide guidance for domestic standards." *THE APPRAISAL OF REAL ESTATE*, 12[th] Edition, 2001, Appraisal Institute, p. 640. Emphasis supplied.

[153] *PHILIPPINE VALUATION STANDARDS, ADOPTION OF THE IVSC VALUATION STANDARDS*

UNDER PHILIPPINE SETTING, 1[st] Edition, 2009, Department of Finance/Bureau of Local Government Finance, pp. 7-9.

[154] THE APPRAISAL OF REAL ESTATE, 12[th] 11 Edition, 2001, Appraisal Institute, pp. 49-51. See Figure 4.1.

[155] Id.

[156] THE APPRAISAL OF REAL ESTATE, 12[th] Edition. 2001, Appraisal Institute, pp. 597-603

[157] Id. at 62.

[158] Id.

[159] THE APPRAISAL OF REAL ESTATE, 12[th] Edition, 2001, Appraisal Institute, p. 63.

[160] Id. at 64-65.

[161] Id. at 63.

[162] Id. at 62.

[163] Id. at 597.

[164] Id. at 600.

[165] Id. at 605-606.

[166] Id. at 598.

[167] Id. at 62.

[168] Id. at 598.

[169] See discussion on pp. 37-38.

[170] Republic Act No. 9646 (2009), Sec. 2 and 12.

[171] Prescribing the Philippine Valuation Standards (1[st] Edition) Adoption of the IVSC Valuation Standards under Philippine Setting, DOF Department Order No. 37-09 (2009). Introduction of the Philippine Valuation Standards (1[st] Edition)

[172] Prescribing the "Mass Appraisal Guidebook: A Supplement to the Manual on Real Property Appraisal and Assessment Operations (with Expanded Discussions on Valuation of Special Purpose Properties and Plant, Machinery & Equipment)", DOF Department Order No. 10-2010 (2010). Message of Secretary Margarito B. Teves.

[173] Department of Finance, Local Assessment Regulations No. 1-04 (2004).

[174] Senate Bill No. 415 titled The Real Property Valuation and Assessment Reform Act of 2013 file in the Sixteenth Congress by Senator Ferdinand R. Marcos, Jr., per inquiry, still pending at this time.

[175] Section 12 of Senate Bill No. 415.

[176] THE APPRAISAL OF REAL ESTATE, 12[th] Edition, 2001, Appraisal Institute, p. 651.

[177] San Miguel Properties, Inc. v. Perez, *supra* note 138 at 61.

[178] Institute of Agrarian Studies, College of Economics and Management, STUDIES ON AGRARIAN REFORM ISSUES, UPLB, College, Laguna, p. 91.

[179] Under Section Part II (E) and (F) of DAR AO No. 5 (1998), non-crop improvements introduced by the landowner are also compensated, with the valuation to be undertaken by the LBP.

[180] THE APPRAISAL OF REAL ESTATE, 12[th] Edition, 2001, Appraisal Institute p. 53.

[181] Id. at 598.

[182] Id.

[183] Dissenting Opinion of Justice Leonen, p. 14.

[184] Dissenting Opinion of Justice Leonen, p. 17.

[185] Dissenting Opinion of Justice Leonen, p. 16.

[186] Dissenting Opinion of Justice Leonen, p. 16.

[187] Dissenting Opinion of Justice Leonen, p. 18.

[188] THE APPRAISAL OF REAL ESTATE, 12[th] Edition, 2001, Appraisal Institute p. 62.

[189] Parts Three and Four of the Systematic Valuation Process. See Table at p. 38.

[190] Part Six of the Systematic Valuation Process. Id.

[191] Part Seven of the Systematic Valuation Process. Id.

[192] THE APPRAISAL OF REAL ESTATE, 12[th] Edition, 2001, Appraisal Institute, p. 62.

[193] Here, the yield rate is applied to a set of projected income streams and a reversion to determine whether the investment property will produce a required yield given a known acquisition price. If the rate of return is known, DCF analysis can be used to solve for the present value of the property. If the property's purchase price is known, DCF analysis can be applied to find the rate of return. See THE APPRAISAL OF REAL ESTATE, 12[th] Edition, 2001, Appraisal Institute, p. 569.

[194] Dissenting Opinion of Justice Leonen, p. 15.

[195] THE APPRAISAL OF REAL ESTATE, 12[th] Edition, 2001, Appraisal Institute, p. 529.

[196] Id. at 529-530.

[197] Id. at 529.

[198] Drawn from existing knowledge and actual experience in Philippine crop cycles.

[199] Dissenting Opinion of Justice Velasco, p. 18.

[200] Dissenting Opinion of Justice Velasco, pp. 4-5.

[201] G.R. No. 164631, June 26 2009, 591 SCRA 137; Dissenting Opinion of Justice Velasco, pp. 5-6.

[202] G.R. No. 166461, April 30, 2010, 619 SCRA 609.

[203] Dissenting Opinion of Justice Velasco, p. 5.

[204] Dissenting Opinion of Justice Velasco, p. 8.

[205] G.R. No. 169008, July 31, 2008. 560 SCRA 776.

[206] Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines, *supra* at 630.

[207] Far East Conference v. United States, 342 U.S. 570, 574-575 (1952).

[208] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, December 19, 2007, 541 SCRA 117.

[209] *Id.* at 131.

[210] See *Abakada Guro Party List V. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251 as cited in *Dacudao v. Gonzales*, G.R. No. 188056, January 8, 2013, 688 SCRA 109.

[211] *Aisporna v. Court of Appeals*, G.R. No. L-39419, April 12, 1982, 113 SCRA 459, 467. See also *Civil Service Commission v. Joson, Jr.*, G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786.

[212] In the interpretation of a statute, the Court should start with the assumption that the legislature intended to enact an effective law, and the legislature is not presumed to have done a vain thing in the enactment of a statute. As held by this Court in *Paras v. Commission on Elections*, G.R. No. 123169, November 4, 1996, 264 SCRA 49, 54-55: "An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, estroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or ugary."

[213] *Republic v. Yahon*, G.R. No. 201043, June 16, 2014, 726 SCRA 438, 454.

[214] Part II, DAR AO No. 5 (1998). See also Section 85, DAR AO No. 7 (2011).

[215] *Commissioner of Internal Revenue v. The Insular Life Assurance, Co., Ltd.*, G.R. No. 197192, June 4, 2014, 725 SCRA 94, 96-97.

[216] *Supra* note 85 at 392.

[217] See *Association of Small Landowners v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343 and *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, G.R. No. 166461, April 30, 2010, 619 SCRA 609, 630.

[218] 342 U.S. 570 (1952).

[219] *Id.* at 575.

[220] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, *supra* note 85 at 393.

SEPARATE CONCURRING OPINION

SERENO, CJ:

I fully agree with the majority's view that courts have a legal duty to consider the factors provided in Section 17 of Republic Act (R.A.) No. 6657, as amended. I also agree that deviation therefrom is authorized, provided it is explained and is supported by the evidence on record. I only write this opinion to make a clarification.

To my mind, there should be no conflict between the duty to consider the factors laid down by Section 17, as amended, and the established rule that the determination of just compensation is a judicial function.

R.A. No. 9700 amended Section 17 of R.A. No. 6657 to make the consideration of the factors enumerated therein mandatory. Using the word "shall," the amended provision now reads:

SEC.17. Determination of Just Compensation. —In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphases Supplied)

With the amendment, courts are now bound to consider the enumerated factors in the determination of just compensation.[1] For reasons to be discussed below, this does not straitjacket them and thereby unduly restrain their power to determine just compensation, which has been established to be exclusively a judicial function.[2]

Section 17 does not tread on dangerous grounds. All that it requires is the consideration by the courts of the enumerated factors. The provision does not mandate that they use those factors exclusively for the determination of just compensation. Congress even circumscribed the consideration of the factors with the clause, "subject to the final decision of the proper court." They are, at most, guidelines to assist the courts in the determination of just compensation. Therefore, Section 17 does not take away, much less limit, the power of the courts to inquire into what *EPZA v. Dulay* termed the "justness" of the compensation.[3]

We should give effect to the legislatively mandated mode of valuation as prescribed in Section 17, following the default rule in the interpretation of statutes:

In the interpretation of a statute, the Court should start with the assumption that the legislature intended to enact an effective law, and the legislature is not presumed to have done a vain thing in the enactment of a statute. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or nugatory.[4]

R.A. No. 6657 was designed to breathe life to the constitutional mandate for land reform.[5] In particular, the valuation method under Section 17 reflects the wisdom of Congress in prescribing the manner of implementing the constitutional mandate. I see no reason why we should not accord the provision the presumption of constitutionality that it fairly deserves.[6] We must consequently avoid an interpretation whereby the constitutional directive for land reform would be rendered ineffective.

Accordingly, I vote to GRANT the Petition and REMAND the case to the Special Agrarian Court for a proper determination of the just compensation.

(SGD.) MARIA LOURDES P. A. SERENO
Chief Justice

[1] *SM Land, Inc. v. BCDA*, G.R. No. 203655, 13 August 2014, 733 SCRA 68.

[2] *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987).

[3] *Id.*

[4] *Paras v. Commission on Elections*, 332 PHIL 56-67 (1996).

[5] Section 4, Article XIII of the Constitution states:

SECTION 4. The State shall, by Jaw, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

[6] *Carpio v. Executive Secretary*, G.R. No. 96409, 14 February 1992, 206 SCRA 290.

SEPARATE CONCURRING OPINION

CARPIO, J.:

The application of DAO 11, s. of 1994, as amended by DAO 5, s. of 1998, is not mandatory on Special Agrarian Courts in the determination of just compensation. I submit this Separate Concurring Opinion to clarify further the first paragraph of Section 18 of Republic Act No. 6657 (RA 6657) or the Comprehensive Agrarian Reform Law of 1988.

The first paragraph of Section 18 of RA 6657 reads:

Section 18. Valuation and Mode of Compensation. - The LBP shall compensate the landowner in such amounts as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land. (Emphasis supplied)

This provision on valuation of just compensation consists of two parts. The first part refers to the amount of just compensation "as may be agreed upon by the landowner and the DAR and the LBP" while the second part pertains to the amount of just compensation "as may be finally determined by the court." In other words, the amount of just compensation may either be (1) by an agreement among the parties concerned; or (2) by a judicial determination thereof.

In the first case, there must be an agreement on the amount of just compensation between the landowner and the DAR. Such agreement must be in accordance with the criteria under Sections 16 and 17 of RA 6657.[1] Section 16 outlines the procedure for acquiring private lands while Section 17 provides for the factors to be considered in determining just compensation. To translate such factors, the DAR devised a formula, which is presently embodied in DAO No. 5.[2] The DAR, using the formula in DAO No. 5, will make an initial determination of the value of the land and thereafter offer such amount to the landowner. If the landowner accepts the DAR's offer, he shall be paid the amount of just compensation as computed by the DAR. If the landowner rejects the DAR's offer, he may opt to file an action before the courts to finally determine the proper amount of just compensation.[3] Clearly, the DAR cannot mandate the value of the land because Section 18 expressly states that the landowner shall be paid the amount of just compensation "as may be agreed upon" by the parties. In other words, the DAR's valuation of the land is not final and conclusive upon the landowner. Simply put, the DAR's computation of just compensation is not binding on the landowner.

Since the landowner is not bound to accept the DAR's computation of just compensation, with more reason are courts not bound by DAR's valuation of the land. To mandate the courts to adhere to the DAR's valuation, and thus require the courts to impose such valuation on the landowner, is contrary to the first paragraph of Section 18

which states that the DAR's valuation is not binding on the landowner. If the law intended courts to be bound by DAR's valuation, and to impose such valuation on the landowner, then Section 18 should have simply directly stated that the landowner is bound by DAR's valuation. To hold that courts are bound by DAR's valuation makes resort to the courts an empty exercise. To avoid violating Section 18, courts must be given the discretion to accept, modify, or reject the DAR's valuation.

The law itself vests in the Regional Trial Courts, sitting as Special Agrarian Courts (SAC), the original and exclusive jurisdiction over actions for the determination of just compensation. Section 57 of RA 6657 reads:

Section 57. Special Jurisdiction. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision. (Emphasis supplied)

In *Land Bank of the Philippines v. Montalvan*,^[4] the Court reiterated the exclusive jurisdiction of the SAC to determine just compensation, to wit:

The SAC has been statutorily determined to have original and exclusive jurisdiction over all petitions for the determination of just compensation due to landowners under the CARP. This legal principle has been upheld in a number of this Court's decisions and has passed into the province of established doctrine in agrarian reform jurisprudence. In fact, this Court has sustained the exclusive authority of the SAC over the DARAB, even in instances when no administrative proceedings were conducted in the DARAB.

It is settled that the determination of just compensation is essentially a judicial function. The judicial determination of just compensation is what the second part of the first paragraph of Section 18 of RA 6657 comprehends, as it states that "The LBP shall compensate the landowner in such amounts x x x as may be finally determined by the court, as the just compensation for the land." In *Land Bank of the Philippines v. Escandar*,^[5] the Court held:

It is settled that the determination of just compensation is a judicial function. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be. (Emphasis supplied)

Considering that the SACs exercise exclusive jurisdiction over petitions for determination of just compensation, the valuation by the DAR, presented before the agrarian courts, should only be regarded as initial or preliminary. As such, the DAR's computation of just compensation is not binding on the courts. In *Heirs of Lorenza and Carmen Vidad v. Land Bank of the Philippines*,^[6] the Court held:

In fact, RA 6657 does not make DAR's valuation absolutely binding as the amount payable by LBP. A reading of Section 18 of RA 6657 shows that the courts, and not the DAR, make the final determination of just compensation. It is well-settled that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. The courts will still have the right to review with finality the determination in the exercise of what is admittedly a judicial function. (Emphasis supplied)

That the DAR valuation, based on the formula in DAO No. 5, is not controlling on the courts is likewise enunciated in *Apa Fruits Corporation v. Court of Appeals*,^[7] to wit:

x x x [T]he basic formula and its alternatives – administratively determined (as it is not found in Republic Act

No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) - although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory construction should not kill but give life to the law. As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies. The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula dictated by the DAR, an administrative agency. Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance. The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors[.] x x x. (Emphasis supplied)

Suffice it to state that no administrative order can deprive the courts of the power to review with finality the DAR's determination of just compensation in the exercise of what is admittedly a judicial function.[8] What the DAR is empowered to do is only to determine in a preliminary manner the amount of just compensation, leaving to the courts the ultimate power to decide this issue.[9]

Further, to adhere to the formula in DAO No. 5, in every instance, constitutes an undue restriction of the power of the courts to determine just compensation. This is clear from the case of *Land Bank of the Philippines v. Heirs of Puyat*[10] which stated:

As the CA correctly held, the determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it.

To repeat, under the first paragraph of Section 18 of RA 6657, the amount of just compensation may be determined by (1) agreement between the landowner and the DAR; or (2) judicial decision. In either case, the computation by the DAR of just compensation, using the formula in DAO No. 5, is merely initial or preliminary. As such, the DAR valuation of just compensation is not binding or mandatory on the landowner or the courts.

Significantly, RA 9700, which took effect on 1 July 2009, amended Section 17 of RA 6657 by adding other factors to be considered and clarifying that:

In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessments made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphasis supplied)

The clause "a basic formula by the DAR shall be considered, subject to the final decision of the proper court" means that the law requires the courts to consider the DAR formula in determining just compensation, but the courts are not bound by the DAR formula since the determination of just compensation is essentially a judicial function. This amendment recognizes that the DAR adopted a formula under DAO No. 5. However, the

amendment also recognizes that any DAR formula is always subject, in the appropriate case, to the final decision of the proper court.

The phrase "subject to the final decision of the proper court" does not appear in the old Section 17. Congress, in amending Section 17 of RA 6657 and adding such phrase, recognizes and, in fact, emphasizes that the final determination of just compensation rests exclusively with the proper court, which is the SAC in this case. In short, while the courts are statutorily required to consider the DAR formula, the courts are definitely not mandated to adopt such formula in determining just compensation. With the amendment of Section 17 of RA 6657, there can no longer be any doubt whatsoever that the DAR valuation of just compensation is not binding or mandatory on the courts.

Accordingly, I vote to GRANT the petition and to REMAND the case to the Special Agrarian Court for proper determination of the just compensation.

(SGD.) ANTONIO T. CARPIO
Associate Justice

[1] Section 16 of RA 6657 provides:

SECTION 16. Procedure for Acquisition of Private Lands. - For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other monuments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

Section 17 of RA 6657 provides:

SECTION 17. Determination of Just Compensation. In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Republic Act No. 9700, which took effect on 1 July 2009, amended Section 17 of RA 6657 to read as follows:

SEC. 17. Determination of Just Compensation. - In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessments made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

[2] DAO No. 5, entitled Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657, amended DAO No. 11, series of 1994, which in turn amended DAO No. 6, series of 1992, entitled the Rules and Regulations Covering the Valuation of Lands Voluntarily Offered or Compulsorily Acquired.

[3] Republic v. Court of Appeals, 331 Phil. 1070, 1077 (1996).

[4] 689 Phil. 641, 650-651 (2012).

[5] 647 Phil. 20, 28 (2010).

[6] 634 Phil. 9, 31 (2010).

[7] 565 Phil. 418, 433-434 (2007).

[8] See Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, 256 Phil. 777, 815 (1989).

[9] Republic v. Court of Appeals, supra note 3 at 1077.

[10] 689 Phil. 505, 522 (2012).

DISSENTING OPINION

VELASCO, JR., J.:

The instant case involves Department of Agrarian Reform (DAR) Department Administrative Order No. 05-s. 1998 (DAO No.5), which provides for a formula in the computation for just compensation that is due to a landowner. The core issue is whether or not the DAR-crafted formula is mandatory on the Regional Trial Court (RTC), acting as a Special Agrarian Court (SAC). While jurisprudence on the matter is not consistent, the pre-dominant holding has been that the application of the formula is mandatory. However, this dictum should now be revisited, in consonance with the postulate that the determination of just compensation is basically a judicial function.

The Facts

The case started when the government, through the DAR, sought to appropriate two (2) parcels of land in San Juan, Sorsogon City under RA 6657,[1] otherwise known as the Comprehensive Agrarian Reform Law (CARL). The land was originally registered in the name of Cynthia Palomar (Palomar) under Transfer Certificate of Title (TCT) Nos. T-21136 and T-23180 consisting of 1.6350 and 26.2284 hectares, respectively.

Palomar rejected the initial valuation of PhP36,066.27 and PhP792,869.06, respectively, made by the DAR and the Land Bank of the Philippines (LBP) in accordance with Sec. 17 of RA 6657 and DAO 11, s. of 1994, as amended by DAO No.5. She appealed the valuations thus made to the Provincial Adjudication Board of the DAR in Sorsogon (PARAD), docketed as Land Valuation Case No. 68-01 for TCT No. T-21136 and Land Valuation Case No. 70-01 for TCT No. T-23180. On April 16, 2001, Palomar sold the subject lots to petitioner Ramon Alfonso (Alfonso).

In separate decisions both dated June 20, 2002[2] the PARAD made a valuation of the parcels of land of PhP103,955.66 and PhP2,314,115.73, respectively, applying this formula: Land Value = (Capitalized Net Income multiplied by 0.9) plus (Market Value per tax declaration multiplied by 0.1).

From the PARAD decisions, both parties initiated complaints with the RTC of Sorsogon City, Branch 52, SAC, the first docketed as Civil Case No. 2002-7090 filed by Palomar and Alfonso, and the other, Civil Case No. 2002-7073, filed by the LBP.

For their part, Palomar and Alfonso claim that the PARAD valuation did not take into account the following: (a) actual number of trees planted therein, i.e., coconut and other fruit and non-fruit bearing trees; (b) other improvements that were introduced on the properties; and (c) their proximity to the commercial centers and establishments, roads and other value enhancing structures and facilities.

The LBP, on the other hand, insisted on the correctness of its valuation in light of the provisions of DAO No. 11, s. of 1994, as amended by DAO No. 5, s. of 1998.

The court-appointed commissioner tasked to render a report on the just compensation for the covered parcels used both a Market Data Approach (MDA) and Capitalized Income Approach (CIA) in determining the correct value for the subject lands. In the MDA, the valuation is primarily based on sales and listing of comparable properties in the neighborhood adjusted for time of sale, locations and general characteristics of the properties. The CIA, on the other hand, is based on the potential net benefit that may be derived from the ownership of the property.

Thereafter, the SAC rendered a consolidated decision dated May 13, 2005[3] fixing the valuation of the properties at PhP442,830.00 for the land covered by TCT No. T-21136 and PhP5,650,680.00 for the lot covered by TCT No. T-23180. In arriving at such valuation, the SAC, stressing that the matter of valuation is a judicial function, wrote:[4]

After a thorough study of the indications, and considering all factors relating to the market conditions of the subject property and its neighboring area we are of the opinion that the average of the two indications (MDA and CIA) reasonably represented the just compensation (fair market value) of the land with productive coconut trees.

x x x x

R.A. 6657 provides that "In determining just compensation, the cost of acquisition of the land, the current value of like property, the sworn valuation by the owner, the tax declarations and assessments and the assessments made by government assessors shall be considered. The social and economic benefits contributed by the farmers and farmworkers and by the government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional

factors to determine valuation."

Considering all these factors, the valuation made by the Commissioner and the potentials of the property, the Court considers that the valuation of the Commissioner as the more realistic appraisal which could be the basis for the full and fair equivalent of the property taken from the owner while the Court finds that the valuation of the Petitioner Land Bank as well as the Provincial Adjudicator of Sorsogon in this particular parcels of land for acquisition are unrealistically low.

The provisions of Section 2, Executive Order No. 228 are not binding upon the Courts. Determination of just compensation is a judicial prerogative. Section 2, EO No. 228, however, "may serve merely as a guiding principle or one of the factors in determining just compensation, but may not substitute the Court's own judgment as to what amount should be awarded and how to arrive at such amount." (Republic vs. Court of Appeals, G.R 74331. March 25, 1988)

x x x x

WHEREFORE, premises considered, judgment is hereby rendered:

- Fixing the amount of FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED THIRTY PESOS (PhP442,830.00), Philippine currency for Site 1 with an area of 16,530 sq.m. covered by TCT No. T-21136 situated at San Juan, Sorsogon City and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND SIX HUNDRED EIGHTY (PhP 5,650,680.00) Philippine currency for Site 2 with an area of 262,284 sq. m. covered by TCT Bi. T-23180 situated in Bibincahan, Sorsogon City or a total amount of SIX MILLION NINETY THOUSAND PESOS (PhP6,090,000.00) for the total area of 278,814 sq. m. in the name of Cynthia Palomar/Ramon M. Alfonso which property was taken by the government pursuant to the Agrarian Reform Program of the government as provided by R.A. 6657.

- Ordering the Petitioner Land Bank of the Philippines to pay the Plaintiff/Private Respondent the amount of FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED THIRTY PESOS (PhP442,830.00) and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND SIX HUNDRED EIGHTY (PhP 5,650,680.00) or the total amount of SIX MILLION NINETY THOUSAND PESOS (PhP6,090,000.00), Philippine currency for Lots 1604 and 2161 respectively, in the manner provided by R.A. 6657 by way of full payment of the said just compensation after deducting whatever amount previously received by the private respondents from the Petitioner Land Bank of the Philippines as part of the just compensation.

- Without pronouncement as to costs.

SO ORDERED.

Therefrom, the LBP and the DAR appealed to the Court of Appeals (CA), which, by Decision dated July 19, 2007[5] found for the appellants, thus:[6]

For failure to observe the procedure provided in DAR A.O. No. 5, series of 1998 and the guidelines therein, this Court finds it imperative to set aside the assailed decision of April 13, 2005 and REMAND the case to the trial court for proper determination of just compensation.

WHEREFORE, in view of the foregoing, both petitions are GRANTED. The decision of Branch 52, Regional Trial Court of Sorsogon City dated April 13, 2005 in Civil Cases [sic] Nos. 2002-7073 and 2002-7090 is SET ASIDE. Both cases are hereby REMANDED to the court of origin for proper determination of just compensation.

SO ORDERED.

Hence, the instant petition.

The issue posed in the instant petition is whether the SAC erred in assigning to the expropriated lots values under a formula not strictly following that set forth in DAO No. 5. The ponencia would deny the petition and affirm the appealed ruling of the CA, remanding the case to the SAC for the proper determination of just compensation in accordance with the formula provided by DAO No. 5.

With all due respect, I beg to disagree.

Discussion

The jurisdiction of the SACs to determine just compensation is original and exclusive under Sec. 57 of the CARL[7]

The jurisdiction bestowed by Congress to the SACs to entertain petitions for the determination of just compensation for property taken pursuant to the CARL is characterized as "original and exclusive." This could not be any clearer from the language of Sec. 57 of the law, to wit:

Section 57. Special Jurisdiction. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. (emphasis added)

The fundamental tenet is that jurisdiction can only be granted through legislative enactments,[8] and once conferred cannot be diminished by the executive branch. It can neither be expanded nor restricted by executive issuances in the guise of law enforcement. Thus, although the DAR has the authority to promulgate its own rules of procedure,[9] it cannot modify the "original and exclusive jurisdiction" to settle the issue of just compensation accorded the SACs. Stated in the alternative, the DAR is precluded from vesting upon itself the power to determine the amount of just compensation a landowner is entitled to, notwithstanding the quasi-judicial powers granted the DAR under Sec. 50 of the CARL, to wit:

Section 50. Quasi-judicial Powers of the DAR. - The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR) x x x.

We clarified in *LBP v. Belista*[10] that further excepted from the coverage of the DAR's jurisdiction, aside from those specifically mentioned in Sec. 50, are petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA 6657, which are within the jurisdiction of the SACs pursuant to Sec. 57 of the law. As held:

Clearly, under Section 50, DAR has primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the DA and the DENR. Further exception to the DAR's original and exclusive jurisdiction are all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA No. 6657, which are within the jurisdiction of the RTC sitting as a Special Agrarian Court. Thus, jurisdiction on just compensation cases for the taking of lands under RA No. 6657 is vested in the courts.

In *Republic v. CA*, the Court explained:

Thus, Special Agrarian Courts, which are Regional Trial Courts, are given original and exclusive jurisdiction

over two categories of cases, to wit: (1) "all petitions for the determination of just compensation to landowners" and (2) "the prosecution of all criminal offenses under [R.A. No. 6657]." The provisions of §50 must be construed in harmony with this provision by considering cases involving the determination of just compensation and criminal cases for violations of R.A. No. 6657 as excepted from the plenitude of power conferred on the DAR. Indeed, there is a reason for this distinction. The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (for such are takings under R.A. No. 6657) and over criminal cases. Thus, in *EPZA v. Dulay* and *Sumulong v. Guerrero* - we held that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies, while in *Scoty's Department Store v. Micaller*, we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act. (emphasis added)

Corollary to the above-quoted pronouncement, the rule-making power of the DAR cannot then extend to the determination of just compensation by the SACs. The DAR cannot promulgate rules to cover matters outside of its jurisdiction. At best, it can only serve to govern the internal workings of the administrative agency, but definitely cannot control the court proceedings before the SACs.

The original and exclusive jurisdiction of the SACs to determine just compensation is further strengthened by the fact that even without completing the process outlined in Sec. 16 of the CARL, the landowner affected by the taking could immediately seek court action to determine the amount he is entitled to.

In effecting the CARP, the government, through the LBP, makes an initial valuation of the property being taken, which constitutes the initial government offer. Should the landowner reject this offer or otherwise fail to reply, a summary proceeding would ensue. In this proceeding conducted by the DAR, the parties involved, i.e., the landowner and the LBP, submit evidence to justify their claim of the agricultural land's proper valuation. The DAR has thirty (30) days from the date the matter is submitted for decision within which to render a decision. This framework is outlined under Sec. 16 of the CARP.[11] Its final paragraph reads: "Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation." [12]

Thus, from the DAR ruling, the landowner has the option of whether or not to accept or reject the recalibrated offer. Should the landowner refuse the offer still, he or she may file the necessary petition for determination of just compensation with the RTC acting as a SAC that has jurisdiction over the property being taken. But as earlier discussed, the administrative procedure before the DAR can be bypassed by the landowner by invoking the original and exclusive jurisdiction of the SACs. The Court has applied this holding in numerous cases summarized in *Heirs of Vidad v. LBP*, to wit:[13]

In *Land Bank of the Philippines v. Wycoco*, [14] the Court upheld the RTCs jurisdiction over Wycoco's petition for determination of just compensation even where no summary administrative proceedings was held before the DARAB which has primary jurisdiction over the determination of land valuation. x x x

In *Land Bank of the Philippines v. Court of Appeals*, [15] the landowner filed an action for determination of just compensation without waiting for the completion of DARABs re-evaluation of the land. x x x

In *Land Bank of the Philippines v. Natividad*, [16] wherein Land Bank questioned the alleged failure of private respondents to seek reconsideration of the DARs valuation, but instead filed a petition to fix just compensation with the RTC x x x.

In *Land Bank of the Philippines v. Celada*, [17] where the issue was whether the SAC erred in assuming jurisdiction over respondents petition for determination of just compensation despite the pendency of the administrative proceedings before the DARAB x x x. (emphasis added)

In the cited cases, the Court invariably upheld the original and exclusive jurisdiction of the SACs over petitions for the determination of just compensation, notwithstanding the seeming failure to exhaust administrative remedies before the DAR.[18]

More recently, in *LBP v. Montalvan*, [19] therein petitioner argued that the landowner's filing with the SAC of a separate Complaint for the determination of just compensation was premature because the revaluation proceedings in the DAR were still pending. The Court ruled, however, that the pendency of the DAR proceedings could not have ousted the SAC from its original and exclusive jurisdiction over the petition for judicial determination of just compensation since "the function of fixing the award of just compensation is properly lodged with the trial court and is not an administrative undertaking." [20]

Thus, even though the landowner was not able to undergo the complete administrative process before the DAR pursuant to Sec. 16 of the CARL, he is not precluded from immediately and directly filing a complaint for just compensation before the SAC. More than being the prevailing interpretation of Sec. 57 of the CARL, this is also in line with the oft-cited ruling that the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies.[21]

The administrative proceeding before the DAR is merely preliminary and cannot prevail over the judicial determination of just compensation[22]

In contradistinction with the original and exclusive jurisdiction of the SACs under Sec. 57 of the CARL, the valuation process undertaken by DAR under Sec. 16 of the same law is merely preliminary in character. We said as much in *LBP v. Listana*: [23]

In *Republic v. Court of Appeals*, private respondent landowner rejected the government's offer of its lands based on LBP's valuation and the case was brought before the PARAD which sustained LBP's valuation. Private respondent then filed a Petition for Just Compensation in the RTC sitting as [SAC]. However, the RTC dismissed its petition on the ground that private respondent should have appealed to the DARAB x x x. Private respondent then filed a petition for certiorari in the CA which reversed the order of dismissal of RTC and remanded the case to the RTC for further proceedings. The government challenged the CA ruling before this Court via a petition for review on certiorari. This Court, affirming the CA, ruled as follows:

Thus, under the law, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Through notice sent to the landowner pursuant to §16(a) of R.A. No. 6657, the DAR makes an offer. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. If the landowner does not agree to the price fixed, he may bring the matter to the RTC acting as Special Agrarian Court. This in essence is the procedure for the determination of compensation cases under R.A. No. 6657. In accordance with it, the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case. In the terminology of §57, the RTC, sitting as [SAC], has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions.

Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from §57 that the original and exclusive jurisdiction to determine

such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to §57 and therefore would be void. What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question. (emphasis supplied)

This ruling was reiterated in *LBP v. Montalvan*,^[24] to wit:

There is no inherent inconsistency between (a) the primary jurisdiction of the DAR to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all questions involving the implementation of agrarian reform, including those of just compensation; and (b) the original and exclusive jurisdiction of the SAC over all petitions for the determination of just compensation. "The first refers to administrative proceedings, while the second refers to judicial proceedings." The jurisdiction of the SAC is not any less "original and exclusive," because the question is first passed upon by the DAR; as the judicial proceedings are not a continuation of the administrative determination. In *LBP v. Escandor*, the Court further made the following distinctions:

It is settled that the determination of Just compensation is a judicial function. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be.

Although the DAR is vested with primary jurisdiction under the Comprehensive Agrarian Reform Law (CARL) of 1988 to determine in a preliminary manner the reasonable compensation for lands taken under the CARP, such determination is subject to challenge in the courts. The CARL vests in the RTCs, sitting as SACs, original and exclusive jurisdiction over all petitions for the determination of just compensation. This means that the RTCs do not exercise mere appellate jurisdiction over just compensation disputes.

We have held that the jurisdiction of the RTCs is not any less "original and exclusive" because the question is first passed upon by the DAR. The proceedings before the RTC are not a continuation of the administrative determination. Indeed, although the law may provide that the decision of the DAR is final and unappealable, still a resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

The preliminary valuation conducted by the DAR serves very limited purposes, the first of which is the recalibration of the offer to the landowner. The proceeding before the DAR is not for making a binding determination of rights between the parties. Rather, it must be understood as a venue for negotiations between the government and the landowner, allowing the latter to present his counter-offer to the proposed sale, and providing the parties involved with the opportunity to agree on the amount of just compensation.

The other more significant purpose of the valuation is compliance with the deposit requirement to be granted entry into the property. Significantly, the amount deposited should not be confused with the just compensation to be received by the landowner. It merely serves as an assurance to the landowner that he will receive compensation since the deposit, in a way, can be construed as earnest money for the involuntary sale. It is a form of security that payment of just compensation would actually be made thereafter upon court judgment.^[25] As explained during the Constitutional Commission deliberations:^[26]

MR. REGALADO. It is not correct to state that jurisprudence does not require prior payment. Even the recent presidential decrees of the President always require a partial deposit of a certain percentage and the rest by a guaranteed payment. What I am after here is that, as Commissioner Bernas has said, there must at least be an assurance. That assurance may be in the form of a bond which may be redeemable later. But to say that there has never been a situation where prior payment is not required, that is not so even under the Rules of Court as

amended by presidential decrees. Even the government itself, upon entry on the land, has to make a deposit and the rest thereafter will be guaranteed under the judgment of a court, but which judgment, as I have pointed out, is not even realizable by executor process. Does it mean to say that the government can take its own time at determining when the payment is to be made? At least simultaneously, there should be an assurance in the form of partial payment in cash or other modes of payment, and the rest thereof being guaranteed by bonds, the issuance whereof should be simultaneous with the transfer. That is my only purpose in saying that there should be prior payment - not payment in cash physically but, at least, contract for payment in the form of an assurance, a guarantee or a promissory undertaking. (emphasis added)

A deposit is likewise required for the government to gain entry in properties expropriated under Rule 67 of the Rules of Court. Sec. 2 of the rule provides that the amount equivalent to the assessed value of the property is deposited, and only from then would the right of the government take possession of the property would commence. The amount deposited, however, is merely an advance to the value of just compensation, which is yet to be determined by the trial court at the second stage of the expropriation proceeding.[27] As such, the amount deposited is not necessarily the amount of just compensation that the law requires. In the exercise of their judicial functions, the courts still have the final say on what the amount of just compensation will be.[28]

The same holds true for the taking of private property under RA 6657. In these instances, the government proceeds to take possession of the property subject of the taking, despite the pendency of the just compensation case before the SACs, upon depositing the value of the property as computed by the DAR. Verily, the administrative proceeding before the SACs is a precondition to possess the property but is not necessarily the just compensation contemplated by the Constitution.

To further highlight the preliminary character of the DAR proceeding, it is noteworthy that DAO No. 5 was not the original issuance on the matter of valuation of expropriated land under RA 6657. The administrative order traces its roots to DAO 6, s. of 1989, or the Rules and Procedures on Land Valuation and Just Compensation. DAO 6 relevantly states in its Statement of Policy portion that:

The final determination of just compensation is a judicial function. However, DAR as the lead implementing agency of the CARP, may initially determine the value of lands covered by the CARP. (emphasis supplied)

Although DAO 6 had already been repealed, it bears to reiterate that the land valuation formula presented by the DAR was never intended to control the determination of just compensation by the courts. Recapitulating our pronouncement in *Republic v. Court of Appeals*:[29] "[w]hat adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question." The determination of just compensation is, therefore, as it were, a judicial function that cannot be usurped by any other branch of government. And insofar as agrarian reform cases are concerned, the original and exclusive jurisdiction to determine of just compensation is properly lodged before the SACs, not with the DAR.

There should be no fixed formula in
computing for just compensation
under the CARL, just as in other
forms of expropriation

As a guide to the SACs, Sec. 17 of the CARL enumerates the factors to consider in approximating the amount of just compensation for private agricultural property taken by the government. It reads:

Section 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the

owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

It is conceded that the SACs are bound to consider the above- enumerated factors embodied in Sec. 17 in determining just compensation. Nevertheless, it would be a stretch, if not downright erroneous, to claim that its formulaic translation by the DAR is just as binding on the SACs.

To elucidate, "just compensation" is a constitutional limitation to all modalities of the government's exercise of its right of eminent domain, not just in agrarian reform cases.[30] Despite making numerous appearances in various provisions of the fundamental law, however, it was the understanding among the members of the Constitutional Commission that the concept of just compensation would, nevertheless, bear the same meaning all throughout the document, and to apply the same rules for all types of expropriation, whether commenced under the CARL or not.[31] This intent of the framers is evident from the records of, the deliberations specifically bearing on agrarian reform:[32]

MR. CONCEPCION. Thank you.

I think the thrust of the amendment of Commissioner Trefias is that the term "just compensation" is used in several parts of the Constitution, and, therefore, it must have a uniform meaning. It cannot have in one part a meaning different from that which appears in the other portion. If, after all, the party whose property is taken will receive the real value of the property on just compensation, that is good enough. Any other qualification would lead to the impression that something else other than that meaning of just compensation is used in other parts of the Constitution.

x x x x

MR. RODRIGO. I was about to say what Commissioner Concepcion said. I just want to add that the phrase "just compensation" already has a definite meaning in jurisprudence. And, of course, I would like to reiterate the fact that "just compensation" here is not the amount paid by the farmers. It is the amount paid to the owner, and this does not necessarily have to come from the farmer. x x x

x x x x

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. Madam President, I propose an amendment to the proposed amendment of Commissioner Trefias. I support him in his statement that the words "just compensation" should be used there because it has jurisprudentially settled meaning, instead of putting in other ambivalent and ambiguous phrases which may be misconstrued, especially considering the fact that the words "just compensation" appear in different parts of the Constitution. However, my proposed amendment would read: "subject to THE PRIOR PAYMENT OF JUST COMPENSATION." x x x

x x x x

MR. DAVIDE. If the withdrawal is based on what was supposedly agreed with the Committee, I will still object because we will have the concept of just compensation for the farmers and farm workers more difficult than those in other cases of eminent domain. So, we should not make a distinction as to the manner of the exercise of eminent domain or expropriations and the manner that just compensation should be paid. It should be uniform in all others because if we now allow the interpretation of Commissioner Regalado to be the concept of just compensation, then we are making it hard for the farmers and the farm workers to enjoy the benefits allowed them under the agrarian reform policy.

MR. BENGZON. Madam President, as we stated earlier, the term "just compensation" is as it is defined by the Supreme Court in so many cases and which we have accepted. So, there is no difference between "just compensation" as stated here in Section 5 and "just compensation" as stated elsewhere. There are no two different interpretations.(emphasis added)

Clearly then, the framers intended that the concept of just compensation in the country's agrarian reform programs be the same as those in other cases of eminent domain. No special definition for "just compensation" for properties to be expropriated under the country's land reform program was reached by the Commission.[33] As settled by jurisprudence, the term "just compensation" refers to 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 qualify the meaning of the word "compensation" and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.[34]

There is then neither rhyme nor reason to treat agrarian reform cases differently insofar as the determination of just compensation is concerned. In all instances, the measure is not the taker's gain, but the owner's loss.[35] The amount of just compensation does not depend on the purpose of expropriation, for compensation should be "just" irrespective of the nobility or loftiness of the public aim sought to be achieved. And as in other cases of eminent domain, "any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount." [36] In all cases of eminent domain proceedings, there should be no mandatory formula for the courts to apply in determining the amount of just compensation to be paid.

To claim that the courts should apply the DAR formula and should rely on the administrative agency tasked to implement the CARL is to undermine the judicial power of the courts. It is incorrect to claim that the SACs do not have the same expertise the DAR has when it comes to calculating just compensation for agricultural lands. For if an agricultural land is expropriated under Rule 67 of the Rules of Court instead of the CARL, the courts could still compute the just compensation the landowner is entitled to and need not refer the issue to the DAR.

Consider a parcel of agricultural land subjected to CARL expropriated instead under Rule 67 of the Rules of Court. In either situation, the landowner will be entitled to "just compensation" as understood in its jurisprudentially-settled meaning. However, let us assume that the trial court will apply the DAR formula in the former, while it would exercise a wider latitude of discretion in the latter. Thus, for the same parcel of agricultural land, the compensation fixed by the trial court under Rule 67 may be totally far off from what would have been considered "just" using the DAR formula. Since it is allowed to adopt its own valuation method, not constrained to make use of the weighted averages accorded to the various factors for consideration, the discrepancy between two valuations could prove to be significant but this does not necessarily make the valuation by the court, without applying the DAR formula, "unjust."

There are limitless approaches towards approximating what would constitute just compensation and there are endless criteria for determining what is "just." As the DAR itself emphatically declares: "Land valuation is not an exact science but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it. What is important ultimately is that the land value approximates, as closely as possible, what is broadly considered to be just." [37] Thus, while Sec. 17 enumerates the factors to consider in determining just compensation, no mandatory fixed weights should be accorded to them. It is the prerogative of the courts to assess the significance of these factors in each individual case, and in the process, assign them weights in determining just compensation. It lies within the discretion of the SACs to determine which valuation method to select

To recall, the concept of just compensation is uniform in all forms of government taking. On this point, it must be borne in mind that Rule 67 of the Rules of Court on Eminent Domain never prescribed any formula for the valuation of taken property. This undeniable fact only goes to show that the trial courts, with the assistance of its appointed commissioners,[38] are competent enough to ascertain the amount of just compensation that the landowner is entitled to without rigidly applying any set formula. There is then no reason to mandatorily apply a valuation formula for one exercise of eminent domain, but not on the other forms.

Associate Justice Arturo D. Brion is correct in pointing out that the appointment of commissioners is not mandatory on the SACs. Pertinently, Sec. 58 of the CARL provides:

Section 58. Appointment of Commissioners. — The Special Agrarian Courts, upon their own initiative or at the instance of any of the parties, may appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute including the valuation of properties, and to file a written report thereof with the court. (emphasis added)

This could, however, only serve to strengthen the position that the SACs are not bound to apply DAO No. 5. Notwithstanding the prior ruling of the DAR, what is being resolved by the SAC in the exercise of its original and exclusive jurisdiction is a *de novo* complaint. Therefore, the SACs may, in the exercise of its discretion, disregard the valuations by the DAR and proceed with its own examination, investigation, and valuation of the subject property through its appointed commissioners. Plainly, the SACs are not barred from disregarding the prior findings of the DAR and substituting their own valuation in its stead.

Nowhere in the law can it be seen that the court-appointed commissioners are precluded from utilizing their own valuation methods. All RA 6657 requires is that the factors in Sec. 17 be considered, but not in any specific way. This was the teaching in the landmark case of *Export Processing Zone Authority v. Dulay* (Dulay)[39] wherein the Court held that:

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation. (emphasis added)

Dulay involved an expropriation case for the establishment of an export processing zone. There, the Court declared provisions of Presidential Decree Nos. 76, 464, 794, and 1533 as unconstitutional for encroaching on the prerogative of the judiciary to determine the amount of just compensation the affected landowners were entitled to. The Court further held that, at the most, the valuation in the decrees may only serve as guiding principles or factors in determining just compensation, but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.[40]

The seminal case of *Dulay* paved the way for similar Court pronouncements in other expropriation proceedings. Thus, in *National Power Corporation v. Zabala*,[41] the Court refused to apply Sec. 3-A of Republic Act No. 6395, as amended,[42] in determining the amount of just compensation that the landowner therein was entitled to. As held:

x x x The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government." Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of

computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof. (emphasis added)

This holding in *Zabala* is not novel and has in fact been repeatedly upheld by the Court in the catena of cases that preceded it. As discussed in *National Power Corporation v. Bagui*:^[43]

Moreover, Section 3A-(b) of R.A. No. 6395, as amended, is not binding on the Court. It has been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function and that any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. (emphasis added)

The very same edict in *Bagui* was reiterated in the cases of *National Power Corporation v. Tuazon*,^[44] *National Power Corporation v. Saldares*,^[45] and *Republic v. Lubinao*,^[46] and remains to be the controlling doctrine in expropriation cases, including those concerning agrarian reform.

In contrast, the Court in *LBP v. Gonzalez*^[47] echoed the ruling for the SAC to adhere to the formula provided in DAO No. 5, explaining:

While the determination of just compensation is essentially a judicial function vested in the RTC acting as a SAC, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. SACs are not at liberty to disregard the formula laid down in DAR AO No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it. Simply put, courts cannot ignore, without violating the agrarian reform law, the formula provided by the DAR for the determination of just compensation. (Emphasis supplied)

The cases of *LBP v. Honeycomb Farms Corporation*,^[48] *LBP v. Celada*^[49] and *LBP v. Lim*^[50] were of the same tenor.

In light of the case dispositions in *Honeycomb Farms*, *Celada* and *Lim*, the question is begged: what discretion is left to the courts in determining just compensation in agrarian cases given the formula provided in DAO No. 5? Apparently, none. Our rulings therein have veritably rendered hollow and ineffective the maxim that the determination of just compensation is a judicial function. For DAO No. 5 has effectively relegated the SAC to perform the mechanical duty of plugging in the different variables in the formula.

Precisely, this is an undue restriction on the power of the SAC to judicially determine just compensation. For this reason, the formula provided under DAO No. 5 should no longer be made mandatory on, or tie the hands of the SACs in determining just compensation. The courts of justice cannot be stripped of their authority to review with finality the said determination in the exercise of what is admittedly a judicial function, consistent with the Court's roles as the guardian of the fundamental rights guaranteed by the due process and equal protection clauses, and as the final arbiter over transgressions committed against constitutional rights.^[51] Strict adherence to the formula provided in DAO No. 5 must now be abandoned.

Only upon the enactment of RA 9700
were the SACs mandated to
"consider" the DAR formula

A cursory examination of Sec. 17 of RA 6657, as amended by RA 9700, easily leads to the inescapable conclusion that the law never intended that the DAR shall formulate an inflexible norm in determining the value of agricultural lands for purposes of just compensation, one that is binding on courts. A comparison of the former and current versions of Sec. 17 evinces that it was only upon the enactment of RA 9700^[52] that the courts were

mandated by law to "consider" the DAR formula in determining just compensation. There was no such requirement under RA 6657. Prior to RA 9700's enactment, there was then even lesser statutory basis, if not none at all, for the mandatory imposition of the DAR formula.

Sec. 7 of RA 9700, which was approved on August 7, 2009, amended Sec. 17 of the CARL to read:

SEC. 17. Determination of Just Compensation. - In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (emphasis added)

The non-retroactivity of RA 9700's amendment to Sec. 17, and its inapplicability in the current case, is expressed under Sec. 5 thereof, which provides:

Section 5. Section 7 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

"SEC. 7. Priorities. - x x x

"Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate landholdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; rice and corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform: Provided, That with respect to voluntary land transfer, only those submitted by June 30, 2009 shall be allowed. Provided, further, That after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition: Provided, furthermore, That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended x x x." (emphasis added)

In the consolidated cases of *DAR v. Beriña* and *LBP v. Beriña*,^[53] the Court held that for pending just compensation cases during RA 9700's enactment, the evidence of land valuation must conform to Section 17 of RA 6657 prior to its amendment by RA 9700. The Court categorically stated therein that the law should not be retroactively applied to pending claims, and held that:

x x x [T]he Court, cognizant of the fact that the instant consolidated petitions for review on certiorari were filed in August 2008, or long before the passage of RA 9700, finds that Section 17 of RA 6657, as amended, prior to its further amendment by RA No. 9700, should control the challenged valuation. (emphasis added)

The amendments introduced RA 9700, which was enacted after the taking of the subject properties was commenced, cannot then be invoked in this case. At the time of taking, there was no statutory mandate for the SAC's to consider the DAR formula in determining the proper amount of just compensation.

It was only upon the effectivity of RA 9700 were the SACs required to take into consideration the basic formula of the DAR. But despite such requirement, it must still be borne in mind that the language of the law does not even treat the formula and its resultant valuations as binding on the SACs; for though they shall be "considered," the valuations are still subject to the final decision of the proper court. It is merely an additional variable to consider, but not a controlling formula for the courts to apply.

During the Bicameral Conference Committee deliberations on RA 9700, Congress even confirmed that the

valuation process before the DAR is only preliminary, and, more significantly, that the SACs can adjust the preliminary valuation based on the best discretion of the courts. As discussed:[54]

REP. P. P. GARCIA Mr. Chairman, just an observation. With respect to the fixing of just compensation, the Supreme Court and even in that case of Association of Small Landowners versus the Secretary of DAR, he said or rule that the valuation or the determination of the valuation made by DAR is only preliminary because the fixing of just compensation is a judicial question. That is why in the law, Republic Act 6657, we have the special agrarian courts whose jurisdiction is to cover cases involving the fixing of just compensation. So it is not very important that we already determined how much or what percentage of the zonal valuation should be accepted as the just compensation because anyway, it will be the court that will determine the fixing of just compensation.

CHAIRPERSON HONASAN. Thank you, Congressman Garcia.
Can we hear from...

REP. LAGMAN. Mr. Chairman, Mr. Chairman, in that case, if the determination of the DAR on just compensation is only preliminary and the ultimate authority will be the courts, then there is no harm in providing that it should be 70% of the zonal valuation because, anyway, the court will have to make the final determination. It can increase the valuation consistent with its best discretion.

CHAIRPERSON HONASAN. Thank you, Congressman Lagman.

Senator Pimental.

SEN. PIMENTEL. Can we propose an additional phraseology that might address the concerns of Pabling and, of course, the Chairman of the House contingent, subject to the final decision by the court, by the proper court. In other words, while preliminarily the 70% of the zonal valuation is inputted into this amendment, ultimately, as has been suggested by Pabling, it will have to be the courts. (emphasis added)

The clear intention of the lawmakers was then to grant the courts discretion to determine for itself the final amount of just compensation, taking into account the factors enumerated under Sec. 17. As the lawmakers admitted, the 70% zonal value to be included in the valuation is actually an arbitrary figure, which is not a cause for alarm since, in any case, the courts can modify the valuation afterwards, consistent with their best discretion. Evidently, the phrase "subject to the final determination of the proper court" is a license for the SACs to adjust the valuation by the DAR as they deem fit.

There would always be extraneous circumstances for the courts to take into account, which were never expressed by the DAR in mathematical terms. This was readily admitted by Congress when RA 9700 expressly included the subject property's zonal value in the enumeration under Sec. 17 of RA 6657, an apparent omission in RA 6657. Even the "social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property" as well as the "nonpayment of taxes or loans secured from any government financing institution on the said land" were never given their formulaic equivalents in DAO No. 5. The phrase only appears after the DAR's mandate to translate the other factors into a basic formula. If the SAC would then opt to include these factors and even those unaccounted for under Sec. 17, then they may deviate from the formula upon reasoned explanation and as supported by evidence on record, as suggested by the ponencia.

A direct attack on the validity of
DAO No. 5 is not necessary to
reverse the Court's doctrine

Associate Justices Arturo D. Brion and Francis H. Jardeleza highlight that the case at bar is one for just

compensation, and that none of the parties is challenging the constitutionality of Sec. 17 of RA 6657 nor of DAO No. 5. They then argue that it would be premature for the Court to resolve the constitutional questions since they are not the *lis mota* of the case at hand. To pursue the line of thought advanced, according to them, would be premature, and would deprive the State, through the OSG, of the right to defend the constitutionality of Sec. 17 of RA 6657 and DAR No. 5.

It is conceded that the Court herein is not faced with questions on the constitutionality or validity of administrative issuances. What is merely being called for here is a revisit of existing doctrines, more specifically the mandatory application of the DAR formula by the SACs.

The Court is not being asked to declare DAO No. 5 as null and void. Rather, it is the postulation that DAO No. 5 should not be made mandatory on the courts. The formula is, as it remains to be, valid, but its application ought to be limited to making an initial government offer to the landowner and recalibrating the same thereafter as per Sec. 16 of the CARL. The Court cannot interfere with the DAR's policy decision to adopt the direct capitalization method of the market value in determining just compensation in the same way that the DAR cannot likewise prevent the courts from adopting its own method of valuation.

All told, there is no need to declare either Sec. 17 of the CARL or DAO No. 5 as unconstitutional. To emphasize, what is being revisited here is the Court's prior holdings in *Honeycomb*, *Celada*, *Lim*, and *LBP v. Yatco*[55] that the DAR formula is mandatory on the Courts. As explained, it is not the intention of CARL that the DAR shall peremptorily determine just compensation or set guidelines and formula for the SAC to follow in determining just compensation. RA 6657 merely authorizes the DAR to make an initial valuation of the subject land based on Sec. 17 of the law for purposes of making an offer to the landowner unless accepted by the landowner and other stakeholders. The determination made by DAR is only preliminary, meaning courts of justice will still have the right to review with finality the said determination in the exercise of what admittedly is a judicial function, without being straitjacketed by the DAR formula. Otherwise, the SACs will be relegated to an appellate court, in direct conflict with the express mandate of Sec. 57 of RA 6657 that grants them original and exclusive jurisdiction over the just compensation of lots covered by agrarian reform.

Applying the foregoing in the case at bar, the CA is, therefore, incorrect in requiring the SAC to observe and comply with the procedure provided in DAO No. 5 and the guidelines therein.

The determination of just compensation is, as it always has been, a judicial function. Ergo, if the parties to the expropriation do not agree on the amount of just compensation, it shall be subject to the final determination of the courts as provided under Sec. 18 of RA 6657:

Section 18. Valuation and Mode of Compensation. — The LBP shall compensate the landowner in such amounts as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land. (emphasis added)

It is not mandatory but discretionary on the SAC to apply the DAR formula in determining the amount of just compensation. While the SAC shall consider applying the DAR-crafted formula, it may, nevertheless, disregard the same with reasons and proceed with its own determination of just compensation and make use of any accepted valuation method, a variation of the DAR formula, or a combination thereof in assigning weights to the factors enumerated under Sec. 17 of the CARL.

The SACs only became legally bound to apply the DAR formula after RA 9700 took effect on August 7, 2009. This does not, however, diminish the discretionary power of the courts because deviation from the strict application of the DAR basic formula is still allowed upon justifiable grounds and based on evidence on record.

Sec. 17, as amended by RA 9700, is clear that the determination of just compensation shall be "subject to the final decision of the proper court," referring to the SACs.

Furthermore, the DAR basic formula does not capture all the factors for consideration in determining just compensation under Sec. 17 of the CARL. Guilty of reiteration, the pertinent provision reads:

SEC. 17. Determination of Just Compensation. - In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (emphasis added)

"The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non- payment of taxes or loans secured from any government financing institution," having been placed after the DAR mandate to translate the earlier enumerated factors into a basic formula, are then excluded in the DAR valuation method. Thus, the SACs may deviate from the DAR formula in order to take these additional factors into account.

In view of the foregoing disquisitions, the doctrine echoed in *Honeycomb*, *Celada*, *Lim*, and *Yatco* requiring the mandatory application of the DAR formula must be abandoned.

I, therefore, vote to GRANT the petition. The July 19, 2007 Decision and the March 4, 2008 Resolution of the Court of Appeals in CA-G.R. SP Nos. 90615 and 90643, as well as the May 13, 2005 Decision of the Regional Trial Court, Branch 52 in Sorsogon City, acting as a Special Agrarian Court, in Civil Case Nos. 2002-7090 and 2002-7073, must be SET ASIDE, and the consolidated cases REMANDED to the Regional Trial Court, Branch 52 in Sorsogon City for the proper determination of just compensation.

The Court should have further held that, for the guidance of the bench and bar, the following guidelines for determining just compensation in agrarian reform cases must be observed:

- In actions for the judicial determination of just compensation of property taken pursuant to RA 6657 that were filed prior to August 7, 2009 when RA 9700 took effect, it is not mandatory but discretionary on the Special Agrarian Courts to apply the DAR formula in determining the amount of just compensation. They shall first consider applying the pertinent DAR formula at the time of filing. In case it disregards the said formula, it shall explain the reason for the departure. Thereafter, it is within their discretion to select the valuation method to apply, which may be a variation of the DAR-crafted formula, any other valuation method, or any combination thereof, provided that all the factors under Sec. 17 of RA 6657, prior to amendment by RA 9700, are taken into consideration.

- In actions for the judicial determination of just compensation of property taken pursuant to RA 6657 that were filed when RA 9700 took effect on August 7, 2009 and onwards, the Special Agrarian Courts have the duty to apply the prevailing DAR formula at the time of filing. Disregarding the formula or deviating therefrom shall only be allowed upon justifiable grounds and if supported by evidence on record. If the SAC does not apply the DAR formula, it may adopt any other valuation method, a variation of the DAR formula, or a combination of the DAR formula with any other valuation method, provided that all of the factors under Sec. 17 of RA 6657, as amended by RA 9700, shall be taken into consideration. Determination of just compensation "shall be subject to the final decision" of the SACs.

(SGD.) PRESBITERO J. VELASCO, JR.
Associate Justice

[1] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES.

[2] Rollo, pp. 51-53; 36-38.

[3] Id. at 58-66.

[4] Id. at 64-66.

[5] Id. at 24-32. Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza.

[6] Id. at 31.

[7] See also Separate Concurring Opinion of Justice Presbitero J. Velasco, Jr. in *Limkaichong v. Landbank of the Philippines*, G.R. No. 158464, August 2, 2016.

[8] *Magno v. People*, G.R. No. 171542, April 6, 2011, citing *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559; *Spouses Vargas v. Spouses Caminas*, G.R. Nos. 137839-40, June 12, 2008, 554 SCRA 305, 317; *Metromedia Times Corporation v. Pastorin*, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; and *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 (1986).

[9] Sec. 49, RA 6657.

[10] G.R. No. 164631, 26 June 2009, 591 SCRA 137, 143-147

[11] Section 16. Procedure for Acquisition of Private Lands. — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

[12] Sec. 16 (f), RA 6657.

[13] G.R. No. 166461, April 30, 2010.

[14] G.R. No. 140160, January 13, 2004.

[15] 376 Phil. 252 (1999).

[16] G.R. No. 127198, May 16, 2005.

[17] G.R. No. 164876, January 23, 2006.

[18] Separate Concurring Opinion of Associate Justice Presbitero J. Velasco, Jr. in *Limkaichong v. DAR*, G.R. No. 158464, August 2, 2016.

[19] G.R. No. 190336, June 27, 2012.

[20] *Land Bank of the Philippines v. Montalvan*, G.R. No. 190336, June 27, 2012.

[21] *Id.*, citing *Land Bank of the Philippines v. Court of Appeals*, 376 Phil. 252 (1999); and *Land Bank of the Philippines v. Celada*, 515 Phil. 467 (2006).

[22] See also Separate Concurring Opinion of Justice Presbitero J. Velasco, Jr. in *Limkaichong v. Landbank of the Philippines*, G.R. No. 158464, August 2, 2016.

[23] G.R. No. 168105, July 27, 2011, 654 SCRA 559, 569-571.

[24] G.R. No. 190336, June 27, 2012, 675 SCRA 380, 393-394.

[25] *City of Manila v. Alegar Corporation*, G.R. No. 187604, June 25, 2012.

[26] Record of the Constitutional Commission Proceedings and Debates, Vol. 3, pp. 20; Minutes of the Constitutional Commission dated August 7, 1986.

[27] Sec. 5, Rule 67 of the Rules of Court.

[28] *Land Bank of the Philippines v. Escandor*, G.R. No. 171685, October 11, 2010, 632 SCRA 504.

[29] *Republic v. Court of Appeals*, G.R. No. 122256, October 30, 1996

[30] Article III. Bill of Rights

Section 9. Private property shall not be taken for public use without just compensation.

Article XII. National Economy and Patrimony

Section 18. The State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be

operated by the Government.

Article XIII. Social Justice and Human Rights

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (emphasis added)

[31] See also Separate Concurring Opinion of Associate Justice Presbitero J. Velasco, Jr. in *Limkaichong v. DAR*, G.R. No. 158464, August 2, 2016.

[32] Record of the Constitutional Commission Proceedings and Debates, Vol. 3, pp. 16-21; Minutes of the Constitutional Commission dated August 7, 1986.

[33] *Association of Small Landowners in the Philippines v. Hon. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744, and 79777, July 14, 1989.

[34] *National Power Corporation v. Spouses Zabala*, G.R. No. 173520, January 30, 2013, citing *Republic v. Rural Bank of Kabacan, Inc.*, G.R. No. 185124, January 25, 2012, 664 SCRA 233, 244; *National Power Corporation v. Manubay Agro-Industrial Development Corporation*, 480 Phil. 470, 479 (2004).

[35] *National Power Corporation v. Spouses Zabala*, G.R. No. 173520, January 30, 2013.

[36] *National Power Corporation v. Bagui* G.R. No. 164964, October 17, 2008, 569 SCRA 401.

[37] Paragraph I-D of DAR Administrative Order No. 05-98.

[38] Rule 67, Sec. 6 of the Rules of Court.

[39] No. L-59603, April 29, 1987.

[40] *EPZA v. Dulay*, *id.*

[41] G.R. No. 173520, January 30, 2013.

[42] Sec. 3A. x x x

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall:

(a) With respect to the acquired land or portion thereof, not to exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (100%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

[43] G.R. No. 164964, October 17, 2008, 569 SCRA 401.

[44] G.R. No. 193023, June 29, 2011, 653 SCRA 84.

[45] G.R. No. 189127, April 25, 2012, 671 SCRA 266.

[46] G.R. No. 166553, July 30, 2009.

[47] G.R. No. 185821, June 13, 2013.

[48] G.R. No. 169903, February 29, 2012, 667 SCRA 255.

[49] G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[50] G.R. No. 171941, August 2, 2007, 529 SCRA 129.

[51] EPZA v. Dulay, No. L-59603, April 29, 1987.

[52] AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

[53] G.R. Nos. 183901 & 183931, July 9, 2014.

[54] Bicameral Conference Committee on the Disagreeing Provisions of House Bill No. 4077 and Senate Bill 2666 (CARP Extension), June 9, 2009.

[55] G.R. No. 172551, January 15, 2014.

CONCURRING OPINION

LEONEN, J.:

I concur in the result.

In the exercise of the judicial power to determine just compensation in cases where there is a taking of property, courts may consider — though it should not be strictly bound by — the factors that a statute may provide. It may also take into consideration formulas provided by an executive issuance or an administrative order pursuant to a provision of law. In doing so, courts have the power to determine whether, given the circumstances of a specific case, the methods of valuation of property taken by the state reasonably approximates fair market value for the owner. Should it arrive at a different method of valuation, the trial court — as in all cases — must show the reasonable fit of the formula it uses based on the facts established by evidence to determine the final value of just compensation.

Neither the law nor an administrative order may constrict courts from determining just compensation. The formula to be used as well as the amount awarded as fair market value equivalent to the constitutional requirement of just compensation is a present or contemporary value that cannot be fully encompassed by a single formula. Valuation, rather than being a science, is an act that can only be approximated given present conditions. Thus, the constitutional guarantee of payment of just compensation can only be fulfilled by judicial action.

We are asked to decide which among the Legislative, Executive, and Judicial branches have the final power to determine the just compensation to be paid to the landowner in agrarian cases. The principal issue is whether legislative and executive issuances setting parameters for the determination of just compensation in expropriation proceedings should be binding or mandatory on our courts.

The determination of just compensation — a concept provided for clearly in constitutional text — is a judicial function.[1]

The determination of just compensation involves the appreciation of specific facts that can only be inferred from evidence presented in a court tasked to make those determinations. Valuation requires the exercise of judicial discretion to determine the land value appropriate to replace the loss of the landowner's title. Each parcel of land taken for purposes of agrarian reform requires its own unique assessment. The factors that should be considered cannot be limited to what can be normatively prescribed. The formulas provided in statutes or in executive issuances are only recommendatory. They cannot capture the full range of options that a trial court judge may consider.

Trial courts acting as Special Agrarian Courts should not be reduced to simply affirming the actions of administrative bodies when their full discretion is required by the Constitution.

This is a Petition for Review on Certiorari brought through Rule 45 of our Rules impugning the validity of the Court of Appeals Decision dated July 19, 2007 and its Resolution dated March 4, 2008. The Court of Appeals set aside the Regional Trial Court Decision dated April 13, 2005, which adopted the appointed commissioner's land valuation. The Court of Appeals, in the Decision now brought before for our review, ordered that the case be remanded to the court of origin for proper determination of just compensation.

The facts, as understood from the records of the case, are as follows:

Cynthia Palomar (Palomar) was the owner of parcels of land with an aggregate area of about 28 hectares in Sorsogon City.[2] The Department of Agrarian Reform, pursuant to the Comprehensive Agrarian Reform Program, acquired the land.[3]

Land Bank of the Philippines' aggregate valuation of the land was set at P828,935.33.[4] Palomar rejected this finding.[5] The case was, thus, brought to the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon for a summary proceeding on the proper value of the land.[6]

After examining the records, the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon found that there was a need to re-compute the land valuation.[7] Applying the formula in Department of Agrarian Reform Administrative Order No. 5, Series of 1998, the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon pegged the aggregate value of the properties at P2,418,071.39.[8]

On April 16, 2001, Palomar sold the properties to Ramon Alfonso (Alfonso).[9]

Alfonso and the Land Bank of the Philippines (Land Bank) did not agree with the Department of Agrarian Reform Provincial Adjudication Board of Sorsogon's valuation. Alfonso filed a Verified Complaint[10] docketed as Civil Case No. 2002-7090, while Land Bank filed a Petition[11] for the determination of just compensation, docketed as Civil Case No. 2002-7073. These cases were consolidated by the trial court.[12]

Alfonso alleged in his Complaint that the valuation did not take the actual number of fruit-bearing trees; non-fruit-bearing trees; improvements; and the proximity of the properties to commercial centers, markets, roads, national highways, service facilities, commercial establishments, and government offices into full consideration.[13] Alfonso also alleged that despite the disagreement on the proper value of the properties, the Department of Agrarian Reform "already dispossessed [him], deprived him of his rightful share on [the land's] produce and [in his view, the Department of Agrarian Reform] arbitrarily awarded the property to its farmer beneficiaries." [14]

Land Bank, on the other hand, alleged that its valuation was correct, having based its computation on Section 18

of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 5, Series of 1998.[15]

The trial court appointed Cuervo Appraisers, Inc. as the commissioner to determine the just compensation and required Cuervo Appraisers to "submit [a] report within 30 days." [16]

Alfonso presented his testimony as well as that of Commissioner Amado Chua's. Cuervo Appraisers, Inc.'s appraisal report was submitted as documentary exhibit.[17]

Land Bank presented as witnesses Francisco Corcuerra, Edwin Digo, and Manuel Depalac. For the documentary exhibits, it presented Field Investigation Reports, Land Use Maps, and Market Value per Ocular Inspection of the properties.[18]

On May 13, 2005, the trial court rendered a Decision ordering Land Bank to pay Alfonso the amount of P6,090,000.00 as just compensation for the taking of the parcels of land.[19] The amount was later amended to P6,093,000.00 after discovery of some typographical errors.[20]

The trial court's Decision, in part, reads:

The Court after careful examination of the evidence presented by the Petitioner/Defendant LBP as well as the Private Respondent/Plaintiff, particularly the Report of the Commissioner, Amado Chua of the Cuervo Appraisers Inc. the location of the property, the current value of like properties, the improvements, its actual use, the social and economic benefits that the landholding can give to the community, the BIR zonal values of Real Properties in [B]arangay Bibincahan, Sorsogon City under Department Order No. 34-97 effective 30 April 1997, the Current Assessor's Schedule of Market Values of Real Properties in Sorsogon City effective year 1999 and the community facilities and utilities, it is the considered Opinion of the Court that the Provincial Adjudicator did not abuse his discretion in making the valuation assailed by the Petitioner LBP, as a matter of fact the valuation made by the said Provincial Adjudicator is still very low after taking into consideration other factors which said Provincial Adjudicator failed to consider.[21]

The trial court adopted the commissioner's determination of just compensation, "considering that said Commissioner is an expert in real property appraisal and considering further the facts and equities of the case and the appropriate law and jurisprudence." [22] According to the trial court, it did not consider Land Bank's and the Provincial Adjudicator's valuation because they are "grossly very low, confiscatory and did not take into consideration that the property is very near the commercial center of the city and subdivision in the vicinity." [23]

The commissioner's use of both the Market Data Approach, which is the measure of the supply and demand conditions of real estate in the market, and the Capitalized Income Approach, which is the method used to extract the investment or income potential of the property, was noted by the trial court.[24] In the commissioner's opinion, the average of the two approaches "reasonably represented the just compensation [of the subject properties]." [25]

Considering all the factors for the determination of just compensation enumerated in Republic Act No. 6657, the trial court ruled that the commissioner's valuation gave a more realistic appraisal of the property.[26] On the other hand, Land Bank's and the Provincial Adjudicator's valuations were unrealistically low.[27]

In August 2005, Land Bank and the Department of Agrarian Reform filed a Petition for Review[28] of the trial court's Decision with the Court of Appeals. They claimed that the just compensation fixed by the trial court was a clear violation of Republic Act No. 6657 and its implementing rules, particularly Department of Agrarian Reform Administrative Order No. 5, Series of 1998, "as well as the jurisprudential principles laid down by the Supreme Court in the case of [Land Bank of the Philippines v. Spouses Banal]." [29] They continued to claim that the court's reliance on the appraisal report of Cuervo Appraisers, Inc. was a serious error since it was a violation of

Administrative Order No. 5.[30] According to them, nothing in Section 17 of Republic Act No. 6657 provides that "capitalized income of a property can be used as basis in determining just compensation." [31]

Land Bank and the Department of Agrarian Reform further insist that this Court was explicit in stating that the "actual use and income of a property at the time of its taking by the government shall be considered as the basis in determining just compensation." [32] Thus, they claim that the use of capitalized income as a basis for valuation is a modification of the valuation factors in Republic Act No. 6657. [33] Moreover, the trial court failed to consider that the taking of private property for purposes of agrarian reform is not a traditional exercise of the power of eminent domain. Citing *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform*, [34] Land Bank pointed out that there is a "revolutionary kind of expropriation." [35]

In his Comment, Alfonso argued that "the determination of just compensation ... is an exclusive judicial function." [36]

On July 19, 2007, the Court of Appeals set aside the trial court's Decision and ordered the cases to be "remanded to the court of origin for proper determination of just compensation." [37] The Court of Appeals found it imperative to set aside the trial court's Decision for its failure to observe the procedure under Department of Agrarian Reform Administrative Order No. 5, Series of 1998, and its guidelines. [38]

Alfonso filed a Motion for Reconsideration of the Court of Appeals Decision. [39] This was denied in a Court of Appeals Resolution dated March 4, 2008. [40]

Hence, this Petition was filed.

The sole issue is whether the Court of Appeals erred in ruling that adherence to Administrative Order No. 5 in determining just compensation in agrarian reform cases is mandatory, and therefore, binding on the Regional Trial Court.

Petitioner Alfonso argues that:

It would certainly be inequitable to determine just compensation based on the guideline provided by [the Department of Agrarian Reform Administrative Order No. 5, Series of 1998] without giving merits to the trial court's due consideration to the factors enunciated by Section 17 of [Republic Act No. 6657] and several factors . . . including the documentary exhibits, testimonial evidence of all the parties . . . , the well-balanced appraisal made by the duly appointed commissioner, [and the suggested valuation of both parties.]" [41]

Petitioner Alfonso also argued that the determination of just compensation is a judicial function. [42] Related decrees, circulars, and executive or administrative orders serve merely as guiding posts in the determination of just compensation. [43] Imposing upon the court strict observance of these acts would be an encroachment on the court's judicial powers. [44]

Respondent Land Bank argued in its Comment that petitioner Alfonso raised questions of fact, which this Court cannot properly consider because this Court is not a trier of facts. Therefore, the Petition should be dismissed. [45]

Meanwhile, respondent Department of Agrarian Reform argued in their Comment that the trial court's use of the Market Data Approach was a total defiance of Section 17 and Administrative Order No. 5. [46] The trial court "is not at liberty to disregard the same." [47]

In my view, the Court of Appeals erred in ruling that the courts are mandated to adhere to the parameters set in Section 17 of Republic Act No. 6657 and in the Department of Agrarian Reform Administrative Order No. 5, Series of 1998.

I

In *Export Processing Zone Authority v. Dulay*,^[48] this Court declared a law^[49] which provided for a specific method of valuation as unconstitutional, stating clearly that:

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can rriandate that its own determination shall prevail over the court's findings. Much less can the courts be recluded from looking into the "just-ness" of the decreed compensation.^[50]

This doctrine was further reiterated in *National Power Corporation v. Spouses Baylon*:^[51]

The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government." Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof.^[52] (Emphasis supplied)

Provisions in the Bill of Rights do not simply inform Congress and the President as to the limits of their powers. They contain substantive individual and collective rights which can be invoked in a proper case against a law or an executive issuance.

The right to property is protected by several layers under the present Constitution.

The first is the due process clause. Article III, Section 1 of the Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."^[53]

The second is on the right to just compensation. Article III, Section 9 of the Constitution states that "[p]rivate property shall not be taken for public use without just compensation."^[54]

The constitutional provision relating to agrarian reform also recognizes the landowner's right to just compensation. Article XIII, Section 4 states:

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.^[55] (Emphasis supplied)

Republic Act No. 6657^[56] reiterates this right of the affected landowner to just compensation:

Section 2. Declaration of Principles and Policies. –

....

To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and

farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

The agrarian reform program is founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to the priorities and retention limits set forth in this Act, having taken into account ecological, developmental, and equity considerations, and subject to the payment of just compensation. The State shall respect the right of small landowners, and shall provide incentives for voluntary land-sharing. (Emphasis supplied)

II

Regional Trial Courts are not rubber stamps of the Executive.

I agree with Justice Carpio that reading the law in its entirety will also lead to the same conclusion as to what is constitutionally required.

Republic Act No. 6657 as amended by Republic Act No. 7881,[57] 7905,[58] 8532,[59] and 9700[60] explicitly provides under Section 57:

Section 57. Special Jurisdiction – The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act. (Emphasis supplied)

Regional Trial Courts sitting as Special Agrarian Courts have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. The jurisdiction is original. Petitions must be initiated in the Special Agrarian Court. The jurisdiction is also exclusive. No other court may exercise original jurisdiction over these cases.[61]

A statute should be read in its entirety. This provision of Republic Act No. 6657 as amended must also be read with Section 16(f) which provides that:

Section 16. For purposes of acquisition of private lands, the following procedures shall be followed:

(a)

After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof . . .

(b)

Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c)

If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government . . .

(d)

In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice . . .

(e)

Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f)

Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation. (Emphasis supplied)

The key word in the statute is "final." Regional Trial Courts acting as a Special Agrarian Court or SAC can make a binding decision regarding land value in the exercise of its judicial discretion. The Regional Trial Court is not seen merely as an appellate court for the Department of Agrarian Reform's determination of just compensation.

Section 57 of Republic Act No. 6657 must also be read with Section 50, the provision which outlines the scope of the Department of Agrarian Reform's jurisdiction over agrarian matters:

Section 50. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). (Emphasis supplied)

The law grants the Department of Agrarian Reform primary administrative jurisdiction over agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform. Agrarian disputes are defined under Section 3(d) of Republic Act No. 6657:

SECTION 3. Definitions. -

. . . .

(d) Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements.

It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

As defined, an agrarian dispute includes "any controversy relating to compensation" between a landowner to a farmer, or between the landowner to a tenant, or between a landowner to an agrarian reform beneficiary. This definition does not include any conflict on compensation between the landowner and the state.

Under the agrarian reform program, two kinds of compensation take place. The first is just compensation, which must be paid to the landowner by the state upon the taking of the land. The second is compensation that may be paid by agrarian reform beneficiaries who acquire ownership of the land through certificate of land ownership awards. Section 3 (d) of Republic Act No. 6657 only refers to the second kind of compensation. All matters relating to just compensation by the state to the landowners remains under the exclusive and original jurisdiction of the trial court acting as a Special Agrarian Court. To rule otherwise would run counter not only to the clear and unambiguous provision of Section 57, but also to the constitutional right to just compensation.[62]

In *Land Bank of the Philippines v. Court of Appeals*,^[63] this Court noted that:

It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Sec. 57 and therefore would be void. Thus, direct resort to the SAC by private respondent is valid.[64] (Emphasis supplied)

An examination of the statutory provision as well as the holding in *Land Bank of the Philippines v. Court of Appeals* leads to the conclusion that full and final discretion to determine whether compensation is just is strictly within the ambit of the trial court sitting as a Special Agrarian Court.

The Regional Trial Court makes this determination in its first instance.

There is no point in bringing the issue of just compensation from the Department of Agrarian Reform to the trial court if the latter is merely expected to perfunctorily apply fixed rules and formulas. Issues of just compensation reaching the courts from the Department of Agrarian Reform should not become mere questions of application of the law and administrative rules rather than a continuing interpretation of what the Constitution requires in every case.

III

Valuation cannot be exactly prescribed in law or in an executive issuance. It depends on the unique situation of every parcel of land to be taken for purposes of agrarian reform.

Just compensation must be determined based on the fair market value of the property at the time of the taking. Thus, in *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*:

The market value of the land taken is the just compensation to which the owner of condemned property is entitled, the market value being that sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property.[66]

This market value is often arrived at through compromise between the buyer and the seller.[67] Factors affecting market value include the "time and terms of sale, relationship of the parties involved, knowledge [and evaluation] concerning the rights to be conveyed, present and possible potential uses to which the property may be put, and

the immediate transferability of good and marketable title." [68]

Just compensation also refers to "the full and fair equivalent of the property taken from its owner by the expropriator." [69] It 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." [70] In other words, the measure of just compensation "is not the taker's gain but the owner's loss." [71]

Loss is not exclusive to physical loss of expropriated property. The property may be generating income. The income generated or may be generated must also be considered in determining just compensation. We explained in *Apo Fruits Corporation v. Land Bank of the Philippines* [72] that:

The owner's loss . . . 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; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness. [73]

Other factors that may be considered in judicial valuation of property are the "assessed value of the property," [74] the "schedule of market values [as] determined by the provincial or city appraisal committee," [75] and the "nature and character of the [property] at the time of its taking." [76]

In *Land Bank of the Philippines v. Orilla*, [77] this Court clarified that just compensation is not only about the correctness of the valuation of the property. Prompt payment is equally important, thus:

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. [78]

In *Apo Fruits*, we characterized the purpose of qualifying the word, "compensation," found in Article III, Section 9 of the Constitution:

It is not accidental that Section 9 specifies that compensation should be "just" as the safeguard is here to ensure a balance – property is not to be taken for public use at the expense of private interests; the public, through the State, must balance the injury that the taking of property causes through compensation for what is taken, value for value.

Nor is it accidental that the Bill of Rights is interpreted liberally in favor of the individual and strictly against the government. The protection of the individual is the reason for the Bill of Rights' being; to keep the exercise of the powers of government within reasonable bounds is what it seeks. [79]

Further, we explained in *Association of Small Landowners v. Hon. Secretary of Agrarian Reform* [80] that "[t]he word 'just' is used to intensify the meaning of the word 'compensation' to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, ample." [81]

Compensation cannot be just if its determination is left to the discretion of one of the parties to the expropriation proceeding. It is even more unjust if the court's discretion to determine just compensation is removed. We noted in *National Power Corporation v. Iletto* [82] that "[t]he 'just'-ness of just compensation can only be attained by

using reliable and actual data as bases in fixing the value of the condemned property [T]he determination of just compensation cannot be left to the self-serving discretion of the expropriating agency." [83]

The role of the Department of Agrarian Reform as an implementing agency in agrarian reform cases is to represent the state as the buyer of properties for distribution to farmers. The landowner is the seller. The procedure for the acquisition of properties to be distributed as part of the agrarian reform program allows the parties to negotiate on the valuation of the property. As the buyer, the Department of Agrarian Reform is expected to ensure that the government can purchase the property at the lowest possible price. It would be inequitable if the Department of Agrarian Reform, as the buyer, is allowed to dictate through its issuances the means by which the landowner's property would be valued.

The policy of the State to promote social justice is not a justification for the violation of fundamental rights. In *Apo Fruits Corporation v. Land Bank of the Philippines*, [84] we emphasized:

[S]horn of its eminent domain and social justice aspects, what the agrarian land reform program involves is the purchase by the government, through the LBP, of agricultural lands for sale and distribution to farmers. As a purchase, it involves an exchange of values – the landholdings in exchange for the LBP's payment. In determining the just compensation for this exchange, however, the measure to be borne in mind is not the taker's gain but the owner's loss since what is involved is the takeover of private property under the State's coercive power. . . . in the value-for- value exchange in an eminent domain situation, the State must ensure that the individual whose property is taken is not shortchanged and must hence carry the burden of showing that the "just compensation" requirement of the Bill of Rights is satisfied. [85] (Emphases supplied)

I agree with the trial court that:

[I]n the pursuit of social justice, it's not only the attainment of the goal of totally emancipating the farmers from their bondage but it is also necessary that in the pursuit of this objective, vigilance over the right of the landowners is equally important because social justice cannot be invoked to trample on the rights of property owners, who under our Constitution and laws, are also entitled to protection. [86]

The Department of Agrarian Reform Administrative Order No. 5, Series of 1998, acknowledges that properties have particularities that must be considered in determining just compensation. It also acknowledges the inexactness of land valuation as well as the human qualities required in its determination. Notably, its Prefatory Statement provides that just compensation:

[C]annot be an absolute amount disregarding particularities of productivity, distance to the marketplace and so on. Hence, land valuation is not an exact science but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it." [87] (Emphasis supplied)

Understandably, therefore, Section 17 of Republic Act No. 6657, which contains only a finite enumeration of variables to be considered in determining just compensation, is characterized as mere "guidance on land valuation." [88]

The law is not particularly exacting on equating just compensation with the economic value of the land. The administrative agencies that were assigned the task of evaluating the value of the land missed several important factors. For instance, Administrative Order No. 5, though more specific than Section 17 of Republic Act No. 6657, does not capture all factors necessary to comply with the constitutional mandate of just compensation.

The Department of Agrarian Reform considers the following formula in determining just compensation: [89]

$$LV = (CNI \times 60\%) + (CS \times 30\%) + (MV \times 10\%)$$

Where:

LV

=

Land Value

CNI

=

Capitalized Net Income

CS

=

Comparable Sales

MV

=

Market Value per Tax Declaration

The first component in the formula is Capitalized Net Income.[90] This refers to the difference between annual gross sales and the total cost of operations capitalized at the interest rate of 12%. This is the closest approximation of the productivity of the land.[91] The annual gross product of the land is multiplied by the average annual selling price. The cost of operation is subtracted from this amount to obtain the Net Income. Net income is divided by the interest rate to arrive at the Capitalized Net Income. In formula terms:

CNI

=

Capitalized Net Income

AGP

=

Annual Gross Product

SP

=

Selling Price

CO

=

Cost of Operation

12%

=

Interest Rate

However, Capitalized Net Income in the Department of Agrarian Reform's formula does not account for the discounted future income stream or the "net present value." This is important because when a landowner lets go of his property, he is not only letting go of income for a year, but he is also letting go of future income. It is possible that this is one major factor why landowners feel that the Department of Agrarian Reform or Land Bank assessment of just compensation is severely undervalued.

The second component is Comparable Sales.[92] This component examines prices of sales transactions of other parcels of land within the same barangay that have the same land use and topography. The Department of Agrarian Reform guidelines recommend the average of at least three comparable sales transactions

The problem with this is that they cannot fully account for the fact that prices per unit of land fluctuate with the size of the total parcel.[93] The Department of Agrarian Reform also did not give guidelines stating that similar land transactions should be alike in population density as well as the accessibility of the property in terms of road networks and commercial centers.[94] The requirement that it should be from the same barangay is less important than land use, population density, and accessibility factors.[95] A more comparable land transaction might be situated in a different province, which would be a better basis than a land transaction in the same barangay where the property has different intrinsic and extrinsic land conditions. This is a noticeable gap in the formula considering that land size, population density, and accessibility are highly influential factors in price-setting.

The Department of Agrarian Reform's issuance merely provides for sub-factors or substitutes in the event of insufficient data for comparable sales: first, the acquisition cost of the property; and second, the market value based on mortgage.

The inclusion of acquisition cost in the computation is in keeping with Section 17 of Republic Act No. 6657. On the other hand, market value based on mortgage refers to the appraised value in a mortgage contract if the property is mortgaged under certain conditions. Market value based on mortgage is used only to a limited extent.

Despite the perception that the Department of Agrarian Reform's rules and regulations try to capture the determinants enumerated under Republic Act No. 6657, most of the critical land attributes including productivity, acquisition cost, location, and accessibility factors are only indirectly corporated.[96]

Moreover, the assigned weights to the factors included in the Department of Agrarian Reform formula are static. Understandably, these are thought of as "control mechanisms to prevent manipulation." [97] However, there is still room for manipulation in the formula itself. For instance, the administrative agency is still given the choice of what land transactions to include in comparable sales.

We noted in *Export Processing Zone Authority v. Dulay*[98] that:

[I]n 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 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.[99]

Market value is not fully determined in the Department of Agrarian Reform's formula.

For agricultural land valuation, many other factors may be considered.[100]

For instance, land attributes are important. In some areas, smaller parcels of land may be more costly than larger parcels. Land value per unit of land may decrease as the area of the total land area increases. Topography also matters. Flatlands for specific crops may be more valuable than those that are sloping or are located in higher terrain. Soil types affect price given the kinds of crops planted in the land. The improvements already existing in

the land or surrounding it should also be considered. There can already be access to infrastructure like farm to market roads as well as irrigation. The alternative uses of the property other than for agriculture should also be considered.

A study of agricultural land transactions in the 1980s in Regions IV and IX showed the most significant factors affecting land values: topography, land size, value of improvements, population density, influence of agrarian reform, gross farm income, personal income, and locational/accessibility factors.[101]

Particularities relating to these factors cannot be addressed using only fixed parameters and formulas. The variables that affect the fair market value of a specific property can only be determined on a case-to-case basis. Each property varies in particularities that may or may not affect its value.

We cannot declare that the variables enumerated in the law are already exhaustive. It is not beyond imagination that other variables and variable relationships exist, which, due to the limited information about the particular circumstances of each case, remain undiscovered and unconsidered by the Department of Agrarian Reform. Both the law and the Department of Agrarian Reform, with their consistent revisions of formulations for valuation of land to be expropriated for agrarian reform, attest to this.

Only by considering all relevant factors can just compensation be most closely approximated, and therefore, the fundamental rights of landowners be upheld. Proper valuation of properties is a result of a complex interaction of variables, which may not be encompassed in a single formula. No single formula guarantees a fair property valuation. However, this does not mean that valuation or just compensation cannot be determined.

This is precisely why the final determination is to be done by a court of law. The judge receives a report from commissioners that were appointed following the procedure outlined in the Rules of Court.[102] The commissioners deliberate on the required valuation given the peculiarities of the property in question.

Hence, the trial court cannot be said to have erred when, in determining the just compensation for the subject properties, it adopted an approach different from what was laid out in Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 05, Series of 1998. According to the trial court, its valuation was based on the evidence submitted by both petitioner Alfonso and respondents Land Bank and Department of Agrarian Reform, the report of the appointed commissioner, the location of the property, the current value of like properties, the improvements, its actual use, the social and economic benefits of the land to the community, the Bureau of Internal Revenue zonal values, the assessor's schedule of market values, and community facilities and utilities in the area.

The trial court's adoption of the average of the Market Data Approach and Capitalized Income Approach in computing the just compensation for the subject properties was an exercise of discretion necessary in the performance of its judicial function.

Having considered the indicators available and deemed as relevant, the trial court did not arbitrarily arrive at a valuation. What the court did was to exercise its duty to determine just compensation in accordance with the available data. It cannot, therefore, be set aside for not adhering to the Department of Agrarian Reform's fixed formula without impairing judicial functions.

Moreover, we have to recognize that the administrative determination of land value will never be perfected, and not all landowners will settle for the administratively determined offer. Due to the particularities of each case, disagreement as to the valuation of land between the landowner and the expropriator will always exist.

The judicial determination of just compensation is there to break bargaining deadlocks between buyer and seller

when these administrative formulations cannot be modified fast enough to accommodate the exigencies of the situation. Judicial determination will provide more flexibility in order to achieve the ideal where government, as buyer, will pay without coercion, and the landowner, as seller, will accept without compulsion.

Interpreting Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 5 as mandate to the courts is tantamount to underrating the effect of each property's peculiarities. To sanction disregard of these particularities endangers the right of landowners to just compensation. It is even inconsistent with the Prefatory Statement of Administrative Order No. 5, which emphasizes the role of these particularities in the proper determination of just compensation.[103]

IV

At present, the judiciary's role as guardian of and final arbiter over transgressions of fundamental rights remains. The judiciary cannot effectively exercise such a role if its powers with respect to the determination of just compensation is restricted by laws and issuances dictating how just compensation should be determined.

We must, therefore, abandon our rulings in *Land Bank of the Philippines v. Spouses. Banal*[104] and *Land Bank of the Philippines v. Celada*[105] that executive and legislative issuances providing for the proper determination of just compensation must be adhered to by the courts. Mandating strict adherence to these executive and legislative issuances is not only tantamount to an unwarranted abdication of judicial authority, it also endangers rights against undue deprivation of property and to just compensation.

The policies adhered to by the executive branch may also change with every election period. It would be unwise to mandate that the courts follow a single formula for determining just compensation considering that the current formula of the Department of Agrarian Reform can just as easily be discontinued by another administration.

While this case should be remanded to the Special Agrarian Court for the determination of just compensation, the court should be allowed to deviate from the Department of Agrarian Reform's formulas if it finds a different method of valuation based on the evidence presented.

Accordingly, I vote to remand Civil Case No. 2002-7073 and Civil Case No. 2002-7090 to the Special Agrarian Court for the determination of just compensation.

(SGD.) MARIVIC M.V.F. LEONEN
Associate Justice

[1] See for example *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc] and *Land Bank of the Philippines v. Hon. Natividad*, 497 Phil. 738, 746 (2005) [Per J. Tinga, Second Division].

[2] *Rollo*, p. 25.

[3] *Id.*

[4] *Id.* at 55.

[5] *Id.* at 25.

[6] *Id.* at 59.

[7] *Id.* at 37.

[8] Id. at 38 and 50. The total is arrived at by adding P2,314,115.73 and P103,955.66.

[9] Id. at 59.

[10] Id. at 39-42.

[11] Id. at 54-57.

[12] Id. at 60.

[13] Id. at 40.

[14] Id.

[15] Id. at 56.

[16] Id. at 60.

[17] Id.

[18] Id.

[19] Id. at 65-66.

[20] Id. at 11.

[21] Id. at 61.

[22] Id.

[23] Id.

[24] Id. at 61 and 64.

[25] Id. at 64.

[26] Id. at 65.

[27] Id.

[28] Id. at 67-97.

[29] Id. at 80-81.

[30] Id. at 81.

[31] Id. at 86.

[32] Id. at 86-87.

[33] Id. at 87.

[34] Association of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform, 256 Phil. 777 (1989) (Per J. Cruz, En Banc).

[35] Id. at 819.

[36] Rollo, p. 105.

[37] Id. at 31.

[38] Id.

[39] Id. at 34.

[40] Id. at 35.

[41] Id. at 15.

[42] Id. at 17.

[43] Id.

[44] Id.

[45] Id. at 136-139.

[46] Id. at 156.

[47] Id.

[48] *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc].

[49] Presidential Decree No. 1533 (1978), Section 1. In determining just compensation for private property acquired through eminent domain proceedings, the compensation to be paid shall not exceed the value declared by the owner or administrator or anyone having legal interest in the property or determined by the assessor, pursuant to the Real Property Tax Code, whichever value is lower, prior to the recommendation or decision of the appropriate Government office to acquire the property.

[50] Id. at 326.

[51] 702 Phil. 491 (2013) [Per J. Del Castillo, Second Division].

[52] Id. at 500.

[53] CONST., art. III, sec. 1.

[54] CONST., art. III, sec. 9.

[55] CONST., art. XIII, sec. 4.

[56] Comprehensive Agrarian Reform Law (1988).

[57] An Act Amending Certain Provisions of Republic Act No. 6657 (1995).

[58] An Act to Strengthen the Implementation of the Comprehensive Agrarian Reform Program, and for Other Purposes (1995).

[59] An Act Strengthening Further the Comprehensive Agrarian Reform Program (CARP), By Providing Augmentation Fund Therefor, Amending for the Purpose Section 63 of Republic Act No. 6657, Otherwise Known as "The CARP Law of 1988" (1998).

[60] An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise, Known as the Comprehensive Agrarian Reform Program Law of 1988, As Amended, and Appropriating Funds Therefor (2009).

[61] See *Ong v. Parel*, 240 Phil. 734, 742-743 (1987) [Per J. Gutierrez, Jr., Third Division] and the Separate

Concurring Opinion of Leonen in *Limkaichong v. Land Bank of the Philippines*, G.R. No. 158464, August 2, 2016 <
http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464_leonen.pdf > [Per J. Bersamin, En Banc].

[62] See Separate Concurring Opinion of J. Leonen in *Limkaichong v. Land Bank of the Philippines*, G.R. No. 158464, August 2, 2016 <
http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464_leonen.pdf > [Per J. Bersamin, En Banc].

[63] *Land Bank of the Philippines v. Court of Appeals*, 376 Phil. 252 (1999) [Per J. Bellosillo, Second Division]; Also cited in *Land Bank of the Philippines v. Montalvan*, 689 Phil. 641 (2012) <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/158464_leonen.pdf> [Per J. Sereno, Second Division].

[64] *Id.* at 262-263.

[65] *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

[66] *Id.* at 818 citing *J.M. Tuason & Co. v. Land Tenure Administration*, 142 Phil. 393 (1970) [Per J. Fernando, Second Division].

[67] 1 STUDIES ON AGRARIAN REFORM ISSUES, Institute of Agrarian Studies, College of Economics and Management, University of the Philippines-Los Baños, Laguna citing Found 14 (1974).

[68] 1 STUDIES ON AGRARIAN REFORM ISSUES, Institute of Agrarian Studies, College of Economics and Management, University of the Philippines-Los Baños, Laguna citing Ring (1970).

[69] *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 812 (1989) [Per J. Cruz, En Banc] citing *Manila Railroad Co. v. Velasquez*, 32 Phil. 286 (1915) [Per J. Trent, En Banc]. See also *National Power Corporation v. Iletto*, 690 Phil. 453 (2012) [Per J. Brion, Second Division].

[70] *Export Processing Zone Authority v. Dulay*, 233 Phil. 313, 319 (1987) [Per J. Gutierrez, Jr., En Banc] citing *Municipality of Daet v. Court of Appeals*, 182 Phil. 81, 96 (1979) [Per J. Guerrero, First Division].

[71] *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 812 (1989) [Per J. Cruz, En Banc] citing *Province of Tayabas v. Perez*, 66 Phil. 467 (1938) (Per J. Diaz, En Banc); *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, 142 Phil. 393 (1970) [Per J. Fernando, Second Division]; *Municipality of Daet v. Court of Appeals*, 182 Phil. 81 (1979) [Per J. Guerrero, First Division]; *Manotok v. National Housing Authority*, 234 Phil. 91 (1987) [Per J. Gutierrez, Jr., En Banc]. See also *National Power Corporation v. Iletto*, 690 Phil. 453 (2012) [Per J. Brion, Second Division].

[72] *Apo Fruits Corporation v. Land Bank of the Philippines*, 647 Phil. 251 (2010) [Per J. Brion, En Banc].

[73] *Id.* at 276-277.

[74] *National Power Corporation v. Iletto*, 690 Phil. 453, 477 (2012) [Per J. Brion, En Banc].

[75] *Id.*

[76] *Id.*

[77] *Land Bank of the Philippines v. Orilla*, 578 Phil. 663 (2008) [Per J. Nachura, Third Division].

[78] Id. at 677.

[79] Apo Fruits Corporation v. Land Bank of the Philippines, 647 Phil. 251, 269-270 (2010) [Per J. Brion, En Banc].

[80] 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

[81] Id. at 812 citing City of Manila v. Estrada, 25 Phil. 208 (1913) [Per J. Trent, First Division].

[82] 690 Phil. 453 (2012) [Per J. Brion, En Banc].

[83] Id. at 475-476.

[84] 647 Phil. 251(2010) [Per J. Brion, En Banc].

[85] Id. at 275-276.

[86] Rollo, p. 65.

[87] DAR Adm. O. No. 5 (1998).

[88] DAR Adm. O. No. 5, sec. I(E).

[89] DAR Adm. O. No. 5, sec. II(A). This section provides for contingency formulae in case one of the factors in the equation is unavailable.

[90] DAR Adm. O. No. 5, sec. 11(B).

[91] D.G. ROSSITER, ECONOMIC LAND EVALUATION: WHY AND HOW 7 (1995) <
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.3.384&rep=rep1&type=pdf> > (visited November 15, 2016).

[92] DAR Adm. O. No. 5, sec. II(C).

[93] Agricultural Land Values, STUDIES ON AGRARIAN REFORM ISSUES 81 (1991).

[94] Id. at 92-93.

[95] Id. at 81.

[96] Id. at 88-89.

[97] Id. at 88.

[98] Export Processing Zone Authority v. Dulay, 233 Phil. 313 (1987) [Per J. Gutierrez, Jr., En Banc].

[99] Id. at 319 citing Garcia v. Court of Appeals, 190 Phil. 518 (1981) [Per J. Fernandez, First Division].

[100] Agricultural Land Values, STUDIES ON AGRARIAN REFORM ISSUES 19-21 (1991).

[101] Id. at 51-55.

[102] REVISED RULES OF CIVIL PROCEDURE, Rule 67.

[103] DAR Adm. O. No. 5 (1998), sec. I(D).

[104] 478 Phil. 701 (2004) [Per J. Sandoval-Gutierrez, Third Division].

[105] 515 Phil. 467 (2006) [Per J. Ynares-Santiago, First Division].

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