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EN BANC

[G.R. No. 164195. April 5, 2011]

APO FRUITS CORPORATION and HIJO PLANTATION, INC., *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SUPREME COURT; RULES GOVERNING SECOND MOTION FOR RECONSIDERATION; DISCUSSED.— The basic rule governing 2nd motions for reconsideration is Section 2, Rule 52 (which applies to original actions in the Supreme Court pursuant to Section 2, Rule 56) of the Rules of Court. This Rule expressly provides: Sec. 2. Second Motion for Reconsideration. No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. The absolute terms of this Rule is tempered by Section 3, Rule 15 of the Internal Rules of the Supreme Court that provides: *Sec. 3. Second Motion for Reconsideration.* – The Court **shall not entertain a second motion for reconsideration** and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* **upon *a vote of at least two-thirds of its actual membership***. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. **A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.** Separately from these rules is Article VIII, Section 4 (2) of the 1987 Constitution which governs the decision-making by the Court *en banc* of any matter before it, including a motion for the reconsideration of a previous decision. x x x Thus, while the Constitution grants the Supreme Court the power to promulgate rules concerning the practice and procedure in all courts (and allows the Court to regulate the consideration of 2nd motions for reconsideration, including the vote that the Court shall require), these procedural rules must be consistent with the standards set by the Constitution

itself. Among these constitutional standards is the above quoted Section 4 which applies to "*all other cases which under the Rules of Court are required to be heard en banc*," and **does not make any distinction as to the type of cases or rulings it applies to**, *i.e.*, whether these cases are originally filed with the Supreme Court, or cases on appeal, or rulings *on the merits* of motions before the Court. Thus, rulings on the merits by the Court *en banc* on 2nd motions for reconsideration, if allowed by the Court to be entertained under its Internal Rules, must be decided with the concurrence of a majority of the Members who actually took part in the deliberations.

2. ID.; ID.; ID.; ID.; COMPLIANCE WITH THE RULES IS DEMONSTRATED THROUGH THE PARTICIPATION OF THE 12 MEMBERS OF THE COURT INSTEAD OF REGISTERING AN EXPRESS AND SEPARATE VOTING.— When the Court ruled on October 12, 2010 on the petitioners' motion for reconsideration by a vote of 12 Members (8 for the grant of the motion and 4 against), the Court ruled on the merits of the petitioners' motion. This ruling complied in all respects with the Constitution requirement for the votes that should support a ruling of the Court. Admittedly, the Court did not make any *express* prior ruling accepting or disallowing the petitioners' motion as required by Section 3, Rule 15 of the Internal Rules. The Court, however, did not thereby contravene its own rule on 2nd motions for reconsideration; *since 12 Members of the Court opted to entertain the motion by voting for and against it, the Court simply did not register an express vote, but instead demonstrated its compliance with the rule through the participation by no less than 12 of its 15 Members.* Viewed in this light, the Court cannot even be claimed to have suspended the effectiveness of its rule on 2nd motions for reconsideration; it simply complied with this rule *in a form other than by express and separate voting.*

3. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; RIGHT THERETO IS A MATTER OF PUBLIC INTEREST.— The present case goes beyond the private interests involved; it involves a matter of public interest – the proper application of a basic

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constitutionally-guaranteed right, namely, the right of a landowner to receive just compensation when the government exercises the power of eminent domain in its agrarian reform program. Section 9, Article III of the 1987 Constitution expresses the constitutional rule on eminent domain – "*Private property shall not be taken for public use without just compensation*." While confirming the State's inherent power and right to take private property for public use, this provision at the same time lays down the limitation in the exercise of this power. When it takes property pursuant to its inherent right and power, the State has the corresponding obligation to pay the owner just compensation for the property taken. For compensation to be considered "just," it must not only be the full and fair equivalent of the property taken; it must also be paid to the landowner without delay. x x x This case involves the government's agrarian reform program whose success largely depends on the willingness of the participants, both the farmers-beneficiaries and the landowners, to cooperate with the government. Inevitably, if the government falters or is seen to be faltering through lack of good faith in implementing the needed reforms, including any hesitation in paying the landowners just compensation, this reform program and its objectives would suffer major setbacks. That the government's agrarian reform program and its success are matters of public interest, to our mind, cannot be disputed as the program seeks to remedy long existing and widespread social justice and economic problems.

4. ID.; ID.; ID.; ID.; RTC'S DETERMINATION OF JUST COMPENSATION IS UPHELD BY THE COURT AS IT IS FULLY IN ACCORD WITH SECTION 17 OF R.A. 6657.— [T]his Court has already determined, *in a final and executed judgment*, that the RTC's valuation of the petitioners' properties is the correct one. To recall, the LBP initially fixed the value of Apo Fruits Corporation's (*AFC*) properties at ₱165,484.47 per hectare ***or ₱16.00 per square meter (sqm)***, while it valued Hijo Plantation Inc.'s (*HPI*) properties at ₱201,929.97 per hectare, or approximately ***₱20.00/sqm.*** In contrast, the Regional Trial Court fixed the valuation of the petitioners' properties at ***₱103.33/sqm., or more than five times the initial valuation fixed by the LBP.*** After reviewing the records, this Court affirmed the RTC's valuation in its February 6, 2007 decision,

noting that it was based on the following evidence: (a) the Commissioners' reports, (b) the Cuervo appraisers' report, (c) the schedule of market values of the City of Tagum per its 1993 and 1994 Revision of Assessment and Property Classification, (d) the value of the permanent improvements found on the expropriated properties, and (e) the comparative sales of adjacent lands from early 1995 to early 1997. The Court observed that the RTC valuation also took into consideration the land's nature as irrigated land, its location along the highway, market value, assessor's value, and the volume and value of its produce. This valuation is fully in accordance with Section 17 of RA 6657.

5. ID.; ID.; ID.; ID.; COMPENSATION, TO BE JUST MUST BE MADE IN FULL WITHOUT DELAY; 12% INTEREST AWARDED IN VIEW OF DELAYED PAYMENT.— Apart from the requirement that compensation for expropriated land must be fair and reasonable, **compensation, to be "just," must also be made without delay.** In simpler terms, for the government's payment to be considered just compensation, the landowner must receive it **in full without delay**. In the present case, **it is undisputed that the government took the petitioners' lands on December 9, 1996; the petitioners only received full payment of the just compensation due on May 9, 2008.** This circumstance, by itself, already confirms the unconscionable delay in the payment of just compensation. x x x **Thus, for twelve long years, the amount of ₱971,409,831.68 was withheld from the landowners.** An added dimension to this delayed payment is the impact of the delay. One impact – as pointed out above – is **the loss of income the landowners suffered**. Another impact that the LBP now glosses over is **the income that the LBP earned from the sizeable sum it withheld** for twelve long years. From this perspective, the unaccounted-for LBP income is **unjust enrichment** in its favor and an inequitable loss to the landowners. This situation was what the Court essentially addressed when it awarded the petitioners 12% interest.

6. ID.; ID.; ID.; ID.; TWO FACTORS THAT JUSTIFY THE ATTRIBUTION OF THE DELAY IN THE PAYMENT OF JUST COMPENSATION TO THE GOVERNMENT.— Two significant factors justify the attribution of the delay to the

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government. The *first* is the DAR's gross undervaluation of the petitioners' properties – the government move that started the cycle of court actions. The *second* factor to consider is government inaction. Records show that after the petitioners received the LBP's initial valuation of their lands, they filed petitions with the DARAB, the responsible agency of the DAR, for the proper determination of just compensation. Instead of dismissing these petitions outright for lack of jurisdiction, the DARAB sat on these cases for three years. It was only after the petitioners resorted to judicial intervention, filing their petitions for the determination of just compensation with the RTC, that the petitioners' case advanced. The RTC interpreted the DARAB's inaction as reluctance of the government to pay the petitioners just compensation, a view this Court affirmed in its October 12, 2010 Resolution.

7. ID.; ID.; ID.; ID.; THE CONSTITUTION REQUIRES PAYMENT OF JUST COMPENSATION; PRINCIPLE APPLIES EVEN IF THE LANDOWNERS ARE CORPORATIONS.— Section 4, Article XIII of the 1987 Constitution x x x expressly provides that the taking of land for use in the government's agrarian reform program is **conditioned on the payment of just compensation**. Nothing in the wording of this provision even remotely suggests that the just compensation required from the taking of land for the agrarian reform program should be treated any differently from the just compensation required in any other case of expropriation. As explained by Commissioner Roberto R. Concepcion during the deliberations of the 1986 Constitutional Commission: [T]he 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. In fact, while a proposal was made during the deliberations of the 1986 Constitutional Commission to give a lower market price per square meter for larger tracts of land, the Commission never intended to give agricultural landowners less than just compensation in the expropriation of property for agrarian reform purposes. To our mind, nothing is inherently contradictory in the public purpose of land reform and the right of landowners to receive just compensation for

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the expropriation by the State of their properties. That the petitioners are corporations that used to own large tracts of land should not be taken against them.

8. ID.; ID.; ID.; ID.; THE GOVERNMENT IS LIABLE TO PAY INTEREST TO THE LANDOWNERS FOR ITS DELAY IN PAYING JUST COMPENSATION NOT THE FARMERS-BENEFICIARIES.— Nor do we find any merit in the LBP's assertion that the large amount of just compensation that we awarded the petitioners, together with the amount of interest due, would necessarily result in making the farmers- beneficiaries endure another form of bondage – the payment of an exorbitant amount for the rest of their lives. As the petitioners correctly pointed out, the government's liability for the payment of interest to the landowner for any delay attributable to it in paying just compensation for the expropriated property is entirely separate and distinct from the farmers-beneficiaries' obligations to pay regular amortizations for the properties transferred to them. Republic Act No. 6657 (The Comprehensive Agrarian Reform Law, or CARL) provides for the specific source of funding to be used by the government in implementing the agrarian reform program; this funding does not come directly from the payments made by the farmers-beneficiaries. More to the point, under the CARL, the amount the farmers-beneficiaries must pay the LBP for their land is, for the most part, subsidized by the State and is not equivalent to the actual cost of the land that the Department of Agrarian Reform paid to the original landowners.

SERENO*, J., concurring opinion*:

1. REMEDIAL LAW; COURTS; SUPREME COURT; RULES GOVERNING SECOND MOTION FOR RECONSIDERATION; THE PARTICIPATION OF THE MAJORITY OF THE MEMBERS OF THE COURT IN THE DELIBERATION SATISFIES THE CONSTITUTIONAL REQUIREMENT TO SUPPORT A RULING AND OVERRIDES ANY CONCERN ABOUT THE LACK OF THE SUPER-MAJORITY VOTE REQUIRED BY THE COURT'S INTERNAL RULES.— I agree with the wise formulation of Justice Arturo D. Brion that the requirement of the 1987 Constitution, specifically in Article VIII, Section 4 (2) has been met by the fact that a majority of the Court took part in the deliberation on 12 October 2010; and therefore, that the

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voting that took place thereon was valid, and more important, that the satisfaction of this constitutional requirement overrides any concern about the lack of a conscious, express super-majority vote by the Court to entertain a second motion for reconsideration.

2. ID.; ID.; ID.; ID.; SELECTIVE INVOCATION OF THE INTERNAL RULES ON THE VOTING REQUIREMENT TO RESOLVE SECOND MOTIONS FOR RECONSIDERATION IS UNHEALTHY AND WILL UNDERMINE THE MORAL AND LEGAL FORCE OF THE COURT'S DECISION.— What is unhealthy from what I see is that the objection rising from a lack of a super-majority vote is raised in one case, but not raised in others by the same objecting member — Justice Roberto A. Abad. If Section 3, Rule 15 of the Internal Rules was such an important bar that must be met in any motion for reconsideration, then it should have been raised by him as well in the still unpromulgated ruling in the *Dinagat* case. The Court has realized the difficulty that the said rule introduces. It should not be further invoked by any of its Members in a way that introduces further instability and fuels the public perception of a flip-flopping Court. With more reason, the rule should not have been invoked only in this case, but not in the two other highly controversial flip-flopping cases, by any of the Court's Members who strongly moved for the reconsideration of the original decision in *League of Cities* and for the recall of the entry of final judgment in *Dinagat*. Technically, Section 3, Rule 15 of the Internal Rules of Court, does not apply to the reconsideration of the original Decision in *League of Cities*. Had there been a consistent intent to protect the immutability of Supreme Court decisions, however, a similar rule in the 1997 Rules of Civil Procedure could have been invoked, namely, Section 2, Rule 56, in relation to Section 2, Rule 52, prohibiting the filing of second motions for reconsideration. x x x What has been at stake in the flip-flopping cases and now in the puzzling invocation of the Internal Rules of the Court in this case is no less than the risk that the moral force of Supreme Court judgments will be undermined. The Supreme Court's word is final because all the coercive forces of the state apparatus will ensure its execution, by operation of the Constitution. The Members of the Court must never lose sight of the fact that it owes the authority of its

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decisions only to the Constitution and, hence, to the people themselves. When the moral force of the decisions of the Supreme Court is lost because the people do not see in them the application of procedural rules in an even manner, then it is conceivable that even the automatic legal force given to its decisions may likewise be lost. That would be a most sad period in its history.

3. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; 6% RATE OF INTEREST, AND NOT 12%, IS PROPER FOR THE DELAYED PAYMENT OF JUST COMPENSATION.— On the substantial ruling in this case, while I have full sympathy for the financial condition of the public respondent and the National Government, Justice Brion's assessment of the respective legal rights and obligations of the parties is correct. In an interim voting that took place in this case, I had wanted, and indeed voted for, the imposition of a mere 6% interest and not a 12% interest on the principal amount due petitioners. Thus, I do not fully agree with the rate of interest imposed by the Decision. It is also correct, however, that a strong signal must be sent that the Government cannot willfully refuse to promptly pay a just obligation. The problem that remains unaddressed, though, is who should bear responsibility for the unjust delay in payment that happened here. The *ponencia* has already named the various government actors whose prompt resolution of petitioners' claim was required, and who failed to discharge such duty. Unless these actors are made operationally liable for the unjust delay, it will be the taxpayer who will ultimately bear the adverse financial consequences of our findings and directive in this case, as usually happens in most public accountability cases. Our public officers responsible for guarding the coffers of our government from irresponsible acts of its officers must do more than just accept the immediate effects of the *fallo* of the Decision in this case.

ABAD, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; DELAY IN THE PAYMENT THEREOF COULD NOT BE ATTRIBUTED TO THE LAND BANK OF THE PHILIPPINES.— The *ponencia* blames Land Bank for the twelve-year delay in the payment of

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compensation to AFC-HPI, claiming that had the government not grossly undervalued the expropriated properties and thus betrayed lack of good faith, it could have prevented the lengthy legal proceedings in the case. But the fact that Land Bank did not readily agree with AFC-HPI regarding the value of the lands should not mean that Land Bank acted in bad faith or deliberately delayed payment of compensation. The records show that Land Bank valued the lands, using the compensation formula that Section 17 of Republic Act 6657 and the DAR's implementing rules provide. Can that be malicious or in bad faith? Granted that Land Bank appealed the RTC decision, which awarded a compensation of ₱1,383,179,000.00 to AFC-HPI (more than double what the CARL formula provided) plus 12% interest per annum until the finality of its decision, such appeal can hardly be regarded as dilatory and baseless. Indeed, although the Court affirmed the principal amount that the RTC fixed, it ordered deleted the grossly excessive interest of 12% counted from the date of taking or a period of about 12 years. Even if the Court changed its mind on a third motion for reconsideration and after the finality of its judgment, it cannot be said, therefore, that Land Bank's appeal was malicious or in bad faith. x x x Here, there is no evidence to prove that Land Bank was in delay. On the contrary, pertinent amounts were deposited, specifically ₱26,409,549.86 for AFC and ₱45,481,706.76 for HPI, within fourteen months after AFC-HPI filed the complaint for just compensation before the RTC. Notably, Land Bank made the deposits prior to AFC-HPI's titles being cancelled. The bank afterwards made additional payments based on upgraded values, swelling its total payments to ₱411,769,168.32 even before the RTC case was filed. The *ponencia* points out that Land Bank paid only a trifling of the actual value of properties as later determined by the Court. But I do not think that ₱411,769,168.32, a third of the RTC award and paid even before the suit was filed, can be regarded as trifling. AFC-HPI did not linger long to withdraw the deposits, negating any notion that it suffered long with nothing to assuage its feelings about the compensation. Likewise, Land Bank could not have foreseen that it would take twelve years for the case to be resolved. AFC-HPI themselves erroneously filed their complaints with the DARAB instead of directly seeking recourse with the courts. The *ponencia* is requiring Land Bank to pay for that error and the delays rooted in it. To iterate, Land Bank

had every right to defend an initial position dictated by law and not risk sending bank officers to jail for giving undue benefit to others in violation of the Anti-graft and Corrupt Practices Act. Land Bank should not be penalized for taking such cautious position with respect to money belonging to the government. The Court should not, by its present ruling, encourage government agencies to pay more than what the law or the rules prescribe unless directed differently by superior orders.

2. REMEDIAL LAW; COURTS; SUPREME COURT; RULES GOVERNING SECOND MOTION FOR RECONSIDERATION; TAKING OF *"A VOTE"* IS REQUIRED; MERE ASSUMPTION OF CONCURRENCE IS NOT EQUIVALENT TO TAKING OF A VOTE.— [E]ven if AFC-HPI's motion can be treated as another **second motion for reconsideration**, which it is not, the Court *En Banc* violated Section 3, Rule 15, of its Internal Rules which provides that it cannot entertain a second motion for reconsideration except upon a vote of two-thirds of its actual membership in the highest interest of justice. x x x Justice Brion of course points out that since twelve Justices took part in acting on AFC-HPI's motion for reconsideration, it may be assumed that such number agreed to entertain the same. But this assumption will not do since the rules require the taking of "**a vote**" on whether to entertain such a motion or not. An assumption of concurrence is not the equivalent of the taking of a vote. Moreover, in truth, those who voted to approve the October 12, 2010 resolution simply forgot to vote before hand on whether or not to entertain AFC-HPI's motion for reconsideration.

3. ID.; ID.; ID.; ID.; OMISSION TO TAKE THE REQUIRED TWO-THIRDS VOTE OF THE *EN BANC*'S ACTUAL MEMBERSHIP IS FATAL.— [I]t is inevitable that the procedure for entertaining second motions for reconsideration should follow the two-step procedure observed when a Division wants to refer a case to the *En Banc* for its consideration. This requires the *En Banc* to first accept the referral before acting to decide the referred case. This was not done in the present case. The Minutes do not show that the *En Banc* voted by at least two-thirds of its actual membership to entertain the motion for reconsideration before approving the draft

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resolution for release. The omission is fatal to the resolution because the requirement of a two-thirds vote of the *En Banc*'s actual membership is a specially difficult bar that the Justices precisely adopted unanimously to solve the problem of endless motions for reconsideration that undermine the stability of the judgments of courts. If the *En Banc* ignores this rule to accommodate an award of ₱1.331 billion in interest to AFC-HPI, the public who will pay for it would probably not be able to understand the *En Banc*'s reason for making such an exception.

APPEARANCES OF COUNSEL

Herrera Teehankee Faylona Cabrera and *Sanidad & Villanueva Law Offices* for petitioners.
LBP Legal Services Group for respondent.

R E S O L U T I O N

BRION, *J.*:

We resolve Land Bank of the Philippines' (*LBP's*) **2nd Motion for Reconsideration** of December 14, 2010 that addresses our Resolutions of October 12, 2010 and November 23, 2010. This motion prays as well for the holding of oral arguments. We likewise resolve the Office of the Solicitor General's (*OSG*) Motion for Leave to Intervene and to Admit Motion for Reconsideration-in-Intervention dated February 15, 2011 in behalf of the Republic of the Philippines (*Republic*).

The Motion for Reconsideration

The LBP submits the following arguments in support of its 2nd motion for reconsideration:

a) the test of "transcendental importance" does not apply to the present case;

b) the standard of "transcendental importance" cannot justify the negation of the doctrine of immutability of a final judgment and the abrogation of a vested right in favor of the Government that respondent LBP represents;

c) the Honorable Court ignored the deliberations of the 1986 Constitutional Commission showing that just compensation for expropriated agricultural property must be viewed in the context of social justice; and

d) granting *arguendo* that the interest payment has factual and legal bases, only six (6%) percent interest per annum may be validly imposed.

We have more than amply addressed argument (d) above in our October 12, 2010 Resolution, and we see no point in further discussing it. Without in any way detracting from the overriding effect of our main and primary ruling that the present 2nd motion for reconsideration is a prohibited motion that the Court can no longer entertain, and if only to emphatically signal an unequivocal *finis* to this case, we examine for the last and final time the LBP's other arguments.

In the course of the Court's deliberations, Mr. Justice Roberto A. Abad questioned the application of Section 3, Rule 15 of the Internal Rules of the Supreme Court to the present 2nd motion for reconsideration. He posited that instead of voting immediately on the present 2nd motion for reconsideration, the Court should instead first consider the validity of our October 12, 2010 Resolution; he claimed that this Resolution is null and void because the Court violated the above-cited provision of the Internal Rules when it did not first vote on whether the Resolution's underlying motion (itself a 3rd motion for reconsideration) should be entertained before voting on the motion's merits. We shall lay to rest Mr. Justice Abad's observation before dwelling on the merits of the present 2nd motion for reconsideration.

Our Ruling

We find no merit in the LBP's second motion for reconsideration, and reject as well the Mr. Justice Abad's observation on how to approach the consideration of the present motion.

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Mr. Justice Abad's Observations/Objections; The Rules on 2nd Motions for Reconsideration.

Mr. Justice Abad's observation apparently stemmed from the peculiar history of the present case.

a. A recap of the history of the case.

This case was originally handled by the Third Division of this Court. In its original Decision of February 6, 2007, the Division affirmed the RTC's decision setting the just compensation to be paid and fixing the interest due on the balance of the compensation due at 12% per annum. In its Resolution of December 19, 2007, the Third Division resolved the parties' motions for reconsideration by deleting the 12% interest due on the balance of the awarded just compensation. The parties' subsequent motions to reconsider this Resolution were denied on April 30, 2008; on May 16, 2008, entry of judgment followed. Despite the entry of judgment, the present petitioners filed a second motion for reconsideration that prayed as well that the case be referred to the Court *en banc*. Finding merit in these motions, the Third Division referred the case to the *En Banc* for its disposition. On December 4, 2009, the Court *en banc* denied the petitioners' second motion for reconsideration. Maintaining their belief in their demand to be granted 12% interest, the petitioners persisted in filing another motion for reconsideration. In the interim, the Court promulgated its Internal Rules that regulated, among others, 2nd motions for reconsideration. On October 12, 2010, the Court *en banc* granted – by a vote of 8 for and 4 against – the petitioner's motion and awarded the 12% interests the petitioners' prayed for, thus affirming the interests the RTC originally awarded. The Court subsequently denied the respondent's motion for reconsideration, giving rise to the present 2nd motion for reconsideration. It was at this point that the OSG moved for leave to intervene.

b. The governing rules on 2nd motions for reconsideration

The basic rule governing 2nd motions for reconsideration is Section 2, Rule 52 (which applies to original actions in the

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Supreme Court pursuant to Section 2, Rule 56) of the Rules of Court. This Rule expressly provides:

Sec. 2. Second Motion for Reconsideration. No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

The absolute terms of this Rule is tempered by Section 3, Rule 15 of the Internal Rules of the Supreme Court that provides:

Sec. 3. Second Motion for Reconsideration. – The Court **shall not entertain a second motion for reconsideration** and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* **upon *a vote of at least two-thirds of its actual membership***. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. **A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.** [Emphases supplied.]

Separately from these rules is Article VIII, Section 4 (2) of the 1987 Constitution which governs the decision-making by the Court *en banc* of any matter before it, including a motion for the reconsideration of a previous decision. This provision states:

Section 4.

x x x x x x x x x

(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and **all other cases which under the Rules of Court are required to be heard *en banc***, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, **shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations** on the issues in the case and voted thereon.

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Thus, while the Constitution grants the Supreme Court the power to promulgate rules concerning the practice and procedure in all courts[1] (and allows the Court to regulate the consideration of 2nd motions for reconsideration, including the vote that the Court shall require), these procedural rules must be consistent with the standards set by the Constitution itself. Among these constitutional standards is the above quoted Section 4 which applies to "*all other cases which under the Rules of Court are required to be heard en banc*," and **does not make any distinction as to the type of cases or rulings it applies to**, *i.e.*, whether these cases are originally filed with the Supreme Court, or cases on appeal, or rulings *on the merits* of motions before the Court. Thus, rulings on the merits by the Court *en banc* on 2nd motions for reconsideration, if allowed by the Court to be entertained under its Internal Rules, must be decided with the concurrence of a majority of the Members who actually took part in the deliberations.

When the Court ruled on October 12, 2010 on the petitioners' motion for reconsideration by a vote of 12 Members (8 for the grant of the motion and 4 against), the Court ruled on the merits of the petitioners' motion. This ruling complied in all respects with the Constitution requirement for the votes that should support a ruling of the Court.

Admittedly, the Court did not make any *express* prior ruling accepting or disallowing the petitioners' motion as required by Section 3, Rule 15 of the Internal Rules. The Court, however, did not thereby contravene its own rule on 2nd motions for reconsideration; *since 12 Members of the Court opted to entertain*

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[1] Section 5.

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

the motion by voting for and against it, the Court simply did not register an express vote, but instead demonstrated its compliance with the rule through the participation by no less than 12 of its 15 Members. Viewed in this light, the Court cannot even be claimed to have suspended the effectiveness of its rule on 2nd motions for reconsideration; it simply complied with this rule *in a form other than by express and separate voting*.

Based on these considerations, arrived at after a lengthy deliberation, the Court thus rejected Mr. Justice Abad's observations, and proceeded to vote on the question of whether to entertain the respondents' present 2nd motion for reconsideration. ***The vote was 9 to 2, with 9 Members voting not to entertain the LBP's 2nd motion for reconsideration.*** By this vote, the ruling sought to be reconsidered for the second time was unequivocally upheld; its finality – already declared by the Court in its Resolution of November 23, 2010 – was reiterated. To quote the dispositive portion of the reiterated November 23, 2010 Resolution:

> On these considerations, we hereby DENY the Motion for Reconsideration with FINALITY. No further pleadings shall be entertained. Let entry of judgment be made in due course.

Thus, this Court mandated a clear, unequivocal, final and emphatic *finis* to the present case.

Landowner's right to just compensation: a matter of public interest

In assailing our October 12, 2010 resolution, the LBP emphasizes the need to respect the doctrine of immutability of final judgments. The LBP maintains that we should not have granted the petitioners' motion for reconsideration in our October 12, 2010 Resolution because the ruling deleting the 12% interest had already attained finality when an Entry of Judgment was issued. The LBP argues, too, that the present case does not involve a matter of transcendental importance, as it does not involve life or liberty. The LBP further contends that the Court mistakenly used the concept of transcendental

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importance to recall a final ruling; this standard should only apply to questions on the legal standing of parties.

In his dissenting opinion, Mr. Justice Roberto Abad agrees with the LBP's assertion, positing that this case does not fall under any of the exceptions to the immutability doctrine since it only involves money and does not involve a matter of overriding public interest.

We reject the basic premise of the LBP's and Mr. Justice Abad's arguments for being flawed. The present case goes beyond the private interests involved; it involves a matter of public interest – the proper application of a basic constitutionally-guaranteed right, namely, the right of a landowner to receive just compensation when the government exercises the power of eminent domain in its agrarian reform program.

Section 9, Article III of the 1987 Constitution expresses the constitutional rule on eminent domain – "*Private property shall not be taken for public use without just compensation.*" While confirming the State's inherent power and right to take private property for public use, this provision at the same time lays down the limitation in the exercise of this power. When it takes property pursuant to its inherent right and power, the State has the corresponding obligation to pay the owner just compensation for the property taken. For compensation to be considered "just," it must not only be the full and fair equivalent of the property taken;[2] it must also be paid to the landowner without delay.[3]

To fully and properly appreciate the significance of this case, we have to consider it in its proper context. Contrary to the LBP's and Mr. Justice Abad's assertions, the outcome of this case is not confined to the fate of the two petitioners alone. This case involves the government's agrarian reform program whose success largely depends on the willingness of the participants, both the farmers-beneficiaries and the

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[2] *Land Bank of the Philippines v. Orilla*, G.R. No. 157206, June 27, 2008, 556 SCRA 102, 116-117.

[3] *Land Bank v. Rodriguez*, G.R. No. 148892, May 6, 2010.

landowners, to cooperate with the government. Inevitably, if the government falters or is seen to be faltering through lack of good faith in implementing the needed reforms, including any hesitation in paying the landowners just compensation, this reform program and its objectives would suffer major setbacks. That the government's agrarian reform program and its success are matters of public interest, to our mind, cannot be disputed as the program seeks to remedy long existing and widespread social justice and economic problems.

In a last ditch attempt to muddle the issues, the LBP focuses on our use of the phrase "transcendental importance," and asserts that we erred in applying this doctrine, applicable only to legal standing questions, to negate the doctrine of immutability of judgment. This is a very myopic reading of our ruling as the context clearly shows that the phrase "transcendental importance" was used only to emphasize the **overriding public interest** involved in this case. Thus, we said:

> That the issues posed by this case are of transcendental importance is not hard to discern from these discussions. A constitutional limitation, guaranteed under no less than the all-important Bill of Rights, is at stake in this case: how can compensation in an eminent domain case be "just" when the payment for the compensation for property already taken has been unreasonably delayed? To claim, as the assailed Resolution does, that only private interest is involved in this case is to forget that an expropriation involves the government as a necessary actor. It forgets, too, that under eminent domain, the constitutional limits or standards apply to government who carries the burden of showing that these standards have been met. Thus, to simply dismiss the case as a private interest matter is an extremely shortsighted view that this Court should not leave uncorrected.
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> More than the stability of our jurisprudence, the matter before us is of transcendental importance to the nation because of the subject matter involved – agrarian reform, a societal objective of that the government has unceasingly sought to achieve in the past half century.[4]

[4] In our resolution dated October 12, 2010.

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From this perspective, our Resolution of October 12, 2010 only had to demonstrate, as it did, that the higher interests of justice are duly served. All these, amply discussed in the Resolution of October 12, 2010, are briefly summarized and reiterated below.

LBP at fault for twelve-year delay in payment

In his dissenting opinion, Mr. Justice Abad insists that the LBP's initial valuation of the petitioners' properties was fully in accord with Section 17 of the CARL. He posits that when the RTC gave a significantly higher value to these lands, the LBP acted well within its rights when it appealed the valuation. Thus, to him, it was wrong for this Court to characterize the LBP's appeal as malicious or in bad faith.

A simple look at the attendant facts disproves the accuracy of this claim.

First, Mr. Justice Abad's allegation that the LBP correctly valued the petitioners' properties is not at all accurate. Significantly, **Mr. Justice Abad does not cite any evidence on record to support his claim** that "the Land Bank valued the lands using the compensation formula that Section 17 of Republic Act 6657 and the DAR's implementing rules provide."[5]

More to the point, this Court has already determined, *in a final and executed judgment*, that the RTC's valuation of the petitioners' properties is the correct one. To recall, the LBP initially fixed the value of Apo Fruits Corporation's (*AFC*) properties at ₱165,484.47 per hectare ***or ₱16.00 per square meter (sqm)***, while it valued Hijo Plantation Inc.'s (*HPI*) properties at ₱201,929.97 per hectare, or approximately ***₱20.00/sqm.*** In contrast, the Regional Trial Court fixed the valuation of the petitioners' properties at ***₱103.33/sqm., or more than five times the initial valuation fixed by the LBP.***

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[5] Justice Abad's Dissent, p. 2.

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After reviewing the records, this Court affirmed the RTC's valuation in its February 6, 2007 decision, noting that it was based on the following evidence: (a) the Commissioners' reports, (b) the Cuervo appraisers' report, (c) the schedule of market values of the City of Tagum per its 1993 and 1994 Revision of Assessment and Property Classification, (d) the value of the permanent improvements found on the expropriated properties, and (e) the comparative sales of adjacent lands from early 1995 to early 1997. The Court observed that the RTC valuation also took into consideration the land's nature as irrigated land, its location along the highway, market value, assessor's value, and the volume and value of its produce. This valuation is fully in accordance with Section 17 of RA 6657, which states:

> 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 farm workers and by 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.

On its face, the staggering difference between the **LBP's initial valuation** of the petitioners' properties (totaling ₱251,379,104.02) and the RTC's valuation (totaling ₱1,383,179,000.00) – **a difference of ₱1,131,799,895.98 amounting to 81% of the total price** – betrays the lack of good faith on the part of the government in dealing with the landowners. The sheer enormity of the difference between the two amounts cannot but lead us to conclude that the LBP's error was grievous and amounted to nothing less than ***gross negligence in the exercise of its duty*** – in this case, to properly ascertain the just compensation due to the petitioners.

Mr. Justice Abad further argues that interest on just compensation is due only where there is delay in payment. In the present case, the petitioners allegedly did not suffer any

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delay in payment since the LBP made partial payments prior to the taking of their lands.

This argument completely overlooks the definition of just compensation already established in jurisprudence. Apart from the requirement that compensation for expropriated land must be fair and reasonable, **compensation, to be "just," must also be made without delay.**[6] In simpler terms, for the government's payment to be considered just compensation, the landowner must receive it **in full without delay**.

In the present case, **it is undisputed that the government took the petitioners' lands on December 9, 1996; the petitioners only received full payment of the just compensation due on May 9, 2008.** This circumstance, by itself, already confirms the unconscionable delay in the payment of just compensation.

Admittedly, a grain of truth exists in Justice Abad's observation that the petitioners received partial payments from the LBP before the titles to their landholdings were transferred to the government. **The full and exact truth**, however, is that the partial payments at the time of the taking only amounted to a trifling **five percent (5%) of the actual value** of the expropriated properties, as determined with finality by this Court. Even taking into consideration the subsequent partial payments made totaling ₱411,769,168.32 (inclusive of the amounts deposited prior to the taking), these payments only constituted **a mere one-third (1/3) of the actual value of the petitioners' properties**.

It should be considered – as highlighted in our October 12, 2010 Resolution – that the properties the government took were fully operating and earning plantations at the time of the taking. Thus, the landowners lost not only their properties, but the fruits of these properties. These were all lost in 1996, leaving the landowners without any replacement income from their properties, except for the possible interest for the trifling

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[6] *Land Bank v. Rodriguez*, G.R. No. 148892, May 6, 2010.

payment made at the time of the taking that, together with the subsequent payment, only amounted to a third of the total amount due. **Thus, for twelve long years, the amount of ₱971,409,831.68 was withheld from the landowners.**

An added dimension to this delayed payment is the impact of the delay. One impact – as pointed out above – is **the loss of income the landowners suffered**. Another impact that the LBP now glosses over is **the income that the LBP earned from the sizeable sum it withheld** for twelve long years. From this perspective, the unaccounted-for LBP income is **unjust enrichment** in its favor and an inequitable loss to the landowners. This situation was what the Court essentially addressed when it awarded the petitioners 12% interest.

Mr. Justice Abad goes on to argue that the delay should not be attributed to the LBP as it could not have foreseen that it would take twelve years for the case to be resolved. Justice Abad's stance could have been correct were it not for the fact that the delay in this case is ultimately attributable to the government. Two significant factors justify the attribution of the delay to the government.

The *first* is the DAR's gross undervaluation of the petitioners' properties – the government move that started the cycle of court actions.

The *second* factor to consider is government inaction. Records show that after the petitioners received the LBP's initial valuation of their lands, they filed petitions with the DARAB, the responsible agency of the DAR, for the proper determination of just compensation. Instead of dismissing these petitions outright for lack of jurisdiction, the DARAB sat on these cases for three years. It was only after the petitioners resorted to judicial intervention, filing their petitions for the determination of just compensation with the RTC, that the petitioners' case advanced.

The RTC interpreted the DARAB's inaction as reluctance of the government to pay the petitioners just compensation, a view this Court affirmed in its October 12, 2010 Resolution.

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Expropriation for agrarian reform requires the payment of just compensation

The LBP claims that the just compensation in this case should be determined within the context of the article on social justice found in the 1987 Constitution. In the LBP's opinion, when we awarded the petitioners 12% interest by way of potential income, we removed from the taking of agricultural properties for agrarian reform its main public purpose of righting the wrong inflicted on landless farmers.

By this argument, the LBP effectively attempts to make a distinction between the just compensation given to landowners whose properties are taken for the government's agrarian reform program and properties taken for other public purposes. This perceived distinction, however, is misplaced and is more apparent than real.

The constitutional basis for our agrarian reform program is Section 4, Article XIII of the 1987 Constitution, which mandates:

> Section 4. The State shall, by law, 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 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 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**.

This provision expressly provides that the taking of land for use in the government's agrarian reform program is **conditioned on the payment of just compensation**. Nothing in the wording of this provision even remotely suggests that the just compensation required from the taking of land for the agrarian reform program should be treated any differently from the just compensation required in any other case of expropriation. As explained by Commissioner Roberto R. Concepcion during the deliberations of the 1986 Constitutional Commission:

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[T]he 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.[7]

In fact, while a proposal was made during the deliberations of the 1986 Constitutional Commission to give a lower market price per square meter for larger tracts of land, the Commission never intended to give agricultural landowners less than just compensation in the expropriation of property for agrarian reform purposes.[8]

To our mind, nothing is inherently contradictory in the public purpose of land reform and the right of landowners to receive just compensation for the expropriation by the State of their properties. That the petitioners are corporations that used to own large tracts of land should not be taken against them. As Mr. Justice Isagani Cruz eloquently put it:

[S]ocial justice - or any justice for that matter - is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor, to whom the Constitution fittingly

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[7] III Record at 17, cited in Bernas, SJ. The Intent of the 1986 Constitution Writers, 1995 ed., p. 948.

[8] *Id*. at 947; III Record at 17, where the Commissioners, in discussing just compensation within the context of properties expropriated for redistribution to farmers in pursuance of agrarian reform, stated thus:

Fr. Bernas: We discussed earlier the idea of a progressive system of compensation and I must admit, that it was before I discussed it with Commissioner Monsod. I think what is confusing the matter is the fact that when we speak of progressive taxation, we mean the bigger the tax base, the higher the rate of tax. Here, what we are saying is that the bigger the land is, the lower the value per square meter. So, it is really regressive, not progressive.

Mr. Monsod: Yes, Madam President, it is true. It is progressive with respect to the beneficiary and regressive with respect to the landowner.

Fr. Bernas: But is it the intention of the Committee that the owner should receive less than the market value?

Mr. Monsod: **It is not the intention of the Committee that the owner should receive less than the just compensation.**

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extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.[9]

Interest payments borne by government, not by farmers-beneficiaries

Nor do we find any merit in the LBP's assertion that the large amount of just compensation that we awarded the petitioners, together with the amount of interest due, would necessarily result in making the farmers- beneficiaries endure another form of bondage – the payment of an exorbitant amount for the rest of their lives.

As the petitioners correctly pointed out, the government's liability for the payment of interest to the landowner for any delay attributable to it in paying just compensation for the expropriated property is entirely separate and distinct from the farmers-beneficiaries' obligations to pay regular amortizations for the properties transferred to them.

Republic Act No. 6657 (The Comprehensive Agrarian Reform Law, or CARL) provides for the specific source of funding to be used by the government in implementing the agrarian reform program; this funding does not come directly from the payments made by the farmers-beneficiaries.[10]

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[9] *Gelos v. Court of Appeals*, G.R. No. 86186, May 8, 1992, 208 SCRA 608, 616.

[10] Section 63 of Republic Act No. 6657 provides:

Section 63. *Funding Source*.- The initial amount needed to implement this Act for the period of ten (10) years upon approval hereof shall be funded from the Agrarian Reform Fund created under Sections 20 and 21 of Executive Order No. 229.Additional amounts are hereby authorized to be appropriated as and when needed to augment the Agrarian Reform Fund in order to fully implement the provisions of this Act.

Sources of funding or appropriations shall include the following:

(a) Proceeds of the sales of the Assets Privatization Trust;

(b) All receipts from assets recovered and from sale of ill-gotten wealth recovered through the Presidential Commission on Good Government;

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More to the point, under the CARL, the amount the farmers-beneficiaries must pay the LBP for their land is, for the most part, subsidized by the State and is not equivalent to the actual cost of the land that the Department of Agrarian Reform paid to the original landowners. Section 26, Chapter VII of the CARL provides:

SEC. 26. *Payment by Beneficiaries*. - Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations at six percent (6%) interest per annum. The payments for the first three (3) years after the award may be at reduced amounts as established by the PARC: *Provided,* That **the first five (5) annual payments may not be more than five percent (5%) of the value of the annual gross productions paid as established by the DAR**. Should the scheduled annual payments after the fifth year exceed ten percent (10) of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, the LBP may reduce the interest rate or reduce the principal obligation to make the payment affordable.

Interpreting this provision of the law, DAR Administrative Order No. 6, Series of 1993 provides:

A. As a general rule, land awarded pursuant to E.O. 229 and R.A. 6657 shall be repaid by the Agrarian Reform Beneficiary (ARB) to LANDBANK in thirty (30) annual amortizations at six (6%) percent interest per annum. The annual amortization shall start one year from date of Certificate of Landownership Award (CLOA) registration.

B. The payments by the ARBs for the first three (3) years shall be two and a half percent (2.5%) of AGP [Annual Gross Production] and five percent (5.0%) of AGP for the fourth

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(c) Proceeds of the disposition of the properties of the Government in foreign countries;

(d) Portion of amounts accruing to the Philippines from all sources or official foreign aid grants and concessional financing from all countries, to be used for the specific purposes of financing production credits, infrastructures, and other support services required by this Act;

(e) Other government funds not otherwise appropriated.

All funds appropriated to implement the provisions of this Act shall be considered continuing appropriations during the period of its implementation.

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> and fifth years. To further make the payments affordable, the ARBs shall pay ten percent (10%) of AGP or the regular amortization, **whichever is lower**, from the sixth (6th) to the thirtieth (30th) year.

Clearly, **the payments made by the farmers-beneficiaries to the LBP are primarily based on a fixed percentage of their annual gross production**, or the value of the annual yield/produce of the land awarded to them.[11] The cost of the land will only be considered as the basis for the payments made by the farmers-beneficiaries when this amount is lower than the amount based on the annual gross production. Thus, there is no basis for the LBP to claim that our ruling has violated the letter and spirit of the social justice provision of the 1987 Constitution. On the contrary, our ruling is made in accordance with the intent of the 1987 Constitution.

Motion for Oral Arguments

We deny as well the LBP's motion to set the case for oral arguments. The submissions of the parties, as well as the records of the case, have already provided this Court with enough arguments and particulars to rule on the issues involved. Oral arguments at this point would be superfluous and would serve no useful purpose.

The OSG's Intervention

The interest of the Republic, for whom the OSG speaks, has been amply protected through the direct action of petitioner LBP – the government instrumentality created by law to provide timely and adequate financial support in all phases involved in the execution of needed agrarian reform. The OSG had every opportunity to intervene through the long years that this case had been pending but it chose to show its hand only at this very late stage when its presence can only serve to delay the final disposition of this

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[11] DAR Administrative Order No. 6, Series of 1993 defines Annual Gross Production (AGP) as the "peso (P) value of the annual yield/produce per hectare of the land awarded to farmer-beneficiaries (as established jointly by the Department of Agrarian Reform (DAR) and the Land Bank of the Philippines [LBP] during the valuation process) which is reflected in the valuation portion of the Claims Valuation and Processing Form.

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case. The arguments the OSG presents, furthermore, are issues that this Court has considered in the course of resolving this case. Thus, every reason exists to deny the intervention prayed for.

WHEREFORE, premises considered, the respondent's second motion for reconsideration and the motion to set the case for oral arguments are hereby *DENIED WITH ABSOLUTE FINALITY*. The motion for intervention filed by the Office of the Solicitor General is, likewise, denied. We **reiterate**, under pain of contempt if our directive is disregarded or disobeyed, that *no further pleadings shall be entertained*. Let judgment be entered in due course.

SO ORDERED.

Carpio Morales, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Sereno, J., see concurring opinion.

Abad, J., see dissenting opinion.

Corona, C.J. and *Velasco, Jr., J.,* join the dissent of Justice Abad.

Leonardo-de Castro, J., maintains her vote for reduced interest rate.

Carpio, J., no part, prior inhibition.

Nachura, J., on leave.

CONCURRING OPINION

SERENO, *J.*:

I write separately to express my concern over what I perceive as an unhealthy invocation of the Internal Rules of the Supreme Court, specifically Section 3, Rule 15, on the matter of entertaining second motions for reconsideration to set aside a final judgment of this Court. Admittedly, having been appointed to the Court after the effectivity of the said rule on 22 May 2010, I do not have the advantage of knowing firsthand the history of the said rule, but I have heard enough, during the deliberations on this case, of the problem that will continue to be engendered by Section 3, Rule 15.

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I understand that at the time the above rule was formulated, the Court did not expect that a conscious two-step process would be so rigidly demanded by any of its Members to the point that the rule would be used as basis to move to recall a final judgment of this Court. Neither was it fully anticipated that the refusal to do so would lead to concerns on the possible removal of Members of the Court for violation of its own rules. Thus, I agree with the wise formulation of Justice Arturo D. Brion that the requirement of the 1987 Constitution, specifically in Article VIII, Section 4 (2) has been met by the fact that a majority of the Court took part in the deliberation on 12 October 2010; and therefore, that the voting that took place thereon was valid, and more important, that the satisfaction of this constitutional requirement overrides any concern about the lack of a conscious, express super-majority vote by the Court to entertain a second motion for reconsideration.

What is unhealthy from what I see is that the objection rising from a lack of a super-majority vote is raised in one case, but not raised in others by the same objecting member — Justice Roberto A. Abad. If Section 3, Rule 15 of the Internal Rules was such an important bar that must be met in any motion for reconsideration, then it should have been raised by him as well in the still unpromulgated ruling in the *Dinagat* case.[1] The Court has realized the difficulty that the said rule introduces. It should not be further invoked by any of its Members in a way that introduces further instability and fuels the public perception of a flip-flopping Court. With more reason, the rule should not have been invoked only in this case, but not in the two other highly controversial flip-flopping cases, by any of the Court's Members who strongly moved for the reconsideration of the original decision in *League of Cities*[2] and for the recall of the entry of final judgment in *Dinagat*. Technically, Section 3, Rule 15 of the Internal Rules of Court, does not apply to the reconsideration of the original Decision in *League of Cities.* Had there been a consistent intent to protect the immutability

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[1] *Navarro v. Executive Secretary*, G.R. No 180050, 10 February 2010.

[2] G.R. Nos. 176951, 177499, 178056, 18 November 2008.

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of Supreme Court decisions, however, a similar rule in the 1997 Rules of Civil Procedure could have been invoked, namely, Section 2, Rule 56, in relation to Section 2, Rule 52, prohibiting the filing of second motions for reconsideration.

While the classic lines in *Banogon v. Zerna*[3] are writ in large part to litigants to make them accept that the orderly administration of justice means that their causes must end at some time, it is most earnestly and humbly believed that those lines must be re-learned by this Court as well. This re-learning seems urgent, especially with the reversal of the original Decision in *League of Cities*, followed by the reversal of the fully executory *Dinagat* Decision.

To recall those lines:

> Litigation must end and terminate sometime and somewhere and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.
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> There should be a greater awareness on the part of litigants that the time of the judiciary, much more so of this Court, is too valuable to be wasted or frittered away by efforts, far from commendable, to evade the operation of a decision final and executory, especially so, where, as shown in this case, the clear and manifest absence of any right calling for vindication, is quite obvious and indisputable.

That this concern about the endlessness of litigation should morph —from one regarding the behavior of litigants to one regarding the stability of the decision-making instincts of the Members of this Court — is shared by Justices Antonio T. Carpio and Arturo D. Brion as well in their Opinions in *League of Cities* and *Dinagat*. To re-cast the lines of *Banogon v. Serna*, I would venture to say this:

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[3] G.R. No. L-35469, 9 October 1987, 154 SCRA 593.

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There should be a greater awareness of the members of judiciary, that its time, especially that of the Supreme Court, is too valuable to be wasted or frittered away by efforts, far from commendable, that come from any quarter including its own, to evade the operation of a decision final and executory, especially so, where, as shown in this case, the clear and manifest absence of any right calling for vindication, is quite obvious and indisputable.

What has been at stake in the flip-flopping cases and now in the puzzling invocation of the Internal Rules of the Court in this case is no less than the risk that the moral force of Supreme Court judgments will be undermined. The Supreme Court's word is final because all the coercive forces of the state apparatus will ensure its execution, by operation of the Constitution. The Members of the Court must never lose sight of the fact that it owes the authority of its decisions only to the Constitution and, hence, to the people themselves. When the moral force of the decisions of the Supreme Court is lost because the people do not see in them the application of procedural rules in an even manner, then it is conceivable that even the automatic legal force given to its decisions may likewise be lost. That would be a most sad period in its history.

While Justice Brion, in his Dissent in the latest *Dinagat* Decision, invokes the non-adherence to Sec. 3, Rule 15 of the Internal Rules of the Court as an additional reason to object to the reversal of the *Dinagat* original Decision, his sentiments must be taken in the context of the recent puzzling reversals of this Court. Thus, while I am not convinced about the necessity of the above rule, I understand and fully support the spirit in which it was made — to restore belief and actual adherence to the doctrine of immutability of judgments and its necessary by-product, the stability of judicial decisions. There need actually be no hard and fast rule on the matter if the members of this Court were to remember that there are behind every good decision, whose dispositive effect must be immutable, lie fundamental rules of sound legal reasoning. When these are absent, as in the reversals of the original decision in *League of Cities* and *Dinagat*, for reasons that are hollow and even appear

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unjust, then the convenient invocation or non-invocation of the technical rules of procedure acquires a more egregious, distasteful taste. Such situation must be avoided by any court with a long-term perspective of its role, and that understands the need to guard its legacy.

On the substantial ruling in this case, while I have full sympathy for the financial condition of the public respondent and the National Government, Justice Brion's assessment of the respective legal rights and obligations of the parties is correct. In an interim voting that took place in this case, I had wanted, and indeed voted for, the imposition of a mere 6% interest and not a 12% interest on the principal amount due petitioners. Thus, I do not fully agree with the rate of interest imposed by the Decision. It is also correct, however, that a strong signal must be sent that the Government cannot willfully refuse to promptly pay a just obligation. The problem that remains unaddressed, though, is who should bear responsibility for the unjust delay in payment that happened here. The *ponencia* has already named the various government actors whose prompt resolution of petitioners' claim was required, and who failed to discharge such duty. Unless these actors are made operationally liable for the unjust delay, it will be the taxpayer who will ultimately bear the adverse financial consequences of our findings and directive in this case, as usually happens in most public accountability cases. Our public officers responsible for guarding the coffers of our government from irresponsible acts of its officers must do more than just accept the immediate effects of the *fallo* of the Decision in this case.

DISSENTING OPINION

ABAD, *J.*:

I am unable to agree with the *ponencia* of Mr. Justice Arturo D. Brion that the respondent Land Bank of the Philippines (Land Bank) is guilty of delay and must, therefore, pay petitioners Apo Fruits Corp. (AFC) and Hijo Plantation, Inc. (HPI) 12% interest on the compensation awarded to them for their lands.

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Brief Factual Background

On October 12, 1995 AFC-HPI voluntarily offered to sell their lands[1] to the government under Republic Act 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL). Land Bank valued the properties at ₱165,484.47 per hectare, but AFC-HPI rejected the offer of that amount. Consequently, on instruction of the Department of Agrarian Reform (DAR), Land Bank deposited partial payments in AFC-HPI's bank accounts. Land Bank deposited for AFC and HPI ₱26,409,549.86 and ₱45,481,706.76, respectively, or a total of ₱71,891,256.62.

Upon revaluation of the expropriated properties, Land Bank eventually made additional deposits, placing the total amount paid at ₱411,769,168.32 (₱71,891,256.62 + ₱339,877,911.70), an increase of nearly five times. Both AFC-HPI withdrew the amounts. Still, they filed separate complaints for just compensation with the DAR Adjudication Board (DARAB). But due to DARAB's inaction, they later filed complaints for determination of just compensation with the Regional Trial Court (RTC) of Tagum City.

On September 25, 2001 the RTC ruled in favor of AFC-HPI, fixing the just compensation for 1,338.6027 hectares of land at ₱1,383,179,000.00 (₱411,769,168.32 + ₱971,409,831.68), more than double the previous estimated value, and ordering the payment of 12% interest per annum from the time of taking until the finality of the decision plus attorney's fees.

The Third Division of this Court affirmed the RTC decision in its February 6, 2007 Decision. But, on motion for reconsideration, the Third Division deleted the award of interest and attorney's fees in its December 19, 2007 resolution. Upon finality of this resolution, entry of judgment was issued on May 16, 2008.

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[1] AFC owned 640.3483 hectares, while HPI owned 805.5308 hectares, for a total of 1,445.8791 hectares. However, the RTC later fixed just compensation for only 1,338.6027 hectares of land.

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Undaunted, AFC-HPI filed a **second motion for reconsideration** with respect to the denial of the award of legal interest and attorney's fees and a motion to refer the second motion for reconsideration to the Court *En Banc*. The Third Division subsequently referred the case to the *En Banc*. The Court *En Banc* accepted the referral but on December 4, 2009 it denied with finality AFC-HPI's second motion for reconsideration. An entry of its finality was duly recorded.

Still AFC-HPI filed a **third motion for reconsideration** on the issue of legal interest. On October 12, 2010 the *En Banc* granted AFC-HPI's motion for reconsideration and restored the additional award of 12% legal interest in their favor equivalent to ₱1.331 billion. The Court held that although Land Bank's deposits might have been sufficient for the purpose of immediate taking of the properties, the deposits were insufficient to excuse Land Bank from the payment of interest on the unpaid balance. It found Land Bank to have grossly undervalued AFC-HPI's properties, thus resulting in a prolonged suit. On the issue of immutability of judgment, the Court said that the matter was of transcendental importance since it involved agrarian reform.

The Court voted 8-3-1 to issue the above resolution. Associate Justice Arturo D. Brion wrote it; Associate Justices Conchita Carpio Morales, Presbitero J. Velasco, Jr., Mariano C. Del Castillo, Martin S. Villarama, Jr., Jose Portugal Perez, Jose Catral Mendoza, and Maria Lourdes P. A. Sereno concurred. Associate Justice Lucas P. Bersamin dissented along with Chief Justice Renato C. Corona and Associate Justice Antonio Eduardo B. Nachura. Associate Justice Teresita J. Leonardo-de Castro maintained her previous vote for a reduced interest of ₱400 million. Associate Justice Antonio T. Carpio took no part. Associate Justices Roberto A. Abad and Diosdado M. Peralta who earlier voted to deny the motion for reconsideration were on leave when the voting took place.

Land Bank moved for reconsideration of this turn-around resolution but the *En Banc* resolved to deny the same on November 23, 2010 under the same vote. Consequently, Land

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Bank filed another motion asking for the deletion of the award of legal interest.

The Issues Presented

Two issues emerged during the deliberation in this case:

1. Whether or not respondent Land Bank has been guilty of delay and, therefore, should be made to pay AFC-HPI ₱1.331 billion in interest;

2. Whether or not it was error for the *En Banc* to have issued the October 12, 2010 resolution ordering payment of such interest, given that AFC-HPI's third motion for reconsideration was absolutely prohibited and, even if it were to be treated as a second motion for reconsideration, the *En Banc* violated its Internal Rules which require a vote of two-thirds of its actual membership (10 votes) to entertain such a motion.

Discussion

First. The *ponencia* blames Land Bank for the twelve-year delay in the payment of compensation to AFC-HPI, claiming that had the government not grossly undervalued the expropriated properties and thus betrayed lack of good faith, it could have prevented the lengthy legal proceedings in the case.

But the fact that Land Bank did not readily agree with AFC-HPI regarding the value of the lands should not mean that Land Bank acted in bad faith or deliberately delayed payment of compensation. The records show that Land Bank valued the lands, using the compensation formula that Section 17 of Republic Act 6657 and the DAR's implementing rules provide. Can that be malicious or in bad faith?

Granted that Land Bank appealed the RTC decision, which awarded a compensation of ₱1,383,179,000.00 to AFC-HPI (more than double what the CARL formula provided) plus 12% interest per annum until the finality of its decision, such appeal can hardly be regarded as dilatory and baseless. Indeed, although the Court affirmed the principal amount that the RTC fixed, it

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ordered deleted the grossly excessive interest of 12% counted from the date of taking or a period of about 12 years. Even if the Court changed its mind on a third motion for reconsideration and after the finality of its judgment, it cannot be said, therefore, that Land Bank's appeal was malicious or in bad faith.

The Court's ruling in *Land Bank of the Philippines vs. Wycoco*[2] is clear. Interest on just compensation is due only in case of delay in payment, a fact which must be adequately proved. If, for instance, property is taken for public use before compensation is given or deposited in favor of the landowner, then there is delay and the final compensation must include an award of interest.

Here, there is no evidence to prove that Land Bank was in delay. On the contrary, pertinent amounts were deposited, specifically ₱26,409,549.86 for AFC and ₱45,481,706.76 for HPI, within fourteen months after AFC-HPI filed the complaint for just compensation before the RTC. Notably, Land Bank made the deposits prior to AFC-HPI's titles being cancelled. The bank afterwards made additional payments based on upgraded values, swelling its total payments to ₱411,769,168.32 even before the RTC case was filed.

The *ponencia* points out that Land Bank paid only a trifling of the actual value of properties as later determined by the Court. But I do not think that ₱411,769,168.32, a third of the RTC award and paid even before the suit was filed, can be regarded as trifling. AFC-HPI did not linger long to withdraw the deposits, negating any notion that it suffered long with nothing to assuage its feelings about the compensation.

Likewise, Land Bank could not have foreseen that it would take twelve years for the case to be resolved. AFC-HPI themselves erroneously filed their complaints with the DARAB instead of directly seeking recourse with the courts. The *ponencia* is requiring Land Bank to pay for that error and the delays rooted in it.

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[2] G.R. No. 140160, January 13, 2004, 419 SCRA 67.

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To iterate, Land Bank had every right to defend an initial position dictated by law and not risk sending bank officers to jail for giving undue benefit to others in violation of the Anti-graft and Corrupt Practices Act. Land Bank should not be penalized for taking such cautious position with respect to money belonging to the government. The Court should not, by its present ruling, encourage government agencies to pay more than what the law or the rules prescribe unless directed differently by superior orders. Notably, when the Third Division of this Court handed down its December 19, 2007 resolution, Land Bank immediately settled its unpaid balance of ₱971,409,831.68 even before entry of judgment was issued in the case.

The *ponencia* states that a second motion for reconsideration is prohibited. But, it must be remembered that the October 12, 2010 resolution which Land Bank assails itself resulted from the grant of a third motion for reconsideration filed by AFC-HPI. By then, the February 6, 2007 Decision and December 19, 2007 Resolution of this Court had already become final and executory, and Land Bank had already complied with the same by paying the judgment amounts. By the rule that the *ponencia* invokes, the Court should not have reopened the case in the first place.

The immutability doctrine admits exceptions such as: a) the correction of clerical errors; b) the *nunc pro tunc* entries that cause no prejudice to any party; c) void judgments; and d) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. This case does not fall under any of the exceptions, nor does it involve life or liberty—only money.

Second. The Court must recall its October 12, 2010 resolution granting AFC-HPI's motion for reconsideration for having been voted on by the Justices present without an inkling or awareness that it was actually a **third motion for reconsideration**. It was not only a prohibited motion like second motions for reconsideration but, evidently a motion in the category of the not-filed, beyond judicial cognizance, or non-existent. The

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Court unwittingly made a mistake in acting on a "nothing" motion. Consequently, it must rectify this mistake by immediately recalling such resolution.

And, even if AFC-HPI's motion can be treated as another **second motion for reconsideration**, which it is not, the Court *En Banc* violated Section 3, Rule 15, of its Internal Rules which provides that it cannot entertain a second motion for reconsideration except upon a vote of two-thirds of its actual membership in the highest interest of justice. Thus:

> **SEC. 3. Second motion for reconsideration. – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. xxx**

Justice Brion of course points out that since twelve Justices took part in acting on AFC-HPI's motion for reconsideration, it may be assumed that such number agreed to entertain the same. But this assumption will not do since the rules require the taking of "**a vote**" on whether to entertain such a motion or not. An assumption of concurrence is not the equivalent of the taking of a vote. Moreover, in truth, those who voted to approve the October 12, 2010 resolution simply forgot to vote before hand on whether or not to entertain AFC-HPI's motion for reconsideration.

Notably, it is inevitable that the procedure for entertaining second motions for reconsideration should follow the two-step procedure observed when a Division wants to refer a case to the *En Banc* for its consideration. This requires the *En Banc* to first accept the referral before acting to decide the referred case. This was not done in the present case. The Minutes do not show that the *En Banc* voted by at least two-thirds of its actual membership to entertain the motion for reconsideration before approving the draft resolution for release.

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The omission is fatal to the resolution because the requirement of a two-thirds vote of the *En Banc*'s actual membership is a specially difficult bar that the Justices precisely adopted unanimously to solve the problem of endless motions for reconsideration that undermine the stability of the judgments of courts. If the *En Banc* ignores this rule to accommodate an award of ₱1.331 billion in interest to AFC-HPI, the public who will pay for it would probably not be able to understand the *En Banc*'s reason for making such an exception.

For the above reasons, I vote to *RECALL* the Court's Resolution dated October 12, 2010 and *REINSTATE* the Resolution dated December 4, 2009. This would render moot and academic the question of whether or not to give due course to respondent Land Bank's motion for reconsideration.

FIRST DIVISION

[A.C. No. 7771. April 6, 2011]

PATRICIO GONE, *complainant, vs.* **ATTY. MACARIO GA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; FAILURE TO RECONSTITUTE OR TURN OVER THE RECORDS OF THE CASE TO HIS CLIENT IS A VIOLATION OF HIS DUTY TO SERVE CLIENTS WITH COMPETENCE AND DILIGENCE; COUNSEL'S SENTIMENTS AGAINST HIS CLIENT, NOT A VALID REASON.— Respondent Atty. Ga breached these duties when he failed to reconstitute or turn over the records of the case to his client, herein complainant Gone. His negligence manifests lack of competence and diligence required of every lawyer. His failure to comply with the request of his