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SO ORDERED.

Gutierrez, Jr., Bidin, and *Cortes, JJ.*, concur.

Feliciano, J., on leave.

EN BANC

[G.R. No. 78742. July 14, 1989]

ASSOCIATION OF SMALL LANDOWNERS IN THE PHILIPPINES, INC., JUANITO D. GOMEZ, GERARDO B. ALARCIO, FELIFE A. GUICO, JR., BERNARDO M. ALMONTE, CANUTO RAMIR B. CABRITO, ISIDRO T. GUICO, FELISA I. LLAMIDO, FAUSTO J. SALVA, REYNALDO G. ESTRADA, FELISA C. BAUTISTA, ESMENIA J. CABE, TEODORO B. MADRIAGA, AUREA J. PRESTOSA, EMERENCIANA J. ISLA, FELICISIMA C. APRESTO, CONSUELO M. MORALES, BENJAMIN R. SEGISMUNDO, CIRILA A. JOSE & NAPOLEON S. FERRER, *petitioners, vs.* **HONORABLE SECRETARY OF AGRARIAN REFORM,** *respondent.*

[G.R. No. 79310. July 14, 1989]

ARSENIO AL. ACUÑA, NEWTON JISON, VICTORINO FERRARIS, DENNIS JEREZA, HERMINIGILDO GUSTILO, PAULINO D. TOLENTINO and PLANTERS' COMMITTEE, INC., Victorias Mill District, Victorias, Negros Occidental, *petitioners, vs.* **JOKER ARROYO, PHILIP E. JUICO and PRESIDENTIAL AGRARIAN REFORM COUNCIL,** *respondents.*

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[G.R. No. 79744. July 14, 1989]

INOCENTES PABICO, *petitioner, vs.* **HON. PHILIP E. JUICO, SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM, HON. JOKER ARROYO, EXECUTIVE SECRETARY OF THE OFFICE OF THE PRESIDENT, and Messrs. SALVADOR TALENTO, JAIME ABOGADO, CONRADO AVANCEÑA, and ROBERTO TAAY,** *respondents.*

[G.R. No. 79777. July 14, 1989]

NICOLAS S. MANAAY and AGUSTIN HERMANO, JR., *petitioners, vs.* **HON. PHILIP ELLA JUICO, as Secretary of Agrarian Reform, and LAND BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CONSTITUTIONAL LAW; SUPREME COURT; ROLE. — Although holding neither purse nor sword and so regarded as the weakest of the three departments of the government, the judiciary is nonetheless vested with the power to annul the acts of either the legislative or the executive or of both when not conformable to the fundamental law. This is the reason for what some quarters call the doctrine of judicial supremacy.

2. ID.; SEPARATION OF POWERS; CONSTRUED. — The doctrine of separation of powers imposes upon the courts a proper restraint, born of the nature of their functions and of their respect for the other departments, in striking down the acts of the legislative and the executive as unconstitutional. The policy, indeed, is a blend of courtesy and caution. To doubt is to sustain. The theory is that before the act was done or the law was enacted, earnest studies were made by Congress or the President, or both, to insure that the Constitution would not be breached.

3. ID.; SUPREME COURT; HAS POWER TO DECLARE AN ACT OR LAW UNCONSTITUTIONAL. — The Constitution itself lays down stringent conditions for a declaration of

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unconstitutionality, requiring therefor the concurrence of a majority of the members of the Supreme Court who took part in the deliberations and voted on the issue during their session *en banc*.

4. ID.; JUDICIAL DEPARTMENT; SUPREME COURT; JUDICIAL INQUIRY; REQUISITES. — The Court will assume jurisdiction over a constitutional question only if it is shown that the essential requisites of a judicial inquiry into such a question are first satisfied. Thus, there must be an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, the constitutional question must have been opportunely raised by the proper party, and the resolution of the question is unavoidably necessary to the decision of the case itself.

5. REMEDIAL LAW; ACTIONS; PROPER PARTY; WHEN SATISFIED. — With particular regard to the requirement of proper party as applied in the cases before us, we hold that the same is satisfied by the petitioners and intervenors because each of them has sustained or is in danger of sustaining an immediate injury as a result of the acts or measures complained of.

6. CONSTITUTIONAL LAW; SUPREME COURT; POWER TO DECLARE AN ACT OR LAW UNCONSTITUTIONAL; TRIBUNAL WITH WIDE DISCRETION TO WAIVE REQUIREMENT. — Even if, strictly speaking, they are not covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised.

7. ID.; ID.; JUDICIAL SUPREMACY. — . . . When the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the Legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.

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8. ID.; 1973 CONSTITUTION; PRESIDENT; EXERCISE OF LEGISLATIVE POWER DURING MARTIAL LAW, SUSTAINED. — The promulgation of P.D. No. 27 by President Marcos in the exercise of his powers under martial law has already been sustained in *Gonzales v. Estrella* and we find no reason to modify or reverse it on that issue.

9. ID.; 1987 CONSTITUTION; PRESIDENT; LEGISLATIVE POWER, AUTHORIZED. — As for the power of President Aquino to promulgate Proc. No. 131 and E.O. Nos. 228 and 229, the same was authorized under Section 6 of the Transitory Provisions of the 1987 Constitution, quoted above. The said measures were issued by President Aquino before July 27, 1987, when the Congress of the Philippines was formally convened and took over legislative power from her. They are not "midnight" enactments intended to pre-empt the legislature because E.O. No. 228 was issued on July 17, 1987, and the other measures, *i.e.*, Proc. No. 131 and E.O. No. 229, were both issued on July 22, 1987.

10. ID.; ID.; ID.; ID.; MEASURES PROMULGATED REMAINS VALID EVEN AFTER LOSS OF LEGISLATIVE POWER; RATIONALE. — Neither is it correct to say that these measures ceased to be valid when she lost her legislative power for, like any statute, they continue to be in force unless modified or repealed by subsequent law or declared invalid by the courts. A statute does not *ipso facto* become inoperative simply because of the dissolution of the legislature that enacted it. By the same token, President Aquino's loss of legislative power did not have the effect of invalidating all the measures enacted by her when and as long as she possessed it.

11. ID.; STATUTES; PROCLAMATION REMAINS VALID EVEN AFTER LOSS OF LEGISLATIVE POWER; RATIONALE. — Proc. No. 131 is not an appropriation measure even if it does provide for the creation of said fund, for that is not its principal purpose. An appropriation law is one the primary and specific purpose of which is to authorize the release of public funds from the treasury. The creation of the fund is only incidental to the main objective of the proclamation, which is agrarian reform.

12. ID.; ID.; PROCLAMATION NO. 131 AND EXECUTIVE ORDER NO. 229; ABSENCE OF RETENTION LIMIT PROVIDED FOR IN REPUBLIC ACT NO. 6657. — The argument of some of

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the petitioners that Proc. No. 131 and E.O. No. 229 should be invalidated because they do not provide for retention limits as required by Article XIII, Section 4 of the Constitution is no longer tenable. R.A. No. 6657 does provide that in no case shall retention by the landowner exceed five (5) hectares. three (3) hectares may be awarded to each child of the landowner, subject to two (2) qualification which is now in Section 6 of the law.

13. ID.; ID.; TITLE OF A BILL NEED NOT BE CATALOGUED. — The title of the bill does not have to be a catalogue of its contents and will suffice if the matters embodied in the text are relevant to each other and may be inferred from the title.

14. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; ISSUANCES FROM THE PRESIDENT REQUIRE PUBLICATION FOR EFFECTIVITY. — But for all their peremptoriness, these issuances from the President Marcos still had to comply with the requirement for publication as this Court held in *Tañada v. Tuvera*. Hence, unless published in the Official Gazette in accordance with Article 2 of the Civil Code, they could not have any force and effect if they were among those enactments successfully challenged in that case. (LOI 474 was published, though, in the Official Gazette dated November 29, 1976.)

15. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHEN ISSUED. — *Mandamus* will lie to compel the discharge of the discretionary duty itself but not to control the discretion to be exercised. In other words, *mandamus* can issue to require *action only* but not *specific action*.

16. ID.; ID.; ID.; GENERALLY NOT AVAILABLE WHERE THERE IS A PLAIN, SPEEDY AND ADEQUATE REMEDY; EXCEPTION. — While it is true that as a rule the writ will not be proper as long as there is still a plain, speedy and adequate remedy available from the administrative authorities, resort to the courts may still be permitted if the issue raised is a question of law.

17. POLITICAL LAW; INHERENT POWER OF THE STATE; POLICE POWER AND EMINENT DOMAIN; TRADITIONAL DISTINCTIONS. — There are traditional distinctions between the police power and the power of eminent domain that logically preclude the application of both powers at the same time on

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the same subject. The cases before us present no knotty complication insofar as the question of compensable taking is concerned. To the extent that the measures under challenge merely prescribe retention limits for landowners, there is an exercise of the police power for the regulation of private property in accordance with the Constitution. But where, to carry out such regulation, it becomes necessary to deprive such owners of whatever lands they may own in excess of the maximum area allowed, there is definitely a taking under the power of eminent domain for which payment of just compensation is imperative. The taking contemplated is not a mere limitation of the use of the land. What is required is the surrender of the title to and the physical possession of the said excess and all beneficial rights accruing to the owner in favor of the farmer-beneficiary. This is definitely an exercise not of the police power but of the power of eminent domain.

18. **CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; CLASSIFICATION; DEFINED.** — Classification has been defined as the grouping of persons or things similar to each other in certain particulars and different from each other in these same particulars.

19. **ID.; ID.; ID.; REQUISITES.** — To be valid, it must conform to the following requirements: (1) it must be based on substantial distinctions; (2) it must be germane to the purposes of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all the members of the class.

20. **ID.; ID.; ID.; MEANING.** — Equal protection simply means that all persons or things similarly situated must be treated alike both as to the rights conferred and the liabilities imposed.

21. **POLITICAL LAW; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; NATURE.** — Eminent domain is an inherent power of the State that enables it to forcibly acquire private lands intended for public use upon payment of just compensation to the owner.

22. **ID.; ID.; ID.; WHEN MAY BE AVAILED OF.** — Obviously, there is no need to expropriate where the owner is willing to sell under terms also acceptable to the purchaser, in which case an ordinary deed of sale may be agreed upon by the parties. It is only where the owner is unwilling to sell, or cannot accept the price or

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other conditions offered by the vendee, that the power of eminent domain will come into play to assert the paramount authority of the State over the interests of the property owner. Private rights must then yield to the irresistible demands of the public interest on the time-honored justification, as in the case of the police power, that the welfare of the people is the supreme law.

23. **ID.; ID.; ID.; REQUIREMENTS.** — Basically, the requirements for a proper exercise of the power are: (1) public use and (2) just compensation.

24. **ID.; POLITICAL QUESTION; DEFINED.** — The term "political question" connotes what it means in ordinary parlance, namely, a question of policy. It refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government." It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.

25. **ID.; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; JUST COMPENSATION; DEFINED.** — Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator.

26. **ID.; ID.; ID.; WORD "JUST," EXPLAINED.** — It has been repeatedly stressed by this Court that the measure is not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, ample.

27. **ID.; ID.; ID.; COMPENSABLE TAKING; CONDITIONS.** — There is compensable taking when the following conditions concur: (1) the expropriator must enter a private property; (2) the entry must be for more than a momentary period; (3) the entry must be under warrant or color of legal authority; (4) the property must be devoted to public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property.

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28. ID.; ID.; ID.; DEPOSIT, NOT NECESSARY WHERE THE EXPROPRIATOR IS THE STATE. — Where the State itself is the expropriator, it is not necessary for it to make a deposit upon its taking possession of the condemned property, as "the compensation is a public charge, the good faith of the public is pledged for its payment, and all the resources of taxation may be employed in raising the amount."

29. ID.; ID.; ID.; DETERMINATION THEREOF, ADDRESSED TO THE COURTS OF JUSTICE. — 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.

30. ID.; ID.; ID.; ID.; EMINENT DOMAIN UNDER THE COMPREHENSIVE AGRARIAN REFORM LAW; DETERMINATION MADE BY THE DEPARTMENT OF AGRARIAN RELATIONS, ONLY PRELIMINARY. — 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.

31. ID.; ID.; ID.; ID.; PAYMENT IN MONEY ONLY, NOT APPLICABLE IN REVOLUTIONARY KIND OF EXPROPRIATION. — We do not deal here with the *traditional* exercise of the power of eminent domain. This is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose. What we deal with here is a *revolutionary* kind of expropriation. The expropriation before us affects *all* private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. Such a program will involve not mere millions of pesos. The cost will be tremendous. Considering the vast areas of land subject to expropriation under the laws before us, we estimate that hundreds of billions of

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pesos will be needed, far more indeed than the amount of ₱50 billion initially appropriated, which is already staggering as it is by our present standards. The Court has not found in the records of the Constitutional Commission any categorial agreement among the members regarding the meaning to be given the concept of just compensation as applied to the comprehensive agrarian reform program being contemplated. On the other hand, there is nothing in the records either that militates against the assumptions we are making of the general sentiments and intention of the members on the content and manner of the payment to be made to the landowner in the light of the magnitude of the expenditure and the limitations of the expropriator. Therefore, payment of the just compensation is not always required to be made fully in money.

32. ID.; ID.; ID.; ID.; PRINCIPLE THAT TITLE SHALL PASS ONLY UPON FULL PAYMENT OF JUST COMPENSATION, NOT APPLICABLE UNDER COMPREHENSIVE AGRARIAN REFORM LAW. — Title to the property expropriated shall pass from the owner to the expropriator only upon full payment of the just compensation. The CARP Law, for its part, conditions the transfer of possession and ownership of the land to the government on receipt by the landowner of the corresponding payment or the deposit by the DAR of the compensation in cash or LBP bonds with an accessible bank. Until then, title also remains with the landowner. No outright change of ownership is contemplated either. Hence, that the assailed measures violate due process by arbitrarily transferring title before the land is fully paid for must also be rejected.

33. ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; APPLICATION IN CASE AT BAR. — It does not appear in G.R. No. 78742 that the appeal filed by the petitioners with the Office of the President has already been resolved. Although we have said that the doctrine of exhaustion of administrative remedies need not preclude immediate resort to judicial action, there are factual issues that have yet to be examined on the administrative level, especially the claim that the petitioners are not covered by LOI 474 because they do not own other agricultural lands than the subjects of their petition. Obviously, the Court cannot resolve these issues.

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DECISION

CRUZ, *J.*:

In ancient mythology, Antaeus was a terrible giant who blocked and challenged Hercules for his life on his way to Mycenae after performing his eleventh labor. The two wrestled mightily and Hercules flung his adversary to the ground thinking him dead, but Antaeus rose even stronger to resume their struggle. This happened several times to Hercules' increasing amazement. Finally, as they continued grappling, it dawned on Hercules that Antaeus was the son of Gaea and could never die as long as any part of his body was touching his Mother Earth. Thus forewarned, Hercules then held Antaeus up in the air, beyond the reach of the sustaining soil, and crushed him to death.

Mother Earth. The sustaining soil. The giver of life, without whose invigorating touch even the powerful Antaeus weakened and died.

The cases before us are not as fanciful as the foregoing tale. But they also tell of the elemental forces of life and death, of men and women who, like Antaeus, need the sustaining strength of the precious earth to stay alive.

"Land for the Landless" is a slogan that underscores the acute imbalance in the distribution of this precious resource among our people. But it is more than a slogan. Through the brooding centuries, it has become a battlecry dramatizing the increasingly urgent demand of the dispossessed among us for a plot of earth as their place in the sun.

Recognizing this need, the Constitution in 1935 mandated the policy of social justice to "insure the well-being and economic security of all the people,"[1] especially the less privileged. In 1973, the new Constitution affirmed this goal, adding specifically that "the State shall regulate the acquisition, ownership, use, enjoyment and disposition of private property and equitably diffuse

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[1] Art. II, Sec. 5.

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property ownership and profits."[2] Significantly, there was also the specific injunction to "formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil."[3]

The Constitution of 1987 was not to be outdone. Besides echoing these sentiments, it also adopted one whole and separate Article XIII on Social Justice and Human Rights, containing grandiose but undoubtedly sincere provisions for the uplift of the common people. These include a call in the following words for the adoption by the State of an agrarian reform program:

> 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.

Earlier, in fact, R.A. No. 3844, otherwise known as the Agricultural Land Reform Code, had already been enacted by the Congress of the Philippines on August 8, 1963, in line with the above-stated principles. This was substantially superseded almost a decade later by P.D. No. 27, which was promulgated on October 21, 1972, along with martial law, to provide for the compulsory acquisition of private lands for distribution among tenant-farmers and to specify maximum retention limits for landowners.

The people power revolution of 1986 did not change and indeed even energized the thrust for agrarian reform. Thus, on July 17, 1987, President Corazon C. Aquino issued E.O. No. 228, declaring full land ownership in favor of the beneficiaries

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[2] 1973 Constitution, Art. II, Sec. 6.

[3] *Ibid.*, Art. XIV, Sec. 12.

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of P.D. No. 27 and providing for the valuation of still unvalued lands covered by the decree as well as the manner of their payment. This was followed on July 22, 1987 by Presidential Proclamation No. 131, instituting a comprehensive agrarian reform program (CARP), and E.O. No. 229, providing the mechanics for its implementation.

Subsequently, with its formal organization, the revived Congress of the Philippines took over legislative power from the President and started its own deliberations, including extensive public hearings, on the improvement of the interests of farmers. The result, after almost a year of spirited debate, was the enactment of R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, which President Aquino signed on June 10, 1988. This law, while considerably changing the earlier mentioned enactments, nevertheless gives them suppletory effect insofar as they are not inconsistent with its provisions.[4]

The above-captioned cases have been consolidated because they involve common legal questions, including serious challenges to the constitutionality of the several measures mentioned above. They will be the subject of one common discussion and resolution. The different antecedents of each case will require separate treatment, however, and will must be explained hereunder.

G.R. No. 79777

Squarely raised in this petition is the constitutionality of P.D. No. 27, E.O. Nos. 228 and 229, and R.A. No. 6657.

The subjects of this petition are a 9-hectare riceland worked by four tenants and owned by petitioner Nicolas Manaay and his wife and a 5-hectare riceland worked by four tenants and owned by petitioner Augustin Hermano, Jr. The tenants were declared full owners of these lands by E.O. No. 228 as qualified farmers under P.D. No. 27.

The petitioners are questioning P.D. No. 27 and E.O. Nos. 228 and 229 on grounds *inter alia* of separation of powers, due process, equal protection and the constitutional limitation

[4] R.A No. 6657, Sec. 15.

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that no private property shall be taken for public use without just compensation.

They contend that President Aquino usurped legislative power when she promulgated E.O. No. 228. The said measure is invalid also for violation of Article XIII, Section 4, of the Constitution, for failure to provide for retention limits for small landowners. Moreover, it does not conform to Article VI, Section 25(4) and the other requisites of a valid appropriation.

In connection with the determination of just compensation, the petitioners argue that the same may be made only by a court of justice and not by the President of the Philippines. They invoke the recent cases of *EPZA v. Dulay*[5] and *Manotok v. National Food Authority*.[6] Moreover, the just compensation contemplated by the Bill of Rights is payable in money or in cash and not in the form of bonds or other things of value.

In considering the rentals as advance payment on the land, the executive order also deprives the petitioners of their property rights as protected by due process. The equal protection clause is also violated because the order places the burden of solving the agrarian problems on the owners only of agricultural lands. No similar obligation is imposed on the owners of other properties.

The petitioners also maintain that in declaring the beneficiaries under P.D. No. 27 to be the owners of the lands occupied by them, E.O. No. 228 ignored judicial prerogatives and so violated due process. Worse, the measure would not solve the agrarian problem because even the small farmers are deprived of their lands and the retention rights guaranteed by the Constitution.

In his Comment, the Solicitor General stresses that P.D. No. 27 has already been upheld in the earlier cases of *Chavez v. Zobel*,[7] *Gonzales v. Estrella*,[8] and *Association of Rice and*

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[5] 149 SCRA 305.

[6] 150 SCRA 89.

[7] 55 SCRA 26.

[8] 91 SCRA 294.

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Corn Producers of the Philippines, Inc. v. the National Land Reform Council[9] The determination of just compensation by the executive authorities conformably to the formula prescribed under the questioned order is at best initial or preliminary only. It does not foreclose judicial intervention whenever sought or warranted. At any rate, the challenge to the order is premature because no valuation of their property has as yet been made by the Department of Agrarian Reform. The petitioners are also not proper parties because the lands owned by them do not exceed the maximum retention limit of 7 hectares.

Replying, the petitioners insist they are proper parties because P.D. No. 27 does not provide for retention limits on tenanted lands and that in any event their petition is a class suit brought in behalf of landowners with landholdings below 24 hectares. They maintain that the determination of just compensation by the administrative authorities is a final ascertainment. As for the cases invoked by the public respondent, the constitutionality of P.D. No. 27 was merely assumed in Chavez, while what was decided in Gonzales was the validity of the imposition of martial law.

In the amended petition dated November 22, 1988, it is contended that P.D. No. 27, E.O. Nos. 228 and 229 (except Sections 20 and 21) have been impliedly repealed by R.A. No. 6657. Nevertheless, this statute should itself also be declared unconstitutional because it suffers from substantially the same infirmities as the earlier measures.

A petition for intervention was filed with leave of court on June 1, 1988 by Vicente Cruz, owner of a 1.83-hectare land, who complained that the DAR was insisting on the implementation of P.D. No. 27 and E.O. No. 228 despite a compromise agreement he had reached with his tenant on the payment of rentals. In a subsequent motion dated April 10, 1989, he adopted the allegations in the basic amended petition that the above-mentioned enactments have been impliedly repealed by R.A. No. 6657.

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[9] 113 SCRA 798.

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G.R. No. 79310

The petitioners herein are landowners and sugar planters in the Victorias Mill District, Victorias, Negros Occidental. Co-petitioner Planters' Committee, Inc. is an organization composed of 1,400 planter-members. This petition seeks to prohibit the implementation of Proc. No. 131 and E.O. No. 229.

The petitioners claim that the power to provide for a Comprehensive Agrarian Reform Program as decreed by the Constitution belongs to Congress and not the President. Although they agree that the President could exercise legislative power until the Congress was convened, she could do so only to enact emergency measures during the transition period. At that, even assuming that the interim legislative power of the President was properly exercised, Proc. No. 131 and E.O. No. 229 would still have to be annulled for violating the constitutional provisions on just compensation, due process, and equal protection.

They also argue that under Section 2 of Proc. No. 131 which provides:

> *Agrarian Reform Fund.* — There is hereby created a special fund, to be known as the Agrarian Reform Fund, an initial amount of FIFTY BILLION PESOS (₱50,000,000,000.00) to cover the estimated cost of the Comprehensive Agrarian Reform Program from 1987 to 1992 which shall be sourced from the receipts of the sale of the assets of the Asset Privatization Trust and Receipts of sale of ill-gotten wealth received through the Presidential Commission on Good Government and such other sources as government may deem appropriate. The amounts collected and accruing to this special fund shall be considered automatically appropriated for the purpose authorized in this Proclamation.

the amount appropriated is *in futuro*, not *in esse*. The money needed to cover the cost of the contemplated expropriation has yet to be raised and cannot be appropriated at this time.

Furthermore, they contend that taking must be simultaneous with payment of just compensation as it is traditionally understood, *i.e.*, with money and in full, but no such payment is contemplated in Section 5 of the E.O. No. 229. On the contrary, Section 6,

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thereof provides that the Land Bank of the Philippines "shall compensate the landowner in an amount to be established by the government, which shall be based on the owner's declaration of current fair market value as provided in Section 4 hereof, but subject to certain controls to be defined and promulgated by the Presidential Agrarian Reform Council." This compensation may not be paid fully in money but in any of several modes that may consist of part cash and part bond, with interest, maturing periodically, or direct payment in cash or bond as may be mutually agreed upon by the beneficiary and the landowner or as may be prescribed or approved by the PARC.

The petitioners also argue that in the issuance of the two measures, no effort was made to make a careful study of the sugar planters' situation. There is no tenancy problem in the sugar areas that can justify the application of the CARP to them. To the extent that the sugar planters have been lumped in the same legislation with other farmers, although they are a separate group with problems exclusively their own, their right to equal protection has been violated.

A motion for intervention was filed on August 27, 1987 by the National Federation of Sugarcane Planters (NASP) which claims a membership of at least 20,000 individual sugar planters all over the country. On September 10, 1987, another motion for intervention was filed, this time by Manuel Barcelona, *et al.*, representing coconut and riceland owners. Both motions were granted by the Court.

NASP alleges that President Aquino had no authority to fund the Agrarian Reform Program and that, in any event, the appropriation is invalid because of uncertainty in the amount appropriated. Section 2 of Proc. No. 131 and Sections 20 and 21 of E.O. No. 229 provide for an initial appropriation of fifty billion pesos and thus specifies the minimum rather than the maximum authorized amount. This is not allowed. Furthermore, the stated *initial* amount has not been certified to by the National Treasurer as actually available.

Two additional arguments are made by Barcelona, to wit, the failure to establish by clear and convincing evidence the

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necessity for the exercise of the powers of eminent domain, and the violation of the fundamental right to own property.

The petitioners also decry the penalty for non-registration of the lands, which is the expropriation of the said land for an amount equal to the government assessor's valuation of the land for tax purposes. On the other hand, if the landowner declares his own valuation, he is unjustly required to immediately pay the corresponding taxes on the land, in violation of the uniformity rule.

In his consolidated Comment, the Solicitor General first invokes the presumption of constitutionality in favor of Proc. No. 131 and E.O. No. 229. He also justifies the necessity for the expropriation as explained in the "whereas" clauses of the Proclamation and submits that, contrary to the petitioner's contention, a pilot project to determine the feasibility of CARP and a general survey on the people's opinion thereon are not indispensable prerequisites to its promulgation.

On the alleged violation of the equal protection clause, the sugar planters have failed to show that they belong to a different class and should be differently treated. The Comment also suggests the possibility of Congress first distributing public agricultural lands and scheduling the expropriation of private agricultural lands later. From this viewpoint, the petition for prohibition would be premature.

The public respondent also points out that the constitutional prohibition is against the payment of public money without the corresponding appropriation. There is no rule that only money already in existence can be the subject of an appropriation law. Finally, the earmarking of fifty billion pesos as Agrarian Reform Fund, although denominated as an initial amount, is actually the *maximum* sum appropriated. The word "initial" simply means that additional amounts may be appropriated later when necessary.

On April 11, 1988, Prudencio Serrano, a coconut planter, filed a petition on his own behalf, assailing the constitutionality

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of E.O. No. 229. In addition to the arguments already raised, Serrano contends that the measure is unconstitutional because:

(1) Only public lands should be included in the CARP;

(2) E.O. No. 229 embraces more than one subject which is not expressed in the title;

(3) The power of the President to legislate was terminated on July 2, 1987; and

(4) The appropriation of a ₱50 billion special fund from the National Treasury did not originate from the House of Representatives.

G.R. No. 79744

The petitioner alleges that the then Secretary of Department of Agrarian Reform, in violation of due process and the requirement for just compensation, placed his landholding under the coverage of Operation Land Transfer. Certificates of Land Transfer were subsequently issued to the private respondents, who then refused payment of lease rentals to him.

On September 3, 1986, the petitioner protested the erroneous inclusion of his small landholding under Operation Land Transfer and asked for the recall and cancellation of the Certificates of Land Transfer in the name of the private respondents. He claims that on December 24, 1986, his petition was denied without hearing. On February 17, 1987, he filed a motion for reconsideration, which had not been acted upon when E.O. Nos. 228 and 229 were issued. These orders rendered his motion moot and academic because they directly effected the transfer of his land to the private respondents.

The petitioner now argues that:

(1) E.O. Nos. 228 and 229 were invalidly issued by the President of the Philippines.

(2) The said executive orders are violative of the constitutional provision that no private property shall be taken without due process or just compensation.

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(3) The petitioner is denied the right of maximum retention provided for under the 1987 Constitution.

The petitioner contends that the issuance of E.O Nos. 228 and 229 shortly before Congress convened is anomalous and arbitrary, besides violating the doctrine of separation of powers. The legislative power granted to the President under the Transitory Provisions refers only to emergency measures that may be promulgated in the proper exercise of the police power.

The petitioner also invokes his rights not to be deprived of his property without due process of law and to the retention of his small parcels of riceholding as guaranteed under Article XIII, Section 4 of the Constitution. He likewise argues that, besides denying him just compensation for his land, the provisions of E.O. No. 228 declaring that:

> Lease rentals paid to the landowner by the farmer-beneficiary after October 21, 1972 shall be considered as advance payment for the land.

is an unconstitutional taking of a vested property right. It is also his contention that the inclusion of even small landowners in the program along with other landowners with lands consisting of seven hectares or more is undemocratic.

In his Comment, the Solicitor General submits that the petition is premature because the motion for reconsideration filed with the Minister of Agrarian Reform is still unresolved. As for the validity of the issuance of E.O. Nos. 228 and 229, he argues that they were enacted pursuant to Section 6, Article XVIII of the Transitory Provisions of the 1987 Constitution which reads:

> The incumbent president shall continue to exercise legislative powers until the first Congress is convened.

On the issue of just compensation, his position is that when P.D. No. 27 was promulgated on October 21, 1972, the tenant-farmer of agricultural land was deemed the owner of the land he was tilling. The leasehold rentals paid after that date should therefore be considered amortization payments.

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In his Reply to the public respondents, the petitioner maintains that the motion he filed was resolved on December 14, 1987. An appeal to the Office of the President would be useless with the promulgation of E.O. Nos. 228 and 229, which in effect sanctioned the validity of the public respondent's acts.

G.R. No. 78742

The petitioners in this case invoke the right of retention granted by P.D. No. 27 to owners of rice and corn lands not exceeding seven hectares as long as they are cultivating or intend to cultivate the same. Their respective lands do not exceed the statutory limit but are occupied by tenants who are actually cultivating such lands.

According to P.D. No. 316, which was promulgated in implementation of P.D. No. 27:

> No tenant-farmer in agricultural lands primarily devoted to rice and corn shall be ejected or removed from his farmholding until such time as the respective rights of the tenant-farmers and the landowner shall have been determined in accordance with the rules and regulations implementing P.D. No. 27.

The petitioners claim they cannot eject their tenants and so are unable to enjoy their right of retention because the Department of Agrarian Reform has so far not issued the implementing rules required under the above-quoted decree. They therefore ask the Court for a writ of *mandamus* to compel the respondent to issue the said rules.

In his Comment, the public respondent argues that P.D. No. 27 has been amended by LOI 474 removing any right of retention from persons who own other agricultural lands of more than 7 hectares in aggregate area or lands used for residential, commercial, industrial or other purposes from which they derive adequate income for their family. And even assuming that the petitioners do not fall under its terms, the regulations implementing P.D. No. 27 have already been issued, to wit, the Memorandum dated July 10, 1975 (Interim Guidelines on Retention by Small Landowners, with an accompanying Retention Guide Table), Memorandum Circular No. 11 dated April 21, 1978,

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(Implementation Guidelines of LOI No. 474), Memorandum Circular No. 18-81 dated December 29, 1981 (Clarificatory Guidelines on Coverage of P.D. No. 27 and Retention by Small Landowners), and DAR Administrative Order No. 1, series of 1985 (Providing for a Cut-off Date for Landowners to Apply for Retention and/or to Protest the Coverage of their Landholdings under Operation Land Transfer pursuant to P.D. No. 27). For failure to file the corresponding applications for retention under these measures, the petitioners are now barred from invoking this right.

The public respondent also stresses that the petitioners have prematurely initiated this case notwithstanding the pendency of their appeal to the President of the Philippines. Moreover, the issuance of the implementing rules, assuming this has not yet been done, involves the exercise of discretion which cannot be controlled through the writ of *mandamus*. This is especially true if this function is entrusted, as in this case, to a separate department of the government.

In their Reply, the petitioners insist that the abovecited measures are not applicable to them because they do not own more than seven hectares of agricultural land. Moreover, assuming *arguendo* that the rules were intended to cover them also, the said measures are nevertheless not in force because they have not been published as required by law and the ruling of this Court in *Tañada v. Tuvera.*[10] As for LOI 474, the same is ineffective for the additional reason that a mere letter of instruction could not have repealed the presidential decree.

I

Although holding neither purse nor sword and so regarded as the weakest of the three departments of the government, the judiciary is nonetheless vested with the power to annul the acts of either the legislative or the executive or of both when not conformable to the fundamental law. This is the reason for what some quarters call the doctrine of judicial supremacy.

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[10] 136 SCRA 27; 146 SCRA 446.

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Even so, this power is not lightly assumed or readily exercised. The doctrine of separation of powers imposes upon the courts a proper restraint, born of the nature of their functions and of their respect for the other departments, in striking down the acts of the legislative and the executive as unconstitutional. The policy, indeed, is a blend of courtesy and caution. To doubt is to sustain. The theory is that before the act was done or the law was enacted, earnest studies were made by Congress or the President, or both, to insure that the Constitution would not be breached.

In addition, the Constitution itself lays down stringent conditions for a declaration of unconstitutionality, requiring therefor the concurrence of a majority of the members of the Supreme Court who took part in the deliberations and voted on the issue during their session *en banc*.[11] And as established by judge-made doctrine, the Court will assume jurisdiction over a constitutional question only if it is shown that the essential requisites of a judicial inquiry into such a question are first satisfied. Thus, there must be an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, the constitutional question must have been opportunely raised by the proper party, and the resolution of the question is unavoidably necessary to the decision of the case itself.[12]

With particular regard to the requirement of proper party as applied in the cases before us, we hold that the same is satisfied by the petitioners and intervenors because each of them has sustained or is in danger of sustaining an immediate injury as a result of the acts or measures complained of.[13] And even if, strictly speaking, they are not covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised.

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[11] Art. VIII, Sec. 4(2).

[12] *Dumlao v. COMELEC*, 95 SCRA 392.

[13] *Ex Parte* Levitt, 303 US 633.

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In the first Emergency Powers Cases,[14] ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they were invoking only an indirect and general interest shared in common with the public. The Court dismissed the objection that they were not proper parties and ruled that "the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure." We have since then applied this exception in many other cases.[15]

The other above-mentioned requisites have also been met in the present petitions.

In must be stressed that despite the inhibitions pressing upon the Court when confronted with constitutional issues like the ones now before it, it will not hesitate to declare a law or act invalid when it is convinced that this must be done. In arriving at this conclusion, its only criterion will be the Constitution as God and its conscience give it the light to probe its meaning and discover its purpose. Personal motives and political considerations are irrelevancies that cannot influence its decision. Blandishment is as ineffectual as intimidation. For all the awesome power of the Congress and the Executive, the Court will not hesitate to "make the hammer fall, and heavily," to use Justice Laurel's pithy language, where the acts of these departments, or of any public official, betray the people's will as expressed in the Constitution.

It need only be added, to borrow again the words of Justice Laurel, that —

> x x x when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the Legislature, but only asserts the solemn and sacred obligation

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[14] *Araneta v. Dinglasan*. 84 Phil. 368.

[15] *Pascual v. Secretary of Public Works*. 110 Phil. 331: *PHILCONSA v. Gimenez*, 15 SCRA 479: *Sanidad v. COMELEC*. 73 SCRA 333.

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assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.[16]

The cases before us categorically raise constitutional questions that this Court must categorically resolve. And so we shall.

II

We proceed first to the examination of the preliminary issues before resolving the more serious challenges to the constitutionality of the several measures involved in these petitions.

The promulgation of P.D. No. 27 by President Marcos in the exercise of his powers under martial law has already been sustained in *Gonzales v. Estrella* and we find no reason to modify or reverse it on that issue. As for the power of President Aquino to promulgate Proc. No. 131 and E.O. Nos. 228 and 229, the same was authorized under Section 6 of the Transitory Provisions of the 1987 Constitution, quoted above.

The said measures were issued by President Aquino before July 27, 1987, when the Congress of the Philippines was formally convened and took over legislative power from her. They are not "midnight" enactments intended to pre-empt the legislature because E.O. No. 228 was issued on July 17, 1987, and the other measures, *i.e.*, Proc. No. 131 and E.O. No. 229, were both issued on July 22, 1987. Neither is it correct to say that these measures ceased to be valid when she lost her legislative power for, like any statute, they continue to be in force unless modified or repealed by subsequent law or declared invalid by the courts. A statute does not *ipso facto* become inoperative simply because of the dissolution of the legislature that enacted it. By the same token, President Aquino's loss of legislative power did not have the effect of invalidating all the measures enacted by her when and as long as she possessed it.

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[16] *Angara v. Electoral Commission,* 63 Phil. 139.

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Significantly, the Congress she is alleged to have undercut has not rejected but in fact substantially affirmed the challenged measures and has specifically provided that they shall be suppletory to R.A. No. 6657 whenever not inconsistent with its provisions.[17] Indeed, some portions of the said measures, like the creation of the ₱50 billion fund in Section 2 of Proc. No. 131, and Sections 20 and 21 of E.O. No. 229, have been incorporated by reference in the CARP Law.[18]

That fund, as earlier noted, is itself being questioned on the ground that it does not conform to the requirements of a valid appropriation as specified in the Constitution. Clearly, however, Proc. No. 131 is not an appropriation measure even if it does provide for the creation of said fund, for that is not its principal purpose. An appropriation law is one the primary and specific purpose of which is to authorize the release of public funds from the treasury.[19] The creation of the fund is only incidental to the main objective of the proclamation, which is agrarian reform.

It should follow that the specific constitutional provisions invoked, to wit, Section 24 and Section 25(4) of Article VI, are not applicable. With particular reference to Section 24, this obviously could not have been complied with for the simple reason that the House of Representatives, which now has the exclusive power to initiate appropriation measures, had not yet been convened when the proclamation was issued. The legislative power was then solely vested in the President of the Philippines, who embodied, as it were, both houses of Congress.

The argument of some of the petitioners that Proc. No. 131 and E.O. No. 229 should be invalidated because they do not provide for retention limits as required by Article XIII, Section 4 of the Constitution is no longer tenable. R.A. No. 6657 does provide for such limits now in Section 6 of the law, which in fact is one of its most controversial provisions. This section declares:

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[17] R.A. No. 6657, Sec. 75.

[18] *Ibid.*, Sec. 63.

[19] *Bengzon v. Secretary of Justice*, 299 US 410.

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Retention Limits. — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm; Provided, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder, further, That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The argument that E.O. No. 229 violates the constitutional requirement that a bill shall have only one subject, to be expressed in its title, deserves only short attention. It is settled that the title of the bill does not have to be a catalogue of its contents and will suffice if the matters embodied in the text are relevant to each other and may be inferred from the title.[20]

The Court wryly observes that during the past dictatorship, every presidential issuance, by whatever name it was called, had the force and effect of law because it came from President Marcos. Such are the ways of despots. Hence, it is futile to argue, as the petitioners do in G.R. No. 79744, that LOI 474 could not have repealed P.D. No. 27 because the former was only a letter of instruction. The important thing is that it was issued by President Marcos, whose word was law during that time.

But for all their peremptoriness, these issuances from the President Marcos still had to comply with the requirement for publication as this Court held in *Tañada v. Tuvera*.[21] Hence, unless published in the Official Gazette in accordance with

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[20] *Alalayan v. NPC*, 24 SCRA 172; *Sumulong v. COMELEC*, 73 Phil. 288; *Tio v. Videogram Regulatory Board*, 151 SCRA 208.

[21] *Supra*.

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Article 2 of the Civil Code, they could not have any force and effect if they were among those enactments successfully challenged in that case. (LOI 474 was published, though, in the Official Gazette dated November 29, 1976.)

Finally, there is the contention of the public respondent in G.R. No. 78742 that the writ of *mandamus* cannot issue to compel the performance of a discretionary act, especially by a specific department of the government. That is true as a general proposition but is subject to one important qualification. Correctly and categorically stated, the rule is that *mandamus* will lie to compel the discharge of the discretionary duty itself but not to control the discretion to be exercised. In other words, *mandamus* can issue to require *action only* but not *specific action.*

Whenever a duty is imposed upon a public official and an unnecessary and unreasonable delay in the exercise of such duty occurs, if it is a clear duty imposed by law, the courts will intervene by the extraordinary legal remedy of *mandamus* to *compel action*. If the duty is purely ministerial, the courts will require *specific action*. If the duty is purely discretionary, the courts by *mandamus* will require *action only*. For example, if an inferior court, public official, or board should, for an unreasonable length of time, fail to decide a particular question to the great detriment of all parties concerned, or a court should refuse to take jurisdiction of a cause when the law clearly gave it jurisdiction, *mandamus* will issue, in the first case to require a decision, and in the second to require that jurisdiction be taken of the cause.[22]

And while it is true that as a rule the writ will not be proper as long as there is still a plain, speedy and adequate remedy available from the administrative authorities, resort to the courts may still be permitted if the issue raised is a question of law.[23]

III

There are traditional distinctions between the police power and the power of eminent domain that logically preclude the

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[22] *Lamb v. Phipps*, 22 Phil. 456.

[23] *Malabanan v. Ramento*, 129 SCRA 359; *Español v. Chairman, Philippine Veterans Administration*, 137 SCRA 314.

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application of both powers at the same time on the same subject. In the case of *City of Baguio v. NAWASA*,[24] for example, where a law required the transfer of all municipal waterworks systems to the NAWASA in exchange for its assets of equivalent value, the Court held that the power being exercised was eminent domain because the property involved was wholesome and intended for a public use. Property condemned under the police power is noxious or intended for a noxious purpose, such as a building on the verge of collapse, which should be demolished for the public safety, or obscene materials, which should be destroyed in the interest of public morals. The confiscation of such property is not compensable, unlike the taking of property under the power of expropriation, which requires the payment of just compensation to the owner.

In the case of *Pennsylvania Coal Co. v. Mahon*,[25] Justice Holmes laid down the limits of the police power in a famous aphorism: "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." The regulation that went "too far" was a law prohibiting mining which might cause the subsidence of structures for human habitation constructed on the land surface. This was resisted by a coal company which had earlier granted a deed to the land over its mine but reserved all mining rights thereunder, with the grantee assuming all risks and waiving any damage claim. The Court held the law could not be sustained without compensating the grantor. Justice Brandeis filed a lone dissent in which he argued that there was a valid exercise of the police power. He said:

> Every restriction upon the use of property imposed in the exercise of the police power deprives the owner of some right theretofore enjoyed, and is, in that sense, an abridgment by the State of rights in property without making compensation. But restriction imposed to protect the public health, safety or morals from dangers threatened is not a taking. The restriction here in question is merely the prohibition of a noxious use. The property so restricted remains in the possession

[24] 106 Phil. 144.

[25] 260 US 393.

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of its owner. The state does not appropriate it or make any use of it. The state merely prevents the owner from making a use which interferes with paramount rights of the public. Whenever the use prohibited ceases to be noxious — as it may because of further changes in local or social conditions — the restriction will have to be removed and the owner will again be free to enjoy his property as heretofore.

Recent trends, however, would indicate not a polarization but a *mingling* of the police power and the power of eminent domain, with the latter being used as an implement of the former like the power of taxation. The employment of the taxing power to achieve a police purpose has long been accepted.[26] As for the power of expropriation, Prof. John J. Costonis of the University of Illinois College of Law (referring to the earlier case of *Euclid v. Ambler Realty Co.*, 272 US 365, which sustained a zoning law under the police power) makes the following significant remarks:

Euclid, moreover, was decided in an era when judges located the police and eminent domain powers on different planets. Generally speaking, they viewed eminent domain as encompassing public acquisition of private property for improvements that would be available for "public use," literally construed. To the police power, on the other hand, they assigned the less intrusive task of preventing harmful externalities, a point reflected in the *Euclid* opinion's reliance on an analogy to nuisance law to bolster its support of zoning. So long as suppression of a privately authored harm bore a plausible relation to some legitimate "public purpose," the pertinent measure need have afforded no compensation whatever. With the progressive growth of government's involvement in land use, the distance between the two powers has contracted considerably. Today government often employs eminent domain interchangeably with or as a useful complement to the police power — a trend expressly approved in the Supreme Court's 1954 decision in *Berman v. Parker*, which broadened the reach of eminent domain's "public use" test to match that of the police power's standard of "public purpose."[27]

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[26] *Powell v. Pennsylvania*, 127 US 678; *Lutz v. Araneta,* 98 Phil. 148; *Tio v. Videogram Regulatory Board, supra.*

[27] John J. Costonis, "*The Disparity Issue: A Context for the Grand Central Terminal Decision*," *Harvard Law Review*, Vol. 91:40, 1977, p. 404.

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The *Berman* case sustained a redevelopment project and the improvement of blighted areas in the District of Columbia as a proper exercise of the police power. On the role of eminent domain in the attainment of this purpose, Justice Douglas declared:

> If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.
>
> Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear.
>
> For the power of eminent domain is merely the means to the end.[28]

In *Penn Central Transportation Co. v. New York City*,[29] decided by a 6-3 vote in 1978, the U.S. Supreme Court sustained the respondent's Landmarks Preservation Law under which the owners of the Grand Central Terminal had not been allowed to construct a multi-story office building over the Terminal, which had been designated a historic landmark. Preservation of the landmark was held to be a valid objective of the police power. The problem, however, was that the owners of the Terminal would be deprived of the right to use the airspace above it although other landowners in the area could do so over their respective properties. While insisting that there was here no taking, the Court nonetheless recognized certain compensatory rights accruing to Grand Central Terminal which it said would "undoubtedly mitigate" the loss caused by the regulation. This "fair compensation," as he called it, was explained by Prof. Costonis in this wise:

> In return for retaining the Terminal site in its pristine landmark status, Penn Central was authorized to transfer to neighboring properties the authorized but unused rights accruing to the site prior to the Terminal's designation as a landmark — the rights which would have been exhausted by the 59-story building that the city refused to countenance atop the Terminal. Prevailing bulk restrictions on neighboring sites were proportionately relaxed, theoretically enabling

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[28] 348 US 1954.

[29] 438 US 104.

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Penn Central to recoup its losses at the Terminal site by constructing or selling to others the right to construct larger, hence more profitable buildings on the transferee sites.[30]

The cases before us present no knotty complication insofar as the question of compensable taking is concerned. To the extent that the measures under challenge merely prescribe retention limits for landowners, there is an exercise of the police power for the regulation of private property in accordance with the Constitution. But where, to carry out such regulation, it becomes necessary to deprive such owners of whatever lands they may own in excess of the maximum area allowed, there is definitely a taking under the power of eminent domain for which payment of just compensation is imperative. The taking contemplated is not a mere limitation of the use of the land. What is required is the surrender of the title to and the physical possession of the said excess and all beneficial rights accruing to the owner in favor of the farmer-beneficiary. This is definitely an exercise not of the police power but of the power of eminent domain.

Whether as an exercise of the police power or of the power of eminent domain, the several measures before us are challenged as violative of the due process and equal protection clauses.

The challenge to Proc. No. 131 and E.O. Nos. 228 and 299 on the ground that no retention limits are prescribed has already been discussed and dismissed. It is noted that although they excited many bitter exchanges during the deliberation of the CARP Law in Congress, the retention limits finally agreed upon are, curiously enough, not being questioned in these petitions. We therefore do not discuss them here. The Court will come to the other claimed violations of due process in connection with our examination of the adequacy of just compensation as required under the power of expropriation.

The argument of the small farmers that they have been denied equal protection because of the absence of retention limits has

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[30] See note 27.

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also become academic under Section 6 of R.A. No. 6657. Significantly, they too have not questioned the area of such limits. There is also the complaint that they should not be made to share the burden of agrarian reform, an objection also made by the sugar planters on the ground that they belong to a particular class with particular interests of their own. However, no evidence has been submitted to the Court that the requisites of a valid classification have been violated.

Classification has been defined as the grouping of persons or things similar to each other in certain particulars and different from each other in these same particulars.[31] To be valid, it must conform to the following requirements: (1) it must be based on substantial distinctions; (2) it must be germane to the purposes of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all the members of the class.[32] The Court finds that all these requisites have been met by the measures here challenged as arbitrary and discriminatory.

Equal protection simply means that all persons or things similarly situated must be treated alike both as to the rights conferred and the liabilities imposed.[33] The petitioners have not shown that they belong to a different class and entitled to a different treatment. The argument that not only landowners but also owners of other properties must be made to share the burden of implementing land reform must be rejected. There is a substantial distinction between these two classes of owners that is clearly visible except to those who will not see. There is no need to elaborate on this matter. In any event, the Congress is allowed a wide leeway in providing for a valid classification. Its decision is accorded recognition and respect by the courts of justice except only where its discretion is abused to the detriment of the Bill of Rights.

It is worth remarking at this juncture that a statute may be sustained under the police power only if there is a concurrence

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[31] *International Harvester Co. v. Missouri*, 234 US 199.

[32] *People v. Cayat*, 68 Phil. 12.

[33] *Ichong v. Hernandez*, 101 Phil. 1155.

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of the lawful subject and the lawful method. Put otherwise, the interests of the public generally as distinguished from those of a particular class require the interference of the State and, no less important, the means employed are reasonably necessary for the attainment of the purpose sought to be achieved and not unduly oppressive upon individuals.[34] As the subject and purpose of agrarian reform have been laid down by the Constitution itself, we may say that the first requirement has been satisfied. What remains to be examined is the validity of the method employed to achieve the constitutional goal.

One of the basic principles of the democratic system is that where the rights of the individual are concerned, the end does not justify the means. It is not enough that there be a valid objective; it is also necessary that the means employed to pursue it be in keeping with the Constitution. Mere expediency will not excuse constitutional shortcuts. There is no question that not even the strongest moral conviction or the most urgent public need, subject only to a few notable exceptions, will excuse the bypassing of an individual's rights. It is no exaggeration to say that a person invoking a right guaranteed under Article III of the Constitution is a majority of one even as against the rest of the nation who would deny him that right.

That right covers the person's life, his liberty and his property under Section 1 of Article III of the Constitution. With regard to his property, the owner enjoys the added protection of Section 9, which reaffirms the familiar rule that private property shall not be taken for public use without just compensation.

This brings us now to the power of eminent domain.

IV

Eminent domain is an inherent power of the State that enables it to forcibly acquire private lands intended for public use upon payment of just compensation to the owner. Obviously, there is no need to expropriate where the owner is willing to sell

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[34] *US v. Toribio*, 15 Phil. 85; *Fabie v. City of Manila*, 21 Phil. 486; *Case v. Board of Health*, 24 Phil. 256.

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under terms also acceptable to the purchaser, in which case an ordinary deed of sale may be agreed upon by the parties.[35] It is only where the owner is unwilling to sell, or cannot accept the price or other conditions offered by the vendee, that the power of eminent domain will come into play to assert the paramount authority of the State over the interests of the property owner. Private rights must then yield to the irresistible demands of the public interest on the time-honored justification, as in the case of the police power, that the welfare of the people is the supreme law.

But for all its primacy and urgency, the power of expropriation is by no means absolute (as indeed no power is absolute). The limitation is found in the constitutional injunction that "private property shall not be taken for public use without just compensation" and in the abundant jurisprudence that has evolved from the interpretation of this principle. Basically, the requirements for a proper exercise of the power are: (1) public use and (2) just compensation.

Let us dispose first of the argument raised by the petitioners in G.R. No. 79310 that the State should first distribute public agricultural lands in the pursuit of agrarian reform instead of immediately disturbing property rights by forcibly acquiring private agricultural lands. Parenthetically, it is not correct to say that only public agricultural lands may be covered by the CARP as the Constitution calls for "the just distribution of all agricultural lands." In any event, the decision to redistribute private agricultural lands in the manner prescribed by the CARP was made by the legislative and executive departments in the exercise of their discretion. We are not justified in reviewing that discretion in the absence of a clear showing that it has been abused.

A becoming courtesy admonishes us to respect the decisions of the political departments when they decide what is known as the political question. As explained by Chief Justice Concepcion in the case of *Tañada v. Cuenco*:[36]

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[35] *Noble v. City of Manila*, 67 Phil. 1.

[36] 100 Phil. 1101.

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The term "political question" connotes what it means in ordinary parlance, namely, a question of policy. It refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government." It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.

It is true that the concept of the political question has been constricted with the enlargement of judicial power, which now includes the authority of the courts "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."[37] Even so, this should not be construed as a license for us to reverse the other departments simply because their views may not coincide with ours.

The legislature and the executive have been seen fit, in their wisdom, to include in the CARP the redistribution of private landholdings (even as the distribution of public agricultural lands is first provided for, while also continuing space under the Public Land Act and other cognate laws). The Court sees no justification to interpose its authority, which we may assert only if we believe that the political decision is not unwise, but *illegal*. We do not find it to be so.

In *U.S. v. Chandler-Dunbar Water Power Company*,[38] it was held:

Congress having determined, as it did by the Act of March 3, 1909 that the entire St. Mary's river between the American bank and the international line, as well as all of the upland north of the present ship canal, throughout its entire length, was "necessary for the purpose of navigation of said waters, and the waters connected therewith," that determination is conclusive in condemnation proceedings instituted by the United States under that Act, and there is no room for judicial review of the judgment of Congress x x x.

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[37] 1987 Constitution, Art. VIII, Sec. 1.

[38] 57 L ed. 1063.

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As earlier observed, the requirement for public use has already been settled for us by the Constitution itself. No less than the 1987 Charter calls for agrarian reform, which is the reason why private agricultural lands are to be taken from their owners, subject to the prescribed maximum retention limits. The purposes specified in P.D. No. 27, Proc. No. 131 and R.A. No. 6657 are only an elaboration of the constitutional injunction that the State adopt the necessary measures "to encourage and undertake the just distribution of all agricultural lands to enable farmers who are landless to own directly or collectively the lands they till." That public use, as pronounced by the fundamental law itself, must be binding on us.

The second requirement, *i.e.*, the payment of just compensation, needs a longer and more thoughtful examination.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator.[39] It has been repeatedly stressed by this Court that the measure is not the taker's gain but the owner's loss.[40] The 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.[41]

It bears repeating that the measures challenged in these petitions contemplate more than a mere regulation of the use of private lands under the police power. We deal here with an actual taking of private agricultural lands that has dispossessed the owners of their property and deprived them of all its beneficial use and enjoyment, to entitle them to the just compensation mandated by the Constitution.

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[39] *Manila Railroad Co. v. Velasquez*, 32 Phil. 286.

[40] *Province of Tayabas v. Perez*, 66 Phil. 467; *J.M. Tuazon & Co., Inc. v. Land Tenure Administration*, 31 SCRA 413; *Municipality of Daet v. Court of Appeals*, 93 SCRA 503; *Manotok v. National Housing Authority*, 150 SCRA 89.

[41] *City of Manila v. Estrada*, 25 Phil. 208.

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As held in *Republic of the Philippines v. Castellvi*,[42] there is compensable taking when the following conditions concur: (1) the expropriator must enter a private property; (2) the entry must be for more than a momentary period; (3) the entry must be under warrant or color of legal authority; (4) the property must be devoted to public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property. All these requisites are envisioned in the measures before us.

Where the State itself is the expropriator, it is not necessary for it to make a deposit upon its taking possession of the condemned property, as "the compensation is a public charge, the good faith of the public is pledged for its payment, and all the resources of taxation may be employed in raising the amount."[43] Nevertheless, Section 16(e) of the CARP Law provides that:

> 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.

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 the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner,

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[42] 58 SCRA 336.

[43] Lewis, *Law of Eminent Domain*, 3rd Edition, pp. 1166-1167.

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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*[44] 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.
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> xxx xxx xxx

[44] 149 SCRA 305.

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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.

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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.

The second and more serious objection to the provisions on just compensation is not as easily resolved.

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This refers to Section 18 of the CARP Law providing in full as follows:

SEC. 18. *Valuation and Mode of Compensation.* — The LBP shall compensate the landowner in such amount 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 compensation shall be paid in one of the following modes, at the option of the landowner:

(1) Cash payment, under the following terms and conditions:

(a) For lands above fifty (50) hectares, insofar as the excess hectarage is concerned — Twenty-five percent (25%) cash, the balance to be paid in government financial instruments negotiable at any time.

(b) For lands above twenty-four (24) hectares and up to fifty (50) hectares — Thirty percent (30%) cash, the balance to be paid in government financial instruments negotiable at any time.

(c) For lands twenty-four (24) hectares and below — Thirty-five percent (35%) cash, the balance to be paid in government financial instruments negotiable at any time.

(2) Shares of stock in government-owned or controlled corporations, LBP preferred shares, physical assets or other qualified investments in accordance with guidelines set by the PARC;

(3) Tax credits which can be used against any tax liability;

(4) LBP bonds, which shall have the following features:

(a) Market interest rates aligned with 91-day treasury bill rates. Ten percent (10%) of the face value of the bonds shall mature every year from the date of issuance until the tenth (10th) year: *Provided*, That should the landowner choose to forego the cash portion, whether in full or in part, he shall be paid correspondingly in LBP bonds;

(b) Transferability and negotiability. Such LBP bonds may be used by the landowner, his successors-in-interest or his assigns, up to the amount of their face value, for any of the following:

(i) Acquisition of land or other real properties of the government, including assets under the Asset Privatization Program

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and other assets foreclosed by government financial institutions in the same province or region where the lands for which the bonds were paid are situated;

(ii) Acquisition of shares of stock of government owned or controlled corporations or shares of stock owned by the government in private corporations;

(iii) Substitution for surety or bail bonds for the provisional release of accused persons, or for performance bonds;

(iv) Security for loans with any government financial institution, provided the proceeds of the loans shall be invested in an economic enterprise, preferably in a small and medium-scale industry, in the same province or region as the land for which the bonds are paid;

(v) Payment for various taxes and fees to government: *Provided*, That the use of these bonds for these purposes will be limited to a certain percentage of the outstanding balance of the financial instruments; *Provided, further*, That the PARC shall determine the percentages mentioned above;

(vi) Payment for tuition fees of the immediate family of the original bondholder in government universities, colleges, trade schools, and other institutions;

(vii) Payment for fees of the immediate family of the original bondholder in government hospitals; and

(viii) Such other uses as the PARC may from time to time allow.

The contention of the petitioners in G.R. No. 79777 is that the above provision is unconstitutional insofar as it requires the owners of the expropriated properties to accept just compensation therefor in less than money, which is the only medium of payment allowed. In support of this contention, they cite jurisprudence holding that:

The fundamental rule in expropriation matters is that the owner of the property expropriated is entitled to a just compensation, which should be neither more nor less, whenever it is possible to make the assessment, than the *money equivalent* of said property. Just compensation has always been understood to be the just and complete

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equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation.[45] (Italics supplied.)

In *J.M. Tuazon Co. v. Land Tenure Administration*,[46] this Court held:

It is well-settled that just compensation means the equivalent for the value of the property at the time of its taking. Anything beyond that is more, and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity. 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. (Italics supplied.)

In the United States, where much of our jurisprudence on the subject has been derived, the weight of authority is also to the effect that just compensation for property expropriated is payable *only in money* and not otherwise. Thus —

The medium of payment of compensation is *ready money or cash*. The condemnor cannot compel the owner to accept anything *but money*, nor can the owner compel or require the condemnor to pay him on any other basis than the value of the property in money at the time and in the manner prescribed by the Constitution and the statutes. When the power of eminent domain is resorted to, there must be a standard medium of payment, binding upon both parties, and the law has fixed that standard as *money in cash*.[47] (Italics supplied.)

Part cash and deferred payments are not and cannot, in the nature of things, be regarded as a reliable and constant standard of compensation.[48]

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[45] *Manila Railroad Co. v. Velasquez*, 32 Phil. 286; *Province of Tayabas v. Perez, supra*, at note 40.

[46] 31 SCRA 413.

[47] *Mandl v. City of Phoenix*, 18 p 2d 273.

[48] *Sacremento Southern R. Co. v. Heilbron*, 156 Cal. 408, 104, pp. 979, 980.

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"Just compensation" for property taken by condemnation means a fair equivalent *in money*, which must be paid at least within a reasonable time after the taking, and it is not within the power of the Legislature to substitute for such payment future obligations, bonds, or other valuable advantage.[49] (Italics supplied.)

It cannot be denied from these cases that the traditional medium for the payment of just compensation is money and no other. And so, conformably, has just compensation been paid in the past solely in that medium. However, we do not deal here with the *traditional* exercise of the power of eminent domain. This is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose. What we deal with here is a *revolutionary* kind of expropriation.

The expropriation before us affects *all* private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or of a small segment of the population but of the entire Filipino nation, from all levels of our society, from the impoverished farmer to the land-glutted owner. Its purpose does not cover only the whole territory of this country but goes beyond in time to the foreseeable future, which it hopes to secure and edify with the vision and the sacrifice of the present generation of Filipinos. Generations yet to come are as involved in this program as we are today, although hopefully only as beneficiaries of a richer and more fulfilling life we will guarantee to them tomorrow through our thoughtfulness today. And, finally, let it not be forgotten that it is no less than the Constitution itself that has ordained this revolution in the farms, calling for "a just distribution" among the farmers of lands that have heretofore been the prison of their dreams but can now become the key at least to their deliverance.

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[49] *City of Waterbury v. Platt Bros. & Co.*, 56 A 856, 76 Conn, 435 citing *Butler v. Ravine Road Sewer Com'rs*, 39 N.J.L. 665; *Bloodgood v. Mohawk v. H.R.R. Co.*, N.Y. 18 Wend. 9 35, 31 Am. Dec. 313; *Sanborn v. Helden*, 51 Cal 266; *Burlington & C.R. Co. v. Schweikart*, 14 p. 329, 10 Colo, 178; 23 Words and Phrases, pl. 460.

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Such a program will involve not mere millions of pesos. The cost will be tremendous. Considering the vast areas of land subject to expropriation under the laws before us, we estimate that hundreds of billions of pesos will be needed, far more indeed than the amount of ₱50 billion initially appropriated, which is already staggering as it is by our present standards. Such amount is in fact not even fully available at this time.

We assume that the framers of the Constitution were aware of this difficulty when they called for agrarian reform as a top priority project of the government. It is a part of this assumption that when they envisioned the expropriation that would be needed, they also intended that the just compensation would have to be paid not in the orthodox way but a less conventional if more practical method. There can be no doubt that they were aware of the financial limitations of the government and had no illusions that there would be enough money to pay in cash and in full for the lands they wanted to be distributed among the farmers. We may therefore assume that their intention was to allow such manner of payment as is now provided for by the CARP Law, particularly the payment of the balance (if the owner cannot be paid fully with money), or indeed of the entire amount of the just compensation, with other things of value. We may also suppose that what they had in mind was a similar scheme of payment as that prescribed in P.D. No. 27, which was the law in force at the time they deliberated on the new Charter and with which they presumably agreed in principle.

The Court has not found in the records of the Constitutional Commission any categorial agreement among the members regarding the meaning to be given the concept of just compensation as applied to the comprehensive agrarian reform program being contemplated. There was the suggestion to "fine tune" the requirement to suit the demands of the project even as it was also felt that they should "leave it to Congress" to determine how payment should be made to the landowner and reimbursement required from the farmer-beneficiaries. Such innovations as "progressive compensation" and "State-subsidized compensation" were also proposed. In the end, however, no

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special definition of the just compensation for the lands to be expropriated was reached by the Commission.[50]

On the other hand, there is nothing in the records either that militates against the assumptions we are making of the general sentiments and intention of the members on the content and manner of the payment to be made to the landowner in the light of the magnitude of the expenditure and the limitations of the expropriator.

With these assumptions, the Court hereby declares that the content and manner of the just compensation provided for in the aforequoted Section 18 of the CARP Law is not violative of the Constitution. We do not mind admitting that a certain degree of pragmatism has influenced our decision on this issue, but after all this Court is not a cloistered institution removed from the realities and demands of society or oblivious to the need for its enhancement. The Court is as acutely anxious as the rest of our people to see the goal of agrarian reform achieved at last after the frustrations and deprivations of our peasant masses during all these disappointing decades. We are aware that invalidation of the said section will result in the nullification of the entire program, killing the farmer's hopes even as they approach realization and resurrecting the spectre of discontent and dissent in the restless countryside. That is not in our view the intention of the Constitution, and that is not what we shall decree today.

Accepting the theory that payment of the just compensation is not always required to be made fully in money, we find further that the proportion of cash payment to the other things of value constituting the total payment, as determined on the basis of the areas of the lands expropriated, is not unduly oppressive upon the landowner. It is noted that the smaller the land, the bigger the payment in money, primarily because the small landowner will be needing it more than the big landowners, who can afford a bigger balance in bonds and other things of

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[50] Record of the Constitutional Commission, Vol. 2, pp. 647, 704; Vol. 3, pp. 16-20, 243-247.

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value. No less importantly, the government financial instruments making up the balance of the payment are "negotiable at any time." The other modes, which are likewise available to the landowner at his option, are also not unreasonable because payment is made in shares of stock, LBP bonds, other properties or assets, tax credits, and other things of value equivalent to the amount of just compensation.

Admittedly, the compensation contemplated in the law will cause the landowners, big and small, not a little inconvenience. As already remarked, this cannot be avoided. Nevertheless, it is devoutly hoped that these countrymen of ours, conscious as we know they are of the need for their forebearance and even sacrifice, will not begrudge us their indispensable share in the attainment of the ideal of agrarian reform. Otherwise, our pursuit of this elusive goal will be like the quest for the Holy Grail.

The complaint against the effects of non-registration of the land under E.O. No. 229 does not seem to be viable any more as it appears that Section 4 of the said Order has been superseded by Section 14 of the CARP Law. This repeats the requisites of registration as embodied in the earlier measure but does not provide, as the latter did, that in case of failure or refusal to register the land, the valuation thereof shall be that given by the provincial or city assessor for tax purposes. On the contrary, the CARP Law says that the just compensation shall be ascertained on the basis of the factors mentioned in its Section 17 and in the manner provided for in Section 16.

The last major challenge to CARP is that the landowner is divested of his property even before actual payment to him in full of just compensation, in contravention of a well-accepted principle of eminent domain.

The recognized rule, indeed, is that title to the property expropriated shall pass from the owner to the expropriator only upon full payment of the just compensation. Jurisprudence on this settled principle is consistent both here and in other democratic jurisdictions. Thus:

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Title to property which is the subject of condemnation proceedings does not vest the condemnor until the judgment fixing just compensation is entered and paid, but the condemnor's title relates back to the date on which the petition under the Eminent Domain Act, or the commissioner's report under the Local Improvement Act, is filed.[51]

x x x although the right to appropriate and use land taken for a canal is complete at the time of entry, *title to the property taken remains in the owner until payment is actually made.*[52] (Italics supplied.)

In *Kennedy v. Indianapolis*,[53] the US Supreme Court cited several cases holding that title to property does not pass to the condemnor until just compensation had actually been made. In fact, the decisions appear to be uniformly to this effect. As early as 1838, in *Rubottom v. McLure*,[54] it was held that "actual payment to the owner of the condemned property was a condition precedent to the investment of the title to the property in the State" albeit "not to the appropriation of it to public use." In *Rexford v. Knight*,[55] the Court of Appeals of New York said that the construction upon the statutes was that the fee did not vest in the State until the payment of the compensation although the authority to enter upon and appropriate the land was complete prior to the payment. Kennedy further said that "both on principle and authority the rule is x x x that the right to enter on and use the property is complete, as soon as the property is actually appropriated under the authority of law for a public use, *but that the title does not pass from the owner without his consent, until just compensation has been made to him.*"

Our own Supreme Court has held in *Visayan Refining Co. v. Camus and Paredes*,[56] that:

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[51] *Chicago Park Dist. v. Downey Coal Co.*, 1 Ill. 2d 54.

[52] *Kennedy v. Indianapolis*, 103 US 599, 26 L ed 550.

[53] *Ibid.*

[54] 4 Blkf., 508.

[55] 11 NY 314.

[56] 40 Phil. 550.

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If the laws which we have exhibited or cited in the preceding discussion are attentively examined it will be apparent that the method of expropriation adopted in this jurisdiction is such as to afford absolute reassurance that *no piece of land can be finally and irrevocably taken from an unwilling owner until compensation is paid* x x x (Italics supplied.)

It is true that P.D. No. 27 expressly ordered the emancipation of tenant-farmer as October 21, 1972 and declared that he shall "be deemed the owner" of a portion of land consisting of a family-sized farm except that "no title to the land owned by him was to be actually issued to him unless and until he had become a full-fledged member of a duly recognized farmers' cooperative." It was understood, however, that full payment of the just compensation also had to be made first, conformably to the constitutional requirement.

When E.O. No. 228, categorically stated in its Section 1 that:

All qualified farmer-beneficiaries are now deemed full owners as of October 21, 1972 of the land they *acquired* by virtue of Presidential Decree No. 27. (Italics supplied.)

it was obviously referring to lands already validly acquired under the said decree, after proof of full-fledged membership in the farmers' cooperatives and full payment of just compensation. Hence, it was also perfectly proper for the Order to also provide in its Section 2 that the "lease rentals paid to the landowner by the farmer-beneficiary after October 21, 1972 (pending transfer of ownership after full payment of just compensation), shall be considered as advance payment for the land."

The CARP Law, for its part, conditions the transfer of possession and ownership of the land to the government on receipt by the landowner of the corresponding payment or the deposit by the DAR of the compensation in cash or LBP bonds with an accessible bank. Until then, title also remains with the landowner.[57] No outright change of ownership is contemplated either.

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[57] Sec. 16 (d).

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Hence, the argument that the assailed measures violate due process by arbitrarily transferring title before the land is fully paid for must also be rejected.

It is worth stressing at this point that all rights acquired by the tenant-farmer under P.D. No. 27, as recognized under E.O. No. 228, are retained by him even now under R.A. No. 6657. This should counterbalance the express provision in Section 6 of the said law that "the landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder, further, That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead."

In connection with these retained rights, it does not appear in G.R. No. 78742 that the appeal filed by the petitioners with the Office of the President has already been resolved. Although we have said that the doctrine of exhaustion of administrative remedies need not preclude immediate resort to judicial action, there are factual issues that have yet to be examined on the administrative level, especially the claim that the petitioners are not covered by LOI 474 because they do not own other agricultural lands than the subjects of their petition. Obviously, the Court cannot resolve these issues. In any event, assuming that the petitioners have not yet exercised their retention rights, if any, under P.D. No. 27, the Court holds that they are entitled to the new retention rights provided for by R.A. No. 6657, which in fact are on the whole more liberal than those granted by the decree.

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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

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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.

By the decision we reach today, all major legal obstacles to the comprehensive agrarian reform program are removed, to clear the way for the true freedom of the farmer. We may now glimpse the day he will be released not only from want but also from the exploitation and disdain of the past and from his own feelings of inadequacy and helplessness. At last his servitude will be ended forever. At last the farm on which he toils will be *his* farm. It will be his portion of the Mother Earth that will give him not only the staff of life but also the joy of living. And where once it bred for him only deep despair, now can he see in it the fruition of his hopes for a more fulfilling future. Now at last can he banish from his small plot of earth his insecurities and dark resentments and "rebuild in it the music and the dream."

WHEREFORE, the Court holds as follows:

1. R.A. No. 6657, P.D. No. 27, Proc. No. 131, and E.O. Nos. 228 and 229 are SUSTAINED against all the constitutional objections raised in the herein petitions.

2. Title to all expropriated properties shall be transferred to the State only upon full payment of compensation to their respective owners.

3. All rights previously acquired by the tenant-farmers under P.D. No. 27 are retained and recognized.

4. Landowners who were unable to exercise their rights of retention under P.D. No. 27 shall enjoy the retention rights granted by R.A. No. 6657 under the conditions therein prescribed.

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5. Subject to the above-mentioned rulings, all the petitions are DISMISSED, without pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and *Regalado, JJ.*, concur.

SECOND DIVISION

[G.R. No. 72827. July 18, 1989]

LUCIA EUROPA (Mother of Deceased Lucrecia Europa), *petitioner, vs.* **HUNTER GARMENTS MFG. (PHILS.) INC. and INTERMEDIATE APPELLATE COURT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; ACQUIRED WHEN RESPONDENT FILED A MOTION FOR RECONSIDERATION OF THE JUDGMENT BY DEFAULT AND A MOTION TO ADMIT ANSWER BASED ON EXCUSABLE NEGLIGENCE.— Assuming *arguendo* that the court below originally did not acquire jurisdiction over the private respondent, the latter certainly submitted to it when private respondent filed a motion for reconsideration of the judgment by default and a motion to admit answer on the ground of excusable negligence. Therefore, the lower court's denial of both motions is binding on private respondent.

2. CIVIL LAW; TORTS; QUASI DELICT; ALL DAMAGES FOR THE NATURAL AND PROBABLE CONSEQUENCES OF THE ACT OR OMISSION COMPLAINED OF ARE RECOVERABLE.— In actions based on quasi-delict as in this case, all damages