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alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted."[34]

There can be no question as to the patriotism and good motive of the petitioner in filing this petition. Unfortunately, the petition must fail based on the foregoing reasons.

WHEREFORE, the petition is **DISMISSED** without pronouncement as to costs.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, Reyes, and *Perlas-Bernabe, JJ.*, concur.

EN BANC

[G.R. No. 171101. April 24, 2012]

HACIENDA LUISITA, INCORPORATED, *petitioner,* **LUISITA INDUSTRIAL PARK CORPORATION and RIZAL COMMERCIAL BANKING CORPORATION,** *petitioners-in-intervention, vs.* **PRESIDENTIAL AGRARIAN REFORM COUNCIL; SECRETARY NASSER PANGANDAMAN OF THE DEPARTMENT OF AGRARIAN REFORM; ALYANSA NG MGA MANGGAGAWANG BUKID NG HACIENDA**

[34] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60 (1974).

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LUISITA, RENE GALANG, NOEL MALLARI, and JULIO SUNIGA[1] and his SUPERVISORY GROUP OF THE HACIENDA LUISITA, INC. and WINDSOR ANDAYA, *respondents.*

SYLLABUS

1. REMEDIAL LAW; MOTIONS; SECOND MOTION FOR RECONSIDERATION, AS A RULE, IS PROHIBITED FOR BEING A MERE REITERATION OF THE ISSUES ASSIGNED AND THE ARGUMENTS RAISED BY THE PARTIES.— At the outset, it should be noted that Section 2, Rule 52 of the Rules of Court states, "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." A second motion for reconsideration, as a rule, is prohibited for being a mere reiteration of the issues assigned and the arguments raised by the parties. In the instant case, the issue on just compensation and the grounds HLI and Mallari, *et al.* rely upon in support of their respective stance on the matter had been previously raised by them in their first motion for reconsideration and fully passed upon by the Court in its November 22, 2011 Resolution. The similarities in the issues then and now presented and the grounds invoked are at once easily discernible from a perusal of the November 22, 2011 Resolution x x x. Considering that the issue on just compensation has already been passed upon and denied by the Court in its November 22, 2011 Resolution, a subsequent motion touching on the same issue undeniably partakes of a second motion for reconsideration, hence, a prohibited pleading, and as such, the motion or plea must be denied x x x. Nonetheless, even if we entertain said motion and examine the arguments raised by HLI and Mallari, *et al.* one last time, the result will be the same.

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (R.A. NO. 6657) JUST COMPENSATION; DEFINED AND EXPLAINED. — Sec. 4, Article XIII of the 1987 Constitution expressly provides that the taking of land for use in the agrarian reform

[1] "Jose Julio Zuniga" in some parts of the records.

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program of the government is conditioned on the payment of just compensation. x x x. Just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator." The measure is not the taker's gain, but the owner's loss. In determining just compensation, the price or value of the property at the time it was taken from the owner and appropriated by the government shall be the basis. If the government takes possession of the land before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint.

3. ID.; ID.; ID.; EFFECTIVE DATE OF TAKING, WHEN IT TAKES PLACE.— In *Land Bank of the Philippines v. Livioco*, the Court held that "the 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic." It should be noted, however, that "taking" does not only take place upon the issuance of title either in the name of the Republic or the beneficiaries of the Comprehensive Agrarian Reform Program (CARP). "Taking" also occurs when agricultural lands are voluntarily offered by a landowner and approved by PARC for CARP coverage through the stock distribution scheme, as in the instant case. Thus, HLI's submitting its SDP for approval is an acknowledgment on its part that the agricultural lands of Hacienda Luisita are covered by CARP. However, it was the PARC approval which should be considered as the effective date of "taking" as it was only during this time that the government officially confirmed the CARP coverage of these lands.

4. ID.; ID.; ID.; STOCK DISTRIBUTION OPTION AND COMPULSORY LAND ACQUISITION, DISTINGUISHED; THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP) OPERATES AND TAKES THE PLACE OF A NOTICE OF COVERAGE ORDINARILY ISSUED UNDER COMPULSORY ACQUISITION.— Indeed, stock distribution option and compulsory land acquisition are two (2) different modalities under the agrarian reform program. Nonetheless, both share the same end goal, that is, to have "a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation." The fact that Sec. 31 of Republic Act No. 6657 (RA 6657) gives corporate

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landowners the option to give qualified beneficiaries the right to avail of a stock distribution or, in the phraseology of the law, "the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets," does not detract from the avowed policy of the agrarian reform law of equitably distributing ownership of land. The difference lies in the fact that instead of actually distributing the agricultural lands to the farmer-beneficiaries, these lands are held by the corporation as part of the capital contribution of the farmer-beneficiaries, not of the landowners, under the stock distribution scheme. The end goal of equitably distributing ownership of land is, therefore, undeniable. And since it is only upon the approval of the SDP that the agricultural lands actually came under CARP coverage, such approval operates and takes the place of a notice of coverage ordinarily issued under compulsory acquisition.

5. ID.; ID.; ID.; TARLAC DEVELOPMENT CORPORATION (TADECO) WAS DISPOSSESSED OF THE ATTRIBUTES OF OWNERSHIP OVER THE SUBJECT AGRICULTURAL LANDS WHEN IT TRANSFERRED THE SAME TO PETITIONER HACIENDA LUISITA, INCORPORATED (HLI) IN COMPLIANCE WITH CARP THROUGH THE STOCK DISTRIBUTION OPTION SCHEME; OWNERSHIP DEFINED; ATTRIBUTES OF OWNERSHIP.— While it is true that Tadeco has majority control over HLI, the Court cannot subscribe to the view Mallari, *et al.* espouse that, on the basis of such majority stockholding, Tadeco was never deprived of the use and benefit of the agricultural lands of Hacienda Luisita it divested itself in favor of HLI. It bears stressing that "[o]wnership is defined as a relation in law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by law or the concurrence with the rights of another." The attributes of ownership are: *jus utendi* or the right to possess and enjoy, *jus fruendi* or the right to the fruits, *jus abutendi* or the right to abuse or consume, *jus disponendi* or the right to dispose or alienate, and *jus vindicandi* or the right to recover or vindicate. When the agricultural lands of Hacienda Luisita were transferred by Tadeco to HLI in order to comply with CARP through the stock distribution option scheme, sealed with the imprimatur of PARC under PARC Resolution No. 89-12-2 dated November

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21, 1989, Tadeco was consequently dispossessed of the aforementioned attributes of ownership. Notably, Tadeco and HLI are two different entities with separate and distinct legal personalities. Ownership by one cannot be considered as ownership by the other.

6. ID.; ID.; ID.; THE TAKING OF THE AGRICULTURAL LANDS OF HACIENDA LUISITA SHOULD BE RECKONED FROM THE TIME OF THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP) BY THE PRESIDENTIAL AGRARIAN REFORM COUNCIL (PARC).— Corollarily, it is the official act by the government, that is, the PARC's approval of the SDP, which should be considered as the reckoning point for the "taking" of the agricultural lands of Hacienda Luisita. Although the transfer of ownership over the agricultural lands was made prior to the SDP's approval, it is this Court's consistent view that these lands officially became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP. And as We have mentioned in Our November 22, 2011 Resolution, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition.

7. ID.; ID.; ID.; THE DATE OF TAKING OF THE SUBJECT AGRICULTURAL LANDS FOR THE PURPOSE OF DETERMINING JUST COMPENSATION IS NOVEMBER 21, 1989 WHEN PARC APPROVED THE STOCK OPTION PLAN; THE FACT THAT THE SPECIAL AGRARIAN COURT IS VESTED WITH ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PETITIONS FOR DETERMINATION OF JUST COMPENSATION TO LANDOWNERS WILL NOT PRECLUDE THE COURT FROM RULING UPON A MATTER THAT MAY ALREADY BE RESOLVED BASED ON THE RECORDS BEFORE IT.— As regards the issue on when "taking" occurred with respect to the agricultural lands in question, We, however, maintain that this Court can rule, as it has in fact already ruled on its reckoning date, that is, November 21, 1989, the date of issuance of PARC Resolution No. 89-12-2, based on the above-mentioned disquisitions. The investment on SACs of original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners will not preclude the Court from ruling upon a matter that may already

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be resolved based on the records before Us. x x x. Even though the compensation due to HLI will still be preliminarily determined by DAR and LBP, subject to review by the RTC acting as a SAC, the fact that the reckoning point of "taking" is already fixed at a certain date should already hasten the proceedings and not further cause undue hardship on the parties, especially the qualified FWBs. By a vote of 8-6, the Court affirmed its ruling that the date of "taking" in determining just compensation is November 21, 1989 when PARC approved HLI's stock option plan.

8. ID.; ID.; ID.; THE FARMERS, INDIVIDUALLY OR COLLECTIVELY, MUST HAVE CONTROL OVER THE AGRICULTURAL LANDS THEY TILL.— The Court agrees that the option given to the qualified FWBs whether to remain as stockholders of HLI or opt for land distribution is neither iniquitous nor prejudicial to the FWBs. Nonetheless, the Court is not unmindful of the policy on agrarian reform that control over the agricultural land must always be in the hands of the farmers. Contrary to the stance of HLI, both the Constitution and RA 6657 intended the farmers, individually or collectively, to have control over the agricultural lands of HLI; otherwise, all these rhetoric about agrarian reform will be rendered for naught. x x x. Pursuant to and as a mechanism to carry out [Sec. 4, Art. XIII of the 1987 Constitution], RA 6657 was enacted. x x x Based on [Sec. 2 of RA 6657] the notion of farmers and regular farmworkers having the right to own directly or collectively the lands they till is abundantly clear.

9. ID.; ID.; ID.; CONTROL OVER THE AGRICULTURAL LAND MUST ALWAYS BE IN THE HANDS OF THE FARMERS, AND THEY WILL NO LONGER HAVE THE OPTION TO REMAIN AS STOCKHOLDERS OF HLI. — [T]here is collective ownership as long as there is a concerted group work by the farmers on the land, regardless of whether the landowner is a cooperative, association or corporation composed of farmers. However, this definition of collective ownership should be read in light of the clear policy of the law on agrarian reform, which is to emancipate the tiller from the bondage of the soil and empower the common people. Worth noting too is its noble goal of rectifying "the acute imbalance in the distribution of this precious resource among our people." Accordingly, HLI's insistent view that control need not be in

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the hands of the farmers translates to allowing it to run roughshod against the very reason for the enactment of agrarian reform laws and leave the farmers in their shackles with sheer lip service to look forward to. Notably, it has been this Court's consistent stand that control over the agricultural land must always be in the hands of the farmers. x x x There is an aphorism that "what has been done can no longer be undone." That may be true, but not in this case. The SDP was approved by PARC even if the qualified FWBs did not and will not have majority stockholdings in HLI, contrary to the obvious policy by the government on agrarian reform. Such an adverse situation for the FWBs will not and should not be permitted to stand. For this reason, We maintain Our ruling that the qualified FWBs will no longer have the option to remain as stockholders of HLI.

10. ID.; ID.; ID.; THE FWBS ARE ENTITLED TO THE PROCEEDS OF THE SALE OF THE 500-HECTARE CONVERTED LAND AND THE SCTEX LOT LESS 3% SHARE, TAXES AND EXPENSES.— It cannot be denied that the adverted 500-hectare converted land and the SCTEX lot once formed part of what would have been agrarian-distributable lands, in fine subject to compulsory CARP coverage. And, as stated in our July 5, 2011 Decision, were it not for the approval of the SDP by PARC, these large parcels of land would have been distributed and ownership transferred to the FWBs, subject to payment of just compensation, given that, as of 1989, the subject 4,915 hectares of Hacienda Luisita were already covered by CARP. Accordingly, the proceeds realized from the sale and/or disposition thereof should accrue for the benefit of the FWBs, less deductions of the 3% of the proceeds of said transfers that were paid to the FWBs, the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary Holdings, Inc. for legitimate corporate purposes, as prescribed in our November 22, 2011 Resolution.

11. ID.; ID.; ID.; THE FWBS SHALL RETAIN OWNERSHIP OF THE HOMELOTS GIVEN TO THEM BUT THE GOVERNMENT THROUGH THE DEPARTMENT OF AGRARIAN REFORM (DAR) MUST PAY THE JUST COMPENSATION FOR SAID HOMELOTS.— As We have explained in Our July 5, 2011 Decision, the distribution of homelots is required under RA 6657 only for corporations or

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business associations owning or operating farms which opted for land distribution. This is provided under Sec. 30 of RA 6657. x x x. Since none of the above-quoted provisions made reference to corporations which opted for stock distribution under Sec. 31 of RA 6657, then it is apparent that said corporations are not obliged to provide for homelots. Nonetheless, HLI undertook to "subdivide and allocate **for free and without charge** among the qualified family-beneficiaries x x x residential or homelots of not more than 240 sq. m. each, with each family beneficiary being assured of receiving and owning a homelot in the barrio or *barangay* where it actually resides." In fact, HLI was able to distribute homelots to some if not all of the FWBs. Thus, in our November 22, 2011 *Resolution*, We declared that the homelots already received by the FWBs shall be respected with no obligation to refund or to return them. The Court, by a unanimous vote, resolved to maintain its ruling that the FWBs shall retain ownership of the homelots given to them with no obligation to pay for the value of said lots. However, since the SDP was already revoked with finality, the Court directs the government through the DAR to pay HLI the just compensation for said homelots in consonance with Sec. 4, Article XIII of the 1987 Constitution that the taking of land for use in the agrarian reform program is "subject to the payment of just compensation." Just compensation should be paid to HLI instead of Tadeco in view of the Deed of Assignment and Conveyance dated March 22, 1989 executed between Tadeco and HLI, where Tadeco transferred and conveyed to HLI the titles over the lots in question. DAR is ordered to compute the just compensation of the homelots in accordance with existing laws, rules and regulations.

BERSAMIN, *J., concurring and dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; STATE; POWER OF EMINENT DOMAIN; TWO STAGES; EXPLAINED.— [T]he exercise by the State of its inherent power of eminent domain comes in two stages. The Court has characterized the dual stages in *Municipality of Biñan v. Garcia* in the following manner: There are two (2) stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in

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the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint." x x x The second phase of the eminent domain action is concerned with the determination by the court of "the just compensation for the property sought to be taken." xxx. The first stage in expropriation relates to the determination of the validity of the expropriation. At this stage, the trial court resolves questions, like whether the expropriator has the power of eminent domain, whether the use of the property is public, whether the taking is necessary, and, should there be conditions precedent for the exercise of the power, whether they have been complied with. In the second stage, the trial court is called upon to determine the just compensation, taking into consideration all the factors of just compensation (including whether interest should be paid on the amount of just compensation). Rule 67 of the *Rules of Court* generally delineates the procedure followed in both stages. Although expropriation may be either judicial or legislative, the dual stages apply to both, for there is "no point in distinguishing between judicial and legislative expropriation as far as the two stages mentioned above are concerned."

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (R.A. 6657); TAKING OF PROPERTY PURSUANT THERETO IS AN EXERCISE OF THE POWER OF EMINENT DOMAIN BY THE STATE; TWO STAGES OF EXPROPRIATION UNDER CARL, EXPLAINED.— The taking of property pursuant to the CARL is an exercise of the power of eminent domain by the State. It is a revolutionary expropriation that covers all private agricultural lands that exceeded the maximum retention limits reserved to their owners. x x x. Its revolutionary character notwithstanding, expropriation under the CARL still goes through the two stages. Section 16 of the CARL, which provides the procedure for private agricultural land acquisition, makes this explicit enough x x x. For sure, the expropriation under the CARL is not an exclusively judicial process. The first stage of expropriation commences upon the issuance of the notice of coverage, and is initially dealt with administratively by the

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DAR pursuant to Section 50 of the CARL, subject to a judicial review in accordance with Section 54 of the CARL. The DAR, through the Regional Director, has jurisdiction over all agrarian law implementation cases, including protests or petitions to lift coverage. In exercising jurisdiction over such cases, the Regional Director passes upon and resolves various issues, including whether the land is subject to or exempt from CARP coverage, and whether the required notices of coverage have been served on the landowners. x x x The Constitution itself has thereby settled the requirement of public use and the necessity for the expropriation, which are the proper subjects of the first stage of expropriation proceedings. x x x. The second stage is devoted to the determination of just compensation. This stage, as essential as the first, is always judicial in nature.

3. ID.; ID.; JUST COMPENSATION; DEFINED AND EXPLAINED.— Just compensation is the full and fair equivalent of the property the expropriator takes from its owner. The measure for computing just compensation is not the taker's gain, but the owner's loss. The constitutional policy underlying the requirement for the payment of just compensation is to make the landowner whole after the State has taken his property. The word *just* intensifies the word *compensation* to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full and ample. For the landowner of expropriated property to be fully compensated, the State must put him in as good a position pecuniarily as if the use of the property had not been taken away. Accordingly, just compensation is principally based on the fair market value, which is "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 therefore."

4. ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION, FACTORS TO BE CONSIDERED.— The price or value of the land and its character *at the time it is taken* by the Government are the primordial criteria for determining just compensation. Section 17 of the CARL enumerates other factors to be considered, *viz*: Section 17. *Determination of Just Compensation* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the

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

5. ID.; ID.; ID.; TAKING OF PROPERTY FOR PUBLIC USE, CONCEPT OF.— As to taking, the Court has set a number of circumstances that must be established before property is said to be taken for a public use, to wit: A number of circumstances must be present in "taking" of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a 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 to oust the owner and deprive him of all beneficial enjoyment of the property.

6. ID.; ID.; ID.; THE SUPREME COURT, NOT BEING A TRIER OF FACTS, HAS NO CAPACITY TO RENDER A VALID FINDING AS TO THE TIME OF TAKING OF THE PROPERTY FOR PUBLIC USE; THE REGIONAL TRIAL COURT-SPECIAL AGRARIAN COURT IS VESTED WITH THE ORIGINAL AND EXCLUSIVE JURISDICTION TO RECEIVE THE PARTIES' EVIDENCE ON THE VALUATION OF THE AFFECTED PROPERTY PURSUANT TO CARL.— The prescription of such number of circumstances means that *compensable taking* is not a simple concept easy to ascertain. Certainly, evidence from the parties is needed to concretize the concept. Thus, stablishing the time of taking demands a judicial trial in which both the owner and the expropriator are afforded the fullest opportunity to prove either when the owner was actually deprived or dispossessed of the property, or when a practical destruction or a material impairment of the value of the property happened, or when the owner was deprived of the ordinary use of the property. Not being a trier of facts, the Court has no capacity to render a valid finding upon the time of taking. In contrast,

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not only is the RTC-SAC a trier of facts but it is also vested with the *original* and *exclusive* jurisdiction to receive the parties' evidence on the valuation of the affected property pursuant to Section 57 of the CARL x x x. *Original jurisdiction* means jurisdiction to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts, and concerns the right to hear a cause and to make an original determination of the issues from the evidence as submitted directly by the witnesses, or of the law as presented, *uninfluenced or unconcerned by any prior determination*, or the action of any other court juridically determining the same controversy. Needless to point out, that jurisdiction of the RTC-SAC is also exclusive of all *other* courts, including this Court.

7. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE COURT SHOULD NOT CREATE ISSUES *SUA SPONTE* BUT SHOULD DECIDE ONLY THE ISSUES PRESENTED BY THE PARTIES.— Although November 21, 1989 was the date when the affected landholdings of HLI came under the SDP, x x x no practical justification why the Court should peg that date as the time of taking. x x x It is significant that the parties did not raise the time of taking as an issue in their pleadings. The petition for *certiorari* and prohibition assailed only the PARC's revocation of the SDP and the resulting placement of the lands subject of the SDP under compulsory land acquisition of the CARP on the ground that the PARC had no authority to revoke the SDP. Consequently, the time of taking was neither relevant to the objective of the petition, nor necessary to the determination of the issues the petition raised. x x x. **The first time that the time of taking surfaced was when the July 5, 2011 decision pegged it on November 29, 1989.** As such, the Court overstepped its adjudicative boundaries by pegging the taking at a definite date (whether November 21, 1989, or January 2, 2006, or any other date) even without the parties presenting the matter here. x x x As a rule, the Court should not create issues *sua sponte* but should decide only the issues presented by the parties. This rule adheres to the principle of party presentation, which fully complements the role of the Judiciary as the neutral arbiter of disputes, a role that is vital to the adversarial system. x x x. The grave danger posed by the *sua sponte* creation and decision of issues by the trial and appellate courts without the prior knowledge of the parties is

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to cause injustice itself. "Were we to address these unbriefed issues," an appellate tribunal in the State of Illinois observed, "we would be forced to speculate as to the arguments that the parties might have presented had these issues been properly raised before this court. To engage in such speculation would only cause further injustice; thus, we refrain from addressing these issues *sua sponte*."

8. ID.; ID.; ID.; INSTANCES WHEN COURTS ARE ALLOWED TO STEP IN AND RAISE ISSUES; *SUA SPONTE*; LIMITATIONS; NOT PRESENT.— Instances admittedly happen when courts are allowed to step in and raise issues *sua sponte*. The most common instance is when a court decides whether or not it has jurisdiction over a case before it. Also, in the exercise of its appellate jurisdiction, the Court has been relatively flexible in resolving unassigned issues everytime it has found doing so necessary to arrive at a just decision. However, limitations on such instances should be set in order to preserve the courts' neutrality and to respect the litigants' autonomy, particularly: (*a*) when necessary to avoid issuing decisions containing erroneous statements of the law, such as when the parties misrepresent the law and ask the court to decide a case on such ground; (*b*) when necessary to maintain control over how the court would want to interpret the law; and (*c*) when necessary to give voice to legislative enactments disfavored or ignored by the parties. None of the limitations obtains here. The time of taking is an issue peripheral to and outside of the claims the parties extensively argued in this case. That the parties did not see fit to present the issue is concrete testimony to their consensus that the issue was not appropriate to be decided here and now, or that it might be better dealt with by and presented to the trial court. Consequently, the Court must itself exercise self-restraint and resist the temptation to deal with and pass upon the issue, because: x x x a court has no reason to raise issues that are tangential to or distinct from the claims that the parties have asked the court to decide, because in these cases its opinion will not mislead other or create flawed precedent. x x x Moreover, questions that are truly independent from those that the parties have already briefed and argued would likely require the development of facts not already in the record, which is unfair to litigants who are beyond the discovery stage — thus providing good reason for courts to ignore those issues as well.

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9. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (R.A. NO. 6657); THE TAKING OF LAND FOR THE CARP, ALBEIT REVOLUTIONARY, SHOULD NOT BE DONE BY SACRIFICING THE CONSTITUTIONAL RIGHT TO FAIR AND PROMPT DETERMINATION OF JUST COMPENSATION FOR THE LANDOWNERS BECAUSE THEY ARE ENTITLED, AS THE FARM-WORKER BENEFICIARIES (FWBS), TO THE PROTECTION OF THE CONSTITUTION AND THE AGRARIAN REFORM LAWS; THE TIME OF TAKING SHOULD BE FULLY HEARD AND SETTLED INITIALLY BY THE DEPARTMENT OF AGRARIAN REFORM AND LAND BANK AND SUBSEQUENTLY BY THE RTC-SAC.— The taking of land for the CARP, albeit revolutionary, should not be done by sacrificing the constitutional right to the fair and prompt determination of just compensation for HLI as the landowner because it was as entitled as the FWBs to the protection of the Constitution and the agrarian reform laws. On the other hand, having the RTC-SAC determine the time of taking, far from being a cause for delay, may actually expedite the proceedings, because the RTC-SAC can resort to the aid of extrajudicial and judicial mediation, as well as to other procedures heretofore effectively used by the trial courts to expedite, including pre-trial and discovery, with the end in view of quickening the all-important determination of just compensation. In this regard, all the possibilities of expediting the process should be encouraged, because just compensation that results from the agreement and consent of the stakeholders of land reform will be no less just and full. Given the foregoing, the time of taking, as a factor in determining just compensation, should be fully heard during the second stage of the expropriation proceedings and settled initially by the DAR and Land Bank, and subsequently by the RTC-SAC, not by the Court in these proceedings that commenced from an administrative decision that was an incident during the first stage of the expropriation.

10. ID.; ID.; ID.; SOCIAL JUSTICE CANNOT BE INVOKED TO TRAMPLE ON THE RIGHTS OF THE PROPERTY OWNER, WHO UNDER THE CONSTITUTION AND LAWS, IS ALSO ENTITLED TO PROTECTION; THE PETITIONER HLI SHOULD BE JUSTLY COMPENSATED FOR THE MARKET VALUE OF THE HOMELOTS

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DISTRIBUTED TO THE FARMER-WORKER BENEFICIARIES (FWBS).— Verily, the giving of the homelots as among the benefits acquired by the FWBs under the SDP should not be disturbed, *that is*, the FWBs should not be obliged to return the homelots thus received. To oust the FWBs from their homelots would displace them from the premises they had enjoyed for two decades, more or less, building thereon the homes for their families. Their displacement would be unjust. Yet, the homelots were distributed to the FWBs because of the SDP. Upon the revocation of the SDP, HLI lost the only enforceable justification for distributing the homelots to the FWBs. Simple justice demands, therefore, that HLI be justly compensated for the market value of the homelots. Indeed, while the emancipation of the FWBs from the bondage of the soil is the primordial objective of the CARP, vigilance for the rights of the landowner is equally important because social justice cannot be invoked to trample on the rights of the property owner, who under our Constitution and laws is also entitled to protection.

BRION, *J., separate opinion (concurring and dissenting)*:

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (CARL) (R.A. NO. 6657); THE ILLEGALITY OF THE TERMS OF THE STOCK DISTRIBUTION PLAN (SDP) RENDERED THE SAME NULL AND VOID FROM THE VERY BEGINNING AND WAS NOT CURED BY PRESIDENTIAL AGRARIAN REFORM COUNCIL'S (PARC) ERRONEOUS APPROVAL. — On December 22, 2005, PARC revoked its approval of the SDP through Resolution No. 2005-31-01. Although this revocation was made only in 2005, the effects should date back to 1989, considering that the basis for the revocation was primarily the illegality of the SDP's terms; the illegality rendered the SDP null and void from the very beginning and was not cured by PARC's erroneous approval. Indeed, the illegality of the terms of the SDP was apparent from its face so that PARC's approval should not have been given from the start. Specifically, the *man-days* scheme — the SDP's method in determining the number of shares of stock to which each FWB was entitled — ran counter to Section 4 of Administrative Order (*AO*) No. 10, Series of 1988 of the Department of Agrarian Reform (*DAR*);

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this AO required the distribution of an *equal number of shares of stock to each qualified beneficiary*. Section 11 of the same AO mandated that the *stock distribution should also be implemented within three months from receipt* of the PARC's approval of the SDP, and that the transfer of the shares of stock in the name of the qualified beneficiaries should be *recorded in the stock and transfer books within 60 days from the implementation of the SDP*. HLI's SDP clearly and illegally provided for a 30-year distribution period.

2. ID.; ID.; ID.; THE AGRICULTURAL LAND OF THE CORPORATE OWNERS BECAME SUBJECT TO THE COMPULSORY COVERAGE OF CARP AND THEIR RIGHTS OF OWNERSHIP OVER THE SAID LANDS WERE TRANSFERRED BY LAW TO THE FARMER-WORKERS BENIFICIARIES (FWBS) WHEN THE PARC DISAPPROVED THE STOCK DISTRIBUTION PLAN (SDP).— In the absence of any valid stock distribution plan, HLI's agricultural land became subject to compulsory coverage by 1989 — the time HLI chose as its option in complying with RA No. 6657. Section 31 of RA No. 6657 states without any ambiguity that: SEC. 31. *Corporate Landowners.*— x x x **If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.** HLI exercised the option granted under this provision by putting in place and securing the approval of its SDP with its FWBs on November 21, 1989. Its exercise of the stock distribution scheme, however, failed due primarily to its failure to secure PARC's approval of the SDP. The legal consequence, by the very terms of the above provision, is for the "agricultural land of the corporate owners or corporation [to] be subject to the compulsory coverage of th[e] Act." Compulsory coverage — the option not taken — means the actual transfer of the HLI land to the FWBs which should be deemed to have taken place on November 21, 1989 when the first option HLI took failed. ***At that point, the rights of ownership of HLI were transferred by law to the FWBs, who should be deemed the owners of the HLI land (and who should enjoy the rights of ownership under Article 428 of***

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the Civil Code, subject only to the restrictions and limitations that the medium of their ownership RA No. 6657 imposes).

3. ID.; ID.; JUST COMPENSATION; THE AGRICULTURAL LAND OF PETITIONER HLI WAS DEEMED TAKEN ON NOVEMBER 21, 1989, AND JUST COMPENSATION SHOULD BE COMPUTED AS OF THAT DATE.— "Taking" for purposes of determining just compensation necessarily took place as of 1989 not only because of the failure of the stock distribution option under Section 31 of RA No. 6657 (whose terms require the inclusion of the agricultural land under the law's compulsory coverage), but also because HLI chose to comply with the government's agrarian reform program through the SDP. The "taking" involved here was a revolutionary form of expropriation for purposes of agrarian reform. Expropriation under RA No. 6657 may take the form of either ***actual land distribution*** or ***stock distribution***. HLI was only allowed to use stock distribution because of RA No. 6657, and it lost this privilege upon the invalid exercise of this option when its approval was cancelled. x x x **[November 21, 1989]** is the point in time when HLI complied with its obligation under the CARL as a corporate landowner, through the stock distribution mode of compliance. This is the point, too, when the parties themselves determined — albeit under a contract that is null and void, but within the period of coverage that the CARL required and pursuant to the terms of what this law allowed — that compliance with the CARL should take place. **From the eminent domain perspective, this is the point when the deemed "taking" of the land, for agrarian reform purposes, should have taken place if the compulsory coverage and direct distribution of lands had been the compliance route taken. As the chosen mode of compliance was declared a nullity, the alternative compulsory coverage (that the SDOA was intended to replace) and the accompanying "taking" should thus be reckoned from [November 21, 1989.] Since "taking" in law is deemed to have occurred on November 21, 1989, the just compensation due to HLI for placing its agricultural lands under RA No. 6657's compulsory coverage should be computed as of this date.**

4. ID.; ID.; ID.; ADMINISTRATIVE AND JUDICIAL DETERMINATION OF JUST COMPENSATION,

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DISTINGUISHED.— The determination of the **valuation of the HLI land as of 1989** is a matter that RA No. 6657 and its applicable regulation leaves with the Land Bank of the Philippines (*LBP*), DAR, and, ultimately, the RTC acting as Special Agrarian Court (*SAC*). The determination of just compensation is done at two levels: administrative determination by LBP and DAR and judicial determination by the SAC. The authority of LBP to make a preliminary valuation of the land is provided under Section 1 of Executive Order (*EO*) No. 405 dated June 14, 1990, x x x. After the preliminary determination of the value of the land, DAR then acquires administrative jurisdiction to determine just compensation, pursuant to Rule II, Section 1 5(b) of the 2009 DARAB Rules of Procedure. The process for the preliminary determination of just compensation is fully discussed in Rule XIX of the 2009 DARAB Rules. The judicial determination of just compensation commences when a petition for its determination is filed with the SAC, which has the original and primary jurisdiction pursuant to Section 57 of RA No. 6657. Notably, no overlapping of jurisdiction between DARAB and SAC occurs because, as the Court explained: x x x primary jurisdiction is vested in the DAR to determine in a preliminary manner the just compensation for the lands taken under the agrarian reform program, but such determination is subject to challenge before the courts. The resolution of just compensation cases for the taking of lands under agrarian reform is, after all, essentially a judicial function. The above process is a matter of law and regulation that the courts, including the Supreme Court, cannot deviate from. Hence, the referral of the valuation of the former HLI land under the parameters outlined in the Court's Resolution should initially be to DAR.

5. ID.; ID.; ID.; ALL NON-COMPENSATION ISSUES THAT THE COURT HAS NOT RESOLVED FOR DETERMINATION AND ALL RESOLVED ISSUES FOR IMPLEMENTATION SHOULD BE REFERRED TO THE DEPARTMENT OF AGRARIAN REFORM (DAR).— Other than the issue of just compensation over which jurisdiction is a matter of law, this case faces issues of compulsory coverage, land distribution, and restitution of amounts previously paid and of homelots previously granted. All these are within the jurisdiction of this Court to adjudicate, save only for the determination of facts not yet on record that this Court is not

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equipped to undertake because of its limited trial capabilities. In lieu of remanding all the unresolved factual issues to the judicial trial courts, we should appropriately delegate the fact-finding to the DAR from which this case originated and which has primary jurisdiction over the issue of compensation that the Court has left untouched. Consequently, we should refer to DAR (1) all non-compensation issues that we have not resolved for determination, and (2) all resolved issues for implementation. To state what is obvious in law, what we have resolved here constitute the *law of the case* that none of the parties and no court or administrative body can reopen, modify, alter, or amend. As a matter of judicial policy and practice that is now established, the DAR should apply to the fullest the mediation and conciliation efforts that the judiciary has found very effective. Save only for the legal conclusions and final factual determinations the Court has reached (*e.g.*, the decision to distribute and the time of taking), all factual issues can be conciliated and agreed upon by mutual and voluntary action of the parties.

6. ID.; ID.; ID.; PAYMENT OF INTEREST ON JUST COMPENSATION, WHEN MAY BE AWARDED; NO IMPOSITION OF INTEREST ON JUST COMPENSATION DURING THE INTERVENING PERIOD IN CASE AT BAR. — No interest on the amount due as just compensation may be imposed. The Court awards interests when there is delay in the payment of just compensation, not for reasons of the fact of delay, but for the consequent income that the landowner should have received from the land had there been no immediate "taking" by the government. x x x. [The rules in the case of *Apo Fruits Corporation, Inc. v. Land Bank of the Philippines*], do not apply to the present case, since **HLI never lost possession and control of the land; all the incomes that the land generated were appropriated by HLI**; no loss of income on the land therefore exists that should be compensated by the imposition of interest on just compensation. For the same reason that [the Ponente opposes] the imposition of interest on the just compensation due to HLI, [he disagrees] with the view that "taking" should be pegged on January 6, 2006, when the Notice of Compulsory Coverage was issued. Supposedly, the "rationale in pegging the period of computing the value so close or near the present market value at the time of taking is to consider the appreciation of the property, brought about by

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improvements in the property and other factors. x x x. It is patently iniquitous for landowners to have their real properties subject of expropriation valued several years or even decades behind." To peg the taking in 1989 would allegedly make HLI suffer the loss of its lands twice, since it will be paid its property at 1989 levels and any improvements it made on the land, which appreciated its value, would be ignored. Considering that HLI retained possession and control of the land, any benefit that could have been derived from such possession and control would be for HLI's account. In reality, therefore, HLI will be reaping benefits twice if the taking is pegged in 2006.

7. ID.; ID.; ID.; THE AMOUNT OF AMORTIZATION THAT THE FWBS ARE REQUIRED TO PAY TO THE GOVERNMENT IS NOT NECESSARILY BASED ON THE COST OF THE LAND.— The amount of amortization that the FWBs are required to pay the government is not necessarily based on the cost of the land. **DAR AO No. 6, Series of 1993** is the implementing rule of Section 26 of RA No. 6657. x x x A. As a general rule, land awarded pursuant to x x x R.A. 6657 shall be repaid by the Agrarian Reform Beneficiary (ARB) to LANDBANK in thirty (30) annual amortizations at six (6%) percent interest per annum. The annual amortization shall start one year from date of Certificate of Landownership Award (CLOA) registration. B. The payments by the ARBs for the first three (3) years shall be two and a half percent (2.5%) of AGP [Annual Gross Production] and five percent (5.0%) of AGP for the fourth and fifth years. To further make the payments affordable, **the ARBs shall pay ten percent (10.0%) of AGP or the regular amortization** [refers to the annuity based on the cost of the land and permanent improvements at six percent (6%) interest rate per annum payable in 30 years], **whichever is lower, from the sixth (6th) to the thirtieth (30th) year.** Construing these provisions, the Court explained in *Apo Fruits* that the payments made by the farmers-beneficiaries to the LBP are primarily based on a fixed percentage of their annual gross production or the value of the annual yield/produce of the land awarded to them. ***The cost of the land will only be considered as the basis for the payments made by the farmers-beneficiaries when this amount is lower than the amount based on the annual gross production***. Hence, the amount due to HLI as just compensation for the land is not necessarily

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the basis of the amount that the FWBs are required to pay the government pursuant to Section 26 of RA No. 6657.

8. ID.; ID.; ID.; PETITIONER HLI IS A POSSESSOR IN GOOD FAITH; THE FWBS CANNOT OBLIGE THE PETITIONER HLI TO PAY THE PRICE OF THE LAND BUT THEY MUST APPROPRIATE THE WORKS AFTER PAYMENT OF INDEMNITY.— [H]LI, at the very least, has remained a *possessor in good faith* during all these times and has built and introduced improvements on the land in good faith. Its possession proceeded from its belief that it validly retained ownership of the land after choosing to adopt stock distribution option as its mode of compliance with the agrarian reform program, which option was approved (erroneously, as discussed) by PARC. Its possession, although wrongful, was in good faith. Under the Civil Code, a possessor in good faith is one who is not aware that there exists in his title or mode of acquisition any flaw that invalidates it. The relationship between the owner of the land (the FWBs starting November 21, 1989) and the builder in good faith (HLI) is governed by Article 448 of the Civil Code x x x. This provision is "manifestly intended to apply only to a case where one builds, plants, or sows on land in which he believes himself to have a claim of title." Generally, the owner of the land has the option of either (a) choosing to appropriate the works after payment of indemnity or (b) obliging the builder in good faith to pay the price of the land. Considering that the HLI land is, *by law*, subject to compulsory acquisition, the FWBs can no longer now exercise the option of obliging HLI to pay for the price of the land, and are thus left only with the first option of appropriating the works upon payment of indemnity pursuant to Articles 546 and 548.

9. ID.; ID.; ID.; THE COST OF THE NECESSARY AND USEFUL EXPENSES THAT GAVE RISE TO THE INCREASE IN VALUE OF THE LAND SHOULD BE REIMBURSED TO THE PETITIONER HLI AS INDEMNITY; COMPUTATION THEREOF.— The necessary expenses are those made for the proper preservation of the land and the improvements introduced, or those without expenses without which the land and the improvements would have been lost. These expenses include the taxes paid on the land and all other charges on the land. Useful expenses, on the other hand, are the expenses

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incurred to give greater utility or productivity to the land and its improvements. Among others, these include the cost of roads, drainage, lighting, and other fixtures that HLI introduced into the land that increased its value and its eventual purchase price to third parties**. Pursuant to Article 448 of the Civil Code x x x all these improvements HLI can retain until it is reimbursed.** Under the unique facts of this case, **this indemnity should be paid together with the payment for just compensation and should be included in the total reckoning of what the parties owe one another.** x x x**.** [The Ponente takes] the view that the rule that prevailed with respect to the land and the improvements should still prevail. Thus, **the third parties' purchase price should be credited to the FWBs as owners**. The value of the improvements introduced by HLI on these lands, which led to the increase in the price of the land and its eventual sale to LIPCO/RCBC and (if proven to be valid) to LRC, should be subject to the builder in good faith provision of Article 448 of the Civil Code and the payment of indemnity to HLI computed under Articles 546 and 548 of the same Code. This would be true whether the sale was voluntary (as in the case of the sale to LIPCO/RCBC/LRC) or involuntary (as in the exercise of the power of eminent domain by government in securing the land for the SCTEX). In either case, **the cost of the necessary and useful expenses that gave rise to the increase in value of the land should be reimbursed to HLI as indemnity**. In simple mathematical terms, the computation of the amounts due the parties should run: **Amount Accruing to FWBs** ***= Purchase Price by 3rd Parties – the amounts due to HLI (the amount of just compensation FWBs should pay HLI + the indemnity due to HLI under Articles 546 and 548, etc.).***

10. ID.; ID.; ID.; RESTITUTION OF WHAT THE PARTIES RECEIVED UNDER THE DISAPPROVED SDP, PROPER. — The consequence of the nullification of the SDP's approval should have properly been the restitution of what the parties received under the disapproved SDP; **the parties must revert back to their respective situations prior to the execution of the SDP and must return whatever they received from each other under the SDP that, in legal contemplation, never took place.**

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11. POLITICAL LAW; STATUTES; OPERATIVE FACT DOCTRINE; DOES NOT APPLY TO THE EXERCISE OF QUASI-ADJUDICATORY POWER; WHEN THE AGREEMENTS ARE NULLIFIED, THE PARTIES SHOULD BE RESTORED TO THEIR ORIGINAL STATE PRIOR TO THE EXECUTION OF THE NULLIFIED AGREEMENT; APPLIED.— In ruling on the present motion, the *ponencia* has apparently abandoned the view that the SDP, while illegal, should still be accorded recognition as a reality that was operative from the time it was put in place up to the time the PARC revocation. This change cannot be wrong as the "operative fact" doctrine applies only in considering the effects of the declaration unconstitutionality of, among others, ***executive acts that have the force and effect of law, i.e., those issued pursuant to a grant of quasi-legislative power.*** The doctrine does not apply to the exercise of quasi-adjudicatory power that PARC exercised as part of its mandate under RA No. 6657, which required its determination of facts and the applicable law in the course of implementing Section 31 of the law. Thus, the SDP, erroneously approved by PARC through Resolution No. 89-12-2, cannot be the basis for the grant of benefits to the FWBs as the approval was not in the exercise of quasi-legislative powers. In law, nullification of agreements — as we now undertake in our present ruling — dictates that the parties should be restored to their original state prior to the execution of the nullified agreement. This is the command of Articles 1409, 1411 and 1412 of the Civil Code and its supporting jurisprudence that this Court should follow. This means that (1) the 3% production share; (2) the 3% share I the proceeds of the sale of the lands; and (3) the homelots in relation with the revoked SDP should all be returned by the FWBs to HLI, subject to x x x conditions.

12. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657); HOMELOTS ALREADY GRANTED TO BOTH THE FWBS AND NON-FWBS CONSIDERED AS COMPULSORY ACQUISITIONS SUBJECT TO THE PAYMENT OF JUST COMPENSATION IN THE COURSE OF THE EXERCISE OF THE POWER OF EMINENT DOMAIN.— An undisputed fact is that the homelots do not form part of the 4,915 hectares covered by the SDP, and no obligation under RA No. 6657 exists for HLI to provide homelots. HLI — through TADECO, however, made

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the grant of homelots apparently as a consideration for the adoption of the SDP that does not now legally exists. From this view, the homelots may be said to have in fact been donated by HLI so that these should not be taken back. [T]he grant of the homelots outside of the requirements of RA No. 6657 cannot be denied. In fairness, however, to HLI who made the grant in the spirit of and pursuant to the SDP, the parties cannot just be left as they are. The way out of this bind is to consider the homelots already granted to both FWBs and non-FWBs as compulsory acquisitions subject to the payment of just compensation in the course of the exercise of the power of eminent domain. The valuation of just compensation for these homelots, therefore, should be an issue to be brought to the DAR for its determination together with all other issue submitted to that forum. For the FWBs, the just compensation for these homelots shall be an item considered in the adjustment of the claims of HLI and the FWBs against one another. For non-FWBs who now enjoy their homelots, the matter should be submitted to DAR and to the LBP for their determination and action as these homelots are or were part of an agricultural estate that is subject to land reform.

13. ID.; ID.; NULLIFICATION OF THE SDP, CONSEQUENCES THEREOF.— As a consequence of the nullification of the SDP, the FWBs should return the following benefits to HLI: 1. the 59 million shares of stock of HLI; 2. the ₱150 million representing the 3% gross sales of the production of the agricultural lands; and 3. the ₱37.5 million representing the 3% proceeds from the sale of the 500 hectares of agricultural land (including the amount received as just compensation for the expropriation by the government of the land used for SCTEX). The 3% proceeds from the voluntary and involuntary sale of the agricultural land shall be offset against the value received by HLI as consideration for the sale, which should be turned over to the FWBs who are considered the owners of the land as of 1989. The taxes and expenses related to the transfer of titles should likewise be deducted as the same amounts would be incurred regardless of the seller (HLI or the FWBs). [A]djustments should also be made to allow for the payment of indemnity for the improvements HLI introduced on the land, pursuant to Articles 448, 546, and 548 of the Civil Code. As discussed above, this task has been delegated by the Court for factual determination to the DAR. To summarize, the purchase

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price received by HLI for the sale of portions of the land should be turned over to the FWBs less (1) the 3% proceeds from the sale already given to the FWBs, (2) the taxes and expenses related to the transfer of titles, and (3) the value of the improvements HLI introduced according to Articles 448, 546, and 548 of the Civil Code. To be excluded from the benefits that should be returned to HLI are the wages and benefits that both the FWBs and non-FWBs received as employees of HLI. They are entitled to retain these as fruits of their labor; they received these as compensation earned for services rendered.

SERENO, *J., separate opinion (concurring and dissenting)*:

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (R.A. NO. 6657); JUST COMPENSATION; PAYMENT THEREOF BASED ON OUTDATED VALUES OF THE EXPROPRIATED LANDS IS TOO CONFISCATORY; THE TAKING OF THE EXPROPRIATED PROPERTY TO BE RECKONED FROM THE TIME OF THE APPROVAL OF THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA) IS UNJUST; REASONS.— For the Court to impose the reckoning period for the valuation of the expropriated Hacienda Luisita farmlands to its 1989 levels is an unwarranted departure from what the Philippine legal system has come to understand and accept (and continues to do so, as recently as last month) as the meaning of just compensation in agrarian reform cases since the 1988 Comprehensive Agrarian Reform Law (CARL). The decision taken by the Court today (albeit *pro hac vice*) to pay petitioner HLI an amount based on outdated values of the expropriated lands is too confiscatory considering the years of jurisprudence built by this Court. No reasonable explanation has been offered in this case to justify such deviation from our past decisions that would lead to a virtual non-compensation for petitioner HLI's lands. x x x [T]hat the "taking" is to be reckoned from the time of the approval of the SDOA is unjust for two reasons. *First*, the uniform jurisprudence on this matter is that taking is actual taking. *Second*, no clever restatement of the law is acceptable if it will result in injustice, and in this case, to a landowner who is differently treated from every other landowner.

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2. ID.; ID.; ID.; REMAND OF THE CASE TO THE PROPER TRIAL COURT FOR THE RECEPTION OF EVIDENCE ON FACTUAL MATTERS, FOR PURPOSES OF DETERMINING JUST COMPENSATION DUE TO PETITIONER HACIENDA LUISITA INC. (HLI), WARRANTED.— The records of the case as it now stands sorely lack factual certainty for this Court to make a proper determination of the exact award of just compensation. It has only been in the media that a purported numerical value has been argued; no argument over such amount has ever taken place before this Court. Although this Court can provide guidelines for the concerned judicial authorities, the dearth in evidence to substantiate the value of the lands (regardless of whether it is reckoned from 1989 or 2006) requires that the parties be allowed to present before an impartial authority with jurisdiction to receive evidence, hear their cases and finally decide the matter. The Supreme Court is not a trier of facts. Factual matters such as the scope of the farmlands in the name of Tarlac Development Corporation (TADECO) or petitioner HLI that should be subject to CARP coverage, the number and value of the homelots given, the improvements introduced, the type of lands subject to coverage, and the amounts actually received by both the corporate landowner and the farmworker beneficiaries during the operation of the SDOA have yet to be convincingly determined to arrive at the amount of just compensation. The more equitable solution would be to allow reception of evidence on these factual matters and to relegate the adjudication of the same to the proper trial court with exclusive and original jurisdiction over the controversy.

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R E S O L U T I O N

VELASCO, JR., *J.*:

Before the Court are the *Motion to Clarify and Reconsider Resolution of November 22, 2011* dated December 16, 2011 filed by petitioner Hacienda Luisita, Inc. (HLI) and the *Motion for Reconsideration/Clarification* dated December 9, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. and Windsor Andaya (collectively referred to as "Mallari, *et al*.").

In Our July 5, 2011 Decision[2] in the above-captioned case, this Court denied the petition for review filed by HLI and affirmed the assailed Presidential Agrarian Reform Council (PARC) Resolution No. 2005-32-01 dated December 22, 2005 and PARC Resolution No. 2006-34-01 dated May 3, 2006 with the modification that the original 6,296 qualified farmworker-beneficiaries of Hacienda Luisita (FWBs) shall have the option to remain as stockholders of HLI.

Upon separate motions of the parties for reconsideration, the Court, by Resolution[3] of November 22, 2011, recalled and set aside the option thus granted to the original FWBs to remain as stockholders of HLI, while maintaining that all the benefits and homelots received by all the FWBs shall be respected with no obligation to refund or return them.

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[2] G.R. No. 171101, 653 SCRA 154; hereinafter referred to as "July 5, 2011 Decision."

[3] G.R. No. 171101; hereinafter referred to as "November 22, 2011 Resolution."

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HLI invokes the following grounds in support of its instant *Motion to Clarify and Reconsider Resolution of November 22, 2011* dated December 16, 2011:

A

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT IN DETERMINING THE JUST COMPENSATION, THE DATE OF "TAKING" IS NOVEMBER 21, 1989, WHEN PARC APPROVED HLI's SDP [STOCK DISPTRIBUTION PLAN] (sic) "IN VIEW OF THE FACT THAT THIS IS THE TIME THAT THE FWBs WERE CONSIDERED TO OWN AND POSSESS THE AGRICULTURAL LANDS IN HACIENDA LUISITA" BECAUSE:

(1) THE SDP IS PRECISELY A MODALITY WHICH THE AGRARIAN LAW GIVES THE LANDOWNER AS ALTERNATIVE TO COMPULSORY COVERAGE IN WHICH CASE, THEREFORE, THE FWBs CANNOT BE CONSIDERED AS OWNERS AND POSSESSORS OF THE AGRICULTURAL LANDS AT THE TIME THE SDP WAS APPROVED BY PARC;

(2) THE APPROVAL OF THE SDP CANNOT BE AKIN TO A NOTICE OF COVERAGE IN COMPULSORY COVERAGE OR ACQUISITION BECAUSE SDP AND COMPULSORY COVERAGE ARE TWO DIFFERENT MODALITIES WITH INDEPENDENT AND SEPARATE RULES AND MECHANISMS;

(3) THE NOTICE OF COVERAGE OF JANUARY 02, 2006 MAY, AT THE VERY LEAST, BE CONSIDERED AS THE TIME WHEN THE FWBs CAN BE CONSIDERED TO OWN AND POSSESS THE AGRICULTURAL LANDS OF HACIENDA LUISITA BECAUSE THAT IS THE ONLY TIME WHEN HACIENDA LUISITA WAS PLACED UNDER COMPULSORY ACQUISITION IN VIEW OF FAILURE OF HLI TO PERFORM CERTAIN OBLIGATIONS OF THE SDP, OR SDOA [STOCK DISTRIBUTION OPTION AGREEMENT];

(4) INDEED, THE IMMUTABLE RULE AND THE UNBENDING JURISPRUDENCE IS THAT "TAKING" TAKES PLACE WHEN THE OWNER IS ACTUALLY DEPRIVED OR DISPOSSESSED OF HIS PROPERTY;

(5) TO INSIST THAT THE "TAKING" IS WHEN THE SDP WAS APPROVED BY PARC ON NOVEMBER 21, 1989 AND THAT THE SAME BE CONSIDERED AS THE RECKONING PERIOD

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TO DETERMINE THE JUST COMPENSATION IS DEPRIVATION OF LANDOWNER'S PROPERTY WITHOUT DUE PROCESS OF LAW;

(6) HLI SHOULD BE ENTITLED TO PAYMENT OF INTEREST ON THE JUST COMPENSATION.

B

WITH DUE RESPECT, THE HONORABLE COURT ERRED WHEN IT REVERSED ITS DECISION GIVING THE FWBs THE OPTION TO REMAIN AS HLI STOCKHOLDERS OR NOT, BECAUSE:

(1) IT IS AN EXERCISE OF A RIGHT OF THE FWB WHICH THE HONORABLE COURT HAS DECLARED IN ITS DECISION AND EVEN IN ITS RESOLUTION AND THAT HAS TO BE RESPECTED AND IMPLEMENTED;

(2) NEITHER THE CONSTITUTION NOR THE CARL [COMPREHENSIVE AGRARIAN REFORM LAW] REQUIRES THAT THE FWBs SHOULD HAVE CONTROL OVER THE AGRICULTURAL LANDS;

(3) THE OPTION HAS NOT BEEN SHOWN TO BE DETRIMENTAL BUT INSTEAD BENEFICIAL TO THE FWBs AS FOUND BY THE HONORABLE COURT.

C

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE PROCEEDS FROM THE SALES OF THE 500-HECTARE CONVERTED LOT AND THE 80.51-HECTARE SCTEX CANNOT BE RETAINED BY HLI BUT RETURNED TO THE FWBs AS BY SUCH MANNER; HLI IS USING THE CORPORATION CODE TO AVOID ITS LIABILITY TO THE FWBs FOR THE PRICE IT RECEIVED FROM THE SALES, BECAUSE:

(1) THE PROCEEDS OF THE SALES BELONG TO THE CORPORATION AND NOT TO EITHER HLI/TADECO OR THE FWBs, BOTH OF WHICH ARE STOCKHOLDERS ENTITLED TO THE EARNINGS OF THE CORPORATION AND TO THE NET ASSETS UPON LIQUIDATION;

(2) TO ALLOW THE RETURN OF THE PROCEEDS OF THE SALES TO FWBs IS TO IMPOSE ALL LIABILITIES OF THE CORPORATION ON HLI/TADECO WHICH IS UNFAIR AND VIOLATIVE OF THE CORPORATION CODE.

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Mallari, *et al.* similarly put forth the following issues in its *Motion for Reconsideration/Clarification* dated December 9, 2011:

I

REPUBLIC ACT NO. 6657 [RA 6657] OR THE COMPREHENSIVE AGRARIAN REFORM LAW [CARL] DOES NOT PROVIDE THAT THE FWBs WHO OPT FOR STOCK DISTRIBUTION OPTION SHOULD RETAIN MAJORITY SHAREHOLDING OF THE COMPANY TO WHICH THE AGRICULTURAL LAND WAS GIVEN.

II

IF THE NOVEMBER 22, 2011 DECISION OF THIS HONORABLE COURT ORDERING LAND DISTRIBUTION WOULD BE FOLLOWED, THIS WOULD CAUSE MORE HARM THAN GOOD TO THE LIVES OF THOSE PEOPLE LIVING IN THE HACIENDA, AND MORE PARTICULARLY TO THE WELFARE OF THE FWBs.

III

ON THE CONCLUSION BY THIS HONORABLE COURT THAT THE OPERATIVE FACT DOCTRINE IS APPLICABLE TO THE CASE AT BAR, THEN FWBs WHO MERELY RELIED ON THE PARC APPROVAL SHOULD NOT BE PREJUDICED BY ITS SUBSEQUENT NULLIFICATION.

IV

THOSE WHO CHOOSE LAND SHOULD RETURN WHATEVER THEY GOT FROM THE SDOA [STOCK DISTRIBUTION OPTION AGREEMENT] AND TURN OVER THE SAME TO HLI FOR USE IN THE OPERATIONS OF THE COMPANY, WHICH IN TURN WILL REDOUND TO THE BENEFIT OF THOSE WHO WILL OPT TO STAY WITH THE SDO.

V

FOR THOSE WHO CHOOSE LAND, THE TIME OF TAKING FOR PURPOSES OF JUST COMPENSATION SHOULD BE AT THE TIME HLI WAS DISPOSSESSED OF CONTROL OVER THE PROPERTY, AND THAT PAYMENT BY [THE GOVERNMENT] OF THE LAND SHOULD BE TURNED OVER TO HLI FOR THE BENEFIT AND USE OF THE COMPANY'S OPERATIONS THAT WILL, IN TURN, REDOUND TO THE BENEFIT OF FWBs WHO WILL OPT TO STAY WITH THE COMPANY.

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Basically, the issues raised by HLI and Mallari, *et al.* boil down to the following: (1) determination of the date of "taking"; (2) propriety of the revocation of the option on the part of the original FWBs to remain as stockholders of HLI; (3) propriety of distributing to the qualified FWBs the proceeds from the sale of the converted land and of the 80.51-hectare Subic-Clark-Tarlac Expressway (SCTEX) land; and (4) just compensation for the homelots given to the FWBs.

Payment of just compensation

HLI contends that since the SDP is a modality which the agrarian reform law gives the landowner as alternative to compulsory coverage, then the FWBs cannot be considered as owners and possessors of the agricultural lands of Hacienda Luisita at the time the SDP was approved by PARC.[4] It further claims that the approval of the SDP is not akin to a Notice of Coverage in compulsory coverage situations because stock distribution option and compulsory acquisition are two (2) different modalities with independent and separate rules and mechanisms. Concomitantly, HLI maintains that the Notice of Coverage issued on January 2, 2006 may, at the very least, be considered as the date of "taking" as this was the only time that the agricultural lands of Hacienda Luisita were placed under compulsory acquisition in view of its failure to perform certain obligations under the SDP.[5]

Mallari, *et al.* are of a similar view. They contend that Tarlac Development Corporation (Tadeco), having as it were majority control over HLI, was never deprived of the use and benefit of the agricultural lands of Hacienda Luisita. Upon this premise, Mallari, *et al.* claim the "date of taking" could not be at the time of the approval of the SDP.[6]

A view has also been advanced that the date of the "taking" should be left to the determination of the Department of Agrarian

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[4] HLI MR, pp. 10-11.

[5] *Id.* at 11.

[6] Mallari, *et al.* MR, p. 15.

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Reform (DAR) in conjunction with its authority to preliminarily determine the just compensation for the land made subject of CARP.

Alyansa ng mga Manggagawang Bukid sa Hacienda Luisita (AMBALA), in its *Comment/Opposition (to the Motion to Clarify and Reconsider Resolution of November 22, 2011)* dated January 30, 2012, on the other hand, alleges that HLI should not be paid just compensation altogether.[7] It argues that when the Court of Appeals (CA) dismissed the case[8] the government of then President Ferdinand E. Marcos initially instituted and won against Tadeco, the CA allegedly imposed as a condition for its dismissal of the action that should the stock distribution program fail, the lands should be distributed to the FWBs, with Tadeco receiving by way of compensation only the amount of PhP 3,988,000.[9]

AMBALA further contends that if HLI or Tadeco is, at all, entitled to just compensation, the "taking" should be reckoned as of November 21, 1989, the date when the SDP was approved, and the amount of compensation should be PhP 40,000 per hectare as this was the same value declared in 1989 by Tadeco to ensure that the FWBs will not control the majority stockholdings in HLI.[10]

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[7] AMBALA MR, p. 4.

[8] As a backgrounder, and as stated in Our July 5, 2011 Decision, the government filed a suit on May 7, 1980 before the Manila Regional Trial Court (RTC) against Tadeco, *et al.* for them to surrender Hacienda Luisita to the then Ministry of Agrarian Reform (MAR, now the Department of Agrarian Reform [DAR]) so that the land can be distributed to the farmers at cost. For its part, Tadeco alleged that aside from the fact that Hacienda Luisita does not have tenants, the sugar lands, of which the hacienda consisted, are not covered by existing agrarian reform legislations.

Eventually, the Manila RTC rendered judgment ordering Tadeco to surrender Hacienda Luisita to the MAR. Aggrieved, Tadeco appealed to the CA. On March 17, 1988, the Office of the Solicitor General (OSG) moved to withdraw the government's case against Tadeco, *et al.* By Resolution of May 18, 1988, the CA dismissed the case, subject to the obtention by Tadeco of the PARC's approval of a stock distribution plan that must initially be implemented after such approval shall have been secured.

[9] AMBALA MR, p. 6.

[10] *Id.* at 17.

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At the outset, it should be noted that Section 2, Rule 52 of the Rules of Court states, "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." A second motion for reconsideration, as a rule, is prohibited for being a mere reiteration of the issues assigned and the arguments raised by the parties.[11]

In the instant case, the issue on just compensation and the grounds HLI and Mallari, *et al*. rely upon in support of their respective stance on the matter had been previously raised by them in their first motion for reconsideration and fully passed upon by the Court in its November 22, 2011 Resolution. The similarities in the issues then and now presented and the grounds invoked are at once easily discernible from a perusal of the November 22, 2011 Resolution, the pertinent portions of which read:

> In Our July 5, 2011 Decision, We stated that "HLI shall be paid just compensation for the remaining agricultural land that will be transferred to DAR for land distribution to the FWBs." We also ruled that the date of the "taking" is November 21, 1989, when PARC approved HLI's SDP per PARC Resolution No. 89-12-2.
>
> In its *Motion for Clarification and Partial Reconsideration*, HLI disagrees with the foregoing ruling and contends that the "taking" should be reckoned from finality of the Decision of this Court, or at the very least, the reckoning period may be tacked to January 2, 2006, the date when the Notice of Coverage was issued by the DAR pursuant to PARC Resolution No. 2006-34-01 recalling/revoking the approval of the SDP.
>
> For their part, Mallari, *et al.* argue that the valuation of the land cannot be based on November 21, 1989, the date of approval of the SDP. Instead, they aver that the date of "taking" for valuation purposes is a factual issue best left to the determination of the trial courts.
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> At the other end of the spectrum, AMBALA alleges that HLI should no longer be paid just compensation for the agricultural land that will be distributed to the FWBs, since the Manila Regional

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[11] See *Lao v. Co*, G.R. No. 168198, August 22, 2008, 563 SCRA 139, 143; citing *Balindong v. CA*, G.R. No. 159962, December 16, 2004, 447 SCRA 200, 210.

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Trial Court (RTC) already rendered a decision ordering the Cojuangcos to transfer the control of Hacienda Luisita to the Ministry of Agrarian Reform, which will distribute the land to small farmers after compensating the landowners ₱3.988 million. In the event, however, that this Court will rule that HLI is indeed entitled to compensation, AMBALA contends that it should be pegged at forty thousand pesos (PhP 40,000) per hectare, since this was the same value that Tadeco declared in 1989 to make sure that the farmers will not own the majority of its stocks.

Despite the above propositions, We maintain that the date of "taking" is November 21, 1989, the date when PARC approved HLI's SDP per PARC Resolution No. 89-12-2, in view of the fact that this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition. Further, any doubt should be resolved in favor of the FWBs. As this Court held in *Perez-Rosario v. CA*:

> It is an established social and economic fact that the escalation of poverty is the driving force behind the political disturbances that have in the past compromised the peace and security of the people as well as the continuity of the national order. To subdue these acute disturbances, the legislature over the course of the history of the nation passed a series of laws calculated to accelerate agrarian reform, ultimately to raise the material standards of living and eliminate discontent. Agrarian reform is a perceived solution to social instability. The edicts of social justice found in the Constitution and the public policies that underwrite them, the extraordinary national experience, and the prevailing national consciousness, all command the great departments of government to tilt the balance in favor of the poor and underprivileged whenever reasonable doubt arises in the interpretation of the law. But annexed to the great and sacred charge of protecting the weak is the diametric function to put every effort to arrive at an equitable solution for all parties concerned: the jural postulates of social justice cannot shield illegal acts, nor do they sanction false sympathy towards a certain class, nor yet should they deny justice to the landowner whenever truth and justice happen to be on her side. In the

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> occupation of the legal questions in all agrarian disputes whose outcomes can significantly affect societal harmony, the considerations of social advantage must be weighed, an inquiry into the prevailing social interests is necessary in the adjustment of conflicting demands and expectations of the people, and the social interdependence of these interests, recognized. (Emphasis and citations omitted.)

Considering that the issue on just compensation has already been passed upon and denied by the Court in its November 22, 2011 Resolution, a subsequent motion touching on the same issue undeniably partakes of a second motion for reconsideration, hence, a prohibited pleading, and as such, the motion or plea must be denied. Sec. 3 of Rule 15 of the Internal Rules of the Supreme Court is clear:

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

Nonetheless, even if we entertain said motion and examine the arguments raised by HLI and Mallari, *et al.* one last time, the result will be the same.

Sec. 4, Article XIII of the 1987 Constitution expressly provides that the taking of land for use in the agrarian reform program of the government is conditioned on the payment of just compensation. As stated:

> Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till

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or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and **subject to the payment of just compensation**. (Emphasis supplied.)

Just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator."[12] The measure is not the taker's gain, but the owner's loss.[13] In determining just compensation, the price or value of the property at the time it was taken from the owner and appropriated by the government shall be the basis. If the government takes possession of the land before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint.[14]

In *Land Bank of the Philippines v. Livioco,* the Court held that "the 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic."[15] It should be noted, however, that "taking" does not only take place upon the issuance of title either in the name of the Republic or the beneficiaries of the Comprehensive Agrarian Reform Program (CARP). "Taking" also occurs when agricultural lands are voluntarily offered by a landowner and approved by PARC for CARP coverage through the stock distribution scheme, as in the instant case. Thus, HLI's submitting its SDP for approval is an acknowledgment on its part that the agricultural lands of Hacienda Luisita are covered by CARP. However, it was the PARC approval which should be considered as the effective date of "taking" as it was only

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[12] *National Power Corporation v. Diato-Bernal*, G.R. No. 180979, December 15, 2010, 638 SCRA 660, 669.

[13] *Id.*

[14] *Republic v. CA*, G.R. No. 160379, August 14, 2009, 596 SCRA 57, 70.

[15] G.R. No. 170685, September 22, 2010, 631 SCRA 86, 112-113.

during this time that the government officially confirmed the CARP coverage of these lands.

Indeed, stock distribution option and compulsory land acquisition are two (2) different modalities under the agrarian reform program. Nonetheless, both share the same end goal, that is, to have "a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation."[16]

The fact that Sec. 31 of Republic Act No. 6657 (RA 6657) gives corporate landowners the option to give qualified beneficiaries the right to avail of a stock distribution or, in the phraseology of the law, "the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets," does not detract from the avowed policy of the agrarian reform law of equitably distributing ownership of land. The difference lies in the fact that instead of actually distributing the agricultural lands to the farmer-beneficiaries, these lands are held by the corporation as part of the capital contribution of the farmer-beneficiaries, not of the landowners, under the stock distribution scheme. The end goal of equitably distributing ownership of land is, therefore, undeniable. And since it is only upon the approval of the SDP that the agricultural lands actually came under CARP coverage, such approval operates and takes the place of a notice of coverage ordinarily issued under compulsory acquisition.

Moreover, precisely because due regard is given to the rights of landowners to just compensation, the law on stock distribution option acknowledges that landowners can require payment for the shares of stock corresponding to the value of the agricultural lands in relation to the outstanding capital stock of the corporation.

Although Tadeco did not require compensation for the shares of stock corresponding to the value of the agricultural lands in relation to the outstanding capital stock of HLI, its inability to

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[16] RA 6657, Sec. 2.

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receive compensation cannot be attributed to the government. The second paragraph of Sec. 31 of RA 6657 explicitly states that "[u]pon certification by DAR, corporations owning agricultural lands may give their qualified beneficiaries **the right to purchase** such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. x x x"[17] On the basis of this statutory provision, Tadeco could have exacted payment for such shares of stock corresponding to the value of the agricultural lands of Hacienda Luisita in relation to the outstanding capital stock of HLI, but it did not do so.

What is notable, however, is that the divestment by Tadeco of the agricultural lands of Hacienda Luisita and the giving of the shares of stock for free is nothing but an enticement or incentive for the FWBs to agree with the stock distribution option scheme and not further push for land distribution. And the stubborn fact is that the "man days" scheme of HLI impelled the FWBs to work in the hacienda in exchange for such shares of stock.

Notwithstanding the foregoing considerations, the suggestion that there is "taking" only when the landowner is deprived of the use and benefit of his property is not incompatible with Our conclusion that "taking" took place on November 21, 1989. As mentioned in Our July 5, 2011 Decision, even from the start, the stock distribution scheme appeared to be Tadeco's preferred option in complying with the CARP when it organized HLI as its spin-off corporation in order to facilitate stock acquisition by the FWBs. For this purpose, Tadeco assigned and conveyed to HLI the agricultural lands of Hacienda Luisita, set at 4,915.75 hectares, among others. These agricultural lands constituted as the capital contribution of the FWBs in HLI. In effect, Tadeco deprived itself of the ownership over these lands when it transferred the same to HLI.

While it is true that Tadeco has majority control over HLI, the Court cannot subscribe to the view Mallari, *et al.* espouse

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[17] Emphasis supplied.

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that, on the basis of such majority stockholding, Tadeco was never deprived of the use and benefit of the agricultural lands of Hacienda Luisita it divested itself in favor of HLI.

It bears stressing that "[o]wnership is defined as a relation in law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by law or the concurrence with the rights of another."[18] The attributes of ownership are: *jus utendi* or the right to possess and enjoy, *jus fruendi* or the right to the fruits, *jus abutendi* or the right to abuse or consume, *jus disponendi* or the right to dispose or alienate, and *jus vindicandi* or the right to recover or vindicate.[19]

When the agricultural lands of Hacienda Luisita were transferred by Tadeco to HLI in order to comply with CARP through the stock distribution option scheme, sealed with the imprimatur of PARC under PARC Resolution No. 89-12-2 dated November 21, 1989, Tadeco was consequently dispossessed of the afore-mentioned attributes of ownership. Notably, Tadeco and HLI are two different entities with separate and distinct legal personalities. Ownership by one cannot be considered as ownership by the other.

Corollarily, it is the official act by the government, that is, the PARC's approval of the SDP, which should be considered as the reckoning point for the "taking" of the agricultural lands of Hacienda Luisita. Although the transfer of ownership over the agricultural lands was made prior to the SDP's approval, it is this Court's consistent view that these lands officially became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP. And as We have mentioned in Our November 22, 2011 Resolution, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition.

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[18] *Tatad v. Garcia*, G.R. No. 114222, April 6, 1995, 243 SCRA 436, 453; citing 2 Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 45 (1992).

[19] *Samartino v. Raon*, G.R. No. 131482, July 3, 2002, 383 SCRA 664, 674.

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Further, if We adhere to HLI's view that the Notice of Coverage issued on January 2, 2006 should, at the very least, be considered as the date of "taking" as this was the only time that the agricultural portion of the hacienda was placed under compulsory acquisition in view of HLI's failure to perform certain obligations under the SDP, this Court would, in effect, be penalizing the qualified FWBs twice for acceding to the adoption of the stock distribution scheme: *first*, by depriving the qualified FWBs of the agricultural lands that they should have gotten early on were it not for the adoption of the stock distribution scheme of which they only became minority stockholders; and *second*, by making them pay higher amortizations for the agricultural lands that should have been given to them decades ago at a much lower cost were it not for the landowner's initiative of adopting the stock distribution scheme "for free."

Reiterating what We already mentioned in Our November 22, 2011 Resolution, "[e]ven if it is the government which will pay the just compensation to HLI, this will also affect the FWBs as they will be paying higher amortizations to the government if the 'taking' will be considered to have taken place only on January 2, 2006." As aptly observed by Justice Leonardo-De Castro in her Concurring Opinion, "this will put the land beyond the capacity of the [FWBs] to pay," which this Court should not countenance.

Considering the above findings, it cannot be gainsaid that effective "taking" took place in the case at bar upon the approval of the SDP, that is, on November 21, 1989.

HLI postulates that just compensation is a question of fact that should be left to the determination by the DAR, Land Bank of the Philippines (LBP) or even the special agrarian court (SAC).[20] As a matter of fact, the Court, in its November 22, 2011 Resolution, dispositively ordered the DAR and the LBP to determine the compensation due to HLI. And as indicated in the body of said Resolution:

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[20] HLI MR, pp. 21-23.

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The foregoing notwithstanding, it bears stressing that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner. The landowner can file an original action with the RTC acting as a special agrarian court to determine just compensation. The court has the right to review with finality the determination in the exercise of what is admittedly a judicial function.

As regards the issue on when "taking" occurred with respect to the agricultural lands in question, We, however, maintain that this Court can rule, as it has in fact already ruled on its reckoning date, that is, November 21, 1989, the date of issuance of PARC Resolution No. 89-12-2, based on the above-mentioned disquisitions. The investment on SACs of original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners[21] will not preclude the Court from ruling upon a matter that may already be resolved based on the records before Us. By analogy, Our ruling in *Heirs of Dr. Jose Deleste v. LBP* is applicable:

> Indeed, it is the Office of the DAR Secretary which is vested with the primary and exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. **However, this will not prevent the Court from assuming jurisdiction over the petition considering that the issues raised in it may already be resolved on the basis of the records before Us. Besides, to allow the matter to remain with the Office of the DAR Secretary would only cause unnecessary delay and undue hardship on the parties.** Applicable, by analogy, is Our ruling in the recent *Bagong Pagkakaisa ng Manggagawa ng Triumph International v. Department of Labor and Employment Secretary*, where We held:
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> > But as the CA did, we similarly recognize that undue hardship, to the point of injustice, would result if a remand would be ordered under a situation where we are in the position to resolve the case based on the records before us. As we said in *Roman Catholic Archbishop of Manila v. Court of Appeals*:
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> > [w]e have laid down the rule that the remand of the case to the lower court for further reception of evidence is not necessary

[21] RA 6657, Sec. 57.

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> where the Court is in a position to resolve the dispute based on the records before it. On many occasions, the Court, in the public interest and for the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice, would not be subserved by the remand of the case.[22] (Emphasis supplied; citations omitted.)

Even though the compensation due to HLI will still be preliminarily determined by DAR and LBP, subject to review by the RTC acting as a SAC, the fact that the reckoning point of "taking" is already fixed at a certain date should already hasten the proceedings and not further cause undue hardship on the parties, especially the qualified FWBs.

By a vote of 8-6, the Court affirmed its ruling that the date of "taking" in determining just compensation is November 21, 1989 when PARC approved HLI's stock option plan.

As regards the issue of interest on just compensation, We also leave this matter to the DAR and the LBP, subject to review by the RTC acting as a SAC.

Option will not ensure control over agricultural lands

In Our November 22, 2011 Resolution, this Court held:

> After having discussed and considered the different contentions raised by the parties in their respective motions, We are now left to contend with one crucial issue in the case at bar, that is, control over the agricultural lands by the qualified FWBs.
>
> Upon a review of the facts and circumstances, We realize that the FWBs will never have control over these agricultural lands for as long as they remain as stockholders of HLI. In Our July 5, 2011 Decision, this Court made the following observations:
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> > There is, thus, nothing unconstitutional in the formula prescribed by RA 6657. **The policy on agrarian reform is that control over the agricultural land must always be in the hands of the farmers.** Then it falls on the shoulders of

[22] G.R. No. 169913, June 8, 2011, 651 SCRA 352, 374-375.

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> DAR and PARC to see to it the farmers should always own majority of the common shares entitled to elect the members of the board of directors to ensure that the farmers will have a clear majority in the board. Before the SDP is approved, strict scrutiny of the proposed SDP must always be undertaken by the DAR and PARC, such that the value of the agricultural land contributed to the corporation must always be more than 50% of the total assets of the corporation to ensure that the majority of the members of the board of directors are composed of the farmers. The PARC composed of the President of the Philippines and cabinet secretaries must see to it that control over the board of directors rests with the farmers by rejecting the inclusion of non-agricultural assets which will yield the majority in the board of directors to non-farmers. Any deviation, however, by PARC or DAR from the correct application of the formula prescribed by the second paragraph of Sec. 31 of RA 6675 does not make said provision constitutionally infirm. Rather, it is the application of said provision that can be challenged. Ergo, Sec. 31 of RA 6657 does not trench on the constitutional policy of ensuring control by the farmers.

In line with Our finding that control over agricultural lands must always be in the hands of the farmers, We reconsider our ruling that the qualified FWBs should be given an option to remain as stockholders of HLI, inasmuch as these qualified FWBs will never gain control given the present proportion of shareholdings in HLI.

A revisit of HLI's Proposal for Stock Distribution under CARP and the Stock Distribution Option Agreement (SDOA) upon which the proposal was based reveals that the total assets of HLI is PhP 590,554,220, while the value of the 4,915.7466 hectares is PhP 196,630,000. Consequently, the share of the farmer-beneficiaries in the HLI capital stock is 33.296% (196,630,000 divided by 590,554.220); 118,391,976.85 HLI shares represent 33.296%. Thus, even if all the holders of the 118,391,976.85 HLI shares unanimously vote to remain as HLI stockholders, which is unlikely, control will never be placed in the hands of the farmer-beneficiaries. Control, of course, means the majority of 50% plus at least one share of the common shares and other voting shares. Applying the formula to the HLI stockholdings, the number of shares that will constitute the majority is 295,112,101 shares (590,554,220 divided by 2 plus one [1] HLI share). The 118,391,976.85 shares subject to the SDP approved by PARC substantially fall short of the 295,112,101 shares

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needed by the FWBs to acquire control over HLI. Hence, control can NEVER be attained by the FWBs. There is even no assurance that 100% of the 118,391,976.85 shares issued to the FWBs will all be voted in favor of staying in HLI, taking into account the previous referendum among the farmers where said shares were not voted unanimously in favor of retaining the SDP. In light of the foregoing consideration, the option to remain in HLI granted to the individual FWBs will have to be recalled and revoked.

Moreover, bearing in mind that with the revocation of the approval of the SDP, HLI will no longer be operating under SDP and will only be treated as an ordinary private corporation; the FWBs who remain as stockholders of HLI will be treated as ordinary stockholders and will no longer be under the protective mantle of RA 6657. (Emphasis in the original.)

HLI, however, takes exception to the above-mentioned ruling and contends that "[t]here is nothing in the Constitution nor in the agrarian laws which require that control over the agricultural lands must always be in the hands of the farmers."[23] Moreover, both HLI and Mallari, *et al*. claim that the option given to the qualified FWBs to remain as stockholders of HLI is neither iniquitous nor prejudicial to the FWBs.[24]

The Court agrees that the option given to the qualified FWBs whether to remain as stockholders of HLI or opt for land distribution is neither iniquitous nor prejudicial to the FWBs. Nonetheless, the Court is not unmindful of the policy on agrarian reform that control over the agricultural land must always be in the hands of the farmers. Contrary to the stance of HLI, both the Constitution and RA 6657 intended the farmers, individually or collectively, to have control over the agricultural lands of HLI; otherwise, all these rhetoric about agrarian reform will be rendered for naught. Sec. 4, Art. XIII of the 1987 Constitution provides:

Section 4. The State shall, by law, undertake an agrarian reform program founded on **the right of farmers and regular farmworkers**

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[23] HLI MR, p. 25.

[24] *Id*. at 30; Mallari, *et al*. MR, p. 8.

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

Pursuant to and as a mechanism to carry out the above-mentioned constitutional directive, RA 6657 was enacted. In consonance with the constitutional policy on agrarian reform, Sec. 2 of RA 6657 also states:

SECTION 2. *Declaration of Principles and Policies*. — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farm workers will receive the highest consideration to promote social justice and to move the nation towards sound rural development and industrialization, and the establishment of owner cultivatorship of economic-sized farms as the basis of Philippine agriculture.

To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farm workers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

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

The State shall recognize the right of farmers, farm workers and landowners, as well as cooperatives and other independent farmers'

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organization, to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing and other support services.

The State shall apply the principles of agrarian reform or stewardship, whenever applicable, in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain, under lease or concession, suitable to agriculture, subject to prior rights, homestead rights of small settlers and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farm workers in its own agricultural estates, which shall be distributed to them in the manner provided by law.

By means of appropriate incentives, the State shall encourage the formation and maintenance of economic-sized family farms to be constituted by individual beneficiaries and small landowners.

The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production and marketing assistance and other services, The State shall also protect, develop and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

The State shall be guided by the principles that land has a social function and land ownership has a social responsibility. Owners of agricultural land have the obligation to cultivate directly or through labor administration the lands they own and thereby make the land productive.

The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment and privatization of public sector enterprises. Financial instruments used as payment for lands shall contain features that shall enhance negotiability and acceptability in the marketplace.

The State may lease undeveloped lands of the public domain to qualified entities for the development of capital-intensive farms,

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traditional and pioneering crops especially those for exports subject to the prior rights of the beneficiaries under this Act. (Emphasis supplied.)

Based on the above-quoted provisions, the notion of farmers and regular farmworkers having the right to own directly or collectively the lands they till is abundantly clear. We have extensively discussed this ideal in Our July 5, 2011 Decision:

> The wording of the provision is unequivocal — the farmers and regular farmworkers have a right TO OWN DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL. The basic law allows two (2) modes of land distribution—direct and indirect ownership. Direct transfer to individual farmers is the most commonly used method by DAR and widely accepted. Indirect transfer through collective ownership of the agricultural land is the alternative to direct ownership of agricultural land by individual farmers. The aforequoted Sec. 4 EXPRESSLY authorizes collective ownership by farmers. No language can be found in the 1987 Constitution that disqualifies or prohibits corporations or cooperatives of farmers from being the legal entity through which collective ownership can be exercised. The word 'collective' is defined as 'indicating a number of persons or things considered as constituting one group or aggregate,' while 'collectively' is defined as 'in a collective sense or manner; in a mass or body.' By using the word 'collectively,' the Constitution allows for indirect ownership of land and not just outright agricultural land transfer. This is in recognition of the fact that land reform may become successful even if it is done through the medium of juridical entities composed of farmers.
>
> Collective ownership is permitted in two (2) provisions of RA 6657. Its Sec. 29 allows workers' cooperatives or associations to collectively own the land, while the second paragraph of Sec. 31 allows corporations or associations to own agricultural land with the farmers becoming stockholders or members. Said provisions read:
>
> > SEC. 29. *Farms owned or operated by corporations or other business associations*.— In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC.
> >
> > In general, lands shall be distributed directly to the individual worker-beneficiaries.

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> In case it is not economically feasible and sound to divide the land, then **it shall be owned collectively by the worker beneficiaries who shall form a workers' cooperative or association** which will deal with the corporation or business association. x x x
>
> SEC. 31. *Corporate Landowners.* — x x x
>
> x x x x x x x x x
>
> Upon certification by the DAR, **corporations** owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the **corporation** that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to **associations**, with respect to their equity or participation. x x x

Clearly, workers' cooperatives or associations under Sec. 29 of RA 6657 and corporations or associations under the succeeding Sec. 31, as differentiated from individual farmers, are authorized vehicles for the collective ownership of agricultural land. Cooperatives can be registered with the Cooperative Development Authority and acquire legal personality of their own, while corporations are juridical persons under the Corporation Code. Thus, Sec. 31 is constitutional as it simply implements Sec. 4 of Art. XIII of the Constitution that land can be owned COLLECTIVELY by farmers. Even the framers of the l987 Constitution are in unison with respect to the two (2) modes of ownership of agricultural lands tilled by farmers—DIRECT and COLLECTIVE, thus:

> MR. NOLLEDO. And when we talk of the phrase 'to own **directly**,' we mean the principle of **direct ownership by the tiller**?
>
> MR. MONSOD. Yes.
>
> MR. NOLLEDO. And when we talk of '**collectively**,' we mean communal ownership, stewardship or State ownership?
>
> MS. NIEVA. In this section, we conceive of cooperatives; **that is farmers' cooperatives owning the land**, not the State.

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MR. NOLLEDO. And when we talk of '**collectively**,' referring to farmers' cooperatives, do the farmers own specific areas of land where they only unite in their efforts?

MS. NIEVA. That is one way.

MR. NOLLEDO. Because I understand that there are two basic systems involved: the 'moshave' type of agriculture and the 'kibbutz.' So are both contemplated in the report?

MR. TADEO. ***Ang dalawa kasing pamamaraan ng pagpapatupad ng tunay na reporma sa lupa ay ang pagmamay-ari ng lupa na hahatiin sa individual na pagmamay-ari – directly – at ang tinatawag na sama-samang gagawin ng mga magbubukid.*** *Tulad sa Negros, ang gusto ng mga magbubukid ay gawin nila itong 'cooperative or collective farm.' Ang ibig sabihin ay* ***sama-sama*** *nilang sasakahin.*

x x x x x x x x x

MR. TINGSON. x x x When we speak here of 'to own directly or collectively the lands they till,' is this land for the tillers rather than land for the landless? Before, we used to hear 'land for the landless,' but now the slogan is 'land for the tillers.' Is that right?

MR. TADEO. *Ang prinsipyong umiiral dito ay iyong* land for the tillers. ***Ang ibig sabihin ng 'directly' ay tulad sa implementasyon sa rice and corn lands kung saan inaari na ng mga magsasaka ang lupang binubungkal nila. Ang ibig sabihin naman ng 'collectively' ay sama-samang paggawa sa isang lupain o isang bukid****, katulad ng sitwasyon sa Negros.*

As Commissioner Tadeo explained, the farmers will work on the agricultural land 'sama-sama' or collectively. Thus, the main requisite for collective ownership of land is collective or group work by farmers of the agricultural land. Irrespective of whether the landowner is a cooperative, association or corporation composed of farmers, as long as concerted group work by the farmers on the land is present, then it falls within the ambit of collective ownership scheme. (Emphasis in the original; underscoring supplied.)

As aforequoted, there is collective ownership as long as there is a concerted group work by the farmers on the land, regardless of whether the landowner is a cooperative, association or

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corporation composed of farmers. However, this definition of collective ownership should be read in light of the clear policy of the law on agrarian reform, which is to emancipate the tiller from the bondage of the soil and empower the common people. Worth noting too is its noble goal of rectifying "the acute imbalance in the distribution of this precious resource among our people."[25] Accordingly, HLI's insistent view that control need not be in the hands of the farmers translates to allowing it to run roughshod against the very reason for the enactment of agrarian reform laws and leave the farmers in their shackles with sheer lip service to look forward to.

Notably, it has been this Court's consistent stand that control over the agricultural land must always be in the hands of the farmers. As We wrote in Our July 5, 2011 Decision:

> There is, thus, nothing unconstitutional in the formula prescribed by RA 6657. **The policy on agrarian reform is that control over the agricultural land must always be in the hands of the farmers.** Then it falls on the shoulders of DAR and PARC to see to it the farmers should always own majority of the common shares entitled to elect the members of the board of directors to ensure that the farmers will have a clear majority in the board. Before the SDP is approved, strict scrutiny of the proposed SDP must always be undertaken by the DAR and PARC, such that the value of the agricultural land contributed to the corporation must always be more than 50% of the total assets of the corporation to ensure that the majority of the members of the board of directors are composed of the farmers. **The PARC composed of the President of the Philippines and cabinet secretaries must see to it that control over the board of directors rests with the farmers by rejecting the inclusion of non-agricultural assets which will yield the majority in the board of directors to non-farmers. Any deviation, however, by PARC or DAR from the correct application of the formula prescribed by the second paragraph of Sec. 31 of RA 6675 does not make said provision constitutionally infirm. Rather, it is the application of said provision that can be challenged.** Ergo, Sec. 31 of RA 6657 does not trench on the constitutional policy of ensuring control by the farmers. (Emphasis supplied.)

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[25] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 352.

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There is an aphorism that "what has been done can no longer be undone." That may be true, but not in this case. The SDP was approved by PARC even if the qualified FWBs did not and will not have majority stockholdings in HLI, contrary to the obvious policy by the government on agrarian reform. Such an adverse situation for the FWBs will not and should not be permitted to stand. For this reason, We maintain Our ruling that the qualified FWBs will no longer have the option to remain as stockholders of HLI.

FWBs Entitled to Proceeds of Sale

HLI reiterates its claim over the proceeds of the sales of the 500 hectares and 80.51 hectares of the land as corporate owner and argues that the return of said proceeds to the FWBs is unfair and violative of the Corporation Code.

This claim is bereft of merit.

It cannot be denied that the adverted 500-hectare converted land and the SCTEX lot once formed part of what would have been agrarian-distributable lands, in fine subject to compulsory CARP coverage. And, as stated in our July 5, 2011 Decision, were it not for the approval of the SDP by PARC, these large parcels of land would have been distributed and ownership transferred to the FWBs, subject to payment of just compensation, given that, as of 1989, the subject 4,915 hectares of Hacienda Luisita were already covered by CARP. Accordingly, the proceeds realized from the sale and/or disposition thereof should accrue for the benefit of the FWBs, less deductions of the 3% of the proceeds of said transfers that were paid to the FWBs, the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary Holdings, Inc. for legitimate corporate purposes, as prescribed in our November 22, 2011 Resolution.

Homelots

In the present recourse, HLI also harps on the fact that since the homelots given to the FWBs do not form part of the 4,915.75 hectares covered by the SDP, then the value of these homelots

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should, with the revocation of the SDP, be paid to Tadeco as the landowner.[26]

We disagree. As We have explained in Our July 5, 2011 Decision, the distribution of homelots is required under RA 6657 only for corporations or business associations owning or operating farms which opted for land distribution. This is provided under Sec. 30 of RA 6657. Particularly:

> SEC. 30. *Homelots and Farmlots for Members of Cooperatives.* — The individual members of the cooperatives or corporations mentioned in the *preceding section* shall be provided with homelots and small farmlots for their family use, to be taken from the land owned by the cooperative or corporation. (Italics supplied.)

The "preceding section" referred to in the above-quoted provision is Sec. 29 of RA 6657, which states:

> SEC. 29. *Farms Owned or Operated by Corporations or Other Business Associations.* — In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC.
>
> In general, lands shall be distributed directly to the individual worker-beneficiaries.
>
> In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association. Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association, any agreement existing at the time this Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation or business association.

Since none of the above-quoted provisions made reference to corporations which opted for stock distribution under Sec. 31 of RA 6657, then it is apparent that said corporations are not obliged to provide for homelots. Nonetheless, HLI undertook

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[26] HLI MR, pp. 38-40.

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to "subdivide and allocate **for free and without charge** among the qualified family-beneficiaries x x x residential or homelots of not more than 240 sq. m. each, with each family beneficiary being assured of receiving and owning a homelot in the barrio or *barangay* where it actually resides." In fact, HLI was able to distribute homelots to some if not all of the FWBs. Thus, in our November 22, 2011 *Resolution*, We declared that the homelots already received by the FWBs shall be respected with no obligation to refund or to return them.

The Court, by a unanimous vote, resolved to maintain its ruling that the FWBs shall retain ownership of the homelots given to them with no obligation to pay for the value of said lots. However, since the SDP was already revoked with finality, the Court directs the government through the DAR to pay HLI the just compensation for said homelots in consonance with Sec. 4, Article XIII of the 1987 Constitution that the taking of land for use in the agrarian reform program is "subject to the payment of just compensation." Just compensation should be paid to HLI instead of Tadeco in view of the Deed of Assignment and Conveyance dated March 22, 1989 executed between Tadeco and HLI, where Tadeco transferred and conveyed to HLI the titles over the lots in question. DAR is ordered to compute the just compensation of the homelots in accordance with existing laws, rules and regulations.

To recapitulate, the Court voted on the following issues in this manner:

1. In determining the date of "taking," the Court voted 8-6 to maintain the ruling fixing November 21, 1989 as the date of "taking," the value of the affected lands to be determined by the LBP and the DAR;

2. On the propriety of the revocation of the option of the FWBs to remain as HLI stockholders, the Court, by unanimous vote, agreed to reiterate its ruling in its November 22, 2011 Resolution that the option granted to the FWBs stays revoked;

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3. On the propriety of returning to the FWBs the proceeds of the sale of the 500-hectare converted land and of the 80.51-hectare SCTEX land, the Court unanimously voted to maintain its ruling to order the payment of the proceeds of the sale of the said land to the FWBs less the 3% share, taxes and expenses specified in the *fallo* of the November 22, 2011 Resolution;

4. On the payment of just compensation for the homelots to HLI, the Court, by unanimous vote, resolved to amend its July 5, 2011 Decision and November 22, 2011 Resolution by ordering the government, through the DAR, to pay to HLI the just compensation for the homelots thus distributed to the FWBS.

WHEREFORE, the *Motion to Clarify and Reconsider Resolution of November 22, 2011* dated December 16, 2011 filed by petitioner Hacienda Luisita, Inc. and the *Motion for Reconsideration/Clarification* dated December 9, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. and Windsor Andaya are hereby **DENIED** with this qualification: the July 5, 2011 Decision, as modified by the November 22, 2011 Resolution, is **FURTHER MODIFIED** in that the government, through DAR, is ordered to pay Hacienda Luisita, Inc. the just compensation for the 240-square meter homelots distributed to the FWBs.

The July 5, 2011 Decision, as modified by the November 22, 2011 Resolution and further modified by this Resolution is declared **FINAL** and **EXECUTORY**. The entry of judgment of said decision shall be made upon the time of the promulgation of this Resolution.

No further pleadings shall be entertained in this case.

SO ORDERED.

Corona, C.J., Leonardo-de Castro, Abad, and *Villarama, Jr., JJ.,* concur.

Brion, J., see separate opinion.

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Peralta, del Castillo, Reyes, and *Perlas-Bernabe, JJ.,* join the opinion of *J.* Bersamin.

Bersamin, J., see concurring and dissenting opinion.

Perez, J., concurs but joins Justice Brion on his position on mediation.

Mendoza, J., joins Justice Brion in his concurring and dissenting opinion.

Sereno, J., joins *J.* Bersamin, see also separate opinion.

Carpio, J., no part.

CONCURRING AND DISSENTING OPINION

BERSAMIN, *J.*:

For resolution are the *Motion to Clarify and Reconsider Resolution of November 22, 2011* of petitioner Hacienda Luisita, Inc. (HLI) and the *Motion for Reconsideration/Clarification* dated December 9, 2011 of respondents Noel Mallari, *et al.*

HLI contends in its *Motion to Clarify and Reconsider Resolution of November 22, 2011* as follows:

A

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT IN DETERMINING THE JUST COMPENSATION, THE DATE OF "TAKING" IS NOVEMBER 21, 1989, WHEN PARC APPROVED HLI's SDP "IN VIEW OF THE FACT THAT THIS IS THE TIME THAT THE FWBs WERE CONSIDERED TO OWN AND POSSESS THE AGRICULTURAL LANDS IN HACIENDA LUISITA" **because:**

1. The SDP is precisely a modality which the agrarian law gives the landowner as alternative to compulsory coverage in which case, therefore, the FWBs cannot be considered as owners and possessors of the agricultural lands at the time the SDP was approved by PARC;

2. The approval of the SDP cannot be akin to a Notice of Coverage in compulsory coverage or acquisition because SDP and compulsory

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coverage are two **different modalities** with independent and separate rules and mechanisms;

3. The Notice of Coverage of **January 02, 2006** may, at the very least, be considered as the time when the FWBs can be considered to own and possess the agricultural lands of Hacienda Luisita because that is only the time when Hacienda Luisita was placed under **compulsory acquisition** in view of failure of HLI to perform certain obligations of the SDP, or SDOA;

4. Indeed, the immutable rule and the unbending jurisprudence is that "taking" takes place when the owner is actually deprived or dispossessed of his property;

5. To insist that the "taking" is when the SDP was approved by PARC on November 21, 1989 and that the same be considered as the reckoning period to determine the just compensation is deprivation of landowner's property without due process of law;

6. HLI should be entitled to payment of interest on the just compensation.

B

WITH DUE RESPECT, THE HONORABLE COURT ERRED WHEN IT REVERSED ITS DECISION GIVING THE FWBs THE OPTION TO REMAIN AS HLI STOCKHOLDERS OR NOT, **because:**

1. It is an exercise of a right of the FWB which the Honorable Court has declared in its Decision and even in its Resolution and that has to be respected and implemented;

2. Neither the Constitution nor the CARL require[s] that the FWBs should have control over the agricultural lands;

3. The option has not been shown to be detrimental but instead beneficial to the FWBs as found by the Honorable Court.

C

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE PROCEEDS FROM THE SALES OF THE 500-HECTARE CONVERTED LOT AND THE 80.51-HECTARE SCTEX CANNOT BE RETAINED BY HLI BUT RETURNED TO THE FWBs AS BY SUCH MANNER; HLI IS USING THE CORPORATION CODE TO AVOID ITS LIABILITY TO THE FWBs FOR THE PRICE IT RECEIVED FROM THE SALES, **because —**

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1. The proceeds of the sales belong to the corporation and not to either HLI/Tadeco or the FWBs, both of which are stockholders entitled to the earnings of the corporation and to the net assets upon liquidation;

2. To allow the return of the proceeds of the sales to FWBs is to impose all liabilities of the corporation on HLI/Tadeco which is unfair and violative of the Corporation Code.

For their part, respondents Mallari, *et al*. submitted in their *Motion for Reconsideration/Clarification* that:

1. Republic Act No. 6657 or the Comprehensive Agrarian Reform Law does not provide that the FWBs who opt for stock distribution option should retain majority shareholding of the company to which the agricultural land was given.

2. If the November 22, 2011 decision of this Honorable Court ordering land distribution would be followed, this would cause more harm than good to the lives of those people living in the hacienda, and more particularly to the welfare of the FWBs.

3. On the conclusion by this Honorable Court that the operative fact doctrine is applicable to the case at bar, then FWBs who merely relied on the PARC approval should not be prejudiced by its subsequent nullification.

4. Those who choose land should return whatever they got from the SDOA and turn over the same to HLI for use in the operations of the company, which in turn will redound to the benefit of those who will opt to stay with the SDO.

5. For those who choose land, the time of taking for purposes of just compensation should be at the time HLI was dispossessed of control over the property, and that payment by of the land should be turned over to HLI for the benefit and use of the company's operations that will, in turn, redound to the benefit of FWBs who will opt to stay with the company.

Recommendations

I readily **CONCUR** with the Majority in subjecting to compulsory land distribution the lands of HLI affected by the discredited Stock Distribution Plan (SDP), as disposed in the resolution promulgated on November 22, 2011.

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However, I humbly **REITERATE** my **DISSENT** on two aspects of the decision of July 5, 2011 and the resolution of November 22, 2011. I **MAINTAIN** that if the constitutional guarantee of just compensation is to be fulfilled with justice and fairness:

(*a*) The Department of Agrarian Reform (DAR) and Land Bank of the Philippines (Land Bank), initially, and the Regional Trial Court as Special Agrarian Court (RTC-SAC), ultimately, should determine the reckoning date of taking as an integral component of their statutory responsibility to determine just compensation under Republic Act No. 6657 (*Comprehensive Agrarian Reform Law of 1988*, or CARL); and

(*b*) HLI should be compensated as the landowner for the fair market value of the homelots granted to the farmworker-beneficiaries (FWBs) under the discredited SDP.

I humbly **CONTEND** that the Court will likely overstep its jurisdiction if it pegs the time of taking at a definite date (whether November 21, 1989, or January 2, 2006, or any other date) because it thereby pre-empts the RTC-SAC from doing so. I must **NOTE** that the determination of just compensation (which is always reckoned from the time of taking) is a factual matter expressly within the original and exclusive jurisdiction of the RTC-SAC; and that the *sua sponte* pegging by the Court of the time of taking (even without the parties having properly raised and argued the matter) unduly interferes with the parties' right of presentation and autonomy.

Submissions & Explanations

I

A

For a proper perspective, let me remind that the exercise by the State of its inherent power of eminent domain comes in two stages. The Court has characterized the dual stages in *Municipality of Biñan v. Garcia*[1] in the following manner:

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[1] G.R. No. 69260, December 22, 1989, 180 SCRA 576.

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There are two (2) stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint." x x x

The second phase of the eminent domain action is concerned with the determination by the court of "the just compensation for the property sought to be taken." x x x.[2]

The first stage in expropriation relates to the determination of the validity of the expropriation. At this stage, the trial court resolves questions, like whether the expropriator has the power of eminent domain, whether the use of the property is public, whether the taking is necessary, and, should there be conditions precedent for the exercise of the power, whether they have been complied with. In the second stage, the trial court is called upon to determine the just compensation, taking into consideration all the factors of just compensation (including whether interest should be paid on the amount of just compensation). Rule 67 of the *Rules of Court* generally delineates the procedure followed in both stages. Although expropriation may be either judicial or legislative, the dual stages apply to both, for there is "no point in distinguishing between judicial and legislative expropriation as far as the two stages mentioned above are concerned."[3]

The taking of property pursuant to the CARL is an exercise of the power of eminent domain by the State. It is a revolutionary expropriation that covers all private agricultural lands that exceeded the maximum retention limits reserved to their owners. This the Court has fittingly pointed out in *Association of Small*

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[2] *Id.*, pp. 583-584.

[3] *Republic v. Salem Investment Corporation*, G.R. No. 137569, June 23, 2000, 334 SCRA 320, 330.

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Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform:[4]

x x x [W]e 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 wherever 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 last to their deliverance.

Its revolutionary character notwithstanding, expropriation under the CARL still goes through the two stages. Section 16 of the CARL, which provides the procedure for private agricultural land acquisition, makes this explicit enough, thus:

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

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and

[4] G.R. No. 78742, July 14, 1989, 175 SCRA 343, 385-386.

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post the same in a conspicuous place in the municipal building and *barangay* hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

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

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

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

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

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

For sure, the expropriation under the CARL is not an exclusively judicial process. The first stage of expropriation commences upon the issuance of the notice of coverage, and is initially dealt with administratively by the DAR pursuant to

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Section 50 of the CARL,[5] subject to a judicial review in accordance with Section 54 of the CARL.[6] The DAR, through the Regional Director, has jurisdiction over all agrarian law implementation cases, including protests or petitions to lift coverage.[7] In exercising jurisdiction over such cases, the Regional Director passes upon and resolves various issues, including whether the land is subject to or exempt from CARP coverage, and whether the required notices of coverage have been served on the landowners.

Section 4, Article XIII of the 1987 Constitution provides:

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

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

x x x x x x x x x

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

[6] Section 54. *Certiorari.* — Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari* except as otherwise provided in this Act within fifteen (15) days from the receipt of a copy thereof.

The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.

[7] DAR Administrative Order No. 03, series of 2003 (*Rules for Agrarian Law Implementation Cases*).

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small landowners. The State shall further provide incentives for voluntary land-sharing.

The Constitution itself has thereby settled the requirement of public use and the necessity for the expropriation, which are the proper subjects of the first stage of expropriation proceedings. In its 1987 pronouncement in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[8] the Court declared so:

> As earlier observed, the requirement of 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 stage is devoted to the determination of just compensation. This stage, as essential as the first, is always judicial in nature. According to *Export Processing Zone Authority v. Dulay*:[9]

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

B.

HLI assailed the resolution of November 22, 2011 for reckoning the time of taking from November 21, 1989, the date when the

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[8] *Supra*, note 4, at p. 378.

[9] No. 59603, April 29, 1987, 149 SCRA 305, 316.

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PARC approved HLI's SDP, because there was yet no land transfer at that time. It insists that, at the very least, January 2, 2006, the date when the notice of coverage issued, should be considered as the time of taking.

In the alternative, HLI manifested its willingness to abide by my *Concurring and Dissenting Opinion* of November 22, 2011, whereby I respectfully recommended leaving the issue of the time of taking for the RTC-SAC to decide as an adjunct of the determination of the just compensation.

Respondents Noel Mallari, *et al.* agreed that the RTC-SAC should decide the issue of the time of taking.

To recall, I wrote in my *Concurring and Dissenting Opinion* of November 22, 2011, as follows:

> The determination of when the taking occurred is an integral and vital part of the determination and computation of just compensation. The nature and character of land *at the time of its taking* are the principal criteria to determine just compensation to the landowner. In *National Power Corporation v. Court of Appeals*, the Court emphasized the importance of the time of taking in fixing the amount of just compensation, thus:
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> > x x x [T]he Court xxx invariably held that **the time of taking is the critical date in determining lawful or just compensation**. Justifying this stance, Mr. Justice (later Chief Justice) Enrique Fernando, speaking for the Court in *Municipality of La Carlota vs. The Spouses Felicidad Baltazar and Vicente Gan,* said, "xxx the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of the taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantees just compensation. It would be an injustice to him certainly if from such a period, he could not recover the value of what was lost. There could be on the other hand, injustice to the expropriator if by a delay in the collection, the increment in price would accrue to the owner. The doctrine to which this Court has been committed is intended precisely to avoid either contingency fraught with unfairness."

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It is my humble submission, therefore, that the factual issue of when the taking had taken place as to the affected agricultural lands should not be separated from the determination of just compensation by DAR, Land Bank and SAC. Accordingly, I urge that the Court should leave the matter of the reckoning date to be hereafter determined by the DAR and Land Bank pursuant to Section 18 of Republic Act No. 6657.[10] Should the parties disagree thereon, the proper SAC will then resolve their disagreement as an integral part of a petition for determination of just compensation made pursuant to Section 57 of Republic Act No. 6657 x x x.

I **MAINTAIN** my foregoing position.

Just compensation is the full and fair equivalent of the property the expropriator takes from its owner. The measure for computing just compensation is not the taker's gain, but the owner's loss.[11] The constitutional policy underlying the requirement for the payment of just compensation is to make the landowner whole after the State has taken his property.[12] The word *just* intensifies the word *compensation* to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full and ample.[13] For the landowner of expropriated property to be fully compensated, the State must put him in as good a position pecuniarily as if the use of the property had not been taken away.[14] Accordingly, just compensation is principally based on the fair market value, which is "that sum of money which a person desirous but not compelled to buy, and an owner willing

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[10] Section 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 LBP or as may be finally determined by the court as just compensation for the land.

[11] *National Power Corporation v. Maruhom*, G.R. No. 183297, December 23, 2009, 609 SCRA 198, 210.

[12] *State By and Through Dept. of Highways of State of Mont. v. McGuckin*, 242 Mont. 81, 788 P.2d 926 (1990).

[13] *National Power Corporation v. Maruhom*, G.R. No. 183297, December 23, 2009, 609 SCRA 198, 210.

[14] *South Carolina Department of Transportation v. Faulkenberry*, 522 S.E.2d 822 (1999).

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but not compelled to sell, would agree on as a price to be given and received therefore."[15]

The price or value of the land and its character *at the time it is taken* by the Government are the primordial criteria for determining just compensation.[16] Section 17 of the CARL enumerates other factors to be considered, *viz*:

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

As to taking, the Court has set a number of circumstances that must be established before property is said to be taken for a public use, to wit:

> A number of circumstances must be present in "taking" of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a 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 to oust the owner and deprive him of all beneficial enjoyment of the property.[17]

The prescription of such number of circumstances means that *compensable taking* is not a simple concept easy to ascertain.

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[15] *National Power Corporation v. Co*, G.R. No. 166973, February 10, 2009, 578 SCRA 234, 240.

[16] *National Power Corporation v. Court of Appeals*, No. 56378, June 22, 1984, 129 SCRA 665, 673.

[17] *National Power Corporation v. Court of Appeals*, G.R. No. 113194, March 11, 1996, 254 SCRA 577, 590.

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Certainly, evidence from the parties is needed to concretize the concept. Thus, establishing the time of taking demands a judicial trial in which both the owner and the expropriator are afforded the fullest opportunity to prove either when the owner was actually deprived or dispossessed of the property, or when a practical destruction or a material impairment of the value of the property happened, or when the owner was deprived of the ordinary use of the property. Not being a trier of facts, the Court has no capacity to render a valid finding upon the time of taking.

In contrast, not only is the RTC-SAC a trier of facts but it is also vested with the *original* and *exclusive* jurisdiction to receive the parties' evidence on the valuation of the affected property pursuant to Section 57 of the CARL, *viz*:

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

Original jurisdiction means jurisdiction to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts,[18] and concerns the right to hear a cause and to make an original determination of the issues from the evidence as submitted directly by the witnesses, or of the law as presented, *uninfluenced or unconcerned by any prior determination*, or the action of any other court juridically determining the same controversy.[19] Needless to point out, that jurisdiction of the RTC-SAC is also exclusive of all *other* courts, including this Court.

Although November 21, 1989 was the date when the affected landholdings of HLI came under the SDP, I see no practical

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[18] *Cubero v. Laguna West Multi-Purpose Cooperative, Inc.*, G.R. No. 166833, November 30, 2006, 509 SCRA 410, 416.

[19] *State v. Johnson*, 100 Utah 316, 114 P.2d 1034 (1941).

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justification why the Court should peg that date as the time of taking. As I see it, HLI/TADECO as landowner was not deprived of its property on that date. Nor was its property destroyed or materially impaired then. **Instead, what occurred on that date was the fusion of HLI/TADECO as owner, on the one hand, and the FWBs as the tenant-farmers, on the other hand, into one corporate entity in relation to the land subject of the SDP, a fusion that did not result into or cause the deprivation of HLI of its land.**

It is significant that the parties did not raise the time of taking as an issue in their pleadings. The petition for *certiorari* and prohibition assailed only the PARC's revocation of the SDP and the resulting placement of the lands subject of the SDP under compulsory land acquisition of the CARP on the ground that the PARC had no authority to revoke the SDP. Consequently, the time of taking was neither relevant to the objective of the petition, nor necessary to the determination of the issues the petition raised. In fact, the decision promulgated on July 5, 2011 itself expressly limited the issues only to: — "(1) matters of standing; (2) the constitutionality of Sec. 31 of RA 6657; (3) the jurisdiction of PARC to recall or revoke HLI's SDP; (4) the validity or propriety of such recall or revocatory action; and (5) corollary to (4), the validity of the terms and conditions of the SDP, as embodied in the SDOA," with none of the stated issues involving the time of taking. **The first time that the time of taking surfaced was when the July 5, 2011 decision pegged it on November 29, 1989.** As such, the Court overstepped its adjudicative boundaries by pegging the taking at a definite date (whether November 21, 1989, or January 2, 2006, or any other date) even without the parties presenting the matter here.

With all due respect to my distinguished colleagues in the Majority, I state that the Court unduly interfered with the right of the parties to present the issues they desired to bring for the Court's consideration and resolution. As a rule, the Court should not create issues *sua sponte* but should decide only the issues presented by the parties. This rule adheres to the principle of party presentation, which fully complements the role of the

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Judiciary as the neutral arbiter of disputes, a role that is vital to the adversarial system.

Greenlaw v. United States,[20] a 2008 ruling of the United States Supreme Court, explained the principle of party presentation or litigants' autonomy in the following terms, to wit:

> In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a *pro se* litigant's rights. See *Castro v. United States*, 540 U. S. 375, 381-383 (2003). But as a general rule, "[o]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." *Id*., at 386 (*Scalia, J.*, concurring in part and concurring in judgment). As cogently explained:
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> > "[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties. Counsel almost always know a great deal more about their cases than we do, and this must be particularly true of counsel for the United States, the richest, most powerful, and best represented litigant to appear before us." *United States v. Samuels*, 808 F. 2d 1298, 1301 (CA8 1987) (R. Arnold, J., concurring in denial of reh'g *en banc*).

The grave danger posed by the *sua sponte* creation and decision of issues by the trial and appellate courts without the prior knowledge of the parties is to cause injustice itself. "Were we to address these unbriefed issues," an appellate tribunal in the State of Illinois observed, "we would be forced to speculate as to the arguments that the parties might have presented had these issues been properly raised before this court. To engage in such speculation would only cause further injustice; thus, we refrain

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[20] 554 U.S. 237, 128 S.Ct. 2559, 171 L.Ed.2d 399, 76 BNA USLW 4533 (June 23, 2008).

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from addressing these issues *sua sponte*."[21] Such injustice may extend outside of the parties themselves, as warned in *United Shoe Workers of America, Local 132 v. Wisconsin Labor Relations Board*,[22] *viz*:

> Courts do not decline to decide questions which are not before them because they are not willing to assume responsibility for the decision. When a court decides a question not before it, its decision may and very probably will affect the rights of parties who have never had their day in court. The question may, as Chief Justice Winslow said, arise under circumstances that cannot be foreseen which may throw much additional light upon the question. Long experience has demonstrated that questions which affect the rights of citizens should not be determined upon hypothetical and suppositious cases.

Instances admittedly happen when courts are allowed to step in and raise issues *sua sponte*.[23] The most common instance is when a court decides whether or not it has jurisdiction over a case before it.[24] Also, in the exercise of its appellate jurisdiction,

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[21] *People v. Rodriguez*, 336 Ill.App.3d 1, 782 N.E.2d 718, 270 Ill. Dec. 159 (2003).

[22] 227 Wis. 569, 279 N.W. 37, 2 L.R.R.M. (BNA) 883, 1 Lab. Cas. P 18, 132 (1938).

[23] See *People v. Villarico, Sr.*, G.R. No. 158362, April 4, 2011, 647 SCRA 43, which held that the absence of specific assignments of error does not inhibit the *sua sponte* rectification of the omission to grant civil liability and damages to the victim, "for the grant of *all* the proper kinds and amounts of civil liability to the victim or his heirs is a matter of law and judicial policy not dependent upon or controlled by an assignment of error"; *Euro-Med Laboratories, Phil., Inc. v. Province of Batangas*, G.R. No. 148106, July 17, 2006, 495 SCRA 301, which declared that courts may raise the issue of primary jurisdiction *sua sponte* and its invocation cannot be waived by the failure of the parties to argue it; *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, wherein the Court held that courts may apply the precept of retroactivity of penal laws that is favorable to the accused even if the accused has not invoked it; *Republic v. Feliciano*, No. 70853, March 12, 1987, 148 SCRA 424, which declared that the defense of immunity from suit may be invoked by the courts *sua sponte* at any stage of the proceedings.

[24] *Dy v. National Labor Relations Commission*, No. 68544, October 27, 1986, 145 SCRA 211.

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the Court has been relatively flexible in resolving unassigned issues everytime it has found doing so necessary to arrive at a just decision.[25] However, limitations on such instances should be set in order to preserve the courts' neutrality and to respect the litigants' autonomy, particularly: (*a*) when necessary to avoid issuing decisions containing erroneous statements of the law, such as when the parties misrepresent the law and ask the court to decide a case on such ground; (*b*) when necessary to maintain control over how the court would want to interpret the law; and (*c*) when necessary to give voice to legislative enactments disfavored or ignored by the parties.[26]

None of the limitations obtains here. The time of taking is an issue peripheral to and outside of the claims the parties extensively argued in this case. That the parties did not see fit to present the issue is concrete testimony to their consensus that the issue was not appropriate to be decided here and now, or that it might be better dealt with by and presented to the trial court. Consequently, the Court must itself exercise self-restraint and resist the temptation to deal with and pass upon the issue, because:

> x x x a court has no reason to raise issues that are tangential to or distinct from the claims that the parties have asked the court to decide, because in these cases its opinion will not mislead other or create flawed precedent. x x x Moreover, questions that are truly independent from those that the parties have already briefed and argued would likely require the development of facts not already in the record, which is unfair to litigants who are beyond the discovery stage — thus providing good reason for courts to ignore those issues as well.[27]

Moreover, I disagree that the desire to avoid delaying the distribution of the land can justify deciding now the time of

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[25] *Globe Telecom, Inc. v. Florendo-Flores,* G.R. No. 150092, September 27, 2002, 390 SCRA 201, 209.

[26] Frost, A., *Limits of Advocacy, Duke Law Journal,* Vol. 59:44, pp. 509-511 (2009).

[27] *Id.,* pp. 509-510.

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taking. Haste on that basis may unduly sacrifice the constitutional right of HLI to the fair and prompt determination of its just compensation. We have to bear in mind that the taking of land for the CARP, albeit revolutionary, should not be done by sacrificing the constitutional right to the fair and prompt determination of just compensation for HLI as the landowner because it was as entitled as the FWBs to the protection of the Constitution and the agrarian reform laws.[28] On the other hand, having the RTC-SAC determine the time of taking, far from being a cause for delay, may actually expedite the proceedings, because the RTC-SAC can resort to the aid of extrajudicial and judicial mediation, as well as to other procedures heretofore effectively used by the trial courts to expedite, including pre-trial and discovery, with the end in view of quickening the all-important determination of just compensation. In this regard, all the possibilities of expediting the process should be encouraged, because just compensation that results from the agreement and consent of the stakeholders of land reform will be no less just and full.

Given the foregoing, the time of taking, as a factor in determining just compensation, should be fully heard during the second stage of the expropriation proceedings and settled initially by the DAR and Land Bank, and subsequently by the RTC-SAC, not by the Court in these proceedings that commenced from an administrative decision that was an incident during the first stage of the expropriation.

II

The Majority now rules that the Government shall pay to HLI the just compensation for the 240-square-meter homelots distributed to the FWBs pursuant to the provisions of the discredited SDP.

I welcome the ruling, because the Majority now adopts my humble view.

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[28] *Land Bank v. Chico*, G.R. No. 168453, March 13, 2009, 581 SCRA 226, 245.

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Verily, the giving of the homelots as among the benefits acquired by the FWBs under the SDP should not be disturbed, *that is*, the FWBs should not be obliged to return the homelots thus received. To oust the FWBs from their homelots would displace them from the premises they had enjoyed for two decades, more or less, building thereon the homes for their families. Their displacement would be unjust. Yet, the homelots were distributed to the FWBs because of the SDP. Upon the revocation of the SDP, HLI lost the only enforceable justification for distributing the homelots to the FWBs. Simple justice demands, therefore, that HLI be justly compensated for the market value of the homelots. Indeed, while the emancipation of the FWBs from the bondage of the soil is the primordial objective of the CARP, vigilance for the rights of the landowner is equally important because social justice cannot be invoked to trample on the rights of the property owner, who under our Constitution and laws is also entitled to protection.[29]

IN VIEW OF THE FOREGOING, I vote to **PARTIALLY GRANT** HLI's *Motion to Clarify and Reconsider Resolution of November 22, 2011* and the *Motion for Reconsideration/ Clarification* of Noel Mallari, *et al*. in accordance with the foregoing.

SEPARATE OPINION
(Concurring and Dissenting)

BRION, *J.*:

I **concur** with the *ponencia's* ruling that the Stock Distribution Plan (*SDP*) of the petitioner Hacienda Luisita, Inc. (*HLI*), made pursuant to the agrarian reform law, Republic Act (*RA*) No. 6657[1] which took effect on June 15, 1988, is illegal so that an actual compulsory transfer of the HLI's agricultural lands should have taken place. I likewise agree that the date of **"taking" for**

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[29] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 118712, October 6, 1995, 249 SCRA 149, 161.

[1] Comprehensive Agrarian Reform Law of 1988.

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purposes of determining just compensation should be deemed to be *November 21, 1989* — the date when the respondent Presidential Agrarian Reform Council (*PARC*) erroneously approved the Stock Distribution Plan (*SDP*) of the petitioner HLI and its 6,596 farmworker-beneficiaries (*FWBs*) through Resolution No. 89-12-2.

Despite my overall concurrence, I still **differ** with some of the *ponencia's* rulings, particularly on the legal basis of the **consequences of** PARC's revocation of its previous SDP approval. These consequences should be determined on the basis of clear *applicable statutory provisions* and the legal principles discussed below.

The illegality of the SDP rendered it null and void from the beginning

On December 22, 2005, PARC revoked its approval of the SDP through Resolution No. 2005-31-01. Although this revocation was made only in 2005, the effects should date back to 1989, considering that the basis for the revocation was primarily the illegality of the SDP's terms; the illegality rendered the SDP null and void from the very beginning and was not cured by PARC's erroneous approval. Indeed, the illegality of the terms of the SDP was apparent from its face so that PARC's approval should not have been given from the start.

Specifically, the *man-days* scheme — the SDP's method in determining the number of shares of stock to which each FWB was entitled — ran counter to Section 4 of Administrative Order (*AO*) No. 10, Series of 1988 of the Department of Agrarian Reform (*DAR*); this AO required the distribution of an *equal number of shares of stock to each qualified beneficiary*. Section 11 of the same AO mandated that the *stock distribution should also be implemented within three months from receipt* of the PARC's approval of the SDP, and that the transfer of the shares of stock in the name of the qualified beneficiaries should be *recorded in the stock and transfer books within 60 days from the implementation of the SDP*. HLI's SDP clearly and illegally provided for a 30-year distribution period.

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Consequences of Illegality

A. Compulsory coverage of HLI agricultural land

In the absence of any valid stock distribution plan, HLI's agricultural land became subject to compulsory coverage by 1989 — the time HLI chose as its option in complying with RA No. 6657. Section 31 of RA No. 6657 states without any ambiguity that:

SEC. 31. *Corporate Landowners.* — x x x

If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act. [emphasis supplied]

HLI exercised the option granted under this provision by putting in place and securing the approval of its SDP with its FWBs on November 21, 1989. Its exercise of the stock distribution scheme, however, failed due primarily to its failure to secure PARC's approval of the SDP. The legal consequence, by the very terms of the above provision, is for the "agricultural land of the corporate owners or corporation [to] be subject to the compulsory coverage of th[e] Act." Compulsory coverage — the option not taken — means the actual transfer of the HLI land to the FWBs which should be deemed to have taken place on November 21, 1989 when the first option HLI took failed. ***At that point, the rights of ownership of HLI were transferred by law to the FWBs, who should be deemed the owners of the HLI land (and who should enjoy the rights of ownership under Article 428 of the Civil Code, subject only to the restrictions and limitations that the medium of their ownership RA No. 6657 imposes).***

B. Payment of just compensation

B.1 "Taking" for purposes of just compensation

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"Taking" for purposes of determining just compensation necessarily took place as of 1989 not only because of the failure of the stock distribution option under Section 31 of RA No. 6657 (whose terms require the inclusion of the agricultural land under the law's compulsory coverage), but also because HLI chose to comply with the government's agrarian reform program through the SDP. The "taking" involved here was a revolutionary form of expropriation for purposes of agrarian reform. Expropriation under RA No. 6657 may take the form of either ***actual land distribution*** or ***stock distribution***. HLI was only allowed to use stock distribution because of RA No. 6657, and it lost this privilege upon the invalid exercise of this option when its approval was cancelled. As I previously posited —

> **[November 21, 1989]** is the point in time when HLI complied with its obligation under the CARL as a corporate landowner, through the stock distribution mode of compliance. This is the point, too, when the parties themselves determined — albeit under a contract that is null and void, but within the period of coverage that the CARL required and pursuant to the terms of what this law allowed — that compliance with the CARL should take place. **From the eminent domain perspective, this is the point when the deemed "taking" of the land, for agrarian reform purposes, should have taken place if the compulsory coverage and direct distribution of lands had been the compliance route taken. As the chosen mode of compliance was declared a nullity, the alternative compulsory coverage (that the SDOA was intended to replace) and the accompanying "taking" should thus be reckoned from [November 21, 1989.]**[2] [emphasis supplied]

Since "taking" in law is deemed to have occurred on November 21, 1989, the just compensation due to HLI for placing its agricultural lands under RA No. 6657's compulsory coverage should be computed as of this date.

B.2 Administrative and judicial determination of just compensation

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[2] *J.* Brion, Separate Concurring and Dissenting Opinion to the Resolution dated November 22, 2011.

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The determination of the **valuation of the HLI land as of 1989** is a matter that RA No. 6657 and its applicable regulation leaves with the Land Bank of the Philippines (*LBP*), DAR, and, ultimately, the RTC acting as Special Agrarian Court (*SAC*). The determination of just compensation is done at two levels: administrative determination by LBP and DAR and judicial determination by the SAC.[3]

Philippine Veterans Bank, Inc. v. Court of Appeals[4] outlines the procedure in determining just compensation:

> [T]he Land Bank of the Philippines is charged with the **preliminary determination of the value of lands** placed under land reform program and the compensation to be paid for their taking. It initiates the acquisition of agricultural lands by notifying the landowner of the government's intention to acquire his land and the valuation of the same as determined by the Land Bank. Within 30 days from receipt of notice, the landowner shall inform the DAR of his acceptance or rejection of the offer. In the event the landowner rejects the offer, a summary administrative proceeding is held by the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator, as the case may be, depending on the value of the land, for the purpose of determining the compensation for the land. The landowner, the Land Bank, and other interested parties are then required to submit evidence as to the just compensation for the land. The DAR adjudicator decides the case within 30 days after it is submitted for decision. If the landowner finds the price unsatisfactory, he may bring the matter directly to the appropriate Regional Trial Court.

The authority of LBP to make a preliminary valuation of the land is provided under Section 1 of Executive Order (*EO*) No. 405 dated June 14, 1990,[5] which states:

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[3] *Philippine Veterans Bank v. Court of Appeals*, G.R. No. 132767, January 18, 2000.

[4] *Ibid.*

[5] Entitled *Vesting in the Land Bank of the Philippines the Primary Responsibility to Determine the Land Valuation and Compensation for All Lands Covered Under Republic Act No. 6657, Known as the Comprehensive Agrarian Reform Law of 1988.*

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SECTION 1. The Lank Bank of the Philippines shall be primarily responsible for the determination of the land valuation and compensation for all private lands suitable for agriculture under either the Voluntary Offer to Sell (VOS) or Compulsory Acquisition (CA) arrangement as governed by Republic Act No. 6657. The Department of Agrarian Reform shall make use of the determination of the land valuation and compensation by the Land Bank of the Philippines, in the performance of functions

After effecting the transfer of titles from the landowner to the Republic of the Philippines, the Land Bank of the Philippines shall inform the Department of Agrarian Reform of such fact in order that the latter may proceed with the distribution of the lands to the qualified agrarian reform beneficiaries within the time specified by law.

After the preliminary determination of the value of the land, DAR then acquires administrative jurisdiction to determine just compensation, pursuant to Rule II, Section 1 5(b) of the 2009 DARAB Rules of Procedure. The process for the preliminary determination of just compensation is fully discussed in Rule XIX of the 2009 DARAB Rules.

The judicial determination of just compensation commences when a petition for its determination is filed with the SAC, which has the original and primary jurisdiction pursuant to Section 57 of RA No. 6657.[6] Notably, no overlapping of jurisdiction between DARAB and SAC occurs because, as the Court explained:

x x x primary jurisdiction is vested in the DAR to determine in a preliminary manner the just compensation for the lands taken under the agrarian reform program, but such determination is subject to challenge before the courts. The resolution of just compensation cases for the taking of lands under agrarian reform is, after all, essentially a judicial function.[7]

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[6] Section 57. Special Jurisdiction. — The Special Agrarian Court shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. x x x

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

[7] *Philippine Veterans Bank v. Court of Appeals, supra* note 3.

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The above process is a matter of law and regulation that the courts, including the Supreme Court, cannot deviate from. Hence, the referral of the valuation of the former HLI land under the parameters outlined in the Court's Resolution should initially be to DAR.

B.3 Resolution of non-just compensation issues

In the unique circumstances of this case, *i.e.* — a case that has caused unrest and even deaths; which has been pending for administrative and judicial adjudication for at least 22 years; and which has many parties raising multiple issues arising from 22 years of developments — a necessary problem area on the matter of adjudication, is the procedure in handling what has become a seeming multi-headed monster.

I believe that the only way left for us, on matters of procedures that this Court can act upon, is to handle the case *pro hac vice*, *i.e.*, with the use of a one-time non-recurring mode appropriate only to the case, on the issues that this Court has jurisdiction to act upon pursuant to its powers "to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts…and legal assistance to the underprivileged."[8]

Other than the issue of just compensation over which jurisdiction is a matter of law, this case faces issues of compulsory coverage, land distribution, and restitution of amounts previously paid and of homelots previously granted. All these are within the jurisdiction of this Court to adjudicate, save only for the determination of facts not yet on record that this Court is not equipped to undertake because of its limited trial capabilities.

In lieu of remanding all the unresolved factual issues to the judicial trial courts, we should appropriately delegate the fact-finding to the DAR from which this case originated and which has primary jurisdiction over the issue of compensation that the Court has left untouched. Consequently, we should refer

[8] CONSTITUTION, Article VIII, Section 5(5).

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to DAR (1) all non-compensation issues that we have not resolved for determination, and (2) all resolved issues for implementation. To state what is obvious in law, what we have resolved here constitute the *law of the case* that none of the parties and no court or administrative body can reopen, modify, alter, or amend.

As a matter of judicial policy[9] and practice that is now established, the DAR should apply to the fullest the mediation and conciliation efforts that the judiciary has found very effective. Save only for the legal conclusions and final factual determinations the Court has reached (*e.g.*, the decision to distribute and the time of taking), all factual issues can be conciliated and agreed upon by mutual and voluntary action of the parties.

B.4 No interest on just compensation during intervening period

No interest on the amount due as just compensation may be imposed. The Court awards interests when there is delay in the payment of just compensation, not for reasons of the fact of delay, but for the consequent income that the landowner should

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[9] See RA No. 9285 or the *Alternative Dispute Resolution Act of 2004*, which recognized the authority of the Supreme Court to adopt "any Alternative Dispute Resolution system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time."

In this line, the Supreme Court has promulgated various rules on mediation and conciliation including: Amended Guidelines for the Implementation of Mediation/Conciliation Proceedings in the Pilot Areas of Mandaluyong City and Valenzuela City (November 16. 1999); A.O. No. 21-2001 re: Participation in the Amicable Settlement Weeks; A.O. No. 24-2001 re: Inclusion of Additional Participants in the Amicable Settlement Weeks (March 5, 2001); A.M. No. 01-10-5-SC-PHILJA and OCA Circular No. 82-2001 re: Designating the Philippine Judicial Academy as the Component Unit of the Supreme Court of the Court-Referred, Court-Related Mediation Cases and Other Alternative Dispute Resolution Mechanisms, and Establishing the Philippine Mediation Center for the Purpose; OCA Circular No. 2-2002 re Memorandum on Policy Guidelines between OCA and IBP; Administrative Circular No. 20-2002 re Monthly Inventory and Referral of Cases for Mediation; and A.M. No. 11-1-16-SC-PHILJA re: Consolidated and Revised Guidelines to Implement the Expanded Coverage.

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have received from the land had there been no immediate "taking" by the government.[10] *Apo Fruits Corporation, Inc. v. Land Bank of the Philippines*[11] elaborated on this legal issue when it stated that —

x x x the just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.

In the context of this case, when the LBP took the petitioners' landholding without the corresponding full payment, it became liable to the petitioners for the income the landholding would have earned had they not immediately been taken from the petitioners.

[T]he undisputed fact is that the petitioners were deprived of their lands on December 9, 1996 (when the titles to their landholdings were cancelled and transferred to the Republic of the Philippines), and received full payment of the principal amount due them only on May 9, 2008.

In the interim, they received no income from their landholdings because these landholdings had been taken. Nor did they receive adequate income from what should replace the income potential of their landholdings because the LBP refused to pay interest while

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[10] See *Apo Fruits Corporation, Inc. v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010. Also, *Land Bank of the Philippines v. Soriano*, G.R. Nos. 180772 and 180776, May 6, 2010, where the Court declared that

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.

[11] *Ibid.*

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withholding the full amount of the principal of the just compensation due by claiming a grossly low valuation.

The above rules, however, do not apply to the present case, since **HLI never lost possession and control of the land; all the incomes that the land generated were appropriated by HLI**; no loss of income on the land therefore exists that should be compensated by the imposition of interest on just compensation.[12]

For the same reason that I oppose the imposition of interest on the just compensation due to HLI, I disagree with the view that "taking" should be pegged on January 6, 2006, when the Notice of Compulsory Coverage was issued. Supposedly, the "rationale in pegging the period of computing the value so close or near the present market value at the time of taking is to consider the appreciation of the property, brought about by improvements in the property and other factors. x x x. It is patently iniquitous for landowners to have their real properties subject of expropriation valued several years or even decades behind."[13] To peg the taking in 1989 would allegedly make HLI suffer the loss of its lands twice, since it will be paid its property at 1989 levels and any improvements it made on the land, which appreciated its value, would be ignored.

Considering that HLI retained possession and control of the land, any benefit that could have been derived from such possession and control would be for HLI's account. In reality, therefore, HLI will be reaping benefits twice if the taking is pegged in 2006.

B.5 Amount of just compensation paid to landowner does not necessarily affect the amortizations due from FWBs

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[12] *J.* Brion, Separate Concurring and Dissenting Opinion to the Resolution dated November 22, 2011.

[13] *J.* Sereno, Dissenting Opinion to the Resolution dated November 22, 2011.

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In this regard, I disagree with the *ponencia's* reasoning for rejecting the view that "taking" occurred in 2006. The *ponencia* objects to a "taking" in 2006 because the FWBs will be made to pay higher amortizations for the "lands that should have been given to them decades ago at a much lower cost." The amount of amortization that the FWBs are required to pay the government is not necessarily based on the cost of the land. **DAR AO No. 6, Series of 1993**[14] is the implementing rule of Section 26 of RA No. 6657.[15] Its pertinent provisions state:

V. GENERAL GUIDELINES

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

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

[14] *Revised Implementing Guidelines and Procedures Governing Payment of Land Amortization by Agrarian Reform Beneficiaries*.

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

The LBP shall have a lien by way of mortgage on the land awarded to beneficiary and this mortgage may be foreclosed by the LBP for non-payment of an aggregate of three (3) annual amortizations. The LBP shall advise the DAR of such proceedings and the latter shall subsequently award the forfeited landholding to other qualified beneficiaries. A beneficiary whose land as provided herein has been foreclosed shall thereafter be permanently disqualified from becoming a beneficiary under this Act.

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> for the fourth and fifth years. To further make the payments affordable, **the ARBs shall pay ten percent (10.0%) of AGP or the regular amortization** [refers to the annuity based on the cost of the land[16] and permanent improvements at six percent (6%) interest rate per annum payable in 30 years], **whichever is lower, from the sixth (6th) to the thirtieth (30th) year.**

Construing these provisions, the Court explained in *Apo Fruits*[17] that

> the payments made by the farmers-beneficiaries to the LBP are primarily based on a fixed percentage of their annual gross production or the value of the annual yield/produce of the land awarded to them. ***The cost of the land will only be considered as the basis for the payments made by the farmers-beneficiaries when this amount is lower than the amount based on the annual gross production***.

Hence, the amount due to HLI as just compensation for the land is not necessarily the basis of the amount that the FWBs are required to pay the government pursuant to Section 26 of RA No. 6657.

C. Determination of related claims arising from compulsory coverage of the land

Other consequences must necessarily flow from the compulsory coverage of HLI's agricultural lands, deemed to have taken place on November 21, 1989.

First. The transfer of the land to the FWBs after compulsory coverage does not signify that the land was actually distributed to them or that they immediately came into possession of the land as of that date. The factual reality is too clear to need further discussion and elaboration: no actual distribution actually took place and the present case is in fact with this Court today

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[16] Defined in the same AO as "the amount paid or approved for payment to the landowner for the specific parcel of land and permanent crops including improvements thereon acquired and awarded to ARBs."

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

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— almost 22 years after distribution was due — because no actual distribution took place.

Second. From the perspective of law, ownership and possession are two different concepts and need not necessarily be fused with the same entity at the same time. Thus, while the FWBs have collectively been the owners of the transferred property as of November 21, 1989, actual possession has not been with them either collectively or individually.

The reality is that possession from that time effectively rested with HLI, which continued to possess and operate the land. In fact, HLI possessed the land in the concept of an owner from November 21, 1989 pursuant to the SDP, and was only divested of possession in this concept when PARC revoked its approval of the SDP in 2005. But even then, the issue of the SDP's legality (and the nature of HLI's possession) remained legally uncertain because the PARC revocation gave rise to the present dispute which to date remains pending.

I conclude from all these developments that HLI, at the very least, has remained a ***possessor in good faith*** during all these times and has built and introduced improvements on the land in good faith. Its possession proceeded from its belief that it validly retained ownership of the land after choosing to adopt stock distribution option as its mode of compliance with the agrarian reform program, which option was approved (erroneously, as discussed) by PARC. Its possession, although wrongful, was in good faith. Under the Civil Code, a possessor in good faith is one who is not aware that there exists in his title or mode of acquisition any flaw that invalidates it.[18]

The relationship between the owner of the land (the FWBs starting November 21, 1989) and the builder in good faith (HLI) is governed by Article 448 of the Civil Code, which reads:

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have **the right to appropriate as his own the works, sowing or planting, after payment of the**

[18] CIVIL CODE, Article 526.

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indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

This provision is "manifestly intended to apply only to a case where one builds, plants, or sows on land in which he believes himself to have a claim of title."[19] Generally, the owner of the land has the option of either (a) choosing to appropriate the works after payment of indemnity or (b) obliging the builder in good faith to pay the price of the land.

Considering that the HLI land is, *by law*, subject to compulsory acquisition, the FWBs can no longer now exercise the option of obliging HLI to pay for the price of the land, and are thus left only with the first option of appropriating the works upon payment of indemnity pursuant to Articles 546 and 548. These provisions state:

Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

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Article 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing

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[19] Arturo Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume Two (1992 ed.), p. 111, citing *Floreza v. Evangelista*, 96 SCRA 130.

if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

The necessary expenses are those made for the proper preservation of the land and the improvements introduced, or those without expenses without which the land and the improvements would have been lost.[20] These expenses include the taxes paid on the land and all other charges on the land.[21] Useful expenses, on the other hand, are the expenses incurred to give greater utility or productivity to the land and its improvements.[22] Among others, these include the cost of roads, drainage, lighting, and other fixtures that HLI introduced into the land that increased its value and its eventual purchase price to third parties**. Pursuant to Article 448 of the Civil Code above, all these improvements HLI can retain until it is reimbursed.** Under the unique facts of this case, **this indemnity should be paid together with the payment for just compensation and should be included in the total reckoning of what the parties owe one another.**

A twist in this case is the conveyance to third parties (LIPCO/ RCBC, the government for SCTEX, and, if proven to be a valid transfer, to LRC), of part of the converted agricultural land by HLI while it *was still in possession in the concept of an owner*. As already held by the majority in its previous ruling on this case, the alienation to the third parties is valid as the latter were purchasers for value in good faith; these converted agricultural lands are excluded from the land reform coverage and distribution because of the intervening valid transfer. One seeming problem this conclusion, however, leaves is on the question of the purchase price — who should now get the purchase price in light of the change of the parties' circumstances under the revoked SDP?

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[20] A. Tolentino, *supra* note 18, at 292, citing 4 Manresa 270-271; *Case, et al. v. Cruz*, (S.C.), 50 Official Gazette 618, *Calang, et al. v. Santos, et al*. (C.A.), 50 Official Gazette 1446.

[21] *Id.* at 293, citing 4 Manresa 271-272.

[22] *Id.* at 294, citing 2 Oyuelos 298.

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I take the view that the rule that prevailed with respect to the land and the improvements should still prevail. Thus, **the third parties' purchase price should be credited to the FWBs as owners**. The value of the improvements introduced by HLI on these lands, which led to the increase in the price of the land and its eventual sale to LIPCO/RCBC and (if proven to be valid) to LRC, should be subject to the builder in good faith provision of Article 448 of the Civil Code and the payment of indemnity to HLI computed under Articles 546 and 548 of the same Code. This would be true whether the sale was voluntary (as in the case of the sale to LIPCO/RCBC/LRC) or involuntary (as in the exercise of the power of eminent domain by government in securing the land for the SCTEX). In either case, **the cost of the necessary and useful expenses that gave rise to the increase in value of the land should be reimbursed to HLI as indemnity**.

In simple mathematical terms, the computation of the amounts due the parties should run:

Amount Accruing to FWBs	=	***Purchase Price by 3rd Parties***	**–** ***the amounts due to HLI (the amount of just compensation FWBs should pay HLI + the indemnity due to HLI under Articles 546 and 548, etc.)***

D. With the SDP declared revoked and illegal, mutual restitution should take place.

The consequence of the nullification of the SDP's approval should have properly been the restitution of what the parties received under the disapproved SDP; **the parties must revert back to their respective situations prior to the execution of the SDP and must return whatever they received from each other under the SDP that, in legal contemplation, never took place.**[23] The details of these restitutions are more fully discussed below.

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[23] A. Tolentino, *supra* note 18, at 632, citing Perez Gonzales & Alguer; 1-II Enneccerus, Kipp & Wolf 364-366; 3 Von Tuhr 311; 3 Fabres 231.

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D.1 Mutual restitution must be in accordance with law

In ruling on the present motion, the *ponencia* has apparently abandoned the view that the SDP, while illegal, should still be accorded recognition as a reality that was operative from the time it was put in place up to the time the PARC revocation. This change cannot be wrong as the "operative fact" doctrine applies only in considering the effects of the declaration unconstitutionality of, among others, ***executive acts that have the force and effect of law, i.e., those issued pursuant to a grant of quasi-legislative power.*** The doctrine does not apply to the exercise of quasi-adjudicatory power that PARC exercised as part of its mandate under RA No. 6657, which required its determination of facts and the applicable law in the course of implementing Section 31 of the law. Thus, the SDP, erroneously approved by PARC through Resolution No. 89-12-2, cannot be the basis for the grant of benefits to the FWBs as the approval was not in the exercise of quasi-legislative powers.

In law, nullification of agreements — as we now undertake in our present ruling — dictates that the parties should be restored to their original state prior to the execution of the nullified agreement. This is the command of Articles 1409, 1411 and 1412 of the Civil Code and its supporting jurisprudence that this Court should follow.[24] This means that (1) the 3% production share; (2) the 3% share I the proceeds of the sale of the lands; and (3) the homelots granted in relation with the revoked SDP should all be returned by the FWBs to HLI, subject to the conditions I discuss below. Hence, mutual restitution (instead of the retention that the *ponencia* espouses) should take place.

D.2. Disposition of homelots

With the failure of the SDP, the question of how homelots should be handled becomes a ticklish issue, involving as it does **the home where the family lives. It is in this spirit that the Court should address issue, and in the spirit of fairness that should attend all our dispositions in this case.**

[24] *Ibid.*

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An undisputed fact is that the homelots do not form part of the 4,915 hectares covered by the SDP, and no obligation under RA No. 6657 exists for HLI to provide homelots. HLI — through TADECO,[25] however, made the grant of homelots apparently as a consideration for the adoption of the SDP that does not now legally exists. From this view, the homelots may be said to have in fact been donated by HLI so that these should not be taken back.

In my view, the grant of the homelots outside of the requirements of RA No. 6657 cannot be denied. In fairness, however, to HLI who made the grant in the spirit of and pursuant to the SDP, the parties cannot just be left as they are. The way out of this bind is to consider the homelots already granted to both FWBs and non-FWBs as compulsory acquisitions subject to the payment of just compensation in the course of the exercise of the power of eminent domain. The valuation of just compensation for these homelots, therefore, should be an issue to be brought to the DAR for its determination together with all other issue submitted to that forum.

For the FWBs, the just compensation for these homelots shall be an item considered in the adjustment of the claims of HLI and the FWBs against one another. For non-FWBs who now enjoy their homelots, the matter should be submitted to DAR and to the LBP for their determination and action as these homelots are or were part of an agricultural estate that is subject to land reform.

D.3 Other restitutions

As a consequence of the nullification of the SDP, the FWBs should return the following benefits to HLI:

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[25] TADECO is the owner of the 6,443 hectare land; 4,916 hectares of this constitutes the agricultural land that TADECO turned over to HLI, the spin-off corporation it created to comply with Section 31 of RA No. 6657. In return, TADECO received shares of stock of HLI. The Stock Distribution Agreement (which became the basis of the SDP) executed by TADEO, HLI and the FWBs provided that the FWBs are entitled to residential or homelots of not more than 240 sqm. each, see Decision of July 5, 2011, pp. 9-14.

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1. the 59 million shares of stock of HLI;
2. the ₱150 million representing the 3% gross sales of the production of the agricultural lands; and
3. the ₱37.5 million representing the 3% proceeds from the sale of the 500 hectares of agricultural land (including the amount received as just compensation for the expropriation by the government of the land used for SCTEX).

The 3% proceeds from the voluntary and involuntary sale of the agricultural land shall be offset against the value received by HLI as consideration for the sale, which should be turned over to the FWBs who are considered the owners of the land as of 1989. The taxes and expenses related to the transfer of titles should likewise be deducted as the same amounts would be incurred regardless of the seller (HLI or the FWBs). As earlier discussed, adjustments should also be made to allow for the payment of indemnity for the improvements HLI introduced on the land, pursuant to Articles 448, 546, and 548 of the Civil Code. As discussed above, this task has been delegated by the Court for factual determination to the DAR.

To summarize, the purchase price received by HLI for the sale of portions of the land should be turned over to the FWBs less (1) the 3% proceeds from the sale already given to the FWBs, (2) the taxes and expenses related to the transfer of titles, and (3) the value of the improvements HLI introduced according to Articles 448, 546, and 548 of the Civil Code.

To be excluded from the benefits that should be returned to HLI are the wages and benefits that both the FWBs and non-FWBs received as employees of HLI. They are entitled to retain these as fruits of their labor; they received these as compensation earned for services rendered.

Conclusions and Dispositions

For greater clarity, I submit the following conclusions and dispositions based on my foregoing discussions.

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1. Compulsory Coverage. The entire 4,915 hectares of land is deemed placed under COMPULSORY COVERAGE of the Comprehensive Agrarian Reform Law AS OF NOVEMBER 21, 1989, and the 6,296 qualified FWBs shall be deemed to have collectively acquired ownership rights over the land as of this date. These new owners shall enjoy all the attributes of ownership pursuant to Article 428 of the Civil Code, subject only to legal limitations. The principal limitations are those imposed under RA No. 6657 that governs agrarian reform.

2. Distribution. The DAR shall DISTRIBUTE the land among the 6,296 qualified FWBs pursuant to the terms of RA No. 6657, EXCLUDING:

a. the 300 hectares of converted land acquired by LIPCO/ RCBC; and

b. the 80 hectares of land expropriated by the government for the SCTEX.

The LRC, which never entered its appearance in this case, shall be entitled to prove before the DAR that a valid transfer of the 200 hectares of converted land in its favor took place. If the DAR finds that LRC is a purchaser in good faith and for value, the 200 hectares of converted land shall likewise be excluded from the land to be distributed among qualified FWBs.

3. Just Compensation. The DAR is likewise ORDERED to determine the amount of just compensation that HLI is entitled for the entire 4,915.75 hectares of agricultural land, based on its value at the time of taking — November 21, 1989; no interest shall be imposed on this amount as discussed above. The amount of just compensation shall include the indemnities due to HLI under Articles 546 and 548 of the Civil Code for the useful and necessary expenses incurred for the lands under compulsory coverage.

The DAR is also ORDERED to determine the amount just compensation on the homelots that will be retained by the FWBs, based on their value at the time of taking — November 21, 1989.

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4. Other Payments. HLI shall REMIT to the FWBs the purchase price of the:

a. 300 hectares of converted land conveyed to LIPCO/ RCBC;

b. 80 hectares of land taken over by government; and

c. if DAR finds that there was a valid transfer, 200 hectares of converted land conveyed to LRC.

The amount of taxes and expenses related to the sale shall be deducted from the purchase price. The indemnities due to HLI under Article 546 and 548 of the Civil Code representing the useful and necessary expenses incurred for the lands and improvements conveyed to third parties shall also be deducted from the purchase price. The amounts deducted shall be retained by HLI.

5. Restituted Amounts and Benefits. The FWBs shall likewise return to HLI the following amounts paid pursuant to the failed SDP:

a. the ₱37.5 million, representing the 3% share in the sale of portions of the land; and

b. the ₱150 million, representing the 3% production share;

The value of the 3% share in the proceeds of the sale of the lands and 3% production share shall depend on the amount actually received by the FWBs, to be determined by the DAR, and not the amount HLI claims that it gave to the FWBs. The actual amounts of received by the FWBs may be off-set against the purchase price of the sale of the lands that HLI must turn over to the FWBs.

All the FWBs shall return to HLI the 59 million shares of stock. They are, however, entitled to retain all the salaries, wages and other benefits received as employees of HLI.

6. Conciliation and Set-Off. The DAR shall exercise its authority in the determination of just compensation as mandated by law, and the authority delegated by the Supreme Court to undertake the determination of facts and the adjustment of the parties'

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claims other than just compensation, including matters of set-off of the parties' claims and the possibility of settlement through mediation and conciliation. **The DAR, hopefully, shall seriously attempt at their level for mediation and conciliation for, ultimately, the agreement between and among the parties will best, in the quickest time, resolve the case.**

The DAR shall undertake its delegated authority on matters other than just compensation and report its results to this Court for its final disposition within one (1) year from this referral. This ruling is immediately final and no further pleadings shall be entertained.

SEPARATE OPINION
(Concurring and Dissenting)

SERENO, *J.*:

There is never any acceptable reason to be unjust. While this Court must be just and fully sympathetic to the farmers, it cannot also be unjust to the landowner. When the *ponente* first circulated the draft that became the 05 July 2011 Decision, I was the first to counter that the lands of petitioner Hacienda Luisita, Inc., (HLI) should be immediately distributed to the farmers. One of the theories of my Dissent of even date — namely, that the Stock Distribution Option Agreement (SDOA) cannot be upheld because, as designed, the farmworker-beneficiaries (FWBs) would forever be the minority stockholders of petitioner HLI — was the same theory used to justify the majority's reversal in its 22 November 2011 Resolution. Little did I suspect that my position in November, that the reckoning of the time of the taking should follow the uniform jurisprudence of this Court, would be stretched to such wild accusations, with some claiming that I had moved that petitioner HLI be paid ₱10 Billion, and that the FWBs had prayed that I be inhibited from participating in this case for unduly advocating the cause of petitioner HLI. Neither of the two claims is true nor has any basis on the record. This Court has never discussed any monetary

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values for the land for purposes of just compensation, and none of the justices has even attempted to peg any such value.

In my Separate Opinion to the 22 November 2011 Resolution, I lament the fact that Congress did not choose a revolutionary form of taking for agrarian reform by allowing effective partial confiscation by not requiring payment to the landowners at fair market value.[1] I also advocated the immediate freedom of the land and the FWBs by construing that the 10-year prohibition against transfers of land should not be considered as effective in this case.[2] The FWBs of Hacienda Luisita deserve the full benefits of agrarian reform. But with the Supreme Court consistently requiring that payment to landowners be pegged at fair market value for all kinds of expropriation, and in the case of agrarian reform, pegging it at the time of the notice of

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[1] "After the fall of the martial law regime and at the start of the new democratic society, a 'window of opportunity' was presented to the State to determine and adopt the type of land and agrarian reform to be implemented. The newly formed administration enjoyed a strong mandate from the people, who desired change and would support a sweeping agrarian reform measure to distribute lands. In this scenario, the State could have chosen a more revolutionary approach, introducing into its agrarian reform program a more 'confiscatory element.' Following the examples of other revolutionary governments, **the State could have resorted to simply confiscating agricultural lands under the claim of social justice and the social function of lands, with little need of payment of full just compensation**." (Separate Opinion of Justice Sereno in the 22 November 2011 Resolution)

[2] "Similarly, qualified FWBs should be afforded the same freedom to have the lands awarded to them transferred, disposed of, or sold, if found to have substantially greater economic value as reclassified lands. The proceeds from the sale of reclassified lands in a free, competitive market may give the qualified FWBs greater options to improve their lives. The funds sourced from the sale may open up greater and more diverse entrepreneurial opportunities for them as opposed to simply tying them to the awarded lands. Severely restricting the options available to them with respect to the use or disposition of the awarded lands will only prolong their bondage to the land instead of freeing them from economic want. **Hence, in the interest of equity, the ten-year prohibitive period for the transfer of the Hacienda Luisita lands covered under the CARL shall be deemed to have been lifted, and nothing shall prevent qualified FWBs from negotiating the sale of the lands transferred to them**." (Dissenting Opinion of Justice Sereno in the 05 July 2011 Decision)

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coverage, this same Court is required to be fair and observe the same rule by not unduly discriminating against petitioner HLI. Thus, I maintain the position I have earlier expounded in my Opinions in the 05 July 2011 Decision and the 22 November 2011 Resolution, specifically, that petitioner HLI, as any other landowner, is entitled to just compensation for their farmlands to be reckoned at the time of the actual taking of the expropriated property.

There is absolutely no basis on the record to claim that my position will render the lands beyond the FWBs' capability to pay. In my Opinion in the 22 November 2011 Resolution, the deliberations of the framers of the Constitution were cited to conclude that **there is no strict and absolute correspondence between the fair market value to be awarded to the landowners as just compensation and the amortization payments to be paid by the FWBs to the Land Bank of the Philippines for the awarded agricultural lands**.[3] Although the State is obliged to pay the fair market value of the agricultural lands in accordance with the law, rules and jurisprudence, the State does not shift that burden to the FWBs that would receive the expropriated properties. It shall subsidize the repayment schemes for the distributed agricultural lands and offer terms that are affordable to the farmers and allow them to simultaneously pursue their chosen agricultural enterprises on the lands. **In fact, under the CARL, the Presidential Agrarian Reform Council or the Land Bank of the Philippines may even reduce the principal**

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[3] "The approximation of fair value of the expropriated lands as just compensation is not meant to increase the burdens of payment by the qualified FWBs. **When the framers of the Constitution originally determined that just compensation, as understood in prevailing jurisprudence, was to be given to landowners in agrarian reform expropriation, the point was clarified that the amounts to be awarded to the landowners were not the exact figures that would in turn be paid by the farmers, in other words it should be subsidized**: x x x

Thus, the original intention was that there should be **no strict correspondence** between the just compensation due to the landowner and the amounts to be paid by the farmworkers: x x x" (Separate Opinion of Justice Sereno in the 22 November 2011 Resolution)

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obligation or the interest rates on amortization payments to make them more affordable to the FWBs.[4] Hence, a totally different regime of social justice applies when it is the FWBs that will pay the amortization to the State through the Land Bank of the Philippines under the CARL.

Nevertheless, I have listened to the reasoning recently expounded in full by Justice Lucas P. Bersamin and join his position for the most judicious and equitable recourse of remanding the issue of determining just compensation, initially, to the Department of Agrarian Reform, and ultimately, to the Regional Trial Court, acting as a Special Agrarian Court. Considering that the parties had not fully substantiated or argued the determination of the award of just compensation, factual circumstances are clearly lacking for this Court to make a substantial and definitive ruling on significant, yet insufficiently factually-litigated facets of the case. As Justice Bersamin explains, the matter of the time when the taking of the Hacienda Luisita farmlands is to be pegged for purposes of valuation of the property has not been properly raised as an issue by the parties and that factual issue is within the exclusive and original jurisdiction of the Regional Trial Court, acting as a Special Agrarian Court.[5]

In his Separate Opinion, Justice Arturo D. Brion approximates, to some extent, the proper value of the expropriated lands for purposes of just compensation by characterizing petitioner HLI as a builder in good faith and allowing it reimbursement for its

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

[5] Concurring and Dissenting Opinion of Justice Bersamin, p. 4.

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improvements on the expropriated lands.[6] As I mentioned in my previous Opinion, I would have been persuaded by Justice Brion's reasoning to reckon the period to the 1989 value of the lands, if petitioner HLI would be compensated for the time difference with interest in the interim period when payment was not made by the government.[7] The payment of interest is a superior solution to identifying and assessing each building or improvement attributable to petitioner HLI, as previous corporate landowner since it acquires less factual determination and accounting, which is open again to prolonged dispute and further adjudication. In any case, it seems incongruent to declare petitioner HLI a good faith builder of improvements on the land and yet, expropriate the same land under confiscatory, and hence, punitive values. The nullification of the SDOA and distribution of the lands to the FWBs should not come at the expense of depriving petitioner HLI what is due to it under the Constitution, the law and existing jurisprudence. If petitioner HLI has to be penalized for some

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[6] Separate Opinion (Concurring and Dissenting) of Justice Brion, pp. 11-14.

[7] "Although Justice Brion reckoned the period for the valuation of the land to 21 November 1989, he recognized petitioner HLI's entitlement to the value of the improvements that it has introduced into the agricultural lands for the past twenty years. The proposition is akin to the Civil Code situation where a landowner opts to acquire the improvements introduced by a builder in good faith and must necessarily pay their value. **Hence, although the land of petitioner HLI is expropriated by the government, there is a need for compensation for the introduction of the improvements actually installed by petitioner HLI, such as roads and other infrastructure, which have evidently improved the value of the property, aside from its appreciation over time. In recognizing the necessity for compensating petitioner HLI for their improvements, pegging the values to its 1989 levels will not be as severely confiscatory, if the value will be included as part of the just compensation to be paid. I would even be willing to accept the formulation proposed by Justice Brion since it would, to a lesser amount, approximates a fair market value of the property.** But to simply evaluate the property's worth to outdated levels and exclude entirely the improvements made and the market appreciation of the lands in all the 17 years that petitioner HLI invested in the lands is not even supportable by the Civil Code." (Separate Opinion of Justice Sereno in the 22 November 2011 Resolution)

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historical infraction, then the factual and legal basis for such penalty has to be clearly articulated by the Court.

For the Court to impose the reckoning period for the valuation of the expropriated Hacienda Luisita farmlands to its 1989 levels is an unwarranted departure from what the Philippine legal system has come to understand and accept[8] (and continues to do so, as recently as last month)[9] as the meaning of just compensation in agrarian reform cases since the 1988 Comprehensive Agrarian Reform Law (CARL).[10] The decision taken by the Court today (albeit *pro hac vice*) to pay petitioner HLI an amount based on outdated values of the expropriated lands is too confiscatory considering the years of jurisprudence built by this Court. No reasonable explanation has been offered in this case to justify such deviation from our past decisions that would lead to a virtual non-compensation for petitioner HLI's lands. The

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[8] *LBP v. Spouses Banal*, G.R. No. 143276, 20 July 2004, 434 SCRA 543; *LBP v. Celada*, G.R. No. 164876, 23 January 2006, 479 SCRA 495; *Lubrica v. LBP*, G.R. No. 170220, 20 November 2006, 507 SCRA 415; *LBP v. Lim*, G.R. No. 171941, 02 August 2007, 529 SCRA 129; *LBP v. Suntay*, G.R. No. 157903, 11 October 2007, 535 SCRA 605; *Spouses Lee v. LBP*, G.R. No. 170422, 07 March 2008, 548 SCRA 52; *LBP v. Heirs of Eleuterio Cruz*, G.R. No. 175175, 29 September 2008, 567 SCRA 31; *LBP v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108; *LBP v. Gallego, Jr.*, G.R. No. 173226, 20 January 2009, 576 SCRA 680; *LBP v. Kumassie Plantation*, G.R. Nos. 177404 and 178097, 25 June 2009, 591 SCRA 1; *LBP v. Rufino*, G.R. No. 175644 and 175702, 02 October 2009, 602 SCRA 399; *LBP v. Luciano*, G.R. No. 165428, 25 November 2009, 605 SCRA 426; *LBP v. Dizon*, G.R. No. 160394, 27 November 2009, 606 SCRA 66; *Heirs of Lorenzo and Carmen Vidad v. LBP*, G.R. No. 166461, 30 April 2010, 619 SCRA 609; *LBP v. Soriano*, G.R. Nos. 180772 and 180776, 06 May 2010, 620 SCRA 347; *LBP v. Barrido*, G.R. No. 183688, 18 August 2010, 628 SCRA 454; *LBP v. Colarina*, G.R. No. 176410, 01 September 2010, 629 SCRA 614; *LBP v. Livioco*, G.R. No. 170685, 22 September 2010, 631 SCRA 86; *LBP v. Escandor*, G.R. No. 171685, 11 October 2010, 632 SCRA 504; *LBP v. Rivera*, G.R. No. 182431, 17 November 2010, 635 SCRA 285; *LBP v. DAR*, G.R. No. 171840, 04 April 2011.

[9] *LBP v. Honey Comb Farms Corp.*, G.R. No. 169903, 29 February 2012; *LBP v. Heirs of Jesus Yujuico*, G.R. No. 184719, 21 March 2012.

[10] Republic Act No. 6657.

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majority's and Justice Brion's legal fiction that the "taking" is to be reckoned from the time of the approval of the SDOA is unjust for two reasons. *First*, the uniform jurisprudence on this matter is that taking is actual taking. *Second*, no clever restatement of the law is acceptable if it will result in injustice, and in this case, to a landowner who is differently treated from every other landowner.

Although I continue to believe that the application of the ordinary reckoning period from the time of the taking of the expropriated property as enunciated in existing agrarian reform jurisprudence is applicable to this case, the resolution of this case, as explained by Justice Bersamin, requires further reception of documentary evidence, administrative investigation and judicial analysis to arrive at the approximate value of the expropriated lands and the amount of just compensation to be paid to petitioner HLI. The records of the case as it now stands sorely lack factual certainty for this Court to make a proper determination of the exact award of just compensation. It has only been in the media that a purported numerical value has been argued; no argument over such amount has ever taken place before this Court. Although this Court can provide guidelines for the concerned judicial authorities, the dearth in evidence to substantiate the value of the lands (regardless of whether it is reckoned from 1989 or 2006) requires that the parties be allowed to present before an impartial authority with jurisdiction to receive evidence, hear their cases and finally decide the matter. The Supreme Court is not a trier of facts. Factual matters such as the scope of the farmlands in the name of Tarlac Development Corporation (TADECO) or petitioner HLI that should be subject to CARP coverage, the number and value of the homelots given, the improvements introduced, the type of lands subject to coverage, and the amounts actually received by both the corporate landowner and the farmworker beneficiaries during the operation of the SDOA have yet to be convincingly determined to arrive at the amount of just compensation. The more equitable solution would be to allow reception of evidence on these factual matters and to relegate the adjudication of the same to the proper trial court with exclusive and original jurisdiction over the controversy.

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In the midst of these reasoned disagreements in our separate Opinions as to the period when to determine just compensation, the parties must not lose sight of our near unanimity of the substantial merits of the case — that the SDOA is nullified and that the lands should be immediately and without delay be distributed to the farmworker beneficiaries. **Hence, the remand of the determination of the just compensation due to petitioner HLI should not in any way hinder the immediate distribution of the farmlands in Hacienda Luisita**. Legal processes regarding the determination of the amount to be awarded to the corporate landowner in case of non-acceptance, must not be used to deny the farmworker beneficiaries the legal victory they have long fought for and successfuly obtained.

For the foregoing reasons, I join the Separate Concurring and Dissenting Opinion of Justice Lucas P. Bersamin.

EN BANC

[G.R. No. 181367. April 24, 2012]

LA CARLOTA CITY, NEGROS OCCIDENTAL, represented by its Mayor, HON. JEFFREY P. FERRER,[*] and the SANGGUNIANG PANLUNGSOD OF LA CARLOTA CITY, NEGROS OCCIDENTAL, represented by its Vice-Mayor, HON. DEMIE JOHN C. HONRADO,[**] *petitioners, vs.* **ATTY. REX G. ROJO,** *respondent.*

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[*] Now the Representative of the 4th District of Negros Occidental. See footnote 1 of the Petition for Review, *rollo*, p. 12.

[**] Now the Mayor of La Carlota City, Negros Occidental. See page 1 of the Petition for Review, *id.*