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[G.R. Nos. 60549, 60553-60555. October 26, 1983]

HEIRS OF JUANCHO ARDONA (represented by Gloria Ardona) ANASTACIO C. CABILAO, HEIRS OF CIPRIANO CABILAO (represented by Jose Cabilao) MODESTA CABILAO, HEIRS OF ROMAN CABUENAS (represented by Alberto Cabuenas), AGRIPINO GABISAY and PRUDENCIA MABINI, ANTONIO LABRADOR and LUCIA GABISAY, GERONIMO MABINI and MARCELINA SABAL, INOCENCIO MABINI and ARSENIA REYES, PATRICIO MABINI and GREGORIA BORRES, ANICETO GADAPAN and MAXIMA GABISAY, BARTOLOME MAGNO and CALINECA E. MAGNO, ALBERTO CABUENAS, NARCISO CABUENAS and VICTORIA CABUENAS, EUTIQUIOSENO, HEIRS OF ESPERIDION CABUENAS (represented by Alberto Cabuenas), MAXIMINA NAVARO, SULPICIO NAVARO, EDUARDO NAVARO, MARTINIANO ROMA (in representation of Arcadio Mabini, deceased), MARTIN SENO, FAUSTO ARDA, MAXIMA CABILAO, ESTRELLA SENO, EDUVEGIS S. CABILAO, ROSARIO CABILAO, MINORS DANILO, SOCORRO, JOSEFINA and MARITES all surnamed Cabilao, JUAN BORRES (represented by Francisca Borres), RAMON JABADAN, JESUS ALIPAR and LEONILA KABAHAR, ANTONIO LABRADOR, HEIRS OF NICASIO GABISAY (represented by Arsenio Gabisay), PACIFICO LABRADOR, DEMETRIO LABRADOR and FRUCTOSA TABURA, VENANCIO DEL MAR, MARINO DEL MAR, HEIRS OF TEODORA ARCILLO (represented by Brigida Arcillo) DIONISIA GABUNADA, HEIRS OF BUENAVENTURA FRANCISCO (represented by Felicidad Sadaya Francisco), HEIRS OF VICTORIA C. CABUENAS (represented by Alberto Cabuenas) HEIRS OF

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CIPRIANO GABUNADA (represented by Claudio Gabunada), petitioners, *vs.* HON. JUAN Y. REYES, Executive Judge and Presiding Judge of Branch I, COURT OF FIRST INSTANCE OF CEBU, and the PHILIPPINE TOURISM AUTHORITY, respondents.

SYLLABUS

1. BILL OF RIGHTS; POWER OF EMINENT DOMAIN; THREE PROVISIONS OF THE CONSTITUTION WHICH DIRECTLY PROVIDE FOR EXERCISE THEREOF, CITED.— There are three provisions of the Constitution which directly provide for the exercise of the power of eminent domain. Section 2, Article IV states that private property shall not be taken for public use without just compensation. Section 6, Article XIV allows the State, in the interest of national welfare or defense and upon payment of just compensation to transfer to public ownership, utilities and other private enterprises to be operated by the government. Section 13, Article XIV states that the Batasang Pambansa may authorize upon payment of just compensation the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens.

2. ID.; ID.; PURPOSE THEREOF IS TO PROVIDE SOME FORM OF RESTRAINT ON THE SOVEREIGN POWER; CONSTITUTIONAL RESTRAINTS ARE PUBLIC USE AND JUST COMPENSATION.— In the leading case of *Visayan Refining Co. v. Camus* (*supra*), this Court emphasized that the power of eminent domain is inseparable from sovereignty being essential to the existence of the State and inherent in government even in its most primitive forms. The only purpose of the provision in the Bill of Rights is to provide some form of restraint on the sovereign power. The constitutional restraints are public use and just compensation.

3. ID.; ID.; PUBLIC USE; IDEA THAT SUCH IS STRICTLY LIMITED TO CLEAR CASES OF "USE BY THE PUBLIC," DISCARDED.— There can be no doubt that expropriation for such traditional purposes as the construction of roads, bridges, ports, waterworks, schools, electric and telecommunications systems, hydroelectric power plants, markets and slaughterhouses, parks, hospitals, government office buildings, and flood control or irrigation systems is valid. However, the concept of public use is not limited to traditional purposes. Here as elsewhere the idea that "public use" is strictly limited to clear cases of "use by the public" has been discarded.

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4. ID.; ID.; ID.; WHATEVER MAY BE BENEFICIALLY EMPLOYED FOR THE GENERAL WELFARE SATISFIES REQUIREMENT THEREOF.— In the Philippines, Chief Justice Enrique M. Fernando has aptly summarized the statutory and judicial trend as follows: "The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not anymore. As long as the purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the Constitution in at least two cases, to remove any doubt, determines what is public use. One is expropriation of lands to be subdivided into small lots for resale at cost to individuals. The other is the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use." (Fernando, *The Constitution of the Philippines,* 2nd ed., pp. 523-524)

5. ID.; ID.; ID.; PROMOTION OF TOURISM, A CASE OF.— The petitioner's contention that the promotion of tourism is not "public use" because private concessioners would be allowed to maintain various facilities such as restaurants, hotels, stores, etc. inside the tourist complex is impressed with even less merit. Private bus firms, taxicab fleets, roadside restaurants, and other private businesses using public streets and highways do not diminish in the least bit the public character of expropriations for roads and streets. The lease of store spaces in underpasses of streets built on expropriated land does not make the taking for a private purpose. Airports and piers catering exclusively to private airlines and shipping companies are stil for public use. The expropriation of private land for slum clearance and urban development is for a public purpose even if the developed area is later sold to private homeowners, commercial firms, entertainment and service companies, and other private concerns.

6. ID.; ID.; JUDICIAL DEFERENCE TO LEGISLATIVE POLICY, CLEAR AND MANIFEST IN EMINENT DOMAIN PROCEEDINGS.— An examination of the language in the 1919 cases of *City of Manila v. Chinese Community of Manila* (40 Phil. 349) and *Visayan Refining Co. v. Camus,* earlier cited, shows that from the very start of constitutional government in our country judicial deference to legislative policy has been clear and manifest in eminent domain proceedings.

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7. ID.; NON-IMPAIRMENT OF CONTRACTS CLAUSE; NEVER A BARRIER TO THE EXERCISE OF POLICE POWER AND POWER OF EMINENT DOMAIN.— The invocation of the contracts clause has no merit. The non-impairment clause has never been a barrier to the exercise of police power and likewise eminent domain. As stated in *Manigault v. Springs* (199 U.S. 473) "parties by entering into contracts may not estop the legislature from enacting laws intended for the public good."

8. REMEDIAL LAW; SPECIAL CIVIL ACTION; CERTIORARI; COMPLIANCE WITH PRESIDENTIAL DECREE NO. 42, NOT AN ACT IN EXCESS OF JURISDICTION OR A GRAVE ABUSE OF DISCRETION.— The issue of prematurity is also raised by the petitioners. They claim that since the necessity for the taking has not been previously established, the issuance of the orders authorizing the PTA to take immediate possession of the premises, as well as the corresponding writs of possession was premature. Under Presidential Decree No. 42, as amended by Presidential Decree No. 1533, the government, its agency or instrumentality, as plaintiff in an expropriation proceedings is authorized to take immediate possession, control and disposition of the property and the improvements, with power of demolition, notwithstanding the pendency of the issues before the court, upon deposit with the Philippine National Bank of an amount equivalent to 10% of the value of the property expropriated. The issue of immediate possession has been settled in *Arce v. Genato* (69 SCRA 544) where this Court held that: ". . . It is not disputed that in issuing such order, respondent Judge relied on Presidential Decree No. 42 issued on the 9th of November, 1972. (Presidential Decree No. 42 is entitled 'Authorizing the Plaintiff in Eminent Domain Proceedings to Take Possession of the Property involved Upon Depositing the Assessed Value for Purposes of Taxation.') The question as thus posed does not occasion any difficulty as to the answer to be given. This petition for certiorari must fail, there being no showing that compliance with the Presidential Decree, which under the Transitory Provisions is deemed a part of the law of the land, would be characterized as either an act in excess of jurisdiction or a grave abuse of discretion. So we rule."

9. LABOR LAWS; LAND REFORM; PRESIDENTIAL DECREE NO. 583; FORCIBLE EJECTMENT NOT A CRIMINAL ACT THEREUNDER.— In their last argument, the petitioners claim that a consequence of the expropriation proceedings would be their forcible ejectment which is a criminal act under Presidential Decree No. 583.

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This contention is not valid. Presidential Decree No. 583 prohibits the taking cognizance or implementation of orders designed to obstruct the land reform program. It refers to the harassment of tenant-farmers who try to enforce emancipation rights. It has nothing to do with the expropriation by the State of lands needed for public purposes. As a matter of fact, the expropriated area does not appear in the master lists of the Ministry of Agrarian Reforms as a tenanted area. The petitioners' bare allegations have not been supported with particulars pointing to specific parcels which are subject of tenancy contracts. The petitioner may be owner-tillers or may have some form of possessory or ownership rights but there has been no showing of their being tenants on the disputed lands.

10. STATUTORY CONSTRUCTION; STATUTE; HAS IN ITS FAVOR THE PRESUMPTION OF VALIDITY.— The petitioners have failed to overcome the burden of anyone trying to strike down a statute or decree whose avowed purpose is the legislative perception of the public good. A statute has in its favor the presumption of validity. All reasonable doubts should be resolved in favor of the constitutionality of a law. The courts will not set aside a law as violative of the Constitution except in a clear case (People *v.* Vera, 65 Phil. 56). And in the absence of factual findings or evidence to rebut the presumption of validity, the presumption prevails (Ermita-Malate Hotel, etc. *v.* Mayor of Manila, 20 SCRA 849; Morfe *v.* Mutuc, 22 SCRA 424).

APPEARANCES OF COUNSEL

George M. Baladjay, Mario G. dela Victoria, Olegario Sarmiento, Jr. and Democrito Barcenas for petitioner.

F.A. Sugue & Elino B. Lingas for Phil. Tourism Authority.

DECISION

GUTIERREZ, JR., *J.*:

This is a petition for certiorari with preliminary injunction challenging the constitutionality of Presidential Decree No. 564, the Revised Charter of the Philippine Tourism Authority, and Proclamation No. 2052 declaring the barangays of Sibugay, Malubog, Babag and Sirao including the proposed Lusaran Dam in the City of Cebu and in the municipalities of Argao and Dalaguete in the province of Cebu as tourist zones. The petitioners ask that we restrain respondents Court of First Instance of Cebu

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and the Philippine Tourism Authority (PTA) from enforcing and implementing the writs of possession issued in four (4) expropriation cases filed by PTA against petitioners: Civil Cases Nos. R-19562, R-19684, R-20701, and R-21608 of the Court of First Instance of Cebu (Branch I).

The Philippine Tourism Authority filed four (4) complaints with the Court of First Instance of Cebu City for the expropriation of some 282 hectares of rolling land situated in barangays Malubog and Babag, Cebu City, under PTA's express authority "to acquire by purchase, by negotiation or by condemnation proceedings any private land within and without the tourist zones" for the purposes indicated in Section 5, paragraph B(2), of its Revised Charter (PD 564), more specifically, for the development into integrated resort complexes of selected and well-defined geographic areas with potential tourism value. As uniformly alleged in the complaints, the purposes of the expropriation are:

. . . . . .

"Plaintiff, in line with the policy of the government to promote tourism and development of tourism projects will construct in Barangays Malubog, Busay and Babag, all of Cebu City, a sports complex (basketball courts, tennis courts, volleyball courts, track and field, baseball and softball diamonds, and swimming pools), club house, golf course, children's playground and a nature area for picnics and horseback riding for the use of the public.

"The development plan, covering approximately 1,000 hectares, includes the establishment of an electric power grid in the area by the National Power Corporation, thus assuring the supply of electricity therein for the benefit of the whole community. Deep wells will also be constructed to generate water supply within the area. Likewise, a complex sewerage and drainage system will be devised and constructed to protect the tourists and nearby residents from the dangers of pollution.

"Complimentary and support facilities for the project will be constructed, including public rest houses, lockers, dressing rooms, coffee shops, shopping malls, etc. Said facilities will create and offer employment opportunities to residents of the community and further generate income for the whole of Cebu City.

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"Plaintiff needs the property above described which is directly covered by the proposed golf course."

. . . . . .

The defendants in Civil Cases Nos. R-20701 and R-21608 filed their respective Opposition with Motion to Dismiss and/or Reconsideration. The defendants in Civil Case No. R-19562 filed a manifestation adopting the answer of defendants in Civil Case No. R-19864. The defendants, now petitioners, had a common allegation in that the taking is allegedly not impressed with public use under the Constitution.

In their motions to dismiss, the petitioners alleged, in addition to the issue of public use, that there is no specific constitutional provision authorizing the taking of private property for tourism purposes; that assuming that PTA has such power, the intended use cannot be paramount to the determination of the land as a land reform area; that limiting the amount of compensation by legislative fiat is constitutionally repugnant; and that since the land is under the land reform program, it is the Court of Agrarian Relations and not the Court of First Instance, that has jurisdiction over the expropriation cases.

The Philippine Tourism Authority having deposited with the Philippine National Bank, Cebu City Branch, an amount equivalent to 10% of the value of the properties pursuant to Presidential Decree No. 1533, the lower court issued separate orders authorizing PTA to take immediate possession of the premises and directing the issuance of writs of possession.

On May 25, 1982, petitioners filed this petition questioning the orders of the respondent Judge. The respondents have correctly restated the grounds in the petition as follows:

. . . . . .

"A. The complaints for expropriation lack basis because the Constitution does not provide for the expropriation of private property for tourism or other related purposes;

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"B. The writs of possession or orders authorizing PTA to take immediate possession is premature because the 'public use' character of the taking has not been previously demonstrated;

"C. The taking is not for public use in contemplation of eminent domain law;

"D. The properties in question have been previously declared a land reform area; consequently, the implementation of the social justice provision of the Constitution on agrarian reform is paramount to the right of the State to expropriate for the purposes intended;

"E. Proclamation No. 2052 declaring certain barangays in Cebu City, which include the lands subject of expropriation as within a tourist zone, is unconstitutional for it impairs the obligation of contracts;

"F. Since the properties are within a land reform area, it is the Court of Agrarian Relations, not the lower court, that has jurisdiction pursuant to Pres. Decree No. 946;

"G. The forcible ejectment of defendants from the premises constitutes a criminal act under Pres. Decree No. 583;"

In their memorandum, the petitioners have summarized the issues as follows:

I. Enforcement of the Writ of Possession is Premature:

II. Presidential Decree 564 Amending Presidential Decree 189 is Constitutionally Repugnant:

III. The Condemnation is not for Public Use, Therefore, Unconstitutional:

IV. The Expropriation for Tourism Purposes of Lands Covered by the Land Reform Program Violates the Constitution:

V. Presidential Proclamation 2052 is Unconstitutional:

VI. Presidential Decree No. 1533 is Unconstitutional:

VII. The Court of First Instance has no Jurisdiction:

VIII. The Filing of the Present Petition is not Premature:

The issues raised by the petitioners revolve around the proposition that the actions to expropriate their properties are constitutionally infirm because nowhere in the Constitution can a provision be found which allows the taking of private property for the promotion of tourism.

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The petitioner's arguments in their pleadings in support of the above proposition are subsumed under the following headings:

1. Non-compliance with the "public use" requirement under the eminent domain provision of the Bill of Rights.

2. Disregard of the land reform nature of the property being expropriated.

3. Impairment of the obligation of contracts.

There are three provisions of the Constitution which directly provide for the exercise of the power of eminent domain. Section 2, Article IV states that private property shall not be taken for public use without just compensation. Section 6, Article XIV allows the State, in the interest of national welfare or defense and upon payment of just compensation to transfer to public ownership, utilities and other private enterprises to be operated by the government. Section 13, Article XIV states that the Batasang Pambansa may authorize upon payment of just compensation the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens.

While not directly mentioning the expropriation of private properties upon payment of just compensation, the provisions on social justice and agrarian reforms which allow the exercise of police power together with the power of eminent domain in the implementation of constitutional objectives are even more far-reaching insofar as taking of private property is concerned.

Section 6, Article II provides:

> "Sec. 6. The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."

. . . . . .

Section 12, Article XIV provides:

> "Sec. 12. The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."

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The equitable diffusion of property ownership in the promotion of social justice implies the exercise, whenever necessary, of the power to expropriate private property. Likewise there can be no meaningful agrarian reform program unless the power to expropriate is utilized.

We cite all the above provisions on the power to expropriate because of the petitioners' insistence on a restrictive view of the eminent domain provision. The thrust of all constitutional provisions on expropriation is in the opposite direction.

As early as 1919, this Court in *Visayan Refining Co. v. Camus* (40 Phil. 550) categorized the restrictive view as wholly erroneous and based on a misconception of fundamentals.

The petitioners look for the word "tourism" in the Constitution. Understandably the search would be in vain. The policy objectives of the framers can be expressed only in general terms such as social justice, local autonomy, conservation and development of the national patrimony, public interest, and general welfare, among others. The programs to achieve these objectives vary from time to time and according to place. To freeze specific programs like tourism into express constitutional provisions would make the Constitution more prolix than a bulky code and require of the framers a prescience beyond Delphic proportions. The particular mention in the Constitution of agrarian reform and the transfer of utilities and other private enterprises to public ownership merely underscores the magnitude of the problems sought to be remedied by these programs. They do not preclude nor limit the exercise of the power of eminent domain for such purposes like tourism and other development programs.

In the leading case of *Visayan Refining Co. v. Camus* (supra), this Court emphasized that the power of eminent domain is inseparable from sovereignty being essential to the existence of the State and inherent in government even in its most primitive forms. The only purpose of the provision in the Bill of Rights is to provide some form of restraint on the sovereign power. It is not a grant of authority -

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" 'The power of eminent domain does not depend for its existence on a specific grant in the constitution. It is inherent in sovereignty and exists in a sovereign state without any recognition of it in the constitution. The provisions found in most of the state constitutions relating to the taking of property for the public use do not by implication grant the power to the government of the state, but limit a power which would otherwise be without limit.' "

The constitutional restraints are public use and just compensation.

Do the purposes of the taking in this case constitute "public use"?

The petitioners ask us to adopt a strict construction and declare that "public use" means literally use by the public and that "public use" is not synonymous with "public interest," "public benefit," or "public welfare" and much less "public convenience."

The petitioners face two major obstacles. First, their contention which is rather sweeping in its call for a retreat from the public welfare orientation is unduly restrictive and outmoded. Second, no less than the lawmaker has made a policy determination that the power of eminent domain may be exercised in the promotion and development of Philippine tourism.

The restrictive view of public use may be appropriate for a nation which circumscribes the scope of government activities and public concerns and which possesses big and correctly located public lands that obviate the need to take private property for public purposes. Neither circumstance applies to the Philippines. We have never been a laissez faire State. And the necessities which impel the exertion of sovereign power are all too often found in areas of scarce public land or limited government resources.

Certain aspects of parliamentary government were introduced by the 1973 amendments to the Constitution with further modifications in the 1976 and 1981 amendments. Insofar as the executive and legislative departments are concerned, the traditional concept of checks and balances in a presidential form was

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considerably modified to remove some roadblocks in the expeditious implementation of national policies. There was no such change for the judiciary. We remain as a checking and balancing department even as all strive to maintain respect for constitutional boundaries. At the same time, the philosophy of coordination in the pursuit of developmental goals implicit in the amendments also constrains the judiciary to defer to legislative discretion in the judicial review of programs for economic development and social progress unless a clear case of constitutional infirmity is established. We cannot stop the legitimate exercise of power on an invocation of grounds better left interred in a bygone age and time.* As we review the efforts of the political departments to bring about self-sufficiency, if not eventual abundance, we continue to maintain the liberal approach because the primary responsibility and the discretion belong to them.

There can be no doubt that expropriation for such traditional purposes as the construction of roads, bridges, ports, waterworks, schools, electric and telecommunications systems, hydroelectric power plants, markets and slaughterhouses, parks, hospitals, government office buildings, and flood control or irrigation systems is valid. However, the concept of public use is not limited to traditional purposes. Here as elsewhere the idea that "public use" is strictly limited to clear cases of "use by the public" has been discarded.

In the United States, the rule was enunciated in *Berman v. Parker* (348 U.S. 25; 99 L. ed. 27) as follows:

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* Cf. Matter of New York City Housing Authority v. Muller, 1 NE 2d 153, "Over many years and in a multitude of cases the courts have vainly attempted to define comprehensively the concept of a public use and to formulate a universal test. They have found here as elsewhere that to formulate anything ultimate, even though it were possible, would, in an inevitably changing world, be unwise if not futile. Lacking a controlling precedent, we deal with the question as it presents itself on the facts at the present point of time. "The law of each age is ultimately what the age thinks should be the law." People ex rel. Durham Realty Corporation v. La Fetra, 230 N.Y. 429, 450, 130 N.E. 601, 608. Board of Education v. Pace College, 50 Misc. 2d 806, 807, 271 N.Y. S 2d 773, 775 (Sup. Ct. Westchester County 1966).

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"We do not sit to determine whether a particular housing project is or is not desirable. The concept of public welfare is broad and inclusive. See DayBrite Lighting, Inc. *v.* Missouri, 342 US 421, 424, 96 L ed 469, 472, 72 S Ct 405. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.

"Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. See Luxton *v.* North River Bridge Co. 153 US 525, 529, 530, 38 L ed 808, 810, 14 S Ct 891; United States *v.* Gettysburg Electric R. Co. 160 US 668, 679, 40 L ed 576, 580, 16 S Ct 427."

In an earlier American case, where a village was isolated from the rest of North Carolina because of the flooding of the reservoir of a dam thus making the provision of police, school, and health services unjustifiably expensive, the government decided to expropriate the private properties in the village and the entire area was made part of an adjoining national park. The district court and the appellate court ruled against the expropriation or excess condemnation. The Court of Appeals applied the "use by the public" test and stated that the only land needed for public use was the area directly flooded by the reservoir. The village may have been cut off by the dam but to also condemn it was excess condemnation not valid under the "public use" requirement. The U.S. Supreme Court in *United States ex rel T.V.A. v. Welch* (327 U.S. 546; 90 L. ed 843) unanimously reversed the lower courts. It stated:

"The Circuit Court of Appeals, without expressly relying on a compelling rule of construction that would give the restrictive scope to the T.V.A. Act given it by the district court, also interpreted the statute narrowly. It first analyzed the facts by segregating the total problem into distinct parts, and thus came to the conclusion that T.V.A.'s purpose in condemning the land

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in question was only one to reduce its liability arising from the destruction of the highway. The Court held that use of the lands for that purpose is a 'private' and not a 'public use' or, at best, a 'public use' not authorized by the statute. We are unable to agree with the reasoning and conclusion of the Circuit Court of Appeals.

"We think that it is the function of Congress to decide what type of taking is for a public use and that the agency authorized to do the taking may do so to the full extent of its statutory authority. United States *v.* Gettysburg Electric R. Co., 160 US 668, 679, 40 L ed 576, 580, 16 S Ct 427. . . ."

. . . . . .

". . . But whatever may be the scope of the judicial power to determine what is a 'public use' in Fourteenth Amendment controversies, this Court has said that when Congress has spoken on this subject 'Its decision is entitled to deference until it is shown to involve an impossibility.' Old Dominion Land Co. *v.* United States, 269 US 55, 66, 70 L ed 162, 46 S Ct 39. Any departure from this judicial restraint would result in courts deciding on what is and is not a governmental function and in their invalidating legislation on the basis of their view on that question at the moment of decision, a practice which has proved impracticable in other fields. See Case *v.* Bowles, decided February 4, 1946, 327 US 92, 101, ante, 552, 559, 66 S Ct 438. New York *v.* United States, 326 US 572 [ante, 326, 66 S Ct 310]. We hold that the T.V.A. took the tracts here involved for a public purpose, if, as we think is the case, Congress authorized the Authority to acquire, hold, and use the lands to carry out the purposes of the T.V.A. Act."

In the Philippines, Chief Justice Enrique M. Fernando has aptly summarized the statutory and judicial trend as follows:

"The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not any more. As long as the purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be subdivided into small lots for resale at cost to individuals. The other is the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use." (Fernando, *The Constitution of the Philippines*, 2nd ed., pp. 523-524)

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The petitioner's contention that the promotion of tourism is not "public use" because private concessioners would be allowed to maintain various facilities such as restaurants, hotels, stores, etc. inside the tourist complex is impressed with even less merit. Private bus firms, taxicab fleets, roadside restaurants, and other private businesses using public streets and highways do not diminish in the least bit the public character of expropriations for roads and streets. The lease of store spaces in underpasses of streets built on expropriated land does not make the taking for a private purpose. Airports and piers catering exclusively to private airlines and shipping companies are still for public use. The expropriation of private land for slum clearance and urban development is for a public purpose even if the developed area is later sold to private homeowners, commercial firms, entertainment and service companies, and other private concerns.

The petitioners have also failed to overcome the deference that is appropriately accorded to formulations of national policy expressed in legislation. The rule in *Berman v. Parker* (supra) of deference to legislative policy even if such policy might mean taking from one private person and conferring on another private person applies as well in the Philippines.

". . . Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. See Luxton *v.* North River Bridge Co. (US) supra; cf. Highland *v.* Russel Car & Snow Plow Co., 279 US 253, 73 L ed 688, 49 S Ct 314. The public end may be as well or better served through an agency of private enterprise than through a department of government—or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects. What we have said also disposes of any contention concerning the fact that certain property owners in the area may be permitted to repurchase their properties for redevelopment in harmony with the over-all plan. That, too, is a legitimate means which Congress and its agencies may adopt, if they choose." (Berman *v.* Parker, 99 L ed 38, 348 US 33, 34)

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An examination of the language in the 1919 cases of *City of Manila v. Chinese Community of Manila* (40 Phil. 349) and *Visayan Refining Co. v. Camus,* earlier cited, shows that from the very start of constitutional government in our country judicial deference to legislative policy has been clear and manifest in eminent domain proceedings.

The expressions of national policy are found in the revised charter of the Philippine Tourism Authority, Presidential Decree No. 564:

"WHEREAS, it is the avowed aim of the government to promote Philippine tourism and work for its accelerated and balanced growth as well as for economy and expediency in the development of the tourism plant of the country;"

. . . . . .

"SECTION 1. *Declaration of Policy.*— It is hereby declared to be the policy of the State to promote, encourage, and develop Philippine tourism as an instrument in accelerating the development of the country, of strengthening the country's foreign exchange reserve position, and of protecting Philippine culture, history, traditions and natural beauty, internationally as well as domestically."

The power of eminent domain is expressly provided for under Section 5 B(2) as follows:

. . . . . .

2. *Acquisition of Private Lands, Power of Eminent Domain.* — To acquire by purchase, by negotiation or by condemnation proceedings any private land within and without the tourist zones for any of the following reasons: (a) consolidation of lands for tourist zone development purposes, (b) prevention of land speculation in areas declared as tourist zones, (c) acquisition of right of way to the zones, (d) protection of water shed areas and natural assets with tourism value, and (e) for any other purpose expressly authorized under this Decree and accordingly, to exercise the power of eminent domain under its own name, which shall proceed in the manner prescribed by law and/or the Rules of Court on condemnation proceedings. The Authority may use any mode of payment which it may deem expedient and acceptable to the land owners: *Provided,* That in case bonds are used as payment, the conditions and restrictions set forth in Chapter III, Sections 8 to 13 inclusively, of this Decree shall apply."

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The petitioners rely on the Land Reform Program of the government in raising their second argument. According to them, assuming that PTA has the right to expropriate, the properties subject of expropriation may not be taken for the purposes intended since they are within the coverage of "operation land transfer" under the land reform program. Petitioners claim that certificates of land transfer (CLT's) and emancipation patents have already been issued to them thereby making the lands expropriated within the coverage of the land reform area under Presidential Decree No. 2; that the agrarian reform program occupies a higher level in the order of priorities than other State policies like those relating to the health and physical well-being of the people; and that property already taken for public use may not be taken for another public use.

We have considered the above arguments with scrupulous and thorough circumspection. For indeed any claim of rights under the social justice and land reform provisions of the Constitution deserves the most serious consideration. The petitioners, however, have failed to show that the area being developed is indeed a land reform area and that the affected persons have emancipation patents and certificates of land transfer.

The records show that the area being developed into a tourism complex consists of more than 808 hectares, almost all of which is not affected by the land reform program. The portion being expropriated is 282 hectares of hilly and unproductive land where even subsistence farming of crops other than rice and corn can hardly survive. And of the 282 disputed hectares, only 8,970 square meters - less than one hectare - is affected by Operation Land Transfer. Of the 40 defendants, only two have emancipation patents for the less than one hectare of land affected. And this 8,970 square meters parcel of land is not even within the sports complex proper but forms part of the 32 hectares resettlement area where the petitioners and others similarly situated would be provided with proper housing, subsidiary employment, community centers, schools, and essential services like water and

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electricity - which are non-existent in the expropriated lands. We see no need under the facts of this petition to rule on whether one public purpose is superior or inferior to another purpose or engage in a balancing of competing public interests. The petitioners have also failed to overcome the showing that the taking of the 8,970 square meters covered by Operation Land Transfer forms a necessary part of an inseparable transaction involving the development of the 808 hectares tourism complex. And certainly, the human settlement needs of the many beneficiaries of the 32 hectares resettlement area should prevail over the property rights of two of their compatriots.

The invocation of the contracts clause has no merit. The non-impairment clause has never been a barrier to the exercise of police power and likewise eminent domain. As stated in *Manigault v. Springs* (199 U.S. 473) "parties by entering into contracts may not estop the legislature from enacting laws intended for the public good."

The applicable doctrine is expressed in *Arce v. Genato* (69 SCRA 544) which involved the expropriation of land for a public plaza. The Court stated:

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". . . What is claimed is that there must be a showing of necessity for such condemnation and that it was not done in this case. In support of such a view, reliance is placed on City of Manila *v.* Arellano Law Colleges. (85 Phil. 663 [1950]) That doctrine itself is based on the earlier case of City of Manila *v.* Chinese Community of Manila, (50 Phil. 349) also, like Camus, a 1919 decision. As could be discerned, however, in the Arellano Law Colleges decision, it was the antiquarian view of Blackstone with its sanctification of the right to one's estate on which such an observation was based. As did appear in his Commentaries: 'So great is the regard of the law for private property that it will not authorize the least violation of it, even for the public good, unless there exists a very great necessity thereof.' Even the most cursory glance at such well-nigh absolutist concept of property would show its obsolete character at least for Philippine constitutional law. It cannot survive the test of the 1935 Constitution with its mandates on social justice and protection to labor. (Article II, Section 5 of the 1935 Constitution reads: 'The promotion of social justice to insure the well-being and economic

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security of all the people should be the concern of the State.' Article XI, Section 6 of the same Constitution provides: 'The State shall afford protection to labor, especially to working women and minors, and shall regulate the relation between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration.') What is more, the present Constitution pays even less heed to the claims of property—and rightly so. After stating that the State shall promote social justice, it continues: 'Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.' (That is the second sentence of Article II, Section 6 of the Constitution) If there is any need for explicit confirmation of what was set forth in Presidential Decree No. 42, the above provision supplies it. Moreover, that is merely to accord to what of late has been the consistent course of decisions of this Court whenever property rights are pressed unduly. (Cf. Alalayan *v.* National Power Corporation, L-24396, July 29, 1968, 24 SCRA 172; Agricultural Credit and Cooperative Financing Administration *v.* Confederation of Unions, L-21484, Nov. 29, 1969, 30 SCRA 649; Edu *v.* Ericta, L-32096, Oct. 24, 1970, 35 SCRA 481; Phil. Virginia Tobacco Administration *v.* Court of Industrial Relations, L-32052, July 25, 1975, 65 SCRA 416) The statement therefore, that there could be discerned a constitutional objection to a lower court applying a Presidential Decree, when it leaves no doubt that a grantee of the power of eminent domain need not prove the necessity for the expropriation, carries its own refutation."

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The issue of prematurity is also raised by the petitioners. They claim that since the necessity for the taking has not been previously established, the issuance of the orders authorizing the PTA to take immediate possession of the premises, as well as the corresponding writs of possession was premature. Under Presidential Decree No. 42, as amended by Presidential Decree No. 1533, the government, its agency or instrumentality, as plaintiff in an expropriation proceedings is authorized to take immediate possession, control and disposition of the property and the improvements, with power of demolition, notwithstanding the pendency of the issues before the court, upon deposit with the Philippine National Bank of an amount equivalent to 10% of the value of the property expropriated. The issue of immediate possession has been settled in *Arce v. Genato* (supra). In answer to the issue:

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". . . whether the order of respondent Judge in an expropriation case allowing the other respondent, . . . to take immediate possession of the parcel of land sought to be condemned for the beautification of its public plaza, without a prior hearing to determine the necessity for the exercise of the power of eminent domain, is vitiated by jurisdictional defect, . . ."

this Court held that:

". . . It is not disputed that in issuing such order, respondent Judge relied on Presidential Decree No. 42 issued on the 9th of November, 1972. (Presidential Decree No. 42 is entitled 'Authorizing the Plaintiff in Eminent Domain Proceedings to Take Possession of the Property involved Upon Depositing the Assessed Value for Purposes of Taxation.') The question as thus posed does not occasion any difficulty as to the answer to be given. This petition for certiorari must fail, there being no showing that compliance with the Presidential Decree, which under the Transitory Provisions is deemed a part of the law of the land, (According to Article XVII, Section 3 par. (2) of the Constitution: 'All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly') would be characterized as either an act in excess of jurisdiction or a grave abuse of discretion. So we rule."

Likewise in *Ramos v. Philippine Tourism Authority* (G.R. Nos. 52449-50, June 9, 1980), this Court held:

". . . condemnation or expropriation proceedings is in the nature of one that is *quasi-in-rem*, wherein the fact that the owner of the property is made a party is not essentially indispensable insofar at least as it concerns the immediate taking of possession of the property and the preliminary determination of its value, including the amount to be deposited."

In their last argument, the petitioners claim that a consequence of the expropriation proceedings would be their forcible ejectment. They contend that such forcible ejectment is a criminal act under Presidential Decree No. 583. This contention is not valid. Presidential Decree No. 583 prohibits the taking cognizance or implementation of orders designed to obstruct the land reform program. It refers to the harassment of tenant-farmers who try

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to enforce emancipation rights. It has nothing to do with the expropriation by the State of lands needed for public purposes. As a matter of fact, the expropriated area does not appear in the master lists of the Ministry of Agrarian Reforms as a tenanted area. The petitioners' bare allegations have not been supported with particulars pointing to specific parcels which are subject of tenancy contracts. The petitioners may be owner-tillers or may have some form of possessory or ownership rights but there has been no showing of their being tenants on the disputed lands.

The petitioners have failed to overcome the burden of anyone trying to strike down a statute or decree whose avowed purpose is the legislative perception of the public good. A statute has in its favor the presumption of validity. All reasonable doubts should be resolved in favor of the constitutionality of a law. The courts will not set aside a law as violative of the Constitution except in a clear case (People *v.* Vera, 65 Phil. 56). And in the absence of factual findings or evidence to rebut the presumption of validity, the presumption prevails (Ermita-Malate Hotel, etc. *v.* Mayor of Manila, 20 SCRA 849; Morfe *v.* Mutuc, 22 SCRA 424).

The public respondents have stressed that the development of the 808 hectares includes plans that would give the petitioners and other displaced persons productive employment, higher incomes, decent housing, water and electric facilities, and better living standards. Our dismissing this petition is, in part, predicated on those assurances. The right of the PTA to proceed with the expropriation of the 282 hectares already identified as fit for the establishment of a resort complex to promote tourism is, therefore, sustained.

WHEREFORE, the instant petition for certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.

Fernando, C.J., Concepcion Jr., Guerrero, Melencio-Herrera, Plana, Escolin and *Relova, JJ.*, concur.

Makasiar, J., see concurrence and dissent.

Teehankee, J., dissented on the grounds stated in Justice

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Makasiar's separate opinion. Petitioners have the personality to file the petition at bar, as conceded by public *respondent itself* in having filed the expropriation case against them.

Aquino, J., in the result.

Abad Santos, J., with Justice Makasiar.

De Castro, J., is on leave.

MAKASIAR, *J., concurring and dissenting:*

It appearing that the petitioners are not tenants of the parcels of land in question and therefore do not fall within the purview of the Land Reform Code, the petition should be dismissed on that score alone.

There is no need to decide whether the power of the Philippine Tourism Authority to expropriate the land in question predicated on the police power of the State shall take precedence over the social justice guarantee in favor of tenants and the landless. The welfare of the landless and small landowners should prevail over the right of the PTA to expropriate the lands just to develop tourism industry, which benefit the wealthy only. Such a position would increase the disenchanted citizens and drive them to dissidence. The government is instituted primarily for the welfare of the governed and there are more poor people in this country than the rich. The tourism industry is not essential to the existence of the government, but the citizens are, and their right to live in dignity should take precedence over the development of the tourism industry.

FIRST DIVISION

[G.R. No. 60665, October 26, 1983]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* CIRILO FLORES, defendant-appellant.

SYLLABUS

1. CRIMINAL LAW; RAPE; CONDUCT OF COMPLAINANT IN CASE AT BAR NEGATE COMMISSION THEREOF.— We cannot sustain