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rules of procedure to govern the civil action for the recovery of the amount covered by the check against the juridical person which issued it.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175983. April 16, 2009]

METROPOLITAN CEBU WATER DISTRICT (MCWD), *petitioner, vs.* **J. KING AND SONS COMPANY, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; CONSTITUTIONAL REQUIREMENTS FOR THE EXERCISE OF THE POWER.— Eminent domain is the right of the state to acquire private property for public use upon payment of just compensation. The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. Its exercise is proscribed by only two Constitutional requirements: first, that there must be just compensation, and second, that no person shall be deprived of life, liberty or property without due process of law.

2. ID.; ID.; ID.; WHILE THE POWER TO EXPROPRIATE PERTAINS TO THE LEGISLATURE, CONGRESS MAY VALIDLY DELEGATE THE EXERCISE OF THE POWER TO GOVERNMENT AGENCIES, PUBLIC OFFICIALS AND QUASI-PUBLIC ENTITIES LIKE A LOCAL WATER

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UTILITY.— As an inherent sovereign prerogative, the power to expropriate pertains to the legislature. However, Congress may, as in fact it often does, delegate the exercise of the power to government agencies, public officials and quasi-public entities. Petitioner is one of the numerous government offices so empowered. Under its charter, P.D. No. 198, as amended, petitioner is explicitly granted the power of eminent domain.

3. ID.; ID.; ID.; R.A. NO. 8974 (AN ACT TO FACILITATE THE ACQUISITION OF RIGHT OF WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES); APPLIES TO THE EXPROPRIATION SUBJECT OF THE PRESENT CASE.— On 7 November 2000, Congress enacted R.A. No. 8974, entitled "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes." Section 2 thereof defines national government projects as follows: Sec. 2. *National Government Projects*.—The term "national government projects" shall refer to all national government infrastructure, engineering works and service contracts, **including projects undertaken by government-owned and -controlled corporations,** all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of source of funding." R.A. No. 8974 includes projects undertaken by government owned and controlled corporations, such as petitioner. Moreover, the Implementing Rules and Regulations of R.A. No. 8974 explicitly includes water supply, sewerage, and waste management facilities among the national government projects covered by the law. It is beyond question, therefore, that R.A. No. 8974 applies to the expropriation subject of this case.

4. ID.; ID.; ID.; PETITIONER HAS LEGAL CAPACITY TO INSTITUTE THE EXPROPRIATION COMPLAINT.— A corporation does not have powers beyond those expressly conferred upon it by its enabling law. Petitioner's charter provides that it has the powers, rights and privileges given to private corporations under existing laws, in addition to the

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powers granted in it. All the powers, privileges, and duties of the district shall be exercised and performed by and through the board and that any executive, administrative or ministerial power may be delegated and redelegated by the board to any of its officers or agents for such purpose. Being a corporation, petitioner can exercise its powers only through its board of directors. For petitioner to exercise its power of eminent domain, two requirements should be met, namely: first, its board of directors passed a resolution authorizing the expropriation, and; second, the exercise of the power of eminent domain was subjected to review by the LWUA. In this case, petitioner's board of directors approved on 27 February 2004, Board Resolution No. 015-2004 authorizing its general manager to file expropriation and other cases. Moreover, the LWUA did review and gave its stamp of approval to the filing of a complaint for the expropriation of respondent's lot. Specifically, the LWUA through its Administrator, Lorenzo H. Jamora, wrote petitioner's manager, Armando H. Paredes, a letter dated 28 February 2005 authorizing petitioner to file the expropriation case "against the owner of the five-square meter portion of Lot No. 921-A covered by TCT No. 168805, pursuant to Section 25 of P.D. No. 198, as amended." The letter not only explicitly debunks respondent's claim that there was no authorization from LWUA but it also identifies the lot sought to be expropriated with sufficient particularity. It is settled that the validity of a complaint may be questioned immediately upon its filing through a motion to dismiss or raised thereafter as an affirmative defense. However, there is no need to further belabor the issue since it is established that petitioner has the legal capacity to institute the expropriation complaint.

5. ID.; ID.; ID.; VARIOUS STAGES IN AN EXPROPRIATION PROCEEDINGS; EXPOUNDED.— The general rule is that upon filing of the expropriation complaint, the plaintiff has the right to take or enter into possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation. An exception to this procedure is provided by R.A. No. 8974. It requires the payment of one hundred percent (100%) of the zonal value of the property to be expropriated to entitle the plaintiff to a writ of possession. In an expropriation proceeding there are two stages, first, is the determination of the validity of the expropriation, and second

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is the determination of just compensation. In *Tan v. Republic*, we explained the two (2) stages in an expropriation proceeding to wit: (1) 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, with 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 payment of just compensation. An order of expropriation is final. An order of dismissal, if this be ordained, would be a final one, as it finally disposes of the action and leaves nothing more to be done by the courts on the merits. The order of expropriation would also be a final one for after its issuance, no objection to the right of condemnation shall be heard. The order of expropriation may be appealed by any party aggrieved thereby by filing a record on appeal. (2) Determination by the court of the just compensation for the property sought to be taken with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before the court and findings of the commissioners would likewise be a final one, as it would leave nothing more to be done by the court regarding the issue. A second and separate appeal may be taken from this order fixing the just compensation. Thus, the determination of the necessity of the expropriation is a justiciable question which can only be resolved during the first stage of an expropriation proceeding. Respondent's claim that the expropriated property is too small to be considered for public use can only be resolved during that stage.

6. ID.; ID.; ID.; R.A. No. 8974 DOES NOT TAKE AWAY FROM THE COURTS THE POWER TO JUDICIALLY DETERMINE THE AMOUNT OF JUST COMPENSATION WHICH MUST STILL BE DETERMINED BY THE COURTS ACCORDING TO THE STANDARDS SET FORTH IN SECTION 5 OF THE LAW.— The Court of Appeals ruled that Section 4 of R.A. No. 8974 runs counter to the express mandate of Section 2 of Rule 67. It held that the law undermined the principle that the determination of just compensation is a judicial function. However, this Court has already settled the issue. In *Republic v. Gingoyon*, this Court held that: It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment"

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in cases involving national government infrastructure projects. x x x It likewise bears noting that the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of Rep. Act No. 8974. Specifically, this prescribes the new standards in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the manner of payment thereof. At the same time, Section 14 of the Implementing Rules recognizes the continued applicability of Rule 67 on procedural aspects when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court. R.A. No. 8974 does not take away from the courts the power to judicially determine the amount of just compensation. The law merely sets the minimum price of the property as the provisional value. Thus, the amount of just compensation must still be determined by the courts according to the standards set forth in Section 5 of R.A. No. 8974.

7. ID.; ID.; ID.; R.A. NO. 8974 DOES NOT REQUIRE A DEPOSIT WITH A GOVERNMENT BANK BUT REQUIRES THE GOVERNMENT TO IMMEDIATELY PAY THE PROPERTY OWNER TO OBTAIN A WRIT OF POSSESSION; THE PROVISIONAL PAYMENT IS A PREREQUISITE AND TRIGGER FOR THE ISSUANCE OF A WRIT OF POSSESSION.— R.A. No. 8974 provides a different scheme for the obtention of a writ of possession. The law does not require a deposit with a government bank; instead it requires the government to immediately pay the property owner. The provisional character of this payment means that it is not yet final, yet, sufficient under the law to entitle the Government to the writ of possession over the expropriated property. The provisional payment is a prerequisite and a trigger for the issuance of the writ of possession. In *Gingoyon*, we held that: It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects. x x x Rep. Act. No. 8974 is plainly clear in imposing

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the requirement of immediate prepayment, and no amount of statutory deconstruction can evade such requisite. It enshrines a new approach towards eminent domain that reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity. While expropriation proceedings have always demanded just compensation in exchange for private property, the previous deposit requirement impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed. Under the new modality prescribed by Rep. Act. No. 8974, the private owner sees immediate monetary recompense, with the same degree of speed as the taking of his/her property.

8. ID.; ID.; ID.; THE TRIAL COURT DID NOT COMMIT ERROR IN ACCEPTING PETITIONER'S DEPOSIT AND IN ISSUING THE WRIT OF POSSESSION; THE DEPOSIT OF THE PROVISIONAL AMOUNT WITH THE COURT IS EQUIVALENT TO PAYMENT.— Petitioner was supposed to tender the provisional payment directly to respondent during a hearing which it had failed to attend. Petitioner, then, deposited the provisional payment with the court. The trial court did not commit an error in accepting the deposit and in issuing the writ of possession. The deposit of the provisional amount with the court is equivalent to payment. Indeed, Section 4 of R.A. No. 8974 is emphatic to the effect that "upon compliance with the guidelines…the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project." Under this statutory provision, when the government, its agencies or government-owned and controlled corporations, make the required provisional payment, the trial court has a ministerial duty to issue a writ of possession. In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*, we held that: Upon compliance with the requirements, a petitioner in an expropriation case…is entitled to a writ of possession as a matter of right and it becomes the ministerial duty of the trial court to forthwith issue the writ of possession. No hearing is required and the court neither exercises its discretion or judgment in determining the amount of the provisional value of the properties to be expropriated as the legislature has fixed the amount under Section 4 of R.A. No. 8974. It is mandatory

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on the trial court's part to issue the writ of possession and on the sheriff's part to deliver possession of respondent's property to petitioner pursuant to the writ.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Alvarez Nuez Galang Espina and Lopez Law Offices for respondent.

D E C I S I O N

TINGA, *J.*:

Before us is a Rule 45 petition[1] which seeks the reversal of the decision[2] and resolution[3] of the Court of Appeals in CA-G.R. CEB-SP No. 00810. The Court of Appeals' decision nullified the orders[4] and the writ of possession[5] issued by the Regional Trial Court (RTC) of Cebu City, Branch 23, allowing petitioner to take possession of respondent's property.

Petitioner Metropolitan Cebu Water District is a government-owned and controlled corporation created pursuant to Presidential Decree No. 198, as amended. Among its purposes are to acquire, install, improve, maintain and operate water supply and distribution systems within the boundaries of the District.[6]

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[1] *Rollo*. pp. 9-23.

[2] *Id.* at 29-36; Dated 26 July 2006; penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Apolinario Bruselas, Jr. and Agustin S. Dizon.

[3] *Id.* at 49-50; Dated 28 September 2006.

[4] *Id.* at 57-58; Dated 01 April 2005 and 9 May 2005, both penned by Judge Generosa Labra.

[5] *Id.* at 98-100; Dated 21 June 2005 issued by Clerk of Court Jeoffrey Joaquino.

[6] P.D. No. 198, Sec. 5.

Section 5. *Purpose*.—Local water districts may be formed pursuant to this Title for the purposes of (a) acquiring, installing, improving, maintaining and operating water supply and distribution systems for domestic, industrial,

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Petitioner wanted to acquire a five (5)-square meter lot occupied by its production well. The lot is part of respondent's property covered by TCT No. 168605 and located in Banilad, Cebu City. Petitioner initiated negotiations[7] with respondent J. King and Sons Company, Inc. for the voluntary sale of the latter's property. Respondent did not acquiesce to petitioner's proposal. After the negotiations had failed, petitioner pursuant to its charter[8] initiated expropriation proceedings through Board Resolution No. 015-2004[9] which was duly approved by the Local Water Utilities Administration (LWUA).[10] On 10 November 2004, petitioner filed a complaint[11] to expropriate the five (5)-square meter portion of respondent's property.

On 7 February 2005, petitioner filed a motion[12] for the issuance of a writ of possession. Petitioner wanted to tender the amount to respondent during a rescheduled hearing which petitioner's counsel had failed to attend.[13] Petitioner deposited[14] with the Clerk of Court the amount of ₱17,500.00 equivalent to one hundred percent (100%) of the current zonal value of the property

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municipal and agricultural uses for residents and lands within the boundaries of such districts, (b) providing, maintaining and operating waste-water collection, treatment and disposal facilities, and (c) conducting such other functions and operations incidental to water resource development, utilization and disposal within such districts, as are necessary or incidental to said purpose.

[7] *Rollo*, pp. 112-116.

[8] P.D. No. 198, Sec.. 25, as amended.

Section 25. *Authorization*. –The district may exercise all the powers which are expressly granted by this Title or which are necessarily implied from or incidental to the powers and purposes herein stated. For the purpose of carrying out the objectives of this Act, a district is hereby granted the power of eminent domain, the exercise thereof shall, however, be subject to review by the Administration.

[9] *Rollo*, p. 118.

[10] *Id.* at 95; Letter dated 28 February 2005.

[11] *Id.* at 102-106.

[12] Records, pp. 49-50.

[13] *Rollo*, p. 40.

[14] *Id.* at 56; Official Receipt No. 5908819 dated 16 March 2005.

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which the Bureau of Internal Revenue had pegged at ₱3,500.00 per square meter.[15] Subsequently, the trial court granted the motion[16] and issued the writ of possession.[17] Respondent moved for reconsideration but the motion was denied.[18]

Respondent filed a petition[19] for *certiorari* under Rule 65 with the Court of Appeals. It sought the issuance of a temporary restraining order (TRO) which the Court of Appeals granted.[20] Thus, petitioner was not able to gain entry to the lot.[21]

On 26 July 2006, the Court of Appeals rendered the assailed decision[22] granting respondent's petition. It ruled that the board resolution which authorized the filing of the expropriation complaint lacked exactitude and particularity which made it invalid; that there was no genuine necessity for the expropriation of the five (5)-square meter lot and; that the reliance on Republic Act (R.A.) No. 8974 in fixing the value of the property contravenes the judicial determination of just compensation. Petitioner moved[23] for reconsideration but the motion was rejected.[24]

Hence, this petition.

The issues raised by petitioner can be summarized as follows:

1. Whether there was sufficient authority from the petitioner's board of directors to institute the expropriation complaint; and

2. Whether the procedure in obtaining a writ of possession was properly observed.

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[15] *Id.* at 117.

[16] *Id.* at 57-58; Order dated 1 April 2005.

[17] *Id.* at 98-100.

[18] *Id.* at 97.

[19] *Id.* at 233-278.

[20] *Id.* at 82-83; Dated 28 June 2005.

[21] *Id.* at 44.

[22] *Supra* note 2.

[23] *Id.* at 37-45; Dated 23 August 2006.

[24] *Supra* note 3.

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Eminent domain is the right of the state to acquire private property for public use upon payment of just compensation.[25] The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government. Its exercise is proscribed by only two Constitutional requirements: first, that there must be just compensation, and second, that no person shall be deprived of life, liberty or property without due process of law.[26]

As an inherent sovereign prerogative, the power to expropriate pertains to the legislature. However, Congress may, as in fact it often does, delegate the exercise of the power to government agencies, public officials and quasi-public entities. Petitioner is one of the numerous government offices so empowered. Under its charter, P.D. No. 198, as amended,[27] petitioner is explicitly granted the power of eminent domain.

On 7 November 2000, Congress enacted R.A. No. 8974, entitled "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes." Section 2 thereof defines national government projects as follows:

Sec. 2. *National Government Projects*. — The term "national government projects" shall refer to all national government infrastructure, engineering works and service contracts, **including projects undertaken by government-owned and -controlled corporations**, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of source of funding." (emphasis ours)

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[25] 1987 CONST., Art. III, Sec. 9.

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

[26] *Barangay Sindalan, San Fernando, Pampanga v. Court of Appeals*, G.R. No. 150640, 22 March 2007, 518 SCRA 649.

[27] *Supra* note 8.

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R.A. No. 8974 includes projects undertaken by government owned and controlled corporations,[28] such as petitioner. Moreover, the Implementing Rules and Regulations of R.A. No. 8974 explicitly includes water supply, sewerage, and waste management facilities among the national government projects covered by the law.[29] It is beyond question, therefore, that R.A. No. 8974 applies to the expropriation subject of this case.

The Court of Appeals held that the board resolution authorizing the expropriation lacked exactitude and particularity. It described the board resolution as akin to a general warrant in criminal law and as such declared it invalid. Respondent reiterates the same argument in its comment and adds that petitioner's exercise of the power of eminent domain was not reviewed by the LWUA.

A corporation does not have powers beyond those expressly conferred upon it by its enabling law. Petitioner's charter provides that it has the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in it.[30] All the powers, privileges, and duties of the district shall

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[28] *Rollo*, p. 84.

[29] Implementing Rules and Regulation of R.A. No. 8974 (2001).

Sec. 2 Definition of Terms—

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(d) National government projects—based on Section 2 of the Act, refer to all national government infrastructure, engineering works, and service contracts, including all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-Transfer Law x x x these projects shall include, but not limited, to x x x water supply, sewerage and waste management facilities x x x

[30] P.D. No. 198, Sec. 6, as amended,

Sec. 6. *Formation of District.*—This Act is the source of authorization and power to form and maintain a district. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act.

x x x x x x x x x

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be exercised and performed by and through the board and that any executive, administrative or ministerial power may be delegated and redelegated by the board to any of its officers or agents for such purpose.[31] Being a corporation, petitioner can exercise its powers only through its board of directors.

For petitioner to exercise its power of eminent domain, two requirements should be met, namely: first, its board of directors passed a resolution authorizing the expropriation, and; second, the exercise of the power of eminent domain was subjected to review by the LWUA. In this case, petitioner's board of directors approved on 27 February 2004, Board Resolution No. 015-2004[32] authorizing its general manager to file expropriation and other cases. Moreover, the LWUA did review and gave its stamp of approval to the filing of a complaint for the expropriation of respondent's lot. Specifically, the LWUA through its Administrator, Lorenzo H. Jamora, wrote petitioner's manager, Armando H. Paredes, a letter dated 28 February 2005[33] authorizing petitioner to file the expropriation case "against the owner of the five-square meter portion of Lot No. 921-A covered by TCT No. 168805, pursuant to Section 25 of P.D. No. 198, as amended."

The letter not only explicitly debunks respondent's claim that there was no authorization from LWUA but it also identifies the lot sought to be expropriated with sufficient particularity.

It is settled that the validity of a complaint may be questioned immediately upon its filing through a motion to dismiss or raised thereafter as an affirmative defense. However, there is no need to further belabor the issue since

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[31] P.D. No. 198, Sec. 17, as amended.

Sec. 17. *Performance of District Powers.*–All powers, privileges, and duties of the district shall be exercised and performed by and through the board: Provided, however, that any executive, administrative or ministerial power shall be delegated and redelegated by the board to officers or agents designated for such purpose by the board.

[32] *Rollo*, p. 118.

[33] *Id.* at 95.

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it is established that petitioner has the legal capacity to institute the expropriation complaint.

Anent the second issue involving the issuance of a writ of possession, a discussion on the various stages in an expropriation proceeding is necessary.

The general rule is that upon filing of the expropriation complaint, the plaintiff has the right to take or enter into possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation. An exception to this procedure is provided by R.A. No. 8974.[34] It requires the payment of one hundred percent (100%) of the zonal value of the property to be expropriated to entitle the plaintiff to a writ of possession.

In an expropriation proceeding there are two stages, first, is the determination of the validity of the expropriation, and second is the determination of just compensation.[35] In *Tan v. Republic*,[36] we explained the two (2) stages in an expropriation proceeding to wit:

(1) 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, with 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 payment of just compensation. An order of expropriation is final. An order of dismissal, if this be ordained, would be a final one, as it finally disposes of the action and leaves nothing more to be done by the courts on the merits. The order of expropriation would also be a final one for after its issuance, no objection to the right of condemnation shall be heard. The order of expropriation may be appealed by any party aggrieved thereby by filing a record on appeal.

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[34] Infra note 42.

[35] *Republic v. Phil-Ville Development and Housing Corporation,* G.R. No. 172243, 26 June 2007, 525 SCRA 776.

[36] *Tan v. Republic* G.R. No. 170740, 25 May 2007, 523 SCRA 203.

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(2) Determination by the court of the just compensation for the property sought to be taken with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before the court and findings of the commissioners would likewise be a final one, as it would leave nothing more to be done by the court regarding the issue. A second and separate appeal may be taken from this order fixing the just compensation.[37]

Thus, the determination of the necessity of the expropriation is a justiciable question which can only be resolved during the first stage of an expropriation proceeding. Respondent's claim that the expropriated property is too small to be considered for public use can only be resolved during that stage.

Further, the Court of Appeals ruled that Section 4 of R.A. No. 8974 runs counter to the express mandate of Section 2 of Rule 67.[38] It held that the law undermined the principle that the determination of just compensation is a judicial function.

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[37] *Id.* at 211-212. Citing *Municipality of Biñan v. Garcia*, G.R. No. 69260, 22 December 1989, 180 SCRA 576; *National Power Corp. v. Jocson*, G.R. Nos. 94193-99, 25 February 1992, 206 SCRA 520. See also *Lintag v. National Power Corporation*, G.R. No. 158609, 27 July 2007, 528 SCRA 287, 297.

[38] RULES OF COURT, Rule 67, Sec. 2.

Sec.2 *Entry of plaintiff upon depositing value with authorized government depositary*.—Upon filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.

If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.

After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties.

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However, this Court has already settled the issue. In *Republic v. Gingoyon*,[39] this Court held that:

> It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects.
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> x x x x x x x x x
>
> It likewise bears noting that the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of Rep. Act No. 8974. Specifically, this prescribes the new standards in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the manner of payment thereof.
>
> At the same time, Section 14 of the Implementing Rules recognizes the continued applicability of Rule 67 on procedural aspects when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court.[40]

R.A. No. 8974 does not take away from the courts the power to judicially determine the amount of just compensation. The law merely sets the minimum price of the property as the provisional value. Thus, the amount of just compensation must still be determined by the courts according to the standards set forth in Section 5[41] of R.A. No. 8974.

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[39] G.R. No. 166429, 19 December 2005, 478 SCRA 474, 519.

[40] *Id.* at 519-520. Cited in *National Power Corporation v. Co*, G.R. No. 166973, 10 February 2009.

[41] Sec. 5 *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*.—In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

(c) The value declared by the owners;

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R.A. No. 8974 provides a different scheme for the obtention of a writ of possession. The law does not require a deposit with a government bank; instead it requires the government to immediately pay the property owner.[42] The provisional character of this payment means that it is not yet final, yet, sufficient under the law to entitle the Government to the writ of possession over the expropriated property.[43] The provisional payment is a

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(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f) The size, shape, or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

[42] R.A. No. 8974, Sec. 4.

Sec. 4. *Guidelines for Expropriation Proceedings*.—Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;

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Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

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[43] *Resolution* denying Motion for Reconsideration in *Republic v. Gingoyon*, G.R. No. 166429, 1 February 2006, 481 SCRA 457, 467.

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prerequisite[44] and a trigger[45] for the issuance of the writ of possession. In *Gingoyon*,[46] we held that:

> It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects.[47]
>
> x x x x x x x x x
>
> Rep. Act. No. 8974 is plainly clear in imposing the requirement of immediate prepayment, and no amount of statutory deconstruction can evade such requisite. It enshrines a new approach towards eminent domain that reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity. While expropriation proceedings have always demanded just compensation in exchange for private property, the previous deposit requirement impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed. Under the new modality prescribed by Rep. Act. No. 8974, the private owner sees immediate monetary recompense, with the same degree of speed as the taking of his/her property.[48]

Petitioner was supposed to tender the provisional payment directly to respondent during a hearing which it had failed to attend. Petitioner, then, deposited the provisional payment with the court. The trial court did not commit an error in accepting the deposit and in issuing the writ of possession. The deposit of the provisional amount with the court is equivalent to payment.

Indeed, Section 4 of R.A. No. 8974 is emphatic to the effect that "upon compliance with the guidelines…the court **shall** immediately issue to the implementing agency an order to take possession of the property and start the implementation of the

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[44] *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*, G.R. No. 169453, 6 December 2006, 510 SCRA 590, 617.

[45] *Supra* note 43 at 469.

[46] G.R. No. 166429, 19 December 2005, 478 SCRA 474, 519.

[47] *Id.* at 519. Cited in *National Power Corporation v. Co*, G.R. No. 166973, 10 February 2009.

[48] *Id.* at 531-532.

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project."[49] Under this statutory provision, when the government, its agencies or government-owned and controlled corporations, make the required provisional payment, the trial court has a ministerial duty to issue a writ of possession. In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*,[50] we held that:

> Upon compliance with the requirements, a petitioner in an expropriation case…is entitled to a writ of possession as a matter of right and it becomes the **ministerial duty** of the trial court to forthwith issue the writ of possession. No hearing is required and the court neither exercises its discretion or judgment in determining the amount of the provisional value of the properties to be expropriated as the legislature has fixed the amount under Section 4 of R.A. No. 8974.[51] (emphasis ours)

It is mandatory on the trial court's part to issue the writ of possession and on the sheriff's part to deliver possession of respondent's property to petitioner pursuant to the writ.

WHEREFORE, the Court of Appeals' Decision dated 26 July 2006 and Resolution dated 28 September 2006 are *REVERSED*. The *ORDERS* of the Regional Trial Court dated 01 April 2005 and 9 May 2005 are hereby *REINSTATED*. The Regional Trial Court is further *DIRECTED* to immediately *REMIT* the amount of ₱17,500.00 to respondent and to *REQUIRE* the sheriff to implement the writ of possession. The case is *REMANDED* to the trial court for further proceedings.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

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[49] *Supra* note 42.

[50] *Supra* note 44.

[51] *Id.* at 602.