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**SO ORDERED.**

*Teehankee, Acting C.J. (Chairman), Makasiar, Fernandez, De Castro,* and *Melencio Herrera JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. L-35861. October 18, 1979]

**MUNICIPALITY OF DAET,** *petitioner, vs.* **COURT OF APPEALS and LI SENG GIAP & CO., INC.,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; STATE; INHERENT POWERS; EMINENT DOMAIN; JUST COMPENSATION; FUNCTION AND POWER OF THE COMMISSIONERS OF APPRAISALS.**— As to the extent of this function and power of the commissioners, this Court held in *Manila Railroad Company vs. Velasquez* that the commissioners' power is limited to assessing the value and determining the amount of damages. There it stops; they can go no farther. The value and damages awarded must be a just compensation and no more and no less. But in fixing these amounts, the commissioners are not to act *ad libitum*. They are to discharge the trust reposed in them according to well-established rules and form their judgment upon correct legal principles. To deny this is to place them where no one else in this country is placed, above the law and beyond accountability.

**2. ID.; ID.; ID.; ID.; REPORTS SUBMITTED BY COMMISSIONERS OF APPRAISALS IN CONDEMNATION PROCEEDINGS ARE NOT BINDING, BUT MERELY ADVISORY IN CHARACTER.**— It has been held that reports submitted by commissioners of appraisals in condemnation proceedings are not binding, but merely advisory in character, as far as the court is concerned. An early case enunciated the rule that a Court of First Instance has the undoubted right to reject the report of the commissioners as to the value of the land, if the report is not founded upon

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legal evidence. The judge has the undoubted right also to discharge the commission and appoint a new one. He also has the right to formulate an opinion of his own as to the value of the land in question, nevertheless, if he formulates such an opinion, he must base it upon competent evidence. When the commissioners' report is not in accordance with the law on the matter, another case ruled that it cannot serve as the basis of the judicial decision but must be annulled and set aside, and the case remanded to the court below for reopening of trial. Then, in still other cases, it was held that a Court of First Instance or on appeal, the Supreme Court may substitute its own estimate of value as gathered from the record submitted to it, in cases where the only error of the commissioners is that they have applied illegal principles to the evidence submitted to them; or that they have disregarded a clear preponderance of evidence; or that they have used an improper rule of assessment in arriving at the amount of the award; provided always that the evidence be clear and convincing and the amount allowed by the commissioners is grossly inadequate or excessive.

3. ID.; ID.; ID.; ID.; ID.; P.D. NO. 42 DOES NOT LIMIT THE JUST COMPNESATION IN EXPROPRIATION PROCEEDINGS TO THE ASSESSED VALUE OF THE VALUE SOUGHT TO BE CONDEMNED.— Presidential Decree No. 42 issued on November 9, 1972 does not limit the just compensation in expropriation proceedings to the assessed value of the value sought to be condemned. By its title alone, *i.e.*, "Authorizing the Plaintiff in Eminent Domain Proceedings to Take Possession of the Property Involved Upon Depositing the Assessed Value for Purposes of Taxation," it can already be gleaned that said decree fixes only the provisional value of the property. As a provisional value, "it does not necessarily represent the true and correct value of the land. The value is only 'provisional' or 'tentative' to serve as the basis for the immediate occupancy of the property being expropriated by the condemnor." Clearly, therefore, the assessed value of a property constitutes only a percentage of its current fair market value. It cannot, thus, be the direct basis of just compensation in expropriation proceedings.

4. ID.; ID.; ID.; ID.; ID.; REQUIREMENT OF DEPOSIT; PURPOSE.— We hold that petitioner has not made the correct and proper deposit of the provisional value as fixed by the trial court. It is elementary that Presidential Decree No. 42 of November 9,

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1972 which grants the right to take or enter upon the possession of the property sought to be expropriated if he deposits with the Philippine National Bank an amount equivalent to the assessed value of the property for purposes of taxation has no application to the case at bar where the Court of Appeals had already fixed the value of the property at ₱200.00 per square meter and ₱36,500.00 for the improvement in its decision promulgated on October 18, 1972 about three weeks earlier than the issuance of the Presidential Decree No. 42. Petitioner upon filing the complaint has the duty to make the deposit in the amount provisionally ascertained and fixed by the court (Sec. 2, Rule 67, Rules of Court), which deposit serves the double purpose of pre-payment of the property if the same is finally expropriated and of an indemnity for damages if the proceedings are dismissed.

5. **ID.; ID.; ID.; ID.; ID.; VALUE SHOULD BE FIXED AS OF THE TIME OF THE TAKING.**— The value should be fixed as of the time of the taking of the possession of the property because firstly, at the time judgment was rendered on December 2, 1969, petitioner had not actually taken possession of the property sought to be expropriated and secondly, We find the valuation determined by the Court of Appeals to be just, fair and reasonable.

6. **REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; OPINION RULE; SINCE THE VALUE OF A PARCEL OF LAND TAKEN BY EMINENT DOMAIN IS ALWAYS A MATTER OF OPINION, THE SAME MAY BE PROVED BY OPINION EVIDENCE OF THE REAL ESTATE APPRAISER.**— Respondent court found that aside from being a civil engineer, Aurelio B. Aquino is a licensed real estate broker and appraiser of long standing, being one of the incorporators of C.M. Hoskins and Co., Inc., a corporation engaged in real estate brokerage since October, 1938 and of which firm he is presently the Chairman of the board of directors. With these qualifications, respondent court committed no error in concluding that he was competent to make the appraisal of the fair market value of the parcel of land under consideration. Although he does not maintain an office in Daet nor does he appear to have had any transactions in said locality, he is competent since a commercial parcel of land retains the same characteristics whether it is located in Manila or Daet, and the criterion for making an appraisal of a parcel of land is universally applied, irrespective

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of the locality where it is situated. And since the value of a parcel of land taken by eminent domain is always a matter of opinion, the same may be proved by opinion evidence of the real estate appraiser.

7. **ID.; CIVIL PROCEDURE; COURTS OF FIRST INSTANCE; JURISDICTION; RULE IN CASE THE COURT IS DIVIDED INTO SEVERAL BRANCHES.**— Where a court of first instance is divided into several branches, each of the branches is not a court distinct and separate from the others. Jurisdiction is vested in the court, not in the judges, so that when a complaint or information is filed before one branch or judge, jurisdiction does not attach to said branch or judge alone, to the exclusion of the others. Trial may be had or proceedings may continue by and before another branch or judge.

8. **ID.; ID.; ID.; ID.; EFFECT OF APPORTIONMENT OF CASES.**— It is for this reason that Section 57 of the Judiciary Act, expressly grants the Minister of Justice, upon recommendation of the district Judge, the administrative right or power to apportion the cases among the different branches, both for the convenience of the parties and the coordination of the work by the different branches, and the judges presiding each branch. The apportionment does not involve a grant or limitation or jurisdiction; this continues to be vested in the court of first instance of the province as a whole, and trial may be had by any judge or branch of the court.

9. **ID.; ID.; JUDGMENT; *RES JUDICATA*; REQUISITES.**— In order that there may be *res judicata*, the following requisites must be present: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction of the subject-matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, of subject matter, and of cause of action.

10. **ID.; ID.; ID.; ID.; EFFECTS**— When, between the first case where the judgment was rendered, and the second case where such judgment is invoked, the three identities mentioned in paragraph (d) above, are present, the judgment on the merits rendered in the first case constitutes an absolute bar to the subsequent action. It is final as to the claim or demand in the controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible

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matter which might have been offered for that purpose and of all matters that could have been adjudged in that case.

**11. ID.; ID.; ID.; ID.; TO CONSTITUTE *RES JUDICATA*, THE RIGHT TO RELIEF IN ONE SUIT MUST REST UPON THE SAME QUESTION WHICH IN ESSENCE AND SUBSTANCE WAS LITIGATED AND DETERMINED IN THE FIRST SUIT.**— The only question drawn in issue before the Court of Appeals in CA-G.R. No. 32259-R was whether petitioner had the authority to exercise the right of eminent domain. The question regarding the amount of just compensation was expressly reserved by the Court of Appeals for the trial court to determine. Perforce, between the first case wherein the judgment is rendered, and the second case wherein such judgment is invoked, there is identity of parties but there is no identity of causes of action. In such a situation, the judgment is conclusive in the second case only to those matters actually and directly controverted and determined, and not as to matters merely involved therein. To constitute *res judicata*, the right to relief in one suit must rest upon the same question which in essence and substance was litigated and determined in the first suit.

**12. ID.; ID.; ID.; LAW OF THE CASE; NATURE.**— The law of the case, as applied to a former decision of an appellate court, merely expresses the practice of the courts in refusing to reopen what has been decided. It differs from *res judicata* in that the conclusiveness of the first judgment is not dependent upon its finality. The first judgment is generally, if not universally, not final. It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case. While it is conclusive as to all matters within its scope, it cannot be invoked, except as to questions as have been actually considered and determined in the first appeal. In the application of this rule, courts will take cognizance of such points only as affirmatively appears in the last to have been decided in the former appeal.

**13. ID.; ID.; ID.; FINALITY OF JUDGMENT; EFFECT.**— This case is before the Supreme Court and being the Court of last resort, it is the final arbiter of all legal questions properly brought before it and its decision in any given case constitutes the law of this particular case. Once Our judgment becomes final, it is binding on all inferior courts, and hence beyond their power and authority to alter or modify.

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## DECISION

**GUERRERO, *J.*:**

The judgment of the respondent Court of Appeals, subject of the instant petition to review on *certiorari*, "fixing the fair market value of the property sought to be expropriated at ₱200.00 per square meter or for a total of FIVE HUNDRED FORTY THREE THOUSAND FOUR HUNDRED (₱543,400.00) PESOS, and the value of the improvement thereon at THIRTY SIX THOUSAND FIVE HUNDRED (₱36,500.00) PESOS, Philippine Currency, both amounts to bear legal interest from and after the date of the actual taking of possession by the Municipality of Daet, Camarines Norte until the full amount is paid, with costs against plaintiff-appellant," must be affirmed in the light of the unusual, unique and abnormal circumstances obtaining in this case where the complaint for condemnation was filed on August 9, 1962 or seventeen (17) years ago but up to the present, the petitioner Municipality of Daet has failed to make the deposit required to take possession of the property sought to be expropriated.

The Municipality of Daet instituted condemnation proceedings against private respondent Li Seng Giap & Co., Inc. on August 9, 1962 before the Court of First Instance of Camarines Norte for the purpose of acquiring and subsequently converting the following described property owned by private respondent as a public park:

"A parcel of land (Lot No. 3 Plans PSU-57331 situated in the Poblacion, Municipality of Daet, bounded on the North-East by a provincial road known as Vinzons Avenue; on the South-East, by Felipe II Street; on the South, by Ildefonso Moreno Street, and on the West, by J. Lukban Street, covering an area of TWO THOUSAND SEVEN HUNDRED AND SEVENTEEN (2,717 sq. meters) SQUARE METERS, more or less and assessed at ₱54,370.00 under Tax Declaration No. 11683 and covered by TRANSFER CERTIFICATE OF TITLE NO. 207 in the name of Li Seng Giap & Co."[1]

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[1] Record on Appeal, pp. 2-3.

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On August 20, 1962, private respondent, having been served with summons through counsel, filed a "Motion to Dismiss" on the following grounds:

"1. The proposed expropriation has not been duly authorized as provided by law, principally because it has not been approved by the Office of the President as required by Section 2245 of the Revised Administrative Code;

2. There is no genuine necessity for the proposed expropriation of the defendant's property;

3. The proposed park could be put up in a different site which would entail less expense to the plaintiff;

4. The present expropriation proceeding instituted by the herein plaintiff against the defendant is discriminatory;

5. The plaintiff does not have sufficient funds to push through its project of constructing a park and to allow the plaintiff to expropriate defendant's property this time would be only to needlessly deprive the latter of the use of its property."[2]

On February 8, 1963, the trial court rendered a decision dismissing the expropriation proceedings mainly on the grounds that there is no "genuine need" for the petitioner to convert the aforestated lot into a park nor necessity to widen the streets and that even if there is genuine necessity for the proposed expropriation, still the petitioner cannot, in this case, exercise the power of eminent domain as it has no funds to pay the reasonable value of the land and the building thereon.[3]

On February 12, 1963, petitioner filed a motion for reconsideration which was denied on February 27, 1963. Petitioner then appealed to the Court of Appeals, which appeal was docketed as CA-G.R. No. 32-259-R. On April 14, 1968, the Court of Appeals rendered a decision reversing the trial court's decision, the dispositive portion of which is as follows:

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[2] *Ibid.*, pp. 5-6.

[3] *Ibid.*, p. 50.

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"WHEREFORE, the appealed 'decision' (order) in Civil Case No. 1436 for expropriation is hereby reversed and set aside, and, in lieu thereof, another one is hereby rendered denying defendant Li Seng Giap & Company's motion to dismiss; declaring that plaintiff Municipality of Daet has a lawful right to take the property sought to be condemned, for the public use described in the complaint, upon payment of just compensation to be determined as of the date of the filing of the complaint; directing the court *a quo* to promptly fix the provisional value of the property sought to be condemned for the purpose of the motion of plaintiff Municipality of Daet to take immediate possession of said property under Sec. 2 of Rule 67 (formerly Sec. 3 of Rule 69) of the Rules of Court; and remanding the case to the court a quo for further proceedings consistent with this decision, the costs in this appeal to be taxed against plaintiff Municipality of Daet in accordance with Sec. 12 of Rule 67 (formerly Sec. 13 of Rule 69) of the Rules of Court; x x x"[4]

On March 20, 1969, after the records of the case were remanded to the trial court, private respondent filed a "Motion for Appointment of Commissioners to Fix Just Compensation for the Property Sought to be Taken."

On April 15, 1969, the trial court issued twin orders: (1) fixing the provisional value of the land at ₱120.00 per square meter and the value of the improvement at ₱30,000.00 totalling ₱356,040.00 and require the Municipality to deposit with the Provincial Treasurer in cash or in security which should be payable on demand and upon deposit being effected, the Clerk of Court was ordered to issue the necessary writ of place the Municipality in possession of the property; and (2) appointing Atty. Ernesto de Jesus, Provincial Assessor, as chairman; Atty. Jose V. Jamito, PNB Branch Attorney and Dr. Mateo Aquino, a resident of the municipality, as members of the committee on appraisal. The committee members proceeded to qualify by taking their oaths of office and then held three sessions on May 10, May 17 and May 24, 1969. On May 28, 1969, the committee filed the following report:

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[4] *Ibid.*, pp. 79-80.

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"COMMISSIONERS' REPORT

In compliance with the order of this Honorable Court dated April 15, 1969, and pursuant to the provisions of Sec. 6, Rule 67 of the Rules of Court, the undersigned commissioners, with due notice to the counsels of both parties, convened in the morning of May 10, 1969, for the purpose of finding ways and means by which the commissioners could ascertain the fair market value of the property subject of this proceeding. There are two basic approaches used in the appraisal of land sought to be condemned — the sale approach, and the income approach. The commissioners as well as the counsels of both parties agreed to use the sale approach. In order to enable the counsels of both parties, as well as the commissioners, to gather or secure documents regarding transactions of real property which the commissioners might use as guide in determining the fair market value, the parties agreed to postpone the hearing to May 17, 1969, at 6:30 in the morning.

Hearing was resumed in the morning of May 17, forthwith, the counsel for the plaintiff presented documents which were submitted as Exhibits, to wit:

1. Exh. "A" — Deed of absolute sale executed by Lydia Moreno in favor of Jaime R. Alegre, entered as Doc. No. 160; Page No. 33; Book No. IV; Series of 1962. (The consideration was about ₱13.00 per square meter)

2. Exh. "B" — Deed of absolute sale executed by Jesus Villafranca *y* Aules in favor of Southern Products Import and Export Corporation, entered as Doc. No. 314; Page No. 64; Book No. II; Series of 1962. (The consideration was around ₱14.00 per square meter)

3. Exh. "C" — Deed of absolute sale executed by Julio Curva, *et al.* in favor of Felicidad Vinzons Pajarillo, entered as Doc. No. 186; Page No. 39; Book No. 1; Series of 1958. (The consideration was ₱15.00 per square meter)

4. Exh. "D" — Deed of Absolute Sale executed by Clao Dy Kim To in favor of Concepcion Fonacier-Abañio, entered as Doc. No. 133; Page No. 88; Book No. V; Series of 1948. (The consideration was about ₱8.57 per square meter)

5. Exh. "E" — Deed of sale with mortgage executed by Dr. Agustin F. Cuevas and Leticia Lopez, in favor of the Camarines Norte

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Teachers Cooperative Credit Union, Inc., entered as Doc. No. 117; Page No. 56; Book No. VIII; Series of 1961. (The consideration was ₱57,000.00 — the lot with an area of 972 square meters, and a three-storey concrete building assessed at ₱16,000.00 under Tax Dec. No. 7083. If we will exclude the value of the building, the consideration for the land will be about ₱43.00 per square meter)

After the submission of the aforementioned exhibits, upon motion of the counsel for the defendant, the hearing was postponed to May 24, 1969, at 8:30 in the morning. Upon resumption of the hearing on said hour and date, the counsel for the defendant presented Exh. 1, which is the deed of sale executed by the Municipality of Daet in favor of the Development Bank of the Philippines; the document was executed on January 30, 1969; Exh. "1-A", the consideration in the amount of ₱205,600.00; Exh. "1-B", the area of 2,056 square meters; and Exh. "2", the letter of Tomas Cootauco to Li Seng Giap & Co., dated July 21, 1962. In addition to the aforementioned evidence, the counsel for the defendant presented as witness Lo Chin who testified that sometime in July, 1962 (after the fire), he was instructed by his son-in-law, Mr. Jesus Ty Poco, to see Mr. Jose Ong, the representative of Mr. William Lee, for the purpose of making an offer to buy the land subject of this proceeding for a price of ₱120.00 per square meter, and ₱30.000.00 for the structure thereon; that he had talked with Mr. William Lee, for the purpose of making an offer to buy the land subject of this proceeding for a price of ₱120.00 per square meter, and ₱30.000.00 for the structure thereon; that he had talked with Mr. Jose Ong, for the same purpose, on several occasions 5 or 6 times, the last was sometime in the first week of May, this year wherein he offered to pay as high as ₱150.00 per square meter, and ₱50,000.00 for the structure thereon; and that Mr. Ty Poco, having been born in Mercedes, and resided here since birth, was desirous of buying said property because he intends to build a memorial thereon. Counsel likewise presented Mr. Jose Ong as witness to corroborate the testimony of Lo Chin.

After the hearing held by the commissioners, Atty. Ernesto de Jesus, who is the incumbent provincial assessor, dig up the records in his office for the purpose of finding, in addition to the exhibits already presented, other documents covering transactions of properties located within the areas near the land sought to be condemned, but failed to locate even a single document. Hence, the commissioners have no other recourse but to base their appraisal of the value of the land under consideration from the Exhibits submitted by the parties.

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Under Sec. 4, Rule 67, of the Rules of Court, just compensation is to be determined as of the date of the filing of the complaint. The above entitled complaint was filed in August, 1962; hence, Exh "1", Exh. "1-B" and Exh. "1-C" could not be taken into consideration, the same having been executed in the year 1969 — seven years after the filing of the complaint. The offer of Mr. Jesus Ty Poco could not also be considered because the same was made by one who was under an imperative necessity of buying the property.

After all the exhibits submitted by the plaintiff had been examined by the commissioners, and upon a conscientious and analytical study of the sales of land near the land subject of this proceeding, and after serious deliberations on the matter, the commissioners agreed that, in the year 1962, the reasonable or fair market value of the land subject of this proceeding should be P60.00 per square meter; and the structure remaining thereon at ₱15,000.00.

Attached hereto is the map of the commercial center of Daet wherein the land subject of this case is shown. The lands described in the Exhibits submitted by the plaintiff are also indicated thereon.

Daet, Camarines Norte, May 28, 1969.

Respectfully submitted,

(Sgd.) Ernesto de Jesus
Commissioner

(Sgd.) Jose V. Jamito
Commissioner

(Sgd.) Mateo D. Aquino
Commissioner"[5]

Private respondent, having received copy of the commissioners' report, filed a "Motion to Admit Additional Evidence" which was opposed by petitioner but the same was granted by the Court provided that the additional evidence consisted of the expert testimony of a duly licensed broker. On August 20, 1969, the municipality manifested its conformity to the commissioners' report.

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[5] *Ibid.*, pp. 80-85.

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Meanwhile, on July 23, 1969, Judge Gabriel V. Valero, the Presiding Judge at Branch I, issued an order transferring this case to Judge Isidoro Vera of Branch II, who proceeded to take the additional evidence of private respondent. Said evidence consisted of the testimony of Engineer Aurelio B. Aquino, who appraised the land involved herein at ₱200.00 per square meter and the improvement thereon at ₱36,500.00 in 1969.

On December 2, 1969, after submission of evidence for both parties, the trial court rendered a decision disregarding the valuation made by the commissioners and using the appraisal of Engineer Aurelio B. Aquino in 1969 as the basis in determining the value of the land in 1962. The dispositive portion of said decision is quoted herein as follows:

"WHEREFORE, the Court renders judgment firing the reasonable value of the property sought to be expropriated at ₱117.00 per square meter or for a total amount of Three Hundred Seventeen Thousand Eight Hundred Eighty Nine Pesos (₱317,889.00), and the value of the improvement at Thirty Six Thousand Five Hundred Pesos (₱36, 500.00), this amount to bear interest at the legal rate from the filing of the complaint until paid with costs against the plaintiff.

SO ORDERED."[6]

Both petitioner and private respondent filed their respective motions for reconsideration, the former praying that the trial court give due course to the commissioners' report while the latter insisting that the market value of the land be fixed at ₱200.00 per square meter. Upon denial of the said motions, both parties then appealed to the Court of Appeals.

On October 18, 1972, respondent Court of Appeals rendered a decision sustaining the valuation of the property in 1969, declaring the municipality to have a lawful right to expropriate and modified the judgment of the trial court with respect to the interest that can be recovered which should be from and after the date of actual taking.

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[6] *Ibid.*, pp. 103-104.

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Petitioner's motion for reconsideration having been denied, the instant petition for review on *certiorari* was filed and the following assignment of errors raised:

I. Contrary to law and jurisprudence, the Court of Appeals erred in the interpretation and application of Section 4, Rule 67 of the Rules of Court by determining the value of the property in condemnation proceedings at the time of the rendition of the judgment of the trial court and not at the date of the filing of the complaint.

II. Contrary to the principle of *res judicata*, the Court of Appeals gravely abused its power in modifying, disregarding and amending its own decision which has long become final and executory (in CA-G.R. No. 32259-R).

III. Without regard to the guidelines set forth by procedural laws and jurisprudence, the Court of Appeals erred in giving credence to an appraiser under the employ of the private respondent and totally disregarded the findings of the commissioners appointed by the Court and by not declaring that the trial judge of Branch II of the Court of First Instance of Camarines Norte has gravely abused his discretion in taking cognizance of the condemnation case.

IV. In any event, by virtue of the Presidential Decree No. 42 issued on November 9, 1972, private respondent is estopped from claiming a valuation higher than the assessed value of the property sought to be condemned.[7]

The first assignment of error assails the respondent Court's application of Section 4, Rule 67 of the Revised Rules of Court which states the time when the value of the land should be determined in condemnation proceedings. The Rule provides thus:

"Sec. 4. Order of condemnation. — When such a motion is overruled or when any party fails to defend as required by this rule, the court may enter an order 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 payment of just compensation to be determined as of the date of the filing of the complaint. x x x"

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[7] Brief for Petitioner, pp. 1-3.

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A look into the origin of this provision reveals that it is a reproduction of Section 5, Rule 69 of the Rules of Court of July 1, 1940. In turn, the said provision in the Rules of 1940 appears to have been taken from the ruling in *Manila Railroad Company vs. Caligsihan*,[8] a 1919 case, where the rule that "the value of the property taken should be fixed as of the date of the proceedings" was enunciated.

Prior to the promulgation of the Rules of 1940, however, there is another case that touched on the question of time when valuation of the property taken should be fixed. This is the case of *Provincial Government of Rizal vs. Caro de Araullo,*[9] a 1938 case, where the value of the property therein involved was fixed as of the date when it was taken in 1927 and not at the time of the filing of the complaint in 1928. This ruling was reiterated in *Republic vs. Lara,*[10] a 1954 case, where it was held that the value of the lands expropriated must be reckoned as of the time of the actual possession by the Government in 1946 and not as of the time of the filing of the complaint in 1949. Such was the ruling notwithstanding the fact that the Rules of 1940 was already in force and effect. In explaining the ruling, the Court therein held:

"x x x Ordinarily, inquiry is limited to actual market values at the time of the institution of the condemnation proceedings because under normal circumstances, the filing of the complaint coincides or even precedes the taking of the property by the plaintiff; and Rule 69 simply fixes this convenient date for the valuation of property sought to be expropriated. Where, however, the actual taking or occupation by the plaintiff, with the consent of the landowner long precedes the filing of the complaint for expropriation the rule to be followed must still be that enunciated by us in Provincial Government of *Rizal vs. Caro, supra*, that 'value of the property should be fixed as of the date when it was taken and not of the date of the filing of the proceedings.' For where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by

[8] 40 Phil. 326.

[9] 58 Phil. 308.

[10] 96 Phil. 170.

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the public purpose for which it is taken, the entry of the plaintiff upon the property may have depreciated its value thereby, or there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of the private property should be compensated only for what he actually loses, it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken. This is the only way the compensation to be paid can be truly just, *i.e.*, 'just' not only to the individual whose property is taken, 'but to the public, which is to pay for it.' (18 Am. Jur. 873, 874)"

Subsequent cases where the taking preceded the filing of the expropriation proceedings followed the doctrine in the Caro case. These cases were: *Republic vs. Garcellano, et al.*;[11] *Municipal Government of Sagay vs. Jison, et al.*;[12] and *Alfonso vs. Pasay City*.[13] However, in the case of *Republic vs. Narciso, et al.*,[14] where the expropriation proceeding preceded the taking, it was held that the value of "the property to be considered are those *at the beginning* of the expropriation" and not accordingly at the time of the taking of said property. For this reason, this Court fittingly saw the need for clarify the departure of some cases from the mandate of Section 5, Rule 69 of the Rules of Court of 1940 (now Section 4, Rule 67 of the Revised Rules of Court) in the case of *Republic of the Philippines vs. Philippine National Bank*,[15] where it was held:

"It is apparent from the foregoing that, when plaintiff takes possession *before* the institution of the condemnation proceedings, the value should be fixed as of the time of the taking of the said possession, not the filing of the complaint, and the *latter* should be the basis for the determination of the value, when the taking of the

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[11] 103 Phil. 231.

[12] 104 Phil. 1026.

[13] 106 Phil. 1017.

[14] L-6594, May 18, 1956.

[15] 1 SCRA 957.

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property involved coincides with or is *subsequent* to, the commencement of the proceedings. Indeed, otherwise, the provision of Rule 69, Section 5, directing that compensation 'be determined as of the date of the filing of the complaint,' would never be operative."

In *Capitol Subdivision, Inc. vs. Province of Negros Occidental*, 7 SCRA 60, the Court said that "Since the right of the Province of Negros Occidental to expropriate the lot in question in the present case is not contested, the owner of said lot is entitled to recover from said province the fair and full value of the lot, as of the time when possession thereof was actually taken by the province, plus consequential damages — including attorney's fees — from which the consequential benefits, if any, should be deducted with interest at the legal rate, on the aggregate sum due to the owner from and after the date of actual taking." And in the case of *J.M. Tuason & Co., Inc. vs. Land Tenure Administration*, 31 SCRA 413, the Court, speaking thru now Chief Justice Fernando, reiterated the "well-settled (rule) that just compensation means the equivalent for the value of the property at the time of its taking. Anything beyond that is more and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity."

In the case at bar, it is a fact that there has been no taking of the property prior to the institution of the condemnation proceedings. And it cannot even be said that the filing of the complaint coincided with the taking of the property by the plaintiff because the latter did not enter into possession of the property since it failed or did not comply with the order of the Court requiring the municipality to make the necessary deposit of the provisional value as fixed by the Court in its Order of April 15, 1969. Petitioner did not even move for a reconsideration of said Order. The trial proceeded and after hearing and submission of evidence for both parties, the trial court rendered on December 2, 1969 its decision "fixing the reasonable value of the property sought to be expropriated at ₱117.00 per square meter or for a total amount of Three Hundred Seventeen Thousand Eight Hundred Eighty Nine Pesos (₱317,889.00), and the value of

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the improvement at Thirty Six Thousand Five Hundred Pesos (36,500.00), said amount . . . to bear interest at the legal rate from the date of the filing of the complaint until paid."

Still questioning the value determined by the trial court, petitioner appealed to the Court of Appeals and on October 8, 1972, the appellate court in its judgment fixed the value of the property at ₱200.00 per square meter and ₱36,500.00 for the improvement. Not yet satisfied, the municipality appealed to the Supreme Court and meantime took no step to take possession of the land. While petitioner submitted a Manifestation on September 15, 1977 to this Court invoking Presidential Decree No. 42 dated November 9, 1972 and manifesting that it had made a deposit to the Philippine National Bank in the amount of ₱54,370.00 as per PNB Certificate No. 9381 dated February 9, 1973, We hold that petitioner has not made the correct and proper deposit of the provisional value as fixed by the trial court. It is elementary that Presidential Decree No. 42 of November 9, 1972 which grants the right to take or enter upon the possession of the property sought to be expropriated if he deposits with the Philippine National Bank an amount equivalent to the assessed value of the property for purposes of taxation has no application to the case at bar where the Court of Appeals had already fixed the value of the property at ₱200.00 per square meter and ₱36,500.00 for the improvement in its decision promulgated on October 18, 1972 about three weeks earlier than the issuance of the Presidential Decree No. 42.

By not complying with the orders of the trial court and the appellate court, petitioner would benefit by its non-compliance and dilly-dallying in taking possession of the property which We will not sanction or allow to the prejudice of the private respondent landowner who should not be penalized by the protracted delay of petitioner in taking over the property over a period of seventeen (17) years during which time private respondent was deprived of the beneficial use of the land and the improvement thereon. Petitioner upon filing the complaint has the duty to make the deposit in the amount provisionally ascertained and fixed by the court (Sec. 2, Rule 67, Rules of Court), which deposit serves the double purpose of pre-payment

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of the property if the same is finally expropriated and of an indemnity for damages if the proceedings are dismissed. (*Visayan Refining Co. vs. Camus*, 40 Phil. 550; *Republic of the Philippines vs. Baylosis*, L-13582, Sept. 30, 1960)

The records disclose that petitioner filed a Motion for Authority to Demolish Building of Private Respondent dated June 27, 1974 for reasons therein alleged which private respondent opposed as not being the proper procedure under the law to abate a nuisance unless petitioner deposits the amount of ₱36,500.00 which is the value of the improvement. The Court resolved to deny the motion without prejudice to petitioner's taking the proper proceedings for the abatement of the alleged nuisance pursuant to the provisions of the new Civil Code in its Resolution of July 24, 1974.

The records further disclose that in the Petition to Cite the Mayor of the Municipality of Daet (Herein Petitioner) in Contempt of Court filed by private respondent on February 14, 1978, this Court was informed that the petitioner acting thru its Mayor, Engineer Jose P. Timoner, started to demolish on February 6, 1978 the building of the private respondent, attaching thereto photographs marked Annexes 1 and 2 showing the building before and during the demolition. Private respondent prayed that the Mayor be cited for contempt or alternatively, that the petitioner be ordered to deposit with the Philippine National Bank the amount of ₱36,500.00 instead of ₱28,830.00 to await the final outcome of this case.

Commenting on the petition to cite the Mayor in contempt of court, petitioner again relies on Presidential Decree No. 42 alleging that the assessed value of the property for taxation purposes is only ₱18,250.00 which is less than the amount of ₱28,830.00 it had already deposited with the Philippine National Bank.

The above antecedent facts and circumstances of this case are unusual, unique and abnormal such that by reason thereof, We agree with the judgment of the Court of Appeals fixing the fair market value of the property sought to be expropriated at ₱200.00 per sq. meter or for a total of FIVE HUNDRED FORTY

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THREE THOUSAND FOUR HUNDRED (₱543,400.00) PESOS, and the value of the improvement thereon at THIRTY SIX THOUSAND FIVE HUNDRED (₱36,500.00) PESOS, Philippine Currency, both amounts to bear legal interest from and after the date of the actual taking of possession by the Municipality of Daet, Camarines Norte until the full amount is paid, with costs against plaintiff-appellant.

We hold that the decision of the Court of Appeals fixing the market value of the property to be that obtaining, at least, as of the date of the rendition of the judgment on December 2, 1969 as prayed by private respondent, which the Court fixed at ₱200.00 per square meter is in conformity with doctrinal rulings hereinabove cited that the value should be fixed as of the time of the taking of the possession of the property because firstly, at the time judgment was rendered on December 2, 1969, petitioner had not actually taken possession of the property sought to be expropriated and secondly, We find the valuation determined by the Court of Appeals to be just, fair and reasonable.

On the second assignment of error, petitioner faults the respondent court in modifying, disregarding and amending its own decision in CA-G.R. No. 32259-R which directed payment of just compensation to be determined as of the date of the filing of the complaint. Petitioner claims that this decision has long become final and executory and it would be contrary to the doctrine of *res judicata* to modify, disregard and amend said decision.

In order that there may be *res judicata*, the following requisites must be present: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction of the subject-matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, of subject matter, and of cause of action.[16]

[16] *Alejandrino vs. Cardona*, 70 Phil. 281; *Vda. de Nator vs. Court of Industrial Relations*, 4 SCRA 727; *Suzara vs. Caluag*, 4 SCRA 1060; *Philippine Farming Corporation, Ltd. vs. Llanos*, 14 SCRA 949; *Malvar vs. Palligayan*, 18 SCRA 121; *Suarez vs. Municipality of Naujan*, 18 SCRA 682.

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When, between the first case where the judgment was rendered, and the second case where such judgment is invoked, the three identities mentioned in paragraph (d) above, are present, the judgment on the merits rendered in the first case constitutes an absolute bar to the subsequent action. It is final as to the claim or demand in the controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case.[17]

This is, however, not the situation in the case at bar. The only question drawn in issue before the Court of Appeals in CA-G.R. No. 32259-R was whether petitioner had the authority to exercise the right of eminent domain. The question regarding the amount of just compensation was expressly reserved by the Court of Appeals for the trial court to determine. Perforce, between the first case wherein the judgment is rendered, and the second case wherein such judgment is invoked, there is identity of parties but there is no identity of causes of action. In such a situation, the judgment is conclusive in the second case only to those matters actually and directly controverted and determined, and not as to matters merely involved therein. To constitute *res judicata*, the right to relief in one suit must rest upon the same question which in essence and substance was litigated and determined in the first suit.[18]

That phrase in the dispositive portion of the decision of the Court of Appeals in CA-G.R. No. 32259-R referring to the time that should be considered in reckoning the just compensation, to wit — "declaring that plaintiff Municipality of Daet has the "lawful right to take the property sought to be condemned, for the public use described in the complaint, upon payment of just compensation *to be determined as of the date of the filing*

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[17] Sec. 49 (c), Rule 39, Revised Rules of Court; *Aguila vs. J.M. Tuason & Co.*, 22 SCRA 690; *Gonzales vs. Gonzales*, 26 SCRA 72.

[18] *In re* Aktiebolaget Kreuger & Toll, D.C. N.Y., 20 F. Supp. 964, 968.

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*of the complaint*" — cannot likewise constitute the law of the case, which is a doctrine closely akin to *res judicata*. The law of the case, as applied to a former decision of an appellate court, merely expresses the practice of the courts in refusing to reopen what has been decided.[19] It differs from *res judicata* in that the conclusiveness of the first judgment is not dependent upon its finality. The first judgment is generally, if not universally, not final. [20] It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case.[21] While it is conclusive as to all matters within its scope, it cannot be invoked, except as to questions as have been actually considered and determined in the first appeal. In the application of this rule, courts will take cognizance of such points only as affirmatively appears in the last to have been decided in the former appeal.[22]

Moreover, this case is before the Supreme Court and being the Court of last resort, it is the final arbiter of all legal questions properly brought before it and its decision in any given case constitutes the law of this particular case. Once Our judgment becomes final, it is binding on all inferior courts, and hence beyond their power and authority to alter or modify. (*Kabigting vs. Acting Director of Prisons*, 6 SCRA 281, 286). Petitioner's second assignment of error is, therefore, without merit.

The first part of the third assignment of error hinges on what is the proper procedure in determining the just compensation in expropriation proceedings.

Section 5, Rule 67 of the Revised Rules of Court calls for the appointment of not more than three (3) competent and

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[19] See *Great Western Tel. Co. vs. Burham* (1895). 162 U.S.. 339. 343: *Robert vs. Cooper* (1857). 20 How. 467. 481: *Messinger vs. Anderson* (1912). 225 U.S. 436.

[20] *Steinman vs. Clinchfield Coal Corp.*. 121 VA. 611. 620. 93 SE 684.

[21] 30 Am. Jur. 913-914.

[22] *Alerding vs. Allison*. 170 Ind.. 252. 258. 83 NE. 1006. 17 Am. Jur. SR. 363. (aff. CA) 32 NE. 934.

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disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken. As to the extent of this function and power of the commissioners, this Court held in *Manila Railroad Company vs. Velasquez*[23] that the commissioners' power is limited to assessing the value and determining the amount of damages. There it stops; they can go no farther. The value and damages awarded must be a just compensation and no more and no less. But in fixing these amounts, the commissioners are not to act *ad libitum*. They are to discharge the trust reposed in them according to well-established rules and form their judgment upon correct legal principles. To deny this is to place them where no one else in this country is placed, above the law and beyond accountability.

Corollary to this limitation, it has been held that reports submitted by commissioners of appraisals in condemnation proceedings are not binding, but merely advisory in character, as far as the court is concerned.[24] An early case enunciated the rule that a Court of First Instance has the undoubted right to reject the report of the commissioners as to the value of the land, if the report is not founded upon legal evidence. The judge has the undoubted right also to discharge the commission and appoint a new one. He also has the right to formulate an opinion of his own as to the value of the land in question, nevertheless, if he formulates such an opinion, he must base it upon competent evidence.[25] When the commissioners' report is not in accordance with the law on the matter, another case ruled that it cannot serve as the basis of the judicial decision but must be annulled and set aside, and the case remanded to the court below for reopening of trial.[26] Then, in still other cases, it was held that a Court of First Instance or on appeal, the Supreme Court may substitute its own estimate of value as gathered from the record

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[23] 32 Phil. 286, 314.

[24] *City of Cebu vs. Ledesma*, 14 SCRA 666.

[25] *Manila Railroad Company vs. Fabie*, 17 SCRA 206.

[26] *Province of Tayabas vs. Perez*, 56 Phil. 257.

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submitted to it, in cases where the only error of the commissioners is that they have applied illegal principles to the evidence submitted to them; or that they have disregarded a clear preponderance of evidence; or that they have used an improper rule of assessment in arriving at the amount of the award; provided always that the evidence be clear and convincing and the amount allowed by the commissioners is grossly inadequate or excessive.[27]

That the commissioners' report is not final and conclusive, but merely recommendatory is bolstered by the requirement in Section 8, Rule 67 of the Revised Rules of Court of conducting a hearing thereon. Otherwise stated, said provision requires that upon the expiration of the period of ten (10) days within which all interested parties may file their objects to the report, or even before the expiration of such period if all interested parties have filed their objections to the report or their statement of agreement therewith, the court must conduct a hearing on the report.

In view of these basic provisions of the Rules of Court on eminent domain and various jurisprudence on the function of the commissioners as limited by the Court, We hold that the respondent Court of Appeals did not err in giving credence to the appraiser employed by private respondent and in disregarding the commissioners' report.

Respondent court found that aside from being a civil engineer, Aurelio B. Aquino is a licensed real estate broker and appraiser of long standing, being one of the incorporators of C.M. Hoskins and Co., Inc., a corporation engaged in real estate brokerage since October, 1938 and of which firm he is presently the Chairman of the board of directors. With these qualifications, respondent court committed no error in concluding that he was competent to make the appraisal of the fair market value of the parcel of land under consideration. Although he does not maintain an office in Daet nor does he appear to have had any

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[27] *Manila Railroad Company vs. Velasquez*, 32 Phil. 286; see also *City of Manila vs. Neal*, 33 Phil. 291; *Manila Railroad Co. vs. Aguilar*, 36 Phil. 118; *Manila Railroad Co. vs. Alano*, 36 Phil. 500.

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transactions in said locality, he is competent since a commercial parcel of land retains the same characteristics whether it is located in Manila or Daet, and the criterion for making an appraisal of a parcel of land is universally applied, irrespective of the locality where it is situated. And since the value of a parcel of land taken by eminent domain is always a matter of opinion, the same may be proved by opinion evidence of the real estate appraiser.[28] Hence, We find substantial basis for the court to fix the value of the land at ₱200.00 per square meter and the building at ₱36,500.00 as testified to by the broker.

Petitioner assails the transfer of the case from Branch I of the Court of First Instance of Camarines Norte to Branch II thereof, claiming that the jurisdiction of the respective branches are delineated by a controlling department circular and thereby concluding that Branch II has no legal and valid authority to take over said expropriation case.

We do not agree. Where a court of first instance is divided into several branches, each of the branches is not a court distinct and separate from the others. Jurisdiction is vested in the court, not in the judges, so that when a complaint or information is filed before one branch or judge, jurisdiction does not attach to said branch or judge alone, to the exclusion of the others. Trial may be had or proceedings may continue by and before another branch or judge. It is for this reason that Section 57 of the Judiciary Act, expressly grants the Minister of Justice, upon recommendation of the district Judge, the administrative right or power to apportion the cases among the different branches, both for the convenience of the parties and the coordination of the work by the different branches, and the judges presiding each branch. The apportionment does not involve a grant or limitation or jurisdiction; this continues to be vested in the court of first instance of the province as a whole, and trial may be had by any judge or branch of the court.[29]

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[28] 18 Am. Jur. 999.

[29] *Lumpay, et al. vs. Hon. Moscoso*, 105 Phil. 968; *Bacalso vs. Ramolete*, 21 SCRA 519.

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We do agree, however, that the apportionment of cases must be respected by the judges in the interest of order and coordination in the dispatch of cases. But the question of whether Branch II took cognizance of a case properly belonging to another branch is negated by the fact, pointed out by respondents, that Administrative Order No. 472 of the Secretary of Justice dividing the Province of Camarines Norte between Branch I and Branch II took effect on January 1, 1971 long after Branch II had disposed of the case at bar because said case was decided on December 2, 1969.

The fourth assignment of error is clearly untenable. Presidential Decree No. 42 issued on November 9, 1972 does not limit the just compensation in expropriation proceedings to the assessed value of the value sought to be condemned. By its title alone, *i.e.*, "Authorizing the Plaintiff in Eminent Domain Proceedings to Take Possession of the Property Involved Upon Depositing the Assessed Value for Purposes of Taxation," it can already be gleaned that said decree fixes only the provisional value of the property. As a provisional value, "it does not necessarily represent the true and correct value of the land. The value is only 'provisional' or 'tentative' to serve as the basis for the immediate occupancy of the property being expropriated by the condemnor."[30]

This decree repealed Section 2, Rule 67 of the Revised Rules of Court which imposed upon the court having jurisdiction of the proceeding with the duty of ascertaining and fixing the provisional value of the property. As stated in the said decree itself, the repeal was necessary inasmuch as the "existing procedure for the exercise of the right of eminent domain is not expeditious enough to enable the plaintiff to take possession of the real property involved as soon as possible, when needed for public purposes."

Even in Presidential Decree No. 76, "Requiring All Persons, Natural or Juridical, Owning or Administering Real Property,

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[30] *Republic vs. Vda. de Castelvi*, 58 SCRA 336.

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Including the Improvements Thereon, to File Sworn Statement of the True Value of Such Property," issued on December 6, 1972, it is clearly stated that the just compensation is based on the current and fair market value and not on the assessed value. The pertinent provisions state as follows:

"For purposes of just compensation in cases of private property acquired by the government for public use, the basis shall be the current and fair market value as declared by the owner or administrator or such market value as determined by the assessor, whichever is lower.

"Under this Decree, the assessed valuation which shall be the basis for payment of real property tax beginning the calendar year 1974 shall be fifty per centum of the current fair market value, as determined by the assessor, in case of commercial, industrial or mineral lands; forty *per centum* in the case of agricultural lands and thirty *per centum* in the case of lands for purely residential purposes."

Clearly, therefore, the assessed value of a property constitutes only a percentage of its current fair market value. It cannot, thus, be the direct basis of just compensation in expropriation proceedings.

But more importantly, this assignment of error is bereft of merit because Presidential Decree No. 42 is inapplicable in the case at bar. As pointed out by private respondent, it is a cardinal rule of statutory construction that laws shall have only prospective effect. The provisional value of the property in this case having already been fixed, the deposit on February 9, 1973 of the amount of ₱54,370.00 representing the assessed value of the land and the deposit on October 21, 1977 of the amount of ₱25,830.00 representing the assessed value of the improvement, both pursuant to the said decree, are not sufficient. Nevertheless, said amounts should be deducted from the total amount due to private respondent.

To elucidate and clarify the judgment of this Court in affirming the decision appealed from, We consider and hold that the demolition of the building of private respondent standing on the land by the Municipal Mayor, Engr. Jose P. Timoner on February

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14, 1978 constituted the actual taking of possession of the property sought to be expropriated by the Municipality of Daet. And from said date, February 14, 1978, interest at the legal rate shall be paid by the municipality until the full amount is paid.

**IN VIEW OF ALL THE FOREGOING**, the judgment under review is hereby AFFIRMED *in toto*.

**SO ORDERED.**

*Makasiar, Fernandez, De Castro*, and *Melencio-Herrera, JJ.*, concur.

*Teehankee (Chairman), A.C.J.*, took no part.

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**FIRST DIVISION**

[G.R. No. L-42594. October 18, 1979]

**ELIGIO ROQUE and RODRIGO G. MALONJAO,** *petitioners, vs.* **HON. COURT OF APPEALS, HON. JUDGE CARLOS L. SUNDIAM, (CFI-Manila, Branch XXVIII) ASSOCIATED BANKING CORPORATION, FIL-EASTERN WOOD INDUSTRIES, INC., CITY SHERIFF OF MANILA, DEPUTY SHERIFFS ADRIEL GARCIA and BENJAMIN GARVIDA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES.**— It should be reiterated that this is a special civil action for *Certiorari*, the main requisites for the issuance of which Writ are: 1) that the Writ be directed against a tribunal, board or officer exercising judicial functions; 2) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and 3) that there