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**[G.R. No. L-30138. May 30, 1972]**

**MUNICIPALITY OF LA CARLOTA, *petitioner, vs.* THE SPOUSES FELICIDAD BALTAZAR AND VICENTE GAN, *respondents.***

**SYLLABUS**

**CONSTITUTIONAL LAW; RIGHT OF EMINENT DOMAIN; DETERMINATION OF JUST COMPENSATION; VALUE OF PROPERTY AT THE TIME OF TAKING.**— Where a municipal corporation, within the meaning of the constitutional provision on eminent domain takes private property without paying the just compensation, the requisite proceedings not even having been instituted, the Court has invariably seen to it that there be compliance with what the Constitution requires. And in such a case, where the crucial question is as of what date the value of the property in question is to be appraised, the answer supplied by Alfonso *vs.* Pasay City, is that the owner is entitled to how much it was worth at the time of the taking.

**BARREDO, *J., concurring*:**

**CONSTITUTIONAL LAW; RIGHT OF EMINENT DOMAIN; DOWNWARD FLUCTUATION OF CURRENCY MUST BE CONSIDERED IN DETERMINING THE AMOUNT TO BE PAID.**— In view, however, of what I consider to be extraordinary loss in value of our currency since 1966, I am inclined to believe that respondents herein are entitled to the benefits of Article 1250 of the Civil Code, under which they should be paid the price of their property at the time the petitioner took possession thereof on the basis of "the value of the currency at the time of" said taking, which means that the downward fluctuation or loss of value of our currency since 1966 should be taken into account in addition to the payment of interest. It is my considered view that in circumstances like those herein involved, to disregard the loss of value of the currency is to deprive the owner of the property expropriated of their constitutional right to "just compensation" guaranteed by the Constitution. (Article III, Section 1, par. [2], Constitution) In this particular case, however, since respondents have not specifically prayed that this point be considered in their favor, I believe that the judgment rendered by the Court is justified.

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**APPEARANCES OF COUNSEL**

*Fortunato E. Tiongson, Jr.*, and *Cesar Manalo* for petitioner.
*Cesar J. Nersia* for respondents.

## DECISION

**FERNANDO, *J.*:**

It is not a unique situation that confronts the Court. It had happened in the past, and there is no assurance that it will not occur again in the future, that a municipal corporation did, within the meaning of the constitutional provision on eminent domain,[1] take private property without paying the just compensation, the requisite condemnation proceedings not even having been instituted. This Court however, in an appropriate suit, has invariably seen to it that there be compliance with what the Constitution requires. In such a case, the crucial question is as of what date the value of the property in question is to be appraised. The answer supplied by Alfonso *v.* Pasay City[2] is that the owner is entitled to how much it was worth at the time of the taking. Such principle is decisive of the present petition for review of a decision of the Court of Appeals. Since there was a failure on its part to abide by such an authoritative pronouncement, we must reverse.

The antecedents of the present litigation were set forth in the appealed decision of the Court of Appeals, dated December 23, 1966 thus: "On appeal Civil No. 7208 of the Court of First Instance of Negros Occidental instituted by Felicidad Baltazar et al., against the Municipality of La Carlota for compensation of expropriated real property in which after filing of the complaint on 14 January, 1964, amended afterwards, answer on 3 December, 1964 and trial on the merits on various dates from 21 April, 1966 to 11 July, 1966, there was promulgated decision disposing: Por tanto, se dicta sentencia en esta causa condenando a la demanda Municipio de La Carlota (hoy Ciudad de La Carlota) a pagar a los

[1] Article III, Sec. 1, par. 2 of the Constitution reads as follows: "Private property shall not be taken for public use without just compensation."

[2] 106 Phil. 1017 (1960).

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demandantes la suma de treinta y tres mil quinientos sesenta pesos (P33,560.00) con sus intereses legales desde la presentacion de la demanda hasta su completo pago, y a pagar las costas del presente juicio. Se ordena a los demandantes para que, previo pago por la demandada de la referida cantidad de 'P33,560.00, otorquen a favor de dicha demandada la escritura de traspaso de los Lotes Nos. 314-B y 314-C-1 de la Medicion Catastral de La Carlota. Asi se ordena. Ciudad de Bacolod, Septiembre 30, 1966. (Sgd.) [Eduardo D. Enriquez] Juez.' p. 36, Amended R.A.; which defendant has taken here on the errors assigned in its brief; * * *."[3]

There was, according to such decision, "no debate that plaintiffs are the true and absolute owners of Lot No. 314 of the Cadastral Survey of La Carlota; now as shown in the plan,* * *, the municipal cemetery of La Carlota adjoins the same on three (3) sides; according to plaintiffs, they came to find out after a survey executed sometime in 1963 that it had encroached without their knowledge and consent upon their property occupying what according to the relocation plan, appear to be Lot 314-B with an area of 1,243 square meters and Lot 314-C-1 with an area of 435 square meters or a total of 1,678 square meters; so that because of it, they asked for compensation from the municipality but this was ignored and what the municipality tried to do was to secure a 'possible donation' from the plaintiffs according to its resolution, * * *; therefore plaintiffs filed this case, as has been said, for the value of the *de facto* expropriation with damages claiming therefor the sum of P40 per square meter; But in its defense, the Municipality of La Carlota contended that there had been previously executed many years back a donation of the property and further that the price of P40 was too much; Well then, plaintiffs, during the trial of the case, having submitted oral and documentary proofs and as well the defendant, trial Judge discarded the claim of pretended donation by plaintiff's predecessor in interest and condemned defendant to pay at P20 per square meter; it is because of this that defendant has come here * * *."[4]

As it was viewed by the decision under review, the errors assigned could "be reduced to the simple question of what under

[3] Decision of the Court of Appeals, pp. 1-2.

[4] *Ibid.*, pp. 2-3.

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the evidence should be the measure"[5] of compensation to which plaintiffs were entitled. In reaching its conclusion, the decision emphasized what it considered to be the "unlawful invasion and occupancy" of land belonging to the spouses Felicidad Baltazar and Vicente Gan, now respondents. Then reference was made to the ruling in Province of Rizal *v.* Araullo[6] thus: ""The property is to be considered in its condition and situation at the time it is taken, and not as enhanced by the purpose for which it was taken. The fundamental doctrine that private property cannot be taken for public use without just compensation requires that the owner shall receive the market value of his property at the time of taking, unaffected by any subsequent change in the condition of the property.""[7] Nonetheless, it did not decide to apply such doctrine under the rationalization that what should not be overlooked "is that the reason for the rule is because eminent domain is nothing less than a forced legal sale, therefore, the price to be paid by expropriation must be the price, the just price at the time it legally expropriated, not any enhanced price afterwards; putting it in another way since the sale is forced upon the owner by expropriator who alleged a right to forcibly buy in eminent domain, where expropriator filed the complaint and gets judgment, the Courts having recognized its right to expropriate, will condemn it to pay the price at the time when its right was recognized to have existed, i.e., the price at the time the complaint was filed, see Rule 67, Sec. 4; but an illegal usurpation without benefit of judicial proceedings is different; * * *."[8]

Under such a view, it was to be expected that what the lower court did would receive the approval of the Court of Appeals. So it turned out, the dispositive portion of the decision being tersely worded, "affirmed with costs."[9] It is from such a judgment that the petition for review was elevated to this Court and given due course by us. As was made clear at the outset, the authoritative

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

[6] 58 Phil. 308 (1933).

[7] Decision of the Court of Appeals, p. 4.

[8] *Ibid.*, pp. 4-5.

[9] *Ibid.*, p. 14.

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doctrine in Alfonso *v.* Pasay City[10] calls for a reversal. It is the value as of the time of the taking that should have been the measure of the just compensation to which under the Constitution respondent spouses are entitled.

1. It would not be amiss then to inquire further into the Alfonso case. The relevant facts follow: "This is a case where a registered owner of a parcel of land has lost possession way back in 1925 because it was taken by a municipal corporation (Municipality of Pasay) for road purposes. It was never paid for, and so the ownership thereof remained in the name of the registered owner. No annotation on said title was made as to any right, say easement of right of way, which the City of Pasay might have acquired over the land. There is some doubt as to whether Estanislao Alfonso ever made demands for the payment of his property which was taken away from him without the benefit of either expropriation proceedings or a negotiated sale. However, there is reason to believe that Alfonso has made such demands as any owner of a valuable registered property would do, but as usually the case, perhaps the demands were either ignored or action thereon was postponed and perhaps forgotten with the changes of administration in Pasay that occurred since 1925 up to 1954 when Alfonso finally brought the present action to recover either the possession of the parcel or its value."[11]

After noting that as such registered owner, plaintiff Alfonso could bring action to recover possession at any time but that the restoration thereof by the City of Pasay would be "neither convenient nor feasible."[12] It was the conclusion of the Court that the only relief available "is for the City of Pasay to make due compensation, which it could and should have done years ago since 1925."[13] The decisive question, according to Justice Montemayor, speaking for the Court, is the price to be paid. After referring to plaintiff's claim to the effect that he was entitled to the then market value, his opinion continues, "the rule is that to determine

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[10] 106 Phil. 1017 (1960).

[11] *Ibid.*, pp. 1019-1020.

[12] *Ibid.*, p. 1022.

[13] *Ibid.*

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due compensation for lands appropriated by the Government, the basis should be the price or value at the time that it was taken from the owner and appropriated by the Government. According to the stipulation of facts, the value of the land in 1925 was P1.25 per square meter. So, for the area of 719.92 square meters, the value will be said area multiplied by P1.25. Inasmuch as the City of Pasay has not been paying rent for the use of the land since 1925, thereby causing damages in favor of the owner, said damages may be assessed in the form of legal interest on the price since 1925, up to the time when payment is made by the City of Pasay."[14]

Nor does it make any difference just because the use to which the land was devoted in Alfonso was for a road, while here, a cemetery is involved. While in the leading case of City of Manila *v.* Chinese Community of Manila,[15] it was merely assumed that a cemetery is devoted to a public use, there can be no doubt now as to its being so impressed with such a character.[16] There is no valid reason then to deviate in any whit or form from the Alfonso ruling. As we decided then, so do we now.

2. There is all the more reason to adhere to the Alfonso doctrine considering that when it was enunciated in 1960, this Court did not blaze a new trail but did travel a well-worn path. The Court

[14] *Ibid.*, pp. 1022-1023.

[15] 40 Phil. 349 (1919).

[16] Justice Malcolm, however, was of the view even then that a cemetery is dedicated to a public use as is shown by this excerpt from his concurring opinion. "From the time of its creation until the present the cemetery has been used by the Chinese community for burial of their dead. It is said that no less than four hundred graves, many of them with handsome monuments, would be destroyed by the proposed street. This desecration is attempted as to the last resting places of the dead of a people who, because of their peculiar and ingrained ancestral worship, retain more than the usual reverence for the departed. These facts lead us straight to the conclusion that the Chinese Cemetery is not used by a family or a small portion of a community but by a particular race long existing in the country and of considerable numbers. The case, then, is one of where the city of Manila, under a general authority permitting it to condemn private property for public use, is attempting to convert a property already dedicated to a public use to an entirely different public use; and this, not directly pursuant to legislative authority, but primarily through the sole advice of the consulting architect." *Ibid.*, pp. 372-373.

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of Appeals itself noted that as early as 1933 in Province of Rizal *v.* Araullo, there was the categorical pronouncement "that the owner shall receive the market value of this property at the time of the taking * * *." In 1954 came Republic *v.* Lara, [17] where there was a reiteration of the view that where the actual taking or occupation did precede the filing of the complaint for expropriation, it was the former date, not that of the filing of the proceeding that should be the basis for the determination of the amount to be awarded the owner as to the compensation due him. There being an apparent conflict between such a principle and the provision in the Rules of Court[18] as to the time that is decisive in ascertaining compensation due the owner, the then Justice, now Chief Justice, Concepcion, speaking for the Court in Republic *v.* Philippine National Bank,[19] clarified matters thus: "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 said possession, not of filing of the complaint, and that the *latter* should be the basis for the determination of the value, when the taking of the property involved coincides with or is subsequent to, the commencement of the proceedings. Indeed, otherwise, the provision of Rule 69, Section 3, directing that compensation 'be determined as of the date of the filing of the complaint,' would never be operative. As intimated in Republic *v.* Lara * * *, said provision contemplates 'normal circumstances,' under which 'the complaint coincides or

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[17] 96 Phil. 170 (1954).

[18] Rule 67, Section 4 reads as follows: "*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 the payment of just compensation to be determined as of the date of the filing of the complaint. After the entry of such an order no objection to the exercise of the right of condemnation shall be filed or heard and the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court fixes." This is a reproduction of Rule 69, Section 3.

[19] L-14158, April 12, 1961, 1 SCRA 957. Cf. Valdehueza *v.* Republic, L-21032, May 19, 1966, 17 SCRA 107 and Capitol Subdivision, Inc. *v.* Province of Negros Occidental, L-16257, January 31, 1963, 7 SCRA 60.

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even precedes the taking of the property by the plaintiff.' In fact, the complaint, normally, precedes, and does not coincide with such taking of the property, for 'upon the filing of the complaint or at any time thereafter' plaintiff can not, over the defendant's objection and the institution of the proceedings generally indicates an issue between the parties — take possession of said property without an order of the court fixing provisionally its value and without depositing the same (Rule 69, Section 3, Rules of Court)."[20] It is thus apparent how far the Court of Appeals was not all mindful of what has so long and so consistently been announced by this Court.

3. Even if the question presented were novel, our conclusion would not be any different. With the expanding role of government, including all its branches and subdivisions, municipal corporations not excepted, reliance on the power of eminent domain far from diminishing will continue to manifest itself. This is an assertion confirmed by history. Outside of the aforesaid City of Manila *v.* Chinese Community of Manila,[21] there were only four other reported cases dealing with condemnation proceedings by local governments,[22] before World War II. It was not so after liberation. At least fifteen decisions have dealt with exercise of such power by such units.[23] Nor is it to be wondered at. Things that were formerly of private concern have, under this era of fostering social and economic rights, assumed a public aspect.

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[20] *Ibid.*, pp. 961-962.

[21] 40 Phil. 349 (1919).

[22] Provincial Government of Rizal *v.* Caro de Araullo, 58 Phil. 308 (1933); Province of Tayabas *v.* Perez, 66 Phil. 467 (1938); Noble *v.* City of Manila, 67 Phil. 1 (1938) and Abad Santos *v.* Province of Tarlac, 67 Phil. 480 (1939).

[23] Municipality of Dingras *v.* Bonoan, 85 Phil. 457 (1950); City of Manila *v.* Arellano Law Colleges, 85 Phil. 663 (1950); Uriarte *v.* Teodoro, 86 Phil. 196 (1950); Lee Tay *v.* Choco, 87 Phil. 814 (1950); Urban Estates, Inc. *v.* Montesa, 88 Phil. 348 (1951); Pangilinan *v.* Samia, 89 Phil. 483 (1951); Municipality of Caloocan *v.* Manotok Realty, Inc., 94 Phil. 1003 (1954); Nieto *v.* Ysip, 97 Phil. 31 (1955); Ilocos Norte *v.* Cia Gen. de Tabacos, 98 Phil. 831 (1956); Municipal Government of Sagay *v.* Jison, 104 Phil. 1026 (1958); Province of Rizal *v.* San Diego, 105 Phil. 33 (1959); Alfonso *v.* Pasay City, 106 Phil. 1017 (1960); Capitol Subdivision Inc. *v.* Negros Occidental, L-16257, Jan. 31, 1963, 7 SCRA 60 and City of Cebu *v.* Ledesma, L-16723, July 30, 1965, 14 SCRA 666.

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Such being the case, the entry of government, whether national or local, in such field cannot legitimately be resisted. What is more appropriate then than that an attribute inherent in government, whether national or local, of expropriation, like taxation and the police power, would be utilized. This is the more so, considering that it is now a well-settled doctrine that public use can be identified with public purpose, public interest and public convenience.[24]

It is of course to be expected that the procedural steps set forth in the Rules of Court will be strictly followed by municipal corporations. In the event however that such is not the case, as did happen in this instance, the Alfonso ruling certainly affords an equitable solution. The expropriation stands, and the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of the taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantees just compensation. It would be an injustice to him certainly if from such a period, he could not recover the value of what was lost. There could be on the other hand, injustice to the expropriator if by a delay in the collection, the increment in price would accrue to the owner. The doctrine to which this Court has been committed is intended precisely to avoid either contingency fraught with unfairness. The Court of Appeals, as well as the lower court, should not have decided then the case as they did. There can be no affirmance of what was done.

WHEREFORE, the decision of the Court of Appeals of December 23, 1966 is reversed and a new judgment entered awarding respondent-spouses Felicidad Baltazar and Vicente Gan, the amount due them computed as of the time of the taking, with legal interest from said date until the sum is paid in full by petitioner, now La Carlota City. The case is remanded to the Court of First Instance of Negros Occidental for the fixing of such money judgment in accordance with this decision. Without pronouncement as to costs.

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[24] Cf. Guido *v.* Rural Progress, 84 Phil. 847 (1949) and J. M. Tuason and Co. *v.* Land Tenure Administration, L-21064, Feb. 18, 1970, 31 SCRA 413.

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*Reyes, J.B.L. (Acting C.J.), Makalintal, Teehankee, Makasiar,* and *Antonio, JJ.*, concur.

*Zaldivar* and *Ruiz Castro, JJ.*, reserve their votes.

*Barredo, J.*, concurs in separate opinion.

*Concepcion, C.J.*, on official leave.

**BARREDO, *J., concurring*:**

I agree with Mr. Justice Fernando that, if only on the basis of precedents, the decision of the Court of Appeals in this case should be reversed insofar as it deviates from the doctrine laid down in the leading case of Alfonso *vs.* Pasay City, cited in the main opinion, to the effect that the price which petitioner should pay for the expropriation of the land of the respondents should be the price thereof as of the date said petitioner took possession of the same. To my mind, the very clear reason for such a rule is that the obligation of the expropriator to pay arises on the very date that such expropriator takes possession of the property for public use and it is elementary in the law of obligations that delay in payment of an obligation does not result in the change of the principal amount to be paid but merely gives the obligee the right to the payment of the corresponding interest. In view, however, of what I consider to be extraordinary loss in value of our currency since 1966, I am inclined to believe that respondents herein are entitled to the benefits of Article 1250 of the Civil Code, under which they should be paid the price of their property at the time the petitioner took possession thereof on the basis of "the value of the currency at the time of" said taking, which means that the downward fluctuation or loss of value of our currency since 1966 should be taken into account in addition to the payment of interest. It is my considered view that in circumstances like those herein involved, to disregard the loss of value of the currency is to deprive the owner of the property expropriated of their constitutional right to "just compensation" guaranteed by the Constitution. (Article III, Section 1, par. [2], Constitution) In this particular case, however, since respondents have not specifically prayed that this point be considered in their favor, I believe that the judgment rendered by the Court is justified.