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EN BANC

[G.R. No. 94193-99. February 25, 1992]

NATIONAL POWER CORPORATION, *petitioner, vs.* **HON. ENRIQUE T. JOCSON, in his capacity as Presiding Judge, Regional Trial Court, 6th Judicial Region, Branch 47, Bacolod City; JESUS, FERNANDO, MARIA CRISTINA and MICHAEL, all surnamed GONZAGA; LUIS, DIONISIO, ROBERTO, GABRIEL, BENJAMIN, ANA, ALEXANDER, CARLA, SOFIA and DANIEL, all surnamed GONZAGA; ROSARIO P. MENDOZA; CELSOY AGRO-IND. CORP.; EMMANUEL, LYDIA, HARRY, NOLI, CLIFFORD and CHRISTIAN DALE, all surnamed AÑO; MAYO L. LACSON; and LUCIA GOSIENFIAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EMINENT DOMAIN ACTION; PLAINTIFF ALLOWED TO ENTER PREMISES UPON DEPOSITING VALUE WITH THE PHILIPPINE NATIONAL BANK.— Upon the filing of the complaint or at any time thereafter, the petitioner has the right to take or enter upon the possession of the property involved upon compliance with P.D. No. 42 which requires the petitioner, after due notice to the defendant, to deposit with the Philippine National Bank in its main office or any of its branches or agencies, "an amount equivalent to the assessed value of the property for purposes of taxation." This assessed value is that indicated in the tax declaration. The court has the discretion to determine the provisional value which must be deposited by the plaintiff to enable it "to take or enter upon the possession of the property." Notice to the parties is not indispensable. Petitioner deposited the provisional value fixed by the court. As a matter of right, it was entitled to be placed in possession of the property involved in the complaints at once, pursuant to both Section 2 of Rule 67 and P.D. No. 42. Respondent Court had the corresponding duty to order the sheriff or any other proper officer to forthwith place the petitioner in such possession.

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2. ID.; ID.; DISCRETION OF THE COURT TO DETERMINE PROVISIONAL VALUE REMOVED UNDER PD 42.— P.D. No. 42 repealed the "provisions of Rule 67 of the Rules of Court and of any other existing law contrary to or inconsistent" with it. Accordingly, it repealed Section 2 of Rule 67 insofar as the determination of the provisional value, the form of payment and the agency with which the deposit shall be made, are concerned. P.D. No. 42, effectively removes the discretion of the court in determining the provisional value. What is to be deposited is *an amount equivalent to the assessed value for taxation purposes*. No hearing is required for that purpose. All that is needed is notice to the owner of the property sought to be condemned.

3. ID.; ID.; TRIAL JUDGE LOSES PLENARY CONTROL OVER ORDER FIXING THE AMOUNT OF DEPOSIT AND HAS NO POWER TO ANNUL OR AMEND IT DURING PENDENCY OF CONDEMNATION PROCEEDINGS; REASON THEREFOR.— After having fixed these provisional values, albeit erroneously, and upon deposit by petitioner of the said amounts, respondent Judge lost, "plenary control over the order fixing the amount of the deposit, and has no power to annul, amend or modify it in matters of substance pending the course of the condemnation proceedings." The reason for this is that a contrary ruling would defeat the very purpose of the law which is to provide a speedy and summary procedure whereby the peaceable possession of the property subject of the expropriation proceedings "may be secured without the delays incident to prolonged and vexatious litigation touching the ownership and value of such lands, which should not be permitted to delay the progress of the work."

4. ID.; ID.; DETERMINATION OF JUST COMPENSATION, A JUDICIAL FUNCTION.— This Court ruled in *Export Processing Zone Authority vs. Dulay, et al.* (149 SCRA 305 [1987]) that the determination of just compensation in eminent domain cases is a judicial function; accordingly, We declared as unconstitutional and void, for being, *inter alia*, impermissible encroachment on judicial prerogatives which tends to render the Court inutile in a matter which, under the Constitution, is reserved to it for final determination, the method of ascertaining just compensation prescribed in P.D. Nos. 76, 464, 794 and 1533, to wit: the market value as declared by the owner or

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administrator or such market value as determined by the assessor, whichever is lower in the first three (3) decrees, and the value declared by the owner or administrator or anyone having legal interest in the property or the value as determined by the assessor, pursuant to the Real Property Tax Code, whichever is lower, prior to the recommendation or decision of the appropriate Government office to acquire the property, in the last mentioned decree.

5. ID.; ID.; DUTY OF TRIAL JUDGE WHEN PARTIES LEAVE THE DETERMINATION OF JUST COMPENSATION TO THE COURT. — Considering that the parties submitted neither a compromise agreement as to the just compensation nor a stipulation to dispense with the appointment of commissioners and to leave the determination of just compensation to the court on the basis of certain criteria, respondent Judge was duty bound to set in motion Section 5 of Rule 67; said section directs the court to appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to it regarding the just compensation for the property sought to be taken. Such commissioners shall perform their duties in the manner provided for in Section 6; upon the filing of their report, the court may, after a period of ten (10) days which it must grant to the parties in order that the latter may file their objections to such report, and after hearing pursuant to Section 8, accept and render judgment in accordance therewith or, for cause shown, recommit the same to the commissioners for further report of facts. The court may also set aside the report and appoint new commissioners, or it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the petitioner the property essential to the exercise of its right of condemnation, and to the defendant just compensation for the property so taken.

6. ID.; MOTION FOR RECONSIDERATION; CONSIDERED MERE SCRAP OF PAPER FOR NON-COMPLIANCE WITH THE RULES. — The motion for reconsideration in Civil Case No. 5938 does not even contain a notice of hearing. It is then a mere scrap of paper; it presents no question which merits the attention and consideration of the court. It is not even a motion for it does not comply with the rules, more

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particularly Sections 4 and 5, Rule 15 of the Rules of Court; the Clerk of Court then had no right to receive it.

7. JUDICIAL ETHICS; JUDGES; CALLED UPON TO FAITHFULLY ADHERE TO LEGAL PRECEPTS ON PROCEDURE. — Judges must apply the law; they are not at liberty to legislate. As Canon 18 of the Canon of Judicial Ethics provides: "A judge should be mindful that his duty is the application of general law to particular instances, that ours is a government of law and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of law." They must be reminded once more that "the demands of fair, impartial, and wise administration of justice call for a faithful adherence to legal precepts on procedure which ensure to litigants the opportunity to present their evidence and secure a ruling on all the issues presented in their respective pleadings. 'Short-cuts' in judicial processes are to be avoided where they impede rather than promote a judicious disposition of justice."

APPEARANCES OF COUNSEL

Amado B. Parreno Law Office for Gonzaga, *et al.*

Francisco B. Cruz for R. Mendoza.

Eduardo M. Casiple for Mayo Lacson.

D E C I S I O N

DAVIDE, JR., *J.*:

This is a special civil action for *certiorari* to annul, for having been issued without or in excess of jurisdiction, in violation of law and in deprivation of petitioner's right to due process, four (4) orders successively issued by the respondent Judge in seven

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(7) eminent domain cases (1) fixing the provisional values of the parcels of land sought to be expropriated by the petitioner, National Power Corporation (NAPOCOR), in amounts far exceeding their market values, (2) increasing the provisional values of the parcels of land involved in two (2) of such cases without hearing and holding in abeyance the issuance of the writ of possession in favor of petitioner until deposit of the additional amount, (3) requiring the private respondents, as defendants in said cases, to state in writing within twenty-four (24) hours whether or not they are amenable to accepting and withdrawing the amount deposited by petitioner as provisional values in full and final satisfaction of their respective properties, and directing that the writ of possession be issued only until after the defendants shall have so manifested in writing their acceptance and receipt of said amounts and (4) directing petitioner to release and pay within twenty-four (24) hours, through the Court and in favor of the defendants, the amount of ₱43,016,960.00.

The antecedents of this case are not controverted.

Petitioner is a government-owned and controlled corporation created and existing by virtue of Republic Act No. 6395, as amended, for the purpose of undertaking the development of hydraulic power, the production of power from any source, particularly by constructing, operating and maintaining power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof. In order to carry out these purposes, it is authorized to exercise the power of eminent domain.

On 30 March 1990, petitioner filed seven (7) eminent domain cases before the Regional Trial Court of the Sixth Judicial Region in Bacolod City, to wit:

(1) Civil Case No. 5938 against Jesus, Fernando, Ma. Cristina and Michael, all surnamed GONZAGA;[1]

[1] Annex "A" of Petition.

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(2) Civil Case No. 5939 against Louis, Dionisio, Roberto, Gabriel, Benjamin, Ana, Alexander, Carla, Sofia, Daniel, all surnamed GONZAGA;[2]

(3) Civil Case No. 5940 against Rosario P. Mendoza;[3]

(4) Civil Case No. 5941 against Celsoy Agro-Ind. Corporation;[4]

(5) Civil Case No. 5942 against Emmanuel, Lydia, Harry, Noli, Clifford and Christian Dale, all surnamed AÑO;[5]

(6) Civil Case No. 5943 against Mayo L. Lacson;[6]

(7) Civil Case No. 5944 against Lucia Gosiengfiao.[7]

for the acquisition of a right-of-way easement over portions of the parcels of land described in the complaints for its Negros-Panay Interconnection Project, particularly the Bacolod-Tomonton Transmission Line.

The complaints uniformly (a) allege that petitioner urgently needs portions of the affected land to enable it to construct its tower and transmission line in a manner that is compatible with the greatest good while at the same time causing the least private injury; the purpose for which the lands are principally devoted will not be impaired by the transmission lines as it will only acquire a right-of-way-easement thereon; and it had negotiated with and offered to pay defendants for the portions affected by the Bacolod-Tomonton Transmission Line, but the parties failed to reach an agreement despite long and repeated negotiations, and (b) pray that:

"1. This Honorable Court fix the provisional value of the portions of the parcel of land herein sought to be expropriated pursuant to Section 2, Rule 67 of the Rules of Court;

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[2] Annex "B", *Id*.

[3] Annex "C", *Id*.

[4] Annex "D", *Id*.

[5] Annex "E", *Id*.

[6] Annex "F", *Id*.

[7] Annex "G", *Id*.

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2. This Honorable Court, by proper order and writ, authorize the plaintiff to enter or take possession of the premises described in paragraph 3 hereof, and to commence and undertake the construction of the Bacolod-Tomonton T/L after depositing with the Provincial Treasurer of Negros Occidental the provisional value fixed by this Honorable Court, which amount shall be held by said official subject to the order and final disposition of the Court;

3. This Honorable Court appoint three (3) Commissioners to hear the parties, view the premises, assess the damages to be paid for the condemnation, and to report in full their proceedings to the Court;

4. The Plaintiff be declared to have the lawful right to acquire portions of the properties of the defendants affected by the condemnation;

5. After the determination of the amount of indemnity, the Court authorize the payment by the plaintiff to the defendants; and

6. Judgment be rendered against the defendants, condemning the portion of the parcels of land referred to in paragraphs 3 and 4 hereof, including the improvements thereof, if any, for public use and for the purpose hereinabove set forth, free from all other liens and encumbrances whatsoever; and thereafter, upon plaintiff's compliance with the requirements of said judgment, a final order of condemnation be issued and entered in favor of the plaintiff.

Plaintiff further prays for such other reliefs as may be deemed just and equitable in the premises."

The cases were raffled to different branches of the trial court as follows: Civil Cases Nos. 5938, 5943 and 5944 to Branch 43; Civil Case No. 5939 to Branch 54; Civil Case No. 5940 to Branch 45; Civil Case No. 5941 to Branch 50; and Civil Case No. 5942 to Branch 46.

Only the defendants in Civil Cases Nos. 5938, 5939 and 5942 filed Motions to Dismiss.[8]

[8] Annexes "H", "I" and "J", respectively, of Petition.

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On 4 April 1990, petitioner filed a Motion to consolidate these cases for joint trial[9] and an Urgent Motion to Fix Provisional Value.[10]

On 10 April 1990, Executive Judge Jesus V. Ramos issued an Order granting the motion for consolidation and ordering the consolidation of all the cases in Branch 43 of the court, then presided over by Judge Romeo Habaradas.[11]

Considering that Judge Habaradas was on sick leave, petitioner filed on 8 May 1990 an Urgent Motion to Reraffle due to the urgent necessity for the hearing of the cases and the Urgent Motion to Fix Provisional Value.[12] Acting on said motion, Vice-Executive Judge Bethel K. Moscardon issued on 9 May 1990 an Order granting the motion and directing the re-raffle of the cases.[13]

Upon re-raffle, the cases were assigned to Branch 47, presided over by respondent Judge. Since the latter went on sick leave effective 16 May 1990, petitioner filed on said date an Urgent Motion for Special Re-raffle and for Immediate Fixing of Provisional Value.[14] As a consequence thereof, the cases were re-raffled to Branch 48 of the court.

On 17 May 1990, Judge Romeo Hibionada of Branch 48 issued an Order directing the defendants to appear before the court on 21 May 1990 at 8:30 A.M. to register their comments or objections to the fixing of the provisional values of the parcels of land subject of expropriation.[15]

On 21 May 1990, the petitioner and the defendants, through their respective lawyers, appeared and orally argued their respective positions on the Motion to Fix Provisional Value.[16]

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[9] Annex "K", *Id*.

[10] Annex "L", *Id*.

[11] Annex "M", *Id*.

[12] Annex "N" of Petition.

[13] Annex "O", *Id*.

[14] Annex "P", *Id*.

[15] Annex "Q", *Id*.

[16] *Rollo*, 7.

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Instead of ruling on the issues raised therein, Judge Hibionada, citing Circular No. 7 of this Court dated 23 September 1974 which establishes a pairing system,[17] promulgated an Order directing the return of the seven (7) cases to Branch 47 for further disposition.

On 5 June 1990, Branch 47, through respondent Judge, issued an Order directing the petitioner:

". . . to show by documents and otherwise within five (5) days from receipt hereof the following:

1. That it has earlier negotiated repeatedly with defendants but failed to reach agreement;
2. That expropriation of heavily populated subdivision areas in order to install primary electric transmission lines would not endanger lives and property in the area;
3. That such installation is of paramount public interest and there is no other demonstrable alternative."

and warning that "no provisional order for tentative cost payment of the land affected would be issued" pending compliance by petitioner with the foregoing.[18]

On 25 June 1990, respondent Judge, finding the existence of paramount public interest which may be served by the expropriation, the long range benefit of the project involved, substantial compliance with the rules concerning efforts for negotiation and, taking into consideration the market value of the subject areas and the daily opportunity profit that the petitioner allegedly admitted in open court, issued an Order fixing the provisional values of the subject areas, to wit:

"CIVIL CASE NO.	AFFECTED AREA (SQ. M.)	MARKET VALUE	PROVISIONAL VALUE
1. 5938	7,050	₱ 45,000.00	₱ 180,000.00
	3,000	668,700.00	2,674,800.00
	6,600	219,830.00	879,320.00

[17] Annex "R" of Petition.

[18] Annex "S", *Id*.

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2. 5939	23,400	757,437.00	3,029,748.00
3. 5940	9,030	2,870.00	11,480.00
4. 5941	17,430	433,130.00	1,732,520.00
5. 5942	2,700	342,900.00	1,371,600.00
6. 5943	15,900	2,125,340.00	8,501,360.00
7. 5944	21,000	1,200,000.00	4,800,000.00"

and directing the petitioner:

". . . to deposit the amount with the Philippine National Bank in escrow for the benefit of the defendants pending decision on the merits."[19]

The market values mentioned in the Order are the same values appearing in the tax declarations of the properties and the notices of assessment issued by the Assessor.

In compliance with the said Order, petitioner deposited the total sum of ₱23,180,828.00 with the Philippine National Bank, NAPOCOR Branch, Quezon City, under Savings Account No. 249-505865-7 and manifested on 3 July 1990 with the court below that it did so.[20]

On 11 July 1990, the defendants in Civil Case No. 5938 filed a motion for the reconsideration of the 25 June 1990 Order alleging that the provisional value of the property involved therein "had been set much too low" considering the allegations therein adduced, stating that the real compensation that should accrue to them is estimated at ₱29,970,000.00 and praying that the questioned Order be reconsidered so as to reflect "the true amount covering the properties subject to (sic) Eminent Domain estimated at TWENTY NINE MILLION NINE HUNDRED SEVENTY THOUSAND (₱29,970,000.00)."[21]

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[19] Annex "T" of Petition.

[20] Annex "U", *Id.*

[21] Annex "V" of Petition.

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It likewise appears that the defendants in Civil Case No. 5939 filed a motion for reconsideration asking for a re-evaluation of the provisional value of the subject property.[22]

On 12 July 1990, respondent Judge issued an Order[23] increasing the provisional values of the properties enumerated in the motions for reconsideration, directing the petitioner to deposit "whatever differential between the amounts above fixed and those already deposited within twenty-four (24) hours from receipt of the Order" and holding in abeyance the issuance of the writ of possession pending compliance therewith. The Order reads in full as follows:

"O R D E R

I

Before this Court are two (2) Motions for Reconsideration of the Order dated June 25, 1990 fixing provisional values of the lands sought to be expropriated belonging to the defendants in these cases. The first motion was filed by the Torres Valencia Ciocon Dabao Valencia & De La Paz Law Offices for the defendants Jesus, Fernando, Ma. Cristina and Michel (sic), all surnamed Gonzaga, seeking a reconsideration of the values set by this Court earlier at ₱3,734,120.00 for the areas affected consisting of the following:

7,050 square meters;

6,600 square meters; and

3,000 square meters

belonging to the aforesaid persons. The Court is aware of the Order of June 25, 1990 was not based on ultimate factual conditions of the property of the movants. At that time, the Court is (sic) unaware that the expropriation of these areas would render the remaining portion practically a total loss considering that it is in a subdivision and not agricultural and that the fetching price (sic) now in the immediate vicinity is between ₱1,500.00 and ₱2,000.00 per square meter. Considering that the presence of the primary transmission lines of the property and the earlier intrusion of the Central Negros

[22] A copy of the motion is not attached to the petition, however, the Order of 12 July 1990 made reference to and resolved this motion.

[23] Annex "W", *op cit.*

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Cooperative at the side of the areas affected for free (sic) during the Martial Law Regime, and considering further the proximity of the Rolling Hills Memorial Park, the San Miguel Corporation manufacturing complex, Jesusa Heights, Green Hills Memorial Park and other posh subdivisions, as well as a golf course, the Court is convinced that (sic) defendants Jesus Gonzaga, Fernando Gonzaga, Ma. Cristina and Michel (sic) Gonzaga are entitled to a higher valuation for the property, not only because of the above-stated facts but because of the clear danger to the inhabitants in the area and the destruction of the marketability of the remaining portion after expropriation.

II

In respect to the plea of defendants Louis Gonzaga, *et al*. for re-evaluation of the areas owned by them, the Court feels that adjustment should also be made considering that it is contiguous to the areas belonging to Jesus Gonzaga, *et al*. above-stated and it is also affected by the same conditions. Considering that the area affected is 23,000 square meters and the fetching price (sic) in the vicinity is between ₱1,500.00 and ₱2,000.00 per square meter, the Court feels that the provisional value of the property should be ₱12,600,000.00.

As to the rest of the defendants, there being no extra-ordinary or peculiar conditions which may warrant re-evaluation, the amounts fixed earlier by this Court shall stand.

WHEREFORE, (a) the Court rules that the provisional value of 7,050 square meters aforestated should be ₱6,000,000.00; the provisional value of 6,600 square meters aforestated should be ₱5,000,000.00; and the provisional value of 3,000 square meters aforestated should be ₱3,000,000.00 instead of those fixed in the June 25, 1990 Order of this Court for these properties. (b) The provisional value of 23,000 square meters belonging to Louis Gonzaga, *et al*. should be rightfully valued at ₱12,600,000.00.

The plaintiff is directed to deposit whatever differential between the amounts above fixed and those already deposited in PNB Savings Account No. 249-5-5865-7 within 48 hours from receipt of this Order. Pending such compliance hereof, action on the Motion for Issuance of Writ of Possession will be held in abeyance. The representative of the plaintiff may get from the Branch Clerk of Court the corresponding bank book earlier attached to the expediente for the purpose of complying with this Order.

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SO ORDERED."

In compliance with the said Order, petitioner immediately deposited the additional sum of ₱22,866,680.00 with the Philippine National Bank under Savings Account No. 249-505865-7 as evidenced by the Bank's certification dated 13 July 1990.[24]

On 16 July 1990, respondent Judge issued an Order[25] mandatorily requiring the defendants:

". . . to state in writing within twenty-four (24) hours whether or not they are amenable to accept and withdraw (sic) the amounts already deposited by the plaintiff for each of them as final and full satisfaction of the value of their respective property (sic) affected by the expropriation, and this is mandatory.

"[t]he Writ of Possession sought for by the plaintiff will be issued immediately after manifestation of acceptance and receipt of said amounts."

On 18 July 1990, respondent Judge, claiming to act on the Manifestation — filed in compliance with the Order of 16 July 1990 — of defendants Jesus Gonzaga, *et al*. in Civil Case No. 5938, Luis Gonzaga, *et al*. in Civil Case No. 5939, Rosario Mendoza in Civil Case No. 5940, Emmanuel Año, *et al*. in Civil Case No. 5942 and Mayo Lacson in Civil Case No. 5943, issued an Order[26] directing the petitioner to pay the defendants within twenty-four (24) hours, through the court and from petitioner's Philippine National Bank Savings Account No. 249-505865-7 or from any other fund; whichever may be most expeditious, the following amounts by way of full payment for their expropriated property:

"CIVIL CASE NO.	AFFECTED AREA (SQ. M.)	VALUE
1. 5938	7,050	₱ 6,000,000.00
	3,000	3,000,000.00

[24] Annex "X" of Petition.

[25] Annex "Y", *Id*.

[26] Annex "Z" of Petition. Copies of the so-called Manifestation are not attached to the Petition.

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	6,600	5,000,000.00
2. 5939	23,000	12,600,000.00
3. 5940	9,030	11,480.00
4. 5941	17,430	1,732,520.00
5. 5942	2,700	1,371,600.00
6. 5943	15,900	8,501,360.00
7. 5944	21,000	4,800,000.00"

and ordering that the writ of possession be issued in these cases after the defendants "have duly received the amounts."

Unable to accept the above Orders of 25 June, 12 July, 16 July and 18 July 1990, petitioner filed this petition on 24 July 1990 alleging therein, as grounds for its allowance, that respondent Judge acted in excess of jurisdiction, in violation of laws and in dereliction of the duty to afford respondents due process when he issued said Orders. In support thereof, petitioner asserts that the Orders of 25 June and 12 July 1990 fixing the provisional values at excessive and unconscionable amounts, are utterly scandalous and unreasonable. As classified under their respective tax declarations, the several lots to be expropriated are sugarlands with the following assessed values:

"OWNER	TAX DEC. NO.	ASSESSED VALUE
1. JESUS L. GONZAGA	007-000621	₱ 18,000.00
2. Estate of SOPHIA *Vda. de* GONZAGA	007-000495	267,480.00
3. JESUS GONZAGA	005-000007	87,930.00
4. LOUIS, DIONISIO, ROBERTO, GABRIEL BENJAMIN, ANA, ALEXANDER, CARLO, SOPHIA, DANIEL, also named GONZAGA	007-5224	398,260.00
5. ROSARIO MENDOZA	Notice of Assessment of Real Property	

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	dated March 23, 1990, Lot No. 1278-B-1	860.00
6. ROSARIO MENDOZA	Notice of Assessment of Real Property dated March 23, 1990, Lot No. 1278-C-1	429,080.00
7. CEL-SOY — AGRO-IND. CORPORATION	2284	179,650.00
8. LYDIA S. ANO married to EMMANUEL ANO	4047 (O854-05)	137,160.00
9. PACITA LACSON (MAYO L. LACSON)	Notice of Assessment of Real Property dated March 21, 1990, Lot No. 7-G	861,380.00
10. DOLORES D. COSCOLLUELA (LUCIA GOSIENFIAO)	020-00017	487,730.00”

Yet, petitioner submits that in a clear display of abuse of discretion, respondent Judge fixed, in the Order of 25 June 1990, the provisional values as follows:

“CIVIL CASE VALUE NO.	AFFECTED AREA (SQ. M.)	MARKET VALUE	PROVISIONAL VALUE
1. 5938	7,050	₱45,000.00	₱ 180,000.00
	3,000	668,700.00	2,674,800.00
	6,600	219,830.00	879,320.00
2. 5939	23,400	757,437.00	3,029,748.00
3. 5940	9,030	2,870.00	11,480.00

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4. 5941	17,430	433,130.00	1,732,520.00
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6. 5943	15,900	2,125,340.00	8,501,360.00
7. 5944	21,000	1,200,000.00	4,800,000.00"

and that:

". . . in another clear abuse (sic) of discretion, herein respondent Judge, on the basis of the respective Motion (sic) for Reconsideration of defendants in Civil Cases Nos. 5938 and 5939, without affording the herein petitioner an opportunity to be heard, and with evident and manifest partiality to therein defendants increased the previously fixed provisional values of their respective lands, as follows:

a. Civil Case No. 5938:

1. 7,050 sq.m. — From ₱180,000.00 to ₱6,000,000.00

2. 3,000 sq.m. — From ₱2,674,800.00 to ₱3,000,000.00

3. 6,600 sq.m. — From ₱879,320.00 to ₱5,000,000.00.

b. Civil Case No. 5939

1. 23,400 sq.m. — From ₱3,029,748.00 to ₱12,600,000.00"

Nevertheless, due to its urgent need for the areas to be able to complete the interconnection project as soon as possible, petitioner deposited the amounts representing the provisional values fixed by the respondent Judge. Still, petitioner laments, the latter persisted in his stubbornness by not issuing a writ of possession, in violation of Section 2, Rule 67 of the Rules of Court which provides that upon the filing of the complaint or at any time thereafter, the plaintiff shall have the right to take or enter upon the possession of the real or personal property involved if he deposits with the National or Provincial Treasurer its value, as provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings, to be held by such treasurer subject to the orders and final disposition of the court; and that 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. P.D. No. 42, which provides that:

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". . . upon filing in the proper court of the complaint in eminent domain proceedings or at anytime thereafter, and after due notice to the defendant, plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the Philippine National Bank, in its main office or any of its branches or agencies, an amount equivalent to the assessed value of the property for purposes of taxation, to be held by said bank subject to the orders and final disposition of the court."

is also alleged to have been violated by respondent Judge.

The issuance then of the writ of possession was an unqualified ministerial duty which respondent Judge failed to perform.

Moreover, the Order of 16 July 1990 surrenders the judicial prerogative to fix the provisional value in favor of the defendants considering that respondent Judge's valuation may still be overruled by the latter since they were given twenty-four (24) hours to state in writing whether or not they are accepting and withdrawing the amount already deposited by petitioner.

Finally, petitioner contends that the Order of 16 July 1990 partakes of the nature of a final disposition of the case should the defendants accept the provisional value as "final and full satisfaction of the value of their respective property (sic) affected by expropriation," thereby preempting and depriving the former of the right to dispute and contest the value of the property. Clearly, respondent Judge took a short-cut, violating in the process the procedure laid down in Sections 3 to 8, inclusive, of Rule 67 of the Rules of Court.

In the Resolution of 31 July 1990, this Court required the respondents to comment on the petition and resolved to issue a temporary restraining order, effective immediately and to continue until further orders from the Court, compelling the respondent Judge to cease and desist from enforcing and/or executing his questioned Orders and directing him, pending determination of this case, to place petitioner in possession of the properties subject of this petition.[27]

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[27] *Rollo,* 140.

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The following respondents filed, through their counsels, their Answers on various dates, as follows:

Mayo Lacson	—	14 September 1990[28]
Rosario P. Mendoza	—	18 September 1990[29]
Jesus Gonzaga, *et al.*; Emmanuel Año, *et al.*	—	27 September 1990[30]
Luis Gonzaga, *et al.*	—	20 September 1990[31]

All of them, except for Rosario P. Mendoza who informed the Court that she filed a motion to reconsider the 18 July 1990 Order of respondent Judge and who agrees with petitioner that commissioners should be appointed to determine the just compensation,[32] support and sustain the actions of respondent Judge and pray for the dismissal of the petition.

Mayo Lacson, in submitting that the procedure prescribed in Rule 67 may be abbreviated provided that the rights of the parties are duly protected, cites the case of *City Government of Toledo City vs. Fernandos, et al.*,[33] wherein this Court sustained the judgment of the trial court on the basis of what transpired in the pre-trial conference.

Complying with the Resolution of 25 September 1990, petitioner filed on 6 November 1990 a Reply to the Comment of respondent Mayo Lacson,[34] stressing therein that the case of *City Government of Toledo City vs. Fernandos, et al.*,[35] does not apply to the present case because a pre-trial was conducted

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[28] *Id.*, 183, *et seq.*

[29] *Id.*, 211, *et seq.*

[30] *Id.*, 216, *et seq.*

[31] *Id.*, 236, *et seq.*

[32] *Id.*, 211-212.

[33] 160 SCRA 285 (G.R. No. L-45144, 15 April 1988).

[34] *Rollo*, 261, *et seq.*

[35] *Supra*.

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in the former during which the parties were able to present their respective positions on just compensation.

On 22 January 1991, this Court resolved to consider the respondents' Comments as Answers to the petition, give due course to the petition and require the parties to file simultaneously their respective Memoranda within twenty (20) days from notice, which petitioner complied with on 11 March 1991;[36] respondent Mendoza on 4 March 1991;[37] respondents *Jesus Gonzaga, et al. and Emmanuel Año, et al.* on 19 March 1991;[38] and Mayo Lacson on 5 April 1991.[39]

We find merit in the petition.

Respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction, and is otherwise either unmindful or ignorant of the law: when he fixed the provisional values of the properties for the purpose of issuing a writ of possession on the basis of the market value and the daily opportunity profit petitioner may derive in violation or in disregard of P.D. No. 42; in amending such determination in Civil Cases Nos. 5938 and 5939 by increasing the same without hearing; in directing the defendants to manifest within twenty-four (24) hours whether or not they are accepting and withdrawing the amounts, representing the provisional values, deposited by the plaintiff for each of them as "final and full satisfaction of the value of their respective property (sic)"; in declaring the provisional values as the final values and directing the release of the amounts deposited, in full satisfaction thereof, to the defendants even if not all of them made the manifestation; and in suspending the issuance of the writ of possession until after the amounts shall have been released to and received by defendants.

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[36] *Op. cit.*, 281.

[37] *Id.*, 276.

[38] *Id.*, 297, *et seq.*

[39] *Id.*, 308, *et seq.*

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In *Municipality of Biñan vs. Hon. Jose Mar Garcia, et al.*,[40] this Court ruled that there are two (2) stages in every action of expropriation:

"The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit.[41] It ends with an order, if not of dismissal of the action, 'of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint.'[42] An order of dismissal, if this be ordained, would be a final one, of course, since it finally disposes of the action and leaves nothing more to be done by the Court on the merits.[43] So, too, would an order of condemnation be a final one, for thereafter as the Rules expressly state, in the proceedings before the Trial Court, 'no objection to the exercise of the right of condemnation (or the propriety thereof) shall be filed or heard.'

The second phase of the eminent domain action is concerned with the determination by the Court of 'the just compensation for the property sought to be taken.' This is done by the Court with the assistance of not more than three (3) commissioners.[44] The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too. It would finally dispose of the second stage of the suit, and leave nothing more to be done by the Court regarding the issue. . . ."

However, upon the filing of the complaint or at any time thereafter, the petitioner has the right to take or enter upon the possession of the property involved upon compliance with P.D. No. 42 which requires the petitioner, after due notice to the defendant, to deposit with the Philippine National Bank in its

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[40] 180 SCRA 576 (1989).

[41] Citing Sections 1, 2 and 3, Rule 67 of the Rules of Court.

[42] Citing Section 4, Rule 67; *Nieto vs. Isip*, 97 Phil. 31; *Benguet Consolidated vs. Republic*, 143 SCRA 466.

[43] *Citing Investments, Inc. vs. Court of Appeals, et al.*, 147 SCRA 334.

[44] Citing Sections 5 to 8, Rule 67 of the Rules of Court.

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main office or any of its branches or agencies, "an amount equivalent to the assessed value of the property for purposes of taxation." This assessed value is that indicated in the tax declaration.

P.D. No. 42 repealed the "provisions of Rule 67 of the Rules of Court and of any other existing law contrary to or inconsistent" with it. Accordingly, it repealed Section 2 of Rule 67 insofar as the determination of the provisional value, the form of payment and the agency with which the deposit shall be made, are concerned. Said section reads in full as follows:

"SECTION 2. *Entry of plaintiff upon depositing value with National or Provincial Treasurer*. — Upon the filing of the complaint or at any time thereafter the plaintiff shall have the right to take or enter upon the possession of the real or personal property involved if he deposits with the National or Provincial Treasurer its value, as provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings, to be held by such treasurer subject to the orders and final disposition 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 depository of the Republic of the Philippines payable on demand to the National or Provincial Treasurer, as the case may be, in the amount directed by the court to be deposited. 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."

It will be noted that under the aforequoted section, the court has the discretion to determine the provisional value which must be deposited by the plaintiff to enable it "to take or enter upon the possession of the property." Notice to the parties is not indispensable. In interpreting a similar provision of Act No. 1592, this Court, in the 1915 case of *Manila Railroad Company, et al. vs. Paredes, et al.*,[45] held:

"x x x The statute directs that, at the very outset, 'when condemnation proceedings are brought by any railway corporation' the amount of the deposit is to be 'provisionally and promptly ascertained and fixed by the court.' It is very clear that it was not

[45] 31 Phil. 118, 132 (1915).

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the intention of the legislator that before the order fixing the amount of the deposit could lawfully be entered the court should finally and definitely determine who are the true owners of the land; and after doing so, give them a hearing as to its value, and assess the true value of the land accordingly. In effect, that would amount to a denial of the right of possession of the lands involved until the conclusion of the proceedings, when there would be no need for the filing of the deposit. Of course, there is nothing in the statute which denies the right of the judge to hear all persons claiming an interest in the land, and courts should ordinarily give all such persons an opportunity to be heard if that be practicable, and will cause no delay in the prompt and provisional ascertainment of the value of the land. But the scope and extent of the inquiry is left wholly in the discretion of the court, and a failure to hear the owners and claimants of the land, who may or may not be known at the time of the entry of the order, in no wise affects the validity of the order . . . ."

P.D. No. 42, however, effectively removes the discretion of the court in determining the provisional value. What is to be deposited is *an amount equivalent to the assessed value for taxation purposes*.[46] No hearing is required for that purpose. All that is needed is notice to the owner of the property sought to be condemned.[47]

Clearly, therefore, respondent Judge either deliberately disregarded P.D. No. 42 or was totally unaware of its existence and the cases applying the same.

In any event, petitioner deposited the provisional value fixed by the court. As a matter of right, it was entitled to be placed in possession of the property involved in the complaints at once, pursuant to both Section 2 of Rule 67 and P.D. No. 42. Respondent Court had the corresponding duty to order the sheriff or any other proper officer to forthwith place the petitioner in such possession. Instead of complying with the clear mandate of the law, respondent Judge chose to ignore and overlook it. Moreover, upon separate motions for reconsideration filed by

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[46] *Haguisan vs. Emilia, et al.*, 131 SCRA 517.

[47] *Arce vs. Genato*, 69 SCRA 544; *San Diego vs. Valdellon*, 80 SCRA 305.

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the defendants in Civil Cases Nos. 5938 and 5939, he issued a new Order increasing the provisional values of the properties involved therein. No hearing was held on the motions. As a matter of fact, as the records show, the motion for reconsideration filed by defendants Jesus Gonzaga, *et al*. in Civil Case No. 5938 is dated 11 July 1990[48] while the Order granting both motions was issued the next day, 12 July 1990.[49] The motion for reconsideration in Civil Case No. 5938 does not even contain a notice of hearing. It is then a mere scrap of paper; it presents no question which merits the attention and consideration of the court. It is not even a motion for it does not comply with the rules, more particularly Sections 4 and 5, Rule 15 of the Rules of Court; the Clerk of Court then had no right to receive it.[50]

There was, moreover, a much stronger reason why the respondent Court should not have issued the 12 July 1990 Order increasing the provisional values of the Gonzaga lots in Civil Cases Nos. 5938 and 5939. After having fixed these provisional values, albeit erroneously, and upon deposit by petitioner of the said amounts, respondent Judge lost, as was held in *Manila Railroad Company vs. Paredes*,[51] "plenary control over the order fixing the amount of the deposit, and has no power to annul, amend or modify it in matters of substance pending the course of the condemnation proceedings." The reason for this is that a contrary ruling would defeat the very purpose of the law which is to provide a speedy and summary procedure whereby the peaceable possession of the property subject of the expropriation proceedings "may be secured without the delays incident to prolonged and vexatious litigation touching the ownership and value of such lands, which should not be permitted to delay the progress of the work."

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[48] *Rollo*, 133.

[49] Annex "W" of Petition.

[50] *Bank of the Philippine Islands vs. Far East Molasses, Corp.*, G.R. No. 89125, 2 July 1991, 198 SCRA 698, citing *Firme, et al. vs. Reyes, et al*, 92 SCRA 713; *Filipinas Fabricators & Sales, Inc., et al. vs. Magsino, et al*., 157 SCRA 469.

[51] *Supra*.

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Compounding the above error and the capriciousness with which it was committed is respondent Judge's refusal to place the petitioner in possession of the property or issue the writ of possession despite the fact that the latter had likewise deposited the additional amount called for by the 12 July 1990 Order. Instead, respondent Judge issued the 16 July 1990 order directing the defendants to state in writing within twenty-four (24) hours whether or not they would accept and withdraw the amounts deposited by the petitioner for each of them "as final and full satisfaction of the value of their respective property (sic) affected by the expropriation" and stating at the same time that the writ of possession will be issued after such manifestation and acceptance and receipt of the amounts.

The above Order has absolutely no legal basis even as it also unjustly, oppressively and capriciously compels the petitioner to accept the respondent Judge's determination of the provisional value as the just compensation after the defendants shall have manifested their conformity thereto. He thus subordinated his own judgment to that of the defendants' because he made the latter the final authority to determine such just compensation. This Court ruled in *Export Processing Zone Authority vs. Dulay, et al*.[52] that the determination of just compensation in eminent domain cases is a judicial function; accordingly, We declared as unconstitutional and void, for being, *inter alia*, impermissible encroachment on judicial prerogatives which tends to render the Court inutile in a matter which, under the Constitution, is reserved to it for final determination, the method of ascertaining just compensation prescribed in P.D. Nos. 76, 464, 794 and 1533, to wit: the market value as declared by the owner or administrator or such market value as determined by the assessor, whichever is lower in the first three (3) decrees, and the value declared by the owner or administrator or anyone having legal interest in the property or the value as determined by the assessor, pursuant to the Real Property Tax Code, whichever is lower, prior to the recommendation or decision of the appropriate

[52] 149 SCRA 305 (1987).

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Government office to acquire the property, in the last mentioned decree. If the legislature or the executive department cannot even impose upon the court how just compensation should be determined, it would be far more objectionable and impermissible for respondent Judge to grant the defendants in an eminent domain case such power and authority.

Without perhaps intending it to be so, there is not only a clear case of abdication of judicial prerogative, but also a complete disregard by respondent Judge of the provisions of Rule 67 as to the procedure to be followed after the petitioner has deposited the provisional value of the property. It must be recalled that three (3) sets of defendants filed motions to dismiss[53] pursuant to Section 3, Rule 67 of the Rules of Court; Section 4 of the same rule provides that the court must rule on them and in the event that it overrules the motions or, when any party fails to present a defense as required in Section 3, it should enter an order of condemnation declaring that the petitioner has a lawful right to take the property sought to be condemned.

As may be gleaned from the 25 June 1990 Order, the respondent Judge found that the petitioner has that right and that "there will be a (sic) paramount public interest to be served by the expropriation of the defendants' properties." Accordingly, considering that the parties submitted neither a compromise agreement as to the just compensation nor a stipulation to dispense with the appointment of commissioners and to leave the determination of just compensation to the court on the basis of certain criteria, respondent Judge was duty bound to set in motion Section 5 of Rule 67; said section directs the court to appoint not more that three (3) competent and disinterested persons as commissioners to ascertain and report to it regarding the just compensation for the property sought to be taken. Such commissioners shall perform their duties in the manner provided for in Section 6; upon the filing of their report, the court may, after a period of ten (10) days which it must grant to the parties in order that the latter may file their objections to such report,

[53] Annexes "H", "I" and "J" of Petition.

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and after hearing pursuant to Section 8, accept and render judgment in accordance therewith or, for cause shown, recommit the same to the commissioners for further report of facts. The court may also set aside the report and appoint new commissioners, or it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the petitioner the property essential to the exercise of its right of condemnation, and to the defendant just compensation for the property so taken.

Not satisfied with the foregoing violations of law and insisting upon his own procedure, respondent Judge declared in his Order of 18 July 1990 that the provisional amounts he fixed, later increased with respect to the properties of the Gonzagas, shall be considered as the full payment of the value of the properties after the defendants in Civil Cases Nos. 5938, 5939, 5940, 5942 and 5943 shall have filed their manifestations; he also ruled that the writ of possession will be issued only after the latter shall have received the said amounts. This Order and the records before this Court do not disclose that the defendants in Civil Cases Nos. 5941 and 5944 filed any manifestation; yet, in the Order, respondent Judge whimsically and arbitrarily considered the so-called provisional values fixed therein as the final values. By such Order, the case was in fact terminated and the writ of execution then became a mere incident of an execution of a judgment. The right of the petitioner to take or enter into possession of the property upon the filing of the complaint granted by Section 2 of Rule 67 and P.D. No. 42 was totally negated despite compliance with the deposit requirement under the latter law.

Nothing can justify the acts of respondents Judge. Either by design or sheer ignorance, he made a mockery of the procedural law on eminent domain by concocting a procedure which he believes to be correct. Judges must apply the law; they are not at liberty to legislate. As Canon 18 of the Canon of Judicial Ethics provides:

"A judge should be mindful that his duty is the application of general law to particular instances, that ours is a government of

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law and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but judge under the sanction of law."

They must be reminded once more that "the demands of fair, impartial, and wise administration of justice call for a faithful adherence to legal precepts on procedure which ensure to litigants the opportunity to present their evidence and secure a ruling on all the issues presented in their respective pleadings. 'Short-cuts' in judicial processes are to be avoided where they impede rather than promote a judicious disposition of justice."[54]

We agree with the petitioner that the ruling in the case of *City Government of Toledo City vs. Fernandos, et al.*[55] does not apply to the instant petition because at the pre-trial conference held therein, the petitioner submitted to the discretion of the court as to the correct valuation, private respondents stated that they have no objections and are in conformity with the price of ₱30.00 per square meter as reasonable compensation for their land and the City Assessor informed the court of the current market and appraisal values of the properties in the area and the factors to be considered in the determination of such. The parties presented their documentary exhibits. In effect, therefore, the parties themselves agreed to submit to a judicial determination on the matter of just compensation and that judgment be rendered based thereon. In the instant case, no pre-trial was conducted; the proceedings were still at that stage where the provisional value was yet to be determined; and the parties made no agreement on just compensation.

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[54] *Constantino, et al. vs. Estenzo, et al.*, 65 SCRA 675.

[55] *Supra*.

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WHEREFORE, the *instant petition* is *GRANTED* and the *Orders of respondent Judge of 25 June 1990, 12 July 1990, 16 July 1990 and 18 July 1990* are hereby *SET ASIDE* and the *temporary restraining order issued by this Court on 31 July* 1990 directing respondent Judge to cease and desist from enforcing the questioned Orders is hereby made permanent.

The respondent Judge is hereby directed to fix the provisional values of the parcels of land in Civil Cases Nos. 5938, 5939, 5940, 5941, 5942, 5943 and 5944 in accordance with P.D. No. 42; thereafter, the petitioner may retain in Savings Account No. 249-505865-7 with the Philippine National Bank, NAPOCOR Branch, Diliman, Quezon City, a sum equivalent to the provisional value as thus fixed, which the Bank shall hold subject to the orders and final disposition of the court *a quo,* and withdraw the balance.

The respondent Judge is further directed to proceed with the above eminent domain cases without unnecessary delay pursuant to the procedure laid down in Rule 67 of the Rules of Court.

Finally, respondent Judge is reminded to comply faithfully with the procedure provided for in the Rules of Court. Let a copy of this Decision be appended to his record.

Costs against private respondents.

IT IS SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Romero, and *Nocon, JJ.,* concur.