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the mortgage of the four parcels divisible by taking only one of them solely to obtain its release. The basic indivisibility of the mortgage obligation still remains unimpaired despite that fact. To hold that the acceptance of the bonds at par value should be limited only to the loan value of properties acquired by the Land Bank but should be discounted as to other lands not so acquired, would not only run counter to the principle of indivisibility of a mortgage and contravene the clear mandate of PD No. 251, but would also reduce the bond payment to the dispossessed landowner by approximately one-half, to his complete detriment. This is a consequence that neither law, equity, nor justice would countenance.

WHEREFORE, granting Mandamus, respondent Government Service Insurance System is hereby required to accept the bonds issued by the Land Bank of the Philippines at their par or face value in payment of petitioners' outstanding balance. No findings as to damages. No costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez and *Guerrero, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-54886. September 10, 1981]

REPUBLIC OF THE PHILIPPINES, petitioner, *vs.* THE HONORABLE COURT OF APPEALS (Special Second Division), COURT OF FIRST INSTANCE OF BULACAN, TURANDOT, TRAVIATA, MARCELITA, MARLENE, PACITA, MATTHEW, VICTORIA and ROSARY, all surnamed ALDABA, respondents.

SYNOPSIS

In an expropriation proceeding initiated by petitioner over a 15,000 sq. meter lot of private respondents situated in Barrio Tikay, Malolos, Bulacan,

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the trial Court fixed the just compensation of the land at ₱30.00 per sq. meter or a total of ₱450,000. Petitioner filed a notice of appeal and a motion for extension of 30 days from January 17, 1979 within which to file a record on appeal which was granted by the lower Court. On February 13, 1979, the trial Court allowed petitioner to borrow the records of the case and granted it a second extension of 30 days from February 17, 1979 to file the said record on appeal. A third and fourth motions for extension for a total of 60 days were also granted by the lower Court.

On June 7, 1979 when its motion dated May 17, 1979 for a fifth extension of 30 days from May 18, 1979 has not been acted upon by the trial court, petitioner filed its record on appeal. On August 13, 1979, the lower court dismissed the appeal on the ground that the motion dated May 17, 1979 was posted late as shown by the date stamped on the envelope containing the motion for extension. The Court of Appeals sustained said dismissal order.

Reiterating its claim that the motion dated May 17, 1979 was filed on time as shown by a certification of the postmaster, petitioner filed the instant recourse.

The Supreme Court held that the respondent Court of Appeals gravely abused its discretion in affirming the questioned orders of the trial Court since a delay of one working day does not justify the outright dismissal of the appeal and that public interest warrants the suspension of the rules on the timeliness of the appeal.

Disputed orders set aside and the trial court ordered to approve petitioner's record on appeal and to elevate the same to the Hon. Intermediate Appellate Court.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; DISMISSAL; PROVISIONS OF THE RULES OF COURT THEREON.— Section 13, Rule 41 provides that where the notice of appeal, appeal bond or record on appeal are not filed within the period of time herein provided, the appeal shall be dismissed; and Section 14, Rule 41 reads: A motion to dismiss an appeal on any of the grounds mentioned in the preceding section may be filed in the Court of First Instance prior to the transmittal of the record to the appellate court.

2. ID.; ID.; ID.; RECORD ON APPEAL; DELAY OF ONLY ONE WORKING DAY IN FILING THE SAME DOES NOT JUSTIFY OUTRIGHT DISMISSAL OF APPEAL.— A delay of only one

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working day in filing the record on appeal does not justify the outright dismissal of the appeal of petitioner especially so in the light of the undisputed fact that petitioner had already filed with the lower court the record on appeal at the time the questioned dismissal order was issued by the lower court.

3. ID.; ID.; ID.; ID.; POWER OF THE COURT TO SUSPEND ITS OWN RULES.— A special circumstance which is the subject of one of the main issues raised by petitioner in its appeal warrants US to exercise once more OUR exclusive prerogative to suspend OUR own rules or to exempt a particular case from its operation as in the recent case of Republic of the Philippines *vs.* Court of Appeals, et al. (83 SCRA 459, 478-480 [1978]) thus: ". . . The Rules have been drafted with the primary objective of enhancing fair trials and expediting justice. As a corollary, if their application and operation tend to subvert and defeat instead of promote and enhance it, their suspension is justified. . . ."

4. ID.; EVIDENCE; JUDICIAL NOTICE; POST OFFICE PRACTICE, NOT COVERED THEREBY.— The prevailing practice in post offices "that registered letter when posted is immediately stamped with the date of its receipt, indicating therein the number of the registry, both on the covering envelope itself and on the receipt delivered to the person who delivered the letter to the office" is not covered by any of the specific instances cited in Section 1 of Rule 129 on judicial notice. Neither can it be classified under "matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. . . ."

5. ID.; ID.; ID.; PROPER SUBJECT THEREOF.— For a matter to be taken judicial notice of by the courts of law, it must be a subject of common and general knowledge. In other words, judicial notice of facts is measured by general knowledge of the same facts. A fact is said to be generally recognized or known when its existence or operation is accepted by the public without qualification.

6. ID.; ID.; ID.; POWER TO TAKE JUDICIAL NOTICE MUST BE EXERCISED WITH CAUTION.— The doctrine of judicial notice rests on the wisdom and discretion of the courts. The power to take judicial notice is to be exercised by the courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt upon the subject should be promptly resolved in the negative (31 CJS 522; Martin, Rules of Court 38, Second Edition).

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APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Eulogio Raquel-Santos and *Solicitor Wilfredo D. Reyes* for petitioner.

Felipe Alvarez for private respondents.

DECISION

MAKASIAR, *J.*:

Petitioner, through this petition for review by certiorari, seeks to annul and set aside the respondent Court of Appeals' April 29, 1980 decision and August 15, 1980 resolution in CA-G.R. No. 10081-SP, entitled "Republic of the Philippines versus Hon. Roque Tamayo, et al."—a special action for certiorari, prohibition and *mandamus*—sustaining the lower court's action in dismissing petitioner's appeal as not having been perfected on time.

The root case is an expropriation proceedings initiated by the petitioner over a 15,000 square meter lot of private respondents situated in Barrio Tikay, Malolos, Bulacan, docketed in the lower court as Civil Case No. 525, entitled "Republic of the Philippines *vs.* Turandot Aldaba, et al." The subject parcel of land is needed by the petitioner to set up a permanent site for the Bulacan Area Shop, Bureau of Equipment, Department of Public Highways, a public purpose authorized by law to be undertaken by the Ministry of Public Highways. On March 2, 1978, the lower court issued a writ of possession placing the petitioner in possession of the land in question, upon its deposit of the amount of ₱7,200.00 as provisional value. On March 31, 1978, counsel for private respondents filed a motion praying for the creation of a three (3)-man committee in accordance with Section 5, Rule 67 of the Rules of Court, to study and submit a report as to the just and reasonable compensation for the parcel of land subject of expropriation. On July 31, 1978, the lower court issued an order naming the chairman and members of the committee of three. On November 17, 1978, the three-man committee submitted

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a joint report to the lower court, recommending that the just compensation of the expropriated land be fixed at ₱50.00 per square meter. In this petition, the Solicitor General claims that he was not served copies of the aforementioned March 31, 1978 motion of private respondents, July 31, 1978 order of the respondent lower court and the November 17, 1978 report of the three-man committee. The records reveal that the Solicitor General authorized the provincial fiscal of Bulacan to represent him in that proceedings (pp. 11-12, C.A. rec.). Parenthetically, private respondents in their comment to this petition, alleged "that the Provincial Fiscal, being duly authorized by the office of the Solicitor General to represent the latter in this case, the court merely furnished the office of the Provincial Fiscal with all the pleadings and other papers of the case" (p. 53, rec.).

On December 18, 1978, the Solicitor General received a copy of the lower court's order dated December 8, 1978. The order reads in part:

"The joint report filed by the three-man committee charged with the determination of the just compensation of the property herein sought to be condemned is hereby APPROVED, such that the just compensation of the land described in Paragraph II of the Complaint is fixed at Thirty Pesos (₱30.00) per square meter.

"The defendant may now withdraw from the Philippine National Bank, Malolos, Branch, the sum of ₱7,200.00 deposited by the Third Regional Equipment Services, Department of Public Highways under Account No. 35109, said sum to be part of the total amount of ₱450,000.00 (15,000 square meters at ₱30.00 per square meter), which the Department of Public Highways, Third Regional Equipment Services, Malolos, Bulacan, shall, and is hereby ordered, to pay to the herein defendants as just compensation for the subject property."

On December 22, 1978, the Solicitor General filed through the mail a *notice of appeal,* as well as a *first motion for extension of time of 30 days* from January 17, 1979 within which to file record on appeal. The extension sought for was granted by the lower court in its order dated January 17, 1979.

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On February 13, 1979, the lower court, acting upon petitioner's manifestation filed on January 9, 1979 and motion filed on February 8, 1979, allowed the Solicitor General to borrow the records of the expropriation case "under proper receipt, the Clerk of Court taking the necessary steps to index and number the pages thereof and to ensure its integrity; and granted a second extension of thirty (30) days from February 17, 1979, within which to file the record on appeal of the Republic of the Philippines" (p. 79, C.A. rec.).

Again, on March 22, 1979, the lower court granted petitioner's third motion for an extension of thirty (30) days from March 19, 1979 within which to file its record on appeal (p. 80, C.A. rec.).

Subsequently, the lower court, in an order dated April 24, 1980, acted favorably upon petitioner's motion for a fourth extension of thirty (30) days from April 19, 1979 within which to file its record on appeal and petitioner's request that the records of the expropriation case be forwarded to the Solicitor General (p. 81, C.A. rec.).

In a motion dated May 17, 1979, the petitioner, invoking heavy pressure of work, asked for a fifth extension of thirty (30) days from May 18, 1979 or until June 17, 1979, within which to file its record on appeal (pp. 82-83, C.A. rec.).

On June 7, 1979, when its motion for a fifth extension has not yet been acted upon by the lower court, petitioner filed its record on appeal (p. 13, rec.).

On June 15, 1979, eight (8) days after petitioner had filed its record on appeal, private respondents filed an opposition to the aforesaid fifth motion for extension (pp. 85-87, C.A. rec.), and an objection to petitioner's record on appeal (pp. 88-89, C.A. rec.), on the ground that the same was filed beyond the reglementary period, because petitioner's motion dated May 17, 1979 for extension to file record on appeal was mailed only on May 21, 1979 (pp. 13-14, rec.).

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On June 27, 1979, petitioner filed its opposition to the aforesaid objection to its record on appeal, contending that the said May 17, 1979 motion for extension of time was actually mailed on May 18, 1979, which was the last day of the extended period allowed by the lower court's order of April 24, 1979 (p. 14, rec.).

In an order dated August 13, 1979 but received by the Solicitor General only on September 10, 1979, the lower court dismissed the appeal of petitioner on the ground that *the fifth motion for extension of time dated May 17, 1979 within which to file the record on appeal* and the record on appeal were filed out of time. The lower court found that the said fifth motion for extension of time was actually mailed on May 21, 1979 and not on May 18, 1979 as claimed by petitioner (pp. 14, 34-35, rec.). The order of dismissal reads:

"Upon consideration of the approval of the record on appeal filed by the Republic and acting on the manifestation filed on July 25, 1979 by the defendants thru counsel, the Court finds no merit in the same.

"The last motion of the Office of the Solicitor General for extension of time to file record on appeal was on May 17, 1979, seeking for an additional extension of thirty (30) days from April 18, 1979.

"The thirty-day period requested by the Solicitor General from May 18, 1979 therefore expired on June 17, 1979. But this last request for extension was not acted upon by the court. The Republic of the Philippines had therefore only up to May 17, 1979, within which to file record on appeal. The record on appeal was filed only on June 11, 1979 (should be June 7), which is well beyond the period to file record on appeal. Moreover, the last motion for extension which was not acted upon by the Court had only been filed on May 21, 1979 as shown by the stamp of the Manila Post Office, the date of the mailing which should be reckoned with in computing periods of mailed pleadings, and received by the Court on June 22, 1979. Both the motion for extension filed on May 21, 1979 and the record on appeal filed on June 11, 1979 (should be June 7), have therefore been filed beyond the reglementary period of 30 days from April 18, 1979, or up to May 18, 1979.

". . . . . ." (pp. 34-35, rec.).

On October 4, 1979, petitioner filed a motion for reconsideration claiming that "1) there is merit in plaintiff's appeal

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from this Honorable Court's order of December 8, 1978, a copy of which was received on December 18, 1978; 2) plaintiff's May 17, 1979 motion for 30 days extension from May 17, 1979 to file Record on Appeal, was actually filed on May 18, 1979; and 3) the Honorable Court denied plaintiff's appeal without first resolving plaintiff's motion for a 30-day extension, from May 18, 1979 to file Record on Appeal" (pp. 14-15, rec.; pp. 52-66, C.A. rec.). Relative to the timeliness of the filing of its fifth motion for extension of time, petitioner submitted a certification of the Postmaster of the Central Office of the Bureau of Posts, Manila, that registered letter No. 3273 containing the aforesaid motion addressed to the Clerk of Court of the Court of First Instance of Malolos, Bulacan ". . . was received by this Office late Friday afternoon, May 18, 1979. The letter was not included in the only morning dispatch of May 19 to Bulacan and was dispatched May 21, 1979, Monday (May 20 being a Sunday) under the Manila-Malolos Bill No. 202, page 1, line 15" (p. 66, C.A. rec.).

On the merits of the dismissed appeal, petitioner stressed that the creation of a three-man committee to fix the just compensation of the expropriated lot was without legal basis, because Section 5, Rule 6 of the Rules of Court upon which the same was anchored had already been repealed by the provisions of Presidential Decree No. 76 which took effect on December 6, 1972—under which the court has no alternative but to base the just compensation of expropriated property upon the current and fair market value declared by the owner or administrator, or such market value as determined by the assessor, whichever is lower.

On October 31, 1979, the lower court denied petitioner's motion for reconsideration for lack of merit (pp. 36-40, rec.; pp. 28-32, C.A. rec.), thus:

"The grounds advanced by the plaintiff Republic of the Philippines have been fully taken into account by the Court in its order of August 13, 1979, particularly the late filing of the record on appeal. Plaintiff's counsel should not have assumed that the motion for extension of the period for filing of the record on appeal would be granted.

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"The plaintiff's counsel's belief that their May 17, 1979 motion would be granted cannot be the basis for the plaintiff to be absolved of the effect of late filing of the record on appeal, considering that the Court had liberally extended for five times**, each for thirty (30) days, the filing of said record. This Court considers said extensions as sufficient time for the counsel for plaintiff to prepare its record on appeal. Plaintiff's counsel, with all the resources it has, to protect its client's interests, should have been vigilant enough not to assume and should not expect that their motion for extension would be granted. It is not correct therefore that only three days had elapsed after the reglementary period to perfect appeal because the reglementary period ended not on June 17, 1979, but on May 17, 1979, because the last motion for extension was not granted by the Court.

"The Court deplores the insinuation of plaintiff's counsel that it took hook, line and sinker, defendant's allegation about the fact of mailing. It has carefully gone over the record and found that the date of mailing of the motion for extension is May 21, 1979, as shown by the stamp 'Registered, Manila, Philippines, May 21, 1979' appearing on the covering envelope containing the motion for extension. Therefore, the explanation contained in Annex B of the motion for reconsideration to the effect that registered Letter No. 3273, addressed to the Clerk of Court, Court of First Instance of Malolos, Bulacan, was received by the Manila Post Office late Friday afternoon, May 18, 1979, but was not included in the 'only' morning dispatch of May 19 to Bulacan and was dispatched May 21, 1979, Monday (May 20 being a Sunday), under the Manila-Malolos Bill No. 202, page 1, line 15', can not overturn the fact of date of actual mailing which is May 21, 1979, because it is of judicial knowledge that a registered letter when posted is immediately stamped with the date of its receipt, indicating therein the number of the registry, both on the covering envelope itself and on the receipt delivered to the person who delivered the letter to the post office. The letter Annex B of the motion therefore lacks sufficient weight and persuasiveness to prove the fact that the letter asking for another extension was actually filed on May 18, 1979, and not May 21, 1979.

"Regarding the creation of a three-man committee which according to plaintiff the Court sorely lacked the prerogative to create pursuant to Sec. 5, Rule 67 of the Rules of Court because it has been superseded by the provisions of PD 76 which definitely fixed the guidelines for the determination of just compensation of private property acquired by the State

** four (4) times only; 5th extension was not acted upon by the Court.

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for public use, the Court had to resort to this old method of determining fair market value, which is defined as:

> 'The "current and fair market value" shall be understood to mean the "price of which a willing seller would sell and a willing buyer would buy neither being under abnormal pressure.'

because, firstly; the plaintiff failed to show evidence thereof as declared by the owner or administrator of the property under the provisions of PD 76, or the valuation or assessment of the value as determined by the assessor, whichever is lower. Hence, for all intents and purposes, the findings of the three-man committee have become the basis of the valuation, Paragraph III of the complaint notwithstanding, because allegation in the complaint, unless proved, are not binding as evidence.

"Presidential Decree No. 42, from its very caption, which reads:

> 'PRESIDENTIAL DECREE NO. 42 AUTHORIZING THE PLAINTIFF IN EMINENT DOMAIN PROCEEDINGS TO TAKE POSSESSION OF THE PROPERTY INVOLVED UPON DEPOSITING THE ASSESSED VALUE FOR PURPOSES OF TAXATION'

does not fix the value of the property to be expropriated, but rather for the purpose of taking possession of the property involved, the assessed value for purposes of taxation is required to be deposited in the Philippine National Bank or any of its branches or agencies. This is borne out by the first *Whereas* of the decree which finds the existing procedure for the exercise of the right of eminent domain not expeditious enough to enable the plaintiff to take or enter upon the possession of the real property involved, when needed for public purposes. The second *Whereas* states that the measure is in the national interest in order to effect the desired changes and reforms to create a new society and economic order for the benefit of the country and its people.

"The body of the law does not specify the valuation of the property, but rather the method by which seizure of the property could be done immediately, and that is by the act of depositing with the Philippine National Bank, in its main office or any of its branches or agencies, an amount equivalent to 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.

"Only in this respect are the provisions of Rule 67 of the Rules of Court and or any other existing law contrary to or inconsistent therewith repealed. If at all, the decree, PD 42, fixes only a *provisional value* of the property

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which does not necessarily represent the true and correct value of the land as defined in PD 76. It is only provisional or tentative to serve as the basis for the immediate occupancy of the property being expropriated by the condemnor. This is in line with the recent decision of the Honorable Supreme Court promulgated on October 18, 1979, in the case of the Municipality of Daet, Petitioner, *vs.* Court of Appeals and Li Seng Giap & Co., Inc., Respondents, G.R. No. L-45861, which states in part:

> '. . ., 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.'
>
> ". . . . . ." (pp. 28-32, rec.).

Dissatisfied with the aforesaid orders of the lower court, petitioner on December 3, 1979 filed with the respondent Court of Appeals a petition for certiorari, prohibition and mandamus with preliminary injunction in CA-G.R. No. 10081-Sp, entitled: Republic of the Philippines *versus* Court of First Instance of Bulacan, Branch VI, presided over by Hon. Roque Tamayo, et al., whereby it prayed that: "1) This petition be given due course; 2) A writ of preliminary injunction and/or temporary restraining order be issued ex-parte restraining respondent court from executing, enforcing and/or implementing its Order dated December 8, 1978, . . . and its orders dated August 13, 1979 and October 31, 1979 . . .; 3) After hearing on the merits, judgment be rendered: [a] annulling and setting aside respondent court's Orders of August 13, 1979 . . .; [b] Directing and compelling respondent court to allow and approve petitioner's record on appeal and to certify and elevate the same to this Honorable Court; [c] Declaring the writ of preliminary injunction and/or restraining order herein prayed for to be made permanent and perpetual" and for such other relief as the Court may deem just and equitable in the premises.

On December 14, 1979, respondent Court of Appeals issued a temporary restraining order to maintain the *status quo,* and

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required private respondents to file their comment (pp. 67-68, C.A. rec.).

On January 2, 1980, private respondents filed the required comment (pp. 69-91, C.A. rec.).

On April 29, 1980, respondent Court of Appeals dismissed petitioner's action and set aside its December 14, 1979 restraining order. The respondent Court of Appeals ruled that "A review of the whole record convinces Us that the challenged orders are not a capricious and whimsical exercise of judgment as to constitute a grave abuse of discretion . . . ." (pp. 44-45, rec.). The Solicitor General received a copy of the aforesaid decision on May 19, 1980.

On May 30, 1980, the Solicitor General sought a thirty-day extension from June 3, 1980 within which to file a motion for reconsideration (pp. 106-107, C.A. rec.).

On June 20, 1980, the respondent Court of Appeals granted the extension sought (p. 108, C.A. rec.).

On June 23, 1980, the Solicitor General filed his motion for reconsideration on the ground that, "The Honorable Court of Appeals was misled by private respondents' counsel in holding that petitioner's motion for extension of time to file record on appeal dated May 17, 1979 . . . was filed on May 21, 1979, not on May 18, 1979 (which was the last day within which to file petitioner's record on appeal); hence, this Honorable Court was not correct in ARRIVING AT THE CONCLUSION THAT PETITIONER'S AFORESAID MOTION FOR EXTENSION was filed beyond the reglementary period" (pp. 109-118, C.A. rec.). Petitioner also moved to set the case for oral argument (p. 119, C.A. rec.). Petitioner vehemently insisted as it did in the main action (pp. 10-12, C.A. rec.), that it is erroneous to conclude that its

". . . . motion for extension dated May 17, 1979 . . . was filed on May 21, 1979 and not on May 18, 1979 which is the last day of the extended period fixed by respondent court for petitioner to file its record on appeal. It is submitted that the motion for extension dated May 17, 1979 . . . was actually

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filed on May 18, 1979 as there is incontrovertible proof that the same was in fact mailed on May 18, 1979 via registered mail (Registry Letter 3273) at the Manila Central Office of the Bureau of Posts. A letter dated September 25, 1979 of Delfin Celis, postmaster of Central Post Office, Manila, to the Chief of the Records Section of the Office of the Solicitor General shows that envelope containing the May 17, 1979 motion was received by the Post Office of Manila on May 17, 1979. Said letter states:

> 'In compliance to your request in your letter dated September 20, 1979 in connection with registered letter No. 3273 addressed to the Clerk of Court, Court of First Instance Malolos, Bulacan, please be informed that it was received by this Office late Friday afternoon, May 18, 1979. The letter was not included in the only morning dispatch of May 19 to Bulacan and was dispatched May 21, 1979, Monday (May 20 being a Sunday) under the Manila-Malolos Bill No. 202, page 1, line 15.'

"Thus, it is conceded that the envelope containing the registered letter of petitioner's motion for extension to file record on appeal dated May 17, 1979 has on its face the date May 21, 1979 stamped thereon . . . . If the aforesaid proof of mailing presented by private respondent is taken into account solely without taking into consideration the letter of Postmaster Delfin Celis dated September 25, 1979 . . . , then it could be said that petitioner's motion for extension to file record on appeal dated May 17, 1979 was filed out of time. However, the certification of the Postmaster stating that the letter was actually received in the Post Office on May 18, 1979 conclusively shows that such date is the date of mailing, and the date May 21, was thus wrongly stamped thereon by an employee of the Post Office. Petitioner should not be blamed for the mistake committed by the personnel of the Post Office of stamping May 21, 1979 on the envelope of said Registered Letter No. 3273. Petitioner's counsel had nothing to do with the aforesaid mistake that had been committed by the personnel of the Post Office.

"In resume, it can be said with certainty that the records of the Office of the Solicitor General and the Post Office of Manila clearly show that the petitioner's motion for extension dated May 17, 1979 was seasonably filed on May 18, 1979 as the latter was actually the date of its mailing and therefore said date should be deemed as the actual date of its filing before respondent court.

"At this juncture, it may be stated that undersigned counsel were constrained to seek extension to file record on appeal because of the pressure of work and their need to borrow the records of the case from the trial court.

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Thus, as early as January 9, 1979, they were borrowing the *expediente* of the case so as to enable them to prepare an accurate record on appeal. Petitioner in its motion and manifestation of January 9, 1979 stated why it wanted to borrow the *expediente* of the case at bar, as follows:

> '3. The records of the undersigned counsel may not be complete as it had authorized the Provincial Fiscal of Bulacan to appear in the hearings before this Honorable Court, thus it is possible that the Office of the Solicitor General may not have been furnished copies of Orders of this Honorable Court, as well as pleadings that may have been furnished the Provincial Fiscal of Bulacan.
>
> '4. This being the case, undersigned counsel can not prepare an accurate and concise record on appeal, hence it is necessary that the records of the case be lent to the undersigned counsel pursuant to Sec. 14, Rule 136 of the Revised Rules of Court' (pp. 6-7, Motion for Reconsideration [in the CFI of Bulacan]; see pp. 52, 57-58, C.A. rec.).

"On April 10, 1979, undersigned counsel reiterated their desire to borrow said *expediente* but it was not until May 3, 1979 that the *expediente* of the case consisting of 164 pages were received by the Docket Section of the Office of the Solicitor General. It was only on May 16, 1979 that said *expediente* were delivered to undersigned Solicitor, thus compelling him to prepare the May 17, 1979 motion. And for the same reasons, it was only on June 7, 1979 that the record on appeal was filed, which was well within the 30 days extension from May 18, 1979 prayed for in petitioner's motion of May 17, 1979.

". . . . . ." (pp. 109-113, C.A. rec.).

On July 14, 1980, respondent Court of Appeals resolved to require private respondents to comment on the motion for reconsideration within ten (10) days from receipt of the resolution (p. 121, C.A. rec.).

Earlier, however, or on July 8, 1980, private respondents mailed their *opposition* to the motion for reconsideration and their waiver to appear for oral argument (pp. 122-123, C.A. rec.). Both were received by the Court of Appeals on July 14, 1980, the very day the resolution requiring private respondents to comment on the motion for reconsideration, was released by the Court of Appeals. In the petition before *this Court,* the Solicitor General laments

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the fact that no copies of the aforesaid pleadings of the private respondents were ever served on and received by him (p. 18, rec.). Indeed, said pleadings of the private respondents do not show nor indicate that copies thereof were served on the Solicitor General (pp. 121-123, C.A. rec.).

In the aforesaid opposition of private respondents, they claimed that:

"The undersigned counsel merely stated that the date of filing the fifth motion for extension to file record on appeal by the office of the Solicitor General was on May 21, 1979, as shown on the envelope bearing the stamp of the Manila Post Office, which clearly reads *'May 21, 1979'* and the undersigned counsel brought to the attention of the lower court that the date of filing of this fifth extension was the date shown when the mailing was made as stamped on the envelope. That there can be no other date than the date stamped on the envelope made by the Manila Post Office when the fifth request for extension of filing the record on appeal was mailed. This fact of the date of mailing, May 21, 1979, was stamped on the envelope.

"The office of the Solicitor General further alleged:

> 'If . . . taken into account solely without taking into consideration the letter of the Post Master Delfin Celis, dated September 25, 1979 . . , then it could be said that petitioner's motion for extension to file record on appeal, dated May 17, 1979, was filed out of time.'

"From the above statement of the Office of the Solicitor General there can never be any abuse in the exercise of judgment as to constitute a grave abuse of discretion. The lower court chose to rely on the date stamped on the envelope by the Manila Post Office rather than considering as paramount a mere letter from the Manila Post Office employee, Delfin Celis.

". . . . . .

"If we are to believe that the stamped date, May 21, 1979, was wrongly stamped by an employee of the Manila Post Office, then thousands of mails received and/or mailed on that date were all wrongly stamped. How can the lower court believe that the date May 21, 1979, was merely erroneously stamped on the envelope? The lower court's finding of facts on this regard, must also be sustained.

"The other reason given by the Office of the Solicitor General was that they have asked for the complete record of the case but that it was only forwarded to their office sometime on May 3, 1979.

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"The record of the case cannot be easily forwarded to the Solicitor General because there was the case of motion for intervention filed in connection with the case.

"The failure on the part of the court to immediately comply with the request of the office of the Solicitor General cannot be a justifying reason for failure to comply with the rules of court and of the order of filing the record on appeal within the reglementary period, or time given by the court.

"The office of the Solicitor General gave the Provincial Fiscal of Bulacan the power to handle the case for (them) and the office of the Provincial Fiscal was furnished with all pleadings, orders and other papers of the case. The record therefore of the Office of the Provincial Fiscal can easily be available to them. Besides no less than five (5) extensions of time had been requested and the last one was not acted upon by the Court and yet the Office of the Solicitor General filed the Record on Appeal only on June 17, 1979 (should be June 7, 1979), which is far beyond the reglementary period which was May 17, 1979 (should be May 18, 1979).

". . . . . ." (pp. 123-125, C.A. rec.).

On August 15, 1980, respondent Court of Appeals issued a resolution denying the motion for reconsideration, thus:

"Acting on the Motion for Reconsideration dated June 23, 1980 filed by the Solicitor General and the opposition thereto filed on July 8, 1980 by the respondents and considering that the said motion does not cite new matters which have not been considered in the decision promulgated on April 29, 1980, the said motion is hereby *denied.*

"Petitioner's 'Motion to Set Case for Oral Argument' dated June 23, 1980 is likewise DENIED."

Aforesaid resolution was received by the Solicitor General on August 20, 1980.

Hence, this recourse.

Petition was filed on October 24, 1980; two extensions of time of thirty (30) days each having been previously asked by and granted to petitioner Republic of the Philippines.

On October 29, 1980, WE resolved to require respondents to comment on the petition within ten (10) days from notice of the resolution and at the same time issued a temporary restraining

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order enjoining respondents from executing, enforcing and/or implementing the decision dated April 28, 1980 issued in CA-G.R. No. SP-10081, entitled "Republic of the Philippines, Petitioner, *versus* Hon. Roque Tamayo, etc., et al., Respondents" of the Court of Appeals, and the Order dated December 8, 1978 issued in Civil Case No. 5257-M, entitled "Republic of the Philippines, Plaintiff, *versus* Turandot Aldaba, et al., Defendants" of the Court of First Instance of Bulacan, Branch VI, at Malolos, Bulacan (pp. 49-51, rec.).

On November 14, 1980, private respondents filed their comment to the petition contending that no abuse of discretion or act in excess of jurisdiction exists as to require a review by this Honorable Court (pp. 52-64, rec.).

On November 24, 1980, WE resolved to give due course to the petition and to declare the case submitted for decision (p. 65, rec.).

But on December 22, 1980, private respondents filed a motion, praying for the outright dismissal of the instant petition on the main ground that the decision of the respondent Court of Appeals sought to be reviewed has already become final and executory, hence, unappealable, because this petition was filed out of time as the petitioner's motion for reconsideration in the Court of Appeals was *pro forma* (pp. 66-67, rec.).

The main issue to be resolved in this case is whether or not respondent Court of Appeals itself committed a grave abuse of discretion in not finding that the respondent trial court committed a grave abuse of discretion in dismissing petitioner's appeal.

The questioned orders should be set aside.

I. It must be underscored that the basic provisions of the Rules of Court basis of the dismissal of the petitioner's appeal by the Court of First Instance of Bulacan as sustained by the respondent Court of Appeals are Section 13, Rule 41: Where the notice of appeal, appeal bond or record on appeal are not filed within the period of time herein provided, the appeal shall be dismissed; and Section 14, Rule 41: A motion to dismiss an appeal on any

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of the grounds mentioned in the preceding section may be filed in the Court of First Instance prior to the transmittal of the record to the appellate court.

The Court of First Instance of Bulacan dismissed herein petitioner's appeal on the bases of the foregoing provisions upon its finding that the record on appeal of petitioner was filed out of time as it was filed only on June 7, 1979 or twenty (20) days after May 18, 1979, the last day of the appeal period as extended; petitioner's fifth extension of time of thirty days from May 18, 1979, not having been favorably acted upon by the Court of First Instance of Bulacan upon its finding that the same was also filed late or three days after the last day of the extended appeal period. The implication of the questioned orders of the Court of First Instance is that since the fifth extension of time was filed out of time, no action may be taken thereon by it; hence, petitioner Republic had only up to May 18, 1979 within which to file the record on appeal. Consequently, the filing thereof only on June 7, 1979 was too late.

The petitioner, however, herein contends as it did before the Court of First Instance of Bulacan and before the respondent Court of Appeals, that its fifth extension of time was actually filed on May 18, 1979, not on May 21, 1979 as found out by the Court of First Instance and Court of Appeals and in support thereof, pointed to the certification of the postmaster of the Central Office of the Bureau of Posts, dated September 25, 1979 (p. 47, rec.) to the effect that the said motion for extension of time as contained in registered mail No. 3273 addressed to the Clerk of Court of First Instance of Bulacan (Malolos) ". . . was received by this office late Friday afternoon, May 18, 1979. The letter was not included in the only morning dispatch of May 19, to Bulacan and was dispatched May 21, 1979, Monday (May 20 being a Sunday) under the Manila-Malolos Bill No. 202, page 1, line 15."

But the Court of First Instance of Bulacan opined that said certification cannot override the prevailing practice in post offices

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"that a registered letter when posted is immediately stamped with the date of its receipt, indicating therein the number of the registry, both on the covering envelope itself and on the receipt delivered to the person who delivered the letter to the office" of which it took judicial notice.

WE entertain grave doubts that the aforesaid post office practice is a proper subject of judicial notice.

Section 1 of Rule 129 on judicial notice provides that "The existence and territorial extent of states, their forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive, and judicial departments of the Philippines, the laws of nature, the measure of time, the geographical divisions and political history of the world and all similar matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions, shall be judicially recognized by the court without the introduction of proof; but the court may receive evidence upon any of the subjects in this section stated, when it shall find it necessary for its own information, and may resort for its aid to appropriate books or documents or reference."

Undoubtedly, the post office practice of which the Court of First Instance took judicial notice is not covered by any of the specific instances cited above. Neither can it be classified under "matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. . . ." For a matter to be taken judicial notice of by the courts of law, it must be a subject of common and general knowledge. In other words, judicial notice of facts is measured by general knowledge of the same facts. A fact is said to be generally recognized or known when its existence or operation is accepted by the public without qualification or contention. The test is whether the fact involved is so notoriously known as to make it proper to assume its existence without proof.

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The fact that a belief is not universal, however, is not controlling for it is very seldom that any belief is accepted by everyone. It is enough that the matters are familiarly known to the majority of mankind or those persons familiar with the particular matter in question (20 Am Jur 49-50; Martin, Rules of Court 37, Second Edition). Furthermore, a matter may be personally known to the judge and yet not be a matter of judicial knowledge and vice versa, a matter may not be actually known to an individual judge, and nevertheless be a proper subject of judicial cognizance.

The post office practice herein involved is not tested by the aforestated considerations, a proper matter of judicial notice. Moreover, the certification issued by the very postmaster of the post office where the letter containing the questioned motion for extension of time was posted, is a very clear manifestation that the said post office practice is not of unquestionable demonstration. Indeed, the doctrine of judicial notice rests on the wisdom and discretion of the courts. The power to take judicial notice is to be exercised by the courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt upon the subject should be promptly resolved in the negative (31 CJS 522; Martin, Rules of Court 38, Second Edition).

It is therefore manifest from the foregoing that the Court of First Instance of Bulacan committed a palpable error amounting to a grave abuse of discretion in relying on the alleged post office practice aforementioned over the uncontroverted certification of the postmaster earlier referred to. That being so, the dismissal of petitioner's appeal therefore lacks factual basis. It should have acted on petitioner's fifth motion for extension of time which WE find to have been filed on time.

The records reveal that a favorable action on the aforesaid fifth motion for extension of time is warranted by the following circumstances: (1) the record on appeal was filed by petitioner even before the lower court could consider the questioned motion for extension of time; and private respondents objected to the said motion only after petitioner had filed the record on appeal;

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(2) the order of the lower court granting the fourth extension of time did not contain any *caveat* that no further extension shall be allowed; (3) the fact that the CFI records of the case were sent to the Solicitor General only on May 3, 1979 and ostensibly handed to the Solicitor assigned to the case only on May 16, 1979 or barely two (2) days before the expiration of the extended appeal period; and (4) pressure of work in the undermanned Office of the Solicitor General who is the counsel of the National Government and all other governmental agencies and instrumentalities; and (5) and the unconscionable amount of ₱450,000.00 for a parcel of 1.5 hectares situated in a barrio of Malolos, Bulacan, with only a provisional value of ₱7,200.00 obviously based upon its assessed value appearing on its tax declaration. No sugar, rice or coconut land of only 15,000 square meters could command such a fabulous price.

WE therefore rule that the respondent Court of Appeals gravely abused its discretion in affirming the disputed orders of the Court of First Instance of Bulacan.

II. But even assuming that the motion for extension to file record on appeal dated May 17, 1979 was filed not on May 18, 1979 but on May 21, 1979 as claimed by private respondents, which is a delay of only one (1) working day, May 19 and 20 being Saturday, and Sunday, respectively, that circumstance alone would not justify the outright dismissal of the appeal of petitioner Republic of the Philippines, especially so in the light of the undisputed fact that petitioner had already filed with the lower court the record on appeal at the time the questioned dismissal order was issued by the lower court. For, as ruled in one case, ". . . . the delay of four days in filing a notice of appeal and a *motion for an extension of time to file a record on appeal can be excused on the basis of equity and considering that the record on appeal is now with the respondent judge*"(Ramos *vs.* Bagasao, et al., G.R. No. 51552, February 28, 1980, Second Division; italics supplied). Moreover, WE have already liberalized in a number of cases the jurisprudence on the matter of perfection of appeals.

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For one, in De las Alas *vs.* Court of Appeals (83 SCRA 200-216 [1978]), WE ruled that:

"... litigation should, as much as possible, be decided on their merits and not on technicality, and under the circumstances obtaining in this case, WE said in the case of Gregorio *vs.* Court of Appeals (L-43511, July 23, 1976, 72 SCRA 120, 126), thus:

'... Dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage hearing of appeals on their merits. The rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override, substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated.

'. . . .'

III. Moreover, a special circumstance which is the subject of one of the main issues raised by petitioner in its appeal warrants US to exercise once more OUR exclusive prerogative to suspend OUR own rules or to exempt a particular case from its operation as in the recent case of Republic of the Philippines *vs.* Court of Appeals, et al. (83 SCRA 459, 478-480 [1978]), thus: "... The Rules have been drafted with the primary objective of enhancing fair trials and expediting justice. As a corollary, if their application and operation tend to subvert and defeat instead of promote and enhance it, their suspension is justified. In the words of Justice Antonio P. Barredo in his concurring opinion in Estrada *vs.* Sto. Domingo, '(T)his Court, through the revered and eminent Mr. Justice Abad Santos, found occasion in the case of C. Viuda de Ordoverza *v.* Raymundo, to lay down for recognition in holding that ' "*it is always in the power of the court (Supreme Court) to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it . . . .*' " (italics ours). As emphasized by the Solicitor General, if the questioned orders are not annulled and set aside, its enforcement and implementation will result to the prejudice of, and irreparable injury to, public interest." This is so because the Government would lose its opportunity to assail the order of the lower court

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dated December 8, 1978, the dispositive portion of which reads, as follows:

". . . . . .

'The joint report filed by the three-man committee charged with the determination of the just compensation of the property herein sought to be condemned is hereby approved, such that the just compensation of the land described in Paragraph II of the Complaint is fixed at Thirty Pesos (₱30.00) per square meter.

'The defendant may now withdraw from the Philippine National Bank, Malolos Branch, the sum of ₱7,200.00 deposited by the Third Regional Equipment Services, Department of Public Highways under Account No. 35109, said sum to be part of the total amount of 450,000.00 (15,000 square meters at ₱30.00 per square meter), which the Department of Public Highways, Third Regional Equipment Services, Malolos, Bulacan, shall, and is hereby ordered to pay to the herein defendants as just compensation for the subject property.

'SO ORDERED' (pp. 3-4, Order dated December 8, 1978).

"It must be stressed at this stage that the Government would lose no less than ₱425,000.00 if the lower court's order of December 8, 1978 is not scrutinized on appeal. It must be stated that the lower court was without jurisdiction to create a three-man committee because Sec. 5, Rule 67 of the Revised Rules of Court was repealed by P.D. 76 which took effect on December 6, 1972, the salient features of which read, as follows:

'The "current and fair market value" shall be understood to mean the "price of which a willing seller would sell and a willing buyer would buy neither being under abnormal pressure.'

'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 declared by the owner or administrator or such market value as determined by the assessor, whichever is lower.'

"Thus, from December 6, 1972, the effectivity date of PD 76, the just compensation to be paid for private property acquired by the government for public use is the current and fair market value declared by the owner or administrator or such market value as determined by the Assessor whichever is lower. Pursuant to said Decree, the government's obligation to private respondent would only be ₱24,376.00. The lower court thus had

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no jurisdiction to fix an amount of just compensation higher than ₱24,376.00. It follows therefore that the joint report submitted by the three-man committee created by the lower court could not serve as a legal basis for the determination of the just compensation of the property sought to be condemned.

". . ." (pp. 19-21, rec.).

IV. With respect to the motion to dismiss filed on December 22, 1980 by private respondents, WE find no merit therein. The contention of private respondents that the June 23, 1980 motion for reconsideration of petitioner with the Court of Appeals was *pro forma* is belied by the results obtained in this petition before US.

WHEREFORE, PETITION IS HEREBY GRANTED; THE DECISION DATED APRIL 29, 1980 AND THE RESOLUTION DATED AUGUST 15, 1980 OF THE RESPONDENT COURT OF APPEALS ARE HEREBY ANNULLED AND SET ASIDE; AND THE RESPONDENT COURT OF FIRST INSTANCE OF BULACAN IS HEREBY DIRECTED TO APPROVE PETITIONER'S RECORD ON APPEAL AND TO ELEVATE THE SAME TO THE HONORABLE COURT OF APPEALS. NO COST.

SO ORDERED.

Teehankee (Chairman), Fernandez and *Guerrero, JJ.*, concur. *Melencio-Herrera, J.*, concurs in the result.

EN BANC

[Adm. Mat. No. 1938-CFI. September 11, 1981]

CONCEPCION FONACIER-ABAÑO, petitioner, *vs.* JUDGE CONSTANTE A. ANCHETA, respondent.

SYNOPSIS

An administrative complaint was filed against respondent judge for consorting with litigants, more particularly with a certain Ong and one