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SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

EN BANC

[G.R. No. 166429. December 19, 2005]

REPUBLIC OF THE PHILIPPINES, Represented by Executive Secretary Eduardo R. Ermita, the DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), and the MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), *petitioners, vs.* **HON. HENRICK F. GINGOYON, In his capacity as Presiding Judge of the Regional Trial Court, Branch 117, Pasay City and PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC.,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; INHERENT RIGHTS OF THE STATE; RIGHT OF EMINENT DOMAIN; EXTENDS TO PERSONAL AND REAL PROPERTY; CASE AT BAR.**— The right of eminent domain extends to personal and real property, and the NAIA 3 structures, adhered as they are to the soil, are considered as real property. The public purpose for the expropriation is also beyond dispute. It should also be noted that Section 1 of Rule 67 (on Expropriation) recognizes the possibility that the property sought to be expropriated may be titled in the name of the Republic of the Philippines, although occupied by private individuals, and in such case an averment to that effect should be made in the complaint. The instant expropriation complaint did aver that the NAIA 3 complex

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"stands on a parcel of land owned by the Bases Conversion Development Authority, another agency of [the Republic of the Philippines]."

2. **ID.; ID.; STATUTES; REPUBLIC ACT NO. 8974; APPLIES IN INSTANCES WHEN THE NATIONAL GOVERNMENT EXPROPRIATES PROPERTY FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS.**— Rep. Act No. 8974, which provides for a procedure eminently more favorable to the property owner than Rule 67, inescapably applies in instances when the national government expropriates property "for national government infrastructure projects." Thus, if expropriation is engaged in by the national government for purposes other than national infrastructure projects, the assessed value standard and the deposit mode prescribed in Rule 67 continues to apply.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; RULE 67 AND REPUBLIC ACT NO. 8974, DISTINGUISHED.**— Under both Rule 67 and Rep. Act No. 8974, the Government commences expropriation proceedings through the filing of a complaint. Unlike in the case of local governments which necessitate an authorizing ordinance before expropriation may be accomplished, there is no need under Rule 67 or Rep. Act No. 8974 for legislative authorization before the Government may proceed with a particular exercise of eminent domain. The most crucial difference between Rule 67 and Rep. Act No. 8974 concerns the particular essential step the Government has to undertake to be entitled to a writ of possession. xxx Rule 67 merely requires the Government to deposit with an authorized government depositary the assessed value of the property for expropriation for it to be entitled to a writ of possession. On the other hand, Rep. Act No. 8974 requires that the Government make a direct payment to the property owner before the writ may issue. Moreover, such payment is based on the zonal valuation of the BIR in the case of land, the value of the improvements or structures under the replacement cost method, or if no such valuation is available and in cases of utmost urgency, the proffered value of the property to be seized.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; REPUBLIC ACT NO. 8974; NATIONAL GOVERNMENT PROJECTS, DEFINED.**— Rep. Act No. 8974 is entitled "An

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Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes." Obviously, the law is intended to cover expropriation proceedings intended for national government infrastructure projects. Section 2 of Rep. Act No. 8974 explains what are considered as "national government projects." "Sec. 2. *National Government Projects.* – The term "national government projects" shall refer to all national government infrastructure, engineering works and service contracts, including projects undertaken by government-owned and controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding."

5. **ID.; ID.; ID.; ID.; CONTEMPLATES WITHIN ITS COVERAGE REAL PROPERTY ACQUIRED FOR NATIONAL INFRASTRUCTURE PROJECTS; CASE AT BAR.—** Since the rights of PIATCO over the NAIA 3 facilities are established, the nature of these facilities should now be determined. Under Section 415(1) of the Civil Code, these facilities are ineluctably immovable or real property, as they constitute buildings, roads and constructions of all kinds adhered to the soil. Certainly, the NAIA 3 facilities are of such nature that they cannot just be packed up and transported by PIATCO like a traveling circus caravan. Thus, the property subject of expropriation, the NAIA 3 facilities, are real property owned by PIATCO. xxx Rep. Act No. 8974 contemplates within its coverage such real property constituting land, buildings, roads and constructions of all kinds adhered to the soil. Section 1 of Rep. Act No. 8974, which sets the declaration of the law's policy, refers to "real property acquired for national government infrastructure projects are promptly paid just compensation." Section 4 is quite explicit in stating that the scope of the law relates to the acquisition of "real property," which under civil law includes buildings, roads and constructions adhered to the soil.

6. **ID.; ID.; ID.; ID.; IN CASE THE COMPLETION OF A GOVERNMENT INFRASTRUCTURE PROJECT IS OF UTMOST URGENCY AND THERE IS NO EXISTING**

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VALUATION OF THE AREA CONCERNED, THE IMPLEMENTING AGENCY SHALL IMMEDIATELY PAY THE OWNER OF THE PROPERTY ITS PROFERRED VALUE.— Admittedly, there is no way, at least for the present, to immediately ascertain the value of the improvements and structures since such valuation is a matter for factual determination. Yet Rep. Act No. 8974 permits an expedited means by which the Government can immediately take possession of the property without having to await precise determination of the valuation. Section 4(c) of Rep. Act No. 8974 states that "in case the completion of a government infrastructure project is of utmost urgency and importance, *and there is no existing valuation of the area concerned,* the implementing agency shall immediately pay the owner of the property its *proferred value,* taking into consideration the standards prescribed in Section 5 [of the law]." The "proffered value" may strike as a highly subjective standard based solely on the intuition of the government, but Rep. Act No. 8974 does provide relevant standards by which "proffered value" should be based, as well as the certainty of judicial determination of the propriety of the proffered value.

7. **ID.; ID.; ID.; ID.; MANDATES THE IMMEDIATE PAYMENT OF THE INITIAL JUST COMPENSATION PRIOR TO THE ISSUANCE OF THE WRIT OF POSSESSION IN FAVOR OF THE GOVERNMENT.**— Rep. Act No. 8974 represents a significant change from previous expropriation laws such as Rule 67, or even Section 19 of the Local Government Code. Rule 67 and the Local Government Code merely provided that the Government deposit the initial amounts antecedent to acquiring possession of the property with, respectively, an authorized Government depositary or the proper court. In both cases, the private owner does not receive compensation prior to the deprivation of property. On the other hand, Rep. Act No. 8974 mandates immediate payment of the initial just compensation prior to the issuance of the writ of possession in favor of the Government. Rep. Act No. 8974 is plainly clear in imposing the requirement of immediate prepayment, and no amount of statutory deconstruction can evade such requisite. It enshrines a new approach towards eminent domain that reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity. While expropriation proceedings have always demanded just compensation in exchange for private

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property, the previous deposit requirement impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed. Under the new modality prescribed by Rep. Act No. 8974, the private owner sees immediate monetary recompense with the same degree of speed as the taking of his/her property.

8. **ID.; ID.; ID.; ID.; PROVIDES FOR THE STANDARD THAT GOVERNS THE EXTENT OF THE ACTS THE GOVERNMENT MAY BE AUTHORIZED TO PERFORM UPON THE ISSUANCE OF THE WRIT OF POSSESSION; CASE AT BAR.**— Rep. Act No. 8974 provides the appropriate answer for the standard that governs the extent of the acts the Government may be authorized to perform upon the issuance of the writ of possession. Section 4 states that "the court shall immediately issue to the implementing agency an order to take possession of the property and *start the implementation of the project*." We hold that accordingly, once the Writ of Possession is effective, the Government itself is authorized to perform the acts that are essential to the operation of the NAIA 3 as an international airport terminal upon the effectivity of the Writ of Possession. These would include the repair, reconditioning and improvement of the complex, maintenance of the existing facilities and equipment, installation of new facilities and equipment, provision of services and facilities pertaining to the facilitation of air traffic and transport, and other services that are integral to a modern-day international airport.

9. **ID.; ID.; ID.; ID.; FINAL DETERMINATION OF JUST COMPENSATION; PROCEDURE; CASE AT BAR.**— Rep. Act No. 8974 mandates a speedy method by which the final determination of just compensation may be had. Section 4 provides: "In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court." We hold that this provision should apply in this case. The sixty (60)-day period prescribed in Rep. Act No. 8974 gives teeth to the law's avowed policy "to ensure

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that owners of real property acquired for national government infrastructure projects are *promptly paid* just compensation." In this case, there already has been irreversible delay in the prompt payment of PIATCO of just compensation, and it is no longer possible for the RTC to determine the just compensation due PIATCO within sixty (60) days from the filing of the complaint last 21 December 2004, as contemplated by the law. Still, it is feasible to effectuate the spirit of the law by requiring the trial court to make such determination within sixty (60) days from *finality of this decision,* in accordance with the guidelines laid down in Rep. Act No. 8974 and its Implementing Rules.

10. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; THE APPOINTMENT OF COMMISSIONERS UNDER RULE 67 MAY BE RESORTED TO EVEN IN EXPROPRIATION PROCEEDINGS UNDER REPUBLIC ACT NO. 8974.**— Rep. Act No. 8974 is silent on the appointment of commissioners tasked with the ascertainment of just compensation. This protocol though is sanctioned under Rule 67. We rule that the appointment of commissioners under Rule 67 may be resorted to, even in expropriation proceedings under Rep. Act No. 8974, since the application of the provisions of Rule 67 in that regard do not conflict with the statute. As earlier stated, Section 14 of the Implementing Rules does allow such other incidents affecting the complaint to be resolved under the provisions on expropriation of Rule 67 of the Rules of Court. Even without Rule 67, reference during trial to a commissioner of the examination of an issue of fact is sanctioned under Rule 32 of the Rules of Court. But while the appointment of commissioners under the aegis of Rule 67 may be sanctioned in expropriation proceedings under Rep. Act No. 8974, the standards to be observed for the determination of just compensation are provided not in Rule 67 but in the statute. In particular, the governing standards for the determination of just compensation for the NAIA 3 facilities are found in Section 10 of the Implementing Rules for Rep. Act No. 8974, which provides for the replacement cost method in the valuation of improvements and structures.

11. **ID.; ID.; ID.; ID.; OBJECTIONS TO THE ORDER OF APPOINTMENT OF THE COMMISSIONERS SHOULD BE FILED WITH THE TRIAL COURT.**— What Rule 67 does allow though is for the parties to protest the appointment

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of any of these commissioners, as provided under Section 5 of the Rule. These objections though must be made filed within ten (10) days from service of the order of appointment of the commissioners. In this case, the proper recourse of the Government to challenge the choice of the commissioners is to file an objection with the trial court, conformably with Section 5, Rule 67, and not as it has done, assail the same through a special civil action for *certiorari*. Considering that the expropriation proceedings in this case were effectively halted seven (7) days after the *Order* appointing the commissioners, it is permissible to allow the parties to file their objections with the RTC within five (5) days from finality of this decision.

12. **JUDICIAL ETHICS; JUDGES; INHIBITION; DISQUALIFICATION OF A JUDGE IS A DEPRIVATION OF HIS JUDICIAL POWER AND SHOULD NOT BE ALLOWED ON THE BASIS OF MERE SPECULATIONS AND SURMISES.**— The disqualification of a judge is a deprivation of his/her judicial power and should not be allowed on the basis of mere speculations and surmises. It certainly cannot be predicated on the adverse nature of the judge's rulings towards the movant for inhibition, especially if these rulings are in accord with law. Neither could inhibition be justified merely on the erroneous nature of the rulings of the judge.

13. **REMEDIAL LAW; COURTS; POWERS; COURTS HAVE THE INHERENT POWER TO AMEND AND CONTROL ITS PROCESSES AND ORDERS SO AS TO MAKE THEM CONFORMABLE TO LAW AND JUSTICE; CASE AT BAR.**— The *motu proprio* amendment by a court of an erroneous order previously issued may be sanctioned depending on the circumstances, in line with the long-recognized principle that every court has inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction. Section 5(g), Rule 135 of the Rules of Court further recognizes the inherent power of courts "to amend and control its process and orders so as to make them conformable to law and justice," a power which Hon. Gingoyon noted in his 10 January 2005 *Omnibus Order*. This inherent power includes the right of the court to reverse itself, especially when in its honest opinion it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party litigant.

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14. JUDICIAL ETHICS; JUDGES; INHIBITION; INCOMPETENCE MAY BE A GROUND FOR ADMINISTRATIVE SANCTION, BUT NOT FOR INHIBITION.— Incompetence may be a ground for administrative sanction, but not for inhibition, which requires lack of objectivity or impartiality to sit on a case.

PUNO, *J.*, *separate opinion*:

POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; POWERS; THE POWER TO PROMULGATE RULES OF PLEADING, PRACTICE AND PROCEDURE IS NO LONGER SHARED BY THE SUPREME COURT WITH CONGRESS; CASE AT BAR.— Article VIII, Sec. 5 of the 1987 Constitution gave the Supreme Court the following powers: x x x (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. In *Echegaray v. Secretary of Justice* we emphasized that the 1987 Constitution strengthened the rule making power of this Court, thus: The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court. x x x The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. x x x *But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress* x x x. Undoubtedly, Rule 67 is the rule this Court promulgated to govern the proceedings in expropriation cases filed in court. It has been the undeviating rule for quite a length of time. Following Article VIII, Section 5(5) of the 1987 Constitution and the *Echegaray* jurisprudence, Rule 67 cannot be repealed or amended by Congress. This prohibition against

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non- repeal or non-amendment refers to any part of Rule 67 for Rule 67 is pure procedural law. Consequently, the Court should not chop Rule 67 into pieces and hold that some can be changed by Congress but others can be changed. The stance will dilute the rule making power of this Court which can not be allowed for it will weaken its institutional independence.

CARPIO, *J.*, *separate opinion*:

POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; REPUBLIC ACT NO. 8974; THE IMMEDIATE PAYMENT TO THE PROPERTY OWNER OF THE FULL ZONAL OR PROFERRED VALUE PRIOR TO TAKEOVER BY THE GOVERNMENT MUST APPLY TO ALL EXPROPRIATION CASES UNDER REPUBLIC ACT NO. 8974 INVOLVING THE ACQUISITION OF REAL PROPERTY FOR NATIONAL GOVERNMENT PROJECTS; CASE AT BAR.— Congress has no power to amend or repeal rules of procedure adopted by the Supreme Court. However, Congress can enact laws on substantive matters which are the subject of court procedures. Thus, Congress can prescribe the initial or minimum amount for just compensation in expropriation cases, and require immediate payment of such initial or minimum amount as condition for the immediate takeover of the property by the government. The rules of procedure, like Rule 67 of the Rules of Court, must adjust automatically to such new laws on substantive matters. Section 4 of Republic Act No. 8974, mandating immediate payment to the property owner of the full zonal or proffered value prior to takeover by the government, is a substantive requirement in expropriation cases. Thus, Section 4 must apply to all expropriation cases under RA No. 8974 involving the acquisition of real property, like the NAIA Terminal III, for "national government projects." Even assuming, for the sake of argument, that Section 4 of RA 8974 is not applicable to the expropriation of NAIA Terminal III, the Court must still apply the substantive concept in Section 4 of RA 8974 to expropriation proceedings under Rule 67 to insure equal protection of the law to property owners. There is no substantial reason to discriminate against property owners in expropriation cases under Rule 67. Under RA 8974, when private property is expropriated for a national government project, the government must first pay the zonal or proffered value to the property owner

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before the government can take over the property. In the present case, private property is expropriated for an admittedly national government project. Thus, the Court must extend the substantive benefits in Section 4 of RA 8974 to expropriation cases under Rule 67 to prevent denial of the equal protection of the law.

CORONA, *J.*, *dissenting opinion*:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; LIMITATIONS.**— The exercise of eminent domain is circumscribed by two limitations in the Constitution : (1) the taking must be for public use and (2) just compensation must be paid to the owner of the private property. These twin proscriptions are grounded on the necessity to achieve a balance between the interests of the State, on the one hand, and the private rights of the individual, on the other hand, by effectively restraining the former and affording protection to the latter. "Public use" as a limitation to the power of eminent domain is not defined in the Constitution. It is thus considered in its general notion of meeting a public need or a public exigency. It is not restricted to clear cases of "use by the public" but embraces whatever may be beneficially employed for the community. The concept now covers uses which, while not directly available to the public, redound to their indirect advantage or benefit. It is generally accepted that it is just as broad as "public welfare."

2. **ID.; ID.; ID.; ID.; JUST COMPENSATION; DEFINED.**— Just compensation is the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation. The compensation given to the owner is just if he receives for his property a sum equivalent to its market value at the time of the taking. "Market value" is the price fixed by the buyer and the seller in the open market in the usual and ordinary course of legal trade and competition.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; RULE 67 AND REPUBLIC ACT 8974, DISTINGUISHED.**— Rule 67 and RA 8974 differ in the manner of compensating the owner of the property under expropriation. Under Rule 67, before the government can take possession of the property to be expropriated, the deposit of an amount equivalent to the *assessed value* of the property for taxation purposes is sufficient for the

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time being, that is, until the conclusion of the court proceedings where both parties shall have proven their claims and the court shall have made a factual determination of the price of the property. Under RA 8974, on the other hand, *immediate* payment of the *full zonal value* (a much bigger sum than the assessed value required by Rule 67) of the property and improvements and/or structures as determined under Section 7 of the law is required before the government can take possession of the property.

4. **ID.; CIVIL PROCEDURE; JUDGMENTS; LAW OF THE CASE; FINDS APPLICATION ONLY IN THE SAME CASE BETWEEN THE PARTIES.**— It is incorrect to say that *Agan* constitutes the law of the case. The "law of the case" doctrine is defined as a term applied to an established rule that, when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case on subsequent appeal. Unlike the doctrine of *stare decisis*, the doctrine of the law of the case operates only in the particular case. The law of the case finds application only in the *same case* between the parties. This case (which refers to the expropriation of NAIA IPT3) is irrefutably not the same as *Agan* (which was about the validity of the so-called "PIATCO contracts"). Hence, the pronouncements in *Agan* cannot constitute the law of the case here.

5. **ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; RULE 67 IS APPLICABLE IN CASE AT BAR.**— The application of Rule 67 in the expropriation proceedings of NAIA IPT3 is in consonance with *Agan*. The determination and payment of just compensation pursuant to Rule 67 are in accordance with law. Under Rule 67, PIATCO will be given FULL JUST COMPENSATION by the government for the taking of NAIA IPT3. That is mandatory. The Constitution itself ordains it. Under Rule 67, there is no way the government can unjustly enrich itself at the expense of PIATCO. Section 9 of Rule 67 ensures this by requiring the payment of interest from the time government takes possession of the property.

6. **STATUTORY CONSTRUCTION; STATUTES; INTERPRETATION OF; IMPLIED REPEALS ARE NOT FAVORED; CASE AT BAR.**— Respondent judge's theory about Rule 67's supposed repeal by RA 8974 was totally devoid of factual and legal basis.

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RA 8974 did *not* repeal Rule 67 at all. The Constitution will not allow it. In fact, neither its repealing clause nor any of its provisions even mentioned or referred to the Rules of Court, whether on expropriation or anything else. But even assuming (but not conceding) that respondent judge's theory had been based on an *implied* repeal, still there would have been no legal justification for it. Settled is the rule in statutory construction that implied repeals are not favored. Thus: "The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn. The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretendi, i.e.,* every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. The fundament is that the legislature should be presumed to have known the existing laws on the subject and not have enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject." The foregoing becomes all the more significant when, as in this case, the provisions of RA 8974 reveal no manifest intent to revoke Rule 67. *In fact, Section 14 of the IRR of RA 8974 makes an explicit reference to Rule 67 and mandates its applicability to all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties and such other incidents affecting the complaint.* If only for this reason, respondent judge's "repeal theory" is totally erroneous.

7. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; THE POWER TO PROMULGATE RULES OF PLEADING, PRACTICE AND PROCEDURE IS NO LONGER SHARED BY THE SUPREME COURT WITH CONGRESS.**— [A]ny talk of repeal (whether express or implied) by legislative enactment of the rules of procedure duly promulgated by this Court goes against the Constitution itself. The power to promulgate rules of pleading, practice and procedure was granted by the Constitution to this Court to enhance its independence. It is no longer shared by this Court with Congress. The legislature now has no power to annul, modify or augment the Rules of Court. We expressly declared in *Echegaray v. Secretary of Justice* that *the 1987 Constitution took away the power of Congress to*

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repeal, alter or supplement rules concerning pleading, practice and procedure.

8. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— There is no question that the appropriate standard of just compensation is a substantive matter, not procedural. However, the manner of determining just compensation (including how it shall be paid and under what conditions a writ of possession may be issued) is a matter of procedure, not of substantive law. If a rule or statute creates a right or takes away a vested right, it is substantive. If it operates as a means of implementing an existing right, then it is procedural. The provisions of Rule 67 neither vest a new power on the State nor create a new right in favor of the property owner. Rule 67 merely provides the procedure for the State's exercise of eminent domain and, at the same time, ensures the enforcement of the right of the private owner to receive just compensation for taking of his property. It is purely a matter of procedure. It is therefore exclusively the domain of this Court. The Constitution prohibits Congress from transgressing this sphere. Congress cannot legislate the manner of payment of just compensation. Neither can Congress impose a condition on the issuance of a writ of possession. Yet that is what RA 8974 precisely does.

9. ID.; ID.; STATUTES; REPUBLIC ACT 8974; WHEN INAPPLICABLE.— Section 1 of the IRR of RA 8974 provides that the law covers: "[A]ll acquisition of private real properties, including improvements therein, needed as right-of-way, site or location for national government projects undertaken by any department, office or agency of the national government, including any government-owned or controlled corporation or state college or university, authorized by law or its respective charter to undertake national government projects." From this, we can clearly infer that the law does not apply to the following: (1) expropriation of private property which is personal or movable property; (2) *taking of private property, whether personal or real, for a purpose other than for right-of-way, site or location of a national government project;* (3) appropriation of private property for right-of-way, site or location of a project not classified as a national government project; (4) acquisition of private property for right-of-way, site or location of a national government project but to be undertaken by an entity not enumerated in Section 1 of the IRR of RA 8974. In the foregoing situations, it is Rule 67 of the Rules of Court or the relevant

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special law (if any) that will apply. Here, the expropriation of NAIA IPT3 falls under the second category since petitioners seek to take private property for a purpose other than for a right-of-way, site or location for a national government project.

10. **ID.; ID.; ID.; ID.; INAPPLICABLE IN CASE AT BAR.**— [U]nder Section 2(d) of the IRR of RA 8974 defining "national government projects", an airport (which NAIA IPT3 essentially is) is specifically listed among the national government projects for which expropriation proceedings may be initiated under the law. However, the law and its IRR also provide that the expropriation should be for the purpose of providing for a right of way, site or location for the intended national government project. A national government project is separate and distinct from the purpose of expropriation. Otherwise, there would have been no need to define them separately. Thus, respondent judge erred when he equated one with the other and obliterated the clear distinction made by the law. Moreover, under Section 2(e) of the IRR, the specific objects or purposes of expropriation were lumped as 'ROW' which is defined as the "right-of-way, site or location, with defined physical boundaries, used for a national government project." Obviously, the NAIA IPT3 is not a right of way, site or location for any national government infrastructure project but the infrastructure itself albeit still under construction. The construction (and now the completion) of NAIA IPT3 never required the acquisition of private property for a right of way, site or location since the terminal, including all its access roads, stands completely on government land. Conformably, RA 8974 does not apply to the expropriation of NAIA IPT3. And there being no special law on the matter, Rule 67 of the Rules of Court governs the procedure for its expropriation.

11. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; REQUISITES FOR THE ISSUANCE OF THE WRIT OF POSSESSION; COMPLIED WITH IN CASE AT BAR.**— Under Section 2 of Rule 67, the only requisites for authorizing immediate entry (that is, for the issuance of the writ of possession) in expropriation proceedings are: (1) the filing of a complaint for expropriation sufficient in form and substance, and (2) a deposit equivalent to the assessed value for taxation purposes of the property subject to expropriation. Upon compliance with these two requirements, the issuance of

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a writ of possession becomes ministerial. Petitioners complied fully with the requirements of Rule 67 pertaining to the issuance of the writ allowing entry into the expropriated facility. First, they duly filed the verified complaint with the court *a quo*. Second, PIATCO was served with and notified of the complaint. Third, petitioners set aside and earmarked ₱3,022,125,00 as provisional deposit, equivalent to the assessed value of the property for taxation purposes with the depositary bank. Form then on, it became the ministerial duty of the trial court presided over by respondent judge to issue the writ of possession. Section 2 of Rule 67 categorically prescribes the amount to be deposited with the authorized government depositary as the pre-condition for the issuance of a writ of possession. This is the assessed value of the property for purposes of taxation. The figure is exact and permits the court no discretion in determining what the provisional value should be.

12. **POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; REPUBLIC ACT 8974; WHERE THERE IS NO EXISTING VALUATION OF THE PROPERTY CONCERNED, ONLY THE PROFERRED VALUE OF THE PROPERTY BY THE AGENCY REQUESTING EXPROPRIATION IS REQUIRED TO BE PAID FOR THE ISSUANCE OF THE WRIT.**— Even assuming for the sake of argument that it was RA 8974 that was applicable, still the trial court could not order petitioners to increase their deposit and to immediately pay the zonal value of NAIA IPT3. Section 4(c) of the law state that, in cases where there is *no existing valuation* of the property concerned, *only the proferred value* of the property by the agency requesting expropriation is required to be paid for issuance of the writ. So even if it had been RA 8974 that was applicable - which was not so - the amount deposited by petitioners would have constituted *the proferred value* estimated by them, based on comparative values made by the City Assessor. In any case, the final determination of the total just compensation due the owner will have to be made in accordance with Rule 67. The provisional deposit shall then be deducted and petitioners shall pay the balance plus legal interest from the time petitioners took possession of the property until PIATCO is fully paid.

13. **ID.; ID.; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; JUST COMPENSATION; FULL PAYMENT**

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THEREOF, THOUGH A CONDITION PRECEDENT FOR THE TRANSFER OF TITLE OR OWNERSHIP, IS NOT A CONDITION PRECEDENT FOR THE TAKING OF THE PROPERTY.— In expropriation, private property is *taken* for public use. What constitutes *taking* is well-settled in our jurisprudence. The owner is ousted from his property and deprived of his beneficial enjoyment thereof. The owner's right to possess and exploit the property (that is to say, his beneficial ownership of it) is "destroyed." And it is only after the property is taken that the court proceeds to determine just compensation, upon full payment of which shall title pass on to the expropriator. xxx Full payment of just compensation, though a condition precedent for the transfer of title or ownership, is not a condition precedent for the *taking* of the property.

14. ID.; ID.; ID.; ID.; THE RIGHT OF BENEFICIAL OWNERSHIP ENJOYED BY THE EXPROPRIATOR INCLUDES THE RIGHT TO LEASE; CASE AT BAR.— [A]n important element of taking is that the owner's right to possess and exploit the land (in other words, his beneficial ownership of it) is transferred to and thenceforth exercised by the expropriator. xxx The question now is whether this right of beneficial ownership enjoyed by the expropriator includes the right to lease out the property (or portions thereof) and to award concessions within NAIA IPT3 to third parties. It does. xxx In this case, petitioners aim to acquire the NAIA IPT3 as the site of a world-class passenger terminal and airport, and to complete its construction and operate it for the benefit of the Filipino people. This is the "public use" purpose of the expropriation. On the other hand, the lease and concession contracts are the means by which the public purpose of the expropriation can be attained. Since PIATCO never challenged the "public use" purpose of the expropriation, the reasonable implications of such public use, including the award of leases and concessions in the terminal, are deemed admitted as necessary consequences of such expropriation. Furthermore, in a contract of lease, only the *use and enjoyment* of the thing are extended to the lessee. Thus, one need not be the legal owner of the property in order to give it in lease. The same is true for the award of concessions which petitioners, as beneficial owner of the property, can legally grant. Hence, respondent judge committed grave abuse of discretion when he prohibited petitioners from exercising acts of ownership in NAIA IPT3.

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15. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; ASCERTAINMENT OF COMPENSATION; APPOINTMENT OF COMMISSIONERS; OBJECTION THERETO MUST BE FILED WITH THE TRIAL COURT WITHIN THE PRESCRIBED PERIOD.**— x x x Rule 67 does not require consultation with the parties before the court appoints the commissioners. Neither notice to the parties nor hearing is required for the appointment of commissioners by the judge. However, in *Municipality of Talisay v. Ramirez,* we held that "while it is true that, strictly speaking, it is the court that shall appoint the said commissioners, there is nothing to prevent it from seeking the recommendations of the parties on this matter xxx to ensure their fair representation." This ruling was more or less integrated into the revised rules of court as the latter now gives the parties ten days from the service of the order appointing the commissioners to file their objections to any of the appointees. This, in effect, allows them to protest the appointment of the commissioners while providing them the opportunity to recommend their own choices. But the objection must come *after* the appointment. This is apparent from the second paragraph of Section 5, Rule 67: "[o]bjections to the appointment of any of the commissioners shall be filed in court within ten (10) days from service, and shall be resolved within thirty (30) days *after* all the commissioners shall have received copies of the objections." Consequently, if petitioners are unable to accept the competence of any of the commissioners, their remedy is to file an objection with the court within the stated period. Initiating a *certiorari* proceeding on this issue is premature.

16. **ID.; ID.; ID.; ID.; ID.; THE COURT IS NOT BOUND BY THE FINDINGS OF THE COMMISSIONERS.**— In any case, even if the commissioners are appointed by the court, the latter is not bound by their findings. xxx The report of the commissioners on the value of the condemned property is neither final nor conclusive. The court is permitted to act on the report in any of several ways enumerated in the rules, at its discretion. It may render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of condemnation and, to the defendant, just compensation for the property expropriated. The court may substitute its own estimate of the value as gathered from the records.

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17. **JUDICIAL ETHICS; JUDGES; DISQUALIFICATION; COMPULSORY DISQUALIFICATION AND VOLUNTARY INHIBITION, DISTINGUISHED.**—As a general rule, judges are mandated to hear and decide cases, unless legally disqualified. However, they may voluntarily excuse themselves, in the exercise of their sound discretion, for just or valid reasons. The rule on disqualification of a judge to hear a case finds its rationale in the principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. It is aimed at preserving the people's faith and confidence in the courts of justice. In compulsory disqualification, the law conclusively presumes that a judge cannot objectively or impartially sit in a case. In voluntary inhibition, the law leaves it to the judge to decide for himself whether he will desist from sitting in a case with only his conscience to guide him.

18. **ID.; ID.; ID.; A JUDGE SHOULD INHIBIT HIMSELF FROM THE CASE AT THE VERY FIRST SIGN OF LACK OF FAITH AND TRUST IN HIS ACTIONS; CASE AT BAR.**— A judge, like Caesar's wife, must be above suspicion. He must hold himself above reproach and suspicion. At the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no other alternative but to inhibit himself from the case. That way, he avoids being misunderstood. His reputation for probity and objectively is maintained. Even more important, the ideal of an impartial administration of justice is preserved. Justice must not merely be done but must also be seen and perceived to be done. Besides, where a case has generated a strained personal relationship, animosity and hostility between the party or his counsel and the judge that the former has lost confidence in the judge's impartiality or the latter is unable to display the cold neutrality of an impartial judge, it is a violation of due process for the judge not to recuse himself from hearing the case. Due process cannot be satisfied in the absence of that objectivity on the part of a judge sufficient to reassure litigants of his being fair and just. Respondent judge should have recused himself from hearing the case in the light of petitioners' patent distrust: "The presiding judge's impartiality has been irreparably impaired. xxx [A]ny decision, order or resolution he would make on the incidents of the case would now be under a cloud of distrust and skepticism. The presiding judge is no longer effective in dispensing justice to the parties herein." Clearly, it would have been more prudent for respondent

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judge to inhibit himself instead of placing any of his decisions, orders or resolutions under a cloud of distrust. It would have likewise deprived petitioners or any one else of reason to cast doubt on the integrity of these expropriation proceedings with national and international implications.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Romulo Mabanta Buenaventura Sayoc and Delos Angeles for PIATCO.

D E C I S I O N

TINGA, *J.*:

The Ninoy Aquino International Airport Passenger Terminal III (NAIA 3) was conceived, designed and constructed to serve as the country's show window to the world. Regrettably, it has spawned controversies. Regrettably too, despite the apparent completion of the terminal complex way back it has not yet been operated. This has caused immeasurable economic damage to the country, not to mention its deplorable discredit in the international community.

In the first case that reached this Court, *Agan v. PIATCO,*[1] the contracts which the Government had with the contractor were voided for being contrary to law and public policy. The second case now before the Court involves the matter of just compensation due the contractor for the terminal complex it built. We decide the case on the basis of fairness, the same norm that pervades both the Court's 2004 Resolution in the first case and the latest expropriation law.

The present controversy has its roots with the promulgation of the Court's decision in *Agan v. PIATCO*,[2] promulgated in

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[1] 450 Phil. 744 (2003). The Motions for Reconsideration were denied in a Resolution dated 21 January 2004, *see* 420 SCRA 575.

[2] *Ibid.*

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2003 (2003 Decision). This decision nullified the "Concession Agreement for the Build-Operate-and-Transfer Arrangement of the Ninoy Aquino International Airport Passenger Terminal III" entered into between the Philippine Government (Government) and the Philippine International Air Terminals Co., Inc. (PIATCO), as well as the amendments and supplements thereto. The agreement had authorized PIATCO to build a new international airport terminal (NAIA 3), as well as a franchise to operate and maintain the said terminal during the concession period of 25 years. The contracts were nullified, among others, that Paircargo Consortium, predecessor of PIATCO, did not possess the requisite financial capacity when it was awarded the NAIA 3 contract and that the agreement was contrary to public policy.[3]

At the time of the promulgation of the 2003 Decision, the NAIA 3 facilities had already been built by PIATCO and were nearing completion.[4] However, the *ponencia* was silent as to the legal status of the NAIA 3 facilities following the nullification of the contracts, as well as whatever rights of PIATCO for reimbursement for its expenses in the construction of the facilities. Still, in his Separate Opinion, Justice Panganiban, joined by Justice Callejo, declared as follows:

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[3] "In sum, this Court rules that in view of the absence of the requisite financial capacity of the Paircargo Consortium, predecessor of respondent PIATCO, the award by the PBAC of the contract for the construction, operation and maintenance of the NAIA IPT III is null and void. Further, considering that the 1997 Concession Agreement contains material and substantial amendments, which amendments had the effect of converting the 1997 Concession Agreement into an entirely different agreement from the contract bidded upon, the 1997 Concession Agreement is similarly null and void for being contrary to public policy. The provisions under Sections 4.04(b) and (c) in relation to Section 1.06 of the 1997 Concession Agreement and Section 4.04(c) in relation to Section 1.06 of the ARCA, which constitute a direct government guarantee expressly prohibited by, among others, the BOT Law and its Implementing Rules and Regulations are also null and void. The Supplements, being accessory contracts to the ARCA, are likewise null and void." *Id.* at 840.

[4] *Id.* at 898. Per *Separate Opinion, J.* Panganiban.

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Should government pay at all for reasonable expenses incurred in the construction of the Terminal? Indeed it should, otherwise it will be unjustly enriching itself at the expense of Piatco and, in particular, its funders, contractors and investors — both local and foreign. After all, there is no question that the State needs and will make use of Terminal III, it being part and parcel of the critical infrastructure and transportation-related programs of government.[5]

PIATCO and several respondents-intervenors filed their respective motions for the reconsideration of the 2003 Decision. These motions were denied by the Court in its *Resolution* dated 21 January 2004 (2004 Resolution).[6] However, the Court this time squarely addressed the issue of the rights of PIATCO to refund, compensation or reimbursement for its expenses in the construction of the NAIA 3 facilities. The holding of the Court on this crucial point follows:

This Court, however, is not unmindful of the reality that the structures comprising the NAIA IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. For the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity for the government can not unjustly enrich itself at the expense of PIATCO and its investors.[7]

After the promulgation of the rulings in *Agan*, the NAIA 3 facilities have remained in the possession of PIATCO, despite the avowed intent of the Government to put the airport terminal into immediate operation. The Government and PIATCO conducted several rounds of negotiation regarding the NAIA 3 facilities.[8] It also appears that arbitral proceedings were commenced before the International Chamber of Commerce

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[5] *Ibid.* at 899. Per *Separate Opinion, J.* Panganiban. Italics supplied.

[6] G.R. Nos. 155001, 155547 & 155561, 21 January 2004, 420 SCRA 575.

[7] *Id.* at 603. Italics supplied.

[8] *Rollo*, pp. 27-28.

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International Court of Arbitration and the International Centre for the Settlement of Investment Disputes,[9] although the Government has raised jurisdictional questions before those two bodies.[10]

Then, on 21 December 2004, the Government[11] filed a *Complaint* for expropriation with the Pasay City Regional Trial Court (RTC), together with an *Application for Special Raffle* seeking the immediate holding of a special raffle. The Government sought upon the filing of the complaint the issuance of a writ of possession authorizing it to take immediate possession and control over the NAIA 3 facilities. The Government also declared that it had deposited the amount of ₱3,002,125,000.00[12] (3 Billion)[13] in Cash with the Land Bank of the Philippines, representing the NAIA 3 terminal's assessed value for taxation purposes.[14]

The case[15] was raffled to Branch 117 of the Pasay City RTC, presided by respondent judge Hon. Henrick F. Gingoyon (Hon. Gingoyon). On the same day that the *Complaint* was filed, the RTC issued an *Order*[16] directing the issuance of a writ of possession to the Government, authorizing it to "take or enter

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[9] *Id.* at 60-61.

[10] *Ibid.*

[11] Particularly the Republic of the Philippines, represented by Executive Secretary Eduardo Ermita, the Department of Transportation and Communications, represented by its Secretary Leandro Mendoza, and the Manila International Airport Authority, represented by its General Manager Alfonso Cusi. *See rollo*, pp. 88-90.

[12] *Rollo*, p. 93.

[13] For brevity's sake, all further references to this amount will be to this rounded off figure denominated in Philippine Pesos.

[14] Based on the resolution by the Board of Directors of the Manila International Airport Authority to use the amount of ₱16,450.00 per square meter as the assessed value of the NAIA 3 Terminal. *See rollo*, p. 103.

[15] Docketed as Civil Case No. 04-0876-9.

[16] *Rollo*, pp. 108-109.

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upon the possession" of the NAIA 3 facilities. Citing the case of *City of Manila v. Serrano*,[17] the RTC noted that it had the ministerial duty to issue the writ of possession upon the filing of a complaint for expropriation sufficient in form and substance, and upon deposit made by the government of the amount equivalent to the assessed value of the property subject to expropriation. The RTC found these requisites present, particularly noting that "[t]he case record shows that [the Government has] deposited the assessed value of the [NAIA 3 facilities] in the Land Bank of the Philippines, an authorized depositary, as shown by the certification attached to their complaint." Also on the same day, the RTC issued a *Writ of Possession.* According to PIATCO, the Government was able to take possession over the NAIA 3 facilities immediately after the *Writ of Possession* was issued.[18]

However, on 4 January 2005, the RTC issued another *Order* designed to supplement its 21 December 2004 *Order* and the *Writ of Possession.* In the 4 January 2005 *Order*, now assailed in the present petition, the RTC noted that its earlier issuance of its writ of possession was pursuant to Section 2, Rule 67 of the 1997 Rules of Civil Procedure. However, it was observed that Republic Act No. 8974 (Rep. Act No. 8974), otherwise known as "An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and For Other Purposes" and its Implementing Rules and Regulations (Implementing Rules) had amended Rule 67 in many respects.

There are at least two crucial differences between the respective procedures under Rep. Act No. 8974 and Rule 67. Under the statute, the Government is required to make immediate payment to the property owner upon the filing of the complaint

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[17] Cited as G.R. No. 142304, June 20, 2001. *See rollo*, p. 109.

[18] *Rollo*, p. 255. According to PIATCO, on 21 December 2004, the same date of the filing of the complaint for expropriation and the issuance of the writ of possession, "hundreds of PNP fully armed (*sic*) SWAT teams flanked [the NAIA 3 facilities]," even though it had not yet been served summons.

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to be entitled to a writ of possession, whereas in Rule 67, the Government is required only to make an initial deposit with an authorized government depositary. Moreover, Rule 67 prescribes that the initial deposit be equivalent to the assessed value of the property for purposes of taxation, unlike Rep. Act No. 8974 which provides, as the relevant standard for initial compensation, the market value of the property as stated in the tax declaration or the current relevant zonal valuation of the Bureau of Internal Revenue (BIR), whichever is higher, and the value of the improvements and/or structures using the replacement cost method.

Accordingly, on the basis of Sections 4 and 7 of Rep. Act No. 8974 and Section 10 of the Implementing Rules, the RTC made key qualifications to its earlier issuances. *First*, it directed the Land Bank of the Philippines, Baclaran Branch (LBP-Baclaran), to immediately release the amount of US$62,343,175.77 to PIATCO, an amount which the RTC characterized as that which the Government "specifically made available for the purpose of this expropriation"; and such amount to be deducted from the amount of just compensation due PIATCO as eventually determined by the RTC. *Second*, the Government was directed to submit to the RTC a Certificate of Availability of Funds signed by authorized officials to cover the payment of just compensation. *Third*, the Government was directed "to maintain, preserve and safeguard" the NAIA 3 facilities or "perform such as acts or activities in preparation for their direct operation" of the airport terminal, pending expropriation proceedings and full payment of just compensation. However, the Government was prohibited "from performing acts of ownership like awarding concessions or leasing any part of [NAIA 3] to other parties."[19]

The very next day after the issuance of the assailed 4 January 2005 *Order*, the Government filed an *Urgent Motion for Reconsideration*, which was set for hearing on 10 January 2005. On 7 January 2005, the RTC issued another *Order*, the second

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[19] *Id.* at 76-77.

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now assailed before this Court, which appointed three (3) Commissioners to ascertain the amount of just compensation for the NAIA 3 Complex. That same day, the Government filed a *Motion for Inhibition* of Hon. Gingoyon.

The RTC heard the *Urgent Motion for Reconsideration* and *Motion for Inhibition* on 10 January 2005. On the same day, it denied these motions in an *Omnibus Order* dated 10 January 2005. This is the third *Order* now assailed before this Court. Nonetheless, while the *Omnibus Order* affirmed the earlier dispositions in the 4 January 2005 *Order*, it excepted from affirmance "the superfluous part of the *Order* prohibiting the plaintiffs from awarding concessions or leasing any part of [NAIA 3] to other parties."[20]

Thus, the present *Petition for Certiorari and Prohibition* under Rule 65 was filed on 13 January 2005. The petition prayed for the nullification of the RTC orders dated 4 January 2005, 7 January 2005, and 10 January 2005, and for the inhibition of Hon. Gingoyon from taking further action on the expropriation case. A concurrent prayer for the issuance of a temporary restraining order and preliminary injunction was granted by this Court in a *Resolution* dated 14 January 2005.[21]

The Government, in imputing grave abuse of discretion to the acts of Hon. Gingoyon, raises five general arguments, to wit:

(i) that Rule 67, not Rep. Act No. 8974, governs the present expropriation proceedings;

(ii) that Hon. Gingoyon erred when he ordered the immediate release of the amount of US$62.3 Million to PIATCO considering that the assessed value as alleged in the complaint was only ₱3 Billion;

(iii) that the RTC could not have prohibited the Government from enjoining the performance of acts of ownership;

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[20] *Id.* at 87.

[21] *Id.* at 240-241.

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(iv) that the appointment of the three commissioners was erroneous; and

(v) that Hon. Gingoyon should be compelled to inhibit himself from the expropriation case.[22]

Before we delve into the merits of the issues raised by the Government, it is essential to consider the crucial holding of the Court in its 2004 Resolution in *Agan*, which we repeat below:

> This Court, however, is not unmindful of the reality that the structures comprising the NAIA IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. *For the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity for the government can not unjustly enrich itself at the expense of PIATCO and its investors.*[23]

This pronouncement contains the fundamental premises which permeate this decision of the Court. Indeed, *Agan*, final and executory as it is, stands as governing law in this case, and any disposition of the present petition must conform to the conditions laid down by the Court in its 2004 *Resolution*.

The 2004 Resolution Which Is

Law of This Case Generally

Permits Expropriation

The pronouncement in the 2004 Resolution is especially significant to this case in two aspects, namely: (i) that PIATCO must receive payment of just compensation determined in accordance with law and equity; and (ii) that the government is barred from taking over NAIA 3 until such just compensation is paid. The parties cannot be allowed to evade the directives laid down by this Court through any mode of judicial action, such as the complaint for eminent domain.

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[22] *Id.* at 34-35.

[23] *Id.* at 603. Italics supplied.

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It cannot be denied though that the Court in the 2004 Resolution prescribed mandatory guidelines which the Government must observe before it could acquire the NAIA 3 facilities. Thus, the actions of respondent judge under review, as well as the arguments of the parties must, to merit affirmation, pass the threshold test of whether such propositions are in accord with the 2004 Resolution.

The Government does not contest the efficacy of this pronouncement in the 2004 *Resolution*,[24] thus its application to the case at bar is not a matter of controversy. Of course, questions such as what is the standard of "just compensation" and which particular laws and equitable principles are applicable, remain in dispute and shall be resolved forthwith.

The Government has chosen to resort to expropriation, a remedy available under the law, which has the added benefit of an integrated process for the determination of just compensation and the payment thereof to PIATCO. We appreciate that the case at bar is a highly unusual case, whereby the Government seeks to expropriate a building complex constructed on land which the State already owns.[25] There is an inherent illogic in the resort to eminent domain on property already owned by the State. At first blush, since the State already owns the property on which NAIA 3 stands, the proper remedy should be akin to an action for ejectment.

However, the reason for the resort by the Government to expropriation proceedings is understandable in this case. The 2004 Resolution, in requiring the payment of just compensation prior to the takeover by the Government of NAIA 3, effectively

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[24] *See rollo*, pp. 297-298. "Petitioners agree with this Honorable Court's statement that '[f]or the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures.' However, petitioners would like to stress the qualification enunciated by this Honorable Court that the 'compensation must be just and in accordance with law and equity.'"

[25] The NAIA 3 facility stands on a parcel of land owned by the Bases Conversion Development Authority. *See rollo*, p. 27.

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precluded it from acquiring possession or ownership of the NAIA 3 through the unilateral exercise of its rights as the owner of the ground on which the facilities stood. Thus, as things stood after the 2004 Resolution, the right of the Government to take over the NAIA 3 terminal was preconditioned by lawful order on the payment of just compensation to PIATCO as builder of the structures.

The determination of just compensation could very well be agreed upon by the parties without judicial intervention, and it appears that steps towards that direction had been engaged in. Still, ultimately, the Government resorted to its inherent power of eminent domain through expropriation proceedings. Is eminent domain appropriate in the first place, with due regard not only to the law on expropriation but also to the Court's 2004 Resolution in *Agan*?

The right of eminent domain extends to personal and real property, and the NAIA 3 structures, adhered as they are to the soil, are considered as real property.[26] The public purpose for the expropriation is also beyond dispute. It should also be noted that Section 1 of Rule 67 (on Expropriation) recognizes the possibility that the property sought to be expropriated may be titled in the name of the Republic of the Philippines, although occupied by private individuals, and in such case an averment to that effect should be made in the complaint. The instant expropriation complaint did aver that the NAIA 3 complex "stands on a parcel of land owned by the Bases Conversion Development Authority, another agency of [the Republic of the Philippines]."[27]

Admittedly, eminent domain is not the sole judicial recourse by which the Government may have acquired the NAIA 3 facilities while satisfying the requisites in the 2004 Resolution. Eminent domain though may be the most effective, as well as the speediest means by which such goals may be accomplished.

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[26] *See* Article 415(1), Civil Code.

[27] *Rollo, infra.*

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Not only does it enable immediate possession after satisfaction of the requisites under the law, it also has a built-in procedure through which just compensation may be ascertained. Thus, there should be no question as to the propriety of eminent domain proceedings in this case.

Still, in applying the laws and rules on expropriation in the case at bar, we are impelled to apply or construe these rules in accordance with the Court's prescriptions in the 2004 Resolution to achieve the end effect that the Government may validly take over the NAIA 3 facilities. Insofar as this case is concerned, the 2004 Resolution is effective not only as a legal precedent, but as the source of rights and prescriptions that must be guaranteed, if not enforced, in the resolution of this petition. Otherwise, the integrity and efficacy of the rulings of this Court will be severely diminished.

It is from these premises that we resolve the first question, whether Rule 67 of the Rules of Court or Rep. Act No. 8974 governs the expropriation proceedings in this case.

Application of Rule 67 Violates

the 2004 Agan Resolution

The Government insists that Rule 67 of the Rules of Court governs the expropriation proceedings in this case to the exclusion of all other laws. On the other hand, PIATCO claims that it is Rep. Act No. 8974 which does apply. Earlier, we had adverted to the basic differences between the statute and the procedural rule. Further elaboration is in order.

Rule 67 outlines the procedure under which eminent domain may be exercised by the Government. Yet by no means does it serve at present as the solitary guideline through which the State may expropriate private property. For example, Section 19 of the Local Government Code governs as to the exercise by local government units of the power of eminent domain through an enabling ordinance. And then there is Rep. Act No. 8974, which covers expropriation proceedings intended for national government infrastructure projects.

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Rep. Act No. 8974, which provides for a procedure eminently more favorable to the property owner than Rule 67, inescapably applies in instances when the national government expropriates property "for national government infrastructure projects."[28] Thus, if expropriation is engaged in by the national government for purposes other than national infrastructure projects, the assessed value standard and the deposit mode prescribed in Rule 67 continues to apply.

Under both Rule 67 and Rep. Act No. 8974, the Government commences expropriation proceedings through the filing of a complaint. Unlike in the case of local governments which necessitate an authorizing ordinance before expropriation may be accomplished, there is no need under Rule 67 or Rep. Act No. 8974 for legislative authorization before the Government may proceed with a particular exercise of eminent domain. The most crucial difference between Rule 67 and Rep. Act No. 8974 concerns the particular essential step the Government has to undertake to be entitled to a writ of possession.

The first paragraph of Section 2 of Rule 67 provides:

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

In contrast, Section 4 of Rep. Act No. 8974 relevantly states:

> SEC. 4. *Guidelines for Expropriation Proceedings.*— Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through

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[28] *See* Section 1, Rep. Act No. 8974.

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expropriation, the appropriate proceedings before the proper court under the following guidelines:

> a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;
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> . . . . . .
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> c) In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the implementing agency shall immediately pay the owner of the property its proffered value taking into consideration the standards prescribed in Section 5 hereof.
>
> Upon completion with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.
>
> Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.
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> . . . . . .

As can be gleaned from the above-quoted texts, Rule 67 merely requires the Government to deposit with an authorized government depositary the assessed value of the property for expropriation for it to be entitled to a writ of possession. On the other hand, Rep. Act No. 8974 requires that the Government make a direct payment to the property owner before the writ may issue. Moreover, such payment is based on the zonal valuation of the BIR in the case of land, the value of the improvements or structures under the replacement cost method,[29] or if no such valuation is available and in cases of utmost urgency, the proffered value of the property to be seized.

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[29] As prescribed by Section 10 of the Implementing Rules to Rep. Act No. 8974, in relation to Sections 4(a) and 7, Rep. Act No. 8974.

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It is quite apparent why the Government would prefer to apply Rule 67 in lieu of Rep. Act No. 8974. Under Rule 67, it would not be obliged to immediately pay any amount to PIATCO before it can obtain the writ of possession since all it need do is deposit the amount equivalent to the assessed value with an authorized government depositary. Hence, it devotes considerable effort to point out that Rep. Act No. 8974 does not apply in this case, notwithstanding the undeniable reality that NAIA 3 is a national government project. Yet, these efforts fail, especially considering the controlling effect of the 2004 Resolution in *Agan* on the adjudication of this case.

It is the finding of this Court that the staging of expropriation proceedings in this case with the exclusive use of Rule 67 would allow for the Government to take over the NAIA 3 facilities in a fashion that directly rebukes our 2004 Resolution in *Agan*. This Court cannot sanction deviation from its own final and executory orders.

Section 2 of Rule 67 provides that the State "shall have the right to take or enter upon the possession of the real property involved if [the plaintiff] deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court."[30] It is thus apparent that under the provision, all the Government need do to obtain a writ of possession is to deposit the amount equivalent to the assessed value with an authorized government depositary.

Would the deposit under Section 2 of Rule 67 satisfy the requirement laid down in the 2004 Resolution that "[f]or the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures"? Evidently not.

If Section 2 of Rule 67 were to apply, PIATCO would be enjoined from receiving a single centavo as just compensation before the Government takes over the NAIA 3 facility by virtue

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[30] *See* Section 2, Rule 67, Rules of Court.

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of a writ of possession. Such an injunction squarely contradicts the letter and intent of the 2004 Resolution. Hence, the position of the Government sanctions its own disregard or violation the prescription laid down by this Court that there must first be just compensation paid to PIATCO before the Government may take over the NAIA 3 facilities.

Thus, at the very least, Rule 67 cannot apply in this case without violating the 2004 Resolution. Even assuming that Rep. Act No. 8974 does not govern in this case, it does not necessarily follow that Rule 67 should then apply. After all, adherence to the letter of Section 2, Rule 67 would in turn violate the Court's requirement in the 2004 Resolution that there must first be payment of just compensation to PIATCO before the Government may take over the property.

It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects. The following portion of the Senate deliberations, cited by PIATCO in its Memorandum, is worth quoting to cogitate on the purpose behind the plain meaning of the law:

THE CHAIRMAN (SEN. CAYETANO). "x x x *Because the Senate believes that, you know, we have to pay the landowners immediately not by treasury bills but by cash.*

Since we are depriving them, you know, upon payment, 'no, of possession, we might as well pay them as much, 'no, hindi lang 50 percent.

x x x x x x x x x

THE CHAIRMAN (REP. VERGARA). Accepted.

x x x x x x x x x

THE CHAIRMAN (SEN. CAYETANO). *Oo.* Because this is really in favor of the landowners, e.

THE CHAIRMAN (REP. VERGARA). That's why we need to really secure the availability of funds.

x x x x x x x x x

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THE CHAIRMAN (SEN. CAYETANO). *No, no. It's the same. It says here: iyong first paragraph, diba? Iyong zonal — talagang magbabayad muna. In other words, you know, there must be a payment kaagad.* (TSN, Bicameral Conference on the Disagreeing Provisions of House Bill 1422 and Senate Bill 2117, August 29, 2000, pp. 14-20)

x x x x x x x x x

THE CHAIRMAN (SEN. CAYETANO). *Okay, okay, 'no. Unang-una, it is not deposit, 'no. It's payment."*

REP. BATERINA. *It's payment, ho, payment."* (*Id.*, p. 63)[31]

It likewise bears noting that the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of Rep. Act No. 8974. Specifically, this prescribes the new standard in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the payment of the provisional value as a prerequisite to the issuance of a writ of possession. Of course, rules of procedure, as distinguished from substantive matters, remain the exclusive preserve of the Supreme Court by virtue of Section 5(5), Article VIII of the Constitution. Indeed, Section 14 of the Implementing Rules recognizes the continued applicability of Rule 67 on procedural aspects when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court."[32]

Given that the 2004 Resolution militates against the continued use of the norm under Section 2, Rule 67, is it then possible to apply Rep. Act No. 8974? We find that it is, and moreover, its application in this case complements rather than contravenes the prescriptions laid down in the 2004 Resolution.

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[31] Private Respondent's Memorandum, pp. 26-27. Italics not ours. *See rollo, infra.*

[32] *See* Section 14, Implementing Rules.

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Rep. Act No. 8974 Fits to the Situation at Bar and Complements the 2004 Agan Resolution

Rep. Act No. 8974 is entitled "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes." Obviously, the law is intended to cover expropriation proceedings intended for national government infrastructure projects. Section 2 of Rep. Act No. 8974 explains what are considered as "national government projects."

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

As acknowledged in the 2003 Decision, the development of NAIA 3 was made pursuant to a build-operate-and-transfer arrangement pursuant to Republic Act No. 6957, as amended,[33] which pertains to infrastructure or development projects normally financed by the public sector but which are now wholly or partly implemented by the private sector.[34] Under the build-operate-and-transfer scheme, it is the project proponent which undertakes the construction, including the financing, of a given infrastructure facility.[35] In *Tatad v. Garcia,*[36] the Court acknowledged that the operator of the EDSA Light Rail Transit

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[33] *See* Agan 1, *supra* note 1 at 631-632.

[34] *See* Section 2(a), Rep. Act No. 6957, as amended.

[35] *See* Section 2(b), Rep. Act No. 6957, as amended.

[36] G.R. No. 114222, 6 April 1995, 243 SCRA 436.

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project under a BOT scheme was the owner of the facilities such as "the rail tracks, rolling stocks like the coaches, rail stations, terminals and the power plant."[37]

There can be no doubt that PIATCO has ownership rights over the facilities which it had financed and constructed. The 2004 Resolution squarely recognized that right when it mandated the payment of just compensation to PIATCO prior to the takeover by the Government of NAIA 3. The fact that the Government resorted to eminent domain proceedings in the first place is a concession on its part of PIATCO's ownership. Indeed, if no such right is recognized, then there should be no impediment for the Government to seize control of NAIA 3 through ordinary ejectment proceedings.

Since the rights of PIATCO over the NAIA 3 facilities are established, the nature of these facilities should now be determined. Under Section 415(1) of the Civil Code, these facilities are ineluctably immovable or real property, as they constitute buildings, roads and constructions of all kinds adhered to the soil.[38] Certainly, the NAIA 3 facilities are of such nature that they cannot just be packed up and transported by PIATCO like a traveling circus caravan.

Thus, the property subject of expropriation, the NAIA 3 facilities, are real property owned by PIATCO. This point is critical, considering the Government's insistence that the NAIA 3 facilities cannot be deemed as the "right-of-way," "site" or "location" of a national government infrastructure project, within the coverage of Rep. Act No. 8974.

There is no doubt that the NAIA 3 is not, under any sensible contemplation, a "right-of-way." Yet we cannot agree with the Government's insistence that neither could NAIA 3 be a "site" or "location." The petition quotes the definitions provided in Black's Law Dictionary of "location'" as the specific place or position of a person or thing and 'site' as pertaining to a place

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[37] *Ibid.*

[38] *See* Article 415 (1), Civil Code.

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or location or a piece of property set aside for specific use.'"[39] Yet even Black's Law Dictionary provides that "[t]he term [site] does not of itself necessarily mean a place or tract of land fixed by definite boundaries."[40] One would assume that the Government, to back up its contention, would be able to point to a clear-cut rule that a "site" or "location" exclusively refers to soil, grass, pebbles and weeds. There is none.

Indeed, we cannot accept the Government's proposition that the only properties that may be expropriated under Rep. Act No. 8974 are parcels of land. Rep. Act No. 8974 contemplates within its coverage such real property constituting land, buildings, roads and constructions of all kinds adhered to the soil. Section 1 of Rep. Act No. 8974, which sets the declaration of the law's policy, refers to "real property acquired for national government infrastructure projects are promptly paid just compensation."[41] Section 4 is quite explicit in stating that the scope of the law relates to the acquisition of "real property," which under civil law includes buildings, roads and constructions adhered to the soil.

It is moreover apparent that the law and its implementing rules commonly provide for a rule for the valuation of improvements and/or structures thereupon separate from that of the land on which such are constructed. Section 2 of Rep. Act No. 8974 itself recognizes that the improvements or structures on the land may very well be the subject of expropriation proceedings. Section 4(a), in relation to Section 7 of the law provides for the guidelines for the valuation of the improvements or structures to be expropriated. Indeed, nothing in the law would prohibit the application of Section 7, which provides for the valuation method of the improvements and or structures in the instances wherein it is necessary for the Government to expropriate only the improvements or structures, as in this case.

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[39] *Rollo*, p. 42.

[40] BLACK`S *LAW DICTIONARY*, 6th ed., p. 1387.

[41] *See* Section 1, Rep. Act No. 8974.

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The law classifies the NAIA 3 facilities as real properties just like the soil to which they are adhered. Any sub-classifications of real property and divergent treatment based thereupon for purposes of expropriation must be based on substantial distinctions, otherwise the equal protection clause of the Constitution is violated. There may be perhaps a molecular distinction between soil and the inorganic improvements adhered thereto, yet there are no purposive distinctions that would justify a variant treatment for purposes of expropriation. Both the land itself and the improvements thereupon are susceptible to private ownership independent of each other, capable of pecuniary estimation, and if taken from the owner, considered as a deprivation of property. The owner of improvements seized through expropriation suffers the same degree of loss as the owner of land seized through similar means. Equal protection demands that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. For purposes of expropriation, parcels of land are similarly situated as the buildings or improvements constructed thereon, and a disparate treatment between those two classes of real property infringes the equal protection clause.

Even as the provisions of Rep. Act No. 8974 call for that law's application in this case, the threshold test must still be met whether its implementation would conform to the dictates of the Court in the 2004 Resolution. Unlike in the case of Rule 67, the application of Rep. Act No. 8974 will not contravene the 2004 Resolution, which requires the payment of just compensation before any takeover of the NAIA 3 facilities by the Government. The 2004 Resolution does not particularize the extent such payment must be effected before the takeover, but it unquestionably requires at least some degree of payment to the private property owner before a writ of possession may issue. The utilization of Rep. Act No. 8974 guarantees compliance with this bare minimum requirement, as it assures the private property owner the payment of, at the very least, the proffered value of the property to be seized. Such payment of the proffered value to the owner, followed by the issuance of the writ of possession in favor of the Government, is precisely

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the schematic under Rep. Act No. 8974, one which facially complies with the prescription laid down in the 2004 Resolution.

Clearly then, we see no error on the part of the RTC when it ruled that Rep. Act No. 8974 governs the instant expropriation proceedings.

The Proper Amount to be Paid

under Rep. Act No. 8974

Then, there is the matter of the proper amount which should be paid to PIATCO by the Government before the writ of possession may issue, consonant to Rep. Act No. 8974.

At this juncture, we must address the observation made by the Office of the Solicitor General in behalf of the Government that there could be no "BIR zonal valuations" on the NAIA 3 facility, as provided in Rep. Act No. 8974, since zonal valuations are only for parcels of land, not for airport terminals. The Court agrees with this point, yet does not see it as an impediment for the application of Rep. Act No. 8974.

It must be clarified that PIATCO cannot be reimbursed or justly compensated for the value of the parcel of land on which NAIA 3 stands. PIATCO is not the owner of the land on which the NAIA 3 facility is constructed, and it should not be entitled to just compensation that is inclusive of the value of the land itself. It would be highly disingenuous to compensate PIATCO for the value of land it does not own. Its entitlement to just compensation should be limited to the value of the improvements and/or structures themselves. Thus, the determination of just compensation cannot include the BIR zonal valuation under Section 4 of Rep. Act No. 8974.

Under Rep. Act No. 8974, the Government is required to "immediately pay" the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the [BIR]; and (2) the value of the improvements and/or structures as determined under Section 7. As stated above, the BIR zonal valuation cannot apply in this case, thus the amount

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subject to immediate payment should be limited to "the value of the improvements and/or structures as determined under Section 7," with Section 7 referring to the "implementing rules and regulations for the equitable valuation of the improvements and/or structures on the land." Under the present implementing rules in place, the valuation of the improvements/structures are to be based using "the replacement cost method."[42] However, the replacement cost is only one of the factors to be considered in determining the just compensation.

In addition to Rep. Act No. 8974, the 2004 *Resolution* in *Agan* also mandated that the payment of just compensation should be in accordance with equity as well. Thus, in ascertaining the ultimate amount of just compensation, the duty of the trial court is to ensure that such amount conforms not only to the law, such as Rep. Act No. 8974, but to principles of equity as well.

Admittedly, there is no way, at least for the present, to immediately ascertain the value of the improvements and structures since such valuation is a matter for factual determination.[43] Yet Rep. Act No. 8974 permits an expedited means by which the Government can immediately take possession of the property without having to await precise determination of the valuation. Section 4(c) of Rep. Act No. 8974 states that "in case the completion of a government infrastructure project is of utmost urgency and importance, *and there is no existing valuation of the area concerned*, the implementing agency shall

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[42] *See* Section 10, Implementing Rules to Rep. Act No. 8974. The replacement cost method is generally defined as "the amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures."

[43] The replacement cost method is generally defined as "the amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures." *Ibid.*

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immediately pay the owner of the property its *proferred value*, taking into consideration the standards prescribed in Section 5 [of the law]."[44] The "proffered value" may strike as a highly subjective standard based solely on the intuition of the government, but Rep. Act No. 8974 does provide relevant standards by which "proffered value" should be based,[45] as well as the certainty of judicial determination of the propriety of the proffered value.[46]

In filing the complaint for expropriation, the Government alleged to have deposited the amount of ₱3 Billion earmarked for expropriation, representing the assessed value of the property. The making of the deposit, including the determination of the amount of the deposit, was undertaken under the erroneous notion that Rule 67, and not Rep. Act No. 8974, is the applicable law. Still, as regards the amount, the Court sees no impediment to recognize this sum of ₱3 Billion as the proffered value under Section 4(b) of Rep. Act No. 8974. After all, in the initial determination of the proffered value, the Government is not strictly required to adhere to any predetermined standards, although its proffered value may later be subjected to judicial review using the standards enumerated under Section 5 of Rep. Act No. 8974.

How should we appreciate the questioned order of Hon. Gingoyon, which pegged the amount to be immediately paid to PIATCO at around $62.3 Million? The *Order* dated 4 January 2005, which mandated such amount, proves problematic in that regard. While the initial sum of ₱3 Billion may have been based on the assessed value, a standard which should not however apply in this case, the RTC cites without qualification Section 4(a) of Rep. Act No. 8974 as the basis for the amount

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[44] *See* Section 4(c), Rep. Act No. 8974.

[45] *See* Section 5, *id.*

[46] In the event that the owner of the property contests the implementing agency's proffered value. the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case." *See* Section 4, *id.*

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of $62.3 Million, thus leaving the impression that the BIR zonal valuation may form part of the basis for just compensation, which should not be the case. Moreover, respondent judge made no attempt to apply the enumerated guidelines for determination of just compensation under Section 5 of Rep. Act No. 8974, as required for judicial review of the proffered value.

The Court notes that in the 10 January 2005 *Omnibus Order*, the RTC noted that the concessions agreement entered into between the Government and PIATCO stated that the actual cost of building NAIA 3 was "not less than" US$350 Million.[47] The RTC then proceeded to observe that while Rep. Act No. 8974 required the immediate payment to PIATCO the amount equivalent to 100% of the value of NAIA 3, the amount deposited by the Government constituted only 18% of this value. At this point, no binding import should be given to this observation that the actual cost of building NAIA 3 was "not less than" US$350 Million, as the final conclusions on the amount of just compensation can come only after due ascertainment in accordance with the standards set under Rep. Act No. 8974, not the declarations of the parties. At the same time, the expressed linkage between the BIR zonal valuation and the amount of just compensation in this case, is revelatory of erroneous thought on the part of the RTC.

We have already pointed out the irrelevance of the BIR zonal valuation as an appropriate basis for valuation in this case, PIATCO not being the owner of the land on which the NAIA 3 facilities stand. The subject order is flawed insofar as it fails to qualify that such standard is inappropriate.

It does appear that the amount of US$62.3 Million was based on the certification issued by the LBP-Baclaran that the Republic of the Philippines maintained a total balance in that branch amounting to such amount. Yet the actual representation of the $62.3 Million is not clear. The Land Bank Certification expressing such amount does state that it was issued upon request

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[47] *Rollo*, p. 84.

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of the Manila International Airport Authority "purportedly as guaranty deposit for the expropriation complaint."[48] The Government claims in its Memorandum that the entire amount was made available as a guaranty fund for the final and executory judgment of the trial court, and not merely for the issuance of the writ of possession.[49] One could readily conclude that the entire amount of US$62.3 Million was intended by the Government to answer for whatever guaranties may be required for the purpose of the expropriation complaint.

Still, such intention the Government may have had as to the entire US$62.3 Million is only inferentially established. In ascertaining the proffered value adduced by the Government, the amount of ₱3 Billion as the amount deposited characterized in the complaint as "to be held by [Land Bank] subject to the [RTC's] orders,"[50] should be deemed as controlling. There is no clear evidence that the Government intended to offer US$62.3 Million as the initial payment of just compensation, the wording of the Land Bank Certification notwithstanding, and credence should be given to the consistent position of the Government on that aspect.

In any event, for the RTC to be able to justify the payment of US$62.3 Million to PIATCO and not ₱3 Billion Pesos, he would have to establish that the higher amount represents the valuation of the structures/improvements, and not the BIR zonal valuation on the land wherein NAIA 3 is built. The *Order* dated 5 January 2005 fails to establish such integral fact, and in the absence of contravening proof, the proffered value of ₱3 Billion, as presented by the Government, should prevail.

Strikingly, the Government submits that assuming that Rep. Act No. 8974 is applicable, the deposited amount of ₱3 Billion should be considered as the proffered value, since the amount

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[48] Annex "K-1" to Petition. *See rollo, infra.*

[49] *Rollo*, p. 397.

[50] Complaint dated 21 December 2004. *See rollo, infra.*

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was based on comparative values made by the City Assessor.[51] Accordingly, it should be deemed as having faithfully complied with the requirements of the statute.[52] While the Court agrees that ₱3 Billion should be considered as the correct proffered value, still we cannot deem the Government as having faithfully complied with Rep. Act No. 8974. For the law plainly requires direct payment to the property owner, and not a mere deposit with the authorized government depositary. Without such direct payment, no writ of possession may be obtained.

Writ of Possession May Not Be Implemented Until Actual Receipt by PIATCO of Proferred Value

The Court thus finds another error on the part of the RTC. The RTC authorized the issuance of the writ of possession to the Government notwithstanding the fact that no payment of any amount had yet been made to PIATCO, despite the clear command of Rep. Act No. 8974 that there must first be payment before the writ of possession can issue. While the RTC did direct the LBP-Baclaran to immediately release the amount of US$62 Million to PIATCO, it should have likewise suspended the writ of possession, nay, withdrawn it altogether, until the Government shall have actually paid PIATCO. This is the inevitable consequence of the clear command of Rep. Act No. 8974 that requires immediate payment of the initially determined amount of just compensation should be effected. Otherwise, the overpowering intention of Rep. Act No. 8974 of ensuring payment first before transfer of repossession would be eviscerated.

Rep. Act No. 8974 represents a significant change from previous expropriation laws such as Rule 67, or even Section 19 of the Local Government Code. Rule 67 and the Local Government Code merely provided that the Government deposit

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[51] *Rollo*, p. 394.

[52] *Id.* at 393.

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the initial amounts[53] antecedent to acquiring possession of the property with, respectively, an authorized Government depositary[54] or the proper court.[55] In both cases, the private owner does not receive compensation prior to the deprivation of property. On the other hand, Rep. Act No. 8974 mandates immediate payment of the initial just compensation prior to the issuance of the writ of possession in favor of the Government.

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

While eminent domain lies as one of the inherent powers of the State, there is no requirement that it undertake a prolonged procedure, or that the payment of the private owner be protracted as far as practicable. In fact, the expedited procedure of payment, as highlighted under Rep. Act No. 8974, is inherently more fair, especially to the layperson who would be hard-pressed to fully comprehend the social value of expropriation in the first place. Immediate payment placates to some degree whatever ill-will that arises from expropriation, as well as satisfies the demand of basic fairness.

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[53] The assessed market value under Rule 67 of the Rules of Court, and 15% of the fair market value under the Local Government Code.

[54] *See* Section 2, Rule 67, Rules of Court.

[55] *See* Section 19, Local Government Code.

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The Court has the duty to implement Rep. Act No. 8974 and to direct compliance with the requirement of immediate payment in this case. Accordingly, the Writ of Possession dated 21 December 2004 should be held in abeyance, pending proof of actual payment by the Government to PIATCO of the proffered value of the NAIA 3 facilities, which totals ₱3,002,125,000.00.

Rights of the Government upon Issuance of the Writ of Possession

Once the Government pays PIATCO the amount of the proffered value of ₱3 Billion, it will be entitled to the Writ of Possession. However, the Government questions the qualification imposed by the RTC in its 4 January 2005 *Order* consisting of the prohibition on the Government from performing acts of ownership such as awarding concessions or leasing any part of NAIA 3 to other parties. To be certain, the RTC, in its 10 January 2005 *Omnibus Order*, expressly stated that it was not affirming "the superfluous part of the Order [of 4 January 2005] prohibiting the plaintiffs from awarding concessions or leasing any part of NAIA [3] to other parties."[56] Still, such statement was predicated on the notion that since the Government was not yet the owner of NAIA 3 until final payment of just compensation, it was obviously incapacitated to perform such acts of ownership.

In deciding this question, the 2004 *Resolution* in *Agan* cannot be ignored, particularly the declaration that "[f]or the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures." The obvious import of this holding is that unless PIATCO is paid just compensation, the Government is barred from "taking over," a phrase which in the strictest sense could encompass even a bar of physical possession of NAIA 3, much less operation of the facilities.

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[56] *Ibid.*

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There are critical reasons for the Court to view the 2004 *Resolution* less stringently, and thus allow the operation by the Government of NAIA 3 upon the effectivity of the Writ of Possession. For one, the national prestige is diminished every day that passes with the NAIA 3 remaining mothballed. For another, the continued non-use of the facilities contributes to its physical deterioration, if it has not already. And still for another, the economic benefits to the Government and the country at large are beyond dispute once the NAIA 3 is put in operation.

Rep. Act No. 8974 provides the appropriate answer for the standard that governs the extent of the acts the Government may be authorized to perform upon the issuance of the writ of possession. Section 4 states that "the court shall immediately issue to the implementing agency an order to take possession of the property and *start the implementation of the project.*" We hold that accordingly, once the Writ of Possession is effective, the Government itself is authorized to perform the acts that are essential to the operation of the NAIA 3 as an international airport terminal upon the effectivity of the Writ of Possession. These would include the repair, reconditioning and improvement of the complex, maintenance of the existing facilities and equipment, installation of new facilities and equipment, provision of services and facilities pertaining to the facilitation of air traffic and transport, and other services that are integral to a modern-day international airport.

The Government's position is more expansive than that adopted by the Court. It argues that with the writ of possession, it is enabled to perform acts *de jure* on the expropriated property. It cites *Republic v. Tagle*,[57] as well as the statement therein that "the expropriation of real property does not include mere physical entry or occupation of land," and from them concludes that "its mere physical entry and occupation of the property fall short of the taking of title, which includes all the rights that may be exercised by an owner over the subject property."

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[57] Cited as 299 SCRA 549 (1998). *Rollo*, p. 413.

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This conclusion is indeed lifted directly from statements in *Tagle*,[58] but not from the *ratio decidendi* of that case. *Tagle* concerned whether a writ of possession in favor of the Government was still necessary in light of the fact that it was already in actual possession of the property. In ruling that the Government was entitled to the writ of possession, the Court in *Tagle* explains that such writ vested not only physical possession, but also the legal right to possess the property. Continues the Court, such legal right to possess was particularly important in the case, as there was a pending suit against the Republic for unlawful detainer, and the writ of possession would serve to safeguard the Government from eviction.[59]

At the same time, *Tagle* conforms to the obvious, that there is no transfer of ownership as of yet by virtue of the writ of possession. *Tagle* may concede that the Government is entitled to exercise more than just the right of possession by virtue of the writ of possession, yet it cannot be construed to grant the Government the entire panoply of rights that are available to the owner. Certainly, neither *Tagle* nor any other case or law, lends support to the Government's proposition that it acquires beneficial or equitable ownership of the expropriated property merely through the writ of possession.

Indeed, this Court has been vigilant in defense of the rights of the property owner who has been validly deprived of possession, yet retains legal title over the expropriated property pending payment of just compensation. We reiterated the various doctrines of such import in our recent holding in *Republic v. Lim:*[60]

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[58] "In exercising this power, petitioner intended to acquire not only physical possession but also the legal right to possess and ultimately to own the subject property. Hence, its mere physical entry and occupation of the property fall short of the taking of title, which includes all the rights that may be exercised by an owner over the subject property." *Republic v. Tagle*, 359 Phil. 892, 902 (1998).

[59] *Republic v. Tagle, id.* at 903.

[60] G.R. No. 161656, 29 June 2005.

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The recognized rule is that title to the property expropriated shall pass from the owner to the expropriator only *upon full payment of the just compensation.* Jurisprudence on this settled principle is consistent both here and in other democratic jurisdictions. In *Association of Small Landowners in the Philippines, Inc. et al., vs. Secretary of Agrarian Reform*[61], thus:

> "*Title to property which is the subject of condemnation proceedings does not vest the condemnor until the judgment fixing just compensation is entered and paid,* but the condemnor's title relates back to the date on which the petition under the Eminent Domain Act, or the commissioner's report under the Local Improvement Act, is filed.
>
> *x x x Although the right to appropriate and use land taken for a canal is complete at the time of entry, title to the property taken remains in the owner until payment is actually made.* (Italics supplied.)
>
> In *Kennedy v. Indianapolis,* the US Supreme Court cited several cases holding that title to property does not pass to the condemnor until just compensation had actually been made. In fact, the decisions appear to be uniform to this effect. As early as 1838, in *Rubottom v. McLure,* it was held that *'actual payment to the owner of the condemned property was a condition precedent to the investment of the title to the property in the State' albeit 'not to the appropriation of it to public use.'* In *Rexford v. Knight,* the Court of Appeals of New York said that the construction upon the statutes was that the fee did not vest in the State until the payment of the compensation although the authority to enter upon and appropriate the land was complete prior to the payment. Kennedy further said that *'both on principle and authority the rule is . . . that the right to enter on and use the property is complete, as soon as the property is actually appropriated under the authority of law for a public use, but that the title does not pass from the owner without his consent, until just compensation has been made to him."*

Our own Supreme Court has held in *Visayan Refining Co. v. Camus and Paredes,* that:

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[61] G.R. No. 78742, July 14, 1989, 175 SCRA 343.

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> *'If the laws which we have exhibited or cited in the preceding discussion are attentively examined it will be apparent that the method of expropriation adopted in this jurisdiction is such as to afford absolute reassurance that no piece of land can be finally and irrevocably taken from an unwilling owner until compensation is paid....'"*(Italics supplied.)

Clearly, without full payment of just compensation, there can be no transfer of title from the landowner to the expropriator. Otherwise stated, the Republic's acquisition of ownership is conditioned upon the full payment of just compensation within a reasonable time.

Significantly, in *Municipality of Biñan v. Garcia*[62] this Court ruled that the expropriation of lands consists of two stages, to wit:

> "x x x 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. 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" x x x.
>
> 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. x x x.

It is only upon the completion of these two stages that expropriation is said to have been completed. In *Republic v. Salem Investment Corporation*[63], we ruled that, "the process is not completed until payment of just compensation." Thus, here, the failure of the Republic to pay respondent and his predecessors-in-interest for a period of 57 years rendered the expropriation process incomplete.

Lim serves fair warning to the Government and its agencies who consistently refuse to pay just compensation due to the

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62 G.R. No. 69260, December 22, 1989, 180 SCRA 576, 583-584.

63 G.R. No. 137569, June 23, 2000, 334 SCRA 320, 329.

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private property owner whose property had been expropriated. At the same time, *Lim* emphasizes the fragility of the rights of the Government as possessor pending the final payment of just compensation, without diminishing the potency of such rights. Indeed, the public policy, enshrined foremost in the Constitution, mandates that the Government must pay for the private property it expropriates. Consequently, the proper judicial attitude is to guarantee compliance with this primordial right to just compensation.

Final Determination of Just

Compensation Within 60 Days

The issuance of the writ of possession does not write *finis* to the expropriation proceedings. As earlier pointed out, expropriation is not completed until payment to the property owner of just compensation. The proffered value stands as merely a provisional determination of the amount of just compensation, the payment of which is sufficient to transfer possession of the property to the Government. However, to effectuate the transfer of ownership, it is necessary for the Government to pay the property owner the final just compensation.

In *Lim,* the Court went as far as to countenance, given the exceptional circumstances of that case, the reversion of the validly expropriated property to private ownership due to the failure of the Government to pay just compensation in that case.[64] It was noted in that case that the Government deliberately refused to pay just compensation. The Court went on to rule that "in cases where the government failed to pay just compensation within five (5) years from the finality of the

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[64] The Court in *Republic v. Lim* however recognized the exceptional circumstances in that case, wherein the government had not paid just compensation in the 57 years that had passed since the expropriation proceedings were terminated. The general rule, as stated in *Republic*, remained that "non-payment of just compensation (in expropriation proceedings) does not entitle the private landowners to recover possession of the expropriated lots." *Id.*

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judgment in the expropriation proceedings, the owners concerned shall have the right to recover possession of their property."[65]

Rep. Act No. 8974 mandates a speedy method by which the final determination of just compensation may be had. Section 4 provides:

> In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court.

We hold that this provision should apply in this case. The sixty (60)-day period prescribed in Rep. Act No. 8974 gives teeth to the law's avowed policy "to ensure that owners of real property acquired for national government infrastructure projects are *promptly paid* just compensation."[66] In this case, there already has been irreversible delay in the prompt payment of PIATCO of just compensation, and it is no longer possible for the RTC to determine the just compensation due PIATCO within sixty (60) days from the filing of the complaint last 21 December 2004, as contemplated by the law. Still, it is feasible to effectuate the spirit of the law by requiring the trial court to make such determination within sixty (60) days from *finality of this decision*, in accordance with the guidelines laid down in Rep. Act No. 8974 and its Implementing Rules.

Of course, once the amount of just compensation has been finally determined, the Government is obliged to pay PIATCO the said amount. As shown in *Lim* and other like-minded cases, the Government's refusal to make such payment is indubitably actionable in court.

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[65] *Republic v. Lim*, *supra* note 60. The 5-year period set in Lim was based on Section 6, Rule 39 of the Rules of Court, which sets a 5-year period within which a final and executory judgment or order may be executed on motion. *Id.*

[66] *See* Section 1, Rep. Act No. 8974.

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Appointment of Commissioners

The next argument for consideration is the claim of the Government that the RTC erred in appointing the three commissioners in its 7 January 2005 *Order* without prior consultation with either the Government or PIATCO, or without affording the Government the opportunity to object to the appointment of these commissioners. We can dispose of this argument without complication.

It must be noted that Rep. Act No. 8974 is silent on the appointment of commissioners tasked with the ascertainment of just compensation.[67] This protocol though is sanctioned under Rule 67. We rule that the appointment of commissioners under Rule 67 may be resorted to, even in expropriation proceedings under Rep. Act No. 8974, since the application of the provisions of Rule 67 in that regard do not conflict with the statute. As earlier stated, Section 14 of the Implementing Rules does allow such other incidents affecting the complaint to be resolved under the provisions on expropriation of Rule 67

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[67] Section 11 of the Implementing Rules does allow the implementing government agency to engage the services of government financing institutions or private appraisers duly accredited by those institutions to undertake the appraisal of the property, including the land and/or improvements and structures. Yet the engagement of these appraisers at the election of the Government is clearly different from the appointment by the trial court of commissioners. The differences extend beyond merely the selecting authority. The engagement of appraisers under Section 11 primarily occurs before the filing of the expropriation complaint, when the Government is obliged to determine the current relevant zonal valuation of the land to be expropriated, the valuation of the structures and improvements using the replacement cost method, or the proffered value of the property for expropriation, all for the purpose of making the initial payment necessary for the writ of possession under Section 4 of Rep. Act No. 8974. This initial determination of the amount is generally made by the Government, and not by the courts, and the engagement of appraisers is attuned for such purpose. However, if the Government engages these appraisers after the initial payment has been made to the property owner, for the express purpose of making the final determination of just compensation, there is no rule that binds the trial court to the findings of these appraisers. Neither are these appraisers obliged to receive evidence submitted by the parties, unlike the commissioners, who are expressly authorized to do so under Section 6, Rule 67.

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of the Rules of Court. Even without Rule 67, reference during trial to a commissioner of the examination of an issue of fact is sanctioned under Rule 32 of the Rules of Court.

But while the appointment of commissioners under the aegis of Rule 67 may be sanctioned in expropriation proceedings under Rep. Act No. 8974, the standards to be observed for the determination of just compensation are provided not in Rule 67 but in the statute. In particular, the governing standards for the determination of just compensation for the NAIA 3 facilities are found in Section 10 of the Implementing Rules for Rep. Act No. 8974, which provides for the replacement cost method in the valuation of improvements and structures.[68]

Nothing in Rule 67 or Rep. Act No. 8974 requires that the RTC consult with the parties in the expropriation case on who should be appointed as commissioners. Neither does the Court feel that such a requirement should be imposed in this case. We did rule in *Municipality of Talisay v. Ramirez* [69] that "there is nothing to prevent [the trial court] from seeking the recommendations of the parties on [the] matter [of appointment of commissioners], the better to ensure their fair representation."[70] At the same time, such solicitation of recommendations is not obligatory on the part of the court, hence we cannot impute error on the part of the RTC in its exercise of solitary discretion in the appointment of the commissioners.

What Rule 67 does allow though is for the parties to protest the appointment of any of these commissioners, as provided under Section 5 of the Rule. These objections though must be made filed within ten (10) days from service of the order of appointment of the commissioners.[71] In this case, the proper recourse of the Government to challenge the choice of the commissioners is to file an objection with the trial court,

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[68] *Supra* note 42.

[69] G.R. No. 77071, 22 March 1990, 183 SCRA 528.

[70] *Id.* at 532.

[71] *See* Section 5, Rule 67, Rules of Court.

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conformably with Section 5, Rule 67, and not as it has done, assail the same through a special civil action for *certiorari*. Considering that the expropriation proceedings in this case were effectively halted seven (7) days after the *Order* appointing the commissioners,[72] it is permissible to allow the parties to file their objections with the RTC within five (5) days from finality of this decision.

Insufficient Ground for Inhibition

of Respondent Judge

The final argument for disposition is the claim of the Government is that Hon. Gingoyon has prejudged the expropriation case against the Government's cause and, thus, should be required to inhibit himself. This grave charge is predicated on facts which the Government characterizes as "undeniable." In particular, the Government notes that the 4 January 2005 *Order* was issued *motu proprio*, without any preceding motion, notice or hearing. Further, such order, which directed the payment of US$62 Million to PIATCO, was attended with error in the computation of just compensation. The Government also notes that the said *Order* was issued even before summons had been served on PIATCO.

The disqualification of a judge is a deprivation of his/her judicial power[73] and should not be allowed on the basis of mere speculations and surmises. It certainly cannot be predicated on the adverse nature of the judge's rulings towards the movant for inhibition, especially if these rulings are in accord with law. Neither could inhibition be justified merely on the erroneous nature of the rulings of the judge. We emphasized in *Webb v. People*:[74]

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[72] By virtue of the issuance of the Temporary Restraining Order dated 14 January 2005.

[73] *See Estrada v. Desierto*, G.R. Nos. 146710-15, 146738, 3 April 2001, 356 SCRA 108.

[74] 342 Phil. 206 (1997).

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To prove bias and prejudice on the part of respondent judge, *petitioners harp on the alleged adverse and erroneous rulings of respondent judge on their various motions. By themselves, however, they do not sufficiently prove bias and prejudice to disqualify respondent judge. To be disqualifying, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.* Opinions formed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge. *As a general rule, repeated rulings against a litigant, no matter how erroneous and vigorously and consistently expressed, are not a basis for disqualification of a judge on grounds of bias and prejudice. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error which may be inferred from the decision or order itself. Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.*[75]

The Government's contentions against Hon. Gingoyon are severely undercut by the fact that the 21 December 2004 *Order*, which the 4 January 2005 *Order* sought to rectify, was indeed severely flawed as it erroneously applied the provisions of Rule 67 of the Rules of Court, instead of Rep. Act No. 8974, in ascertaining compliance with the requisites for the issuance of the writ of possession. The 4 January 2005 *Order*, which according to the Government establishes Hon. Gingoyon's bias, was promulgated precisely to correct the previous error by applying the correct provisions of law. It would not speak well of the Court if it sanctions a judge for wanting or even attempting

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[75] *Id.* at 216-217. *See* also *Aleria v. Velez*, G.R. No. 127400, 16 November 1998; *People v. Court of Appeals*, G.R. No. 129120, 2 July 1999; *Seveses v. Court of Appeals*, G.R. No. 102675, 13 October 1999; *Soriano v. Angeles*, G.R. No. 109920, 31 August 2000; *People v. Gako*, G.R. No. 135045, 15 December 2000; *Gochan v. Gochan*, G.R. No. 143089, 27 February 2003.

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to correct a previous erroneous order which precisely is the right move to take.

Neither are we convinced that the *motu proprio* issuance of the 4 January 2005 *Order*, without the benefit of notice or hearing, sufficiently evinces bias on the part of Hon. Gingoyon. The *motu proprio* amendment by a court of an erroneous order previously issued may be sanctioned depending on the circumstances, in line with the long-recognized principle that every court has inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction.[76] Section 5(g), Rule 135 of the Rules of Court further recognizes the inherent power of courts "to amend and control its process and orders so as to make them conformable to law and justice,"[77] a power which Hon. Gingoyon noted in his 10 January 2005 *Omnibus Order*.[78] This inherent power includes the right of the court to reverse itself, especially when in its honest opinion it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party litigant.[79]

Certainly, the 4 January 2005 *Order* was designed to make the RTC's previous order conformable to law and justice, particularly to apply the correct law of the case. Of course, as earlier established, this effort proved incomplete, as the 4 January 2005 *Order* did not correctly apply Rep. Act No. 8974 in several respects. Still, at least, the 4 January 2005 *Order* correctly reformed the most basic premise of the case that Rep. Act No. 8974 governs the expropriation proceedings.

Nonetheless, the Government belittles Hon. Gingoyon's invocation of Section 5(g), Rule 135 as "patently without merit."

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[76] *Shioji v. Harvey*, 43 Phil. 333, 344 (1922).

[77] Section 5, Rule 135, Rules of Court.

[78] *See rollo*, p. 82.

[79] *Tocao v. Court of Appeals*, G.R. No. 127405, 20 September 2001, 463 SCRA 365. *See* also *Astraquillo v. Javier*, L-20034, January 26, 1965, 13 SCRA 125.

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Certainly merit can be seen by the fact that the 4 January 2005 *Order* reoriented the expropriation proceedings towards the correct governing law. Still, the Government claims that the unilateral act of the RTC did not conform to law or justice, as it was not afforded the right to be heard.

The Court would be more charitably disposed towards this argument if not for the fact that the earlier order with the 4 January 2005 *Order* sought to correct was itself issued without the benefit of any hearing. In fact, nothing either in Rule 67 or Rep. Act No. 8975 requires the conduct of a hearing prior to the issuance of the writ of possession, which by design is available immediately upon the filing of the complaint provided that the requisites attaching thereto are present. Indeed, this expedited process for the obtention of a writ of possession in expropriation cases comes at the expense of the rights of the property owner to be heard or to be deprived of possession. Considering these predicates, it would be highly awry to demand that an order modifying the earlier issuance of a writ of possession in an expropriation case be barred until the staging of a hearing, when the issuance of the writ of possession itself is not subject to hearing. Perhaps the conduct of a hearing under these circumstances would be prudent. However, hearing is not mandatory, and the failure to conduct one does not establish the manifest bias required for the inhibition of the judge.

The Government likewise faults Hon. Gingoyon for using the amount of US$350 Million as the basis for the 100% deposit under Rep. Act No. 8974. The Court has noted that this statement was predicated on the erroneous belief that the BIR zonal valuation applies as a standard for determination of just compensation in this case. Yet this is manifest not of bias, but merely of error on the part of the judge. Indeed, the Government was not the only victim of the errors of the RTC in the assailed orders. PIATCO itself was injured by the issuance by the RTC of the writ of possession, even though the former had yet to be paid any amount of just compensation. At the same time, the Government was also prejudiced by the erroneous ruling of the RTC that the amount of US$62.3 Million, and not ₱3 Billion, should be released to PIATCO.

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The Court has not been remiss in pointing out the multiple errors committed by the RTC in its assailed orders, to the prejudice of both parties. This attitude of error towards all does not *ipso facto* negate the charge of bias. Still, great care should be had in requiring the inhibition of judges simply because the magistrate did err. Incompetence may be a ground for administrative sanction, but not for inhibition, which requires lack of objectivity or impartiality to sit on a case.

The Court should necessarily guard against adopting a standard that a judge should be inhibited from hearing the case if one litigant loses trust in the judge. Such loss of trust on the part of the Government may be palpable, yet inhibition cannot be grounded merely on the feelings of the party-litigants. Indeed, every losing litigant in any case can resort to claiming that the judge was biased, and he/she will gain a sympathetic ear from friends, family, and people who do not understand the judicial process. The test in believing such a proposition should not be the vehemence of the litigant's claim of bias, but the Court's judicious estimation, as people who know better than to believe any old cry of "wolf!," whether such bias has been irrefutably exhibited.

The Court acknowledges that it had been previously held that "at the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no other alternative but to inhibit himself from the case."[80] But this doctrine is qualified by the entrenched rule that "a judge may not be legally prohibited from sitting in a litigation, but when circumstances appear that will induce doubt to his honest actuations and probity in favor of either party, or incite such state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the Courts of Justice is not impaired."[81] And a self-assessment by the judge that he/she is not impaired to hear the case will be respected by the

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[80] *See e.g., Gacayan v. Pamintuan*, A.M. No. RTJ-99-1483, 17 September 1999, 314 SCRA 682.

[81] *See e.g., Pimentel vs. Salanga*, 21 SCRA 160.

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Court absent any evidence to the contrary. As held in *Chin v. Court of Appeals*:

> An allegation of prejudgment, without more, constitutes mere conjecture and is not one of the "just and valid reasons" contemplated in the second paragraph of Rule 137 of the Rules of Court for which a judge may inhibit himself from hearing the case. We have repeatedly held that mere suspicion that a judge is partial to a party is not enough. Bare allegations of partiality and prejudgment will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. There should be adequate evidence to prove the allegations, and there must be showing that the judge had an interest, personal or otherwise, in the prosecution of the case. To be a disqualifying circumstance, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.[82]

The mere vehemence of the Government's claim of bias does not translate to clear and convincing evidence of impairing bias. There is no sufficient ground to direct the inhibition of Hon. Gingoyon from hearing the expropriation case.

In conclusion, the Court summarizes its rulings as follows:

(1) The 2004 *Resolution* in *Agan* sets the base requirement that has to be observed before the Government may take over the NAIA 3, that there must be payment to PIATCO of just compensation in accordance with law and equity. Any ruling in the present expropriation case must be conformable to the dictates of the Court as pronounced in the *Agan* cases.

(2) Rep. Act No. 8974 applies in this case, particularly insofar as it requires the immediate payment by the Government of at least the proffered value of the NAIA 3 facilities to PIATCO and provides certain valuation standards or methods for the determination of just compensation.

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[82] G.R. No. 144618, 15 August 2003, 206 SCRA 409.

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(3) Applying Rep. Act No. 8974, the implementation of Writ of Possession in favor of the Government over NAIA 3 is held in abeyance until PIATCO is directly paid the amount of ₱3 Billion, representing the proffered value of NAIA 3 under Section 4(c) of the law.

(4) Applying Rep. Act No. 8974, the Government is authorized to effectuate the operation of the Ninoy Aquino International Airport Passenger Terminal III (NAIA 3) by performing the acts that are essential to its functioning as such upon the effectivity of the Writ of Possession, subject to the conditions above-stated. As prescribed by the Court, such authority encompasses "the repair, reconditioning and improvement of the complex, maintenance of the existing facilities and equipment, installation of new facilities and equipment, provision of services and facilities pertaining to the facilitation of air traffic and transport, and other services that are integral to a modern-day international airport."[83]

(5) The RTC is mandated to determine the just compensation within sixty (60) days from finality of this *Decision*. In doing so, the RTC is obliged to comply with "law and equity" as ordained in *Agan* and the standard set under Implementing Rules of Rep. Act No. 8974 which is the "replacement cost method" as the standard of valuation of structures and improvements.

(6) There was no grave abuse of discretion attending the RTC *Order* appointing the commissioners for the purpose of determining just compensation. The provisions on commissioners under Rule 67 shall apply insofar as they are not inconsistent with Rep. Act No. 8974, its Implementing Rules, or the rulings of the Court in *Agan*.

(7) The Government shall pay the just compensation fixed in the decision of the trial court to PIATCO immediately upon the finality of the said decision.

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[83] *Infra*.

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(8) There is no basis for the Court to direct the inhibition of Hon. Gingoyon.

All told, the Court finds no grave abuse of discretion on the part of the RTC to warrant the nullification of the questioned orders. Nonetheless, portions of these orders should be modified to conform with law and the pronouncements made by the Court herein.

WHEREFORE, the Petition is GRANTED in PART with respect to the orders dated 4 January 2005 and 10 January 2005 of the lower court. Said orders are AFFIRMED with the following MODIFICATIONS:

1) The implementation of the Writ of Possession dated 21 December 2004 is HELD IN ABEYANCE, pending payment by petitioners to PIATCO of the amount of Three Billion Two Million One Hundred Twenty Five Thousand Pesos (₱3,002,125,000.00), representing the proffered value of the NAIA 3 facilities;

2) Petitioners, upon the effectivity of the Writ of Possession, are authorized to start the implementation of the Ninoy Aquino International Airport Pasenger Terminal III project by performing the acts that are essential to the operation of the said International Airport Passenger Terminal project;

3) RTC Branch 117 is hereby directed, within sixty (60) days from finality of this Decision, to determine the just compensation to be paid to PIATCO by the Government.

The *Order* dated 7 January 2005 is AFFIRMED in all respects subject to the qualification that the parties are given ten (10) days from finality of this *Decision* to file, if they so choose, objections to the appointment of the commissioners decreed therein.

The *Temporary Restraining Order* dated 14 January 2005 is hereby LIFTED.

No pronouncement as to costs.

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SO ORDERED.

Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Callejo, Sr., Azcuna, Chico-Nazario, and *Garcia, JJ.,* concur.

Davide, Jr., C.J., Panganiban, and *Carpio Morales, JJ.,* join Mr. Justice Corona in his dissent.

Puno, J., please see separate opinion.

Carpio, J., see separate opinion. In the result.

Corona, J., please see dissenting opinion.

SEPARATE OPINION

PUNO, *J.*:

I join the exhaustive Dissent of Mr. Justice Corona. In addition, I proffer the following thoughts:

I

Agan case did not preclude
right of State to expropriate

The majority opinion took excruciating pains to reconcile our Decision in *Agan* and the inherent right of the State to expropriate private property. With due respect, the effort is strained and unnecessary for there nothing in *Agan* where it can be deduced that the right of the State to expropriate the subject property has been impaired or diminished. In *Agan*, we simply held:

x x x x x x x x x

This Court, however, is not unmindful of the reality that the structures comprising the NAIA IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. For the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity

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for the government cannot unjustly enrich itself at the expense of PIATCO and its investors.

Agan involved *solely* the issue of the validity of THE PIATCO contracts. After striking down the contracts as void, we ruled that the State must pay just compensation to PIATCO before it could exercise the right to take over considering the undeniable fact that the latter spent a considerable sum of money to build the structures comprising the NAIA IPT III. The Court, however, did not spell out a rigid formula for just compensation to be paid to PIATCO except to say that it must be according to law and equity. The Court's language was carefully crafted to give the trial court sufficient flexibility in determining just compensation considering the exchange of charges and countercharges that the cost in building the said structures was unreasonably bloated. It ought to be stressed again that in *Agan*, we did not rule that the State cannot expropriate the said structures. Necessarily, we did not also set the procedure on how the expropriation proceedings should be conducted if the State would opt to expropriate said structures. We need not, therefore, strain in attempting to square our ruling in *Agan* with our ruling in the case at bar. If at all, *Agan* will *later* be relevant in fixing just compensation but not in determining which procedure to follow in the expropriation of NAIA IPT III.

II

R.A. No. 8974 cannot amend Rule 67

Article VIII, Sec. 5 of the 1987 Constitution gave the Supreme Court the following powers:

x x x x x x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall

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be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

In *Echegaray v. Secretary of Justice*[1] we emphasized that the 1987 Constitution strengthened the rule making power of this Court, thus:

> The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court. x x x
>
> The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. x x x *But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress* x x x.

Undoubtedly, Rule 67 is the rule this Court promulgated to govern the proceedings in expropriation cases filed in court. It has been the undeviating rule for quite a length of time. Following Article VIII, Section 5(5) of the 1987 Constitution and the *Echegaray* jurisprudence, Rule 67 cannot be repealed or amended by Congress. This prohibition against non- repeal or non-amendment refers to any part of Rule 67 for Rule 67 is pure procedural law. Consequently, the Court should not chop Rule 67 into pieces and hold that some can be changed by Congress but others can be changed. The stance will dilute the rule making power of this Court which can not be allowed for it will weaken its institutional independence.

III

On December 12, 2005, the Solicitor General filed a Supplemental Manifestation and Motion. The Solicitor General informed the Court about an Order dated December 2, 2005 of

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[1] 361 Phil. 76 (1999).

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the High Court of Justice, Queen's Bench Division, London which reads:

Claim No.: HT-05-269

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT
MR. JUSTICE RAMSEY

BETWEEN:

TAKENAKA CORPORATION (PHILIPPINE BRANCH)
First Claimant

ASAHIKOSAN CORPORATION
Second Claimant

-vs.-

PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC.
Defendant

ORDER DATED 2 DECEMBER 2005

UPON Judgment in default of Defence having been entered on 28 November 2005.

AND UPON READING the Application Notice of the Claimants dated 28 November 2005 and the evidence referred to in Part C.

AND UPON HEARING the solicitors for the Claimants and the solicitors for the Defendant appearing.

IT IS ORDERED THAT:

1. Judgment be entered for the First Claimant in the sum of 21,688,012.18 United States dollars, together with interest in the sum of 6,052,805.83 United State dollars.

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2. Judgment be entered for the Second Claimant in the sum of 30,319,284.36 United States dollars, together with interest in the sum of 5,442,628.26 United States dollars.

3. The Defendant do pay the Claimants' costs in the action, to be subject to detailed assessment if not agreed.

DATED this 2 day of December 2005.

To be sure, the said Order is not yet final. Be that as it may, the Court cannot turn a blind eye to this new wrinkle of the case at bar. It is of judicial notice that despite *Agan*, the subject case has reached the international arbitral tribunals where the government and the private respondent have filed charges and countercharges. There is evident need to avoid the issues pestering the parties from further multiplying and for new proceedings to be started in other courts, lest public interest suffer further irretrievable prejudice. Towards this end, it is respectfully submitted that the Court should exercise its power to compel the parties to interplead pursuant to Rule 62 and invoke the need for orderly administration of justice. The parties may be given reasonable time to amend their pleadings in the trial court.

IN VIEW WHEREOF, I join the Opinion of Mr. Justice Corona except the part calling for the inhibition of the respondent judge. The issues resolved by the respondent judge are not the run of the mill variety. Indeed, their novelty and complexity have divided even the members of this Court. There may have been lapses by the respondent judge but they do not bespeak of a biased predisposition.

SEPARATE OPINION

CARPIO, *J.*:

I concur in the result of the majority opinion.

Congress has no power to amend or repeal rules of procedure adopted by the Supreme Court.[1] However, Congress can enact

[1] Section 5(5), Article VIII, 1987 Constitution; *Echegaray v. Secretary of Justice*, 361 Phil. 76 (1999).

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laws on substantive matters which are the subject of court procedures. Thus, Congress can prescribe the initial or minimum amount for just compensation in expropriation cases, and require immediate payment of such initial or minimum amount as condition for the immediate takeover of the property by the government. The rules of procedure, like Rule 67 of the Rules of Court, must adjust automatically to such new laws on substantive matters.

Section 4 of Republic Act No. 8974, mandating immediate payment to the property owner of the full zonal or proffered value prior to takeover by the government, is a substantive requirement in expropriation cases. Thus, Section 4 must apply to all expropriation cases under RA No. 8974 involving the acquisition of real property, like the NAIA Terminal III, for "national government projects."

Even assuming, for the sake of argument, that Section 4 of RA 8974 is not applicable to the expropriation of NAIA Terminal III, the Court must still apply the substantive concept in Section 4 of RA 8974 to expropriation proceedings under Rule 67 to insure equal protection of the law to property owners.[2] There is no substantial reason to discriminate against property owners in expropriation cases under Rule 67. Under RA 8974, when private property is expropriated for a national government project, the government must first pay the zonal or proffered value to the property owner before the government can take over the property. In the present case, private property is expropriated for an admittedly national government project. Thus, the Court must extend the substantive benefits in Section 4 of RA 8974 to expropriation cases under Rule 67 to prevent denial of the equal protection of the law.

Accordingly, I join in the result of the majority opinion.

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[2] Section 1, Article III, 1987 Constitution.

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DISSENTING OPINION

CORONA, *J.*:

The *1987 Constitution molded an even stronger and more independent judiciary*. Among others, *it enhanced the rule making power of this Court*. x x x

The rule making power of this Court was expanded. This Court for the *first time* was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. x x x ***But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure.*** In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress x x x. (emphasis supplied)

– *Echegaray v. Secretary of Justice*, 361 Phil. 76 (1999)

— 0 —

Senator [Miriam] Santiago. Mr. President, will the gentleman yield for clarificatory interpellation considering that I support the bill?

x x x x x x x x x

x x x I would now like to proceed with the clarificatory questions. I would like to go through the pages chronologically. I will refer to *Section 4* on page 2 of [Senate Bill No. 2038]. *This is the Section which sets out the procedures for acquisition of land or other real property, including expropriation.*

We all know in the legal profession that expropriation proceedings are covered by Rule 67 of the Rules of Court. I think *it is self-evident that Section 4 seeks to revise Rule 67 of the Rules of Court.*

x x x *Is this section intended to amend Rules of Procedure promulgated by the Supreme Court*? x x x

Senator [Renato] Cayetano. x x x

Yes, Mr. President, to a certain extent, *Section 4 would amend the provisions of the Rules of Court vis-à-vis expropriation* x x x.

x x x x x x x x x

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x x x *Section 4 of this bill* x x x *effectively amends certain portions of the Rules of Court on expropriation.*

– Senate deliberations on July 25, 2000 on Senate Bill (SB) No. 2038 which later became SB No. 2117. SB No. 2117 was consolidated with House Bill No. 1422 and enacted by Congress as RA 8974.

This case involves the exercise by the national government of the power of eminent domain over the Ninoy Aquino International Airport International Passenger Terminal III (NAIA IPT3). From the start, there was never any doubt about the Republic's position to exercise the power of eminent domain. The discussions within the Court focused on which procedure shall govern the determination of the just compensation due to PIATCO for the NAIA IPT3 facilities — whether it would be Rule 67 of the Rules of Court or RA 8974.

The majority ruled that RA 8974 should apply. It ordered the national government and its co-petitioners to immediately pay the just compensation for NAIA IPT3 before taking over the facility. In so doing, the majority may have unwittingly further delayed, if not virtually foreclosed, the expropriation of NAIA IPT3.

I submit it erroneously allowed the procedure set forth in an unconstitutional law.

The majority allowed Congress to encroach upon the rule-making power[1] which the Constitution has reserved exclusively

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[1] Section 5(5), Article VIII of the Constitution provides:

x x x x x x x x x

Section 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(5) *Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts*, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive

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to this Court. And it may have created another white elephant as a result.

Hence, I respectfully dissent.

Before us is a petition for *certiorari* and prohibition with urgent prayer for preliminary injunction and temporary restraining order filed by the Republic of the Philippines (Republic), the Department of Transportation and Communications (DOTC) and the Manila International Airport Authority (MIAA). The petition seeks to nullify and set aside the January 4, 2005, January 7, 2005 and January 10, 2005 orders of the public respondent, Hon. Henrick F. Gingoyon, presiding judge of the Regional Trial Court of Pasay City, Branch 117, in RTC Civil Case No. 04-0876.

The main case here is one of expropriation[2] and is an offshoot of the decision[3] and resolution[4] of this Court in the consolidated cases of *Agan v. PIATCO*, *Baterina v. PIATCO* and *Lopez v. PIATCO*. The object of the expropriation proceedings is the NAIA IPT3.[5]

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rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[2] *Republic of the Philippines represented by Executive Secretary Eduardo R. Ermita, the Department of Transportation and Communications (DOTC), and the Manila International Airport Authority (MIAA) v. Philippine Air Terminals Co., Inc. (PIATCO).*

[3] 450 Phil. 744 (2003).

[4] G.R. Nos. 155001, 155547 and 155661, 21 January 2004, 420 SCRA 575.

[5] The NAIA IPT3 is described more particularly as follows:

The new international passenger terminal building (NAIA IPT3) on a site approximately 65 hectares located at the Philippine Air Force Base at Villamor, designed to handle 13 million passengers annually; the sewage treatment plant located within the same 65-hectare land; aircraft aprons, ramps, remote aircraft parking area; and, a multi-story parking structure capable of accommodating approximately 2,000 vehicles. (Complaint, *Rollo*, p. 93; Order, *Rollo*, p. 108; Writ of Possession, *Rollo*, p. 110)

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PETITIONERS' CASE

The actual construction and development of the NAIA IPT3 were undertaken by PIATCO as contractor of a build-operate-transfer project[6] pursuant to the following contracts: (1) Concession Agreement signed on July 12, 1997; (2) Amended and Restated Concession Agreement (ARCA) dated November 26, 1998; (3) First Supplement to the ARCA dated August 27, 1999; (4) Second Supplement to the ARCA dated September 4, 2000; and (5) Third Supplement to the ARCA dated June 22, 2001 [collectively, the PIATCO Contracts].[7]

At the end of a 25-year concession, PIATCO will transfer the operation of the terminal to the MIAA.[8] PIATCO commenced but did not complete the construction of NAIA IPT3 because of certain developments which will be taken up in detail later.

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[6] RA 6957 as amended by RA 7718 otherwise known as "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for other Purposes" (sometimes referred to as the B-O-T Law).

[7] Complaint, *Rollo*, p. 91.

[8] *Id.*, pp. 91-92.

PIATCO was granted a franchise to operate and maintain the said terminal during the concession period and to collect the fees, rentals and other charges in accordance with the rates or schedules stipulated in the 1997 Concession Agreement.

Among others, the 1998 ARCA amended the 1997 Concession Agreement provisions on: (a) special obligations of the government; (b) exclusivity of the franchise; (c) temporary take-over of operations by the government; (d) taxes, duties and other imposts that may be levied on the Concessionaire; and (e) termination of the contract.

Three supplements to the ARCA were subsequently signed by the government and PIATCO. The First Supplement introduced amendments on the provisions on, among others: (a) revenues (b) terminal fees and (c) maintenance and upkeep of facilities. The Second Supplement contained provisions concerning clearing, removal, demolition or disposal of subterranean structures uncovered or discovered at the site of the construction of the terminal. Finally, the Third Supplement provided for PIATCO's obligations as regards the construction of the surface road connecting Terminals II and III. (*Agan, supra,* note 2, pp. 795-797.)

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NAIA IPT3 stands on a parcel of land owned by the Bases Conversion Development Authority (BCDA), an agency of the Republic.[9]

By way of a brief background, this Court ruled in *Agan* that in view of the absence of the required financial capacity of PIATCO's predecessor, the Paircargo Consortium,[10] the award to it by the Prequalification Bids and Awards Committee (PBAC) of the contract for the construction, operation and maintenance of the NAIA IPT3 was null and void.[11] Moreover, the 1997 Concession Agreement was nullified for being a substantially different agreement from the contract bidded upon. It also contained a provision constituting a direct government guarantee which was expressly prohibited by RA 6957 or the Build-Operate-Transfer (B-O-T) Law and its implementing rules. The 1999 ARCA and its supplements, being mere accessory contracts, were all similarly voided.

After invalidating all the PIATCO Contracts, the Court declared in a resolution dated January 21, 2004 (2004 resolution):

> [that this] Court, however, is not unmindful of the reality that the structures comprising the NAIA [IPT3] facility are almost complete and that funds have been spent by PIATCO in their construction. *For the government to take over the facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity* for the government can not unjustly enrich itself at the expense of PIATCO and its investors.[12] (italics supplied)

More than a year later, however, the Republic still had not moved any closer to opening and operating a modern international airport. Petitioners allegedly exerted efforts, unfortunately to

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[9] *Id.*, p. 92.

[10] People's Air Cargo and Warehousing Co., Inc. (Paircargo). Philippine Air and Ground Services, Inc. (PAGS) and Security Bank Corp. (Security Bank).

[11] *Supra* at note 3.

[12] *Supra* at note 4, p. 603.

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no avail, to negotiate with PIATCO and its foreign stockholder and lender, Fraport AG Frankfurt Airport Services Worldwide (Fraport), for the resolution of the stalemate. Petitioners claimed that their request for a "walk-through" to arrive at a preliminary determination of the safety and structural integrity of the terminal as well as their appeal for the submission of construction plans and related documents were denied.

On the ground that, under the Constitution, (1) private property can be taken for public use under certain conditions and (2) the State has the inherent power of eminent domain, the Republic resorted to an action for expropriation on December 21, 2004.[13]

Upon filing the complaint for expropriation, petitioners made a cash deposit of ₱3,002,125,000 (NAIA IPT3's assessed value for taxation purposes) at the Baclaran Branch of the Land Bank of the Philippines (LBP-Baclaran). The amount, roughly equivalent to US$ 53 million, was subject to the orders of the trial court. A writ of possession was thereafter issued, enabling petitioner to gain its first access to the terminal[14] after the

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[13] Petition, *Rollo*, p. 9. See also Article XII, Section 6 of the Constitution.

On December 22, 2004, Chavez Miranda Aseoche Law Firm entered its special appearance for intervenor-movant Paircargo Consortium for the purpose of filing a motion to quash/ recall the issuance of the writ of possession. It later withdrew its appearance on December 28. As a consequence, the motion to quash/recall the issuance of the writ of possession was likewise withdrawn and the hearing scheduled on January 10, 2005 was sought to be considered vacated. (Special Appearance Solely for Purpose of Filing a Motion to Quash/Recall Issuance of Writ of Possession, *Rollo*, pp. 181-211; Withdrawal of Appearance, *Rollo*, p. 213)

[14] Rule 67, Section 2 of the Rules of Court provides:

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

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promulgation of *Agan*. With the writ, petitioners entered and took possession of the NAIA IPT3.[15]

Meanwhile, the sheriff was not able to serve summons at the indicated address of PIATCO since it apparently no longer held office there.[16] Petitioners claim that, as of January 3, 2005, the sheriff still had been unable to serve summons on PIATCO.[17]

On *January 4, 2005*, respondent judge issued the first assailed order:

> In view of the foregoing, this court hereby issues the following orders to supplement its Order dated 21 December 2004 and the writ of possession issued on the same date:
>
> (a) The Land Bank of the Philippines, Baclaran Branch, is hereby directed to immediately, upon receipt of this Order, release the amount of US$62,343,175.77 that plaintiffs specifically made available for the purpose of expropriation, to and in favor of PIATCO. This amount shall be deducted from the amount of just compensation due PIATCO that shall be determined by this court pursuant to Section 4 of R.A. No. 8974.
>
> (b) The plaintiffs are hereby directed to submit to this court a Certificate of Availability of Funds signed by authorized officials to cover the payment of just compensation.
>
> (c) Pending expropriation proceedings and full payment of just compensation to PIATCO, the plaintiffs are directed to maintain, preserve and safeguard NAIA IPT3, or perform such acts or activities in preparation for their direct operation of NAIA IPT3. Plaintiffs,

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x x x x x x x x x

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

[15] Order dated December 21, 2004, *Rollo*, pp. 108-109; Writ of Possession, *Rollo*, p. 110.

[16] Petition, *Rollo*, p. 17; Return of Service, *Rollo*, p. 111; Sheriff's Return, *Rollo*, p. 113.

[17] Petition, *Rollo*, p. 10.

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however, are prohibited from performing acts of ownership like awarding concessions or leasing any part of NAIA IPT3 to other parties.

SO ORDERED.[18]

Petitioners filed an urgent motion for reconsideration on January 5, 2005, asserting that the amount ordered released by the court (approximately US$ 62.3+ million) was excessive. The LBP-Baclaran had certified that the Republic had a total deposit of approximately US$ 62.3+[19] million with it. Apparently, it was this whole amount the trial court wanted released to PIATCO.

On the other hand, petitioner Republic objected to the order of the court because, as could be allegedly concluded from the documents it filed with the expropriation complaint, since there were no comparable values for the expropriated property, "reasonable basis" should determine what the provisional value[20] of NAIA IPT3 ought to be. Using "reasonable basis" as a guide, the Republic arrived at a provisional value of ₱3,002,125,000 or about US$ 53 million which actually represented the assessed value of the property for taxation purposes.[21] The amount Judge Gingoyon wanted to be released immediately to PIATCO was

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[18] *Rollo*, pp. 76-77.

[19] The Republic's deposit for purposes of securing the writ of possession was roughly equivalent to only US$ 53 million. But its total bank balance in LBP-Baclaran amounted to US$ 62.3+ million. The difference represented other funds or deposits not at all intended by the Republic to be part of the provisional value required before a writ of possession could be issued.

[20] The "provisional value" refers to the provisional amount which is, according to Rule 67, Sec. 2 of the 1997 Rules of Civil Procedure, "equivalent to the assessed value of the property for [taxation] purposes." It is by no means the final or total amount of compensation to be paid to the owner of the property expropriated (arrived at only after the entire expropriation proceedings are concluded), but merely an initial sum or "down payment" required before the court can issue a writ of possession which will then authorize the expropriation complainant to take, enter or possess the property.

[21] *Rollo*, pp. 28-29.

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about US$ 9 million more or US$ 63.2+ million. Hence, the Republic's objection on the ground of excessiveness.

Petitioners contended that it was likewise erroneous for the trial court to order the release of the deposit *motu propio* (that is, without any motion therefor) since just compensation was yet undetermined and the deposit itself was being claimed by other parties.[22] According to petitioners, since they had not been granted "full and relevant access to the NAIA IPT3," it was impossible for them to fully assess its safety, structural integrity and real value after just one perfunctory guided tour of the facility.[23] As there was no opportunity to thoroughly inspect the property being expropriated, the expenditure of public funds could not be legally justified.[24] Hence, it was error for the trial court to order the release of any part of the Republic's deposits in LBP-Baclaran to PIATCO.

Petitioners also questioned why the court *a quo* applied RA 8974[25] instead of Rule 67[26] of the 1997 Rules of Court to the expropriation proceedings. They argued that the title of RA 8974 itself defined its limited application: only for the acquisition of a right of way, site or location for a national infrastructure project. NAIA IPT3 was not a right-of-way, site or location for any national government infrastructure project. It was the national government infrastructure project itself.[27]

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[22] Fraport initiated arbitration proceedings before the International Centre for the Settlement of Investment Disputes (ICSID) claiming US$ 425 million and an unspecified amount of damages. As unpaid builder, Takenaka Corporation (Takenaka) has a claim of at least US$ 70 million. (Urgent Motion for Reconsideration, *Rollo*, p. 117)

[23] Reply, *Rollo*, p. 289.

[24] Urgent Motion for Reconsideration, *Rollo*, p. 118.

[25] "An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for other Purposes."

[26] *Supra* at note 14.

[27] *Rollo*, p. 116.

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Furthermore, petitioners considered the trial court's prohibition against "acts of ownership like awarding concessions or leasing any part of NAIA IPT3 to other parties" as, in effect, an injunction or restraining order against a government infrastructure project and therefore a violation of RA 8975[28] which prohibits the issuance of an injunction (except by the Supreme Court) against government infrastructure projects.[29] In total disregard of due process, the injunction was issued by the trial court without notice and hearing.[30] Petitioners argued that preventing them from exercising the rights of a beneficial owner of NAIA IPT3 would negate the very purpose for which the writ of possession was issued[31] and the expropriation itself was being pursued.

Respondent judge, finding that petitioners had the legal right to expropriate NAIA IPT3, issued the second assailed order on *January 7, 2005*.

WHEREFORE, finding plaintiffs to have the right to expropriate NAIA IPT3, this court hereby orders:

1. The EXPROPRIATION of NAIA IPT3, which is particularly described in the Writ of Possession issued by this court on December 21, 2004;

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[28] "An Act to ensure the expeditious implementation and completion of government infrastructure projects by prohibiting lower courts from issuing temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions, providing penalties for violations thereof, and for other purposes."

It is a declared policy under RA 8975 that "the use of property bears a social function, and all economic agents shall contribute to the common good. Toward this end, the State shall ensure the expeditious and efficient implementation and completion of government infrastructure projects to avoid unnecessary increase in construction, maintenance and/or repair costs and to immediately enjoy the social and economic benefits therefrom" pursuant to Article XII, Section 6 of the Constitution.

[29] *Rollo*, p. 119.

[30] *Id.*

[31] *Id.*

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2. The appointment of *DR. FIORELLO R. ESTUAR, SOFRONIO B. URSAL and ANGELO I. PANGANIBAN* as commissioners to ascertain and report to this court the just compensation for the taking of NAIA IPT3. They shall appear before this court within three (3) days from receipt hereof to take and subscribe an oath that they will faithfully perform their duties as commissioners under Section 6, Rule 67 of the 1997 Rules of Civil Procedure.

   a. The first session of the hearing to be held by the aforesaid commissioners shall be on January 14, 2005 at 10:00 A.M. at the NAIA International Passenger Terminal 3, Villamor Airbase, Pasay City.

   b. Thereafter, the commissioners shall hold session at least twice a week.

   c. The commissioners shall make a full and accurate report to the court of all their proceedings on or before February 28, 2005.

   d. The commissioners shall be paid reasonable fees that shall be taxed as part of the costs of the proceedings.

SO ORDERED.[32]

On *January 10, 2005*, the trial court denied the urgent motion for reconsideration of its January 4, 2005 order and petitioners' urgent motion for inhibition of respondent judge filed on January 7, 2005.[33]

WHEREFORE, plaintiffs['] Motion for Reconsideration of the Order dated January 4, 2005, and Urgent Motion for Inhibition are DENIED.

Accordingly, except for the superfluous part of the Order prohibiting the plaintiffs from awarding concession or leasing any part of NAIA IPT3 to other parties, the order sought to be reconsidered stands: (1) The Land Bank of the Philippines, Baclaran Branch, must release the sum of US$62,343,175.77 in favor of PIATCO; (2) The Plaintiffs must submit a certificate of availability of funds; and (3) Pending expropriation proceedings and full payment of just compensation to

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[32] *Rollo*, p. 79.

[33] Omnibus Order, *Rollo*, pp. 80-87; Urgent Motion for Inhibition, *Rollo*, pp. 167-172.

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PIATCO, the plaintiffs are directed to maintain, preserve and safeguard NAIA IPT3, or perform such acts or activities in preparation for their direct operation of NAIA IPT3.

SO ORDERED.

RESPONDENT PIATCO'S VERSION OF EVENTS

On October 5, 1994, petitioners received an unsolicited offer from Asia's Emerging Dragons Corporation (AEDC) to construct, operate and maintain a state-of-the-art international passenger terminal under Section 4(a) of RA 6957 (the B-O-T Law),[34] Section 4(a) because the government did not have the funds nor the expertise to do the same.[35] The project was considered an unsolicited proposal because it was not a government priority project.[36] Paircargo Consortium, which eventually incorporated with other investors under the name PIATCO, submitted a counterproposal:

> to construct IPT-3 at a cost of not less than US$ 350 Million, operate such terminal at no cost to the Government, pay Government a total of at least ₱17.5 Billion in annual guaranteed payments over twenty-five (25) years and thereafter transfer title over IPT-3 to the Government for ₱1.00.[37]

The government, considering Paircargo Consortium's counterproposal more beneficial, gave AEDC thirty days to match it; this, AEDC failed to do.[38] The DOTC then issued the notice of award for the NAIA IPT3 project to PIATCO's predecessor, Paircargo Consortium. The government, through then DOTC Secretary Arturo T. Enrile, and PIATCO, through its President, Henry T. Go, executed the so-called PIATCO Contracts whereby PIATCO was granted a 25-year concession

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[34] *Supra* at note 6.

[35] Comment, *Rollo*, p. 250.

[36] *Id.*

[37] *Id.*

[38] *Id.*

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to operate NAIA IPT3, after which title was to pass on to the government.[39]

The 1997 Concession Agreement was signed during former President Fidel V. Ramos' administration while the ARCA and the first two supplements were executed during the tenure of former President Joseph Ejercito Estrada.[40] In January 2001, the Estrada administration was overthrown by mass political action popularly known as EDSA People Power II. Six months into the new administration of President Gloria Macapagal-Arroyo, on June 22, 2001, the third supplement to the ARCA was signed. Since then, the NAIA IPT3 project has been beset by seemingly interminable difficulties on all fronts.

According to PIATCO, long-term loans from Asian Development Bank, Kreditanstalt für Wiederaufbau, International Finance Corporation and Dresdner Bank could not be drawn on because of the refusal of the government to cooperate in the fulfillment of conditions precedent demanded by the lenders.[41] Undaunted, PIATCO nevertheless continued the construction of NAIA IPT3 through advances from stockholders and interim financing. It would have completed NAIA IPT3 by now had it not been for the alleged lack of cooperation of the Macapagal-Arroyo administration and the obstacles it allegedly put up.[42] (In her speech at the 2002 Golden Shell Export Awards at Malacañang Palace, President Macapagal-Arroyo stated that she could not honor the PIATCO Contracts denounced by government lawyers[43] as null and void.[44])

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[39] *Id.*, p. 247; *Agan, supra* at note 4, p. 582.

[40] *Supra* at note 3, p. 798.

[41] *Supra* at note 35, p. 251.

[42] *Id.*, pp. 247-249, 252, 254-255.

[43] President Macapagal-Arroyo was referring to the Office of the Solicitor General and the Department of Justice.

[44] *Supra* at note 35, p. 247. See also *Agan, supra* at note 3, p. 798.

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Furthermore, while the government defended the validity of the PIATCO Contracts in the past, it suddenly made a *volte face* and joined the parties who sought their nullification.[45] On September 17, 2002, various petitions were filed before this Court to annul the PIATCO Contracts and prohibit the DOTC and MIAA from implementing them. *Agan* was promulgated on May 5, 2003. Although this Court voided the PIATCO Contracts because PIATCO was, among other reasons, unqualified, this Court did not actually find private respondent to have acted fraudulently.[46]

Moreover, the Court required the government to pay PIATCO a fair and just compensation for NAIA IPT3 as a prerequisite for any takeover of the terminal.[47]

According to PIATCO, since the nullification of the PIATCO Contracts in 2003, petitioners have not shown any interest in the completion, opening and operation of NAIA IPT3. Instead of directing its resources and efforts to actually take over and operate NAIA IPT3 and to compensate PIATCO as builder of the structures, the government allegedly prepared to develop the Diosdado Macapagal International Airport in Clark Field, Pampanga.[48]

Contrary to petitioners' assertion that they were not being given access to NAIA IPT3, PIATCO alleged that invitations to view and inspect the terminal were in fact extended to them on several occasions. According to private respondent, the following were actually able to inspect NAIA IPT3:

(a) Secretary Leandro Mendoza;
(b) Solicitor General Alfredo Benipayo;

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[45] *Id.* Note the change of political leadership that occurred in January 2001.

[46] *Id.*

[47] *Agan, supra* at note 4, p. 603.

[48] *Supra* at note 35, *Rollo*, p. 248.

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(c) Former Executive Secretary, now Foreign Affairs Secretary Alberto Romulo;
(d) Former MIAA General Manager Edgardo Manda;
(e) MIAA General Manager Alfonso Cusi;
(f) Former Immigration Commissioner Andrea Domingo;
(g) Congressmen Alfonso Umali Jr., Raul Villareal, Joseph Santiago, Roberto Cajes, Corazon Malanyaon, Josephine Ramirez, Charity Leviste, Jacinto Paras, Prospero Pichay, Prospero Nograles, Willie Villarama, Perpetuo Ylagan, Eduardo Zialcita, Carmen Cari, Jose Solis, Consuelo Dy, Aleta Suarez, Rodolfo Bacani, Aurelio Umali, Augusto Syjuco Jr., Generoso Tulagan and Harlin Cast Abayon;
(h) Senators Ramon Revilla Jr., Alfredo Lim, Juan Ponce Enrile, Edgardo Angara, Panfilo Lacson and Tessie Aquino-Oreta.[49]

PIATCO is convinced that the government's intentions *vis-à-vis* NAIA IPT3 are suspect. "They did not negotiate. They dictated."[50] The government, with police assistance, allegedly seized control of NAIA IPT3 late in the afternoon of December 21, 2004 on the basis of a writ of possession issued by the trial court after no more than a unilateral assessment of the value of the facility.[51]

THE ISSUES

In fine, petitioners seek the resolution of the following issues:

I.

WHETHER OR NOT RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AND ACTED IN EXCESS OF JURISDICTION WHEN HE HELD THAT RA 8974, NOT RULE 67

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[49] *Id.*, p. 253.

[50] *Id.*, p. 249.

[51] *Id.*

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OF THE RULES OF COURT, IS APPLICABLE IN THE EXPROPRIATION PROCEEDINGS.

II.

WHETHER OR NOT RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AND ACTED IN EXCESS OF HIS JURISDICTION WHEN HE *MOTU PROPRIO* ISSUED THE ORDER DIRECTING THE DEPOSITARY BANK TO IMMEDIATELY RELEASE PETITIONERS' DEPOSIT IN THE AMOUNT OF US$ 62,343,175.77 WHEN NAIA IPT3'S ASSESSED VALUE FOR THE PURPOSE OF THE ISSUANCE OF THE WRIT AS ALLEGED IN THE COMPLAINT FOR EXPROPRIATION IS ONLY ₱ 3,002,125,000 (APPROXIMATELY US$ 53 MILLION).

III.

WHETHER OR NOT RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AND ACTED IN EXCESS OF HIS JURISDICTION WHEN HE PROHIBITED PETITIONERS FROM PERFORMING "ACTS OF OWNERSHIP" SUCH AS AWARDING CONCESSIONS OR LEASING ANY PART OF NAIA IPT3 TO OTHER PARTIES.

IV.

WHETHER OR NOT RESPONDENT JUDGE GRAVELY ERRED IN *MOTU PROPRIO* ISSUING THE JANUARY 7, 2005 ORDER APPOINTING THREE COMMISSIONERS TO DETERMINE THE TERMINAL'S JUST COMPENSATION.

V.

WHETHER OR NOT RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN REFUSING TO INHIBIT HIMSELF FROM THE EXPROPRIATION CASE.

Parallel to the resolution of the foregoing issues, petitioners also sought: (1) a TRO commanding respondent judge to cease and desist from implementing his orders dated January 4, 2005, January 7, 2005 and January 10, 2005 in RTC Civil Case No. 04-876; (2) the nullification of the orders dated January 4, 2005; January 7, 2005; and January 10, 2005; and (3) an order to respondent judge in his capacity as presiding judge of the

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Regional Trial Court, Branch 117, Pasay City to inhibit himself from further actions on the subject case.

The Court issued the TRO, as prayed for, on January 14, 2005.[52]

I shall discuss the issues *in seriatim*.

THE CONSTITUTIONAL REQUIREMENT OF PUBLIC USE

This case essentially pertains to the exercise by the Republic of its inherent power of eminent domain or the right of the sovereign authority to acquire private property for public use upon payment of just compensation. It refers to the right to take or reassert dominion over property within the state for public use or to meet a public exigency.[53] The constitutional requirement of due process lays down a rule of procedure to be observed in the exercise of such power.[54] This rule of procedure is more familiarly known as expropriation,[55] a term used interchangeably with eminent domain.

The exercise of eminent domain is circumscribed by two limitations in the Constitution: (1) the taking must be for public use and (2) just compensation must be paid to the owner of the private property.[56] These twin proscriptions are grounded on the necessity to achieve a balance between the interests of the State, on the one hand, and the private rights of the individual, on the other hand, by effectively restraining the former and affording protection to the latter.[57]

"Public use" as a limitation to the power of eminent domain is not defined in the Constitution. It is thus considered in its

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[52] Confirmed *nunc pro tunc* by the Court *en banc* on January 18, 2005.

[53] *Mañosca v. Court of Appeals*, 322 Phil. 442 (1996).

[54] Regalado, Florenz, *REMEDIAL LAW COMPENDIUM*, vol. I, 1997 ed., p. 735.

[55] *Id.*

[56] CONSTITUTION, Art. III, Sec. 9.

[57] *Republic v. Court of Appeals*, 433 Phil. 106 (2002).

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general notion of meeting a public need or a public exigency.[58] It is not restricted to clear cases of "use by the public"[59] but embraces whatever may be beneficially employed for the community.[60] The concept now covers uses which, while not directly available to the public, redound to their indirect advantage or benefit.[61] It is generally accepted that it is just as broad as "public welfare."[62]

Viewed in this light, the "public use" dimension of a modern international airport need not be belabored. For it is inextricably linked to air transport which, in turn, is vital to the economy, to business and to tourism. It enhances the movement of goods, services and people across international borders. It serves as the country's main gateway to the world and as its major link to its neighbors in the global village. Hardly anyone can doubt the public need for a modern international airport and the immeasurable boost it will give the country's economy.[63]

WHY EXPROPRIATE NAIA IPT3 IN THE FIRST PLACE?

In *Manotok v. National Housing Authority,*[64] we ruled that the exercise of the power of eminent domain should be based on necessity. Is there such a necessity for the expropriation of NAIA IPT3?

First, in today's global market governed by the hard-hearted rules of business dominance and competitiveness, time has become a precious resource and a critical determinant of either failure or success. Indeed, not only time but also resources are at stake in the expropriation of NAIA IPT3, an infrastructure

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[58] *Mañosca v. Court of Appeals, supra.*

[59] *Id.*

[60] *Sena v. Manila Railroad Co.*, 42 Phil. 102 (1921).

[61] Cruz, Isagani, *PHILIPPINE POLITICAL LAW*, 2000 ed., p. 75.

[62] *Mañosca v. Court of Appeals, supra.*

[63] In this connection, the Court reaffirms its pronouncement in *Agan* that the efficient functioning of NAIA IPT3 is *imbued with public interest.*

[64] G.R. Nos. L-55166-67, 21 May 1987, 150 SCRA 89.

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project that needs only to be completed to become fully operational, instead of building an entirely new facility from scratch.

Second, NAIA IPT3 sits on 65 hectares (161 acres) of prime government land located in one of the most expensive commercial areas in the country. But that valuable land will be completely laid to waste if NAIA IPT3 does not become operational, either because government does not allow it to operate or petitioners decide to build, operate or develop an entirely new international airport. In either case, both sides will only succeed in stalemating each other and NAIA IPT3 will be absolutely of no use to both petitioners and private respondent PIATCO. The land will just lie idle and unproductive while a white elephant abjectly sits on it. A repeat of the mothballed Bataan Nuclear Power Plant? Certainly. On the other hand, will not expropriating NAIA IPT3, putting it to good use and paying off its owner(s) redound to the benefit of the entire country and all parties concerned?

Third, there is no denying that a project like NAIA IPT3 is long overdue, such that the prestige of the entire country before the international community is at stake. Politics and narrow vested interests have a peculiar way of extirpating the most salutary and beneficial ventures in this country. The undertaking appears headed for the same fate unless this Court intervenes and exercises its judicial discretion to settle the destructive impasse. Shall this Court watch in silence while the parties claw at each other before international arbitration bodies?

The majority opinion effectively disregarded this necessity.

PUBLIC USE AND JUST COMPENSATION

None of the parties actually questioned the public purpose of the expropriation — not the petitioners of course, not the respondent judge, not even private respondent PIATCO. In fact, petitioners exerted special effort to show that the taking was intended to encourage and promote international air traffic as well as to develop an airport with facilities, accommodations and services meeting international standards. As for PIATCO, the records do not show that it questioned the public purpose

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of the expropriation at all. The respondent judge, for his part, recognized that the NAIA IPT3 was undoubtedly a structure for a well-defined public purpose, being of critical importance to the Philippine economy in terms of the carriage of goods, services and people.[65] Thus, there was never any question that the expropriation of NAIA IPT3 was for a public purpose.

The policy underlying the constitutional provision for eminent domain is to make the private owner "whole" after his property is taken.[66] Thus, private property cannot be taken in any way for public use without adequate compensation.[67]

Just compensation is the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation.[68] The compensation given to the owner is just if he receives for his property a sum equivalent to its market value at the time of the taking.[69] "Market value" is the price fixed by the buyer and the seller in the open market in the usual and ordinary course of legal trade and competition.[70]

RA 8974 OR RULE 67 OF THE RULES OF COURT?

At bottom, the bone of contention is the procedure that should govern the determination and payment of just compensation, *i.e.,* whether it should be that under RA 8974[71] or that under Rule 67 of the Rules of Court.

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[65] *Supra* at note 15.

[66] *State by Department of Highways v. McGuckin*, 242 Mont 81, 788 P2d 926.

[67] *West v. Chesapeake & Potomac Tel. Co.*, 295 US 662.

[68] *Province of Tayabas v. Perez*, 66 Phil. 467 (1938); *Manila Railroad Co. v. Velasquez*, 32 Phil. 208 (1913).

[69] *Manila Railroad Co. v. Fabie*, 17 Phil. 206 (1910); *Manila Railroad Co. v. Velasquez, supra.*

[70] *Id.*

[71] *Supra* at note 25.

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Under the relevant provisions of Rule 67 of the Rules of Court, possession is given to the condemnor and just compensation is determined in accordance with the following procedures:

x x x x x x x x x

SECTION 2. *Entry of plaintiff upon depositing value with authorized government depositary.* – Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the *possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation* to be held by such bank subject to the orders of the court. x x x

x x x x x x x x x

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

SECTION 3. *Defenses and objections.* –

x x x x x x x x x

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. x x x

x x x However, at the trial of the issue of just compensation, whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award.

SECTION 4. *Order of expropriation.* – If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be

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expropriated, 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 taking of the property or the filing of the complaint, whichever came first.

x x x x x x x x x

SECTION 5. *Ascertainment of compensation.* – Upon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken. The order of appointment shall designate the time and place of the first session of the hearing to be held by the commissioners and specify the time within which their report shall be submitted to the court.

Copies of the order shall be served on the parties. Objections to the appointment of any of the commissioners shall be filed with the court within ten (10) days from service, and shall be resolved within thirty (30) days after all the commissioners shall have received copies of the objections. (italics supplied)

On the other hand, RA 8974 provides for the observance of the following guidelines:

x x x x x x x x x

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

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

x x x x x x x x x

(c) In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation

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of the area concerned, the implementing agency shall immediately pay the owner of the property its *proffered value* taking into consideration the standards prescribed in Section 5 hereof.

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

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

In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court. (italics supplied)

To implement the above "guidelines," the Implementing Rules and Regulations (IRR) of RA 8974 provide:

x x x x x x x x x

SECTION 8. *Expropriation.* – If the owner of a private property needed by the government implementing agency does not agree to convey his property to the government by any of the foregoing modes of acquiring and/or transferring ownership of the property, then the government shall exercise its right of eminent domain by filing a complaint with the proper Court for the expropriation of the private property.

The verified complaint shall state with certainty the right and purpose of expropriation, describe the real or personal property sought to be expropriated, and join as defendants all persons owning or claiming to own, or occupying, any part thereof or interest therein, showing as far as practicable, the interest of each defendant separately. If the title of any property sought to be condemned appears to be in the name of the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify the real owners, averment to the effect may be made in the complaint.

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Pursuant to Section 4 of the Act, the Implementing Agency shall comply with the following guidelines:

a. *Upon the filing of the complaint, and after due notice to the defendant/property owner, the Implementing Agency shall immediately pay the property owner the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current zonal valuation of the BIR; and (2) the value of the improvements and/or structures as determined by the Implementing Agency, in accordance with Section 10 hereof, pursuant to Section 7 of the Act.*

x x x x x x x x x

c. In case the completion of a national government project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the Implementing Agency shall immediately pay the owner of the property its *proffered value* taking into consideration the standards stated in the second paragraph of Section 8 hereof, pursuant to Section 5 of the Act.

x x x x x x x x x

SECTION 10. *Valuation of Improvements and/or Structures.* – Pursuant to Section 7 of the Act, the Implementing Agency shall determine the valuation of the improvements and/or structures on the land to be acquired using the replacement cost method. The replacement cost of the improvements/structures is defined as the amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/ structures. In the valuation of the affected improvements/structures, the Implementing Agency shall consider, among other things, the kinds and quantities of materials/equipment used, the location, configuration and other physical features of the properties, and prevailing construction prices.

SECTION 11. *Engagement of Appraisers.* – The Implementing Agency may, if it deems necessary, engage the services of government financing institutions and/or private appraisers duly accredited by the said institutions to undertake the appraisal of the property, *i.e.,* the land and/or improvements/structures, and to determine its fair market value. The Implementing Agency concerned shall consider

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the recommendations of the said appraisers in deciding on the purchase price of or just compensation for the property.

SECTION 12. *Writ of Possession.* – Pursuant to Section 4 of the Act, upon compliance with the guidelines stated in Section 8 of this IRR, the court shall immediately issue to the Implementing Agency an order to take possession of the property and start the implementation of the project.

Before the Court can issue a Writ of Possession, however, the Implementing Agency shall present to the Court of *Certificate of Availability of Funds* signed by authorized officials to cover the payment to be made to the property owner.

After the Implementing Agency has complied with the foregoing requirements, the Court shall immediately issue the Writ of Possession to the complainant Implementing Agency.

SECTION 13. *Payment of Compensation.* – Should the property owner concerned contest the proffered value of the Implementing Agency, the Court shall determine the just compensation to be paid to the owner within sixty (60) days from the date of the filling of the expropriation case, considering the standards set out in Sections 8, 9 and 10 hereof, pursuant to Section 5 of the Act. When the decision of the Court becomes final and executory, the Implementing Agency shall pay the owner the difference between the amount already paid as provided in Section 8 (a) hereof and the just compensation determined by the court, pursuant to Section 4 of the Act.

SECTION 14. *Trial Proceedings.* – Within the sixty (60)-day period prescribed by the Act, all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of *Rule 67 of the Rules of Court.* (italics supplied)

Petitioners assert that the provisions on expropriation of Rule 67 of the Rules of Court should apply. The trial court and respondent PIATCO opine that it should be RA 8974.

Rule 67 and RA 8974 differ in the manner of compensating the owner of the property under expropriation. Under Rule 67, before the government can take possession of the property to be expropriated, the deposit of an amount equivalent to the *assessed value* of the property for taxation purposes is sufficient

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for the time being, that is, until the conclusion of the court proceedings where both parties shall have proven their claims and the court shall have made a factual determination of the price of the property. Under RA 8974, on the other hand, *immediate* payment of the *full zonal value* (a much bigger sum than the assessed value required by Rule 67) of the property and improvements and/or structures as determined under Section 7 of the law is required before the government can take possession of the property.

Petitioners maintain that the very title of RA 8974 states that it only covers the acquisition of *right of way, site or location for government infrastructure projects*. Thus, the law itself defines the limits of its application.

Obviously, according to petitioners, an airport is not a right of way because a "right of way" refers to the right to pass through property owned by another, which is not so in this case. Neither is it a "site or location" because "location" is the specific place or position of a person or thing and "site" pertains to a place or location or a piece of property set aside for a specific use. They further aver that even the bicameral deliberations on the law reveal that the legislature never contemplated the use of this special law for the acquisition of land for a purpose other than a right of way, site or location for government infrastructure projects.[72]

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[72] Petitioners quote the following portions of the discussions during the bicameral conference committee meeting on the disagreeing provisions of SB No. 2117 and House Bill No. 1422, the congressional bills which later became RA 8974:

THE CHAIRMAN (SEN. CAYETANO). x x x

Now, [House Bill No. 1422's] Section 3, ours is [a] method of acquiring real properties; yours is right-of-way acquisition procedure,....

THE CHAIRMAN (REP. VERGARA). Yeah.

THE CHAIRMAN (SEN. CAYETANO). Okay, there are few basic differences. In our version, we do not only include right-of-way....; we also included acquisition of site or location, ... [Yours is limited to right-of-way]. [Thus, ours is broader because our definition... includes right-of-way or site,..., or location. So to be consistent with that, we have also to include here,..., that we are not only speaking of right of way but also of site or location.]

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Moreover, the provisions[73] of RA 8974 cited by respondent judge speak of "relevant current zonal valuation of the [Bureau of Internal Revenue (BIR)]" as the amount of deposit necessary for the issuance of a writ of possession. BIR zonal valuations are only for parcels of land, not for airport facilities. There is no BIR zonal valuation for an airport terminal precisely because the latter is not land.

The majority opinion ruled that RA 8974 applies in this case. It premised its conclusion on the argument that the application of Rule 67 will violate this Court's 2004 resolution in *Agan*, the alleged governing law of the case.

The ruling is basically flawed as it is grounded on a wrong premise.

It is incorrect to say that *Agan* constitutes the law of the case. The "law of the case" doctrine is defined as a term applied to an established rule that, when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case on subsequent appeal.[74] Unlike the doctrine of *stare decisis*, the doctrine of the law of the case operates only in the particular case.[75]

The law of the case finds application only in the *same case* between the parties. This case (which refers to the expropriation of NAIA IPT3) is irrefutably not the same as *Agan* (which was about the validity of the so-called "PIATCO contracts"). Hence, the pronouncements in *Agan* cannot constitute the law of the case here.

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x x x x x x x x x

(Transcript of Bicameral Conference Committee Meeting on the Disagreeing Provisions of SB No. 2117 and HB No. 1422, August 29, 2000, pp. 11-12)

[73] Sections 4 and 7, RA 8974 and Section 10, IRR of RA 8974.

[74] *Fulgencio v. National Labor Relations Commission*, G.R. No. 141600, 13 September 12, 2003.

[75] *Ayala Corporation v. Rosa-Diana Realty and Development Corporation*, G.R. No. 134284. 01 December 2000.

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The majority opinion claims that "the staging of expropriation proceedings in this case with the exclusive use of Rule 67 would allow for the government to take over the NAIA 3 facilities in a fashion that directly rebukes our 2004 resolution in *Agan* (which) mandated that there must be first payment of just compensation before the Government could take over the NAIA IPT3 facilities." This is very misleading.

The full text of the relevant statement of the Court in its 2004 resolution in *Agan* is as follows:

> This Court, however, is not unmindful of the reality that the structures comprising the NAIA [IPT3] facility are almost complete and that funds have been spent by PIATCO in their construction. *For the government to take over the facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity* for the government can not unjustly enrich itself at the expense of PIATCO and its investors. (italics supplied)

Clearly, the resolution only requires that PIATCO be given just compensation as a condition for any government take-over of NAIA IPT3. The just compensation should be in accordance with law and equity. There is something seriously wrong with the argument that RA 8974 is the only legal and equitable way to compensate PIATCO in accordance with our 2004 resolution.

The application of Rule 67 in the expropriation proceedings of NAIA IPT3 is in consonance with *Agan*. The determination and payment of just compensation pursuant to Rule 67 are in accordance with law. Under Rule 67, PIATCO will be given FULL JUST COMPENSATION by the government for the taking of NAIA IPT3. That is mandatory. The Constitution itself ordains it.

Under Rule 67, there is no way the government can unjustly enrich itself at the expense of PIATCO. Section 9 of Rule 67 ensures this by requiring the payment of interest from the time government takes possession of the property.

Moreover, I dare say the majority opinion actually got caught up in a self-contradiction. At first, it claimed that the 2004

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resolution in *Agan* laid down the following directives: (1) PIATCO must receive payment of just compensation determined in accordance with law and equity, and (2) the government is barred from taking over NAIA IPT3 *until such just compensation* is paid. It continued to argue that the 2004 resolution requires the payment of just compensation before the takeover of NAIA IPT3 facilities. Subsequently, however, it backtracked and stated that "the 2004 resolution does not particularize the extent such payment must be effected before the takeover, but it actually requires at least *some degree of payment* to the private owner before a writ of possession may issue." However, neither the proffered value nor the zonal valuation under RA 8974 is equivalent to just compensation. If the majority opinion were to pursue its argument to its logical conclusion, no takeover can be had without payment of the just compensation itself, not merely of a value corresponding to what it vaguely referred to as "some degree of payment."

The requirement to pay the proffered value was a strained and belabored way of establishing that the application of RA 8974 is in consonance with the 2004 resolution in *Agan*. If the majority opinion were to be true to its pronouncement that the 2004 resolution demands payment of just compensation prior to the take over of NAIA IPT3, then payment of the proffered value is not enough. The proffered value is definitely not equivalent to just compensation.

The majority failed to realize that respondent judge gravely abuse his discretion when he issued his January 10, 2005 order. Respondent judge precipitately ruled that Rule 67 of the Rules of Court and all the laws on expropriation involving infrastructure projects had been expressly repealed by RA 8974 and its implementing rules and regulations. Worse, respondent judge justified his conclusion by erroneously invoking a footnote in *City of Iloilo v. Legaspi.*[76] His order read:

x x x x x x x x x

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[76] G.R. No. 154614, 25 November 2004, 444 SCRA 269.

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[Petitioners] relied solely — and this court initially went along with their reliance — on Rule 67 on Expropriation (an perchance of P.D. Nos. 42 and 1533) as the applicable authority on the instant case for expropriation. *But this court did not know then that Rule [67] and all the laws on expropriation involving infrastructure projects have been expressly repealed by R.A. No. 8974 and its Implementing Rules and Regulations insofar as they are inconsistent with said Act. In the footnote of the recent case of* ***City of Iloilo vs. Judge Legaspi*** *(G.R. No. 154614, November 25, 2004)*, the Supreme Court recognized that:

> "Section 4 of Rep. Act No. 8974 (An Act To Facilitate The Acquisition of Right-Of-Way, Site Or Location For National Government Infrastructure Projects and For Other Purposes) provides for the guidelines for expropriation proceedings."

Plaintiff's argument that R.A. No. 8974 is not applicable because NAIA IPT3 is "*not right-of-way, site or location*" for a national infrastructure project "*but the infrastructure itself*" is absurd. It is very plain to see, and this court hereby holds, that the NAIA IPT3 is itself the very right-of-way, the site or location of the national government's infrastructure project; it is the very right-of-way, site or location of an airport that will make them attain their *"goal of encouraging and promoting international and domestic air traffic as well as developing an internationally acceptable airport accommodation and service."*[77] (italics supplied)

Respondent judge's theory about Rule 67's supposed repeal by RA 8974 was totally devoid of factual and legal basis. RA 8974 did *not* repeal Rule 67 at all. The Constitution will not allow it. In fact, neither its repealing clause nor any of its provisions even mentioned or referred to the Rules of Court, whether on expropriation or anything else. But even assuming (but not conceding) that respondent judge's theory had been based on an *implied* repeal, still there would have been no legal justification for it.

Settled is the rule in statutory construction that implied repeals are not favored. Thus:

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[77] *Supra* at note 33.

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The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn. The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretendi*, *i.e.*, every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. The fundament is that the legislature should be presumed to have known the existing laws on the subject and not have enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject.[78]

The foregoing becomes all the more significant when, as in this case, the provisions of RA 8974 reveal no manifest intent to revoke Rule 67. *In fact, Section 14 of the IRR of RA 8974 makes an explicit reference to Rule 67 and mandates its applicability to all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties and such other incidents affecting the complaint.* If only for this reason, respondent judge's "repeal theory" is totally erroneous.

The footnote in *City of Iloilo*[79] was not in any way necessary to resolve any of the issues in that case. Thus, it was merely part of an *obiter dictum.* Respondent judge should be reminded of our pronouncement in *City of Manila v. Entote*[80] that a remark made or opinion expressed by a judge in a decision upon a cause, incidentally or collaterally, and not directly upon the question before the court, or upon a point not necessarily involved in the determination of the cause, is *obiter dictum* lacking the force of an adjudication. An *obiter dictum* is an opinion entirely unnecessary for the decision of the case and is not binding as precedent.[81]

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[78] *Thornton v. Thornton,* G.R. No. 154598, 16 August 2004, 436 SCRA 550.

[79] The footnote in 444 SCRA 285 referring to RA 8974 merely quoted Sec. 4 of the law and *said nothing else.*

[80] 156 Phil. 498 (1974).

[81] *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, 332 Phil. 525 (1996); See also *Morales v. Paredes*, 55 Phil. 565 (1930); *Reagan*

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Not only was there no pronouncement from us in *City of Iloilo* about Rule 67's repeal by RA 8974, we in fact applied Rule 67 in that case. The Court invoked Section 1 of Rule 67 in resolving the issue of the sufficiency in form and substance of the amended complaint for expropriation and Section 2 of the same Rule in holding that the City of Iloilo was not in estoppel since it simply followed the procedure that a prior hearing was not required before a writ of possession could be issued. Indeed, the Court could not even have applied RA 8974 in *City of Iloilo* because it did not involve a project of the national government but that of a local government unit,[82] thus requiring the application of RA 7160 (the Local Government Code).[83]

More importantly, any talk of repeal (whether express or implied) by legislative enactment of the rules of procedure duly promulgated by this Court goes against the Constitution itself. The power to promulgate rules of pleading, practice and procedure was granted by the Constitution to this Court to enhance its independence.[84] It is no longer shared by this Court with Congress.[85] The legislature now has no power to annul, modify or augment the Rules of Court. We expressly declared in *Echegaray v. Secretary of Justice*[86] that *the 1987 Constitution took away the power of Congress to repeal, alter or supplement rules concerning pleading, practice and procedure.*[87]

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v. Commissioner of Internal Revenue, 141 Phil. 621 (1969); *American Home Insurance Co. v. National Labor Relations Commission*, 328 Phil. 606 (1996).

[82] The City of Iloilo sought to expropriate the property for conversion into an on-site relocation for the poor and landless residents of the city in line with the city's housing development program.

[83] The provisions of Rule 67 were applied suppletorily.

[84] *Echegaray v. Secretary of Justice*, 361 Phil. 73 (1999).

[85] *Id.*

[86] *Id.*

[87] *Id.*

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The majority properly recognized that Rule 67 governs the procedure undertaken for eminent domain. It is thus surprising when they unequivocally declared that, as a rule of procedure, Rule 67 can be *superseded* by statutory enactment.

A perusal of the so-called "Guidelines for Expropriation Proceedings" provided for under Section 4 of RA 8974 shows that the "guidelines" radically alter the rules for expropriation under Rule 67. The majority even declared that "RA 8974 represents a *significant change* from previous expropriation laws such as Rule 67...." The majority however failed to realize that such change brought about by a legislative enactment subverts the fundamental law and defeats the constitutional intent to strengthen the independence of this Court.

There is no question that the appropriate standard of just compensation is a substantive matter, not procedural. However, the manner of determining just compensation (including how it shall be paid and under what conditions a writ of possession may be issued) is a matter of procedure, not of substantive law.

If a rule or statute creates a right or takes away a vested right, it is substantive. If it operates as a means of implementing an existing right, then it is procedural.[88]

The provisions of Rule 67 neither vest a new power on the State nor create a new right in favor of the property owner. Rule 67 merely provides the procedure for the State's exercise of eminent domain and, at the same time, ensures the enforcement of the right of the private owner to receive just compensation for the taking of his property. It is purely a matter of procedure. It is therefore exclusively the domain of this Court. The Constitution prohibits Congress from transgressing this sphere.

Congress cannot legislate the manner of payment of just compensation. Neither can Congress impose a condition on the issuance of a writ of possession. Yet that is what RA 8974 precisely does.

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[88] *Fabian v. Desierto*, 356 Phil. 787 (1998).

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The records of the 11th Congress which enacted RA 8974 reveal that Congress intended to revise and amend Rule 67. The Senate deliberations quoted at the beginning of this dissenting opinion show this legislative intent.[89] I am therefore disheartened that the majority opinion is in effect sanctioning the arrogation of judicial power by Congress.

In denying the petition, the majority effectively sustained respondent judge's repeal theory. Thus, they allowed Congress to infringe on the Court's rule-making power, a power vested by the Constitution exclusively on this Court.

Assuming *ex gratia argumenti* that the procedure outlined under RA 8974 does not constitute an impermissible encroachment on the Court's rule-making power, the law still does not apply here. Section 1 of the IRR of RA 8974 provides that the law covers:

> [A]ll acquisition of private real properties, including improvements therein, needed as right-of-way, site or location for national government projects undertaken by any department, office or agency of the national government, including any government-owned or controlled corporation or state college or university, authorized by law or its respective charter to undertake national government projects.

From this, we can clearly infer that the law does not apply to the following:

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[89] SB 2038 was justified on the basis of Fr. Joaquin Bernas, SJ's pronouncement in his book that though the 1987 did not contain a provision similar to that in the 1935 and 1973 Contitutions granting Congress the power to repeal, alter or supplement rules concerning pleading, practice and procedure promulgated by this Court, the Constitutional Convention intended to preserve that power in favor of Congress. However, while historical discussion on the floor of the constitutional convention is valuable, it is not necessarily decisive (*J.M. Tuason & Co., Inc. v. Land Tenure Administration*, G.R. No. 21064, 18 February 1970, 31 SCRA 413). Moreover, the power to interpret the Constitution is vested by the Constitution in this Court. The Court's interpretation of the fundamental law contradicts that of Fr. Bernas. The Court's interpretation controls.

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(1) expropriation of private property which is personal or movable property;

(2) *taking of private property, whether personal or real, for a purpose other than for right-of-way, site or location of a national government project;*

(3) appropriation of private property for right-of-way, site or location of a project not classified as a national government project;

(4) acquisition of private property for right-of-way, site or location of a national government project but to be undertaken by an entity not enumerated in Section 1 of the IRR of RA 8974.

In the foregoing situations, it is Rule 67 of the Rules of Court or the relevant special law (if any)[90] that will apply.

Here, the expropriation of NAIA IPT3 falls under the second category since petitioners seek to take private property for a purpose other than for a right-of-way, site or location for a national government project.

Unfortunately, the majority sided with respondent judge and completely disregarded the fact that NAIA IPT3 was *the national government infrastructure project itself* and ruled instead that it was the right-of-way, site or location of a national government project. That was wrong and the reasoning was even more difficult to understand.

True, under Section 2(d) of the IRR of RA 8974 defining "national government projects," an airport (which NAIA IPT3 essentially is) is specifically listed among the national government projects for which expropriation proceedings may be initiated under the law. However, the law and its IRR also provide that the expropriation should be for the purpose of

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[90] For example, RA 7160 governs the exercise of eminent domain by local government units while the acquisition of lands under agrarian reform is governed by RA 6557 (The Comprehensive Agrarian Reform Law of 1988) and related laws.

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providing for a right of way, site or location for the intended national government project. A national government project is separate and distinct from the purpose of expropriation. Otherwise, there would have been no need to define them separately. Thus, respondent judge erred when he equated one with the other and obliterated the clear distinction made by the law.

Moreover, under Section 2(e) of the IRR, the specific objects or purposes of expropriation were lumped as 'ROW' which is defined as the "right-of-way, site or location, with defined physical boundaries, used for a national government project." Obviously, the NAIA IPT3 is not a right of way, site or location for any national government infrastructure project but the infrastructure itself albeit still under construction. The construction (and now the completion) of NAIA IPT3 never required the acquisition of private property for a right of way, site or location since the terminal, including all its access roads, stands completely on government land.

Conformably, RA 8974 does not apply to the expropriation of NAIA IPT3. And there being no special law on the matter, Rule 67 of the Rules of Court governs the procedure for its expropriation.

AMOUNT ORDERED TO BE RELEASED

Having determined Rule 67 to be the applicable procedure to follow in this expropriation case, I now turn to the other issues.

In its complaint[91] for the expropriation of NAIA IPT3, petitioners prayed for the immediate issuance of a writ of possession of the airport terminal and deposited the amount of ₱3,002,125,00 (about $53 million) at LBP-Baclaran for this purpose. This amount was based on the assessed value of NAIA IPT3 for taxation purposes.[92] As requested by petitioners and

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[91] *Rollo*, p. 88.

[92] *Id.*, pp. 102-104. MIAA Board Resolution Nos. 2004-085 and 2004-086.

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in support of their complaint for expropriation, LBP-Baclaran issued a certification of deposit,[93] which was in effect the functional equivalent of a certificate of availability of said funds.

In his January 4, 2005 order,[94] respondent judge — without any motion by PIATCO — ordered petitioners to immediately pay PIATCO US$62,343,175.77, the *total* balance of MIAA's deposits in LBP-Baclaran. Respondent judge reiterated the above directive in his January 10, 2005 omnibus order.[95] The amount directed to be released was about US$ 9 million (or ₱500 million) more than the provisional value required by Rule 67 for issuance of the writ of possession.

I refuse to join the majority who turned a blind eye on respondent judge's orders which were issued with grave abuse of discretion.

Respondent judge should not have issued his disputed orders without any motion by PIATCO. There were very compelling reasons why. Considering that respondent judge knew or should have known how extremely controversial NAIA IPT3 had become, he should have granted the parties unimpeded opportunity to confront each other on the propriety of releasing such a huge amount to the owner of the property under expropriation. There were in fact still so many pending contentious issues on which the parties had taken radically opposite positions, such as whether it was respondent PIATCO alone that was entitled to payment or whether there were other parties like Takenaka Corporation (to be discussed later in this decision) that had valid claims thereon and, if so, how much each was entitled to. Furthermore, inasmuch as petitioners had been vigorously complaining that they were never really able to inspect and evaluate the structural integrity and real worth of NAIA IPT3, respondent judge should have at least tried to

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[93] *Id.*, p. 178.

[94] *Supra* at note 18.

[95] *Supra* at note 33.

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determine the reasonableness of petitioners' provisional deposit and therefore, he ought not to have been in such a hurry to order the release of petitioners' funds to PIATCO which was not even asking for it. In other words, all the foregoing warning signs considered, he should have been more circumspect, deliberate and careful in handling the case.

On a more academic note, however, and as already quoted previously, one significant difference between RA 8974 and Rule 67 is that, under RA 8974, immediate payment of the *full zonal value* of the land and improvements/structures is required before the writ of possession is issued. On the other hand, under Rule 67, the deposit of an amount equivalent to the *assessed value* of the property for taxation purposes is enough.

Under Section 2 of Rule 67, the only requisites for authorizing immediate entry (that is, for the issuance of the writ of possession) in expropriation proceedings are: (1) the filing of a complaint for expropriation sufficient in form and substance, and (2) a deposit equivalent to the assessed value for taxation purposes of the property subject to expropriation. Upon compliance with these two requirements, the issuance of a writ of possession becomes ministerial.[96]

Petitioners complied fully with the requirements of Rule 67 pertaining to the issuance of the writ allowing entry into the expropriated facility. First, they duly filed the verified complaint with the court *a quo*. Second, PIATCO was served with and notified of the complaint. Third, petitioners set aside and earmarked ₱3,022,125,000 as provisional deposit, equivalent to the assessed value of the property for taxation purposes with the depositary bank. From then on, it became the ministerial duty of the trial court presided over by respondent judge to issue the writ of possession.

Section 2 of Rule 67 categorically prescribes the amount to be deposited with the authorized government depositary as the

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[96] *Biglang-awa v. Bacalla*, G.R. Nos. 139927 and 139936, 22 November 2000, 345 SCRA 562.

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pre-condition for the issuance of a writ of possession. This is the assessed value of the property for purposes of taxation. The figure is exact and permits the court no discretion in determining what the provisional value should be.[97]

Respondent judge committed grave abuse of discretion when he ordered the release not only of the provisional deposit (as computed under Rule 67) but also of the entire bank balance of petitioner MIAA. He exercised discretion in a matter where no discretion was allowed.

Respondent judge thus disregarded established rules by unilaterally increasing the amount of the provisional deposit required for the issuance of the writ of possession. This Court has had occasions in the past where we denounced the acts of trial courts in unilaterally increasing such provisional deposits. After issuing the writ of possession, the provisional deposit is fixed and the court can no longer change it. As the Court ruled in *National Power Corporation v. Jocson:* [98]

> After having fixed these provisional values, x x x and upon deposit by petitioner of the said amounts, respondent Judge lost, as was held in *Manila Railroad Company vs. Paredes*, "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 rule 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 work."

Even assuming for the sake of argument that it was RA 8974 that was applicable, still the trial court could not order petitioners to increase their deposit and to immediately pay the zonal value

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[97] *National Power Corporation v. Jocson*, G.R. Nos. 94193-99, 25 February 1992, 206 SCRA 520.

[98] *Id.*

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of NAIA IPT3. Section 4(c) of the law[99] states that, in cases where there is *no existing valuation* of the property concerned, *only the proferred value* of the property by the agency requesting expropriation is required to be paid for issuance of the writ.

So even if it had been RA 8974 that was applicable — which was not so — the amount deposited by petitioners would have constituted *the proffered value* estimated by them, based on comparative values made by the City Assessor. In any case, the final determination of the total just compensation due the owner will have to be made in accordance with Rule 67. The provisional deposit shall then be deducted and petitioners shall pay the balance plus legal interest from the time petitioners took possession of the property until PIATCO is fully paid.

The majority opinion asserted that the determination of the amount of just compensation to be made pursuant to RA 8974 is limited to the value of the improvements/structures that constitute the NAIA IPT3 complex and cannot include the BIR zonal valuation which serves as one of the bases for just compensation under the law. This is, however, based on the assumption that the law is valid and Congress can substantially amend the rules of practice and procedure duly promulgated by this Court. It cannot.

Even assuming that RA 8974 is valid, it still does not support the conclusions of the majority opinion.

The law makes clear the distinction between the valuation of the land itself, and the improvements and structures constructed therein. While PIATCO is not entitled to the

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[99] This is implemented by Sec. 8 of the IRR of RA 8974 which provides:

SECTION 8. *Expropriation.*

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In case the completion of a national government project is of utmost urgency and importance, and there is no existing valuation of the area concerned, *the Implementing Agency shall immediately pay the owner of the property its proffered value* taking into consideration the standards stated in the second paragraph of Section 8 hereof, pursuant to Section 5 of the Act. (italics supplied)

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valuation that is inclusive of the value of the land, it is entitled to just compensation limited to the value of the improvements and/or structures.

True, Section 4 distinguishes between the valuations of the land itself and of the improvements and structures constructed therein. However, it is erroneous to infer that such difference in the manner of valuation justifies the application of RA 8974 to the expropriation of improvements and structures alone, *i.e.*, separate from the land. The language of the law itself does not warrant the conclusion made in the majority opinion.

Section 4 of RA 8974 on the valuation of improvements and structures expressly refers to Section 7 of the law. Section 4 is therefore to be construed in the light of Section 7. The latter provision (Section 7) speaks of "improvements and/or structures *on the land to be expropriated.*" Hence, the expropriation of the improvements and structures under RA 8974 should be properly viewed not in isolation from but in connection with (or as an incident of) the expropriation of land.

Moreover, any discussion of the expropriation under RA 8974 cannot be divorced from (1) the purpose of the expropriation and (2) the nature or character of the project. Here, the expropriation does not meet the first requisite. Hence, assuming the validity of RA 8974, its provisions still cannot be applied.

Even the reference to the proffered value by the majority opinion is inappropriate. The law is clear that such proffered value applies only "[i]n case the completion of a national government project is of utmost urgency and importance, and *there is no existing valuation of the area concerned.*" The majority opinion recognizes the correctness of the position of the Solicitor General that zonal valuations are only for parcels of land and, hence, there can be no zonal valuation for improvements or structures such as an airport terminal like NAIA IPT3. Since it is impossible for improvements or structures to have an existing valuation, then there can be no proffered value for NAIA IPT 3 to speak of.

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The fact that the proffered value does not apply to improvements is buttressed by the provisions of RA 8974. The law provides that in the determination of the proffered value, the standards prescribed in Section 5 of RA 8974 shall be taken into consideration. Section 5 expressly refers to "*Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings* or Negotiated Sale." On the other hand, the valuation of improvements and/or structures is separately governed by Section 7 of the law.

To reiterate, the determination of the proffered value categorically refers to Section 5 on the valuation of the land, not to valuation of improvements or structures under Section 7. Thus, the majority opinion unduly enlarged the concept of proffered value when it extended the same to improvements or structures.

PERFORMANCE OF ACTS OF OWNERSHIP

Petitioners contend that respondent judge committed grave abuse of discretion when he prohibited petitioners in his January 4, 2005 order from performing "acts of ownership." Although six days later, in his January 10, 2005 omnibus order, respondent judge removed this prohibition, it was only because he thought it to be a "superfluity" inasmuch as petitioners were not yet the owners of the terminal.[100]

Petitioners allege that the order of respondent judge unduly limited them to mere physical entry to the property without, however, affording them the means to accomplish the public purpose of the expropriation. They argue that a writ of possession in an expropriation proceeding carries with it the right to perform acts *de jure* which are necessary to attain the purpose for which the expropriation is intended. In deciding to exercise the power of eminent domain, petitioners intended to acquire not only physical possession but also ownership of the property ultimately. By NAIA IPT3's very nature as an international airport terminal, awarding concessions and leasing space to third parties are

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[100] *Supra* at note 33.

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necessary and related activities in its operation.[101] Petitioners assert that, upon the issuance of the writ of possession, they acquired equitable or beneficial ownership of NAIA IPT3. What PIATCO retained — until full payment of just compensation — was the mere legal title to the terminal.[102]

PIATCO, on the other hand, alleges that petitioners, not being the owners of NAIA IPT3, cannot exercise rights of ownership. It cites the doctrine that title to the property does not transfer to the expropriating authority until full payment of the just compensation.[103]

I agree with petitioners.

In expropriation, private property is *taken* for public use.[104] What constitutes *taking* is well-settled in our jurisprudence. The owner is ousted from his property and deprived of his beneficial enjoyment thereof.[105] The owner's right to possess and exploit the property (that is to say, his beneficial ownership of it) is "destroyed."[106] And it is only after the property is taken that the court proceeds to determine just compensation,[107] upon full payment of which shall title pass on to the expropriator.

Citing the case of *Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*,[108] PIATCO contends that title to the property expropriated can only cede from the owner to the expropriator only upon full payment of just compensation. The citation is incomplete, however. We actually held that:

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[101] *Rollo*, pp. 51-52.

[102] *Id.*, pp. 306-307.

[103] *Id.*, pp. 268-269.

[104] CONSTITUTION, Art. III, Sec. 9.

[105] *Republic of the Phils. v. vda. de Castellvi*, 157 Phil. 329 (1974).

[106] *U.S. v. Causby*, 328 US 256 (1946).

[107] *Supra* at note 97.

[108] G.R. No. 78742, 14 July 1989, 175 SCRA 343, citing *Kennedy v. Indianapolis*, 103 US 599, 26 L ed 550.

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(T)he right to enter on and use the property is complete, as soon as the property is actually appropriated under the authority of law for a public use, but (the) title does not pass from the owner without his consent, until just compensation has been made to him.[109] (italics supplied)

True, title remains with the owner until just compensation is fully paid. This is only proper to protect the rights of the property owner. But that is not the point here. The issue is whether or not the expropriating authority has the right to enter and use the property even prior to full payment.[110] In other words, can the property be taken and used even before full payment of just compensation? Yes. Full payment of just compensation, though a condition precedent for the transfer of title or ownership, is not a condition precedent for the *taking* of the property. As discussed earlier, an important element of taking is that the owner's right to possess and exploit the land (in other words, his beneficial ownership of it) is transferred to and thenceforth exercised by the expropriator.

This is consistent with our ruling in *Republic v. Tagle*[111] where the issue was whether the quashal of the writ of possession, on the ground that the Republic was already occupying the property sought to be expropriated, was proper. We held there that it was not and that the expropriation of real property was not limited to mere physical entry or occupation:

... (I)t is manifest that the petitioner, in pursuit of an objective beneficial to public interest, seeks to realize the same through its power of eminent domain. In exercising this power, petitioner intended to acquire not only *physical* possession but also the *legal* right to possess and ultimately to own the subject property. Hence, its mere physical entry and occupation of the property fall short of the taking of title, *which includes all the rights that may be exercised by an owner over the subject property.*

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[109] *Id.*, p. 390.

[110] *Reyes v. National Housing Authority*, 443 Phil. 603 (2003).

[111] 359 Phil. 892 (1998).

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... Ineludibly, said writ (of possession) is both necessary and practical, because mere physical possession that is gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership over, or even the right to possess, the expropriated property.[112] (italics supplied)

The question now is whether this right of beneficial ownership enjoyed by the expropriator includes the right to lease out the property (or portions thereof) and to award concessions within NAIA IPT3 to third parties. It does.

In *Estate of Salud Jimenez v. Philippine Export Processing Zone (PEZA)*,[113] we allowed the lease by the PEZA of the property under expropriation to third parties even before payment of just compensation. PEZA's charter provided it "substantial leeway in deciding for what public use the expropriated property would be utilized."[114] Thus, the Court declared that it would not question the lease because it was in furtherance of the public purpose of the expropriation.[115]

In this case, petitioners aim to acquire the NAIA IPT3 as the site of a world-class passenger terminal and airport, and to complete its construction and operate it for the benefit of the Filipino people.[116] This is the "public use" purpose of the expropriation. On the other hand, the lease and concession contracts are the means by which the public purpose of the expropriation can be attained. Since PIATCO never challenged the "public use" purpose of the expropriation, the reasonable implications of such public use, including the award of leases and concessions in the terminal, are deemed admitted as necessary consequences of such expropriation.

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[112] *Id.*

[113] G.R. No. 137285, 16 January 2001, 349 SCRA 240.

[114] *Id.*

[115] *Id.*

[116] *Rollo*, p. 9.

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Furthermore, in a contract of lease, only the *use and enjoyment* of the thing are extended to the lessee.[117] Thus, one need not be the legal owner of the property in order to give it in lease.[118] The same is true for the award of concessions which petitioners, as beneficial owner of the property, can legally grant.

Hence, respondent judge committed grave abuse of discretion when he prohibited petitioners from exercising acts of ownership in NAIA IPT3.

APPOINTMENT OF COMMISSIONERS

In petitioners' complaint for expropriation, they prayed *inter alia* for the appointment of commissioners to determine the terminal's just compensation.[119] Respondent judge, in the assailed order dated January 7, 2005, granted petitioners' prayer and appointed three commissioners.[120]

Petitioners now assail the appointment because it was allegedly issued by respondent judge without prior consultation, notice and hearing to all parties who claim an interest in the just compensation to be determined. Respondent judge also disregarded petitioners' right to object to any of the appointed commissioners within ten days from notice under Section 5,

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[117] Art. 1643, Civil Code.

[118] A.M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V (1992 ed.), p. 204.

[119] Petitioners' complaint for expropriation prayed, among others: "WHEREFORE, plaintiffs Republic of the Philippines, DOTC and MIAA pray of this Honorable Court – x x x (3) Upon issuance of the order of expropriation, to appoint three (3) competent and disinterested persons as commissioners to ascertain and report to this Honorable Court defendant PIATCO's just compensation."

[120] The following were the appointed commissioners in the assailed order dated January 7, 2005: (1) Dr. Fiorello R. Estuar, a structural engineer and a former Secretary of the Department of Public Works and Highways; (2) Sofronio B. Ursal, a former Commissioner of the Commission on Audit; and (3) Angelo I. Panganiban, a former Philippine Air Force pilot and an aeronautical engineer.

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Rule 67 of the Rules of Court. Petitioners question as well the competence of the appointed commissioners.

Petitioners' contentions are untenable.

Section 5 of Rule 67 provides:

> Section 5. *Ascertainment of Compensation.* – Upon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken. The order of appointment shall designate the time and place of the first session of the hearing to be held by the commissioners and specify the time within which their report shall be submitted to the court.
>
> Copies of the order shall be served on the parties. Objections to the appointment of any of the commissioners shall be filed with the court within ten (10) days from service, and shall be resolved within thirty (30) days after all the commissioners shall have received copies of the objections.

Contrary to petitioners' position, Rule 67 does not require consultation with the parties before the court appoints the commissioners. Neither notice to the parties nor hearing is required for the appointment of commissioners by the judge.

However, in *Municipality of Talisay v. Ramirez,*[121] we held that "while it is true that, strictly speaking, it is the court that shall appoint the said commissioners, there is nothing to prevent it from seeking the recommendations of the parties on this matter x x x to ensure their fair representation."

This ruling was more or less integrated into the revised rules of court as the latter now gives the parties ten days from the service of the order appointing the commissioners to file their objections to any of the appointees. This, in effect, allows them to protest the appointment of the commissioners while providing them the opportunity to recommend their own choices.

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[121] G.R. No. 77071, March 22, 1990, 183 SCRA 528.

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But the objection must come *after* the appointment. This is apparent from the second paragraph of Section 5, Rule 67:

"[o]bjections to the appointment of any of the commissioners shall be filed in court within ten (10) days from service, and shall be resolved within thirty (30) days *after* all the commissioners shall have received copies of the objections." (italics supplied)

Consequently, if petitioners are unable to accept the competence of any of the commissioners, their remedy is to file an objection with the trial court within the stated period. Initiating a *certiorari* proceeding on this issue is premature.

In any case, even if the commissioners are appointed by the court, the latter is not bound by their findings.[122] Section 8 of Rule 67 provides:

Section 8. *Action upon the Commissioner's Report.* – Upon the expiration of the period of ten (10) days referred to in the preceding section,[123] but after all the interested parties have filed their objections to the report or their statement of agreement therewith, the court may, after hearing, accept the report and render judgment in accordance therewith; or, for cause shown, it may recommit the same to the commissioners for further report of facts; or it may 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 plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.

The report of the commissioners on the value of the condemned property is neither final nor conclusive. The court is permitted to act on the report in any of several ways enumerated in the

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[122] *Republic v. Santos*, 225 Phil. 29 (1986).

[123] Sec. 7, Rule 67: *Report by commissioners and judgment thereupon.* – x x x Upon the filing of such report, the clerk of court shall serve copies thereof on all interested parties, with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire.

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rules, at its discretion.[124] It may render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of condemnation and, to the defendant, just compensation for the property expropriated. The court may substitute its own estimate of the value as gathered from the records.[125]

I therefore find no abuse of discretion on the part of respondent judge in the appointment of the three commissioners.

However, to ensure the parties' fair representation, they should be allowed to object, if they so desire, to any of the appointed commissioners within ten days from receipt of this decision.

INHIBITION OF RESPONDENT JUDGE

According to petitioners, respondent judge should have inhibited himself from the expropriation case because he had already prejudged it and was extremely biased against their cause.

Petitioners charge that respondent judge's January 4, 2005 order authorizing PIATCO to *immediately* withdraw the sum of US$62,343,175.77 was irregularly and unfairly issued. Apart from the fact that the amount was in *excess*[126] of what petitioners proffered, *no motion or notice preceded the order*. In other words, PIATCO was not even asking for what the judge granted. To petitioners, respondent judge's extreme diligence and assiduousness were uncalled for. The swiftness by which the order was issued could only mean collusion between respondent judge and PIATCO. This explained why PIATCO did not bother to file any motion or pleading as even without it, the orders of respondent judge were always in its favor.

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[124] Moran, *COMMENTS ON THE RULES OF COURT*, Vol. III, 1997 Edition, pp. 328-330.

[125] *Republic v. Santos, supra.*

[126] *The amount respondent judge ordered released, without any motion from respondent PIATCO, was $9 million (₱500 million) more than that required by Rule 67.*

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In seeking respondent judge's recusation, petitioners aver that they are "not shopping for a sympathetic judge."[127] They ask for his inhibition in order to have a competent judge who can hear the parties impartially and with an open mind.

As a general rule, judges are mandated to hear and decide cases, unless legally disqualified.[128] However, they may voluntarily excuse themselves, in the exercise of their sound discretion, for just or valid reasons.[129]

The rule on disqualification of a judge to hear a case finds its rationale in the principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. It is aimed at preserving the people's faith and confidence in the courts of justice.

In compulsory disqualification, the law conclusively presumes that a judge cannot objectively or impartially sit in a case.[130] In voluntary inhibition, the law leaves it to the judge to decide for himself whether he will desist from sitting in a case with only his conscience to guide him.[131]

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[127] *Supra* at note 23, p. 310.

[128] Section 1, Rule 137: *Disqualification of Judges.* – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

[129] *Lapulapu Development and Housing Corp. v. Group Management Corporation*, 437 Phil. 297 (2002).

[130] Agpalo, *LEGAL ETHICS*, 6th Edition (1997), p. 443, citing *Gutierrez v. Santos*, 112 Phil. 184 (1961); *Geotina v. Hon. Gonzales, etc., et al.*, 148-B Phil. 556 (1971); *Umale v. Hon. Villaluz, et al.*, 151-A Phil. 563 (1973).

[131] *Ibid.*, p. 444, citing *Paredes v. Judge Abad*, 155 Phil. 494 (1974).

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In *Pimentel v. Salanga,*[132] the Court provided guidance in case a judge's capacity to try and decide a case fairly and judiciously is challenged by any of the parties:

A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decisions to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.

Here, petitioners' skepticism of respondent judge's ability to display the cold neutrality of an impartial judge was evident:

Respondent judge ought to have inhibited himself from the expropriation case. xxx [H]e lacks the competence and more importantly, the impartiality necessary for justice to prevail.

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[132] 128 Phil. 176 retiterated in *Mateo v. Villaluz*, 151-A Phil. 21 (1973); *Dimacuha v. Concepcion*, 202 Phil. 961 (1982), *Gutang v. Court of Appeals*, 354 Phil. 77 (1998), *People v. Kho*, G.R. No. 139381, April 20, 2001, 357 SCRA 290; Extended Explanation of Inhibition of J. Panganiban, *Estrada v. Macapagal-Arroyo*, G.R. No. 146738, March 2, 2001, 353 SCRA 452; *Gochan v. Gochan*, G.R. No. 143089, February 27, 2003, 398 SCRA 323.

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[I]f respondent judge did not ambush petitioners with his Orders dated January 4 and 10, 2005, petitioners would have had the restraint and patience to contest in the ordinary course of law the Order dated January 7, 2005 hastily appointing three commissioners for the determination of just compensation. *But the pattern of fraud and deception has become too obvious and too dangerous to be ignored.* Petitioners have had enough of respondent judge's onslaught. Three successive orders of incredible implications have raised the levels of concern to a *tsunami*. This was no longer a matter for polite presumptions; hostile facts were already staring petitioners in the face. Thus, before the die could be cast, the Republic was constrained to act deliberately and decisively by bringing the matter to this Honorable Court. Otherwise, the expropriation case would irreversibly become the plaything of one who had lost the virtues of a good magistrate.[133] (italics supplied)

A judge, like Caesar's wife, must be above suspicion.[134] He must hold himself above reproach and suspicion. At the very first sign of lack of faith and trust in his actions, whether well-grounded or not, the judge has no other alternative but to inhibit himself from the case. That way, he avoids being misunderstood. His reputation for probity and objectivity is maintained. Even more important, the ideal of an impartial administration of justice is preserved.[135] Justice must not merely be done but must also be seen and perceived to be done.[136]

Besides, where a case has generated a strained personal relationship, animosity and hostility between the party or his counsel and the judge that the former has lost confidence in the judge's impartiality or the latter is unable to display the

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[133] *Supra* at note 23, pp. 288-312.

[134] *Javier v. Comelec*, 228 Phil. 193 (1986); *Bautista v. Rebueno*, No. L-46117, 22 February 1978, 81 SCRA 535.

[135] *Madula v. Santos*, A.M. No. RTJ-02-1742, 11 September 2003, 410 SCRA 504.

[136] Section 2, Canon 2, Code of Judicial Conduct for the Philippine Judiciary.

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cold neutrality of an impartial judge,[137] it is a violation of due process for the judge not to recuse himself from hearing the case. Due process cannot be satisfied in the absence of that objectivity on the part of a judge sufficient to reassure litigants of his being fair and just.[138]

Respondent judge should have recused himself from hearing the case in the light of petitioners' patent distrust:

> The presiding judge's impartiality has been irreparably impaired. x x x [A]ny decision, order or resolution he would make on the incidents of the case would now be under a cloud of distrust and skepticism. The presiding judge is no longer effective in dispensing justice to the parties herein.[139]

Clearly, it would have been more prudent for respondent judge to inhibit himself instead of placing any of his decisions, orders or resolutions under a cloud of distrust. It would have likewise deprived petitioners or any one else of reason to cast doubt on the integrity of these expropriation proceedings with national and international implications.

One final note.

The complaint for expropriation before the RTC named PIATCO as the sole defendant. However, both petitioners and PIATCO claim that there are other parties who assert an interest in NAIA IPT3. According to the parties, one of these parties is Takenaka Corporation, PIATCO's contractor for the construction of NAIA IPT3. Petitioners are aware that all the parties who claim an interest in the just compensation should be notified and heard on the matter. They have even signified their intention to file an amended complaint impleading Takenaka Corporation as a necessary party so that complete relief may be accorded to all interested parties.[140]

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[137] *Supra* at note 122, p. 446, citing *Paredes v. Judge Abad, supra.*

[138] *Id.,* citing *Mateo v. Villaluz, supra.*

[139] Petitioners' Urgent Motion for Inhibition, *Rollo*, pp. 167-171.

[140] Petition, *Rollo*, pp. 54-55.

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Section 1, Rule 67 of the Rules of Court provides:

> Section 1. *The complaint.* – The right of eminent domain shall be exercised by the filing of a verified complaint which shall state with certainty the right and purpose of expropriation, describe the real or personal property sought to be expropriated, and *join as defendants all persons owning or claiming to own, or occupying, any part thereof or interest therein, showing as far as practicable, the separate interest of each defendant.* If the title to any property sought to be expropriated appears to be in the name of the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify who are the real owners, averment to the effect may be made in the complaint. (Italics supplied)

Just compensation is not due to the owner alone:[141]

> The defendants in an expropriation case are not limited to the owners of the property condemned. They include all other persons owning occupying, or claiming to own the property. When [property] is taken by eminent domain, the owner ... is not necessarily the only person who is entitled to compensation. In American jurisdiction, the term 'owner' when employed in statutes relating to eminent domain to designate the persons who are to be made parties to the proceeding, refer, as is the rule in respect of those entitled to compensation, to all those who have lawful interest in the property to be condemned, including a mortgagee, a lessee and a vendee in possession under an executory contract. Every person having an estate or interest at law or in equity in the land taken is entitled to share in the award. If a person claiming an interest in the land is not made a party, he is given the right to intervene and lay claim to the compensation.[142]

In accordance with the foregoing rule, petitioners should be ordered to amend their complaint for expropriation to include as defendants Takenaka Corporation and all other parties who occupy, own or claim to own any part of or interest in NAIA IPT3.

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[141] Bernas, S.J., Joaquin, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 2003 Edition, p. 393.

[142] *De Knecht v. Court of Appeals*, 352 Phil. 833 (1998).

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EPILOGUE

The government got entangled in the present legal controversy as a result of its decision to resort to expropriation proceedings for the take-over of NAIA IPT3. It could have avoided this imbroglio had it pursued the options available to it under the 2004 resolution in *Agan*. Among these options was the filing in this Court of a motion for the determination of just compensation. Immediately after the 2004 resolution was promulgated, the right, purpose and propriety of expropriation could not have been seriously contested. The sole issue that remained was the amount of just compensation to be paid. Thus, a motion could have easily been filed to determine the just compensation for the facility. The Court could have then appointed a panel of commissioners in accordance with Section 5 of Rule 67 and the problem could have been completely resolved.

Another option the government could have taken at that time was to take over NAIA IPT3 in the exercise of its police power. Thereafter, it could have bidded out the facility's operations. PIATCO could have then been paid from the revenues from the winning bidder.

Nonetheless, the present expropriation proceedings are proper. Even the majority opinion recognizes this. The government has all the right to institute the proceedings where Rule 67 should be applied.

Rule 67 is designed to expedite expropriation proceedings as well as to strike the needed balance between the interests of the State and that of the private owner. Applying its provisions here is grounded not only in law but also in reality.

The provisional deposit having been paid, petitioners can take possession of NAIA IPT3. They can also perform acts of ownership over the property. NAIA IPT3 can then be made operational and the public purpose for its expropriation will be satisfied. PIATCO, on the other hand, will receive full and just compensation after the court finally determines the fair market value of the property.

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RA 8974 provides that there should be immediate payment direct to the property owner prior to the take over of the property. Pursuant thereto, the majority opinion ordered the payment of the proffered value to PIATCO as a condition for the implementation of the writ of possession earlier issued by respondent judge. On the other hand, Rule 67 requires only the making of a down payment in the form of a provisional deposit. It cannot be withdrawn without further orders from the court, *i.e.*, until just compensation is finally determined.

It is disturbing that the majority opinion allows PIATCO to take hold of the money without giving the government the opportunity to first inspect the facility thoroughly to ascertain its structural integrity and to make a preliminary valuation. With the money already in its possession, PIATCO may make use of the same in whatever way it may see fit. I dread to think what will happen if the government later on decides to back out after finding either irremediable structural defects or an excessively bloated valuation, such that it will cost more to put NAIA IPT3 in operational readiness than to build (or develop) and operate another airport. What happens then? Will not the government be left holding an empty bag — losing no less than US$ 53 million for an inoperable facility?

Furthermore, the exchange of opinion between Senator Renato Cayetano and Congressman Salacnib Baterina quoted by the majority opinion reveals that there should be a *legislative appropriation of funds* to finance the acquisition of right of way, site or location for a national government project. Based on PIATCO's estimate, the value of the NAIA IPT3 may well be $400 million. This amount may be fair or it may be bloated. Nonetheless, in the event the trial court determines the just compensation after 60 days from finality of the decision in this case, the government cannot just release the amount, assuming that it has the necessary funds. The release of that huge amount in one shot should have congressional fiat for it is Congress after all which holds the purse under our system of government.

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Given the foregoing, while the procedure under RA 8974 is (as the majority opinion describes it) "eminently more favorable to the property owner than Rule 67," it is clearly onerous to the government. In contrast, Rule 67 will be advantageous to the government without being cumbersome to the private owner. It provides a procedure that is sensitive to the government's financial condition and, at the same time, fair and just to the owner of the property.

In ordering the application of RA 8974, the majority opinion favors the interests of PIATCO over that of the government. Rather than striking the desired balance between legitimate State interests and private rights, it sacrifices public interest in favor of individual benefit.

The majority opinion constantly and unabashedly proclaims the objectives of RA 8974 — to benefit the property owner and to expedite expropriation proceedings for national government projects. The majority opinion tilted the balance in favor of private interest to the prejudice of the common good. Moreover, besides being erroneous, resort to RA 8974 will be counter-productive and self-defeating.

The national government operates on a "collection-for-payment" system. It has to collect money first before it can make payments to its creditors. If the government is allowed to undertake acts of ownership over NAIA IPT3, the facility can be utilized not only to serve the public but also to contribute to the collections needed by the government. Payment of just compensation to PIATCO will then come "easier and sooner."

Applying RA 8974, on the other hand, will bring about the exact opposite result. Considering the limited funds and scarce resources of the national government, it will not be able to come up with the amount equivalent to the full just compensation within the short period envisioned in the majority opinion. It is absurd to expect or require the government to pay the full just compensation for NAIA IPT3 allegedly worth several hundred million dollars in one shot. The expropriation proceedings will grind to a halt. The hands of the government will be tied. The public interest sought to be met by the

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expropriation will be adversely affected. NAIA IPT3 will remain idle and the prime government property on which it stands will be a complete waste. In such a case, nobody wins. Everybody loses — PIATCO, the government, the Filipino people and our national prestige. Indeed, another mothballed white elephant!

Accordingly, I vote to *grant* the petition except insofar as it assails the January 7, 2005 order directing the appointment of three commissioners to assist the trial court in determining just compensation.

SECOND DIVISION

[G.R. No. 166993. December 19, 2005]

DSM CONSTRUCTION AND DEVELOPMENT CORPORATION, *petitioner, vs.* **COURT OF APPEALS and MEGAWORLD GLOBUS ASIA, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION; TRIFLING WITH FINAL AND EXECUTORY DECISIONS RENDERED BY THE SUPREME COURT BY ENTERTAINING BASELESS ACTIONS, A CASE OF.— From the outset, it bears stressing that the subject of petitioner and respondent's petitions is the execution of a final judgment affirmed by no less than this Court. This being so, the appellate court should have been doubly careful about entertaining an obviously dilatory petition intended merely to delay the satisfaction of the judgment. Any lower court or tribunal that trifles with the execution of a final and executory judgment of the Supreme Court flirts with insulting the highest court of the land. While we do not diminish the availability of judicial remedies to the execution of final judgments of this Court, as