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THIRD DIVISION

[G.R. No. 227614; January 11, 2021]

REPUBLIC OF THE PHILIPPINES, represented by the Department of Energy, *Petitioner*, *v.* **ROPA DEVELOPMENT CORPORATION, and/or ROBINSON YAO, and/or JOVITO YAO,** *Respondents*.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Amego Law Office & Associates for respondents.

D E C I S I O N

LEONEN, *J.*:

In expropriation cases, the appointment of commissioners for the determination of just compensation for the property sought to be taken is a mandatory requirement.

This Court resolves a Petition for Review seeking to set aside the Court of Appeals' Decision[1] and Resolution[2] dismissing the Republic of the Philippines' (Republic) appeal from the Bacolod City Regional Trial Court's Decision. The Regional Trial Court ordered the Republic to pay Ropa Development (Ropa Development), and/or Robinson Yao (Robinson), and/or Jovito Yao (Jovito) just compensation.

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[1] *Rollo*, pp. 29-39. The November 19, 2015 Decision was penned by Associate Justice Germano Francisco D. Legaspi, and concurred in by Associate Justices Gabriel T. Ingles and Jhosep Y. Lopez of the Special Twentieth Division, Court of Appeals, Cebu City.

[2] Id. at 40-42. The August 30, 2016 Resolution was penned by Associate Justice Germano Francisco D. Legaspi, and concurred in by Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol of the Special Former Special Twentieth Division, Court of Appeals, Cebu City.

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Ropa Development, Robinson, and Jovito were owners of two parcels of a 20,000-square meter land in Mansilingan, Bacolod City.[3]

The Republic, represented by the Department of Energy, filed a Complaint with the Regional Trial Court of Bacolod City, seeking to expropriate a total of 32 square meters from the properties in Mansilingan. The land was to be used for the construction of two transmission towers for the Northern Negros Geothermal Project.[4]

The Republic also sought to acquire an easement of right of way consisting of 288 square meters from the same properties to be used as temporary working sites during the construction of the towers. It prayed for the immediate issuance of a writ of possession.[5]

However, Ropa Development, Robinson, and Jovito opposed this. In their Answer, they admitted to most of the allegations in the Complaint, but alleged that it "failed to show that a number of fruit bearing trees were planted on the property."[6] Thus, considering the nature and effects of the construction of transmission towers, they claim that they should be paid not only for the portion actually expropriated, but for the entire property as well. Moreover, they said that the towers' power lines will "substantially limit [their] use of the land."[7]

The Regional Trial Court issued a writ of possession in favor of the Republic. Ropa Development, Robinson, and Jovita questioned this before the Court of Appeals through a Petition for Certiorari.[8]

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[3] Id. at 29.

[4] Id. at 30.

[5] Id.

[6] Id.

[7] Id.

[8] Id. at 31.

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While the Petition for Certiorari was still pending, Ropa Development, Robinson, and Jovito filed a Motion for Judgment on the Pleadings and/or Summary Judgment before the Regional Trial Court. They raised the issues, among others, of: (1) whether or not the amount deposited by the government was sufficient compensation; and (2) whether or not the government was allowed to simply pay an "easement fee" of 10% of the zonal valuation for the area used for temporary working sites.[9] This motion was held in abeyance pending the resolution of the petition for certiorari filed before the Court of Appeals.[10]

Eventually, the Court of Appeals rendered a Decision on the Petition for Certiorari, enjoining the enforcement and implementation of the writ of possession. This Court affirmed the ruling.[11]

The Regional Trial Court, in its Decision granting the Motion for Judgment on the Pleadings,[12] held that Ropa Development, Robinson, and Jovita were entitled to just compensation for the 32-square meter area actually expropriated, as well as for the 288-square meter area which would be temporarily used for the construction of the towers. It also ordered the Republic to pay severance or consequential damages representing the value reduction of the rest of the 39,680 square meters of the two properties, considering the adverse effects of the presence of posts and high tension transmission lines.[13] The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of defendants, namely, ROPA DEVELOPMENT CORPORATION and/or ROBINSON YAO and/or JOVITO YAO, as follows:

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[9] Id. at 59.

[10] Id. at 31.

[11] Id.

[12] Id. at 103. The Regional Trial Court rendered a judgment on the pleadings after finding that there was no controverted issue between the parties.

[13] Id. at 31-32.

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1. Ordering plaintiff to pay defendants afore-named the sum of THREE HUNDRED EIGHTY FOUR THOUSAND PESOS (₱384,000.00) representing the just compensation for the properties of defendants consisting of the total area of (32) square meters, more or less, computed at ₱1,200.00 per square meter which will be used for the construction and maintenance of Tower Nos. 112 and 113 and two hundred eighty eight (288) square meters, more or less, from both properties will be needed as temporary working areas during the construction and installation of two (2) transmission towers on the properties of the defendants, covered by Transfer Certificate of Title Nos. T-218571 and T-218573 situated in Barangay Mansilingan, Bacolod City, as contained in the Resolution of the Court of Appeals promulgated on February 21, 2008 and was affirmed with finality by the Supreme Court of the Philippines on June 11, 2010;

2. Ordering plaintiff to pay defendants the sum of FOUR MILLION SEVEN HUNDRED SIXTY ONE THOUSAND SIX HUNDRED PESOS (₱4,761,600.00) as severance/ consequential damages representing ten percent (10%) of the price difference or reduction of value of the fair market value of 39,680 square meters of the properties which were adversely affected by the presence of the plaintiff's posts and high tension transmission lines; and

3. Ordering plaintiff to pay the defendants the sum of One Hundred Thousand (₱100,000.00) Pesos, as attorney's fees.

SO ORDERED.[14]

The Republic lodged an appeal, claiming that no commissioners were appointed during the trial in violation of the Rules of Court. It also questioned the judgment on the pleadings, arguing that it was improper as there were unresolved factual issues. The Republic also assailed the order to pay for compensation for the mere temporary use of the 288-square meter area during the construction and installation of the towers. Finally, it said that there was no basis for the order to pay severance or consequential damages.[15]

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[14] Id.

[15] Id. at 32-33.

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The Republic's appeal was denied, but the Court of Appeals deleted the award of attorney's fees. The Court of Appeals held that Republic Act No. 8974, the governing law at that time, did not require the appointment of commissioners for expropriation proceedings initiated under it. It cited *Republic v. Gingoyon*,[16] which ruled that "the appointment of commissioners under Rule 67 may be resorted to, even in expropriation proceedings under Rep. Act No. 8974,"[17] with the word "may" indicating that such procedure is only optional.[18] The Decision's dispositive portion reads:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The *Decision* dated May 5, 2011 of Branch 49 of the Regional Trial Court of Bacolod City in Civil Case No. 05-12654 is AFFIRMED with MODIFICATION in that the award of attorney's fees is DELETED.
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> SO ORDERED.[19]

The Republic moved for reconsideration, but its motion was likewise denied by the Court of Appeals.[20] Hence, this petition was filed before this Court.

Petitioner contends that the Court of Appeals erred in holding that a judgment on the pleadings is proper in expropriation proceedings because of the innate factual issues involved in determining just compensation.[21] It claims that the Answer tendered genuine issues which require the presentation of evidence.[22]

Moreover, petitioner argues that the Regional Trial Court should have appointed commissioners to ascertain the amount

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[16] 514 Phil. 657 (2005) [Per J. Tinga, En Banc].

[17] Id. at 709.

[18] *Rollo*, p. 33.

[19] Id. at 38.

[20] Id. at 41.

[21] Id. at 12.

[22] Id. at 13.

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of just compensation, pursuant to Rule 67 of the Rules of Court.[23] It maintains that the appointment of commissioners is mandatory in expropriation proceedings, as it is a requirement for due process.[24]

Petitioner disagrees with the Court of Appeals' finding that Republic Act No. 8974 makes the appointment of commissioners merely optional and not mandatory.[25] It points to the law's Implementing Rules and Regulations, which states that the trial for cases that fall under it shall be "resolved under the provisions on expropriation of Rule 67 of the Rules of Court."[26] Citing *NAPOCOR v. Co*,[27] petitioner argues that Republic Act No. 8974 only governs the substantive aspect of expropriation cases, but their procedures are continually governed by Rule 67 of the Rules of Court.[28]

Petitioner also questions the award of consequential damages amounting to ₱4,761,600.00, saying that it is illegal and without basis. The determination of such an amount must be made after submission of evidence to appointed commissioners, pursuant to the Rules of Court.[29] Further, even without the appointment of commissioners, the Regional Trial Court also offered no explanation as to how it arrived at the formula for determining the amount of consequential damages.[30]

Finally, petitioner argues that the temporary occupation of the property to be used as working sites for the construction

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[23] Id. at 14-15.

[24] Id. at 15.

[25] Id. at 17.

[26] Id. at 18. Citing Section 14 of the Implementing Rules and Regulations of Republic Act No. 8974.

[27] 598 Phil. 58 (2009) [Per J. Tinga, Second Division].

[28] *Rollo*, p. 19.

[29] Id. at 19-20.

[30] Id. at 20.

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and installment of the transmission towers cannot be considered as "taking" that would entitle respondents to just compensation, since upon completion, the possession was immediately restored to the owners.[31]

In their Comment, respondents argue that in their Answer to petitioner's Complaint filed before the Regional Trial Court, they already admitted that the zonal value of the property was to be at ₱1,200.00. In any case, they point to how petitioner agreed to submit the case for resolution on the basis of the parties' position papers, which allowed both parties to air out their sides.[32]

As to petitioner's argument that the appointment of commissioners is mandatory, respondents reiterate the Court of Appeals' ruling that the governing law is Republic Act No. 8974, which does not provide the appointment of commissioners. Hence, to respondents, this step is merely optional.[33]

Petitioner filed its Reply, asserting that there were genuine issues that the Regional Trial Court needed to resolve through trial. These issues are intimately related to the determination of just compensation, such as the Complaint's proposed easement fee of 10% of the zonal value of the 288-square meter affected area, which, as petitioner clarified in its brief before the Court of Appeals, is actually akin to a rental fee.[34] This was opposed by respondents in their Answer.[35] Further, the Answer also demanded payment for the consequential damages which were not covered in the Complaint. According to petitioner, this meant that the Answer "tendered new issues" that could not be resolved through a judgment on the pleadings or a summary judgment.[36]

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[31] Id. at 21.

[32] Id. at 231.

[33] Id. at 232-233.

[34] Id. at 137.

[35] Id. at 242.

[36] Id. at 242-243.

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Petitioner also rejects respondents' allegations that it submitted the case for decision without further hearing. It claims that the only incident which it agreed to submit for resolution after the submission of position papers was the Motion for Summary Judgment on the Pleadings and/or Summary Judgment, and not the Complaint itself.[37] Consistent with its reasoning, petitioner argues that its position paper even opposed the said Motion, saying that it was inappropriate due to the existence of genuine issues.[38]

Finally, petitioner maintains that Republic Act No. 8974 did not repeal Rule 67 of the Rules of Court. It insists that the appointment of commissioners is indispensable because of the need to determine the actual area "taken" by the government, as well as the extent of the consequential damages to be awarded to respondents, if any.[39]

The petition raises three issues: first, whether or not the appointment of commissioners is mandatory for expropriation proceedings covered by Republic Act No. 8974; second, whether or not the Regional Trial Court erred in deciding on the merits of the case through a judgment on the pleadings and/or summary judgment; and third, whether or not respondents are entitled to just compensation for the temporary use of the 288-square meter area of their properties during the construction and installation of the transmission towers.

The petition should be granted.

It is undisputed that the applicable law in this case is Republic Act No. 8974. However, the main contention of the parties is whether or not the appointment of commissioners is a mandatory step. This Court finds that it is.

Section 4 of Republic Act No. 8794 provides the guidelines for expropriation proceedings brought under it. It differs from

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[37] Id. at 244.

[38] Id.

[39] Id. at 245.

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the system of deposit under Section 2[40] of Rule 67, as it now provides direct payment by the government to the property owner before a writ of possession is issued.

Section 14 of its Implementing Rules and Regulations states:

> 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.

Thus, it appears that Rule 67 governs the trial proceedings of expropriation cases initiated under Republic Act No. 8974. However, respondents claim that the law does not specifically require the procedure of appointing commissioners, as found in Section 5 of Rule 67. They also cite this Court's pronouncements in *Republic v. Gingoyon*,[41] which states that "the appointment of commissioners under Rule 67 may be resorted to, even in expropriation proceedings under [Republic] Act No. 8974, since the application of the provisions of Rule 67 in that regard do not conflict with the statute."[42] To respondents,

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[40] 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. 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.

If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.

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.

[41] 514 Phil. 657 (2005) [Per J. Tinga, En Banc].

[42] Id. at 709.

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the use of the word "may" means that the appointment of commissioners was only optional and not mandatory.

This Court disagrees. A careful reading of that case reveals the proper context in which such pronouncement must be understood.

In *Gingoyon*, the government sought to expropriate only the improvements built on already government-owned land, and not a parcel of land. Particularly, it concerned the Ninoy Aquino International Airport International Passenger Terminal III (NAIA IPT III) facility built by Philippine International Air Terminals Co., Inc. (PIATCO) on government property. Since these properties were not land, they did not have a zonal valuation. Thus, its value was contested.[43]

When the trial court in *Gingoyon* ordered the release of the amount of US$62.3 million to the property owners, the government objected, saying that the assessed value indicated in the complaint was only ₱3 Billion. It also insisted that Rule 67, and not Republic Act No. 8974, governed the proceedings.[44]

In deciding the case, this Court noted the major difference between the proceedings under Rule 67 of the Rules of Court and under this law:

> 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.
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> . . . .
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> . . . 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

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[43] Id. at 681-682.

[44] Id.

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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.

. . . .

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. . . .[45]

The clarification in *Gingoyon* was necessary in view of the earlier but related case of *Agan v. PIATCO*[46] resolved by this Court (*Agan* Resolution). In the *Agan* Resolution, this Court stated that the government had to compensate PIATCO as builder of the structures comprising the NAIA IPT III facility, and that this "compensation must be just and in accordance with law and equity for the government [cannot] unjustly enrich itself at the expense of PIATCO and its investors."[47]

Gingoyon was decided in the context of what "just compensation" meant considering the peculiar circumstances of the case and the differing requirements given by the Rules and Republic Act No. 8974. The government's insistence on Rule 67 was obvious to this Court, since under this Rule, "it would not be obliged to immediately pay any amount to PIATCO before it can obtain the writ of possession since all it [needs] do is to deposit the amount equivalent to the assessed value with an authorized government depositary."[48]

In the end, *Gingoyon* decided that Republic Act No. 8974 — direct payment to PIATCO — was more fitting to the situation because it complements the requirements of the *Agan* Resolution, as compared to the system of deposit in Rule 67.

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[45] Id. at 686-689.

[46] 465 Phil. 545 (2004) [Per J. Puno, En Banc].

[47] Id. at 582.

[48] *Republic v. Gingoyon*, 514 Phil. 657, 688 (2005) [Per J. Tinga, En Banc].

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Thus, *Gingoyon*'s statement — that the appointment of commissioners may be resorted to, should not be interpreted to mean that it was merely optional. Such statement meant that the requirement by the Rules of appointing commissioners did not contradict Republic Act No. 8974 and was permissible. There was no conflict in this regard, in contrast with the patently different systems of deposit and direct payment.

Further, *Gingoyon* even referred to Section 14 of the Implementing Rules to show that the procedure under Rule 67 is applicable in expropriation cases initiated under Republic Act No. 8974. Thus, this Court holds that the appointment of commissioners is mandatory, if not necessary, in this case.[49]

The Rules provide that the parties are given the opportunity to introduce evidence before commissioners, and that the commissioners are empowered to "assess the consequential damages to the property not taken[.]"[50]

Indeed, Section 5 (1) of Rule 67 requires the appointment of commissioners in the ascertainment of just compensation:

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[49] Id. at 690.

[50] RULES OF COURT, Rule 67, sec. 6, provides:

SECTION 6. *Proceedings by commissioners*. — Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.

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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.

This Court has consistently characterized this procedure as mandatory. In *Manila Electric Company v. Pineda*:[51]

In an expropriation case such as this one where the principal issue is the determination of just compensation, a trial before the Commissioners is indispensable to allow the parties to present evidence on the issue of just compensation. Contrary to the submission of private respondents, the appointment of at least three (3) competent persons as commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases.[52]

The need to conduct proceedings before appointed commissioners becomes more apparent, given the necessity to compute for consequential damages. As pointed out by petitioner, the Regional Trial Court's award of consequential damages of ₱4,761,600.00 is baseless without the presentation of evidence before the court-appointed commissioners.

On the propriety of resolving the case on its merits through a judgment on the pleadings, as prayed for by respondents in their motion, it should be observed that respondents themselves raised a genuine issue in the same motion. They questioned the sufficiency of the amount deposited by the government as

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[51] 283 Phil. 90 (1992) [Per J. Medialdea, First Division].

[52] Id. at 100. See also *Forfom Development Corporation v. Philippine National Railways*, 594 Phil. 10 (2008) [Per J. Chico-Nazario, Third Division]; and *Republic v. Spouses Silvestre*, G.R. No. 237324, February 6, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64899> [Per J. Peralta, Third Division].

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just compensation. They further asked whether or not the acquisition of their property's portion also constitutes "taking" that entitles them to just compensation.

Evidence is necessary to properly resolve these issues related to the *final* just compensation to be paid to respondents. Parties must be given the opportunity to show and dispute the: (1) nature and extent of the taking; (2) length of the dispossession; and (3) scope of the owners' deprivation of the use of their property. Unfortunately, the Regional Trial Court failed to allow the parties to properly prove their case on these issues. This could have been done with the aid of commissioners.

Additionally, it appears that the Court of Appeals mistakenly treated its earlier Decision on a Petition for Certiorari questioning the requisites for the issuance of a writ of possession to be the law of the case. In that Decision affirmed by this Court, the Court of Appeals stated that "the fact that [respondents] will not lose title and possession over the area . . . does not in any way justify the reduction of the amount to be paid to [respondents]."[53] Taking this to be binding here, the Court of Appeals held that it was no longer necessary to try the issue regarding the extent of the compensation due to respondents.

However, the Court of Appeals may have overlooked the important distinction: that its earlier Decision only resolved the sole issue of compliance with Republic Act No. 8974's requisites for the issuance of a writ of possession. As characterized by the Regional Trial Court, the amount in dispute there only represented the "initial compensation"[54] necessary for a writ of possession.

Further, the pronouncements it made in that Decision, as affirmed by this Court, should be taken in that light. It was not, and could not have been, an adjudication on the *final* just compensation to be paid by petitioner to respondents, which is the issue here.

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[53] *Rollo*, p. 35.

[54] Id. at 34.

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Finally, petitioner questions the Court of Appeals' finding that the temporary working site covering an area of 288 square meters should be considered in the computation of just compensation. According to it, the temporary use of the area does not constitute "taking" as contemplated in expropriation cases.

This Court agrees with petitioner. It has been held that taking, in the context of a State's exercise of its power of eminent domain, "must be for more than a momentary period."[55] This means the entrance into the private property must be for a limited period only, and not indefinite and permanent. In one case, the taking was done through a one-year renewable lease, and this Court considered this to only be momentary; it was not the "taking" contemplated in expropriation cases.[56]

Similarly, in this case, the temporary use of the area as a working site only for the duration of the construction and installation of the transmission towers can hardly be described as indefinite or permanent. As pointed out by petitioner, that the installations were immediately removed and the possession over the area was restored to respondents show the transitory nature of the taking. Thus, respondents are not entitled to full compensation for this, but are only entitled to the rental fees as proposed by petitioner in its Complaint.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals' Decision and Resolution are **SET ASIDE**. Branch 49 of the Regional Trial Court of Bacolod City is **ORDERED** to appoint commissioners and to comply with the procedure laid down in Rule 67 of the Rules of Court for the determination of just compensation.

SO ORDERED.

Hernando, Inting, and *Delos Santos, JJ.*, concur.

Rosario, J., on leave.

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[55] *Heirs of Pidacan v. Air Transportation Office*, 552 Phil. 48, 55 (2007) [Per J. Quisumbing, Second Division].

[56] *Republic v. Castellvi*, 157 Phil. 329 (1974) [Per J. Zaldivar, En Banc].