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The RTC held Arriola criminally liable for *Estafa* under Article 315, Paragraph 2(a) for the amount of ₱437,000.00 and initially imposed the indeterminate penalty of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. In light of RA 10951 and the aforementioned recent pronouncements, Arriola's penalty is hereby modified to *arresto mayor* in its minimum period to *prision correccional* in its minimum period, further narrowed down to an indeterminate penalty of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.

WHEREFORE, the Petition is **DENIED**. The assailed August 5, 2011 Decision and January 3, 2012 Resolution of the Court of Appeals in CA-G.R. CR No. 31338 are **AFFIRMED** with **MODIFICATIONS**. Petitioner Luis T. Arriola is **ORDERED** to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Reyes, A. Jr., Inting, and *Delos Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. 214310. February 24, 2020]

REPUBLIC OF THE PHILIPPINES represented by the Department of Public Works and Highways (DPWH), *petitioner*, *vs.* **ESTATE OF JUAN MARIA POSADAS III, MARIA ELENA POSADAS, and ESTELA MARFORI DE POSADAS,** *respondents*.

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SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF COMPLAINT DUE TO FAULT OF PLAINTIFF; FAILURE ON THE PART OF THE PLAINTIFF, WITHOUT JUSTIFIABLE CAUSE, TO COMPLY WITH ANY ORDER OF THE COURT MAY RESULT IN THE DISMISSAL OF THE COMPLAINT EITHER *MOTU PROPRIO* OR ON MOTION BY THE DEFENDANT. —** [T]he RTC based its order of dismissal on Section 3, Rule 17 of the Rules of Court, x x x The provision contemplates certain instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he or she fails to appear during a scheduled hearing, especially on the date for the presentation of his or her evidence in chief; (2) if he or she fails to prosecute his or her action for an unreasonable length of time; (3) if he or she fails to comply with the rules; or (4) if he or she fails to comply with any order of the court. Thus, failure on the part of the plaintiff, without any justifiable cause, to comply with any order of the court may result in the dismissal of the complaint either *motu proprio* or on motion by the defendant.

2. **ID; ID.; PARTIES TO CIVIL ACTION; DEATH OF A PARTY; PROCEDURE FOR THE SUBSTITUTION OF A PARTY-LITIGANT WHO DIES DURING THE PENDENCY OF A CASE. —** Section 16, Rule 3 of the Rules of Court lays down the procedure for the substitution of a party-litigant who dies during the pendency of a case, x x x [Thus,] when a party to a case dies, his or her counsel is charged with the duty of informing the trial court of, first, the fact of the litigant's death and, second, the name and address of the litigant's representative. The court must then issue an order requiring the said representative to appear and formally be substituted. However, if no representative is so named or if he or she does not appear, the court may direct the adverse party to procure an executor or administrator, who will be tasked to represent the deceased party until the case is terminated.

3. **ID.; ID.; NON-COMPLIANCE TO THE RULES; LITIGANTS ARE NOT ALLOWED TO EXPLOIT THE RULES AND RESORT TO TECHNICALITIES TO JUSTIFY WANTON DISREGARD FOR THE ORDERS OF THE COURT. —** It has been held that procedural rules are in place to ensure the

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orderly, just, and speedy dispensation of cases. They are tools designed to facilitate, not hinder, the attainment of justice. Thus, technicality, when it deserts its proper office as an aid to justice, warrants scant consideration. Therefore, litigants deserve no sympathy when they exploit the rules and resort to technicalities in order to justify wanton disregard for the orders of a court.

4. **ID.; ID.; ISSUES NOT PRESENTED BEFORE THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. —** It is hornbook law that issues and arguments not presented before the trial court cannot be raised for the first time on appeal. An issue that was neither averred in the complaint nor raised during the trial cannot be raised for the first time on appeal, for to do so would be offensive to the basic rules of fair play, justice, and due process.

5. **POLITICAL LAW; INHERENT POWERS OF THE STATE; POWER OF EMINENT DOMAIN; THE EXPROPRIATION CASES ARE DIVIDED INTO TWO STAGES: THE FIRST IS CONCERNED WITH THE PROPRIETY OF CONDEMNING THE PROPERTY FOR PUBLIC PURPOSE AND THE SECOND INVOLVES THE DETERMINATION OF JUST COMPENSATION FOR THE PROPERTY OWNER. —** The power of eminent domain has been described as "the ultimate right of the sovereign power to appropriate, not only the public but the private property of all citizens within the territorial sovereignty, to public purpose." It is an inherent power of the state, not granted but merely limited by constitutional fiat, *viz.*: **Section 9.** Private property shall not be taken for public use without just compensation. The provision places two express limitations on the power of eminent domain: *first*, the condemned property must be used for a public purpose, and *second*, the exercising authority must pay the property owner just compensation. Correlatively, expropriation cases are divided into two stages. The first is concerned with the propriety of condemning the property, while the second involves the determination of just compensation. The first phase begins with the filing of the complaint before the trial court, which is then tasked to ascertain the purpose of the taking. If it finds that the property is being taken for a public purpose, it shall issue an order condemning the property, otherwise it must dismiss the case. If the court issues an order of condemnation, it must then proceed to the second phase — the determination of just

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compensation. For this purpose, the rules direct the trial court to appoint commissioners, who will be assigned to aid it in ascertaining the fair value of the expropriated property. The trial court will then set the amount of just compensation, order the plaintiff to pay such amount to the defendant, and proceed to completely dispose of the case.

6. **ID.; ID.; ID.; ID.; THE ASCERTAINMENT OF HOW MUCH PROPERTY WAS TAKEN IS NECESSARY TO DETERMINE THE FULL AMOUNT OF JUST COMPENSATION.** — [T]he ascertainment of exactly how much property was taken is necessary to determine the full amount of just compensation. In expropriation cases involving land, just compensation is generally set on a per square meter basis. Thus, without knowing the precise area taken by the State, there is no way of definitively setting the amount payable to the respondents. x x x In addition, there is a need to determine how much of the respondents' property was expropriated so that they can be reimbursed only for what cannot be returned to them. Jurisprudence clearly provides for the remedies available to a landowner when his land is taken by the government for public use. The owner may recover his or her property if its return is feasible, or, if it is not, he or she may demand payment of just compensation.

7. **ID.; ID.; ID.; ID.; CIRCUMSTANCES THAT CONSTITUTE THE TAKING OF PRIVATE PROPERTY IN EXPROPRIATION PROCEEDINGS.** — In the seminal case of *Rep. of the Phils. v. Vda. de Castellvi*, the Court laid down several circumstances that constitute the taking of private property in expropriation proceedings. These circumstances, adopted by subsequent case law, are summed up as follows: (1) the expropriator must enter private property; (2) the entrance in to private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public use or other wise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. Taking therefore occurs when the government actually deprives or dispossesses the proprietor of his or her property. So too, when there is "an intrusion so

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immediate and direct as to subtract from the owner's full enjoyment of the property and to limit his exploitation of it," the said property is deemed taken.

8. ID.; ID.; ID.; ID.; NECESSITY OF DETERMINATION OF THE TIME OF TAKING. — The determination of the time of taking is necessary for two reasons. First, interest, which is imposed as damages for delaying the payment of just compensation, begins to run from the time the property is taken from its owner. Second, the nature of the deposit required pending the determination of just compensation will depend on whether the property was taken before or after the date of effectivity of Republic Act (R.A.) No. 8974, which governs expropriation proceedings relative to national government infrastructure projects.

9. ID.; ID.; ID.; ID.; JUST COMPENSATION IS THE PROPERTY'S FAIR MARKET VALUE. — It has been consistently held that the property's fair market value is the just compensation to which the owner of condemned property is entitled. Market value is the price agreed on by a willing buyer and willing seller, both of whom are not compelled to enter into the transaction. It has also been described as the amount fixed in the open market in the usual and ordinary course of legal trade and competition.

10. ID.; ID.; ID.; ID.; ID.; RECKONING POINT; JUST COMPENSATION, AS A RULE, BASED ON THE VALUE OF THE PROPERTY AT THE TIME THE COMPLAINT FOR EXPROPRIATION WAS FILED. — [J]ust compensation is, as a general rule, based on the price or value of the property at the time the complaint for expropriation was filed. By way of exception, *National Transmission Corporation v. Oroville Development Corporation* instructs that when the government takes the property before initiating the expropriation case, the property's value at the time of the prior taking must be used as the basis for determining just compensation. x x x In this case, since the Republic initiated expropriation proceedings before taking the subject property, it follows that the land's value at the time of the filing of the complaint, *i.e.*, June 25, 1990, should be used as the basis for just compensation.

11. ID.; ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION;

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APPOINTMENT OF COMMISSIONERS TO AID THE TRIAL COURT IN THE DETERMINATION OF JUST COMPENSATION; DISCUSSED. — [T]he determination of just compensation is a judicial function, one that is best addressed to the discretion of the trial court. x x x The trial court, however, should not be without aid in the ascertainment of what constitutes just compensation. For this purpose, the rules direct the court to appoint not more than three competent and disinterested persons as commissioners to ascertain and report to it the value of the property sought to be taken. The commissioners may then determine just compensation based on the evidence presented before them, and, for the same purpose, they are also authorized to enter and inspect the property and its surroundings. Finally, after the reception and scrutiny of the evidence, the commissioners have the responsibility of reporting their findings to the trial court. It has been held that trial with the aid of the commissioners is a substantial right. Therefore, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. However, this does not mean that the commissioners' determination of just compensation is final and binding on the parties. Because such determination is ultimately a judicial function, the trial court is given the discretion to either accept or reject the commissioners' findings in whole or in part. If the court rejects their report, it may require them to render a supplemental report on facts yet to be taken up, or it may appoint another set of commissioners to provide it with an entirely new report. The trial court is also allowed to disregard the findings of the commissioners and use its own estimate of the property's value. However, it may only do so for valid reasons, such as when the commissioners apply illegal principles to the evidence, when they disregard a clear preponderance of evidence, or when the amount allowed is either grossly inadequate or excessive. Once the trial court is satisfied with the amount of just compensation, it may render judgment ordering payment thereof to the property owner.

12. ID.; ID.; ID.; ID.; JUST COMPENSATION TO BE PAID WITHIN A REASONABLE TIME; JUST COMPENSATION PAYABLE TO THE PROPERTY OWNER AMOUNTS TO AN EFFECTIVE FORBEARANCE ON THE PART OF THE GOVERNMENT – A PROPER SUBJECT OF INTEREST.

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> — In eminent domain cases, just compensation entails not only the determination of the proper amount to be paid to the owners of the property, but also the payment of such amount within a reasonable time. x x x In *National Power Corporation v. Manalastas (Manalastas*), the Court held that the just compensation payable to the property owner amounts to an effective forbearance on the part of the government — a proper subject of interest, *viz.*: *[I]f properly is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.*

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Luis M. Posadas for respondent Estate of Juan Posadas III.

Alice Pesigan for Estela M. Posadas and Ma. Elena M. Posadas.

D E C I S I O N

REYES, A. JR., *J.*:

When the State appropriates private property for public use, it must compensate the owner of the property so taken. For compensation to be just, the government must not only reimburse the owner with the property's fair value, it must also do so in a timely manner.

This is a petition for review on *certiorari*[1] filed by the Republic of the Philippines (Republic),represented by the Department of Public Works and Highways (DPWH),through the Office of the Solicitor General (OSG), assailing the February 19, 2014

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[1] *Rollo*, pp. 31-56.

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Decision[2] and the September 15, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 94901. Through the challenged decision and resolution, the appellate court affirmed the Order[4] of Branch 61 of the Regional Trial Court (RTC) of Makati City dismissing the Republic's complaint for expropriation thereat, docketed as Civil Case No. 90-1777.

The Factual Antecedents

On July 4, 1990, the Republic filed a complaint[5] for expropriation before the RTC of Makati against 181 individuals and corporations owning land situated along Sucat Road in Parañaque. The properties were earmarked by the DPWH for a road-widening project. However, out of all the named defendants, only Alfonso Cruz and the respondents, namely: Estela Marfori Posadas, Maria Elena Posadas, and the Estate of Juan Maria Posadas III (respondents), appeared to oppose the complaint.[6]

In the complaint, it was stated that the DPWH needed 15,554 square meters of the respondents' land for the project. The Republic alleged that the property had an appraised value of ₱18,664,800.00,[7] but the Estate of Juan Maria Posadas III contested such valuation in its answer,[8] arguing that the land was worth much more.[9]

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[2] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Samuel H. Gaerlan (now a Member of this Court) concurring; *id.* at 60-72.

[3] *Id.* at 74-75.

[4] *Id.* at 214.

[5] *Id.* at 76-103.

[6] *Id.* at 62.

[7] *Id.* at 86.

[8] *Id.* at 111-113.

[9] *Id.* at 62.

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On January 8, 1991, pursuant to Section 7[10] of Executive Order No. 1035, the Republic deposited with the Escolta Branch of the Philippine National Bank the amount of ₱1,866,480.00, representing 10% of the value of the property. It then filed a motion for the issuance of a writ of possession so that it could take possession of the land.[11] The record, however, does not show the exact date of the Republic's entry into the property.

The respondents contested neither the public purpose behind the taking of their property nor the propriety of the deposit. Accordingly, on July 16, 1993, they filed a joint motion to withdraw deposit,[12] concurrently reserving their right to substantiate their claim that the expropriated property had a fair market value that was higher than what the Republic alleged.[13]

Through an Order[14] dated July 26, 1993, the RTC allowed the respondents to withdraw the amount of ₱1,866,480.00, ruling that there was indeed no issue as to public purpose of the taking. Nonetheless, since the respondents were contesting the property's value, the trial court ruled that the final amount of just compensation was still subject to the outcome of the case.[15]

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[10] Entitled: "Providing the Procedures and Guidelines for the Expeditious Acquisition by the Government of Private Real Properties or Rights thereon for Infrastructure and Other Government Development Projects" (June 25, 1985)

Sec. 7. *Expropriation.*— Courts shall give priority to the adjudication of cases on expropriation and shall immediately **issue the necessary writ of possession upon deposit by the government implementing agency/ instrumentality concerned of an amount equivalent to ten per cent (10%) of the amount of just compensation** provided under P.D. No. 1533; *Provided*, That the period within which said writ of possession shall be issued shall in no case extend beyond five (5) days from the date such deposit was made. (Emphasis supplied)

[11] *Rollo*, pp. 62-63.

[12] *Id.* at 116.

[13] *Id.*

[14] *Id.* at 116-117.

[15] *Id.*

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On August 6, 1993, the respondents filed another Joint Motion to Withdraw Deposit,[16] this time praying for the payment of ₱16,798,320.00, representing the balance of the property's provisional value. However, despite the grant of the motion and subsequent orders directing the disbursement of the balance, the Republic never paid.[17]

Thereafter, through a letter[18] dated November 3, 1998, DPWH Secretary Gregorio Vigilar informed the OSG that the government was no longer interested in pursuing the road-widening project, *viz.*:

> This has reference to your letter of 28 August 1998 seeking the official position of the DPWH whether it will pursue the above expropriation case in view of the construction of the Skyway Project along the South Expressway.
>
> In this regard, we wish to inform you that the Department will no longer pursue the implementation of the loop road in that vicinity, considering that this will already be part of the ramps in the Skyway Project. We will, therefore, no longer pursue said expropriation case.
>
> Thank you for extending to us your invaluable assistance on the matter.[19]

Thus, on July 11, 2005, the Estate of Juan Maria Posadas III filed a manifestation with motion[20] praying for the dismissal of the action, arguing that the Republic had abandoned the case. The estate likewise prayed that it be allowed to present evidence on the damages it suffered because of the suit.[21]

In the interim, on March 27, 2005, Acting DPWH Secretary Hermogenes Edbane, Jr. wrote a letter[22] informing the OSG

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[16] *Id.* at 118-122.

[17] *Id.* at 63.

[18] *Id.* at 123.

[19] *Id.*

[20] *Id.* at 155-161.

[21] *Id.*

[22] *Id.* at 154.

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that the Republic had once again changed its mind, and that this time it has finally resolved to expropriate the respondents' property. He also stated that the government needed to acquire more of the respondents' land, *viz.*:

> We wish to inform you of our change in position on the above-subject case.
>
> Briefly, on 3 November, 1998, then Secretary Gregorio R. Vigilar wrote Hon. Maria Aurora P. Cortes, Asst. Solicitor General of the Department's decision to no longer pursue the above expropriation case (Annex A).
>
> However, due to changes in the infrastructure needs in the vicinity, there is a need to pursue the case and acquire more real properties contiguous to the area being expropriated that may also belong to the defendants in this case.
>
> May we therefore seek your assistance on the matter and require the services of ASG Renan Ramos and Sol. Ismael G. Miaral to represent the department in this case as they are always in close coordination with the Legal Services of this department in numerous other cases.
>
> Your usual and prompt attention on the matter will be highly appreciated.[23]

The Republic thus opposed[24] the motion to dismiss filed by the Estate of Juan Maria Posadas III. Citing the letter of Acting Secretary Ebdane, it prayed for the conduct of further proceedings.[25]

In response to the Republic's vacillation, the Estate of Juan Maria Posadas III filed on July 1, 2007 a motion for the payment of just compensation and for the inclusion in the complaint of all property affected by the expropriation.[26] The estate manifested that a road had already been constructed on the land subject of

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[23] *Id.*

[24] *Id.* at 162-168.

[25] *Id.*

[26] *Id.* at 172-176.

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the case.[27] Moreover, it averred that the DPWH's original plan was substantially altered and that other properties belonging to the respondents had been condemned. The estate thus reiterated its prayer for the payment of the uncontested balance of the property's provisional value, while also asking for an order directing the Republic to amend its complaint to reflect the new area affected by the road-widening project.[28]

In another letter,[29] the DPWH confirmed that it would indeed be occupying a different portion of the respondents' property for the project, which it sought to pursue under a different plan.

Accordingly, in a Resolution[30] dated March 11, 2008, the RTC ordered the submission of an amended complaint to reflect the new area used by the road-widening project.[31]

The order, however, went unheeded.

Thus, on March 26, 2008, the RTC again directed the Republic, through the OSG, to submit an amended complaint. The Republic was given 30 days, or until April 25, 2008, to comply.[32]

Instead of amending its complaint, the Republic filed a manifestation and motion[33] stating that respondent Maria Elena Posadas had died on December 10, 2007.[34] Accordingly, it prayed for the suspension of the period to file its amended complaint, contending that it could not make the required amendments without the name of her substitute. Hence, the Republic prayed

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[27] *Id.* at 175.

[28] *Id.* at 175.

[29] *Id.* at 184.

[30] *Id.* at 185-186.

[31] *Id.* at 65.

[32] *Id.* at 187.

[33] *Id.* at 188-191.

[34] *Id.* at 190.

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for the disclosure of the name and address of said substitute, as well as for the deferment of the amended complaint's filing.[35]

In an Order[36] dated May 23, 2008, the RTC, while refusing to altogether suspend the deadline for the amendment of the complaint, gave the Republic until August 20, 2008 to comply. In the same order, the trial court directed the respondents' counsel to inform the court of the substitute for the late Maria Elena Posadas.[37]

It appears, however, that a substitute was never named by the deceased's counsel.

On August 27, 2008, the Republic filed a motion seeking an extension of time to amend its complaint.[38] Citing the tedious and time-consuming process of securing funds for just compensation, it asked the RTC to give it until September 29, 2008 to file the pleading.[39]

The motion was granted by the RTC through a Resolution[40] dated September 2, 2008. Notably, the RTC stated that the extended period would not be subject to further extension.[41]

However, on September 26, 2008, the Republic filed another motion for extension of time,[42] stating that it could not immediately disburse the amount due as just compensation. It prayed for a sufficient period of time to secure such funds and to prepare its amended complaint. It likewise prayed that, in the meantime, proceedings before the trial court be suspended.[43]

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[35] *Id.*

[36] *Id.* at 193.

[37] *Id.*

[38] *Id.* at 195-198.

[39] *Id.* at 196.

[40] *Id.* at 199.

[41] *Id.*

[42] *Id.* at 200-204.

[43] *Id.* at 201-202.

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Noting the difficulty in securing the funds for just compensation, the RTC, in an Order[44] dated December 19, 2008, reset the case for the presentation of the Republic's evidence.[45]

The OSG, however, failed to appear on the scheduled date. Thus, in an Order[46] dated May 12, 2009, the RTC reset the case anew. The RTC also ordered the OSG to explain why it should not be cited in contempt for: (1) repeatedly failing to attend the hearings of the case; and (2) failing to file its amended complaint pursuant to the trial court's order, which dated as far back as March 11, 2008.[47]

In response,[48] the OSG informed the RTC that the state solicitor assigned to the case, Atty. Andrew S. Ibarra, was unable to attend the hearings due to his prolonged travel time caused by the construction of the Skyway extension from Alabang to Bicutan.[49]

At this juncture, it bears noting that the Republic had yet to file its amended complaint.

For that reason, on December 7, 2009, the respondents orally moved for the dismissal of the case in open court. They maintained that the Republic had no justification for failing to comply with the RTC's order directing the amendment of the complaint.[50]

Ruling of the RTC

Agreeing with the respondents, the RTC issued an Order[51] dismissing the case for failure to comply with an order of the court, *viz.*:

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[44] *Id.* at 205.

[45] *Id.*

[46] *Id.* at 206.

[47] *Id.*

[48] *Id.* at 207-212.

[49] *Id.* at 208.

[50] *Id.* at 214.

[51] *Id.*

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Upon motion of the subject defendant and finding the said motion to be meritorious, the instant case is hereby **DISMISSED** in accordance with Section 3, Rule 17 of the Revised Rules of Court.

The counsel for the defendant Estate of Juan Ma. Posadas III is notified of this Order in open court.

Serve a copy of this Order to the Republic of the Philippines, through the Office of the Solicitor General.

SO ORDERED.[52]

On December 28, 2009, the Republic filed a motion for reconsideration.[53] It alleged that the assigned state solicitor's absence was due to an illness as shown by an attached Medical Certificate dated December 7, 2009.[54]

The RTC denied the foregoing motion through a Resolution[55] dated February 3, 2010. The RTC held that the OSG should have designated another lawyer to take the place of the assigned state solicitor; and that the Republic was bound by the negligence of its counsel.[56]

The Republic thus appealed to the CA.

Ruling of the CA

On February 19, 2014, the CA rendered the herein assailed Decision[57] holding that the RTC did not commit any reversible error in dismissing the case. The appellate court ruled that the delays caused by the OSG were the very abuses that the constitutional tenets on just compensation sought to guard against; that the government's vacillation between its decisions

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[52] *Id.*

[53] *Id.* at 215-218.

[54] *Id.* at 215-216.

[55] *Id.* at 227-228.

[56] *Id.* at 227.

[57] *Id.* at 60-72.

to expropriate and not to expropriate the property meant that the order of condemnation never became final.[58] Thus, the CA decreed as follows —

WHEREFORE, the instant appeal is **DISMISSED**.The December 7, 2009 Order and February 3, 2010 Resolution of the Regional Trial Court, Branch 61, Makati City in Civil Case No. 90-1777 are hereby **AFFIRMED**.

SO ORDERED.[59]

The Republic moved for reconsideration, but this was denied by the CA through a Resolution[60] dated September 15, 2014.

Hence, the instant Petition.

The Issue

The lone issue here is whether the RTC acted correctly in ordering the dismissal of this case, which was based on the Republic's failure to file an amended complaint.

The Republic admits that it never filed an amended complaint.[61] However, it maintains that such omission was justified. It points to the fact that the counsel of record for the late Maria Elena Posadas did not inform the trial court of her substitute, and that this was a legal impediment which effectively prevented it from amending its complaint.[62]

Thus, the question presented to the Court is:

Whether or not the absence of a substitute for the late Maria Elena Posadas justified the Republic's failure to amend its complaint.[63]

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[58] *Id.* at 69.

[59] *Id.* at 71.

[60] *Id.* at 74-75.

[61] *Id.* at 44-45.

[62] *Id.*

[63] *Id.* at 44.

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The Court's Ruling

The answer is in the negative.

At the outset, it bears noting that the RTC based its order of dismissal on Section 3, Rule 17 of the Rules of Court, which provides:

> **Section 3.** *Dismissal due to fault of plaintiff.*— If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

The provision contemplates certain instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he or she fails to appear during a scheduled hearing, especially on the date for the presentation of his or her evidence in chief; (2) if he or she fails to prosecute his or her action for an unreasonable length of time; (3) if he or she fails to comply with the rules; or (4) if he or she fails to comply with any order of the court.[64] Thus, failure on the part of the plaintiff, without any justifiable cause, to comply with any order of the court may result in the dismissal of the complaint either *motu proprio* or on motion by the defendant.[65]

Here, the trial court dismissed the case after Atty. Luis M. Posadas, counsel for the Estate of Juan M. Posadas III, orally moved for dismissal on the ground that the Republic had failed to comply with the order directing the filing of an amended complaint.

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[64] *BPI v. Court of Appeals*, 362 Phil. 362, 367-368 (1999).

[65] *Eloisa Merchandising, Inc. v. Banco de Oro Universal Bank*, 687 Phil. 501, 512-513 (2012).

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As elsewhere noted, the Republic contends that it was unable to amend its complaint because it was never informed of the substitute for the late Maria Elena Posadas.[66]

The contention is without merit.

Section 16, Rule 3 of the Rules of Court lays down the procedure for the substitution of a party-litigant who dies during the pendency of a case, *viz.*:

> **Section 16.** *Death of party; duty of counsel*. — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.
>
> x x x x x x x x x
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
>
> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. x x x.

As can be gleaned from the above provision, when a party to a case dies, his or her counsel is charged with the duty of informing the trial court of, first, the fact of the litigant's death and, second, the name and address of the litigant's representative. The court must then issue an order requiring the said representative to appear and formally be substituted. However, if no representative is so named or if he or she does not appear, the court may direct the adverse party to procure an executor or administrator, who will be tasked to represent the deceased party until the case is terminated.[67]

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[66] *Rollo*, pp. 44-45.

[67] RULES OF COURT, Rule 3, Sec. 16.

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In this case, the trial court issued an order directing Atty. Antonio Pesigan (Atty. Pesigan), Maria Elena Posadas's counsel of record, to name his client's substitute. It appears, however, that a representative was never named in the proceedings *a quo*. In accordance with the rules, it thus became incumbent on the trial court to direct the Republic to procure an executor or administrator for the estate of the deceased litigant. Yet, this was never done. The Republic capitalized on this circumstance, ascribing its failure to file an amended complaint to the fact that a representative was never named.

Atty. Pesigan's failure to name a substitute did not justify the non-submission of the amended complaint. The order directing the designation of a substitute and the order directing the amendment of the complaint were completely independent of each other. The first was solely between the trial court and Atty. Pesigan, while the second was directed exclusively to the Republic, which cannot simply shift the blame to the respondents.

For the sake of emphasis, the RTC directed the amendment of the complaint so that the records of the case would accurately reflect the area expropriated under the DPWH's new plan. It goes without saying that the Republic did not need the name of Maria Elena Posadas's representative to show the trial court the new land area it was going to condemn.

Further, more than a year had elapsed between the issuance of the trial court's initial order directing the submission of an amended complaint and the dismissal of the case. This was definitely more than enough time to make the amendments required by the trial court. Oddly enough, however, within this period, the Republic instead asked for the postponement of numerous hearings, resulting in prolonged and inordinate delays. Worse, it had the audacity to ask for the suspension of the proceedings altogether.

These delays only exacerbated the lengthy setback brought about by the Republic's earlier hesitation to pursue the road-widening project. Be it recalled that the Republic decided to discontinue the project in 1998, only to change its mind seven years later.

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The delays attendant in this case undoubtedly prejudiced the respondents.

Not only did the Republic engage in egregious dilatory tactics, it ultimately failed to file its amended complaint. Hence, it must be precluded from setting up its own neglect as an excuse for its failure to comply with the trial court's order.

It has been held that procedural rules are in place to ensure the orderly, just, and speedy dispensation of cases.[68] They are tools designed to facilitate, not hinder, the attainment of justice. Thus, technicality, when it deserts its proper office as an aid to justice, warrants scant consideration.[69] Therefore, litigants deserve no sympathy when they exploit the rules and resort to technicalities in order to justify wanton disregard for the orders of a court.

For this reason, the instant petition must fail.

More than that, the Republic raised the issue on substitution for the first time before the Court. The record is without any indication that the failure to designate a representative was questioned in the RTC or even in the CA.

Section 15, Rule 44 of the Rules of Court provides:

Section 15. *Questions that may be raised on appeal*. — Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors **any question of law or fact that has been raised in the court below and which is within the issues framed by the parties**.(Emphasis supplied)

It is hornbook law that issues and arguments not presented before the trial court cannot be raised for the first time on appeal.[70] An issue that was neither averred in the complaint

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[68] *Asia United Bank v. Goodland Company, Inc.*, 650 Phil. 174, 184 (2010).

[69] *Alonso v. Villamor*, 16 Phil. 315, 322 (1910).

[70] *Del Rosario v. Bonga*, 402 Phil. 949, 957 (2001).

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nor raised during the trial cannot be raised for the first time on appeal, for to do so would be offensive to the basic rules of fair play, justice, and due process.[71]

Since it was the RTC itself that ordered the substitution of the deceased respondent Maria Elena Posadas, the Republic clearly had the opportunity to raise the issue during the proceedings *a quo*. For certain inexplicable reasons, however at the trial and, later, on appeal, it never questioned the absence of a substitute. The Republic only raised the issue as a mere afterthought in the instant petition for review.

Therefore, the Court cannot now address this question without transgressing the Rules of Court and the pertinent jurisprudence on the matter. To rule on the issue would go against the tenets of fair play and equity.[72]

The power of eminent domain has been described as "the ultimate right of the sovereign power to appropriate, not only the public but the private property of all citizens within the territorial sovereignty, to public purpose."[73] It is an inherent power of the state, not granted but merely limited by constitutional fiat, *viz.*:

Section 9. Private property shall not be taken for public use without just compensation.[74]

The provision places two express limitations on the power of eminent domain: *first*, the condemned property must be used for a public purpose, and *second*, the exercising authority must pay the property owner just compensation. Correlatively, expropriation cases are divided into two stages. The first is concerned with the propriety of condemning the property, while

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[71] *Union Bank of the Phils. v. Court of Appeals*, 412 Phil. 64, 73 (2001).

[72] *People v. Tripoli*, 810 Phil. 788, 799 (2017).

[73] *Rep. of the Phils. v. Heirs of Saturnino Q. Borbon*, 750 Phil. 37, 48 (2015), citing Bernas, *Constitutional Rights and Social Demands: Notes and Cases*, Part II, 2010 Ed.

[74] CONSTITUTION, Article III, Section 9.

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the second involves the determination of just compensation. The first phase begins with the filing of the complaint before the trial court, which is then tasked to ascertain the purpose of the taking. If it finds that the property is being taken for a public purpose, it shall issue an order condemning the property,[75] otherwise it must dismiss the case. If the court issues an order of condemnation, it must then proceed to the second phase — the determination of just compensation.[76] For this purpose, the rules direct the trial court to appoint commissioners, who will be assigned to aid it in ascertaining the fair value of the expropriated property. The trial court will then set the amount of just compensation, order the plaintiff to pay such amount to the defendant, and proceed to completely dispose of the case.

Here, the proceedings *a quo* never reached the second phase. The trial court immediately allowed the Republic to take possession of the subject property because the respondents never questioned the public purpose behind its taking; the parties agreed that the road-widening project met this criterion. Nevertheless, the record reveals that just compensation was neither determined nor paid. As stated above, the trial court dismissed the case because the Republic failed to file an amended complaint. The order of dismissal therefore effectively divested the respondents of their property without imposing on the Republic the concomitant constitutional obligation to pay just compensation.

The record shows a road now traverses the respondents' expropriated land. The payment of just compensation must therefore follow as a matter of course. However, the records do not show exactly how much of the property was taken. Likewise, the time of taking by the government does not appear. Thus, the Court is left with no other alternative but to remand the case to the trial court for a proper determination of: *first*, how much of the respondents' property had in fact been taken;

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[75] *National Power Corporation v. Posada*, 755 Phil. 613, 624 (2015).

[76] *Id.*

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second, when was the property so taken; and *finally*, the amount of just compensation due and owed to the respondents. The RTC must be guided by the pronouncements set forth hereunder, which shall form the law of the case.

To begin with, the ascertainment of exactly how much property was taken is necessary to determine the full amount of just compensation. In expropriation cases involving land, just compensation is generally set on a per square meter basis.[77] Thus, without knowing the precise area taken by the State, there is no way of definitively setting the amount payable to the respondents.

This problem was brought about by the Republic's failure to amend its complaint. As may be recalled, the DPWH initially sought to expropriate 15,554 square meters of the respondents' land. Thereafter, it vacillated on its decision to condemn the property, deciding later to finally push through with the road-widening project under a different area plan. Therefore, it does not come as a surprise that the records fail to reveal exactly how much of the subject lot was indeed expropriated. In fact, it appears that the parties have conflicting claims as to the extent of the property taken. This should have been remedied by the amendment of the complaint, which was ordered precisely because the area of land used for the project was unclear. Unfortunately, the Republic never complied, leaving the Court to engage in guesswork as to how much of the respondent's land was expropriated.

In addition, there is a need to determine how much of the respondents' property was expropriated so that they can be reimbursed only for what cannot be returned to them. Jurisprudence clearly provides for the remedies available to a landowner when his land is taken by the government for public use. The owner may recover his or her property if its return is

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[77] See *The Manila Banking Corporation v. Bases Conversion and Development Authority*, G.R. No. 230144, January 22, 2018, 852 SCRA 334, *Rep. of the Phils. v. Heirs of Eladio Santiago*, 808 Phil. 1 (2017); *Rep. of the Phils. v. Larrazabal*, 814 Phil. 684 (2017).

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feasible, or, if it is not, he or she may demand payment of just compensation.[78] Accordingly, upon remand, the trial court must first and foremost determine how much of respondent's property had actually been taken.

In the seminal case of *Rep. of the Phils. v. Vda. de Castellvi*,[79] the Court laid down several circumstances that constitute the taking of private property in expropriation proceedings. These circumstances, adopted by subsequent case law, are summed up as follows:

> (1) the expropriator must enter private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.[80]

Taking therefore occurs when the government actually deprives or dispossesses the proprietor of his or her property.[81] So too, when there is "an intrusion so immediate and direct as to subtract from the owner's full enjoyment of the property and to limit his exploitation of it," the said property is deemed taken.[82]

Hence, on remand, the trial court must initially determine the precise area or extent of the property that had actually been taken from the respondents. In regard to the portion of property not so taken, if any, the trial court must order its return. On the other hand, with respect to the area actually expropriated, the trial court must proceed to determine when its taking occurred.

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[78] *Republic of the Phils. v. Court of Appeals*, 494 Phil. 494, 505 (2005).

[79] 157 Phil. 329 (1974).

[80] *Heirs of Mateo Pidacan and Romana Eigo v. Air Transportation Office (ATO)*, 552 Phil. 48, 55 (2007).

[81] *Id.*

[82] *United States v. Causby*, 328 U.S. 256, 265 (1946).

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The determination of the time of taking is necessary for two reasons. First, interest, which is imposed as damages for delaying the payment of just compensation,[83] begins to run from the time the property is taken from its owner.[84] Second, the nature of the deposit required pending the determination of just compensation will depend on whether the property was taken before or after the date of effectivity of Republic Act (R.A.) No. 8974, which governs expropriation proceedings relative to national government infrastructure projects.[85]

Interest, as will be discussed in detail below, is imposed to ensure prompt payment by the government. Its imposition is justified only when the delay in payment has been sufficiently established,[86] as is the case here. However, as mentioned earlier, since the records do not show the specific date of taking, remand is necessary so that the proper amount of interest may be determined.

Likewise, the date of taking will have an effect on the amount due as a deposit for the property's expropriation. The road-widening project subject of the case at bar is properly categorized as a national government infrastructure project within the purview of R.A. No. 8974. The law directs the government agency implementing the project to immediately pay the owner 100% of the value of the property based on the current relevant zonal valuation, as determined by the Bureau of Internal Revenue, plus the value of the improvements and structures erected thereon.[87] Since R.A. No. 8974 took effect on November 26,

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[83] *Land Bank of the Philippines v. Sps. Avanceña*, 785 Phil. 755, 764 (2016).

[84] *Republic v. Macabagdal*, G.R. No. 227215, January 10, 2018, 850 SCRA 501.

[85] *Republic of the Philippines v. Judge Gingoyon*, 514 Phil. 657, 685 (2005).

[86] *National Power Corporation v. Marasigan*, G.R. No. 220367, November 20, 2017, 845 SCRA 248, 271.

[87] REPUBLIC ACT NO. 8974 (2000), Sec. 4(a).

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2000[88] without a retroactivity clause,[89] the government's obligation to deposit such an amount will arise only with regard to property taken on or after that date. Alternatively, if the property was taken before then, the provisions of Rule 67 of the Rules of Court apply. The rules provide that the expropriating agency must deposit with an authorized government depositary an amount equivalent to the property's assessed value for taxation purposes.[90] Simply put, if the property was taken on or after November 26, 2000, the Republic must immediately pay the respondents the amount provided under R.A. No. 8974. On the other hand, if the property was taken before said date, the trial court must order the Republic to comply with the provisions of Rule 67, particularly the requirement of depositing the property's assessed value with the appropriate government depositary.

Note that R.A. No. 8974 has been repealed by R.A. No. 10752. This, however, did not affect the Republic's obligation to deposit the land's zonal value plus the value of the improvements situated thereon. The latter law substantially retained the deposit requirement, *viz.*:

> **SEC. 6.** *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 through expropriation, the appropriate implementing agency, through the Office of the Solicitor General, the Office of the Government Corporate Counsel, or their deputized government or private legal counsel, shall immediately initiate the expropriation proceedings before the proper court under the following guidelines:
>
> (a) Upon the filing of the complaint or at any time thereafter, and after due notice to the defendant, the implementing agency shall immediately deposit to the court in favor of the owner the amount equivalent to the sum of:

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[88] *Republic of the Philippines v. Judge Gingoyon, supra* note 85.

[89] *Sps. Curata, et al. v. Philippine Ports Authority*, 608 Phil. 9, 89 (2009).

[90] RULES OF COURT, Rule 67, Sec. 2.

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> (1) **One hundred percent (100%) of the value of the land based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR)** issued not more than three (3) years prior to the filing of the expropriation complaint subject to subparagraph (c) of this section;
>
> (2) **The replacement cost at current market value of the improvements and structures** as determined by:
>
> (i) The implementing agency;
>
> (ii) A government financial institution with adequate experience in property appraisal; and
>
> (iii) An independent property appraiser accredited by the BSP.
>
> (3) The current market value of crops and trees located within the property as determined by a government financial institution or an independent property appraiser to be selected as indicated in subparagraph (a) of Section 5 hereof.[91] (Emphasis supplied)

In fine, the trial court must take into account the possibility of various takings occurring on different dates. It is conceivable that there were portions of the respondent's property that were taken prior to the effectivity of R.A. No. 8974, while there were others taken thereafter. In the event of such a finding, the trial court must direct the government to comply with the requirements of Rule 67 with respect to the segment or segments taken before November 26, 2000 and, with respect to those taken on or after that date, the trial court must order the immediate payment of the sum provided under R.A. No. 8974 and R.A. No. 10752.

For clarity's sake, the Court reiterates its pronouncement that the deposit requirement differs from the obligation to pay just compensation.[92] In his Dissenting Opinion in *Sec. of the Dep't. of Public Works and Highways, et al. v. Sps. Tecson*,[93]

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[91] REPUBLIC ACT NO. 10752 (2016), Sec. 6.

[92] *National Power Corporation v. Posada, supra* note 75.

[93] 758 Phil. 604 (2015).

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Justice Presbitero J. Velasco, Jr., speaking of an analogous deposit requirement found in the Local Government Code, elaborated in this wise:

A similar requirement of posting a deposit is likewise demanded under Sec. 19 of the Local Government Code, with respect to the exercise of a local government unit's power of eminent domain. The purpose of the deposit is explained in *City of Manila v. Alegar Corporation*, thusly:

> But the advance deposit required under Section 19 of the Local Government Code constitutes an advance payment only in the event the expropriation prospers. Such deposit also has a dual purpose: as pre-payment if the expropriation succeeds and as indemnity for damages if it is dismissed. **This advance payment, a prerequisite for the issuance of a writ of possession, should not be confused with payment of just compensation for the taking of property even if it could be a factor in eventually determining just compensation**. If the proceedings fail, the money could be used to indemnify the owner for damages.[94] (Citations omitted and emphasis supplied)

On the other hand, just compensation is defined as the fair and full equivalent of the loss suffered by the owner, whose property has been taken pursuant to the state's power of eminent domain.[95] It has been more completely described as:

[T]he full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.[96]

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[94] *Id.* at 679-680.

[95] *National Power Corporation v. Court of Appeals*, 479 Phil. 850, 868 (2004).

[96] *National Transmission Corporation v. Oroville Development Corporation*, 815 Phil. 91, 105 (2017).

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It has been consistently held that the property's fair market value is the just compensation to which the owner of condemned property is entitled.[97] Market value is the price agreed on by a willing buyer and willing seller, both of whom are not compelled to enter into the transaction.[98] It has also been described as the amount fixed in the open market in the usual and ordinary course of legal trade and competition.[99]

But from what point in time must the property's fair market value be reckoned?

Section 4, Rule 67 of the Rules of Court succinctly provides the answer, *viz.*:

> **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 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**. (Emphasis supplied)

In this regard, the Court, in *National Power Corp. v. Ibrahim*,[100] ruled:

> Normally, the time of the taking coincides with the filing of the complaint for expropriation. Hence, **many rulings of this Court have equated just compensation with the value of the property as of the time of filing of the complaint** consistent with the above provision of the Rules. So too, where the institution of the action precedes entry to the property, the just compensation is to be ascertained as of the time of the filing of the complaint.[101] (Emphasis supplied and citations omitted)

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[97] *Leca Realty Corp. v. Rep. of the Phils.*, 534 Phil. 693, 706 (2006).

[98] *Napocor v. Spouses Igmedio*, 452 Phil. 649, 663 (2003).

[99] *Rep. of the Phils. v. Sps. Cancio*, 597 Phil. 342, 351 (2009).

[100] 553 Phil. 136 (2007).

[101] *Id.* at 152.

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In other words, just compensation is, as a general rule, based on the price or value of the property at the time the complaint for expropriation was filed.[102] By way of exception, *National Transmission Corporation v. Oroville Development Corporation*[103] instructs that when the government takes the property before initiating the expropriation case, the property's value at the time of the prior taking must be used as the basis for determining just compensation.

To be sure, this is in consonance with the Court's ruling in *Ansaldo v. Tantuico, Jr.*,[104] where the Court held:

> Normally, of course, **where the institution of an expropriation action precedes the taking of the property subject thereof, the just compensation is fixed as of the time of the filing of the complaint**.This is so provided by the Rules of Court, the assumption of possession by the expropriator ordinarily being conditioned on its deposit with the National or Provincial Treasurer of the value of the property as provisionally ascertained by the court having jurisdiction of the proceedings.
>
> There are instances, however, **where the expropriating agency takes over the property prior to the expropriation suit**, as in this case although, to repeat, the case at bar is quite extraordinary in that possession was taken by the expropriator more than 40 years prior to suit. In these instances, this Court has ruled that **the just compensation shall be determined as of the time of taking, not as of the time of filing of the action** of eminent domain.[105] (Citations omitted and emphasis supplied)

In this case, since the Republic initiated expropriation proceedings before taking the subject property, it follows that the land's value at the time of the filing of the complaint, *i.e.*, June 25, 1990, should be used as the basis for just compensation.

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[102] *Rep. of the Phils. v. Court of Appeals*, 612 Phil. 965, 977-978 (2009).

[103] *Supra* note 96.

[104] 266 Phil. 319 (1990).

[105] *Id.* at 323.

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Necessarily, just compensation cannot be arrived at arbitrarily. It must be determined only after an evaluation of several factors. The assessment of these factors is addressed to the sound discretion of the trial judge, who must enlist commissioners tasked to receive and appraise evidence on the property's value.

It has been held in a long line of cases that the determination of just compensation is a judicial function, one that is best addressed to the discretion of the trial court.[106] In this respect, the Court, in *Alfonso v. Land Bank of the Philippines, et al.*,[107] elaborated, thus:

> Section 1, Article VIII of the 1987 Constitution provides that "judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."
>
> The right of a landowner to just compensation for the taking of his or her private property is a legally demandable and enforceable right guaranteed by no less than the Bill of Rights, under Section 9, Article III of the Constitution. The determination of just compensation in cases of eminent domain is thus an actual controversy that calls for the exercise of judicial power by the courts. x x x.

The trial court, however, should not be without aid in the ascertainment of what constitutes just compensation. For this purpose and as alluded to earlier, the rules direct the court to appoint not more than three competent and disinterested persons as commissioners to ascertain and report to it the value of the property sought to be taken.[108] The commissioners may then determine just compensation based on the evidence presented before them, and, for the same purpose, they are also authorized to enter and inspect the property and its surroundings.[109] Finally, after the reception and scrutiny of the evidence, the commissioners

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[106] *Rep. of the Phils. v. Cebuan*, 810 Phil. 767, 779 (2017).

[107] 801 Phil. 217, 291-292 (2016).

[108] RULES OF COURT, Rule 67, Sec. 5.

[109] RULES OF COURT, Rule 67, Sec. 6.

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have the responsibility of reporting their findings to the trial court.[110]

It has been held that trial with the aid of the commissioners is a substantial right.[111] Therefore, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases.[112]

However, this does not mean that the commissioners' determination of just compensation is final and binding on the parties. Because such determination is ultimately a judicial function, the trial court is given the discretion to either accept or reject the commissioners' findings in whole or in part. If the court rejects their report, it may require them to render a supplemental report on facts yet to be taken up, or it may appoint another set of commissioners to provide it with an entirely new report.[113] The trial court is also allowed to disregard the findings of the commissioners and use its own estimate of the property's value. However, it may only do so for valid reasons, such as when the commissioners apply illegal principles to the evidence, when they disregard a clear preponderance of evidence, or when the amount allowed is either grossly inadequate or excessive.[114] Once the trial court is satisfied with the amount of just compensation, it may render judgment ordering payment thereof to the property owner.

Lastly, there is one more circumstance that must be addressed before the remand of the instant case to the trial court. This litigation has been dragging on for almost three decades. The complaint for expropriation was filed in 1990, and, as of today,

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[110] RULES OF COURT, Rule 67, Sec. 7.

[111] *Manila Electric Company v. Judge Pineda*, 283 Phil. 90, 100 (1992).

[112] *National Power Corp. v. Spouses Dela Cruz*, 543 Phil. 53, 66 (2007).

[113] RULES OF COURT, Rule 67, Sec. 8.

[114] *Forfom Development Corp. v. Phil. National Railways*, 594 Phil. 10, 33 (2008).

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the respondents have not yet been paid the fair value of their property. In eminent domain cases, just compensation entails not only the determination of the proper amount to be paid to the owners of the property, but also the payment of such amount within a reasonable time.[115]

Verily, it is the Republic that must be blamed for the lethargic pace of this case. It vacillated on its decision to expropriate the property, finally deciding to condemn the same more than fifteen years after the complaint was initially filed. More, the record also discloses that the Republic caused the postponement and resetting of numerous hearings, either due to the absence of the assigned state solicitor or because of the unavailability of the funds representing just compensation. These delays prejudiced the respondents' rights over their property, and cannot be without consequence.

In *National Power Corporation v. Manalastas (Manalastas)*,[116] the Court held that the just compensation payable to the property owner amounts to an effective forbearance on the part of the government—a proper subject of interest, *viz.*:

> *[I]f property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.* (Italics in the original)[117]

In that case, the Court awarded interest at the rate of 12% *per annum* from the time of taking up to June 30, 2013 and, thereafter, 6% *per annum* from July 1, 2013 until full satisfaction,

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[115] *Land Bank of the Philippines v. Obias, et al.*, 684 Phil. 296, 302 (2012).

[116] 779 Phil. 510 (2016).

[117] *Id.* at 516-517.

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pursuant to Section 1 of *Bangko Sentral ng Pilipinas* — Monetary Board Circular No. 799, Series of 2013.[118]

As mentioned earlier, the record of the instant case does not disclose the exact time of taking. Without this date, there is no way to determine the proper amount of interest due on the condemned property. Hence, before the trial court calculates interest, the date of entry must be established by competent evidence. Only then will the trial court be able to reckon the proper sum of interest in accordance with the Court's ruling in *Manalastas*.

Taking the foregoing into account and to encapsulate the Court's pronouncements, upon the remand of the instant case, the trial court shall designate not more than three commissioners to aid it in determining the fair market value of the respondents' property back when the complaint was filed in 1990. Then, after it satisfies itself of the amount of just compensation, it shall ascertain the exact date of entry into the property. It shall then impose legal interest on the property's value at the rate of 12% *per annum* from the time of taking up to June 30, 2013 and, thereafter, six percent *per annum* from July 1, 2013 until complete payment. Lastly, the trial court shall subtract ₱1,866,480.00 from the sum awarded, since the Republic had previously paid this amount.

WHEREFORE, the February 19, 2014 Decision and the September 15, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 94901 are **SET ASIDE**.The case is **REMANDED** to Branch 61 of the Regional Trial Court of Makati City, which is hereby directed to:

(1) **ORDER** the appointment of a substitute or representative for deceased respondent Maria Elena Posadas, or an executor or administrator for her estate;

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[118] **Section 1.** The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

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(2) **DETERMINE** the just compensation due on respondents' property in accordance with the principles laid down in this Decision;

(3) Pending the determination of the amount provided in the next preceding number, **IMMEDIATELY ORDER** the Republic to deposit:

a. The assessed value of those portions of respondents' property taken before November 26, 2000, in accordance with Section 2 of Rule 67 of the Rules of Court; and

b. 100% of the current relevant zonal valuation of those portions taken on or after November 26, 2000, plus the current market value of the structures erected thereon, in accordance with Section 4 of Republic Act No. 8974 and Section 6 of Republic Act No. 10752;

(4) **IMPOSE** legal interest on the amount arrived at as just compensation, less the amount of ₱1,866,480.00 representing the prior deposit made by the Republic and any amount that will actually be paid by the Republic as initial deposit/provisional value pursuant to the net preceding number, at the rate of 12% percent per annum from the time of taking up to June 30, 2013 and, thereafter, 6% *per annum* from July 1, 2013 until finality of this decision;

(5) **AWARD** to the respondents the total amount of just compensation inclusive of interest, which shall earn legal interest at the rate of 6% *per annum* from finality of the Decision until full satisfaction; and

(6) Lastly, anent the portions of the property included in the Republic's original complaint for which return is feasible, **REVEST** title thereto in the name of the respondents.

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The trial court is also directed to conduct the proceedings in this case with utmost dispatch and to submit to the Court a report on its findings and recommended conclusions within sixty (60) days from notice of this Decision.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Inting, and *Delos Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. 223103. February 24, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORENTINO LABUGUEN *y* FRANCISCO *alias* "TINONG," and ROMEO ZUÑIGA[1] *y* PILARTA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; IRRESISTIBLE FORCE AND/OR UNCONTROLLABLE FEAR OF AN EQUAL OR GREATER INJURY; REQUISITES. — To avail of the exempting circumstance ["of irresistible force and/or uncontrollable fear of an equal or greater injury."], the evidence must establish: (1) the existence of an uncontrollable fear; (2) that the fear must be real and imminent; and (3) the fear of an injury is greater than or at least equal to that committed. A threat of future injury is insufficient. The compulsion must be of such a character as to leave no opportunity for the accused to escape.

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[1] Also spelled as Zuniga in some parts of the records.