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March 31, 2011 of the National Labor Relations Commission (NLRC) are **REINSTATED** with **MODIFICATION** reckoning the computation of back wages from the date of petitioner's constructive dismissal on **October 24, 2009** until finality hereof, computed at **₱12,400.00** per month. The rest of the NLRC Decision stands.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 211666. February 25, 2015]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioners*, *vs.* **ARLENE R. SORIANO,** *respondent*.

SYLLABUS

1. CIVIL LAW; CIVIL CODE; DAMAGES; THE DEBT INCURRED BY THE GOVERNMENT ON ACCOUNT OF AN EXPROPRIATION CONSTITUTES A FORBEARANCE WHICH RUNS CONTRARY TO THE TRIAL COURT'S OPINION THAT THE SAME IS IN THE NATURE OF INDEMNITY FOR DAMAGES CALLING FOR APPLICATION OF ARTICLE 2209 OF THE CIVIL CODE.— At the outset, it must be noted that the RTC's reliance on *National Power Corporation v. Angas* is misplaced for the same has already been overturned by our more recent ruling in *Republic v. Court of Appeals*, wherein we held that the payment of just compensation for the expropriated property amounts to an effective forbearance on the part of the State,

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to wit: **Aside from this ruling, Republic notably overturned the Court's previous ruling in *National Power Corporation v. Angas* which held that just compensation due for expropriated properties is not a loan or forbearance of money but indemnity for damages for the delay in payment; since the interest involved is in the nature of damages rather than earnings from loans, then Art. 2209 of the Civil Code, which fixes legal interest at 6%, shall apply. x x x** Effectively, therefore, the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes a forbearance which runs contrary to the trial court's opinion that the same is in the nature of indemnity for damages calling for the application of Article 2209 of the Civil Code. Nevertheless, in line with the recent circular of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP-MB) No. 799, Series of 2013, effective July 1, 2013, the prevailing rate of interest for loans or forbearance of money is six percent (6%) per annum, in the absence of an express contract as to such rate of interest.

2. ID.; ID.; ID.; IMPOSITION OF INTEREST IS UNWARRANTED SINCE THERE WAS NO DELAY IN THE PAYMENT OF JUST COMPENSATION.— We find that the imposition of interest in this case is unwarranted in view of the fact that as evidenced by the acknowledgment receipt signed by the Branch Clerk of Court, petitioner was able to deposit with the trial court the amount representing the zonal value of the property before its taking. As often ruled by this Court, the award of interest is imposed in the nature of damages for delay in payment which, in effect, makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner. However, when there is no delay in the payment of just compensation, We have not hesitated in deleting the imposition of interest thereon for the same is justified only in cases where delay has been sufficiently established. The records of this case reveal that petitioner did not delay in its payment of just compensation as it had deposited the pertinent amount in full due to respondent on January 24, 2011, or four (4) months before the taking thereof, which was when the RTC ordered the issuance of a Writ of Possession and a Writ of Expropriation on May 27, 2011. The amount deposited was deemed by the trial court to be just, fair, and equitable, taking

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into account the well-established factors in assessing the value of land, such as its size, condition, location, tax declaration, and zonal valuation as determined by the BIR. Considering, therefore, the prompt payment by the petitioner of the full amount of just compensation as determined by the RTC, We find that the imposition of interest thereon is unjustified and should be deleted.

3. ID.; ID.; ID.; AWARD OF CONSEQUENTIAL DAMAGES LIKEWISE DELETED IN VIEW OF THE FACT THAT THE ENTIRE AREA OF THE SUBJECT PROPERTY IS BEING EXPROPRIATED, AND NOT MERELY A PORTION THEREOF, WHEREIN THE REMAINING PORTION SUFFERS AN IMPAIRMENT OR DECREASE IN VALUE.— The award of consequential damages should likewise be deleted in view of the fact that the entire area of the subject property is being expropriated, and not merely a portion thereof, wherein such remaining portion suffers an impairment or decrease in value, as enunciated in *Republic of the Philippines v. Bank of the Philippine Islands*, thus: x x x The general rule is that the just compensation to which the owner of the condemned property is entitled to is the market value. Market value is that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be paid by the buyer and received by the seller. **The general rule, however, is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property**. x x x No actual taking of the building is necessary to grant consequential damages. **Consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value. x x x** Considering that the subject property is being expropriated in its entirety, there is no remaining portion which may suffer an impairment or decrease in value as a result of the expropriation. Hence, the award of consequential damages is improper.

4. TAXATION; NATIONAL INTERNAL REVENUE CODE; INCOME TAXATION; CAPITAL GAINS TAX FROM SALE OF REAL PROPERTY; LIABILITY OF THE

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SELLER, NOT THE BUYER, WHO WOULD GENERALLY SHOULDER THE TAX.— Anent petitioner's contention that it cannot be made to pay the value of the transfer taxes in the nature of capital gains tax and documentary stamp tax, which are necessary for the transfer of the subject property from the name of the respondent to that of the petitioner, the same is partly meritorious. With respect to the capital gains tax, We find merit in petitioner's posture that pursuant to Sections 24(D) and 56(A)(3) of the 1997 National Internal Revenue Code (*NIRC*), capital gains tax due on the sale of real property is a liability for the account of the seller. x x x Thus, it has been held that since capital gains is a tax on passive income, it is the seller, not the buyer, who generally would shoulder the tax. Accordingly, the BIR, in its BIR Ruling No. 476-2013, dated December 18, 2013, constituted the DPWH as a withholding agent to withhold the six percent (6%) final withholding tax in the expropriation of real property for infrastructure projects. As far as the government is concerned, therefore, the capital gains tax remains a liability of the seller since it is a tax on the seller's gain from the sale of the real estate.

5. ID.; ID.; DOCUMENTARY STAMP TAX; ANY OF THE PARTIES TO A TRANSACTION SHALL BE LIABLE FOR THE FULL AMOUNT, UNLESS THEY AGREE AMONG THEMSELVES ON WHO SHALL BE LIABLE FOR THE SAME.— As a general rule, therefore, any of the parties to a transaction shall be liable for the full amount of the documentary stamp tax due, unless they agree among themselves on who shall be liable for the same. In this case, there is no agreement as to the party liable for the documentary stamp tax due on the sale of the land to be expropriated. But while petitioner rejects any liability for the same, this Court must take note of petitioner's Citizen's Charter, which functions as a guide for the procedure to be taken by the DPWH in acquiring real property through expropriation under RA 8974.

6. ID.; ID.; ID.; THE DOCUMENTARY STAMP TAX SHALL BE FOR THE ACCOUNT OF PETITIONER IN CASE AT BAR; THE CITIZENS CHARTER ISSUED BY PETITIONER ITSELF EXPLICITLY PROVIDES THAT THE DOCUMENTARY STAMP TAX, TRANSFER TAX, AND REGISTRATION FEE DUE ON THE TRANSFER

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OF THE TITLE OF LAND IN THE NAME OF THE REPUBLIC SHALL BE SHOULDERED BY THE IMPLEMENTING AGENCY OF THE PETITIONER.— The Citizen's Charter, issued by petitioner DPWH itself on December 4, 2013, explicitly provides that the documentary stamp tax, transfer tax, and registration fee due on the transfer of the title of land in the name of the Republic shall be shouldered by the implementing agency of the DPWH, while the capital gains tax shall be paid by the affected property owner. Thus, while there is no specific agreement between petitioner and respondent, petitioner's issuance of the Citizen's Charter serves as its notice to the public as to the procedure it shall generally take in cases of expropriation under RA 8974. Accordingly, it will be rather unjust for this Court to blindly accede to petitioner's vague rejection of liability in the face of its issuance of the Citizen's Charter, which contains a clear and unequivocal assumption of accountability for the documentary stamp tax. Had petitioner provided this Court with more convincing basis, apart from a mere citation of an indefinite provision of the 1997 NIRC, showing that it should be respondent-seller who shall be liable for the documentary stamp tax due on the sale of the subject property, its rejection of the payment of the same could have been sustained.

LEONEN, *J.*, *concurring opinion:*

1. CIVIL LAW; CIVIL CODE; DAMAGES; LEGAL INTEREST IN THE FORM OF MONETARY INTEREST FOR FORBEARANCE OR COMPENSATORY INTEREST FOR DAMAGES DOES NOT APPLY IN CASE AT BAR SINCE THERE IS NO SHOWING THAT THE OWNER WAS DENIED PAYMENT OF JUST COMPENSATION NOR WAS THERE ANY DELAY IN THE PAYMENT THEREOF.— Clearly, the state through the agency causing the taking complies with the requirements for the issuance of a writ of possession only when it pays the owner. Of course, the owner may contest the proffered value by the agency or the power of the agency to exercise eminent domain, the necessity of the taking, or the public character of the use for which the property is being condemned. In such cases, the value required by Section 4(a) will be deposited with the trial court with

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jurisdiction over the case. This case does not present these issues, and I am of the view that the pronouncements should be limited only to cases where there are no objections to the taking of the property. Legal interest, whether in the form of monetary interest (for forbearance) or compensatory interest (for damages) also does not apply in this case. In *Sun Life of Canada (Philippines), Inc. v. Sandra Tan Kit*, the two (2) kinds of interest rates were distinguished. Monetary interest rate is determined by parties that enter into a contract of loan, or any other contract involving the use or forbearance of money. Thus, monetary interest represents the *cost of letting another person use or borrow money*. On the other hand, compensatory interest rates are determined by courts as a penalty or indemnity for damages in monetary judgments. There is no showing that the owner was denied payment of the amount deposited by the Department of Public Works and Highways in accordance with Republic Act No. 8974. Furthermore, there is no complaint by the landowner of any delay in payment. The property was subject to a writ of possession dated March 27, 2011. Should there be any delay, I am of the view that the value of the property should be at the time of the taking, but the actual price paid should be computed using the formula for present value as of the time of payment. In other words, we compute for replacement value. Monetary interest or compensatory interest will not be relevant.

2. TAXATION; NATIONAL INTERNAL REVENUE CODE; DOCUMENTARY STAMP TAX; DOCUMENTARY STAMP TAXES ARE NOT NECESSARILY FOR THE ACCOUNT OF THE SELLER, ESPECIALLY SO IN EXPROPRIATION CASES WHERE THE SALE IS COERCED AND THE OWNER IS UNWILLING.— I agree that documentary stamp taxes are not necessarily for the account of the seller. This is especially so in expropriation cases where the sale is coerced and the owner is unwilling. I, however, doubt whether the "Citizen's Charter" of the Department of Public Works and Highways, published in its website, should have the effect of a regulation. At best, it is evidence that can lead to a finding of estoppel if all the elements of that equitable defense are alleged and proven by the proper party.

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APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review under Rule 45 of the Rules of Court assailing the Decision[1] dated November 15, 2013 and Order[2] dated March 10, 2014 of the Regional Trial Court (*RTC*), Valenzuela City, Branch 270, in Civil Case No. 140-V-10.

The antecedent facts are as follows:

On October 20, 2010, petitioner Republic of the Philippines, represented by the Department of Public Works and Highways (*DPWH*), filed a Complaint[3] for expropriation against respondent Arlene R. Soriano, the registered owner of a parcel of land consisting of an area of 200 square meters, situated at Gen. T. De Leon, Valenzuela City, and covered by Transfer Certificate of Title (*TCT*) No. V-13790.[4] In its Complaint, petitioner averred that pursuant to Republic Act (*RA*) No. 8974, otherwise known as "An Act to Facilitate the Acquisition of Right-Of-Way, Site or Location for National Government Infrastructure Projects and for other Purposes," the property sought to be expropriated shall be used in implementing the construction of the North Luzon Expressway (*NLEX*)- Harbor Link Project (Segment 9) from NLEX to MacArthur Highway, Valenzuela City.[5]

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[1] Penned by Judge Evangeline M. Francisco; Annex "A" to Petition, *rollo*, pp. 27-32.

[2] Annex "B" to Petition, *id*. at 33-34.

[3] Annex "D" to Petition, *id*. at 38-49.

[4] Annex "E" to Petition, *id*. at 50.

[5] *Id*. at 27.

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Petitioner duly deposited to the Acting Branch Clerk of Court the amount of ₱420,000.00 representing 100% of the zonal value of the subject property. Consequently, in an Order[6] dated May 27, 2011, the RTC ordered the issuance of a Writ of Possession and a Writ of Expropriation for failure of respondent, or any of her representatives, to appear despite notice during the hearing called for the purpose.

In another Order[7] dated June 21, 2011, the RTC appointed the following members of the Board of Commissioners for the determination of just compensation: (1) Ms. Eunice O. Josue, Officer-in-Charge, RTC, Branch 270, Valenzuela City; (2) Atty. Cecilynne R. Andrade, Acting Valenzuela City Assessor, City Assessor's Office, Valenzuela City; and (3) Engr. Restituto Bautista, of Brgy. Bisig, Valenzuela City. However, the trial court subsequently revoked the appointment of the Board for their failure to submit a report as to the fair market value of the property to assist the court in the determination of just compensation and directed the parties to submit their respective position papers.[8] Thereafter, the case was set for hearing giving the parties the opportunity to present and identify all evidence in support of their arguments therein.

According to the RTC, the records of the case reveal that petitioner adduced evidence to show that the total amount deposited is just, fair, and equitable. Specifically, in its Position Paper, petitioner alleged that pursuant to a Certification issued by the Bureau of Internal Revenue (*BIR*), Revenue Region No. 5, the zonal value of the subject property in the amount of ₱2,100.00 per square meter is reasonable, fair, and just to compensate the defendant for the taking of her property in the total area of 200 square meters.[9] In fact, Tax Declaration No. C-018-07994, dated November 13, 2009 submitted by petitioner, shows that the value of the subject property is at a lower rate of ₱400.00 per square

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[6] Annex "G" to Petition, *id*. at 53.

[7] Annex "H" to Petition, *id*. at 54.

[8] Annex "I" to Petition, *id*. at 55.

[9] *Id*. at 28.

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meter. Moreover, as testified to by Associate Solicitor III Julie P. Mercurio, and as affirmed by the photographs submitted, the subject property is poorly maintained, covered by shrubs and weeds, and not concretely-paved. It is located far from commercial or industrial developments in an area without a proper drainage system, can only be accessed through a narrow dirt road, and is surrounded by adjacent dwellings of sub-standard materials.

Accordingly, the RTC considered respondent to have waived her right to adduce evidence and to object to the evidence submitted by petitioner for her continued absence despite being given several notices to do so.

On November 15, 2013, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, with the foregoing determination of just compensation, judgment is hereby rendered:

1) Declaring plaintiff to have lawful right to acquire possession of and title to 200 square meters of defendant Arlene R. Soriano's parcel of land covered by TCT V-13790 necessary for the construction of the NLEX – Harbor Link Project (Segment 9) from NLEX to MacArthur Highway Valenzuela City;

2) Condemning portion to the extent of 200 square meters of the above-described parcel of land including improvements thereon, if there be any, free from all liens and encumbrances;

3) Ordering the plaintiff to pay defendant Arlene R. Soriano Php2,100.00 per square meter or the sum of Four Hundred Twenty Thousand Pesos (Php420,000.00) for the 200 square meters as fair, equitable, and just compensation with legal interest at 12% per annum from the taking of the possession of the property, subject to the payment of all unpaid real property taxes and other relevant taxes, if there be any;

4) Plaintiff is likewise ordered to pay the defendant consequential damages which shall include the value of the transfer tax necessary for the transfer of the subject

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property from the name of the defendant to that of the plaintiff;

5) The Office of the Register of Deeds of Valenzuela City, Metro Manila is directed to annotate this Decision in Transfer Certificate of Title No. V-13790 registered under the name of Arlene R. Soriano.

Let a certified true copy of this decision be recorded in the Registry of Deeds of Valenzuela City.

Records of this case show that the Land Bank Manager's Check Nos. 0000016913 dated January 21, 2011 in the amount of Php400,000.00 and 0000017263 dated April 28, 2011 in the amount of Php20,000.00 issued by the Department of Public Works and Highways (DPWH) are already stale. Thus, the said Office is hereby directed to issue another Manager's Check in the total amount Php420,000.00 under the name of the Office of the Clerk of Court, Regional Trial Court, Valenzuela City earmarked for the instant case.[10]

Petitioner filed a Motion for Reconsideration maintaining that pursuant to Bangko Sentral ng Pilipinas (*BSP*) Circular No. 799, Series of 2013, which took effect on July 1, 2013, the interest rate imposed by the RTC on just compensation should be lowered to 6% for the instant case falls under a loan or forbearance of money.[11] In its Order[12] dated March 10, 2014, the RTC reduced the interest rate to 6% per annum not on the basis of the aforementioned Circular, but on Article 2209 of the Civil Code, *viz.*:

However, the case of *National Power Corporation v. Honorable Zain B. Angas* is instructive.

In the aforementioned case law, which is similar to the instant case, the Supreme Court had the occasion to rule that it is well-settled that the aforequoted provision of Bangko Sentral ng Pilipinas Circular applies only to a loan or forbearance of money, goods or credits. However, the term "judgments" as used in Section 1 of the Usury Law and the previous Central Bank Circular No. 416, should

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[10] *Rollo*, pp. 30-32.

[11] *Id.* at 33.

[12] *Supra* note 2.

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be interpreted to mean only judgments involving loan or forbearance of money, goods or credits, following the principle of *ejusdem generis*. And applying said rule on statutory construction, the general term "judgments" can refer only to judgments in cases involving loans or forbearance of any money, goods, or credits. Thus, the High Court held that, Art. 2209 of the Civil Code, and not the Central Bank Circular, is the law applicable.

Art. 2009 of the Civil Code reads:

> "If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum."

Further in that case, the Supreme Court explained that the transaction involved is clearly not a loan or forbearance of money, goods or credits but expropriation of certain parcels of land for a public purpose, the payment of which is without stipulation regarding interest, and the interest adjudged by the trial court is in the nature of indemnity for damages. The legal interest required to be paid on the amount of just compensation for the properties expropriated is manifestly in the form of indemnity for damages for the delay in the payment thereof. It ultimately held that Art. 2209 of the Civil Code shall apply.[13]

On May 12, 2014, petitioner filed the instant petition invoking the following arguments:

I.

RESPONDENT IS NOT ENTITLED TO THE LEGAL INTEREST OF 6% PER ANNUM ON THE AMOUNT OF JUST COMPENSATION OF THE SUBJECT PROPERTY AS THERE WAS NO DELAY ON THE PART OF PETITIONER.

II.

BASED ON THE NATIONAL INTERNAL REVENUE CODE OF 1997 AND THE LOCAL GOVERNMENT CODE, IT IS RESPONDENT'S OBLIGATION TO PAY THE TRANSFER TAXES.

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[13] *Rollo*, pp. 33-34. (Citations omitted)

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Petitioner maintains that if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value computed from the time the property is taken up to the time when compensation is actually paid or deposited with the court.[14] Thus, legal interest applies only when the property was taken prior to the deposit of payment with the court and only to the extent that there is delay in payment. In the instant case, petitioner posits that since it was able to deposit with the court the amount representing the zonal value of the property before its taking, it cannot be said to be in delay, and thus, there can be no interest due on the payment of just compensation.[15] Moreover, petitioner alleges that since the entire subject property was expropriated and not merely a portion thereof, it did not suffer an impairment or decrease in value, rendering the award of consequential damages nugatory. Furthermore, petitioner claims that contrary to the RTC's instruction, transfer taxes, in the nature of Capital Gains Tax and Documentary Stamp Tax, necessary for the transfer of the subject property from the name of the respondent to that of the petitioner are liabilities of respondent and not petitioner.

The petition is partly meritorious.

At the outset, it must be noted that the RTC's reliance on *National Power Corporation v. Angas* is misplaced for the same has already been overturned by our more recent ruling in *Republic v. Court of Appeals*,[16] wherein we held that the payment of just compensation for the expropriated property amounts to an effective forbearance on the part of the State, to wit:

Aside from this ruling, Republic notably overturned the Court's previous ruling in *National Power Corporation v. Angas* which held that just compensation due for expropriated properties is

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[14] *Republic of the Philippines v. Court of Appeals, et al.*, 433 Phil. 106, 122 (2002).

[15] *Rollo*, p. 16.

[16] *Supra* note 13.

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not a loan or forbearance of money but indemnity for damages for the delay in payment; since the interest involved is in the nature of damages rather than earnings from loans, then Art. 2209 of the Civil Code, which fixes legal interest at 6%, shall apply.

In Republic, the Court recognized that the just compensation due to the landowners for their expropriated property amounted to an effective forbearance on the part of the State. Applying the *Eastern Shipping Lines* ruling, the Court fixed the applicable interest rate at 12% per annum, computed from the time the property was taken until the full amount of just compensation was paid, in order to eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. In the Court's own words:

> The Bulacan trial court, in its 1979 decision, was correct in imposing interest[s] on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and "took" the property in September 1969. This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.

We subsequently upheld Republic's 12% per annum interest rate on the unpaid expropriation compensation in the following cases: *Reyes v. National Housing Authority, Land Bank of the Philippines v. Wycoco, Republic v. Court of Appeals, Land Bank of the Philippines v. Imperial, Philippine Ports Authority v. Rosales-Bondoc, and Curata v. Philippine Ports Authority*.[17]

Effectively, therefore, the debt incurred by the government on account of the taking of the property subject of an expropriation constitutes a forbearance[18] which runs contrary to the trial court's opinion that the same is in the nature of indemnity for damages calling for the application of Article 2209 of the Civil Code.

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[17] *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippine*s, 647 Phil. 251, 274-275 (2010). (Emphasis supplied)

[18] *Sy v. Local Government of Quezon City*, G.R. No. 202690, June 5, 2013, 697 SCRA 621, 631.

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Nevertheless, in line with the recent circular of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP-MB) No. 799, Series of 2013, effective July 1, 2013, the prevailing rate of interest for loans or forbearance of money is six percent (6%) per annum, in the absence of an express contract as to such rate of interest.

Notwithstanding the foregoing, We find that the imposition of interest in this case is unwarranted in view of the fact that as evidenced by the acknowledgment receipt[19] signed by the Branch Clerk of Court, petitioner was able to deposit with the trial court the amount representing the zonal value of the property before its taking. As often ruled by this Court, the award of interest is imposed in the nature of damages for delay in payment which, in effect, makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner.[20] However, when there is no delay in the payment of just compensation, We have not hesitated in deleting the imposition of interest thereon for the same is justified only in cases where delay has been sufficiently established.[21]

The records of this case reveal that petitioner did not delay in its payment of just compensation as it had deposited the pertinent amount in full due to respondent on January 24, 2011, or four (4) months before the taking thereof, which was when the RTC ordered the issuance of a Writ of Possession and a Writ of Expropriation on May 27, 2011. The amount deposited

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[19] *Rollo*, p. 67.

[20] *Land Bank of the Philippines v. Rivera,* G.R. No. 182431, February 27, 2013, 692 SCRA 148, 153, citing *Land Bank of the Philippines v. Celada*, 515 Phil. 467, 484 (2006) citing *Land Bank of the Philippines v. Wycoco*, 464 Phil. 83, 100 (2004), further citing *Reyes v. National Housing Authority*, 443 Phil. 603 (2003).

[21] *Land Bank of the Philippines v. Escandor, et al.,* 647 Phil. 20, 30 (2010), citing *Land Bank of the Philippines v. Celada*, 515 Phil. 467, 484 (2006); 479 SCRA 495, 512; see also *Apo Fruits Corporation and Hijo Plantation, Inc. v. Court of Appeals and Land Bank of the Philippines*, 622 Phil. 215, 238 (2009).

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was deemed by the trial court to be just, fair, and equitable, taking into account the well-established factors in assessing the value of land, such as its size, condition, location, tax declaration, and zonal valuation as determined by the BIR. Considering, therefore, the prompt payment by the petitioner of the full amount of just compensation as determined by the RTC, We find that the imposition of interest thereon is unjustified and should be deleted.

Similarly, the award of consequential damages should likewise be deleted in view of the fact that the entire area of the subject property is being expropriated, and not merely a portion thereof, wherein such remaining portion suffers an impairment or decrease in value, as enunciated in *Republic of the Philippines v. Bank of the Philippine Islands*,[22] thus:

> x x x The general rule is that the just compensation to which the owner of the condemned property is entitled to is the market value. Market value is that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be paid by the buyer and received by the seller. **The general rule, however, is modified where only a part of a certain property is expropriated. In such a case, the owner is not restricted to compensation for the portion actually taken, he is also entitled to recover the consequential damage, if any, to the remaining part of the property**.
>
> x x x x x x x x x
>
> No actual taking of the building is necessary to grant consequential damages. **Consequential damages are awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value.** The rules on expropriation clearly provide a legal basis for the award of consequential damages. Section 6 of Rule 67 of the Rules of Court provides:
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> > x x x **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 public purpose of the

[22] G.R. No. 203039, September 11, 2013, 705 SCRA 650.

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> 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.

In *B.H. Berkenkotter & Co. v. Court of Appeals*, we held that:

> To determine just compensation, the trial court should first ascertain the market value of the property, to which should be added the consequential damages after deducting therefrom the consequential benefits which may arise from the expropriation. If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the property should be paid in every case.[23]

Considering that the subject property is being expropriated in its entirety, there is no remaining portion which may suffer an impairment or decrease in value as a result of the expropriation. Hence, the award of consequential damages is improper.

Anent petitioner's contention that it cannot be made to pay the value of the transfer taxes in the nature of capital gains tax and documentary stamp tax, which are necessary for the transfer of the subject property from the name of the respondent to that of the petitioner, the same is partly meritorious.

With respect to the capital gains tax, We find merit in petitioner's posture that pursuant to Sections 24(D) and 56(A)(3) of the 1997 National Internal Revenue Code (*NIRC*), capital gains tax due on the sale of real property is a liability for the account of the seller, to wit:

> Section 24. *Income Tax Rates* –
>
> x x x x x x x x x
>
> (D) Capital Gains from Sale of Real Property. –

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[23] *Republic v. Bank of the Philippine Islands, supra*, at 664-666. (Citations omitted; emphasis ours)

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(1) In General. – The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other disposition of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24(A)or under this Subsection, at the option of the taxpayer.

x x x x x x x x x

Section 56. Payment and Assessment of Income Tax for Individuals and Corporations. –

(A) Payment of Tax –

x x x x x x x x x

(3) Payment of Capital Gains Tax. – The total amount of tax imposed and prescribed under Section 24 (c), 24(D), 27(E)(2), 28(A)(8)(c) and 28(B)(5)(c) shall be paid on the date the return prescribed therefor is filed by the person liable thereto: Provided, That if the seller submits proof of his intention to avail himself of the benefit of exemption of capital gains under existing special laws, no such payments shall be required : Provided, further, That in case of failure to qualify for exemption under such special laws and implementing rules and regulations, the tax due on the gains realized from the original transaction shall immediately become due and payable, subject to the penalties prescribed under applicable provisions of this Code: Provided, finally, That if the seller, having paid the tax, submits such proof of intent within six (6) months from the registration of the document transferring the real property, he shall be entitled to a refund of such tax upon verification of his compliance with the requirements for such exemption.

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Thus, it has been held that since capital gains is a tax on passive income, it is the seller, not the buyer, who generally would shoulder the tax.[24] Accordingly, the BIR, in its BIR Ruling No. 476-2013, dated December 18, 2013, constituted the DPWH as a withholding agent to withhold the six percent (6%) final withholding tax in the expropriation of real property for infrastructure projects. As far as the government is concerned, therefore, the capital gains tax remains a liability of the seller since it is a tax on the seller's gain from the sale of the real estate.[25]

As to the documentary stamp tax, however, this Court finds inconsistent petitioner's denial of liability to the same. Petitioner cites Section 196 of the 1997 NIRC as its basis in saying that the documentary stamp tax is the liability of the seller, *viz.*:

SECTION 196. Stamp Tax on Deeds of Sale and Conveyances of Real Property. – On all conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: Provided, That when one of the contracting parties is the Government, the tax herein imposed shall be based on the actual consideration:

> (a) When the consideration, or value received or contracted to be paid for such realty, after making proper allowance of any encumbrance, does not exceed One thousand pesos (₱1,000), Fifteen pesos (₱15.00).

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[24] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 173425, September 4, 2012, 679 SCRA 566, 586, citing *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* 602 Phil. 100, 123 (2009).

[25] *Chua v. Court of Appeals*, 449 Phil. 25, 50 (2003).

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(b) For each additional One thousand pesos (₱1,000), or fractional part thereof in excess of One thousand pesos (₱1,000) of such consideration or value, Fifteen pesos (₱15.00).

When it appears that the amount of the documentary stamp tax payable hereunder has been reduced by an incorrect statement of the consideration in any conveyance, deed, instrument or writing subject to such tax the Commissioner, provincial or city Treasurer, or other revenue officer shall, from the assessment rolls or other reliable source of information, assess the property of its true market value and collect the proper tax thereon.

Yet, a perusal of the provision cited above does not explicitly impute the obligation to pay the documentary stamp tax on the seller. In fact, according to the BIR, all the parties to a transaction are primarily liable for the documentary stamp tax, as provided by Section 2 of BIR Revenue Regulations No. 9-2000, which reads:[26]

SEC. 2. *Nature of the Documentary Stamp Tax and Persons Liable for the Tax*. –

(a) *In General*. – **The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against "the person making, signing, issuing, accepting, or transferring" the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. Any of the parties thereto shall be liable for the full amount of the tax due:** *Provided, however*, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.

(b) *Exception*. – Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax.[27]

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[26] *Philacor Credit Corporation v. Commissioner of Internal Revenue*, G.R. No. 169899, February 6, 2013, 690 SCRA 28, 38, citing BIR Revenue Regulations No. 9-2000, November 22, 2000.

[27] Emphasis ours.

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As a general rule, therefore, any of the parties to a transaction shall be liable for the full amount of the documentary stamp tax due, unless they agree among themselves on who shall be liable for the same.

In this case, there is no agreement as to the party liable for the documentary stamp tax due on the sale of the land to be expropriated. But while petitioner rejects any liability for the same, this Court must take note of petitioner's Citizen's Charter,[28] which functions as a guide for the procedure to be taken by the DPWH in acquiring real property through expropriation under RA 8974. **The Citizen's Charter, issued by petitioner DPWH itself on December 4, 2013, explicitly provides that the documentary stamp tax, transfer tax, and registration fee due on the transfer of the title of land in the name of the Republic shall be shouldered by the implementing agency of the DPWH, while the capital gains tax shall be paid by the affected property owner**.[29] Thus, while there is no specific agreement between petitioner and respondent, petitioner's issuance of the Citizen's Charter serves as its notice to the public as to the procedure it shall generally take in cases of expropriation under RA 8974. Accordingly, it will be rather unjust for this Court to blindly accede to petitioner's vague rejection of liability in the face of its issuance of the Citizen's Charter, which contains a clear and unequivocal assumption of accountability for the documentary stamp tax. Had petitioner provided this Court with more convincing basis, apart from a mere citation of an indefinite provision of the 1997 NIRC, showing that it should be respondent-seller who shall be liable for the documentary stamp tax due on the sale of the subject property, its rejection of the payment of the same could have been sustained.

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED.** The Decision and Order, dated November 15, 2013 and March 10, 2014, respectively, of the

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[28] http://www.dpwh.gov.ph/pdf/DPWH%20Citizen's%20Charter.pdf. (last accessed February 12, 2015).

[29] DPWH Citizen's Charter, *id*., p. 22.

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Regional Trial Court, Valenzuela City, Branch 270, in Civil Case No. 140-V-10 are hereby **MODIFIED**, in that the imposition of interest on the payment of just compensation as well as the award of consequential damages are deleted. In addition, respondent Arlene R. Soriano is **ORDERED** to pay for the capital gains tax due on the transfer of the expropriated property, while the documentary stamp tax, transfer tax, and registration fee shall be for the account of petitioner.

SO ORDERED.

Velasco, Jr. (Chairperson), Villarama, Jr., and *Reyes, JJ.,* concur.

Leonen,[*] *J.,* see separate concurring opinion.

CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

Republic Act No. 8974, Section 4 provides in part:

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

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

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[*] Designated Acting Member, in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 8, 2014.

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. . . . . .

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

Clearly, the state through the agency causing the taking complies with the requirements for the issuance of a writ of possession only when it pays the owner.

Of course, the owner may contest the proffered value by the agency[1] or the power of the agency to exercise eminent domain, the necessity of the taking, or the public character of the use for which the property is being condemned. In such cases, the value required by Section 4(a) will be deposited with the trial court with jurisdiction over the case.

This case does not present these issues, and I am of the view that the pronouncements should be limited only to cases where there are no objections to the taking of the property.

Legal interest, whether in the form of monetary interest (for forbearance) or compensatory interest (for damages) also does not apply in this case. In *Sun Life of Canada (Philippines), Inc. v. Sandra Tan Kit*,[2] the two (2) kinds of interest rates were distinguished.[3] Monetary interest rate is determined by parties

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[1] Rep. Act No. 8974 (2000), Sec. 4, par. 4 states:

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

[2] G.R. No. 183272, October 15, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/ jurisprudence/2014/october2014/183272.pdf> [Per *J.* Del Castillo, Second Division].

[3] *Id*. at 7. "'Monetary interest refers to the compensation set by the parties for the use or forbearance of money.' No such interest shall be due unless it has been expressly stipulated in writing. 'On the other hand,

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that enter into a contract of loan, or any other contract involving the use or forbearance of money. Thus, monetary interest represents the *cost of letting another person use or borrow money*. On the other hand, compensatory interest rates are determined by courts as a penalty or indemnity for damages in monetary judgments.

There is no showing that the owner was denied payment of the amount deposited by the Department of Public Works and Highways in accordance with Republic Act No. 8974.

Furthermore, there is no complaint by the landowner of any delay in payment. The property was subject to a writ of possession dated March 27, 2011.

Should there be any delay, I am of the view that the value of the property should be at the time of the taking, but the actual price paid should be computed using the formula for present value as of the time of payment.[4] In other words, we compute for replacement value. Monetary interest or compensatory interest will not be relevant.

Finally, I agree that documentary stamp taxes are not necessarily for the account of the seller. This is especially so in expropriation cases where the sale is coerced and the owner is unwilling. I, however, doubt whether the "Citizen's Charter" of the Department of Public Works and Highways, published in its website, should have the effect of a regulation. At best, it is evidence that can lead to a finding of estoppel if all the elements of that equitable defense are alleged and proven by the proper party.

ACCORDINGLY, I concur that the Petition be **PARTIALLY GRANTED**. The Decision dated November 15, 2013 and Order dated March 10, 2014 of the Regional Trial Court in Civil Case No. 140-V-10 are hereby **MODIFIED**, in that the imposition

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compensatory interest refers to the penalty or indemnity for damages imposed by law or by the courts.'"

[4] *J.* Leonen, Separate Opinion in *Heirs of Spouses Domingo Tria Consorcia Camano Tria v. Land Bank of the Philippines,* G.R. No. 170245, July 1, 2013, 700 SCRA 188, 205-209 [Per *J.* Peralta, Third Division].

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of interest on the payment of just compensation and the award of consequential damages are deleted. In addition, respondent is **ORDERED** to pay for the capital gains tax due to the transfer of the expropriated property, while the documentary stamp tax, transfer tax, and registration fee shall be for the account of petitioner.

FIRST DIVISION

[G.R. No. 212565. February 25, 2015]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. **BENJAMIN CASAS *y* VINTULAN**, *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; THERE CAN BE NO SELF-DEFENSE UNLESS THE VICTIM COMMITTED UNLAWFUL AGGRESSION AGAINST THE PERSON WHO RESORTED TO SELF-DEFENSE.— Preliminarily, Casas failed to prove any unlawful aggression on the part of either Joel or Eligio, which is a condition *sine qua non* for the justifying circumstance of self-defense to obtain. **As case law puts it, there can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense**. As shown by the records, it was Casas who was actually the aggressor, as he was the one who wielded a knife, brought it to bear on Eligio, then on Joel as he lay prostrate, and again on Eligio as he was fleeing. Being the party initiating the attack, and overbearing with a deadly weapon, Casas cannot successfully claim that there was unlawful aggression. Verily, for unlawful aggression to be appreciated, there must be an actual, sudden and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude, as against the one claiming self-defense. Evidently, the contrary happened in this case.