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FIRST DIVISION

[G.R. No. 129079. December 2, 1998]

REPUBLIC OF THE PHILIPPINES represented by the Department of Trade and Industry, *petitioner, vs.* **HON. LUCENITO N. TAGLE, Presiding Judge of RTC, Imus, Cavite, Branch 20; and HELENA Z. BENITEZ,** *respondents.*

SYNOPSIS

This is a petition for *certiorari* under Rule 65 of the Rules of Court assailing the Orders of the Regional Trial Court of Imus, Cavite quashing the May 24, 1996 writ of possession issued earlier, pursuant to Executive Order 1035 and denying the motion for reconsideration of said Order.

The main issue in this present petition is whether the respondent judge may quash a writ of possession on the ground that the expropriating government agency is already occupying the property sought to be expropriated.

The expropriation of real property does not include mere physical entry or occupation of the land. In exercising the power of eminent domain, petitioner intended to acquire not only physical possession but also the legal right to possess and ultimately to own the subject property. Mere physical entry and occupation of the property fall short of the taking of title. Petitioner's actual occupation does not by itself include its acquisition of all the rights of ownership. Petitioner's right to possess did not attend its initial physical possession of the property because the lease, which had authorized said possession, lapsed. Petitioner wanted not merely possession *de facto* but possession *de jure* as well.

Under Section 7 of Executive Order No. 1035, it is the ministerial duty of courts to issue a writ of possession within five days from the time the government deposits ten (10) percent of the just compensation payable. Moreover, such writ cannot be nullified by an adverse decision in an ejectment proceeding involving the same property and the same parties. The Supreme

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Court noted that petitioner has deposited not just the ten (10) percent required under EO 1035, but the whole amount of the just compensation that private respondent is entitled to. Thus, there is no legal impediment for the issuance of a writ of possession in favor of petitioner. Precisely, the purpose of institution of expropriation proceedings is to prevent petitioner from being ejected from the subject property. Thus, the Court held that, in quashing the writ of possession, respondent judge violated EO 1035. His assailed Orders were therefore void.

SYLLABUS

1. **POLITICAL LAW; INHERENT POWER OF THE STATE; EMINENT DOMAIN; PREVAILS OVER EJECTMENT CASE.** — It is well-settled that eminent domain is an inherent power of the State that need not be granted even by the fundamental law. Section 9, Article III of the Constitution, in mandating that "[p]rivate property shall not be taken for public use without just compensation," merely imposes a limit on the governments exercise of this power and provides a measure of protection to the individual's right to property. Thus, in J.M. Tuason & Co. and Cuatico, the Court merely enforced the constitutional limitation regarding the payment of just compensation. Clearly, an ejectment suit ordinarily should not prevail over the State's power of eminent domain.

2. **ID.; ID.; ID.; E.O. NO. 1035; EXPROPRIATION PROCEEDING; WRIT OF POSSESSION; ISSUANCE THEREOF A MINISTERIAL DUTY OF THE COURT AFTER GOVERNMENT DEPOSITED 10% OF THE JUST COMPENSATION PAYABLE; WRIT OF POSSESSION CANNOT BE NULLIFIED BY ADVERSE DECISION IN EJECTMENT PROCEEDING.** — Executive Order No. 1035 (EO 1035) was enacted to facilitate government acquisition of private property to be used for infrastructure or other development projects. Under Section 7 thereof, it is the ministerial duty of courts to issue a writ of possession within five days from the time the government deposits 10 percent of the just compensation payable. Moreover, such writ cannot be nullified by an adverse decision in an ejectment proceeding involving the same property and the same parties.

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3. **ID.; ID.; ID.; ID.; ID.; ID.; IMMEDIATE ISSUANCE THEREOF IS NECESSARY SINCE PHYSICAL POSSESSION IS NOT EQUIVALENT WITH ACQUISITION OF OWNERSHIP OF THE EXPROPRIATED PROPERTY.** — What will happen if the required writ of possession is not issued? This question becomes very important because the Municipal Trial Court (MTC), where private respondent sued petitioner for unlawful detainer, has rendered a decision ordering petitioner to vacate the property. It would be circuitous, if not legally absurd, for this Court to require petitioner to first vacate the property in view of the adverse judgment in the unlawful detainer case, and soon afterwards, order the trial court to issue in petitioner's favor a writ of possession pursuant to the expropriation proceedings. Such a scenario is a bureaucratic waste of precious time and resources. This precisely is the sort of pernicious and unreasonable delay of government infrastructure or development projects, which EO 1035 intended to address by requiring the immediate issuance of a writ of possession. Ineludibly, said writ is both necessary and practical, because mere physical possession that is gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership over, or even the right to possess, the expropriated property.

4. **ID.; ID.; ID.; ID.; ID.; ID.; ISSUANCE THEREOF PROPER WHERE THE GOVERNMENT DEPOSITED NOT ONLY 10% BUT THE WHOLE AMOUNT OF JUST COMPENSATION PAYABLE.** — We note that in the present case, petitioner has deposited not just the 10 percent required under EO 1035, but the whole amount of the just compensation that private respondent is entitled to. Thus, we are unable to find any legal impediment for the issuance of a writ of possession in favor of petitioner. Precisely, the purpose of instituting expropriation proceedings is to prevent petitioner from being ejected from the subject property; otherwise, the above-mentioned absurd and circuitous rulings would arise.

5. **ID.; ID.; ID.; ID.; ID.; ID.; QUASHING THEREOF, A VIOLATION OF E.O. NO. 1035 IN CASE AT BAR.** — It is clear that, in quashing the writ of possession, respondent judge violated EO 1035 on the quaint and whimsical ground that petitioner was already in actual possession of the property.

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His assailed Orders dated July 26, 1996 and February 20, 1997 are therefore void for having been issued with grave abuse of discretion.

6. **ID.; ID.; ID.; ID.; ID.; EXPROPRIATION OF REAL PROPERTY DOES NOT INCLUDE MERE PHYSICAL OCCUPATION; GOVERNMENT WANTS BOTH POSSESSION *DE FACTO* AND *DE JURE* IN CASE AT BAR.** — The expropriation of real property does not include mere physical entry or occupation of land. Although eminent domain usually involves a taking of title, there may also be compensable taking of only some, not all, of the property interests in the bundle of rights that constitute ownership. In the instant case, it is manifest that the petitioner, in pursuit of an objective beneficial to public interest, seeks to realize the same through its power of eminent domain. In exercising this power, petitioner intended to acquire not only physical possession but also the legal right to possess and ultimately to own the subject property. Hence, its mere physical entry and occupation of the property fall short of the taking of title, which includes all the rights that may be exercised by an owner over the subject property. Its actual occupation, which renders academic the need for it to enter, does not by itself include its acquisition of all the rights of ownership. Its right to possess did not attend its initial physical possession of the property because the lease, which had authorized said possession, lapsed. In short, petitioner wanted not merely possession *de facto* but possession *de jure* as well.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Loyola Rodriguez de los Santos & Naidas Law Offices for private respondent.

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DECISION

PANGANIBAN, *J.*:

Executive Order No. 1035[1] (EO 1035) was enacted to facilitate government acquisition of private property to be used for infrastructure or other development projects. Under Section 7 thereof, it is the ministerial duty of courts to issue a writ of possession within five days from the time the government deposits 10 percent of the just compensation payable. Moreover, such writ cannot be nullified by an adverse decision in an ejectment proceeding involving the same property and the same parties.

Statement of the Case

This *principium* is used by this Court in resolving this petition for *certiorari* under Rule 65 assailing the Orders dated July 26, 1996[2] and February 20, 1997,[3] promulgated by the Regional Trial Court[4] of Imus, Cavite in Civil Case No. 1277-96. The first ruling quashed the May 24, 1996 writ of possession issued earlier, pursuant to EO 1035, and the second denied petitioner's plea for reconsideration.

The Antecedent Facts

The facts, as narrated in the solicitor general's Memorandum, are as follows:

"Private respondent Helena Z. Benitez is the registered owner of two (2) parcels of land located in Barangay Salawag, Dasmariñas, Cavite covered [by] TCT No. 14701 containing an area of Four Hundred Eighty Three Thousand Three Hundred Thirty One (483,331) square meters more or less.

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[1] 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" and dated June 25, 1985.

[2] *Rollo*, pp. 36-37.

[3] *Ibid.*, pp. 38-39.

[4] Branch 20, Imus, Cavite, Judge Lucenito N. Tagle presiding.

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"Sometime in September 1982, the Philippine Government, through the Philippine Human Resources Development Center (PHRDC for short), an agency under the then Ministry of Human Settlements, negotiated with the Japanese International Cooperation Agency (JICA) Survey Team on the technicalities of the establishment of the ASEAN Human Resources Development Project in the Philippines. Among the five (5) main programs of the proposed project was Program III (Construction Manpower Development) which involved the establishment of a Construction Manpower Development Center (CMDC for short), an agency now under the Department of Trade and Industry.

"On March 30, 1983, PHRDC and private respondent Helena Z. Benitez (BENITEZ for short), signed a Memorandum of Agreement (Annex 'C', Petition) which provides, among others, [that] BENITEZ 'undertakes to lease within the period of twenty (20) years and/or sell a portion of that property (which is no less than ten-hectares)' in favor of PHRDC 'which likewise agrees to lease' within a period of twenty (20) years and/or buy said property site.'

"On September 22, 1983, the Philippine Women's University (PWU for short) and BENITEZ granted a permit to PHRDC 'to occupy and use' the land in question and 'to undertake land development, electrical and road network installations and other related works necessary to attain its objectives....' Pursuant thereto, the CMDF took possession of the property and erected buildings and other related facilities necessary for its operations.

"Accordingly, in December 1983, PWU entered into a purported contract of lease with PHRDC on a ten (10)-hectare piece of land which stipulated, among other things, a rental of P200,000.00 per annum for an initial term of four (4) years from January 1, 1984 to January 1, 1988, with an option granted to PHRDC to renew the lease, upon agreement of both parties, 'for a further period up to, but not exceeding twenty (20) years from the expiration of the initial term hereof ....'

"PWU entered into the aforesaid lease contract, dated December 3, 1983, purporting to be the donee of the property involved in a deed of donation executed by BENITEZ in its favor; which deed of donation, however, was executed only in December 1984, much later than the execution of the lease contract.

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"After the expiration of the lease contract on January 1, 1988, negotiations began on the purchase of the property in question on a plain offer of BENITEZ to sell the same. In her letter of 21 August 1989, BENITEZ advised the PHRDC, through its General Manager Mr. Juvenal Catajoy, to 'pursue the successful completion of the sale of the subject 7-hectare property within 30 days from August 31, 1989 at the agreed price of ₱70.00 per square meter.'

"Again, in BENITEZ' letter of February 4, 1991, she stated the position of the University regarding the negotiated sale of the 7-hectare property in Dasmariñas, Cavite and 'confirme(d) that the agreed purchase price in 1989 [was] ₱70.00 per sq. m. ....'

"In view of the agreement on the sale of the land in question, PHRDC prepared a Deed of Absolute Sale with BENITEZ, as vendor, and PHRDC and CMDF, as vendees, duly represented by then Undersecretary Gloria M. Arroyo, for the signature of BENITEZ.

"Subsequently, BENITEZ and PHRDC, represented by PHRDC General Manager Juvenal Catajoy, Jr., agreed that the payment of 'rentals for the Dasmariñas lot [would] cease effective July 1, 1989 in view of on-going negotiations for the eventual sale of the lot.'

"However, for reasons known only to her, BENITEZ did not sign the Deed of Absolute Sale thus reneging on her commitment to sell the lot in question.

"Thereafter, in a letter dated August 15, 1995, BENITEZ and PWU demanded from PHRDC the payment of rentals and to vacate the premises within 30 days from notice. It later filed an unlawful detainer suit against petitioner.

"Failing to acquire the property involved through negotiated sale, petitioner, through the Department of Trade and Industry, to which CMDF is attached, instituted a complaint for Eminent Domain, pursuant to the provisions of Executive Order No. 1035, dated June 25, 1985.

"In compliance with Section 2, Rule 67 of the Rules of Court, as amended by Presidential Decree No. 42, petitioner deposited with the Philippine National Bank (PNB), Makati Avenue Branch, in favor of defendant, Seven Hundred Eight Thousand Four Hundred Ninety Pesos (P708,490.00) an amount equivalent to the provisional value of the land sought to be expropriated.

"On May 16, 1996, petitioner filed a Motion for Issuance of a Writ of Possession.

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"On May 24, 1996 respondent Judge issued an Order (Annex 'D', Petition) granting petitioner's Motion for Issuance of a Writ of Possession.

"In compliance with the Order of May 24, 1996, the Clerk of Court issued a Writ of Possession (Annex 'E', Petition) which the Sheriff duly implemented.

"Private respondent filed a Motion for Reconsideration of the Order of May 24, 1996 xxx which petitioner opposed.

"On July 26, 1996, respondent Judge issued the assailed Order (Annex 'A', Petition) the dispositive portion of which reads:

> 'WHEREFORE, in view of the foregoing, defendant's Motion for Reconsideration is granted. Accordingly, the Order dated May 24, 1996 is hereby set aside and reconsidered. The Writ of Possession issued in consonance therewith is hereby quashed.'

"On August 21, 1996, petitioner filed a Motion for Reconsideration (Annex 'F', Petition) of the above Order. Private respondent filed an Opposition (Annex 'G', Petition) thereto.

"On February 20, 1997, respondent Judge denied petitioner's motion for reconsideration (Annex 'B', Petition)."[5]

The foregoing narration of the facts was not contradicted by private respondent.[6] Not satisfied by the court *a quo's* rulings, petitioner thus elevated the matter to this Court.[7]

The Issue

In its Memorandum, petitioner submits that "[t]he only legal issue raised in the petition is whether or not respondent judge committed grave abuse of discretion when he quashed the writ of possession which he had previously issued."[8] Put differently,

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[5] Petitioner's Memorandum, pp. 3-9, signed by Assistant Solicitor General Antonio L. Villamor and Solicitor Raul J. Mandin; *rollo*, pp. 120-126.

[6] Cf. private respondent's Memorandum, dated June 11, 1996; *rollo*, pp. 107-117, signed by Attys. Arnel D. Naidas and Bernardo C. Cabidag.

[7] This case was deemed submitted for decision on July 9, 1998, upon receipt by the Court of petitioner's Memorandum.

[8] Petitioner's Memorandum, p. 10; *rollo*, p. 127.

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the issue is whether the respondent judge may quash a writ of possession on the ground that the expropriating government agency is already occupying the property sought to be expropriated.

The Court's Ruling

The petition is impressed with merit.

Issuance of Writ of Possession: A Duty Mandated by Law

It is undisputed that the expropriation proceeding in the case at bar involves a development project covered by EO 1035. The site, which is being used by the Philippine Human Resources Development Center (PHRDC), is sought to be expropriated for the establishment and operation of the Association of Southeast Asian Nations (ASEAN) Human Resources Development Project of the Philippines, a component of which is the Construction Manpower Development Center (CMDC), an agency now under the Department of Trade and Industry (DTI). Plainly, the respondent judge is required to issue a writ of possession in favor of petitioner, pursuant to Section 7 of EO 1035, which reads:

"SEC 7. *Expropriation.* If the parties fail to agree in negotiation of the sale of the land as provided in the preceding section, the government implementing agency/instrumentality concerned shall have authority to immediately institute expropriation proceedings through the Office of the Solicitor General, as the case may be. The just compensation to be paid for the property acquired through expropriation shall be in accordance with the provisions of P.D. No. 1533. 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."

Under this statutory provision, when the government or its authorized agent makes the required deposit, the trial court has

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a ministerial duty to issue a writ of possession. We note that the respondent judge indeed issued such writ in favor of petitioner, aptly stating:

"There being a deposit made by the plaintiff with the Philippine National Bank (PNB) in the amount of ₱708,490.00 which is equivalent to the assessed value of the property subject matter hereof based on defendant's 1990 tax declaration, coupled with the fact that notice to defendant as landowner has been effected, the Motion for Issuance of Writ of Possession is hereby GRANTED. Forthwith, let a Writ of Possession be issued ordering the Sheriff to place plaintiff in possession of the property involved in this case."[9]

Writ of Possession Necessary

As previously mentioned, the trial court reversed itself by later issuing an Order quashing the writ of possession, reasoning as follows:

"While this Court fully agrees with the plaintiff that it is entitled to be placed in possession of the property subject of the Complaint at once, the position of the parties in the case at bar is different. For, plaintiff admitted that it is already in possession of subject premises. Such being the case, it is obvious that plaintiff's purpose in securing a writ of possession is only to utilize it as leverage in the ejectment suit filed against it by defendant Benitez wherein the issue is possession."[10]

In denying the motion for reconsideration of said Order, the respondent judge reiterated his position, adding that "the present case is different from the ordinary action for eminent domain because prior to the filing of this case, there was already an ejectment suit instituted against plaintiff-corporation."[11] Agreeing with the trial court, private respondent contends that "the writ of possession is warranted only in cases where the party seeking

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[9] Order of the Regional Trial Court dated May 24, 1996; *rollo*, p. 43.

[10] Order of the Regional Trial Court dated July 26, 1996, p. 2; *rollo*, p. 37.

[11] Order of the Regional Trial Court dated February 20, 1997; *rollo*, pp. 38-39.

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[it] is not yet in possession [of] the property sought to be expropriated."[12]

Private respondent underscores Section 2, Rule 67 of the 1997 Rules on Civil Procedure, which in part states that "the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation xxx."[13] She also points out that since Presidential Decree (PD) 42 provides that the "plaintiff shall have the right to take or enter upon the possession of the real property involved," the writ of possession it requires to be issued "is not to maintain possession but intended for the purpose of taking or entering possession."[14]

The Court is not persuaded. The expropriation of real property does not include mere physical entry or occupation of land. Although eminent domain usually involves a taking of title, there may also be compensable taking of only some, not all, of the property interests in the bundle of rights that constitute ownership.[15]

In the instant case, it is manifest that the petitioner, in pursuit of an objective beneficial to public interest, seeks to realize the same through its power of eminent domain. In exercising this power, petitioner intended to acquire not only *physical* possession but also the *legal* right to possess and ultimately to own the subject property. Hence, its mere physical entry and occupation of the property fall short of the taking of title, which includes all the rights that may be exercised by an owner over the subject property. Its actual occupation, which renders academic the need for it to enter, does not by itself include its acquisition of all the rights of ownership. Its right to possess did not

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[12] Private respondent's Memorandum; *rollo*, p. 110.

[13] *Ibid.*

[14] *Ibid.*, p. 111.

[15] Joaquin G. Bernas SJ, *The 1987 Constitution of the Philippines: A Commentary*, pp. 379-380, 1996 Edition. See *Republic v. Phil. Long Distance Telephone Co.*, 26 SCRA 628, January 27, 1969 and *United States v. Causby*, 328 U.S. 256 (1946).

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attend its initial physical possession of the property because the lease, which had authorized said possession, lapsed. In short, petitioner wanted not merely possession *de facto* but possession *de jure* as well.

What will happen if the required writ of possession is not issued? This question becomes very important because the Municipal Trial Court (MTC), where private respondent sued petitioner for unlawful detainer, has rendered a decision ordering petitioner to vacate the property.[16] It would be circuitous, if not legally absurd, for this Court to require petitioner to first vacate the property in view of the adverse judgment in the unlawful detainer case, and soon afterwards, order the trial court to issue in petitioner's favor a writ of possession pursuant to the expropriation proceedings. Such a scenario is a bureaucratic waste of precious time and resources. This precisely is the sort of pernicious and unreasonable delay of government infrastructure or development projects, which EO 1035 intended to address by requiring the immediate issuance of a writ of possession. Ineludibly, said writ is both necessary and practical, because mere physical possession that is gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership over, or even the right to possess, the expropriated property.

Citing *J.M. Tuason & Co., Inc. v. Court of Appeals*[17] and *Cuatico v. Court of Appeals*,[18] private respondent further submits that "the eminent domain case, much less the writ of possession, cannot be entertained to defeat the ejectment case."[19]

Such argument is untenable. It is well-settled that eminent domain is an inherent power of the State that need not be granted even by the fundamental law.[20] Section 9, Article III of the Constitution, in mandating that "[p]rivate property shall not be

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[16] Decision of the Municipal Trial Court; *rollo*, pp. 90-94.

[17] 3 SCRA 696, December 26, 1961.

[18] 6 SCRA 595, October 31, 1962.

[19] Private Respondent's Memorandum; *rollo*, p. 114.

[20] Bernas, *supra*, p. 347. See also *Municipality of Parañaque v. V.M. Realty Corporation*, G.R. No. 127820, p. 15, July 20, 1998.

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taken for public use without just compensation," merely imposes a limit on the government's exercise of this power and provides a measure of protection to the individual's right to property.[21] Thus, in *J.M. Tuason & Co.* and *Cuatico*, the Court merely enforced the constitutional limitation regarding the payment of just compensation. Clearly, an ejectment suit ordinarily should not prevail over the State's power of eminent domain.

We note that in the present case, petitioner has deposited not just the 10 percent required under EO 1035, but the whole amount of the just compensation that private respondent is entitled to. Thus, we are unable to find any legal impediment for the issuance of a writ of possession in favor of petitioner. Precisely, the purpose of instituting expropriation proceedings is to prevent petitioner from being ejected from the subject property; otherwise, the above-mentioned absurd and circuitous rulings would arise.

Assailed Orders Tainted by Grave Abuse of Discretion

It is clear that, in quashing the writ of possession, respondent judge violated EO 1035 on the quaint and whimsical ground that petitioner was already in actual possession of the property.[22] His assailed Orders dated July 26, 1996 and February 20, 1997 are therefore void for having been issued with grave abuse of discretion.[23]

WHEREFORE, the petition is *GRANTED*, and the assailed Orders dated July 26, 1996 and February 20, 1997 are hereby *ANNULLED* and *SET ASIDE*. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Bellosillo, Vitug, and *Quisumbing, JJ.*, concur.

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[21] *Ibid.*; citing *Visayan Refining Co. v. Camus*, 40 Phil. 550, 559, (1919).

[22] *See* Order of the Regional Trial Court dated July 26, 1996; *rollo*, pp. 36-37.

[23] *Cf. Governor Pablo P. Garcia, et al. v. Hon. Jose P. Burgos, et al.*, G.R. No. 124130, p. 24, June 29, 1998.