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first paragraph of Section 8 of Article IX-B of the Constitution, which proscribes additional, double, or indirect compensation. Said provision reads:

> No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law . . .

Section 11 of R.A. No. 7924 does not specifically authorize payment of additional compensation for years of government service outside of the MMA.

WHEREFORE, finding no reversible error in the judgment appealed from, the petition in this case is *DENIED* for want of merit, and the decision of 19 August 1999 of the Court of Appeals in CA-G.R. SP No. 48301 is *AFFIRMED.*

Costs against petitioner.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and *De Leon, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. Nos. 139927 and 139936. November 22, 2000]

SALVADOR BIGLANG-AWA, REMEDIOS BIGLANG-AWA, *petitioners, vs.* **HON. JUDGE MARCIANO I. BACALLA in his capacity as Presiding Judge of Branch 216 — Regional Trial Court of Quezon City, REPUBLIC OF THE PHILIPPINES (DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS),** *respondents.*

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SYNOPSIS

Petitioners Remedios and Salvador Biglang-awa were the registered owners of two parcels of land situated in Novaliches, Quezon City. The government needed to expropriate portions of the two lots for the construction of Mindanao Avenue. The Department of Public Works and Highways (DPWH) required petitioners to submit the necessary documents to determine just compensation for the properties. The petitioners failed to submit the documents required in the final notices issued by the DPWH. The latter filed separate cases for expropriation against petitioners and thereafter deposited with the Land Bank of the Philippines the respective amounts of payment pertaining to the properties involved in the expropriation based on the appraisal report of the Quezon City Appraisal Committee. The DPWH filed separate motions for the issuance of writ of possession of the properties of the petitioners. Upon failure to file opposition to the motion, the respondent court issued separate orders granting the motion for the issuance of the writ. The two petitioners received two separate notices to vacate the property. Petitioners hired a new lawyer who moved for reconsideration of the orders and a recall of the writs of possession on the ground of failure to comply with the provisions of E.O. 1035 (1985), relating to the conduct of feasibility studies, information campaign, detailed engineering and surveys, negotiation prior to the acquisition of, or entry into, the property being expropriated. The motion was denied, hence, this petition for *certiorari*.

According to the Supreme Court, the issuance of a writ of possession pursuant to Rule 67 of the 1997 Revised Rules of Civil Procedure alone is neither capricious nor oppressive as the said rule affords owners safeguards against unlawful deprivation of their property in expropriation proceedings, one of which is the deposit requirement which constitutes advance payment in the event expropriation proceeds, and stands as indemnity for damages should the proceedings fail of consummation. The Court ruled that there was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the respondent court in issuing the writ of possession. The filing of the expropriation cases against the petitioners was not in violation of Section 6 of E.O. 1035, and was, on the contrary,

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in accordance with the provisions of the said special law. The Supreme Court denied the petition.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTION; EXPROPRIATION PROCEEDINGS; REQUIREMENT FOR THE ISSUANCE OF THE WRIT OF POSSESSION, CONSTRUED. — A careful perusal of the provisions [of Executive Order No. 1035, particularly Sections 2, 3, 4 and 6] do not yield the conclusion that the conduct of feasibility studies, information campaign and detailed engineering/surveys are conditions precedent to the issuance of a writ of possession against the property being expropriated. Although compliance with these activities should indeed be made prior to the decision to expropriate private property, the requirements for issuance of a writ of possession once the expropriation case is filed, are expressly and specifically governed by Section 2 of Rule 67 of the 1997 Rules of Civil Procedure, to wit: Sec. 2. *Entry of the plaintiff upon depositing value with authorized government depositary.*— Upon the filing of the complaint or at anytime thereafter, and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for the purposes of taxation to be held by such bank subject to the orders of the court x x x. If such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties. Thus, pursuant to Section 2 of Rule 67 of the 1997 Revised Rules of Civil Procedure and the *Robern Development Corporation* case, the only requisites for authorizing immediate entry in expropriation proceedings are: (1) the filing of a complaint for expropriation sufficient in form and substance; and (2) the making of a deposit equivalent to the assessed value of the property subject to expropriation. Upon compliance with the requirements the issuance of the writ of possession becomes "ministerial."

2. ID.; ID.; ID.; DEPOSIT REQUIREMENT; PURPOSE THEREOF. — The issuance of a writ of possession pursuant to Rule 67

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of the 1997 Revised Rules of Civil Procedure alone is neither "capricious" nor "oppressive" as the said rule affords owners safeguards against unlawful deprivation of their property in expropriation proceedings, one of which is the deposit requirement which constitutes advance payment in the event expropriation proceeds, and stands as indemnity for damages should the proceedings fail of consummation. The deposit likewise sufficiently satisfies the compensation requirement of the Constitution. Moreover, the owners of the expropriated lands are entitled to legal interest on the compensation eventually adjudged from the date the condemnor takes possession of the land until the full compensation is paid to them or deposited in court.

3. ID.; LAWYERS; NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPT TO PREVENT MISCARRIAGE OF JUSTICE; EXCEPTION NOT APPLICABLE IN CASE AT BAR. — Although the general rule is that the negligence of counsel binds the client, the rule is not without an exception. Petitioners rely on the case of *Aceyork Aguilar vs. Court of Appeals* wherein the court relaxed the rule to prevent miscarriage of justice. We find no such prejudice to petitioners caused by the failure of their counsel. When petitioner Remedios received a Notice to Vacate her property on September 11, 1998, the petitioners immediately tried to get in touch with their former counsel, Atty. Jose Felix Lucero, but to no avail as the latter refused to talk to them or even answer their letter. No reason was given for the behavior of the counsel. The petitioners wasted no time in hiring the services of a new counsel, the law firm of Gumpal and Valenzuela. Considering that once the deposit under Section 2 of Rule 67 of the 1997 Revised Rules on Civil Procedure has been made, the expropriator becomes entitled to a writ of possession as a matter of right, and the issuance of the writ becomes ministerial on the part of the trial court, no opposition on the part of the petitioners on the grounds now pleaded could have prevented such issuance. Therefore, the petitioners were not prejudiced by the lost opportunity to file their opposition to the respondent's Motions for the Issuance of Writs of Possession.

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APPEARANCES OF COUNSEL

Gumpal & Ruiz-Valenzuela Law Firm for petitioners.
The Solicitor General for respondents.

D E C I S I O N

GONZAGA-REYES, *J.*:

Before us is a petition for *certiorari* under Rule 65 of the Rules of Court, with a prayer for the issuance of a writ of preliminary injunction, seeking to annul and set aside the Orders of the respondent Court dated August 5, 1998, ordering the issuance of Writs of Possession of the properties of herein petitioners, and the Order dated August 12, 1998, issuing the corresponding Writs of Possession, as well as the Order dated July 7, 1999, denying the petitioners' Motion for Reconsideration of the August 5, 1998 Orders. The petition further prays for the dismissal of Civil Cases Nos. Q-97-31368 and Q-97-31369 for being premature due to failure to comply with the substantive requirements of Executive Order No. 1035 (1985).[1]

The antecedent facts are as follows:

Petitioners Remedios Biglang-awa and Salvador Biglang-awa are the registered owners of certain parcels of land situated in Talipapa, Novaliches, Quezon City. The parcel of land owned by petitioner Remedios Biglang-awa is covered by T.C.T. No. RT-101389 (362966) with an area of 769 sq. m., while that owned by Salvador Biglang-awa is covered by T.C.T. No. RT-101390 (19352) with an area of 2,151 sq. m. The government needed to expropriate 558 sq. m. of the aforesaid property of petitioner Remedios Biglang-awa, and 881 sq. m. of that belonging to petitioner Salvador Biglang-awa for the construction of the Mindanao Avenue Extension, Stages II-B and II-C.

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[1] Executive Order No. 1035, June 25, 1985, "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."

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On August 29, 1996, the petitioner Remedios Biglang-awa received a Notice from the respondent Republic, through the Department of Public Works and Highways (DPWH) Project Manager Patrick G. Gatan, requiring her to submit the documents necessary to determine the just compensation for her property.[2]

On October 15, 1996, Final Notices, signed by Project Director Cresencio M. Rocamora, were given by the DPWH to the petitioners to submit within five (5) days the pertinent documents, otherwise, expropriation proceedings would be filed against their properties.[3] As the petitioners failed to comply with these final notices, the respondent Republic, through the DPWH, filed with the respondent Regional Trial Court of Quezon City [4] separate cases for expropriation against the petitioners, docketed as Civil Case Nos. Q-99-31368 and Q-97-31369.

On July 10, 1997, the petitioners received summons from the respondent court, and were ordered to file their respective Answers to the Complaints for expropriation. The petitioners filed their Answers on August 11, 1997.

Subsequently, the respondent Republic, through the DPWH, deposited with the Land Bank of the Philippines the amounts of ₱3,964,500.00 and ₱2,511,000.00 for the properties of Salvador and Remedios Biglang-awa, respectively, based on the appraisal report of the Quezon City Appraisal Committee.

On April 24, 1998, respondent Republic filed separate Motions for the Issuance of Writs of Possession of the properties of the petitioners with the respondent court. The court issued Orders giving the petitioners, through counsel Atty. Jose Felix Lucero, ten (10) days within which to submit their Opposition to the said motions. The petitioners failed to file their Opposition to the Motion.

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[2] *Rollo*, p. 46. The documents required to be submitted by the DPWH include the Tax Declaration, Tax Clearance, *Barangay* Certification, pictures of the lot and its improvements, Tax Receipt, TCT, and Subdivision Plan.

[3] *Id.*, pp. 47-48.

[4] Branch 216, Quezon City, presided by Hon. Judge Marciano I. Bacalla.

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On August 5, 1998, the respondent court issued separate Orders[5] granting the motions for the issuance of writs of possession. Accordingly, the writs of possession were issued by the respondent court on August 12, 1998.[6]

On September 11, 1998, petitioner Remedios Biglang-awa received a Notice to Vacate her property. A similar Notice was likewise received by petitioner Salvador Biglang-awa at about the same time.

On January 25, 1999, the petitioners filed a joint Manifestation with the respondent court to the effect that they were retaining the law firm of Gumpal and Valenzuela, in lieu of Atty. Jose Felix Lucero whose services they had already terminated due to the latter's inaction and abandonment of their cases.

On May 10, 1999, the petitioners, through their new counsel, moved for a reconsideration of the respondent court's Orders dated August 5, 1998, and a recall of the writs of possession issued on August 12, 1998, mainly on the ground that the respondent Republic failed to comply with the provisions of E.O. 1035 (1985), relating to the conduct of feasibility studies, information campaign, detailed engineering/surveys, and negotiation prior to the acquisition of, or entry into, the property being expropriated.

On July 7, 1999, the respondent court issued an Order denying the petitioners' Motion for Reconsideration, a copy of which was received by the petitioners on July 26, 1999.

Hence, this Petition for *Certiorari*.

The sole issue in this case is whether or not the respondent court gravely abused its discretion, amounting to lack or excess of its jurisdiction, when it issued the questioned orders.

We rule in the negative.

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[5] *Rollo*, pp. 29-30, 33-34.

[6] *Id.*, pp. 31-32, 35-36.

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The petitioners contend that due process of law in relation to expropriation proceedings mandates that there be compliance with the provisions of Executive Order No. 1035, particularly Sections 2, 3, 4 and 6, claimed to constitute the substantive requirements of the expropriation law, prior, and as a condition precedent, to Section 2 of Rule 67 of the 1997 Revised Rules of Civil Procedure. Hence, a writ of possession pursuant to the above provision of Rule 67 will issue only upon showing that the said provisions of E.O. 1035 have already been complied with. As the writs of possession in the instant case were issued by the respondent court without the respondent Republic, through the DPWH, having furnished the petitioners any feasibility study and "approved" parcellary survey in connection with the Mindanao Avenue Extension Project,[7] despite formal request by the latter,[8] and therefore without showing prior compliance with E.O. 1035, the petitioners contend that such issuance of the writs of possession by the respondent court was made with grave abuse of discretion amounting to lack or excess of jurisdiction.

We do not agree.

The provisions of law adverted to by petitioners are as follows:

Title A. Activities Preparatory To Acquisition Of Property

Sec. 2. *Feasibility Studies.* Feasibility studies shall be undertaken for all major projects, and such studies shall, in addition to the usual technical, economic and operational aspects, include the social, political, cultural and environmental impact of the project.

Sec. 3. *Information Campaign.* Every agency, office and instrumentality of the government proposing to implement a development project which requires the acquisition of private real property or rights thereon shall first make consultations with the local government officials, including the regional development councils having jurisdiction over the area where the project will be undertaken to elicit their support and assistance for the smooth implementation

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[7] Stages II-B and II-C.

[8] *Rollo*, p. 222.

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of the project. The implementing agency/instrumentality concerned with the assistance of the local government officials and representatives of the Office of Media Affairs shall conduct an extensive public information campaign among the local inhabitants that will be affected by the project to acquaint them with the objectives and benefits to be derived from the project and thus avoid any resistance to or objection against the acquisition of the property for the project.

Sec. 4. *Detailed Engineering/Surveys.* The implementing government agency/instrumentality concerned shall, well in advance of the scheduled construction of the project, undertake detailed engineering, including parcellary surveys to indicate the location and size of the sites and to determine ownership of the land to be acquired, including the status of such landownership.

xxx xxx xxx

Title B. Procedure For Acquisition Of Property

Sec. 6. *Acquisition Through Negotiated Sale.* — As an initial step, the government implementing agency/instrumentality concerned shall negotiate with the owner of the land that is needed for the project for the purchase of said land, including improvements thereon. In the determination of the purchase price to be paid, the Ministry of Finance and the Provincial/City/Municipal Assessors shall extend full assistance and coordinate with the personnel of the government implementing agency concerned in the valuation of lands and improvements thereon taking into consideration the current and fair market value declared by the owner or administrator of the land, or such current market value as determined by the assessor, whichever is lower, prior to the negotiation. [Executive Order No. 1035 (1985)]

Nothing in the foregoing provisions supports the contention of the petitioners. A careful perusal of the provisions cited do not yield the conclusion that the conduct of feasibility studies, information campaign and detailed engineering/surveys are conditions precedent to the issuance of a writ of possession against the property being expropriated. Although compliance with these activities should indeed be made prior to the decision to expropriate private property, the requirements for issuance of a writ of possession once the expropriation case is filed, are expressly and specifically governed by Section 2 of Rule 67 of the 1997 Rules of Civil Procedure, to wit:

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

xxx xxx xxx

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

As clearly enunciated in *Robern Development Corporation vs. Judge Jesus Quitain:*[9]

"Expropriation proceedings are governed by revised Rule 67 of the 1997 Rules of Civil Procedure which took effect on July 1, 1997. *Previous doctrines inconsistent with this Rule are deemed reversed or modified. Specifically, (1) an answer, not a motion to dismiss, is the responsive pleading to a complaint in eminent domain;* ***(2) the trial court may issue a writ of possession once the plaintiff deposits an amount equivalent to the assessed value of the property, pursuant to Section 2 of said Rule, without need of a hearing to determine the provisional sum to be deposited****; and (3) a final order of expropriation may not be issued prior to a full hearing and resolution of the objections and defenses of the property owner."* (Italics Ours)

Thus, pursuant to Section 2 of Rule 67 of the 1997 Revised Rules of Civil Procedure and the *Robern Development Corporation* case, the only requisites for authorizing immediate entry in expropriation proceedings are: (1) the filing of a complaint for expropriation sufficient in form and substance; and (2) the making of a deposit equivalent to the assessed value of the property subject to expropriation. Upon

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[9] G.R. No. 135042, September 23, 1999, *En Banc* decision.

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compliance with the requirements the issuance of the writ of possession becomes "ministerial."[10]

The antecedents and the rationale for the rule are explained thus:

"There is no prohibition against a procedure whereby immediate possession of the land involved in expropriation proceedings may be taken, provided always that due provision is made to secure the prompt adjudication and payment of just compensation to the owners. However, the requirements for authorizing immediate entry in expropriation proceedings have changed.

To start with, in *Manila Railroad Company v. Paredes, [Manila Railroad Company v. Paredes*, 31 Phil 118, 135, March 31 & December 17, 1915] *the Court held that the railway corporation had the right to enter and possess the land involved in condemnation proceedings under Section 1, Act No. 1592, immediately upon the filing of a deposit fixed by order of the court.*

The Rules of Court of 1964 sanctioned this procedure as follows:

> *Sec. 2. Entry of plaintiff upon depositing value with National or Provincial Treasurer. Upon the filing of the complaint or at any time thereafter the plaintiff shall have the right to take or enter upon the possession of the real or personal property involved if he deposits with the National or Provincial Treasurer its value, as provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings, to be held by such treasurer subject to the orders and final disposition of the court . . .* (italics ours.)

Subsequently, former President Ferdinand E. Marcos signed into law Presidential Decree No. 42 and its companion decrees, which removed the court's discretion in determining the amount of the provisional value of the land to be expropriated and fixed the provisional deposit at its assessed value for taxation purposes. Hearing was not required; only notice to the owner of the property sought to be condemned.

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[10] *Robern Development Corporation vs. Judge Jesus Quitain, supra.* See also *Republic vs. Tagle*, 299 SCRA 549, at p. 552.

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On the issue of the immediate possession, PD 42 (Authorizing The Plaintiff In Eminent Domain Proceedings To Take Possession Of The Property Involved Upon Depositing The Assessed Value, For Purposes of Taxation) provided:

> *WHEREAS, the existing procedure for the exercise of the right of eminent domain is not expeditious enough to enable the plaintiff to take or enter upon the possession of the real property involved as soon as possible, when needed for public purposes;*
>
> *x x x* *x x x* *x x x*
>
> *[T]hat, upon filing in the proper court of the complaint in eminent domain proceedings or at anytime thereafter, and after due notice to the defendant, plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the Philippine National Bank, . . . an amount equivalent to the assessed value of the property for purposes of taxation, to be held by said bank subject to the orders and final disposition of the court.*
>
> *The provisions of Rule 67 of the Rules of Court and of any other existing law contrary to or inconsistent herewith are hereby repealed.*

Paragraph 3 of PD No. 1224 (Defining The Policy On The Expropriation Of Private Property for Socialized Housing Upon Payment Of Just Compensation) also authorized immediate takeover of the property in this manner:

> *3. Upon the filing of the petition for expropriation and the deposit of the amount of just compensation as provided for herein, the Government, or its authorized agency or entity, shall immediately have possession, control and disposition of the real property and the improvements thereon even pending resolution of the issues that may be raised whether before the Court of First Instance or the higher courts.*

Where the "taking" was for "socialized housing," Section 3, PD 1259 (Amending Paragraphs 1, 2, And 3 Of PD No. 1224 Further Defining The Policy On The Expropriation Of Private Property For Socialized Housing Upon Payment Of Just Compensation), amending the above-quoted paragraph, provided:

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> *Upon the filing of the petition for expropriation and the deposit of the amount of the just compensation provided for in Section 2 hereof, the Government, or its authorized agency or entity, shall immediately have possession, control and disposition of the real property and the improvements thereon even pending resolution of the issues that may be raised whether before the Court of First Instance, Court of Agrarian Relations or the higher courts.*

Similarly, Section 1, PD No. 1313 (Further Amending Paragraph 3 Of Presidential Decree No. 1224 As Amended By Presidential Decree No. 1259, Defining The Policy On The Expropriation Of Private Property For Socialized Housing Upon Payment Of Just Compensation), amending paragraph 3 of PD 1224, decreed:

> *Upon the filing of the petition for expropriation and the deposit in the Philippine National Bank at its main office or any of its branches of the amount equivalent to ten percent (10%) of the just compensation provided for in Section 2 of Presidential Decree No. 1259, the government, or its authorized agency or entity, shall immediately have possession, control and disposition of the real property and the improvements thereon with the power of demolition, if necessary, even pending resolution of the issues that may be raised whether before the Court of First Instance, Court of Agrarian Relations, or the higher Courts.*

In this connection, we also quote Section 7 of PD No. 1517 (Proclaiming Urban Land Reform In The Philippines And Providing For The Implementing Machinery Thereof), which reads:

> *x x x* *x x x* *x x x*
>
> *Upon the filing of the petition for expropriation and the deposit in the Philippine National Bank at its main office or any of its branches of the amount equivalent to ten per cent (10%) of the declared assessment value in 1975, the Government, or its authorized agency or entity shall immediately have possession, control and disposition of the real property and the improvements thereon with the power of demolition, if necessary, even pending resolution of the issues that may be raised whether before the Court of First Instance, Court of Agrarian Relations, or the higher Courts.*

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Finally, PD 1533 (Establishing A Uniform Basis For Determining Just Compensation And The Amount Of Deposit For Immediate Possession Of The Property Involved In Eminent Domain Proceedings) mandated the deposit of only ten percent (10%) of the assessed value of the private property being sought to be expropriated, after fixing the just compensation for it at a value not exceeding that declared by the owner or determined by the assessor, whichever is lower. Section 2 thereof reads:

> *Sec. 2. Upon the filing of the petition for expropriation and the deposit in the Philippine National Bank at its main office or any of its branches of an amount equivalent to ten per cent (10%) of the amount of compensation provided in Section 1 hereof, the government or its authorized instrumentality agency or entity shall be entitled to immediate possession, control and disposition of the real property and the improvements thereon, including the power of demolition if necessary, notwithstanding the pendency of the issues before the courts.*

Accordingly, in San Diego v. Valdellon [80 Phil 305, 310, November 22, 1977], Municipality of Daet v. Court of Appeals [93 SCRA 503, 525, October 18, 1979], and Haguisan v. Emilia [131 SCRA 517, 522-524, August 31, 1984] the Court reversed itself and ruled that Section 2, Rule 67 of the 1964 Rules, was repealed by Presidential Decree No. 42. The judicial duty of ascertaining and fixing the provisional value of the property was done away with, because the hearing on the matter had not been "expeditious enough to enable the plaintiff to take possession of the property involved as soon as possible, when needed for public purpose."

In Daet, the Court clarified that the provisional value of the land did not necessarily represent the true and correct one but only tentatively served as the basis for immediate occupancy by the condemnor. The just compensation for the property continued to be based on its current and fair market value, not on its assessed value which constituted only a percentage of its current fair market value.

However, these rulings were abandoned in Export Processing Zone Authority v. Dulay [149 SCRA 305, 311 & 316, April 29, 1987], because "[t]he method of ascertaining just compensation under the aforecited decrees constitute[d] impermissible encroachment on judicial prerogatives. It tend[ed] to render this Court inutile in a matter which under the Constitution [was] reserved to it for final determination." The Court added:

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We return to older and more sound precedents. This Court has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. (See Salonga v. Cruz Pano, supra).

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. — Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

x x x *x x x* *x x x*

More precisely, Panes v. Visayas State College of Agriculture [264 SCRA 708, 719, November 27, 1996.] ruled that the judicial determination of just compensation included the determination of the provisional deposit. In that case, the Court invalidated the Writ of Possession because of lack of hearing on the provisional deposit, as required under then Section 2 of Rule 67, pre-1997 Rules. In the light of the declared unconstitutionality of PD Nos. 76, 1533 and 42, insofar as they sanctioned executive determination of just compensation, any right to immediate possession of the property must be firmly grounded on valid compliance with Section 2 of Rule 67, pre-1997 Rules; that is, the value of the subject property, as provisionally and promptly ascertained and fixed by the court that has jurisdiction over the proceedings, must be deposited with the national or the provincial treasurer.

However, the 1997 Rules of Civil Procedure revised Section 2 of Rule 67 and clearly reverted to the San Diego, Daet and Haguisan rulings. Section 2 now reads:

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

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x x x *x x x* *x x x*

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

In the present case, although the Complaint for expropriation was filed on June 6, 1997, the Motion for the Issuance of the Writ of Possession was filed on July 28, 1997; thus, the issuance of the Writ is covered by the 1997 Rules. As earlier stated, procedural rules are given immediate effect and are applicable to actions pending and undetermined at the time they are passed; new court rules apply to proceedings that take place after the date of their effectivity. Therefore, Section 2, Rule 67 of the 1997 Rules of Civil Procedure, is the prevailing and governing law in this case.

With the revision of the Rules, the trial court's issuance of the Writ of Possession becomes ministerial, once the provisional compensation mentioned in the 1997 Rule is deposited. Thus, in the instant case the trial court did not commit grave abuse of discretion when it granted the NPC's Motion for the issuance of the Writ, despite the absence of hearing on the amount of the provisional deposit.

The Court nonetheless hastens to add that PD 1533 is not being revived.

Under Section 2, Rule 67 of the 1997 Rules, the provisional deposit should be in an amount equivalent to the full assessed value of the property to be condemned, not merely ten percent of it. Therefore, the provisional deposit of NPC is insufficient. Since it seeks to expropriate portions, not the whole, of four parcels of land owned by Robern, the provisional deposit should be computed on the basis of the Tax Declarations of the property: x x x"

Hence, the issuance of writs of possession by the respondent court in favor of the respondent Republic after the latter, through the DPWH, filed complaints for expropriation and deposited the amounts of ₱3,964,500.00 and ₱2,511,000.00 equivalent to the assessed value of the properties of the petitioners is proper and not without basis.

Contrary to the claim of the petitioners, the issuance of a writ of possession pursuant to Rule 67 of the 1997 Revised Rules of

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Civil Procedure alone is neither "capricious" nor "oppressive," as the said rule affords owners safeguards against unlawful deprivation of their property in expropriation proceedings, one of which is the deposit requirement which constitutes advance payment in the event expropriation proceeds, and stands as indemnity for damages should the proceedings fail of consummation.[11] The deposit likewise sufficiently satisfies the compensation requirement of the Constitution.[12] Moreover, the owners of the expropriated lands are entitled to legal interest on the compensation eventually adjudged from the date the condemnor takes possession of the land until the full compensation is paid to them or deposited in court.[13]

It is the ruling of this Court that there is no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the respondent court in issuing the orders and the writs of possession herein questioned. Accordingly, the prayer for the dismissal of Civil Cases Nos. Q-97-31368 and Q-97-31369 on the ground of prematurity for failure to comply with E.O. 1035 is denied.

As regards Section 6 (Acquisition through Negotiated Sale) of E.O. 1035, records show that there had been an attempt on the part of the Republic to negotiate with the petitioners through the Notices sent by the former through the DPWH. The Notice dated August 29, 1996 sent to petitioner Remedios Biglang-awa by the respondent Republic[14] was intended not only to inform

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[11] *Visayan Refining Company vs. Camus*, G.R. No. 15870, December 3, 1919, 40 Phil 550, at p. 563.

[12] Joaquin G. Bernas, S.J., *The Constitution of the Philippines, A Commentary*, at pp. 284-285, citing *City of Manila vs. Battle*, 25 Phil 566, 572 (1913).

Art. III, Sec. 9 of the 1987 Philippine Constitution: Sec. 9. Private property shall not be taken for public use without just compensation.

[13] *Digran vs. Auditor General,* L-21593, April 29, 1966, 16 SCRA 762, at p. 771, citing *Republic vs. Lara*, G.R. No. L-5080, November 29, 1954, 96 Phil 170.

[14] Only the Notice dated August 29, 1996 sent to petitioner Remedios Biglang-awa appears on record.

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her formally of the planned expropriation, but also to require her to submit several documents needed for the determination of the just compensation for her property. The petitioner failed to submit the required documents. The respondent Republic sent both petitioners Remedios and Salvador Biglang-awa Final Notices dated October 15, 1996 stating that failure to submit the required documents "significantly delay[ed] the completion of the x x x project," and that the petitioners were given five (5) days to "cooperate by way of submitting the documents being requested," otherwise expropriation proceedings would be initiated against them.[15] These notices were ignored by the petitioners. Consequently, the respondent Republic, through the DPWH, filed expropriation cases against the petitioners, conformably with Section 7 of E.0.1035, to wit:

> 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 of the Government Corporate Counsel, 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.

Thus, the filing of the expropriation cases against the petitioners was not in violation of Section 6 of E.O. 1035, and was, on the contrary, in accordance with the provisions of the said special law.

The petitioners also claim that they are not bound by the gross and inexcusable abandonment of their cases by their former lawyer, Atty. Jose Felix Lucero, resulting to the non-filing of

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[15] *Rollo*, pp. 47-48.

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their Opposition to the respondents' Motion for the Issuance of Writs of Possession.

Although the general rule is that the negligence of counsel binds the client,[16] the rule is not without an exception. Petitioners rely on the case of *Aceyork Aguilar vs. Court of Appeals*[17] wherein the court relaxed the rule to prevent miscarriage of justice. We find no such prejudice to petitioners caused by the failure of their counsel.

When petitioner Remedios received a Notice to Vacate her property on September 11, 1998, the petitioners immediately tried to get in touch with their former counsel, Atty. Jose Felix Lucero, but to no avail as the latter refused to talk to them or even answer their letter.[18] No reason was given for the behavior of the counsel. The petitioners wasted no time in hiring the services of a new counsel, the law firm of Gumpal and Valenzuela. Considering that once the deposit under Section 2 of Rule 67 of the 1997 Revised Rules on Civil Procedure has been made, the expropriator becomes entitled to a writ of possession as a matter of right, and the issuance of the writ becomes ministerial on the part of the trial court, no opposition on the part of the petitioners on the grounds now pleaded could have prevented such issuance. Therefore, the petitioners were not prejudiced by the lost opportunity to file their opposition to the respondent's Motions for the Issuance of Writs of Possession.

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

Melo (Chairman), Vitug, and *Panganiban, JJ.*, concur.

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[16] *Meralco vs. CA*, G.R. No. 88396, July 4, 1990, 187 SCRA 200, at p. 208; *BR Sebastian Enterprises vs. CA*, G.R. No. 41862, February 7, 1992, 206 SCRA 28, at p. 39.

[17] G.R. No. 11482, November 28, 1995, 250 SCRA 371.

[18] *Rollo*, pp. 11 and 52.