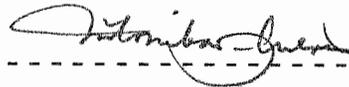


EN BANC

G.R. No. 197743 – Heirs of Jose Mariano and Helen S. Mariano, represented by Danilo David S. Mariano, Mary Therese Irene S. Mariano, Ma. Catalina Sophia S. Mariano, Jose Mario S. Mariano, Ma. Lenor S. Mariano, Macario S. Mariano and Heirs of Erlinda Mariano-Villanueva, represented in this act by Irene Lourdes M. Villanueva through her Attorney-in-Fact Editha S. Santuyo and Benjamin B. Santuyo, petitioners v. City of Naga, respondent

Promulgated:

October 18, 2022



X ----- X

LAZARO-JAVIER, J.:

CONCURRENCE and DISSENT

Antecedents

The facts relevant to the present second motion for reconsideration are narrated in *Heirs of Mariano v. City of Naga*, G.R. No. 197743, March 12, 2018:

On July 3, 1954, Eusebio M. Lopez, Sr., Soledad L. Dolor, Jose A. Gimenez and Eusebio Lopez, Jr. (Lopez, Jr.), as the President, Secretary, Treasurer and General Manager of the **City Heights Subdivision** (Subdivision), respectively, **wrote to the mayor** of the City of Naga (City), **offering to construct the Naga City Hall within the premises of the Subdivision**. Their letter indicated that **the City Hall would be built on an area of not less than two hectares within the Subdivision**, which would be designated as the open space reserved for a public purpose. The letter, which also indicated the terms of the construction contract, provided that **the City would be free to accept another party's offer to construct the City Hall** if it found the same to be more favorable.

The City's Municipal Board subsequently passed Resolution No. 75, dated July 12, 1954, asking the Subdivision for a bigger area on which the City Hall would stand. Consequently, on July 30, 1954, the Subdivision amended its offer and agreed to donate five hectares to the City. The area is a portion of the land registered in the names of Macario Mariano (Macario) and Jose A. Gimenez (Gimenez) under Transfer Certificate of Title (TCT) No. 671 of the Registry of Deeds for Naga City, measuring a total of 22.9301 hectares. **Along with its amended**



offer to construct the City Hall, the Subdivision specified the terms of its proposal to finance the construction.

The amended offer was signed by Macario and Gimenez to indicate their "(c)onforme," and by their respective spouses, Irene P. Mariano (Irene) and Rose Fitzgerald De Gimenez (through one Josie A. Gimenez), to indicate their marital consent.

On August 11, 1954, the Municipal Board adopted Resolution No. 89 accepting the Subdivision's offer of donation and its proposed contract. The Resolution also authorized the City Mayor to execute the deed of donation on the City's behalf.

The parties submitted divergent accounts on what happened after Resolution No. 89 was passed.

According to the City, the City Mayor of Naga, Monico Imperial (Mayor Imperial), and the registered landowners, Macario and Gimenez, executed a Deed of Donation on August 16, 1954, whereby the latter donated five hectares of land (subject property), two hectares of which to be used as the City Hall site, another two hectares for the public plaza, and the remaining hectare for the public market. By virtue of said Deed, the City entered the property and began construction of the government center. It also declared the five-hectare property in its name for tax purposes. Thereafter, the Land Transportation Office (LTO), the National Bureau of Investigation (NBI), the Department of Labor and Employment (DOLE), the Philippine Postal Corporation (PPC), the Fire Department and other government agencies and instrumentalities entered the same property and built their offices thereon.

In contrast, petitioners averred that the landowners' plan to donate five hectares to the City did not materialize as the contract to build the City Hall was not awarded to the Subdivision. As early as August 23, 1954, Lopez, Jr., the Subdivision's General Manager, supposedly wrote to Macario telling him to suspend the signing of the deed of donation as the Municipal Board could not agree on the specific site where the City Hall would be built. Petitioners alleged that the construction contract was eventually awarded by the Bureau of Public Works (BPW) to a local contractor, Francisco O. Sabaria (Sabaria), who won in a public bidding. Mayor Imperial opposed the award, arguing that he and not the BPW had the authority to initiate the public bidding for the project. The BPW, however, asserted its authority to bid out and award the contract on the ground that national funds would be used for the project. Mayor Imperial and Sabaria litigated the issue, with the former losing before the trial court and subsequently withdrawing his appeal before the CA. Afterwards, the Municipal Board adopted Resolution No. 11 dated January 20, 1959 authorizing the City Mayor to enter into a contract with Sabaria for the construction of the City Hall.

Petitioners claimed that on February 5, 1959, Macario and officers of the Subdivision met with Mayor Imperial to demand the return of the five-hectare lot as the condition for the donation was not complied with. Mayor Imperial purportedly assured them that the City would buy the property from them. The purchase, however, did not materialize. Petitioners alleged that ten years later, or on May 14, 1968,

Macario wrote to Lopez, Jr., instructing him to make a follow-up on the City's payment for the subject lot. On December 2, 1971, Macario died without receiving payment from the City.

In 1976, a certain Tirso Mariano filed an **action for partition** of Macario's estate. The action was opposed by Macario's widow, Irene, and their adopted children, Jose (Jose) and Erlinda (Erlinda) Mariano. As an offshoot of this action, a petition to annul Jose and Erlinda's adoption was instituted.

Irene died in 1988. Jose died the following year which was also when his and Erlinda's **adoption was declared valid and legal** by the appellate court. In 1994, Irene's marriage to one Rolando Reluccio (Reluccio) was declared bigamous and void ab initio. And after a **protracted litigation**, Jose, then represented by his heirs, and Erlinda were **declared as Irene's heirs** to the exclusion of Reluccio who was also declared to be without right to represent Irene in Macario's estate.

On **March 11, 1997**, the probate court issued **letters of administration** to one of the petitioners herein, **Danilo David S. Mariano (Danilo)**, for the administration of Irene's estate. In **September 2003**, **Danilo demanded upon then City Mayor** of Naga, Jesse M. Robredo, **to vacate and return the subject property**. When **the City did not comply**, petitioners, as heirs of Jose and Erlinda, filed a **Complaint for unlawful detainer** against the City, docketed as Civil Case No. 12334.

The Unlawful Detainer Case

In their **Complaint, filed on February 12, 2004**, petitioners asked the MTC to order the City and all agencies, instrumentalities or offices claiming rights under it, including the LTO, NBI, DOLE, PPC and the Fire Department, to vacate the subject property, shown in the Sketch Plan as Blocks 25 and 26 (LRC) Psd-9674, and to return possession thereof to them. In addition to attorney's fees, they asked the City to pay them a monthly rental of P2.5 million from the date it received the demand to vacate until it surrendered possession, as reasonable compensation for the use of the property.

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Arguing that the issue involved is **one of ownership**, the City moved to dismiss the complaint for lack of jurisdiction. After the MTC denied the motion on March 22, 2004, the City filed its Answer. The parties subsequently submitted their respective Position Papers and evidence.

X X X X

In its **February 15, 2005 Decision**, the MTC gave weight to the Deed of Donation. Nonetheless, it **dismissed the complaint on the ground of lack of jurisdiction**. It reasoned that the City's defense, which **involved a claim of ownership, removed** the issue from the case of **unlawful detainer**. (Emphases supplied)

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On **appeal to the Regional Trial Court**, the latter **reversed** the first level court and **granted** the complaint for ejectment. The City and other government offices thereat were **ordered ejected** and **liable** for the **special damages** of back rentals and legal costs.

On **review by the Court of Appeals**, the RTC decision was at first merely modified. However, on **motion for reconsideration**, the Court of Appeals **reversed** the RTC decision and **reinstated the MTC decision** dismissing the case for **lack of jurisdiction**.

Issues

There are **two issues** in this second motion for reconsideration: **(i)** the identification of petitioners' true cause of action and remedy; and **(ii)** the proper relief to be awarded to them.

1. Identification of petitioners' true cause of action and remedy

On the **first issue**, the *ponencia* holds that **neither** recovery of physical and/or legal possession and/or ownership **nor** the remedies of ejectment and/or *accion publiciana* and/or *accion reivindicatoria* are petitioners' **true** cause of action and remedy. It rules that the proper cause of action is **inverse expropriation** and the remedy is a **complaint for just compensation** under the *Constitution* itself.

I concur that this is the **proper characterization** of the action below based on the factual allegations in the parties' pleadings and which was established during the actions' original and appellate proceedings. After all, "[i]t is worth reminding that the actual nature of every action is determined by the allegations in the body of the pleading or the complaint itself, not by the nomenclature used to designate the same."¹

2. Proper relief to petitioners

On the **second issue**, the key facts and law are as follows:

One, the City **did not usurp** the property of petitioners and their predecessors. The City entered, possessed and improved the property on

¹ *Mandanas v. Ochoa, Jr.*, 835 Phil. 97, 135 (2018).



the basis of **its acceptance of the offer to donate** made by petitioners' predecessors. This was the meeting of their minds in the beginning and for some time after.

As regards timelines, this meeting of the minds started on **August 11, 1954** when the City decided to accept the predecessors' offer of donation and contract. From **August 16, 1954**, by the City's own **admission**, the donation was **partially executed**. Starting on **this date**, the City benefitted from the predecessors' property while the **predecessors** were **deprived** of and **lost this property**.

As to when the meeting of the minds **came to an end**, the facts are not established.

Petitioners claim that as early as **February 5, 1959**, the predecessors met with the City Mayor to demand the return of the five-hectare lot. This was reiterated almost a decade later, on **May 14, 1968**. Nothing came out of it until the patriarch's death on December 2, 1971.

The *status quo* continued probably because of the internal family disputes that took place from 1976 until the appointment of an administrator on **March 11, 1997**. It took a while for the administrator to collate the properties since only in **September 2003** did the administrator send a notice to vacate and pay damages to the City. On **February 12, 2004**, the unlawful detainer complaint was filed against the City by petitioners.

Two, just compensation is reckoned from the time of **actual taking**. The latter occurs when the **property owner** is **deprived of the land**. On the other hand, **just compensation** is defined as:

x x x "the **sum equivalent of the market value** of the property, broadly described as the **price fixed in open market by the seller in the usual and ordinary course** of legal action or competition, or the **fair value of the property as between one who receives and who desires to sell it**, fixed at the time of the **actual taking** by the government." The word "just" is used to emphasize the meaning of the word "compensation" so as to convey the idea that the **equivalent to be rendered for the property to be taken should be real, substantial, full and ample**.

The **nature and character of the land** at the **time of taking** is thus the principal criterion in determining just compensation. All the facts as to the **condition of the property and its surroundings**, as well as its **improvements and capabilities**, must be considered. The "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.² (Emphases supplied)

² *Rebadulla v. Republic*, 824 Phil. 982, 995 (2018).

The **payment of compensation** must also be **timely** and **without delay – at the time of taking** – in order to be **just**. On this score, the Court's pronouncement in *Evergreen Manufacturing Corporation v. Republic*,³ is *apropos*:

Again, **just compensation should be made at the time of taking**, and the amount of payment should be the fair and equivalent value of the property. In this case, Republic-DPWH was able to take possession of the Subject Premises even before making a full and fair payment of just compensation because RA 8974 allowed for the possession of the property merely upon the initial payment which forms part of the just compensation. Thus, it is clear that the government has not yet made the full and fair payment of just compensation to Evergreen.

As explained by this Court in *Apo Fruits Corporation v. Land Bank of the Philippines*, **the rationale for imposing interest on just compensation is to compensate the property owners for the income that they would have made if they had been properly compensated — meaning if they had been paid the full amount of just compensation — at the time of taking** when they were deprived of their property. The Court held:

We recognized in *Republic v. Court of Appeals* the **need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken**. We ruled in this case that:

The constitutional limitation of “just compensation” is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, **if fixed at the time of the actual taking by the government**. Thus, **if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court**. In fine, **between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred**.

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.

³ *Evergreen Manufacturing Corporation v. Republic*, 817 Phil. 1048, 1068-1071 (2017).



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.

The **delay in the payment of just compensation is a forbearance of money.** As such, this is necessarily entitled to earn interest. The difference in the amount between the final amount as adjudged by the court and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money. In Republic v. Mupas, we stated clearly:

Contrary to the Government's opinion, the interest award is not anchored either on the law of contracts or damages; it is based on the owner's constitutional right to just compensation. The difference in the amount between the final payment and the initial payment — in the interim or before the judgment on just compensation becomes final and executory — is not unliquidated damages which do not earn interest until the amount of damages is established with reasonable certainty. The **difference between final and initial payments forms part of the just compensation** that the property owner is **entitled from the date of taking of the property.**

Thus, when the **taking of the property** precedes the filing of the complaint for expropriation, the Court orders the condemnor **to pay the full amount of just compensation from the date of taking** whose **interest** shall likewise **commence on the same date.** The Court does not rule that the interest on just compensation shall commence [on] the date when the amount of just compensation becomes certain, e.g., from the promulgation of the Court's decision or the finality of the eminent domain case.

With respect to the **amount of interest** on the difference between the initial payment and final amount of just compensation as adjudged by the court, we have upheld in Eastern Shipping Lines, Inc. v. Court of Appeals, 45 and in subsequent cases thereafter, **the imposition of 12% interest rate from the time of taking when the property owner was deprived of the property, until 1 July 2013,** when the **legal interest on loans and forbearance of money was reduced from 12% to 6% per annum** by BSP Circular No. 799. Accordingly, **from 1 July 2013 onwards, the legal interest** on the difference between the final amount and initial payment is **6% per annum.**

In the present case, Republic-DPWH filed the expropriation complaint on 22 March 2004. As this preceded the actual taking of the property, the just compensation shall be appraised as of this date. No interest shall accrue as the government did not take possession of the Subject Premises. Republic-DPWH was able to take possession of the property on 21 April 2006 upon the agreement of the parties. Thus, a **legal interest of 12% per annum** on the difference between the final amount adjudged by the Court and the initial payment made shall **accrue from 21 April 2006 until 30 June 2013. From 1 July 2013 until**



the finality of the Decision of the Court, the difference between the initial payment and the final amount adjudged by the Court **shall earn interest at the rate of 6% per annum. Thereafter, the total amount of just compensation shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.** (Emphases supplied)

Lastly, the **added value brought about by the improvements** in the expropriated property as a result of the expropriation is **discounted** from the amount of just compensation:

x x x **just compensation** refers to the **just and complete equivalent of the loss which the owner of the thing expropriated has to suffer** by reason of the expropriation and is ordinarily determined by **referring to the value of the land and its character at the time it was taken** by the expropriating authority. In fine, just compensation is the “equivalent for the value of the property at the time of its taking. Anything beyond that is more and anything short of that is less, than just compensation. It **means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating authority.**” In other words, the measure of just compensation “is not the taker’s gain but the owner’s loss.”

Accordingly, the **State’s obligation to compensate the landowner arises only if the owner suffered a loss** in the hands of the State.⁴ (Emphases supplied)

3. Relief in the present case

Applying the facts and the law to determine the proper relief in the present case, I reckon the **date of the actual taking** to be the **same date** when petitioners’ predecessors were **deprived of their property**. This was on **August 16, 1954** which the City admitted as the date when it **entered, possessed, and started improving** the property. It was on this date that petitioners’ predecessors were **deprived** of their property. That the predecessors **consented and acquiesced** to this taking **does not change** the reality that the property was **taken from them** and they **suffered a loss** on this date.

On the amount of **just compensation**, the court below must determine the property’s **fair market value** on **August 16, 1954**. This was the **amount of loss** that petitioners’ predecessors and, by extension, petitioners suffered. The **fair market value** is the **amount of money** that a motivated seller will be receiving from a motivated buyer.

⁴ *Philippine Veterans Bank v. Bases Conversion and Development Authority*, G.R. No. 217492, October 4, 2021.



But since **payment** of just compensation was **not made** on August 16, 1954 and will not be forthcoming until the proceedings in the present case are decided, the property's **fair market value** on **August 16, 1954** will necessarily be **adjusted** according to the terms below:

First. The property's **fair market value** on **August 16, 1954** must be the **equivalent value of money** at the **time of payment**. For example, the **value of PHP 100.00 on August 16, 1954** will **not be the same** as the **value of PHP 100.00 at the time of payment**. What the **predecessors lost** as say, PHP 100.00 on August 16, 1954, or the **fair market value** of the property on this date, will **not be compensated** by paying them PHP 100.00 or the **same face amount** of fair market value on the date of payment. The *ponencia* ordains that said fair market value must be computed using the formula in *Republic v. Spouses Nocom*.⁵ However, the fair market value arrived at using said formula, to my mind, does not sufficiently or **justly approximate** the **opportunity cost** of petitioners, *i.e.*, the foregone benefits from the missed opportunity to use the property under dispute—or the monetary value locked therein—for gainful objectives. A computation based on the inflation rate from August 16, 1954 to present would yield a **more equitable resolution** in this regard.

According to the *Philippine Inflation Calculator* available online,⁶ the goods that **PHP 100.00** could buy in 1960 would roughly cost **PHP 12,307.11** or **12,207.11%** increase at the end of 2020. The **cost of inflation** must be **factored in** so that the **true value of the loss** suffered by the predecessors (or any landowner for that matter) is justly compensated.

Second. While the **cost of inflation** speaks to justly compensating the **real value of the loss** suffered by the landowner, which is the **matter being compensated** *according to our jurisprudence*, **legal interest** must also be imposed on the **inflation-adjusted fair market value at the time of actual taking**, since there was a **forbearance of money** as a result of the **delay in the payment of just compensation**.

Thus, a **legal interest of 12% per annum** on the **inflation-adjusted fair market value at the time of actual taking** shall **accrue** from **August 16, 1954** until **June 30, 2013**. From **July 1, 2013** until the **finality** of the present **Resolution** of the Court, the **inflation-adjusted fair market value at the time of actual taking** shall **earn legal interest** at the rate of **6% per annum**. Thereafter, the **total amount of just compensation** (*i.e.*, the **inflation-adjusted fair market value at the time of actual taking plus** legal interests) shall **earn legal interest of 6% per annum** from the finality of this Resolution until **full payment** thereof.

⁵ G.R. No. 233988, November 15, 2021.

⁶ Philippine Inflation Calculator at <https://acesubido.net/ph-inflation-calculator/> (last accessed on August 28, 2022).

Finally, the **determination of just compensation, how it is to be computed and from what date it is to be reckoned, should be remanded**, after the Court has finally decided the case, how it is to be computed, and from what date it is to be reckoned, **to the Court of Appeals** under **CA-G.R. SP No. 90547**, instead of the RTC. The **Court of Appeals** can hear evidence and pronounce judgment on this **sole issue**, and should there be a further appeal therefrom, it will be directly to this Court, thus removing a layer of proceedings and delay in forever settling this matter. An **expeditious final settlement** of this matter is **all the more necessary** because the **literal seat of government of Naga City is endlessly imperiled** so long as the issue about **its existence on its heartland** remains unsettled.

Conclusion

THUS, I vote to **grant** petitioners' second motion for reconsideration, and to **reverse** the Decision dated March 12, 2018 and the Resolution dated July 23, 2018 of the First Division of this Court, in this wise:

1. The order for respondent and all government instrumentalities, agencies, and offices claiming right of possession through and under it to peacefully surrender and deliver to petitioners the physical possession of the land covered by Transfer Certificate of Title No. 671, including all improvements and structures erected thereon should be **DELETED**;
2. The award of monthly rental in favor of petitioners should also be **DELETED**;
3. Respondent should be **ORDERED** to pay petitioners just compensation in accordance with the above formula; and
4. The case should be **REMANDED** to the Court of Appeals under CA-G.R. SP No. 90547 for the determination of just compensation. The Court of Appeals should also be **DIRECTED** to resolve it within two months from notice.


AMY C. LAZARO-JAVIER
Associate Justice