EN BANC

G.R. Nos. 181912 & 183347 *(Ramon M. Alfonso vs. Land Bank of the Philippines, et al.)*

Promulgated:

November 29, 2016

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DISSENTING OPINION

VELASCO, JR., *J.*:

The instant case involves Department of Agrarian Reform (DAR) Department Administrative Order No. 05-s.1998 (DAO No.5), which provides for a formula in the computation for just compensation that is due to a landowner. The core issue is whether or not the DAR-crafted formula is mandatory on the Regional Trial Court (RTC), acting as a Special Agrarian Court (SAC). While jurisprudence on the matter is not consistent, the predominant holding has been that the application of the formula is mandatory. However, this dictum should now be revisited, in consonance with the postulate that the determination of just compensation is basically a judicial function.

The Facts

The case started when the government, through the DAR, sought to expropriate two (2) parcels of land in San Juan, Sorsogon City under RA 6657,[1] otherwise known as the Comprehensive Agrarian Reform Law (CARL). The land was originally registered in the name of Cynthia Palomar (Palomar) under Transfer Certificate of Title (TCT) Nos. T-21136 and T-23180 consisting of 1.6350 and 26.2284 hectares, respectively.

Palomar rejected the initial valuation of PhP36,066.27 and PhP792,869.06, respectively, made by the DAR and the Land Bank of the Philippines (LBP) in accordance with Sec. 17 of RA 6657 and DAO 11, s. of 1994, as amended by DAO No. 5. She appealed the valuations thus made to the Provincial Adjudication Board of the DAR in Sorsogon (PARAD), docketed as Land Valuation Case No. 68-01 for TCT No. T-21136 and Land Valuation Case No. 70-01 for TCT No. T-23180. On April 16, 2001, Palomar sold the subject lots to petitioner Ramon Alfonso (Alfonso).

In separate decisions both dated June 20, 2002,[2] the PARAD made a valuation of the parcels of land of PhP103,955.66 and PhP2,314,115.73,

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[1] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES.

[2] *Rollo*, pp. 51-53; 36-38.

respectively, applying this formula: Land Value = (Capitalized Net Income multiplied by 0.9) plus (Market Value per tax declaration multiplied by 0.1).

From the PARAD decisions, both parties initiated complaints with the RTC of Sorsogon City, Branch 52, SAC, the first docketed as Civil Case No. 2002-7090 filed by Palomar and Alfonso, and the other, Civil Case No. 2002-7073, filed by the LBP.

For their part, Palomar and Alfonso claim that the PARAD valuation did not take into account the following: (a) actual number of trees planted therein, *i.e.*, coconut and other fruit and non-fruit bearing trees; (b) other improvements that were introduced on the properties; and (c) their proximity to the commercial centers and establishments, roads and other value enhancing structures and facilities.

The LBP, on the other hand, insisted on the correctness of its valuation in light of the provisions of DAO No. 11, s. of 1994, as amended by DAO No. 5, s. of 1998.

The court-appointed commissioner tasked to render a report on the just compensation for the covered parcels used both a Market Data Approach (MDA) and Capitalized Income Approach (CIA) in determining the correct value for the subject lands. In the MDA, the valuation is primarily based on sales and listing of comparable properties in the neighborhood adjusted for time of sale, locations and general characteristics of the properties. The CIA, on the other hand, is based on the potential net benefit that may be derived from the ownership of the property.

Thereafter, the SAC rendered a consolidated decision dated May 13, 2005[3] fixing the valuation of the properties at PhP442,830.00 for the land covered by TCT No. T-21136 and PhP5,650,680.00 for the lot covered by TCT No. T-23180. In arriving at such valuation, the SAC, stressing that the matter of valuation is a judicial function, wrote:[4]

> After a thorough study of the indications, and considering all factors relating to the market conditions of the subject property and its neighboring area we are of the opinion that the average of the two indications (MDA and CIA) reasonably represented the just compensation (fair market value) of the land with productive coconut trees.
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> x x x x
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> R.A. 6657 provides that "In determining just compensation, the cost of acquisition of the land, the current value of like property, the sworn valuation by the owner, the tax declarations and assessments and the assessments made by government assessors shall be considered. The social and economic benefits contributed by the farmers and farmworkers and by the government to the property as well as the non-payment of taxes or

[3] Id. at 58-66.
[4] Id. at 64-66.

loans secured from any government financing institution on the said land shall be considered as additional factors to determine valuation."

Considering all these factors, the valuation made by the Commissioner and the potentials of the property, the Court considers that the valuation of the Commissioner as the more realistic appraisal which could be the basis for the full and fair equivalent of the property taken from the owner while the Court finds that the valuation of the Petitioner Land Bank as well as the Provincial Adjudicator of Sorsogon in this particular parcels of land for acquisition are unrealistically low.

The provisions of Section 2, Executive Order No. 228 are not binding upon the Courts. Determination of just compensation is a judicial prerogative. Section 2, EO No. 228, however, "may serve merely as a guiding principle or one of the factors in determining just compensation, but may not substitute the Court's own judgment as to what amount should be awarded and how to arrive at such amount." (Republic vs. Court of Appeals, G.R. 74331. March 25, 1988)

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WHEREFORE, premises considered, judgment is hereby rendered:

1. Fixing the amount of FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED THIRTY PESOS (PhP442,830.00), Philippine currency for Site 1 with an area of 16,530 sq.m. covered by TCT No. T-21136 situated at San Juan, Sorsogon City and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND SIX HUNDRED EIGHTY (PhP 5,650,680.00) Philippine currency for Site 2 with an area of 262,284 sq. m. covered by TCT Bi. T-23180 situated in Bibincahan, Sorsogon City or a total amount of SIX MILLION NINETY THOUSAND PESOS (PhP6,090,000.00) for the total area of 278,814 sq. m. in the name of Cynthia Palomar/Ramon M. Alfonso which property was taken by the government pursuant to the Agrarian Reform Program of the government as provided by R.A. 6657.

2. Ordering the Petitioner Land Bank of the Philippines to pay the Plaintiff/Private Respondent the amount of FOUR HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED THIRTY PESOS (PhP442,830.00) and the amount of FIVE MILLION SIX HUNDRED FIFTY THOUSAND SIX HUNDRED EIGHTY (PhP 5,650,680.00) or the total amount of SIX MILLION NINETY THOUSAND PESOS (PhP6,090,000.00), Philippine currency for Lots 1604 and 2161 respectively, in the manner provided by R.A. 6657 by way of full payment of the said just compensation after deducting whatever amount previously received by the private respondents from the Petitioner Land Bank of the Philippines as part of the just compensation.

3. Without pronouncement as to costs.

SO ORDERED.

Therefrom, the LBP and the DAR appealed to the Court of Appeals (CA), which, by Decision dated July 19, 2007[5] found for the appellants, thus:[6]

> For failure to observe the procedure provided in DAR A.O. No. 5, series of 1998 and the guidelines therein, this Court finds it imperative to set aside the assailed decision of April 13, 2005 and REMAND the case to the trial court for proper determination of just compensation.
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> WHEREFORE, in view of the foregoing, both petitions are GRANTED. The decision of Branch 52, Regional Trial Court of Sorsogon City dated April 13, 2005 in Civil Cases [sic] Nos. 2002-7073 and 2002-7090 is SET ASIDE. Both cases are hereby REMANDED to the court of origin for proper determination of just compensation.
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> SO ORDERED.

Hence, the instant petition.

The issue posed in the instant petition is whether the SAC erred in assigning to the expropriated lots values under a formula not strictly following that set forth in DAO No. 5. The *ponencia* would deny the petition and affirm the appealed ruling of the CA, remanding the case to the SAC for the proper determination of just compensation in accordance with the formula provided by DAO No. 5.

With all due respect, I beg to disagree.

Discussion

The jurisdiction of the SACs to determine just compensation is original and exclusive under Sec. 57 of the CARL[7]

The jurisdiction bestowed by Congress to the SACs to entertain petitions for the determination of just compensation for property taken pursuant to the CARL is characterized as *"original and exclusive."* This could not be any clearer from the language of Sec. 57 of the law, to wit:

> **Section 57. *Special Jurisdiction.*** — The Special Agrarian Courts shall have **original and exclusive jurisdiction** over all petitions for the **determination of just compensation to landowners,** and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. (emphasis added)

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[5] Id. at 24-32. Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza.

[6] Id. at 31.

[7] See also Separate Concurring Opinion of Justice Presbitero J. Velasco, Jr. in *Limkaichong v. Landbank of the Philippines*, G.R. No. 158464, August 2, 2016.

The fundamental tenet is that jurisdiction can only be granted through legislative enactments,[8] and once conferred cannot be diminished by the executive branch. It can neither be expanded nor restricted by executive issuances in the guise of law enforcement. Thus, although the DAR has the authority to promulgate its own rules of procedure,[9] it cannot modify the *"original and exclusive jurisdiction"* to settle the issue of just compensation accorded the SACs. Stated in the alternative, the DAR is precluded from vesting upon itself the power to determine the amount of just compensation a landowner is entitled to, notwithstanding the quasi-judicial powers granted the DAR under Sec. 50 of the CARL, to wit:

> **Section 50.** ***Quasi-judicial Powers of the DAR.*** - The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR) x x x.

We clarified in *LBP v. Belista*[10] that further excepted from the coverage of the DAR's jurisdiction, aside from those specifically mentioned in Sec. 50, are petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA 6657, which are within the jurisdiction of the SACs pursuant to Sec. 57 of the law. As held:

> Clearly, under Section 50, DAR has primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the DA and the DENR. **Further exception to the DAR's original and exclusive jurisdiction are all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA No. 6657, which are within the jurisdiction of the RTC sitting as a Special Agrarian Court. Thus, jurisdiction on just compensation cases for the taking of lands under RA No. 6657 is vested in the courts.**
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> In *Republic v. CA*, the Court explained:
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> > Thus, Special Agrarian Courts, which are Regional Trial Courts, are given original and exclusive jurisdiction over two categories of cases, to wit: (1) "all petitions for the determination of just compensation to landowners" and (2) "the prosecution of all criminal offenses under [R.A. No. 6657]." The provisions of §50 must be construed in harmony with this provision by considering cases involving **the determination of just compensation** and criminal cases for violations of R.A. No. 6657 **as excepted from**

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[8] *Magno v. People,* G.R. No. 171542, April 6, 2011, citing *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559; *Spouses Vargas v. Spouses Caminas*, G.R. Nos. 137839-40, June 12, 2008, 554 SCRA 305, 317; *Metromedia Times Corporation v. Pastorin*, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; and *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 (1986).

[9] Sec. 49, RA 6657.

[10] G.R. No. 164631, 26 June 2009, 591 SCRA 137, 143-147

> **the plenitude of power conferred on the DAR.** Indeed, there is a reason for this distinction. **The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (for such are takings under R.A. No. 6657)** and over criminal cases. Thus, in *EPZA v. Dulay* and *Sumulong v. Guerrero* - we held that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies, while in *Scoty's Department Store v. Micaller*, we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act. (emphasis added)

Corollary to the above-quoted pronouncement, the rule-making power of the DAR cannot then extend to the determination of just compensation by the SACs. **The DAR cannot promulgate rules to cover matters outside of its jurisdiction**. At best, it can only serve to govern the internal workings of the administrative agency, but definitely cannot control the court proceedings before the SACs.

The original and exclusive jurisdiction of the SACs to determine just compensation is further strengthened by the fact that even without completing the process outlined in Sec. 16 of the CARL, the landowner affected by the taking could immediately seek court action to determine the amount he is entitled to.

In effecting the CARP, the government, through the LBP, makes an initial valuation of the property being taken, which constitutes the initial government offer. Should the landowner reject this offer or otherwise fail to reply, a summary proceeding would ensue. In this proceeding conducted by the DAR, the parties involved, i.e., the landowner and the LBP, submit evidence to justify their claim of the agricultural land's proper valuation. The DAR has thirty (30) days from the date the matter is submitted for decision within which to render a decision. This framework is outlined under Sec. 16 of the CARP.[11] Its final paragraph reads: *"Any party who disagrees*

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[11] **Section 16.** ***Procedure for Acquisition of Private Lands.*** — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from

with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation."[12]

Thus, from the DAR ruling, the landowner has the option of whether or not to accept or reject the recalibrated offer. Should the landowner refuse the offer still, he or she may file the necessary petition for determination of just compensation with the RTC acting as a SAC that has jurisdiction over the property being taken. But as earlier discussed, the administrative procedure before the DAR can be bypassed by the landowner by invoking the original and exclusive jurisdiction of the SACs. The Court has applied this holding in numerous cases summarized in *Heirs of Vidad v. LBP,* to wit:[13]

> In *Land Bank of the Philippines v. Wycoco,*[14] the Court upheld the RTCs jurisdiction over Wycoco's petition for determination of just compensation **even where no summary administrative proceedings was held before the DARAB** which has primary jurisdiction over the determination of land valuation. x x x
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> In *Land Bank of the Philippines v. Court of Appeals,*[15] the landowner filed an action for determination of just compensation **without waiting for the completion of DARABs re-evaluation of the land.** x x x
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> In *Land Bank of the Philippines v. Natividad,*[16] wherein Land Bank questioned the alleged **failure of private respondents to seek reconsideration of the DARs valuation**, but instead filed a petition to fix just compensation with the RTC x x x.
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> In *Land Bank of the Philippines v. Celada,*[17] where the issue was whether the SAC erred in assuming jurisdiction over respondents petition for determination of just compensation **despite the pendency of the administrative proceedings before the DARAB** x x x. (emphasis added)

In the cited cases, the Court invariably upheld the original and exclusive jurisdiction of the SACs over petitions for the determination of

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the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

[12] Sec. 16 (f), RA 6657.

[13] G.R. No. 166461, April 30, 2010.

[14] G.R. No. 140160, January 13, 2004.

[15] 376 Phil. 252 (1999).

[16] G.R. No. 127198, May 16, 2005.

[17] G.R. No. 164876, January 23, 2006.

just compensation, notwithstanding the seeming failure to exhaust administrative remedies before the DAR.[18]

More recently, in *LBP v. Montalvan,*[19] therein petitioner argued that the landowner's filing with the SAC of a separate Complaint for the determination of just compensation was premature because the revaluation proceedings in the DAR were still pending. The Court ruled, however, that the pendency of the DAR proceedings could not have ousted the SAC from its original and exclusive jurisdiction over the petition for judicial determination of just compensation since "*the function of fixing the award of just compensation is properly lodged with the trial court and is not an administrative undertaking.*"[20]

Thus, even though the landowner was not able to undergo the complete administrative process before the DAR pursuant to Sec. 16 of the CARL, he is not precluded from immediately and directly filing a complaint for just compensation before the SAC. More than being the prevailing interpretation of Sec. 57 of the CARL, this is also in line with the oft-cited ruling that the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies.[21]

The administrative proceeding before the DAR is merely preliminary and cannot prevail over the judicial determination of just compensation[22]

In contradistinction with the original and exclusive jurisdiction of the SACs under Sec. 57 of the CARL, the valuation process undertaken by DAR under Sec. 16 of the same law is merely **preliminary** in character. We said as much in *LBP v. Listana*:[23]

> In *Republic v. Court of Appeals*, private respondent landowner rejected the government's offer of its lands based on LBP's valuation and the case was brought before the PARAD which sustained LBP's valuation. Private respondent then filed a Petition for Just Compensation in the RTC sitting as [SAC]. However, the RTC dismissed its petition on the ground that private respondent should have appealed to the DARAB x x x. Private respondent then filed a petition for certiorari in the CA which reversed the order of dismissal of RTC and remanded the case to the RTC for further proceedings. The government challenged the CA ruling before this Court via a petition for review on certiorari. This Court, affirming the CA, ruled as follows:

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[18] Separate Concurring Opinion of Associate Justice Presbitero J. Velasco, Jr. in *Limkaichong v. DAR*, G.R. No. 158464, August 2, 2016.

[19] G.R. No. 190336, June 27, 2012.

[20] *Land Bank of the Philippines v. Montalvan*, G.R. No. 190336, June 27, 2012.

[21] Id., citing *Land Bank of the Philippines v. Court of Appeals*, 376 Phil. 252 (1999); and *Land Bank of the Philippines v. Celada*, 515 Phil. 467 (2006).

[22] *See also* Separate Concurring Opinion of Justice Presbitero J. Velasco, Jr. in *Limkaichong v. Landbank of the Philippines*, G.R. No. 158464, August 2, 2016.

[23] G.R. No. 168105, July 27, 2011, 654 SCRA 559, 569-571.

> **Thus, under the law, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking.** Through notice sent to the landowner pursuant to §16(a) of R.A. No. 6657, the DAR makes an offer. In case the landowner rejects the offer, a summary administrative proceeding is held and afterward the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator as the case may be, depending on the value of the land, fixes the price to be paid for the land. If the landowner does not agree to the price fixed, he may bring the matter to the RTC acting as Special Agrarian Court. This in essence is the procedure for the determination of compensation cases under R.A. No. 6657. In accordance with it, the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case. **In the terminology of §57, the RTC, sitting as [SAC], has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions**.
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> Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from §57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to §57 and therefore would be void. **What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question.** (emphasis supplied)

This ruling was reiterated in *LBP v. Montalvan*,[24] to wit:

> There is no inherent inconsistency between (a) the primary jurisdiction of the DAR to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all questions involving the implementation of agrarian reform, including those of just compensation; and (b) the original and exclusive jurisdiction of the SAC over all petitions for the determination of just compensation. "The first refers to administrative proceedings, while the second refers to judicial proceedings." The jurisdiction of the SAC is not any less "original and exclusive," because the question is first passed upon by the DAR; as the judicial proceedings are not a continuation of the administrative determination. In *LBP v. Escandor*, the Court further made the following distinctions:
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> **It is settled that the determination of just compensation is a judicial function. The DAR's land valuation is only**

[24] G.R. No. 190336, June 27, 2012, 675 SCRA 380, 393-394.

> **preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be.**
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> Although the DAR is vested with primary jurisdiction under the Comprehensive Agrarian Reform Law (CARL) of 1988 to determine in a preliminary manner the reasonable compensation for lands taken under the CARP, such determination is subject to challenge in the courts. The CARL vests in the RTCs, sitting as SACs, original and exclusive jurisdiction over all petitions for the determination of just compensation. This means that the RTCs do not exercise mere appellate jurisdiction over just compensation disputes.
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> We have held that the jurisdiction of the RTCs is not any less "original and exclusive" because the question is first passed upon by the DAR. The proceedings before the RTC are not a continuation of the administrative determination. Indeed, although the law may provide that the decision of the DAR is final and unappealable, still a resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

The preliminary valuation conducted by the DAR serves very limited purposes, the first of which is the recalibration of the offer to the landowner. The proceeding before the DAR is not for making a binding determination of rights between the parties. Rather, it must be understood as a venue for negotiations between the government and the landowner, allowing the latter to present his counter-offer to the proposed sale, and providing the parties involved with the opportunity to agree on the amount of just compensation.

The other more significant purpose of the valuation is compliance with the deposit requirement to be granted entry into the property. Significantly, the amount deposited should not be confused with the just compensation to be received by the landowner. It merely serves as an assurance to the landowner that he will receive compensation since the deposit, in a way, can be construed as earnest money for the involuntary sale. It is a form of security that payment of just compensation would actually be made thereafter upon court judgment.[25] As explained during the Constitutional Commission deliberations:[26]

> MR. REGALADO. It is not correct to state that jurisprudence does not require prior payment. Even the recent presidential decrees of the President always require **a partial deposit of a certain percentage and the rest by a guaranteed payment**. What I am after here is that, as Commissioner Bernas has said, there must at least be an assurance. That assurance may be in the form of a bond which may be redeemable later. But to say that there has never been a situation where prior payment is not required, that is not so even under the Rules of Court as amended by

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[25] *City of Manila v. Alegar Corporation*, G.R. No. 187604, June 25, 2012.

[26] Record of the Constitutional Commission Proceedings and Debates, Vol. 3, pp. 20; Minutes of the Constitutional Commission dated August 7, 1986.

> presidential decrees. **Even the government itself, upon entry on the land, has to make a deposit and the rest thereafter will be guaranteed under the judgment of a court**, but which judgment, as I have pointed out, is not even realizable by executor process. Does it mean to say that the government can take its own time at determining when the payment is to be made? **At least simultaneously, there should be an assurance in the form of partial payment** in cash or other modes of payment, and the rest thereof being guaranteed by bonds, the issuance whereof should be simultaneous with the transfer. That is my only purpose in saying that there should be prior payment – not payment in cash physically but, at least, contract for payment in the form of an assurance, a guarantee or a promissory undertaking. (emphasis added)

A deposit is likewise required for the government to gain entry in properties expropriated under Rule 67 of the Rules of Court. Sec. 2 of the rule provides that the amount equivalent to the assessed value of the property is deposited, and only from then would the right of the government take possession of the property would commence. The amount deposited, however, is merely an advance to the value of just compensation, which is yet to be determined by the trial court at the second stage of the expropriation proceeding.[27] As such, the amount deposited is not necessarily the amount of just compensation that the law requires. **In the exercise of their judicial functions, the courts still have the final say on what the amount of just compensation will be.**[28]

The same holds true for the taking of private property under RA 6657. In these instances, the government proceeds to take possession of the property subject of the taking, despite the pendency of the just compensation case before the SACs, upon depositing the value of the property as computed by the DAR. Verily, the administrative proceeding before the SACs is a precondition to possess the property but is not necessarily the just compensation contemplated by the Constitution.

To further highlight the preliminary character of the DAR proceeding, it is noteworthy that DAO No. 5 was not the original issuance on the matter of valuation of expropriated land under RA 6657. The administrative order traces its roots to DAO 6, s. of 1989, or the *Rules and Procedures on Land Valuation and Just Compensation*. DAO 6 relevantly states in its Statement of Policy portion that:

> The final determination of just compensation is a judicial function. However, DAR as the lead implementing agency of the CARP, may **initially determine** the value of lands covered by the CARP. (emphasis supplied)

Although DAO 6 had already been repealed, it bears to reiterate that the land valuation formula presented by the DAR was never intended to control the determination of just compensation by the courts. Recapitulating

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[27] Sec. 5, Rule 67 of the Rules of Court.

[28] *Land Bank of the Philippines v. Escandor*, G.R. No. 171685, October 11, 2010, 632 SCRA 504.

our pronouncement in *Republic v. Court of Appeals*:[29] *"[w]hat adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question."* The determination of just compensation is, therefore, as it were, a judicial function that cannot be usurped by any other branch of government. **And insofar as agrarian reform cases are concerned, the original and exclusive jurisdiction to determine of just compensation is properly lodged before the SACs, not with the DAR.**

There should be no fixed formula in computing for just compensation under the CARL, just as in other forms of expropriation

As a guide to the SACs, Sec. 17 of the CARL enumerates the factors to consider in approximating the amount of just compensation for private agricultural property taken by the government. It reads:

> **Section 17.** ***Determination of Just Compensation.*** — In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

It is conceded that the SACs are bound to consider the above-enumerated factors embodied in Sec. 17 in determining just compensation. Nevertheless, it would be a stretch, if not downright erroneous, to claim that its formulaic translation by the DAR is just as binding on the SACs.

To elucidate, "*just compensation*" is a constitutional limitation to all modalities of the government's exercise of its right of eminent domain, not just in agrarian reform cases.[30] Despite making numerous appearances in

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[29] *Republic v. Court of Appeals*, G.R. No. 122256, October 30, 1996

[30] **Article III. Bill of Rights**

Section 9. Private property shall not be taken for public use without **just compensation.**

Article XII. National Economy and Patrimony

Section 18. The State may, in the interest of national welfare or defense, establish and operate vital industries and, **upon payment of just compensation**, transfer to public ownership utilities and other private enterprises to be operated by the Government.

Article XIII. Social Justice and Human Rights

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and **subject to the payment of just compensation**. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (emphasis added)

various provisions of the fundamental law, however, **it was the understanding among the members of the Constitutional Commission that the concept of just compensation would, nevertheless, bear the same meaning all throughout the document, and to apply the same rules for all types of expropriation, whether commenced under the CARL or not.**[31] This intent of the framers is evident from the records of the deliberations specifically bearing on agrarian reform:[32]

> MR. CONCEPCION. Thank you.
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> I think the thrust of the amendment of Commissioner Treñas is that the term **"just compensation"** is used in several parts of the Constitution, and, therefore, it must have a **uniform meaning**. **It cannot have in one part a meaning different from that which appears in the other portion**. If, after all, the party whose property is taken will receive the real value of the property on just compensation, that is good enough. Any other qualification would lead to the impression that something else other than that meaning of just compensation is used in other parts of the Constitution.
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> x x x x
>
> MR. RODRIGO. I was about to say what Commissioner Concepcion said. I just want to add that the phrase **"just compensation" already has a definite meaning in jurisprudence**. And, of course, I would like to reiterate the fact that "just compensation" here is not the amount paid by the farmers. **It is the amount paid to the owner, and this does not necessarily have to come from the farmer.** x x x
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> x x x x
>
> THE PRESIDENT. Commissioner Regalado is recognized.
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> MR. REGALADO. Madam President, I propose an amendment to the proposed amendment of Commissioner Treñas. I support him in his statement that the words **"just compensation" should be used there because it has jurisprudentially settled meaning, instead of putting in other ambivalent and ambiguous phrases which may be misconstrued, especially considering the fact that the words "just compensation" appear in different parts of the Constitution.** However, my proposed amendment would read: "subject to THE PRIOR PAYMENT OF JUST COMPENSATION." x x x
>
> x x x x
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> MR. DAVIDE. If the withdrawal is based on what was supposedly agreed with the Committee, I will still object because we will have the concept of just compensation for the farmers and farm workers more difficult than those in other cases of eminent domain. **So, we should not make a distinction as to the manner of the exercise of eminent domain or expropriations and the manner that just compensation should be**

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[31] *See also* Separate Concurring Opinion of Associate Justice Presbitero J. Velasco, Jr. in *Limkaichong v. DAR*, G.R. No. 158464, August 2, 2016.

[32] Record of the Constitutional Commission Proceedings and Debates, Vol. 3, pp. 16-21; Minutes of the Constitutional Commission dated August 7, 1986.

> **paid. It should be uniform in all others** because if we now allow the interpretation of Commissioner Regalado to be the concept of just compensation, then we are making it hard for the farmers and the farm workers to enjoy the benefits allowed them under the agrarian reform policy.
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> MR. BENGZON. Madam President, as we stated earlier, **the term "just compensation" is as it is defined by the Supreme Court in so many cases and which we have accepted. So, there is no difference between "just compensation" as stated here in Section 5 and "just compensation" as stated elsewhere. There are no two different interpretations.**(emphasis added)

Clearly then, the framers intended that the concept of just compensation in the country's agrarian reform programs be the same as those in other cases of eminent domain. No special definition for "just compensation" for properties to be expropriated under the country's land reform program was reached by the Commission.[33] As settled by jurisprudence, the term "just compensation" refers to the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to qualify the meaning of the word "compensation" and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.[34]

There is then neither rhyme nor reason to treat agrarian reform cases differently insofar as the determination of just compensation is concerned. In all instances, the measure is not the taker's gain, but the owner's loss.[35] The amount of just compensation does not depend on the purpose of expropriation, for compensation should be "just" irrespective of the nobility or loftiness of the public aim sought to be achieved. And as in other cases of eminent domain, "*any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.*"[36] In **all** cases of eminent domain proceedings, there should be no mandatory formula for the courts to apply in determining the amount of just compensation to be paid.

To claim that the courts should apply the DAR formula and should rely on the administrative agency tasked to implement the CARL is to undermine the judicial power of the courts. It is incorrect to claim that the SACs do not have the same expertise the DAR has when it comes to calculating just compensation for agricultural lands. For if an

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[33] *Association of Small Landowners in the Philippines v. Hon. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744, and 79777, July 14, 1989.

[34] *National Power Corporation v. Spouses Zabala,* G.R. No. 173520, January 30, 2013, citing *Republic v. Rural Bank of Kabacan, Inc.,* G.R. No. 185124, January 25, 2012, 664 SCRA 233, 244; *National Power Corporation v. Manubay Agro-Industrial Development Corporation*, 480 Phil. 470, 479 (2004).

[35] *National Power Corporation v. Spouses Zabala,* G.R. No. 173520, January 30, 2013.

[36] *National Power Corporation v. Bagui* G.R. No. 164964, October 17, 2008, 569 SCRA 401.

agricultural land is expropriated under Rule 67 of the Rules of Court instead of the CARL, the courts could still compute the just compensation the landowner is entitled to and need not refer the issue to the DAR.

Consider a parcel of agricultural land subjected to CARL expropriated instead under Rule 67 of the Rules of Court. In either situation, the landowner will be entitled to "just compensation" as understood in its jurisprudentially-settled meaning. However, let us assume that the trial court will apply the DAR formula in the former, while it would exercise a wider latitude of discretion in the latter. Thus, **for the same parcel of agricultural land, the compensation fixed by the trial court under Rule 67 may be totally far off from what would have been considered "just" using the DAR formula**. Since it is allowed to adopt its own valuation method, not constrained to make use of the weighted averages accorded to the various factors for consideration, the discrepancy between two valuations could prove to be significant but **this does not necessarily make the valuation by the court, without applying the DAR formula, "unjust."**

There are limitless approaches towards approximating what would constitute just compensation and there are endless criteria for determining what is "just." As the DAR itself emphatically declares: *"**Land valuation is not an exact science** but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it. What is important ultimately is that the land value approximates, as closely as possible, what is broadly considered to be just."*[37] Thus, **while Sec. 17 enumerates the factors to consider in determining just compensation, no mandatory fixed weights should be accorded to them**. **It is the prerogative of the courts** to assess the significance of these factors in each individual case, and in the process, assign them weights in determining just compensation. It lies within the discretion of the SACs to determine which valuation method to select.

To recall, the concept of just compensation is uniform in all forms of government taking. On this point, it must be borne in mind that Rule 67 of the Rules of Court on Eminent Domain **never** prescribed any formula for the valuation of taken property. This undeniable fact only goes to show that the trial courts, with the assistance of its appointed commissioners,[38] are competent enough to ascertain the amount of just compensation that the landowner is entitled to without rigidly applying any set formula. **There is then no reason to mandatorily apply a valuation formula for one exercise of eminent domain, but not on the other forms.**

Associate Justice Arturo D. Brion is correct in pointing out that the appointment of commissioners is not mandatory on the SACs. Pertinently, Sec. 58 of the CARL provides:

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[37] Paragraph I-D of DAR Administrative Order No. 05-98.
[38] Rule 67, Sec. 6 of the Rules of Court.

> **Section 58.** ***Appointment of Commissioners.*** — The Special Agrarian Courts, upon their own initiative or at the instance of any of the parties, **may appoint one or more commissioners to examine, investigate and ascertain facts** relevant to the dispute **including the valuation of properties**, and to file a written report thereof with the court. (emphasis added)

This could, however, only serve to strengthen the position that the SACs are not bound to apply DAO No. 5. Notwithstanding the prior ruling of the DAR, what is being resolved by the SAC in the exercise of its original and exclusive jurisdiction is a *de novo* complaint. Therefore, the SACs **may**, in the exercise of its discretion, disregard the valuations by the DAR and proceed with its own examination, investigation, and valuation of the subject property through its appointed commissioners. Plainly, the SACs are not barred from disregarding the prior findings of the DAR and substituting their own valuation in its stead.

Nowhere in the law can it be seen that the court-appointed commissioners are precluded from utilizing their own valuation methods. All RA 6657 requires is that the factors in Sec. 17 be considered, but not in any specific way. This was the teaching in the landmark case of *Export Processing Zone Authority v. Dulay (Dulay)*[39] wherein the Court held that:

> 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.** (emphasis added)

Dulay involved an expropriation case for the establishment of an export processing zone. There, the Court declared provisions of Presidential Decree Nos. 76, 464, 794, and 1533 as unconstitutional for encroaching on the prerogative of the judiciary to determine the amount of just compensation the affected landowners were entitled to. The Court further held that, at the most, the valuation in the decrees may only serve as guiding principles or factors in determining just compensation, but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.[40]

The seminal case of *Dulay* paved the way for similar Court pronouncements in other expropriation proceedings. Thus, in *National Power Corporation v. Zabala,*[41] the Court refused to apply Sec. 3-A of Republic Act No. 6395, as amended,[42] in determining the amount of just compensation that the landowner therein was entitled to. As held:

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[39] No. L-59603, April 29, 1987.
[40] *EPZA v. Dulay*, id.
[41] G.R. No. 173520, January 30, 2013.
[42] Sec. 3A. x x x

> x x x The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. **As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government." Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof.** (emphasis added)

This holding in *Zabala* is not novel and has in fact been repeatedly upheld by the Court in the catena of cases that preceded it. As discussed in *National Power Corporation v. Bagui*:[43]

> Moreover, Section 3A-(b) of R.A. No. 6395, as amended, is not binding on the Court. **It has been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function** and that **any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.** (emphasis added)

The very same edict in *Bagui* was reiterated in the cases of *National Power Corporation v. Tuazon*,[44] *National Power Corporation v. Saludares*,[45] and *Republic v. Lubinao*,[46] and remains to be the controlling doctrine in expropriation cases, including those concerning agrarian reform.

In contrast, the Court in *LBP v. Gonzalez*[47] echoed the ruling for the SAC to adhere to the formula provided in DAO No. 5, explaining:

> While the determination of just compensation is essentially a judicial function vested in the RTC acting as a SAC, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. SACs are not at liberty to disregard the formula laid down in DAR AO No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it. **Simply put, courts cannot ignore, without violating the agrarian reform law, the formula provided by**

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall:

(a) With respect to the acquired land or portion thereof, not to exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

[43] G.R. No. 164964, October 17, 2008, 569 SCRA 401.

[44] G.R. No. 193023, June 29, 2011, 653 SCRA 84.

[45] G.R. No. 189127, April 25, 2012, 671 SCRA 266.

[46] G.R. No. 166553, July 30, 2009.

[47] G.R. No. 185821, June 13, 2013.

> **the DAR for the determination of just compensation.** (Emphasis supplied)

The cases of *LBP v. Honeycomb Farms Corporation*,[48] *LBP v. Celada*[49] and *LBP v. Lim*[50] were of the same tenor.

In light of the case dispositions in *Honeycomb Farms*, *Celada* and *Lim*, the question is begged: what discretion is left to the courts in determining just compensation in agrarian cases given the formula provided in DAO No. 5? Apparently, **none**. Our rulings therein have veritably rendered hollow and ineffective the maxim that the determination of just compensation is a judicial function. For DAO No. 5 has effectively relegated the SAC to perform the mechanical duty of plugging in the different variables in the formula.

Precisely, this is an undue restriction on the power of the SAC to judicially determine just compensation. For this reason, the formula provided under DAO No. 5 should no longer be made mandatory on, or tie the hands of the SACs in determining just compensation. The courts of justice cannot be stripped of their authority to review with finality the said determination in the exercise of what is admittedly a judicial function, consistent with the Court's roles as the guardian of the fundamental rights guaranteed by the due process and equal protection clauses, and as the final arbiter over transgressions committed against constitutional rights.[51] **Strict adherence to the formula provided in DAO No. 5 must now be abandoned**.

Only upon the enactment of RA 9700 were the SACs mandated to "consider" the DAR formula

A cursory examination of Sec. 17 of RA 6657, as amended by RA 9700, easily leads to the inescapable conclusion that the law never intended that the DAR shall formulate an inflexible norm in determining the value of agricultural lands for purposes of just compensation, one that is binding on courts. A comparison of the former and current versions of Sec. 17 evinces that it was only upon the enactment of RA 9700[52] that the courts were mandated by law to "consider" the DAR formula in determining just compensation. There was no such requirement under RA 6657. Prior to RA 9700's enactment, there was then even lesser statutory basis, if not none at all, for the mandatory imposition of the DAR formula.

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[48] G.R. No. 169903, February 29, 2012, 667 SCRA 255.
[49] G.R. No. 164876, January 23, 2006, 479 SCRA 495.
[50] G.R. No. 171941, August 2, 2007, 529 SCRA 129.
[51] *EPZA v. Dulay*, No. L-59603, April 29, 1987.
[52] AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

Sec. 7 of RA 9700, which was approved on August 7, 2009, amended Sec. 17 of the CARL to read:

> SEC. 17. *Determination of Just Compensation.* - In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), **translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court**. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (emphasis added)

The non-retroactivity of RA 9700's amendment to Sec. 17, and its inapplicability in the current case, is expressed under Sec. 5 thereof, which provides:

> **Section 5.** Section 7 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:
>
> "SEC. 7. *Priorities.* – x x x
>
> "Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate landholdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; rice and corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform: *Provided*, That with respect to voluntary land transfer, only those submitted by June 30, 2009 shall be allowed *Provided, further*, That after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition: **Provided, furthermore, That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended x x x."** (emphasis added)

In the consolidated cases of *DAR v. Beriña* and *LBP v. Beriña*,[53] the Court held that for pending just compensation cases during RA 9700's enactment, the evidence of land valuation must conform to Section 17 of RA 6657 **prior to its amendment by RA 9700**. The Court categorically stated therein that the law should not be retroactively applied to pending claims, and held that:

> x x x [T]he Court, cognizant of the fact that the instant consolidated petitions for review on certiorari were filed in August 2008,

[53] G.R. Nos. 183901 & 183931, July 9, 2014.

> or long before the passage of RA 9700, finds that Section 17 of RA 6657, as amended, prior to its further amendment by RA No. 9700, should control the challenged valuation. (emphasis added)

The amendments introduced RA 9700, which was enacted after the taking of the subject properties was commenced, cannot then be invoked in this case. At the time of taking, there was no statutory mandate for the SAC's to consider the DAR formula in determining the proper amount of just compensation.

It was only upon the effectivity of RA 9700 were the SACs required to take into consideration the basic formula of the DAR. But despite such requirement, it must still be borne in mind that **the language of the law does not even treat the formula and its resultant valuations as binding on the SACs**; for though they shall be "considered," **the valuations are still subject to the final decision of the proper court. It is merely an additional variable to consider, but not a controlling formula for the courts to apply.**

During the Bicameral Conference Committee deliberations on RA 9700, Congress even confirmed that **the valuation process before the DAR is only preliminary, and, more significantly, that the SACs can adjust the preliminary valuation based on the best discretion of the courts**. As discussed:[54]

> REP. P. P. GARCIA. Mr. Chairman, just an observation. With respect to the fixing of just compensation, the Supreme Court and even in that case of Association of Small Landowners versus the Secretary of DAR, he said or rule that **the valuation or the determination of the valuation made by DAR is only preliminary because the fixing of just compensation is a judicial question**. That is why in the law, Republic Act 6657, we have the special agrarian courts whose jurisdiction is to cover cases involving the fixing of just compensation. **So it is not very important that we already determined how much or what percentage of the zonal valuation should be accepted as the just compensation <u>because anyway, it will be the court that will determine the fixing of just compensation.</u>**
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> CHAIRPERSON HONASAN. Thank you, Congressman Garcia.
> Can we hear from...
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> REP. LAGMAN. Mr. Chairman, Mr. Chairman, **in that case, if the determination of the DAR on just compensation is only preliminary and the ultimate authority will be the courts, then there is no harm in providing that it should be 70% of the zonal valuation because, anyway, <u>the court will have to make the final determination.</u> <u>It can increase the valuation consistent with its best discretion.</u>**
>
> CHAIRPERSON HONASAN. Thank you, Congressman Lagman.
> Senator Pimental.

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[54] Bicameral Conference Committee on the Disagreeing Provisions of House Bill No. 4077 and Senate Bill 2666 (CARP Extension), June 9, 2009.

> SEN. PIMENTEL. Can we propose an additional phraseology that might address the concerns of Pabling and, of course, the Chairman of the House contingent, **subject to the final decision by the court, by the proper court. In other words, while preliminarily the 70% of the zonal valuation is inputed into this amendment, ultimately, as has been suggested by Pabling, it will have to be the courts.** (emphasis added)

The clear intention of the lawmakers was then to grant the courts discretion to determine for itself the final amount of just compensation, taking into account the factors enumerated under Sec. 17. As the lawmakers admitted, the 70% zonal value to be included in the valuation is actually **an arbitrary figure**, which is not a cause for alarm since, in any case, **the courts can modify the valuation afterwards, consistent with their best discretion.** Evidently, the phrase *"subject to the final determination of the proper court"* is a license for the SACs to adjust the valuation by the DAR as they deem fit.

There would always be extraneous circumstances for the courts to take into account, which were never expressed by the DAR in mathematical terms. This was readily admitted by Congress when RA 9700 expressly included the subject property's zonal value in the enumeration under Sec. 17 of RA 6657, an apparent omission in RA 6657. Even the *"social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property"* as well as the *"nonpayment of taxes or loans secured from any government financing institution on the said land"* were never given their formulaic equivalents in DAO No. 5. The phrase only appears after the DAR's mandate to translate the other factors into a basic formula. If the SAC would then opt to include these factors and even those unaccounted for under Sec. 17, then they may deviate from the formula upon reasoned explanation and as supported by evidence on record, as suggested by the *ponencia*.

A direct attack on the validity of DAO No. 5 is not necessary to reverse the Court's doctrine

Associate Justices Arturo D. Brion and Francis H. Jardeleza highlight that the case at bar is one for just compensation, and that none of the parties is challenging the constitutionality of Sec. 17 of RA 6657 nor of DAO No. 5. They then argue that it would be premature for the Court to resolve the constitutional questions since they are not the *lis mota* of the case at hand. To pursue the line of thought advanced, according to them, would be premature, and would deprive the State, through the OSG, of the right to defend the constitutionality of Sec. 17 of RA 6657 and DAR No.5.

It is conceded that the Court herein is not faced with questions on the constitutionality or validity of administrative issuances. What is merely being called for here is a revisit of existing doctrines, more specifically the mandatory application of the DAR formula by the SACs.

The Court is not being asked to declare DAO No. 5 as null and void. Rather, it is the postulation that **DAO No. 5 should not be made mandatory on the courts.** The formula is, as it remains to be, valid, but its application ought to be limited to making an initial government offer to the landowner and recalibrating the same thereafter as per Sec. 16 of the CARL. The Court cannot interfere with the DAR's policy decision to adopt the direct capitalization method of the market value in determining just compensation in the same way that the DAR cannot likewise prevent the courts from adopting its own method of valuation.

All told, there is no need to declare either Sec. 17 of the CARL or DAO No. 5 as unconstitutional. To emphasize, what is being revisited here is the Court's prior holdings in *Honeycomb, Celada, Lim,* and *LBP v. Yatco*[55] that the DAR formula is mandatory on the Courts. As explained, it is not the intention of CARL that the DAR shall peremptorily determine just compensation or set guidelines and formula for the SAC to follow in determining just compensation. RA 6657 merely authorizes the DAR to make an initial valuation of the subject land based on Sec. 17 of the law for purposes of making an offer to the landowner unless accepted by the landowner and other stakeholders. The determination made by DAR is only **preliminary**, meaning courts of justice will still have the right to review with finality the said determination in the exercise of what admittedly is a judicial function, without being straitjacketed by the DAR formula. Otherwise, the SACs will be relegated to an appellate court, in direct conflict with the express mandate of Sec. 57 of RA 6657 that grants them original and exclusive jurisdiction over the just compensation of lots covered by agrarian reform.

Applying the foregoing in the case at bar, the CA is, therefore, incorrect in requiring the SAC to observe and comply with the procedure provided in DAO No. 5 and the guidelines therein.

The determination of just compensation is, as it always has been, a judicial function. *Ergo*, if the parties to the expropriation do not agree on the amount of just compensation, it shall be subject to the final determination of the courts as provided under Sec. 18 of RA 6657:

> **Section 18.** ***Valuation and Mode of Compensation.*** — The LBP shall compensate the landowner in such amounts **as may be agreed upon by the landowner and the DAR and the LBP**, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, **or as may be finally determined by the court,** as the just compensation for the land. (emphasis added)

It is not mandatory but **discretionary** on the SAC to apply the DAR formula in determining the amount of just compensation. While the SAC shall consider applying the DAR-crafted formula, it may, nevertheless, disregard the same with reasons and proceed with its own determination of

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[55] G.R. No. 172551, January 15, 2014.

just compensation and make use of any accepted valuation method, a variation of the DAR formula, or a combination thereof in assigning weights to the factors enumerated under Sec. 17 of the CARL.

The SACs only became legally bound to apply the DAR formula after RA 9700 took effect on August 7, 2009. This does not, however, diminish the discretionary power of the courts because deviation from the strict application of the DAR basic formula is still allowed upon justifiable grounds and based on evidence on record. Sec. 17, as amended by RA 9700, is clear that the determination of just compensation shall be "subject to the final decision of the proper court," referring to the SACs.

Furthermore, the DAR basic formula does not capture all the factors for consideration in determining just compensation under Sec. 17 of the CARL. Guilty of reiteration, the pertinent provision reads:

> SEC. 17. *Determination of Just Compensation.* - In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), **translated into a basic formula by the DAR** shall be considered, subject to the final decision of the proper court. **The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.** (emphasis added)

"The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution," having been placed **after** the DAR mandate to translate the earlier enumerated factors into a basic formula, are then excluded in the DAR valuation method. Thus, the SACs may deviate from the DAR formula in order to take these additional factors into account.

In view of the foregoing disquisitions, the doctrine echoed in *Honeycomb, Celada, Lim,* and *Yatco* requiring the mandatory application of the DAR formula must be **abandoned.**

I, therefore, vote to **GRANT** the petition. The July 19, 2007 Decision and the March 4, 2008 Resolution of the Court of Appeals in CA-G.R. SP Nos. 90615 and 90643, as well as the May 13, 2005 Decision of the Regional Trial Court, Branch 52 in Sorsogon City, acting as a Special Agrarian Court, in Civil Case Nos. 2002-7090 and 2002-7073, must be **SET ASIDE**, and the consolidated cases **REMANDED** to the Regional Trial Court, Branch 52 in Sorsogon City for the proper determination of just compensation.

The Court should have further held that, for the guidance of the bench and bar, the following guidelines for determining just compensation in agrarian reform cases must be observed:

1. In actions for the judicial determination of just compensation of property taken pursuant to RA 6657 that were filed prior to August 7, 2009 when RA 9700 took effect, it is not mandatory but discretionary on the Special Agrarian Courts to apply the DAR formula in determining the amount of just compensation. They shall first consider applying the pertinent DAR formula at the time of filing. In case it disregards the said formula, it shall explain the reason for the departure. Thereafter, it is within their discretion to select the valuation method to apply, which may be a variation of the DAR-crafted formula, any other valuation method, or any combination thereof, provided that all the factors under Sec. 17 of RA 6657, prior to amendment by RA 9700, are taken into consideration.

2. In actions for the judicial determination of just compensation of property taken pursuant to RA 6657 that were filed when RA 9700 took effect on August 7, 2009 and onwards, the Special Agrarian Courts have the duty to apply the prevailing DAR formula at the time of filing. Disregarding the formula or deviating therefrom shall only be allowed upon justifiable grounds and if supported by evidence on record. If the SAC does not apply the DAR formula, it may adopt any other valuation method, a variation of the DAR formula, or a combination of the DAR formula with any other valuation method, provided that all of the factors under Sec. 17 of RA 6657, as amended by RA 9700, shall be taken into consideration. Determination of just compensation "shall be subject to the final decision" of the SACs.

PRESBITERO J. VELASCO, JR.
Associate Justice