

EN BANC

G.R. No. 248061 – MORE ELECTRIC AND POWER CORPORATION, *petitioner* v. PANAY ELECTRIC COMPANY, INC., *respondent*.

G.R. No. 249406 – REPUBLIC OF THE PHILIPPINES, *petitioner-oppositor*, MORE ELECTRIC AND POWER CORPORATION, *petitioner* v. PANAY ELECTRIC COMPANY, INC., *respondent*.

Promulgated:

September 15, 2020

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DISSENTING OPINION

LEONEN, J.:

I dissent.

Section 10 of Republic Act No. 11212,<sup>1</sup> which grants More Electric and Power Corporation (More Electric) the right of eminent domain, constitutes class legislation proscribed by the equal protection clause. Section 10 confers unwarranted benefits to a specific corporation, i.e., More Electric—benefits that are not conferred to other public utilities similarly situated to it. Equally, Section 10 burdens and discriminates against a specific corporation, Panay Electric Company, Inc. (Panay Electric Company), by deeming the latter's assets subject to expropriation and acquirable by the payment of the assessed value of the properties, a mere percentage of what could be the negotiated price payable to Panay Electric Company, had it and More Electric dealt in the open market.

Furthermore, the taking allowed under Section 10 is not for public use. Section 10 permits the taking of private property already devoted to the same public purpose by an entity with no experience whatsoever in electricity distribution, and who will be operating as a monopoly; therefore, there will be no benefit to the public. The taking serves nothing but private interests. Section 17 of Republic Act No. 11212, in turn, enables the application of Section 10 by legislatively mandating the corporate takeover of Panay Electric Company by More Electric. This is not a case of a true expropriation, but rather a confiscation of property and a shameless violation

<sup>1</sup> An Act Granting MORE Electric and Power Corporation a Franchise to Establish, Operate, and Maintain, for Commercial Purposes and in the Public Interest, a Distribution System for the Conveyance of Electric Power to the End Users in the City of Iloilo, Province of Iloilo, and Ensuring the Continuous and Uninterrupted Supply of Electricity (2019).

of Article III, Sections 1 and 9 of the Constitution. Sections 10 and 17 of Republic Act No. 11212 must be struck down.

## I

The Constitution in Article III, Section 1 provides that “[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” The equal protection clause mandates that “all persons under similar circumstances . . . must be treated in the same manner . . . both in the privileges conferred and the liabilities imposed.”<sup>2</sup> Consequently, class legislation, or a law that discriminates against some, but favors others, is prohibited.<sup>3</sup>

The prohibition on class legislation does not mean that valid classifications cannot be created by law. However, to be valid, the classification must—at the very least—conform to the traditional standard of reasonableness. A reasonable classification is that which is: (1) “based on substantial distinctions;” (2) “germane to the purposes of the law;” (3) “[applies] equally to all the members of the class[;]” and (4) not “limited to existing conditions only[.]”<sup>4</sup>

The rational basis test—that a statute must reasonably relate to the purpose of the law—is said to be the least intensive of the three (3) levels of tests developed to decide equal protection cases. The rational basis test is applied if the case does not involve a classification historically characterized as suspect, such as race or nationality, or a fundamental right protected by the Constitution.<sup>5</sup>

If an equal protection case involves quasi-suspect classifications, such as sex or illegitimacy, the intermediate scrutiny test or the middle-tier judicial scrutiny is applied. To be a valid classification under the immediate scrutiny test, the classification “must serve important governmental objectives and must be substantially related to [the] achievement of those objectives.”<sup>6</sup>

The most intensive of these levels of scrutiny is the strict scrutiny test, applied when the case involves a suspect classification, such as race or nationality, or a fundamental right protected by the Constitution.<sup>7</sup> It requires

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<sup>2</sup> *Lopez, Jr. v. Commission on Elections*, 221 Phil. 321, 331 (1985) [Per J. Fernando, En Banc].

<sup>3</sup> *People v. Chan*, 65 Phil. 611, 613 (1938) [Per J. Concepcion, First Division].

<sup>4</sup> *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 808 (1989) [Per J. Cruz, En Banc].

<sup>5</sup> *British American Tobacco v. Camacho*, 584 Phil. 489, 524–525 (2008) [Per J. Ynares-Santiago, En Banc].

<sup>6</sup> *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 586 (2004) [Per J. Puno, En Banc].

<sup>7</sup> *Id.*

that the classification “serve a compelling state interest and is necessary to achieve such interest.”<sup>8</sup>

Determining the right involved in this case determines what level of scrutiny this Court should apply. Here, the challenged provision is Section 10 of Republic Act No. 11212, which delegates to More Electric Power Corporation the right of eminent domain. Eminent domain, or the State’s inherent power to forcibly acquire private property for public use upon payment of just compensation,<sup>9</sup> necessarily involves the right to property. In turn, the right to property is a fundamental right protected by the Constitution, specifically under Article III, Section 1, and Article III, Section 9, among others. Therefore, We must apply the strict scrutiny, or the compelling state interest test, in resolving the present case.

Section 10 of Republic Act No. 11212, particularly states:

SECTION 10. *Right of Eminent Domain.* — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services. The grantee is authorized to install and maintain its poles wires, and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of electric power to end users in its franchise area: *Provided, That proper expropriation proceedings shall have been instituted and just compensation paid:*

*Provided, further, That upon the filing of the petition for expropriation, or at any time thereafter, and after due notice to the owner of the property to be expropriated and the deposit in a bank located in the franchise area of the full amount of the assessed value of the property or properties, the grantee shall be entitled to immediate possession, operation, control, use and disposition of the properties sought to be expropriated, including the power of demolition, if necessary, notwithstanding the pendency of other issues before the court, including the final determination of the amount of just compensation to be paid.* The court may appoint a representative from the ERC as a trial commissioner in determining the amount of just compensation. The court may consider the tax declarations, current audited financial statements, and rate-setting

<sup>8</sup> See J. Leonardo-De Castro’s Concurring Opinion in *Garcia v. Judge Drilon, et al.*, 712 Phil. 44, 124 (2013), citing *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 583-584 (2004).

<sup>9</sup> *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 809 (1989) [Per J. Cruz, En Banc].

applications of the owner or owners of the property or properties being expropriated in order to determine their assessed value. (Underscoring provided)

As worded in the provision, More Electric may:

[A]cquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of electric power to end users in its franchise area[.]

Furthermore, upon notice to the owner of the properties and upon deposit of the full amount of their assessed value, the provision entitles More Electric to immediately take over the properties sought to be expropriated. While nowhere named in Section 10, Panay Electric Company is implicitly referred to in the provision, it being the owner of the private property “previously, currently or actually used” in the distribution of electricity in Iloilo.

To my mind, Section 10 grants unwarranted benefits to More Electric—benefits that are not granted to other public utilities similarly situated to it. Section 10 is an example of class legislation proscribed by the equal protection clause.

When read in isolation, Section 10 appears to be consistent with the Constitution, law, and judicial prerogatives. Section 10 requires that the provisional amount equivalent to the assessed value of the property be paid upon entry to the property sought to be expropriated, consistent with Rule 67, Section 2<sup>10</sup> of the Rules of Court on expropriation. Section 10 even speaks of a “final determination of the amount of just compensation to be paid[,]” again, seemingly consistent with Article III, Section 9<sup>11</sup> of the

<sup>10</sup> RULES OF COURT, Rule 67, Sec. 10 provides:

SECTION 2. *Entry of Plaintiff Upon Depositing Value With Authorized Government Depository.* — Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depository an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depository.

If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.

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

<sup>11</sup> CONST., Art. III, sec. 9 provides:

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

Constitution, and that the determination of just compensation is an exclusively judicial function as held in *Export Processing Zone Authority v. Dulay*<sup>12</sup> and *National Power Corporation v. Spouses Zabala*,<sup>13</sup> among others.

However, when read in conjunction with the legislative franchises of other public utilities, Section 10 clearly gives More Electric undue benefits.

Section 10 allows More Electric to immediately take possession, control, and even demolish, the properties expropriated upon payment of the assessed value of the properties. This amount is significantly lower than that payable to Panay Electric Company, had the government—during the 95-year effectivity of Panay Electric Company's franchise—chosen to expropriate the latter's properties. To recall, More Electric's franchise requires it to deposit an amount equivalent to the full amount of the assessed value of the properties sought to be expropriated.

In contrast, Panay Electric Company's legislative franchise, Republic Act No. 5360, provided that the government must pay Panay Electric Company the fair market value of its properties, had the government chosen to operate the electricity distribution system for itself. In other words, Panay Electric Company's franchise required that the full amount of just compensation required under the law be paid before the Government can take Panay Electric Company's properties.<sup>14</sup> Section 4 of Republic Act No. 5360 provided:

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<sup>12</sup> In *Export Processing Zone Authority v. Dulay*, 233 Phil. 313, 326 (1987) [Per J. Gutierrez, Jr. En Banc], this Court said:

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.

<sup>13</sup> In *National Power Corporation v. Spouses Zabala*, 702 Phil. 491, 500 (2013) [Per J. Del Castillo, Second Division], this Court said:

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. (Citations omitted)

<sup>14</sup> See *Association of Small Landowners v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 818 (1989) [Per J. Cruz, En Banc], where this Court equated just compensation to the fair market value of the property taken, thus:

In *J.M. Tuason & Co. v. Land Tenure Administration*, this Court held:

It is well-settled that just compensation means 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 entity. The market value of the land taken is the just compensation to which the owner of condemned property is entitled, the market value being that sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property. (Citation omitted)

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SECTION 4. It is expressly provided that in the event the Government should desire to operate and maintain for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all equipment therein at fair market value.

By definition, the assessed value of a piece of property is that determined by a local government unit for purposes of real property taxation. It is a mere percentage<sup>15</sup> and therefore, necessarily lower, than the fair market value or “the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy[.]”<sup>16</sup> This is a marked difference in the amount payable upon immediate taking, and is one clear economic benefit to More Electric; a grant that, in my view, serves no compelling state interest. That the government has delegated the power of eminent domain to other electric distribution utilities *without the same benefit* emphasizes that the benefits granted to More Electric Power are unwarranted.

<b>Mactan Electric Company, Inc.</b> [Republic Act No. 10890 (2016)]	<b>Tarlac Electric, Inc.</b> [Republic Act No. 10795 (2016)]	<b>Angeles Electric Corporation</b> [Republic Act No. 9381 (2007)]
SECTION 9. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves, and other similar property of the Government of the	SECTION 9. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves, and other similar property of the Government of	SEC. 10. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the

<sup>15</sup> LOC. GOV. CODE., sec. 199 (h) provides:  
SECTION 199. Definition of Terms. — When used in this Title, the term:

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(h) “Assessed Value” is the fair market value of the real property multiplied by the assessment level. It is synonymous to taxable value[.]

<sup>16</sup> LOC. GOV. CODE., sec. 199 (l).

<p>Philippines, its branches or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: <i>Provided</i>, That proper expropriation proceedings shall have been instituted and just compensation paid.</p>	<p>the Philippines, its branches, or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: <i>Provided</i>, That proper expropriation proceedings shall have been instituted and just compensation paid.</p>	<p>Philippines, its branches or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: <i>Provided</i>, That proper condemnation proceedings shall have been instituted and just compensation paid.</p>
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Furthermore, the legislative franchises of other electricity distribution utilities similarly situated to More Electric do not contain a provision allowing it to hire the employees of a competitor. Indeed, More Electric Company will operate the electricity distribution system by acquiring the assets, even the workforce of Panay Electric Company, as shown by Section 17 of Republic Act No. 11212.

SECTION 17. *Transition of Operations.* — In the public interest and to ensure uninterrupted supply of electricity, the current operator, Panay Electric Company, Inc. (PECO), shall in the interim be authorized to operate the existing distribution system within the franchise area, as well as implement its existing power supply agreements with generation companies that had been provisionally or finally approved by the ERC until the establishment or acquisition by the grantee of its own distribution system and its complete transition towards full operations as determined by the ERC, which period shall in no case exceed two (2) years from the grant of this legislative franchise.

Upon compliance with its rules, the ERC shall grant PECO the necessary provisional certificate of public convenience and necessity (CPCN) covering such interim period. The applicable generation rate shall be the provisional or final rate approved by the ERC.

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its expiration on January 18, 2019, and it shall not prevent the grantee from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act. During such interim period, the ERC shall require PECO to settle the full amount which the ERC has directed to refund to its customers in connection with all the cases filed against it.

To reduce the length of the transition period, the ERC and all agencies issuing the requisite licenses shall prioritize all applications relevant to the establishment and operation of the distribution system under its franchise.

The grantee shall, as far as practicable and subject to required qualifications, accord preference to hiring former employees of PECO upon commencement of business operations.

An information dissemination campaign regarding public services and operations of the grantee shall be made to all end-users in the franchise area.

The grantee and PECO shall jointly ensure that employees not hired by the grantee shall receive all separation and/or retirement benefits they are entitled to in accordance with applicable laws.

The DOE shall, during the transition, ensure that there will be uninterrupted supply of electricity in the existing franchise area.

However, it must be stressed that *More Electric never ventured in electricity distribution*. As alleged by Panay Electric Company, an allegation More Electric did not controvert, More Electric was originally named "MORE Minerals Corporation" and was engaged in mining activities.<sup>17</sup> More Electric's application to operate the power distribution utility in Iloilo was embodied in House Bill 6023, entitled "Granting MORE Minerals Corporation a Franchise to Establish, Operate and Maintain for Commercial Purposes and in the Public Interest, a Distribution System for the Conveyance of Electric Power to End Users in the City of Iloilo, Province of Iloilo."<sup>18</sup> It was only during the pendency of its application to operate the electricity distribution system in Iloilo that More Electric changed its corporate name and amended its Articles of Incorporation to reflect electric power distribution as its primary corporate purpose.<sup>19</sup> Further, during the Senate hearings on its version of House Bill 6023, the following exchange transpired between Senator Francis Escudero and More Electric Representatives, Mr. Roel Castro and Atty. Silverio Benny J. Tan:

SEN. ESCUDERO: And that's what you intend to do if you are granted the franchise. You will file a case, deposit 15 percent of the assessed value of the poles, the wires and everything and take over.

MR. CASTRO: Yes, Your Honor, because that is provided by law.

SEN. ESCUDERO: Wala pang law. Hindi pa namin kayo binibigyan ng eminent domain.

MR. CASTRO: If ever, if ever.

SEN. ESCUDERO: If you are given eminent domain.

MR. CASTRO: Yes, sir.

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<sup>17</sup> *Rollo* (G.R. No. 248061), p. 607. Comment.

<sup>18</sup> *Id.* at 578.

<sup>19</sup> *Id.* at 579.



SEN. ESCUDERO: If we do not give you the power of eminent domain, how will you go about it?

MR. TAN: Your Honor, sir, it cannot be done if there is no eminent domain unless [Panay Electric Company] agrees to sell to us. I'd like to say, sir, that eminent domain is an integral part of all franchises for distribution utilities. The only difference here is the specification that it will cover poles and the distribution assets.<sup>20</sup>

All these, to my mind, show that unwarranted privileges were given to a corporation that has never ventured in the business of electricity distribution.

Conversely, Section 10 of Republic Act No. 11212 violates the equal protection clause because it discriminates against a particular entity, i.e., Panay Electric Company. Nowhere does Section 10 mention Panay Electric Company, at least directly. However, the provision cannot be read in any other way except that More Electric will conduct its business *at the expense of Panay Electric Company*.

To recall, Section 10 enables More Electric to “acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment *previously, currently or actually used*, or intended to be used, or have been abandoned, unused or underutilized.”

Further, the owner of these distribution facilities “previously, currently or actually used” is no other than Panay Electric Company, it being the previous franchise holder that had exclusive authority to operate an electricity distribution facility in Iloilo City. While Section 10 seemingly allows More Electric to expropriate property other than those owned by Panay Electric Company, still, More Electric could operate an electricity distribution business and prevent further brownouts in Iloilo *only* by forcefully acquiring Panay Electric Company's assets.

In its Petition for Review on Certiorari, More Electric repeatedly averred that Panay Electric Company's franchise had already expired, and More Electric, being the current franchise holder, has the sole authority to operate the power distribution system in Iloilo.<sup>21</sup> It is true that a power distribution system is a public utility that may be operated only with a legislative franchise. Furthermore, there cannot be any vested right in the continued grant of a franchise, a franchise being a mere privilege that is always subject to amendment or even repeal by the State.<sup>22</sup>

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<sup>20</sup> Id. at 603–604.

<sup>21</sup> *Rollo* (G.R. No. 248061), p. 15.

<sup>22</sup> CONST., art. XII, sec. 11 provides:

Nevertheless, a franchise only relates to the privilege of *operating* a public utility.<sup>23</sup> The ownership over the assets used to operate the public utility, on the other hand, is an entirely different matter. The assets of the private corporation operating a public utility are private property, and ownership over these assets remains with the former franchise holder, notwithstanding the expiration of the franchise.

The right of ownership is composed of a bundle of rights.<sup>24</sup> These rights include, firstly, the right to enjoy the thing owned, or *jus utendi*, which further includes the right to receive from the thing what it produces.

Second, the owner of a thing also has the right to consume it by its use, otherwise called *jus abutendi*.

Third, the right to dispose, or *jus disponendi*, is also included in this bundle of rights.

Finally, an owner has the right to exclude others from the possession of the thing or *jus vindicandi*.<sup>25</sup>

With the expiration of the franchise, what the former franchise holder surrenders is the right to use the property, and the right to enjoy income from it. What remains are: (1) the right to dispose of the property; as well as (2) the right to exclude others from its possession. Except, if as one of the terms

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SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

*See The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, En Banc].

<sup>23</sup> CONST., Art. XII, sec. 11 provides:

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

<sup>24</sup> *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 291–292 (2014) [Per J. Leonen, Third Division].

<sup>25</sup> *Id.* See footnote 50 for the discussion on the bundle of rights.

of the grant of the franchise, the former franchise holder likewise surrendered these rights.

That a franchise holder owns the assets used to operate the public utility is precisely why there are eminent domain provisions in legislative franchises. Specifically for Panay Electric Company, among the terms of its franchise is that it surrender the equipment used for electricity distribution at fair market value, should the Government choose to operate and maintain for itself the electricity distribution system.<sup>26</sup> Panay Electric Company's franchise expired without the Government exercising the privilege in Section 4 of Republic Act No. 5360. Therefore, Panay Electric Company remains the owner of the electricity distribution system it had established in Iloilo, with the concomitant right to dispose of or exclude others from possessing the electricity distribution system.

Consequently, just because More Electric is the current franchise holder, it does not automatically mean that it can operate the power distribution system unquestionably owned by another private entity. More Electric assumed wrongly that only it can operate the distribution system in Iloilo owned by Panay Electric Company.

All these show that there is no compelling state interest in granting benefits to a company that has neither the experience nor the expertise in electricity distribution. I cannot see how the interests of the electricity consumers in Iloilo City will be served by putting an inexperienced entity as the electricity distributor in the City, not to mention that it will be operating as a monopoly and, therefore, has little incentive to operate efficiently.

All told, Sections 10 and 17 of Republic Act No. 11212 violate the equal protection clause.

## II

Apart from being a form of class legislation, Section 10 of Republic Act No. 11212 violates Article III, Section 9 of the Constitution, which provides:

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

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<sup>26</sup> Republic Act No. 5360 (1968), sec. 4 provided:

SECTION 4. It is expressly provided that in the event the Government should desire to operate and maintain for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all equipment therein at fair market value.

As it is worded, Article III, Section 9 is a restraint on the State's inherent and ultimate power of eminent domain,<sup>27</sup> consistent with the purpose of the Constitution: to promote the stability of ownership of private property.<sup>28</sup> Article III, Section 9 requires that the taking of private property be for public use; and that the owner of the private property sought to be expropriated be paid just compensation.

We deal here with the requirement of "public use." In its traditional and literal sense, "public use" means "public employment or the actual use by the public[.]"<sup>29</sup> There is no question that the taking of private property for the building of roads, schools, or hospitals for the use of the public falls under this notion of actual use. "Public use," however, evolved to mean "public purpose[.]"<sup>30</sup> "public advantage or benefit[.]"<sup>31</sup> and even "public welfare."<sup>32</sup> It is under this expanded meaning of public use that expropriations for agrarian reform<sup>33</sup> and urban development<sup>34</sup> were allowed by this Court.

The State may delegate the exercise of the power of eminent domain to political units<sup>35</sup> or agencies<sup>36</sup> as well as public utilities.<sup>37</sup> However, considering that the power is merely delegated, "[t]he authority to condemn is to be strictly construed in favor of the owner and against the condemnor."<sup>38</sup> As explained in *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now city) of Pasig, Metro Manila*:<sup>39</sup>

<sup>27</sup> *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now city) of Pasig, Metro Manila*, 503 Phil. 845, 862 (2005) [Per J. Callejo, Sr., Second Division], citing *Heirs of Alberto Suguitan v. City of Mandaluyong*, 384 Phil. 676 (2000) [Per J. Gonzaga-Reyes, Third Division].

<sup>28</sup> *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50, 114 [Per J. Leonen, En Banc].

<sup>29</sup> *Republic v. Court of Appeals*, 433 Phil. 106, 119 (2002) [Per J. Vitug, First Division].

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Manosca v. Court of Appeals*, 322 Phil. 442, 451 (1996) [Per J. Vitug, First Division].

<sup>33</sup> *See Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

<sup>34</sup> *See Sumulong v. Hon. Guerrero*, 238 Phil. 462 (1987) [Per J. Cortes, En Banc].

<sup>35</sup> LOC. GOV. CODE, Book 1, Title 1, Chapter 1, sec. 19 provides:

SECTION 19. *Eminent Domain.* — A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: *Provided, however,* That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: *Provided, further,* That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: *Provided, finally,* That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

<sup>36</sup> *See Jesus is Lord Christian School Foundation, Inc. v. Municipality (now city) of Pasig, Metro Manila*, 503 Phil. 845 (2005) [Per J. Callejo, Sr., Second Division].

<sup>37</sup> *See for instance Manila Electric Company v. Pineda*, 283 Phil. 90 (1992) [Per J. Medialdea, First Division].

<sup>38</sup> *See Jesus is Lord Christian School Foundation, Inc. v. Municipality (now city) of Pasig, Metro Manila*, 503 Phil. 845, 874 (2005) [Per J. Callejo, Sr., Second Division].

<sup>39</sup> *Id.*

*Strict Construction and Burden of Proof*

The exercise of the right of eminent domain, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. It is one of the harshest proceedings known to the law. Consequently, when the sovereign delegates the power to a political unit or agency, a strict construction will be given against the agency asserting the power. The authority to condemn is to be strictly construed in favor of the owner and against the condemnor. When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained.

Corollarily . . . the condemnor, has the burden of proving all the essentials necessary to show the right of condemnation. It has the burden of proof to establish that it has complied with all the requirements provided by law for the valid exercise of the power of eminent domain.<sup>40</sup> (Citations omitted)

Considering that the power of eminent domain was merely delegated to More Electric, its authority to expropriate must be strictly construed against it.

It is settled that the business of electricity distribution is for a public purpose and is imbued with public interest.<sup>41</sup> It is for this reason that the operation of an electricity distribution system requires a national franchise from Congress.

However, if private property is taken for the same public use to which the property was originally devoted, how the expropriator will serve the public purpose better than the former owner should be examined. For if the public is not better off with the taking of the property, then there is no true expropriation. There is only a transfer of property from one entity to another. All the exercise of eminent domain results in is a change in the "application of the profits,"<sup>42</sup> directly serving proprietary interests. Any public benefit is only pretended or, at best, incidental.

Here, the taking is for the exact same use to which the property sought to be expropriated was originally devoted. Keeping in mind that the expropriator will be monopolistically operating the electricity distribution system, the taking is not for the benefit of the public, but for the private and sole benefit of the expropriator.

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<sup>40</sup> Id. at 862–863.

<sup>41</sup> Republic Act No. 9136 (2001), sec. 29 partly provides:

SECTION 29. Supply Sector. – The supply sector is a business affected with public interest. Except for distribution utilities and electric cooperatives with respect to their existing franchise areas, all suppliers of electricity to the contestable market shall require a license from the ERC.

<sup>42</sup> See Concurring Opinion of J. McLean in *The West River Bridge Company v. Dix, et al.*, 47 U.S. 507, 537 (1848) [Per J. Daniel, Supreme Court of the United States].

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It is undisputed that More Electric will be distributing electricity in Iloilo City, the same public use for which Panay Electric Company (the owner of the properties More Electric sought to expropriate) operated the electricity distribution system. In addition, More Electric has no experience in electricity distribution and has no assets of its own to distribute electricity in Iloilo City. With mining being its business,<sup>43</sup> it was only during the pendency of its application for a franchise to operate an electricity distribution system in Iloilo City did it change its name from "MORE Minerals Corporation" to the present "More Electric Power Corporation."<sup>44</sup>

Moreover, its primary corporate purpose was only recently changed to electricity distribution.<sup>45</sup> On its application for a franchise to operate the electricity distribution system in Iloilo City—and as unabashedly admitted by its representatives during the Congressional hearings—More Electric will primarily rely, as it has begun to rely, on the eminent domain provisions of its franchise to operate Panay Electric Company's distribution system.<sup>46</sup>

Furthermore, like Panay Electric Company, More Electric would still be operating as a monopoly. Thus, the disadvantages of a monopoly, including having a captive market for electricity consumption and the disincentive to operate efficiently, will persist in Iloilo City. These show that the transfer of ownership over the electricity distribution assets from Panay Electric Company to More Electric Power is not for the benefit of the public. The transfer of ownership will only change who gets the profits from operating the electricity distribution system in Iloilo City.

With no effect on the welfare of the consumers of electricity in Iloilo City, coupled with the lack of experience and monopolistic operation of More Electric, the direct *and only* beneficiary of the transfer is no other than More Electric, the new entity who will be receiving the profits from the operation of the electricity distribution set up by Panay Electric Company.

Worse, More Electric unjustly enriches itself by illegally avoiding costs for constructing an electricity distribution infrastructure, as well as the costs of negotiations to buy the property in the open market. More Electric will only be paying the assessed value of these properties. Irrespective of the quality of service of Panay Electric Company through the years, it still owns the distribution facilities and made significant investments for its electricity distribution business. At the very least, Panay Electricity is entitled to the present value of the properties in which it had invested.

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<sup>43</sup> *Rollo* (G.R. No. 248061), p. 578. Comment.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 579.

<sup>46</sup> *Id.* at 603–604.

The present case is nothing like the exercise of eminent domain for the distribution of land to landless farmers in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*<sup>47</sup> or for urban renewal and distribution of low-cost housing to the poor in *Sumulong v. Hon. Guerrero*.<sup>48</sup> The exercise of eminent domain in these cases were done to promote social justice and implement the following provisions of the Constitution:

#### ARTICLE XII

##### *National Economy and Patrimony*

SECTION 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

#### ARTICLE XIII

##### *Social Justice and Human Rights*

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

....

##### *Agrarian and Natural Resources Reform*

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.

....

##### *Urban Land Reform and Housing*

SECTION 9. The State shall, by law, and for the common good, undertake, in cooperation with the public sector, a continuing program of

<sup>47</sup> 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

<sup>48</sup> 238 Phil. 462 (1987) [Per J. Cortes, En Banc].

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urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlements areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

No social justice is achieved in More Electric expropriating the properties of Panay Electric Company. On the contrary, Section 10 of Republic Act No. 11212 enables the unjust enrichment of one private entity at the expense of another. Any benefit the public will obtain is only incidental, because the actual purpose of the transfer is to grant a private benefit.

The cases cited by More Electric to justify its exercise of eminent domain are inapplicable here. In *City of Manila v. Chinese Community of Manila*,<sup>49</sup> where this Court upheld the expropriation of parts of the Manila Chinese Cemetery, the expropriation was done to extend Rizal Avenue. This is a public purpose different from maintaining a public cemetery, unlike here where expropriation was resorted to for the exact same public use to which the properties were originally devoted.

In *Municipality of Paete v. National Waterworks and Sewerage Authority*,<sup>50</sup> the right of eminent domain was exercised by the National Waterworks and Sewerage Authority, an instrumentality of the national government, over the waterworks system owned by Municipality of Paete, a local government unit. In *Municipality of Paete*, the ownership over the waterworks system remained with the public, unlike in the present case where the transfer is from one private entity to another.

In *Republic v. Mupas*,<sup>51</sup> the transfer of the Ninoy Aquino International Airport-Terminal III was to the National Government, not to a private entity. Furthermore, the Ninoy Aquino International Airport-Terminal III was built under a build-operate-transfer scheme, which commanded a payment more than the assessed value of the property expropriated.

For its part, the majority cites the American cases of *Long Island Water Supply Co. v. Brooklyn*,<sup>52</sup> *Eastern Railroad Company v. Boston and Maine Road*,<sup>53</sup> and the highly criticized cases of *Berman v. Parker*<sup>54</sup> and *Kelo v. City of New London*<sup>55</sup> to rule that a taking for the same public

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<sup>49</sup> 40 Phil. 349 (1919) [Per J. Johnson, First Division].

<sup>50</sup> 144 Phil. 180 (1970) [Per J. Dizon, En Banc].

<sup>51</sup> 769 Phil. 21 (2015) [Per J. Brion, En Banc].

<sup>52</sup> 166 U.S. 685 (1897) [Per J. Brewer, United States Supreme Court].

<sup>53</sup> 111 Mass. 125 (1872) [Per J. Colt, Massachusetts Supreme Judicial Court].

<sup>54</sup> 348 U.S. 26 (1954) [Per J. Douglas, United States Supreme Court].

<sup>55</sup> 545 U.S. 469 (2005) [Per J. Stevens, United States Supreme Court].

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purpose is valid.<sup>56</sup> The majority adds that expropriation of private property is valid, even if a private entity benefits, so long as it is for economic development.<sup>57</sup>

To say the least, these cases are foreign jurisprudence and are not binding in this jurisdiction. The facts of these cases are not even on all fours with the facts of the present case. These American cases, therefore, are inapplicable here.

*Long Island Water Supply Co. v. Brooklyn*,<sup>58</sup> decided in 1897, involved a water supply company organized by residents of New Lots in Long Island, New York. The State of New York then passed a statute annexing the town of New Lots to the City of Brooklyn. The same statute allowed the City of Brooklyn to expropriate the properties of the water company, specifically its water reservoir. Long Island Water Supply Co. questioned the expropriation, arguing that it impaired its contract with New Lots, which allowed the water company to collect a certain amount per water hydrant for 25 years. The United States Supreme Court then upheld the expropriation, ruling that the supply of water to a city is for public use.

Hence, *Long Island Water Supply Co.*<sup>59</sup> is inapplicable because ownership over the water reservoir went to the public, unlike here where the transfer of ownership would be from one private entity to another.

*Eastern Railroad Company v. Boston & Maine Railroad*<sup>60</sup> was decided by the Massachusetts Supreme Judicial Court in 1872. It involved the expropriation of a piece of land by Eastern Railroad Company for the statutory purpose of “increasing the terminal facilities and affording convenient access to the passenger depot[.]”<sup>61</sup> Boston and Maine Railroad, also a railroad company and the owner of the land sought to be expropriated, had been using it for the delivery of bricks under a contract. The Massachusetts Supreme Judicial Court upheld the expropriation of the land, ruling that the power of eminent domain is inherent and immense that it may be exercised to expropriate property devoted to a public use similar to which the property was originally devoted.

Further, in *Eastern Railroad Company*, the initial public use was for the delivery of bricks. Eastern Railroad Company expropriated the property for a similar but nonetheless different public use: to increase the facilities in its passenger depot, i.e., for the transport of passengers.

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<sup>56</sup> *Ponencia*, p. 15.

<sup>57</sup> *Id.*

<sup>58</sup> 166 U.S. 685 (1897) [Per J. Brewer, United States Supreme Court].

<sup>59</sup> *Id.*

<sup>60</sup> 111 Mass. 125 (1872) [Per J. Colt, Massachusetts Supreme Judicial Court].

<sup>61</sup> *Id.* at 125.

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Like *Long Island Water Supply Co.*, the case of *Eastern Railroad Company* cannot be applied here. As conceded by the majority in the *ponencia*, what *Eastern Railroad Company* allowed was the expropriation of private property for a “similar but not identical public use.”<sup>62</sup> Here, Section 10 of Republic Act No. 11212 allows for the taking of private property for the exact same public use to which the property was originally devoted.

The 1954 case of *Berman v. Parker*<sup>63</sup> involved the redevelopment of a blighted portion of Washington, D.C. that required the expropriation of the properties located in the area. Among the properties sought to be condemned was a department store. Its owner then questioned the expropriation because: (1) the department store was not itself blighted; and (2) “to develop a better balanced, more attractive community” was not for public use.<sup>64</sup>

Rejecting the argument, the United States Supreme Court upheld the expropriation, deferring to the legislature as the “main guardian of the public needs to be served by social legislation.”<sup>65</sup> Ultimately, it held that the department store may be validly expropriated because “[i]t is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”<sup>66</sup>

In 2005, the United States Supreme Court decided the now infamous *Kelo v. The City of New London*.<sup>67</sup> *Kelo* involved the expropriation of houses in Fort Trumbull, New London City, Connecticut for the area’s redevelopment into a state park and Pfizer research facility. The New London Development Corporation, a private and nonprofit entity, undertook to facilitate the redevelopment project, which the city legislature expected “to create in excess of 1,000 jobs”<sup>68</sup> and would allegedly “increase tax and other revenues, and. . . revitalize [the] economically distressed city including its downtown and waterfront areas.”<sup>69</sup>

The owners of the houses, including Susette Kelo, who had been living in her home since 1997, and Wilhelmina Dery, who was born in her home in 1918 and had lived there all her life, questioned the purpose of the expropriation. They argued that the proposed use of the area does not satisfy the public use requirement under the Fifth Amendment.

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<sup>62</sup> *Ponencia*, p. 15.

<sup>63</sup> 348 U.S. 26 (1954) [Per J. Douglas, United States Supreme Court].

<sup>64</sup> *Id.* at 31.

<sup>65</sup> *Id.* at 32.

<sup>66</sup> *Id.* at 33.

<sup>67</sup> 545 U.S. 469 (2005) [Per J. Stevens, United States Supreme Court].

<sup>68</sup> Slip opinion of *Kelo v. The City of New London*, p. 1, available at <<https://www.law.cornell.edu/supct/pdf/04-108P.ZO>> (Last visited on August 17, 2020).

<sup>69</sup> *Id.*

In a 5-4 decision, the United States Supreme Court<sup>70</sup> upheld the expropriation, adopting the *Berman* ruling and deferring to the City's legislative judgment of public use. It was in *Kelo* where the United States Supreme Court held that private property may be taken for purposes of "economic development," the promotion of which "is a traditional and long accepted function" of government.<sup>71</sup>

Strong dissents were registered in *Kelo*. In Justice Sandra Day O'Connor's dissenting opinion, she decried that:

[u]nder the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e. given to an owner who will use it in a way that the legislature deems more beneficial to the public—in the process.<sup>72</sup>

Chief Justice William Rehnquist joined her in her dissent, along with Justices Antonin Scalia and Clarence Thomas.

Expounding further on why "economic development" is too vague to be considered as "public use" within the meaning of the Fifth Amendment, she said:

In moving away from our decisions sanctioning the condemnation of harmful property use, the Court today significantly expands the meaning of public use. It holds that the sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public—such as increased tax revenue, more jobs, maybe even aesthetic pleasure. But nearly any lawful use of real private property can be said to generate some incidental benefit to the public. Thus, if predicted (or even guaranteed) positive side-effects are enough to render transfer from one private party to another constitutional, then the words "for public use" do not realistically exclude *any* takings, and thus do not exert any constraint on the eminent domain power.<sup>73</sup> (Emphasis in the original)

Justice O'Connor warned that under the *Kelo* ruling, only those with significant influence and power in the political process will be benefited by "economic development" takings:

Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The

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<sup>70</sup> Justice Stevens delivered the opinion of the Court and was joined by Justices Kennedy, Souter, Ginsburg, and Breyer.

<sup>71</sup> Slip opinion of *Kelo v. The City of New London*, p. 14, available at <<https://www.law.cornell.edu/supct/pdf/04-108P.ZO>> (Last visited on August 17, 2020).

<sup>72</sup> Slip opinion of J. O'Connor's Dissent in *Kelo v. The City of New London*, p. 1, Available at <<https://www.law.cornell.edu/supct/pdf/04-108P.ZD>> (Last visited on August 17, 2020).

<sup>73</sup> *Id.* at 8-9.

beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result. “[T]hat alone is a *just* government,” wrote James Madison, “which *impartially* secures to every man, whatever is his *own*.”<sup>74</sup> (Emphasis in the original)

Justice Thomas agreed with Justice O’Connor, but went further to say that the United States Supreme Court had unduly expanded the meaning of “public use.” Thus, he recommended that “public use” be narrowly reinterpreted to mean “use by the public,” the way the Framers of the Constitution of the United States had intended it to be.

“When we depart from the natural import of the term ‘public use,’ and substitute for the simple idea of a public possession and occupation, that of public utility, public interest, common benefit, general advantage or convenience. . . we are afloat without any certain principle to guide us.” . . . Once one permits takings for public purposes in addition to public uses, no coherent principle limits what could constitute a valid public use. . . It is difficult to imagine how a court could find that a taking was purely private except by determining that the taking did not, in fact, rationally advance the public interest. . . The Court is therefore wrong to criticize the “actual use” test as “difficult to administer.” . . . It is far easier to analyze whether the government owns or the public has a legal right to use the taken property than to ask whether the taking has a “purely private purpose” – unless the Court means to eliminate public use scrutiny of takings entirely.<sup>75</sup>

Further, Justice Thomas said that the courts are not duty-bound to defer to legislative determinations of public use:

There is no justification, however, for affording almost insurmountable deference to legislative conclusions that a use serves a “public use.” To begin with, a court owes no deference to a legislature’s judgment concerning the quintessentially legal question of whether the government owns, or the public has a legal right to use, the taken property. Even under the “public purpose” interpretation, moreover, it is most implausible that the Framers intended to defer to legislatures as to what satisfies the Public Use Clause, uniquely among all the express provisions of the Bill of Rights.<sup>76</sup>

The foregoing discussions of *Berman* and *Kelo* show that the cases do not apply here. The properties were expropriated in *Berman* and *Kelo* for a public use different from that to which they were initially devoted to. Besides, More Electric sought to expropriate Panay Electric Company’s

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<sup>74</sup> Id. at 12–13.

<sup>75</sup> Slip opinion of J. Thomas’ Dissent in *Kelo v. The City of New London*, pp. 16–17, Available at <<https://www.law.cornell.edu/supct/pdf/04-108P.ZD1>> (Last visited on August 17, 2020).

<sup>76</sup> Id. at 13–14.


properties, not for economic development, but supposedly for the uninterrupted supply of electricity in Iloilo.

Further, diametrically opposed to the rulings in *Berman* and *Kelo*, this Court's 1919 ruling in *City of Manila v. Chinese Community of Manila*<sup>77</sup> remains true: whether a taking under the power of eminent domain is for public use is a judicial question. In *City of Manila v. Chinese Community of Manila*:<sup>78</sup>

It is true that many decisions may be found asserting that what is a public use is a legislative question, and many other decisions declaring with equal emphasis that it is a judicial question. But, as long as there is a constitutional or statutory provision denying the right to take land for any use other than a public use, it occurs to us that the question that whether any *particular use* is a public one or not is ultimately, at least, a judicial question. The legislature may, it is true, in effect declare certain uses to be public, and, under the operation of the well-known rule that a statute will not be declared to be unconstitutional except in a case free, or comparatively free, from doubt, the courts will certainly sustain the action of the legislature, unless it appears that the particular use is clearly not of a public nature. The decisions must be understood with this limitation; for, certainly, no court of last resort will be willing to declare that any and every purpose which the legislature might happen to designate as a public use shall be conclusively held to be so, irrespective of the purpose in question and of its manifestly private character. Blackstone in his Commentaries on the English Law remarks that, so great is the regard of the law for private property that it will not authorize the least violation of it, even for the public good, unless there exists a very great necessity therefor.<sup>79</sup> (Emphasis in the original)

The present case is a classic example of abuse of eminent domain powers and a deprivation of property without due process of law. Under a semblance of legitimacy, a private entity is allowed to take private property for its own proprietary interests. A law was passed to mask a forced corporate takeover by a private entity. These practices should have no place in a fair and just society.

**ACCORDINGLY**, I vote to **DENY** the Petitions for Review on Certiorari. The July 1, 2019 Judgment of the Regional Trial Court, Branch 209, Mandaluyong City in Civil Case No. R-MND-19-00571 must be **AFFIRMED**. Sections 10 and 17 of Republic Act No. 11212 are **UNCONSTITUTIONAL**.


  
MARVIC M. V. F. LEONEN  
Associate Justice

<sup>77</sup> 40 Phil. 349 (1919) [Per J. Johnson, First Division].

<sup>78</sup> Id.

<sup>79</sup> Id. at 364–365.

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EDGAR O. ARICHETA  
Clerk of Court En Banc  
Supreme Court