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G.R. No. 181892 – REPUBLIC OF THE PHILIPPINES, represented by Executive Secretary Eduardo R. Ermita, the DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, AND MANILA INTERNATIONAL AIRPORT AUTHORITY, petitioners, v. HON. JESUS M. MUPAS, in his capacity as Acting Presiding Judge of the Regional Trial Court, National Capital Judicial Region, Branch 117, Pasay City, AND PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., respondents.

G.R. No. 209917 - REPUBLIC OF THE PHILIPPINES, represented by Executive Secretary Eduardo Ermita, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, AND MANILA INTERNATIONAL AIRPORT AUTHORITY, petitioners, v. PHILIPPINE INTERNATIONAL AIR TERMINALS COMPANY, INC., TAKENAKA CORPORATION, AND ASAHIKOSAN CORPORATION, respondents.

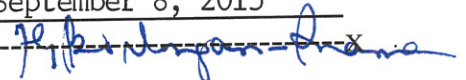
G.R. No. 209696 – TAKENAKA CORPORATION AND ASAHIKOSAN CORPORATION, petitioners, v. REPUBLIC OF THE PHILIPPINES, represented by Executive Secretary Eduardo Ermita, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, MANILA INTERNATIONAL AIRPORT AUTHORITY, AND PHILIPPINE INTERNATIONAL AIR TERMINALS COMPANY, INC., respondents.

G.R. No. 209731 – PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., petitioner, v. REPUBLIC OF THE PHILIPPINES, represented by Executive Secretary Eduardo Ermita, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, MANILA INTERNATIONAL AIRPORT AUTHORITY, TAKENAKA CORPORATION, AND ASAHIKOSAN CORPORATION, respondents.

Promulgated:

September 8, 2015

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CONCURRING OPINION

LEONEN, J.:

I concur in the result.



I entertain serious doubts about the propriety of the remedy pursued by the government to comply with the Decision of this court in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*¹ The improvements built by Philippine International Air Terminals Co., Inc. through its subcontractors may have been private, but it was the product of a procurement contract that would later be declared as illegal and *void ab initio*.

Thus, in my view, it is not the kind of private property protected under Article III, Section 9² of the Constitution. It is not the kind of property that should be the subject of expropriation. Otherwise, the essence of the illegality of the contract will be nullified.

If any, the subsequent payment by government should only be to adhere to a civil law policy against unjust enrichment. Even then, the full application of this concept should also be qualified. The contractor does not stand in the same footing as an ordinary property owner. The improvements had been introduced by virtue of a contract that was subsequently declared illegal.

Nonetheless, the rules on valuation will be different should government be made to pay the owner so that there is no unjust enrichment. Instead of the fair market value of the property at the time of the taking, the government would have had to pay the value of the property based on its utility at present.

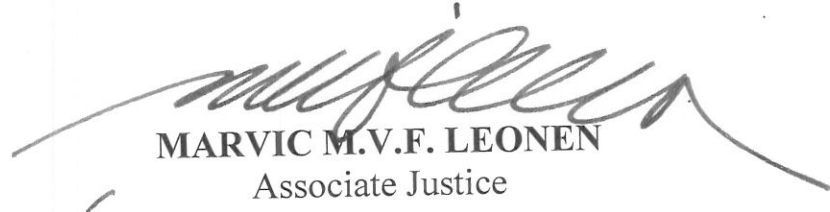
However, these issues were not raised, and the government chose the remedy of expropriation. Thus, this court could not adequately address these issues in these cases.

Finally, I reiterate the view that while just compensation must be the value of the property at the time of the taking, the actual amount to be paid should take into consideration the present value of the property. I had occasion to point this out in my Separate Opinions in *Secretary of the*

¹ 465 Phil. 545 (2004) [Per J. Puno, En Banc]; *See Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, 450 Phil. 744 (2003) [Per J. Puno, En Banc].

² Section 9. Private property shall not be taken for public use without just compensation.

*Department of Public Works and Highways v. Spouses Tecson*³ and *Heirs of Spouses Tria v. Land Bank of the Philippines*.⁴



MARVIC M.V.F. LEONEN
Associate Justice

³ J. Leonen, Dissenting Opinion in G.R. No. 179334, July 1, 2013, 700 SCRA 243, 274–279 [Per J. Peralta, Third Division] and J. Leonen, Dissenting Opinion on the Resolution, G.R. No. 179334, April 21, 2015, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/179334_leonen.pdf> [Per J. Peralta, Third Division].

⁴ G.R. No. 170245, July 1, 2013, 700 SCRA 188, 200–209 [Per J. Peralta, Third Division].