

EN BANC

[G.R. No. 181892, September 08, 2015]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY EXECUTIVE SECRETARY EDUARDO R. ERMITA, THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, AND MANILA INTERNATIONAL AIRPORT AUTHORITY, PETITIONERS, VS. 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, VS. PHILIPPINE INTERNATIONAL AIR TERMINALS COMPANY, INC., TAKENAKA CORPORATION AND ASAHIKOSAN CORPORATION, RESPONDENTS.

[G.R. No. 209696]

TAKENAKA CORPORATION AND ASAHIKOSAN CORPORATION, PETITIONERS, VS. 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, VS. REPUBLIC OF THE PHILIPPINES, AS REPRESENTED BY EXECUTIVE SECRETARY EDUARDO ERMITA, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, MANILA INTERNATIONAL AIRPORT AUTHORITY, TAKENAKA CORPORATION, AND ASAHIKOSAN CORPORATION, RESPONDENTS.

D E C I S I O N

BRION, J.:

Before the Court are the consolidated petitions for review on *certiorari* assailing the Decision dated August 22, 2013, and the Resolution dated October 29, 2013, of the Court of Appeals (CA) in CA-G.R. CV No. 98029; and the petition for *certiorari* assailing the May 3, 2007; May 18, 2008; and January 7, 2008 Decision of the Regional Trial Court (RTC) of Pasay City, Branch 117, in Civil Case No. 04-0876.^[1]

In CA-G.R. CV No. 98029, the CA ordered petitioners Republic of the Philippines, Department of Transportation and Communications, and Manila International Airport Authority (Government for brevity) to pay the Philippine International Airport Terminals Co., Inc. (PIATCO) the amount of \$371,426,688.24 with interest at 6% per annum as just compensation for the expropriation of the Ninoy Aquino International Airport Passenger Terminal III (NAIA-IPT III).^[2]

In Civil Case No. 04-0876, the RTC appointed DG Jones and Partners as an independent appraiser of the NAIA-IPT III, and ordered the Government to submit a Certificate of Availability of Funds to cover DG Jones and Partners' appraisal fee of \$1,900,000.00.

For ease of presentation, the Court's discussion shall be under the following structure:

I. The Factual Antecedents

A. The NAIA-IPT III Contract and PIATCO

1. The NAIA-IPT III Contract
2. PIATCO
3. PIATCO and the Services of Takenaka and Asahikosan

B. The *Agan v. PIATCO* Case, G.R. No. 155001

1. The Case and the Decision dated May 5, 2003
2. The Motion for Reconsideration and the Resolution dated January 21, 2004

C. The Expropriation Case, Civil Case No. 04-0876

D. The *Republic v. Gingoyon* Case, G.R. No. 166429

1. The Case and the Decision dated December 19, 2005
2. The Motion for Reconsideration and the Resolution dated February 1, 2006

E. Proceedings in Civil Case No. 04-0876 after the Finality of the *Gingoyon* Case

1. The Appointment of DG Jones and Partners as an Independent Appraiser
2. The BOC's Expenses

F. The Parties and the BOC's Appraisal of the NAIA-IPT III

1. The Government's Appraisal
2. PIATCO's Appraisal
3. Takenaka and Asahikosan's Appraisal
4. The BOC's Appraisal

II. The RTC Rulings in Civil Case No. 04-0876

A. The Main Decision

B. The RTC's Interlocutory Order on the Validity of the Escrow Account

1. The Government and the Creation of an Escrow Account for the Payment of Just Compensation
2. The Omnibus Order dated October 11, 2011

III. The CA Rulings

A. CA-G.R. CV No. 98029

B. CA-G.R. SP. No. 123221

IV. The Action to Enforce the London Awards, Civil Case No. 06-171

V. The Parties' Positions

A. The Government's Position

B. PIATCO's Position

C. Takenaka and Asahikosan's Position

VI. The Issues

VII. The Court's Rulings

A. G.R. Nos. 209917, 209696, and 209731

1. The parties were afforded procedural due process despite their non-receipt of the BOC Final Report prior to the promulgation of the May 23, 2011 Decision in Civil Case No. 04-0876.
2. Framework: Eminent domain is an inherent power of the State
 - 2.a. The power of eminent domain is a fundamental state power that is inseparable from sovereignty
 - 2.b. Just compensation is the full and fair equivalent of the property taken from the owner by the condemnor
 - 2.b.1. Fair market value is the general standard of value in determining just compensation
 - 2.b.2 Replacement cost is a different standard of value from fair market value
 - 2.b.3. Replacement cost is only one of the standards that the Court should consider in appraising the NAIA-IPT III
 - 2.b.4. The use of depreciated replacement cost method is consistent with the principle that the property owner should be compensated for his actual loss
3. Construction cost of the NAIA-IPT III
 - 3.a. The base valuation of the NAIA-IPT III
 - 3.b. Structural defects on the NAIA-IPT III
 - 3.b.1. The Court cannot consider the additional evidence submitted by Takenaka and Asahikosan before the Court of Appeals
 - 3.b.2. Equiponderance of evidence on the alleged structural defects of the NAIA-IPT III favors PIATCO, Takenaka, and Asahikosan
 - 3.c. The unnecessary areas
4. Attendant cost of the NAIA-IPT III
 - 4.a. PIATCO's attendant cost
 - 4.b. The BOC and the RTC's attendant cost

- 4.c. The Government's attendant cost
 - 5. Deductions to the Replacement Cost of the NAIA-IPT III
 - 5.a. Depreciation should be deducted from the replacement cost
 - 5.b. Rectification for contract compliance should not be deducted from the replacement cost
 - 6. Adjustments to the Replacement Cost
 - 6.a. The replacement cost should be adjusted to December 2004 values
 - 7. Interests, Fruits, and Income
 - 7.a. Computation of Interests
 - 7.b. PIATCO is not entitled to the fruits and income of the NAIA- IPT III
 - 8. The BOC's Expenses
 - 8.a. Takenaka and Asahikosan should not share in the BOC's expenses
 - 9. PIATCO as the Proper Recipient of Just Compensation
 - 9.a. Takenaka and Asahikosan's intervention in the case as unpaid subcontractors is proper
 - 9.b. The property owner is entitled to just compensation
 - 9.c. A final disposition in the eminent domain case with respect to the order of payment to a particular person shall be final and executory
 - 9.d. The determination of whether the NAIA-IPT III shall be burdened by liens and mortgages even after the full payment of just compensation is premature
 - 10. The exercise of eminent domain from the perspective of "taking."
 - 10.a. The Government may take the property for public purpose or public use upon the issuance and effectivity of the writ of possession
- B. G.R. No. 181892
- 1. The issue on the appointment of an independent appraiser is already moot and academic

I. The Factual Antecedents

A. The NAIA-IPT III Contract and PIATCO

1. The NAIA-IPT III Contract

On October 5, 1994, Asia's Emerging Dragon Corp. (*AEDC*) submitted an unsolicited proposal to the Government – through the Department of Transportation and Communications (*DOTC*) and the Manila International Airport Authority (*MIAA*) – for the construction and development of the NAIA-IPT III under a **build-operate-and-transfer (BOT) arrangement**. The DOTC and the MIAA invited the public to submit competitive and comparative proposals to AEDC's unsolicited proposal in accordance with the BOT Law^[3] and its implementing rules.^[4]

2. PIATCO

On September 20, 1996, Paircargo Consortium – composed of People's Air Cargo and Warehousing Co., Inc. (*Paircargo*), Philippine Air and Grounds Services, Inc. (*PAGS*), and Security Bank Corporation (*Security Bank*) – submitted its competitive proposal to the Prequalification Bids and Awards Committee (*PBAC*).^[5]

Both AEDC and Paircargo Consortium offered to build the NAIA-IPT III for at least \$350 million at no cost to the Government and to pay the Government: 5% share in gross revenues for the first five years of operation, 7.5% share in gross revenues for the next ten years of operation, and 10% share in gross revenues for the last ten years of operation. *However, Paircargo Consortium offered to pay the Government a total of P17.75 billion as guaranteed payment for 27 years while AEDC offered to pay the Government a total of P135 million for the same period.*^[6]

After finding that Paircargo Consortium submitted a bid superior to the AEDC's unsolicited proposal and after the AEDC's failure to match the competitive bid, the DOTC awarded, through a notice of award, the NAIA-IPT III project to the Paircargo Consortium (that later organized itself as PIATCO).^[7]

On July 12, 1997, the Government executed a **Concession Agreement** with PIATCO for the construction, development, and operation of the NAIA-IPT III under a **build-operate-transfer scheme**. On November 26, 1998, the Amended and Restated Concession Agreement (ARCA) superseded the 1997 Concession Agreement. The Government and PIATCO likewise entered into a series of supplemental agreements, namely: the First Supplement signed on August 27, 1999; the Second Supplement signed on September 4, 2000; and the Third Supplement signed on June 22, 2001.^[8]

Under the 1997 Concession Agreement, the ARCA and the Supplemental Agreement (for brevity, *PIATCO contracts*), the Government authorized PIATCO to build, operate, and maintain the NAIA-IPT III during the concession period of twenty-five (25) years.^[9]

3. PIATCO and the Services of Takenaka and Asahikosan

On March 31, 2000, **PIATCO engaged the services of Takenaka**, a local branch of a foreign corporation duly organized under the laws of Japan and doing business in the Philippines, for **the construction of the NAIA-IPT III** under an Onshore Construction Contract.^[10]

On the same date, **PIATCO**, through an Offshore Procurement Contract,^[11] likewise **contracted the services of Asahikosan**, a foreign corporation duly organized under the laws of Japan, for the design, manufacture, purchase, test and delivery of the Plant^[12] in the NAIA-IPT III.

In May 2002, **PIATCO defaulted on its obligation to pay Takenaka and Asahikosan** pursuant to their respective contracts. To settle the problem, Takenaka and Asahikosan agreed to defer PIATCO's payments until June 2003, conditioned on their receipt of adequate security from PIATCO as stipulated in the Fourth Supplemental Agreement (relating to the Onshore Construction Contract)^[13] and the Fourth Supplement Agreement (relating to the Offshore Procurement Contract), respectively.^[14]

On November 29, 2002, President Gloria Macapagal Arroyo declared in her speech that the **Government would not honor the PIATCO contracts**. On the same day, Takenaka and Asahikosan notified PIATCO that they were **suspending the construction of the NAIA-IPT III** for PIATCO's failure to provide adequate security.^[15]

B. The *Agan v. PIATCO* Case, G.R. No. 155001

1. The Case and the Decision dated May 5, 2003

On September 17, 2002, petitioners Demosthenes Agan, et al., asked the Court to nullify the PIATCO contracts, and to prohibit the DOTC and the MIAA from implementing these contracts for being contrary to law. The case, entitled *Agan v. PIATCO*, was docketed as **G.R. No. 155001**.^[16]

On May 5, 2003, the Court nullified the PIATCO contracts after finding that Paircargo Consortium (that later incorporated into **PIATCO**) **was not a duly pre-qualified bidder** for failure to meet the minimum equity requirements for the NAIA-IPT III project, as required under the BOT Law and the Bid Documents. The Court also ruled that **Security Bank** (member of the Paircargo Consortium) invested its entire net worth in a single undertaking or enterprise in gross **violation of Section 21-B of the General Banking Act** (which limits a commercial bank's equity investment, whether allied or non-allied, to fifteen percent (15%) of its net worth).^[17] The Court further found that the PIATCO contracts contained **provisions that substantially departed from the draft Concession Agreement**. These substantial modification of the PIATCO contracts violated the public policy for being repugnant to the principle that all bidders must be on equal footing during the public bidding.^[18]

2. The Motion for Reconsideration and the Resolution dated January 21, 2004

We denied PIATCO, et al.'s motion for reconsideration in our January 21, 2004 resolution.^[19] Significantly, we stated in the resolution that the **Government should first pay PIATCO as a prerequisite before taking over the NAIA-IPT III**, to wit:

This Court, however, is not unmindful of the reality that the structures comprising the NAIA-IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. **For the Government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity for the Government cannot unjustly enrich itself at the expense of PIATCO and its investors.**^[20] (Underlines and emphases ours)

C. The Expropriation Case, Civil Case No. 04-0876^[21]

On December 21, 2004, the Government filed a **complaint for expropriation** of the NAIA-IPT III before the RTC of Pasay, Branch 117. The Government informed the RTC that it had deposited with the Land Bank of the Philippines (*Land Bank*) the amount of P3,002,125,000.00, representing the NAIA-IPT III's assessed value.^[22]

On the same day, the RTC issued a **writ of possession** in favor of the Government. Citing *City of Manila v. Serrano*,^[23] the RTC held that that it had the ministerial duty to issue a writ of possession upon: (1) the filing of the complaint for expropriation sufficient in form and substance, and (2) the Government's deposit of the amount equivalent to the property's assessed value, pursuant to Rule 67 of the Rules of Court.^[24]

On **January 4, 2005**, the RTC modified its December 21, 2004 order and directed: (1) the Land Bank to immediately release to PIATCO the amount of US\$62,343,175.77^[25] that would be deducted from the just compensation; (2) the Government to submit to the RTC a Certificate of Availability of Funds for the payment of just compensation; and (3) the Government to maintain and preserve the NAIA-IPT III pending the expropriation proceedings and the full payment of just compensation. The RTC likewise prohibited the Government from performing acts of ownership over the NAIA-IPT III such as awarding concessions or leasing any part of the NAIA-IPT III to other parties.^[26]

The Government sought reconsideration of the January 4, 2005 Order, arguing that Rule 67 of the Rules of Court, and not RA 8974, applied to the case since the NAIA-IPT III was not a national government infrastructure project.^[27]

RA 8974 is otherwise known as "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes."

The Government argued that under Section 2, Rule 67 of the Rules of Court, it shall have the right to a writ of possession upon

deposit with the authorized government depository of an amount equivalent to the assessed value of the property for purposes of taxation, which amount shall be held by the depository subject to the orders of the court. In contrast, Section 4 of RA 8974, as a rule, requires the Government to immediately pay the property owner the amount equivalent to 100% of the value of the property based on the BIR's relevant zonal valuation and the value of the improvements/and or structures, upon the filing of the complaint and after due notice to the defendant.

On **January 7, 2005**, the **RTC appointed three Commissioners**^[28] to determine just compensation without consulting the Government and PIATCO.^[29] Due to these successive adverse rulings, the Government sought to inhibit Judge Henrick F. Gingoyon, the RTC's presiding judge, from hearing the case.^[30] (The judge was ambushed and killed on December 31, 2005.)^[31]

On **January 10, 2005**, the RTC denied the Government's urgent motion for reconsideration and motion for inhibition.^[32]

On December 14, 2005, Asahikosan filed a motion for leave to intervene in Civil Case No. 04-0876 (the expropriation case).^[33] On the other hand, Takenaka filed a Manifestation dated December 15, 2005,^[34] with the attached Manifestation and Motion dated December 14, 2005.^[35] Takenaka alleged that the Government impleaded it as an additional defendant in an amended complaint for expropriation of the NAIA-IPT III, but was not served summons. Takenaka thus manifested its voluntary appearance before the RTC.^[36]

Takenaka and Asahikosan informed the RTC that they had previously filed two collection cases against PIATCO, docketed as Claim Nos. HT-04-248 and HT-05-269, before the High Court of Justice, Queen's Bench Division, Technology and Construction Court in London, England, (*London Court*) on August 9, 2004.

In both instances, the London Court ruled in their favor. The dispositive part of the judgment award in Claim No. HT-04-248 provides:

IT IS ORDERED THAT:

1. Judgment be entered for the First Claimant^[37] in the sum of 6,602,971.00 United States dollars, together with interest in the sum of 116,825,365.34 Philippine pesos up to and including 18 February 2005.
2. Judgment be entered for the Second Claimant^[38] in the sum of 8,224,236.00 United States dollars, together with interest in the sum of 2,947,564.87 United States dollars up to and including 18 February 2005, being a total of 11,171,800.87 United States dollars.
3. Save for the costs of and caused by the amendment of the particulars of claim, which will be the subject of a separate Order, the Defendant do pay the First Claimant's and the Second Claimant's costs in the action, to be subject to detailed assessment if not agreed.

DATED this 18th day of February 2005.^[39]

On the other hand, the dispositive part of the judgment award in Claim No. HT-05-269 states:

IT IS ORDERED THAT:

1. Judgment be entered for the First Claimant in the sum of 21,688,012.18 United States dollars, together with interest in the sum of 6,052,805.83 United States dollars.
2. Judgment be entered for the Second Claimant in the sum of 30,319,284.36 United States dollars, together with interest in the sum of 5,442,628.26 United States dollars.
3. The defendant to pay the Claimants' costs in the action, to be subject to detailed assessment if not agreed.

DATED this 2 (sic) day of December 2005.^[40]

Takenaka and Asahikosan asked the RTC to: (a) hold in abeyance the release of just compensation to PIATCO until the London awards are recognized and enforced in the Philippines; and (b) order that the just compensation be deposited with the RTC for the benefit of PIATCO's creditors.^[41]

During the hearing of the motions, the Government clarified that it neither filed an amended complaint for expropriation nor impleaded Takenaka as a necessary party in the case.^[42]

The RTC initially denied Takenaka and Asahikosan's respective motions^[43] in the August 8, 2006 Order, but subsequently reconsidered its ruling.^[44] **In a March 12, 2007 Order, the RTC treated Takenaka's Manifestation with the attached Manifestation and Motion as a motion to intervene and allowed Takenaka and Asahikosan to intervene in the case as PIATCO's creditors.**^[45]

Pending the RTC's resolution of Takenaka and Asahikosan's motions for leave to intervene in the expropriation case, the Government went directly to the Court seeking Judge Gingoyon's inhibition from the case; the nullification of the order of release of the sum of \$62.3 million to PIATCO; and the nullification as well of the appointment of the commissioners.

D. The Republic v. Gingoyon Case, G.R. No. 166429

1. The Case and the Decision dated December 19, 2005

On January 12, 2005, the Government, et al., filed a petition for certiorari with the Court assailing the validity of the **January 4, 7, and 10, 2005 orders of the RTC in the expropriation case.**^[46] The case, entitled *Republic v. Gingoyon*, was docketed as **G.R. No. 166429**.