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Authority: NSD 652016

EXPROPRIATION BY PHILIPPINE GOVERNMENT FOR U.S. ARMY

CL-29

DECLASSIFIED
Authority NND 683078

Extra

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CHECK SHEET

FROM: JA

TO: Dir of Plans
& Statistics

13 June 47

1. Opinion has been requested of this office as to the legality of the Philippine Government's exercising of its right of Eminent Domain to expropriate a leasehold interest or an interest less than fee simple, for a term of years, for the benefit of the U. S. Government, upon property belonging to private persons and located within the confines of the Angeles General Depot, Pampanga, Philippines; and the advisability of the U. S. military authorities requesting such action of the Philippine authorities under the provisions of Article XXIII of the Bases Agreement.

2. As a general rule, it has been said that condemnation proceedings do not transfer a fee-simple estate in the absence of express provisions to that effect in the statute, but pass only the right to use and occupy the premises for the purposes for which they were condemned. So, where the interest to be taken is not expressly stated, and an easement is sufficient to satisfy the purposes of the use or taking, the condemnor is presumed to take no greater interest than an easement, or a qualified fee is regarded as taken, where a fee simple is not necessary to the purposes; but, where an easement is not sufficient, the right to take is measured by the need to take. On the other hand, it has been held that, where lands are condemned for public use, it will be presumed that the commissioners intended to condemn the entire property and title including the fee simple of all lesser estates unless their report shows the contrary; that, when land is taken by eminent domain, it becomes absolutely the property of the state or other public authority that has condemned it; that, where the statute in terms provides for the condemnation of lands for public use, it will be construed to authorize the taking of the fee; and that, where a municipality condemns land it acquires a fee unless a lesser estate or interest is asked for or specified. (30 C.J.S. 450). The extent of the right of use depends on the purpose for which the property is condemned. (30 C.J.S. 451). The right or use acquired may be of a temporary nature, unless the statute under which action is being taken confers no authority to appropriate for a temporary use, or it may be for a specified period. (30 C.J.S. 452). In support of the above general principles the statutory law of the United States relative to the exercise of the right of Eminent Domain for the expropriation by any executive department of the United States of real property within the District of Columbia provides that every such condemnation proceedings shall contain "A statement of the

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2. As a general rule, it has been said that condemnation proceedings do not transfer a fee-simple estate in the absence of express provisions to that effect in the statute, but pass only the right to use and occupy the premises for the purposes for which they were condemned. So, where the interest to be taken is not expressly stated, and an easement is sufficient to satisfy the purposes of the use or taking, the condemnor is presumed to take no greater interest than an easement, or a qualified fee is regarded as taken, where a fee simple is not necessary to the purposes; but, where an easement is not sufficient, the right to take is measured by the need to take. On the other hand, it has been held that, where lands are condemned for public use, it will be presumed that the commissioners intended to condemn the entire property and title including the fee simple of all lesser estates unless their report shows the contrary; that, when land is taken by eminent domain, it becomes absolutely the property of the state or other public authority that has condemned it; that, where the statute in terms provides for the condemnation of lands for public use, it will be construed to authorize the taking of the fee; and that, where a municipality condemns land it acquires a fee unless a lesser estate or interest is asked for or specified. (30 C.J.S. 450). The extent of the right of use depends on the purpose for which the property is condemned. (30 C.J.S. 451). The right or use acquired may be of a temporary nature, unless the statute under which action is being taken confers no authority to appropriate for a temporary use, or it may be for a specified period. (30 C.J.S. 453). In support of the above general principles the statutory law of the United States relative to the exercise of the right of Eminent Domain for the expropriation by any executive department of the United States of real property within the District of Columbia provides that every such condemnation proceedings shall contain "A statement of the

estate or interest in said lands which petitioner intends to acquire for the public use stated" and "a prayer that said lands be condemned and taken for the use of the United States and that the title to the same in fee simple, or such estate or interest as may be specified, be vested in the United States". (40 USCA 362). Prior to judgment the authority empowered by law to acquire lands may file in the cause a declaration of taking, stating that the lands are thereby taken for the use of the United States, and further "A statement of the estate or interest in said lands taken for said public use." (40 USCA 370). The power of eminent domain is inseparable from sovereignty, being essential to the existence of the State and inherent in government even in its most primitive forms. No law, therefore, is ever necessary to confer this right upon sovereignty or upon any Government exercising sovereign or quasi-sovereign powers. *Visayan Refining Co. v. Gamus and Paredas*, 40 Phil. 550, 40 J.F. 582. (2 Phil. Digest, p. 1741). In this same citation, under the general heading "Eminent Domain", reference is made to A.L.R. Digest under the same heading. In the case of *Pontiac Improvement Co. vs The Board of Commissioners of Cleveland Metropolitan Park District* (cited in 23 A.L.R. p. 866), it is held that, where land is needed for public purposes, such as public buildings, public squares, parks, boulevards, etc., there is full authority to appropriate the land, and the fee simple may be taken, or a mere easement on a limited term or any interest less than a fee may be taken, but the use must always be a public use and the land or the interest therein must be taken by the public. When a lesser interest than a fee in real estate is sought to be appropriated in a condemnation proceedings by a municipality or board for public use the lesser interest must be defined with such certainty as to apprise the owner of the nature and extent of the interest to be taken, and also with such certainty as will enable the proper agency to intelligently assess the compensation to be paid for the interest taken. (23 A.L.R. 867).

3. Article XXII of the Bases Agreement provides: Whenever it is necessary to acquire by condemnation or expropriation proceedings real property belonging to any private persons, associations or corporations located in bases named in Annex A and Annex B in order to carry out the purposes of this Agreement, the Philippines will institute and prosecute such condemnation or expropriation proceedings in accordance with the laws of the Philippines. * * Prior to the completion of such condemnation or expropriation proceedings, in cases of military necessity the United States shall have the right to take possession of such property required for military purposes as soon as the legal requisites for obtaining possession have been fulfilled.

THREE SHEETS

13 June 51

TO: Dir of Plans
 & Station

FROM: SA

1. Opinion has been requested of this office as to the legality of the Philippine Government's expropriation of the right of eminent domain to expropriate a household interest or an interest less than fee simple, for a term of years, for the benefit of the U. S. Government, upon property belonging to private persons and located within the confines of the Angeles General Depot, Pangasinan, Philippines; and the advisability of the U. S. military authorities requesting such action of the Philippine authorities under the provisions of Article XIII of the Peace Agreement.

2. As a general rule, it has been said that condemnation proceedings do not transfer a fee-simple estate in the absence of express provisions to that effect in the statute, but pass only the right to use and occupy the premises for the purposes for which they were condemned. So, where the interest to be taken is not expressly stated, and an easement is authorized for the purpose of the use or taking, the condemnation is presumed to take no greater interest than an easement, or a qualified fee as retained by the grantor, where a fee simple is not necessary to the purpose; but, where an easement is not authorized, the right to take is assumed by the need to take. On the other hand, it has been held that, where lands are condemned for public use, it will be presumed that the commissioners intended to condemn the entire property and title including the fee simple of all tenor estates unless their report shows the contrary; that, when land is taken by eminent domain, it becomes a public use of the state or other public authority that has authorized it; that, where the statute in terms provides for the condemnation of lands for public use, it will be construed to authorize the taking of the fee and that, where a municipality owns property, it is presumed that it has a fee interest in the property. (20 C.2.2.150) The extent of the right of eminent domain or interest is determined by the purpose for which the property is condemned. (20 C.2.2.150) The right of eminent domain may be of a temporary nature and may be exercised for a term of years or for a specified period, or it may be for a temporary use, or in support of the above general principle. In support of the above general principle, the United States relative to the exercise of the right of eminent domain for the expropriation by an executive department of real property within the District of Columbia shall contain a statement of the purpose for which the property is being taken.



estate or interest in said lands which petitioner intends to acquire for the public use stated" and "a prayer that said lands be condemned and taken for the use of the United States and that the title to the same in fee simple, or such estate or interest as may be specified, be vested in the United States". (40 USCA 362). Prior to judgment the authority empowered by law to acquire lands may file in the cause a declaration of taking, stating that the lands are thereby taken for the use of the United States, and further "A statement of the estate or interest in said lands taken for said public use." (40 USCA 370). The power of eminent domain is inseparable from sovereignty, being essential to the existence of the State and inherent in government even in its most primitive forms. No law, therefore, is ever necessary to confer this right upon sovereignty or upon any Government exercising sovereign or quasi-sovereign powers. *Visayan Refining Co. v. Gamis and Paredes*, 40 Phil. 550, 40 J.F. 582. (2 Phil. Digest, p. 1741). In this same citation, under the general heading "Eminent Domain", reference is made to A.L.R. Digest under the same heading. In the case of *Pontiac Improvement Co. vs The Board of Commissioners of Cleveland Metropolitan Park District* (cited in 23 A.L.R. p. 866), it is held that, where land is needed for public purposes, such as public buildings, public squares, parks, boulevards, etc., there is full authority to appropriate the land, and the fee simple may be taken, or a mere easement on a limited term or any interest less than a fee may be taken, but the use must always be a public use and the land or the interest therein must be taken by the public. When a lesser interest than a fee in real estate is sought to be appropriated in a condemnation proceedings by a municipality or board for public use the lesser interest must be defined with such certainty as to apprise the owner of the nature and extent of the interest to be taken, and also with such certainty as will enable the proper agency to intelligently assess the compensation to be paid for the interest taken. (23 A.L.R. 867).

3. Article XXII of the Bases Agreement provides: Whenever it is necessary to acquire by condemnation or expropriation proceedings real property belonging to any private persons, associations or corporations located in bases named in Annex A and Annex B in order to carry out the purposes of this Agreement, the Philippines will institute and prosecute such condemnation or expropriation proceedings in accordance with the laws of the Philippines. * * Prior to the completion of such condemnation or expropriation proceedings, in cases of military necessity the United States shall have the right to take possession of such property required for military purposes as soon as the legal requisites for obtaining possession have been fulfilled.

estate or interest in said lands which petitioner intends to acquire for the public use stated" and "a proper title said lands be condensed and taken for the use of the United States and that the title to the same in fee simple, or such estate or interest as may be specified, be vested in the United States." (Id. U.S. 302.) Prior to judgment the authority empowered by law to acquire lands was left in the hands of a declaration of taking, stating that the lands are thereby taken for the use of the United States, and further "A statement of the estate or interest in said lands taken for said public use." (Id. U.S. 310.) The power of eminent domain is inseparable from sovereignty, being essential to the maintenance of the State and inherent in government even in its most primitive forms. No law, therefore, is unnecessary to confer this right upon sovereignty or upon any Government exercising sovereign or quasi-sovereign powers. *Visayan Refining Co. v. Gamma and Peralta*, 10 Phil. 250, 10 U.P. 282. (2 Phil. Digest, p. 1711.) In this same situation, under the general heading "Eminent Domain", reference is made to *A.L.R. Digest* under the same heading. In the case of *Portland Improvement Co. v. the Board of Commissioners of Cleveland Metropolitan Park District* (cited in 23 A.L.R. p. 886), it is held that, where land is needed for public purposes, such as public buildings, public squares, parks, boulevards, etc., there is full authority to appropriate the land, and the fee simple may be taken, or a lease for a limited term or any interest less than a fee may be taken, but the use must always be a public use and the land or interests therein must be taken by the public. When a lesser interest than a fee in real estate is sought to be appropriated in a condemnation proceeding by a municipality or board for public use the lesser interest must be defined with such certainty as to appraise the owner of the nature and extent of the interest to be taken, and also with such certainty as will enable the proper agency to intelligently assess the compensation to be paid for the interest taken. (23 A.L.R. 367.)

Article XIII of the Basic Agreement provided that the Government should be necessary to acquire by condemnation or expropriation or other means property belonging to any private persons, associations, corporations, located in areas named in Annex A and Annex B and Annex C and that the purposes of this Agreement, the Philippines will be entitled to the same out of such condemnation or expropriation proceedings as would be provided by the laws of the Philippines. * * * Prior to the completion of the condemnation or expropriation proceedings, in cases of military necessity, the United States shall have the right to take possession of such property required for military purposes as soon as the legal requisites for obtaining possession have been fulfilled.



4. It is therefore concluded that the Philippines Government can, in the exercise of its sovereignty, condemn and expropriate for the use of the U. S. military authorities a leasehold interest, or interest less than fee simple, in and to the property located and situated within the boundaries of the Angeles General Depot, Pampanga, Philippines, as defined in Annex A of the Bases Agreement, for a specified period of years, and that such action should be requested of the Philippine Government by the United States Government, through proper channels, in conformity with the provisions of Article XXII of the Bases Agreement.

SEYMOUR W. WUFEL
Colonel, JAGD
Judge Advocate



It is therefore concluded that the Philippine Government owns, in the exercise of its sovereignty, condemn and appropriate for the use of the U. S. military authorities a leasehold interest or interest less than the title, in and to the property located and situated within the boundaries of the Angeles General Depot, Pangasinan, Philippines, as defined in Annex A of the Lease Agreement, for a specified period of years, and that such action should be requested of the Philippine Government by the United States Government, through proper channels, in conformity with the provisions of Article XIII of the Lease Agreement.

SEYMOUR W. WURTZ
Colonel, JAGC
Judge Advocate



Reference Sheet.

1. Policy File No 33 - Real Estate

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Authority NND 883078

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FROM: JA

TO: Dir of Plans
& Statistics13 June 47

1. Opinion has been requested of this office as to the legality of the Philippine Government's exercising of its right of Eminent Domain to expropriate a leasehold interest or an interest less than fee simple, for a term of years, for the benefit of the U. S. Government, upon property belonging to private persons and located within the confines of the Angeles General Depot, Pampanga, Philippines; and the advisability of the U. S. military authorities requesting such action of the Philippine authorities under the provisions of Article XXII of the Bases Agreement.

2. As a general rule, it has been said that condemnation proceedings do not transfer a fee-simple estate in the absence of express provisions to that effect in the statute, but pass only the right to use and occupy the premises for the purposes for which they were condemned. So, where the interest to be taken is not expressly stated, and an easement is sufficient to satisfy the purposes of the use or taking, the condemnor is presumed to take no greater interest than an easement, or a qualified fee is regarded as taken, where a fee simple is not necessary to the purposes; but, where an easement is not sufficient, the right to take is measured by the need to take. On the other hand, it has been held that, where lands are condemned for public use, it will be presumed that the commissioners intended to condemn the entire property and title including the fee simple of all lesser estates unless their report shows the contrary; that, when land is taken by eminent domain, it becomes absolutely the property of the state or other public authority that has condemned it; that, where the statute in terms provides for the condemnation of lands for public use, it will be construed to authorize the taking of the fee; and that, where a municipality condemns land it acquires a fee unless a lesser estate or interest is asked for or specified. (30 C.J.S. 450). The extent of the right of use depends on the purpose for which the property is condemned. (30 C.J.S. 451). The right or use acquired may be of a temporary nature, unless the statute under which action is being taken confers no authority to appropriate for a temporary use, or it may be for a specified period. (30 C.J.S. 453). In support of the above general principles the statutory law of the United States relative to the exercise of the right of Eminent Domain for the expropriation by any executive department of the United States of real property within the District of Columbia provides that every such condemnation proceedings shall contain "A statement of the

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Authority NND 883078



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Authority NND 883078

estate or interest in said lands which petitioner intends to acquire for the public use stated" and "a prayer that said lands be condemned and taken for the use of the United States and that the title to the same in fee simple, or such estate or interest as may be specified, be vested in the United States". (40 USCA 362). Prior to judgment the authority empowered by law to acquire lands may file in the cause a declaration of taking, stating that the lands are thereby taken for the use of the United States, and further "a statement of the estate or interest in said lands taken for said public use." (40 USCA 370). The power of eminent domain is inseparable from sovereignty, being essential to the existence of the State and inherent in government even in its most primitive forms. No law, therefore, is even necessary to confer this right upon sovereignty or upon any Government exercising sovereign or quasi-sovereign powers. *Visayan Refining Co. v. Camus and Paredes*, 40 Phil. 550, 40 J.F. 582. (2 Phil. Digest, p. 1741). In this same citation, under the general heading "Eminent Domain", reference is made to A.L.R. Digest under the same heading. In the case of *Pontiac Improvement Co. vs The Board of Commissioners of Cleveland Metropolitan Park District* (cited in 23 A.L.R. p. 866), it is held that, where land is needed for public purposes, such as public buildings, public squares, parks, boulevards, etc., there is full authority to appropriate the land, and the fee simple may be taken, or a mere easement on a limited term or any interest less than a fee may be taken, but the use must always be a public use and the land or the interest therein must be taken by the public. When a lesser interest than a fee in real estate is sought to be appropriated in a condemnation proceedings by a municipality or board for public use the lesser interest must be defined with such certainty as to apprise the owner of the nature and extent of the interest to be taken, and also with such certainty as will enable the proper agency to intelligently assess the compensation to be paid for the interest taken. (23 A.L.R. 867).

3. Article XXII of the Bases Agreement provides: Whenever it is necessary to acquire by condemnation or expropriation proceedings real property belonging to any private persons, associations or corporations located in bases named in Annex A and Annex B in order to carry out the purposes of this Agreement, the Philippines will institute and prosecute such condemnation or expropriation proceedings in accordance with the laws of the Philippines. * * Prior to the completion of such condemnation or expropriation proceedings, in cases of military necessity the United States shall have the right to take possession of such property required for military purposes as soon as the legal requisites for obtaining possession have been fulfilled.



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4. It is therefore concluded that the Philippines Government can, in the exercise of its sovereignty, condemn and expropriate for the use of the U. S. military authorities a leasehold interest, or interest less than fee simple, in and to the property located and situated within the boundaries of the Angeles General Depot, Pampanga, Philippines, as defined in Annex A of the Bases Agreement, for a specified period of years, and that such action should be requested of the Philippine Government by the United States Government, through proper channels, in conformity with the provisions of Article XXII of the Bases Agreement.

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Authority NND 63078

SEYMOUR W. WUFFEL
Colonel, JAGD
Judge Advocate

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Authority NND 883078



GOC

AFO 707
23 June 1945

MEMORANDUM TO: Director of Claims Commissions.

SUBJECT : Seizure of lands for the purpose of widening streets.

1. The procedure for the appropriation or condemnation of private property for public use is outlined in Rule 69 of the Rules of Court in the Philippines, Sections 1 to 15, inclusive. If the Commonwealth Government itself were to undertake the widening of the roads described in Major Younger's communication, it would be necessary for it to comply strictly with the procedural requirements established by law, in view of the following decision of the Philippine Supreme Court:

"The fact that land of private ownership is required to widen a public street or road does not authorize the Government to seize the land. Expropriation is the proper method in such cases, as provided by sections 241 to 253 of the Code of Civil Procedure (superseded by Rules of Court). No person may be deprived of his property for public purposes, except by proper authority after due compensation. If property is taken otherwise, the courts will reinstate the owner in his possession. (Art. 349, Civil Code.)" (Santos v. Director of Lands, 22 Phil. 424.)

2. As it appears that the widening of the roads is an accomplished fact, there would seem to be no recourse left to the property owners affected other than to accept settlement for the just value of their properties, and in this respect there can be no disagreement with Major Younger's view that the Commonwealth Government should pay the claims arising therefrom. The Commonwealth Government is getting a bargain from this arrangement, because it will pay only for the properties expropriated, whereas if it were to undertake the widening of the roads itself it will have to shoulder as well all the expenses of construction.

3. It is suggested that an understanding be reached with the Commonwealth Government whereby detailed specifications of all roads widened or improved by the U.S. Army for military purposes or otherwise will be forwarded to said Government, so that the claims of property owners affected may be attended to. The Commonwealth Government will in all probability assign the Bureau of Public Works, or some other agency, to take charge of the matter. All claims coming under this class can then be simply referred to the particular government agency concerned for settlement direct with claimants.

4. In the remote possibility that the Commonwealth Government should refuse to pay for the properties appropriated (it should be remembered that the widening of the roads by the U.S. Army is voluntary on its part and the obligation imposed on the Commonwealth Government is purely moral) it is believed that Claims Service will have to settle the claims under 48 25-25. The necessity of arriving at an agreement with the Commonwealth Government on this matter at an early date is therefore apparent. It is believed that improvements of the sort reported by Major Younger are being undertaken by the U.S. Army not only in Leyte but all over the Islands, and the claims involved will no doubt add up to a huge sum.

Juan de B. Jr.
JUAN DE BOWEN

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4. In the remote possibility that the Commonwealth Government should refuse to pay for the properties appropriated (it should be remembered that the widening of the roads by the U.S. Army is voluntary on its part and the obligation imposed on the Commonwealth Government is purely moral) it is believed that Claims Service will have to settle the claims under AR 25-25. The necessity of arriving at an agreement with the Commonwealth Government on this matter at an early date is therefore apparent. It is believed that improvements of the sort reported by Major Younger are being undertaken by the U.S. Army not only in Leyte but all over the Islands, and the claims involved will no doubt add up to a huge sum.

Juan de Buja
JULIAN DE BUJA

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Authority NND 883078

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EXPROPRIATION BY PHILIPPINE GOVERNMENT FOR U.S. ARMY

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Authority NND 65-308