

VOL. II

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TUESDAY, MAY 23, 2000

TABLE OF CONTENTS

BILL ON SECOND READING.....1-21

(S. No. 2038 - Anti-Injunction Act of 2000)

Sponsorship by Senator Cayetano

Interpellations by Senators Pimentel and Guingona  
(Consideration Suspended)

TUESDAY, MAY 23, 2000

RESUMPTION OF SESSION

*At 2:26 p.m., the session was resumed with the Senate President, Hon. Franklin M. Drilon presiding.*

The President. The session is resumed.

SPECIAL ORDER

Senator Tatad. Mr. President. I move that we transfer from the Calendar for Ordinary Business to the Calendar for Special Orders Committee Report No. 239 on Senate Bill No. 2038, entitled

AN ACT PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, OR PRELIMINARY MANDATORY INJUNCTIONS, TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS, AND FOR OTHER PURPOSES

The President. Is there any objection? *[Silence]*  
There being none, the motion is approved.

BILL ON SECOND READING

S. No. 2038 - Anti-Injunction Act of 2000

Senator Tatad. Mr. President, I move that we consider on Second Reading Senate Bill No. 2038 under Committee Report No. 239.

The President. Is there any objection? *[Silence]*  
There being none, the motion is approved.

Consideration of Senate Bill No. 2038 is now in order. With the permission of the Body, the Secretary will read only the title of the bill without prejudice to inserting in the Record the whole text thereof.

The Secretary. Senate Bill No. 2038, entitled

AN ACT PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS, AND FOR OTHER PURPOSES

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*The following is the whole text of the bill:*  
Senate Bill No. 2038  
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Senator Tatad. Mr. President, to sponsor the measure, I ask that the distinguished chairman of the Committee on Justice and Human Rights, Sen. Renato L. *Companero* Cayetano be recognized.

The President. Sen. Renato L. *Companero* Cayetano is recognized to sponsor the measure.

SPONSORSHIP SPEECH OF SENATOR CAYETANO

Senator Cayetano. Thank you, Mr. President.

Mr. President, esteemed colleagues, ladies and gentlemen, good afternoon. On behalf of the Committees on Justice and Human Rights; Public Works; and Finance, it is my privilege to sponsor and present for consideration of this Chamber Senate Bill No. 2038 in substitution of Senate Bill No. 84, filed by Senator Flavio; Senate Bill No. 1221, filed by Senator Osmena III; Senate Bill No. 1223, filed by Senator Osmena III; Senate Bill No. 1247, filed by Senator Revilla; Senate Bill No. 1728, filed by Senator Jaworski; Senate Bill No. 1903, filed by the Senate President, Senator Drilon, under Committee Report No. 239, entitled

AN ACT PROHIBITING LOWER COURTS FROM ISSUING  
T. . . . . RESTRAINING ORDERS, PRELIMINARY  
INJUNCTIONS OR PRELIMINARY MANDATORY  
INJUNCTIONS, TO ENSURE THE EXPEDITIOUS  
IMPLEMENTATION AND COMPLETION OF GOVERNMENT  
INFRASTRUCTURE PROJECTS, AND FOR OTHER  
PURPOSES

Senate Bill No. 2038 seeks to reinforce and give teeth to Presidential Decree No. 1818, prohibiting courts from issuing restraining orders and preliminary injunctions in government infrastructure projects. The bill likewise seeks to give life to Supreme Court Administrative Circular No. 07-99, calling all judges of lower courts to exercise utmost caution, prudence and judiciousness in the issuance of temporary restraining orders and writs of preliminary injunctions.

It is the avowed policy of the State to promote the efficient implementation of government infrastructure projects and/or the unhampered bidding process and awards. This is in line with the government's pursuit to avoid unnecessary increase in construction cost due to delayed project implementation and deprive our people of the

socioeconomic benefits that will arise from the prompt and efficient implementation of the project.

It is an undeniable fact that to attract foreign investments and achieve our country's cherished dream of economic prosperity, the necessary infrastructure must be extant. Government efforts to initiate and implement infrastructure projects often meet legal challenges through the filing of cases in courts by losing contractors and/or bidders which more often than not result in the issuance of temporary restraining orders or preliminary injunctions.

To obviate delays, Presidential Decree No. 1818 was issued on January 16, 1981, which prohibits courts from issuing restraining orders, preliminary injunctions or preliminary mandatory injunctions in any case, dispute or controversy involving an infrastructure project operated by the government; or to prohibit any person, entity or government official from proceeding with, or continuing the execution or implementation of any such project; or pursuing any lawful activity necessary for such execution, implementation or operation.

The rationale behind this express prohibition is such that such project is considered to be critical to the economic development effort of the nation and the issuance of restraining orders and injunctions inevitably disrupt the initiation and/or completion of the same.

Taking the cue from no less than the President of the Republic of the Philippines, the Supreme Court issued Administrative Circular No. 07-99 on June 25, 1999, cautioning lower court judges anent the issuance of temporary restraining orders and writs of preliminary injunctions. Said circular echoed the observation that: ■ Despite well-entrenched jurisprudence and circulars on the subject matter, reports or complaints on abuses committed by trial judges in connection therewith persist. ■

Mr. President, the salient features of the proposed Senate bill are as follows:

1. No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction, in any case, dispute or controversy involving an infrastructure project of the government. Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation thereof is void and of no force or effect;

2. Penal sanctions shall be imposed on a lower court judge who shall issue such a restraining order, preliminary injunction or preliminary mandatory injunction;

3. Penal sanctions to anyone who, by any act or omission, directly or indirectly delay, obstruct, impede or hinder the performance, execution and completion of any government infrastructure project;

4. Efficient and faster procedures for expropriation/acquisition of land or other real property for government infrastructure projects;

5. Deposit of 50% of the estimated value of the land based on the latest relevant zonal valuation of the Bureau of Internal Revenue and 50% of the estimated value of the structures and improvements based on the fair market value as stated in the current Tax Declaration;

6. Provisions for relocation sites for those who will be affected and/or dislocated by the projects;

7. Bidding and award of contracts involving government infrastructure projects shall be done in accordance with the provisions of Presidential Decree No. 1594 and related provisions of Republic Act No. 7718. Such bidding and award shall be final, provided that where such bidding and award is challenged as invalid or irregular, the aggrieved party may file a complaint with the Office of the President. In addition to any criminal and/or administrative liabilities of errant parties, the aggrieved party shall be entitled to damages, including loss of profit.

The Office of the President, however, may direct or order a rebidding if the bidding procedure and/or award is found to be tainted as to affect its legality or regularity.

Mr. President, in light of all these manifestations and concerns, I urge the immediate passage of Senate Bill No. 2038 considered under Committee Report No. 239.

Thank you, Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, I would like to thank Senator Cayetano for his sponsorship speech. I ask that Sen. Aquilino Q. Pimentel Jr. be recognized to ask a few questions.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. Thank you very much, Mr. President.

Will the gentleman kindly yield for a few questions?

Senator Cayetano. With pleasure, Mr. President.

Senator Pimentel. I can see the rationale or the desirability perhaps of enacting this piece of legislation.

My only problem, Mr. President, is: What will the ordinary man who is being harassed by a project that has been approved and he has no recourse in the provinces do? Not too many people can go to the Supreme Court to question what might be an oppressive act on the part of the government. I am talking of principles.

Therefore, this is the reservation I have in my mind. What is the recourse of the ordinary man? For example, the government has a plan to put up a highway and it hits the only piece of property where a man's humble shanty might be located. He has no recourse and he cannot stop it. He cannot even say, "Can we not talk about just compensation in this regard?" That is what I am worried about.

Senator Cayetano. Mr. President, I share the concern of the gentleman from Cagayan de Oro. But let me point out that, first of all, the government cannot just enter a private land unless, of course, this private land is necessary for public use and upon payment of just compensation. That is one guarantee where a private landowner could be subjected to threat or harassment by government officials who merely want to get a piece of his private land. But I think the principle of eminent domain is such that those two elements--that the private land must be for public use, and that there must be just compensation--are present.

As far as just compensation is concerned, the President of the Republic, in his Administrative Order No. 50, dated February 17, 1999, recognizes the problems that the government meets with respect to acquisition of private lands. Therefore, the first step under this circular is really negotiation and not just taking away of private lands, negotiation in terms of how much the property will be valued. Only if negotiation fails will the government resort to the so-called expropriation by filing a case in court.

So I think, Mr. President, those concerns of the gentleman from Cagayan de Oro remain valid. But we have to assume that the government officials will perform with regularity and dedication their functions. And, as I said again, the elements of public use and just compensation must be present in all cases.

Senator Pimentel. Mr. President, I hope that the optimism of the gentleman is justified relying upon good faith of officials. Precisely, the laws requiring due process are set up to safeguard against possible abuse by officials who are exercising governmental powers.

Now, having said that, I would like to point out that the power of eminent domain has been with us at least since 1902 when the first civil government was instituted by the Americans in this country, and the principle has not been disputed. But to say that now we should not allow people to go to the courts, except through the Supreme Court, to question arbitrary acts on the part of local or national officials for that matter, I think, would be a little arbitrary in the sense that we are derogating from a right that is accorded to our people, not only by the Rules of Court, but by the Bill of Rights of this country.

Senator Cayetano. Well, Mr. President, again I would like to reiterate that I share the same concern. But let me just say also that the proposed Senate bill is not really the first of its kind. It was not really a novel proposed bill because as I have said earlier, I expressly adverted to Presidential Decree No. 1818 which already prohibits lower courts from issuing temporary restraining orders or preliminary injunctions in connection with government projects, and no less than the Supreme Court has given, at the very least, tacit approval of the validity of this PD No. 1818 when it issued Administrative Circular No. 07-99 on June 25, 1999, taking a cue from no less than the incumbent President cautioning the lower courts to observe the provisions of PD No. 1818. So this proposed bill is not really novel in that sense.

But let me reassure my good colleague from Cagayan de Oro and Mindanao that it does not deprive any citizen from challenging the taking of the property under eminent domain because if he believes that it is not going to be for public use or for public purpose, definitely, he can go to court and probably win that case even in the lower court; or for that matter, if he feels that the amount of just compensation is inappropriate or is not enough, once again, that is a ground for challenging the taking of a private property under eminent domain. What we are merely prohibiting in this proposed Senate bill is a reiteration with penal sanctions of the issuance of TRO or preliminary injunction.

Senator Pimentel. Mr. President, I am glad that the gentleman has revealed that this bill is patterned after a decree. Decrees in this country have never been known to be expansive of the rights of our people. As a matter of fact, decrees have a tendency to curtail the very rights which we

have been trying to fight for against the dictatorship during martial law.

And now, it looks like we are trying to revive the onerous provisions of those decrees by this very bill. It is true that, as the gentleman pointed out, the people who are aggrieved by the use of any powers granted to government under this bill will challenge the exercise of that power but after the fact.

In other words, I conceive of a situation where we have an ordinary man who has probably a one-hectare farmland or maybe a 500 square-meter property, and that is his only property. Because they cannot agree on, let us say, the just compensation for the expropriation of his property, he cannot stop it. He will have to allow the demolition of his only house, the taking away of his only property, and the payment will have to be given to him after a while because he cannot challenge it right from the very start.

This is what I am trying to drive at, Mr. President. I am sorry that I am very concerned that if we allow the nonchallenging of the act of government in this regard, we are curtailing one of the basic rights of our people, which is precisely to go to court at his level. Not to the Supreme Court because how many Supreme Courts are there? There is only one, and it is in Manila.

When we talk of an ordinary person living there in Tawi-Tawi, in Davao, in Cagayan de Oro, in Samar or in Leyte, and he has to come to the Supreme Court to challenge what I assume--I am not saying that this will always happen--could be an arbitrary act on the part of a highly placed official of this government, what happens if that should be the case? His property is taken away from him. He is removed from his only castle, supposed to be, driven away from his hearth and home and not paid until after the case is terminated. That, to my mind, would be the height of oppression which should be resisted and should not be allowed by a representative government that we have in this country.

Senator Cayetano. Thank you, Mr. President, for again expressing that concern. But may I reassure my good colleague from Cagayan de Oro and Mindanao that that is not the case with respect to this particular bill. As stated in Section 4, the moment that the agency of the government takes possession of the property, immediately the government has to deposit simultaneously 50% of the estimated value of the land based on the latest zonal valuation of the BIR. If there are houses or structures and improvements, another 50% of the estimated value of the structures based on the current tax declaration will be paid simultaneously with the taking of the property.



In addition, the bill precisely gives a deadline--unlike PD No. 1818 where it is not clear--that within 60 days from the filing of the expropriation case in court, the court shall determine the just compensation to be paid to the owner, and based on that the amount shall be paid on or before the completion of the project.

Mr. President, as I said, I share the concern of the good gentleman. But I think we have covered that well in that particular provision to assure precisely that payment will be made to that particular private landowner whose land may be taken because of the power of eminent domain.

Senator Pimentel. But that is exactly what worries me, Mr. President, because the payment will have to come after the fact. In other words, the basic assumption is that this amount is one-half of what his property is worth. And all this is--because it is done by expropriation, to begin with--without any input from the owner of the property which, in my example, may be the only property that he has. I am not worried about big landed estate because the owner can very well fight all the way up to the Supreme Court. What I am worried about is the situation of an ordinary man who has a small property that is being taken away from him because supposedly the government needs it. I believe that that particular person should be allowed to question the expropriation, the taking away of his property, and if there is any need to limit the time for the decision of the court, that is where 60 days should probably come in. That from the time a challenge is made, the court which has jurisdiction over the case should act on that petition or challenge within the time frame set by law.

In other words, Mr. President, baliktarin natin. Payagan natin na magkaroon ng temporary restraining order, but restrict the temporary restraining order to a period that is reasonable so that the project may not be unduly delayed also, and at the same time we respect the right of the citizen to challenge what he thinks are arbitrary actions on the part of the government.

Senator Cayetano. Mr. President, anent again the concern of the gentleman, as I said, the President of the Philippines, under Administrative Order No. 50 mandates that there should first be a negotiation. In that negotiation, the property owner has the right to negotiate with the government agency involved the amount that he feels is the just compensation for the purpose of taking away his property. That is, as I said, Administrative Order No. 50 issued by President Estrada on February 17, 1999.

I do agree with the concern of the gentleman from Cagayan de Oro that, indeed, there should first be a

negotiation. As I said, this Administrative Order No. 50 which is not inconsistent incidentally with the bill can be used for the purpose of ensuring that the private landowner will have an opportunity to negotiate first the value of the land which he feels is the just compensation.

Senator Pimentel. There is no problem with that, Mr. President. My problem is, at the rate the gentleman is always agreeing with me, I cannot understand why he will not agree fully and say, "All right, baliktarin na natin iyong proseso."

The point that I really would want to emphasize is.... I have no quarrel with the prerequisite of negotiation because that is how it should be. But I do believe that the right of the citizen to challenge what would appear to him to be arbitrary action on the part of government should never be infringed upon by our government. If the worry is that one secures a TRO and it delays the implementation of the project, then this is where remedial legislation should come in. Meaning to say, doon natin ipasok iyong requirement na ilang araw lamang ang buhay ng temporary restraining order. Dapat, at that point while there is a temporary restraining order, mag-ayos na iyong mga parties concerned.

Senator Cayetano. Mr. President, as the gentleman said, I keep on agreeing with him. As I said, as far as he is concerned, I quite agree. But I do believe that the proposed bill, as I said, is not really that drastic or Draconian in character because it does give the government an opportunity to really initiate or complete a critical project.

At the same time, no matter how small a private piece of land is, that piece of land is always subject to the principle of eminent domain for as long as there is a public purpose in it and there is just compensation. Because the right to use private property is not absolute. Certainly, in the context of an eminent domain, it may be 500 square meters, but if it sits astride an expressway, there is nothing much we can do about that but to expropriate that 500 square meters, otherwise we might not only be able to complete the expressway but we may have to go several kilometers just to avoid going through that 500 square meters.

I do recall, Mr. President, sometime ago, I think in the extension of Buendia or EDSA--I do not know which way now--it took about 20 years before the extension reached Roxas Boulevard because of a TRO that began from the lower court up to the Supreme Court. And that was a long period of time. Because there was one particular landowner who built a house there and fought the government all the way.

But it took several years, as I recall it, before the Supreme Court finally said that the government has the right to expropriate that piece of land because it is right in the center of where this...I am not sure now whether it is the extension of Buendia or EDSA. But I think it is a matter of record that that occurred.

So my point, Mr. President, is, regardless really of the size of the piece of land, what is important here is that the right to the use of a private property is not absolute. In cases where there are government projects and that land is needed for public purpose and there will be just compensation, I think the private landowner has to take a second billing, so to speak, in favor of the government.

Senator Pimentel. We agree, Mr. President. I mean, there is no quarrel about the right of eminent domain being based on public purpose, public use and just compensation. All these requirements are a given in the exercise of their right.

But precisely, when either the public use or the public purpose or the just compensation is being questioned by the citizen, I believe, Mr. President, no matter how small or how large his property might be, he should have that right. That is the point that I am trying to underscore.

As to the example of the distinguished gentleman, I think he is referring to a piece of property in Pasay from EDSA. It indeed took a long time. So the fault does not lie on the power of eminent domain being exercised in that particular respect. Probably public purpose, public use and just compensation have already been addressed in that particular example and yet the project was delayed. Therefore, this is what we should address. Where the source of the delay or the misuse of the TRO, that I would suggest is what we should really seek to remedy and not remove and curtail that right to challenge by a TRO any perceived arbitrary action on the part of the government.

That, to me, is a fundamental right, Mr. President. I think we should not allow that to be curtailed or to be sidelined just because a presidential decree in the past allowed it.

Senator Cayetano. Mr. President, I may be repeating myself, but the use of the word "arbitrary" connotes that obviously the taking of the property is not proper. Because if it were arbitrary, therefore it is probably unlawful in the sense that it is not going to be used for public purpose or that just compensation will not be paid. So in such a case, the arbitrariness of the situation is such that the government will probably lose the case.

Senator Pimentel. May I just interject, Mr. President, at this point. The arbitrariness of an executive action on the part of government for all we know is a misunderstanding on the part of a particular litigant, the owner. Maybe he is wrong and maybe he is right. But how do we know until that is brought before the courts? That is what I am trying to say. Huwag namang pigilin iyong particular right, and allow him to do that. And if the abuse is in the length of time in which the property that is being subjected to eminent domain is held, I mean, the exercise of that power of eminent domain is held in abeyance because of the abuse of that TRO, then let us cure that abuse, Mr. President.

But I would like to say that this is the particular right of a citizen who may have in a given situation his only property at stake and he is not well-connected. He may not even know big-time lawyers like Senator Cayetano.

Senator Cayetano. And the distinguished senator, Mr. President.

Senator Pimentel. And Senator Guingona who is nodding from the side, Mr. President.

He only knows Juan dela Cruz who is practicing law in their barrio or in their barangay. Therefore, he should not be expected to avail himself of the right that is embodied in this bill to go to the Supreme Court because, to him, that is an empty right; it is not a real right. To that extent, we would be a party to denigrating a fundamental right of our people if we allow this kind of a bill to pass without modification.

Senator Cayetano. I heard the gentleman, Mr. President, well and clear. Unfortunately, as I said, I do share his concern but I still do believe that in the end, the proposed bill with the ban on the TRO to be issued by the lower court is the best under the circumstances.

Senator Pimentel. May I therefore request a deferment of the consideration of this bill, Mr. President.

Senator Tatad. I ask that the Minority Leader be recognized.

The President. The Minority Leader is recognized.

Senator Guingona. Thank you, Mr. President.

Will my distinguished colleague yield for some questions?

Senator Cayetano. With pleasure, Mr. President, from another gentleman from Cagayan de Oro and Mindanao.

Senator Guingona. Again, I would like to reiterate the observation that the bill has very lofty intentions and I have no doubt that the sponsor is motivated by the best of intentions for the speedy development of the nation. However, regarding the concerns of the gentleman from Cagayan de Oro, I would like to be permitted to amplify.

May we know the definition of the term "just compensation" in this bill or as a matter of legal right in the Constitution.

Senator Cayetano. Mr. President, in the first place, upon the taking of the property, there will be an estimated value of the land for the purpose of paying 50% based on the relevant zonal valuation by the Bureau of Internal Revenue. That is just the estimate as far as the payment of 50% simultaneously to the taking of the property. Now, within 60 days, just compensation will have to be determined by the court based on the market value of the property.

Senator Guingona. All right. So in the initial, the basis for determining just compensation is really not legal in the sense that: No. 1. The zonal valuation of the Bureau of Internal Revenue is certainly not a conclusive basis for determining what is fair and just; No. 2. I understand that not all areas have zonal valuations. There are provinces and even some cities in distant places where there exists no zonal valuation by the Bureau of Internal Revenue.

No. 3. This is based only on 50% of the value of the property and the improvements. So right there and then, may we be clarified whether this is in accordance with the concept of "just compensation" because, as we understand it in a number of cases, "just compensation" is determined even before the taking on a formula that has been tried and tested in jurisprudence. If we allow this kind of taking, it may not meet the standards of "just compensation" which would include full indemnity for remuneration for loss or damages sustained by the owner of the property taken or injured.

In another case, it says, "just compensation is award of money for the value of the property taken as of the time of taking to indemnify the owner for the loss and includes all that landowner is entitled to receive as fair equivalent for land taken and injury to remaining land as a result of the taking."

Mr. President, zonal valuation may not really be a fair measure of standard.

Senator Cayetano. Mr. President, I agree with my colleague that zonal valuation is not really the legal equivalent of just compensation. The only reason why we put

here the zonal valuation is to have a specific standard by which the 50% to be deposited with the court will be paid by the government. Because absent a specific standard, the landowner may really suffer from a low estimate by the government agency. But as we know very well, the zonal valuation prepared by the Bureau of Internal Revenue is really, more or less, consistent with the fair market value at the time the zonal valuation is prepared.

However, with respect to improvements and structures like houses, for instance, it is not really the zonal valuation but the fair market value as stated in the tax declaration. As I said, I do agree with my colleague that that is not the legal equivalent of "just compensation." That is why in the bill itself, as I adverted to the other gentleman from Cagayan de Oro, within 60 days from the filing of the expropriation case, it is the court that will determine the just compensation to be paid based on the market value of the property, and that such amount will be paid on or before the completion of the project.

The gentleman is correct, Mr. President, that as far as "just compensation" is defined, in one case, it has been defined as "the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of expropriation."

So my colleague is correct that, indeed, we have to take into account the injury to the property and the injury to the person. I also agree with the gentleman that at the time of the taking of the property, that is the time that just compensation must be valued or must be measured. As I said, this is found in the bill itself.

Senator Guingona. Yes, but in the bill itself, it already allows the taking of the property even before that just compensation is determined, because the 50% is already deposited and, therefore, there is already a deprivation of his property rights. So that he will only be paid the balance of the 50% as determined later on but that comes after he has already been deprived of his property. And I think this goes against the elemental basic rights of a person--not to be deprived of property without due process.

Senator Cayetano. Mr. President, let me just say in reply to the statement of my good colleague that under Section 2, Rule LXVII of the Rules of Court, it states here, and I quote:.

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 purpose of taxation to be held by such bank subject to the orders of the court.

We will note, Mr. President, that in the present provision, it is the assessed value only for taxation purposes. The present bill actually, as I said, is more liberal because the first 50% is based on, more or less, the current value of the property based on the BIR zonal valuation. But within 60 days from the filing, the court itself will determine what is the just compensation based on the market value. I agree with the gentleman that it is not the full amount because that is really the present practice.

Senator Guingona. Yes, but that kind of practice is: No. 1, promulgated by the Supreme Court and it is another issue which we will tackle later on, and not by Congress; No. 2, the rule cited envisions or is premised on the fact that an aggrieved person or one who feels aggrieved can resort precisely to a temporary restraining order, which after all is only 20 days in the case of the lower courts.

But in this bill, it will be based on the zonal valuation of the BIR, and it will deprive him already of the right to contest the same and ask for a TRO. Assuming that he does not agree with the same. So, the situation is a little different. If we adopt the zonal valuation with the recourse for a TRO just in case he does not agree, then there would only be a transfer of assessment value to zonal valuation, which is perfectly all right, except in some cases where there is no zonal valuation.

But here, the procedure is changed and he is deprived of that right. It is only 20 days. If the project is delayed for 20 days, I do not think that the nation's development as against the private rights enshrined in the Constitution would be unduly hampered. This is a balancing of the State's right to progress and the people's right to be protected. I am in sympathy with the avowed object of the distinguished sponsor. But at the same time, why deprive a legitimate grievance to be given relief for only 20 days?

Senator Cayetano. Mr. President, the TRO is really good for 20 days and not any longer. But we know for a fact that when a TRO is issued, that is not the end of it. Because the court may decide to convert the TRO later on to a preliminary injunction. So when a preliminary injunction is issued, then we are no longer talking of a 20-day delay. We will be talking about months or even years of delay in the project.

So, it is not just the TRO that we are talking about here, Mr. President. It is really the maturing of the TRO into a preliminary injunction that, in most cases, will arise in the event that there is such a dispute as to the question of public use or just compensation until it reaches the Supreme Court.

Mr. President, with great deal of respect to my colleague, we are not just talking here of a 20-day period. We are really talking of a much longer period than just 20 days, because a TRO can mature into a preliminary injunction, or for that matter, a writ of preliminary injunction.

Senator Guingona. Yes, we understand that. We see the viewpoint of the distinguished sponsor.

However, it could also go both ways. If there is no merit in his petition and there is no substantial evidence to show that he really does not deserve his property or his right should not be protected, because he has no right in the first place, or there is already a just compensation, then the TRO will be extinguished. The possibility of its being extended, I think, will depend on the merits of his petition, on the evidence of his petition. Therefore, if it is only 20 days and his petition has no merit, the extension will not be given or the TRO should not be extended.

The case cited by the distinguished sponsor refers more to an exception rather than the rule. But if we are to weigh the scale between the right of the State or eminent domain and the right of a person, since the Constitution so mandates, I think, we should resolve the same in favor of the rights of a person. However, I understand the viewpoint of the distinguished sponsor.

May I go to another point, Mr. President.

The distinguished sponsor read Rule LXVII. This is a rule promulgated by the Supreme Court. I understand that under the 1987 Constitution, the right of the Supreme Court to promulgate rules on proceedings and practice has been declared no less by the Supreme Court to be its exclusive prerogative.

In other words, in the *People vs. Echegaray* even, the Supreme Court officials said that they, and they alone, as far as rules and proceedings, pleadings, and practice are concerned, sila na ang bahala. They have the exclusive right, and they have even issued a circular, I think, on this.



I do not necessarily share totally in that view, but I would like to know what is the gentleman's view as far as that issue is concerned?

Senator Cayetano. Mr. President. I also, like him, do not share that view. In the case of Echegaray, I felt that that is an *obiter dictum*. But let me just say that during the hearing, Secretary Paras of the Department of Justice precisely dealt on that question when he was asked. Let me read into the *Record* the answer of Secretary Paras of the Department of Justice.

It is true, Your Honor, that this will amend the Rules of Court because the provision on expropriation and preliminary injunction are provided for in the Rules of Court. However, just a backgrounder, the 1935 and 1973 Constitution provided that the Rules of Court promulgated by the Supreme Court may be repealed, altered, or supplemented by the Legislature. No similar provision appears in the 1987 Constitution. The question now, are the Rules of Court, therefore, beyond the reach of Congress?

Mr. Paras continues, and I quote:

But Fr. Bernas in his book discussed the matter and he concluded that the end result of the debate, therefore, is that the matter stays as if the 1935 and the 1973 provision has been reenacted. So, Fr. Bernas concludes that the Legislature can repeal, alter, or supplement the Rules of Court.

So, Mr. President, this particular point---a very relevant and material point---raised by my good colleague, has indeed been a thorny constitutional question. But, indeed, Fr. Bernas in his book strongly feels that it has not deprived Congress of the right to repeal, amend, or even supplement the Rules of Court notwithstanding the absence of such similar grant of express power in the 1987 Constitution.

In reply to the gentleman's question, let me refer him to page 871 of the 1987 Constitution, Republic of the Philippines: A Commentary, 1996 Edition by Joaquin J. Bernas, where, as I said, he believes strongly that notwithstanding the absence of an express provision of the Constitution giving the Legislative body the right to repeal, alter, or supplement the Rules of Court, the Legislature can, nevertheless, do that as if it were written in the 1987 Constitution.

Senator Guingona. I would like to thank the gentleman for that answer.

May we go back, just a while, to the concept of a TRO. A TRO is an interlocutory order. It is not like an injunction *pendente lite*, and so the bill of the distinguished sponsor seeks to amend the whole concept by depriving a citizen of even an interlocutory order. This proposition must be weighed carefully because it involves not only properties, but also the ejection of occupants of the property. There are many issues there that have to be resolved because whether we like it or not, we live under a *patria protesta* concept wherein the government must give social justice and abhors the forcible ejection of occupants from their dwellings in a place without observing the laws on relocation, whether the relocation sites are livable, et cetera. Therefore, even under interlocutory orders, not *pendente lite*, to preserve the *status quo*, just to question for 20 days, even the occupancy of persons are jeopardized here and put to question. They are left without adequate protection. I think, the distinguished sponsor has weighed this carefully. May we have his views on this.

Senator Cayetano. Mr. President, a TRO is given if there is an allegation that an irreparable injury or damage would ensue unless a TRO is issued. But we must also bear in mind that a TRO is part really of a writ of injunction. And an injunction is either a main action by itself to restrain or command the performance of a certain act, or it may be a provisional remedy as an incident for the main action where another form of relief is being sought. So, in that sense it is really not permanent in character. It is--well, as the gentleman says--interlocutory, but it does however, prohibit or suspend a course of action by the government, even though it is only for 20 days. So it does--in case of the taking of the property by virtue of the principle of eminent domain--and it would nevertheless, Mr. President, stall or delay the taking of the property even just for 20 days.

Senator Guingona. But is this not depriving the person of the right to maintain the *status quo*--at least, maintaining the *status quo* only until the main hearing of the case on its merits? Because there may be situations, Mr. President, when occupants legally and validly occupy the premises under lease. But the government immediately needs the property for a project, pays and gives a deposit based on the zonal value of 50% and the bulldozer goes to work. But he cannot go to the Supreme Court right away. He is in Mindanao--we do not know. There may be no zonal valuation there. But assuming there is, the 50% deposit is made and certified to the Court. The bulldozer starts razing their properties. Where do they go just to maintain their *status quo* for 20 days, if not to the nearest court--Regional Trial

Court? They cannot, even before the takeover of the property with dispatch, they do not have the means, the resources and, maybe, even the time to go to the Supreme Court for a TRO.

Does the distinguished sponsor not believe that this would result in grave injustice as against the alleged purpose of just promoting the welfare of development?

Senator Cayetano. Mr. President, I do share the concern of my colleague, but remember that we are talking here of two conflicting interests which are both protected by the Constitution. We will have to weigh here which is, shall we say, more dominant.

As I said, the right to use a private property is not absolute in character. It is always subject to regulation by the government pursuant to the Constitution. There are three ways whereby a private property can be subjected to burden. One of them is through eminent domain, the other one is through police power and the third is through taxation.

In such a case, Mr. President, I do realize that there will be no opportunity for the private landowner in Cagayan de Oro to really go to the Supreme Court and seek a TRO under this particular bill because the lower court will be banned from issuing such a TRO or preliminary injunction. But, I think, we have to look, as I said, at the interest that we are protecting here. While a private landowner has the right to the use of his property and to avail himself of the due process of law, nevertheless, there is also the equivalent or even more dominant right of the government of eminent domain, that where it is for public purpose and where there is going to be just compensation to be paid, then such eminent domain right is dominant over the right of the private property landowner.

And while it seems that 20 days is such a short period but, nevertheless, as I said--again repeating myself--we are not really talking of 20 days when a TRO is issued. In all likelihood, more often than not, we are not talking just of 20 days. This will mature into a preliminary injunction which, as I said, will take months and even years. This is the reason why we have this provision in the bill.

Finally, Mr. President, I do not think we can be more popish than the pope. The Supreme Court is the protector and guarantor of our constitutional rights. And no less than the Supreme Court, as I adverted to earlier, had issued Circular No. 07-99 whereby it admonished all lower court judges to precisely observe the injunction of P.D. 1818 which prohibits the issuance of TROs with respect to government projects.

So, the Supreme Court has tacitly recognized the dominant character of the principle of eminent domain *vis-à-vis* the right of private landowner with respect to the ban on the issuance of TRO by the lower courts.

Senator Guingona. Thank you for that, Mr. President. Precisely, the RTC judges, the lower courts have been warned by the Supreme Court through a circular enjoining them to be very circumspect in issuing TROs and, therefore, they are already on guard. So, they would not issue the TROs needlessly without merit.

But should we go one step farther and totally deprive the citizen who wants to protect and invoke his rights? And this is not only a case of eminent domain. The bill says that if there are squatters, then they also go because there is a writ of possession that is issued. So assuming that the squatters are not squatters but legitimate lessees of a place, will they be deprived of a right to maintain the *status quo* only until after the formal case is heard on its merits? This is the issue, Mr. President.

Senator Cayetano. Mr. President, with respect to that issue of squatter on lands that are subject to eminent domain or expropriation, Section 5 of the bill deals with that precisely. And there it says that ■ The Government, through the National Housing Authority, in coordination with the local government units and implementing agencies concerned, shall establish and develop squatter relocation sites, including the provision of adequate utilities and services, in anticipation of squatters that have to be removed from the right-of-way or site of future infrastructure projects. ■

Now, under Section 5, Mr. President, the squatters will not be removed unless of course a relocation site has already been determined for them and only after such a relocation site has been determined with adequate facilities and services will they be moved because of the expropriation.

This is quite specific under Section 5, Mr. President.

Senator Guingona. Yes, we understand that. But we raised this... They are tagged as squatters, but they are not squatters. They are legitimate lessees and they just want to maintain the *status quo* before the main case will be heard. There is no longer any right for them to go to the Regional Trial Court.

Senator Cayetano. There is still a resort, Mr. President, to the court. There is no doubt about that. The issue there will be, of course, whether the proposed expropriation is for public use and just compensation will

be paid. Actually in expropriation, these are the two basic issues that normally come. What I would like to emphasize here is preventing the lower courts from stopping the government from implementing these projects by the issuance of TRO or preliminary injunctions, but not to question whether it is for public use or that the compensation is just under the circumstances.

Senator Guingona. Yes. But we have to distinguish between the case on the merits and the issues of deprivation before the main case is heard. If there is already a deprivation of property before the main case is heard, then of what use will the principle of right to property, question of just compensation, et cetera, be? In other words, there is already a taking, there is already a development, the bulldozers have started to ram through the property. And the rightful owner or rightful occupant of the property has been deprived of having recourse to status quo.

Senator Cayetano. Well, Mr. President, there is no doubt that it is really going to be a matter, as I said, of balancing of rights. I do not think any government agency will just enter a private land in order to expropriate it for purposes other than public character. And No. 2, there are several cases in our law books that precisely have overturned expropriation cases because they are not for public purpose. And the overturning of cases has ensued in the payment of damages assessed against the government agencies. Or for that matter, if the particular government official acted arbitrarily or unlawfully, he may even be subjected to criminal or administrative liability. I think those are the remedies available to an aggrieved private landowner.

Senator Guingona. Yes, but, with due respect, that comes after the fact. What we are trying to look for is prevention of any abuse or any wrongful taking. The TRO has been there with that purpose and it has been limited to 20 days.

So with all due respect, I am trying very hard to look at the positive aspects of this measure considering the standing of the sponsor and I hope he can look for ways to protect the rights of people.

Thank you.

Senator Cayetano. Thank you very much, Mr. President. Let me just say that in a very late case in 1998 decided by the Supreme Court in *Garcia vs. Burgos*, 291 SCRA, page 546, the Supreme Court reiterated, and I quote:

At the risk of being repetitious, we stress that Section 1 of PD 1818 expressly deprives court of jurisdiction to its injunctive writs against the implementation or execution of an infrastructure project.

As I said, Mr. President, it is quite obvious that the protector and guarantor of our civil and constitutional rights has recognized the more dominant aspect of the eminent domain *vis-à-vis* the private property landowners.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, we would like to thank the Minority Leader for his probing questions and the sponsor for his masterful defense of the measure.

There are a number of other senators who have reserved for the interpellation, but they are not yet ready at this time to do so.

#### SUSPENSION OF CONSIDERATION OF S. NO. 2038

So I move that we suspend consideration of Senate Bill No. 2038.

The President. Is there any objection? [*Silence*]  
*There being none, the motion is approved.*

#### ADJOURNMENT OF SESSION

Senator Tatad. Mr. President, I move that we adjourn the session to a later time within the hour.

The President. Is there any objection? [*Silence* ]  
*There being none, the session is adjourned to a later hour.*

*It was 3:42 p.m.*