

EXECUTIVE ORDER NO. 1035

PROVIDING THE PROCEDURES AND GUIDELINES FOR THE EXPEDITIOUS ACQUISITION BY THE GOVERNMENT OF PRIVATE REAL PROPERTIES OR RIGHTS THEREON FOR INFRASTRUCTURE AND OTHER GOVERNMENT DEVELOPMENT PROJECTS

WHEREAS, one of the major causes of delays in the implementation of development projects, particularly national infrastructure projects, has been the processing of acquisition of private properties or rights-of-way (ROW) thereon which are needed for said projects, and the settlement of claims for payment thereof;

WHEREAS, such property or ROW acquisitions are being hampered by several problems such as refusal of landowners/tenants to allow government personnel to enter the property during parcellary surveys, refusal of owners to sell because of cultural/personal value attached to the property, difficulties encountered by landowners in complying with existing rigid governmental requirements for payment of claims, and delays in issuance of court orders in expropriation cases;

WHEREAS, the delays in the implementation of development projects due to the aforementioned problems on property/ROW acquisitions have been causing a big drain on the government's financial resources in view of increased project costs specifically in terms of commitment fees on undrawn balance of foreign loans and price escalation;

WHEREAS, there is an urgent need to amend existing rules and regulations, as well as to adopt new procedures and guidelines in order to expedite the acquisition of private property or rights thereon needed for infrastructure and other development projects of the government;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and direct as follows:

Sec. 1. Scope and Applicability. The provisions of this Executive Order shall govern all acquisitions of private real properties or rights-of-way (ROW) thereon needed for infrastructure projects and other development projects of the government which are undertaken by any ministry, agency, office or instrumentality of the government, including government-owned or controlled corporations and state colleges and universities.

TITLE A - ACTIVITIES PREPARATORY TO ACQUISITION OF PROPERTY

Sec. 2. Feasibility Studies. Feasibility studies shall be undertaken for all major projects, and such studies shall, in addition to the usual technical, economic and operational aspects, include the social, political, cultural and environmental impact of the project.

Sec. 3. Information Campaign. Every agency, office and instrumentality of the government proposing to implement a development project which requires the acquisition of private real property or rights thereon shall first make consultations with

the local government officials, including the regional development councils having jurisdiction over the area where the project will be undertaken to elicit their support and assistance for the smooth implementation of the project. The implementing agency/instrumentality concerned with the assistance of the local government officials and representatives of the Office of Media Affairs shall conduct an extensive public information campaign among the local inhabitants that will be affected by the project to acquaint them with the objectives and benefits to be derived from the project and thus avoid any resistance to or objection against the acquisition of the property for the project.

Sec. 4. Detailed Engineering/Surveys. The implementing government agency/instrumentality concerned shall, well in advance of the scheduled construction of the project, undertake detailed engineering, including parcellary surveys to indicate the location and size of the sites and to determine ownership of the land to be acquired, including the status of such landownership.

Sec. 5. Project Cost/Funding. The estimated cost of a project shall have the following distinct components:

- a. Pre-investment cost which shall include the cost of undertaking the feasibility study and public information campaign.
- b. Investment cost which shall include the cost of detailed engineering, cost of the property to be acquired and cost of construction and construction supervision.

The programming and budgeting of funds for the pre-investment and pre-construction phases, carried out in that order, shall be undertaken well in advance of the scheduled commencement of construction. The implementing agency/instrumentality concerned shall include in their respective proposals for annual budgetary outlays provisions to finance these preparatory activities and the Office of Budget and Management (OMB) shall consider such proposals in the light of the foregoing. In the case of the infrastructure ministries, the necessary outlays for each phase of the pre-implementation activities shall be made a distinct component of the annual infrastructure program which shall be released by the OMB as scheduled.

TITLE B - PROCEDURE FOR ACQUISITION OF PROPERTY

Sec. 6. Acquisition Through Negotiated Sale. As an initial step, the government implementing agency/instrumentality concerned shall negotiate with the owner of the land that is needed for the project for the purchase of said land, including improvements thereon. In the determination of the purchase price to be paid, the Ministry of Finance and the Provincial/City/Municipal Assessors shall extend full assistance and coordinate with the personnel of the government implementing agency concerned in the valuation of lands and improvements thereon taking into consideration the current and fair market value declared by the owner or administrator of the land, or such current market value as determined by the assessor, whichever is lower, prior to the negotiation.

Sec. 7. Expropriation. If the parties fail to agree in negotiation of the sale of the land as provided in the preceding section, the government implementing agency/instrumentality concerned shall have authority to immediately institute expropriation proceedings through the Office of the Solicitor General or the Government Corporate Counsel, as the case may be. The just compensation to be paid for the

property acquired through expropriation shall be in accordance with the provisions of P.D. No. 1533. Courts shall give priority to the adjudication of cases on expropriation and shall immediately issue the necessary writ of possession upon deposit by the government implementing agency/instrumentality concerned of an amount equivalent to ten per cent (10%) of the amount of just compensation provided under P.D. No. 1533; Provided, That the period within which said writ of possession shall be issued shall in no case extend beyond five (5) days from the date such deposit was made.

Sec. 8. Conditions Precedent to Foreign Loan Negotiation. As a general rule, negotiations for foreign loans to finance specific construction projects and other projects requiring acquisition of private real property or rights thereon shall be undertaken only after the negotiation for such acquisition with the property owner/s have been completed or the expropriation proceedings have been initiated: Provided, That before the filing of expropriation proceedings, the financing institution must have already favorably appraised the project: Provided, further, That exceptions to the above rule may be allowed by the Investment Coordination Committee (ICC) on a case-to-case basis depending on the type, size and technology of the project involved. In such case, the ICC shall determine the extent/stage of property acquisition that may be required as a pre-condition for project approval or for negotiation of a foreign loan to finance the project.

TITLE C - PROCEDURE FOR PAYMENT AND REGISTRATION OF PROPERTY/ROW ACQUISITIONS

Sec. 9. Assessment of Taxes Due. The Bureau of Internal Revenue and the respective Provincial/City/Municipal Treasurers shall assess the following taxes, where applicable, on the property being acquired:

- a) Capital gains tax due on the gains derived from the sale of the real property to the government;
- b) Estate tax due on the portion of the estate of a deceased owner to be acquired by the government; and
- c) Unpaid real estate taxes on the property up to the time the government took possession thereof.

Such assessment shall be made and transmitted to the government implementing agency/instrumentality concerned within one (1) week from the submission of complete requirements.

Sec. 10. Withholding Tax/Tax Clearance. Upon receipt of the assessment of the aforementioned taxes, the government implementing agency/instrumentality concerned shall issue a certification that upon payment to the landowner; it shall deduct the corresponding capital gains tax and any unpaid estate tax and real estate tax.

On the basis of such certification, the BIR and the respective Provincial/City/Municipal Treasurers shall issue the tax clearances for the registration of the property in favor of the government implementing agency/instrumentality concerned.

All taxes deducted shall be immediately remitted by the government implementing agency/instrumentality concerned to the BIR or the Provincial/City/Municipal Treasurer, as the case may be.

Sec. 11. Payments for Improvements on the Property Acquired. Payment for the improvements or property acquired which are not included in the respective tax declaration of the owner, shall be based on the physical inventory report prepared and

certified to by the representatives of the agency, the Commission on Audit, and the claimant. In addition thereto, claims for payment of improvements must be supported by an affidavit of the claimant and affidavit of two (2) adjoining landowners or barangay officials attesting to or substantiating the ownership of said improvements.

Sec. 12. Indemnity Bond for Untitled Lands. In case where the property acquired is untitle, the government implementing agency/instrumentality concerned shall require the land owner to post an indemnity or property bond, the amount of which shall be fixed by the Provincial/City/Municipal Treasurer concerned on the basis of the market value as determined by the assessor and as appearing on the current tax declaration of the property. This requirement shall be dispensed with where the claim for payment does not exceed P50,000.

Sec. 13. Period for Payment. The payment of property acquired shall be effected by the implementing government agency/instrumentality concerned within ninety (90) days upon approval by appropriate higher authorized of the negotiated sale and submission by the landowner of all required documents. In the case of property acquired through expropriation, payment shall be effected within ninety (90) days from the finality of the decision rendered by the court: Provided, That if at the time of finality of the decision the funds originally allotted to cover the cost of the property are no longer available due to expiration of the pertinent release instruments, payment shall be made upon the release of funds by the OBM which is hereby directed to effect the immediate release thereof, chargeable against available and applicable appropriations thereof.

Sec. 14. Properties Covered by Operation Land Transfer. In case the land acquired is covered by the Operation Land Transfer of the Ministry of Agrarian Reform under P.D. No. 27, payment of the purchase price shall be made by the implementing agency/instrumentality concerned to the farmer-beneficiary owning such land by virtue of an emancipation patent issued by the Ministry of Agrarian Reform, free from all liens and encumbrances. If the land is not covered by an emancipation patent, or even if covered by an emancipation patent but the farmer-beneficiary is still amortizing the same with the Land Bank, payment shall be made by the government implementing agency/instrumentality to the landowner, or the Land Bank, as the case may be: Provided, That any amortization payments made by the farmer-beneficiary to the landowner, or the Land Bank, as the case may be, shall be deducted by the government implementing agency/instrumentality from the purchase price and shall be paid to the farmer-beneficiary: Provided, further, That the farmer-beneficiary shall be entitled to the financial assistance provided for under Section 18 hereof.

Sec. 15. Approval of Survey Plans. The National Land Titles and Deeds Registration Administration and the Bureau of Lands shall give priority to the approval of all survey plans of parcels of land affected by government projects that have been filed under their respective jurisdiction.

Sec. 16. Registration of Deed of Conveyance. The Register of Deeds shall register the deed of conveyance and issue the corresponding title in favor of the government within seven (7) days from the date of presentation of such deed together with the certification provided in Section 10 hereof.

The Register of Deeds shall also register the ROM agreement executed by the landowner in favor of the government for the ROW easement acquired by the latter over his property.

TITLE D - ASSISTANCE TO DISPLACED TENANTS/OCCUPANTS

Sec. 17. Relocation/Resettlement of Tenants/Occupants Affected by Property/ROW Acquisitions. In case where the land to be acquired for the project would involve displacement of tenants, farmers and other occupants, the Ministry of Human Settlements, Ministry of Agrarian Reform and other concerned agencies shall extend full cooperation and assistance to the implementing agency/instrumentality concerned in the relocation and resettlement of such displaced tenants and occupants.

Sec. 18. Financial Assistance to Displaced Tenants/Occupants. The government implementing agencies/instrumentalities concerned shall extend financial assistance to the displaced tenants of agricultural lands, cultural minorities and settlers who are duly accredited by the Ministry of Agrarian Reform/Bureau of Forest Development/Office of Muslim Affairs and Cultural Communities. In the case of cultural minorities payment of such financial assistance shall be based on land occupancy certificates pursuant to the provision of P.D. 419. The amount of financial assistance to be given to tenants/farmers of agricultural lands which is to be determined by the implementing agency concerned in consultation with appropriate agencies, shall be equivalent to the value of the gross harvest for one year on the principal and secondary crops of the area acquired, based on the average annual gross harvest for the last three preceding crop years: Provided, That in no case shall the financial assistance be less than P15,000.00 per hectare.

Financial assistance may also be given to owners of lands acquired under CA 141, as amended, for the area of portion subject to the reservation under Section 112 thereof in such amounts as may be determined by the implementing agency/instrumentality concerned, in consultation with the Commission on Audit and the assessor's office concerned.

Payment of the abovementioned financial assistance shall be made at the time of relocation of the tenants/farmers.

Sec. 19. Repealing Clause. All executive orders, instructions, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly. acd

Sec. 20. Effectivity. This Order shall take effect immediately.

Done in the City of Manila, this 25th day of June, in the year of Our Lord, nineteen hundred and eighty-five.