

671 Phil. 791

**SECOND DIVISION****[ G.R. No. 185023, August 24, 2011 ]****CITY OF PASIG, REPRESENTED BY THE CITY TREASURER AND  
THE CITY ASSESSOR, VS. PETITIONER, REPUBLIC OF THE  
PHILIPPINES, REPRESENTED BY THE PRESIDENTIAL  
COMMISSION ON GOOD GOVERNMENT, RESPONDENT.****D E C I S I O N****CARPIO, J.:****The Case**

This is a petition<sup>[1]</sup> for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 17 October 2008 Decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 97498, affirming the 6 November 2006 Decision<sup>[3]</sup> of the Regional Trial Court (RTC), National Capital Judicial Region, Pasig City, Branch 155, in SCA No. 2901.

**The Facts**

Mid-Pasig Land Development Corporation (MPLDC) owned two parcels of land, with a total area of 18.4891 hectares, situated in Pasig City. The properties are covered by Transfer Certificate of Title (TCT) Nos. 337158 and 469702 and Tax Declaration Nos. E-030-01185 and E-030-01186 under the name of MPLDC. *Portions* of the properties are leased to different business establishments.

In 1986, the registered owner of MPLDC, Jose Y. Campos (Campos), voluntarily surrendered MPLDC to the Republic of the Philippines.

On 30 September 2002, the Pasig City Assessor's Office sent MPLDC two notices of tax delinquency for its failure to pay real property tax on the properties for the period 1979 to 2001 totaling P256,858,555.86. In a letter dated 29 October 2002, Independent Realty Corporation (IRC) President Ernesto R. Jalandoni (Jalandoni) and Treasurer Rosario Razon informed the Pasig City Treasurer that the tax for the period 1979 to 1986 had been paid, and that the properties were exempt from tax beginning 1987.

In letters dated 10 July 2003 and 8 January 2004, the Pasig City Treasurer informed MPLDC and IRC that the properties were not exempt from tax. In a letter dated 16 February 2004, MPLDC General Manager Antonio Merelos (Merelos) and Jalandoni again informed the Pasig City Treasurer that the properties were exempt from tax. In a letter dated 11 March 2004, the Pasig City Treasurer again informed Merelos that the properties were not exempt from tax.

On 20 October 2005, the Pasig City Assessor's Office sent MPLDC a notice of final demand for payment of tax for the period 1987 to 2005 totaling P389,027,814.48. On the same day, MPLDC paid P2,000,000 partial payment under protest.

On 9 November 2005, MPLDC received two warrants of levy on the properties. On 1 December 2005, respondent Republic of the Philippines, through the Presidential Commission on Good Government (PCGG), filed with the RTC a petition for prohibition with prayer for issuance of a temporary restraining order or writ of preliminary injunction to enjoin petitioner Pasig City from auctioning the properties and from collecting real property tax.

On 2 December 2005, the Pasig City Treasurer offered the properties for sale at public auction. Since there was no other bidder, Pasig City bought the properties and was issued the corresponding certificates of sale.

On 19 December 2005, PCGG filed with the RTC an amended petition for certiorari, prohibition and mandamus against Pasig City. PCGG prayed that: (1) the assessments for the payment of real property tax and penalty be declared void; (2) the warrants of levy on the properties be declared void; (3) the public auction be declared void; (4) the issuance of certificates of sale be declared void; (5) Pasig City be prohibited from assessing MPLDC real property tax and penalty; (6) Pasig City be prohibited from collecting real property tax and penalty from MPLDC; (7) Pasig City be ordered to assess the actual occupants of the properties real property tax and penalty; and (8) Pasig City be ordered to collect real property tax and penalty from the actual occupants of the properties.

### **The RTC's Ruling**

In its 6 November 2006 Decision, the RTC granted the petition for certiorari, prohibition and mandamus. The RTC held:

The primordial issue to be resolved in the present case is whether or not respondent City of Pasig, through the City Treasurer and the City Assessor, acted with grave abuse of discretion amounting to lack or excess of jurisdiction

when it assessed, levied and sold in public auction the "payanig" properties for non-payment of real property taxes.

However, before dwelling on the merits of the main issue, certain matters need to be addressed by the Court, to wit:

1. Does the Court have jurisdiction over the instant petition?
2. Who owns the so-called "payanig" properties that were subjected to payment of real property taxes by respondent?

The Court maintains that it is not precluded from assuming jurisdiction over the instant amended petition which involves the legality of the assailed actions by respondent in assessing and collecting real property tax on the properties owned by the Republic of the Philippines. It is a jurisprudential doctrine that the issue is purely legal when the authority of the respondent to assess and collect real property taxes on the subject properties is being questioned (Ty vs. Trampe, 250 SCRA 500).

x x x x

In the instant proceeding, there is no dispute that the properties are surrendered ill-gotten wealth of former President Marcos. As such, the same assumes [sic] a public character and thus belongs [sic] to the Republic of the Philippines. x x x

x x x x

Hence, upon the voluntary surrender by Jose Y. Campos, the controlling owner of Mid-Pasig and Independent Realty Corporation, of the "payanig" properties to PCGG, a clear admission that these properties were part of the ill-gotten wealth of former President Marcos was already evident. As such, there was already constructive reconveyance to the State, which immediately placed these reconveyed properties under the control and stewardship of the PCGG as representative of the Republic of the Philippines. Under such special circumstance, these voluntary surrendered properties had already belonged to the State.

x x x x

Premised on the foregoing, the "payanig" properties, being part of the recovered ill-gotten wealth of President Marcos, and therefore are owned by the State itself, are exempt from payment of real property taxes. It is only when the beneficial use of said properties has been granted to a taxable person that the same may be subject to imposition of real property tax.

Furthermore, in real estate taxation, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner (Testate Estate of Concordia T. Lim vs. City of Manila, 182 SCRA 482).

In the instant case, the taxable persons being referred to are the lessees occupying and/or doing business therein and have beneficial use over portions within the "payanig" properties.

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Consequently, there can be no iota of doubt that respondent City of Pasig abused its discretion by committing the acts sought to be annulled herein despite knowledge of the fact that ownership over the subject properties belong to petitioner. But what is more appalling in the instant action is that such abuse was capriciously committed by respondent City of Pasig against the sovereign State itself from where that atxing local government unit derives its very existence. The spring cannot rise higher than its source.

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In sum, the acts of respondent in assessing real property taxes on properties owned and controlled by the Republic of the Philippines, in collecting taxes from Mid-Pasig in lieu of the actual occupants or beneficial users of certain portions thereof, and in auctioning said properties in favor of respondent, followed by the corresponding certificate of sale, are all unequivocally tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, in the light of the foregoing, the instant Amended Petition is hereby GRANTED.

Accordingly, the following acts of respondent are hereby ANNULLED and SET ASIDE.

1. the assessment dated September 30, 2002 for the payment of real property taxes and penalties made by the City of Pasig on two (2) parcels of land covered by TCT No. 337158 and TCT No. 469702 registered under the name of Mid-Pasig;
2. the warrants of levy dated November 8, 2005 issued thereon by the City of Pasig;

3. the subsequent public auction sale of subject properties held on December 2, 2005 followed by the issuance of the corresponding Certificate of Sale;

FURTHER, the City of Pasig is hereby PROHIBITED from further:

1. Assessing real property taxes and penalties charges [sic] on the said properties;
2. Collecting said taxes and penalty charges from the State;
3. Disposing or encumbering the subject properties or any portion thereof;

FURTHER, the City of Pasig is hereby COMMANDED:

1. To return or effect the refund of the amount of Two Million Pesos (Php 2,000,000.00) paid under protest by Mid-Pasig Land Development Corporation on October 20, 2005, or credit the same amount to any outstanding tax liability that said corporation may have with the City of Pasig; and
2. To assess and collect from the actual occupants or beneficial users of the subject properties, and not from the State, whatever real property taxes and penalties that may be due on the respective areas occupied by them.

SO ORDERED.<sup>[4]</sup>

Pasig City appealed to the Court of Appeals.

### **The Court of Appeals' Ruling**

In its 31 March 2008 Decision,<sup>[5]</sup> the Court of Appeals set aside the RTC's 6 November 2006 Decision. The Court of Appeals held:

We find nothing in PCGG's petition that supports its claim regarding Pasig City's alleged grave abuse of discretion. It is undisputed that the subject parcels of land are registered in the name of Mid-Pasig, a private entity. Although the government, through the PCGG have [sic] sequestered Mid-Pasig and all its assets including the subject parcels of land, the sequestration *per se*, did not operate to convert Mid-Pasig and its properties to public property. "*The power of the PCGG to sequester property claimed to be 'ill-gotten' means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including 'business enterprises and entities' -- for the purpose of*

*preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving the same -- until it can be determined, through appropriate judicial proceedings, whether the property was in truth 'ill-gotten,' i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and great damage and prejudice to the State."* x x x As such, prior to a valid court declaration the "PCGG cannot perform acts of strict ownership of [sic] sequestered property. It is a mere conservator." In view thereof and the fact that Mid-Pasig and its properties have not been validly declared by the Sandiganbayan as "ill-gotten" wealth, the same are not yet public properties. The PCGG even admitted that the transfer certificates of title covering the subject parcels of land in the name of Mid-Pasig have not been cancelled due to an order of the Sandiganbayan. The trial court also found that the subject parcels of land are the subject of litigation between Ortigas and Company Limited Partnership and the PCGG in Civil Case No. 0093 pending before the Sandiganbayan. These facts clearly show that the Sandiganbayan has not validly declared yet that the subject parcels of land are "ill-gotten" wealth. If so, they cannot be claimed yet as properties of the State: they remain properties of a private entity. Thus, Pasig City through its City Assessor and City Treasurer did not act with grave abuse of discretion when it issued real property tax assessment on the subject parcels of land.

Even admitting that the subject parcels of land are already owned by the State, we still see no grave abuse of discretion on the part of Pasig City when it issued the challenged tax assessment, for it is well settled that the test of exemptions from taxation is the use of the property for purposes mentioned in the Constitution. The owner of the property does not matter. Even if he is not a tax-exempt entity, as long as the property is being used for religious, charitable or educational purposes, the property is exempt from tax. Conversely, even if the government owns the property, if the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person, the property is subject to tax. Here, the PCGG admitted that portions of the subject properties were leased to private entities engaged in commercial dealings. As well, the trial court found that lessees occupy different areas of the subject parcels of land beginning 1992 until 2005. Therefore, considering that portions of the subject parcels of land are used for commercial purposes, the duty imposed by law to owners and administrators of real property to declare the same for tax purposes and the fact that the tax declarations over the subject parcels of land are in the name of Mid-Pasig, again, Pasig City did not act with grave abuse of discretion when it issued

the challenged tax assessment.

The foregoing snowball to one conclusion -- the allegations in PCGG's petition imputing grave abuse of discretion on the part of Pasig City, acting through the City Assessor and City Treasurer, in the assessment and collection of the taxes were made in order to justify the filing of the petition for certiorari, prohibition and mandamus with the trial court.

The extraordinary remedies of certiorari, prohibition and mandamus may be resorted to only when there is no other plain, available, speedy and adequate remedy in the course of law. Where administrative remedies are available, petitions for the issuance of these peremptory writs do not lie in order to give the administrative body the opportunity to decide the matter by itself correctly and to prevent unnecessary and premature resort to courts.

Republic Act No. 7160 or the Local Government Code of 1991, clearly sets forth the administrative remedies available to a taxpayer or real property owner who is not satisfied with the assessment or reasonableness of the real property tax sought to be collected. The Supreme Court outlined said remedies, to wit:

*Should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 directs that the taxpayer should first pay the tax due before his protest can be entertained. There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within thirty days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.*

*If the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252, the taxpayer/real property owner may then appeal or directly file a verified petition with the LBAA within sixty days from denial of the protest or receipt of the notice of assessment, as provided in Section 226 of R.A. No. 7160[.]*

*And, if the taxpayer is not satisfied with the decision of the LBAA, he may elevate the same to the CBAA, which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders*

*and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits or overpayments of taxes. An appeal may be taken to the CBAA by filing a notice of appeal within thirty days from receipt thereof.*

From the Central Board Assessment Appeals, the dispute may then be taken to the Court of Tax Appeals by filing a verified petition for review under Rule 42 of the Revised Rules of Court; to the Court of tax Appeals en banc; and finally to the Supreme Court via a petition for review on certiorari pursuant to Rule 45 of the Revised Rules of Court.

We are not convinced with PCGG's stance that their recourse of filing the petition for certiorari, prohibition and mandamus before the trial court is proper as they are questioning not merely the correctness of the tax assessment but the actions of Pasig City, through its City Assessor and City Treasurer, which were done in grave abuse of discretion amounting to lack or excess of jurisdiction.

The well-established rule is that allegations in the complaint and the character of the relief sought determine the nature of an action. A perusal of the petition before the trial court plainly shows that what is actually being assailed is the correctness of the assessments made by the City Assessor of Pasig City on the subject parcels of land. PCGG claims, among others, that: 1) the subject parcels of land are exempt from real property taxation as they are public property; 2) even if the subject parcels of land are subject to tax, as the beneficial use thereof was granted to private persons and entities, only the portion thereof used for commerce is subject to tax and the users thereof are the ones liable to pay the tax; and 3) the right of Pasig City to collect the real property taxes pertaining to 1987 to 1998 has already prescribed. These claims essentially involve questions of fact, which are improper in a petition for certiorari, prohibition and mandamus; hence, the petition should have been brought, at the very first instance, to the Local Board Assessment Appeals, which has authority to rule on the objections of any interested party who is not satisfied with the action of the assessor. Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction.

Granting that the assessor's authority and the legality of the assessment are indeed an issue, the proper remedy is a suit for the refund of the real property tax after paying the same under protest. It must be pointed out that in order for the trial court to resolve the instant petition, the issues of the correctness of the tax assessment and collection must also necessarily be dealt with; hence, a



petition for certiorari, prohibition and mandamus is not the proper remedy. x x x [T]he resolution of the issues raised in the instant case involve examination and determination of relevant and material facts, i.e. facts relating to the ownership of the subject parcels of land, the portion of the subject parcel of land used for commercial purposes and the identities of the lessees and the users thereof. Since resolution of factual issues is not allowed in a petition for certiorari, prohibition and mandamus, the trial court is precluded from entertaining the petition.

Finally, Section 252 of the R.A. No. 7160 requires payment under protest in assailing real property tax assessment. Even an appeal shall not suspend the collection of the atx assessed without prejudice to a later adjustment pending the outcome of the appeal. This principle is consistent with the time-honored principle that taxes are the lifeblood of the nation. But the PCGG failed to pay the tax assessment prior to questioning it before the trial court; hence, the trial court should have dismissed PCGG's petition in line with the Supreme Court pronouncement that a trial court has no jurisdiction to entertain a similar petition absent payment under protest.

In conclusion and taking all the foregoing into account, we hold that the trial court had no jurisdiction to take cognizance and decide PCGG petition for certiorari, prohibition and mandamus; the trial court should have dismissed the petition.<sup>[6]</sup>

PCGG filed a motion for reconsideration. In its 17 October 2008 Decision, the Court of Appeals reversed itself. The Court of Appeals held:

At the outset, although as a rule, administrative remedies must first be exhausted before resort to judicial action can prosper, there is a well-settled exception in cases where the controversy does not involve questions of fact but only of law. We find that the Republic has shown a cause for the application of the foregoing exception. Essentially, the Republic has raised a pure question of law -- whether or not the City of Pasig has the power to impose real property tax on the subject properties, which are owned by the State. It bears stressing that the Republic did not raise any question concerning the amount of the real property tax or the determination thereof. Thus, having no plain, speedy, and adequate remedy in law, the Republic correctly resorted to judicial action via the petition for certiorari, prohibition, and mandamus, to seek redress.

We are convinced that the subject properties were not sequestered by the

government so as to amount to a deprivation of property without due process of law; instead, they were voluntarily surrendered to the State by Campos, a self-admitted crony of the then President Marcos. The relinquishment of the subject properties to the State as ill-gotten wealth of Marcos, as recognized by the Supreme Court, makes a judicial declaration that the same were ill-gotten unnecessary. By virtue of said relinquishment, the State correctly exercised dominion over the subject properties. Indubitably, the subject properties, being ill-gotten wealth, belong to the State. x x x By its nature, ill-gotten wealth is owned by the State. As a matter of fact, the Republic continues to exercise dominion over the subject properties.<sup>[7]</sup>

Hence, the present petition.

### **Issues**

Pasig City raises as issues that the lower courts erred in granting PCGG's petition for certiorari, prohibition and mandamus and in ordering Pasig City to assess and collect real property tax from the lessees of the properties.

### **The Court's Ruling**

The petition is partly meritorious.

As correctly found by the RTC and the Court of Appeals, the Republic of the Philippines owns the properties. Campos voluntarily surrendered MPLDC, which owned the properties, to the Republic of the Philippines. In *Republic of the Philippines v. Sandiganbayan*,<sup>[8]</sup> the Court stated:

x x x Jose Y. Campos, "a confessed crony of former President Ferdinand E. Marcos," voluntarily surrendered or turned over to the PCGG the properties, assets and corporations he held in trust for the deposed President. Among the corporations he surrendered were the Independent Realty Corporation and the Mid-Pasig Land Development Corporation.<sup>[9]</sup>

In *Republic of the Philippines v. Sandiganbayan*,<sup>[10]</sup> the Court stated:

The antecedent facts are stated by the Solicitor General as follows:

X X X X

"3. Sometime in the later part of August 1987, defendant Jose D. Campos, Jr., having been served with summons on August 5, 1987, filed with the respondent Court an undated 'Manifestation and Motion to Dismiss Complaint with Respect to Jose D. Campos' praying that he be removed as party defendant from the complaint on the grounds that he had 'voluntarily surrendered or turned over any share in his name on [sic] any of the corporations referred to, aside from disclaiming any interest, ownership or right thereon to the Government of the Republic of the Philippines' and that he was 'entitled to the immunity granted by the Presidential Commission on Good Government pursuant to Executive Order No. 14, under the Commission's Resolution dated May 28, 1986 to Mr. Jose Y. Campos and his family' he 'being a member of the immediate family of Jose Y. Campos.'

X X X X

In the instant case, the PCGG issued a resolution dated May 28, 1986, granting immunity from both civil and criminal prosecutions to Jose Y. Campos and his family. The pertinent provisions of the resolution read as follows:

"3.0. In consideration of the full cooperation of Mr. Jose Y. Campos to this Commission, his voluntary surrender of the properties and assets disclosed and declared by him to belong to deposed President Ferdinand E. Marcos to the Government of the Republic of the Philippines, his full, complete and truthful disclosures, and his commitment to pay a sum of money as determined by the Philippine Government, this Commission has decided and agreed:

X X X X

Undoubtedly, this resolution embodies a compromise agreement between the PCGG on one hand and Jose Y. Campos on the other. Hence, in exchange for the voluntary surrender of the ill-gotten properties acquired by the then President Ferdinand E. Marcos and his family which were in Jose Campos' control, the latter and his family were given full immunity in both civil and criminal prosecutions. x x x

X X X X

By virtue of the PCGG's May 28, 1986 resolution, Jose Campos, Jr. was given

full immunity from both civil and criminal prosecutions in exchange for the "full cooperation of Mr. Jose Y. Campos to this Commission, his voluntary surrender of the properties and assets disclosed and declared by him to belong to deposed President Ferdinand E. Marcos to the Government of the Republic of the Philippines, his full, complete and truthful disclosures, and his commitment to pay a sum of money as determined by the Philippine Government." In addition, Campos, Jr. had already waived and surrendered to the Republic his registered equity interest in the Marcos/Romualdez corporations involved in the civil case.<sup>[11]</sup>

Even as the Republic of the Philippines is now the owner of the properties in view of the voluntary surrender of MPLDC by its former registered owner, Campos, to the State, such transfer does not prevent a third party with a better right from claiming such properties in the proper forum. In the meantime, the Republic of the Philippines is the presumptive owner of the properties for taxation purposes.

Section 234(a) of Republic Act No. 7160 states that properties owned by the Republic of the Philippines are exempt from real property tax "**except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.**" Thus, the portions of the properties not leased to taxable entities are exempt from real estate tax while the portions of the properties leased to taxable entities are subject to real estate tax. The law imposes the liability to pay real estate tax on the Republic of the Philippines for the portions of the properties leased to taxable entities. It is, of course, assumed that the Republic of the Philippines passes on the real estate tax as part of the rent to the lessees.

In *Philippine Fisheries Development Authority v. Central Board of Assessment Appeals*,<sup>[12]</sup> the Court held:

In the 2007 case of *Philippine Fisheries Development Authority v. Court of Appeals*,<sup>[ ]</sup> the Court resolved the issue of whether the PFDA is a government-owned or controlled corporation or an instrumentality of the national government. **In that case, the City of Iloilo assessed real property taxes on the Iloilo Fishing Port Complex (IFPC), which was managed and operated by PFDA. The Court held that PFDA is an instrumentality of the government and is thus exempt from the payment of real property tax, thus:**

**The Court rules that the Authority is not a GOCC but an instrumentality of the national government which is generally**

**exempt from payment of real property tax. However, said exemption does not apply to the portions of the IFPC which the Authority leased to private entities. With respect to these properties, the Authority is liable to pay property tax. Nonetheless, the IFPC, being a property of public dominion cannot be sold at public auction to satisfy the tax delinquency.**

X X X X

This ruling was affirmed by the Court in a subsequent PFDA case involving the Navotas Fishing Port Complex, which is also managed and operated by the PFDA. In consonance with the previous ruling, **the Court held in the subsequent PFDA case that the PFDA is a government instrumentality not subject to real property tax except those portions of the Navotas Fishing Port Complex that were leased to taxable or private persons and entities for their beneficial use.**

Similarly, we hold that as a government instrumentality, the PFDA is exempt from real property tax imposed on the Lucena Fishing Port Complex, except those portions which are leased to private persons or entities.<sup>[13]</sup> (Emphasis supplied)

In *Government Service Insurance System v. City Treasurer of the City of Manila*,<sup>[14]</sup> the Court held:

X X X **The tax exemption the property of the Republic or its instrumentalities carries ceases only if, as stated in Sec. 234(a) of the LGC of 1991, "beneficial use thereof has been granted, for a consideration or otherwise, to a taxable person."** GSIS, as a government instrumentality, is not a taxable juridical person under Sec. 133(o) of the LGC. **GSIS, however, lost in a sense that status with respect to the Katigbak property when it contracted its beneficial use to MHC, doubtless a taxable person. Thus, the real estate tax assessment of Php 54,826,599.37 covering 1992 to 2002 over the subject Katigbak property is valid insofar as said tax delinquency is concerned as assessed over said property.**<sup>[15]</sup> (Emphasis supplied)

In *Manila International Airport Authority v. Court of Appeals*,<sup>[16]</sup> the Court held:

x x x **Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the "beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."** MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax.

However, **portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a consideration to a taxable person and therefore such land area is subject to real estate tax.**<sup>[17]</sup> (Emphasis supplied)

In *Lung Center of the Philippines v. Quezon City*,<sup>[18]</sup> the Court held:

x x x While portions of the hospital are used for the treatment of patients and the dispensation of medical services to them, whether paying or non-paying, other portions thereof are being leased to private individuals for their clinics and a canteen. Further, a portion of the land is being leased to a private individual for her business enterprise under the business name "Elliptical Orchids and Garden Center." Indeed, the petitioner's evidence shows that it collected P1,136,483.45 as rentals in 1991 and P1,679,999.28 for 1992 from the said lessees.

Accordingly, we hold that **the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes.** On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.<sup>[19]</sup> (Emphasis supplied)

Article 420 of the Civil Code classifies as properties of public dominion those that are "intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads" and those that "are intended for some public service or for the development of the national wealth." Properties of public dominion are not only exempt from real estate tax, they are exempt from sale at public auction. In *Heirs of Mario Malabanan v. Republic*,<sup>[20]</sup> the Court held that, "It is clear that

property of public dominion, which generally includes property belonging to the State, cannot be x x x subject of the commerce of man."<sup>[21]</sup>

In *Philippine Fisheries Development Authority v. Court of Appeals*,<sup>[22]</sup> the Court held:

x x x [T]he real property tax assessments issued by the City of Iloilo should be upheld only with respect to the portions leased to private persons. **In case the Authority fails to pay the real property taxes due thereon, said portions cannot be sold at public auction to satisfy the tax delinquency.** In *Chavez v. Public Estates Authority* it was held that **reclaimed lands are lands of the public dominion and cannot, without Congressional fiat, be subject of a sale, public or private** x x x.

**In the same vein, the port built by the State in the Iloilo fishing complex is a property of the public dominion and cannot therefore be sold at public auction.** Article 420 of the Civil Code, provides:

"Article 420. The following things are property of public dominion:

1. Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
2. Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth."

**The Iloilo fishing port which was constructed by the State for public use and/or public service falls within the term "port" in the aforesaid provision. Being a property of public dominion the same cannot be subject to execution or foreclosure sale.** In like manner, the reclaimed land on which the IFPC is built cannot be the object of a private or public sale without Congressional authorization.<sup>[23]</sup> (Emphasis supplied)

In *Manila International Airport Authority*,<sup>[24]</sup> the Court held:

x x x [T]he Airport Lands and Buildings of MIAA are properties devoted to

public use and thus are properties of public dominion. Properties of public dominion are owned by the State or the Republic. Article 420 of the Civil Code provides:

Art. 420. The following things are property of public dominion:

- (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
- (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

The term "ports x x x constructed by the Sate" includes airports and seaports. The Airport Lands and Buildings of MIAA are intended for public use, and at the very least intended for public service. Whether intended for public use or public service, the Airport Lands and Buildings are properties of public dominion. As properties of public dominion, the the Airport lands and Buildings are owned by the Republic and thus exempt from real estate tax under Section 234(a) of the Local Government Code.

x x x x

Under Article 420 of the Civil Code, the Airport Lands and Buildings of MIAA, being devoted to public use, are properties of public dominion and thus owned by the State or the Republic of the Philippines. Article 420 specifically mentions "ports x x x constructed by the State," which includes public airports and seaports, as properties of public dominion and owned by the Republic. As properties of public dominion owned by the Republic, there is no doubt whatsoever that the Airport Lands and Buildings are expressly exempt from real estate tax under Section 234(a) of the local Government Code. **This Court has also repeatedly ruled that properties of public dominion are not subject to execution or foreclosure sale.**<sup>[25]</sup> (Emphasis supplied)

In the present case, the parcels of land are not properties of public dominion because they are not "intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads." Neither are they "intended for some



public service or for the development of the national wealth." MPLDC leases portions of the properties to different business establishments. Thus, the portions of the properties leased to taxable entities are not only subject to real estate tax, they can also be sold at public auction to satisfy the tax delinquency.

In sum, only those portions of the properties leased to taxable entities are subject to real estate tax for the period of such leases. Pasig City must, therefore, issue to respondent new real property tax assessments covering the portions of the properties leased to taxable entities. If the Republic of the Philippines fails to pay the real property tax on the portions of the properties leased to taxable entities, then such portions may be sold at public auction to satisfy the tax delinquency.

**WHEREFORE**, the petition is **PARTIALLY GRANTED**. The Court **SETS ASIDE** the 17 October 2008 Decision of the Court of Appeals in CA-G.R. SP No. 97498 and declares **VOID** the 30 September 2002 real property tax assessment issued by Pasig City on the subject properties of Mid-Pasig Land Development Corporation, the 8 November 2005 warrants of levy on the properties, and the 2 December 2005 auction sale. Pasig City is **DIRECTED** to issue to respondent new real property tax assessments covering only the portions of the properties actually leased to taxable entities, and only for the period of such leases. Interests and penalties on such new real property tax assessment shall accrue only after receipt of such new assessment by respondent.

**SO ORDERED.**

*Brion, Peralta, \* Perez, and Mendoza, \*\* JJ., concur*

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\* Designated Acting Member per Special Order No. 1067 dated 23 August 2011.

\*\* Designated Acting Member per Special Order No. 1066 dated 23 August 2011.

[1] *Rollo*, pp. 9-38.

[2] *Id.* at 41-48. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Amelita G. Tolentino and Celia C. Librea-Leagogo concurring.

[3] *Id.* at 49-60. Penned by Judge Luis R. Tongco.

[4] *Id.* at 51-60.

[5] Id. at 62-74.

[6] Id. at 67-73.

[7] Id. at 44-45.

[8] 499 Phil. 138 (2005).

[9] Id. at 141.

[10] G.R. No. 84895, 4 May 1989, 173 SCRA 72.

[11] Id. at 76-85.

[12] G.R. No. 178030, 15 December 2010, 638 SCRA 644.

[13] Id. at 650-651.

[14] G.R. No. 186242, 23 December 2009, 609 SCRA 330.

[15] Id. at 350.

[16] G.R. No. 155650, 20 July 2006, 495 SCRA 591.

[17] Id. at 629-630.

[18] G.R. No. 144104, 29 June 2004, 433 SCRA 119.

[19] Id. at 138.

[20] G.R. No. 179987, 29 April 2009, 587 SCRA 172.

[21] Id. at 202.

[22] G.R. No. 169836, 31 July 2007, 528 SCRA 706.

[23] Id. at 716-718.

[24] Supra note 16.

[25] Id. at 644-646.

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