

EN BANC

[G.R. No. 185420, August 29, 2017]

LANAO DEL NORTE ELECTRIC COOPERATIVE, INC., AS REPRESENTED BY ITS GENERAL MANAGER ENGR. RESNOL C. TORRES, PETITIONER, VS. PROVINCIAL GOVERNMENT OF LANA DEL NORTE, AS REPRESENTED BY ITS GOVERNOR HON. MOHAMAD KHALID Q. DIMAPORO AND ITS PROVINCIAL TREASURER, MILDRED J. HINGCO, PROVINCIAL ASSESSOR, NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), AS REPRESENTED BY ITS ADMINISTRATOR HON. EDITA S. BUENO, POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM), AS REPRESENTED BY ITS PRESIDENT AND CEO HON. JOSÉ C. IBAZETA, DEPARTMENT OF ENERGY (DOE), AS REPRESENTED BY ITS SECRETARY HON. ANGELO T. REYES, THE COMMISSION ON AUDIT (COA), AS REPRESENTED BY ITS CHAIRMAN HON. REYNALDO A. VILLAR, RESPONDENTS.

DECISION

VELASCO JR., J.:

Nature of the Case

Before this Court is a Petition for Prohibition and Mandamus under Rule 65 of the Rules of Court, with prayer for injunctive relief to enjoin and prevent the respondent Provincial Government of Lanao del Norte (PGLN) from levying and auctioning off all the assets, properties, and equipment of petitioner Lanao del Norte Electric Cooperative, Inc. (LANECO) to satisfy its unpaid real property taxes.

Factual Antecedents

Pursuant to Republic Act (R.A.) No. 6038, otherwise known as the National Electrification Administration Act, LANEKO was granted a franchise on January 8, 1972 to distribute electricity over the municipalities of Linamon, Kauswagan, Bacolod, Maigo, Kolambugan, Tubod, Baroy, Lala, Salvador, Kapatagan, Sapad, Magsaysay, and Karomatan.^[1] On December 14, 1995, the NEA expanded the coverage of LANEKO's franchise by including

barangays Abaga, Maria Cristina, and Nangka, all in the municipality of Balo-i, Lanao del Norte.^[2]

In order to finance its operations, LANECO contracted several loans from respondent National Electrification Administration (NEA) from 1972 until 1991, secured by real estate mortgage contracts over its properties.^[3] The NEA also gave LANECO grants and subsidies from 1996 to 2006 to fund its various rural electrification programs in the countryside.^[4] LANECO's total loans from the NEA amounted to P117,645,358.00, a substantial portion of which, however, had already been paid.^[5]

Upon the enactment of R.A. No. 9136, or the Electric Power Industry Reform Act of 2001, respondent Power Sector Assets and Liabilities Management (PSALM) assumed LANECO's loan balance of P32,507,813.70 to the NEA pursuant to Section 60^[6] thereof.^[7]

Meanwhile, Congress enacted R.A. No. 7160, otherwise known as the Local Government Code of 1991 (LGC), which conferred power to local government units (LGUs) to impose taxes on real properties located within their territories.^[8] Thus, on January 7, 1993, and in accordance with Sections 232^[9] and 233^[10] of the LGC, the Sangguniang Panlalawigan of the PGLN enacted Provincial Tax Ordinance No. 1, Series of 1993, entitled "*An Ordinance Adopting the Provincial Revenue Code of the Province of Lanao del Norte pursuant to the Provisions of Republic Act No. 7160, otherwise known as the Local Government Code of 1991*" (Provincial Revenue Code).^[11]

On January 26, 2006, LANECO received a letter from respondent Provincial Treasurer of the PGLN, demanding payment of P22,841,842.60 representing real property taxes assessed against the cooperative for the municipalities of Bacolod, Baroy, Kolambugan, Balo-i, Kapatagan, Magsaysay, Maigo, and Tubod for the period of 1995 to 2005. The Provincial Treasurer sent additional billings to LANECO on July 28, 2006, this time for payment of its real property taxes for the municipalities of Kauswagan, Lala, Salvador, and Kolambugan, in the amount of P8,270,469.04.^[12] In a letter dated September 26, 2006, the Provincial Treasurer made a final demand for the payment of the aforesaid amounts, thus:

X X X X

To avoid publication and/or Advertisement of Public Auction of all your delinquent real properties in the province in a newspaper of general circulation, please cause the payment of your real property taxes' obligations to this Office within fifteen (15) days upon receipt of this FINAL DEMAND.^[13]

On several occasions, LANECO allegedly requested the PGLN for the original or a certified true copy of the Provincial Revenue Code to be used by the Energy Regulatory

Commission (ERC) as basis to allow LANECO to pay its real property taxes and subsequently pass it on to its member-consumers, but the PGLN supposedly refused to do so.^[14]

Aggrieved, LANECO questioned the validity of the real property tax assessments and the Provincial Revenue Code in a Petition for Declaratory Relief with Preliminary Prohibitory Injunction,^[15] docketed as Special Civil Action No. 003-07-2006 before the Regional Trial Court (RTC) of Lanao del Norte, Branch 7.

However, on ex-parte motion^[16] by LANECO, the case was dismissed as the parties agreed to resolve the issues before the Bureau of Local Government Finance, instead of pursuing court action.

Nevertheless, the PGLN continued to demand payment from LANECO through a letter^[17] dated June 19, 2008. LANECO reiterated its claim that it attempted to secure an original or certified true copy of the Provincial Revenue Code for submission to the ERC on several occasions but was unable to do so.^[18] On November 12, 2008, it requested for a certified true copy of the ordinance from the Office of the Municipal Assessor of the Municipality of Kolambugan. The latter, however, simply referred the request to the Sangguniang Panlalawigan. The Sangguniang Panlalawigan, in turn, issued a certification^[19] on November 25, 2008 stating that its Legislative Building was gutted by fire, including all the records/documents of its offices, on December 7, 2003.

Hence, LANECO filed the present petition on December 5, 2008 to raise the issue of whether or not respondent PGLN is acting in excess of its authority amounting to grave abuse of discretion and want of jurisdiction in enforcing the collection of unpaid real property tax through administrative action, *i.e.*, levy and auction of its assets, instead of through judicial action. LANECO theorizes that the PGLN's recourse through administrative action by levying on its real property allegedly violates Section 60 of R.A. No. 9136 and Executive Order No. (EO) 119, series of 2002.^[20] Nevertheless, on December 8, 2008, LANECO's counsel discovered that the PGLN issued another Notice of Delinquency of Delinquent Properties of Lanao del Norte Electric Cooperative and caused its publication on the December 1, 2008 issue of *Gold Star Daily*.^[21]

The Petition

While LANECO does not dispute its liability to pay real property taxes to the PGLN, it argues that the PGLN will commit grave abuse of discretion amounting to lack or excess of jurisdiction if it resorts to administrative action through levy to enforce the payment of unpaid real property taxes. Instead, the petition proposes that the PGLN has another remedy of filing a collection case against LANECO under Section 60 of R.A. No. 9136. It also asserts that it is prohibited from disposing, transferring, and conveying its assets, properties, and the management and control of electric cooperatives while under the

rehabilitation and modernization program.

LANECO further claims that the PGLN should be prohibited from auctioning off its assets, otherwise, it would violate the constitutional rights of the national agencies to enter into a contract. It also avers that the PGLN gravely abused its discretion in refusing to provide the original or a certified true copy of the Provincial Revenue Code to allow LANECO to determine the correctness of its assessment and its demand letter.

Incidents that transpired after the filing of the petition

On December 9, 2008, LANECO filed a Petition^[22] for Declaratory Relief with prayer for the issuance of a TRO and/or preliminary prohibitory injunction against the PGLN before the RTC of Tubod, Branch 7, **assailing the validity and constitutionality of the franchise tax provisions of the Provincial Revenue Code contained in Sections 84 to 87 thereof.** The said case was entitled "*LANECO versus The Sangguniang Panlalawigan of Lanao del Norte, et. al.*" and docketed as **Special Civil Case No. 012-07-2008**. The trial court granted the preliminary prohibitory injunction prayed for therein in an Order dated July 29, 2009.^[23]

In the interim, LANECO filed before this Court three Urgent Ex-Parte Motions^[24] or the issuance of a TRO on the following dates: 1) December 5, 2008; 2) December 15, 2008; and 3) January 22, 2009. In a Resolution dated March 24, 2009, LANECO's 3rd Urgent Ex-Parte Motion for the Issuance of a Temporary Restraining Order was denied by this Court for lack of merit.

On April 3, 2009, LANECO learned that the PGLN, through its Provincial Treasurer, issued a Memorandum dated March 30, 2009, directing the Municipal Treasurers of Baroy, Kolabugan, Bacolod, Kapatagan, Magsaysay, Maigo, Lala, and Tubod to issue warrants of levy on its properties thereat.^[25] Consequently, on April 7, 2009, LANECO received the warrants of levy from the Municipality of Tubod for deficient real property tax amounting to P10,066,234.48. LANECO thereafter received warrants of levy of its real property from the Municipality of Baroy on April 17, 2009 for deficient real property tax amounting to P3,260,452.58.

Thus, on August 14, 2009, LANECO filed yet another Petition^[26] for Prohibition with prayer for the issuance of a TRO and/or preliminary prohibitory injunction against the PLGN, including the Provincial Treasurer and its deputized municipal treasurers, with the RTC of Tubod, Branch 7. Docketed as **Special Civil Case No. 015-07-2009, LANECO prayed for the annulment of the provisions imposing real property tax in the Provincial Revenue Code, and for the court to prohibit the PGLN from continuously implementing the real property tax provisions of the Provincial Revenue Code, and collecting real property tax from it.**

In a Decision^[27] dated May 11, 2010, the trial court in **Special Civil Case No. 012-07-**

2008 declared the Provincial Revenue Code invalid, unconstitutional, and ineffective:

WHEREFORE, in the light of the foregoing consideration, and the evidence of petitioner preponderates on its side, by application of pertinent laws and jurisprudence, the Court Orders the 1993 Provincial Revenue Code of Lanao del Norte, as invalid, unconstitutional, non-existing. The Court issues a permanent injunction against the respondents Local Government of Lanao del Norte and [Provincial] Treasurer in assessment, imposition, and collection of the franchise tax against petitioner.

SO ORDERED. ^[28]

On the other hand, in a Decision ^[29] promulgated on May 17, 2010, the RTC resolved **Special Civil Case No. 015-07-2009** in favor of LANECO in this wise:

WHEREFORE, in the light of the foregoing consideration, and by preponderance of evidence in favor of petitioner, the Court renders judgment directing the respondent Office of Provincial Treasurer of Lanao del Norte, at the instance of the incumbent Provincial Treasurer, Mildred J. Hingco, her deputized municipal treasurers in Lanao del Norte, and respondent Office of Provincial Assessor of Lanao del Norte, and respondent Office of Provincial Assessor of Lanao del Norte, through Rogelio Aguaviva, Provincial Assessor, and his deputized municipal assessors, to cease and desist in the furtherance of the assessment, imposition and collection of the real property taxes vis-[a]-vis petitioner on the ground that on May 11, 2010, this Court, in the action for [Declaratory] Relief, Special Civil Case No. 012-07-2008 ,[] declared as invalid, and unconstitutional and ineffective the 1993 Revenue Code of Lanao del Norte, of which the provisions of collection, imposition and assessment of real property taxes are found therein.

The Court also cancels the warrants of levy issued by the respondent Office of the Provincial Treasurer of Lanao del Norte, as well as the annotations of the levy on the tax declarations and certificates of titles (sic) of the levied real properties, by respondent Office of Provincial Assessor of Lanao del Norte and its deputized municipal assessors in the same province and the Register of Deeds of Lanao del Norte. The preliminary prohibitory injunction issued by the Court on September 3, [2009], is ordered declared permanent injunction (sic). No costs to the proceedings.

SO ORDERED. ^[30]

The ruling was arrived at in view of the declaration in Special Civil Case No. 012-07-2008 that the Provincial Revenue Code is invalid and unconstitutional. Consequently, the court ordered the cancellation of the warrants of levy issued against LANECO and directed the Provincial Treasurer and her deputized municipal treasurers, the Provincial Assessor, and

his assessors, to cease and desist from assessing, imposing, and collecting real property taxes on LANECO.

On January 10, 2011, the PGLN filed a Manifestation and Motion,^[31] informing this Court that LANECO filed a Petition for Declaratory Relief and Injunction,^[32] with prayer for the issuance of a writ of preliminary prohibitory injunction, before the RTC of Tubod, Branch 7, docketed as Special Civil Case No. 020-07-2010. This petition questions Provincial Ordinance No. 001-2006, otherwise known as "An Ordinance Enacting the Provincial Revenue Code of Lanao del Norte of 2006," on the ground that the said tax ordinance is unconstitutional, invalid, and ineffective for failure to comply with the required public hearings, consultations, and publication.

To date, the Court is only apprised of the pendency of three other cases between the parties: 1) Special Civil Case No. 012-07-2008, 2) Special Civil Case No. 015-07-2009, and c) Special Civil Case No. 020-07-2010. The PGLN manifested that Special Civil Case Nos. 012-07-2008 and 015-07-2009 are still pending appeal before the CA as of January 10, 2011.

Respondents' comments to the petition

Pursuant to this Court's directive in its Resolution dated December 16, 2008, respondents filed their respective comments to the petition.

Respondents NEA, DOE, and COA filed a consolidated Comment, alleging that LANECO is guilty of forum shopping for filing several petitions before the RTC, aside from the present petition, which all raised similar issues pertaining to the validity of the Provincial Revenue Code of the PGLN. They reject LANECO's argument that the non-impairment clause of the Constitution was violated with the imposition of real property taxes on it by the PGLN. They also assert that LANECO failed to exhaust available administrative remedies when it directly resorted to filing the present petition before this Court instead of filing the correct petition before the ERC. Nevertheless, they implore this Court to exercise caution so as not to defeat the state policies under Presidential Decree No. (PD) 269, R.A. No. 9136, EO 119, and their respective implementing rules and regulations.^[33]

In their Comment, the PGLN and its officers denied the allegations in the petition, stating that their actions do not contradict the policies of the National Government since they are merely employing the administrative remedy of levy of real properties under Section 256 of the LGC. They also assert that LANECO is not without any remedy since it may still redeem the properties by remitting payment of the real property taxes due. They argue that the levy was only limited to LANECO's delinquent properties.^[34]

The PGLN and its officers also claim that Section 60 of R.A. No. 9136 is inapplicable to unpaid real property taxes since it merely refers to financial obligations in form of debts of electric cooperatives to NEA and other government agencies. Moreover, they assert that the

levy does not automatically transfer ownership of the subject properties. Finally, they maintain that LANECO violated the rule on forum shopping for filing the present petition and other cases before the RTC.

As for the comment of respondent PSALM, it agreed with LANECO that the warrant of levy issued by the PGLN should be quashed on the ground that it emanated from an invalid assessment since LANECO was not informed in writing of the law and the facts upon which the tax assessment was made. It also claims that the first lien of the National Government, through the NEA, prevails over the local government's levy.^[35]

Subsequently, LANECO filed a Reply and Manifestation (with Leave of Court)^[36] dated March 12, 2009 and a Consolidated Reply^[37] dated March 16, 2010, essentially refuting the allegations made by respondents in their respective memoranda, wherein they each reiterated their positions.

The Issues

The parties, in the main, raise the following issues for the resolution of this Court:

1. Whether or not the filing of the instant petition constitutes forum shopping;
2. Whether or not the rule on exhaustion of administrative remedy applies;
3. Whether or not the PGLN gravely abused its discretion when it levied on the real properties of LANECO to enforce payment of unpaid real property taxes, in violation of Section 60 of R.A. No. 9136 and EO 119; and
4. Whether or not the PGLN would commit grave abuse of discretion amounting to lack or excess of jurisdiction if it proceeds to auction the delinquent real properties of LANECO.

The Court's Ruling

At the outset, We note that the petition is replete with procedural infirmities that would warrant the outright dismissal of the case.

Violation of the principle of hierarchy of courts

It is an established rule that while this Court, the CA and the Regional Trial Courts exercise concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, such concurrence in jurisdiction does not give petitioners unbridled freedom of choice of court forum.^[38] In *Belmonte v. Office of the Deputy Ombudsman for the Military and other Law Enforcement Offices, Office of the Ombudsman*,^[39] the Court had the occasion to explain the rationale behind this rule:

Even in the absence of such provision, the petition is also dismissible because it simply ignored the doctrine of hierarchy of courts. **True, the Court, the CA and the RTC have original concurrent jurisdiction to issue writs of certiorari, prohibition and mandamus. The concurrence of jurisdiction, however, does not grant the party seeking any of the extraordinary writs the absolute freedom to file a petition in any court of his choice. The petitioner has not advanced any special or important reason which would allow a direct resort to this Court.** Under the Rules of Court, a party may directly appeal to this Court only on pure questions of law. In the case at bench, there are certainly factual issues as Vivas is questioning the findings of the investigating team.

Strict observance of the policy of judicial hierarchy demands that where the issuance of the extraordinary writs is also within the competence of the CA or the RTC, the special action for the obtainment of such writ must be presented to either court. As a rule, the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate lower courts; or where exceptional and compelling circumstances, such as cases of national interest and with serious implications, justify the availment of the extraordinary remedy of writ of certiorari, prohibition, or mandamus calling for the exercise of its primary jurisdiction. The judicial policy must be observed to prevent an imposition on the precious time and attention of the Court.^[40] (Emphasis in the original)

Accordingly, a direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is an established policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further overcrowding of the Court's docket.^[41] These exceptional circumstances, as will be shown hereunder, do not obtain in the extant case.

For one, LANECO's proffered justifications of its direct resort to this Court - that the same was warranted under Section 78^[42] of R.A. No. 9163, and that it is the most speedy and adequate remedy available to it - do not persuade. While Section 78, indeed, vests the Supreme Court with authority to restrain or enjoin the implementation of the provisions of the law, it does not necessarily mean that all cases involving electric cooperatives should be filed thereat. Certainly, this case does not involve questions on the implementation of R.A. No. 9136, which makes Section 78 thereof inapplicable.

As for the claim that direct resort to this Court is the most speedy and adequate remedy available to the LANECO, the same is belied by the fact that LANECO had previously filed several cases before the RTC, questioning the PGLN's right to assess it with both real property and franchise taxes. LANECO's act of filing these cases before the RTC betrays its cognizance of the RTC's power to settle questions regarding the rights of local

government units to impose and collect real property tax from electric cooperatives.

LANECO is guilty of forum shopping

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.

[43] It can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by **filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)**[44] If the forum shopping is not willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. **But if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice.**[45]

The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

Herein, LANECO argues that it did not commit forum shopping since the case before Us prays for the issuance of a writ of prohibition against the PGLN for levying on its real properties due to the deficient real property taxes assessed against it, while Special Civil Case No. 015-07-2009 allegedly prays for the prohibition on the part of the PGLN from continuously implementing the real property tax provisions of its Provincial Revenue Code and, concomitantly, from collecting real property taxes from it.

This argument is utterly bereft of merit.

There is no dispute that there is identity of parties, subject matter, and reliefs prayed for between the present petition and Special Civil Case No. 015-07-2009. Similar to Special Civil Case No. 015-07-2009, LANECO questions before Us the propriety of the assessment for real property tax against it. Ineluctably, LANECO bases its claims in both cases on a single cause of action: that the PGLN has no authority to assess and collect from

it, and conversely, LANECO had no obligation to pay real property tax to the PGLN.

The similarities in the reliefs prayed for herein and in Special Civil Case No. 015-07-2009 are likewise clearly evident. In Special Civil Case No. 015-07-2009, LANECO prayed to enjoin the Provincial and Municipal Treasurers of the PGLN from assessing and collecting real property tax from it and to annul the real property tax provisions of the Provincial Revenue Code. Notably, the trial court, in Special Civil Case No. 015-07-2009, issued a permanent injunction a) directing the Provincial Treasurer to cease and desist in assessing, imposing, and collecting real property taxes from LANECO, and b) cancelling the warrants of levy issued and the annotations of the levy made on the tax declarations and certificates of title of its properties. Meanwhile, in the present case, LANECO prayed for the annulment of the PGLN's assessment, demand letter, notice of publication, and auction of the machineries, equipment, buildings and infrastructure for allegedly violating LANECO's right to due process in failing to furnish it with a copy of the Provincial Revenue Code. The Court is now being asked to grant substantially similar reliefs as those that have already been granted by the trial court, creating the possibility of conflicting decisions.

Without a doubt, LANECO is guilty of forum shopping. Its deliberate act of filing multiple cases before several fora is clearly intended to secure a positive outcome in its favor. This intention is made all the more evident by LANECO's subsequent filing of Special Civil Case No. 015-07-2009, after this Court had not immediately issued a preliminary prohibitory injunction or TRO in its favor.

The Provincial Government of Lanao del Norte did not commit grave abuse of discretion in levying on the real properties of LANECO

While LANECO does not dispute its liability to the PGLN for real property tax, it nevertheless advances that its properties cannot be the subject of an administrative action thru levy pursuant to Section 60 of R.A. No. 9136, which purportedly prohibits electric cooperatives from disposing, transferring, and conveying its assets and properties within the period of the rehabilitation and modernization program. In support of its position, LANECO refers to Sections 1 to 5, Rule 31 of the Implementing Rules and Regulations (TRR) of R.A. No. 9136, as well as the pertinent provisions of EO 119. These provisions respectively state:

Section 60. Debts of Electric Cooperatives. - Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corp. The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations thereof shall repay PSALM Corp. the total debts including accrued interests thereon.

RULE 31. DEBTS OF ELECTRIC COOPERATIVES (ECs)

Section 1. Guiding Principle.

Pursuant to Section 60 of the Act, all outstanding financial obligations of ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program shall be assumed by the PSALM in accordance with the program approved by the President of the Philippines.

Section 2. Scope.

This Rule shall cover all outstanding financial obligations by the ECs to NEA and other government agencies, incurred as of 26 June 2001 for the purpose of financing the Rural Electrification Program. Financial obligation shall refer to the indebtedness, whether through regular or restructured loans, liabilities, or amounts payable by the ECs to NEA and other government agencies as of 26 June 2001, to finance their rural electrification projects, subject to the terms and conditions of duly-executed loan and mortgage contracts between NEA and/or other government agencies, as creditors and the ECs, as debtors/borrowers.

Section 3. Condonation of Debts of ECs.

From the effectivity of the Act, all outstanding financial obligations of ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program shall be assumed by the PSALM in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of the Act which shall be implemented and completed within three (3) years from the effectivity of the Act.

These debts shall include all outstanding financial obligations incurred by the ECs for the purpose of financing the Rural Electrification Program, exclusively utilized for capital expenditures for the acquisition or construction, operation and maintenance, and/or expansion and rehabilitation of distribution, generation and Subtransmission Assets/facilities and pre-operating expenses for newly-established ECs: Provided, however, That such outstanding financial obligations shall include interest, surcharges and penalties on ECs' Rural Electrification Loans, released from NEA and other government agencies to ECs as of 26 June 2001; duly booked by NEA, validated by CO A, and confirmed by the ECs.

Section 4. Assumption of EC Loans by PSALM.

PSALM shall assume all outstanding financial obligations of the ECs to NEA

and other government agencies incurred for the purpose of financing the Rural Electrification Program; such outstanding financial obligations of the ECs involving "Rural Electrification Loans" shall be determined in accordance with the program approved by the President of the Philippines. Correspondingly, having assumed the ECs' obligations, the PSALM shall repay NEA and the other government agencies, in accordance with a prescribed amortization schedule agreed between the parties.

The outstanding financial obligations from other government agencies referred to in Section 60 of the Act shall include loans contracted from the following: x x x

Provided, however, That such loans were contracted in accordance with NEA policies and with prior NEA authorization, except for loans transferred to APT, now PMO.

Section 5. Transfer of Ownership or Control of Assets, Franchise or Operation.

Within five (5) years from the completed Condonation of debt, any EC which shall transfer ownership or Control of its assets, franchise or operations shall repay PSALM the total debts, including accrued interest thereon: Provided, however, That the ECs may enter into loan or financing agreements to allow flexibility in sourcing funds and improvement and management system for needed rehabilitation and modernization programs: Provided, further, That it does not involve permanent transfer or Control of the assets, franchise and operations: Provided, finally, That DOF and NEA shall jointly issue the necessary guidelines to protect the member-consumers of the ECs involved.

x x x x

EXECUTIVE ORDER NO. 119

RESTRUCTURING PROGRAM FOR ELECTRIC COOPERATIVES

x x x x

SECTION 2. COVERAGE. As specified under Section 60 of EPIRA, the Program for PSALM to assume the outstanding financial obligations incurred by ECs covers only those obligations incurred for the purpose of financing the Rural Electrification Program. The Implementing Rules and Regulations of EPIRA, as approved by JCPC and promulgated by DOE, defines "Financing for Rural Electrification" as referring to loans and grants extended to ECs, for the construction or acquisition, operation and maintenance of distribution, generation, and subtransmission facilities for the purpose of supplying electric service, and those loans for the restoration, upgrading and expansion of such

facilities, in areas which are considered rural at the time of the grant of such loans (hereinafter referred to as "Rural Electrification Loans").

Thus, the Program shall comprise the following:

- a. Financial, institutional, technical and managerial restructuring of ECs, pursuant to Section 58 of EPIRA;
- b. Assumption by PSALM of Rural Electrification Loans, pursuant to Section 60 of EPIRA;
- c. Amortization of payments to NEA and/or other government creditor agencies for Rural Electrification Loans assumed by PSALM, pursuant to Section 60 of EPIRA; and
- d. Reorganization of NEA to enable it to perform its additional mandates under Section 58 of EPIRA, and in accordance with Section 5(a)(5) of Presidential Decree No. 269, as amended by Presidential Decree No. 1645.

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SECTION 7. ASSUMPTION AND PAYMENT BY PSALM OF RURAL ELECTRIFICATION LOANS. Pursuant to Section 60 of EPIRA, PSALM shall assume all Rural Electrification Loans upon compliance by the concerned EC with Section 5 of this Executive Order, and thereupon, such EC shall cease to be a debtor of NEA or of other creditor government agencies.

Thereafter, PSALM and NEA or other creditor government agencies shall enter into contracts and/or agreements, necessary and proper, to undertake the payment of the assumed Rural Electrification Loans through an amortization schedule to be agreed upon between PSALM on the one hand, and NEA or other creditor government agencies, on the other. Where necessary, such contracts and/or agreements may include mutual stipulations on the modification and/or amendments of existing contracts of mortgage and other security between ECs and NEA or other creditor government agencies. *Provided, however,* That any such contracts of mortgage and other security with respect to the Rural Electrification Loans assumed by PSALM shall not be released by NEA and/or other creditor government agencies without the written consent of PSALM. (Emphases supplied)

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LANECO additionally cites certain provisions of a Contract dated October 3, 2003 executed between NEA and PSALM, which purportedly establishes the obligation of PSALM to assume the financial obligations of electric cooperatives to the NEA which had

been incurred to finance rural electrification programs. Based on these suppositions, LANECO posits that the prohibition imposed on electric cooperatives to dispose of its assets "extends to Local Government Units in enforcing collection of real property tax by way of Administrative Action through levy on property."^[46]

This conclusion finds no support in law.

Contrary to LANECO's stand, the provisions of law cited do not prohibit local government units from resorting to the administrative remedy of levy on real property. Nothing in the aforecited provisions withdrew the remedy of tax collection by administrative action from the LGUs. Instead, these provisions merely ascribe limitations on, and lay down the consequences of, any **voluntary transfer and disposition of assets** by the electric cooperatives themselves. They do not limit the LGUs' remedies against electric cooperatives to judicial actions in collecting real property taxes. To adopt LANECO's position would be reading into the clear provisions of R.A. No. 9136 more than what it actually provides. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.^[47]

Furthermore, LANECO failed to establish how the administrative remedy of levy on real properties will impair the rights of NEA and PSALM. Instead, it merely reiterated its argument that R.A. No. 9136 prohibits the disposition of its assets and properties during the period of rehabilitation and modernization program. In fact, it failed to differentiate how exclusive resort to judicial action as opposed to the administrative remedy of levy would be a better option to preserve the rights of NEA and PSALM. It is the option of the LGU to choose which remedy to avail.

We likewise do not find merit in LANECO's argument that the levy caused by the PGLN upon its real properties impairs the government contracts entered into by NEA and PSALM and violates the constitutional right of national agencies to enter into a contract. These issues have been similarly raised, and resolved, before this Court in *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government, and the Secretary, Department of Finance*:

It is ingrained in jurisprudence that the constitutional prohibition on the impairment of the obligation of contracts does not prohibit every change in existing laws. To fall within the prohibition, the change must not only impair the obligation of the existing contract, but the impairment must be substantial. What constitutes substantial impairment was explained by this Court in *Clemons v. Noting*:

A law which changes the terms of a legal contract between parties, either in the time or mode of performance, or imposes new conditions, or dispenses with those expressed, or authorizes for its satisfaction something different from that provided in its terms, is

law which impairs the obligation of a contract and is therefore null and void.

Moreover, **to constitute impairment, the law must affect a change in the rights of the parties with reference to each other and not with respect to non-parties.**^[48] (Emphasis and underscoring supplied)

It bears to stress that, regardless of whether the mortgages constituted on LANECO's properties constitute as lien thereon, these cannot defeat the right of the PGLN to make those properties answerable for delinquent real property taxes, since local government taxes serve as superior lien over the property subject of the tax, as clearly laid out in Section 257 of the LGC:

SECTION 257. Local Governments Lien. - The basic real property tax and any other tax levied under this Title constitutes a lien on the property subject to tax, superior to all liens, charges or encumbrances in favor of any person, irrespective of the owner or possessor thereof, enforceable by administrative or judicial action, and may only be extinguished upon payment of the tax and the related interests and expenses.

The PGLN, therefore, is well within its right to assess LANECO with real property taxes, and to exercise its remedies under Section 256^[49] of the LGC for the collection thereof, including by administrative action thru levy on its real properties. Accordingly, We find no cogent reason to rule that the PGLN committed grave abuse of discretion in resorting to the administrative remedy of levy as to warrant the issuance of a writ of prohibition.

IN VIEW OF THE FOREGOING, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C. J., on leave.

Carpio, Peralta, Bersamin, Del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, and Reyes, Jr., JJ., concur.

Leonardo-De Castro, J., on official time.

Jardeleza, J., no part.

Tijam, J., on official leave.

Gesmundo, J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on August 29, 2017 a Decision/Resolution copy attached herewith,

was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 9, 2017 at 3:21 p.m.

Very truly yours,

(SGD)
FELIPA G.
BORLONGAN-
ANAMA
Clerk of Court

[1] *Rollo*, p. 21.

[2] *Id.* at 38.

[3] *Id.* at 30.

[4] *Id.* at 34-36.

[5] *Id.* at 32-33.

[6] SEC. 60. Debts of Electric Cooperatives. - Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corp. in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of this Act which shall be implemented and completed within three (3) years from the effectivity of this Act. The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations thereof shall repay PSALM Corp. the total debts including accrued interests thereon.

[7] *Id.* at 38.

[8] *Id.* at 37.

[9] SECTION 232. Power to Levy Real Property Tax. - A province or city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.

[10] SECTION 233. Rates of Levy. - A province or city or a municipality within the Metropolitan Manila Area shall fix a uniform rate of basic real property tax applicable to their respective localities as follows:

(a) In the case of a province, at the rate not exceeding one percent (1%) of the assessed value of real property; and

(b) In the case of a city or a municipality within the Metropolitan Manila Area, at the rate not exceeding two percent (2%) of the assessed value of real property.

[11] Id. at 37-38.

[12] Id. at 58.

[13] Id. at 59.

[14] Id. at 57-58.

[15] Id. at 424-430.

[16] Id. at 813-814.

[17] Id. at 436.

[18] Id. at 61.

[19] Id. at 438.

[20] Id. at 1553.

[21] Id.

[22] Id. at 649-731.

[23] Id. at 1369.

[24] Id. at 3-17; 501-532; 536-554.

[25] Id. at 1554.

[26] Id. at 1673-1726.

[27] Id. at 1726-1738.

[28] Id. at 1738.

[29] Id. at 1740 to 1759.

[30] Id. at 1758-1759.

[31] Id. at 1800-1807.

[32] Id. at 1809-1863.

[33] Id. at 597-731.

[34] Id. at 777-797.

[35] Id. at 578 to 587.

[36] Id. at 732-776.

[37] Id. at 1307-1362.

[38] *Rayos v. City of Manila*, G.R. No. 196063, December 14, 2011, 662 SCRA 684, 689.

[39] G.R. No. 197665, January 13, 2016, 780 SCRA 483.

[40] Id. at 495-496, citing *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, G.R. No. 191424, August 7, 2013, 703 SCRA 290.

[41] *Rayos v. City of Manila*, supra note 38.

[42] SEC. 78. Injunction and Restraining Order. - The implementation of the provisions of the Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

[43] *Grace Park International Corporation v. Eastwest Banking Corporation*, G.R. No. 210606, July 27, 2016, 798 SCRA 645, 651.

[44] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011, 645 SCRA 205, 215.

[45] *Heirs of Marcelo Sotto v. Palicte*, G.R. No. 159691, February 17, 2014, 716 SCRA 175, 188.

[46] *Rollo*, p. 1599.

[47] *Camp John Hay Development Corporation v. Central Board of Assessment Appeals*, G.R. No. 169234, October 2, 2013, 706 SCRA 547, 559.

[48] G.R. No. 143076, June 10, 2003, 403 SCRA 558, 573.

[49] Section 256. *Remedies For The Collection Of Real Property Tax*. - For the collection of the basic real property tax and any other tax levied under this Title, the local government unit concerned may avail of the remedies by administrative action thru levy on real property or by judicial action.