

SUPREME COURT OF THE PHILIPPINES
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Wiley E. Velasco, Jr.
WILEY E. VELASCO, JR.
Division Clerk of Court
Third Division
MAY 04 2017

Republic of the Philippines
Supreme Court
Manila

SPECIAL THIRD DIVISION

NATIONAL
CORPORATION,

Petitioner,

POWER G.R. No. 180654

Present:

VELASCO, JR., J., *Chairperson*,
PERALTA,
BERSAMIN,
LEONEN, and
JARDELEZA, JJ.

-versus-

PROVINCIAL GOVERNMENT OF
BATAAN, SANGGUNIANG
PANLALAWIGAN OF BATAAN,
PASTOR B. VICHUACO (IN HIS
OFFICIAL CAPACITY AS
PROVINCIAL TREASURER OF
BATAAN) and THE REGISTER OF
DEEDS OF THE PROVINCE OF
BATAAN,

Respondents.

Promulgated:

March 6, 2017

Mis. JOC Batt

X-----X

RESOLUTION

LEONEN, J.:

For resolution is respondents' Motion for Reconsideration¹ of this Court's April 21, 2014 Decision,² which granted the petition of National Power Corporation (Napocor), and set aside the Court of Appeals' Resolution³ dated November 27, 2007. The Decision further remanded "the

¹ Rollo, pp. 996-1006.

² 733 Phil. 34 (2014) [Per J. Abad, Third Division].

³ Rollo, pp. 425-435. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Andres B. Reyes, Jr. and Jose C. Mendoza of the Sixth Division,

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case to the Regional Trial Court so that the Power Sector Assets and Liabilities Management Corporation [PSALM Corporation] and the National Transmission Corporation [TRANSCO] may be impleaded as proper parties.”⁴

Recalling the facts of this case:

On March 28, 2003, petitioner National Power Corporation (NPC) received a notice of franchise tax delinquency from the respondent Provincial Government of Bataan (the Province) for ₱45.9 million covering the years 2001, 2002, and 2003. The Province based its assessment on [Napocor’s] sale of electricity that it generated from two power plants in Bataan. Rather than pay the tax or reject it, [Napocor] chose to reserve its right to contest the [amounts of franchise tax stated in the notice, including the] computation pending the decision of the Supreme Court in *National Power Corporation v. City of Cabanatuan*, a case [where] the issue of [Napocor’s] exemption from the payment of local franchise tax was then pending.

On May 12 and 14, 2003 the Province again sent notices of tax due to [Napocor], calling its attention to the Court’s decision in *National Power Corporation v. City of Cabanatuan* that held [Napocor] liable for the payment of local franchise tax. [Napocor] replied, however, that it had ceased to be liable for the payment of that tax after Congress enacted Republic Act (R.A.) 9136, also known as the Electric Power Industry Reform Act (EPIRA) that took effect on June 26, 2001. The new law relieved [Napocor] of the function of [transmitting electricity] beginning that year. Consequently, the Province has no right to further assess it for the 2001, 2002, and 2003 local franchise tax.

Ignoring [Napocor’s] view, the Province issued a “Warrant of Levy” [dated January 29, 2004]⁵ on 14 real properties that it used to own in Limay, Bataan. [Through a letter dated February 17, 2004, Napocor requested a “deferment of [the Province’s] chosen course of action and give [Napocor] Management and Board of Directors, as well as the OSG, to reconsider the matter at hand.”]⁶ In March 2004 the Province caused their sale at public auction with itself as the winning bidder. Shortly after, [Napocor] received a copy of the Certificate of Sale of Real Property covering the auctioned properties for ₱60,477,285.22, the amount of its franchise tax delinquency, [including surcharges and interest].

On July 7, 2004, [Napocor] filed with the Regional Trial Court (RTC) of Mariveles, Bataan, a petition for declaration of nullity of the foreclosure sale with prayer for preliminary mandatory injunction against the Province, the provincial treasurer, and the *Sangguniang Panlalawigan*.

[Napocor] alleged that the foreclosure had no legal basis since R.A. 7160 which authorized the collection of local franchise tax had been modified by the EPIRA. The latter law provided that power generation is

Court of Appeals, Manila.

⁴ 733 Phil. 34, 41 (2014) [Per J. Abad, Third Division].

⁵ *Rollo*, p. 470.

⁶ *Id.* at 471.

not a public utility operation requiring a franchise, hence, not taxable. What remains subject to such tax is the business of transmission and distribution of electricity since these required a national franchise. As it happened, [Napocor] had ceased by operation of the EPIRA in 2001 to engage in power transmission, given that all its facilities for this function, including its nationwide franchise, had been transferred to the National Transmission Corporation (TRANSCO).

Thus, [Napocor] asked the RTC to issue a preliminary injunction, enjoining the transfer of title and the sale of the foreclosed lands to Bataan and, after trial, to make the injunction permanent, declare [Napocor] exempt from the local franchise tax and annul the foreclosure sale.

On November 3, 2005 the RTC dismissed [Napocor's] petition, stating that the franchise tax was not based on ownership of property but on [Napocor's] exercise of the privilege of doing business within Bataan. Further, [Napocor] presented no evidence that it had ceased to operate its power plants in that jurisdiction.

[Napocor] appealed the RTC Decision to the Court of Appeals (CA) but the Province moved to dismiss the same for lack of jurisdiction of that court over the subject matter of the case. The Province pointed out that, although [Napocor] denominated its suit before the RTC as one for declaration of nullity of foreclosure sale, it was essentially a local tax case questioning the validity of the Province's imposition of the local franchise tax. Any appeal from the action should, therefore, be lodged with the Court of Tax Appeals (CTA). On November 27, 2007 the CA granted the Province's motion and dismissed the petition on the ground cited.⁷ (Citation omitted)

On January 18, 2008, Napocor filed by registered mail a Petition for Review on Certiorari,⁸ assailing the correctness of the Court of Appeals' dismissal of its appeal for lack of jurisdiction. Napocor prayed that "judgment be rendered reversing and setting aside the Court of Appeals' Resolution dated November 27, 2007 and in lieu thereof, directing said Court to reinstate and give due course to petitioner's appeal in CA-G.R. CV No. 87218."⁹

In a Decision dated April 21, 2014, this Court granted the petition and set aside the resolution of the Court of Appeals. This Court ruled that with the transfer of Napocor's power transmission and generation functions, and their associated facilities by operation of the Electric Power Industry Reform Act (EPIRA) in June 2001, Napocor was not the proper party subject to the local franchise tax.¹⁰ The Province also could not levy on the transmission facilities to satisfy the tax assessment against Napocor.¹¹ This Court further found the proceedings in the court *a quo* a nullity for failure to include PSALM Corporation and TRANSCO, companies which were indispensable

⁷ 733 Phil. 34, 36–38 (2014) [Per J. Abad, Third Division].

⁸ *Rollo*, pp. 370–419.

⁹ *Id.* at 418.

¹⁰ 733 Phil. 34, 40 (2014) [Per J. Abad, Third Division].

¹¹ *Id.* at 39.

parties to the case.¹² At this point, this Court opined that it did not matter where the Regional Trial Court decision was appealed, whether before the Court of Appeals or the Court of Tax Appeals,¹³ and remanded the case to the Regional Trial Court so that PSALM Corporation and TRANSCO may be impleaded as proper parties.¹⁴

Hence, this Motion for Reconsideration¹⁵ was filed by the respondents. The issues raised in the motion are:

1. Whether Napocor is the real party in interest; and
2. Whether the foreclosure sale on March 2, 2004 is valid.

Respondents argue that from this Court's disquisition on the purported transfer of Napocor's power generation and transmission functions to PSALM Corporation, and its corresponding generation and transmission facilities to TRANSCO, it follows that petitioner was not the real party in interest and had no legal personality to file the complaint before the Regional Trial Court in the first place.¹⁶ Accordingly, they pray that instead of remanding the case to the trial court for the inclusion of indispensable parties, the complaint should be ordered dismissed for lack of cause of action.¹⁷

Respondents further contend that Napocor was estopped from invoking the EPIRA as a shield against the franchise tax impositions.¹⁸ They assert that Napocor could have raised the EPIRA provisions at the earliest instance when it received the notice of franchise tax delinquency on March 28, 2003, close to two (2) years after the effectivity of EPIRA. Instead, Napocor merely chose to reserve its right to contest the franchise tax assessment and suspend its payment pending the decision of this Court in *NPC v. City of Cabanatuan*.¹⁹

Respondents lastly argue that EPIRA was not self-executing and the transfer of the transmission functions and assets to TRANSCO was not made to take place by operation of law.²⁰ It cites Section 8 of EPIRA, which provides that "[w]ithin six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of [Napocor] and all other assets related to transmission operations, including the nationwide franchise of

¹² Id. at 40.

¹³ Id.

¹⁴ Id. at 41.

¹⁵ Id. at 996-1006.

¹⁶ Id. at 998.

¹⁷ Id. at 999.

¹⁸ Id. at 1000.

¹⁹ Id.

²⁰ Id. at 1002.

[Napocor] for the operation of the transmission system and the grid, shall be transferred to the TRANSCO.” It also renders that “[p]rior to the transfer of the transmission functions by [Napocor] to TRANSCO, and before promulgation of the Grid Code, ERC shall ensure that [Napocor] shall provide to all electric power industry participants open and non-discriminatory access to its transmission system.”²¹ Similarly, respondents assert that the transfer of the generation assets to PSALM Corporation did not take place upon the effectivity of EPIRA, citing Section 47 of the law.²² Thus, the court *a quo* correctly dismissed Napocor’s complaint on the latter’s failure “to present evidence that it no longer owned [the property] or operated the business subject to local franchise tax.”²³

In its Comment,²⁴ petitioner partially agrees with the respondents that the case should not be ordered remanded to the court of origin. According to petitioner, the trial court will then be “confronted with a bizarre situation of ordering PSALM and the TRANSCO to be party-plaintiffs/petitioners when, in truth and in fact, there is no actual controversy confronting them at the moment” as no assessments have yet been issued to these corporations.²⁵

However, contrary to respondents’ submissions, petitioner avers that “the instant case is not dismissible on the ground of lack of cause of action.”²⁶ Petitioner asserts that it “has a valid cause of action against respondents for the nullification of the foreclosure sale” since, as found by this Court, it is not the proper party subject to the local franchise tax being imposed by respondents.²⁷

On respondents’ claim of estoppel, petitioner submits that as a government-owned and controlled corporation, it is “protected by the principle that estoppel does not lie against the government as it is not bound by the errors committed by its agents.”²⁸ Moreover, petitioner maintains that it has consistently invoked that it is not liable for the local franchise tax being collected by respondents because “it has ceased to operate its electric transmission functions upon effectivity of the EPIRA in 2001.”²⁹ Allegedly, this has been its stand from the time it filed its complaint with the Regional Trial Court.³⁰

Lastly, petitioner counters that it does not need to present “evidence to prove its position that it no longer owned or operated the business subject to

²¹ Id. at 1002–1003.

²² Id. at 1003.

²³ Id. at 1002.

²⁴ Id. at 1014–1026.

²⁵ Id. at 1018.

²⁶ Id. at 1017.

²⁷ Id.

²⁸ Id. at 1019.

²⁹ Id.

³⁰ Id.

local franchise tax,” and that the properties, which respondent Provincial Government of Bataan levied on, did not belong to it.³¹

We partially grant the motion for reconsideration.

I

The Court of Appeals correctly dismissed the appeal for lack of jurisdiction. We deem it proper to clarify the last sentence in the decision that “[i]t did not matter where the RTC decision was appealed, whether before the C[ourt of] A[pppeals] or the C[ourt of] T[ax] A[pppeals].”³²

Republic Act No. 9282, which amended Republic Act No. 1125, took effect on April 23, 2004, and significantly expanded the extent and scope of the cases that the Court of Tax Appeals was tasked to hear and adjudicate. Under Section 7, paragraph (a)(3), the Court of Tax Appeals is vested with the exclusive appellate jurisdiction over, among others, appeals from the “decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction.”

The case *a quo* is a local tax case that is within the exclusive appellate jurisdiction of the Court of Tax Appeals. Parenthetically, the case arose from the dispute between Napocor and respondents over the purported franchise tax delinquency of Napocor. Although the complaint filed with the trial court is a *Petition for declaration of nullity of foreclosure sale with prayer for preliminary mandatory injunction*, a reading of the petition shows that it essentially assails the correctness of the local franchise tax assessments by the Provincial Government of Bataan. Indeed, one of the prayers in the petition is for the court *a quo* to declare Napocor “as exempt from payment of local franchise taxes.”³³ Basic is the rule that allegations in the complaint and the character of the relief sought determine the nature of an action.³⁴ In order for the trial court to resolve the complaint, the issues regarding the correctness of the tax assessment and collection must also necessarily be dealt with. As correctly ruled by the Court of Appeals, “the issue of the validity and legality of the foreclosure sale is essentially related

³¹ Id. at 1023.

³² 733 Phil. 34, 40 (2014) [Per J. Abad, Third Division].

³³ *Rollo*, p. 511 (Emphasis omitted).

³⁴ *Padlan v. Dinglasan*, 707 Phil. 83, 91 (2013) [Per J. Peralta, Third Division]; *Villena v. Payoyo*, 550 Phil. 686, 691 (2007) [Per J. Quisumbing, Second Division] citing *Huguete v. Embudo*, 453 Phil. 170, 175 (2003) [Per J. Ynares-Santiago, First Division], citing in turn *Cañiza v. Court of Appeals*, 335 Phil. 1107, 1113 (1997) [Per C.J. Narvasa, Third Division], *Dela Cruz v. Court of Appeals*, 539 Phil. 158, 172 (2006) [Per J. Velasco, Jr., Third Division], citing *Sumulong v. Court of Appeals*, 302 Phil. 392, 408 (1994) [Per J. Davide, Jr., First Division] citing in turn *Feranil v. Arcilla*, 177 Phil. 712, 718 (1979) [Per J. De Castro, First Division].

to the issue of the demandability of the local franchise tax.”³⁵

Therefore, the dismissal of Napocor’s appeal by the Court of Appeals was in order. Napocor’s procedural lapse would have been sufficient to reconsider this Court’s decision and instead deny the instant petition. However, the substantial merits of the case and the patent error committed by the Bataan Regional Trial Court compels this Court to exercise its power of judicial review for purposes of judicial economy.

II

“A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.”³⁶ In the instant case, petitioner’s complaint has sought not only the nullification of the foreclosure sale but also a declaration from the trial court that it is exempt from the local franchise tax. The action began when respondent ignored petitioner’s claim for exemption from franchise tax, and pursued its collection of the franchise tax delinquency by issuing the warrant of levy and conducting the sale at public auction – where the Provincial Government of Bataan was declared as purchaser – of the transmission assets, despite the purported prior mutual agreement to suspend administrative remedies for the collection of taxes. The assets were sold to enforce collection of a franchise tax delinquency **against** the petitioner. Petitioner thus had to assail the correctness of the local franchise tax assessments made against it by instituting the complaint with the Regional Trial Court; otherwise, the assessment would become conclusive and unappealable.³⁷ Certainly, petitioner is a real party in interest, which stands to gain or lose from the judgment that the trial court may render.

³⁵ *Rollo*, p. 434.

³⁶ RULES OF COURT, Rule 3, sec. 2.

³⁷ LOCAL GOVT. CODE, sec. 195 provides:

Section 195. *Protest of Assessment*. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.** (Emphasis and underscoring supplied)

III

The main issue for the court *a quo* was a legal issue³⁸ on whether Napocor was liable to pay the assessed franchise tax imposed under Section 137 of Republic Act No. 7160 (the Local Government Code of 1991) by virtue of EPIRA.

Section 137 of the Local Government Code provides:

Section 137. **Franchise Tax.** - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein.

Section 137 is categorical in stating that franchise tax can only be imposed on businesses enjoying a franchise. This goes without saying that without a franchise, a local government unit cannot impose franchise tax.

The Regional Trial Court relied heavily on the ruling in *NPC v. City of Cabanatuan*³⁹ in concluding that Napocor “is a commercial enterprise enjoying a franchise under Section 137 of the Local Government Code.”⁴⁰ It held that Napocor was “enjoying the privilege of doing business within the territory of the Province of Bataan[;] hence, it is liable to the franchise tax.”⁴¹ The Regional Trial Court further held that Napocor was subject to franchise tax even granting the transfer of its power transmission function to TRANSCO.⁴² The court *a quo* found that “no evidence was adduced showing that [Napocor] is no longer operating the [power plants in Bataan], or that it already ceased generating electricity” from it.⁴³

The court *a quo*'s reliance on the ruling in *NPC v. City of Cabanatuan*⁴⁴ was misplaced. That case involved franchise taxes, which

³⁸ *Rollo*, pp. 528–530. During the pre-trial held on January 31, 2005 at the RTC, the parties agreed that the issues involved are purely questions of law, and in view thereof and upon their request, the court *a quo* directed the parties to submit their respective memorandum within thirty (30) days after which the matter is submitted for resolution.

³⁹ 449 Phil. 233 (2003) [Per J. Puno, Third Division].

⁴⁰ *Rollo*, pp. 550–552.

⁴¹ *Id.* at 552.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 449 Phil. 233 (2003) [Per J. Puno, Third Division].

became due to the local government unit concerned prior to the passage of Republic Act No. 9136 or the EPIRA, and the issue of exemption from payment of franchise tax under EPIRA was not discussed.

Indeed, the enactment of EPIRA separated the transmission and sub-transmission functions of the state-owned Napocor from its generation function, and transferred all its transmission assets to the then newly-created TRANSCO, which was wholly owned by PSALM Corporation at that time.⁴⁵ Power generation is no longer considered a public utility operation, and companies which shall engage in power generation and supply of electricity are no longer required to secure a national franchise. This is expressly provided under Section 6 of EPIRA, which reads:

Section 6. *Generation Sector.* — Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements. (Emphasis supplied)

EPIRA effectively removed power generation from the ambit of local franchise taxes. Hence, as regards Napocor's business of generating electricity, the franchise taxes sought to be collected by the Provincial Government of Bataan for the latter part of 2001 up to 2003 are devoid of any statutory basis.

As regards Napocor's electric transmission function, under Section 8 of the same law, all transmission assets of Napocor were to be transferred to

⁴⁵ Rep. Act No. 9136, sec. 8.

TRANSCO within six (6) months from the effectivity of EPIRA,⁴⁶ or by December 26, 2001. The EPIRA Implementing Rules and Regulations further required Napocor, PSALM Corporation, and TRANSCO to –

take such measures and execute such documents to effect the transfer of the ownership and possession of the transmission and subtransmission facilities of [Napocor] and all other assets related to transmission operations. Upon such transfer, the nationwide franchise of Napocor for the operation of the transmission system and the Grid shall transfer from Napocor to TRANSCO.⁴⁷

Hence, until the transfer date of the transmission assets, which by express provision of EPIRA **shall not be later than December 26, 2001**, these assets, as well as the franchise, belong to and are operated by Napocor, and the latter is consequently subject to the local franchise tax.

Even so, it is quite apparent that at the time of the levy and auction of the 14 properties sometime in January 2004 and March 2004, respectively, the properties were by virtue of EPIRA already owned by TRANSCO. Thus, the foreclosure sale of the properties must be declared null and void.

WHEREFORE, the motion for reconsideration is **PARTIALLY GRANTED**. The decision dated April 21, 2014 insofar as it ordered the remand of the case to the Regional Trial Court is **SET ASIDE**. The foreclosure sale of the 14 properties in Limay, Bataan is hereby declared **NULL and VOID**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice


⁴⁶ Rep. Act No. 9136, sec. 8 provides:

Section 8. Creation of the National Transmission Company. – There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission functions of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

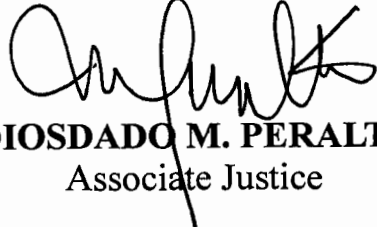
Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.). (Emphasis supplied)

⁴⁷ Implementing Rules and Regulations of Rep. Act No. 9136, Rule 22, sec. 1.

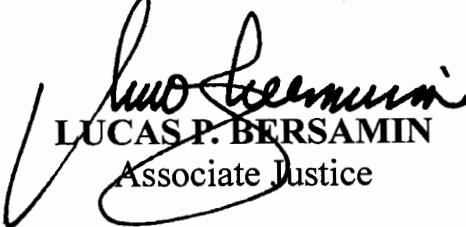
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



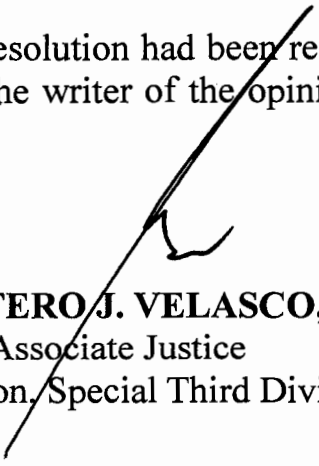
LUCAS P. BERSAMIN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION


I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



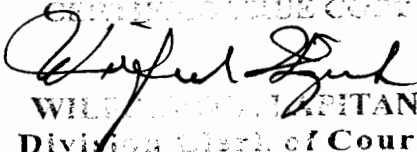
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Special Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice


 WILFREDO C. CAPITAN
 Division Clerk of Court
 Third Division
 MAY 03 2017