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[G.R. NO. 161414, January 17, 2005]

SULTAN OSOP B. CAMID, PETITIONER, VS. THE OFFICE OF THE PRESIDENT, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AUTONOMOUS REGION IN MUSLIM MINDANAO, DEPARTMENT OF FINANCE, DEPARTMENT OF BUDGET AND MANAGEMENT, COMMISSION ON AUDIT, AND THE CONGRESS OF THE PHILIPPINES (HOUSE OF REPRESENTATIVES AND SENATE), RESPONDENTS.

D E C I S I O N

TINGA, J.:

This *Petition for Certiorari* presents this Court with the prospect of our own *Brigadoon*[1]—the municipality of Andong, Lanao del Sur—which like its counterpart in filmdom, is a town that is not supposed to exist yet is anyway insisted by some as actually alive and thriving. Yet unlike in the movies, there is nothing mystical, ghostly or anything even remotely charming about the purported existence of Andong. The creation of the putative municipality was declared *void ab initio* by this Court four decades ago, but the present petition insists that in spite of this insurmountable obstacle Andong thrives on, and hence, its legal personality should be given judicial affirmation. We disagree.

The factual antecedents derive from the promulgation of our ruling in *Pelaez v. Auditor General*[2] in 1965. As discussed therein, then President Diosdado Macapagal issued several Executive Orders[3] creating thirty-three (33) municipalities in Mindanao. Among them was Andong in Lanao del Sur which was created by virtue of Executive Order No. 107.[4]

These executive orders were issued after legislative bills for the creation of municipalities involved in that case had failed to pass Congress.[5] President Diosdado Macapagal justified the creation of these municipalities citing his powers under Section 68 of the Revised Administrative Code. Then Vice-President Emmanuel Pelaez filed a special civil action for a writ of prohibition, alleging in main that the Executive Orders were null and void, Section 68 having been repealed by Republic Act No. 2370,[6] and said orders constituting an undue delegation of legislative power.[7]

After due deliberation, the Court unanimously held that the challenged Executive Orders were null and void. A majority of five justices, led by the *ponente*, Justice (later Chief Justice) Roberto Concepcion, ruled that Section 68 of the Revised Administrative Code did not meet the well-settled requirements for a valid delegation of legislative power to the executive branch,[8] while three justices opined that the nullity of the issuances was the consequence of the enactment of

the 1935 Constitution, which reduced the power of the Chief Executive over local governments.[9] *Pelaez* was disposed in this wise:

> WHEREFORE, the Executive Orders in question are declared null and void *ab initio* and the respondent permanently restrained from passing in audit any expenditure of public funds in implementation of said Executive Orders or any disbursement by the municipalities above referred to. It is so ordered.[10]

Among the Executive Orders annulled was Executive Order No. 107 which created the Municipality of Andong. Nevertheless, the core issue presented in the present petition is the continued efficacy of the judicial annulment of the Municipality of Andong.

Petitioner Sultan Osop B. Camid (Camid) represents himself as a current resident of Andong,[11] suing as a private citizen and taxpayer whose *locus standi* "is of public and paramount interest especially to the people of the Municipality of Andong, Province of Lanao del Sur."[12] He alleges that Andong "has metamorphosed into a full-blown municipality with a complete set of officials appointed to handle essential services for the municipality and its constituents,"[13] even though he concedes that since 1968, no person has been appointed, elected or qualified to serve any of the elective local government positions of Andong.[14] Nonetheless, the municipality of Andong has its own high school, Bureau of Posts, a Department of Education, Culture and Sports office, and at least seventeen (17) "barangay units" with their own respective chairmen.[15] From 1964 until 1972, according to Camid, the public officials of Andong "have been serving their constituents through the minimal means and resources with least (sic) honorarium and recognition from the Office of the then former President Diosdado Macapagal." Since the time of Martial Law in 1972, Andong has allegedly been getting by despite the absence of public funds, with the "Interim Officials" serving their constituents "in their own little ways and means."[16]

In support of his claim that Andong remains in existence, Camid presents to this Court a *Certification* issued by the Office of the Community Environment and Natural Resources (CENRO) of the Department of Environment and Natural Resources (DENR) certifying the total land area of the Municipality of Andong, "created under Executive Order No. 107 issued [last] October 1, 1964."[17] He also submits a *Certification* issued by the Provincial Statistics Office of Marawi City concerning the population of Andong, which is pegged at fourteen thousand fifty nine (14,059) strong. Camid also enumerates a list of governmental agencies and private groups that allegedly recognize Andong, and notes that other municipalities have recommended to the Speaker of the Regional Legislative Assembly for the immediate implementation of the revival or re-establishment of Andong.[18]

The petition assails a *Certification* dated 21 November 2003, issued by the Bureau of Local Government Supervision of the Department of Interior and Local Government (DILG).[19] The *Certification* enumerates eighteen (18) municipalities certified as "existing," per DILG records. Notably, these eighteen (18) municipalities are among the thirty-three (33), along with Andong, whose creations were voided by this Court in *Pelaez.* These municipalities are Midaslip, Pitogo, Naga, and Bayog

in Zamboanga del Sur; Siayan and Pres. Manuel A. Roxas in Zamboanga del Norte; Magsaysay, Sta. Maria and New Corella in Davao; Badiangan and Mina in Iloilo; Maguing in Lanao del Sur; Gloria in Oriental Mindoro; Maasim in Sarangani; Kalilangan and Lantapan in Bukidnon; and Maco in Compostela Valley.[20]

Camid imputes grave abuse of discretion on the part of the DILG "in not classifying [Andong] as a regular existing municipality and in not including said municipality in its records and official database as [an] existing regular municipality."[21] He characterizes such non-classification as unequal treatment to the detriment of Andong, especially in light of the current recognition given to the eighteen (18) municipalities similarly annulled by reason of *Pelaez.* As appropriate relief, Camid prays that the Court annul the DILG Certification dated 21 November 2003; direct the DILG to classify Andong as a "regular existing municipality;" all public respondents, to extend full recognition and support to Andong; the Department of Finance and the Department of Budget and Management, to immediately release the internal revenue allotments of Andong; and the public respondents, particularly the DILG, to recognize the "Interim Local Officials" of Andong.[22]

Moreover, Camid insists on the continuing validity of Executive Order No. 107. He argues that Pelaez has already been modified by supervening events consisting of subsequent laws and jurisprudence. Particularly cited is our *Decision* in *Municipality of San Narciso v. Hon. Mendez,*[23] wherein the Court affirmed the unique status of the municipality of San Andres in Quezon as a "*de facto* municipal corporation."[24] Similar to Andong, the municipality of San Andres was created by way of executive order, precisely the manner which the Court in *Pelaez* had declared as unconstitutional. Moreover, *San Narciso* cited, as Camid does, Section 442(d) of the Local Government Code of 1991 as basis for the current recognition of the impugned municipality. The provision reads:

> Section 442. *Requisites for Creation.* - xxx
>
> (d) Municipalities existing as of the date of the effectivity of this Code shall continue to exist and operate as such. Existing municipal districts organized pursuant to presidential issuances or executive orders and which have their respective sets of elective municipal officials holding office at the time of the effectivity of (the) Code shall henceforth be considered as regular municipalities.[25]

There are several reasons why the petition must be dismissed. These can be better discerned upon examination of the proper scope and application of Section 442(d), which does not sanction the recognition of just any municipality. This point shall be further explained further on.

Notably, as pointed out by the public respondents, through the Office of the Solicitor General (OSG), the case is not a fit subject for the special civil actions of certiorari and mandamus, as it pertains to the *de novo* appreciation of factual questions. There is indeed no way to confirm several of Camid's astonishing factual allegations pertaining to the purported continuing operation of Andong in the decades since it was annulled by this Court. No trial court has had the opportunity to ascertain the validity of these factual claims, the appreciation of which is beyond the function of this Court since it is not a trier of facts.

The importance of proper factual ascertainment cannot be gainsaid, especially in light of the legal principles governing the recognition of *de facto* municipal corporations. It has been opined that municipal corporations may exist by prescription where it is shown that the community has claimed and exercised corporate functions, with the knowledge and acquiescence of the legislature, and without interruption or objection for period long enough to afford title by prescription.[26] These municipal corporations have exercised their powers for a long period without objection on the part of the government that although no charter is in existence, it is presumed that they were duly incorporated in the first place and that their charters had been lost.[27] They are especially common in England, which, as well-worth noting, has existed as a state for over a thousand years. The reason for the development of that rule in England is understandable, since that country was settled long before the Roman conquest by nomadic Celtic tribes, which could have hardly been expected to obtain a municipal charter in the absence of a national legal authority.

In the United States, municipal corporations by prescription are less common, but it has been held that when no charter or act of incorporation of a town can be found, it may be shown to have claimed and exercised the powers of a town with the knowledge and assent of the legislature, and without objection or interruption for so long a period as to furnish evidence of a prescriptive right.[28]

What is clearly essential is a factual demonstration of the continuous exercise by the municipal corporation of its corporate powers, as well as the acquiescence thereto by the other instrumentalities of the state. Camid does not have the opportunity to make an initial factual demonstration of those circumstances before this Court. Indeed, the factual deficiencies aside, Camid's plaint should have undergone the usual administrative gauntlet and, once that was done, should have been filed first with the Court of Appeals, which at least would have had the power to make the necessary factual determinations. Camid's seeming ignorance of the principles of exhaustion of administrative remedies and hierarchy of courts, as well as the concomitant prematurity of the present petition, cannot be countenanced.

It is also difficult to capture the sense and viability of Camid's present action. The assailed issuance is the *Certification* issued by the DILG. But such *Certification* does not pretend to bear the authority to create or revalidate a municipality. Certainly, the annulment of the *Certification* will really do nothing to serve Camid's ultimate cause- the recognition of Andong. Neither does the *Certification* even expressly refute the claim that Andong still exists, as there is nothing in the document that comments on the present status of Andong. Perhaps the *Certification* is assailed before this Court if only to present an actual issuance, rather than a long-standing habit or pattern of action that can be annulled through the special civil action of certiorari. Still, the relation of the *Certification* to Camid's central argument is forlornly strained.

These disquisitions aside, the central issue remains whether a municipality whose creation by executive fiat was previously voided by this Court may attain recognition in the absence of any curative or reimplementing statute. Apparently, the question has never been decided before, *San Narciso* and its kindred cases pertaining as they did to municipalities whose bases of creation were dubious yet were never judicially

nullified. The effect of Section 442(d) of the Local Government Code on municipalities such as Andong warrants explanation. Besides, the residents of Andong who belabor under the impression that their town still exists, much less those who may comport themselves as the municipality's "Interim Government," would be well served by a rude awakening.

The Court can employ a simplistic approach in resolving the substantive aspect of the petition, merely by pointing out that the Municipality of Andong never existed. [29] Executive Order No. 107, which established Andong, was declared "null and void ab initio" in 1965 by this Court in *Pelaez*, along with thirty-three (33) other executive orders. The phrase "*ab initio*" means "from the beginning,"[30] "at first," [31] "from the inception."[32] *Pelaez* was never reversed by this Court but rather it was expressly affirmed in the cases of *Municipality of San Joaquin v. Siva*,[33] *Municipality of Malabang v. Benito*,[34] and *Municipality of Kapalong v. Moya.*[35] No subsequent ruling by this Court declared *Pelaez* as overturned or inoperative. No subsequent legislation has been passed since 1965 creating a Municipality of Andong. Given these facts, there is hardly any reason to elaborate why Andong does not exist as a duly constituted municipality.

This ratiocination does not admit to patent legal errors and has the additional virtue of blessed austerity. Still, its sweeping adoption may not be advisedly appropriate in light of Section 442(d) of the Local Government Code and our ruling in *Municipality of San Narciso*, both of which admit to the possibility of de facto municipal corporations.

To understand the applicability of *Municipality of San Narciso* and Section 442(b) of the Local Government Code to the situation of Andong, it is necessary again to consider the ramifications of our decision in *Pelaez*.

The eminent legal doctrine enunciated in *Pelaez* was that the President was then, and still is, not empowered to create municipalities through executive issuances. The Court therein recognized "that the President has, for many years, issued executive orders creating municipal corporations, and that the same have been organized and in actual operation . . . ."[36] However, the Court ultimately nullified only those thirty-three (33) municipalities, including Andong, created during the period from 4 September to 29 October 1964 whose existence petitioner Vice-President Pelaez had specifically assailed before this Court. No pronouncement was made as to the other municipalities which had been previously created by the President in the exercise of power the Court deemed unlawful.

Two years after *Pelaez* was decided, the issue again came to fore in *Municipality of San Joaquin v. Siva*.[37] The Municipality of Lawigan was created by virtue of Executive Order No. 436 in 1961. Lawigan was not one of the municipalities ordered annulled in *Pelaez*. A petition for prohibition was filed contesting the legality of the executive order, again on the ground that Section 68 of the Revised Administrative Code was unconstitutional. The trial court dismissed the petition, but the Supreme Court reversed the ruling and entered a new decision declaring Executive Order No. 436 void *ab initio*. The Court reasoned without elaboration that the issue had already been squarely taken up and settled in *Pelaez* which agreed with the argument posed by the challengers to Lawigan's validity.[38]