

SECOND DIVISION

[G.R. NO. 126858, September 16, 2005]

**JOSE U. ONG AND NELLY M. ONG, PETITIONERS, VS.
SANDIGANBAYAN (THIRD DIVISION) AND OFFICE OF THE
OMBUDSMAN, RESPONDENTS.**

D E C I S I O N

TINGA, J.

This *Petition for Certiorari*,^[1] dated December 13, 1996 seeks the nullification of the *Resolutions* of the Sandiganbayan dated August 18, 1994^[2] and October 22, 1996.^[3] The first assailed *Resolution* denied petitioners' motion to dismiss the petition for forfeiture filed against them, while the second questioned Resolution denied their motion for reconsideration.

The antecedents are as follows:

Congressman Bonifacio H. Gillego executed a *Complaint-Affidavit*^[4] on February 4, 1992, claiming that petitioner Jose U. Ong, then Commissioner of the Bureau of Internal Revenue (BIR), has amassed properties worth disproportionately more than his lawful income. The complaint pertinently states:

In his Statement of Assets and Liabilities as of December 31, 1989 (Annex "A"), Commissioner Jose U. Ong declared P750,000.00 as his cash on hand and in banks. Within a short period thereafter, he was able to acquire prime real estate properties mostly in the millionaires choice areas in Alabang, Muntinlupa, Metro Manila costing millions of pesos as follows:

1. A house and lot in Alabang bought on October 9, 1990 for P5,500,000.00, now titled in the name of Jose U. Ong under Transfer Certificate of Title No. 172168, Registry of Deeds for Makati (Annexes "B" & "C");
2. Another lot in Alabang bought for P5,700,000.00, now titled in the name of Jose U. Ong and Nelly M. Ong under Transfer Certificate of Title No. 173901. Registered on January 25, 1991 in the Registry of Deeds for Makati (Annex "D");
3. Still another lot in Alabang bought for P4,675,000.00 on January 16, 1991, now titled in the name of spouses Jose U. Ong and Nelly Mercado Ong under Transfer Certificate of Title No. 173760 in the Registry of Deeds for Makati (Annexes "E" and "F");

4. Again, another lot in Alabang bought on December 3, 1990 for P5,055,000.00, now titled in the name of the Children of Commissioner Ong and his son-in-law under transfer Certificate of Title No. 173386 in the Registry of Deeds for Makati (Annex "G" and "H");
5. Again, a lot in Makati bought for P832,000.00 on July 1, 1990, now titled in the name of the Daughter of Commissioner Ong and his son-in-law under transfer certificate of title No. 171210 in the Registry of Deeds of Makati (Annex "I" & "J").

The above documented purchases of Commissioner Ong alone which are worth millions of pesos are obviously disproportionate to his income of just a little more than P200,000.00 per annum.^[5]

Ong submitted an explanation and analysis of fund sourcing, reporting his net worth covering the calendar years 1989 to 1991 and showing his sources and uses of funds, the sources of the increase in his net worth and his net worth as of December 13, 1991.^[6]

The Director* of the Fact-Finding and Intelligence Bureau of the Office of the Ombudsman (Ombudsman) ordered the conduct of a pre-charge investigation on the matter. A *Fact-Finding Report*^[7] was promptly submitted* with the following recommendation:

1. Forfeiture Proceedings be instituted against the properties of Jose U. Ong which he illegitimately acquired in just a span of two (2) years as Commissioner of the Bureau of Internal Revenue. Such properties are briefly specified as follows:
 - a) House and lot in Ayala Alabang bought on October 9, 1990 for P5.5 million under TCT No. 172168 of the Registry of Deeds for Makati, Metro Manila;
 - b) Lot in Ayala Alabang bought on January 23, 1991 for P5.5 million under TCT No. 173901;
 - c) Lot in Ayala Alabang bought on January 16, 1991 for P4,675,000.00 under TCT No. 173760;
 - d) Lot in Ayala Alabang bought on December 3, 1990 for P5,055,000.00 under TCT No. 173386; and
 - e) Condominium Unit 804, located at the eight floor of the Asian Mansion, bought for P744,585.00 under CCT No. 20735 of the Registry of Deeds for Makati, Metro Manila.^[8]

Finding that a preliminary inquiry under Sec. 2 of Republic Act No. 1379 (RA 1379) should be conducted, Ong was directed to submit his counter-affidavit and other

controverting evidence in the *Order*^[9] dated November 18, 1992. For this purpose, Ong was furnished copies of Gillego's *Complaint-Affidavit* and the *Fact-Finding Report*, with annexes and supporting documents.

Ong filed a *Counter-Affidavit*^[10] dated December 21, 1992, submitting his Statement of Assets and Liabilities for the years 1988-1990, income tax return for 1988, bank certificate showing that he obtained a loan from Allied Banking Corporation (Allied Bank), certificate from SGV & Co. (SGV) showing that he received retirement benefits from the latter, a document entitled Acknowledgement of Trust showing that he acquired one of the questioned assets for his brother-in-law, and other documents explaining the sources of funds with which he acquired the questioned assets.

In view of Ong's arguments, the Ombudsman issued another *Order*^[11] dated February 11, 1993, the pertinent portions of which state:

Results of the subpoena duces tecum ad testificandum issued to Allied Banking Corporation, Sycip, Gorres, Velayo & Co., including the BIR insofar as it pertains to the production of the documents that respondents claimed in justification of the sources of his funding/income, proved negative since Allied Bank could not produce documents that would show availment of the loan, nor could SGV itemize the documents/vouchers that would, indeed signify the grant and receipt of the claimed retirement benefits, as well as the BIR insofar as it pertains on respondent's filed income tax returns for the years 1987, 1988, 1989, 1990 and 1991.

Such being the case, and in line with respondent's defense as claimed in his counter-affidavit that all his acquisitions were from legitimate and valid sources based from his (respondent's) salary and other sources of income, and he being the recipient thereof, copies of which he is entitled as a matter of right and party recipient on the claimed loan and retirement benefits, respondent Jose U. Ong, is hereby directed to submit in writing within a period of fifteen (15) days from receipt of this ORDER, the following, namely:--

a) all documents in his possession relevant to the approval by the Allied Banking Corporation on the P6.5 million term loan including documents in availment of the loan such as the execution of promissory note/s, execution of real/chattel mortgage/s and the fact of its registration with the Register of Deeds, credit agreements, receipt of payment on amortization of the loan, if any, and such other pertinent documents that will show existence and availment of the loan granted;

b) All documents in his possession that he was indeed granted by SGV and Co. P7.8 million as retirement benefits including such additional benefits as claimed as evidenced by vouchers, accounting records, computation of benefits, that would signify fact of receipt of the claimed retirement benefits;

c) All documents showing the money market placements such as but not

limited to the (a) confirmation sale on the placements and (b) confirmation of the purchase on the placements;

d) Income tax returns as filed in the Bureau of Internal Revenue for the years, 1987, 1988, 1989, 1990 and 1991.

Failure of the respondent to comply with this ORDER within the period hereinabove prescribed shall be deemed a waiver on his part to submit the required controverting evidence and that he has no evidence on hand to show proof on the existence of the claimed defenses as above set forth and that this case shall be considered for resolution without further notice.^[12]

Instead of complying with the *Order*, Ong filed a *Motion*,^[13] dated February 17, 1993 for its recall, the voluntary inhibition of the handling investigators, and reassignment of the case. Ong objected to the proceedings taken thus far, claiming that he was not notified of the subpoenas issued to SGV and Allied Bank requiring them to substantiate Ong's claims. The *Order* allegedly violates his right to due process and to be presumed innocent because it requires him to produce evidence to exculpate himself.

A *Resolution*^[14] dated May 31, 1993 was thereafter issued finding that Ong "miserably failed to substantiate his claim that the sources of financing his said acquisition came from his other lawful income, taking into account his annual salary of P200,000.00 more or less and his cash standing at the time, even without considering his normal expenses befitting his stature and position in the Government, as well as his acquisition of movable properties for the calendar year[s] 1989 to 1991, totaling P930,000.00," and concluding "that the properties acquired by him in a matter of ELEVEN (11) MONTHS from October, 1990 to September, 1991, during his incumbency as Commissioner of the Bureau of Internal Revenue, are manifestly and grossly disproportionate to his salary as a public official and his other lawful income."^[15]

The *Resolution* directed the filing by the Ombudsman, in collaboration with the Office of the Solicitor General (OSG), of a petition for recovery of ill-gotten/unexplained wealth under RA 1379, in relation to RAs 3019 and 6770, against Ong and all other persons concerned.

The *Resolution* was reviewed by the Office of the Special Prosecutor (Special Prosecutor) which concurred with the findings and recommendation of the Ombudsman.^[16]

A *Petition*^[17] dated November 15, 1993 for forfeiture of unlawfully acquired property was accordingly filed before the Sandiganbayan by the Republic, through the Special Prosecutor and the Deputy Ombudsman for Luzon,^[18] against Ong and his wife, petitioner Nelly Ong, and docketed as Civil Case No. 0160.

The *Petition* alleged that the total value of the questioned assets is P21,474,585.00 which is grossly disproportionate to Ong's lawful income from his public employment and other sources amounting to P1,060,412.50, considering that Nelly Ong has no visible means of income. This circumstance allegedly gave rise to the presumption

under Sec. 2 of RA 1379 that the questioned properties were unlawfully acquired.

In its *Order*^[19] dated November 17, 1993, the Sandiganbayan directed the issuance of a writ of preliminary attachment against the properties of petitioners. The writ, issued on November 18, 1993, was duly served and implemented as shown in the Sheriff's Return dated December 1, 1993.^[20]

Petitioners Jose and Nelly Ong filed an *Answer*^[21] dated January 27, 1994, denying that their lawful income is grossly disproportionate to the cost of the real properties they acquired during the incumbency of Ong as BIR Commissioner. According to them, the Special Prosecutor and the Ombudsman intentionally failed to consider the retirement and separation pay Ong received from SGV and other lawful sources of funds used in the acquisition of the questioned properties.

They presented several affirmative defenses, such as the alleged deprivation of their right to due process considering that no preliminary investigation was conducted as regards Nelly Ong, and the nullity of the proceedings before the Ombudsman because the latter, who acted both as investigator and adjudicator in the determination of the existence of probable cause for the filing of the case, will also prosecute the same. Moreover, the *Petition* also allegedly failed to state a cause of action because RA 1379 is unconstitutional as it is vague and does not sufficiently define ill-gotten wealth and how it can be determined in violation of the non-delegation of legislative power provision, and insofar as it disregards the presumption of innocence by requiring them to show cause why the properties in question should not be declared property of the state. They also objected to the fact that they were not notified of the *Resolution* directing the filing of the case and were thereby prevented from filing a motion for reconsideration.

A hearing of petitioners' affirmative defenses was conducted as in a motion to dismiss, after which the Sandiganbayan issued the assailed *Resolution* dated August 18, 1994. The Sandiganbayan ruled that a petition for forfeiture is an action *in rem*, civil in character. As such, the participation of Nelly Ong in the inquiry to determine whether the properties acquired by her husband are manifestly disproportionate to his salary and other lawful income is not a mandatory requirement. Neither is the conduct of a preliminary investigation as regards Nelly Ong required. Further, Nelly Ong was only impleaded in the petition as a formal party.

The court held that the power of the Ombudsman to investigate and prosecute unexplained wealth cases is founded on RAs 1379, 3019 and 6770. The Sandiganbayan, moreover, declared that the *Petition* sufficiently states a cause of action.

Petitioners filed a *Motion for Reconsideration*^[22] dated September 11, 1994, averring that although a forfeiture proceeding is technically a civil action, it is in substance a criminal proceeding as forfeiture is deemed a penalty for the violation of RA 1379. Hence, Nelly Ong is entitled to a preliminary investigation. To proceed against her conjugal share of the questioned assets without giving her the opportunity to present her side in a preliminary investigation violates her right to due process.

Petitioners reiterated their argument that they were not notified of the *Resolution*