

## EN BANC

[ G.R. No. 210669, August 01, 2017 ]

### HI-LON MANUFACTURING, INC., PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

#### D E C I S I O N

##### PERALTA, J.:

This Petition for *Certiorari* under Rule 64, in relation to Rule 65 of the 1997 Rules of Civil Procedure, seeks to annul and set aside the Commission on Audit (COA) Decision No. 2011-003<sup>[1]</sup> dated January 20, 2011, which denied HI-LON Manufacturing, Inc.'s (*HI-LON*) petition for review, and affirmed with modification the Notice of Disallowance (*ND*) No. 2004-032 dated January 29, 2004 of COA's Legal and Adjudication Office-National Legal and Adjudication Section (*LAO-N*). The LAO-N disallowed the amount of P9,937,596.20, representing the difference between the partial payment of P10,461,338.00 by the Department of Public Works and Highways (DPWH) and the auditor's valuation of P523,741.80, as just compensation for the 29,690-square-meter road right-of-way taken by the government in 1978 from the subject property with a total area of 89,070 sq. m. supposedly owned by HI-LON. The dispositive portion of the assailed COA Decision No. 2011-003 reads:

**WHEREFORE**, premises considered, the instant petition for review is hereby **DENIED** for lack of merit. Accordingly, ND No. 2004-32 dated January 29, 2004 amounting to P9,937,596.20 is hereby **AFFIRMED** with modification on the reason thereof that the claimant is not entitled thereto.

On the other hand, the Special Audit Team constituted under COA Office Order No. 2009-494 dated July 16, 2009 is hereby instructed to issue a ND for the P523,741.80 payment to Hi-Lon not covered by ND No. 2004-032 without prejudice to the other findings to be embodied in the special audit report.<sup>[2]</sup>

This Petition likewise assails COA's Decision<sup>[3]</sup> No. 2013-212 dated December 3, 2013 which denied HI-LON's motion for reconsideration, affirmed with finality COA Decision No. 2011-003, and required it to refund payment made by DPWH in the amount of P10,461,338.00. The dispositive portion of the assailed COA Decision No. 2013-212 reads:

**WHEREFORE**, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, Commission on Audit Decision No. 2011-003 dated January 20, 2011 is hereby **AFFIRMED WITH FINALITY**. Hi-Lon Manufacturing Co., Inc. is hereby required to refund the payment

made by the Department of Public Works and Highways in the amount of P10,461,338.00.<sup>[4]</sup>

The antecedent facts are as follows:

Sometime in 1978, the government, through the then Ministry of Public Works and Highways (*now DPWH*), converted to a road right-of-way (*RROW*) a 29,690 sq. m. portion of the 89,070 sq. m. parcel of land (subject property) located in Mayapa, Calamba, Laguna, for the Manila South Expressway Extension Project. The subject property was registered in the name of Commercial and Industrial Real Estate Corporation (*CIREC*) under Transfer Certificate of Title (*TCT*) No. T-40999.

Later on, Philippine Polymide Industrial Corporation (*PPIC*) acquired the subject property, which led to the cancellation of TCT No. T-40999 and the issuance of TCT No. T-120988 under its name. PPIC then mortgaged the subject property with the Development Bank of the Philippines (*DBP*), a government financing institution, which later acquired the property in a foreclosure proceeding on September 6, 1985. TCT No. T-120988, under PPIC's name, was then cancelled, and TCT No. T-151837 was issued in favor of DBP.

Despite the use of the 29,690 sq. m. portion of the property as RROW, the government neither annotated its claim or lien on the titles of CIREC, PPIC and DBP nor initiated expropriation proceedings, much less paid just compensation to the registered owners.

Upon issuance of Administrative Order No. 14 dated February 3, 1987, entitled "Approving the Identification of and Transfer to the National Government of Certain Assets and Liabilities of the Development Bank of the Philippines and the Philippine National Bank," the DBP submitted all its acquired assets, including the subject property, to the Asset Privatization Trust (*APT*) for disposal, pursuant to Proclamation No. 50 dated 8 December 1986.

On June 30, 1987, APT disposed of a portion of the subject property in a public bidding. The Abstract of Bids<sup>[5]</sup> indicated that Fibertex Corporation (*Fibertex*), through Ester H. Tanco, submitted a P154,000,000.00 bid for the asset formerly belonging to PPIC located in Calamba, Laguna, *i.e.*, "Land (5.9 hectares) TCT 4099, buildings & improvements, whole mill," while TNC Philippines, Inc. and P. Lim Investment, Inc. submitted a bid of P106,666,000.00 and P138,000,000.00, respectively. With respect to the former assets of Texfiber Corporation (*Texfiber*) in Taytay, Rizal *i.e.*, "Land (214,062 sq. m. TCT (493917) 506665, buildings & improvements, whole mill"), only Fibertex submitted a bid of P210,000,000.00.

In a Certification<sup>[6]</sup> dated July 1, 1987, APT certified that Fibertex was the highest bidder of PPIC and Texfiber assets for P370,000,000.00, and recommended to the Committee on Privatization to award said assets to Fibertex. In a Letter<sup>[7]</sup> dated November 10, 1988, APT certified that Fibertex paid APT P370,000,000.00 for the purchase of the said assets formerly belonging to PPIC and Texfiber.

Meanwhile, Fibertex allegedly requested APT to exclude separate deeds of sale for the parcel of land and for improvements under the subject property covered by TCT No. 151837 in the name of DBP. Having been paid the full bid amount, APT

supposedly agreed with Fibertex that the land would be registered in the name of TG Property, Inc. (*TGPI*) and the improvements to Fibertex. Thus, APT executed two (2) separate Deeds of Sale with TGPI and Fibertex with regard to the property, namely:

- a. Deed of Sale between APT and TGPI executed on October 29, 1987 for the sale of a parcel of land covered by TCT No. T-151837 for a consideration of P2,222,967.00.
- b. Deed of Sale between APT and Fibertex executed on 19 August 1987 for the sale of improvements (machinery, equipment and other properties) on the same property for a consideration of P154,315,615.39.

Upon complete submission of the required documents and proof of tax payments on December 9, 1987, the Register of Deeds of Calamba, Laguna, cancelled DBP's TCT No. 151837 and issued TCT No. T-158786 in the name of TGPI, covering the entire 89,070 sq. m. subject property, including the 29,690 sq. m. RROW. From 1987 to 1996, TGPI had paid real property taxes for the entire 89,070 sq. m. property, as shown by the Tax Declarations and the Official Receipt issued by the City Assessor's Office and Office of the City Treasurer of Calamba, Laguna, respectively.

On April 16, 1995, TGPI executed a Deed of Absolute Sale in favor of HI-LON over the entire 89,070 sq. m. subject property for a consideration of P44,535,000.00. HI-LON registered the Deed with the Register of Deeds of Calamba, Laguna, which issued in its name TCT No. 383819.

Sometime in 1998, Rupert P. Quijano, Attorney-in-Fact of HI-LON, requested assistance from the Urban Road Project Office (*URPO*) DPWH for payment of just compensation for the 29,690 sq. m. portion of the subject property converted to a RROW. The DPWH created an *Ad Hoc* Committee which valued the RROW at P2,500/sq. m. based on the 1999 Bureau of/ Internal Revenue (*BIR*) zonal valuation.

On December 21, 2001, a Deed of Sale was executed between HI-LON and the Republic of the Philippines, represented by Lope S. Adriano, URPO-PMO Director, by authority of the DPWH Secretary, covering the 29,690 sq. m. parcel of land converted to RROW for a total consideration of P67,492,500.00. On January 23, 2002, the Republic, through the DPWH, made the first partial payment to HI-LON in the amount of P10,461,338.00.

On post audit, the Supervising Auditor of the DPWH issued Audit Observation Memorandum No. NGS VIII-A-03-001 dated April 2, 2003 which noted that the use of the 1999 zonal valuation of P2,500.00/sq. m. as basis for the determination of just compensation was unrealistic, considering that as of said year, the value of the subject property had already been "glossed over by the consequential benefits" it has obtained from the years of having been used as RROW. The auditor pointed out that the just compensation should be based on the value of said property at the time of its actual taking in 1978. Taking into account the average value between the 1978 and 1980 Tax Declarations covering the subject land, the Auditor arrived at the amount of P19.40/sq. m. as reasonable compensation and, thus, recommended the recovery of excess payments.

Upon review of the auditor's observations, the Director of the LAO-N issued on January 29, 2004 ND No. 2004-32 in the amount of P9,937,596.20, representing the difference between the partial payment of P10,461,338.00 to HI-LON and the amount of P532,741.80, which should have been paid as just compensation for the conversion of the RROW.

Acting on the request of Dir. Lope S. Adriano, Project Director (*URPO-PMO*) for the lifting of ND No. 2004-032 dated January 29, 2004, the LAO-N rendered Decision No. 2004-172 dated May 12, 2004, affirming the same ND, and stating the value of the property must be computed from the time of the actual taking.

Resolving (1) the motions for reconsideration and request for exclusion from liability of former DPWH Secretary Gregorio R. Vigilar, et al. (2) the request for lifting, of Notice of Disallowance No. 2004-032 of OIC Director Leonora J. Cuenca; (3) the motion to lift the disallowance and/or exclusion as person liable of Ms. Teresita S. de Vera, Head, Accounting Unit, DPWH; and (4) the appeal from ND No. 2004-032 of former Assistant Secretary Joel C. Altea and of Mr. Rupert P. Quijano, Attorney-in-Fact of HI-LON, the LAO-N issued Decision No. 2008-172-A dated June 25, 2008, which denied the appeal and affirmed the same ND with modification that payment of interest is appropriate under the circumstances.

Aggrieved, HI-LON filed a petition for review before the COA. In its regular meeting on June 9, 2009, the COA deferred the resolution of the petition, and instructed its Legal Service Section to create a Special Audit Team from the Fraud Audit and Investigation Office to investigate and validate HI-LON's claim.

In its assailed Decision No. 2011-003 dated January 20, 2011, the COA denied for lack of merit HI-LON's petition for review of the LAO-N Decision No. 2008-172-A, and affirmed ND No. 2004-032 dated July 29, 2004 with modification declaring the claimant not entitled to just compensation. The COA also instructed the Special Audit Team to issue an ND for the P523,741.80 payment to HI-LON not covered by ND No. 2004-032, without prejudice to the other findings embodied by the special audit report.

On the issue of whether or not HI-LON is entitled to just compensation for the 29,690 sq. m. portion of the subject property, the COA found that the evidence gathered by the Special Audit Team are fatal to the claim for such compensation.

*First*, the COA noted that the transfer of the subject property in favor of TGPI, the parent corporation of HI-LON, was tainted with anomalies because records show that TGPI did not participate in the public bidding held on June 30, 1987, as only three (3) bidders participated, namely: Fibertex Corporation, TNC Philippines, Inc., and P. Lim Investment, Inc.

*Second*, the COA pointed out that the Deed of Sale between APT and Fibertex has a disclosure that "The subject of this Deed of Absolute Sale, therefore, as fully disclosed in the APT Asset Catalogue, is the total useable area of 59,380 sq. m.,"<sup>[8]</sup> excluding for the purpose the 29,690 sq. m. converted to RROW. The COA added that such exclusion was corroborated by the Abstract of Bids duly signed by the then APT Executive Assistant and Associate Executive Trustee, showing that the land covered by TCT No. T-151387 was offered to the public bidding for its useable portion of 5.9 hectares only, excluding the subject 29,690 sq. m. converted to

RROW.

*Third*, the COA observed that HI-LON is a mere subsidiary corporation which cannot acquire better title than its parent corporation TGPI. The COA stressed that for more than (7) seven years that the subject property was under the name of TGPI from its registration on December 9, 1987 until it was transferred to HI-LON on April 16, 1995, TGPI did not attempt to file a claim for just compensation because it was estopped to do so as the Deed of Sale executed between APT and TGPI clearly stated that the 29,690 sq. m. RROW was excluded from the sale and remains a government property. Applying the principle of piercing the veil of corporate fiction since TGPI owns 99.9% of HI-LON, the COA ruled that HI-LON cannot claim ignorance that the 29,690 sq. m. RROW was excluded from the public auction.

Having determined that HI-LON or its predecessor-in-interest TGPI does not own the RROW in question, as it has been the property of the Republic of the Philippines since its acquisition by the DBP up to the present, the COA concluded that the proper valuation of the claim for just compensation is irrelevant as HI-LON is not entitled thereto in the first place.

Dissatisfied, HI-LON filed a Motion for Reconsideration of COA Decision No. 2011-003 and a Supplement thereto.

On December 3, 2013, the COA issued the assailed Decision No. 2013-212 denying HI-LON's motion, for reconsideration, affirming with finality its assailed Decision No. 2011-003, and requiring HI-LON to refund the payment made by DPWH in the amount of P10,461,338.00.

In this Petition for *Certiorari*, HI-LON argues that the COA committed grave abuse of discretion, amounting to lack or excess of jurisdiction when it held (1) that there was no property owned by HI-LON that was taken by the government for public use; (2) that the 89,070-sq. m. subject parcel of land, including the 29,690 sq. m. portion used as RROW by the government, had been the property of the Republic of the Philippines; (3) that HI-LON is not entitled to payment of just compensation; and (4) that it collaterally attacked HI-LON's ownership of the subject land, including the RROW.<sup>[9]</sup>

The Office of the Solicitor General (OSG) counters that the COA acted within its jurisdiction when it evaluated and eventually disallowed what it found to be an irregular, anomalous and unnecessary disbursement of public funds. The OSG agrees with the COA that HI-LON is not entitled to payment of just compensation because the 29,690 sq. m. portion used as RROW is already owned by the Republic since 1987 when DBP transferred the entire 89,070 sq. m. subject property to APT, pursuant to Administrative Order No. 14. The OSG emphasizes that the Deed of Absolute Sale dated October 29, 1987 between the Republic (through APT) and TGPI clearly stated that the subject thereof, as fully disclosed in the APT Asset Specific Catalogue, is the total useable area of 59,380 sq. m., hence, the 29,690 sq. m. portion used as RROW was expressly excluded from the sale. Besides, the OSG notes that the COA aptly found that there were only three bidders who participated in APT's public bidding of the subject property and TGPI was not one of the bidders. There being an anomaly in the transfer of the property from APT to TGPI, the OSG posits that HI-LON, as TGPI's successor-in-interest, is not entitled to just compensation.