

THIRD DIVISION

[G.R. No. 191109, July 18, 2012]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
PHILIPPINE RECLAMATION AUTHORITY (PRA), PETITIONER, VS.
CITY OF PARAÑAQUE, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, on pure questions of law, assailing the January 8, 2010 Order^[1] of the Regional Trial Court, Branch 195, Parañaque City (*RTC*), which ruled that petitioner Philippine Reclamation Authority (PRA) is a government-owned and controlled corporation (*GOCC*), a taxable entity, and, therefore, not exempt from payment of real property taxes. The pertinent portion of the said order reads:

In view of the finding of this court that petitioner is not exempt from payment of real property taxes, respondent Parañaque City Treasurer Liberato M. Carabeo did not act xxx without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the warrants of levy on the subject properties.

WHEREFORE, the instant petition is dismissed. The Motion for Leave to File and Admit Attached Supplemental Petition is denied and the supplemental petition attached thereto is not admitted.

The Public Estates Authority (*PEA*) is a government corporation created by virtue of Presidential Decree (*P.D.*) No. 1084 (*Creating the Public Estates Authority, Defining its Powers and Functions, Providing Funds Therefor and For Other Purposes*) which took effect on February 4, 1977 to provide a coordinated, economical and efficient reclamation of lands, and the administration and operation of lands belonging to, managed and/or operated by, the government with the object of maximizing their utilization and hastening their development consistent with public interest.

On February 14, 1979, by virtue of Executive Order (*E.O.*) No. 525 issued by then President Ferdinand Marcos, PEA was designated as the agency primarily responsible for integrating, directing and coordinating all reclamation projects for and on behalf of the National Government.

On October 26, 2004, then President Gloria Macapagal-Arroyo issued E.O. No. 380 transforming PEA into PRA, which shall perform all the powers and functions of the PEA relating to reclamation activities.

By virtue of its mandate, PRA reclaimed several portions of the foreshore and

offshore areas of Manila Bay, including those located in Parañaque City, and was issued Original Certificates of Title (OCT Nos. 180, 202, 206, 207, 289, 557, and 559) and Transfer Certificates of Title (TCT Nos. 104628, 7312, 7309, 7311, 9685, and 9686) over the reclaimed lands.

On February 19, 2003, then Parañaque City Treasurer Liberato M. Carabeo (*Carabeo*) issued Warrants of Levy on PRA's reclaimed properties (Central Business Park and *Barangay* San Dionisio) located in Parañaque City based on the assessment for delinquent real property taxes made by then Parañaque City Assessor Soledad Medina Cue for tax years 2001 and 2002.

On March 26, 2003, PRA filed a petition for prohibition with prayer for temporary restraining order (*TRO*) and/or writ of preliminary injunction against Carabeo before the RTC.

On April 3, 2003, after due hearing, the RTC issued an order denying PRA's petition for the issuance of a temporary restraining order.

On April 4, 2003, PRA sent a letter to Carabeo requesting the latter not to proceed with the public auction of the subject reclaimed properties on April 7, 2003. In response, Carabeo sent a letter stating that the public auction could not be deferred because the RTC had already denied PRA's *TRO* application.

On April 25, 2003, the RTC denied PRA's prayer for the issuance of a writ of preliminary injunction for being moot and academic considering that the auction sale of the subject properties on April 7, 2003 had already been consummated.

On August 3, 2009, after an exchange of several pleadings and the failure of both parties to arrive at a compromise agreement, PRA filed a *Motion for Leave to File and Admit Attached Supplemental Petition* which sought to declare as null and void the assessment for real property taxes, the levy based on the said assessment, the public auction sale conducted on April 7, 2003, and the Certificates of Sale issued pursuant to the auction sale.

On January 8, 2010, the RTC rendered its decision dismissing PRA's petition. In ruling that PRA was not exempt from payment of real property taxes, the RTC reasoned out that it was a GOCC under Section 3 of P.D. No. 1084. It was organized as a stock corporation because it had an authorized capital stock divided into no par value shares. In fact, PRA admitted its corporate personality and that said properties were registered in its name as shown by the certificates of title. Therefore, as a GOCC, local tax exemption is withdrawn by virtue of Section 193 of Republic Act (R.A.) No. 7160 [Local Government Code (*LGC*)] which was the prevailing law in 2001 and 2002 with respect to real property taxation. The RTC also ruled that the tax exemption claimed by PRA under E.O. No. 654 had already been expressly repealed by R.A. No. 7160 and that PRA failed to comply with the procedural requirements in Section 206 thereof.

Not in conformity, PRA filed this petition for certiorari assailing the January 8, 2010 RTC Order based on the following

GROUND

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT PETITIONER IS LIABLE TO PAY REAL PROPERTY TAX ON THE SUBJECT RECLAIMED LANDS CONSIDERING THAT PETITIONER IS AN INCORPORATED INSTRUMENTALITY OF THE NATIONAL GOVERNMENT AND IS, THEREFORE, EXEMPT FROM PAYMENT OF REAL PROPERTY TAX UNDER SECTIONS 234(A) AND 133(O) OF REPUBLIC ACT 7160 OR THE LOCAL GOVERNMENT CODE VIS-À-VIS MANILA INTERNATIONAL AIRPORT AUTHORITY V. COURT OF APPEALS.

II

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT RECLAIMED LANDS ARE PART OF THE PUBLIC DOMAIN AND, HENCE, EXEMPT FROM REAL PROPERTY TAX.

PRA asserts that it is not a GOCC under Section 2(13) of the Introductory Provisions of the Administrative Code. Neither is it a GOCC under Section 16, Article XII of the 1987 Constitution because it is not required to meet the test of economic viability. Instead, PRA is a government instrumentality vested with corporate powers and performing an essential public service pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. Although it has a capital stock divided into shares, it is not authorized to distribute dividends and allotment of surplus and profits to its stockholders. Therefore, it may not be classified as a stock corporation because it lacks the second requisite of a stock corporation which is the distribution of dividends and allotment of surplus and profits to the stockholders.

It insists that it may not be classified as a non-stock corporation because it has no members and it is not organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers as provided in Section 88 of the Corporation Code.

Moreover, PRA points out that it was not created to compete in the market place as there was no competing reclamation company operated by the private sector. Also, while PRA is vested with corporate powers under P.D. No. 1084, such circumstance does not make it a corporation but merely an incorporated instrumentality and that the mere fact that an incorporated instrumentality of the National Government holds title to real property does not make said instrumentality a GOCC. Section 48, Chapter 12, Book I of the Administrative Code of 1987 recognizes a scenario where a piece of land owned by the Republic is titled in the name of a department, agency or instrumentality.

Thus, PRA insists that, as an incorporated instrumentality of the National Government, it is exempt from payment of real property tax except when the beneficial use of the real property is granted to a taxable person. PRA claims that based on Section 133(o) of the LGC, local governments cannot tax the national

government which delegate to local governments the power to tax.

It explains that reclaimed lands are part of the public domain, owned by the State, thus, exempt from the payment of real estate taxes. Reclaimed lands retain their inherent potential as areas for public use or public service. While the subject reclaimed lands are still in its hands, these lands remain public lands and form part of the public domain. Hence, the assessment of real property taxes made on said lands, as well as the levy thereon, and the public sale thereof on April 7, 2003, including the issuance of the certificates of sale in favor of the respondent Parañaque City, are invalid and of no force and effect.

On the other hand, the City of Parañaque (*respondent*) argues that PRA since its creation consistently represented itself to be a GOCC. PRA's very own charter (P.D. No. 1084) declared it to be a GOCC and that it has entered into several thousands of contracts where it represented itself to be a GOCC. In fact, PRA admitted in its original and amended petitions and pretrial brief filed with the RTC of Parañaque City that it was a GOCC.

Respondent further argues that PRA is a stock corporation with an authorized capital stock divided into 3 million no par value shares, out of which 2 million shares have been subscribed and fully paid up. Section 193 of the LGC of 1991 has withdrawn tax exemption privileges granted to or presently enjoyed by all persons, whether natural or juridical, including GOCCs.

Hence, since PRA is a GOCC, it is not exempt from the payment of real property tax.

THE COURT'S RULING

The Court finds merit in the petition.

Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a GOCC as follows:

SEC. 2. General Terms Defined. – x x x x

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x.

On the other hand, Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "instrumentality" as follows:

SEC. 2. General Terms Defined. -- x x x x

(10) Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate

powers, administering special funds, and enjoying operational autonomy, usually through a charter. x x x

From the above definitions, it is clear that a GOCC must be "organized as a stock or non-stock corporation" while an instrumentality is vested by law with corporate powers. Likewise, when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework.

When the law vests in a government instrumentality corporate powers, the instrumentality does not necessarily become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a GOCC. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines, and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. They are not, however, GOCCs in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.^[2]

Correlatively, Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x." Section 87 thereof defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." Further, Section 88 provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers."

Two requisites must concur before one may be classified as a stock corporation, namely: (1) that it has **capital stock** divided into shares; and (2) that it is **authorized to distribute** dividends and allotments of surplus and profits to its stockholders. If only one requisite is present, it cannot be properly classified as a stock corporation. As for non-stock corporations, they must have members and must not distribute any part of their income to said members.^[3]

In the case at bench, PRA is not a GOCC because it is neither a stock nor a non-stock corporation. It cannot be considered as a stock corporation because although it has a capital stock divided into no par value shares as provided in Section 7^[4] of P.D. No. 1084, it is not authorized to distribute dividends, surplus allotments or profits to stockholders. There is no provision whatsoever in P.D. No. 1084 or in any of the subsequent executive issuances pertaining to PRA, particularly, E.O. No. 525,^[5] E.O. No. 654^[6] and EO No. 798^[7] that authorizes PRA to distribute dividends,