

EN BANC

[G.R. No. 163072, April 02, 2009]

**MANILA INTERNATIONAL AIRPORT AUTHORITY, PETITIONER,
VS. CITY OF PASAY, SANGGUNIANG PANGLUNGSOD NG PASAY,
CITY MAYOR OF PASAY, CITY TREASURER OF PASAY, AND CITY
ASSESSOR OF PASAY, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

This is a petition for review on certiorari^[1] of the Decision^[2] dated 30 October 2002 and the Resolution dated 19 March 2004 of the Court of Appeals in CA-G.R. SP No. 67416.

The Facts

Petitioner Manila International Airport Authority (MIAA) operates and administers the Ninoy Aquino International Airport (NAIA) Complex under Executive Order No. 903 (EO 903),^[3] otherwise known as the Revised Charter of the Manila International Airport Authority. EO 903 was issued on 21 July 1983 by then President Ferdinand E. Marcos. Under Sections 3^[4] and 22^[5] of EO 903, approximately 600 hectares of land, including the runways, the airport tower, and other airport buildings, were transferred to MIAA. The NAIA Complex is located along the border between Pasay City and Parañaque City.

On 28 August 2001, MIAA received Final Notices of Real Property Tax Delinquency from the City of Pasay for the taxable years 1992 to 2001. MIAA's real property tax delinquency for its real properties located in NAIA Complex, Ninoy Aquino Avenue, Pasay City (NAIA Pasay properties) is tabulated as follows:

TAX DECLARATION	TAXABLE YEAR	TAX DUE	PENALTY	TOTAL
A7-183-08346	1997-2001	243,522,855.00	123,351,728.18	366,874,583.18
A7-183-05224	1992-2001	113,582,466.00	71,159,414.98	184,741,880.98
A7-191-00843	1992-2001	54,454,800.00	34,115,932.20	88,570,732.20
A7-191-00140	1992-2001	1,632,960.00	1,023,049.44	2,656,009.44
A7-191-00139	1992-2001	6,068,448.00	3,801,882.85	9,870,330.85
A7-183-05409	1992-2001	59,129,520.00	37,044,644.28	96,174,164.28
A7-183-	1992-	20,619,720.00	12,918,254.58	33,537,974.58

05410	2001			
A7-183-05413	1992-2001	7,908,240.00	4,954,512.36	12,862,752.36
A7-183-05412	1992-2001	18,441,981.20	11,553,901.13	29,995,882.33
A7-183-05411	1992-2001	109,946,736.00	68,881,630.13	178,828,366.13
A7-183-05245	1992-2001	7,440,000.00	4,661,160.00	12,101,160.00
GRAND TOTAL		P642,747,726.20	P373,466,110.13	P1,016,213,836.33

On 24 August 2001, the City of Pasay, through its City Treasurer, issued notices of levy and warrants of levy for the NAIA Pasay properties. MIAA received the notices and warrants of levy on 28 August 2001. Thereafter, the City Mayor of Pasay threatened to sell at public auction the NAIA Pasay properties if the delinquent real property taxes remain unpaid.

On 29 October 2001, MIAA filed with the Court of Appeals a petition for prohibition and injunction with prayer for preliminary injunction or temporary restraining order. The petition sought to enjoin the City of Pasay from imposing real property taxes on, levying against, and auctioning for public sale the NAIA Pasay properties.

On 30 October 2002, the Court of Appeals dismissed the petition and upheld the power of the City of Pasay to impose and collect realty taxes on the NAIA Pasay properties. MIAA filed a motion for reconsideration, which the Court of Appeals denied. Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals held that Sections 193 and 234 of Republic Act No. 7160 or the Local Government Code, which took effect on 1 January 1992, withdrew the exemption from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under Republic Act No. 6938, non-stock and non-profit hospitals and educational institutions. Since MIAA is a government-owned corporation, it follows that its tax exemption under Section 21 of EO 903 has been withdrawn upon the effectivity of the Local Government Code.

The Issue

The issue raised in this petition is whether the NAIA Pasay properties of MIAA are exempt from real property tax.

The Court's Ruling

The petition is meritorious.

In ruling that MIAA is not exempt from paying real property tax, the Court of Appeals cited Sections 193 and 234 of the Local Government Code which read:

SECTION 193. *Withdrawal of Tax Exemption Privileges.* - Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

SECTION 234. *Exemptions from Real Property Tax.* - The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environment protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.

The Court of Appeals held that as a government-owned corporation, MIAA's tax exemption under Section 21 of EO 903 has already been withdrawn upon the effectivity of the Local Government Code in 1992.

In *Manila International Airport Authority v. Court of Appeals*^[6] (2006 MIAA case), this Court already resolved the issue of whether the airport lands and buildings of MIAA are exempt from tax under existing laws. The 2006 MIAA case originated from a petition for prohibition and injunction which MIAA filed with the Court of Appeals, seeking to restrain the City of Parañaque from imposing real property tax on, levying against, and auctioning for public sale the airport lands and buildings located in Parañaque City. The only difference between the 2006 MIAA case and this case is that the 2006 MIAA case involved airport lands and buildings located in Parañaque City while this case involved airport lands and buildings located in Pasay City. The 2006 MIAA case and this case raised the same threshold issue: whether the local government can impose real property tax on the airport lands, consisting mostly of

the runways, as well as the airport buildings, of MIAA. In the 2006 MIAA case, this Court held:

To summarize, MIAA is not a government-owned or controlled corporation under Section 2(13) of the Introductory Provisions of the Administrative Code because it is not organized as a stock or non-stock corporation. Neither is MIAA a government-owned or controlled corporation under Section 16, Article XII of the 1987 Constitution because MIAA is not required to meet the test of economic viability. MIAA is a government instrumentality vested with corporate powers and performing essential public services pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. As a government instrumentality, MIAA is not subject to any kind of tax by local governments under Section 133(o) of the Local Government Code. The exception to the exemption in Section 234(a) does not apply to MIAA because MIAA is not a taxable entity under the Local Government Code. Such exception applies only if the beneficial use of real property owned by the Republic is given to a taxable entity.

Finally, the Airport Lands and Buildings of MIAA are properties devoted to public use and thus are properties of public dominion. *Properties of public dominion are owned by the State or the Republic.* Article 420 of the Civil Code provides:

Art. 420. The following things are *property of public dominion*:

(1) Those **intended for public use**, such as roads, canals, rivers, torrents, **ports** and bridges **constructed by the State**, banks, shores, roadsteads, and **others of similar character**;

(2) Those which belong to the State, without being for public use, and are **intended for some public service** or for the development of the national wealth.

The term "*ports x x x constructed by the State*" includes *airports* and seaports. The Airport Lands and Buildings of MIAA are intended for public use, and at the very least intended for public service. Whether intended for public use or public service, the Airport Lands and Buildings are *properties of public dominion*. As properties of public dominion, the Airport Lands and Buildings are owned by the Republic and thus exempt from real estate tax under Section 234(a) of the Local Government Code.

[7] (Emphasis in the original)

The definition of "*instrumentality*" under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987 uses the phrase "includes x x x government-owned or controlled corporations" which means that a government "instrumentality" may or may not be a "government-owned or controlled corporation." Obviously, the term government "instrumentality" is **broader** than the term "government-owned or controlled corporation." Section 2(10) provides:

SEC. 2. *General Terms Defined.*- 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. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.

The term "*government-owned or controlled corporation*" has a separate definition under Section 2(13)^[8] of the Introductory Provisions of the Administrative Code of 1987:

SEC. 2. *General Terms Defined.*- 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: *Provided*, That government-owned or controlled corporations may further be categorized by the department of Budget, the Civil Service Commission, and the Commission on Audit for the purpose of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

The fact that two terms have separate definitions means that while a government "instrumentality" may include a "government-owned or controlled corporation," there may be a government "instrumentality" that will not qualify as a "government-owned or controlled corporation."

A close scrutiny of the definition of "government-owned or controlled corporation" in Section 2(13) will show that MIAA would not fall under such definition. **MIAA is a government "instrumentality" that does not qualify as a "government-owned or controlled corporation."** As explained in the 2006 MIAA case:

A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares. x x x

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.*" MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

x x x

MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have