555 Phil. 661

THIRD DIVISION

[G.R. NO. 169836, July 31, 2007]

PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY, PETITIONER, VS. COURT OF APPEALS, OFFICE OF THE PRESIDENT, DEPARTMENT OF FINANCE AND THE CITY OF ILOILO, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

Assailed in this petition for review is the June 21, 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 81228, which held that petitioner Philippine Fisheries Development Authority (hereafter referred to as Authority) is liable to pay real property taxes on the land and buildings of the Iloilo Fishing Port Complex (IFPC) which are owned by the Republic of the Philippines but operated and governed by the Authority.

The facts are not disputed.

On August 11, 1976, then President Ferdinand E. Marcos issued Presidential Decree No. 977 (PD 977) creating the Authority and placing it under the direct control and supervision of the Secretary of Natural Resources. On February 8, 1982, Executive Order No. 772 (EO 772) was issued amending PD 977, and renaming the Authority as the now "Philippine Fisheries Development Authority," and attaching said agency to the Ministry of Natural Resources. Upon the effectivity of the Administrative Code (EO 292), the Authority became an attached agency of the Department of Agriculture.[2]

Meanwhile, beginning October 31, 1981, the then Ministry of Public Works and Highways reclaimed from the sea a 21-hectare parcel of land in Barangay Tanza, Iloilo City, and constructed thereon the IFPC, consisting of breakwater, a landing quay, a refrigeration building, a market hall, a municipal shed, an administration building, a water and fuel oil supply system and other port related facilities and machineries. Upon its completion, the Ministry of Public Works and Highways turned over IFPC to the Authority, pursuant to Section 11 of PD 977, which places fishing port complexes and related facilities under the governance and operation of the Authority. Notwithstanding said turn over, title to the land and buildings of the IFPC remained with the Republic.

The Authority thereafter leased portions of IFPC to private firms and individuals engaged in fishing related businesses.

Sometime in May 1988, the City of Iloilo assessed the *entire* IFPC for real property taxes. The assessment remained unpaid until the alleged total tax delinquency of the Authority for the fiscal years 1988 and 1989 amounted to P5,057,349.67, inclusive of penalties and interests. To satisfy the tax delinquency, the City of Iloilo scheduled on August 30, 1990, the sale at public auction of the IFPC.

The Authority filed an injunction case with the Regional Trial Court. At the pre-trial, the parties agreed to avail of administrative proceedings, *i.e.,* for the Authority to file a claim for tax exemption with the Iloilo City Assessor's Office. The latter, however, denied the claim for exemption, hence, the Authority elevated the case to the Department of Finance (DOF).

In its letter-decision[3] dated March 6, 1992, the DOF ruled that the Authority is liable to pay real property taxes to the City of Iloilo because it enjoys the beneficial use of the IFPC. The DOF added, however, that in satisfying the amount of the unpaid real property taxes, the property that is owned by the Authority shall be auctioned, and not the IFPC, which is a property of the Republic.[4]

The Authority filed a petition before the Office of the President but it was dismissed.[5] It also denied the motion for reconsideration filed by the Authority.[6]

On petition with the Court of Appeals, the latter affirmed the decision of the Office of the President. It opined, however, that the IFPC may be sold at public auction to satisfy the tax delinquency of the Authority.[7] The dispositive portion thereof, reads:

> WHEREFORE, premises considered, the instant Petition for Review is DENIED, and accordingly the June 30, 2003 Decision and December 3, 2003 Order of the Office of the President are hereby AFFIRMED.
>
> SO ORDERED.[8]

Hence, this petition.

The issues are as follows: Is the Authority liable to pay real property tax to the City of Iloilo? If the answer is in the affirmative, may the IFPC be sold at public auction to satisfy the tax delinquency?

To resolve said issues, the Court has to determine (1) whether the Authority is a government owned or controlled corporation (GOCC) or an instrumentality of the national government; and (2) whether the IFPC is a property of public dominion.

The Court rules that the Authority is not a GOCC but an instrumentality of the national government which is generally exempt from payment of real property tax. However, said exemption does not apply to the portions of the IFPC which the Authority leased to private entities. With respect to these properties, the Authority is liable to pay real property tax. Nonetheless, the IFPC, being a property of public dominion cannot be sold at public auction to satisfy the tax delinquency.

In *Manila International Airport Authority (MIAA) v. Court of Appeals*,[9] the Court made a distinction between a GOCC and an instrumentality. Thus:

> Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a government-owned or controlled corporation as follows:

> 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: x x x (Emphasis supplied)

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 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." **<u>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.</u>**

<u>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.</u>" A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.

Section 88 of the Corporation Code 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." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation.[10] (Emphasis supplied)

Thus, for an entity to be considered as a GOCC, it must either be organized as a stock or non-stock corporation. 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.[11]

On the basis of the parameters set in the *MIAA* case, the Authority should be classified as an instrumentality of the national government. As such, it is generally exempt from payment of real property tax, except those portions which have been leased to private entities.

In the *MIAA* case, petitioner Philippine Fisheries Development Authority was cited as among the instrumentalities of the national government. Thus –

> **Some of the national government instrumentalities vested by law with juridical personalities are:** Bangko Sentral ng Pilipinas, Philippine Rice Research Institute, Laguna Lake Development Authority, ***Fisheries Development Authority***, Bases Conversion Development Authority, Philippine Ports Authority, Cagayan de Oro Port Authority, San Fernando Port Authority, Cebu Port Authority, and Philippine National Railways.

Indeed, the Authority is not a GOCC but an instrumentality of the government. The Authority has a capital stock but it is not divided into shares of stocks.[12] Also, it has no stockholders or voting shares. Hence, it is not a stock corporation. Neither it is a non-stock corporation because it has no members.

The Authority is actually a national government instrumentality which is defined as an 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.[13] When the law vests in a government instrumentality corporate powers, the instrumentality does not 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.

Thus, the Authority which is tasked with the special public function to carry out the government's policy "to promote the development of the country's fishing industry and improve the efficiency in handling, preserving, marketing, and distribution of fish and other aquatic products," exercises the governmental powers of eminent domain,[14] and the power to levy fees and charges.[15] At the same time, the Authority exercises "the general corporate powers conferred by laws upon private and government-owned or controlled corporations."[16]

The MIAA case held[17] that unlike GOCCs, **instrumentalities of the national government**, like MIAA, are exempt from local taxes pursuant to Section 133(o) of the Local Government Code. This exemption, however, admits of an *exception* with respect to real property taxes. Applying Section 234(a) of the Local Government Code, the Court ruled that when an instrumentality of the national government grants to a taxable person the beneficial use of a real property owned by the Republic, said instrumentality becomes liable to pay real property tax. Thus, while MIAA was held to be an instrumentality of the national government which is