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[G.R. NO. 166429, February 01, 2006]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY EXECUTIVE SECRETARY EDUARDO R. ERMITA, THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), AND THE MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), PETITIONERS, VS. HON. HENRICK F. GINGOYON, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 117, PASAY CITY AND PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., RESPONDENTS.

R E S O L U T I ON

TINGA, J.:

This Resolution treats of the following motions:

(a) MOTION FOR PARTIAL RECONSIDERATION, dated 2 January 2006 of the decision of 19 December 2005 filed by the Office of the Solicitor General for petitioners;

(b) MOTION FOR LEAVE (To File Motion for Partial Reconsideration-in-Intervention), dated 5 January 2006 filed by counsel for petitioner-intervenor Asahikosan Corporation praying that the attached Motion for Partial Reconsideration and Intervention dated January 5, 2006 be admitted;

(b-1) Aforesaid MOTION FOR PARTIAL RECONSIDERATION-IN-INTERVENTION, dated January 5, 2006;

(c) MOTION FOR LEAVE (To File Motion for Partial Reconsideration-in-Intervention), dated 5 January 2006 filed by counsel for petitioner-intervenor Takenaka Corp.;

(c-1) Aforesaid MOTION FOR PARTIAL RECONSIDERATION-IN-INTERVENTION, dated 5 January 2006;

(d) MOTION FOR INTERVENTION – and – MOTION TO ADMIT THE ATTACHED MOTION FOR RECONSIDERATION-IN-INTERVENTION (of the Decision dated 19 December 2005), dated 6 January 2006 filed by counsel for movant-in-intervention Rep. Salacnib F. Baterina; and

(d-1) Aforesaid MOTION FOR RECONSIDERATION-IN-INTERVENTION (of the Decision dated 19 December 2005) dated 6 January 2006.

We first dispose of the Motion for Partial Reconsideration filed by petitioner Republic of the Philippines (Government). It propounds several reasons for the reconsideration of the Court's Decision dated 19 December 2005. Some of the arguments merely rehash points raised in the petition and already dispensed with exhaustively in the Decision. This applies in particular to the argument that Republic Act No. 8974 does not apply to the expropriation of the Ninoy Aquino International Airport Passenger Terminal 3 (NAIA 3), which is not a right-of-way, site or location. This Resolution will instead focus as it should on the new arguments, as well as the perspectives that were glossed over in the Decision.

On the newly raised arguments, there are considerable factual elements brought up by the Government. In the main, the Government devotes significant effort in diminishing PIATCO's right to just compensation as builder or owner of the NAIA 3. Particularly brought to fore are the claims relating to two entities, Takenaka Corporation (Takenaka) and Asahikosan (Asahikosan) Corporation, who allegedly claim "significant liens" on the terminal, arising from their alleged unpaid bills by virtue of an Engineering, Procurement and Construction Contract they had with PIATCO. On account of these adverse claims, the Government now claims as controvertible the question of who is the builder of the NAIA 3.

The Government likewise claims as "indispensable" the need of Takenaka and Asahikosan to provide the necessary technical services and supplies so that all the various systems and equipment will be ready and operational in a manner that allows the Government to possess a fully-capable international airport terminal.

The Government's concerns that impelled the filing of its Motion for Reconsideration are summed up in the following passage therein: "The situation the Republic now faces is that if any part of its Php3,002,125,000 deposit is released directly to PIATCO, and PIATCO, as in the past, does not wish to settle its obligations directly to Takenaka, Asahikosan and Fraport, the Republic may end up having expropriated a terminal with liens and claims far in excess of its actual value, the liens remain unextinguished, and PIATCO on the other hand, ends up with the Php3,0002,125,000 in its pockets gratuitously."

The Court is not wont to reverse its previous rulings based on factual premises that are not yet conclusive or judicially established. Certainly, whatever claims or purported liens Takenaka and Asahikosan against PIATCO or over the NAIA 3 have not been judicially established. Neither Takenaka nor Asahikosan are parties to the present action, and thus have not presented any claim which could be acted upon by this Court. The earlier adjudications in *Agan v. PIATCO* made no mention of either Takenaka or Asahikosan, and certainly made no declaration as to their rights to any form of compensation. If there is indeed any right to remuneration due to these two entities arising from NAIA 3, they have not yet been established by the courts of the land.

It must be emphasized that the conclusive ruling in the Resolution dated 21 January 2004 in *Agan v. PIATCO* (Agan 2004) is that PIATCO, as builder of the facilities, must first be justly compensated in accordance with law and equity for the Government to take over the facilities. It is on that premise that the Court adjudicated this case in its 19 December 2005 Decision.

While the Government refers to a judgment rendered by a London court in favor of

Takenaka and Asahikosan against PIATCO in the amount of US$82 Million, it should be noted that this foreign judgment is not yet binding on Philippine courts. It is entrenched in Section 48, Rule 39 of the Rules of Civil Procedure that a foreign judgment on the mere strength of its promulgation is not yet conclusive, as it can be annulled on the grounds of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.[1] It is likewise recognized in Philippine jurisprudence and international law that a foreign judgment may be barred from recognition if it runs counter to public policy.[2]

Assuming that PIATCO indeed has corresponding obligations to other parties relating to NAIA 3, the Court does not see how such obligations, yet unproven, could serve to overturn the Decision mandating that the Government first pay PIATCO the amount of 3.02 Million Pesos before it may acquire physical possession over the facilities. This directive enjoining payment is in accordance with Republic Act No. 8974, and under the mechanism established by the law the amount to be initially paid is that which is provisionally determined as just compensation. The provisional character of this payment means that it is not yet final, yet sufficient under the law to entitle the Government to the writ of possession over the expropriated property.

There are other judicial avenues outside of this Motion for Reconsideration wherein all other claims relating to the airport facilities may be ventilated, proved and determined. Since such claims involve factual issues, they must first be established by the appropriate trier of facts before they can be accorded any respect by or binding force on this Court.

The other grounds raised in the Motion for Reconsideration are similarly flawed.

The Government argues that the 2004 *Resolution* in *Agan* did not strictly require the payment of just compensation before the Government can take over the airport facilities. Reliance is placed on the use by the Court of the word "for", instead of "before." Yet the clear intent of that ruling is to mandate payment of just compensation as a condition precedent before the Government could acquire physical possession over the airport facilities. The qualification was made out of due consideration of the fact that PIATCO had already constructed the facilities at its own expense when its contracts with the Government were nullified.

Even assuming that "for" may be construed as not necessarily meaning "prior to", it cannot be denied that Rep. Act No. 8974 does require prior payment to the owner before the Government may acquire possession over the property to be expropriated. Even Rule 67 requires the disbursement of money by way of deposit as a condition precedent prior to entitlement to a writ of possession. As the instant case is one for expropriation, our pronouncement is worthily consistent with the principles and laws that govern expropriation cases.

The Government likewise adopts the position raised by the Dissenting Opinion of Mr. Justice Corona that Rep. Act No. 8974 could not repeal Rule 67 of the Rules of Court, since the deposit of the assessed value is a procedural matter. It adds that otherwise, Rep. Act No. 8974 is unconstitutional.

Of course it is too late in the day to question the constitutionality of Rep. Act No. 8974, an issue that was not raised in the petition. Still, this point was already

addressed in the Decision, which noted that the determination of the appropriate standards for just compensation is a substantive matter well within the province of the legislature to fix.[3] As held in *Fabian v. Desierto*, if the rule takes away a vested right, it is not procedural,[4] and so the converse certainly holds that if the rule or provision creates a right, it should be properly appreciated as substantive in nature. Indubitably, a matter is substantive when it involves the creation of rights to be enjoyed by the owner of property to be expropriated. The right of the owner to receive just compensation prior to acquisition of possession by the State of the property is a proprietary right, appropriately classified as a substantive matter and, thus, within the sole province of the legislature to legislate on.

It is possible for a substantive matter to be nonetheless embodied in a rule of procedure[5], and to a certain extent, Rule 67 does contain matters of substance. Yet the absorption of the substantive point into a procedural rule does not prevent the substantive right from being superseded or amended by statute, for the creation of property rights is a matter for the legislature to enact on, and not for the courts to decide upon. Indeed, if the position of the Government is sustained, it could very well lead to the absurd situation wherein the judicial branch of government may shield laws with the veneer of irrepealability simply by absorbing the provisions of law into the rules of procedure. When the 1987 Constitution restored to the judicial branch of government the sole prerogative to promulgate rules concerning pleading, practice and procedure, it should be understood that such rules necessarily pertain to points of procedure, and not points of substantive law.

The Government also exhaustively cites the Dissenting Opinion in arguing that the application of Rule 67 would violate the 2004 Resolution of the Court in *Agan*. It claims that it is not possible to determine with reasonable certainty the proper amount of just compensation to be paid unless it first acquires possession of the NAIA 3. Yet what the Decision mandated to be paid to PIATCO before the writ of possession could issue is merely the provisionally determined amount of just compensation which, under the auspices of Rep. Act No. 8974, constitutes the proffered value as submitted by the Government itself. There is thus no need for the determination with reasonable certainty of the final amount of just compensation before the writ of possession may be issued. Specifically in this case, only the payment or release by the Government of the proffered value need be made to trigger the operability of the writ of possession.

Admittedly, the 2004 Resolution in *Agan* could be construed as mandating the full payment of the final amount of just compensation before the Government may be permitted to take over the NAIA 3. However, the Decision ultimately rejected such a construction, acknowledging the public good that would result from the immediate operation of the NAIA 3. Instead, the Decision adopted an interpretation which is in consonance with Rep. Act No. 8974 and with equitable standards as well, that allowed the Government to take possession of the NAIA 3 after payment of the proffered value of the facilities to PIATCO. Such a reading is substantially compliant with the pronouncement in the 2004 Agan Resolution, and is in accord with law and equity. In contrast, the Government's position, hewing to the strict application of Rule 67, would permit the Government to acquire possession over the NAIA 3 and implement its operation without having to pay PIATCO a single centavo, a situation that is obviously unfair. Whatever animosity the Government may have towards PIATCO does not acquit it from settling its obligations to the latter, particularly those

which had already been previously affirmed by this Court.

We now turn to the three (3) motions for intervention all of which were filed after the promulgation of the Court's Decision. All three (3) motions must be denied. Under Section 2, Rule 19 of the 1997 Rules of Civil Procedure the motion to intervene may be filed at any time before rendition of judgment by the court.[6] Since this case originated from an original action filed before this Court, the appropriate time to file the motions-in-intervention in this case if ever was before and not after resolution of this case. To allow intervention at this juncture would be highly irregular. It is extremely improbable that the movants were unaware of the pendency of the present case before the Court, and indeed none of them allege such lack of knowledge.

Takenaka and Asahikosan rely on *Mago v. Court of Appeals*[7] wherein the Court took the extraordinary step of allowing the motion for intervention even after the challenged order of the trial court had already become final.[8] Yet it was apparent in *Mago* that the movants therein were not impleaded despite being indispensable parties, and had not even known of the existence of the case before the trial court[9], and the effect of the final order was to deprive the movants of their land.[10] In this case, neither Takenaka nor Asahikosan stand to be dispossessed by reason of the Court's Decision. There is no palpable due process violation that would militate the suspension of the procedural rule.

Moreover, the requisite legal interest required of a party-in-intervention has not been established so as to warrant the extra-ordinary step of allowing intervention at this late stage. As earlier noted, the claims of Takenaka and Asahikosan have not been judicially proved or conclusively established as fact by any trier of facts in this jurisdiction. Certainly, they could not be considered as indispensable parties to the petition for certiorari. In the case of Representative Baterina, he invokes his prerogative as legislator to curtail the disbursement without appropriation of public funds to compensate PIATCO, as well as that as a taxpayer, as the basis of his legal standing to intervene. However, it should be noted that the amount which the Court directed to be paid by the Government to PIATCO was derived from the money deposited by the Manila International Airport Authority, an agency which enjoys corporate autonomy and possesses a legal personality separate and distinct from those of the National Government and agencies thereof whose budgets have to be approved by Congress.

It is also observed that the interests of the movants-in-intervention may be duly litigated in proceedings which are extant before lower courts. There is no compelling reason to disregard the established rules and permit the interventions belatedly filed after the promulgation of the Court's Decision.

WHEREFORE, the Motion for Partial Reconsideration of the petitioners is DENIED WITH FINALITY.

The motions respectively filed by Takenaka Corporation, Asahikosan Corporation and Representative Salacnib Baterina are DENIED.

SO ORDERED.