

EN BANC

[G.R. NO. 155650, July 20, 2006]

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

D E C I S I O N

CARPIO, J.:

The Antecedents

Petitioner Manila International Airport Authority (MIAA) operates the Ninoy Aquino International Airport (NAIA) Complex in Parañaque City under Executive Order No. 903, otherwise known as the *Revised Charter of the Manila International Airport Authority* ("MIAA Charter"). Executive Order No. 903 was issued on 21 July 1983 by then President Ferdinand E. Marcos. Subsequently, Executive Order Nos. 909^[1] and 298^[2] amended the MIAA Charter.

As operator of the international airport, MIAA administers the land, improvements and equipment within the NAIA Complex. The MIAA Charter transferred to MIAA approximately 600 hectares of land,^[3] including the runways and buildings ("Airport Lands and Buildings") then under the Bureau of Air Transportation.^[4] The MIAA Charter further provides that no portion of the land transferred to MIAA shall be disposed of through sale or any other mode unless specifically approved by the President of the Philippines.^[5]

On 21 March 1997, the Office of the Government Corporate Counsel (OGCC) issued Opinion No. 061. The OGCC opined that the Local Government Code of 1991 withdrew the exemption from real estate tax granted to MIAA under Section 21 of the MIAA Charter. Thus, MIAA negotiated with respondent City of Parañaque to pay the real estate tax imposed by the City. MIAA then paid some of the real estate tax already due.

On 28 June 2001, MIAA received Final Notices of Real Estate Tax Delinquency from the City of Parañaque for the taxable years 1992 to 2001. MIAA's real estate tax delinquency is broken down as follows:

TAX DECLARATION	TAXABLE YEAR	TAX DUE	PENALTY	TOTAL
E-016-01370	1992-2001	19,558,160.00	11,201,083.20	30,789,243.20

E-016-01374	1992-2001	111,689,424.90	68,149,479.59	179,838,904.49
E-016-01375	1992-2001	20,276,058.00	12,371,832.00	32,647,890.00
E-016-01376	1992-2001	58,144,028.00	35,477,712.00	93,621,740.00
E-016-01377	1992-2001	18,134,614.65	11,065,188.59	29,199,803.24
E-016-01378	1992-2001	111,107,950.40	67,794,681.59	178,902,631.99
E-016-01379	1992-2001	4,322,340.00	2,637,360.00	6,959,700.00
E-016-01380	1992-2001	7,776,436.00	4,744,944.00	12,521,380.00
*E-016-013-85	1998-2001	6,444,810.00	2,900,164.50	9,344,974.50
*E-016-01387	1998-2001	34,876,800.00	5,694,560.00	50,571,360.00
*E-016-01396	1998-2001	75,240.00	33,858.00	109,098.00
GRAND TOTAL		P392,435,861.95	P232,070,863.47	P624,506,725.42

1992-1997 RPT was paid on Dec. 24, 1997 as per O.R.#9476102 for P4,207,028.75

#9476101 for P28,676,480.00

#9476103 for P49,115.00^[6]

On 17 July 2001, the City of Parañaque, through its City Treasurer, issued notices of levy and warrants of levy on the Airport Lands and Buildings. The Mayor of the City of Parañaque threatened to sell at public auction the Airport Lands and Buildings should MIAA fail to pay the real estate tax delinquency. MIAA thus sought a clarification of OGCC Opinion No. 061.

On 9 August 2001, the OGCC issued Opinion No. 147 clarifying OGCC Opinion No. 061. The OGCC pointed out that Section 206 of the Local Government Code requires persons exempt from real estate tax to show proof of exemption. The OGCC opined that Section 21 of the MIAA Charter is the proof that MIAA is exempt from real estate tax.

On 1 October 2001, MIAA filed with the Court of Appeals an original petition for prohibition and injunction, with prayer for preliminary injunction or temporary restraining order. The petition sought to restrain the City of Parañaque from imposing real estate tax on, levying against, and auctioning for public sale the Airport Lands and Buildings. The petition was docketed as CA-G.R. SP No. 66878.

On 5 October 2001, the Court of Appeals dismissed the petition because MIAA filed it beyond the 60-day reglementary period. The Court of Appeals also denied on 27 September 2002 MIAA's motion for reconsideration and supplemental motion for reconsideration. Hence, MIAA filed on 5 December 2002 the present petition for review.^[7]

Meanwhile, in January 2003, the City of Parañaque posted notices of auction sale at the Barangay Halls of Barangays Vitalez, Sto. Niño, and Tambo, Parañaque City; in the public market of Barangay La Huerta; and in the main lobby of the Parañaque City Hall. The City of Parañaque published the notices in the 3 and 10 January 2003 issues of the *Philippine Daily Inquirer*, a newspaper of general circulation in the Philippines. The notices announced the public auction sale of the Airport Lands and Buildings to the highest bidder on 7 February 2003, 10:00 a.m., at the Legislative Session Hall Building of Parañaque City.

A day before the public auction, or on 6 February 2003, at 5:10 p.m., MIAA filed before this Court an Urgent Ex-Parte and Reiteratory Motion for the Issuance of a Temporary Restraining Order. The motion sought to restrain respondents - the City of Parañaque, City Mayor of Parañaque, *Sangguniang Panglungsod* ng Parañaque, City Treasurer of Parañaque, and the City Assessor of Parañaque ("respondents") - from auctioning the Airport Lands and Buildings.

On 7 February 2003, this Court issued a temporary restraining order (TRO) effective immediately. The Court ordered respondents to cease and desist from selling at public auction the Airport Lands and Buildings. Respondents received the TRO on the same day that the Court issued it. However, respondents received the TRO only at 1:25 p.m. or three hours after the conclusion of the public auction.

On 10 February 2003, this Court issued a Resolution confirming *nunc pro tunc* the TRO.

On 29 March 2005, the Court heard the parties in oral arguments. In compliance with the directive issued during the hearing, MIAA, respondent City of Parañaque, and the Solicitor General subsequently submitted their respective Memoranda.

MIAA admits that the MIAA Charter has placed the title to the Airport Lands and Buildings in the name of MIAA. However, MIAA points out that it cannot claim ownership over these properties since the real owner of the Airport Lands and Buildings is the Republic of the Philippines. The MIAA Charter mandates MIAA to devote the Airport Lands and Buildings for the benefit of the general public. Since the Airport Lands and Buildings are devoted to public use and public service, the ownership of these properties remains with the State. The Airport Lands and Buildings are thus inalienable and are not subject to real estate tax by local governments.

MIAA also points out that Section 21 of the MIAA Charter specifically exempts MIAA from the payment of real estate tax. MIAA insists that it is also exempt from real estate tax under Section 234 of the Local Government Code because the Airport Lands and Buildings are owned by the Republic. To justify the exemption, MIAA invokes the principle that the government cannot tax itself. MIAA points out that the reason for tax exemption of public property is that its taxation would not inure to any public advantage, since in such a case the tax debtor is also the tax creditor.

Respondents invoke Section 193 of the Local Government Code, which **expressly withdrew** the tax exemption privileges of "**government-owned and-controlled corporations**" upon the effectivity of the Local Government Code. Respondents also argue that a basic rule of statutory construction is that the express mention of one person, thing, or act excludes all others. An international airport is not among the

exceptions mentioned in Section 193 of the Local Government Code. Thus, respondents assert that MIAA cannot claim that the Airport Lands and Buildings are exempt from real estate tax.

Respondents also cite the ruling of this Court in ***Mactan International Airport v. Marcos***^[8] where we held that the Local Government Code has withdrawn the exemption from real estate tax granted to international airports. Respondents further argue that since MIAA has already paid some of the real estate tax assessments, it is now estopped from claiming that the Airport Lands and Buildings are exempt from real estate tax.

The Issue

This petition raises the threshold issue of whether the Airport Lands and Buildings of MIAA are exempt from real estate tax under existing laws. If so exempt, then the real estate tax assessments issued by the City of Parañaque, and all proceedings taken pursuant to such assessments, are void. In such event, the other issues raised in this petition become moot.

The Court's Ruling

We rule that MIAA's Airport Lands and Buildings are exempt from real estate tax imposed by local governments.

First, MIAA is not a government-owned or controlled corporation but an **instrumentality** of the National Government and thus exempt from local taxation. Second, the real properties of MIAA are **owned by the Republic** of the Philippines and thus exempt from real estate tax.

1. MIAA is Not a Government-Owned or Controlled Corporation

Respondents argue that MIAA, being a government-owned or controlled corporation, is not exempt from real estate tax. Respondents claim that the deletion of the phrase "any government-owned or controlled so exempt by its charter" in Section 234(e) of the Local Government Code withdrew the real estate tax exemption of government-owned or controlled corporations. The deleted phrase appeared in Section 40(a) of the 1974 Real Property Tax Code enumerating the entities exempt from real estate tax.

There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax. However, MIAA is not a government-owned or controlled corporation. 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 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. Section 10 of the MIAA Charter^[9] provides:

SECTION 10. *Capital.* - The capital of the Authority to be contributed by the National Government shall be increased from Two and One-half Billion (P2,500,000,000.00) Pesos to Ten Billion (P10,000,000,000.00) Pesos to consist of:

(a) The value of fixed assets including airport facilities, runways and equipment and such other properties, movable and immovable[,] which may be contributed by the National Government or transferred by it from any of its agencies, the valuation of which shall be determined jointly with the Department of Budget and Management and the Commission on Audit on the date of such contribution or transfer after making due allowances for depreciation and other deductions taking into account the loans and other liabilities of the Authority at the time of the takeover of the assets and other properties;

(b) That the amount of P605 million as of December 31, 1986 representing about seventy percentum (70%) of the unremitted share of the National Government from 1983 to 1986 to be remitted to the National Treasury as provided for in Section 11 of E. O. No. 903 as amended, shall be converted into the equity of the National Government in the Authority. Thereafter, the Government contribution to the capital of the Authority shall be provided in the General Appropriations Act.

Clearly, under its Charter, MIAA does not have capital stock that is divided into shares.

Section 3 of the Corporation Code^[10] 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.

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 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.^[11] This prevents MIAA from qualifying as a non-stock corporation.

Section 88 of the Corporation Code provides that non-stock corporations are