

EN BANC

[G.R. No. 133250, November 11, 2003]

**FRANCISCO I. CHAVEZ, PETITIONER, VS. PUBLIC ESTATES
AUTHORITY AND AMARI COASTAL BAY DEVELOPMENT
CORPORATION, RESPONDENTS.**

RESOLUTION

CARPIO, J.:

This Court is asked to legitimize a government contract that conveyed to a private entity 157.84 hectares of reclaimed public lands along Roxas Boulevard in Metro Manila at the ***negotiated price of P1,200 per square meter***. However, published reports place the market price of land near that area at that time at a high of P90,000 per square meter.^[1] The difference in price is a staggering ***P140.16 billion***, equivalent to the budget of the entire Judiciary for seventeen years and more than three times the Marcos Swiss deposits that this Court forfeited in favor of the government.

Many worry to death that the private investors will lose their investments, at most not more than one-half billion pesos in legitimate expenses,^[2] if this Court voids the contract. No one seems to worry about the more than tens of billion pesos that the hapless Filipino people will lose if the contract is allowed to stand. There are those who question these figures, but the questions arise only because the private entity somehow managed to inveigle the government to sell the reclaimed lands without public bidding in patent violation of the Government Auditing Code.

Fortunately for the Filipino people, two Senate Committees, the Senate Blue Ribbon Committee and the Committee on Accountability of Public Officers, conducted extensive public hearings to determine the actual market value of the public lands sold to the private entity. **The Senate Committees established the clear, indisputable and unalterable fact that the sale of the public lands is grossly and unconscionably undervalued based on official documents submitted by the proper government agencies during the Senate investigation.** We quote the joint report of these two Senate Committees, Senate Committee Report No. 560, as **approved by the Senate in plenary session** on 27 September 1997:^[3]

The Consideration for the Property

PEA, under the JVA, obligated itself to convey title and possession over the Property, consisting of approximately One Million Five Hundred Seventy Eight Thousand Four Hundred Forty One (1,578,441) Square Meters for a total consideration of One Billion Eight Hundred Ninety Four Million One Hundred Twenty Nine Thousand Two Hundred (P1,894,129,200.00) Pesos, or a price of One Thousand Two Hundred (P1,200.00) Pesos per square meter.

According to the zonal valuation of the Bureau of Internal Revenue, the value of the Property is Seven Thousand Eight Hundred Pesos (P7,800.00) per square meter. The Municipal Assessor of Parañaque, Metro Manila, where the Property is located, pegs the market value of the Property at Six Thousand Pesos (P6,000.00) per square meter. Based on these alone, the price at which PEA agreed to convey the property is a pittance. And PEA cannot claim ignorance of these valuations, at least not those of the Municipal Assessors' office, since it has been trying to convince the Office of the Municipal Assessor of Parañaque to reduce the valuation of various reclaimed properties thereat in order for PEA to save on accrued real property taxes.

PEA's justification for the purchase price are various appraisal reports, particularly the following:

- (1) An appraisal by Vic T. Salinas Realty and Consultancy Services concluding that the Property is worth P500.00 per square meter for the smallest island and P750.00 per square meter for the two other islands, or a total of P1,170,000.00 as of 22 February 1995;
- (2) An appraisal by Valencia Appraisal Corporation concluding that the Property is worth P850 per square meter for Island I, P800 per square meter for Island II and P600 per square meter for the smallest island, or a total of P1,289,732,000, also as of 22 February 1995; and
- (3) An Appraisal by Asian Appraisal Company, Inc. (AACI), stating that the Property is worth approximately P1,000 per square meter for Island I, P950 per square meter for Island II and P600 per square meter for Island III, or a total of P1,518,805,000 as of 27 February 1995.

The credibility of the foregoing appraisals, however, are [sic] greatly impaired by a subsequent appraisal report of AACI stating that the property is worth P4,500.00 per square meter as of 26 March 1996. Such discrepancies in the appraised value as appearing in two different reports by the same appraisal company submitted within a span of one year render all such appraisal reports unworthy of even the slightest consideration. **Furthermore, the appraisal report submitted by the Commission on Audit estimates the value of the Property to be approximately P33,673,000,000.00, or P21,333.07 per square meter.**

There were also other offers made for the property from other parties which indicate that the Property has been undervalued by PEA. For instance, on 06 March 1995, Mr. Young D. See, President of Saeil Heavy Industries Co., Ltd., (South Korea), offered to buy the property at P1,400.00 and expressed its willingness to issue a stand-by letter of credit worth \$10 million. PEA did not consider this offer and instead finalized the JVA with AMARI. Other offers were made on various dates

by Aspac Management and Development Group Inc. (for P1,600 per square meter), Universal Dragon Corporation (for P1,600 per square meter), Cleene Far East Manila Incorporated and Hyosan Prime Construction Co. Ltd. which had prepared an Irrevocable Clean Letter of Credit for P100,000,000.

In addition, AMARI agreed to pay huge commissions and bonuses to various persons, amounting to P1,596,863,050.00 (P1,754,707,150.00 if the bonus is included), as will be discussed fully below, which indicate that AMARI itself believed the market value to be much higher than the agreed purchase price. If such commissions are added to the purchase price, AMARI's acquisition cost for the Property will add-up to P3,490,992,250.00 (excluding the bonus). If AMARI was willing to pay such amount for the Property, why was PEA willing to sell for only P1,894,129,200.00, making the Government stand to lose approximately P1,596,863,050.00?

x x x

Even if we simply assume that the market value of the Property is half of the market value fixed by the Municipal Assessors Office of Parañaque for lands along Roxas Boulevard, or P3,000.00 per square meter, the Government now stands to lose approximately P2,841,193,800.00. But an even better assumption would be that the value of the Property is P4,500.00 per square meter, as per the AACI appraisal report dated 26 March 1996, since this is the valuation used to justify the issuance of P4 billion worth of shares of stock of Centennial City Inc. (CCI) in exchange for 4,800,000 AMARI shares with a total par value of only P480,000,000.00. With such valuation, the Government's loss will amount to P5,208,855,300.00.

Clearly, the purchase price agreed to by PEA is way below the actual value of the Property, thereby subjecting the Government to grave injury and enabling AMARI to enjoy tremendous benefit and advantage. (Emphasis supplied)

The Senate Committee Report No. 560 attached the following official documents from the **Bureau of Internal Revenue**, the **Municipal Assessor** of Parañaque, Metro Manila, and the **Commission on Audit** :

1. Annex "M," Certified True Copy of **BIR Zonal Valuations** as certified by Antonio F. Montemayor, Revenue District Officer. This official document fixed the market value of the 157.84 hectares at **P7,800 per square meter**.
2. Annex "N," Certification of Soledad S. Medina-Cue, **Municipal Assessor**, Parañaque, dated 10 December 1996. This official document fixed the market value at **P6,000 per square meter**.
3. Exhibit "1-Engr. Santiago," the **Appraisal Report of the Commission on Audit**. This official document fixed the market value at **P21,333.07 per square meter**.

Whether based on the official appraisal of the BIR, the Municipal Assessor or the Commission on Audit, the P1,200 per square meter purchase price, or a total of P1.894 billion for the 157.84 hectares of government lands, is grossly and unconscionably undervalued. The authoritative appraisal, of course, is that of the Commission on Audit which valued the 157.84 hectares at P21,333.07 per square meter or a total of P33.673 billion. **Thus, based on the official appraisal of the Commission on Audit, the independent constitutional body that safeguards government assets, the actual loss to the Filipino people is a shocking P31.779 billion.**

This gargantuan monetary anomaly, aptly earning the epithet "Grandmother of All Scams,"^[4] is not the major defect of this government contract. The major flaw is not even the **P1.754 billion in commissions** the Senate Committees discovered the private entity paid to various persons to secure the contract,^[5] described in Senate Report No. 560 as follows:

A Letter-Agreement dated 09 June 1995 signed by Messrs. Premchai Karnasuta and Emmanuel Sy for and in behalf of AMARI, on the one hand, and stockholders of AMARI namely, Mr. Chin San Cordova (a.k.a. Benito Co) and Mr. Chua Hun Siong (a.k.a. Frank Chua), on the other, sets forth various payments **AMARI paid or agreed to pay the aforesaid stockholders by way of fees for "professional efforts and services in successfully negotiating and securing for AMARI the Joint Venture Agreement"**, as follows:

Form of Payment Paid/Payable On Amount

<i>Form of Payment</i>	<i>Paid/Payable On Amount</i>	<i>Amount</i>
Manager's Checks	28 April 1995	P 400,000,000.00
Manager's Checks	Upon signing of letter	262,500,000.00
10 Post Dated Checks (PDCs)	60 days from date of letter	127,000,000.00
24 PDCs	31 Aug. '95 to 31 Jan. '98	150,000,000.00
48 PDCs	Monthly, over a 12-month pd. from date of letter	357,363,050.00
Cash bonus	When sale of land begins	not exceeding 157,844,100.00
Developed land from Project	Upon completion of each phase	Costing 300,000,000.00
TOTAL		P1,754,707,150.00 =====

Mr. Luis Benitez of SGV, the external auditors of AMARI, testified that said Letter-Agreement was approved by the AMARI Board.^[6]
(Emphasis supplied)

The private entity that purchased the reclaimed lands for P1.894 billion expressly admitted before the Senate Committees that it spent P1.754 billion in commissions to pay various individuals for "**professional efforts and services in successfully negotiating and securing**" the contract. **By any legal or moral yardstick, the P1.754 billion in commissions obviously constitutes bribe money.** Nonetheless, there are those who insist that the billions in investments of the private entity deserve protection by this Court. Should this Court establish a new doctrine by elevating grease money to the status of legitimate investments deserving of protection by the law? Should this Court reward the patently illegal and grossly unethical business practice of the private entity in securing the contract? Should we allow those with hands dripping with dirty money equitable relief from this Court?

Despite these revolting anomalies unearthed by the Senate Committees, the ***fatal flaw*** of this contract is that it glaringly violates provisions of the Constitution expressly prohibiting the alienation of lands of the public domain.

Thus, we now come to the resolution of the second Motions for Reconsideration ^[7] filed by public respondent Public Estates Authority ("PEA") and private respondent Amari Coastal Bay Development Corporation ("Amari"). As correctly pointed out by petitioner Francisco I. Chavez in his Consolidated Comment,^[8] the second Motions for Reconsideration raise no new issues.

However, the Supplement to "Separate Opinion, Concurring and Dissenting" of Justice Josue N. Bellosillo brings to the Court's attention the Resolutions of this Court on 3 February 1965 and 24 June 1966 in L- 21870 entitled "*Manuel O. Ponce, et al. v. Hon. Amador Gomez, et al.*" and No. L-22669 entitled "*Manuel O. Ponce, et al. v. The City of Cebu, et al.*" ("Ponce Cases"). ***In effect, the Supplement to the Dissenting Opinion claims that these two Resolutions serve as authority that a single private corporation like Amari may acquire hundreds of hectares of submerged lands, as well as reclaimed submerged lands, within Manila Bay under the Amended Joint Venture Agreement*** ("Amended JVA").

We find the cited Ponce Cases inapplicable to the instant case.

First, as Justice Bellosillo himself states in his supplement to his dissent, the Ponce Cases admit that "***submerged lands still belong to the National Government.***" ^[9] The correct formulation, however, is that ***submerged lands are owned by the State and are inalienable.*** Section 2, Article XII of the 1987 Constitution provides:

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. x x x. (Emphasis supplied)

Submerged lands, like the waters (sea or bay) above them, are part of the State's inalienable natural resources. Submerged lands are property of public dominion, absolutely inalienable and outside the commerce of man.^[10] This is also true with respect to foreshore lands. Any sale of submerged or foreshore lands is void being