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SECOND DIVISION

[G.R. No. L-24294. July 15, 1974]

DONALD BAER, Commander U.S. Naval Base, Subic Bay Olongapo, Zambales, *petitioner, vs.* **HON. TITO V. TIZON, as Presiding Judge of the Court of First Instance of Bataan, and EDGARDO GENER,** *respondents.*

SYLLABUS

CONSTITUTIONAL LAW; DOCTRINE OF ACCEPTED PRINCIPLE OF INTERNATIONAL LAW AS PART OF THE LAW OF THE LAND; BASIS OF IMMUNITY OF FOREIGN STATE FROM SUIT; PETITIONER IN INSTANT CASE COVERED BY STATE IMMUNITY; CLARIFICATION SOUGHT BY PETITIONER RELATIVE THERETO DENIED, THE JUDGMENT OF THE COURT BEING CLEAR ON THE MATTER.— In this motion, petitioner seeks clarification of the decision of this Court of May 3, 1974, its avowed objective being to remove what for him could be a doubt as to the effect of this Court's decision on Civil Case No. 2984 of the CFI of Bataan. Since a fair reading thereof could yield no other conclusion except that such pending suit in the lower court should be dismissed, it would appear that any misgiving entertained as to any lurking ambiguity therein is more fanciful than real. The judgment of the Court cannot be any clearer as to the action against petitioner Donald Baer being against the United States Government, and therefore, covered by the principle of state immunity from suit. Neither should there be any doubt entertained as to that portion of the opinion, which merely reiterates the well-settled concept that what removed the case from any judicial scrutiny is not the lack of jurisdiction over the person of petitioner, who is not vested with diplomatic immunity, but his being held accountable for action taken in pursuance of his official duty under the Military Bases Agreement and as such, beyond the power of judicial scrutiny. Whoever, therefore, is assigned to take the place of former respondent Judge Tito V. Tizon cannot possibly be misled. No apprehension need be entertained then as to the effect of our decision. Civil Case No. 2984 pending in such sala is bereft of support in law. Its dismissal is called for. It is to be assumed that

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what needs to be done will be done and that the Bataan Court of First Instance will act according to law and, more specifically, to the terms of the decision rendered by this Court.

Motion for clarification is denied.

RESOLUTION

FERNANDO, *J.:*

A clarification of the decision of this Court of May 3, 1974 is sought in a motion filed by petitioner. Its avowed objective is to remove what for him could be a doubt as to the effect of our decision on Civil Case No. 2984 of the Court of First Instance of Bataan. Since a fair reading thereof — as a matter of fact even one cursory in character — could yield no other conclusion except that such pending suit in the lower court should be dismissed, it would appear that any misgiving entertained as to any lurking ambiguity therein is more fanciful than real. The motion for clarification is thus denied.

1. The judgment of the Court cannot be any clearer as to the action against petitioner Donald Baer being against the United States Government, and therefore, covered by the principle of state immunity from suit. So it would appear from the following paragraph in the opinion: "The solidity of the stand of petitioner is therefore evident. What was sought by private respondent and what was granted by respondent Judge amounted to an interference with the performance of the duties of petitioner in the base area in accordance with the powers possessed by him under the Philippine-American Military Bases Agreement. This point was made clear [in the petition] in these words: 'Assuming, for purposes of argument, that the Philippine Government, through the Bureau of Forestry, possesses the "authority to issue a Timber License to cut logs" inside a military base, the Bases Agreement subjects the exercise of rights under a timber license issued by the Philippine Government to the exercise by the United States of its rights, power and authority of control within the bases; and the findings of the Mutual Defense Board, an agency of both the Philippine and United States Governments, that "continued

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logging operation by Mr. Gener within the boundaries of the U.S. Naval Base would not be consistent with the security and operation of the Base," is conclusive upon the respondent Judge x x x The doctrine of state immunity is not limited to cases which would result in a pecuniary charge against the sovereign or would require the doing of an affirmative act by it. Prevention of a sovereign from doing an affirmative act pertaining directly and immediately to the most important public function of any government — the defense of the state — is equally as untenable as requiring it to do an affirmative act.' That such an appraisal is not opposed to the interpretation of the relevant treaty provision by our government is [evident] in [its] aforesaid manifestation and memorandum as *amicus curiae*, wherein it joined petitioner for the grant of the remedy prayed for."[1]

2. Neither should there be any doubt entertained as to that portion of the opinion, which merely reiterates the well-settled concept that what removed the case from any judicial scrutiny is not the lack of jurisdiction over the person of petitioner, who is not vested with diplomatic immunity, but his being held accountable for action taken in pursuance of his official duty under the Military Bases Agreement and as such, as pointed out above, beyond the power of judicial scrutiny. Thus: "There should be no misinterpretation of the scope of the decision reached by this Court. Petitioner, as the Commander of the United States Naval Base in Olongapo, does not possess diplomatic immunity. He may therefore be proceeded against in his personal capacity, or when the action taken by him cannot be imputed to the government which he represents. Thus, after the Military Bases Agreement, in *Miquiabas v. Commanding General* and *Dizon v. The Commander General of the Philippine-Ryukus Command,* both of them being *habeas corpus* petitions, there was no question as to the submission to jurisdiction of the respondents. As a matter of fact, in *Miquiabas v. Commanding General,* the immediate release of the petitioner was ordered, it being apparent that the general court martial appointed by respondent Commanding General was

[1] Decision of this Court, 8.

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without jurisdiction to try petitioner. Thereafter, in the cited cases of Syquia, Marquez Lim, and Johnson, the parties proceeded against were American army commanding officers stationed in the Philippines. The insuperable obstacle to the jurisdiction of respondent Judge is that a foreign sovereign without its consent is haled into court in connection with acts performed by it pursuant to treaty provisions and thus impressed with a governmental character."[2]

3. Whoever, therefore, is assigned to take the place of former respondent Judge Tito V. Tizon cannot possibly be misled. No apprehension need be entertained then as to the effect of our decision. Civil Case No. 2984 pending in such sala is bereft of support in law. Its dismissal is called for. Distinguished counsel for petitioner certainly is the last person to need counsel from this Tribunal, even if such were proper. It is to be assumed that what needs to be done will be done and that the Bataan Court of First Instance will act according to law and, more specifically, to the terms of the decision rendered by us.

WHEREFORE, the motion for clarification is denied.

Zaldivar (Chairman), Antonio, Fernandez, and *Aquino, JJ.,* concur.

Barredo, J., did not take part.

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[2] *Ibid,* 8-9.