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THIRD DIVISION

[G.R. No. 186242. December 23, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **CITY TREASURER and CITY ASSESSOR of the CITY OF MANILA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; NATIONAL GOVERNMENT; INSTRUMENTALITIES; GOVERNMENT SERVICE INSURANCE SYSTEM; INITIAL EXEMPTION UNDER CA 186.— In 1936, Commonwealth Act No. (CA) 186 was enacted abolishing the then pension systems under Act No. 1638, as amended, and establishing the GSIS to manage the pension system, life and retirement insurance, and other benefits of all government employees. Under what may be considered as its first charter, the GSIS was set up as a non-stock corporation managed by a board of trustees. Notably, Section 26 of CA 186 provided exemption from any legal process and liens but only for insurance policies and their proceeds, thus: Section 26. Exemption from legal process and liens. — No policy of life insurance issued under this Act, or the proceeds thereof, when paid to any member thereunder, nor any other benefit granted under this Act, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of such member, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the member for payment of his debt.

2. ID.; ID.; ID.; ID.; FULL TAX EXEMPTION UNDER P.D. 1146.— In 1977, PD 1146, otherwise known as the *Revised Government Service Insurance Act of 1977*, was issued, providing for an expanded insurance system for government employees. Sec. 33 of PD 1146 provided for a new tax treatment for GSIS, thus: **Section 33.** *Exemption from Tax, Legal Process and Lien.* It is hereby declared to be the policy of the State

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that the actuarial solvency of the funds of the System shall be preserved and maintained at all times and that the contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the System and/or their employees. Taxes imposed on the System tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits under this Act. Accordingly, notwithstanding any laws to the contrary, the **System, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. These exemptions shall continue unless expressly and specifically revoked and any assessment against the System as of the approval of this Act are hereby considered paid. The benefits granted under this Act shall not be subject, among others, to attachment, garnishment, levy or other processes. This, however, shall not apply to obligations of the member to the System, or to the employer, or when the benefits granted herein are assigned by the member with the authority of the System.

3. ID.; ID.; ID.; ID.; WITHDRAWAL OF TAX EXEMPTION PURSUANT TO R.A. 7160.— Then came the enactment in 1991 of the LGC or RA 7160, providing the exercise of local government units (LGUs) of their power to tax, the scope and limitations thereof, and the exemptions from taxations. Of particular pertinence is the general provision on withdrawal of tax exemption privileges in Sec. 193 of the LGC, and the special provision on withdrawal of exemption from payment of real property taxes in the last paragraph of the succeeding Sec. 234, thus: SEC. 193. *Withdrawal of Tax Exemption Privileges*. – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code. SEC. 234. *Exemption from Real Property Tax*. – x x x Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned

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or controlled corporation are hereby withdrawn upon the effectivity of this Code. From the foregoing provisos, there can be no serious doubt about the Congress' intention to withdraw, subject to certain defined exceptions, tax exemptions granted prior to the passage of RA 7160. The question that easily comes to mind then is whether or not the full tax exemption heretofore granted to GSIS under PD 1146, particular insofar as realty tax is concerned, was deemed withdrawn. We answer in the affirmative. In *Mactan Cebu International Airport Authority v. Marcos*, the Court held that the express withdrawal by the LGC of previously granted exemptions from realty taxes applied to instrumentalities and government-owned and controlled corporations (GOCCs), such as the Mactan-Cebu International Airport Authority. In *City of Davao v. RTC, Branch XII, Davao City*, the Court, citing *Mactan Cebu International Airport Authority*, declared the GSIS liable for real property taxes for the years 1992 to 1994 (contested real estate tax assessment therein), its previous exemption under PD 1146 being considered withdrawn with the enactment of the LGC in 1991.

4. ID.; ID.; ID.; ID.; FULL TAX EXEMPTION REENACTED THROUGH R.A. 8291.— Indeed, almost 20 years to the day after the issuance of the GSIS charter, *i.e.*, PD 1146, it was further amended and expanded by RA 8291 which took effect on June 24, 1997. Under it, the full tax exemption privilege of GSIS was restored, the operative provision being Sec. 39 thereof, a virtual replication of the earlier quoted Sec. 33 of PD 1146. Sec. 39 of RA 8291 reads: SEC. 39. *Exemption from Tax, Legal Process and Lien*. – It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding, any laws to the contrary, the **GSIS, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. **These exemptions shall continue unless expressly and**

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specifically revoked and <u>any assessment against the GSIS as of the approval of this Act are hereby considered paid</u>. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect. Moreover, **these exemptions shall not be affected by subsequent laws to the contrary unless this section is expressly, specifically and categorically revoked or repealed by law and a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund**, notwithstanding and independently of the guaranty of the national government to secure such solvency or liability. The **funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies** including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS.

5. ID.; ID.; ID.; ID.; ID.; ANY ASSESSMENT AGAINST THE GSIS AS OF THE DATE OF APPROVAL OF RA 8291 IS CONSIDERED PAID.— While recognizing the exempt status of GSIS owing to the reenactment of the full tax exemption clause under Sec. 39 of RA 8291 in 1997, the *ponencia* in *City of Davao* appeared to have failed to take stock of and fully appreciate the all-embracing condoning proviso in the very same Sec. 39 which, for all intents and purposes, considered as paid "**any assessment against the GSIS as of the approval of this Act**." If only to stress the point, we hereby reproduce the pertinent portion of said Sec. 39: SEC. 39. *Exemption from Tax, Legal Process and Lien.* – x x x Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding, any laws to the contrary, the **GSIS, its assets,** revenues including all accruals

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thereto, and benefits paid, **shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. **These exemptions shall continue** unless expressly and specifically revoked **and any assessment against the GSIS as of the approval of this Act are hereby considered paid**. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect.

6. ID.; ID.; ID.; ID.; ID.; BENEFICIAL USE DOCTRINE.— It is true that said Sec. 234(a), quoted below, exempts from real estate taxes real property owned by the Republic, unless the beneficial use of the property is, for consideration, transferred to a taxable person. SEC. 234. *Exemptions from Real Property Tax*. – **The following are exempted from payment of the real property tax**: (a) **Real property owned by the Republic of the Philippines** or any of its political subdivisions **except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person**. This exemption, however, must be read in relation with Sec. 133(o) of the LGC, which prohibits LGUs from imposing taxes or fees of any kind on the national government, its agencies, and instrumentalities: SEC. 133. ***Common Limitations on the Taxing Powers of Local Government Units***. – Unless otherwise provided herein, **the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following**: x x x (o) **Taxes, fees or charges of any kinds on the National Government, its agencies and instrumentalities, and local government units**. Thus read together, the provisions allow the Republic to grant the beneficial use of its property to an agency or instrumentality of the national government. Such grant does not necessarily result in the loss of the tax exemption. The tax exemption the property of the Republic or its instrumentality carries ceases only if, as stated in Sec. 234(a) of the LGC of 1991, "beneficial use thereof has been granted, for a consideration or otherwise, to a taxable person."

7. TAXATION; LAND OWNED BY INSTRUMENTALITY OF NATIONAL GOVERNMENT; BENEFICIAL USE; PROPERTY TAX; TO BE PAID BY PERSON WHO HAD

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BENEFICIAL USE.— As we declared in *Testate Estate of Concordia T. Lim*, "the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner." Of the same tenor is the Court's holding in the subsequent *Manila Electric Company v. Barlis* and later in *Republic v. City of Kidapawan*. Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof.

8. ID.; ID.; ID.; ID.; GSIS PROPERTIES ARE EXEMPT FROM ANY ATTACHMENT, GARNISHMENT, EXECUTION, LEVY, OR OTHER LEGAL PROCESSES.— A valid tax levy presupposes a corresponding tax liability. Nonetheless, it will not be remiss to note that it is without doubt that the subject GSIS properties are exempt from any attachment, garnishment, execution, levy, or other legal processes. This is the clear import of the third paragraph of Sec. 39, RA 8291, which we quote anew for clarity: SEC. 39. *Exemption from Tax, Legal Process and Lien.* – x x x. x x x The **funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies** including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioner.
Office of the City Legal Officer (Manila) for respondents.

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D E C I S I O N

VELASCO, JR., *J.*:

The Case

For review under Rule 45 of the Rules of Court on pure question of law are the November 15, 2007 Decision[1] and January 7, 2009 Order[2] of the Regional Trial Court (RTC), Branch 49 in Manila, in Civil Case No. 02-104827, a suit to nullify the assessment of real property taxes on certain properties belonging to petitioner Government Service Insurance System (GSIS).

The Facts

Petitioner GSIS owns or used to own two (2) parcels of land, one located at Katigbak 25th St., Bonifacio Drive, Manila (Katigbak property), and the other, at Concepcion cor. Arroceros Sts., also in Manila (Concepcion-Arroceros property). Title to the Concepcion-Arroceros property was transferred to this Court in 2005 pursuant to Proclamation No. 835[3] dated April 27, 2005. Both the GSIS and the Metropolitan Trial Court (MeTC) of Manila occupy the Concepcion-Arroceros property, while the Katigbak property was under lease.

The controversy started when the City Treasurer of Manila addressed a letter[4] dated September 13, 2002 to GSIS President and General Manager Winston F. Garcia informing him of the unpaid real property taxes due on the aforementioned properties for years 1992 to 2002, broken down as follows: (a) PhP 54,826,599.37 for the Katigbak property; and (b) PhP 48,498,917.01 for the Concepcion-Arroceros property. The letter warned of the inclusion of the subject properties in

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[1] *Rollo*, pp. 29-38. Penned by Judge Concepcion S. Alarcon-Vergara.

[2] *Id.* at 39.

[3] *Id.* at 51-52, entitled "Amending Proclamation No. 78 dated October 13, 1954 by Transferring the Property Housing the Former Offices of the [GSIS] to the Supreme Court of the Philippines, Reserving the Same for the City of Manila Hall of Justice."

[4] *Id.* at 40-41.

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the scheduled October 30, 2002 public auction of all delinquent properties in Manila should the unpaid taxes remain unsettled before that date.

On September 16, 2002, the City Treasurer of Manila issued separate Notices of Realty Tax Delinquency[5] for the subject properties, with the usual warning of seizure and/or sale. On October 8, 2002, GSIS, through its legal counsel, wrote back emphasizing the GSIS' exemption from all kinds of taxes, including realty taxes, under Republic Act No. (RA) 8291.[6]

Two days after, GSIS filed a petition for *certiorari* and prohibition[7] with prayer for a restraining and injunctive relief before the Manila RTC. In it, GSIS prayed for the nullification of the assessments thus made and that respondents City of Manila officials be permanently enjoined from proceedings against GSIS' property. GSIS would later amend its petition[8] to include the fact that: (a) the Katigbak property, covered by TCT Nos. 117685 and 119465 in the name of GSIS, has, since November 1991, been leased to and occupied by the Manila Hotel Corporation (MHC), which has contractually bound itself to pay any realty taxes that may be imposed on the subject property; and (b) the Concepcion-Arroceros property is partly occupied by GSIS and partly occupied by the MeTC of Manila.

The Ruling of the RTC

By Decision of November 15, 2007, the RTC dismissed GSIS' petition, as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered, DISMISSING the petition for lack of merit, and declaring the assessment conducted by the respondents City of Manila on the subject real properties of GSIS as valid pursuant to law.
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> SO ORDERED.[9]

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[5] *Id.* at 53, 54-55.

[6] *Id.* at 56-62.

[7] *Id.* at 63-76, dated October 7, 2002.

[8] *Id.* at 77-90.

[9] *Id.* at 38.

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GSIS sought but was denied reconsideration per the assailed Order dated January 7, 2009.

Thus, the instant petition for review on pure question of law.

The Issues

1. Whether petitioner is exempt from the payment of real property taxes from 1992 to 2002;
2. Whether petitioner is exempt from the payment of real property taxes on the property it leased to a taxable entity; and
3. Whether petitioner's real properties are exempt from warrants of levy and from tax sale for non-payment of real property taxes.[10]

The Court's Ruling

The issues raised may be formulated in the following wise: *first*, whether GSIS under its charter is exempt from real property taxation; *second*, assuming that it is so exempt, whether GSIS is liable for real property taxes for its properties leased to a taxable entity; and *third*, whether the properties of GSIS are exempt from levy.

In the main, it is petitioner's posture that both its old charter, Presidential Decree No. (PD) 1146, and present charter, RA 8291 or the *GSIS Act of 1997*, exempt the agency and its properties from all forms of taxes and assessments, inclusive of realty tax. Excepting, respondents counter that GSIS may not successfully resist the city's notices and warrants of levy on the basis of its exemption under RA 8291, real property taxation being governed by RA 7160 or the *Local Government Code of 1991* (LGC, hereinafter).

The petition is meritorious.

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[10] *Id.* at 11.

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First Core Issue: GSIS Exempt from Real Property Tax

Full tax exemption granted through PD 1146

In 1936, Commonwealth Act No. (CA) 186[11] was enacted abolishing the then pension systems under Act No. 1638, as amended, and establishing the GSIS to manage the pension system, life and retirement insurance, and other benefits of all government employees. Under what may be considered as its first charter, the GSIS was set up as a non-stock corporation managed by a board of trustees. Notably, Section 26 of CA 186 provided exemption from any legal process and liens but only for insurance policies and their proceeds, thus:

> Section 26. Exemption from legal process and liens. — No policy of life insurance issued under this Act, or the proceeds thereof, when paid to any member thereunder, nor any other benefit granted under this Act, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of such member, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the member for payment of his debt. x x x

In 1977, PD 1146,[12] otherwise known as the *Revised Government Service Insurance Act of 1977*, was issued, providing for an expanded insurance system for government employees. Sec. 33 of PD 1146 provided for a new tax treatment for GSIS, thus:

> **Section 33.** *Exemption from Tax, Legal Process and Lien.* It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the System shall be preserved and maintained

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[11] Entitled "An Act to Create and Establish a 'Government Service Insurance System,' to Provide for its Administration, and to Appropriate the Necessary Funds Therefor."

[12] Entitled "Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, as Amended, and for Other Purposes," approved on May 31, 1977.

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at all times and that the contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the System and/or their employees. Taxes imposed on the System tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits under this Act. Accordingly, notwithstanding any laws to the contrary, the **System, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. These exemptions shall continue unless expressly and specifically revoked and any assessment against the System as of the approval of this Act are hereby considered paid.

The benefits granted under this Act shall not be subject, among others, to attachment, garnishment, levy or other processes. This, however, shall not apply to obligations of the member to the System, or to the employer, or when the benefits granted herein are assigned by the member with the authority of the System. (Emphasis ours.)

A scrutiny of PD 1146 reveals that the non-stock corporate structure of GSIS, as established under CA 186, remained unchanged. Sec. 34[13] of PD 1146 pertinently provides that the GSIS, as created by CA 186, shall implement the provisions of PD 1146.

RA 7160 lifted GSIS tax exemption

Then came the enactment in 1991 of the LGC or RA 7160, providing the exercise of local government units (LGUs) of their power to tax, the scope and limitations thereof,[14] and the exemptions from taxations. Of particular pertinence is the general provision on withdrawal of tax exemption privileges in Sec. 193 of the LGC, and the special provision on withdrawal of exemption from payment of real property taxes in the last paragraph of the succeeding Sec. 234, thus:

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[13] Section 34. *Implementing Body.*—The Government Service Insurance System as created and established under Commonwealth Act No. 186 shall implement the provisions of this Act.

[14] Sec. 133(o) of the LGC provides that the taxing power of LGUs shall not extend to the levy of taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and LGUs.

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SEC. 193. *Withdrawal of Tax Exemption Privileges*. – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

SEC. 234. *Exemption from Real Property Tax.* – x x x Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporation are hereby withdrawn upon the effectivity of this Code.

From the foregoing provisos, there can be no serious doubt about the Congress' intention to withdraw, subject to certain defined exceptions, tax exemptions granted prior to the passage of RA 7160. The question that easily comes to mind then is whether or not the full tax exemption heretofore granted to GSIS under PD 1146, particular insofar as realty tax is concerned, was deemed withdrawn. We answer in the affirmative.

In *Mactan Cebu International Airport Authority v. Marcos*,[15] the Court held that the express withdrawal by the LGC of previously granted exemptions from realty taxes applied to instrumentalities and government-owned and controlled corporations (GOCCs), such as the Mactan-Cebu International Airport Authority. In *City of Davao v. RTC, Branch XII, Davao City*,[16] the Court, citing *Mactan Cebu International Airport Authority*, declared the GSIS liable for real property taxes for the years 1992 to 1994 (contested real estate tax assessment therein), its previous exemption under PD 1146 being considered withdrawn with the enactment of the LGC in 1991.

Significantly, the Court, in *City of Davao*, stated the observation that the GSIS' tax-exempt status withdrawn in 1992 by the LGC was restored in 1997 by RA 8291.[17]

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[15] G.R. No. 120082, September 11, 1996, 261 SCRA 667.

[16] G.R. No. 127383, 18 August 2005, 467 SCRA 280.

[17] *Id.* at 299.

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Full tax exemption reenacted through RA 8291

Indeed, almost 20 years to the day after the issuance of the GSIS charter, *i.e.*, PD 1146, it was further amended and expanded by RA 8291 which took effect on June 24, 1997.[18] Under it, the full tax exemption privilege of GSIS was restored, the operative provision being Sec. 39 thereof, a virtual replication of the earlier quoted Sec. 33 of PD 1146. Sec. 39 of RA 8291 reads:

SEC. 39. *Exemption from Tax, Legal Process and Lien.* – It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding, any laws to the contrary, the **GSIS, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. **These exemptions shall continue unless expressly and specifically revoked and <u>any assessment against the GSIS as of the approval of this Act are hereby considered paid</u>**. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect.

Moreover, **these exemptions shall not be affected by subsequent laws to the contrary unless this section is expressly, specifically and categorically revoked or repealed by law and a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund**, notwithstanding and independently of the guaranty of the national government to secure such solvency or liability.

The **funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial**

[18] After its publication in the June 9, 1997 issue of the *Philippine Star*.

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agencies or administrative bodies including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS. (Emphasis ours.)

The foregoing exempting proviso, couched as it were in an encompassing manner, brooks no other construction but that GSIS is exempt from all forms of taxes. While not determinative of this case, it is to be noted that prominently added in GSIS' present charter is a paragraph precluding any implied repeal of the tax-exempt clause so as to protect the solvency of GSIS funds. Moreover, an express repeal by a subsequent law would not suffice to affect the full exemption benefits granted the GSIS, unless the following conditionalities are met: **(1) The repealing clause must expressly, specifically, and categorically revoke or repeal Sec. 39; and (2) a provision is enacted to substitute or replace the exemption** referred to herein as an essential factor to maintain or protect the solvency of the fund. These restrictions for a future express repeal, notwithstanding, do not make the proviso an irrepealable law, for such restrictions do not impinge or limit the *carte blanche* legislative authority of the legislature to so amend it. The restrictions merely enhance other provisos in the law ensuring the solvency of the GSIS fund.

Given the foregoing perspectives, the following may be assumed: (1) Pursuant to Sec. 33 of PD 1146, GSIS enjoyed tax exemption from real estate taxes, among other tax burdens, until January 1, 1992 when the LGC took effect and withdrew exemptions from payment of real estate taxes privileges granted under PD 1146; (2) RA 8291 restored in 1997 the tax exempt status of GSIS by reenacting under its Sec. 39 what was once Sec. 33 of P.D. 1146;[19] and (3) If any real estate tax is due to the City of Manila, it is, following *City of Davao*, only for the interim period, or from 1992 to 1996, to be precise.

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[19] *City of Davao*, *supra* note 16.

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Real property taxes assessed and due from GSIS considered paid

While recognizing the exempt status of GSIS owing to the reenactment of the full tax exemption clause under Sec. 39 of RA 8291 in 1997, the *ponencia* in *City of Davao* appeared to have failed to take stock of and fully appreciate the all-embracing condoning proviso in the very same Sec. 39 which, for all intents and purposes, considered as paid "**any assessment against the GSIS as of the approval of this Act**." If only to stress the point, we hereby reproduce the pertinent portion of said Sec. 39:

> SEC. 39. *Exemption from Tax, Legal Process and Lien*. – x x x Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding, any laws to the contrary, the **GSIS, its assets,** revenues including all accruals thereto, and benefits paid, **shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. **These exemptions shall continue** unless expressly and specifically revoked **and any assessment against the GSIS as of the approval of this Act are hereby considered paid**. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect. (Emphasis added.)

GSIS an instrumentality of the National Government

Apart from the foregoing consideration, the Court's fairly recent ruling in *Manila International Airport Authority v. Court of Appeals*,[20] a case likewise involving real estate tax assessments by a Metro Manila city on the real properties administered by MIAA, argues for the non-tax liability of GSIS for real estate taxes. There, the Court held that MIAA does not qualify as a GOCC, not having been organized either as a stock corporation, its capital not being divided into shares, or as a non-stock corporation because it has no members. MIAA is rather an **instrumentality** of the National Government and, hence, outside the purview of local taxation by force of Sec. 133 of the LGC

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[20] G.R. No. 155650, July 20, 2006, 495 SCRA 591.

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providing in context that "**unless otherwise provided**," local governments cannot tax national government instrumentalities. And as the Court pronounced in *Manila International Airport Authority*, the airport lands and buildings MIAA administers belong to the Republic of the Philippines, which makes MIAA a mere trustee of such assets. No less than the Administrative Code of 1987 recognizes a scenario where a piece of land owned by the Republic is titled in the name of a department, agency, or instrumentality. The following provision of the said Code suggests as much:

> Sec. 48. *Official Authorized to Convey Real Property*.—Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following: x x x
>
> (2) For property belonging to the Republic of the Philippines, but titled in the name of x x x any corporate agency or instrumentality, by the executive head of the agency or instrumentality.[21]

While perhaps not of governing sway in all fours inasmuch as what were involved in *Manila International Airport Authority*, *e.g.*, airfields and runways, are properties of the public dominion and, hence, outside the commerce of man, the rationale underpinning the disposition in that case is squarely applicable to GSIS, both MIAA and GSIS being similarly situated. *First*, while created under CA 186 as a non-stock corporation, a status that has remained unchanged even when it operated under PD 1146 and RA 8291, GSIS is not, in the context of the aforequoted Sec. 193 of the LGC, a GOCC following the teaching of *Manila International Airport Authority*, for, like MIAA, GSIS' capital is not divided into unit shares. Also, GSIS has no members to speak of. And by members, the reference is to those who, under Sec. 87 of the Corporation Code, make up the non-stock corporation, and not to the compulsory members of the system who are government employees. Its management is entrusted to a Board of Trustees whose members are appointed by the President.

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[21] Chapter 12, Book I.

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Second, the subject properties under GSIS's name are likewise owned by the Republic. The GSIS is but a mere trustee of the subject properties which have either been ceded to it by the Government or acquired for the enhancement of the system. This particular property arrangement is clearly shown by the fact that the disposal or conveyance of said subject properties are either done by or through the authority of the President of the Philippines. Specifically, in the case of the Concepcion-Arroceros property, it was transferred, conveyed, and ceded to this Court on April 27, 2005 through a presidential proclamation, Proclamation No. 835. Pertinently, the text of the proclamation announces that the Concepcion-Arroceros property was earlier ceded to the GSIS on October 13, 1954 pursuant to Proclamation No. 78 for office purposes and had since been titled to GSIS which constructed an office building thereon. Thus, the transfer on April 27, 2005 of the Concepcion-Arroceros property to this Court by the President through Proclamation No. 835. This illustrates the nature of the government ownership of the subject GSIS properties, as indubitably shown in the last clause of Presidential Proclamation No. 835:

> WHEREAS, by virtue of the Public Land Act (Commonwealth Act No. 141, as amended), Presidential Decree No. 1455, and the Administrative Code of 1987, the **President is authorized to transfer any government property that is no longer needed by the agency to which it belongs to other branches or agencies of the government**. (Emphasis ours.)

Third, GSIS manages the funds for the life insurance, retirement, survivorship, and disability benefits of all government employees and their beneficiaries. This undertaking, to be sure, constitutes an essential and vital function which the government, through one of its agencies or instrumentalities, ought to perform if social security services to civil service employees are to be delivered with reasonable dispatch. It is no wonder, therefore, that the Republic guarantees the fulfillment of the obligations of the GSIS to its members (government employees and their beneficiaries) when and as they become due. This guarantee

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was first formalized under Sec. 24[22] of CA 186, then Sec. 8[23] of PD 1146, and finally in Sec. 8[24] of RA 8291.

Second Core Issue: Beneficial Use Doctrine Applicable

The foregoing notwithstanding, the leased Katigbak property shall be taxable pursuant to the "beneficial use" principle under Sec. 234(a) of the LGC.

It is true that said Sec. 234(a), quoted below, exempts from real estate taxes real property owned by the Republic, unless the beneficial use of the property is, for consideration, transferred to a taxable person.

SEC. 234. *Exemptions from Real Property Tax*. – **The following are exempted from payment of the real property tax**:

(a) **Real property owned by the Republic of the Philippines** or any of its political subdivisions **except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person**.

This exemption, however, must be read in relation with Sec. 133(o) of the LGC, which prohibits LGUs from imposing taxes or fees of any kind on the national government, its agencies, and instrumentalities:

SEC. 133. ***Common Limitations on the Taxing Powers of Local Government Units***. – Unless otherwise provided herein, **the exercise**

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[22] Section 24. *Accounts to be maintained*. — The System shall keep separate and distinct from one another the following funds:

(a) x x x

The Government of the Republic of the Philippines hereby guarantees the fulfillment of the obligations of the [GSIS] to the members thereof when and as they shall become due.

[23] Section 8. *Government Guarantee*.—The Government of the Republic of the Philippines hereby guarantees the fulfillment of the obligations of the System to its members as and when they fall due.

[24] SEC. 8. *Government Guarantee*. – The government of the Republic of the Philippines hereby guarantees the fulfillment of the obligations of the GSIS to its members as and when they fall due.

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of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

x x x x x x x x x

(o) **Taxes, fees or charges of any kinds on the National Government, its agencies and instrumentalities, and local government units**. (Emphasis supplied.)

Thus read together, the provisions allow the Republic to grant the beneficial use of its property to an agency or instrumentality of the national government. Such grant does not necessarily result in the loss of the tax exemption. The tax exemption the property of the Republic or its instrumentality carries ceases only if, as stated in Sec. 234(a) of the LGC of 1991, "beneficial use thereof has been granted, for a consideration or otherwise, to a taxable person." GSIS, as a government instrumentality, is not a taxable juridical person under Sec. 133(o) of the LGC. GSIS, however, lost in a sense that status with respect to the Katigbak property when it contracted its beneficial use to MHC, doubtless a taxable person. Thus, the real estate tax assessment of PhP 54,826,599.37 covering 1992 to 2002 over the subject Katigbak property is valid insofar as said tax delinquency is concerned as assessed over said property.

Taxable entity having beneficial use of leased property liable for real property taxes thereon

The next query as to which between GSIS, as the owner of the Katigbak property, or MHC, as the lessee thereof, is liable to pay the accrued real estate tax, need not detain us long. MHC ought to pay.

As we declared in *Testate Estate of Concordia T. Lim*, "the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner." Of the same tenor is the Court's holding in the subsequent *Manila Electric*

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Company v. Barlis[25] and later in *Republic v. City of Kidapawan*.[26] Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof.[27]

Being in possession and having actual use of the Katigbak property since November 1991, MHC is liable for the realty taxes assessed over the Katigbak property from 1992 to 2002.

The foregoing is not all. As it were, MHC has obligated itself under the GSIS-MHC Contract of Lease to shoulder such assessment. Stipulation l8 of the contract pertinently reads:

> 18. By law, the Lessor, [GSIS], is exempt from taxes, assessments and levies. Should there be any change in the law or the interpretation thereof or any other circumstances which would subject the Leased Property to any kind of tax, assessment or levy which would constitute a charge against the Lessor or create a lien against the Leased Property, the **Lessee agrees and obligates itself to shoulder and pay such tax, assessment or levy as it becomes due**.[28] (Emphasis ours.)

As a matter of law and contract, therefore, MHC stands liable to pay the realty taxes due on the Katigbak property. Considering, however, that MHC has not been impleaded in the instant case, the remedy of the City of Manila is to serve the realty tax assessment covering the subject Katigbak property to MHC and to pursue other available remedies in case of nonpayment, for said property cannot be levied upon as shall be explained below.

Third Core Issue: GSIS Properties Exempt from Levy

In light of the foregoing disquisition, the issue of the propriety of the threatened levy of subject properties by the City of Manila to answer for the demanded realty tax deficiency is now moot

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[25] G.R. No. 114231, May 18, 2001, 357 SCRA 832 and June 29, 2004, 433 SCRA 11.

[26] G.R. No. 166651, December 9, 2005, 477 SCRA 324.

[27] *Id* at 333-334; citing LOCAL GOVERNMENT CODE, Sec. 199(b).

[28] *Rollo*, p. 48.

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and academic. A valid tax levy presupposes a corresponding tax liability. Nonetheless, it will not be remiss to note that it is without doubt that the subject GSIS properties are exempt from any attachment, garnishment, execution, levy, or other legal processes. This is the clear import of the third paragraph of Sec. 39, RA 8291, which we quote anew for clarity:

> SEC. 39. *Exemption from Tax, Legal Process and Lien.* – x x x.
>
> x x x x x x x x x
>
> The **funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies** including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS. (Emphasis ours.)

The Court would not be indulging in pure speculative exercise to say that the underlying legislative intent behind the above exempting proviso cannot be other than to isolate GSIS funds and properties from legal processes that will either impair the solvency of its fund or hamper its operation that would ultimately require an increase in the contribution rate necessary to sustain the benefits of the system. Throughout GSIS' life under three different charters, the need to ensure the solvency of GSIS fund has always been a legislative concern, a concern expressed in the tax-exempting provisions.

Thus, even granting *arguendo* that GSIS' liability for realty taxes attached from 1992, when RA 7160 effectively lifted its tax exemption under PD 1146, to 1996, when RA 8291 restored the tax incentive, the levy on the subject properties to answer for the assessed realty tax delinquencies cannot still be sustained. The simple reason: The governing law, RA 8291, in force at the time of the levy prohibits it. And in the final analysis, the

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proscription against the levy extends to the leased Katigbak property, the beneficial use doctrine, notwithstanding.

Summary

In sum, the Court finds that GSIS enjoys under its charter full tax exemption. Moreover, as an instrumentality of the national government, it is itself not liable to pay real estate taxes assessed by the City of Manila against its Katigbak and Concepcion-Arroceros properties. Following the "beneficial use" rule, however, accrued real property taxes are due from the Katigbak property, leased as it is to a taxable entity. But the corresponding liability for the payment thereof devolves on the taxable beneficial user. The Katigbak property cannot in any event be subject of a public auction sale, notwithstanding its realty tax delinquency. This means that the City of Manila has to satisfy its tax claim by serving the accrued realty tax assessment on MHC, as the taxable beneficial user of the Katigbak property and, in case of nonpayment, through means other than the sale at public auction of the leased property.

WHEREFORE, the instant petition is hereby *GRANTED*. The November 15, 2007 Decision and January 7, 2009 Order of the Regional Trial Court, Branch 49, Manila are *REVERSED* and *SET ASIDE*. Accordingly, the real property tax assessments issued by the City of Manila to the Government Service Insurance System on the subject properties are declared *VOID*, except that the real property tax assessment pertaining to the leased Katigbak property shall be valid if served on the Manila Hotel Corporation, as lessee which has actual and beneficial use thereof. The City of Manila is permanently restrained from levying on or selling at public auction the subject properties to satisfy the payment of the real property tax delinquency.

No pronouncement as to costs.

SO ORDERED.

Corona (Chairperson), Nachura, Peralta, and *Del Castillo,*[*] *JJ.,* concur.

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[*] Additional member per Special Order No. 805 dated December 4, 2009.