Supreme Court E-Library

EN BANC

[G.R. No. 119775. October 24, 2003]

JOHN HAY PEOPLES ALTERNATIVE COALITION, MATEO CARIÑO FOUNDATION INC., CENTER FOR ALTERNATIVE SYSTEMS FOUNDATION INC., REGINA VICTORIA A. BENAFIN REPRESENTED AND JOINED BY HER MOTHER MRS. ELISA BENAFIN, IZABEL M. LUYK REPRESENTED AND JOINED BY HER MOTHER MRS. REBECCA MOLINA LUYK, KATHERINE PE REPRESENTED AND JOINED BY HER MOTHER ROSEMARIE G. PE, SOLEDAD S. CAMILO, ALICIA C. PACALSO *ALIAS* "KEVAB," BETTY I. STRASSER, RUBY C. GIRON, URSULA C. PEREZ *ALIAS* "BA-YAY," EDILBERTO T. CLARAVALL, CARMEN CAROMINA, LILIA G. YARANON, DIANE MONDOC, *petitioners, vs.* **VICTOR LIM, PRESIDENT, BASES CONVERSION DEVELOPMENT AUTHORITY; JOHN HAY PORO POINT DEVELOPMENT CORPORATION, CITY OF BAGUIO, TUNTEX (B.V.I.) CO. LTD., ASIAWORLD INTERNATIONALE GROUP, INC., DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,** *respondents.*

SYNOPSIS

The controversy stemmed from the issuance of Proclamation No. 420 by then President Ramos declaring a portion of Camp John Hay as a Special Economic Zone (SEZ) and creating a regime of tax exemption within the John Hay Special Economic Zone. In the present petition, petitioners assailed the constitutionality of the aforementioned proclamation.

The Supreme Court ruled that when questions of constitutional significance are raised, the court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case;

Supreme Court E-Library

(2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case. These requisites of judicial inquiry were complied with in the case at bar.

The Court also held that it is the legislature, unless limited by a provision of the Constitution, that has the full power to exempt any person or corporation or class of property from taxation, its power to exempt being as broad as its power to tax. The challenged grant of tax exemption would circumvent the Constitution's imposition that a law granting any tax exemption must have the concurrence of a majority of all the members of Congress. Moreover, the claimed statutory exemption of the John Hay SEZ from taxation should be manifest and unmistakable from the language of the law on which it is based. Thus, the Court declared that the grant by Proclamation No. 420 of tax exemption and other privileges to the John Hay SEZ was void for being violative of the Constitution. However, the entire assailed proclamation cannot be declared unconstitutional, the other parts thereof not being repugnant to the law or the Constitution. The delineation and declaration of a portion of the area covered by Camp John Hay as a SEZ was well within the powers of the President to do so by means of a proclamation. Where part of a statute is void as contrary to the Constitution, while another part is valid, the valid portion, if separable from the invalid, as in the case at bar, may stand and be enforced.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; REQUISITES.— [W]hen questions of constitutional significance are raised, the court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.

2. ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY, DEFINED; PRESENT IN CASE AT BAR.— An actual case or controversy refers to an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory. The controversy needs to be definite and concrete, bearing upon

Supreme Court E-Library

the legal relations of parties who are pitted against each other due to their adverse legal interests. There is in the present case a real clash of interests and rights between petitioners and respondents arising from the issuance of a presidential proclamation that converts a portion of the area covered by Camp John Hay into a SEZ, the former insisting that such proclamation contains unconstitutional provisions, the latter claiming otherwise.

3. **ID.; ID.; ID.; PERSONAL AND SUBSTANTIAL INTEREST OF THE PARTY RAISING THE CONSTITUTIONAL QUESTION; PRESENT IN CASE AT BAR.**— R.A. No. 7227 expressly requires the *concurrence* of the affected local government units to the creation of SEZs out of all the base areas in the country. The grant by the law on local government units of the right of concurrence on the bases' conversion is equivalent to vesting a legal standing on them, for it is in effect a recognition of the real interests that communities nearby or surrounding a particular base area have in its utilization. Thus, the interest of petitioners, being inhabitants of Baguio, in assailing the legality of Proclamation No. 420, is personal and substantial such that they have sustained or will sustain direct injury as a result of the government act being challenged. Theirs is a material interest, an interest in issue affected by the proclamation and not merely an interest in the question involved or an incidental interest, for what is at stake in the enforcement of Proclamation No. 420 is the very economic and social existence of the people of Baguio City. ... Moreover, petitioners Edilberto T. Claravall and Lilia G. Yaranon were duly elected councilors of Baguio at the time, engaged in the local governance of Baguio City and whose duties included deciding for and on behalf of their constituents the question of whether to concur with the declaration of a portion of the area covered by Camp John Hay as a SEZ. Certainly then, petitioners Claravall and Yaranon, as city officials who voted against the *sanggunian* Resolution No. 255 (Series of 1994) supporting the issuance of the now challenged Proclamation No. 420, have legal standing to bring the present petition.

4. **ID.; ID.; LEGISLATIVE DEPARTMENT; HAS THE FULL POWER TO EXEMPT ANY PERSON OR CORPORATION OR CLASS OF PROPERTY FROM TAXATION, UNLESS LIMITED BY A PROVISION OF THE CONSTITUTION.**— It is the legislature, unless limited by a provision of the state constitution, that has full power to exempt any person or corporation or class of property

Supreme Court E-Library

from taxation, its power to exempt being as broad as its power to tax. Other than Congress, the Constitution may itself provide for specific tax exemptions, or local governments may pass ordinances on exemption only from local taxes. The challenged grant of tax exemption would circumvent the Constitution's imposition that a law granting any tax exemption must have the concurrence of a majority of all the members of Congress.

5. TAXATION; TAX EXEMPTION; CANNOT BE IMPLIED AS IT MUST BE CATEGORICALLY AND UNMISTAKABLY EXPRESSED.— [T]he claimed statutory exemption of the John Hay SEZ from taxation should be manifest and unmistakable from the language of the law on which it is based; it must be expressly granted in a statute stated in a language too clear to be mistaken. Tax exemption cannot be implied as it must be categorically and unmistakably expressed. If it were the intent of the legislature to grant to the John Hay SEZ the same tax exemption and incentives given to the Subic SEZ, it would have so expressly provided in the R.A. No. 7227.

6. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; CAN VOID AN ACT OR POLICY OF THE POLITICAL DEPARTMENTS OF THE GOVERNMENT; GROUNDS; CASE AT BAR.— This Court no doubt can void an act or policy of the political departments of the government on either of two grounds-infringement of the Constitution or grave abuse of discretion. This Court then declares that the grant by Proclamation No. 420 of tax exemption and other privileges to the John Hay SEZ is void for being violative of the Constitution.

7. ID.; STATUTES; VALIDITY; WHERE PART OF A STATUTE IS VOID AS CONTRARY TO THE CONSTITUTION, WHILE ANOTHER PART IS VALID, THE VALID PORTION, IF SEPARABLE FROM THE INVALID, MAY STAND AND BE ENFORCED; CASE AT BAR.— The unconstitutionality of the grant of tax immunity and financial incentives as contained in the second sentence of Section 3 of Proclamation No. 420 notwithstanding, the entire assailed proclamation cannot be declared unconstitutional, the other parts thereof not being repugnant to law or the Constitution. The delineation and declaration of a portion of the area covered by Camp John Hay as a SEZ was well within the powers of the President to do so by means of a proclamation. The requisite prior concurrence by the Baguio City government to such proclamation appears to have been given in the form of

Supreme Court E-Library

a duly enacted resolution by the *sanggunian*. The other provisions of the proclamation had been proven to be consistent with R.A. No. 7227. Where part of a statute is void as contrary to the Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. This Court finds that the other provisions in Proclamation No. 420 converting a delineated portion of Camp John Hay into the John Hay SEZ are separable from the invalid second sentence of Section 3 thereof, hence they stand.

APPEARANCES OF COUNSEL

Marivic M.V.F. Leonen Edgar DL. Brnal Ma. Fracelyn G. Begonia Ingrid Rosalie L. Gorre Emily L. Manuel for petitioners.

Office of the Government Corporate Counsel for public respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

By the present petition for prohibition, *mandamus* and declaratory relief with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction, petitioners assail, in the main, the constitutionality of Presidential Proclamation No. 420, Series of 1994, "CREATING AND DESIGNATING A PORTION OF THE AREA COVERED BY THE FORMER CAMP JOHN [HAY] AS THE JOHN HAY SPECIAL ECONOMIC ZONE PURSUANT TO REPUBLIC ACT NO. 7227."

Republic Act No. 7227, AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES, otherwise known as the "Bases Conversion and Development Act of 1992," which was enacted on March 13, 1992, set out the policy of the government to accelerate the sound and balanced conversion into alternative productive uses of the former military bases under the 1947

Supreme Court E-Library

Philippines-United States of America Military Bases Agreement, namely, the Clark and Subic military reservations as well as their extensions including the John Hay Station (Camp John Hay or the camp) in the City of Baguio.[1]

As noted in its title, R.A. No. 7227 created public respondent Bases Conversion and Development Authority[2] (BCDA), vesting it with powers pertaining to the multifarious aspects of carrying out the ultimate objective of utilizing the base areas in accordance with the declared government policy.

R.A. No. 7227 likewise created the Subic Special Economic [and Free Port] Zone (Subic SEZ) the metes and bounds of which were to be delineated in a proclamation to be issued by the President of the Philippines.[3]

R.A. No. 7227 granted the Subic SEZ incentives ranging from tax and duty-free importations, exemption of businesses therein from local and national taxes, tc other hallmarks of a liberalized financial and business climate.[4]

And R.A. No. 7227 expressly gave authority to the President to create *through executive proclamation, subject to the concurrence of the local government units directly affected,* other Special Economic Zones (SEZ) in the areas covered respectively by the Clark military reservation, the Wallace Air Station in San Fernando, La Union, and Camp John Hay.[5]

On August 16, 1993, BCDA entered into a Memorandum of Agreement and Escrow Agreement with private respondents Tuntex (B.V.I.) Co., Ltd. (TUNTEX) and Asiaworld Internationale Group, Inc. (ASIAWORLD), private corporations registered under the laws of the British Virgin Islands, preparatory to the formation of a joint venture for the development of Poro

---

[1] R.A. 7227, Section 2.

[2] *Id.*, Section 3.

[3] *Id.*, Section 12.

[4] *Ibid.*

[5] R.A. 7227, Section 15.

Supreme Court E-Library

Point in La Union and Camp John Hay as premier tourist destinations and recreation centers. Four months later or on December 16, 1993, BCDA, TUNTEX and ASIAWORLD executed a Joint Venture Agreement[6] whereby they bound themselves to put up a joint venture company known as the Baguio International Development and Management Corporation which would lease areas within Camp John Hay and Poro Point for the purpose of turning such places into principal tourist and recreation spots, as originally envisioned by the parties under their Memorandum of Agreement.

The Baguio City government meanwhile passed a number of resolutions in response to the actions taken by BCDA as owner and administrator of Camp John Hay.

By Resolution[7] of September 29, 1993, the *Sangguniang Panlungsod* of Baguio City (the *sanggunian*) officially asked BCDA to exclude all the *barangays* partly or totally located within Camp John Hay from the reach or coverage of any plan or program for its development.

By a subsequent Resolution[8] dated January 19, 1994, the *sanggunian* sought from BCDA an abdication, waiver or quitclaim of its ownership over the home lots being occupied by residents of nine (9) *barangays* surrounding the military reservation.

Still by another resolution passed on February 21, 1994, the *sanggunian* adopted and submitted to BCDA a 15-point concept for the development of Camp John Hay.[9] The *sanggunian's* vision expressed, among other things, a kind of development that affords protection to the environment, the making of a family-oriented type of tourist destination, priority in employment opportunities for Baguio residents and free access to the base area, guaranteed participation of the city government in the management and operation of the camp, exclusion of the previously

---

[6] *Rollo*, Annex "A", pp. 45-57.

[7] *Id.*, Annex "C", pp. 64-65.

[8] *Rollo*, Annex "D," pp. 66-67.

[9] *Id.*, Annex "E", pp. 68-69.

Supreme Court E-Library

named nine *barangays* from the area for development, and liability for local taxes of businesses to be established within the camp.[10]

BCDA, TUNTEX and ASIAWORLD agreed to some, but rejected or modified the other proposals of the *sanggunian*.[11] They stressed the need to declare Camp John Hay a SEZ as a condition precedent to its full development in accordance with the mandate of R.A. No. 7227.[12]

On May 11, 1994, the *sanggunian* passed a resolution requesting the Mayor to order the determination of realty taxes which may otherwise be collected from real properties of Camp John Hay.[13] The resolution was intended to intelligently guide the *sanggunian* in determining its position on whether Camp John Hay be declared a SEZ, it (the *sanggunian*) being of the view that such declaration would exempt the camp's property and the economic activity therein from local or national taxation.

More than a month later, however, the *sanggunian* passed Resolution No. 255, (Series of 1994),[14] seeking and supporting, subject to its concurrence, the issuance by then President Ramos of a presidential proclamation declaring an area of 288.1 hectares of the camp as a SEZ in accordance with the provisions of R.A. No. 7227. Together with this resolution was submitted a draft of the proposed proclamation for consideration by the President.[15]

On July 5, 1994 then President Ramos issued Proclamation No. 420,[16] the title of which was earlier indicated, which established a SEZ on a portion of Camp John Hay and which reads as follows:

---

[10] *Id.*, Annex "E-1", pp. 70-71.

[11] *Id.*, Annex "B", pp. 58-63.

[12] *Ibid.*

[13] *Rollo*, Annex "F", p. 72.

[14] *Id.*, Annex "H", p. 76.

[15] *Id.* at 77-78.

[16] *Id.* at 79-81.

Supreme Court E-Library

xxx xxx xxx

Pursuant to the powers vested in me by the law and the resolution of concurrence by the City Council of Baguio, I, FIDEL V. RAMOS, President of the Philippines, do hereby create and designate a portion of the area covered by the former John Hay reservation as embraced, covered, and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, as the John Hay Special Economic Zone, and accordingly order:

SECTION 1. *Coverage of John Hay Special Economic Zone.* — The John Hay Special Economic Zone shall cover the area consisting of Two Hundred Eighty Eight and one/tenth (288.1) hectares, more or less, of the total of Six Hundred Seventy-Seven (677) hectares of the John Hay Reservation, more or less, which have been surveyed and verified by the Department of Environment and Natural Resources (DENR) as defined by the following technical description:

> A parcel of land, situated in the City of Baguio, Province of Benguet, Island of Luzon, and particularly described in survey plans Psd-131102-002639 and Ccs-131102-000030 as approved on 16 August 1993 and 26 August 1993, respectively, by the Department of Environment and Natural Resources, in detail containing:
>
> Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 13, Lot 14, Lot 15, and Lot 20 of Ccs-131102-000030
>
> -and
>
> Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10, Lot 11, Lot 14, Lot 15, Lot 16, Lot 17, and Lot 18 of Psd-131102-002639 being portions of TCT No. T-3812, LRC Rec. No. 87.

With a combined area of TWO HUNDRED EIGHTY EIGHT AND ONE/TENTH HECTARES (288.1 hectares); Provided that the area consisting of approximately Six and two/tenth (6.2) hectares, more or less, presently occupied by the VOA and the residence of the Ambassador of the United States, shall be considered as part of the SEZ only upon turnover of the properties to the government of the Republic of the Philippines.

Sec. 2. *Governing Body of the John Hay Special Economic Zone.* — Pursuant to Section 15 of Republic Act No. 7227, the Bases Conversion and Development Authority is hereby established as the

Supreme Court E-Library

governing body of the John Hay Special Economic Zone and, as such, authorized to determine the utilization and disposition of the lands comprising it, subject to private rights, if any, and in consultation and coordination with the City Government of Baguio after consultation with its inhabitants, and to promulgate the necessary policies, rules, and regulations to govern and regulate the zone thru the John Hay Poro Point Development Corporation, which is its implementing arm for its economic development and optimum utilization.

Sec. 3. *Investment Climate in John Hay Special Economic Zone.* — Pursuant to Section 5(m) and Section 15 of Republic Act No. 7227, the John Hay Poro Point Development Corporation shall implement all necessary policies, rules, and regulations governing the zone, including investment incentives, in consultation with pertinent government departments. Among others, the zone shall have all the applicable incentives of the Special Economic Zone under Section 12 of Republic Act No. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991, and new investment laws that may hereinafter be enacted.

Sec. 4. *Role of Departments, Bureaus, Offices, Agencies and Instrumentalities.* — All Heads of departments, bureaus, offices, agencies, and instrumentalities of the government are hereby directed to give full support to Bases Conversion and Development Authority and/or its implementing subsidiary or joint venture to facilitate the necessary approvals to expedite the implementation of various projects of the conversion program.

Sec. 5. *Local Authority.* — Except as herein provided, the affected local government units shall retain their basic autonomy and identity.

Sec. 6. *Repealing Clause.* — All orders, rules, and regulations, or parts thereof, which are inconsistent with the provisions of this Proclamation, are hereby repealed, amended, or modified accordingly.

Sec. 7. *Effectivity.* — This proclamation shall take effect immediately.

Done in the City of Manila, this 5th day of July, in the year of Our Lord, nineteen hundred and ninety-four.

Supreme Court E-Library

The issuance of Proclamation No. 420 spawned the present petition[17] for prohibition, *mandamus* and declaratory relief which was filed on April 25, 1995 challenging, in the main, its constitutionality or validity as well as the legality of the Memorandum of Agreement and Joint Venture Agreement between public respondent BCDA and private respondents TUNTEX and ASIAWORLD.

Petitioners allege as grounds for the allowance of the petition the following:

I. PRESIDENTIAL PROCLAMATION NO. 420, SERIES OF 1990 (*sic*) *IN SO FAR AS IT GRANTS TAX EXEMPTIONS IS INVALID AND ILLEGAL AS IT IS AN UNCONSTITUTIONAL EXERCISE BY THE PRESIDENT OF A POWER GRANTED ONLY TO THE LEGISLATURE.*

II. PRESIDENTIAL PROCLAMATION NO. 420, *IN SO FAR AS IT LIMITS THE POWERS AND INTERFERES WITH THE AUTONOMY OF THE CITY OF BAGUIO* IS INVALID, ILLEGAL AND UNCONSTITUTIONAL.

III. PRESIDENTIAL PROCLAMATION NO. 420, SERIES OF 1994 IS UNCONSTITUTIONAL IN THAT IT *VIOLATES THE RULE THAT ALL TAXES SHOULD BE UNIFORM AND EQUITABLE.*

IV. *THE MEMORANDUM OF AGREEMENT* ENTERED INTO BY AND BETWEEN PRIVATE AND PUBLIC RESPONDENTS BASES CONVERSION DEVELOPMENT AUTHORITY HAVING BEEN *ENTERED INTO ONLY BY DIRECT NEGOTIATION IS ILLEGAL.*

V. *THE TERMS AND CONDITIONS OF THE MEMORANDUM OF AGREEMENT* ENTERED INTO BY AND BETWEEN PRIVATE AND PUBLIC RESPONDENT BASES CONVERSION DEVELOPMENT AUTHORITY *IS sic ILLEGAL.*

VI. THE CONCEPTUAL DEVELOPMENT PLAN OF RESPONDENTS *NOT HAVING UNDERGONE ENVIRONMENTAL IMPACT ASSESSMENT IS BEING ILLEGALLY CONSIDERED WITHOUT A VALID ENVIRONMENTAL IMPACT ASSESSMENT .*

---

[17] *Rollo*, pp. 2-44.

Supreme Court E-Library

A temporary restraining order and/or writ of preliminary injunction was prayed for to enjoin BCDA, John Hay Poro Point Development Corporation and the city government from implementing Proclamation No. 420, and TUNTEX and ASIAWORLD from proceeding with their plan respecting Camp John Hay's development pursuant to their Joint Venture Agreement with BCDA.[18]

Public respondents, by their separate Comments, allege as moot and academic the issues raised by the petition, the questioned Memorandum of Agreement and Joint Venture Agreement having already been deemed abandoned by the inaction of the parties thereto prior to the filing of the petition as in fact, by letter of November 21, 1995, BCDA formally notified TUNTEX and ASIAWORLD of the revocation of their said agreements.[19]

In maintaining the validity of Proclamation No. 420, respondents contend that by extending to the John Hay SEZ economic incentives similar to those enjoyed by the Subic SEZ which was established under R.A. No. 7227, the proclamation is merely implementing the legislative intent of said law to turn the US military bases into hubs of business activity or investment. They underscore the point that the government's policy of bases conversion can not be achieved without extending the same tax exemptions granted by R.A. No. 7227 to Subic SEZ to other SEZs.

Denying that Proclamation No. 420 is in derogation of the local autonomy of Baguio City or that it is violative of the constitutional guarantee of equal protection, respondents assail petitioners' lack of standing to bring the present suit even as taxpayers and in the absence of any actual case or controversy to warrant this Court's exercise of its power of judicial review over the proclamation.

Finally, respondents seek the outright dismissal of the petition for having been filed in disregard of the hierarchy of courts and of the doctrine of exhaustion of administrative remedies.

---

[18] *Rollo*, pp. 22-23.

[19] *Rollo*, p. 167.

Supreme Court E-Library

Replying[20] petitioners aver that the doctrine of exhaustion of administrative remedies finds no application herein since they are invoking the exclusive authority of this Court under Section 21 of R.A. No. 7227 to enjoin or restrain implementation of projects for conversion of the base areas; that the established exceptions to the aforesaid doctrine obtain in the present petition; and that they possess the standing to bring the petition which is a taxpayer's suit.

Public respondents have filed their Rejoinder[21] and the parties have filed their respective memoranda.

Before dwelling on the core issues, this Court shall first address the preliminary procedural questions confronting the petition.

The judicial policy is and has always been that this Court will not entertain direct resort to it except when the redress sought cannot be obtained in the proper courts, or when exceptional and compelling circumstances warrant availment of a remedy within and calling for the exercise of this Court's primary jurisdiction.[22] Neither will it entertain an action for declaratory relief, which is partly the nature of this petition, over which it has no original jurisdiction.

Nonetheless, as it is *only this Court* which has the power under Section 21[23] of R.A. No. 7227 to enjoin implementation of projects for the development of the former US military reservations, the issuance of which injunction petitioners pray for, petitioners' direct filing of the present petition with it is allowed. Over and above this procedural objection to the present suit, this Court retains full discretionary power to take cognizance

---

[20] *Rollo*, pp. 181-200.

[21] *Id.* at 235-240.

[22] *Tano v. Socrates*, 278 SCRA 154 [1997] citing *Santiago v. Vasquez*, 217 SCRA 633 [1993].

[23] R.A. 7227, Section 21 provides: "The implementation of the projects for the conversion into alternative productive uses of the military reservations are urgent and necessary and shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines."

Supreme Court E-Library

of a petition filed directly to it if compelling reasons, or the nature and importance of the issues raised, warrant.[24] Besides, remanding the case to the lower courts now would just unduly prolong adjudication of the issues.

The transformation of a portion of the area covered by Camp John Hay into a SEZ is not simply a re-classification of an area, a mere ascription of a status to a place. It involves turning the former US military reservation into a focal point for investments by both local and foreign entities. It is to be made a site of vigorous business activity, ultimately serving as a spur to the country's long awaited economic growth. For, as R.A. No. 7227 unequivocally declares, it is the government's policy to enhance the benefits to be derived from the base areas in order to promote the economic and social development of Central Luzon in particular and the country in general.[25] Like the Subic SEZ, the John Hay SEZ should also be turned into a "self-sustaining, industrial, commercial, financial and investment center."[26]

More than the economic interests at stake, the development of Camp John Hay as well as of the other base areas unquestionably has critical links to a host of environmental and social concerns. Whatever use to which these lands will be devoted will set a chain of events that can affect one way or another the social and economic way of life of the communities where the bases are located, and ultimately the nation in general.

Underscoring the fragility of Baguio City's ecology with its problem on the scarcity of its water supply, petitioners point out that the local and national government are faced with the challenge of how to provide for an ecologically sustainable, environmentally sound, equitable transition for the city in the wake of Camp John Hay's reversion to the mass of government property.[27] But that is why R.A. No. 7227 emphasizes the "sound and balanced

---

[24] *Fortich v. Corona*, 289 SCRA 624 [1998].

[25] R.A. 7227, Section 2.

[26] *Id.* at Section 12(a).

Supreme Court E-Library

conversion of the Clark and Subic military reservations and their *extensions consistent with ecological and environmental standards*."[28] It cannot thus be gainsaid that the matter of conversion of the US bases into SEZs, in this case Camp John Hay, assumes importance of a national magnitude.

Convinced then that the present petition embodies crucial issues, this Court assumes jurisdiction over the petition.

As far as the questioned agreements between BCDA and TUNTEX and ASIAWORLD are concerned, the legal questions being raised thereon by petitioners have indeed been rendered moot and academic by the revocation of such agreements. There are, however, other issues posed by the petition, those which center on the constitutionality of Proclamation No. 420, which have not been mooted by the said supervening event upon application of the rules for the judicial scrutiny of constitutional cases. The issues boil down to:

(1) Whether the present petition complies with the requirements for this Court's exercise of jurisdiction over constitutional issues;

(2) Whether Proclamation No. 420 is constitutional by providing for national and local tax exemption within and granting other economic incentives to the John Hay Special Economic Zone; and

(3) Whether Proclamation No. 420 is constitutional for limiting or interfering with the local autonomy of Baguio City;

It is settled that when questions of constitutional significance are raised, the court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.[29]

---

[28] R.A. 7227, Section 4(b).

[29] *Integrated Bar of the Philippines v. Zamora,* 338 SCRA 81 [2000].

Supreme Court E-Library

An actual case or controversy refers to an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory.[30] The controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests.[31] There is in the present case a real clash of interests and rights between petitioners and respondents arising from the issuance of a presidential proclamation that converts a portion of the area covered by Camp John Hay into a SEZ, the former insisting that such proclamation contains unconstitutional provisions, the latter claiming otherwise.

R.A. No. 7227 expressly requires the *concurrence* of the affected local government units to the creation of SEZs out of all the base areas in the country.[32] The grant by the law on local government units of the right of concurrence on the bases' conversion is equivalent to vesting a legal standing on them, for it is in effect a recognition of the real interests that communities nearby or surrounding a particular base area have in its utilization. Thus, the interest of petitioners, being inhabitants of Baguio, in assailing the legality of Proclamation No. 420, is personal and substantial such that they have sustained or will sustain direct injury as a result of the government act being challenged.[33] Theirs is a material interest, an interest in issue affected by the proclamation and not merely an interest in the question involved or an incidental interest,[34] for what is at stake in the enforcement of Proclamation No. 420 is the very economic and social existence of the people of Baguio City.

Petitioners' *locus standi* parallels that of the petitioner and other residents of Bataan, specially of the town of Limay, in *Garcia v. Board of Investments*[35] where this Court

---

[30] *Board of Optometry v. Colet*, 260 SCRA 88 [1996].

[31] Cruz, *Philippine Political Law*, p. 258 [1998].

[32] *Vide* R.A. 7227, Sections 12 and 15.

[33] *Joya v. Presidential Commission on Good Government*, 225 SCRA 568 (1993).

[34] *Ibid.*

[35] 177 SCRA 374 (1989).

Supreme Court E-Library

characterized their interest in the establishment of a petrochemical plant in their place as actual, real, vital and legal, for it would affect not only their economic life but even the air they breathe.

Moreover, petitioners Edilberto T. Claravall and Lilia G. Yaranon were duly elected councilors of Baguio at the time, engaged in the local governance of Baguio City and whose duties included deciding for and on behalf of their constituents the question of whether to concur with the declaration of a portion of the area covered by Camp John Hay as a SEZ. Certainly then, petitioners Claravall and Yaranon, as city officials who voted against [36] the *sanggunian* Resolution No. 255 (Series of 1994) supporting the issuance of the now challenged Proclamation No. 420, have legal standing to bring the present petition.

That there is herein a dispute on legal rights and interests is thus beyond doubt. The mootness of the issues concerning the questioned agreements between public and private respondents is of no moment.

> "By the mere enactment of the questioned law or the approval of the challenged act, the dispute is deemed to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty."[37]

As to the third and fourth requisites of a judicial inquiry, there is likewise no question that they have been complied with in the case at bar. This is an action filed purposely to bring forth constitutional issues, ruling on which this Court must take up. Besides, respondents never raised issues with respect to these requisites, hence, they are deemed waived.

Having cleared the way for judicial review, the constitutionality of Proclamation No. 420, as framed in the second and third issues above, must now be addressed squarely.

---

[36] *Rollo*, Annex "H", p. 76.

[37] *Pimentel, Jr. v. Aguirre*, 336 SCRA 201 (2000).

Supreme Court E-Library

The second issue refers to petitioners' objection against the creation by Proclamation No. 420 of a regime of tax exemption within the John Hay SEZ. Petitioners argue that nowhere in R.A. No. 7227 is there a grant of tax exemption to SEZs *yet to be established* in base areas, unlike the grant under Section 12 thereof of tax exemption and investment incentives to the therein established Subic SEZ. The grant of tax exemption to the John Hay SEZ, petitioners conclude, thus contravenes Article VI, Section 28(4) of the Constitution which provides that "No law granting any tax exemption shall be passed without the concurrence of a majority of all the members of Congress."

Section 3 of Proclamation No. 420, the challenged provision, reads:

Sec. 3. *Investment Climate in John Hay Special Economic Zone.* — Pursuant to Section 5(m) and Section 15 of Republic Act No. 7227, the John Hay Poro Point Development Corporation shall implement all necessary policies, rules, and regulations governing the zone, including investment incentives, in consultation with pertinent government departments. Among others, ***the zone shall have all the applicable incentives of the Special Economic Zone under Section 12 of Republic Act No. 7227 and those applicable incentives*** *granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991, and new investment laws that may hereinafter be enacted.* (Emphasis and italics supplied)

Upon the other hand, Section 12 of R.A. No. 7227 provides:

x x x x x x x x x

(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, *the Subic Special Economic Zone* shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

(b) The *Subic Special Economic Zone* shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty free importations of raw materials, capital and equipment.

Supreme Court E-Library

However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;

(c) The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the *Subic Special Economic Zone.* In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the Municipality of Subic, and other municipalities contiguous to be base areas. In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;

(d) No exchange control policy shall be applied and free markets for foreign exchange, gold, securities and futures shall be allowed and maintained in the *Subic Special Economic Zone*;

(e) The Central Bank, through the Monetary Board, shall supervise and regulate the operations of banks and other financial institutions within the *Subic Special Economic Zone*;

(f) Banking and Finance shall be liberalized with the establishment of foreign currency depository units of local commercial banks and offshore banking units of foreign banks with minimum Central Bank regulation;

(g) Any investor within the *Subic Special Economic Zone* whose continuing investment shall not be less than Two hundred fifty thousand dollars ($250,000), his/her spouse and dependent children under twenty-one (21) years of age, shall be granted permanent resident status within the Subic Special Economic Zone. They shall have freedom of ingress and egress to and from the Subic Special Economic Zone without any need of special authorization from the Bureau of Immigration and Deportation. The Subic Bay Metropolitan Authority referred to in Section 13 of this Act may also issue working

Supreme Court E-Library

visas renewable every two (2) years to foreign executives and other aliens possessing highly-technical skills which no Filipino within the Subic Special Economic Zone possesses, as certified by the Department of Labor and Employment. The names of aliens granted permanent residence status and working visas by the Subic Bay Metropolitan Authority shall be reported to the Bureau of Immigration and Deportation within thirty (30) days after issuance thereof;

x x x x x x x x x (Italics supplied)

It is clear that under Section 12 of R.A. No. 7227 *it is only the Subic SEZ which was granted by Congress with tax exemption, investment incentives and the like*. There is no express extension of the aforesaid benefits to other SEZs *still to be created* at the time via presidential proclamation.

The deliberations of the Senate confirm the exclusivity to Subic SEZ of the tax and investment privileges accorded it under the law, as the following exchanges between our lawmakers show during the second reading of the precursor bill of R.A. No. 7227 with respect to the investment policies that would govern Subic SEZ which are now embodied in the aforesaid Section 12 thereof:

x x x x x x x x x

Senator Maceda: This is what I was talking about. We get into problems here because all of these following policies are centered around the concept of free port. And in the main paragraph above, we have declared both Clark and Subic as special economic zones, subject to these policies which are, in effect, a free-port arrangement.

Senator Angara: The Gentleman is absolutely correct, Mr. President. *So we must confine these policies only to Subic.*

May I withdraw then my amendment, and instead provide that "THE SPECIAL ECONOMIC ZONE OF SUBIC SHALL BE ESTABLISHED IN ACCORDANCE WITH THE FOLLOWING POLICIES." Subject to style, Mr. President.

Thus, it is very clear that these principles and policies are applicable only to Subic as a free port.

Senator Paterno: Mr. President.

Supreme Court E-Library

The President: Senator Paterno is recognized.

Senator Paterno: I take it that the amendment suggested by Senator Angara would then prevent the establishment of other special economic zones observing these policies.

Senator Angara: No, Mr. President, because during our short caucus, Senator Laurel raised the point that if we give this delegation to the President to establish other economic zones, that may be an unwarranted delegation.

So we agreed that we will simply limit the definition of powers and description of the zone to Subic, but that does not exclude the possibility of creating other economic zones within the baselands.

Senator Paterno: But if that amendment is followed, no other special economic zone may be created under authority of this particular bill. Is that correct, Mr. President?

Senator Angara: *Under this specific provision, yes, Mr. President. This provision now will be confined only to Subic.*[38]

x x x x x x x x x (Italics supplied.)

As gathered from the earlier-quoted Section 12 of R.A. No. 7227, the privileges given to Subic SEZ consist principally of exemption from tariff or customs duties, national and local taxes of business entities therein (paragraphs (b) and (c)), free market and trade of specified goods or properties (paragraph d), liberalized banking and finance (paragraph f), and relaxed immigration rules for foreign investors (paragraph g). Yet, apart from these, Proclamation No. 420 also makes available to the John Hay SEZ benefits existing in other laws such as the privilege of export processing zone-based businesses of importing capital equipment and raw materials free from taxes, duties and other restrictions;[39] tax and duty exemptions, tax holiday, tax credit, and other incentives under the Omnibus Investments Code of 1987;[40] and the applicability to the

---

[38] Record of the Senate, Vol. III, N. 56, p. 329 [January 22, 1992].

[39] *Vide* R.A. 7916, "The Special Economic Zone Act of 1995."

[40] There are a multitude of incentives under the Omnibus Investments Code of 1987 depending on the classification of the business or enterprise that is covered by the Code.

Supreme Court E-Library

subject zone of rules governing foreign investments in the Philippines.[41]

While the grant of economic incentives may be essential to the creation and success of SEZs, free trade zones and the like, the grant thereof to the John Hay SEZ cannot be sustained. The incentives under R.A. No. 7227 are *exclusive* only to the Subic SEZ, hence, the extension of the same to the John Hay SEZ finds no support therein. Neither does the same grant of privileges to the John Hay SEZ find support in the other laws specified under Section 3 of Proclamation No. 420, which laws were already extant before the issuance of the proclamation or the enactment of R.A. No. 7227.

More importantly, the nature of most of the assailed privileges is one of tax exemption. It is the legislature, unless limited by a provision of the state constitution, that has full power to exempt any person or corporation or class of property from taxation, its power to exempt being as broad as its power to tax.[42] Other than Congress, the Constitution may itself provide for specific tax exemptions,[43] or local governments may pass ordinances on exemption only from local taxes.[44]

The challenged grant of tax exemption would circumvent the Constitution's imposition that a law granting any tax exemption must have the concurrence of a majority of all the members of Congress.[45] In the same vein, the other kinds of privileges extended to the John Hay SEZ are by tradition and usage for Congress to legislate upon.

Contrary to public respondents' suggestions, the claimed statutory exemption of the John Hay SEZ from taxation should be manifest and unmistakable from the language of the law on which it is based; it must be expressly granted in a statute

---

[41] See R.A. 7042, "Foreign Investments Act of 1991."

[42] 71 Am. Jur. 2d 309.

[43] *Vide* CONSTITUTION, Article VI, Section 28(3).

[44] *Vide* R.A. 7160, Section 192.

[45] CONSTITUTION, Article VI, Section 28(4).

Supreme Court E-Library

stated in a language too clear to be mistaken.[46] Tax exemption cannot be implied as it must be categorically and unmistakably expressed.[47]

If it were the intent of the legislature to grant to the John Hay SEZ the same tax exemption and incentives given to the Subic SEZ, it would have so expressly provided in the R.A. No. 7227.

This Court no doubt can void an act or policy of the political departments of the government on either of two grounds-infringement of the Constitution or grave abuse of discretion.[48]

This Court then declares that the grant by Proclamation No. 420 of tax exemption and other privileges to the John Hay SEZ is void for being violative of the Constitution. This renders it unnecessary to still dwell on petitioners' claim that the same grant violates the equal protection guarantee.

With respect to the final issue raised by petitioners — that Proclamation No. 420 is unconstitutional for being in derogation of Baguio City's local autonomy, objection is specifically mounted against Section 2 thereof in which BCDA is set up as the governing body of the John Hay SEZ.[49]

---

[46] Commissioner of Internal Revenue v. Court of Appeals, 298 SCRA 83 (1998).

[47] *National Development Company v. Commissioner of Internal Revenue*, 151 SCRA 472 (1987).

[48] *Garcia v. Corona*, Separate Opinion of Justice Panganiban, 321 SCRA 218, 237 (1999).

[49] Proc. No. 420, Section 2. *Governing Body of the John Hay Special Economic Zone.* — Pursuant to Section 15 of Republic Act No. 7227, the Bases Conversion and Development Authority is hereby established as the governing body of the John Hay Special Economic Zone and, as such, authorized to determine the utilization and disposition of the lands comprising it, subject to private rights, if any, and in consultation and coordination with the City Government of Baguio after consultation with its inhabitants, and to promulgate the necessary policies, rules, and regulations to govern and regulate the zone thru the John Hay Poro Point Development Corporation, which is its implementing arm for its economic development and optimum utilization.

Supreme Court E-Library

Petitioners argue that there is no authority of the President to subject the John Hay SEZ to the governance of BCDA which has just oversight functions over SEZ; and that to do so is to diminish the city government's power over an area within its jurisdiction, hence, Proclamation No. 420 unlawfully gives the President power of control over the local government instead of just mere supervision.

Petitioners' arguments are bereft of merit. Under R.A. No. 7227, the BCDA is entrusted with, among other things, the following purpose:[50]

x x x x x x x x x

(a) *To own, hold and/or administer the military reservations of* John Hay Air Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station, Mt. Sta. Rita Station (Hermosa, Bataan) and those portions of Metro Manila Camps which may be transferred to it by the President;

x x x x x x x x x (Italics supplied)

With such broad rights of ownership and administration vested in BCDA over Camp John Hay, BCDA virtually has control over it, subject to certain limitations provided for by law. By designating BCDA as the governing agency of the John Hay SEZ, the law merely emphasizes or reiterates the statutory role or functions it has been granted.

The unconstitutionality of the grant of tax immunity and financial incentives as contained in the second sentence of Section 3 of Proclamation No. 420 notwithstanding, the entire assailed proclamation cannot be declared unconstitutional, the other parts thereof not being repugnant to law or the Constitution. The delineation and declaration of a portion of the area covered by Camp John Hay as a SEZ was well within the powers of the President to do so by means of a proclamation.[51] The requisite prior concurrence by the Baguio City government to such proclamation appears to have been given in the form of a duly enacted resolution by the *sanggunian*. The other provisions

[50] R.A. 7227, Section 4.

Supreme Court E-Library

of the proclamation had been proven to be consistent with R.A. No. 7227.

Where part of a statute is void as contrary to the Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced.[52] This Court finds that the other provisions in Proclamation No. 420 converting a delineated portion of Camp John Hay into the John Hay SEZ are separable from the invalid second sentence of Section 3 thereof, hence they stand.

WHEREFORE, the second sentence of Section 3 of Proclamation No. 420 is hereby declared *NULL AND VOID* and is accordingly declared of no legal force and effect. Public respondents are hereby enjoined from implementing the aforesaid void provision.

Proclamation No. 420, without the invalidated portion, remains valid and effective.

SO ORDERED.

Davide, Jr., C. J., Bellosillo, Vitug, Panganiban, Sandoval-Gutierrez, Carpio, Austria-Martinez, Callejo, Sr., Azcuna, and *Tinga, JJ .*, concur.

Puno, J., took no part due to relationship.

Quisumbing, J. No part due to prior action.

Ynares-Santiago, J., on official leave.

Corona, J., is on leave.

---

[51] R.A. 7227, Section 15.

[52] Agpalo, *Statutory Construction, pp. 27-28 [1995].*