Supreme Court E-Library

law pertains to the input tax paid for the goods, materials or supplies passed on to the taxpayer by his suppliers, and used to build improvements on the land. Even before real estate dealers like petitioner became subject to VAT under RA 7716, improvements on land were already subject to VAT. However, since the land itself was not subject to VAT or any input tax prior to RA 7716, the land then could not be considered part of the beginning inventory under Section 105. **Thus, the 8% transitional input tax applies only to improvements on land, but not on the land itself.**

In sum, petitioner's cause must fail because petitioner acquired the Global City land from the national government under a tax-free transaction. Consequently, petitioner is not entitled to a refund or credit of any transitional input tax.

Accordingly, I vote to deny the petitions and affirm the 15 November 2002 Decision and 1 July 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 60477 and the 30 October 2003 Decision and 12 December 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 61517.

EN BANC

[G.R. No. 163072. April 2, 2009]

MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **CITY OF PASAY, SANGGUNIANG PANGLUNGSOD NG PASAY, CITY MAYOR OF PASAY, CITY TREASURER OF PASAY, and CITY ASSESSOR OF PASAY,** *respondents.*

Supreme Court E-Library

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; THE TERMS "GOVERNMENT INSTRUMENTALITY" AND "GOVERNMENT-OWNED OR CONTROLLED CORPORATION," DEFINED. — The definition of *"instrumentality"* under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987 uses the phrase "includes x x x government-owned or controlled corporations" which means that a government "instrumentality" may or may not be a "government-owned or controlled corporation." Obviously, the term government "instrumentality" is **broader** than the term "government-owned or controlled corporation." Section 2(10) provides: "SEC. 2. *General Terms Defined*. — x x x (10) *Instrumentality* refers to any agency of the national Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations. The term *"government-owned or controlled corporation"* has a separate definition under Section 2(13) of the Introductory Provisions of the Administrative Code of 1987: SEC. 2. *General Terms Defined*. — x x x "(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: *Provided*, That government-owned or controlled corporations may further be categorized by the department of Budget, the Civil Service Commission, and the Commission on Audit for the purpose of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations." The fact that two terms have separate definitions means that while a government "instrumentality" may include a "government-owned or controlled corporation," there may be a government "instrumentality" that will not qualify as a "government-owned or controlled corporation."

Supreme Court E-Library

2. ID.; ID.; ID.; GOVERNMENT INSTRUMENTALITIES; MANILA INTERNATIONAL AIRPORT AUTHORITY; CLASSIFIED AS A GOVERNMENT INSTRUMENTALITY THAT DOES NOT QUALIFY AS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION; EXPLAINED. — A close scrutiny of the definition of "government-owned or controlled corporation" in Section 2(13) will show that MIAA would not fall under such definition. **MIAA is a government "instrumentality" that does not qualify as a "government-owned or controlled corporation."** As explained in the 2006 MIAA case: A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares. x x x Section 3 of the Corporation Code defines a stock corporation as one whose "*capital stock is divided into shares and* x x x *authorized to distribute to the holders of such shares dividends* x x x." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation. x x x MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation. Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use. Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA

Supreme Court E-Library

within the National Government? MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. x x x When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."

3. ID.; ID.; ID.; ID.; EXEMPT FROM ANY KIND OF TAX FROM THE LOCAL GOVERNMENTS. — MIAA is not a government-owned or controlled corporation but a government instrumentality which is exempt from any kind of tax from the local governments. Indeed, the exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code. Under Section 133(o) of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the MIAA. Hence, MIAA is not liable to pay real property tax for the NAIA Pasay properties.

4. ID.; ID.; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAX; PROPERTIES OF PUBLIC DOMINION INTENDED FOR PUBLIC USE ARE EXEMPT FROM REAL PROPERTY TAX; EXCEPTION. — [T]he airport lands and buildings of MIAA are properties of public dominion intended for public use, and as such are exempt from real property tax under Section 234(a) of the Local Government Code. However, under the same provision, if MIAA leases its real property to a taxable person, the specific property leased becomes subject to real property tax. In this case, only those portions of the NAIA Pasay properties which are leased to taxable persons like private parties are subject to real property tax by the City of Pasay.

Supreme Court E-Library

NACHURA, *J., separate opinion:*

1. TAXATION; KINDS OF TAXES; REAL PROPERTY TAX; NATURE. — Real property tax is a direct tax on the ownership of lands and buildings or other improvements thereon, not specially exempted, and is payable regardless of whether the property is used or not, although the value may vary in accordance with such factor. The tax is usually single or indivisible, although the land and building or improvements erected thereon are assessed separately, except when the land and building or improvements belong to separate owners. The power to levy this tax is vested in local government units (LGUs).

2. POLITICAL LAW; STATUTES; INTERPRETATION OF; PRESENCE OF A PARTICULAR AND A GENERAL ENACTMENT IN THE SAME STATUTE, HOW CONSTRUED. — A basic principle in statutory construction decrees that, to discover the general legislative intent, the whole statute, and not only a particular provision thereof, should be considered. Every section, provision or clause in the law must be read and construed in reference to each other in order to arrive at the true intention of the legislature. Notably, Section 133 of the LGC speaks of the general limitations on the taxing power of LGUs. This is reinforced by its inclusion in Title I, Chapter I entitled "General Provisions" on "Local Government Taxation." On the other hand, Section 234, containing the enumeration of the specific exemptions from real property tax, is in Chapter IV entitled "Imposition of Real Property Tax" under Title II on "Real Property Taxation." When read together, Section 234, a specific provision, qualifies Section 133, a general provision. Indeed, whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, will overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply. Otherwise stated, where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, will include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general

and special acts or provisions are contemporaneous, as the legislature is not to be presumed to have intended a conflict.

3. TAXATION; KINDS OF TAXES; REAL PROPERTY TAX; WHILE THE BASIS OF A REAL PROPERTY TAX ASSESSMENT IS ACTUAL USE, THE TAX ITSELF IS DIRECTED TO THE OWNERSHIP OF THE LANDS AND BUILDINGS OR OTHER IMPROVEMENTS THEREON. — [W]hile the basis of a real property tax assessment is actual use, the tax itself is directed to the ownership of the lands and buildings or other improvements thereon. Public policy considerations dictate that property of the State and of its municipal subdivisions devoted to governmental uses and purposes is generally exempt from taxation although no express provision in the law is made therefor. In the instant case, the legislature specifically provided that real property owned by the Republic of the Philippines or any of its political subdivisions is exempt from real property tax, except, of course, when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. The principal basis of the exemption is likewise ownership. Indeed, emphasis should be made on the ownership of the property, rather than on the airport Authority being a taxable entity. This strategy makes it unnecessary to determine whether MIAA is an instrumentality or a GOCC, as painstakingly expounded by the *ponente*.

4. CIVIL LAW; PROPERTY; PROPERTIES OF PUBLIC DOMINION; ENUMERATED. — The phrase, "property owned by the Republic" in Section 234 [of the LGC], actually refers to those identified as public property in our laws. Following *MIAA*, we go to Articles 420 and 421 of the Civil Code which provide: "Art. 420. The following things are property of public dominion: (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property." From the afore-quoted, we readily deduce that airport properties are of public dominion. The "port" in the enumeration certainly

Supreme Court E-Library

includes an airport. With its beacons, landing fields, runways, and hangars, an airport is analogous to a harbor with its lights, wharves and docks; the one is the landing place and haven of ships that navigate the water, the other of those that navigate the air. Ample authority further supports the proposition that the term "roads" include runways and landing strips. Airports, therefore, being properties of public dominion, are of the Republic.

5. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAX; EXEMPTION FROM REAL PROPERTY TAX OF PROPERTIES OF THE REPUBLIC, EXPLAINED. — [T]he legislative intent to exempt from real property tax the properties of the Republic remains clear. The soil constituting the NAIA airport and the runways cannot be taxed, being properties of public dominion and pertaining to the Republic. This is true even if the title to the said property is in the name of MIAA. Practical ownership, rather than the naked legal title, must control, particularly because, as a matter of practice, the record title may be in the name of a government agency or department rather than in the name of the Republic. In this case, even if MIAA holds the record title over the airport properties, such holding can only be for the benefit of the Republic, especially when we consider that MIAA exercises an essentially public function. Further, where property, the title to which is in the name of the principal, is immune from taxes, it remains immune even if the title is standing in the name of an agent or trustee for such principal. Properties of public dominion are held in trust by the state or the Republic for the people. The national government and the bodies it has created that exercise delegated authority are, pursuant to the general principles of public law, mere agents of the Republic. Here, insofar as it deals with the subject properties, MIAA, a governmental creation exercising delegated powers, is a mere **agent** of the Republic, and the latter, to repeat, is the trustee of the properties for the benefit of all the people. x x x The MIAA Charter further provides that any portion of the airport cannot be disposed of by the Authority through sale or through any other mode unless specifically approved by the President of the Philippines. It is also noted that MIAA's board of directors is practically controlled by the national government, the members thereof being officials of the executive branch.

Supreme Court E-Library

Likewise, the Authority cannot levy and collect dues, charges, fees or assessments for the use of the airport premises, works, appliances, facilities or concessions, or for any service provided by it, without the approval of several executive departments. These provisions are consistent with an agency relationship. Let it be remembered that one of the principal elements of an agency relationship is the existence of some degree of control by the principal over the conduct and activities of the agent. In this regard, while an agent undertakes to act on behalf of his principal and subject to his control, a trustee as such is not subject to the control of the beneficiary, except that he is under a duty to deal with the trust property for the latter's benefit in accordance with the terms of the trust and can be compelled by the beneficiary to perform his duty.

YNARES-SANTIAGO*, J., dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAX; LEVIED BY A PROVINCE OR CITY OR MUNICIPALITY WITHIN METRO MANILA ON REAL PROPERTY; EXCEPTION. — Pursuant to Section 232 of the LGC, a province or city or municipality within the Metropolitan Manila Area is vested with the power to levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereafter specifically exempted. Corollarily, Section 234 thereof provides an enumeration of certain properties which are exempt from payment of the real property tax, among which is "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."

2. ID.; ID.; ID.; ID.; ID.; THE AIRPORT AND ALL INSTALLATIONS, FACILITIES AND EQUIPMENT OF THE MANILA INTERNATIONAL AIRPORT AUTHORITY ARE PROPERTIES OF PUBLIC DOMINION AND SHOULD BE EXEMPTED FROM PAYMENT OF REAL PROPERTY TAX; EXCEPTION; CASE AT BAR. — Regardless of the apparent transfer of title of the said properties to MIAA, I submit that the latter is only holding the properties for the benefit of the Republic in its capacity as agent thereof.

Supreme Court E-Library

It is to be noted that despite the conveyance of the title to the said properties to the MIAA, however, the latter could not in any way dispose of the same through sale or through any other mode unless specifically approved by the President of the Republic. Even MIAA's borrowing power is dictated upon by the President. Thus, MIAA could raise funds, either from local or international sources, by way of loans, credits or securities, and other borrowing instruments, create pledges, mortgages and other voluntary lines or encumbrances on any of its assets or properties, only after consultation with the Secretary of Finance and with the approval of the President. In addition, MIAA's total outstanding indebtedness could exceed its net worth only upon express authorization by the President. "[E]ven if MIAA holds the record title over the airport properties, such holding can only be for the benefit of the Republic, that MIAA exercises an essentially public function." In sum, the airport and all its installations, facilities and equipment of the MIAA, are properties of public dominion and should thus be exempted from payment of real property tax, except those properties where the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

TINGA*, J., dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; REAL PROPERTY TAX; LIABILITY FOR REAL PROPERTY TAXES OF GOVERNMENT INSTRUMENTALITIES; EXPLAINED. — Section 232 [of the Local Government Code] lays down the general rule that provinces, cities or municipalities within Metro Manila may levy an *ad valorem* tax on real property "not hereinafter specifically exempted." Such specific exemptions are enumerated in Section 234, and the only exemption tied to government properties extends to "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted . . . to a taxable person." Moreover, the final paragraph of Section 234 explains that "[e]xcept as provided herein [in Section 234], 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 corporations are hereby withdrawn upon

Supreme Court E-Library

the effectivity of this Code." What are the implications of Section 232 in relation to Section 234 as to the liability for real property taxes of government instrumentalities such as MIAA? 1) All persons, whether natural or juridical, including GOCCs are liable for real property taxes. 2) The only exempt properties are those owned by the Republic or any of its political subdivisions. 3) So-called "government corporate entities," so long as they have juridical personality distinct from the Republic of the Philippines or any of its political subdivisions, are liable for real property taxes. 4) After the enactment of the Local Government Code in 1991, Congress remained free to reenact tax exemptions from real property taxes to government instrumentalities, as it did with the Government Service Insurance System in 1997.

2. CIVIL LAW; PROPERTY; PUBLIC DOMINION PROPERTIES; ELUCIDATED IN CASE AT BAR. — One of the most recognizable characteristics of public dominion properties is that they are placed outside the commerce of man and cannot be alienated or leased or otherwise be the subject matter of contracts. The fact is that the MIAA may, by law, alienate, lease or place the airport properties as the subject matter of contracts. x x x There is thus that contradiction where property which ostensibly is classified as part of the public dominion under Article 420 of the Civil Code is nonetheless classified to lie within the commerce of man by virtue of a subsequent law such as the MIAA charter. In order for the Court to classify the MIAA properties as part of public dominion, it will be necessary to invalidate the provisions of the MIAA charter allowing the Authority to lease, sell, create pledges, mortgages and other voluntary liens or encumbrances on any of the airport properties. The provisions of the MIAA charter could not very well be invalidated with the Civil Code as basis, since the MIAA charter and the Civil Code are both statutes, and thus of equal rank in the hierarchy of laws, and more significantly the Civil Code was enacted earlier and therefore could not be the repealing law. If there is a provision in the Constitution that adopted the definition of and limitations on public dominion properties as found in the Civil Code, then the aforequoted provisions from the MIAA charter allowing the Authority to place its properties within the commerce of man may be invalidated. The Constitution however does not do so, confining itself instead to a general statement that "all lands of the public

Supreme Court E-Library

domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State." Note though that under Article 420, public dominion properties are not necessarily owned by the State, the two subsections thereto referring to (a) properties intended for public use; and (b) those which belong to the State and are intended for some public service or for the development of the national wealth. In *Laurel v. Garcia*, the Court notably acknowledged that "property of public dominion is not owned by the State but pertains to the State." Thus, there is no equivalence between the concept of public dominion under the Civil Code, and of public domain under the Constitution. Accordingly, the framework of public dominion properties is one that is statutory, rather than constitutional in design. That being the case, Congress is able by law to segregate properties which ostensibly are, by their nature, part of the public dominion under Article 420(1) of the Civil Code, and place them within the commerce of man by vesting title thereto in an independent juridical personality such as the MIAA, and authorizing their sale, lease, mortgage and other similar encumbrances. When Congress accomplishes that by law, the properties could no longer be considered as part of the public dominion.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
City Legal Counsel (Pasay City) for respondents.

D E C I S I O N

CARPIO, *J.*:

This is a petition for review on *certiorari*[1] of the Decision[2] dated 30 October 2002 and the Resolution dated 19 March 2004 of the Court of Appeals in CA-G.R. SP No. 67416.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Ruben T. Reyes (now retired Supreme Court Justice) with Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam, concurring.

Supreme Court E-Library

The Facts

Petitioner Manila International Airport Authority (MIAA) operates and administers the Ninoy Aquino International Airport (NAIA) Complex under Executive Order No. 903 (EO 903),[3] otherwise known as the Revised Charter of the Manila International Airport Authority. EO 903 was issued on 21 July 1983 by then President Ferdinand E. Marcos. Under Sections 3[4] and 22[5] of EO 903, approximately 600 hectares of land, including the runways, the airport tower, and other airport buildings, were transferred to MIAA. The NAIA Complex is located along the border between Pasay City and Parañaque City.

---

[3] Providing for a Revision of Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority with Power to Administer and Operate the Manila International Airport.

[4] Section 3 of EO 903 reads:

SEC. 3. *Creation of the Manila International Airport Authority*. There is hereby established a body corporate to be known as the Manila International Airport Authority which shall be attached to the Ministry of Transportation and Communications. The principal office of the Authority shall be located at the New Manila International Airport. The Authority may establish such offices, branches, agencies or subsidiaries as it may deem proper and necessary; Provided, that any subsidiary that may be organized shall have the prior approval of the President.

The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority, subject to existing rights, if any. The Bureau of Lands and other appropriate government agencies shall undertake an actual survey of the area transferred within one year from the promulgation of this Executive Order and the corresponding title to be issued in the name of the Authority. Any portion thereof shall not be disposed through the sale or through any other mode unless specifically approved by the President of the Philippines.

[5] Section 22 of EO 903 reads:

SEC. 22. *Transfer of Existing Facilities and Intangible Assets*. All existing public airport facilities, runways, lands, buildings and other property, movable and immovable, belonging to the Airport, and all assets, powers, rights, interests and privileges belonging to the Bureau of Air Transportation relating to airport works or air operations, including all equipment which are necessary for the operation of crash fire and rescue facilities, are hereby transferred to the Authority.

Supreme Court E-Library

On 28 August 2001, MIAA received Final Notices of Real Property Tax Delinquency from the City of Pasay for the taxable years 1992 to 2001. MIAA's real property tax delinquency for its real properties located in NAIA Complex, Ninoy Aquino Avenue, Pasay City (NAIA Pasay properties) is tabulated as follows:

TAX DECLARATION	TAXABLE YEAR	TAX DUE	PENALTY	TOTAL
A7-183-08346	1997-2001	243,522,855.00	123,351,728.18	366,874,583.18
A7-183-05224	1992-2001	113,582,466.00	71,159,414.98	184,741,880.98
A7-191-00843	1992-2001	54,454,800.00	34,115,932.20	88,570,732.20
A7-191-00140	1992-2001	1,632,960.00	1,023,049.44	2,656,009.44
A7-191-00139	1992-2001	6,068,448.00	3,801,882.85	9,870,330.85
A7-183-05409	1992-2001	59,129,520.00	37,044,644.28	96,174,164.28
A7-183-05410	1992-2001	20,619,720.00	12,918,254.58	33,537,974.58
A7-183-05413	1992-2001	7,908,240.00	4,954,512.36	12,862,752.36
A7-183-05412	1992-2001	18,441,981.20	11,553,901.13	29,995,882.33
A7-183-05411	1992-2001	109,946,736.00	68,881,630.13	178,828,366.13
A7-183-05245	1992-2001	7,440,000.00	4,661,160.00	12,101,160.00
GRAND TOTAL		₱642,747,726.20	₱373,466,110.13	₱1,016,213,836.33

On 24 August 2001, the City of Pasay, through its City Treasurer, issued notices of levy and warrants of levy for the NAIA Pasay properties. MIAA received the notices and warrants of levy on 28 August 2001. Thereafter, the City Mayor of Pasay threatened to sell at public auction the NAIA Pasay properties if the delinquent real property taxes remain unpaid.

On 29 October 2001, MIAA filed with the Court of Appeals a petition for prohibition and injunction with prayer for preliminary injunction or temporary restraining order. The petition sought to enjoin the City of Pasay from imposing real property taxes on, levying against, and auctioning for public sale the NAIA Pasay properties.

Supreme Court E-Library

On 30 October 2002, the Court of Appeals dismissed the petition and upheld the power of the City of Pasay to impose and collect realty taxes on the NAIA Pasay properties. MIAA filed a motion for reconsideration, which the Court of Appeals denied. Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals held that Sections 193 and 234 of Republic Act No. 7160 or the Local Government Code, which took effect on 1 January 1992, withdrew the exemption from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under Republic Act No. 6938, non-stock and non-profit hospitals and educational institutions. Since MIAA is a government-owned corporation, it follows that its tax exemption under Section 21 of EO 903 has been withdrawn upon the effectivity of the Local Government Code.

The Issue

The issue raised in this petition is whether the NAIA Pasay properties of MIAA are exempt from real property tax.

The Court's Ruling

The petition is meritorious.

In ruling that MIAA is not exempt from paying real property tax, the Court of Appeals cited Sections 193 and 234 of the Local Government Code which read:

SECTION 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.

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

Supreme Court E-Library

(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;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environment protection.

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 corporations are hereby withdrawn upon the effectivity of this Code.

The Court of Appeals held that as a government-owned corporation, MIAA's tax exemption under Section 21 of EO 903 has already been withdrawn upon the effectivity of the Local Government Code in 1992.

In *Manila International Airport Authority v. Court of Appeals*[6] (2006 MIAA case), this Court already resolved the issue of whether the airport lands and buildings of MIAA are exempt from tax under existing laws. The 2006 MIAA case originated from a petition for prohibition and injunction which MIAA filed with the Court of Appeals, seeking to restrain the City of Parañaque from imposing real property tax on, levying against, and auctioning for public sale the airport lands and buildings located in Parañaque City. The only difference between the 2006 MIAA case and this case is that the 2006 MIAA case involved airport lands and buildings located in Parañaque City while this case involved airport lands and buildings located in

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

Supreme Court E-Library

Pasay City. The 2006 MIAA case and this case raised the same threshold issue: whether the local government can impose real property tax on the airport lands, consisting mostly of the runways, as well as the airport buildings, of MIAA. In the 2006 MIAA case, this Court held:

> To summarize, MIAA is not a government-owned or controlled corporation under Section 2(13) of the Introductory Provisions of the Administrative Code because it is not organized as a stock or non-stock corporation. Neither is MIAA a government-owned or controlled corporation under Section 16, Article XII of the 1987 Constitution because MIAA is not required to meet the test of economic viability. MIAA is a government instrumentality vested with corporate powers and performing essential public services pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. As a government instrumentality, MIAA is not subject to any kind of tax by local governments under Section 133(o) of the Local Government Code. The exception to the exemption in Section 234(a) does not apply to MIAA because MIAA is not a taxable entity under the Local Government Code. Such exception applies only if the beneficial use of real property owned by the Republic is given to a taxable entity.
>
> *Finally*, the Airport Lands and Buildings of MIAA are properties devoted to public use and thus are properties of public dominion. *Properties of public dominion are owned by the State or the Republic.* Article 420 of the Civil Code provides:
>
> > Art. 420. The following things are *property of public dominion*:
> >
> > (1) Those **intended for public use**, such as roads, canals, rivers, torrents, **ports** and bridges **constructed by the State**, banks, shores, roadsteads, and **others of similar character**;
> >
> > (2) Those which belong to the State, without being for public use, and are **intended for some public service** or for the development of the national wealth.
>
> The term "*ports* x x x *constructed by the State*" includes *airports* and seaports. The Airport Lands and Buildings of MIAA are intended for public use, and at the very least intended for public service. Whether intended for public use or public service, the Airport Lands and Buildings are *properties of public dominion*. As properties of

Supreme Court E-Library

public dominion, the Airport Lands and Buildings are owned by the Republic and thus exempt from real estate tax under Section 234(a) of the Local Government Code.[7] (Emphasis in the original)

The definition of *"instrumentality"* under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987 uses the phrase "includes x x x government-owned or controlled corporations" which means that a government "instrumentality" may or may not be a "government-owned or controlled corporation." Obviously, the term government "instrumentality" is **broader** than the term "government-owned or controlled corporation." Section 2(10) provides:

SEC. 2. *General Terms Defined.* — x x x

(10) *Instrumentality* refers to any agency of the national Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.

The term *"government-owned or controlled corporation"* has a separate definition under Section 2(13)[8] of the Introductory Provisions of the Administrative Code of 1987:

---

[7] *Id.* at 644-645.

[8] Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 reads:

SEC. 2. *General Terms Defined.*— x x x

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: *Provided,* That government-owned or controlled corporations may further be categorized by the department of Budget, the Civil Service Commission, and the Commission on Audit for the purpose of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

Supreme Court E-Library

SEC. 2. *General Terms Defined.* — x x x

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: *Provided*, That government-owned or controlled corporations may further be categorized by the department of Budget, the Civil Service Commission, and the Commission on Audit for the purpose of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

The fact that two terms have separate definitions means that while a government "instrumentality" may include a "government-owned or controlled corporation," there may be a government "instrumentality" that will not qualify as a "government-owned or controlled corporation."

A close scrutiny of the definition of "government-owned or controlled corporation" in Section 2(13) will show that MIAA would not fall under such definition. **MIAA is a government "instrumentality" that does not qualify as a "government-owned or controlled corporation**." As explained in the 2006 MIAA case:

A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares. x x x

Section 3 of the Corporation Code defines a stock corporation as one whose "*capital stock is divided into shares and* x x x *authorized to distribute to the holders of such shares dividends* x x x." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

x x x x x x x x x

Supreme Court E-Library

MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.

Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. x x x

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."[9]

Thus, MIAA is not a government-owned or controlled corporation but a government instrumentality which is exempt

[9] *Supra* note 6 at 615-618.

Supreme Court E-Library

from any kind of tax from the local governments. Indeed, the exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code.[10] Under Section 133(o)[11] of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the MIAA. Hence, MIAA is not liable to pay real property tax for the NAIA Pasay properties.

Furthermore, the airport lands and buildings of MIAA are properties of public dominion intended for public use, and as such are exempt from real property tax under Section 234(a) of the Local Government Code. However, under the same provision, if MIAA leases its real property to a taxable person, the specific property leased becomes subject to real property tax.[12] In this case, only those portions of the NAIA Pasay properties which are leased to taxable persons like private parties are subject to real property tax by the City of Pasay.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 30 October 2002 and the Resolution dated 19 March 2004 of the Court of Appeals in CA-G.R. SP No. 67416. We *DECLARE* the NAIA Pasay properties of the Manila International Airport Authority *EXEMPT* from real property tax imposed by the City of Pasay. We declare *VOID* all the real property tax assessments, including the final notices of real

---

[10] *Philippine Fisheries Development Authority v. Court of Appeals*, G.R. No. 150301, 2 October 2007, 534 SCRA 490.

[11] Section 133(o) of the Local Government Code reads:

SECTION 133. *Common Limitations on the Taxing Powers of the 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 x x x x x x

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

[12] *Manila International Airport Authority v. Court of Appeals*, *supra* note 6.

Supreme Court E-Library

property tax delinquencies, issued by the City of Pasay on the NAIA Pasay properties of the Manila International Airport Authority, except for the portions that the Manila International Airport Authority has leased to private parties.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, Brion, and *Peralta, JJ.,* concur.

Austria-Martinez, J., joins the separate opinion of *J.* Nachura.

Nachura, J., please see separate opinion.

Ynares-Santiago and *Tinga, JJ.,* please see dissenting opinion.

SEPARATE OPINION

NACHURA, *J.*:

Are airport properties subject to real property tax? The question seriously begs for a definitive resolution, in light of our ostensibly contradictory decisions[1] that may have generated no small measure of confusion even among lawyers and magistrates.

Hereunder, I propose a simple, direct and painless approach to arrive at an acceptable answer to the question.

I.

Real property tax is a direct tax on the ownership of lands and buildings or other improvements thereon, not specially exempted, and is payable regardless of whether the property is used or not, although the value may vary in accordance with such factor. The tax is usually single or indivisible, although the land and building or improvements erected thereon are assessed

---

[1] *Manila International Airport Authority (MIAA) v. Court of Appeals,* G.R. No. 155650, July 20, 2006, 495 SCRA 591; *Mactan Cebu International Airport Authority (MCIAA) v. Marcos,* 330 Phil. 392 (1996).

Supreme Court E-Library

separately, except when the land and building or improvements belong to separate owners.[2]

The power to levy this tax is vested in local government units (LGUs). Thus, Republic Act (R.A.) No. 7160, or the Local Government Code (LGC) of 1991,[3] provides:

Under Book II, Title II, Chapter IV-Imposition of Real Property Tax

Section 232. *Power to Levy Real Property Tax.* — **A province or city or a municipality within the Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted**.[4]

A significant innovation in the LGC is the withdrawal, subject to some exceptions, of all tax exemption privileges of all natural or juridical persons, including government-owned and controlled corporations (GOCCs), thus:

Under Book II, Title I, Chapter V-Miscellaneous Provisions

Section 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**.[5]

This is where the controversy started. The airport authorities, formerly exempt from paying taxes, are now being obliged to pay real property tax on airport properties.

To challenge the real property tax assessments, the airport authorities invoke two provisions of the LGC— one is stated in Book II, Title I, Chapter I on General Provisions, which reads:

---

[2] *Villanueva, et al. v. City of Iloilo*, 135 Phil. 572, 582-583 (1968).

[3] Approved on October 10, 1991 and became effective on January 1, 1992.

[4] Emphasis supplied.

[5] *Id.*

Supreme Court E-Library

Section 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:

(a) Income tax, except when levied on banks and other financial institutions;

(b) Documentary stamp tax;

(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions *mortis causa*, except as otherwise provided herein;

(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;

(e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;

(f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;

(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein;

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;

(k) Taxes on premiums paid by way of reinsurance or retrocession;

Supreme Court E-Library

(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;

(m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;

(n) Taxes, fees, or charges, on Countryside and *Barangay* Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and

(o) **Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units**.[6]

and the other in Book II, Title I, Chapter IV on Imposition of Real Property Tax:

Section 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**;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.

---

[6] *Id.*

Supreme Court E-Library

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 corporations are hereby withdrawn upon the effectivity of this Code.[7]

In *Mactan Cebu International Airport Authority (MCIAA) v. Marcos*,[8] the Court ruled that Section 133(o) is qualified by Sections 232 and 234. Thus, MCIAA could not seek refuge in Section 133(o), but only in Section 234(a) provided it could establish that the properties were owned by the Republic of the Philippines. The Court ratiocinated, thus:

> [R]eading together Sections 133, 232, and 234 of the LGC, we conclude that as a general rule, as laid down in Section 133, the taxing powers of local government units cannot extend to the levy of, *inter alia*, "taxes, fees and charges of any kind on the National Government, its agencies and instrumentalities, and local government units"; however, pursuant to Section 232, provinces, cities, and municipalities in the Metropolitan Manila Area may impose the real property tax except on, *inter alia*, "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," as provided in item (a) of the first paragraph of Section 234.
>
> As to tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons, including government-owned and controlled corporations, Section 193 of the LGC prescribes the general rule, *viz*., they are *withdrawn* upon the effectivity of the LGC, *except* those granted to local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, and unless otherwise provided in the LGC. The latter proviso could refer to Section 234 which enumerates the properties exempt from real property tax. But the last paragraph of Section 234 further qualifies the retention of the exemption insofar as real property taxes are concerned by limiting the retention only to those enumerated therein; all others not included in the enumeration lost the privilege upon the effectivity of the LGC. Moreover, even

---

[7] *Id.*

[8] *Supra* note 1.

Supreme Court E-Library

as to real property owned by the Republic of the Philippines or any of its political subdivisions covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to a taxable person for consideration or otherwise.

Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its Charter, R.A. No. 6958, has been withdrawn. Any claim to the contrary can only be justified if the petitioner can seek refuge under any of the exceptions provided in Section 234, but not under Section 133, as it now asserts, since, as shown above, the said section is qualified by Sections 232 and 234.

In short, the petitioner can no longer invoke the general rule in Section 133 that the taxing powers of the local government units cannot extend to the levy of:

> (o) taxes, fees or charges of any kind on the National Government, its agencies or instrumentalities, and local government units.[9]

In addition, the Court went on to hold that the properties comprising the Lahug International Airport and the Mactan International Airport are no longer owned by the Republic, the latter having conveyed the same absolutely to MCIAA.

About a decade later, however, the Court ruled in *Manila International Airport Authority (MIAA) v. Court of Appeals*,[10] that the airport properties, this time comprising the Ninoy Aquino International Airport (NAIA), are exempt from real property tax. It justified its ruling by categorizing MIAA as a government instrumentality specifically exempted from paying tax by Section 133(o) of R.A. No. 7160. It further reasoned that the subject properties are properties of public dominion, owned by the Republic, and are only held in trust by MIAA, thus:

---

[9] *Id.* at 413-414.

[10] *Supra* note 1.

Supreme Court E-Library

Under Section 2(10) and (13) of the Introductory Provisions of the Administrative Code, which governs the legal relation and status of government units, agencies and offices within the entire government machinery, MIAA is a government **instrumentality** and not a government-owned or controlled corporation. Under Section 133(o) of the Local Government Code, MIAA as a government **instrumentality** is not a taxable person because it is not subject to "[t]axes, fees or charges of any kind" by local governments. The only exception is when MIAA leases its real property to a "taxable person" as provided in Section 234(a) of the Local Government Code, in which case the specific real property leased becomes subject to real estate tax. Thus, only portions of the Airport Lands and Buildings leased to taxable persons like **private parties** are subject to real estate tax by the City of Parañaque.

Under Article 420 of the Civil Code, the Airport Lands and Buildings of MIAA, being devoted to public use, are properties of **public dominion** and thus owned by the State or the Republic of the Philippines. Article 420 specifically mentions "**ports** x x x constructed by the State," which includes public airports and seaports, as properties of public dominion and owned by the Republic. As properties of public dominion owned by the Republic, there is no doubt whatsoever that the Airport Lands and Buildings are expressly exempt from real estate tax under Section 234(a) of the Local Government Code. This Court has also repeatedly ruled that properties of public dominion are not subject to execution or foreclosure sale.[11]

II.

In this case, we are confronted by the very same issue.

A basic principle in statutory construction decrees that, to discover the general legislative intent, the whole statute, and not only a particular provision thereof, should be considered. Every section, provision or clause in the law must be read and construed in reference to each other in order to arrive at the true intention of the legislature.[12]

---

[11] *Id.* at 645-646.

[12] *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, G.R. No. 169435, February 27, 2008, 547 SCRA 71, 95-96.

Supreme Court E-Library

Notably, Section 133 of the LGC speaks of the general limitations on the taxing power of LGUs. This is reinforced by its inclusion in Title I, Chapter I entitled "General Provisions" on "Local Government Taxation." On the other hand, Section 234, containing the enumeration of the specific exemptions from real property tax, is in Chapter IV entitled "Imposition of Real Property Tax" under Title II on "Real Property Taxation." When read together, Section 234, a specific provision, qualifies Section 133, a general provision.

Indeed, whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, will overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.[13] Otherwise stated, where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, will include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the legislature is not to be presumed to have intended a conflict.[14]

Mactan Cebu therefore adheres to the intendment of the law insofar as it holds that MCIAA cannot seek refuge in Section 133(o); that it can only invoke Section 234(a) so long as it can establish that the properties were owned by the Republic of the Philippines. To repeat, Section 234, which specifies the properties exempted from real property tax, prevails over the general limitations on the taxing power of LGUs stated in Section 133.

Thus, if Section 133(o) is not to be a haven, then, I respectfully submit that it is no longer necessary to dichotomize between a government instrumentality and a GOCC. As stressed by the Court in *Mactan Cebu*, what need only be ascertained is whether

---

[13] *Lichauco & Co. v. Apostol and Corpus*, 44 Phil. 138, 146 (1922).

[14] *Id.* at 147.

Supreme Court E-Library

the airport properties are owned by the Republic if the airport Authority is to be freed from the burden of paying the real property tax. Similarly, in *MIAA*, with the Court's finding that the NAIA lands and buildings are owned by the Republic, the airport Authority does not have to pay real property tax to the City of Parañaque.

III.

As pointed out earlier, *Mactan Cebu* and *MIAA* ostensibly contradict each other. While the first considers airport properties as subject to real property tax, the second exempts the same from this imposition. The conflict, however, is more apparent than real. The divergent conclusions in the two cases proceed from different premises; hence, the resulting contradiction.

To elucidate, in *Mactan Cebu*, the Court focused on the proper interpretation of Sections 133, 232 and 234 of the LGC, and emphasized the nature of the tax exemptions granted by law. *Mactan Cebu* categorized the exemptions as based on the ownership, character and use of the property, thus:

(a) *Ownership Exemptions*. Exemptions from real property taxes on the basis of *ownership* are real properties owned by: (i) the Republic, (ii) a province, (iii) a city, (iv) a municipality, (v) a *barangay*, and (vi) registered cooperatives.

(b) *Character Exemptions*. Exempted from real property taxes on the basis of their character are: (i) charitable institutions, (ii) houses and temples of prayer like churches, parsonages or convents appurtenant thereto, mosques, and (iii) non-profit or religious cemeteries.

(c) *Usage exemptions*. Exempted from real property taxes on the basis of the actual, direct and exclusive *use* to which they are devoted are: (i) all lands, buildings and improvements which are actually directly and exclusively used for religious, charitable or educational purposes; (ii) all machineries and equipment actually, directly and exclusively used by local water districts or by government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power; and

Supreme Court E-Library

(iii) all machinery and equipment used for pollution control and environmental protection.

To help provide a healthy environment in the midst of the modernization of the country, all machinery and equipment for pollution control and environmental protection may not be taxed by local governments.[15]

For the airport properties to be exempt from real property tax, they must fall within the mentioned categories. Logically, the airport properties can only qualify under the first exemption — by virtue of ownership. But, as already mentioned, the Court, nevertheless, ruled in *Mactan Cebu* that the said properties are no longer owned by the Republic having been conveyed absolutely to the airport Authority, thus:

Section 15 of the petitioner's Charter provides:

Sec. 15. *Transfer of Existing Facilities and Intangible Assets*. — All existing public airport facilities, runways, lands, buildings and other properties, movable or immovable, belonging to or presently administered by the airports, and all assets, powers, rights, interests and privileges relating on airport works or air operations, including all equipment which are necessary for the operations of air navigation, aerodrome control towers, crash, fire, and rescue facilities are hereby transferred to the Authority: Provided, however, that the operations control of all equipment necessary for the operation of radio aids to air navigation, airways communication, the approach control office, and the area control center shall be retained by the Air Transportation Office. No equipment, however, shall be removed by the Air Transportation Office from Mactan without the concurrence of the Authority. The Authority may assist in the maintenance of the Air Transportation Office equipment.

The "airports" referred to are the "Lahug Air Port" in Cebu City and the "Mactan International Airport in the Province of Cebu," which belonged to the Republic of the Philippines, then under the Air Transportation Office (ATO).

It may be reasonable to assume that the term "lands" refer to "lands" in Cebu City then administered by the Lahug Air Port and

---

[15] *MCIAA v. Marcos*, *supra* note 1, at 410-411.

Supreme Court E-Library

includes the parcels of land the respondent City of Cebu seeks to levy on for real property taxes. **This section involves a "transfer" of the "lands," among other things, to the petitioner and not just the transfer of the beneficial use thereof, with the ownership being retained by the Republic of the Philippines**.

This "transfer" is actually an absolute conveyance of the ownership thereof because the petitioner's authorized capital stock consists of, *inter alia*, "the value of such real estate owned and/or administered by the airports." Hence, the petitioner is now the owner of the land in question and the exception in Section 234(c) of the LGC is inapplicable.[16]

In *MIAA*, a different conclusion was reached by the Court on two grounds. It first banked on the general provision limiting the taxing power of LGUs as stated in Section 133(o) of the LGC that, unless otherwise provided in the Code, the exercise of the taxing powers 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. The Court took pains in characterizing airport authorities as government instrumentalities, quite obviously, in order to apply the said provision.

After doing so, the Court then shifted its attention and proceeded to focus on the issue of who owns the property to determine whether the case falls within the purview of Section 234(a). Ratiocinating that airport properties are of public dominion which pertain to the state and that the airport Authority is a mere trustee of the Republic, the Court ruled that the said properties are exempt from real property tax, thus:

2. Airport Lands and Buildings of MIAA are Owned by the Republic

a. **Airport Lands and Buildings are of Public Dominion**

The Airport Lands and Buildings of MIAA are property of **public dominion and therefore owned by the State or the Republic of the Philippines**. The Civil Code provides:

---

[16] *Id.* at 418-419. (Emphasis supplied, citations omitted.)

Supreme Court E-Library

x x x x x x x x x

No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code, like "**roads, canals, rivers, torrents, ports and bridges constructed by the State**," are owned by the State. **The term "ports" includes seaports and airports.** The MIAA Airport Lands and Buildings constitute a "**port**" constructed by the State. Under Article 420 of the Civil Code, the MIAA Airport Lands and Buildings are properties of public dominion and thus owned by the State or the Republic of the Philippines.

The Airport Lands and Buildings are devoted to public use because they are **used by the public for international and domestic travel and transportation**. The fact that the MIAA collects terminal fees and other charges from the public does not remove the character of the Airport Lands and Buildings as properties for public use. The operation by the government of a tollway does not change the character of the road as one for public use. Someone must pay for the maintenance of the road, either the public indirectly through the taxes they pay the government, or only those among the public who actually use the road through the toll fees they pay upon using the road. The tollway system is even a more efficient and equitable manner of taxing the public for the maintenance of public roads.

The charging of fees to the public does not determine the character of the property whether it is of public dominion or not. Article 420 of the Civil Code defines property of public dominion as one "intended for public use." Even if the government collects toll fees, the road is still "intended for public use" if anyone can use the road under the same terms and conditions as the rest of the public. The charging of fees, the limitation on the kind of vehicles that can use the road, the speed restrictions and other conditions for the use of the road do not affect the public character of the road.

The terminal fees MIAA charges to passengers, as well as the landing fees MIAA charges to airlines, constitute the bulk of the income that maintains the operations of MIAA. The collection of such fees does not change the character of MIAA as an airport for public use. Such fees are often termed user's tax. This means taxing those among the public who actually use a public facility instead of taxing all the public including those who never use the particular public facility. A user's tax is more equitable — a principle of taxation mandated in the 1987 Constitution.

Supreme Court E-Library

The Airport Lands and Buildings of MIAA, which its Charter calls the "principal airport of the Philippines for both international and domestic air traffic," are properties of public dominion because they are intended for public use. **As properties of public dominion, they indisputably belong to the State or the Republic of the Philippines**.

b. **Airport Lands and Buildings are Outside the Commerce of Man**

The Airport Lands and Buildings of MIAA are devoted to public use and thus are properties of public dominion. **As properties of public dominion, the Airport Lands and Buildings are outside the commerce of man**. The Court has ruled repeatedly that properties of public dominion are outside the commerce of man. As early as 1915, this Court already ruled in ***Municipality of Cavite v. Rojas*** that properties devoted to public use are outside the commerce of man, thus:

x x x x x x x x x

Again in ***Espiritu v. Municipal Council***, the Court declared that properties of public dominion are outside the commerce of man:

x x x x x x x x x

The Court has also ruled that property of public dominion, being outside the commerce of man, cannot be the subject of an auction sale.

Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale. This will happen if the City of Parañaque can foreclose and compel the auction sale of the 600-hectare runway of the MIAA for non-payment of real estate tax.

Before MIAA can encumber the Airport Lands and Buildings, the President must first **withdraw from public use** the Airport Lands and Buildings. Sections 83 and 88 of the Public Land Law or Commonwealth Act No. 141, which "remains to this day the existing general law governing the classification and disposition of lands of the public domain other than timber and mineral lands," provide:

Supreme Court E-Library

x x x x x x x x x

Thus, unless the President issues a proclamation withdrawing the Airport Lands and Buildings from public use, these properties remain properties of public dominion and are **inalienable**. Since the Airport Lands and Buildings are inalienable in their present status as properties of public dominion, they are not subject to levy on execution or foreclosure sale. As long as the Airport Lands and Buildings are reserved for public use, their ownership remains with the State or the Republic of the Philippines.

The authority of the President to reserve lands of the public domain for public use, and to withdraw such public use, is reiterated in Section 14, Chapter 4, Title I, Book III of the Administrative Code of 1987, which states:

x x x x x x x x x

There is no question, therefore, that unless the Airport Lands and Buildings are withdrawn by law or presidential proclamation from public use, they are properties of public dominion, owned by the Republic and outside the commerce of man.

c. **MIAA is a Mere Trustee of the Republic**

MIAA is merely holding title to the Airport Lands and Buildings in trust for the Republic. Section 48, Chapter 12, Book I of **the Administrative Code allows instrumentalities like MIAA to hold title to real properties owned by the Republic**, thus:

x x x x x x x x x

In MIAA's case, its status as a mere trustee of the Airport Lands and Buildings is clearer because even its executive head cannot sign the deed of conveyance on behalf of the Republic. Only the President of the Republic can sign such deed of conveyance.

d. **Transfer to MIAA was Meant to Implement a Reorganization**

The MIAA Charter, which is a law, transferred to MIAA the title to the Airport Lands and Buildings from the Bureau of Air Transportation of the Department of Transportation and Communications. The MIAA Charter provides:

x x x x x x x x x

Supreme Court E-Library

The MIAA Charter transferred the Airport Lands and Buildings to MIAA without the Republic receiving cash, promissory notes or even stock since MIAA is not a stock corporation.

The whereas clauses of the MIAA Charter explain the rationale for the transfer of the Airport Lands and Buildings to MIAA, thus:

x x x x x x x x x

The transfer of the Airport Lands and Buildings from the Bureau of Air Transportation to MIAA was not meant to transfer beneficial ownership of these assets from the Republic to MIAA. The purpose was merely to **reorganize a division in the Bureau of Air Transportation into a separate and autonomous body.** The Republic remains the beneficial owner of the Airport Lands and Buildings. MIAA itself is owned solely by the Republic. No party claims any ownership rights over MIAA's assets adverse to the Republic.

The MIAA Charter expressly provides that the Airport Lands and Buildings "**shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines**." This only means that the Republic retained the beneficial ownership of the Airport Lands and Buildings because under Article 428 of the Civil Code, only the "owner has the right to x x x dispose of a thing." Since MIAA cannot dispose of the Airport Lands and Buildings, MIAA does not own the Airport Lands and Buildings.

At any time, the President can transfer back to the Republic title to the Airport Lands and Buildings without the Republic paying MIAA any consideration. Under Section 3 of the MIAA Charter, the President is the only one who can authorize the sale or disposition of the Airport Lands and Buildings. This only confirms that the Airport Lands and Buildings belong to the Republic.

e. **Real Property Owned by the Republic is Not Taxable**

Section 234(a) of the Local Government Code exempts from real estate tax any "[r]eal property owned by the Republic of the Philippines." Section 234(a) provides:

x x x x x x x x x

This exemption should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fees or charges of any kind on the National Government,

its agencies and **instrumentalities** x x x." The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government. The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.

The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption. Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the "beneficial use thereof has been granted, for consideration or otherwise, to a **taxable person**." MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax.

However, portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a consideration to a **taxable person** and therefore such land area is subject to real estate tax. In ***Lung Center of the Philippines v. Quezon City***, the Court ruled:

x x x x x x x x x[17]

In the ultimate, I submit that the two rulings do not really contradict, but, instead, complement each one. ***Mactan Cebu*** **provides the proper rule that, in order to determine whether airport properties are exempt from real property tax, it is Section 234, not Section 133, of the LGC that should be**

---

[17] *Manila International Airport Authority v. Court of Appeals*, *supra* note 10, at 621-630. (Emphasis supplied, citations omitted.)

Supreme Court E-Library

determinative of the properties exempt from the said tax. *MIAA* then lays down the correct doctrine that airport properties are of public dominion pertaining to the state, hence, falling within the ambit of Section 234(a) of the LGC.

However, because of the confusion generated by the apparently conflicting decisions, a fine tuning of *Mactan Cebu* and *MIAA* is imperative.

IV.

Parenthetically, while the basis of a real property tax assessment is actual use,[18] the tax itself is directed to the ownership of the lands and buildings or other improvements thereon.[19] Public policy considerations dictate that property of the State and of its municipal subdivisions devoted to governmental uses and purposes is generally exempt from taxation although no express provision in the law is made therefor.[20] In the instant case, the legislature specifically provided that real property owned by the Republic of the Philippines or any of its political subdivisions is exempt from real property tax, except, of course, when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. The principal basis of the exemption is likewise ownership.[21]

Indeed, emphasis should be made on the ownership of the property, rather than on the airport Authority being a taxable entity. This strategy makes it unnecessary to determine whether MIAA is an instrumentality or a GOCC, as painstakingly expounded by the *ponente*.

Likewise, this approach provides a convenient escape from Justice Tinga's proposition that the MIAA is a taxable entity liable to pay real property taxes, but the airport properties are

---

[18] See Sec. 198 of R.A. No. 7160.

[19] *Supra* note 2.

[20] Aban, *Law of Basic Taxation in the Philippines*, 2001 ed., p. 64.

[21] See *Platte Valley Public Power and Irrigation Dist. v. Lincoln County*, 144 Neb. 584, 586; 14 N.W.2d 202, 204 (1944).

Supreme Court E-Library

exempt from levy on execution to satisfy the tax liability. I fear that this hypothesis may trench on the Constitutional principle of uniformity of taxation,[22] because a tax lawfully levied and assessed against a taxable governmental entity will not be lienable while like assessments against all other taxable entities of the same tax district will be lienable.[23]

The better option, then, is for the Court to concentrate on the nature of the tax as a tax on ownership and to directly apply the pertinent real property tax provisions of the LGC, specifically those dealing with the exemption based on ownership, to the case at bar.

The phrase, "property owned by the Republic" in Section 234, actually refers to those identified as public property in our laws. Following *MIAA*, we go to Articles 420 and 421 of the Civil Code which provide:

> Art. 420. The following things are property of public dominion:
>
> (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
>
> (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.
>
> Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

From the afore-quoted, we readily deduce that airport properties are of public dominion. The "port" in the enumeration certainly includes an airport. With its beacons, landing fields, runways, and hangars, an airport is analogous to a harbor with its lights, wharves and docks; the one is the landing place and haven of ships that navigate the water, the other of those that navigate the air.[24] Ample

---

[22] See 1987 CONSTITUTION, Art. VI, Sec. 28(1).

[23] *Borough of Homestead v. Defense Plant Corporation*, 356 Pa. 500, 508; 52 A.2d 581, 586 (1947).

[24] *Hale v. Sullivan*, 146 Colo. 512, 516; 362 P.2d 402, 404 (1961).

Supreme Court E-Library

authority further supports the proposition that the term "roads" include runways and landing strips.[25] Airports, therefore, being properties of public dominion, are of the Republic.

At this point, I cannot help but air the observation that the legislature may have really intended the phrase "owned by the Republic" in Section 234 to refer to, among others, properties of public dominion. This is because "public dominion" does not carry the idea of ownership. Tolentino, an authority in civil law, explains:

> This article shows that there is a distinction between *dominion* and *ownership*. Private ownership is defined elsewhere in the Code; but the meaning of public dominion is nowhere defined. From the context of various provisions, it is clear that *public dominion* does not carry the idea of ownership; property of public dominion is not owned by the State, but pertains to the State, which as territorial sovereign exercises certain juridical prerogatives over such property. The ownership of such property, which has the special characteristics of a collective ownership for the general use and enjoyment, by virtue of their application to the satisfaction of the collective needs, is in the social group, whether national, provincial, or municipal. Their purpose is not to serve the State as a juridical person, but the citizens; they are intended for the common and public welfare, and so they cannot be the object of appropriation, either by the State or by private persons. The relation of the State to this property arises from the fact that the State is the juridical representative of the social group, and as such it takes care of them, preserves them and regulates their use for the general welfare.[26]

Be that as it may, the legislative intent to exempt from real property tax the properties of the Republic remains clear. The soil constituting the NAIA airport and the runways cannot be taxed, being properties of public dominion and pertaining to the Republic. This is true even if the title to the said property is in the name of MIAA. Practical ownership, rather than the naked legal title, must control, particularly because, as a matter of

---

[25] *Id.* at 518.

[26] Tolentino, *Civil Code of the Philippines*, Vol. II, 1983 ed., p. 28; see also *Laurel v. Garcia*, G.R. Nos. 92013 and 92047, July 25, 1990, 187 SCRA 797.

Supreme Court E-Library

practice, the record title may be in the name of a government agency or department rather than in the name of the Republic.

In this case, even if MIAA holds the record title over the airport properties, such holding can only be for the benefit of the Republic,[27] especially when we consider that MIAA exercises an essentially public function.[28] Further, where property, the title to which is in the name of the principal, is immune from taxes, it remains immune even if the title is standing in the name of an agent or trustee for such principal.[29]

Properties of public dominion are held in trust by the state or the Republic for the people.[30] The national government and the bodies it has created that exercise delegated authority are, pursuant to the general principles of public law, mere agents of the Republic. Here, insofar as it deals with the subject properties, MIAA, a governmental creation exercising delegated powers, is a mere **agent** of the Republic, and the latter, to repeat, is the trustee of the properties for the benefit of all the people.[31]

Our ruling in *MIAA*, therefore, insofar as it holds that the airport Authority is a "trustee of the Republic," may not have been precise. It would have been more sound, legally that is, to consider the relationship between the Republic and the airport Authority as principal and agent, rather than as trustor and trustee.

The history of the subject airport attests to this proposition, thus:

---

[27] See *Rohr Aircraft Corporation v. County of San Diego*, 362 U.S. 628, 634-635; 80 S.Ct. 1050, 1054 (1960).

[28] *Hanover v. Town of Morristown*, 4 N.J.Super. 22, 24; 66 A.2d 187, 188 (1949); *People ex rel. Lawless v. City of Quincy*, 395 Ill. 190, 201; 69 N.E.2d 892, 897 (1946); *People ex rel. Curren v. Wood*, 391 Ill. 237, 241; 62 N.E.2d 809, 812 (1945); *Macclintock v. City of Roseburg*, 127 Or. 698, 701; 273 P. 331-332 (1929).

[29] *Pacific Grove-Asilomar Operating Corp. v. Count of Monterey*, 43 Cal.App.3d 675, 684; 117 Cal.Rptr. 874, 880 (1974); *United States Spruce Production Corporation v. Lincoln County*, 285 F. 388, 391 (1922).

[30] See *Kock Wing v. Philippine Railway Co.*, 54 Phil. 438, 444 (1930).

[31] See *United States of America v. Ruby Company*, 588 F.2d 697, 704 (1978).

Supreme Court E-Library

The country's premier airport was originally a US Air Force Base, which was turned over to the Philippine government in 1948. It started operations as a civil aviation airport with meager facilities, then consisting of the present domestic runway as its sole landing strip, and a small building northwest of this runway as its sole passenger terminal.

The airport's international runway and associated taxiway were built in 1953; followed in 1961 by the construction of a control tower and a terminal building for the exclusive use of international passengers at the southwest intersection of the two runways. These structures formed the key components of an airport system that came to be known as the Manila International Airport (MIA).

Like other national airports, the MIA was first managed and operated by the National Airports Corporation, an agency created on June 5, 1948 by virtue of Republic Act No. 224. This was abolished in 1951 and [in] its stead, the MIA Division was created under the Civil Aeronautics Administration (CAA) of the Department of Commerce and Industry.

On October 19, 1956, the entire CAA, including the MIA Division, was transferred to the Department of Public Works, Transportation and Communications.

In 1979, the CAA was renamed Bureau of Air Transportation following the creation of an exclusive Executive Department for Transportation and Communications.

It is worthwhile to note at this point that while the MIA General Manager then carried the rank of a Division Chief only, it became a matter of policy and practice that he be appointed by no less than the President of the Philippines since the magnitude of its impact on the country's economy has acquired such national importance and recognition.

During the seventies, the Philippine tourism and industry experienced a phenomenal upsurge in the country's manpower exports, resulting in more international flight frequencies to Manila which grew by more than four times.

Executive Order No. 381 promulgated by then President Marcos authorized the development of Manila International Airport to meet the needs of the coming decades.

Supreme Court E-Library

A feasibility study/airport master plan was drawn up in 1973 by Airways Engineering Corporation, the financing of which was source[d] from a US$29.6 Million loan arranged with the Asian Development Bank (ADB). The detailed Engineering Design of the new MIA Development Project (MIADP) was undertaken by Renardet-Sauti/ Transplan/F.F. Cruz Consultants while the design of the IPT building was prepared by Architect L.V. Locsin and Associates.

In 1974, the final engineering design was adopted by the Philippine Government. This was concurred by the ADB on September 18, 1975 and became known as the "Scheme E-5 Modified Plan." Actual work on the project started in the second quarter of 1978.

On March 4, 1982, EXECUTIVE ORDER NO. 778 was signed into law, abolishing the MIA Division under the BAT and creating in its stead the MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), vested with the power to administer and operate the Manila International Airport (MIA).

Though MIAA was envisioned to be autonomous, Letter of Instructions (LOI) No. 1245, signed 31 May 1982, clarified that for purpose of policy integration and program coordination, the MIAA Management shall be under the general supervision but not control of the then Ministry of Transportation and Communications.

On July 21, 1983, Executive Order No. 903 was promulgated, providing that 65% of MIAA's annual gross operating income be reverted to the general fund for the maintenance and operation of other international and domestic airports in the country. It also scaled down the equity contribution of the National Government to MIAA: from PhP 10 billion to PhP 2.5 billion and removed the provision exempting MIAA from the payment of corporate tax.

Another revision in the MIAA Charter followed with the promulgation of Executive Order No. 909, signed September 16, 1983, increasing the membership of the MIAA Board to nine (9) Directors with the inclusion of two other members to be appointed by the Philippine President.

The last amendment to the MIAA Charter was made on July 26, 1987 through Executive Order No. 298 which provided for a more realistic income sharing arrangement between MIAA and the National Government. It provided that instead of the 65% of gross operating income, only 20% of MIAA's gross income, exclusive of income generated from the passenger terminal fees and utility charges, shall

Supreme Court E-Library

revert to the general fund of the National Treasury. EO 298 also reorganized the MIAA Board and raised the capitalization to its original magnitude of PhP 10 billion.

The post 1986 Revolution period will not be complete without mention of the renaming of MIA to Ninoy Aquino International Airport with the enactment of Republic Act No. 6639 on August 17, 1987. While this legislation renamed the airport complex, the MIA Authority would still retain its corporate name since it did not amend the original or revised charters of MIAA.[32]

The MIAA Charter further provides that any portion of the airport cannot be disposed of by the Authority through sale or through any other mode unless specifically approved by the President of the Philippines.[33] It is also noted that MIAA's board of directors is practically controlled by the national government, the members thereof being officials of the executive

---

[32] http://125.60.203.88/miaa/AIRPORT/index.asp (visited Feb. 23, 2009).

[33] Executive Order (E.O.) No. 903, entitled "Providing for a Revision of Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority with Power to Administer and Operate the Manila International Airport, issued on July 21, 1983, provides in its Section 3 the following:

Sec. 3. Creation of the Manila International Airport Authority. There is hereby established a body corporate to be known as the Manila International Airport Authority which shall be attached to the Ministry of Transportation and Communications. The principal office of the Authority shall be located at the New Manila International Airport. The Authority may establish such offices, branches, agencies or subsidiaries as it may deem proper and necessary; Provided, That any subsidiary that may be organized shall have the prior approval of the President.

The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are hereby transferred, conveyed and assigned to the ownership and administration of the Authority, subject to existing rights, if any. The Bureau of Lands and other appropriate government agencies shall undertake an actual survey of the area transferred within one year from the promulgation of this Executive Order and the corresponding title to be issued in the name of the Authority. Any portion thereof shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines. (Underscoring ours.)

Supreme Court E-Library

branch.[34] Likewise, the Authority cannot levy and collect dues, charges, fees or assessments for the use of the airport premises, works, appliances, facilities or concessions, or for any service provided by it, without the approval of several executive departments.[35] These provisions are consistent with an agency relationship. Let it be remembered that one of the principal elements of an agency relationship is the existence of some degree of control by the principal over the conduct and activities of the agent. In this regard, while an agent undertakes to act on behalf of his principal and subject to his control, a trustee as such is not subject to the control of the beneficiary, except that he is under a duty to deal with the trust property for the latter's

---

[34] E.O. No. 909, entitled "Amending Section 7 of Executive Order No. 778, Creating the Manila International Airport Authority, by Increasing the Membership in the Board of Directors to Nine Members," issued on September 16, 1983, pertinently provides in its Section 1 the following:

Sec. 1. Section 7 of Executive Order 778, dated 04 March 1982, is hereby amended to read as follows:

"Sec. 7. Board of Directors. The corporate powers of the Authority shall be exercised by and vested in a Board of NINE (9) members, which shall be composed of a Chairman, a Vice-Chairman and SEVEN (7) members. The Minister of Transportation & Communications shall be the *ex-officio* Chairman of the Board. The General Manager of the Authority shall be the *ex-officio* Vice-Chairman of the Board. The Minister of Finance, the Minister of Tourism, the Presidential Executive Assistant, the Chief of Staff of the Armed Forces of the Philippines, and Commissioner of Immigration & Deportation shall be the *ex-officio* members. TWO OTHER MEMBERS SHALL BE APPOINTED BY THE PRESIDENT UPON THE RECOMMENDATION OF THE BOARD.

x x x x x x x x x."

[35] Sec. 5(k) of E.O. No. 903 provides:

Sec. 5. Functions, Powers, and Duties. The Authority shall have the following functions, powers and duties:

x x x x x x x x x

(k) To levy and collect dues, charges, fees or assessments for the use of the airport premises, works, appliances, facilities or concessions, or for any service provided by the Authority, subject to the approval of the Minister of Transportation and Communications in consultation with the Minister of Finance, and subject further to the provisions of Batas Pambansa Blg. 325 where applicable.

Supreme Court E-Library

benefit in accordance with the terms of the trust and can be compelled by the beneficiary to perform his duty.[36]

Finally, to consider MIAA as a "trustee of the Republic" will sanction the technical creation of a second trust in which the Republic, which is already a trustee, becomes the second trustor and the airport Authority a second trustee. Although I do not wish to belabor the point, I submit that the validity of such a scenario appears doubtful. Sufficient authority, however, supports the proposition that a trustee can delegate his duties to an agent provided he properly supervises and controls the agent's conduct.[37] In this case, we can rightly say that the Republic, as the trustee of the public dominion airport properties for the benefit of the people, has delegated to MIAA the administration of the said properties subject, as shown above, to the executive department's supervision and control.

In fine, the properties comprising the NAIA being of public dominion which pertain to the State, the same should be exempt from real property tax following Section 234(a) of the LGC.

One last word. Given the foregoing disquisition, I find no necessity for this Court to abandon its ruling in *Mactan*. On the premise that the rationale for exempting airport properties from payment of real estate taxes is ownership thereof by the Republic, the *Mactan* ruling is impeccable in its logic and its conclusion should remain undisturbed. Having harmonized the apparently divergent views, we need no longer fear any fierce disagreements in the future.

I therefore vote to grant the petition.

---

[36] 76 Am Jur 2d, Trusts § 13 citing 3 Am Jur 2d, Agency § 2 and Restatement 2d, Trusts § 8, Comment b.

[37] *Walters-Southland Institute v. Walker*, 222 Ark. 857, 861; 263 S.W.2d 83, 84 (1954); see *Welsh v. Griffin*, 179 Cal.App.2d 207, 215; 3 Cal.Rptr. 729, 735 (1960).

Supreme Court E-Library

DISSENTING OPINION

YNARES-SANTIAGO, *J.*:

Indeed, as pointed out by Justice Antonio T. Carpio, the Court has twice reaffirmed the ruling in *Manila International Airport Authority v. Court of Appeals*[1] in the subsequent cases of *Philippine Fisheries Development Authority v. Court of Appeals*[2] and *Philippine Fisheries Development Authority v. Court of Appeals*.[3] However, upon further study of the issues presented in said cases, I agree with Justice Dante O. Tinga that the *Manila International Airport Authority (MIAA*) ruling was incorrectly rationalized, particularly on the unwieldy characterization of MIAA as a species of a government instrumentality. I submit that the present *ponencia* of Justice Carpio perpetuates the error which I find imperative for the Court to correct.

Nevertheless, unlike Justice Tinga's rationalization, I find that there is no more need to belabor the issue of whether the MIAA is a government-owned or controlled corporation (GOCC) or a government instrumentality in order to resolve the issue of whether the airport properties are subject to real property tax.

Instead, I subscribe to the "simple, direct and painless approach" proposed by Justice Antonio Eduardo B. Nachura that it is imperative to "*fine tune*" the Court's ruling in *Mactan Cebu International Airport Authority v. Marcos*[4] *vis-à-vis* that in *Manila International Airport Authority v. Court of Appeals*;[5] and that what needs only to be ascertained is whether the airport properties are owned by the Republic; and if such, then said properties are exempt from real property tax, by applying Section

---

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

[2] G.R. No. 169836, July 31, 2007, 528 SCRA 707.

[3] G.R. No. 151301, October 2, 2007, 534 SCRA 490.

[4] 330 Phil. 392 [1996].

[5] *Supra* note 1.

Supreme Court E-Library

234 of Republic Act No. 7160 (R.A. No. 7160) or the Local Government Code (LGC).

Pursuant to Section 232 of the LGC, a province or city or municipality within the Metropolitan Manila Area is vested with the power to levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereafter specifically exempted. Corollarily, Section 234 thereof provides an enumeration of certain properties which are exempt from payment of the real property tax, among which is "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."

Article 420 of the Civil Code enumerates the properties of public dominion, to wit:

> Art. 420: The following things are property of public dominion:
>
> (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
>
> (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

There is no question that the airport and all its installations, facilities and equipment, are intended for public use and are, thus, properties of public dominion.

Concededly, the Court ruled in *Mactan Cebu International Airport Authority v. Marcos*[6] that:

> The crucial issues then to be addressed are: (a) whether the parcels of land in question belong to the Republic of the Philippines whose beneficial use has been granted to the petitioner, and (b) whether the petitioner is a "taxable persons."
>
> Section 15 of [MCIAA's] Charter provides:
>
> Sec. 15. *Transfer of Existing Facilities and Intangible Assets.* — All existing public airport facilities, runways, lands,

[6] *Supra* note 4.

Supreme Court E-Library

> buildings and other properties, movable or immovable, belonging to or presently administered by the airports, and all assets, powers, rights, interests and privileges relating on airport works or air operations, including all equipment which are necessary for the operations of air navigation, aerodome control towers, crash, fire, and rescue facilities are hereby transferred to the Authority: Provided, however, that the operations control of all equipment necessary for the operation of radio aids to air navigation, airways communication, the approach control office, and the area control center shall be retained by the Air Transportation Office. No equipment, however, shall be removed by the Air Transportation Office from Mactan without the concurrence of the Authority. The Authority may assist in the maintenance of the Air Transportation Office equipment.

The "airports" referred to are the "Lahug Air Port" in Cebu City and the "Mactan International Airport in the Province of Cebu," which belonged to the Republic of the Philippines, then under the Air Transportation Office (ATO).

It may be reasonable to assume that the term "lands" refer to "lands" in Cebu City then administered by the Lahug Air Port and includes the parcels of land the respondent City of Cebu seeks to levy on for real property taxes. This section involves a "transfer" of the "lands" among other thins (sic), to the petitioner and not just the transfer of the beneficial use thereof, with the ownership being retained by the Republic of the Philippines.

This "transfer" is actually an absolute conveyance of the ownership thereof because the petitioner's authorized capital stock consists of, *inter alia*, "the value of such real estate owned and/or administered by the airports." Hence, the petitioner is now the owner of the land in question and the exception in Section 234© of the LGC is inapplicable.

Meanwhile, Executive Order No. 903[7] or the Revised Charter of the Manila International Airport Authority, provides in Section 3 thereof that —

x x x x x x x x x

The land where the Airport is presently located as well as the surrounding land area of approximately six hundred hectares, are

[7] July 21, 1983.

Supreme Court E-Library

hereby transferred, conveyed and assigned to the ownership and administration of the Authority, subject to existing rights, if any. The Bureau of Lands and other appropriate government agencies shall undertake an actual survey of the area transferred within one year from the promulgation of this Executive Order and the corresponding title to be issued in the name of the Authority. Any portion thereof shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines.

Regardless of the apparent transfer of title of the said properties to MIAA, I submit that the latter is only holding the properties for the benefit of the Republic in its capacity as agent thereof. It is to be noted that despite the conveyance of the title to the said properties to the MIAA, however, the latter could not in any way dispose of the same through sale or through any other mode unless specifically approved by the President of the Republic.[8] Even MIAA's borrowing power is dictated upon by the President. Thus, MIAA could raise funds, either from local or international sources, by way of loans, credits or securities, and other borrowing instruments, create pledges, mortgages and other voluntary lines or encumbrances on any of its assets or properties, only after consultation with the Secretary of Finance and with the approval of the President. In addition, MIAA's total outstanding indebtedness could exceed its net worth only upon express authorization by the President.[9]

I fully agree with Justice Nachura that "even if MIAA holds the record title over the airport properties, such holding can only be for the benefit of the Republic, that MIAA exercises an essentially public function."

In sum, the airport and all its installations, facilities and equipment of the MIAA, are properties of public dominion and should thus be exempted from payment of real property tax, except those properties where the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

ACCORDINGLY, I vote to grant the petition.

---

[8] E.O. 903, Sec. 3.

[9] E.O. 903, Sec. 16.

Supreme Court E-Library

DISSENTING OPINION

TINGA, *J.*:

I maintain my dissent expressed in the 2006 ruling in *MIAA v. City of Parañaque*[1] (the "*Parañaque* case.")

The majority relies on two main points drawn from the 2006 *Parañaque* case in this instance as it rules once again that the MIAA is exempt from realty taxes assessed by the City of Pasay. First, because MIAA is a government instrumentality, it somehow finds itself exempt from the said taxes, supposedly by operation of the Local Government Code. Second, the subject properties are allegedly owned by the Republic of the Philippines, notwithstanding that legal title thereto is in the name of the MIAA, which is a distinct and independent juridical personality from the Republic.

I.

Once again, attempts are drawn to classify MIAA as a government instrumentality, and not as a government-owned or controlled corporation. Such characterization was apparently insisted upon in order to tailor-fit the MIAA to Section 133 of the Local Government Code, which reads:

> *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 x x x x x x
>
> **15. Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities** and local government units. (emphasis and underscoring supplied).

How was the *Parañaque* case able to define the MIAA as a instrumentality of the National Government? The case propounded that MIAA was not a GOCC:

---

[1] G.R. No. 155630, 20 July 2006, 495 SCRA 591.

Supreme Court E-Library

There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax. However, MIAA is not a government-owned or controlled corporation. Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a government-owned or controlled corporation as follows:

> SEC. 2. General Terms Defined. — . . .
>
> (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: . . . (Emphasis supplied)

A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares.

x x x x x x x x x

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

Section 3 of the Corporation Code 10 defines a stock corporation as one whose "capital stock is divided into shares and . . . authorized to distribute to the holders of such shares dividends . . ." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. 11 This prevents MIAA from qualifying as a non-stock corporation.

Supreme Court E-Library

Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.[2]

This "black or white" categorization of "stock" and "non-stock" corporations utterly disregards the fact that nothing in the Constitution prevents Congress from creating government-owned or controlled corporations in whatever structure it deems necessary. Note that this definitions of "stock" and "non-stock" corporations are taken from the Administrative Code, and not the Constitution. The Administrative Code is a statute, and is thus not superior in hierarchy to any other subsequent statute created by Congress, including the charters for GOCCs.

Since MIAA was presumed not to be a stock or non-stock corporation, the majority in the *Parañaque* case then strived to fit it into a category.

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "instrumentality" as follows:

SEC. 2. General Terms Defined. — . . .

(10) Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. . . (Emphasis supplied)

---

[2] *Supra* note 1 at 615-616.

Supreme Court E-Library

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."[3]

Unfortunately, this cited statutory definition of an "instrumentality" is incomplete. Worse, the omitted portion from Section 2(10) completely contradicts the premise of the *ponente* that an instrumentality is mutually exclusive from a GOCC. For the provision reads in full, with the omitted portion highlighted, thus:

(10)*Instrumentality* refers to any agency of the National Government not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. **This term includes regulatory agencies, chartered institutions and government — owned or controlled corporations**.

This previous omission had not escaped the attention of the outside world. For example, lawyer Gregorio Batiller, Jr., has written a paper on the *Parañaque* case entitled "A Tale of Two Airports," which is published on the Internet.[4] He notes therein:

Also of interest was the dissenting opinion of Justice Dante Tinga to the effect that the majority opinion failed to quote in full the definition of "government instrumentality":

> The Majority gives the impression that a government instrumentality is a distinct concept from a government corporation. Most tellingly, the majority selectively cites a

---

[3] *Supra* note 1 at 617-618.

[4] See http://www.gbdlr.com/articles/pdf/A_TALE_OF_TWO_ AIRPORTS _vol%5B1% 5D.pdf

Supreme Court E-Library

portion of Section 2(10) of the Administrative Code of 1987, as follows:

> Instrumentality refers to any agency of the National Government not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. x x x (emphasis omitted)"

However, Section 2(10) of the Administrative Code, when read in full, makes an important clarification which the majority does not show. The portions omitted by the majority are highlighted below: x x x

> "(10)Instrumentality refers to any agency of the National Government not integrated within the department framework, vested with special functions or jurisdiction by, law endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government — owned or controlled corporations.

So the majority opinion effectively begged the question in finding that the MIAA was not a GOCC but a mere government instrumentality, which is other than a GOCC.[5]

The Office of the President itself was alarmed by the redefinition made by the MIAA case of instrumentalities, causing it on 29 December 2006 to issue Executive Order No. 596 creating the unwieldy category of "Government Instrumentality Vested with Corporate Powers or Government Corporate Entities" just so that it was clear that these newly defined "instrumentalities" or "government corporate entities" still fell within the jurisdiction of the Office of the Government Corporate Counsel. The E.O. reads in part:

EXECUTIVE ORDER NO. 596

DEFINING AND INCLUDING "GOVERNMENT INSTRUMENTRALITY VESTED WITH CORPORATE

[5] *Supra* note 4.

Supreme Court E-Library

POWERS" OR "GOVERNMENT CORPORATE ENTITIES" UNDER THE JURISDICTION OF THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL (OGCC) AS PRINCIPAL LAW OFFICE OF GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCCs) AND FOR OTHER PURPOSES.

WHEREAS, the Office of the Government Corporate Counsel (OGCC), as the principal law office of all Government-Owned or Controlled Corporations (GOCCs), including their subsidiaries, other corporate offsprings and government acquired assets corporations, plays a very significant role in safeguarding the legal interests and providing the legal requirements of all GOCCs;

WHEREAS, there is an imperative need to integrate, strengthen and rationalize the powers and jurisdiction of the OGCC in the light of the Decision of the Supreme Court dated July 20, 2006, in the case of "***Manila International Airport Authority vs. Court of Appeals, City of Parañaque, et al.***" (G.R. No. 155650), where the High Court differentiated "***government corporate entities***" and "***government instrumentalities with corporate powers***" from GOCCs for purposes of the provisions of the Local Government Code on real estate taxes, and other fees and charges imposed by local government units;

WHEREAS, in the interest of an effective administration of justice, the application and definition of the term "GOCCs" need to be further clarified and rationalized to have consistency in referring to the term and to avoid unintended conflicts and/or confusion;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. The Office of the Government Corporate Counsel (OGCC) shall be the principal law office of all GOCCs, except as may otherwise be provided by their respective charter or authorized by the President, their subsidiaries, corporate offsprings, and government acquired asset corporations. The OGCC shall likewise be the principal law of the "***government instrumentality vested with corporate powers***" or "***government corporate entity***," as defined by the Supreme Court in the case of "***MIAA v. Court of Appeals, City of Parañaque, et al.***," *supra*, notable examples of which are: Manila International Airport Authority (MIAA), Mactan International

Supreme Court E-Library

Airport Authority, the Philippine Ports Authority (PPA), Philippine Deposit Insurance Corporation (PDIC), Metropolitan Water and Sewerage Services (MWSS), Philippine Rice Research Institute (PRRI), Laguna Lake Development Authority (LLDA), Fisheries Development Authority (FDA), Bases Conversion Development Authority (BCDA), Cebu Port Authority (CPA), Cagayan de Oro Port Authority, and San Fernando Port Authority.

SECTION 2. As provided under PD 2029, series of 1986, the term GOCCs is defined as a stock or non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law, is owned or controlled by the government directly, or indirectly, through a parent corporation or subsidiary corporation, to the extent of at least majority of its outstanding capital stock or of its outstanding voting capital stock.

Under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987, a government "instrumentality" refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some, if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.

SECTION 3. The following corporations are considered GOCCs under the conditions and/or circumstances indicated:

a) A corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government financial institution, whether by foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific assets acquired by a government financial institution in satisfaction of debts incurred therewith and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a GOCC before such disposition and even if the ownership or control thereof is subsequently transferred to another GOCC;

b) A corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a GOCC, until it is transferred to private ownership;

Supreme Court E-Library

c) A corporation that is authorized to be established by special law, but which is still required under that law to register with the Securities and Exchange Commission in order to acquire a juridical personality, shall not, on the basis of the special law alone, be considered a GOCC.

x x x x x x x x x

Reading this Executive Order, one cannot help but get the impression that the Republic of the Philippines, ostensibly the victorious party in the *Parañaque* case, felt that the 2006 *ponencia* redefining "instrumentalities" was wrong. Ostensibly, the Office of the Government Corporate Counsel, the winning counsel in the MIAA case, cooperated in the drafting of this E.O. and probably also felt that the redefinition of "instrumentalities" was wrong. I had pointed out in my Dissent to the MIAA case that under the framework propounded in that case, GOCCs such as the Philippine Ports Authority, the Bases Conversion Development Authority, the Philippine Economic Zone Authority, the Light Rail Transit Authority, the Bangko Sentral ng Pilipinas, the National Power Corporation, the Lung Center of the Philippines, and even the Philippine Institute of Traditional and Alternative Health Care have been reclassified as instrumentalities instead of GOCCs.

Notably, GOCCs are mandated by Republic Act No. 7656 to remit 50% of their annual net earnings as cash, stock or property dividends to the National Government. By denying categorization of those above-mentioned corporations as GOCCs, the Court in *MIAA* effectively gave its imprimatur to those entities to withhold remitting 50% of their annual net earnings to the National Government. Hence, the necessity of E.O. No. 596 to undo the destructive effects of the *Parañaque* case on the national coffers.

In a welcome development, the majority now acknowledges the existence of that second clause in Section 2(10) of the Introductory Provisions of the Administrative Code, the clause which made explicit that government instrumentalities include GOCCs. In truth, I had never quite understood this hesitation in plainly saying that GOCCs are instrumentalities. That fact is

Supreme Court E-Library

really of little consequence in determining whether or not the MIAA or other government instrumentalities or GOCCs are exempt from real property taxes.

As I had consistently explained, the liability of such entities is mandated by Section 232, in relation with Section 234 of the Local Government Code. Section 232 lays down the general rule that provinces, cities or municipalities within Metro Manila may levy an *ad valorem* tax on real property "not hereinafter specifically exempted." Such specific exemptions are enumerated in Section 234, and the only exemption tied to government properties extends to "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted . . . to a taxable person."[6]

Moreover, the final paragraph of Section 234 explains that "[e]xcept as provided herein [in Section 234], 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 corporations are hereby withdrawn upon the effectivity of this Code."

What are the implications of Section 232 in relation to Section 234 as to the liability for real property taxes of government instrumentalities such as MIAA?

1) All persons, whether natural or juridical, including GOCCs are liable for real property taxes.

2) The only exempt properties are those owned by the Republic or any of its political subdivisions.

3) So-called "government corporate entities," so long as they have juridical personality distinct from the Republic of the Philippines or any of its political subdivisions, are liable for real property taxes.

4) After the enactment of the Local Government Code in 1991, Congress remained free to reenact tax exemptions from

---

[6] LOCAL GOVERNMENT CODE, Sec. 234(a).

Supreme Court E-Library

real property taxes to government instrumentalities, as it did with the Government Service Insurance System in 1997.

It is that simple. The most honest intellectual argument favoring the exemption of the MIAA from real property taxes corresponds with the issue of whether its properties may be deemed as "owned by the Republic or any of its political subdivisions." The matter of whether MIAA is a GOCC or an instrumentality or a "government corporate entity" should in fact be irrelevant. However, the framework established by the *ponente* beginning with the *Parañaque* case has inexplicably and unnecessarily included the question of what is a GOCC? That issue, utterly irrelevant to settling the question of MIAA's tax liability, has caused nothing but distraction and confusion.

It should be remembered that prior to the *Parañaque* case, the prevailing rule on taxation of GOCCs was as enunciated in *Mactan Cebu International Airport v. Hon. Marcos*.[7] That rule was a highly sensible rule that gave due respect to national government prerogatives and the devolution of taxing powers to local governments. Neither did *Mactan Cebu* prevent Congress from enacting legislation exempting selected GOCCs to be exempt from real property taxes.

A significant portion of my Dissenting Opinion in the *Parañaque* case was devoted to explaining *Mactan Cebu*, and criticizing the *ponencia* for implicitly rejecting that doctrine without categorically saying so. In the years since, significant confusion has arisen on whether *Mactan Cebu* and the framework it established in real property taxation of GOCCs and instrumentalities, remains extant. Batiller makes the same point in his paper, expressly asking why "the Supreme Court did not explicitly declare that the Mactan Cebu International Airport case was deemed repealed." He added:

> Inevitably, the refusal of the Supreme Court to clarify whether its Decision in the Mactan Cebu International Airport case is deemed repealed would leave us with an ambiguous situation where two (2) of our major international airports are treated differently tax wise:

[7] 330 Phil. 392 (1996).

Supreme Court E-Library

one in Cebu which is deemed to be a GOCC subject to real estate taxes and the other in Manila which is not a GOCC and exempt from real estate taxes.

Where lies the substantial difference between the two (2) airports? Your guess is as good as mine.[8]

There are no good reasons why the Court should not reassert the *Mactan Cebu* doctrine. Under that ruling, real properties owned by the Republic of the Philippines or any of its political subdivisions are exempted from the payment of real property taxes, while instrumentalities or GOCCs are generally exempted from local government taxes, save for real property taxes. At the same time, Congress is free should it so desire to exempt particular GOCCs or instrumentalities from real property taxes by enacting legislation for that purpose. This paradigm is eminently more sober than that created by the *Parañaque* case, which attempted to amend the Constitution by elevating as a constitutional principle, the real property tax exemption of all government instrumentalities, most of which also happen to be GOCCs. Considering that the Constitution itself is supremely deferential to the notion of local government rule and the power of local governments to generate revenue through local taxes, the idea that not even the local government code could subject such "instrumentalities" to local taxes is plainly absurd.

II.

I do recognize that the present majority opinion has chosen to lay equal, if not greater emphasis on the premise that the MIAA properties are supposedly of public dominion, and as such are exempt from realty taxes under Section 234(a) of the Local Government Code. Again, I respectfully disagree.

It is Article 420 of the Civil Code which defines what are properties of public dominion. I do not doubt that Article 420 can be interpreted in such a way that airport properties, such as its runways, hangars and the like, can be considered akin to ports or roads, both of which are among those properties considered

[8] *Supra* note 4.

Supreme Court E-Library

as part of the public dominion under Article 420(1). It may likewise be possible that those properties considered as "property of public dominion" under Article 420 of the Civil Code are also "property owned by the Republic," which under Section 234 of the Local Government Code, are exempt from real property taxes.

The necessary question to ask is whether properties which are similar in character to those enumerated under Article 420(1) may be considered still part of the public dominion if, by virtue of statute, ownership thereof is vested in a GOCC which has independent juridical personality from the Republic of the Philippines. The question becomes even more complex if, as in the case of MIAA, the law itself authorizes such GOCC to sell the properties in question.

One of the most recognizable characteristics of public dominion properties is that they are placed outside the commerce of man and cannot be alienated or leased or otherwise be the subject matter of contracts.[9] The fact is that the MIAA may, by law, alienate, lease or place the airport properties as the subject matter of contracts. The following provisions of the MIAA charter make that clear:

SECTION 5. Functions, Powers, and Duties. — The Authority shall have the following functions, powers and duties:

x x x x x x x x x

(i) **To acquire, purchase, own, administer, lease, mortgage, sell or otherwise dispose of any land, building, airport facility, or property of whatever kind and nature**, whether movable or immovable, or any interest therein;

x x x x x x x x x

SECTION 16. Borrowing Power. — **The Authority may**, after consultation with the Minister of Finance and with the approval of the President of the Philippines, as recommended by the Minister of Transportation and Communications, **raise funds, either from**

---

[9] *Villarico v. Sarmiento*, G.R. No. 136438, 11 November 2004, 442 SCRA 110.

Supreme Court E-Library

local or international sources, by way of loans, credits or securities, and other borrowing instruments, with the power to create pledges, mortgages and other voluntary liens or encumbrances on any of its assets or properties.

There is thus that contradiction where property which ostensibly is classified as part of the public dominion under Article 420 of the Civil Code is nonetheless classified to lie within the commerce of man by virtue of a subsequent law such as the MIAA charter. In order for the Court to classify the MIAA properties as part of public dominion, it will be necessary to invalidate the provisions of the MIAA charter allowing the Authority to lease, sell, create pledges, mortgages and other voluntary liens or encumbrances on any of the airport properties. The provisions of the MIAA charter could not very well be invalidated with the Civil Code as basis, since the MIAA charter and the Civil Code are both statutes, and thus of equal rank in the hierarchy of laws, and more significantly the Civil Code was enacted earlier and therefore could not be the repealing law.

If there is a provision in the Constitution that adopted the definition of and limitations on public dominion properties as found in the Civil Code, then the aforequoted provisions from the MIAA charter allowing the Authority to place its properties within the commerce of man may be invalidated. The Constitution however does not do so, confining itself instead to a general statement that "all lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State." Note though that under Article 420, public dominion properties are not necessarily owned by the State, the two subsections thereto referring to (a) properties intended for public use; and (b) those which belong to the State and are intended for some public service or for the development of the national wealth.[10] In *Laurel v. Garcia*,[11] the Court notably acknowledged that

---

[10] See CIVIL CODE, Art. 420.

[11] G.R. No. 92013, 25 July 1990, 187 SCRA 797.

Supreme Court E-Library

"property of public dominion is not owned by the State but pertains to the State." Thus, there is no equivalence between the concept of public dominion under the Civil Code, and of public domain under the Constitution.

Accordingly, the framework of public dominion properties is one that is statutory, rather than constitutional in design. That being the case, Congress is able by law to segregate properties which ostensibly are, by their nature, part of the public dominion under Article 420(1) of the Civil Code, and place them within the commerce of man by vesting title thereto in an independent juridical personality such as the MIAA, and authorizing their sale, lease, mortgage and other similar encumbrances. When Congress accomplishes that by law, the properties could no longer be considered as part of the public dominion.

This point has been recognized by previous jurisprudence which I had cited in my dissent in the *Parañaque* case. For example, in *Philippine Ports Authority v. City of Iloilo*, the Court stated that "properties of public dominion are owned by the general public and cannot be declared to be owned by a public corporation, such as [the Philippine Ports Authority]."[12] I had likewise previously explained:

> The second Public Ports Authority case, penned by Justice Callejo, likewise lays down useful doctrines in this regard. The Court refuted the claim that the properties of the PPA were owned by the Republic of the Philippines, noting that PPA's charter expressly transferred ownership over these properties to the PPA, a situation which similarly obtains with MIAA. The Court even went as far as saying that the fact that the PPA "had not been issued any torrens title over the port and port facilities and appurtenances is of no legal consequence. A torrens title does not, by itself, vest ownership; it is merely an evidence of title over properties. . . . It has never been recognized as a mode of acquiring ownership over real properties."
>
> The Court further added:
>
> . . . The bare fact that the port and its facilities and appurtenances are accessible to the general public does not exempt it from

[12] G.R. No. 109791, 14 July 2003, 406 SCRA 88.

Supreme Court E-Library

> the payment of real property taxes. It must be stressed that the said port facilities and appurtenances are the petitioner's corporate patrimonial properties, not for public use, and that the operation of the port and its facilities and the administration of its buildings are in the nature of ordinary business. The petitioner is clothed, under P.D. No. 857, with corporate status and corporate powers in the furtherance of its proprietary interests . . . The petitioner is even empowered to invest its funds in such government securities approved by the Board of Directors, and derives its income from rates, charges or fees for the use by vessels of the port premises, appliances or equipment. . . . Clearly then, the petitioner is a profit-earning corporation; hence, its patrimonial properties are subject to tax.

There is no doubt that the properties of the MIAA, as with the PPA, are in a sense, for public use. A similar argument was propounded by the Light Rail Transit Authority in *Light Rail Transit Authority v. Central Board of Assessment*, 118 which was cited in Philippine Ports Authority and deserves renewed emphasis. The Light Rail Transit Authority (LRTA), a body corporate, "provides valuable transportation facilities to the paying public." 119 It claimed that its carriage-ways and terminal stations are immovably attached to government-owned national roads, and to impose real property taxes thereupon would be to impose taxes on public roads. This view did not persuade the Court, whose decision was penned by Justice (now Chief Justice) Panganiban. It was noted:

> Though the creation of the LRTA was impelled by public service — to provide mass transportation to alleviate the traffic and transportation situation in Metro Manila — its operation undeniably partakes of ordinary business. Petitioner is clothed with corporate status and corporate powers in the furtherance of its proprietary objectives. Indeed, it operates much like any private corporation engaged in the mass transport industry. Given that it is engaged in a service-oriented commercial endeavor, its carriageways and terminal stations are patrimonial property subject to tax, notwithstanding its claim of being a government-owned or controlled corporation.
>
> x x x x x x x x x
>
> Petitioner argues that it merely operates and maintains the LRT system, and that the actual users of the carriageways and

Supreme Court E-Library

> terminal stations are the commuting public. It adds that the public use character of the LRT is not negated by the fact that revenue is obtained from the latter's operations.
>
> We do not agree. Unlike public roads which are open for use by everyone, the LRT is accessible only to those who pay the required fare. It is thus apparent that petitioner does not exist solely for public service, and that the LRT carriageways and terminal stations are not exclusively for public use. Although petitioner is a public utility, it is nonetheless profit-earning. It actually uses those carriageways and terminal stations in its public utility business and earns money therefrom.
>
> x x x x x x x x x
>
> Even granting that the national government indeed owns the carriageways and terminal stations, the exemption would not apply because their beneficial use has been granted to petitioner, a taxable entity.

There is no substantial distinction between the properties held by the PPA, the LRTA, and the MIAA. These three entities are in the business of operating facilities that promote public transportation.

The majority further asserts that MIAA's properties, being part of the public dominion, are outside the commerce of man. But if this is so, then why does Section 3 of MIAA's charter authorize the President of the Philippines to approve the sale of any of these properties? In fact, why does MIAA's charter in the first place authorize the transfer of these airport properties, assuming that indeed these are beyond the commerce of man?[13]

III.

In the present case, the City of Pasay had issued notices of levy and warrants of levy for the NAIA Pasay properties, leading MIAA to file with the Court of Appeals a petition for prohibition and injunction, seeking to enjoin the City of Pasay from imposing real property taxes, levying against and auctioning for public sale the NAIA Pasay properties.

In the *Parañaque* case, I had expressed that while MIAA was liable for the realty taxes, its properties could not be foreclosed

[13] *Supra* note 1 at 694-696, *J.* Tinga, dissenting.

Supreme Court E-Library

upon by the local government unit seeking the taxes. I explained then:

> Despite the fact that the City of Parañaque ineluctably has the power to impose real property taxes over the MIAA, there is an equally relevant statutory limitation on this power that must be fully upheld. Section 3 of the MIAA charter states that "[a]ny portion [of the [lands transferred, conveyed and assigned to the ownership and administration of the MIAA] shall not be disposed through sale or through any other mode unless specifically approved by the President of the Philippines."
>
> Nothing in the Local Government Code, even with its wide grant of powers to LGUs, can be deemed as repealing this prohibition under Section 3, even if it effectively forecloses one possible remedy of the LGU in the collection of delinquent real property taxes. While the Local Government Code withdrew all previous local tax exemptions of the MIAA and other natural and juridical persons, it did not similarly withdraw any previously enacted prohibitions on properties owned by GOCCs, agencies or instrumentalities. Moreover, the resulting legal effect, subjecting on one hand the MIAA to local taxes but on the other hand shielding its properties from any form of sale or disposition, is not contradictory or paradoxical, onerous as its effect may be on the LGU. It simply means that the LGU has to find another way to collect the taxes due from MIAA, thus paving the way for a mutually acceptable negotiated solution.

Accordingly, I believe that MIAA is entitled to a writ of prohibition and injunctive relief enjoining the City of Pasay from auctioning for public sale the NAIA Pasay properties. Thus, the Court of Appeals erred when it denied those reliefs to the MIAA.

I **VOTE** to **PARTIALLY GRANT** the petition and to issue the Writ of Prohibition insofar as it would enjoin the City of Pasay from auctioning for public sale the NAIA Pasay properties. In all other respects, I respectfully dissent.