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and *(c)* speculative capital infusion or complete lack thereof for the execution of the business plan,[66] as in this case.

Thus, Fortuna's rehabilitation petition should have been dismissed not only due to its failure to comply with the key requirements under the Interim Rules – *i.e.,* to state any material financial commitment to support the rehabilitation, as well as to include a proper liquidation analysis – but also to establish the feasibility and viability of the Rehabilitation Plan. However, since the rehabilitation proceedings had already been terminated, the foregoing observations are purely academic as this case has already been mooted and therefore, must be dismissed.

ACCORDINGLY, I vote to **DISMISS** the petition on the ground of mootness.

THIRD DIVISION

[G.R. No. 194388. November 7, 2018]

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioner, vs.* **THE LOCAL GOVERNMENT OF QUEZON CITY, CITY TREASURER OF QUEZON CITY, CITY ASSESSOR OF QUEZON CITY, SANGGUNIANG PANLUNGSOD NG QUEZON CITY, and CITY MAYOR OF QUEZON CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; DOCTRINE OF HIERARCHY OF COURTS; EXCEPTIONS.— The principle of the hierarchy

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[66] See *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc., supra* note 50, at 383-384.

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of courts is a judicial policy designed to restrain direct resort to *this Court* if relief can be granted or obtained from the lower courts x x x, [a]s this Court explained in *Aala v. Uy* x x x. This Court shares concurrent jurisdiction in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus with the Regional Trial Court and the Court of Appeals. As it stated in *Aala*, the principle of the hierarchy of courts prevents parties from randomly selecting which among these forums their actions will be directed. *Diocese of Bacolod v. Commission on Elections* likewise explained the rationale behind this Court's adherence to the principle x x x. The doctrine of the hierarchy of courts, however, is often invoked in direct resorts to *this Court*. Hence, the exceptions to the rule are more tailored to the specific functions and discretion of *this Court*: "Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy."

2. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNITS; POWER TO LEVY REAL PROPERTY TAX; LOCAL GOVERNMENT UNITS ARE GRANTED THE POWER TO LEVY TAXES ON REAL PROPERTY NOT OTHERWISE EXEMPTED UNDER THE LAW; SPECIFIC LIMITATIONS.— Under the Local Government Code, local government units are granted the power to levy taxes on real property not otherwise exempted under the law x x x. The Local Government Code provides two (2) specific limitations on local government units' power of taxation. The first is Section 133(o) x x x. The first limitation provides a general rule, that is, that local government units cannot levy any taxes, fees, or charges of any kind on the national government or its agencies and instrumentalities. The provision, however, also provides for

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an exception: "[u]nless otherwise provided herein." The implication, therefore, is that while a government agency or instrumentality is generally tax-exempt, the Local Government Code may provide for instances when it could be taxable. The second limitation is provided for under Section 234 of the Local Government Code, which enumerates the properties that are specifically exempted from the payment of real property taxes x x x. The second limitation likewise provides for its own exceptions. Under Section 234(a), the general rule is that any real property owned by the Republic or its political subdivisions is exempt from the payment of real property tax "except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person." The implication is that real property, even if owned by the Republic or any of its political subdivisions, may still be subject to real property tax if the beneficial use of the real property was granted to a taxable person.

3. ID.; ID.; ADMINISTRATIVE CODE; GOVERNMENT INSTRUMENTALITY AND GOVERNMENT-OWNED AND CONTROLLED CORPORATION, DEFINED; THE PROPERTIES OF A GOVERNMENT INSTRUMENTALITY ARE EXEMPT FROM REAL PROPERTY TAX BUT A GOVERNMENT-OWNED AND CONTROLLED CORPORATION IS NOT EXEMPT FROM REAL PROPERTY TAXES.— Citing Section 2(10) of the Administrative Code, this Court defined a government "instrumentality" as an "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 A "government-owned and -controlled corporation," on the other hand, is defined under Section 2(13) of the Administrative Code x x x. [A]ccording to the parameters set by *Manila International Airport Authority* [*vs*. Court of Appeals], a government instrumentality is exempt from the local government unit's levy of real property tax. The government instrumentality must not have been organized as a stock or non-stock corporation, even though it exercises corporate powers, administers special funds, and enjoys operational autonomy, usually through its charter. Its properties are exempt from real

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property tax because they are properties of the public dominion: held in trust for the Republic, intended for public use, and cannot be the subject of levy, encumbrance, or disposition. A government-owned and controlled corporation, on the other hand, is *not* exempt from real property taxes due to the passage of the Local Government Code.

4. ID.; ID.; ID.; GOVERNMENT INSTRUMENTALITIES; METROPOLITAN WATERWORKS SEWERAGE SYSTEM; CATEGORIZED AS A GOVERNMENT INSTRUMENTALITY WITH CORPORATE POWERS/ GOVERNMENT CORPORATE ENTITY AND IT IS EXEMPT FROM REAL PROPERTY TAXES.— Petitioner was created in 1971 by Republic Act No. 6234, initially without any capital stock. x x x Under its Charter, petitioner was explicitly declared exempt from the payment of real property taxes x x x. In 1974, however, Presidential Decree No. 425 amended the Charter and converted petitioner into a stock corporation x x x. Petitioner is an attached agency of the Department of Public Works and Highways, but exercises corporate functions and maintains operational autonomy x x x. To be categorized as a government-owned and -controlled corporation, a government agency must meet the two (2) requirements prescribed in Article XII, Section 16 of the Constitution: common good and economic viability. x x x Petitioner was created by Congress with the mandate to provide potable water to Metro Manila, Rizal, and a portion of Cavite. Undoubtedly, its creation was for the benefit of the common good. With the passing of the National Water Crisis Act of 1995 and petitioner's subsequent privatization, any contract that petitioner undertakes with private concessionaires must be assessed for its market competitiveness or, otherwise stated, for economic viability. Properties of the public dominion are properties "devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased" by the government agency to private parties. x x x Under its Charter, petitioner is given the power to "acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose" of its real property. Properties held by petitioner under the exercise of this power, therefore, cannot be considered properties of the public dominion. Held against the parameters of *Manila International Airport Authority*, this Court cannot but conclude that petitioner is a government-owned

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and controlled corporation. Under the Local Government Code, only its machinery and equipment actually, directly, and exclusively used in the supply and distribution of water can be exempt from the levy of real property taxes. x x x Be that as it may, this Court's categorization cannot supplant that which was previously made by the Executive and Legislative Branches. After the promulgation of *Manila International Airport Authority*, then President Gloria Macapagal-Arroyo issued Executive Order No. 596, which recognized this Court's categorization of "government instrumentalities vested with corporate powers." x x x [P]etitioner is categorized with other government agencies that were found to be exempt from the payment of real property taxes. In 2011, Congress passed Republic Act No. 10149 or the GOCC Governance Act of 2011, which adopted the same categorization and explicitly lists petitioner together with the other government agencies that were previously held by this Court to be exempt from the payment of real property taxes x x x. The Executive and Legislative Branches, therefore, have already categorized petitioner not as a government-owned and controlled corporation but as a Government Instrumentality with Corporate Powers/Government Corporate Entity like the Manila International Airport Authority and the Philippine Fisheries Development Authority. Privileges enjoyed by these Government Instrumentalities with Corporate Powers/Government Corporate Entities should necessarily also extend to petitioner. Hence, petitioner's real property tax exemption under Republic Act No. 6234 is still valid as the proviso of Section 234 of the Local Government Code is only applicable to government-owned and -controlled corporations. Thus, petitioner is not liable to respondent Local Government of Quezon City for real property taxes, except if the beneficial use of its properties has been extended to a taxable person. Respondents have not alleged that the beneficial use of any of petitioner's properties was extended to a taxable person. In the absence of any allegation to the contrary, petitioner's properties in Quezon City are not subject to the levy of real property taxes.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petititoner.
Office of the City Attorney, Quezon City for respondents.

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D E C I S I O N

LEONEN, *J.*:

A government instrumentality exercising corporate powers is not liable for the payment of real property taxes on its properties unless it is alleged and proven that the beneficial use of its properties has been extended to a taxable person.

This resolves a Petition for Review on Certiorari[1] assailing the October 19, 2010 Decision[2] of the Court of Appeals in CA-G.R. SP No. 100733, which held that the Local Government of Quezon City may assess real property taxes on Metropolitan Waterworks and Sewerage System's properties located in Quezon City.

On June 19, 1971, Congress enacted Republic Act No. 6234,[3] creating the Metropolitan Waterworks and Sewerage System. Under the law, it was mandated "to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems."[4] It was granted the power to exercise supervision and control over all waterworks and sewerage systems within Metro Manila, Rizal, and a portion of Cavite.[5]

It was initially created as a corporation without capital stock. On March 29, 1974, then President Ferdinand Marcos issued

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[1] *Rollo*, pp. 9-44. The Petition is erroneously captioned on its first page as a petition for *certiorari*.

[2] *Id*. at 163-189. The Decision was penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Stephen C. Cruz and Manuel M. Barrios of the Special Seventeenth Division, Court of Appeals, Manila.

[3] An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority; and for Other Purposes.

[4] Rep. Act No. 6234 (1971), Sec. 1.

[5] *See* Rep. Act No. 6234 (1971), Sec. 2(c).

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Presidential Decree No. 425,[6] authorizing it to have an authorized capital stock of ₱1,000,000,000.00, divided into 10,000,000 shares at a par value of ₱100.00 each. Presidential Decree No. 425 further mandated that all shares of stock shall only be subscribed by the government. The stocks should not be "transferred, negotiated, pledged, mortgaged or otherwise given as security for the payment of any obligation."[7]

Sometime in July 2007, Metropolitan Waterworks and Sewerage System received several Final Notices of Real Property Tax Delinquency from the Local Government of Quezon City, covering various taxable years, in the total amount of ₱237,108,043.83 on the real properties owned by Metropolitan Waterworks and Sewerage System in Quezon City. The Local Government of Quezon City warned it that failure to pay would result in the issuance of warrants of levy against its properties.[8]

On August 7, 2007, the Treasurer's Office of Quezon City issued Warrants of Levy on the properties due to Metropolitan Waterworks and Sewerage System's failure to pay.[9]

On September 10, 2007, the Local Government of Quezon City had a Notice of Sale of Delinquent Real Properties published, which stated that the real properties would be sold at a public auction on September 27, 2007. The list included properties owned by Metropolitan Waterworks and Sewerage System.[10]

On September 26, 2007, Metropolitan Waterworks and Sewerage System filed before the Court of Appeals a Petition for Certiorari and Prohibition with Prayer for the Issuance of

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[6] Amending Certain Sections of Republic Act Numbered Sixty-Two Hundred Thirty-Four, Entitled "An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority, and for Other Purposes."

[7] Presidential Decree No. 425 (1974), Sec. 2-A.

[8] *Rollo*, p. 70.

[9] *Id*.

[10] *Id*.

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a Temporary Restraining Order and/or Writ of Preliminary Injunction.[11] It argued that its real properties in Quezon City were exclusively devoted to public use, and thus, were exempt from real property tax.[12]

The Court of Appeals issued a Temporary Restraining Order on September 27, 2007, enjoining the Local Government of Quezon City from proceeding with the scheduled auction of the properties. On November 14, 2007, the Court of Appeals conducted oral arguments. On December 19, 2007, it issued a Writ of Preliminary Injunction.[13]

On October 19, 2010, the Court of Appeals rendered a Decision[14] denying the Petition for lack of merit and lifting the Writ of Preliminary Injunction.

According to the Court of Appeals, Metropolitan Waterworks and Sewerage System need not exhaust administrative remedies since the issue involved a purely legal question.[15] It noted, however, that the Petition should have been first filed before the Regional Trial Court, which shares concurrent jurisdiction with the Court of Appeals over petitions for certiorari and prohibition.[16] Nonetheless, it proceeded to resolve the case on its merits.[17]

The Court of Appeals found that since Metropolitan Waterworks and Sewerage System was not a municipal corporation, it could not invoke the immunity granted in

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[11] *Id*. at 46-66.

[12] *Id*. at 49-50.

[13] *Id*. at 71.

[14] *Id*. at 163-189.

[15] *Id*. at 74.

[16] *Id*. at 77.

[17] *Id*. at 78.

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Section 133(o) of the Local Government Code.[18] In particular, it found that even if Metropolitan Waterworks and Sewerage System was an instrumentality of the government, it was not performing a purely governmental function. As such, it cannot invoke immunity from real property taxation.[19]

The Court of Appeals likewise found that the taxed properties were not part of the public dominion, but were even made the subject of concession agreements between Metropolitan Waterworks and Sewerage System and private concessionaires due to its privatization in 1997. It concluded that since the properties were held by Metropolitan Waterworks and Sewerage System in the exercise of its proprietary functions, they were still subject to real property tax.[20]

The dispositive portion of the Court of Appeals October 19, 2010 Decision stated:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the instant petition for lack of merit. The Writ of Preliminary Injunction issued herein is hereby ordered **LIFTED**.

SO ORDERED.[21] (Emphasis in the original)

On November 9, 2010, Warrants of Levy were issued by the Quezon City Treasurer over Metropolitan Waterworks and Sewerage System's properties.[22] Hence, on November 18, 2010,

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[18] LOCAL GOVT. CODE, Sec. 133 provides:

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:

. . . . . .

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

[19] *Rollo*, p. 186.

[20] *Id.* at 187-188.

[21] *Id.* at 189.

[22] *Id.* at 13.

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Metropolitan Waterworks and Sewerage System filed its Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[23] before this Court.

On December 14, 2010, petitioner filed a Very Urgent Reiteratory Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.[24]

Acting on this Motion, this Court resolved to Issue a Temporary Restraining Order on January 26, 2011.[25]

Respondents filed a Consolidated Motions to Dismiss[26] and a Motion for Extension of Time to File Comment.[27] In its April 11, 2011 Resolution,[28] this Court resolved to deny the Consolidated Motions to Dismiss but to grant the Motion for Extension of Time to file comment. Respondents, thus, filed their Comment[29] on April 19, 2011.

While the Petition was pending, however, respondent City Treasurer of Quezon City submitted a Manifestation[30] stating that he intended to auction petitioner's Lot Nos. 1, 2, and 3 of Block PCS-8998, located in Barangay Pasong Putik, Quezon City on July 7, 2011. He reasoned that these properties were not included among those covered in this Court's January 26, 2011 Temporary Restraining Order.[31]

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[23] *Id*. at 9-44.

[24] *Id*. at 202-218.

[25] *Id*. at 240-243.

[26] *Id*. at 248-263-A.

[27] *Id*. at 274-277.

[28] *Id*. at 278.

[29] *Id*. at 290-310.

[30] *Id*. at 322-325.

[31] *Id*. at 323.

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Petitioner filed a Counter-Manifestation *Ad Cautelam*,[32] arguing that while these properties were not included among the properties covered by the January 26, 2011 Temporary Restraining Order, they fall under the same or similar category as those properties that were covered. It contends that if these properties were auctioned, the issue in the Petition would be rendered moot.[33]

In its September 7, 2011 Resolution,[34] this Court issued a Temporary Restraining Order preventing respondents from proceeding with the auction of petitioner's Lot Nos. 1, 2, and 3 of Block PCS-8998.

The parties subsequently submitted their respective memoranda[35] before this Court.

Petitioner maintains that it is a government instrumentality exempt from real property taxation under Section 133(o)[36] of the Local Government Code. In particular, it argues that it is a regulatory body mandated to oversee the operations of its two (2) private concessionaires, the Manila Water Company, Inc. and the Maynilad Water Services, Inc. It points out that Republic Act No. 6234, Section 18, as amended by Presidential

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[32] *Id*. at 312-315.

[33] *Id*. at 313.

[34] *Id*. at 327-328.

[35] *Id*. at 335-349 and 360-377.

[36] LOCAL GOVT. CODE, Sec. 133 provides:

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:

. . . . . .

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

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Decree No. 425,[37] expressly exempts it from the payment of real property taxes.[38]

Citing *Manila International Airport Authorities v. Court of Appeals*[39] and *Philippine Fisheries Development Authority v. Central Board of Assessment Appeals*,[40] petitioner argues that it is exempt from taxation as it is an instrumentality of the government holding properties of the public dominion. It likewise cites Republic Act No. 10149,[41] passed on July 26, 2010, which

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[37] Rep. Act No. 6234 (1971), as amended, Sec. 18 provides:

Section 18. Non-Profit Character of the System, Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities. – The System shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion and improvement. To enable the System to pay its indebtedness and obligations and the furtherance and effective implementation of the policy enumerated in Section one of this Act, the System is hereby declared exempt.

(a) From the payment of all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities including the taxes, duties, fees, imports, and other charges provided for under the Tariff and Customs Code of the Philippines, Republic Act Numbered Nineteen Hundred Thirty-Seven, as amended to further amended by Presidential Decree No. 34, dated October 27, 1972, and costs and service fees in any Court or administrative proceedings in which it may be a party;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and the other Government agencies and instrumentalities; and

(c) From all imposts, duties, compensating taxes, and advanced sales tax, and wharfage fees on import of foreign goods required for its operations

[38] *Rollo*, pp. 336-339.

[39] 528 Phil. 181 (2006) [Per *J.* Carpio, *En Banc*].

[40] 560 Phil. 738 (2007) [Per *J.* Azcuna, First Division].

[41] An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or -Controlled Corporations and to Strengthen the Role of the State in its Governance and Management to Make Them More Responsive to the Needs of Public Interest and for Other Purposes.

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lists petitioner as one of the government instrumentalities with corporate powers.[42]

Respondents, on the other hand, point out that petitioner failed to observe the principle of the hierarchy of courts when it filed the case directly before the Court of Appeals, instead of the Regional Trial Court, which exercises concurrent jurisdiction in petitions for certiorari.[43]

They maintain that petitioner holds properties in the exercise of its proprietary functions, and thus, are susceptible to real property tax.[44] They point out that tax exemption granted in Republic Act No. 6234, Section 18 has since been repealed by Section 234[45] of the Local Government Code.[46] They likewise assert that petitioner has since recognized its tax liabilities when it paid respondents a down payment of ₱30,000,000.00, and when it committed to pay the balance not later than April 2011.[47]

This Court is asked to resolve a pure question of law: whether a local government unit may assess real property taxes on petitioner Metropolitan Waterworks and Sewerage System, a government entity.

Before this issue can be resolved, however, this Court will first pass upon the issue of whether or not petitioner Metropolitan

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[42] *Rollo*, pp. 340-346.

[43] *Id.* at 360-362.

[44] *Id.* at 364.

[45] LOCAL GOVT. CODE, Sec. 234 provides:

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

. . . . . .

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.

[46] *Rollo*, pp. 365-366.

[47] *Id.* at 368.

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Waterworks and Sewerage System violated the principle of hierarchy of courts in directly bringing the case to the Court of Appeals instead of to the Regional Trial Court.

I

The principle of the hierarchy of courts is a judicial policy designed to restrain direct resort to *this Court* if relief can be granted or obtained from the lower courts. As this Court explained in *Aala v. Uy*:[48]

> The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets. Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance."[49]

This Court shares concurrent jurisdiction in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus with the Regional Trial Court and the Court of Appeals.[50] As it stated in *Aala*, the principle of the hierarchy of courts prevents parties from randomly selecting which among

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[48] G.R. No. 202781, January 10, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2018/january2017/202781.pdf] [Per *J.* Leonen, *En Banc*].

[49] *Id*. at 13, *citing De Castro v. Carlos*, 709 Phil. 389, 396-397 (2013) [Per *C.J.* Sereno, *En Banc*]; *People v. Cuaresma*, 254 Phil. 418, 426-428 (1989) [Per *J.* Narvasa, First Division]; *Bañez, Jr. v. Concepcion*, 693 Phil. 399, 411-414 (2012) [Per *J.* Bersamin, First Division]; *Kalipunan ng Damayang Mahihirap, Inc. v. Robredo*, G.R. No. 200903, July 22, 2014, 730 SCRA 322, 332-333 (2014) [Per *J.* Brion, *En Banc*]; *Ouano v. PGTT International Investment Corp.*, 434 Phil. 28, 34-35 (2002) [Per *J.* Sandoval-Gutierrez, Third Division]; and *Vergara, Sr. v. Suelto*, 240 Phil. 719, 732-733 (1987) [Per *J.* Narvasa, First Division].

[50] *See* CONST., Art. VIII, Sec. 5, par. 1; and *People v. Cuaresma*, 254 Phil. 418, 426-428 (1989) [Per *J.* Narvasa, First Division].

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these forums their actions will be directed. *Diocese of Bacolod v. Commission on Elections*[51] likewise explained the rationale behind this Court's adherence to the principle:

> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
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> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
>
> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[52] (Citation omitted)

Respondents assail petitioner's direct resort of its Petition for Certiorari to the Court of Appeals, arguing that the Petition

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[51] G.R. No. 205728, January 21, 2015, 747 SCRA 1 [Per *J.* Leonen, *En Banc*].

[52] *Id.* at 14.

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should have been filed before the Regional Trial Court, which shares concurrent jurisdiction.

The doctrine of the hierarchy of courts, however, is often invoked in direct resorts to *this Court*. Hence, the exceptions to the rule are more tailored to the specific functions and discretion of *this Court*:

> Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[53]

It is doubtful whether the Court of Appeals could apply the same rationale when the doctrine of the hierarchy of courts is invoked. In any case, it has full discretion on whether to give due course to any petition for certiorari directly filed before it. In this case, it allowed petitioner's direct resort to it on the ground that the issue presented was a pure question of law. No error can be ascribed to it for passing upon the issue.

II

Under the Local Government Code, local government units are granted the power to levy taxes on real property not otherwise exempted under the law:

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[53] *Aala v. Uy*, G.R. No. 202781, January 10, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2018/july2018/202275.pdf] 15 [Per *J*. Leonen, *En Banc*], citing *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015, 747 SCRA 1 [Per *J*. Leonen, *En Banc*].

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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.

The Local Government Code provides two (2) specific limitations on local government units' power of taxation. The first is Section 133(o), which provides:

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:

. . . . . .

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

The first limitation provides a general rule, that is, that local government units cannot levy any taxes, fees, or charges of any kind on the national government or its agencies and instrumentalities. The provision, however, also provides for an exception: "[u]nless otherwise provided herein." The implication, therefore, is that while a government agency or instrumentality is generally tax-exempt, the Local Government Code may provide for instances when it could be taxable.

The second limitation is provided for under Section 234 of the Local Government Code, which enumerates the properties that are specifically exempted from the payment of real property taxes:

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, non-profit or religious cemeteries

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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.

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 second limitation likewise provides for its own exceptions. Under Section 234(a), the general rule is that any real property owned by the Republic or its political subdivisions is exempt from the payment of real property tax "except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person." The implication is that real property, even if owned by the Republic or any of its political subdivisions, may still be subject to real property tax if the beneficial use of the real property was granted to a taxable person.

Petitioner claims that it is an instrumentality of the Republic; thus, its real properties should be exempt from real property tax. Respondents, on the other hand, claim that petitioner is a government-owned and -controlled corporation whose tax exemptions have since been withdrawn with the effectivity of the Local Government Code.

This is not the first time that this Court has been confronted with this issue.

In *Manila International Airport Authority v. Court of Appeals*,[54] this Court was confronted with the issue of whether

[54] 528 Phil. 181 (2006) [Per *J.* Carpio, *En Banc*].

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Parañaque City could levy real property taxes on airport lands and buildings. To resolve this issue, it first had to determine whether the Manila International Airport Authority, a government entity with its own charter, was considered an "instrumentality" or a "government-owned and -controlled corporation."

Citing Section 2(10) of the Administrative Code,[55] this Court defined a government "instrumentality" as an "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." Government instrumentalities are exempt from any kind of taxation from local government for the following reasons:

> There is . . . no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another.
>
> There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations. There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments.[56]

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[55] ADM. CODE, 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. . . .

[56] *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 214-215 (2006) [Per *J.* Carpio, *En Banc*].

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A "government-owned and -controlled corporation," on the other hand, is defined under Section 2(13) of the Administrative Code, thus:

(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) per cent of its capital stock[.]

The entity must also meet the two (2) conditions prescribed under Article XII, Section 16 of the Constitution:

ARTICLE XI
National Economy and Patrimony

Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

This Court determined that the Manila International Airport Authority was not a government-owned and controlled corporation since it was not organized as a stock or non-stock corporation. It was likewise unnecessary to subject it to the test of economic viability since it was not created to compete in the marketplace.

Although the Manila International Airport Authority was granted corporate powers, it also exercised governmental powers of eminent domain, police authority, and levying of charges and fees. The proper nomenclature for it, therefore, was that of a government instrumentality exercising corporate powers, sometimes loosely referred to as "government corporate entity." As a government instrumentality, it is exempt from local taxes under Section 133(o)[57] of the Local Government Code.

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[57] LOCAL GOVT. CODE, Sec. 133 provides:

Section 133. Common Limitations on the Taxing Powers of Local Government Units.– Unless otherwise provided herein, the exercise of the taxing powers

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Manila International Airport Authority likewise held that airport lands and buildings are properties of public dominion owned by the Republic. These properties have been determined to be intended for public use as they are used by the public for domestic and international air travel. Even if the titles to the properties were in Manila International Airport Authority's name, it only held them in trust for the Republic since the properties cannot be conveyed without the President's signature on the deed of conveyance. *Manila International Airport Authority*, however, clarified that portions of the Republic's properties that are leased to taxable persons may be subjected to real property 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

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of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following:

. . . . . .

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

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estate tax. In *Lung Center of the Philippines v. Quezon City*, the Court ruled:

> Accordingly, we hold that the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes. On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.[58]

Philippine Fisheries Development Authority v. Court of Appeals[59] was confronted with the same issue when the City of Iloilo levied real property taxes on Iloilo Fishing Port Complex, which was operated by the Philippine Fisheries Development Authority.

Applying the parameters set by *Manila International Airport Authority*, this Court determined that the Philippine Fisheries Development Authority was a government instrumentality exercising corporate powers, not a government-owned and controlled corporation. Thus, it was exempt from the payment of real property taxes on the Iloilo Fishing Port Complex, except for those portions that were leased to private entities. *Philippine Fisheries Development Authority* further clarified that:

> Notwithstanding said tax delinquency on the leased portions of the [Iloilo Fishing Port Complex], the latter or any part thereof, being a property of public domain, cannot be sold at public auction. This means that the City of Iloilo has to satisfy the tax delinquency through means other than the sale at public auction of the [Iloilo Fishing Port Complex].[60]

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[58] *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 224-225 (2006) [Per J. Carpio, *En Banc*], citing *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, June 29, 2004, 433 SCRA 119, 138 [Per *J.* Callejo, Sr., *En Banc*].

[59] 555 Phil. 661 (2007) [Per *J.* Ynares-Santiago, Third Division].

[60] *Id.* at 674.

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In *Government Service Insurance System v. City Treasurer of Manila*,[61] this Court likewise applied *Manila International Airport Authority* and held that the Government Service Insurance System was a government instrumentality whose properties, being owned by the Republic, cannot be assessed for real property taxes:

> While perhaps not of governing sway in all fours inasmuch as what were involved in *Manila International Airport Authority, e.g.*, airfields and runways, are properties of the public dominion and, hence, outside the commerce of man, the rationale underpinning the disposition in that case is squarely applicable to GSIS, both MIAA and GSIS being similarly situated. First, while created under CA 186 as a non-stock corporation, a status that has remained unchanged even when it operated under PD 1146 and RA 8291, GSIS is not, in the context of the afore quoted Sec. 193 of the LGC, a GOCC following the teaching of *Manila International Airport Authority*, for, like MIAA, GSIS' capital is not divided into unit shares. Also, GSIS has no members to speak of. And by members, the reference is to those who, under Sec. 87 of the Corporation Code, make up the non-stock corporation, and not to the compulsory members of the system who are government employees. Its management is entrusted to a Board of Trustees whose members are appointed by the President.
>
> Second, the subject properties under GSIS's name are likewise owned by the Republic. The GSIS is but a mere trustee of the subject properties which have either been ceded to it by the Government or acquired for the enhancement of the system. This particular property arrangement is clearly shown by the fact that the disposal or conveyance of said subject properties are either done by or through the authority of the President of the Philippines. Specifically, in the case of the Concepcion-Arroceros property, it was transferred, conveyed, and ceded to this Court on April 27, 2005 through a presidential proclamation, Proclamation No. 835. Pertinently, the text of the proclamation announces that the Concepcion-Arroceros property was earlier ceded to the GSIS on October 13, 1954 pursuant to Proclamation No. 78 for office purposes and had since been titled to GSIS which constructed an office building thereon. Thus, the transfer on April27, 2005 of the Concepcion-Arroceros property to this Court by the

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[61] 623 Phil. 964 (2009) [Per *J.* Velasco, Jr., Third Division].

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President through Proclamation No. 835. This illustrates the nature of the government ownership of the subject GSIS properties, as indubitably shown in the last clause of Presidential Proclamation No. 835:

> WHEREAS, by virtue of the Public Land Act (Commonwealth Act No. 141, as amended), Presidential Decree No. 1455, and the Administrative Code of 1987, the President is authorized to transfer any government property that is no longer needed by the agency to which it belongs to other branches or agencies of the government.[62]

Manila International Airport Authority remains good law and was applied in the fairly recent *Mactan-Cebu International Airport Authority v. City of Lapu-Lapu*,[63] where this Court concluded that the Mactan-Cebu International Airport Authority, being a government instrumentality, cannot be levied real property tax except on portions leased to taxable persons:

> MCIAA, with its many similarities to the MIAA, should be classified as a government instrumentality, as its properties are being used for public purposes, and should be exempt from real estate taxes. This is not to derogate in any way the delegated authority of local government units to collect realty taxes, but to uphold the fundamental doctrines of uniformity in taxation and equal protection of the laws, by applying all the jurisprudence that have exempted from said taxes similar authorities, agencies, and instrumentalities, whether covered by the 2006 *MIAA* ruling or not.[64]

Thus, according to the parameters set by *Manila International Airport Authority*, a government instrumentality is exempt from the local government unit's levy of real property tax. The government instrumentality must not have been organized as a stock or non-stock corporation, even though it exercises corporate powers, administers special funds, and enjoys operational autonomy, usually through its charter. Its properties

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[62] *Id.* at 979-980.

[63] 759 Phil. 296 (2015) [Per *J.* Leonardo-De Castro, First Division].

[64] *Id.* at 349.

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are exempt from real property tax because they are properties of the public dominion: held in trust for the Republic, intended for public use, and cannot be the subject of levy, encumbrance, or disposition.

A government-owned and controlled corporation, on the other hand, is *not* exempt from real property taxes due to the passage of the Local Government Code, which now provides:

> 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.[65] (Emphasis supplied)

Guided by these parameters, this Court now determines whether petitioner is a government instrumentality exercising corporate powers or a government-owned and controlled corporation.

III

Petitioner was created in 1971 by Republic Act No. 6234, initially without any capital stock. Its Charter merely stated:

> Section 2. Creation, Name, Domicile and Jurisdiction. –
>
> (a) There is hereby created a government corporation to be known as the Metropolitan Waterworks and Sewerage System, hereinafter referred to as the System, which shall be organized within thirty days after the approval of this Act.[66]

Under its Charter, petitioner was explicitly declared exempt from the payment of real property taxes:

> Section 18. Tax Exemption. – All articles imported by the Metropolitan Waterworks and Sewerage System or the local governments for the exclusive use of their waterworks and sewerage systems particularly machineries, equipment, pipes, fire hydrants, and those related to,

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[65] LOCAL GOVT. CODE, Sec. 234.

[66] Rep. Act No. 6234 (1971), Sec. 2(a).

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or connected with, the construction, maintenance, and operation of dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pumping stations; or of artesian wells and springs within their territorial jurisdictions, shall be exempt from the imposition of import duties and other taxes.[67]

In 1974, however, Presidential Decree No. 425 amended the Charter and converted petitioner into a stock corporation:

Section 2-A. Capital Stock of the System. – The System is hereby authorized a capital stock of one billion pesos divided into ten million shares at a par value of one hundred pesos each, which shares shall not be transferred, negotiated, pledged, mortgaged or otherwise given as security for the payment of any obligation. The shares shall be subscribed and paid for by the Government of the Philippines[.]

Petitioner is an attached agency of the Department of Public Works and Highways,[68] but exercises corporate functions and maintains operational autonomy as it was granted the following attributes, powers and functions:

(a) To exist and have continuous succession under its corporate name for a term of fifty (50) years from and after the date of the approval of this Act, notwithstanding any provision of law to the contrary: Provided, however, That at the end of the said period, the System shall automatically continue to exist for another fifty (50) years, unless otherwise provided by law;

(b) To prescribe its by-laws;

(c) To adopt and use a seal and alter it at its pleasure;

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[67] Rep. Act No. 6234 (1971), Sec. 18.

[68] ADM. CODE, Book IV, Title V, Ch. 6, Sec. 25 provides:

Section 25. Attached Agencies and Corporations. – Agencies and corporations attached to the Department [of Public Works and Highways] shall continue to operate and function in accordance with their respective charters/laws/executive orders creating them. Accordingly, the Metropolitan Waterworks and Sewerage System, the Local Water Utilities Administration, the National Irrigation Administration, and the National Water Resources Council, among others, shall continue to be attached to the Department; while the Metropolitan Manila Flood Control and Drainage Council, as reorganized, shall be attached to the Department.

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(d) To sue and be sued;

(e) To establish the basic and broad policies and goals of the System;

(f) To construct, maintain, and operate dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pipes, fire hydrants, pumping stations, machineries and other waterworks for the purpose of supplying water to the inhabitants of its territory, for domestic and other purposes; and to purity, regulate and control the use, as well as prevent the wastage of water;

(g) To construct, maintain, and operate such sanitary sewerages as may be necessary for the proper sanitation and other uses of the cities and towns comprising the System;

(h) To fix periodically water rates and sewerage service fees as the System may deem just and equitable in accordance with the standards outlined in Section 12 of this Act;

(i) To construct, develop, maintain and operate such artesian wells and springs as may be needed in its operation within its territory;

(j) To acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property, including rights and franchises, consistent with the purpose for which the System is created and reasonably required for the transaction of the lawful business of the same;

(k) To construct works across, over, through and/or alongside any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway, whether public or private, as the location of said works may require: Provided, That such works be constructed in such manner as to afford security to life and property; and Provided, further, That the stream, watercourse, canal, ditch, flume, street, avenue, highway, railway, so crossed or intersected be restored as near as possible to their former state, or in a manner not to impair unnecessary their usefulness. Every person or entity whose right-of-way or property is lawfully crossed or intersected by said works shall not obstruct any such crossing or intersection and shall grant the System or its representatives the proper authority to execute such work. The System is hereby given the right-of-way to locate, construct and maintain such works over and throughout the lands, including any street, avenue, or highway owned by the Republic of the Philippines or any of its branches and political subdivisions, and is given right of immediate entry and to prosecute any undertaking thereon without any further

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requirement or restriction other than due notice to the office or entity concerned. The System, or its representatives, may also enter upon private property in the lawful performance or prosecution of its business or purposes, including the construction of water mains and distribution pipes thereon, provided that the owner of such private property shall be compensated as follows:

(1) In case the land shall be acquired by purchase, the fair market value thereof, which shall be the value of the land based on the tax declaration that is valid and effective at the time of the filing of the complaint for eminent domain or of the taking of said land by the System, whichever is earlier; and

(2) In addition, the owner shall be compensated for the improvements such as houses, buildings, structures, or agricultural crops and the like, if any, actually damaged during the construction, operation, and maintenance of such works on the land, in amounts based on the value of such improvements appearing on the tax declaration that is valid and effective and/or the prevailing valuation of such agricultural crops and the like made by the appropriate appraisal body authorized by law at the time of the filing of the said complaint for eminent domain or of the taking of said improvements by the System, whichever is earlier; Provided, further, That any action for compensation and/or damages under (1) and (2) above, shall be filed within five years from the date the right-of-way, pipelines structures or other facilities shall have been established; Provided, finally, That after the said period of five years, no suit shall be brought to question said right-of-way, pipelines, structures or other facilities nor the amounts of compensation and/or damages involve.

(l) To exercise the right of eminent domain for the purpose for which the System is created;

(m) To contract indebtedness in any currency and issue bonds to finance projects now authorized for the National Waterworks and Sewerage Authority under existing laws and as may hereafter be expressly authorized by law with the approval of the President of the Philippines upon the recommendation of the Secretary of Finance;

(n) To approve, regulate, and supervise the establishment, operation and maintenance of waterworks and deepwells within its jurisdiction operated for commercial, industrial and governmental purposes and

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to fix just and equitable rates or fees that may be charged to customers thereof;

(o) To assist in the establishment, operation and maintenance of waterworks and sewerage systems within its jurisdiction under cooperative basis;

(p) To approve and regulate the establishment and construction of waterworks and sewerage systems in privately owned subdivisions within its jurisdiction;

(q) To have exclusive and sole right to test, mount, dismount and remount water meters within its jurisdiction;

(r) To render annual reports to the President of the Philippines and the Presiding Officers of the two Houses of Congress not later than January thirty-first of every year;

(s) In the prosecution and maintenance of its projects and plants, the System shall adopt measures to prevent environmental pollution and shall enhance the conservation, development and maximum utilization of national resources, including the improvement and beautification of its reservoirs, filter plants, and other areas to promote tourism and related purposes, and shall provide for the necessary corporate funds therefor.[69]

To be categorized as a government-owned and -controlled corporation, a government agency must meet the two (2) requirements prescribed in Article XII, Section 16 of the Constitution:[70] common good and economic viability.

In 1995, Congress passed Republic Act No. 8041, or the National Water Crisis Act of 1995, which reorganized petitioner and privatized the "financing, construction, repair, rehabilitation,

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[69] Rep. Act No. 6234 (1971), Sec. 3, as amended by Pres. Decree No. 425 (1974) and Pres. Decree No. 1406 (1978).

[70] CONST., Art. XII, Sec. 16 provides:

Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

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improvement and operation of water supply, treatment and distribution facilities and projects, including sewerage projects."[71] Any proposal by a private concessionaire "to undertake private sector infrastructure or development projects related to water supply, treatment, distribution and disposal under a [Build-Operate- and-Transfer], Build-and-Transfer (BT), Build-Lease-and-Transfer (BLT), Build-Own-and-Operate (BOO), Build-Transfer-and-Operate (BTO), Contract-Add-and-Operate (CAO), Develop-Operate-and-Transfer (DOT), Rehabilitate-Own-and-Transfer (ROT), Rehabilitate-Own-and-Operate (ROO), or other similar contractual arrangements or schemes"[72] is evaluated and assessed for its "technical, operational, financial and economic viability, as well as the environmental impact."[73]

Petitioner was created by Congress with the mandate to provide potable water to Metro Manila, Rizal, and a portion of Cavite. Undoubtedly, its creation was for the benefit of the common good. With the passing of the National Water Crisis Act of 1995 and petitioner's subsequent privatization, any contract that petitioner undertakes with private concessionaires must be assessed for its market competitiveness or, otherwise stated, for economic viability.

Properties of the public dominion are properties "devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased"[74] by the government agency to private parties. *Manila International Airport Authority* added:

> Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale.

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[71] Implementing Rules and Regulations of Rep. Act No. 8041 (1995), Rule 3, Sec. 3.1.

[72] Implementing Rules and Regulations of Rep. Act No. 8041 (1995), Rule 3, Sec. 3.3.

[73] Implementing Rules and Regulations of Rep. Act No. 8041 (1995), Rule 3, Sec. 3.8.

[74] *Espiritu v. Municipal Council*, 102 Phil. 866, 870 (1958) [Per *J.* Montemayor, *En Banc*].

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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.[75]

Under its Charter, petitioner is given the power to "acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose"[76] of its real property. Properties held by petitioner under the exercise of this power, therefore, cannot be considered properties of the public dominion.

Held against the parameters of *Manila International Airport Authority*, this Court cannot but conclude that petitioner is a government- owned and controlled corporation. Under the Local Government Code, only its machinery and equipment actually, directly, and exclusively used in the supply and distribution of water can be exempt from the levy of real property taxes.[77] Its powers, functions, and attributes are more akin to that of the National Power Corporation, which was previously held by this Court as a taxable entity:

To be sure, the ownership by the National Government of its entire capital stock does not necessarily imply that petitioner is not engaged in business. Section 2 of Pres. Decree No. 2029 classifies government-owned or controlled corporations (GOCCs) into those performing governmental functions and those performing proprietary functions, *viz*:

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[75] *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 219 (2006) [Per *J*. Carpio, *En Banc*].

[76] Rep. Act No. 6234 (1971), Sec. 3(j).

[77] LOCAL GOVT. CODE, Sec. 234 provides:

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

. . . . . .

(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[.]

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> "A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by 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 a majority of its outstanding voting capital stock . . ."

Governmental functions are those pertaining to the administration of government, and as such, are treated as absolute obligation on the part of the state to perform while proprietary functions are those that are undertaken only by way of advancing the general interest of society, and are merely optional on the government. Included in the class of GOCCs performing proprietary functions are "business-like" entities such as the National Steel Corporation (NSC), the National Development Corporation (NDC), the Social Security System (SSS), the Government Service Insurance System (GSIS), and the National Water Sewerage Authority (NAWASA), among others.

Petitioner was created to "undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis." Pursuant to this mandate, petitioner generates power and sells electricity in bulk. Certainly, these activities do not partake of the sovereign functions of the government. They are purely private and commercial undertakings, albeit imbued with public interest. The public interest involved in its activities, however, does not distract from the true nature of the petitioner as a commercial enterprise, in the same league with similar public utilities like telephone and telegraph companies, railroad companies, water supply and irrigation companies, gas, coal or light companies, power plants, ice plant among others; all of which are declared by this Court as ministrant or proprietary functions of government aimed at advancing the general interest of society.[78]

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[78] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 256-257 (2003) [Per *J*. Puno, Third Division], citing *Social Security System Employees Association v. Soriano*, 7 SCRA 1016, 1020 (1963) [Per *J*. Bautista Angelo, *En Banc*]; *Boy Scouts of the Philippines v. NLRC*, 196 SCRA 176, 185 (1991) [Per *J*. Feliciano, Third Division]; *Shipside Incorporated v. Court of Appeals*, 352 SCRA 334, 350 (2001) [Per *J*. Melo, Third Division]; Rep. Act No. 6395, Sec. 2; and *National Waterworks & Sewerage Authority v. NWSA Consolidated Unions*, 11 SCRA 766, 774 (1964) [Per *J*. Bautista Angelo, *En Banc*].

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Be that as it may, this Court's categorization cannot supplant that which was previously made by the Executive and Legislative Branches. After the promulgation of *Manila International Airport Authority*, then President Gloria Macapagal-Arroyo issued Executive Order No. 596,[79] which recognized this Court's categorization of "government instrumentalities vested with corporate powers." Section 1 of Executive Order No. 596 states:

> 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 office of "government instrumentality vested with corporate powers" or "government corporate entity", as defined by the Supreme Court in the case of "*MIAA vs. Court of Appeals, City of Parañaque, et al.*", supra, notable examples of which are: Manila International Airport Authority (MIAA), Mactan International 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. (Emphasis supplied)

Under this provision, petitioner is categorized with other government agencies that were found to be exempt from the payment of real property taxes.

In 2011, Congress passed Republic Act No. 10149 or the GOCC Governance Act of 2011, which adopted the same categorization and explicitly lists petitioner together with the other government agencies that were previously held by this Court to be exempt from the payment of real property taxes:

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[79] Defining and Including "Government Instrumentality Vested With Corporate 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 (2006).

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(n) *Government Instrumentalities with Corporate Powers (GICP)/ Government Corporate Entities (GCE)* refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the *Metropolitan Waterworks and Sewerage System (MWSS)*, the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).[80] (Emphasis supplied)

The Executive and Legislative Branches, therefore, have already categorized petitioner not as a government-owned and controlled corporation but as a Government Instrumentality with Corporate Powers/Government Corporate Entity like the Manila International Airport Authority and the Philippine Fisheries Development Authority. Privileges enjoyed by these Government Instrumentalities with Corporate Powers/ Government Corporate Entities should necessarily also extend to petitioner. Hence, petitioner's real property tax exemption under Republic Act No. 6234[81] is still valid as the proviso of

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[80] Rep. Act No. 10149 (2011), Sec. 3(n).

[81] Rep. Act No. 6234 (1971), as amended, Sec. 18 provides:

Section 18. Non-Profit Character of the System, Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities. – The System shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion and improvement. To enable the System to pay its indebtedness and obligations and the furtherance and effective implementation of the policy enumerated in Section one of this Act, the System is hereby declared exempt:

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Section 234[82] of the Local Government Code is only applicable to government-owned and -controlled corporations.

Thus, petitioner is not liable to respondent Local Government of Quezon City for real property taxes, except if the beneficial use of its properties has been extended to a taxable person.

Respondents have not alleged that the beneficial use of any of petitioner's properties was extended to a taxable person. In the absence of any allegation to the contrary, petitioner's properties in Quezon City are not subject to the levy of real property taxes.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals October 19, 2010 Decision in CA-G.R. SP No. 100733 is **REVERSED** and **SET ASIDE**. The Temporary Restraining Orders issued by this Court on January 26, 2011 and September 7, 2011 are made **PERMANENT**.

(a) From the payment of all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities including the taxes, duties, fees, imports, and other charges provided for under the Tariff and Customs Code of the Philippines, Republic Act Numbered Nineteen Hundred Thirty-Seven, as amended to further amended by Presidential Decree No. 34, dated October 27, 1972, and costs and service fees in any Court or administrative proceedings in which it may be a party;

(b) *From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and the other Government agencies and instrumentalities*; and

(c) From all imposts, duties, compensating taxes, and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects. (Emphasis supplied)

[82] LOCAL GOVT. CODE, Sec. 234 provides:

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

. . . . . .

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.

Supreme Court E-Library

The real properties of the Metropolitan Waterworks and Sewerage System located in Quezon City are **DECLARED EXEMPT** from the real estate tax imposed by the Local Government of Quezon City. All the real estate tax assessments, including the final notices of real estate tax delinquencies, issued by the Local Government of Quezon City on the real properties of the Metropolitan Waterworks and Sewerage System located in Quezon City are declared **VOID**, except for the portions that are alleged and proven to have been leased to private parties.

SO ORDERED.

Peralta (*Chairperson*) and *Hernando, JJ.*, concur.

Gesmundo and *Reyes, J. Jr., JJ.*, on wellness leave.

THIRD DIVISION

[G.R. No. 199851. November 7, 2018]

NOELL WHESSOE, INC.,[1] *petitioner, vs.* **INDEPENDENT TESTING CONSULTANTS, INC., PETROTECH SYSTEMS, INC., and LIQUIGAZ PHILIPPINES CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF

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[1] Noell Whessoe Philippines Construction, Inc. has changed its name to "Whessoe Philippines Construction, Inc." (See *rollo*, p. 541). However, this Decision will use "Noell Whessoe, Inc." to be consistent with how petitioner identifies itself in its Petition (See *rollo*, p. 12).