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WHEREFORE, the judgment under review finding the appellant guilty beyond reasonable doubt of the crime of murder punishable by *reclusion perpetua* is hereby AFFIRMED with the modification above indicated.

SO ORDERED.

Gutierrez, Jr. (Chairman), Davide, Jr., Romero and *Melo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 51593. November 5, 1992]

NATIONAL DEVELOPMENT COMPANY, *plaintiff-appellee, vs.* **CEBU CITY and AUGUSTO PACIS, as Treasurer of Cebu City,** *defendant-appellants.*

SYLLABUS

1. POLITICAL LAW; PUBLIC CORPORATIONS; GOVERNMENT OWNED OR CONTROLLED CORPORATION; SEPARATE PERSONALITY ALLOWS IT TO HOLD AND POSSESS PROPERTIES; PERMITS ITS GREATER INDEPENDENCE AND FLEXIBILITY IN OPERATION.— The Republic, like any individual, may form a corporation with personality and existence distinct from its own. The separate personality allows a GOCC to hold and possess properties in its own name and, thus, permit greater independence and flexibility in its operations. It may, therefore, be stated that tax exemption of "property owned by the Republic of the Philippines" refers to properties owned by the Government and by its agencies which do not have separate and distinct personalities.

2. TAXATION; ASSESSMENT LAW; EXEMPTION FROM TAX; NATURE OF USE OF GOVERNMENT OWNED

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PROPERTY, IMMATERIAL.— To come within the ambit of the exemption provided in Art. 3, par. (a), of the Assessment Law, it is important to establish that the property is owned by the government or by its unincorporated agency, and once government ownership is determined, the nature of the use of the property, whether for proprietary or sovereign purposes, becomes immaterial.

3. ID.; ID.; ID.; RESERVED LAND REMAINS WITH REPUBLIC THUS EXEMPTED FROM TAX. — What appears to have been ceded to NWC (later transferred to NDC), in the case before Us, is merely the administration of the property while the government retains ownership of what has been declared reserved for warehousing purposes under Proclamation No. 430. A reserved land is defined as a "[p]ublic land that has been withheld or kept back from sale or disposition." The land remains "absolute property of the government." The government "does not part with its title by reserving them (lands), but simply gives notice to all the world that it desires them for a certain purpose". Absolute disposition of land is not implied from reservation; it merely means "a withdrawal of a specified portion of the public domain from disposal under the land laws and the appropriation thereof, for the time being, to some particular use or purpose of the general government". As its title remains with the Republic, the reserved land is clearly covered by the tax exemption provision.

4. ID.; ID.; ID.; PUBLIC LAND ACT; SECTION 115 THEREOF SUBJECTS PUBLIC LAND TO REALTY TAX BEFORE OWNERSHIP. — Section 115 of the Public Land Act should be treated as an exception to Art. 3, par. (a), of the Assessment Law. While ordinarily public lands are tax exempt because title thereto belongs to the Republic, Sec. 115 subjects them to real estate tax even before ownership thereto is transferred in the name of the beneficiaries. Sec. 115 comprehends three (3) modes of disposition of lands under the Public Land Act, to wit: homestead, concession, and contract.

5. ID.; ID.; ID.; ID.; NDC NOT BEING A HOMESTEADER, RESERVATION BEING A UNILATERAL ACT OF THE PRESIDENT FALLS UNDER "CONCESSION."— Liability to real property taxes under Sec. 115 is predicated on (a) *filing* of homestead application, (b) *approval* of concession and, (c)

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signing of contract. Significantly, without these qualifying words, the date of the accrual of the real estate tax would be indeterminate. Since NDC is not a homesteader and no "contract" (bilateral agreement) was signed, it would appear, then, that reservation under Sec. 83, being a unilateral act of the President, falls under "concession".

6. **ID.; ID.; ID.; ID.; ID.; "CONCESSION: DIFFERENTIATED FROM "RESERVATION." —** "Concession" as a technical term under the Public Land Act is synonymous with "alienation" and "disposition", and is defined in Sec. 10 as "any of the methods authorized by this Act for the acquisition, lease, use, or benefit of the lands of the public domain other than timber or mineral lands." Logically, where Sec. 115 contemplates authorized methods for acquisition, lease, use, or benefit under the Act, the taxability of the land would depend on whether reservation under Sec. 83 is one such method of acquisition, *etc*. Tersely put, is reservation synonymous with alienation? Or, are the two terms antithetical and mutually exclusive? Indeed, reservation connotes retention, while concession (alienation) signifies cession.

7. **ID.; ID.; ID.; ID.; ID.; EFFECT OF RESERVATION; PUBLIC LAND TRANSFORMED INTO NON-ALIENABLE REMAINS TAX EXEMPT. —** Sections 8 and 88 of the Public Land Act provide that reserved lands are excluded from that mass of public land that may be subject of disposition. As We view it, the effect of reservation under Sec. 83 is to segregate a piece of public land and transform it into non-alienable or non-disposable under the Public Land Act. Section 115, on the other hand, applies to disposable public lands. Clearly, therefore, Sec. 115 does not apply to lands reserved under Sec. 83. Consequently, the subject reserved public land remains tax exempt.

8. **ID.; ID.; ID.; ID.; ID.; ID.; TAX EXEMPTION DOES NOT EXTEND TO IMPROVEMENTS. —** As regards the warehouse constructed on a public reservation, a different rule should apply because "[t]he exemption of public property from taxation does not extend to improvements on the public lands made by preemptioners, homesteaders and other claimants, or occupants, at their own expense, and these are taxable by the state. x x x" Consequently, the warehouse constructed on

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the reserved land by NWC (now under administration by NDC), indeed, should properly be assessed real estate tax as such improvement does not appear to belong to the Republic.

9. ID.; PAYMENT UNDER PROTEST REQUIREMENT; DOES NOT APPLY WHERE PAYMENT WAS MADE UNDER MISTAKEN BELIEF THAT IT WAS REQUIRED. — NDC disputes the applicability of the *payment-under-protest* requirement provided in Sec. 75 of the Revised Cebu City Charter because the issue is not the validity of tax assessment but recovery of erroneous payments under Arts. 2154 and 2155 of the Civil Code. In *Ramie Textiles, Inc. vs. Mathay, Sr.*, We held — "x x x Protest is not a requirement in order that a taxpayer who paid under a mistaken belief that it is required by law, may claim for a refund. Section 54 of Commonwealth Act No. 470 does not apply to petitioner which could conceivably not have been expected to protest a payment it honestly believed to be due. The same refers only to the case where the taxpayer, despite his knowledge of the erroneous or illegal assessment, still pays and fails to make the proper protest, for in such case, he should manifest an unwillingness to pay, and failing so, the taxpayer is deemed to have waived his right to claim a refund.

10. ID.; REFUND OF ILLEGALLY COLLECTED TAXES; SOLUTIO INDEBITI; ACTION MUST BE FILED WITHIN SIX (6) YEARS FROM DATE OF PAYMENT. — As regards the claim for refund of tax payments spanning more than twenty (20) years, We also said in *Ramie Textiles* that — "*Solutio indebiti* is a quasi-contract, and the instant case being in the nature of *solutio indebiti*, the claim for refund must be commenced within six (6) years from date of payment pursuant to Article 1145 (2) of the New Civil Code x x x"

11. ID.; ID.; APPEAL TO SECRETARY OF FINANCE OR TO GOVERNMENT AUDITING OFFICE, NOT NECESSARY. — We sustain the appellate court to the extent that its decision covers improperly collected taxes on the reserved land under Proclamation No. 430, thus — "The defense of prescription invoked by the defendant which counsel for the plaintiff, however, did not answer in its memorandum, is partly well-taken. Actions for refund of taxes illegally collected must be commenced within six (6) years from the date of collection. x x x"

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APPEARANCES OF COUNSEL

The Government Corporate Counsel for plaintiff-appellee.
The City Attorney for defendant-appellants.

D E C I S I O N

BELLOSILLO, *J.*:

Is a public land reserved by the President for warehousing purposes in favor of a government-owned or controlled corporation,[1] as well as the warehouse subsequently erected thereon, exempt from real property tax?

Petitioner National Development Company (NDC), a government-owned or controlled corporation (GOCC) existing by virtue of C.A. 182[2] and E.O. 399,[3] is authorized to engage in commercial, industrial, mining, agricultural and other enterprises necessary or contributory to economic development or important to public interest. It also operates, in furtherance of its objectives, subsidiary corporations one of which is the now defunct National Warehousing Corporation (NWC).[4]

On 10 August 1939, the President issued Proclamation No. 430[5] reserving Block No. 4, Reclamation Area No. 4, of

[1] A government-owned or controlled corporation is defined in Sec. 2 of P.D. 2029 as "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 capital stock or its outstanding voting capital stock x x x."

[2] C.A. 182, "An Act to Create a Public Corporation to be known as the National Development Company, to Define its Powers and Duties, to Appropriate the Necessary Funds Therefor, Repealing Thereby Acts Numbered Twenty-Eight Hundred and Forty-Nine and Twenty-Eight Hundred and Seventy-Three", which took effect 1 January 1937.

[3] E.O. 399, "Uniform Charter for Government Corporations", dated 5 January 1951.

[4] Joint Stipulation of Facts, 1st and 2nd pars., Record on Appeal, p. 12.

[5] Proclamation No. 430 provides: "Upon the recommendation of the Secretary of Agriculture and Commerce and pursuant to the provisions of

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Cebu City, consisting of 4,599 square meters, for warehousing purposes under the administration of NWC.[6] Subsequently, in 1940, a warehouse with a floor area of 1,940 square meters, more or less, was constructed thereon.[7]

On 4 October 1947, E.O. 93 dissolved NWC[8] with NDC taking over its assets and functions.[9]

Commencing 1948, Cebu City (CEBU) assessed and collected from NDC real estate taxes on the land and the warehouse thereon.[10] By the first quarter of 1970, a total of ₱100,316.31 was paid by NDC[11] of which only ₱3,895.06 was under protest.[12]

On 20 March 1970, NDC wrote the City Assessor demanding full refund of the real estate taxes paid to CEBU claiming that the land and the warehouse standing thereon belonged to the Republic and therefore exempt from taxation.[13] CEBU did not acquiesce in the demand, hence, the present suit filed 25 October 1972 in the Court of First Instance of Manila.

Section Eighty-Three of Commonwealth Act Numbered One Hundred and Forty-One, I hereby withdraw from sale or settlement and reserve for warehouse purposes, under the administration of the National Warehousing Corporation, subject to private rights, if any there be, block numbered four of Reclamation Area Numbered Four of the City of Cebu."

[6] Joint Stipulation of Facts, par. 3, Record on Appeal, pp. 12-13.

[7] *Ibid*., par. 4.

[8] E.O. 93, "Abolishing the National Enterprises Control Board, Creating the Government Enterprises Council, Transferring the Metropolitan Transportation Service to the Manila Railroad Company, Dissolving and Merging Certain Corporations Owned or Controlled by the Government, and for Other Purposes", effective 4 October 1947.

[9] Joint Stipulation of Facts, par. 5, Record on Appeal, p. 13.

[10] *Ibid*., par. 6.

[11] *Ibid*.

[12] ₱96,401.37 was paid without protest (see Joint Stipulation of Facts, par. 13, Record on Appeal, pp. 14-15).

[13] Joint Stipulation of Facts, par. 8, Record on Appeal, p. 14.

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On 29 May 1973, the Court of First Instance of Manila, Branch XXII, promulgated a decision[14] the dispositive portion of which reads —

"WHEREFORE, judgment is hereby rendered sentencing the City of Cebu, thru the Treasurer of said City, to refund to the plaintiff, National Development Company, the real estate taxes paid by it for the parcel of land covered by Presidential Proclamation No. 430 of August 10, 1939, and the warehouse erected thereon from and after October 25, 1966, with interests thereon at the legal rate from the date of the filing of the complaint and the costs of the suit."

The defendants appealed to the Court of Appeals which however certified the case to Us as one involving pure questions of law, pursuant to Sec. 17, R.A. 296.

In this appeal, CEBU assigns five (5) errors[15] imputed to the trial court which may be synopsized into whether NDC is exempt from payment of real estate taxes on the land reserved by the President for warehousing purposes as well as the warehouse constructed thereon, and in the affirmative, whether NDC may recover in refund unprotested real estate taxes it paid from 1948 to 1970.

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[14] Penned by Judge Federico C. Alikpala, then Presiding Judge, CFI - Manila, Br. XXII, Record on Appeal, pp. 54-55.

[15] Following are the five (5) errors assigned:

I. The trial court erred in not finding that plaintiff National Development Company is liable for real estate taxes when using the land and building, subject of this case, for business purposes.

II. The trial court erred in not finding that plaintiff had not exhausted all administrative remedies before filing the instant action.

III. The trial court erred in not finding that reservations for public use by means of presidential proclamation under Sections 83 - 85 of the Public Land Law are forms of disposition or grants of public lands and, therefore, the lands so disposed of are subject to real estate taxes.

IV. The trial court erred in ordering defendant to refund plaintiff a portion of the taxes paid when said payment was not made under protest as required by the City Charter of the defendant City.

V. The trial court erred in sentencing the City of Cebu to refund plaintiff the amounts paid for real estate taxes for the land covered by

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On the first question, CEBU insists on taxability of the subject properties, claiming that no law grants NDC exemption from real estate taxes, and that NDC, as recipient of the land reserved by the President pursuant to Sec. 83 of the Public Land Act,[16] is liable for payment of ordinary (real estate) taxes under Sec. 115 thereof. CEBU contends that the properties have ceased to be tax exempt under the Assessment Law[17] when the government disposed of them in favor of NDC, and even assuming that title to the land remains with the government (ownership being the basis for real estate taxability under the Assessment Law), the Supreme Court rulings establish increasing trend in the application of "use" of property rather than "ownership" as basis for real estate tax liability.

On the other hand, NDC maintains that Sec. 3 of the Assessment Law, which exempts properties owned by the Republic from real estate tax, includes subject properties in the exemption. It invokes the ruling in *Board of Assessment Appeals vs. CTA & NWSA*[18] which held that properties of NWSA, a GOCC, were exempt from real estate tax because Sec. 3 of the Assessment Law applied to all government properties whether held in governmental or proprietary capacity. NDC rejects the applicability of Sec. 115 of the Public Land Act to the subject

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Presidential Proclamation No. 438 and the warehouse erected thereon from and after 25 October 1966 with interest thereon from date of filing of the complaint and cost of the suit (Brief for Defendant-Appellants, pp. 1-3).

[16] C.A. 141, approved 7 November 1936, Sec. 83 of which provides: "Upon the recommendation of the Secretary of Agriculture and Commerce, the President may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Commonwealth of the Philippines or of any of its branches, or of the inhabitants thereof, in accordance with regulations prescribed for this purpose, or for quasi-public uses or purposes, when the public interest requires it, including reservations for highways, rights of way for railroads, hydraulic power sites, irrigation systems, communal pastures or *leguas comunales*, public parks, public quarries, public fishponds, workingmen's village and other improvements for the public benefit."

[17] C.A. 470, effective 1 January 1940.

[18] 118 Phil. 227, prom. 31 May 1963.

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land, claiming that that provision contemplates dispositions of public land with eventual transfer of title. In addition, NDC believes that it is neither a grantee of a public land nor an applicant within the purview of the same provision.

As already adverted to, one of the principal issues before Us is the interpretation of a provision of the Assessment Law, the precursor of the then Real Property Tax Code and the Local Government Code, where "ownership" of the property and not "use" is the test of tax liability.[19]

Section 3, par. (a), of the Assessment Law, on which NDC claims real estate tax exemption, provides —

"SECTION 3. *Property exempt from tax*. — The exemptions shall be as follows: (a) Property owned by the United States of America, the Commonwealth of the Philippines, any province, city, municipality or municipal district x x x"

The same opinion of NDC was passed upon in *National Development Co. v. Province of Nueva Ecija*[20] where We held that its properties were not comprehended in Sec. 3, par. (a), of the Assessment Law. In part, We stated:

"1. Commonwealth Act No. 182 which created NDC contains no provision exempting it from the payment of real estate tax on properties it may acquire x x x There is justification in the contention of plaintiff-appellee that x x x [I]t is undeniable that to any municipality the principal source of revenue with which it would defray its operation will come from real property taxes. If the National

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[19] We held in *Province of Nueva Ecija v. Imperial Mining Company, Inc.*, G.R. No. 59463, prom. 19 November 1982, 118 SCRA 632: "When IMC in 1968 obtained lease on the mineral land in question, the law governing real property taxation was the former Assessment Law, Commonwealth Act 470, and the basis of realty taxation thereunder was *ownership* or interest tantamount to ownership. A mere lessee of mineral land was therefore *not liable* for the payment of realty tax thereon x x x In 1974, a new Real Property Tax Code came into being when Presidential Decree 464 was issued. It changed the basis of real property taxation. It adopted the policy of taxing real property on the basis of *actual use, even if the user is not the owner*."

[20] G.R. No. 51223, 25 November 1983; 125 SCRA 752.

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Development Company would be exempt from paying real property taxes over these properties, the town of Gabaldon will be deprived of much needed revenues with which it will maintain itself and finance the compelling needs of its inhabitants' (p. 6, Brief of Plaintiff-Appellee).

"2. Defendant-appellant NDC does not come under the classification of municipal or public corporation in the sense that it may sue and be sued in the same manner as any other private corporations, and in this sense, it is an entity different from the government. Unlike the government, defendant corporation may be sued without its consent, and is subject to taxation. In the case of *NDC vs. Jose Yulo Tobias*, 7 SCRA 692, it was held that 'x x x plaintiff is neither the Government of the Republic nor a branch or subdivision thereof, but a government owned and controlled corporation which cannot be said to exercise a sovereign function (*Associacion Cooperativa de Credito Agricola de Miagao vs. Monteclaro*, 74 Phil. 281), it is a business corporation, and as such, its causes of action are subject to the statute of limitations x x x That plaintiff herein does not exercise sovereign powers — and, hence, cannot invoke the exemptions thereof — but is an agency for the performance of purely corporate, proprietary or business functions, is apparent from its Organic Act (Commonwealth Act 182, as amended by Commonwealth Act 311) pursuant to Section 3 of which it 'shall be subject to the provisions of the Corporation Law insofar as they are not inconsistent' with the provisions of said Commonwealth Act, 'and shall have the general powers mentioned in said' Corporation Law, and, hence, 'may engage in commercial, industrial, mining, agricultural, and other enterprises which may be necessary or contributory to the economic development of the country, or important in the public interest,' as well as 'acquire, hold, mortgage, and alienate personal and real property in the Philippines or elsewhere; x x x make contracts of any kind and description', and 'perform any and all acts which a corporation or natural persons is authorized to perform under the laws now existing or which may be enacted hereafter."

We find no compelling reason why the foregoing ruling, although referring to lands which would eventually be transferred to private individuals, should not apply equally to this case.

NDC cites *Board of Assessment Appeals, Province of Laguna v. Court of Tax Appeals and National Waterworks and Sewerage*

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Authority (NAWA). In that case, We held that properties of NWSA, a GOCC, were exempt from real estate tax because Sec. 3, par. (c), of R.A. 470 did not distinguish between those possessed by the government in sovereign/governmental/political capacity and those in private/proprietary/patrimonial character.

The conflict between *NDC v. Nueva Ecija, supra*, and *BAA* v. *CTA and NWSA, supra*, is more superficial than real. The *NDC* decision speaks of properties owned by NDC, while the *BAA* ruling concerns properties belonging to the Republic. The latter case appears to be exceptional because the parties therein stipulated—

"1. That the petitioner National Waterworks and Sewerage Authority (NAWASA) is a public corporation created by virtue of Republic Act No. 1383, and that *it is owned by the Government of the Philippines as well as all property comprising waterworks and sewerage systems placed under it*" (italics supplied).

There, the Court observed: "It is conceded, in the stipulation of facts, that the property involved in this case 'is owned by the Government of the Philippines.' Hence, it belongs to the Republic of the Philippines and falls squarely within the letter of the above provision."

In the case at bar, no similar statement appears in the stipulation of facts, hence, ownership of subject properties should first be established. For, while it may be stated that the Republic owns NDC, it does not necessarily follow that properties owned by NDC are also owned by the Republic — in the same way that stockholders are not *ipso facto* owners of the properties of their corporation.

The Republic, like any individual, may form a corporation with personality and existence distinct from its own. The separate personality allows a GOCC to hold and possess properties in its own name and, thus, permit greater independence and flexibility in its operations. It may, therefore, be stated that tax exemption of "property owned by the Republic of the Philippines" refers to properties owned by the Government and by its agencies which

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do not have separate and distinct personalities (unincorporated entities). We find the separate opinion of Justice Bautista-Angelo in *Gonzales v. Hechanova, et al.*,[21] appropriate and enlightening —

"x x x The Government of the Republic of the Philippines under the Revised Administrative Code refers to that entity through which the functions of government are exercised, including the various arms through which political authority is made effective whether they be provincial, municipal or other form of local government, whereas a government instrumentality refers to corporations owned or controlled by the government to promote certain aspects of the economic life of our people. A government agency, therefore, must necessarily refer to the government itself of the Republic, as distinguished from any government instrumentality which has a personality distinct and separate from it (Section 2)."

The foregoing discussion does not mean that because NDC, like most GOCC's, engages in commercial enterprises, all properties of the government and its unincorporated agencies possessed in proprietary character are taxable. Similarly, in the case at bar, NDC proceeded on the premise that the *BAA* ruling declared all properties owned by GOCC's as properties in the name of the Republic, hence, exempt under Sec. 3 of the Assessment Law.[22]

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[21] 118 Phil. 1084, October 22, 1963.

[22] Consequently, erroneous reliance by *NWSA v. Quezon City*, G.R. No. L-25310, 26 April 1968, 23 SCRA 286, and *Social Security System v. City of Bacolod* G.R. No. L-35726, 21 July 1982, 115 SCRA 412, on *BAA v. CTA and NWSA*, should be reexamined. In *NWSA v. Quezon City*, We held: "x x x The properties of NWSA are exempt from realty tax as properties of the Republic of the Philippines under Sec. 47 (a) of Republic Act 537 (Revised Charter of Quezon City) x x x"

In *SSS v. City of Bacolod*, We ruled: "What is decisive is that the properties possessed by the SSS, albeit devoted to private or proprietary purpose, are in fact owned by the government of the Philippines. As such they are exempt from realty taxes x x x"

The SSS case appears to have proceeded from the premise that properties of SSS are *ipso facto* owned by the Republic. In fact, it views Sec. 16 of P.D. 29 exempting SSS and its assets from taxation a confirmation of its ruling. We are not persuaded; P.D. 24 speaks of properties owned by SSS,

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To come within the ambit of the exemption provided in Art. 3, par. (a), of the Assessment Law, it is important to establish that the property is owned by the government or by its unincorporated agency, and once government ownership is determined, the nature of the use of the property, whether for proprietary or sovereign purposes, becomes immaterial. What appears to have been ceded to NWC (later transferred to NDC), in the case before Us, is merely the administration of the property while the government retains ownership of what has been declared reserved for warehousing purposes under Proclamation No. 430.

Incidentally, the parties never raised the issue of ownership from the court *a quo* to this Court.

A reserved land is defined as a "[p]ublic land that has been withheld or kept back from sale or disposition."[23] The land remains "absolute property of the government."[24] The government "does not part with its title by reserving them (lands), but simply gives notice to all the world that it desires them for a certain purpose".[25] Absolute disposition of land is not implied from reservation;[26] it merely means "a withdrawal of a specified portion of the public domain from disposal under the land laws and the appropriation thereof, for the time being, to some particular use or purpose of the general government."[27] As its title remains with the Republic, the reserved land is clearly covered by the tax exemption provision.

CEBU nevertheless contends that the reservation of the property in favor of NWC or NDC is a form of disposition of public

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while the decision alludes to properties owned by the Republic. That conclusion is a misapplication of the *BAA* ruling.

[23] Black's Law Dictionary, 4th ed., p. 1473, citing *Donley v. Van Horn*, 49 Cal. App. 383, 193 p. 514, 516.

[24] 73 CJS 720.

[25] Footnote No. 85 in 73 CJS 717-718 citing *US v. Payne*, D.C. Ark. 8 F 883, 2 McCrary 289.

[26] Words and Phrases, Vol. 37, p. 167, citing *Jackson v. Wilcox*, 2 Ill. (1 Scam) 344, 359.

[27] 73 CJS 717.

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land which subjects the recipient (NDC) to real estate taxation under Sec. 115 of the Public Land Act, as amended by R.A. 436,[28] which states:

"Sec. 115. All lands granted by virtue of this Act, including homesteads upon which final proof has not been made or approved shall, even though and while the title remains in the State, be subject to the ordinary taxes, which shall be paid by the grantee or the applicant, beginning with the year next following the one in which the homestead application has been filed, or the concession has been approved, or the contract has been signed, as the case may be, on the basis of the value fixed in such filing, approval or signing of the application, concession or contract."

The essential question then is whether lands reserved pursuant to Sec. 83 are comprehended in Sec. 115 and, therefore, taxable.

Section 115 of the Public Land Act should be treated as an exception to Art. 3, par. (a), of the Assessment Law. While ordinarily public lands are tax exempt because title thereto belongs to the Republic, Sec. 115 subjects them to real estate tax even before ownership thereto is transferred in the name of the beneficiaries. Sec. 115 comprehends three (3) modes of disposition of lands under the Public Land Act, to wit: homestead, concession, and contract.

Liability to real property taxes under Sec. 115 is predicated on (a) *filing* of homestead application, (b) *approval* of concession and, (c) *signing* of contract. Significantly, without these qualifying words, the date of the accrual of the real estate tax would be indeterminate. Since NDC is not a homesteader and no "contract" (bilateral agreement) was signed, it would appear, then, that reservation under Sec. 83, being a unilateral act of the President, falls under "concession".

"Concession" as a technical term under the Public Land Act is synonymous with "alienation" and "disposition", and is defined in Sec. 10 as "any of the methods authorized by this Act for the acquisition, lease, use, or benefit of the lands of the public domain other than timber or mineral lands." Logically, where Sec. 115

[28] R.A. 436, approved June 7, 1950.

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contemplates authorized methods for acquisition, lease, use, or benefit under the Act, the taxability of the land would depend on whether reservation under Sec. 83 is one such method of acquisition, *etc*. Tersely put, is reservation synonymous with alienation? Or, are the two terms antithetical and mutually exclusive? Indeed, reservation connotes retention, while concession (alienation) signifies cession.

Sections 8 and 88 of the Public Land Act provide that reserved lands are excluded from that mass of public land that may be subject of disposition, to wit —

"Sec. 8. Only those lands shall be declared open to disposition or concession which have been officially delimited and classified and, when practicable, surveyed, and *which have not been reserved* for public or quasi-public uses, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any valid law may be claimed, or *which, having been reserved or appropriated, have ceased to be so*."

"Sec. 88. The tract or tracts of land reserved under the provisions of Section eighty-three shall be *non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable* under the provisions of this Act or by proclamation of the President" (italics supplied).

As We view it, the effect of reservation under Sec. 83 is to segregate a piece of public land and transform it into non-alienable or non-disposable under the Public Land Act. Section 115, on the other hand, applies to disposable public lands. Clearly, therefore, Sec. 115 does not apply to lands reserved under Sec. 83. Consequently, the subject reserved public land remains tax exempt.

However, as regards the warehouse constructed on a public reservation, a different rule should apply because "[t]he exemption of public property from taxation does not extend to improvements on the public lands made by preemptioners, homesteaders and other claimants, or occupants, at their own expense, and these

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are taxable by the state x x x."[29] Consequently, the warehouse constructed on the reserved land by NWC (now under administration by NDC), indeed, should properly be assessed real estate tax as such improvement does not appear to belong to the Republic.

Since the reservation is exempt from realty tax, the erroneous tax payments collected by CEBU should be refunded to NDC. This is in consonance with Sec. 40, par. (a) of the former Real Property Tax Code which exempted from taxation real property owned by the Republic of the Philippines or any of its political subdivisions, as well as any GOCC so exempt by its charter.[30]

As regards the requirement of paying under protest before judicial, recourse, CEBU argues that in any case NDC is not entitled to refund because Sec. 75 of R.A. 3857, the Revised Charter of the City of Cebu,[31] requires payment *under protest* before resorting to judicial action for tax refund, that it could not have acted on the first demand letter of NDC of 20 May 1970 because it was sent to the City Assessor and not to the City Treasurer; that, consequently, there having been no appropriate prior demand, resort to judicial remedy is premature; and, that even on the premise that there was proper demand, NDC has yet to exhaust administrative remedies by way of appeal to the Department of Finance and/or Auditor General before taking judicial action.

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[29] 84 CJS 383.

[30] Sec. 40, P.D. 464, effective 1 June 1974, provides: "*Exemptions from Real Property Tax*. — The exemptions shall be as follows: (a) Real property owned by the Republic of the Philippines or any of its political subdivisions and any government-owned corporation so exempt by its charter: *Provided, however*, That this exemption shall not apply to real property of the above-named entities the beneficial use of which has been granted, for consideration or otherwise, to a taxable person x x x."

[31] Sec. 75, R.A. 3857, approved 10 June 1964, provides: "No court shall entertain any suit assailing the validity of a tax assessed under this article until the taxpayer shall have paid, under protest, the taxes assessed against him x x x."

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NDC does not agree. It disputes the applicability of the *payment-under-protest* requirement provided in Sec. 75 of the Revised Cebu City Charter because the issue is not the validity of tax assessment but recovery of erroneous payments under Arts. 2154 and 2155 of the Civil Code.[32] It cites the case of *East Asiatic Co., Ltd. v. City of Davao*[33] which held that where the tax is unauthorized, "it is not a tax assessed under the charter of the appellant City of Davao and for that reason no protest is necessary for a claim or demand for its refund." In *Ramie Textiles, Inc. vs. Mathay, Sr.*,[34] We held —

"x x x Protest is not a requirement in order that a taxpayer who paid under a mistaken belief that it is required by law, may claim for a refund. Section 54[35] of Commonwealth Act No. 470 does not apply to petitioner which could conceivably not have been expected to protest a payment it honestly believed to be due. The same refers only to the case where the taxpayer, despite his knowledge of the erroneous or illegal assessment, still pays and fails to make the proper protest, for in such case, he should manifest an unwillingness to pay, and failing so, the taxpayer is deemed to have waived his right to claim a refund.

"In the case at bar, petitioner, therefore, cannot be said to have waived his right. He had no knowledge of the fact that it was exempted from payment of the realty tax under Commonwealth Act No. 470. Payment was made through error or mistake, in the honest belief that petitioner was liable, and therefore could not have been made under protest, but with complete voluntariness. In any case, a taxpayer

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[32] Art. 2154 provides: "If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

Art. 2155 provides: "Payment by reason of a mistake in the construction or application of a doubtful or difficult question of law may come within the scope of the preceding article."

[33] G.R. No. L-16253, 21 August 1962; 5 SCRA 873.

[34] G.R. No. L-32364, 30 April 1979; 89 SCRA 586.

[35] Sec. 54. *Restriction upon power of court to impeach tax.* — No court shall entertain any suit assailing the validity of a tax assessed under this Act until the taxpayer shall have paid, under protest, the taxes assessed against him x x x."

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should not be held to suffer loss by his good intention to comply with what he believes is his legal obligation, where such obligation does not really exist x x x. The fact that petitioner paid thru error or mistake, and the government accepted the payment, gave rise to the application of the principle of *solutio indebiti* under Article 2154 of the New Civil Code, which provides that 'if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.' There is, therefore, created a tie or juridical relation in the nature of *solutio indebiti*, expressly classified as quasi-contract under Section 2, Chapter I of Title XVII of the New Civil Code.

"The quasi-contract of *solutio indebiti* is one of the concrete manifestations of the ancient principle that no one shall enrich himself unjustly at the expense of another x x x. Hence, it would seem unedifying for the government, that knowing it has no right at all to collect or to receive money for alleged taxes paid by mistake, it would be reluctant to return the same x x x. Petitioner is not unsatisfied in the assessment of its property. Assessment having been made, it paid the real estate taxes without knowing that it is exempt."

As regards the claim for refund of tax payments spanning more than twenty (20) years, We also said in *Ramie Textiles* that —

"*Solutio indebiti* is a quasi-contract, and the instant case being in the nature of *solutio indebiti*, the claim for refund must be commenced within six (6) years from date of payment pursuant to Article 1145 (2) of the New Civil Code[36] x x x."

We sustain the appellate court to the extent that its decision covers improperly collected taxes on the reserved land under Proclamation No. 430, thus —

"The defense of prescription invoked by the defendant which counsel for the plaintiff, however, did not answer in its memorandum, is partly well-taken. Actions for refund of taxes illegally collected must be commenced within six (6) years from the date of collection x x x.

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[36] Art. 1145, par. 2, provides: "The following actions must be commenced within six years: x x x Upon a quasi-contract."

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"The stipulation of facts and the pleadings tiled by the parties do not contain data specifying when and how much were paid by the year, of the taxes sought to be refunded. Accordingly, the Court has no other alternative but to order the refund of an undetermined amount based, however, on the date of payment counted six (6) years backward from October 25, 1972, when the complaint in this case was filed."[37]

As regards exhaustion of administrative remedies, We agree with the trial court that the case constitutes an exception to the rule, as it involves purely questions of law.[38] Specifically, on the requirement of appeal to the Secretary of Finance, We further held in the same *Ramie Textiles* that "[E]qually not applicable is Section 17 of Commonwealth Act No. 470[39] cited by respondent in relation to the right of a property owner to contest the validity of assessment x x x."

Respondent CEBU likewise invites Our attention to the availability of appeal to the Government Auditing Office although no authority is cited to Us. We do not find any either to sustain the procedure.

WHEREFORE, finding that National Development Company (NDC) is exempt from real estate tax on the reserved land but liable for the warehouse erected thereon, the decision appealed from is accordingly *MODIFIED*. Consequently, let this case be remanded to the court of origin, now the Regional Trial Court of Manila, to determine the proper liability of NDC, particularly on its warehouse, and effect the corresponding refund, payment or set-off, as the case may be, conformably with this decision. No costs.

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[37] Record on Appeal, p. 54.

[38] *Valmonte v. Belmonte*, G.R. No. 74930, 13 February 1989; 170 SCRA 256.

[39] "Sec 17. *Appeal by owner to the Board of Tax Appeals*. — Any owner who is not satisfied with the action of a provincial assessor in the assessment of his property may x x x appeal to the Board of Tax Appeals x x x Sec. 18. x x x If the taxpayer is not satisfied with the decision of the Board of Tax Appeals, he may likewise appeal to the Secretary of Finance x x x."

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SO ORDERED.

Cruz (Chairman), Padilla, and *Griño-Aquino, JJ.*, concur.

Medialdea, J., on leave.

EN BANC

[G.R. No. 97381. November 5, 1992]

BENIGNO V. MAGPALE, JR., *petitioner, vs.* **CIVIL SERVICE COMMISSION and ROGELIO A. DAYAN, in his capacity as the General Manager of the Philippine Ports Authority,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION; APPEALS; PHRASE "PARTY ADVERSELY AFFECTED BY DECISION" REFERS TO GOVERNMENT EMPLOYEE AGAINST WHOM ADMINISTRATIVE CASE IS FILED. — After *Mendez vs. Civil Service Commission*, (204 SCRA 965 [1991]), the extent of the authority of respondent CSC to review the decisions of the MSPB is now a settled matter. The Court, in said case held: "The phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office x x x By inference or implication, the remedy of appeal may be availed of only in a case where the respondent is found guilty of the charges filed against him. But when the respondent is exonerated of said charges, as in this case, there is, no occasion for appeal."