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SECOND DIVISION

[G.R. No. 171586. July 15, 2009]

NATIONAL POWER CORPORATION, *petitioner, vs.* **PROVINCE OF QUEZON and MUNICIPALITY OF PAGBILAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PRINCIPLE OF ESTOPPEL; APPLIED IN CASE AT BAR.— We agree that the NPC can no longer divest the CBAA of the power to decide the appeal after invoking and submitting itself to the board's jurisdiction. We note that even the NPC itself found nothing objectionable in the LBAA's *sin perjuicio* decision when it filed its appeal before the CBAA; the NPC did not cite this ground as basis for its appeal. What it cited were grounds that went into the merits of its case. In fact, its appeal contained no prayer for the remand of the case to the LBAA. A basic jurisdictional rule, essentially based on fairness, is that a party cannot invoke a court's jurisdiction to secure affirmative relief and, after failing to obtain the requested relief, repudiate or question that same jurisdiction. Moreover, a remand would be unnecessary, as we find the CBAA's and the CTA *en banc's* denial of NPC's claims entirely in accord with the law and with jurisprudence.

2. TAXATION; LOCAL TAXATION; REAL PROPERTY TAXATION; ASSESSMENT OF PROPERTY; ASSESSMENT OF LOCAL ASSESSOR BECOMES FINAL, EXECUTORY AND DEMANDABLE WHEN THE TAXPAYER FAILS TO QUESTION THE ASSESSMENT BEFORE THE LOCAL BOARD OF ASSESSMENT APPEALS.— A taxpayer's failure to question the assessment before the LBAA renders the assessment of the local assessor final, executory, and demandable, thus precluding the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.

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3. ID.; ID.; ID.; ID.; MAY BE CONTESTED BY THE OWNER AND THE PERSON WITH LEGAL INTEREST IN THE PROPERTY; ELUCIDATED.— Section 226 of the LGC lists down the two entities vested with the personality to contest an assessment: the owner and the person with legal interest in the property. A person legally burdened with the obligation to pay for the tax imposed on a property has legal interest in the property and the personality to protest a tax assessment on the property. This is the logical and legal conclusion when Section 226, on the rules governing an assessment protest, is placed side by side with Section 250 on the payment of real property tax; both provisions refer to the same parties who may protest and pay the tax: SECTION 226. *Local Board of Assessment Appeals.* – **Any owner or person having legal interest in the property** who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city x x x. SECTION 250. *Payment of Real Property Taxes in Installments.*— **The owner of the real property or the person having legal interest therein** may pay the basic real property tax x x x due thereon without interest in four (4) equal instalments x x x. The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property. **In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has *actual and beneficial use and possession* of the property regardless of whether or not that person is the owner.**

4. ID.; ID.; ID.; ID.; ID.; LEGAL INTEREST SHOULD BE AN INTEREST THAT IS ACTUAL AND MATERIAL, DIRECT AND IMMEDIATE, NOT SIMPLY CONTINGENT OR EXPECTANT; CASE AT BAR.— In *Cariño v. Ofilado,* we declared that **legal interest should be an interest that is actual and material, direct and immediate, not simply**

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contingent or expectant. The concept of the directness and immediacy involved is no different from that required in motions for intervention under Rule 19 of the Rules of Court that allow one who is not a party to the case to participate because of his or her direct and immediate interest, characterized by either gain or loss from the judgment that the court may render. In the present case, the NPC's ownership of the plant will happen only *after* the lapse of the 25-year period; until such time arrives, the NPC's claim of ownership is merely contingent, *i.e.*, dependent on whether the plant and its machineries exist at that time. Prior to this event, the NPC's real interest is only in the continued operation of the plant for the generation of electricity. This interest has not been shown to be adversely affected by the realty taxes imposed and is an interest that NPC can protect, not by claiming an exemption that is not due to Mirant, but by paying the taxes it (NPC) has assumed for Mirant under the ECA. x x x In the present case, the NPC is neither the owner, nor the possessor or user of the property taxed. No interest on its part thus justifies any tax liability on its part other than its voluntary contractual undertaking. Under this legal situation, only Mirant as the contractual obligor, not the local government unit, can enforce the tax liability that the NPC contractually assumed; the NPC does not have the "legal interest" that the law and jurisprudence require to give it personality to protest the tax imposed by law on Mirant.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF RELATIVITY OF CONTRACTS; APPLIED IN CASE AT BAR.— [W]e do not x x x pass upon the validity of the contractual stipulation between the NPC and Mirant on the assumption of liability that the NPC undertook. All we declare is that the stipulation is entirely between the NPC and Mirant, and does not bind third persons who are not privy to the contract between these parties. We say this pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code which postulates that contracts take effect only between the parties, their assigns and heirs. Quite obviously, there is no privity between the respondent local government units and the NPC, even though both are public corporations. The tax due will not come from one pocket and go to another pocket of the same governmental entity. An LGU is independent and autonomous in its taxing powers and this is clearly reflected

in Section 130 of the LGC which states: SECTION 130. *Fundamental Principles*. — The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units: x x x (d) The **revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to disposition by, the local government unit** levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; xxx An exception to the rule on relativity of contracts is provided under the same Article 1311 as follows: If the contract should contain some stipulation in favor of a third person, he may demand its fulfilment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. **The contracting parties must have clearly and deliberately conferred a favor upon a third person.** The NPC's assumption of tax liability under Article 11.1 of the ECA does not appear, however, to be in any way for the benefit of the Municipality of Pagbilao and the Province of Quezon. In fact, if the NPC theory of the case were to be followed, the NPC's assumption of tax liability will work against the interests of these LGUs. Besides, based on the objectives of the BOT Law that underlie the parties' BOT agreement, the assumption of taxes clause is an incentive for private corporations to take part and invest in Philippine industries. Thus, the principle of relativity of contracts applies with full force in the relationship between Mirant and NPC, on the one hand, and the respondent LGUs, on the other.

6. TAXATION; LOCAL TAXATION; REAL PROPERTY TAXATION; EXEMPTIONS FROM REAL PROPERTY TAX; EXEMPTION UNDER SECTION 234(C) OF THE LOCAL GOVERNMENT CODE; ELEMENTS; EXPLAINED.— To successfully claim exemption under Section 234(c) of the LGC, the claimant must prove two elements: a. the machineries and equipment are **actually, directly, and exclusively used by** local water districts and **government-owned or controlled corporations**; and b. the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power. As applied to the present case, the government-owned or controlled corporation

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claiming exemption must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. Neither the NPC nor Mirant satisfies both requirements. Although the plant's machineries are devoted to the generation of electric power, by the NPC's own admission and as previously pointed out, Mirant – a private corporation – uses and operates them. That Mirant operates the machineries solely in compliance with the will of the NPC only underscores the fact that NPC does not *actually, directly, and exclusively use* them. The machineries must be actually, directly, and exclusively used by the government-owned or controlled corporation for the exemption under Section 234(c) to apply. x x x Based on the clear wording of the law, it is the machineries that are exempted from the payment of real property tax, not the water or electricity that these machineries generate and distribute. x x x The test of exemption is the use, not the ownership of the machineries devoted to generation and transmission of electric power. The nature of the NPC's ownership of these machineries only finds materiality in resolving the NPC's claim of legal interest in protesting the tax assessment on Mirant.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Office of the Provincial Attorney (Quezon) for respondents.

D E C I S I O N

BRION, *J.*:

We resolve in this petition for review on *certiorari* the question of whether the National Power Corporation (*NPC*), as a government-owned and controlled corporation, can claim tax exemption under Section 234 of the Local Government Code (*LGC*) for the taxes due from the Mirant Pagbilao Corporation (*Mirant*)[1] whose tax liabilities the NPC has contractually assumed.

[1] Previously known as Southern Energy Quezon, Inc., and before that, Hopewell Energy International Limited.

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BACKGROUND FACTS

The NPC is a government-owned and controlled corporation mandated by law to undertake, among others, the production of electricity from nuclear, geothermal, and other sources, and the transmission of electric power on a nationwide basis.[2] To pursue this mandate, the NPC entered into an Energy Conversion Agreement (*ECA*) with Mirant on November 9, 1991. The ECA provided for a build-operate-transfer (*BOT*) arrangement between Mirant and the NPC. Mirant will build and finance a coal-fired thermal power plant on the lots owned by the NPC in Pagbilao, Quezon for the purpose of converting fuel into electricity, and thereafter, operate and maintain the power plant for a period of 25 years. The NPC, in turn, will supply the necessary fuel to be converted by Mirant into electric power, take the power generated, and use it to supply the electric power needs of the country. At the end of the 25-year term, Mirant will transfer the power plant to the NPC without compensation. According to the NPC, the power plant is currently operational and is one of the largest sources of electric power in the country.[3]

Among the obligations undertaken by the NPC under the ECA was the payment of all taxes that the government may impose on Mirant; Article 11.1 of the ECA[4] specifically provides:

> 11.1 RESPONSIBILITY. **[NPC] shall be responsible for the payment of** (a) all taxes, import duties, fees, charges and other levies imposed by the National Government of the Republic of the Philippines or any agency or instrumentality thereof to which [Mirant] may at any time be or become subject in or in relation to the performance of their obligations under this Agreement (other than (i) taxes imposed or calculated on the basis of the net income [of Mirant] and (ii) construction permit fees, environmental permit fees and other similar fees and charges), and **(b) all real estate taxes and assessments, rates and other charges in respect of the Site, the buildings and improvements thereon and the Power Station.** [Emphasis supplied.]

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[2] Republic Act No. 6395.

[3] *Rollo*, p. 5.

[4] *Id*., p. 81.

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In a letter dated March 2, 2000, the **Municipality of Pagbilao assessed Mirant's real property taxes** on the power plant and its machineries in the total amount of ₱1,538,076,000.00 for the period of 1997 to 2000. The Municipality of Pagbilao furnished the NPC a copy of the assessment letter.

To protect its interests, the NPC filed a petition before the Local Board of Assessment Appeals (*LBAA*) entitled *"In Re: Petition to Declare Exempt from Payment of Property Tax on Machineries and Equipment Used for Generation and Transmission of Power, under Section 234(c) of RA 7160 [LGC], located at Pagbilao, Quezon xxx"*[5] on April 14, 2000. **The NPC objected to the assessment against Mirant** on the claim that it (the NPC) is entitled to the tax exemptions provided in Section 234, paragraphs (c) and (e) of the LGC. These provisions state:

> Section 234. *Exemptions from Real Property Tax.* – The following are exempted from payment for the real property tax:
>
> x x x x x x x x x
>
> **(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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> x x x x x x x x x
>
> **(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 government-owned or –controlled corporations are hereby withdrawn upon the effectivity of the Code.

Assuming that it cannot claim the exemptions stated in these provisions, the NPC alternatively asserted that it is entitled to:

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[5] Docketed as LBAA Case No. 2-2000.

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a. the lower assessment level of 10% under Section 218(d) of the LGC for government-owned and controlled corporations engaged in the generation and transmission of electric power, instead of the 80% assessment level for commercial properties as imposed in the assessment letter; and

b. an allowance for depreciation of the subject machineries under Section 225 of the LGC.

The LBAA dismissed the NPC's petition on the Municipality of Pagbilao's motion, through a one-page Order dated November 13, 2000.[6]

The NPC appealed the denial of its petition with the Central Board of Assessment Appeals (*CBAA*). Although it noted the incompleteness of the LBAA decision for failing to state the factual basis of its ruling, the CBAA nevertheless affirmed, in its decision of August 18, 2003, the denial of the NPC's claim for exemption. The CBAA likewise denied the NPC's subsequent motion for reconsideration, prompting the NPC to institute an appeal before the Court of Tax Appeals (*CTA*).

Before the CTA, the NPC claimed it was procedurally erroneous for the CBAA to exercise jurisdiction over its appeal because the LBAA issued a *sin perjuicio*[7] decision, that is, the LBAA pronounced a judgment without any finding of fact. It argued that the CBAA should have remanded the case to the LBAA. On substantive issues, the NPC asserted the same grounds it relied upon to support its claimed tax exemptions.

The CTA *en banc* resolved to dismiss the NPC's petition on February 21, 2006. From this ruling, the NPC filed the present petition seeking the reversal of the CTA *en banc's* decision.

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[6] *Rollo*, p. 166.

[7] A *sin perjuicio* decision is a judgment without statement of facts in support of its conclusion (*Director of Lands v. Sanz*, 45 Phil. 119 [1923]).

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THE PETITION

The NPC contends that the CTA *en banc* erred in ruling that the NPC is estopped from questioning the LBAA's *sin perjuicio* judgment; the LBAA decision, it posits, cannot serve as an appealable decision that would vest the CBAA with appellate jurisdiction; a *sin perjuicio* decision, by its nature, is null and void.

The NPC likewise assails the CTA *en banc* ruling that the NPC was not the proper party to protest the real property tax assessment, as it did not have the requisite "legal interest." The NPC claims that it has legal interest because of its beneficial ownership of the power plant and its machineries; what Mirant holds is merely a naked title. Under the terms of the ECA, the NPC also claims that it possesses all the attributes of ownership, namely, the rights to enjoy, to dispose of, and to recover against the holder and possessor of the thing owned. That it will acquire and fully own the power plant after the lapse of 25 years further underscores its "legal interest" in protesting the assessment.

The NPC's assertion of beneficial ownership of the power plant also supports its claim for tax exemptions under Section 234(c) of the LGC. The NPC alleges that it has the right to control and supervise the entire output and operation of the power plant. This arrangement, to the NPC, proves that it is the entity actually, directly, and exclusively using the subject machineries. Mirant's possession of the power plant is irrelevant since all of Mirant activities relating to power generation are undertaken *for and in behalf of the NPC*. Additionally, all the electricity Mirant generates is utilized by the NPC in supplying the power needs of the country; Mirant therefore operates the power plant for the exclusive and direct benefit of the NPC. Lastly, the NPC posits that the machineries taxed by the local government include anti-pollution devices which should have been excluded from the assessment under Section 234(e) of the LGC.

Assuming that the NPC is liable to pay the assessed real property tax, it asserts that a reassessment is necessary as it is

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entitled to depreciation allowance on the machineries and to the lower 10% assessment level under Sections 225 and 218(d) of the LGC, respectively. This position is complemented by its prayer to have the case remanded to the LBAA for the proper determination of its tax liabilities.

THE COURT'S RULING

This case is not one of first impression. We have previously ruled against the NPC's claimed exemptions under the LGC in the cases of *FELS Energy, Inc. v. Province of Batangas*[8] and *NPC v. CBAA*.[9] Based on the principles we declared in those cases, as well as the defects we found in the NPC's tax assessment protest, **we conclude that the petition lacks merit.**

The NPC is estopped from questioning the CBAA's jurisdiction

The assailed CTA *en banc* decision brushed aside the NPC's *sin perjuicio* arguments by declaring that:

> The court finds merit in [NPC's] claim that the Order of the LBAA of the Province of Quezon is a *sin perjuicio* decision. **A perusal thereof shows that the assailed Order does not contain findings of facts in support of the dismissal of the case.** It merely stated a finding of merit in the contention of the Municipality of Pagbilao x x x.
>
> **However, on appeal before the CBAA, [NPC] assigned several errors, both in fact and in law, pertaining to the LBAA's decision. Thus, petitioner is bound by the appellate jurisdiction of the CBAA under the principle of equitable estoppel. In this regard, [NPC] is in no position to question the appellate jurisdiction of the CBAA as it is the same party which sought its jurisdiction and participated in the proceedings therein.**[10] [Emphasis supplied.]

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[8] G.R. No. 168557, February 16, 2007, 516 SCRA 186.

[9] G.R. No. 171470, January 30, 2009.

[10] *Rollo*, pp. 48-49.

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We agree that the NPC can no longer divest the CBAA of the power to decide the appeal after invoking and submitting itself to the board's jurisdiction. We note that even the NPC itself found nothing objectionable in the LBAA's *sin perjuicio* decision when it filed its appeal before the CBAA; the NPC did not cite this ground as basis for its appeal. What it cited were grounds that went into the merits of its case. In fact, its appeal contained no prayer for the remand of the case to the LBAA.

A basic jurisdictional rule, essentially based on fairness, is that a party cannot invoke a court's jurisdiction to secure affirmative relief and, after failing to obtain the requested relief, repudiate or question that same jurisdiction.[11] Moreover, a remand would be unnecessary, as we find the CBAA's and the CTA *en banc's* denial of NPC's claims entirely in accord with the law and with jurisprudence.

The entity liable for tax has the right to protest the assessment

Before we resolve the question of the NPC's entitlement to tax exemption, we find it necessary to determine first whether the NPC initiated a ***valid*** protest against the assessment. A taxpayer's failure to question the assessment before the LBAA renders the assessment of the local assessor final, executory, and demandable, thus precluding the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.[12]

Section 226 of the LGC lists down the two entities vested with the personality to contest an assessment: the owner and the person with legal interest in the property.

A person legally burdened with the obligation to pay for the tax imposed on a property has legal interest in the property and the personality to protest a tax assessment on the property.

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[11] *De Leon v. Court of Appeals*, G.R. No. 96107, June 19, 1995, 245 SCRA 106.

[12] *Supra* note 8.

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This is the logical and legal conclusion when Section 226, on the rules governing an assessment protest, is placed side by side with Section 250 on the payment of real property tax; both provisions refer to the same parties who may protest and pay the tax:

SECTION 226. *Local Board of Assessment Appeals*. — **Any owner or person having legal interest in the property** who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city xxx.

SECTION 250. *Payment of Real Property Taxes in Instalments.* — **The owner of the real property or the person having legal interest therein** may pay the basic real property tax xxx due thereon without interest in four (4) equal instalments xxx.

The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership.[13] However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property.[14] **In either case, the unpaid realty tax attaches to the property**[15] **but is directly chargeable against the taxable person who has *actual and***

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[13] See *Baguio v. Busuego*, G.R. No. L-29772, September 18, 1980, 100 SCRA 116; and *MERALCO v. Barlis*, G.R. No. 114231, June 29, 2004, 433 SCRA 11.

[14] *Republic v. Kidapawan*, G.R. No. 166651, December 9, 2005, 477 SCRA 324, citing Vitug and Acosta, *Tax Law and Jurisprudence* (2000 ed.), p. 490.

[15] LGC, Section 257 which states:

SECTION 257. *Local Government Lien*. – The basic real property tax and any other tax levied under this Title [Title II – Real Property Taxation]

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beneficial use and possession **of the property regardless of whether or not that person is the owner.**[16]

In the present case, the NPC, contrary to its claims, is neither the owner nor the possessor/user of the subject machineries.

The ECA's terms regarding the power plant's machineries clearly vest their ownership with Mirant. Article 2.12 of the ECA[17] states:

> 2.12 OWNERSHIP OF POWER STATION. From the Effective Date until the Transfer Date [that is, the day following the last day of the 25-year period], **[Mirant] shall, directly or indirectly, own the Power Station and all the fixtures, fittings, machinery and equipment on the Site** or used in connection with the Power Station which have been supplied by it or at its cost. [Mirant] shall operate, manage, and maintain the Power Station for the purpose of converting fuel of [NPC] into electricity. [Emphasis supplied.]

The NPC contends that it should nevertheless be regarded as the beneficial owner of the plant, since it will acquire ownership thereof at the end of 25 years. The NPC also asserts, by quoting portions of the ECA, that it has the right to control and supervise the construction and operation of the plant, and that Mirant has retained only naked title to it. These contentions, unfortunately, are not sufficient to vest the NPC the personality to protest the assessment.

In *Cariño v. Ofilado*,[18] we declared that **legal interest should be an interest that is actual and material, direct and immediate, not simply contingent or expectant**. The concept of the directness and immediacy involved is no different from

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constitute a lien on the property subject to tax, superior to all liens, charges, or encumbrances in favor of any person irrespective of the owner or possessor thereof, enforceable by administrative or judicial action, and may only be extinguished upon payment of the tax and the related interests and expenses.

[16] See *Testate of Concordia Lim v. Manila*, G.R. No. 90639, February 21, 1990, 182 SCRA 482.

[17] *Rollo*, p. 65.

[18] G.R. No. 102836, January 18, 1993, 217 SCRA 206.

that required in motions for intervention under Rule 19 of the Rules of Court that allow one who is not a party to the case to participate because of his or her direct and immediate interest, characterized by either gain or loss from the judgment that the court may render.[19] In the present case, the NPC's ownership of the plant will happen only *after* the lapse of the 25-year period; until such time arrives, the NPC's claim of ownership is merely contingent, *i.e.*, dependent on whether the plant and its machineries exist at that time. Prior to this event, the NPC's real interest is only in the continued operation of the plant for the generation of electricity. This interest has not been shown to be adversely affected by the realty taxes imposed and is an interest that NPC can protect, not by claiming an exemption that is not due to Mirant, but by paying the taxes it (NPC) has assumed for Mirant under the ECA.

To show that Mirant only retains a naked title, the NPC has selectively cited provisions of the ECA to make it appear that it has the sole authority over the power plant and its operations. Contrary to these assertions, however, a complete reading of the ECA shows that Mirant has more substantial powers in the control and supervision of the power plant's construction and operations.

Under Articles 2.1 and 3.1 of the ECA, Mirant is responsible for the design, construction, equipping, testing, and commissioning of the power plant. Article 5.1 on the operation of the power plant states that Mirant shall be responsible for the power plant's management, operation, maintenance, and repair until the Transfer Date. This is reiterated in Article 5.3 where Mirant undertakes to operate the power plant to convert fuel into electricity.

While the NPC asserts that it has the power to authorize the closure of the power plant without any veto on the part of Mirant, the full text of Article 8.5 of the ECA shows that Mirant is possessed with similar powers to terminate the agreement:

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[19] See RULES OF COURT, Rule 19, Section 1; and *Alfelor v. Halasan*, G.R. No. 165987, March 31, 2006, 486 SCRA 451, 461, citing *Nordic Asia Ltd. v. Court of Appeals*, 451 Phil. 482, 492-493 (2003).

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8.5 BUYOUT. If the circumstances set out in Article 7.18, Article 9.4, Article 14.4 or Article 28.4 arise or if, not earlier than 20 years after the Completion Date, [the NPC] gives not less than 90 days notice to [Mirant] that it wishes to close the power station, or **if [the NPC] has failed to ensure the due payment of any sum due hereunder within three months of its due date then, upon [Mirant] giving to [the NPC] not less than 90 days notice requiring [the NPC] to buy out [Mirant]** or, as the case may be, [the NPC] giving not less than 90 days notice requiring [Mirant] to sell out to [NPC], [NPC] shall purchase all [Mirant's] right, title, and interest in and to the Power Station and thereupon all [Mirant's] obligations hereunder shall cease. [Emphasis supplied.]

On liability for taxes, the NPC indeed assume responsibility for the taxes due on the power plant and its machineries,[20] specifically, "all real estate taxes and assessments, rates and other charges in respect of the site, the buildings and improvements thereon and the [power plant]." At first blush, this contractual provision would appear to make the NPC liable and give it standing to protest the assessment. ***The tax liability we refer to above, however, is the liability arising from law that the local government unit can rightfully and successfully enforce, not the contractual liability that is enforceable between the parties to a contract as discussed below.*** By law, the tax liability rests on Mirant based on its ownership, use, and possession of the plant and its machineries.

In *Testate of Concordia Lim v. City of Manila*,[21] we had occasion to rule that:

> In [*Baguio v. Busuego*],[22] the assumption by the vendee of the liability for real estate taxes prospectively due was in harmony with the tax policy that **the user of the property bears the tax**. In [the present case], **the interpretation that the [vendee] assumed a liability for overdue real estate taxes for the periods prior to the contract of sale is incongruent with the said policy because there was *no immediate transfer of possession of the properties* previous to full payment of the repurchase price.**

[20] Under Article 11.1 of the ECA.

[21] *Supra* note 16.

[22] *Supra* note 13.

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To impose the real property tax on the estate which was neither the owner nor the beneficial user of the property during the designated periods would not only be contrary to law but also unjust.

For a fuller appreciation of this ruling, the *Baguio* case referred to a contract of sale wherein the vendee not only assumed liability for the taxes on the property, but also acquired its use and possession, even though title remained with the vendor pending full payment of the purchase price. Under this situation, we found the vendee who had assumed liability for the realty taxes and who had been given use and possession to be liable. Compared with *Baguio*, the *Lim* case supposedly involved the same contractual assumption of tax liabilities,[23] but possession and enjoyment of the property remained with other persons. Effectively, *Lim* held that the contractual assumption of the obligation to pay real property tax, by itself, is not sufficient to make one legally compellable by the government to pay for the taxes due; the person liable must also have use and possession of the property.

Using the *Baguio* and *Lim* situations as guides, and after considering the comparable legal situations of the parties assuming liability in these cases, we conclude that the NPC's contractual liability alone cannot be the basis for the enforcement of tax liabilities against it by the local government unit. In *Baguio* and *Lim*, the vendors still retained ownership, and the effectiveness of the tax liabilities assumed by the vendees turned on the possession and use of the property subject to tax. In other words, the contractual assumption of liability was supplemented by an interest that the party assuming liability had on the property taxed; on this basis, the vendee in *Baguio* was found liable,

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[23] The lower court, in the *Lim* case, found the contractual obligation to include assumption of liability for all taxes. The Court, however, declared that what was actually assumed by the vendee was the liability for taxes and other expenses "relative to the execution and/or implementation" of the Deed of Absolute Sale "including among others, documentation, documentary and science stamps, expenses for registration and transfer of titles x x x," which did not necessarily include real property tax.

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while the vendee in *Lim* was not. In the present case, the NPC is neither the owner, nor the possessor or user of the property taxed. No interest on its part thus justifies any tax liability on its part other than its voluntary contractual undertaking. Under this legal situation, only Mirant as the contractual obligor, not the local government unit, can enforce the tax liability that the NPC contractually assumed; the NPC does not have the "legal interest" that the law and jurisprudence require to give it personality to protest the tax imposed by law on Mirant.

By our above conclusion, we do not thereby pass upon the validity of the contractual stipulation between the NPC and Mirant on the assumption of liability that the NPC undertook. All we declare is that the stipulation is entirely between the NPC and Mirant, and does not bind third persons who are not privy to the contract between these parties. We say this pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code which postulates that contracts take effect only between the parties, their assigns and heirs. Quite obviously, there is no privity between the respondent local government units and the NPC, even though both are public corporations. The tax due will not come from one pocket and go to another pocket of the same governmental entity. An LGU is independent and autonomous in its taxing powers and this is clearly reflected in Section 130 of the LGC which states:

> SECTION 130. *Fundamental Principles.* — The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:
>
> x x x x x x x x x
>
> (d) The **revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to disposition by, the local government unit** levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; xxx. [Emphasis supplied.]

An exception to the rule on relativity of contracts is provided under the same Article 1311 as follows:

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If the contract should contain some stipulation in favor of a third person, he may demand its fulfilment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. **The contracting parties must have clearly and deliberately conferred a favor upon a third person.** [Emphasis supplied.]

The NPC's assumption of tax liability under Article 11.1 of the ECA does not appear, however, to be in any way for the benefit of the Municipality of Pagbilao and the Province of Quezon. In fact, if the NPC theory of the case were to be followed, the NPC's assumption of tax liability will work against the interests of these LGUs. Besides, based on the objectives of the BOT Law[24] that underlie the parties' BOT agreement,[25] the assumption of taxes clause is an incentive for private corporations to take part and invest in Philippine industries. Thus, the principle of relativity of contracts applies with full force in the relationship between Mirant and NPC, on the one hand, and the respondent LGUs, on the other.

To reiterate, only the parties to the ECA agreement can exact and demand the enforcement of the rights and obligations it established – only Mirant can demand compliance from the NPC for the payment of the real property tax the NPC assumed to pay. The local government units (the Municipality of Pagbilao and the Province of Quezon), as third parties to the ECA, cannot demand payment from the NPC on the basis of Article 11.1 of the ECA alone. *Corollarily, the local government units can neither be compelled to recognize the protest of a tax assessment from the NPC, an entity against whom it cannot enforce the tax liability.*

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[24] Republic Act No. 7718, as amended.

[25] SEC. 1. *Declaration of Policy.* — It is the declared policy of the State to recognize the indispensable role of the private sector as the main engine for national growth and development and **provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects** normally financed and undertaken by the Government. Such incentives, aside from financial incentives as provided by law, shall include providing a climate of minimum government regulations and procedures and specific government undertakings in support of the private sector. [Emphasis supplied.]

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The test of exemption is the nature of the use, not ownership, of the subject machineries

At any rate, the NPC's claim of tax exemptions is completely without merit. To successfully claim exemption under Section 234(c) of the LGC, the claimant must prove two elements:

a. the machineries and equipment are ***actually, directly, and exclusively used by*** local water districts and ***government-owned or controlled corporations***; and

b. the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power.

As applied to the present case, the government-owned or controlled corporation claiming exemption must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. Neither the NPC nor Mirant satisfies both requirements. Although the plant's machineries are devoted to the generation of electric power, by the NPC's own admission and as previously pointed out, Mirant – a private corporation – uses and operates them. That Mirant operates the machineries solely in compliance with the will of the NPC only underscores the fact that NPC does not *actually, directly, and exclusively use* them. The machineries must be actually, directly, and exclusively used by the government-owned or controlled corporation for the exemption under Section 234(c) to apply.[26]

Nor will NPC find solace in its claim that it utilizes all the power plant's generated electricity in supplying the power needs of its customers. Based on the clear wording of the law, it is the machineries that are exempted from the payment of real property tax, not the water or electricity that these machineries generate and distribute.[27]

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[26] *Supra* note 8.

[27] See *Department of Agrarian Reform v. Department of Education, Culture and Sports*, G.R. No. 158228, March 23, 2004, 426 SCRA 217.

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Even the NPC's claim of beneficial ownership is unavailing. The test of exemption is the use, not the ownership of the machineries devoted to generation and transmission of electric power.[28] The nature of the NPC's ownership of these machineries only finds materiality in resolving the NPC's claim of legal interest in protesting the tax assessment on Mirant. As we discussed above, this claim is inexistent for tax protest purposes.

Lastly, from the points of view of essential fairness and the integrity of our tax system, we find it essentially wrong to allow the NPC to assume in its BOT contracts the liability of the other contracting party for taxes that the government can impose on that other party, and at the same time allow NPC to turn around and say that no taxes should be collected because the NPC is tax-exempt as a government-owned and controlled corporation. We cannot be a party to this kind of arrangement; for us to allow it without congressional authority is to intrude into the realm of policy and to debase the tax system that the Legislature established. We will then also be grossly unfair to the people of the Province of Quezon and the Municipality of Pagbilao who, by law, stand to benefit from the tax provisions of the LGC.

WHEREFORE, we *DENY* the National Power Corporation's petition for review on *certiorari*, and *AFFIRM* the decision of the Court of Tax Appeals *en banc* dated February 21, 2006. Costs against the petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Leonardo-de Castro,*[**] *JJ.,* concur.

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[28] See *Mactan-Cebu International Airport Authority v. Marcos*, G.R. No. 120082, September 11, 1996, 261 SCRA 667.

[*] Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

[**] Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.