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SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., and *Perez, JJ.,* concur.

Corona, J., no part.

Mendoza, J., on leave.

SPECIAL SECOND DIVISION

[G.R. No. 171586. January 25, 2010]

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

SYLLABUS

1. TAXATION; REAL PROPERTY TAX; ASSESSMENT APPEALS; LEGAL INTEREST, DEFINED; ABSENT LEGAL TITLE OVER THE MACHINERIES, AN ENTITY DOES NOT HAVE THE REQUISITE INTEREST TO PROTEST THE TAX ASSESSMENT; APPLIED.— Legal interest is defined as interest in property or a claim cognizable at law, *equivalent to that of a legal owner who has legal title to the property*. Given this definition, Napocor is clearly not vested with the requisite interest to protest the tax assessment, as it is not an entity having the legal title over the machineries. It has absolutely no solid claim of ownership or even of use and possession of the machineries, as our July 15, 2009 Decision explained.

2. CIVIL LAW; CONTRACTS; GOVERNMENT CONTRACTS; BUILD-OPERATE-AND-TRANSFER AGREEMENT; NATURE OF; NOT A MERE FINANCING ARRANGEMENT; ARTICLE 1503 OF THE CIVIL CODE, INAPPLICABLE.— A BOT agreement is not a mere financing arrangement. In *Napocor v.*

CBAA – a case strikingly similar to the one before us, we discussed the nature of BOT agreements in the following manner: The underlying concept behind a BOT agreement is defined and described in the BOT law x x x. Under this concept, it is the project proponent who constructs the project at its own cost and subsequently operates and manages it. The proponent secures the return on its investments from those using the project's facilities through appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated. **At the end of the fixed term agreed upon, the project proponent transfers the ownership of the facility to the government agency**. Thus, the government is able to put up projects and provide immediate services without the burden of the heavy expenditures that a project start up requires. x x x. Given the special nature of a BOT agreement as discussed in the cited case, we find Article 1503 inapplicable to define the contract between Napocor and Mirant, as it refers only to ordinary contracts of sale. We thus declared in *Tatad v. Garcia* that under BOT agreements, **the private corporations/investors are the owners of the facility or machinery concerned.** Apparently, even Napocor and Mirant recognize this principle; Article 2.12 of their BOT Agreement provides that "until the Transfer Date, [Mirant] shall, directly or indirectly, own the Power Station and all the fixtures, fitting, machinery and equipment on the Site x x x. [Mirant] shall operate, manage, and maintain the Power Station for the purpose of converting fuel of Napocor into electricity."

3. TAXATION; REAL PROPERTY TAX; ASSESSMENT APPEALS; DEFINITION OF "PERSON HAVING LEGAL INTEREST IN THE PROPERTY"; DOES NOT INCLUDE AN ENTITY THAT ASSUMES ANOTHER PERSON'S TAX LIABILITY BY CONTRACT.— While a real property owner's failure to comply with Sections 202 and 206 does not necessarily negate its tax obligation nor invalidate its legitimate claim for tax exemption, Napocor's omission to do so in this case can be construed as contradictory to its claim of ownership of the subject machineries. That it assumed liability for the taxes that may be imposed on the subject machineries similarly does not clothe it with legal title over the same. **We do not believe that the phrase *"person having legal interest in the property"* in Section 226 of the LGC can include an entity that assumes another person's tax liability by contract.** A review of the provisions of the LGC

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on real property taxation shows that the phrase has been repeatedly adopted and used to define an entity: a. in whose name the real property shall be listed, valued, and assessed; b. who may be summoned by the local assessor to gather information on which to base the market value of the real property; c. who may protest the tax assessment before the LBAA and may appeal the latter's decision to the CBAA; d. who may be liable for the idle land tax, as well as who may be exempt from the same; e. who shall be notified of any proposed ordinance imposing a special levy, as well as who may object the proposed ordinance; f. who may pay the real property tax; g. who is entitled to be notified of the warrant of levy and against whom it may be enforced; h. who may stay the public auction upon payment of the delinquent tax, penalties and surcharge; and i. who may redeem the property after it was sold at the public auction for delinquent taxes. For the Court to consider an entity assuming another person's tax liability by contract as a *person having legal interest in the real property* would extend to it the privileges and responsibilities enumerated above.

4. ID.; ID.; ID.; LEGAL INTERESTS IN THE PROPERTY TAXED IS REQUIRED BEFORE ANY ADMINISTRATIVE OR JUDICIAL REMEDY MAY BE AVAILED OF; MERE PECUNIARY INTEREST, NOT SUFFICIENT; RIGHT TO APPEAL A TAX ASSESSMENT IS A PURELY STATUTORY RIGHT, DETERMINED BY THE APPLICABLE STATUTE, IN THIS CASE THE LOCAL GOVERNMENT CODE, NOT THE UNITED STATES (US) FEDERAL OR STATE LAWS.— Some authorities consider **a person whose pecuniary interests is or may be adversely affected by the tax assessment** as one who has legal interest in the property (hence, possessed of the requisite standing to protest it), citing Cooley's Law on Taxation. The reference to this foreign material, however, is misplaced. The tax laws of the United States deem it sufficient that a person's *pecuniary interests* are affected by the tax assessment to consider him as a person aggrieved and who may thus avail of the judicial or administrative remedies against it. As opposed to our LGC, mere pecuniary interest is not sufficient; our law has required *legal interest* in the property taxed before any administrative or judicial remedy can be availed. The right to appeal a tax assessment is a purely statutory right;

whether a person challenging an assessment bears such a relation to the real property being assessed as to entitle him the right to appeal is determined by the applicable statute – in this case, our own LGC, not US federal or state tax laws. In light of our ruling above, PIPPA's motion to intervene and motion for reconsideration-in-intervention is already mooted. PIPPA as an organization of independent power producers is not an interested party insofar as this case is concerned.

5. ID.; ID.; ID.; CLAIM FOR TAX EXEMPTION DOES NOT QUESTION THE AUTHORITY OF LOCAL ASSESSOR TO ASSESS REAL PROPERTY TAX; NON-COMPLIANCE WITH THE REQUIREMENT OF PAYMENT UNDER PROTEST RENDERS AN ADMINISTRATIVE PROTEST BEFORE THE LOCAL BOARD OF ASSESSMENT APPEALS (LBAA) WITHOUT ANY EFFECT.— Like Olivarez, Napocor, by claiming exemption from realty taxation, is simply raising a question of the correctness of the assessment. **A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax.** This may be inferred from Section 206 xxx. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Since Napocor was simply questioning the correctness of the assessment, it should have first complied with Section 252, particularly the requirement of payment under protest. Napocor's failure to prove that this requirement has been complied with thus renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax. It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252.

6. ID.; ID.; ID.; SECTIONS 252 AND 226 OF THE LOCAL GOVERNMENT CODE; SUCCESSIVE ADMINISTRATIVE REMEDIES AVAILABLE TO A TAXPAYER WHO QUESTIONS THE CORRECTNESS OF AN ASSESSMENT.— Sections 252 and 226 provide *successive* administrative remedies

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> to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that "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 x x x appeal to the Board of Assessment Appeals x x x," should be read in conjunction with Section 252 (d), which states that "in the event that the protest is denied x x x, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. The "action" referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocor's action before the LBAA was thus prematurely filed.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Dennis M. Guerrero for respondents.
Follosco Morallos & Herce for Philippine Independent Power Producers Association, Inc.

R E S O L U T I O N

BRION, *J.*:

The petitioner National Power Corporation (*Napocor*) filed the present motion for reconsideration[1] of the Court's Decision of July 15, 2009, in which we denied Napocor's claimed real property tax exemptions. For the resolution of the motion, we deem it proper to provide first a background of the case.

BACKGROUND FACTS

The Province of Quezon assessed Mirant Pagbilao Corporation (*Mirant*) for unpaid real property taxes in the amount of ₱1.5 Billion for the machineries located in its power plant in Pagbilao,

[1] *Rollo*, pp. 498-517.

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Quezon. Napocor, which entered into a Build-Operate-Transfer (*BOT*) Agreement (entitled *Energy Conversion Agreement*) with Mirant, was furnished a copy of the tax assessment.

Napocor (***nota bene***, not Mirant) protested the assessment before the Local Board of Assessment Appeals (*LBAA*), claiming entitlement to the **tax exemptions** provided under Section 234 of the Local Government Code (*LGC*), which states:

Section 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of 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;

x x x x x x x x x

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

x x x x x x x x x

Assuming that it cannot claim the above tax exemptions, Napocor argued that it is entitled to certain **tax privileges**, namely:

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.

In the Court's Decision of July 15, 2009, we ruled that Napocor is not entitled to any of these claimed tax exemptions and privileges on the basis primarily of the defective protest filed by the Napocor. We found that Napocor did not file a

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valid protest against the realty tax assessment because it did not possess the requisite legal standing. When a taxpayer fails to question the assessment before the LBAA, the assessment becomes final, executory, and demandable, 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.[2]

Under Section 226 of the LGC,[3] any ***owner or person having legal interest in the property*** may appeal an assessment for real property taxes to the LBAA. Since Section 250 adopts the same language in enumerating who may pay the tax, we equated those who are liable to pay the tax to the same entities who may protest the tax assessment. A person legally burdened with the obligation to pay for the tax imposed on the property has the legal interest in the property and the personality to protest the tax assessment.

To prove that it had legal interest in the taxed machineries, Napocor relied on:

1. the stipulation in the BOT Agreement that authorized the transfer of ownership to Napocor after 25 years;
2. its authority to control and supervise the construction and operation of the power plant; and
3. its obligation to pay for all taxes that may be incurred, as provided in the BOT Agreement.

Napocor posited that these indicated that Mirant only possessed naked title to the machineries.

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[2] *FELS Energy, Inc. v. Province of Batangas,* G.R. No. 168557, February 16, 2007, 516 SCRA 186.

[3] SEC. 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 by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

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We denied the first argument by ruling that **legal interest should be one that is actual and material, direct and immediate, not simply contingent or expectant.**[4] We disproved Napocor's claim of control and supervision under the second argument after reading the full terms of the BOT Agreement, which, contrary to Napocor's claims, granted Mirant substantial power in the control and supervision of the power plant's construction and operation.[5]

For the third argument, we relied on the Court's rulings in *Baguio v. Busuego*[6] and *Lim v. Manila*.[7] In these cases, the Court essentially declared that contractual assumption of tax liability alone is insufficient to make one liable for taxes. The contractual assumption of tax liability must be supplemented by an interest that the party assuming the liability had on the property; the person from whom payment is sought must have also acquired the beneficial use of the property taxed. In other words, he must have the *use and possession* of the property – an element that was missing in Napocor's case.

We further stated that the tax liability must be a liability that arises from law, which the local government unit can rightfully and successfully enforce, not the contractual liability that is enforceable only between the parties to the contract. In the present case, the Province of Quezon is a third party to the BOT Agreement and could thus not exact payment from Napocor without violating the principle of relativity of contracts.[8] Corollarily, for reasons of fairness, the local government units cannot be compelled to recognize the protest of a tax assessment from Napocor, an entity against whom it cannot enforce the tax liability.

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[4] Citing *Cariño v. Ofilado*, G.R. No. 102836, January 18, 1993, 217 SCRA 206.

[5] Citing Articles 2.1, 3.1, 5.1, and 5.3 of the Energy Conversion Agreement.

[6] 188 Phil. 218 (1980).

[7] G.R. No. 90639, February 21, 1990, 182 SCRA 482.

[8] CIVIL CODE, Article 1311.

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At any rate, even if the Court were to brush aside the issue of legal interest to protest, Napocor could still not successfully claim exemption under Section 234 (c) of the LGC, because to be entitled to the exemption under that provision, there must be ***actual, direct, and exclusive use*** of machineries. Napocor failed to satisfy these requirements.

THE MOTION FOR RECONSIDERATION

Although Napocor insists that it is entitled to the tax exemptions and privileges claimed, the primary issue for the Court to resolve, however, is to determine ***whether Napocor has sufficient legal interest to protest the tax assessment*** because without the requisite interest, the tax assessment stands, and no claim of exemption or privilege can prevail.

Section 226 of the LGC, as mentioned, limits the right to appeal the local assessor's action to *the owner or the person having legal interest in the property*. Napocor posits that it is the beneficial owner of the subject machineries, with Mirant retaining merely a naked title to secure certain obligations. Thus, it argues that the BOT Agreement is a mere financing agreement and is similar to the arrangement authorized under Article 1503 of the Civil Code, which declares:

> Art. 1503. When there is a contract of sale of specific goods, the seller may, by the terms of the contract, reserve the right of possession or ownership in the goods until certain conditions have been fulfilled. The right of possession or ownership may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.
>
> Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, **the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.**

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x x x x x x x x x

Pursuant to this arrangement, Mirant's ownership over the subject machineries is merely a security interest, given only for the purpose of ensuring the performance of Napocor's obligations.

Napocor additionally contends that its contractual assumption liability (through the BOT Agreement) for all taxes vests it with sufficient legal interest because it is actually, directly, and materially affected by the assessment.

While its motion for reconsideration was pending, Napocor filed a *Motion to Refer the Case to the Court En Banc* considering that "the issues raised have far-reaching consequences in the power industry, the country's economy and the daily lives of the Filipino people, and since it involves the application of real property tax provision of the LGC against Napocor, an exempt government instrumentality."[9]

Also, the Philippine Independent Power Producers Association, Inc. (*PIPPA*) filed a *Motion for Leave to Intervene* and a *Motion for Reconsideration-in-Intervention*. PIPPA is a non-stock corporation comprising of privately-owned power generating companies which includes TeaM Energy Corporation (*TeaM Energy*), successor of Mirant. PIPPA is claiming interest in the case since any decision here will affect the other members of PIPPA, all of which have executed similar BOT agreements with Napocor.

THE COURT'S RULING

At the outset, we resolve to deny the referral of the case to the Court *en banc*. We do not find the reasons raised by Napocor meritorious enough to warrant the attention of the members of the Court *en banc,* as they are merely reiterations of the arguments it raised in the petition for review on *certiorari* that it earlier filed with the Court.[10]

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[9] *Rollo*, p. 535.

[10] Supreme Court Circular No. 2-98.

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Who may appeal a real property tax assessment

Legal interest is defined as interest in property or a claim cognizable at law, *equivalent to that of a legal owner who has legal title to the property*.[11] Given this definition, Napocor is clearly not vested with the requisite interest to protest the tax assessment, as it is not an entity having the legal title over the machineries. It has absolutely no solid claim of ownership or even of use and possession of the machineries, as our July 15, 2009 Decision explained.

A BOT agreement is not a mere financing arrangement. In *Napocor v. CBAA*[12] – a case strikingly similar to the one before us, we discussed the nature of BOT agreements in the following manner:

> The underlying concept behind a BOT agreement is defined and described in the BOT law as follows:
>
> > *Build-operate-and-transfer* – A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. **The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term** which shall not exceed fifty (50) years x x x.
>
> Under this concept, it is the project proponent who constructs the project at its own cost and subsequently operates and manages it. The proponent secures the return on its investments from those using the project's facilities through appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated.

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[11] Black's *Law Dictionary* (5th ed.), pp. 805-806.

[12] G.R. No. 171470, January 30, 2009, 57 SCRA 418, 434-437.

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At the end of the fixed term agreed upon, the project proponent transfers the ownership of the facility to the government agency. Thus, the government is able to put up projects and provide immediate services without the burden of the heavy expenditures that a project start up requires.

A reading of the provisions of the parties' BOT Agreement shows that it fully conforms to this concept. **By its express terms, BPPC has complete ownership – both legal and beneficial – of the project, including the machineries and equipment used, subject only to the transfer of these properties without cost to NAPOCOR after the lapse of the period agreed upon**. As agreed upon, BPPC provided the funds for the construction of the power plant, including the machineries and equipment needed for power generation; thereafter, it actually operated and still operates the power plant, uses its machineries and equipment, and receives payment for these activities and the electricity generated under a defined compensation scheme. Notably, BPPC – as owner-user – is responsible for any defect in the machineries and equipment.

x x x x x x x x x

That some kind of "financing" arrangement is contemplated – in the sense that the private sector proponent shall initially shoulder the heavy cost of constructing the project's buildings and structures and of purchasing the needed machineries and equipment – is undeniable. The arrangement, however, goes beyond the simple provision of funds, since the private sector proponent not only constructs and buys the necessary assets to put up the project, but operates and manages it as well during an agreed period that would allow it to recover its basic costs and earn profits. In other words, the private sector proponent goes into business for itself, assuming risks and incurring costs for its account. If it receives support from the government at all during the agreed period, these are pre-agreed items of assistance geared to ensure that the BOT agreement's objectives – both for the project proponent and for the government – are achieved. In this sense, a **BOT arrangement is *sui generis* and is different from the usual financing arrangements** where funds are advanced to a borrower who uses the funds to establish a project that it owns, subject only to a collateral security arrangement to guard against the nonpayment of the loan. It is different, too, from an arrangement where a government agency borrows funds to put a project from a private sector-lender who is thereafter

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commissioned to run the project for the government agency. In the latter case, the government agency is the owner of the project from the beginning, and the lender-operator is merely its agent in running the project.

If the BOT Agreement under consideration departs at all from the concept of a BOT project as defined by law, it is only in the way BPPC's cost recovery is achieved; instead of selling to facility users or to the general public at large, the generated electricity is purchased by NAPOCOR which then resells it to power distribution companies. This deviation, however, is dictated, more than anything else, by the structure and usages of the power industry and does not change the BOT nature of the transaction between the parties.

Consistent with the BOT concept and as implemented, **BPPC – the owner-manager-operator of the project – is the actual user of its machineries and equipment. BPPC's ownership and use of the machineries and equipment are actual, direct, and immediate, while NAPOCOR's is contingent and, at this stage of the BOT Agreement, not sufficient to support its claim for tax exemption.** Thus, the CTA committed no reversible error in denying NAPOCOR's claim for tax exemption. [Emphasis supplied.]

Given the special nature of a BOT agreement as discussed in the cited case, we find Article 1503 inapplicable to define the contract between Napocor and Mirant, as it refers only to ordinary contracts of sale. We thus declared in *Tatad v. Garcia*[13] that under BOT agreements, **the private corporations/investors are the owners of the facility or machinery concerned.** Apparently, even Napocor and Mirant recognize this principle; Article 2.12 of their BOT Agreement provides that "until the Transfer Date, [Mirant] shall, directly or indirectly, own the Power Station and all the fixtures, fitting, machinery and equipment on the Site x x x. [Mirant] shall operate, manage, and maintain the Power Station for the purpose of converting fuel of Napocor into electricity."

Moreover, if Napocor truly believed that it was the owner of the subject machineries, it should have complied with Sections

[13] 313 Phil. 296, 323, 326 (1995).

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202 and 206 of the LGC which obligates owners of real property to:

a. file a sworn statement declaring the true value of the real property, whether taxable or exempt;[14] and

b. file sufficient documentary evidence supporting its claim for tax exemption.[15]

While a real property owner's failure to comply with Sections 202 and 206 does not necessarily negate its tax obligation nor invalidate its legitimate claim for tax exemption, Napocor's omission to do so in this case can be construed as contradictory to its claim of ownership of the subject machineries. That it assumed liability for the taxes that may be imposed on the subject machineries similarly does not clothe it with legal title over the same. **We do not believe that the phrase *"person having legal interest in the property"* in Section 226 of the LGC**

[14] SEC. 202. *Declaration of Real Property by the Owner or Administrator*. — It shall be the **duty of all persons,** natural or juridical, **owning or administering real property, including the improvements therein,** within a city or municipality, or their duly authorized representative, **to prepare, or cause to be prepared, and file** with the provincial, city or municipal assessor, **a sworn statement declaring the true value of their property, whether previously declared or undeclared, taxable or exempt**, which shall be the current and fair market value of the property, as determined by the declarant. Such declaration shall contain a description of the property sufficient in detail to enable the assessor or his deputy to identify the same for assessment purposes. The sworn declaration of real property herein referred to shall be filed with the assessor concerned once every three (3) years during the period from January first (1st) to June thirtieth (30th) commencing with the calendar year 1992. [emphasis provided]

[15] SEC. 206. *Proof of Exemption of Real Property from Taxation*. — **Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file** with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property **sufficient documentary evidence in support of such claim** including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents. If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

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can include an entity that assumes another person's tax liability by contract.

A review of the provisions of the LGC on real property taxation shows that the phrase has been repeatedly adopted and used to define an entity:

a. in whose name the real property shall be listed, valued, and assessed;[16]

b. who may be summoned by the local assessor to gather information on which to base the market value of the real property;[17]

c. who may protest the tax assessment before the LBAA[18] and may appeal the latter's decision to the CBAA;[19]

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[16] SEC. 205. *Listing of Real Property in the Assessment Rolls.* — (a) In every province and city, including the municipalities within the Metropolitan Manila Area, there shall be prepared and maintained by the provincial, city or municipal assessor an assessment roll wherein shall be listed all real property, whether taxable or exempt, located within the territorial jurisdiction of the local government unit concerned. **Real property shall be listed, valued and assessed in the name of the owner or administrator, or anyone having legal interest in the property.** x x x.

[17] SEC. 213. *Authority of Assessor to Take Evidence.* — For the purpose of obtaining information on which to base the market value of any real property, **the assessor of the province**, city or municipality or his deputy **may summon the owners of the properties to be affected or persons having legal interest therein** and witnesses, administer oaths, and take deposition concerning the property, its ownership, amount, nature, and value.

[18] *Supra* note 3.

[19] SEC. 229. *Action by the Local Board of Assessment Appeals.* — x x x (c) The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose. The **owner of the property or the person having legal interest therein** or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment appeals, as herein provided. The decision of the Central Board shall be final and executory.

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d. who may be liable for the idle land tax,[20] as well as who may be exempt from the same;[21]

e. who shall be notified of any proposed ordinance imposing a special levy,[22] as well as who may object the proposed ordinance;[23]

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[20] SEC. 237. *Idle Lands, Coverage*. — For purposes of real property taxation, idle lands shall include the following:

(a) "Agricultural lands, more than one (1) hectare in area, suitable for cultivation, dairying, inland fishery, and other agricultural uses, one-half (1/2) of which remain uncultivated or unimproved by the **owner of the property or person having legal interest therein**." Agricultural lands planted to permanent or perennial crops with at least fifty (50) trees to a hectare shall not be considered idle lands. Lands actually used for grazing purposes shall likewise not be considered idle lands.

(b) Lands, other than agricultural, located in a city or municipality, more than one thousand (1,000) square meters in area one-half (1/2) of which remain unutilized or unimproved by the **owner of the property or person having legal interest** therein. Regardless of land area, this Section shall likewise apply to residential lots in subdivisions duly approved by proper authorities, the ownership of which has been transferred to individual owners, who shall be liable for the additional tax: Provided, however, That individual lots of such subdivisions, the ownership of which has not been transferred to the buyer shall be considered as part of the subdivision, and shall be subject to the additional tax payable by subdivision owner or operator.

[21] SEC. 238. *Idle Lands Exempt from Tax*. — A province or city or a municipality within the Metropolitan Manila Area may exempt idle lands from the additional levy by reason of *force majeure*, civil disturbance, natural calamity or any cause or circumstance which physically or legally prevents the **owner of the property or person having legal interest therein** from improving, utilizing or cultivating the same.

[22] SEC. 242. *Publication of Proposed Ordinance Imposing a Special Levy*. — Before the enactment of an ordinance imposing a special levy, the *sanggunian* concerned shall conduct a public hearing thereon; notify in writing the **owners of the real property to be affected or the persons having legal interest therein** as to the date and place thereof and afford the latter the opportunity to express their positions or objections relative to the proposed ordinance.

[23] SEC. 244. *Taxpayers' Remedies Against Special Levy*. — **Any owner of real property affected by a special levy or any person having a legal interest therein** may, upon receipt of the written notice of assessment of the special levy, avail of the remedies provided for in Chapter 3, Title Two, Book II of this Code.

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f. who may pay the real property tax;[24]

g. who is entitled to be notified of the warrant of levy and against whom it may be enforced;[25]

h. who may stay the public auction upon payment of the delinquent tax, penalties and surcharge;[26] and

[24] SEC. 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 and the additional tax for Special Education Fund (SEF) due thereon without interest in four (4) equal installments; the first installment to be due and payable on or before March Thirty-first (31st); the second installment, on or before June Thirty (30); the third installment, on or before September Thirty (30); and the last installment on or before December Thirty-first (31st), except the special levy the payment of which shall be governed by ordinance of the *sanggunian* concerned. The date for the payment of any other tax imposed under this Title without interest shall be prescribed by the *sanggunian* concerned. Payments of real property taxes shall first be applied to prior years delinquencies, interests, and penalties, if any, and only after said delinquencies are settled may tax payments be credited for the current period.

[25] SEC. 258. *Levy on Real Property.* — After the expiration of the time required to pay the basic real property tax or any other tax levied under this Title, real property subject to such tax may be levied upon through the issuance of a warrant on or before, or simultaneously with, the institution of the civil action for the collection of the delinquent tax. The provincial or city treasurer, or a treasurer of a municipality within the Metropolitan Manila Area, as the case may be, when issuing a warrant of levy shall prepare a duly authenticated certificate showing the name of the delinquent **owner of the property or person having legal interest therein**, the description of the property, the amount of the tax due and the interest thereon. The warrant shall operate with the force of a legal execution throughout the province, city or a municipality within the Metropolitan Manila Area. The warrant shall be mailed to or served upon the delinquent **owner of the real property or person having legal interest therein**, or in case he is out of the country or cannot be located, to the administrator or occupant of the property. At the same time, written notice of the levy with the attached warrant shall be mailed to or served upon the assessor and the Registrar of Deeds of the province, city or a municipality within the Metropolitan Manila Area where the property is located, who shall annotate the levy on the tax declaration and certificate of title of the property, respectively. The levying officer shall submit a report on the levy to the *sanggunian* concerned within ten (10) days after receipt of the warrant by the owner of the property or person having legal interest therein.

[26] SEC. 260. *Advertisement and Sale.* — Within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly

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i. who may redeem the property after it was sold at the public auction for delinquent taxes.[27]

advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. The advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the *barangay* where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall specify the amount of the delinquent tax, the interest due thereon and expenses of sale, the date and place of sale, the name of the owner of the real property or person having legal interest therein, and a description of the property to be sold. At any time before the date fixed for the sale, the **owner of the real property or person having legal interest therein** may stay the proceedings by paying the delinquent tax, the interest due thereon and the expenses of sale. The sale shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as specified in the notice of the sale. Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the *sanggunian* concerned, and which shall form part of his records. The local treasurer shall likewise prepare and deliver to the purchaser a certificate of sale which shall contain the name of the purchaser, a description of the property sold, the amount of the delinquent tax, the interest due thereon, the expenses of sale and a brief description of the proceedings: Provided, however, That proceeds of the sale in excess of the delinquent tax, the interest due thereon, and the expenses of sale shall be remitted to the owner of the real property or person having legal interest therein. The local treasurer may, by ordinance duly approved, advance an amount sufficient to defray the costs of collection thru the remedies provided for in this Title, including the expenses of advertisement and sale.

[27] SEC. 254. *Notice of Delinquency in the Payment of the Real Property Tax*. – x x x

(b) Such notice shall specify the date upon which the tax became delinquent and shall state that personal property may be distrained to effect payment. It shall likewise state that at any time before the distraint of personal property, payment of the tax with surcharges, interests and penalties may be made in accordance with the next following Section, and unless the tax, surcharges and penalties are paid before the expiration of the year for which the tax is due except when the notice of assessment or special levy is contested administratively or judicially pursuant to the provisions of Chapter 3, Title II, Book II of this Code, the delinquent real property will be sold at public auction, and the title to the property will be vested in the purchaser, subject, however, to the right of the delinquent **owner of the property or any person having legal interest therein** to redeem the property within one (1) year from the date of sale.

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For the Court to consider an entity assuming another person's tax liability by contract as a *person having legal interest in the real property* would extend to it the privileges and responsibilities enumerated above. The framers of the LGC certainly did not contemplate that the listing, valuation, and assessment of real property can be made in the name of such entity; nor did they intend to make the warrant of levy enforceable against it. Insofar as the provisions of the LGC are concerned, this entity is a party foreign to the operation of real property tax laws and could not be clothed with any legal interest over the property apart from its assumed liability for tax. The rights and obligations arising from the BOT Agreement between Napocor and Mirant were of no legal interest to the tax collector – the Province of Quezon – which is charged with the performance of independent duties under the LGC.[28]

Some authorities consider **a person whose pecuniary interests is or may be adversely affected by the tax assessment** as one who has legal interest in the property (hence, possessed of the requisite standing to protest it), citing Cooley's Law on Taxation.[29] The reference to this foreign material, however, is

SEC. 261. *Redemption of Property Sold*. — Within one (1) year from the date of sale, the **owner of the delinquent real property or person having legal interest therein,** or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy. From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in the possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof. The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from the lien of such delinquent tax, interest due thereon and expenses of sale.

[28] *Hamilton Mfg. Co. v. City of Lowell*, 274 Mass. 477, 175 N.E. 73.

[29] Cooley on Taxation (4th ed.), Volume 3, §1207, p. 2420.

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misplaced. The tax laws of the United States deem it sufficient that a person's *pecuniary interests* are affected by the tax assessment to consider him as a person aggrieved and who may thus avail of the judicial or administrative remedies against it. As opposed to our LGC, mere pecuniary interest is not sufficient; our law has required *legal interest* in the property taxed before any administrative or judicial remedy can be availed. The right to appeal a tax assessment is a purely statutory right; whether a person challenging an assessment bears such a relation to the real property being assessed as to entitle him the right to appeal is determined by the applicable statute – in this case, our own LGC, not US federal or state tax laws.

In light of our ruling above, PIPPA's motion to intervene and motion for reconsideration-in-intervention is already mooted. PIPPA as an organization of independent power producers is not an interested party insofar as this case is concerned. Even if TeaM Energy, as Mirant's successor, is included as one of its members, the motion to intervene and motion for reconsideration-in-intervention can no longer be entertained, as it amounts to a protest against the tax assessment that was filed without the complying with Section 252 of the LGC, a matter that we shall discuss below. Most importantly, our Decision has not touched or affected at all the contractual stipulations between Napocor and its BOT partners for the former's assumption of the tax liabilities of the latter.

Payment under protest is required before an appeal to the LBAA can be made

Apart from Napocor's failure to prove that it has sufficient legal interest, a further review of the records revealed another basis for disregarding Napocor's protest against the assessment.

The LBAA dismissed Napocor's petition for exemption for its failure to comply with Section 252 of the LGC[30] requiring

[30] SEC. 252. *Payment Under Protest.* — (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing

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payment of the assailed tax before any protest can be made. Although the CBAA ultimately dismissed Napocor's appeal for failure to meet the requirements for tax exemption, it agreed with Napocor's position that "the protest contemplated in Section 252 (a) is applicable only when the taxpayer is questioning the reasonableness or excessiveness of an assessment. It presupposes that the taxpayer is subject to the tax but is disputing the correctness of the amount assessed. It does not apply where, as in this case, the legality of the assessment is put in issue on account of the taxpayer's claim that it is exempt from tax." The CTA *en banc* agreed with the CBAA's discussion, relying mainly on the cases of *Ty v. Trampe*[31] and *Olivarez v. Marquez*.[32]

We disagree. The cases of *Ty* and *Olivarez* must be placed in their proper perspective.

The petitioner in *Ty v. Trampe* questioned before the trial court the increased real estate taxes imposed by and being collected in Pasig City effective from the year 1994, premised on the legal question of whether or not Presidential Decree No. 921 (*PD 921*) was repealed by the LGC. PD 921 required that the schedule of values of real properties in the Metropolitan Manila area shall be prepared jointly by the city assessors in the districts created therein; while Section 212 of the LGC stated that the schedule shall be prepared by the provincial, city or municipal assessors of the municipalities within the Metropolitan Manila

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must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

[31] 321 Phil. 81, 101-102 (1995).

[32] G.R. No. 155591, September 22, 2004, 438 SCRA 679, 686, 687.

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Area for the different classes of real property situated in their respective local government units for enactment by ordinance of the *Sanggunian* concerned. The private respondents assailed Ty's act of filing a prohibition petition before the trial court contending that Ty should have availed first the administrative remedies provided in the LGC, particularly Sections 252 (on payment under protest before the local treasurer) and 226 (on appeals to the LBAA).

The Court, through former Chief Justice Artemio Panganiban, declared that Ty correctly filed a petition for prohibition before the trial court against the assailed act of the city assessor and treasurer. The administrative protest proceedings provided in Section 252 and 226 will not apply. **The protest contemplated under Section 252 is required where there is a question as to the *reasonableness or correctness* of the amount assessed.** Hence, if a taxpayer disputes the reasonableness of an increase in a real property tax assessment, he is required to "first pay the tax" under protest. Otherwise, the city or municipal treasurer will not act on his protest. Ty however was questioning the very authority and power of the assessor, acting solely and independently, to impose the assessment and of the treasurer to collect the tax. These were not questions merely of amounts of the increase in the tax but attacks on the very validity of any increase. Moreover, Ty was raising a legal question that is properly cognizable by the trial court; no issues of fact were involved. In enumerating the power of the LBAA, Section 229 declares that "the proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts x x x." Appeals to the LBAA (under Section 226) are therefore fruitful only where questions of fact are involved.

Olivarez v. Marquez, on the other hand, involved a petition for *certiorari*, *mandamus*, and prohibition questioning the assessment and levy made by the City of Parañaque. Olivarez was seeking the annulment of his realty tax delinquency assessment. Marquez assailed Olivarez' failure to first exhaust administrative remedies, particularly the requirement of payment under protest. Olivarez replied that his petition was filed to question the assessor's authority to assess and collect realty taxes and therefore,

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as held in *Ty v. Trampe*, the exhaustion of administrative remedies was not required. The Court however did not agree with Olivarez' argument. It found that there was nothing in his petition that supported his claim regarding the assessor's alleged lack of authority. What Olivarez raised were the following grounds: "(1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; (4) **some properties are exempt from taxation** as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties, and that respondents committed grave abuse of discretion in making the improper, excessive and unlawful the collection of taxes against the petitioner." **The Olivarez petition filed before the trial court primarily involved the correctness of the assessments**, which is a question of fact that is not allowed in a petition for *certiorari*, prohibition, and *mandamus*. Hence, we declared that the petition should have been brought, at the very first instance, to the LBAA, not the trial court.

Like Olivarez, Napocor, by claiming exemption from realty taxation, is simply raising a question of the correctness of the assessment. **A claim for tax exemption, whether full or partial, does not question the authority of local assessor to assess real property tax.** This may be inferred from Section 206 which states that:

SEC. 206. *Proof of Exemption of Real Property from Taxation.* — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents. **If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven**

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to be tax exempt, the same shall be dropped from the assessment roll. [Emphasis provided]

By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above-quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Since Napocor was simply questioning the correctness of the assessment, it should have first complied with Section 252, particularly the requirement of payment under protest. Napocor's failure to prove that this requirement has been complied with thus renders its administrative protest under Section 226 of the LGC without any effect. No protest shall be entertained unless the taxpayer first pays the tax.

It was an ill-advised move for Napocor to directly file an appeal with the LBAA under Section 226 without first paying the tax as required under Section 252. Sections 252 and 226 provide *successive* administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226, in declaring that "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 x x x appeal to the Board of Assessment Appeals x x x," should be read in conjunction with Section 252 (d), which states that "in the event that the protest is denied x x x, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC [Chapter 3 refers to Assessment Appeals, which includes Sections 226 to 231]. The "action" referred to in Section 226 (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252. Without the action of the local assessor, the appellate authority of the LBAA cannot be invoked. Napocor's action before the LBAA was thus prematurely filed.

For the foregoing reasons, we *DENY* the petitioner's motion for reconsideration.

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SO ORDERED.

Carpio Morales (Acting Chairperson), Leonardo-de Castro, Abad, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 179909. January 25, 2010]

FAR EAST BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS) and ROLANDO BORJA, DEPUTY SHERIFF, *petitioners, vs.* **SPS. ERNESTO and LEONOR C. CAYETANO,** *respondents.*

SYLLABUS

1. CIVIL LAW; AGENCY; REAL ESTATE MORTGAGE; AGENT HAS TO INDICATE IN THE MORTGAGE DOCUMENT THAT HE/SHE IS ACTING ON BEHALF OF A PRINCIPAL SO THAT PRINCIPAL WILL BE BOUND THEREBY.— The only issue before us is whether or not the principal is bound by the real estate mortgage executed by an authorized agent in her own name without indicating the principal. The issue is not novel. The RTC and the Court of Appeals are both correct in holding that our decision in *The Philippine Sugar Estates Development Co., Ltd., Inc. v. Poizat, et al.* (Poizat Case), as reiterated in the case of *Rural Bank of Bombon (Camarines Sur), Inc. v. Court of Appeals* (Bombon Case), finds application in the instant case. The factual circumstances of said cases are similar to the case at bar, where an authorized agent executed a real estate mortgage on the principal's property in her own name without indicating that she was acting on behalf of the principal. x x x In the Poizat case, x x x the Court ruled on the legal force and effect of the real estate mortgage in question, by whom and