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up to December 7, 1962 when the Claparols Steel Corporation ceased operations.

**WHEREFORE**, PETITION IS HEREBY DENIED WITH TREBLE COSTS AGAINST PETITIONERS TO BE PAID BY THEIR COUNSEL.

*Castro (Chairman), Esguerra, Muñoz Palma,* and *Martin, JJ.,* concur.

*Teehankee, J.,* is on leave.

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**EN BANC**

[G.R. No. L-31685. July 31, 1975]

**RAMON A. GONZALES,** *petitioner, vs.* **IMELDA R. MARCOS, as Chairman of the Cultural Center of the Philippines, Father HORACIO DE LA COSTA, I. P. SOLIONGCO, ERNESTO RUFINO, ANTONIO MADRIGAL, and ANDRES SORIANO, as Members thereof,** *respondents.*

**SYLLABUS**

1. **CONSTITUTIONAL LAW; PRESIDENT; TAXPAYER'S ACTION ASSAILING VALIDITY OF EXECUTIVE ACT; PROPRIETY OF DISMISSAL.** — A suit filed a taxpayer questioning the validity of an Executive Order creating a trust, the funds of which came from donations and contributions and not from taxation, fails to satisfy the elemental requisite for a taxpayer's suit.

2. **ID.; ID.; ID.; DISCRETION OF COURT.** — The Court is not devoid of discretion as to whether or not actions assailing the validity of a legislative act should be entertained, even if suit falls under category of taxpayer's action.

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**3. ID.; ID.; POWER TO ISSUE EXECUTIVE ORDER IN RELATION TO TRUST.** — The Presidential alone cannot and need not personally handle the duties of a trustee for and in behalf of the Filipino people in relation with the trust in establishing the Cultural Center of the Philippines as the instrumentality to carry out the agreement between the Republic of the Philippines and the United States as to the use of a special fund coming from the latter for a Philippine Cultural development project. He can, through an executive order, set up a group of persons who would receive and administer the trust estate responsible to him.

**4. ID.; ID.; PRESIDENT ENTRUSTED WITH MANAGEMENT FUNCTION.** — Public funds that accrued by way of donation from the United States and financial contributions for the Cultural Center project could be legally considered as "governmental property." They may be acquired under the concept of dominium, the State as a person in law not being deprived of such an attribute, thereafter to be administered by virtue of its prerogative of imperium, through the Executive, the department precisely entrusted with management functions.

**5. ID.; ID.; LEGISLATIVE MAY PROVIDE GUIDELINES FOR ADMINISTERING PUBLIC PROPERTY.** — While to the Presidency under the 1935 Constitution was entrusted the responsibility for administering property, the then Congress could provide guidelines for such a task.

**6. ID.; ID.; ID.; ISSUANCE OF PRESIDENTIAL DECREE NO. 15 RENDERS INSTANT CASE MOOT AND ACADEMIC.** — The passage of Presidential Decree No. 15 on October 15, 1972 creating the Cultural Center superseding Executive Order No. 30, rendered moot and academic the issue whether the creation of trust fund by executive order constitutes an encroachment by the President on the legislative prerogative. The institution known as the Cultural Center is other than that assailed in the instant case. In that sense a *coup de grace* was administered to this proceeding.

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**APPEARANCES OF COUNSEL**

*Ramon A. Gonzales* in his own behalf.

*Acting Solicitor General Hugo E. Gutierrez, Jr.* and *Assistant Solicitor General Reynato S. Puno* for respondent Imelda R. Marcos.

*Siguion Reyna Montecillo Belo & Ongsiako* for respondents.

## D E C I S I O N

**FERNANDO, *J.:***

It was the novelty of the constitutional question raised, there being an imputation by petitioner Ramon A. Gonzales of an impermissible encroachment by the President of the Philippines on the legislative prerogative, that led this Tribunal to give due course to an appeal by *certiorari* from an order of dismissal by the Court of First Instance of Manila.[1] More specifically, the issue centered on the validity of the creation in Executive Order No. 30 of a trust for the benefit of the Filipino people under the name and style of the Cultural Center of the Philippines entrusted with the task to construct a national theatre, a national music hall, an arts building and facilities, to awaken our people's consciousness in the nation's cultural heritage and to encourage its assistance in the preservation, promotion, enhancement and development thereof, with the Board of Trustees to be appointed by the President, the Center having as its estate the real and personal property vested in it as well as donations received, financial commitments that could thereafter be collected, and gifts that may be forthcoming in the future.[2] It was likewise alleged that the Board of Trustees did accept donations from the private sector and did secure from the Chemical Bank of New York a loan of $5 million guaranteed by the National Investment & Development Corporation as well as $3.5 million received from President Johnson of the United States in the

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[1] Resolution of February 27, 1970.

[2] Petition, par. 1.

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concept of war damage funds, all intended for the construction of the Cultural Center building estimated to cost ₱48 million. The Board of Trustees has as its Chairman the First Lady, Imelda Romualdez Marcos, who is named as the principal respondent.[3] In an order of dismissal by the then Judge, now Justice of the Court of Appeals, Jose G. Bautista of a suit for prohibition filed in the Court of First Instance of Manila, stress was laid on the funds administered by the Center as coming from donations and contributions, with not a single centavo raised by taxation, and the absence of any pecuniary or monetary interest of petitioner that could in any wise be prejudiced distinct from those of the general public. Moreover, reference was made to the admission by petitioner of the desirability of the objective of Executive Order No. 30, his objection arising from the alleged illegality of its issuance.[4]

There was a motion of respondents to file a motion to dismiss this appeal by *certiorari*, and it was granted in a resolution of March 5, 1970. Such a pleading was submitted to this Court twelve days later, where it was contended that Executive Order No. 30 represented the legitimate exercise of executive power, there being no invasion of the legislative domain and that it was supplementary to rather than a disregard of Republic Act No. 4165 creating the National Commission on Culture. In this exhaustive motion to dismiss, the point was likewise raised that petitioner did not have the requisite personality to contest as a taxpayer the validity of the executive order in question, as the funds held by the Cultural Center came from donations and contributions, not one centavo being raised by taxation.[5]

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[3] The other respondents are Father Horacio de la Costa, I. P. Soliongco, who died during the pendency of the suit, Ernesto Rufino, Antonio Madrigal and Andres Soriano.

[4] Petition, Annex F. Nor was the other objection that there was a repugnancy between such order and a statute creating a National Commission on Culture sustained. Republic Act No. 4165 (1964).

[5] Motion to Dismiss dated March 17, 1970, submitted by the law firm of Siguion Reyna, Montecillo, Belo & Ongsiako and signed by Attorney Edgardo Angara. In support of the last point, reference was made to the following state cases: *Barber v. Housing Authority,* 5 SE 2d 425 (1939);

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Thereafter, a manifestation was filed by the then Solicitor General, now Associate Justice, Felix Q. Antonio, adopting "the Motion to Dismiss the Petition dated February 25, 1970, filed by respondents with this Honorable Court."[6] There was an opposition to such motion to dismiss on the part of petitioner.[7] That was the status of the case, there being no further pleadings filed except two motions for extension of time to file answer submitted by the Solicitor General and granted by this Court, when on July 22, 1975, there was a second motion to dismiss on the part of respondents through the Acting Solicitor General Hugo E. Gutierrez Jr. and Assistant Solicitor General Reynato S. Puno. It is therein set forth: "(1) As stated in the petition itself its undeniable quintessence is [the allegation of] 'an executive usurpation of legislative powers, hence, respondents in enforcing the same, are acting without jurisdiction, hence, are restrainable by prohibition.' *** (2) On October 5, 1972, Presidential Decree No. 15 *** was promulgated creating the Cultural Center of the Philippines, defining its objectives, powers and functions and other purposes. Section 4, thereof was amended by Presidential Decree No. 179 *** enacted on April 26, 1973. It is submitted that it is now moot and academic to discuss the constitutionality of Executive Order No. 30 considering the promulgation of PD Nos. 15 and 179, done by the President in the exercise of legislative powers under martial law. Executive Order No. 30 has ceased to exist while PD Nos. 15 and 179 meet all the constitutional arguments raised in the petition at bar."[8]

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*Price v. Mattoon*, 4 NE 2d 850 (1936); *Mathaei v. Housing Authority*, 9 A 2d 835 (1939); *Hanrahan v. Corron*, 12 NYS 2d 536 (1938); *Warm v. Cincinnati*, 11 NE 2d 281 (1937); *McKinney v. Watson*, 145 P. 266 (1915); *Hazelwood v. Cooper*, 87 SW 2d 776 (1935); *Jenkins v. Cooper*, 87 SW 2d 778 (1935); *Young v. Taylor*, 92 SW 2d 1075 (1935); *Powell v. Baird*, 132 SW 2d 464 (1939).

[6] Manifestation of March 18, 1970. The then Assistant Solicitor General, now Judge, Ricardo L. Pronove, Jr. as well as Solicitor Vicente A. Torres, Jr. filed such manifestation.

[7] Opposition to Respondent's Motion to Dismiss dated March 23, 1970.

[8] Second Motion to Dismiss dated July 22, 1975.

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It would thus appear that the petition cannot succeed. There is no justification for setting aside the order of dismissal. Notwithstanding the exhaustive and scholarly pleadings submitted by petitioner on his own behalf, the burden of persuasion to warrant a reversal of the action of the lower court was not met. Both on procedural and substantive grounds, a case for prohibition was not made out, notwithstanding the valiant efforts of petitioner. With this latest manifestation, that Executive Order No. 30 had been superseded by Presidential Decree Nos. 15 and 179, the moot and academic character of this appeal by *certiorari* became rather obvious. To repeat, the petition must fail.

1. It may not be amiss though to consider briefly both the procedural and substantive grounds that led to the lower court's order of dismissal. It was therein pointed out as "one more valid reason" why such an outcome was unavoidable that "the funds administered by the President of the Philippines came from donations [and] contributions [not] by taxation." Accordingly, there was that absence of the "requisite pecuniary or monetary interest."[9] The stand of the lower court finds support in judicial precedents.[10] This is not to retreat from the liberal approach followed in *Pascual v. Secretary of Public Works*,[11] foreshadowed by *People v. Vera*,[12] where the doctrine of standing was first fully discussed. It is only to make clear that petitioner, judged by orthodox legal learning, has not satisfied the elemental requisite for a taxpayer's suit. Moreover, even on the assumption that public funds raised by taxation were

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[9] Petition, Annex F, 7.

[10] Cf. *McKinney v. Watson*, 145 P 266, 267 (1915); *Hazelwood v. City of Cooper*, 87 SW (2d) 776 (1935); *Jenkins v. Cooper*, 87 SW (2d) 778 (1935); *Price v. City of Mattoon*, 4 NE (2d) 850 (1936); *Young v. Taylor*, 92 SW (2d) 1075 (1936); *Warm v. Cincinnati*, 11 NE (2d) 281 (1937); *Barber v. Housing Authority*, 5 SE (2d) 425 (1939); and *Powell v. City of Baird*, 132 SW (2d) 464 (1939).

[11] 110 Phil. 331 (1960).

[12] 65 Phil. 56 (1937).

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involved, it does not necessarily follow that such kind of an action to assail the validity of a legislative or executive act has to be passed upon. This Court, as held in the recent case of *Tan v. Macapagal*,[13] "is not devoid of discretion as to whether or not it should be entertained."[14] The lower court thus did not err in so viewing the situation.

2. Nor was the lower court any more impressed by the contention that there was an encroachment on the legislative prerogative discernible in the issuance of Executive Order No. 30. It first took note of the exchange of diplomatic notes between the Republic of the Philippines and the United States as to the use of a special fund coming from the latter for a Philippine cultural development project. Then, as set forth in the order of dismissal, it explained why no constitutional objection could be validly interposed. Thus: "When the President, therefore, acted by disposing of a matter of general concern (Section 63, Rev. Adm. Code) in accord with the constitutional injunction to promote arts and letters (Section 4, Article XIV, Constitution of the Philippines) and issued Executive Order No. 30, he simply carried out the purpose of the trust in establishing the Cultural Center of the Philippines as the instrumentality through which this agreement between the two governments would be realized. Needless to state, the President alone cannot and need not personally handle the duties of a trustee for and in behalf of the Filipino people in relation with this trust. He can do this by means of an executive order by creating as he did, a group of persons, who would receive and administer the trust estate, responsible to the President. As head of the State, as chief executive, as spokesman in domestic and foreign affairs, in behalf of the estate as *parens patriae*, it cannot be successfully questioned that the President has authority to implement for the benefit of the Filipino people by creating the Cultural Center consisting of private citizens to administer the private

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[13] L-34161, February 29, 1972, 43 SCRA 677.

[14] *Ibid*, 680.

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contributions and donations given not only by the United States government but also by private persons."[15]

There is impressive juridical support for the stand taken by the lower court. Justice Malcolm in *Government of the Philippine Islands v. Springer*[16] took pains to emphasize: "Just as surely as the duty of caring for governmental property is neither judicial nor legislative in character is it as surely executive."[17] It would be an unduly narrow or restrictive view of such a principle if the public funds that accrued by way of donation from the United States and financial contributions for the Cultural Center project could not be legally considered as "governmental property." They may be acquired under the concept of *dominium*, the state as a *persona* in law not being deprived of such an attribute, thereafter to be administered by virtue of its prerogative of *imperium*.[18] What is a more appropriate agency for assuring that they be not wasted or frittered away than the Executive, the department precisely entrusted with management functions? It would thus appear that for the President to refrain from taking positive steps and await the action of the then Congress could be tantamount to dereliction of duty. He had to act; time was of the essence. Delay was far from conducive to public interest. It was as simple as that. Certainly then, it could be only under the most strained construction of executive power to conclude that in taking the step he took, he transgressed on terrain constitutionally reserved for Congress.

This is not to preclude legislative action in the premises. While to the Presidency under the 1935 Constitution was entrusted the responsibility for administering public property, the then Congress could provide guidelines for such a task. Relevant in this connection is the excerpt from an opinion of Justice Jackson in *Youngstown Sheet & Tube Co. v.*

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[15] 5 Petition, Annex F, 3.

[16] 50 Phil. 259 (1927).

[17] *Ibid*, 290.

[18] Cf. *Lee Hong Hock v. David,* L-30389, December 27, 1972, 48 SCRA 372.

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*Sawyer*[19] "When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperative of events and contemporary imponderables rather than on abstract theories of law."[20] To vary the phraseology, to recall Thomas Reed Powell, if Congress would continue to keep its peace notwithstanding the action taken by the executive department, it may be considered as silently *vocal*. In plainer language, it could be an instance of silence meaning consent. The Executive Order assailed was issued on June 25, 1966. Congress until the time of the filing of the petition on August 26, 1969 remained quiescent. Parenthetically, it may be observed that petitioner waited until almost the day of inaugurating the Cultural Center on September 11, 1969 before filing his petition in the lower court. However worthy of commendation was his resolute determination to keep the Presidency within the bounds of its competence, it cannot be denied that the remedy, if any, could be supplied by Congress asserting itself in the premises. Instead, there was apparent conformity on its part to the way the President saw fit to administer such governmental property.

3. The futility of this appeal by *certiorari* becomes even more apparent with the issuance of Presidential Decree No. 15 on October 5, 1972. As contended by the Solicitor General, the matter, as of that date, became moot and academic. Executive Order No. 30 was thus superseded. The institution known as the Cultural Center is other than that assailed in this suit. In that sense a *coup de grace* was administered to this proceeding. The labored attempt of petitioner could thus be set at rest.

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[19] 343 US 579 (1952).

[20] *Ibid*, 637.

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This particular litigation is at an end. There is, too, relevance in the observation that the aforesaid decree is part of the law of the land. So the Constitution provides.[21]

4. It only remains to be added that respondents as trustees lived up fully to the weighty responsibility entrusted to them. The task imposed on them was performed with competence, fidelity, and dedication. That was to be expected. From the inception of the Marcos Administration, the First Lady has given unsparingly of herself in the encouragement and support of literary, musical, and artistic endeavors and in the appreciation of our rich and diverse cultural heritage. The rest of the then Board of Trustees, named as the other respondents, were equally deserving of their being chosen for this worthy project. One of them, the late I. P. Soliongco, was in his lifetime one of the most gifted men of letters. Father Horacio de la Costa is a historian and scholar of international repute. Respondents Ernesto Rufino, Antonio Madrigal and Andres Soriano, all men of substance, have contributed in time and money to civic efforts. It is not surprising then that the Cultural Center became a reality, the massive and imposing structure constructed at a shorter period and at a lower cost than at first thought possible. What is of even greater significance, with a portion thereof being accessible at modest admission prices, musical and artistic performances of all kinds are within reach of the lower-income groups. Only thus may meaning be imparted to the Constitutional provision that arts and letters shall be under State patronage.[22]

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[21] According to Article XVII, Section 3, par. (2) of the Constitution: "All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

[22] According to Article XIV, Section 4 of the 1935 Constitution: "Arts and letters shall be under [the State's] patronage." Such a provision is now found in Article XV, Section 9, par. (2) of the present Charter and reads: "Filipino culture shall be preserved and developed for national identity. Arts and letters shall be under the patronage of the State."

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For equally important as the encouragement and support for talented Filipinos with a creative spark is the diffusion of the opportunity for the rest of their countrymen to savour the finer things in life. Who knows, if state efforts along these lines are diligently pursued, that what was said by Justice Holmes about France could apply to the Philippines. Thus: "We have not that respect for art that is one of the glories of France."[23] In justice to petitioner Gonzales, it may be noted that he did not question the wisdom or soundness of the goal of having a Cultural Center or the disbursement of the funds by respondents. It is the absence of statutory authority that bothered him. The lower court did not see things in the same light. It is easily understandable why, as the preceding discussion has made clear, it cannot be said that such a conclusion suffered from legal infirmity. What is more, with the issuance of Presidential Decree No. 15, the suit, to repeat, has assumed a moot and academic character.

**WHEREFORE**, this appeal by *certiorari* to review the lower court's order of dismissal dated December 4, 1969 is dismissed. No costs.

*Makalintal, C.J., Barredo, Esguerra, Muñoz Palma, Aquino, Concepcion, Jr.,* and *Martin JJ.,* concur.

*Castro* and *Makasiar, JJ.*, did not take part.

*Teehankee* and *Antonio, JJ.*, are on official leave.

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[23] Holmes, diss., in *Tyson and Brother v. Benton,* 273 US 418, 445(1927).