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THIRD DIVISION

[G.R. No. 191109. July 18, 2012]

REPUBLIC OF THE PHILIPPINES, represented by the PHILIPPINE RECLAMATION AUTHORITY (PRA), *petitioner, vs.* **CITY OF PARAÑAQUE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; PHILIPPINE RECLAMATION AUTHORITY (PRA) IS AN INCORPORATED GOVERNMENT INSTRUMENTALITY WHICH IS EXEMPT FROM PAYMENT OF REAL PROPERTY TAX.— This Court is convinced that PRA is not a GOCC either under Section 2(3) of the Introductory Provisions of the Administrative Code or under Section 16, Article XII of the 1987 Constitution. The facts, the evidence on record and jurisprudence on the issue support the position that PRA was not organized either as a stock or a non-stock corporation. Neither was it created by Congress to operate commercially and compete in the private market. Instead, PRA is a government instrumentality vested with corporate powers and performing an essential public service pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. Being an incorporated government instrumentality, it is exempt from payment of real property tax.

2. ID.; ID.; ID.; EXEMPTION OF PRA FROM PAYMENT OF REAL PROPERTY TAX, EXPLAINED.— It is clear from Section 234 that real property owned by the Republic of the Philippines *(the Republic)* is exempt from real property tax unless the beneficial use thereof has been granted to a taxable person. In this case, there is no proof that PRA granted the beneficial use of the subject reclaimed lands to a taxable entity. There is no showing on record either that PRA leased the subject reclaimed properties to a private taxable entity. This exemption should be read in relation to Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fees or charges of any kind on the National Government, its agencies

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and instrumentalities x x x." The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax. Indeed, the Republic grants the beneficial use of its real property to an agency or instrumentality of the national government. This happens when the title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption, unless "the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."

3. ID.; ID.; ID.; RECLAIMED LANDS OF THE PRA ARE STILL PART OF THE PUBLIC DOMAIN.— [T]he subject lands are reclaimed lands, specifically portions of the foreshore and offshore areas of Manila Bay. As such, these lands remain public lands and form part of the public domain. In the case of *Chavez v. Public Estates Authority and AMARI Coastal Development Corporation*, the Court held that foreshore and submerged areas irrefutably belonged to the public domain and were inalienable unless reclaimed, classified as alienable lands open to disposition and further declared no longer needed for public service. The fact that alienable lands of the public domain were transferred to the PEA (now PRA) and issued land patents or certificates of title in PEA's name did not automatically make such lands private. This Court also held therein that reclaimed lands retained their inherent potential as areas for public use or public service. x x x They are properties of public dominion. The ownership of such lands remains with the State unless they are withdrawn by law or presidential proclamation from public use.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jose Torrefranca for respondent.

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D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, on pure questions of law, assailing the January 8, 2010 Order[1] of the Regional Trial Court, Branch 195, Parañaque City *(RTC)*, which ruled that petitioner Philippine Reclamation Authority *(PRA)* is a government-owned and controlled corporation *(GOCC)*, a taxable entity, and, therefore, not exempt from payment of real property taxes. The pertinent portion of the said order reads:

> In view of the finding of this court that petitioner is not exempt from payment of real property taxes, respondent Parañaque City Treasurer Liberato M. Carabeo did not act xxx without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the warrants of levy on the subject properties.
>
> WHEREFORE, the instant petition is dismissed. The Motion for Leave to File and Admit Attached Supplemental Petition is denied and the supplemental petition attached thereto is not admitted.

The Public Estates Authority *(PEA)* is a government corporation created by virtue of Presidential Decree *(P.D.)* No. 1084 (*Creating the Public Estates Authority, Defining its Powers and Functions, Providing Funds Therefor and For Other Purposes*) which took effect on February 4, 1977 to provide a coordinated, economical and efficient reclamation of lands, and the administration and operation of lands belonging to, managed and/or operated by, the government with the object of maximizing their utilization and hastening their development consistent with public interest.

On February 14, 1979, by virtue of Executive Order *(E.O.)* No. 525 issued by then President Ferdinand Marcos, PEA was designated as the agency primarily responsible for integrating, directing and coordinating all reclamation projects for and on behalf of the National Government.

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[1] *Rollo*, pp. 50-55.

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On October 26, 2004, then President Gloria Macapagal-Arroyo issued E.O. No. 380 transforming PEA into PRA, which shall perform all the powers and functions of the PEA relating to reclamation activities.

By virtue of its mandate, PRA reclaimed several portions of the foreshore and offshore areas of Manila Bay, including those located in Parañaque City, and was issued Original Certificates of Title (OCT Nos. 180, 202, 206, 207, 289, 557, and 559) and Transfer Certificates of Title (TCT Nos. 104628, 7312, 7309, 7311, 9685, and 9686) over the reclaimed lands.

On February 19, 2003, then Parañaque City Treasurer Liberato M. Carabeo *(Carabeo)* issued Warrants of Levy on PRA's reclaimed properties (Central Business Park and *Barangay* San Dionisio) located in Parañaque City based on the assessment for delinquent real property taxes made by then Parañaque City Assessor Soledad Medina Cue for tax years 2001 and 2002.

On March 26, 2003, PRA filed a petition for prohibition with prayer for temporary restraining order *(TRO)* and/or writ of preliminary injunction against Carabeo before the RTC.

On April 3, 2003, after due hearing, the RTC issued an order denying PRA's petition for the issuance of a temporary restraining order.

On April 4, 2003, PRA sent a letter to Carabeo requesting the latter not to proceed with the public auction of the subject reclaimed properties on April 7, 2003. In response, Carabeo sent a letter stating that the public auction could not be deferred because the RTC had already denied PRA's TRO application.

On April 25, 2003, the RTC denied PRA's prayer for the issuance of a writ of preliminary injunction for being moot and academic considering that the auction sale of the subject properties on April 7, 2003 had already been consummated.

On August 3, 2009, after an exchange of several pleadings and the failure of both parties to arrive at a compromise agreement, PRA filed a *Motion for Leave to File and Admit Attached*

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Supplemental Petition which sought to declare as null and void the assessment for real property taxes, the levy based on the said assessment, the public auction sale conducted on April 7, 2003, and the Certificates of Sale issued pursuant to the auction sale.

On January 8, 2010, the RTC rendered its decision dismissing PRA's petition. In ruling that PRA was not exempt from payment of real property taxes, the RTC reasoned out that it was a GOCC under Section 3 of P.D. No. 1084. It was organized as a stock corporation because it had an authorized capital stock divided into no par value shares. In fact, PRA admitted its corporate personality and that said properties were registered in its name as shown by the certificates of title. Therefore, as a GOCC, local tax exemption is withdrawn by virtue of Section 193 of Republic Act (R.A.) No. 7160 [Local Government Code *(LGC)*] which was the prevailing law in 2001 and 2002 with respect to real property taxation. The RTC also ruled that the tax exemption claimed by PRA under E.O. No. 654 had already been expressly repealed by R.A. No. 7160 and that PRA failed to comply with the procedural requirements in Section 206 thereof.

Not in conformity, PRA filed this petition for *certiorari* assailing the January 8, 2010 RTC Order based on the following

GROUNDS

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT PETITIONER IS LIABLE TO PAY REAL PROPERTY TAX ON THE SUBJECT RECLAIMED LANDS CONSIDERING THAT PETITIONER IS AN INCORPORATED INSTRUMENTALITY OF THE NATIONAL GOVERNMENT AND IS, THEREFORE, EXEMPT FROM PAYMENT OF REAL PROPERTY TAX UNDER SECTIONS 234(A) AND 133(O) OF REPUBLIC ACT 7160 OR THE LOCAL GOVERNMENT CODE *VIS-À-VIS* MANILA INTERNATIONAL AIRPORT AUTHORITY V. COURT OF APPEALS.

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II

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT RECLAIMED LANDS ARE PART OF THE PUBLIC DOMAIN AND, HENCE, EXEMPT FROM REAL PROPERTY TAX.

PRA asserts that it is not a GOCC under Section 2(13) of the Introductory Provisions of the Administrative Code. Neither is it a GOCC under Section 16, Article XII of the 1987 Constitution because it is not required to meet the test of economic viability. Instead, PRA is a government instrumentality vested with corporate powers and performing an essential public service pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. Although it has a capital stock divided into shares, it is not authorized to distribute dividends and allotment of surplus and profits to its stockholders. Therefore, it may not be classified as a stock corporation because it lacks the second requisite of a stock corporation which is the distribution of dividends and allotment of surplus and profits to the stockholders.

It insists that it may not be classified as a non-stock corporation because it has no members and it is not organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers as provided in Section 88 of the Corporation Code.

Moreover, PRA points out that it was not created to compete in the market place as there was no competing reclamation company operated by the private sector. Also, while PRA is vested with corporate powers under P.D. No. 1084, such circumstance does not make it a corporation but merely an incorporated instrumentality and that the mere fact that an incorporated instrumentality of the National Government holds title to real property does not make said instrumentality a GOCC. Section 48, Chapter 12, Book I of the Administrative Code of 1987 recognizes a scenario where a piece of land owned by the Republic is titled in the name of a department, agency or instrumentality.

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Thus, PRA insists that, as an incorporated instrumentality of the National Government, it is exempt from payment of real property tax except when the beneficial use of the real property is granted to a taxable person. PRA claims that based on Section 133(o) of the LGC, local governments cannot tax the national government which delegate to local governments the power to tax.

It explains that reclaimed lands are part of the public domain, owned by the State, thus, exempt from the payment of real estate taxes. Reclaimed lands retain their inherent potential as areas for public use or public service. While the subject reclaimed lands are still in its hands, these lands remain public lands and form part of the public domain. Hence, the assessment of real property taxes made on said lands, as well as the levy thereon, and the public sale thereof on April 7, 2003, including the issuance of the certificates of sale in favor of the respondent Parañaque City, are invalid and of no force and effect.

On the other hand, the City of Parañaque *(respondent)* argues that PRA since its creation consistently represented itself to be a GOCC. PRA's very own charter (P.D. No. 1084) declared it to be a GOCC and that it has entered into several thousands of contracts where it represented itself to be a GOCC. In fact, PRA admitted in its original and amended petitions and pre-trial brief filed with the RTC of Parañaque City that it was a GOCC.

Respondent further argues that PRA is a stock corporation with an authorized capital stock divided into 3 million no par value shares, out of which 2 million shares have been subscribed and fully paid up. Section 193 of the LGC of 1991 has withdrawn tax exemption privileges granted to or presently enjoyed by all persons, whether natural or juridical, including GOCCs.

Hence, since PRA is a GOCC, it is not exempt from the payment of real property tax.

THE COURT'S RULING

The Court finds merit in the petition.

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Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a GOCC as follows:

SEC. 2. General Terms Defined. – x x x

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x.

On the other hand, Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "instrumentality" as follows:

SEC. 2. General Terms Defined. — x x x

(10) Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. x x x

From the above definitions, it is clear that a GOCC must be "organized as a stock or non-stock corporation" while an instrumentality is vested by law with corporate powers. Likewise, when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework.

When the law vests in a government instrumentality corporate powers, the instrumentality does not necessarily become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality

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is deemed a GOCC. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines, and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. They are not, however, GOCCs in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.[2]

Correlatively, Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x." Section 87 thereof defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." Further, Section 88 provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers."

Two requisites must concur before one may be classified as a stock corporation, namely: (1) that it has **capital stock** divided into shares; and (2) that it is **authorized to distribute** dividends and allotments of surplus and profits to its stockholders. If only one requisite is present, it cannot be properly classified as a stock corporation. As for non-stock corporations, they must have members and must not distribute any part of their income to said members.[3]

In the case at bench, PRA is not a GOCC because it is neither a stock nor a non-stock corporation. It cannot be considered as

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[2] *Manila International Airport Authority v. Court of Appeals*, G.R. No. 155650, July 20, 2006, 495 SCRA 618-619.

[3] *Philippine Fisheries Development Authority v. Court of Appeals*, G.R. No. 169836, July 31, 2007, 528 SCRA 706, 712.

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a stock corporation because although it has a capital stock divided into no par value shares as provided in Section 7[4] of P.D. No. 1084, it is not authorized to distribute dividends, surplus allotments or profits to stockholders. There is no provision whatsoever in P.D. No. 1084 or in any of the subsequent executive issuances pertaining to PRA, particularly, E.O. No. 525,[5] E.O. No. 654[6] and EO No. 798[7] that authorizes PRA to distribute dividends, surplus allotments or profits to its stockholders.

PRA cannot be considered a non-stock corporation either because it does not have members. A non-stock corporation

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[4] **Section 7.** *Capital Stock.* The Authority shall have an authorized capital stock divided into THREE MILLION (3,000,000) no par value shares to be subscribed and paid for as follows:

(a) TWO MILLION (2,000,000) shares shall be originally subscribed and paid for by the Republic of the Philippines by the transfer, conveyance and assignment of all the rights and interest of the Republic of the Philippines in that contract executed by and between the Construction and Development Corporation of the Philippines and the Bureau of Public Highways on November 20, 1973 the fair value of such rights and interests to be determined by the Board of Directors and approved by the President of the Philippines and the amount of FIVE MILLION (₱5,000,000.00) PESOS in cash;

(b) The remaining ONE MILLION (1,000,000) shares of stock may be subscribed and paid for by the Republic of the Philippines or by government financial institutions at values to be determined by the Board and approved by the President of the Philippines.

The fair value of the interests hereby transferred shall, for all intents and purposes, be considered as paid-up capital pertaining to the government of the Republic of the Philippines in the Authority.

The voting power pertaining to the shares of stock subscribed by the government of the Republic of the Philippines shall be vested in the President of the Philippines or in such person or persons as he may designate.

[5] Entitled "Designating the Public Estates Authority as the Agency primarily responsible for all Reclamation Projects" dated February 14, 1979.

[6] Entitled "Further Defining Certain Functions and Powers of the Public Estates Authority" dated February 26, 1981.

[7] Entitled "Transferring the Philippine Reclamation Authority from the Department of Public Works and Highways to the Department of Environment and Natural Resources" dated May 14, 2009.

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must have members.[8] Moreover, it was not organized for any of the purposes mentioned in Section 88 of the Corporation Code. Specifically, it was created to manage all government reclamation projects.

Furthermore, there is another reason why the PRA cannot be classified as a GOCC. Section 16, Article XII of the 1987 Constitution provides as follows:

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

The fundamental provision above authorizes Congress to create GOCCs through special charters on two conditions: 1) the GOCC must be established for the common good; and 2) the GOCC must meet the test of economic viability. In this case, PRA may have passed the first condition of common good but failed the second one - economic viability. Undoubtedly, the purpose behind the creation of PRA was not for economic or commercial activities. Neither was it created to compete in the market place considering that there were no other competing reclamation companies being operated by the private sector. As mentioned earlier, PRA was created essentially to perform a public service considering that it was primarily responsible for a coordinated, economical and efficient reclamation, administration and operation of lands belonging to the government with the object of maximizing their utilization and hastening their development consistent with the public interest. Sections 2 and 4 of P.D. No. 1084 reads, as follows:

Section 2. *Declaration of policy.* It is the declared policy of the State to provide for a coordinated, economical and efficient reclamation of lands, and the administration and operation of lands belonging to, managed and/or operated by the government, with the

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[8] *Manila International Airport Authority v. Court of Appeals*, *supra* note 2.

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object of maximizing their utilization and hastening their development consistent with the public interest.

Section 4. *Purposes.* The Authority is hereby created for the following purposes:

(a) To reclaim land, including foreshore and submerged areas, by dredging, filling or other means, or to acquire reclaimed land;

(b) To develop, improve, acquire, administer, deal in, subdivide, dispose, lease and sell any and all kinds of lands, buildings, estates and other forms of real property, owned, managed, controlled and/or operated by the government.

(c) To provide for, operate or administer such services as may be necessary for the efficient, economical and beneficial utilization of the above properties.

The twin requirement of common good and economic viability was lengthily discussed in the case of *Manila International Airport Authority v. Court of Appeals*,[9] the pertinent portion of which reads:

Third, the government-owned or controlled corporations created through special charters are those that meet the two conditions prescribed in Section 16, Article XII of the Constitution. The first condition is that the government-owned or controlled corporation must be established for the **common good**. The second condition is that the government-owned or controlled corporation must meet the test of **economic viability**. Section 16, Article XII of the 1987 Constitution provides:

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

The Constitution expressly authorizes the legislature to create "government-owned or controlled corporations" through special charters only if these entities are required to meet the twin conditions

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[9] *Id.*

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of common good and economic viability. In other words, Congress has no power to create government-owned or controlled corporations with special charters unless they are made to comply with the two conditions of common good and economic viability. **The test of economic viability applies only to government-owned or controlled corporations that perform economic or commercial activities and need to compete in the market place. Being essentially economic vehicles of the State for the common good — meaning for economic development purposes — these government-owned or controlled corporations with special charters are usually organized as stock corporations just like ordinary private corporations.**

In contrast, government instrumentalities vested with corporate powers and performing governmental or public functions need not meet the test of economic viability. These instrumentalities perform essential public services for the common good, services that every modern State must provide its citizens. These instrumentalities need not be economically viable since the government may even subsidize their entire operations. These instrumentalities are not the "government-owned or controlled corporations" referred to in Section 16, Article XII of the 1987 Constitution.

Thus, the Constitution imposes no limitation when the legislature creates government instrumentalities vested with corporate powers but performing essential governmental or public functions. Congress has plenary authority to create government instrumentalities vested with corporate powers provided these instrumentalities perform essential government functions or public services. However, when the legislature creates through special charters corporations that perform economic or commercial activities, such entities — known as "government-owned or controlled corporations" — must meet the test of economic viability because they compete in the market place.

This is the situation of the Land Bank of the Philippines and the Development Bank of the Philippines and similar government-owned or controlled corporations, **which derive their income to meet operating expenses solely from commercial transactions in competition with the private sector**. The intent of the Constitution is to prevent the creation of government-owned or controlled

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corporations that cannot survive on their own in the market place and thus merely drain the public coffers.

Commissioner Blas F. Ople, proponent of the test of economic viability, explained to the Constitutional Commission the purpose of this test, as follows:

> MR. OPLE: Madam President, the reason for this concern is really that when the government creates a corporation, there is a sense in which this corporation becomes exempt from the test of economic performance. We know what happened in the past. If a government corporation loses, then it makes its claim upon the taxpayers' money through new equity infusions from the government and what is always invoked is the common good. That is the reason why this year, out of a budget of ₱115 billion for the entire government, about ₱28 billion of this will go into equity infusions to support a few government financial institutions. And this is all taxpayers' money which could have been relocated to agrarian reform, to social services like health and education, to augment the salaries of grossly underpaid public employees. And yet this is all going down the drain.
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> Therefore, when we insert the phrase "ECONOMIC VIABILITY" together with the "common good," this becomes a restraint on future enthusiasts for state capitalism to excuse themselves from the responsibility of meeting the market test so that they become viable. And so, Madam President, I reiterate, for the committee's consideration and I am glad that I am joined in this proposal by Commissioner Foz, the insertion of the standard of "ECONOMIC VIABILITY OR THE ECONOMIC TEST," together with the common good.

Father Joaquin G. Bernas, a leading member of the Constitutional Commission, explains in his textbook The 1987 Constitution of the Republic of the Philippines: A Commentary:

> The second sentence was added by the 1986 Constitutional Commission. The significant addition, however, is the phrase "in the interest of the common good and subject to the test of economic viability." The addition includes the ideas that they must show capacity to function efficiently in business and that they should not go into activities which the private sector can

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> do better. Moreover, economic viability is more than financial viability but also includes capability to make profit and generate benefits not quantifiable in financial terms.
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> **Clearly, the test of economic viability does not apply to government entities vested with corporate powers and performing essential public services**. The State is obligated to render essential public services regardless of the economic viability of providing such service. The non-economic viability of rendering such essential public service does not excuse the State from withholding such essential services from the public.
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> However, government-owned or controlled corporations with special charters, organized essentially for economic or commercial objectives, must meet the test of economic viability. These are the government-owned or controlled corporations that are usually organized under their special charters as stock corporations, like the Land Bank of the Philippines and the Development Bank of the Philippines. These are the government-owned or controlled corporations, along with government-owned or controlled corporations organized under the Corporation Code, that fall under the definition of "government-owned or controlled corporations" in Section 2(10) of the Administrative Code. [Emphases supplied]

This Court is convinced that PRA is not a GOCC either under Section 2(3) of the Introductory Provisions of the Administrative Code or under Section 16, Article XII of the 1987 Constitution. The facts, the evidence on record and jurisprudence on the issue support the position that PRA was not organized either as a stock or a non-stock corporation. Neither was it created by Congress to operate commercially and compete in the private market. Instead, PRA is a government instrumentality vested with corporate powers and performing an essential public service pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. Being an incorporated government instrumentality, it is exempt from payment of real property tax.

Clearly, respondent has no valid or legal basis in taxing the subject reclaimed lands managed by PRA. On the other hand, Section 234(a) of the LGC, in relation to its Section 133(o),

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exempts PRA from paying realty taxes and protects it from the taxing powers of local government units. Sections 234(a) and 133(o) of the LGC provide, as follows:

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

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions **except** when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

xxx xxx xxx

SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

xxx xxx xxx

(o) Taxes, fees or charges of any kinds on the National Government, its agencies and instrumentalities, and local government units. [Emphasis supplied]

It is clear from Section 234 that real property owned by the Republic of the Philippines *(the Republic)* is exempt from real property tax unless the beneficial use thereof has been granted to a taxable person. In this case, there is no proof that PRA granted the beneficial use of the subject reclaimed lands to a taxable entity. There is no showing on record either that PRA leased the subject reclaimed properties to a private taxable entity.

This exemption should be read in relation to Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fees or charges of any kind on the National Government, its agencies and instrumentalities x x x." The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.

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Indeed, the Republic grants the beneficial use of its real property to an agency or instrumentality of the national government. This happens when the title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption, unless "the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."[10]

The rationale behind Section 133(o) has also been explained in the case of the *Manila International Airport Authority*,[11] to wit:

> Section 133(o) recognizes the basic principle that **local governments cannot tax the national government**, which historically merely delegated to local governments the power to tax. While the 1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power "subject to such guidelines and limitations as the Congress may provide."
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> When local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation. This rule applies with greater force when local governments seek to tax national government instrumentalities.
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> Another rule is that a tax exemption is strictly construed against the taxpayer claiming the exemption. However, when Congress grants an exemption to a national government instrumentality from local taxation, such exemption is construed liberally in favor of the national government instrumentality. As this Court declared in *Maceda v. Macaraig, Jr.*:
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> > The reason for the rule does not apply in the case of exemptions running to the benefit of the government itself or its agencies. In such case the practical effect of an exemption

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[10] Local Government Code, Section 234(a).

[11] *Supra* note 2.

> is merely to reduce the amount of money that has to be handled by government in the course of its operations. For these reasons, provisions granting exemptions to government agencies may be construed liberally, in favor of non tax-liability of such agencies.

There is, moreover, no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another.

There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations. There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments.

Thus, Section 133 of the Local Government Code states that "unless otherwise provided" in the Code, local governments cannot tax national government instrumentalities. As this Court held in *Basco v. Philippine Amusements and Gaming Corporation*:

> The states have no power by taxation or otherwise, to retard, impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the federal government. (*MC Culloch v. Maryland*, 4 Wheat 316, 4 L Ed. 579)

This doctrine emanates from the "supremacy" of the National Government over local governments.

> "Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (*Johnson v. Maryland*, 254 US 51) and it can be agreed that no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal

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> responsibilities, or even to seriously burden it in the accomplishment of them." (Antieau, Modern Constitutional Law, Vol. 2, p. 140, emphasis supplied)

Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as "a tool for regulation." (*U.S. v. Sanchez*, 340 US 42)

The power to tax which was called by Justice Marshall as the "power to destroy" (*McCulloch v. Maryland*, *supra*) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it. [Emphases supplied]

The Court agrees with PRA that the subject reclaimed lands are still part of the public domain, owned by the State and, therefore, exempt from payment of real estate taxes.

Section 2, Article XII of the 1987 Constitution reads in part, as follows:

> **Section 2.** All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant.

Similarly, Article 420 of the Civil Code enumerates properties belonging to the State:

> Art. 420. The following things are property of public dominion:

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(1) Those **intended for public use**, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are **intended for some public service** or for the development of the national wealth. [Emphases supplied]

Here, the subject lands are reclaimed lands, specifically portions of the foreshore and offshore areas of Manila Bay. As such, these lands remain public lands and form part of the public domain. In the case of *Chavez v. Public Estates Authority and AMARI Coastal Development Corporation*,[12] the Court held that foreshore and submerged areas irrefutably belonged to the public domain and were inalienable unless reclaimed, classified as alienable lands open to disposition and further declared no longer needed for public service. The fact that alienable lands of the public domain were transferred to the PEA (now PRA) and issued land patents or certificates of title in PEA's name did not automatically make such lands private. This Court also held therein that reclaimed lands retained their inherent potential as areas for public use or public service.

As the central implementing agency tasked to undertake reclamation projects nationwide, with authority to sell reclaimed lands, PEA took the place of DENR as the government agency charged with leasing or selling reclaimed lands of the public domain. The reclaimed lands being leased or sold by PEA are not private lands, in the same manner that DENR, when it disposes of other alienable lands, does not dispose of private lands but alienable lands of the public domain. Only when qualified private parties acquire these lands will the lands become private lands. In the hands of the government agency tasked and authorized to dispose of alienable of disposable lands of the public domain, these lands are still public, not private lands.

Furthermore, PEA's charter expressly states that PEA "shall hold lands of the public domain" as well as "any and all kinds of lands." PEA can hold both lands of the public domain and private lands.

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[12] 433 Phil. 506, 589 (2002).

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Thus, the mere fact that alienable lands of the public domain like the Freedom Islands are transferred to PEA and issued land patents or certificates of title in PEA's name does not automatically make such lands private.[13]

Likewise, it is worthy to mention Section 14, Chapter 4, Title I, Book III of the Administrative Code of 1987, thus:

SEC 14. Power to Reserve Lands of the Public and Private Dominion of the Government.—

(1)The President shall have the power to reserve for settlement or public use, and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation.

Reclaimed lands such as the subject lands in issue are reserved lands for public use. They are properties of public dominion. The ownership of such lands remains with the State unless they are withdrawn by law or presidential proclamation from public use.

Under Section 2, Article XII of the 1987 Constitution, the foreshore and submerged areas of Manila Bay are part of the "lands of the public domain, waters x x x and other natural resources" and consequently "owned by the State." As such, foreshore and submerged areas "shall not be alienated," unless they are classified as "agricultural lands" of the public domain. The mere reclamation of these areas by PEA does not convert these inalienable natural resources of the State into alienable or disposable lands of the public domain. There must be a law or presidential proclamation officially classifying these reclaimed lands as alienable or disposable and open to disposition or concession. Moreover, these reclaimed lands cannot be classified as alienable or disposable if the law has reserved them for some public or quasi-public use.

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[13] *Id.* at 584-585.

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As the Court has repeatedly ruled, properties of public dominion are not subject to execution or foreclosure sale.[14] Thus, the assessment, levy and foreclosure made on the subject reclaimed lands by respondent, as well as the issuances of certificates of title in favor of respondent, are without basis.

WHEREFORE, the petition is **GRANTED**. The January 8, 2010 Order of the Regional Trial Court, Branch 195, Parañaque City, is **REVERSED** and **SET ASIDE**. All reclaimed properties owned by the Philippine Reclamation Authority are hereby declared **EXEMPT** from real estate taxes. All real estate tax assessments, including the final notices of real estate tax delinquencies, issued by the City of Parañaque on the subject reclaimed properties; the assailed auction sale, dated April 7, 2003; and the Certificates of Sale subsequently issued by the Parañaque City Treasurer in favor of the City of Parañaque, are all declared **VOID**.

SO ORDERED.

Peralta (Acting Chairperson), del Castillo,[*] *Abad,* and *Perlas-Bernabe, JJ.,* concur.

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[14] *Manila International Airport Authority v. Court of Appeals, supra* note 2.

[*] Designated Additional Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Raffle dated July 18, 2012.