

**ILDEFONSO SANTIAGO, REPRESENTED BY HIS ATTORNEY-IN-FACT,
ALFREDO T. SANTIAGO, PETITIONER, VS. THE GOVERNMENT OF
THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
DIRECTOR, BUR...***G.R. No. L-48214. December 19, 1978*

Ponente: FERNANDO, J.

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The first impression yielded by a perusal of this petition for certiorari is its inherent weakness considering the explicit provision in the present Constitution prohibiting a suit against the Republic without its consent.[1] Here, petitioner Ildefonso Santiago[2] filed on August 9, 1976 an action in the Court of First Instance of Zamboanga City naming as defendant the government of the Republic of the Philippines represented by the Director of the Bureau of Plant Industry.[3] His plea was for the revocation of a deed of donation executed by him and his spouse in January of 1971,[4] with the Bureau of Plant Industry as the donee. As alleged in such complaint, such Bureau, contrary to the terms of the donation, failed to "install lighting facilities and water system on the property donated and to build an office building and parking [lot] thereon which should have been constructed and ready for occupancy on or before December 7, 1974." [5] That led him to conclude that under the circumstances, he was exempt from compliance with such an explicit constitutional command. The lower court, in the order challenged in this petition, was of a different view. It sustained a motion to dismiss on the part of the defendant Republic of the Philippines, now named as one of the respondents, the other respondent being the Court of First Instance of Zamboanga City, Branch II. It premised such an order on the settled "rule that the state cannot be sued without its consent. This is so, because the New Constitution of the Philippines expressly provides that the state may not be sued without its consent." [6] Solicitor General Estelito P. Mendoza, [7] in the comment on the petition filed with this Court, is for the affirmance of the order of dismissal of respondent Court precisely to accord deference to the above categorical constitutional mandate.

On its face, such a submission carries persuasion. Upon further reflection, this Tribunal is impressed with the unique aspect of this petition for certiorari, dealing as it does with a suit for the revocation of a donation to the Republic, which allegedly failed to conform with what was agreed to by the donee. If an order of dismissal would suffice, then the element of unfairness enters, the facts alleged being hypothetically admitted. It is the considered opinion of this Court then that to conform to the high dictates of equity and justice, the presumption of consent could be indulged in safely. That would serve to accord to petitioner as plaintiff, at the very least, the right to be heard. Certiorari lies.

1. This is not to deny the obstacle posed by the constitutional provision. It is expressed in language plain and unmistakable: "The State may not be sued without its consent." [8] The Republic cannot be proceeded against unless it allows itself to be sued. Neither can a department, bureau, agency, office, or instrumentality of the government where the suit, according to the then Justice, now Chief Justice, Castro in *Del Mar v. Philippine Veterans Administration*, [9] may result "in adverse consequences to the public treasury, whether in the

disbursements of funds or loss of property." [10] Such a doctrine was reiterated in the following cases: Republic v. Villasor, [11] Sayson v. Singson, [12] Director of the Bureau of Printing v. Francisco, [13] and Republic v. Purisima. [14]

2. It is contended by counsel for petitioner that the above constitutional provision would be given a retroactive application in this case if the suit for the revocation of donation were dismissed. That is not the case at all. In Republic v. Purisima, this Court made clear that such a basic postulate is part and parcel of the system of government implanted in the Philippines from the time of the acquisition of sovereignty by the United States, and therefore, was implicit in the 1935 Constitution even in the absence of any explicit language to that effect. This it did in a citation from Switzerland General Insurance Co., Ltd. v. Republic of the Philippines: [15] "The doctrine of non-suability recognized in this jurisdiction even prior to the effectivity of the [1935] Constitution is a logical corollary of the positivist concept of law which, to paraphrase Holmes, negates the assertion of any legal right as against the state, in itself the source of the law on which such a right may be predicated. Nor is this all. Even if such a principle does give rise to problems, considering the vastly expanded role of government enabling it to engage in business pursuits to promote the general welfare, it is not obeisance to the analytical school of thought alone that calls for its continued applicability." [16] That is the teaching of the leading case of Mobil Philippines Exploration, Inc. v. Customs Arrastre Service, [17] promulgated in December of 1966. As a matter of fact, the Switzerland General Insurance Co. decision was the thirty-seventh of its kind after Mobil. Clearly, then, the contention that to dismiss the suit would be to give the applicable constitutional provision a retroactive effect is, to put it at its mildest, untenable.

3. Petitioner's counsel invoked Santos v. Santos, [18] a 1952 decision. A more thorough analysis ought to have cautioned him against reliance on such a case. It was therein clearly pointed out that the government entity involved was originally the National Airports Corporation. Thereafter, it "was abolished by Executive Order No. 365, series of 1950, and in its place and stead the Civil Aeronautics Administration was created and took over all the assets and assumed all the liabilities of the abolished corporation. The Civil Aeronautics Administration, even if it is not a juridical entity, cannot legally prevent a party or parties from enforcing their proprietary rights under the cloak or shield of lack of juridical personality, because it took over all the powers and assumed all the obligations of the defunct corporation which had entered into the contract in question." [19] Then came National Shipyard and Steel Corporation v. Court of Industrial Relations, [20] a 1963 decision, where the then Justice, later Chief Justice, Concepcion, as ponente, stated that a government-owned and controlled corporation "has a personality of its own distinct and separate from that of the government. * * * Accordingly, it may sue and be sued and may be subjected to court processes just like any other corporation. (Section 13, Act 1459, as amended)." [21] In three recent decisions, Philippine National Bank v. Court of Industrial Relations, [22] Philippine National Bank v. Honorable Judge Pabalan, [23] and Philippine National Railways v. Union de Maquinistas, [24] this constitutional provision on non-suability was unavailing in view of the suit being against a government-owned or controlled corporation. That point apparently escaped the attention of counsel for petitioner. Hence Santos v. Santos is hardly controlling.

4. It is to be noted further that the trend against the interpretation sought to be fastened in the broad language of Santos v. Santos is quite discernible. Not long after, in Araneta v. Hon. M. Gatmaitan, [25] decided in 1957, it was held that an "action [against] Government officials, is essentially one against the Government, * * *." [26] In the same year, this Court, in Angat River Irrigation System v. Angat River Workers Union, [27] after referring to the "basic and fundamental principle of the law that the Government cannot be sued before courts of justice without its consent," pointed out that "this privilege of non-suability of the Government" covers with the mantle of its protection "an entity," in this case, the Angat River Irrigation System. [28] Then, in 1960, came Lim v. Brownell, Jr., [29] where there was a reaffirmation of the doctrine that a "claim [constituting] a charge against, or financial

liability to, the Government cannot be entertained by the courts except with the consent of said government." [30] Bureau of Printing v. Bureau of Printing Employees Association [31] came a year later; it reiterated such a doctrine. It was not surprising therefore that in 1966, Mobil Philippines Exploration, Inc. was decided the way it was. The remedy, where the liability is based on contract, according to this Court, speaking through Justice J.P. Bengzon, is for plaintiff to file a claim with the general office in accordance with the controlling statute, Commonwealth Act No. 327. [32] To repeat, that doctrine has been adhered to ever since. The latest case in point is Travelers Indemnity Company v. Barber Steamship Lines, Inc. [33] Justice Aquino's opinion concluded with this paragraph: "It is settled that the Bureau of Customs, acting as part of the machinery of the national government in the operation of the arrastre service, is immune from suit under the doctrine of non-suability of the State. The claimant's remedy to recover the loss or damage to the goods under the custody of the customs arrastre service is to file a claim with the Commission on Audit as contemplated in Act No. 3083 and Commonwealth Act No. 327." [34] With the explicit provision found in the present Constitution, the fundamental principle of non-suability becomes even more exigent in its command.

5. The reliance on Santos v. Santos as a prop for this petition having failed, it would ordinarily follow that this suit cannot prosper. Nonetheless, as set forth at the outset, there is a novel aspect that suffices to call for a contrary conclusion. It would be manifestly unfair for the Republic, as donee, alleged to have violated the conditions under which it received gratuitously certain property, thereafter to put as a barrier the concept of non-suability. That would be a purely one-sided arrangement offensive to one's sense of justice. Such conduct, whether proceeding from an individual or governmental agency, is to be condemned. As a matter of fact, in case it is the latter that is culpable, the affront to decency is even more manifest. The government, to paraphrase Justice Brandeis, should set the example. If it is susceptible to the charge of having acted dishonorably, then it forfeits public trust – and rightly so.

6. Fortunately, the constitutional provision itself allows a waiver. Where there is consent, a suit may be filed. Consent need not be express. It can be implied. So it was more than implied in Ministerio v. Court of First Instance of Cebu: [35] "The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen." [36] The fact that this decision arose from a suit against the Public Highways Commissioner and the Auditor General for failure of the government to pay for land necessary to widen a national highway, the defense of immunity without the consent proving unavailing, is not material. The analogy is quite obvious. Where the government ordinarily benefited by the taking of the land, the failure to institute the necessary condemnation proceedings should not be a bar to an ordinary action for the collection of the just compensation due. Here, the alleged failure to abide by the conditions under which a donation was given should not prove an insuperable obstacle to a civil action, the consent likewise being presumed. This conclusion is strengthened by the fact that while a donation partakes of a contract, there is no money claim, and therefore reliance on Commonwealth Act No. 327 would be futile.

7. Our decision, it must be emphasized, goes no further than to rule that a donor, with the Republic or any of its agency being the donee, is entitled to go to court in case of an alleged breach of the conditions of such donation. He has the right to be heard. Under the circumstances, the fundamental postulate of non-suability cannot stand in the way. It is made to accommodate itself to the demands of procedural due process, which is the negation of arbitrariness and inequity. The government, in the final analysis, is the beneficiary. It thereby manifests its adherence to the highest ethical standards, which can only be ignored at the risk of losing the confidence of the people, the repository of the sovereign power. The judiciary under this circumstance has the grave responsibility of living up to the ideal of objectivity and impartiality, the very essence of the rule of law. Only by displaying the neutrality expected of an arbiter, even if it happens to be one of the departments of a litigant, can the decision arrived at, whatever it may be, command respect and be entitled to acceptance.

WHEREFORE, the writ of certiorari prayed for is granted and the order of dismissal of October 20, 1977 is nullified, set aside and declared to be without force and effect. The Court of First Instance of Zamboanga City, Branch II, is hereby directed to proceed with this case, observing the procedure set forth in the Rules of Court. No costs.

Barredo, Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] According to Article XV, Section 16 of the Constitution: "The State may not be sued without its consent."

[2] He is represented by his attorney-in-fact, Alfredo T. Santiago.

[3] Ildefonso Santiago v. Republic of the Philippines, Civil Case No. 249 of the Court of First Instance of Zamboanga City, Branch II.

[4] The exact date is January 20, 1971.

[5] Record on Appeal attached in the Petition for Certiorari, Third Amended Complaint, par. 3, 40.

[6] Order of October 20, 1977 by respondent Court, through District Judge Alberto v. Señeris, 1-2. This Order was included in the petition without counsel for petitioner taking the trouble of identifying it as one of the annexes.

[7] He was assisted by Assistant Solicitor General Octavio R. Ramirez and Solicitor Mariano M. Martinez.

[8] Article XV, Section 16 of the Constitution.

[9] L-27299, June 27, 1973, 51 SCRA 340.

[10] Ibid, 345-346. The quotation is from Begosa v. Chairman, Philippine Veterans Administration, L-25916, April 30, 1970, 32 SCRA 466.

[11] L-30671, April 30, 1970, 32 SCRA 466.

[12] L-30044, December 19, 1973, 54 SCRA 282.

[13] L-31337, December 20, 1973, 54 SCRA 324.

[14] L-36084, August 31, 1977, 78 SCRA 470.

[15] L-27389, March 30, 1970, 32 SCRA 227.

[16] Ibid, 228-229.

[17] L-23139, December 17, 1966, 18 SCRA 1120.

[18] 92 Phil. 281.

[19] Ibid, 285.

[20] 118 Phil. 782.

[21] Ibid, 788.

[22] L-32667, January 31, 1978, 81 SCRA 314.

[23] L-33112, June 15, 1978.

[24] L-31948, July 25, 1978.

[25] 101 Phil. 328.

[26] Ibid, 340.

[27] 102 Phil. 789.

[28] Ibid, 801.

[29] 107 Phil. 344 (1960).

[30] Ibid, 351.

[31] 110 Phil. 952 (1961).

[32] Cf. 18 Phil. 1120, 1127.

[33] L-27019, May 6, 1977, 7 SCRA 10.

[34] Ibid, 12.

[35] L-31635, August 31, 1971, 40 SCRA 464.

[36] Ibid, 470.

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