

**REPUBLIC OF THE PHILIPPINES AS LESSOR, ZOILA DE CHAVEZ,
ASSISTED BY HER HUSBAND COL. ISAAC CHAVEZ, DEOGRACIAS
MERCADO, ROSENDO IBANEZ AND GUILLERMO MERCADO, AS
PERMITTEES AND/OR...**

G.R. No. L-30240. March 25, 1988

Ponente: TEEHANKEE, C.J.

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TEEHANKEE, C.J.:

The moment of truth is finally at hand. It is about time to cause the execution in favor of the Republic of the Philippines of the 1965 final and executory judgment of this Court (Republic vs. Ayala y Cia.[1]) affirming that of the CFI of Batangas in Civil Case No. 373 thereof and to recover for the Republic what “Ayala y Cia., Hacienda de Calatagan and/or Alfonso Zobel had illegally expanded [in] the original area of their TCT No. 722 (derived from OCT No. 20) from 9,652.583 hectares to about 12,000 hectares thereby usurping about 2,000 hectares consisting of portions of the territorial sea, the foreshore, the beach and navigable waters properly belong(ing) to the public domain.”[2]

The Court’s decision in said case found that

“We have gone over the evidence presented in this case and found no reason to disturb the factual findings of the trial court. It has been established that certain areas originally portions of the navigable water or of the foreshores of the bay were converted into fishponds or sold by defendant company to third persons. There is also no controversy as to the fact that the said defendant was able to effect these sales after it has obtained a certificate of title (TCT No. 722) and prepared a ‘composite plan’ wherein the aforesaid foreshore areas appeared to be parts of Hacienda Calatagan. Defendants-appellants do not deny that there is an excess in area between those delimited as boundaries of the hacienda in TCT No. 722 and the plan prepared by its surveyor. This, however, was justified by claiming that it could have been caused by the system (magnetic survey) used in the preparation of the original titles, and, anyway, the excess in area (536 hectares, according to defendants) is within the allowable margin given to a magnetic survey.

“But even assuming for the sake of argument that this contention is correct, the fact remains that the areas in dispute (those covered by permits issued by the Bureau of Fisheries) were found to be portions of the foreshore, beach, or of the navigable water itself. And, it is an elementary principle of law that said areas not being capable of registration, their inclusion in a certificate of title does not convert the same into properties of private ownership or confer title on the registrant.”[3]

The Solicitor General’s Memorandum[4] further points out

“x x x that the modus operandi in said usurpation, i.e. grabbing lands of the public domain, was expressly made of record in the case of *Dizon v. Rodriguez*, 13 SCRA 704 (April 30, 1965), where it was recounted that Hacienda de Calatagan, owned by Alfonso and Jacobo Zobel, was originally covered by TCT No. 722, and that in 1948, upon the cessation of their sugar mill operations, the hacienda owners converted the pier (used by vessels loading sugar) which stretched to about 600 meters off the shore into the navigable waters of the

Pagaspas Bay' into a fishpond dike by enclosing 30 and 37 hectares of the bay on both sides of the pier in the process.

"Subsequently, in 1949, the owners of the hacienda ordered its subdivision which enabled them to acquire titles to the subdivided lots which were outside the hacienda's perimeter. Thus, these subdivided lots, which were converted into fishponds were illegally absorbed as part of the hacienda and titled in the name of Jacobo Zobel which were subsequently sold and transferred to the Dizons, Gocos and others. In said Dizon case, 'this Honorable Court affirmed the court a quo's findings that the subdivision plan was prepared not in accordance with the technical description in TCT. No. 722 but in disregard of it.' And that the appropriated fishpond lots 'are actually part of the territorial waters and belong to the State.' "

But all through the years, as stressed in the Republic's memorandum, "the technical maneuvers employed by Ayala and Zobel [of which the instant petition is an off-shoot] undercut the Republic's efforts to execute the aforesaid 1965 final judgment"[5] to recover the estimated 2,000 hectares of territorial sea, foreshore, beach and navigable waters and marshy land of the public domain.

It may seem incredible that execution of such 1965 final judgment in favor of the Republic no less could have been thwarted for twenty-three years now. But the Republic's odyssey and travails since 1965 through the martial law regime to now are recorded in the annals of our jurisprudence. Suffice it to point out that upon petition of the Republic and its co-petitioners (as permittees and/or lessees of the Republic), mandamus was issued on June 30, 1967 by unanimous decision with one abstention in Republic vs. De los Angeles[6], overruling the therein respondent-judge's refusal to issue a writ of execution of the aforesaid 1965 final judgment and ordering him to issue such writ. The Court denied reconsideration on September 19, 1967, but on a second and supplemental motion for reconsideration, it set aside the original decision of June 30, 1967 and dismissed the petition for mandamus and denied execution, per its Resolution of October 4, 1971 by a split 6-3-2 vote.[7] The court denied the Republic, et al.'s motions for reconsideration by the same split 6-3-2 vote per its Resolution of April 11, 1972.[8] An undermanned Court subsequently denied the Republic's co-petitioner Tolentino's second motion for reconsideration for lack of necessary votes per its Resolution of April 27, 1973.[9]

Parenthetically, the complexity, magnitude and persistence of respondents' maneuvers are set forth in the series of decisions and extended resolutions and majority and dissenting opinions reported in the Supreme Court Reports Annotated as per the citations hereinabove given. A reading of said reports together with the Memorandum for Granting of the Petition at bar (and giving the case's backgrounder) which I had circulated in the Court as against the proposed contrary draft of Justice Estanislao A. Fernandez (which did not gain the concurrence of the majority of the Court during his seventeen-month incumbency from October 20, 1973 to March 28, 1975) shows the full extent background and scope of these maneuvers, particularly those in the present case. For the sake of brevity and conciseness, I attach the said Memorandum as Annex A hereof and make the same an integral part of this decision, instead of reproducing the same in the body of this opinion.

Pending respondents' maneuvers in this Court for thwarting the issuance of a writ for execution of the aforesaid 1965 final judgment for the Republic's recovery of land and waters of the public domain in the 1967 mandamus case brought by the Republic, supra, they intensified their maneuvers to defeat the Republic's judgment for recovery of the public lands and waters when they got the trial judge, notwithstanding this Court's final 1965 judgment for reversion of the public lands, to uphold their refusal to recognize the rights of the Republic's public fishponds permittees and/or lessees to the lands leased by the Republic to them. Thus, the Republic as lessor and said permittees/lessees as co-petitioners filed through then Solicitor General Antonio P. Barredo their Amended Complaint of August 2, 1967 in Civil Case No. 653 against herein respondent Enrique Zobel as defendant and the Register of Deeds of Batangas. As summarized by the Solicitor General in his Memorandum of June 1, 1984:

Respondent Zobel had ousted Zoila de Chavez, a government's fishpond permittee, from a portion of the subject fishpond lot described as Lot 33 of Plan Swo-30999 (also known as Lots 55 and 56 of subdivision TCT No. 3699) by bulldozing the same, and threatened to eject fishpond permittees Zoila de Chavez, Guillermo Mercado, Deogracias Mercado and Rosendo Ibanez from their respective fishpond lots described as Lots 4, 5, 6 and 7 and Lots 55 and 56, of Plan Swo-30999, embraced in the void subdivision titles TCT No. 3699 and TCT No. 9262 claimed by said respondent. Thus, on August 2, 1967, the Republic filed an Amended Complaint captioned "Accion Reinvidicatoria with Preliminary Injunction" against respondent Zobel and the Register of Deeds of Batangas, docketed as Civil Case No. 653, for cancellation of Zobel's void subdivision titles TCT No. 3699 and TCT No. 9262, and the reconveyance of the same to the government; to place aforementioned fishpond permittees in peaceful and adequate possession thereof; to require respondent Zobel to pay back rentals to the Republic; and to enjoin said respondent from usurping and exercising further acts of dominion and ownership over the subject land of public domain;

Respondent Zobel, however, filed a Motion to Dismiss Amended Complaint, dated August 16, 1967, contending inter alia that said Amended Complaint (Civil Case No. 653) is barred by prior judgment in Civil Case 373 (G.R. No. L-20950, the 1965 final judgment in favor of the Republic), and arguing that "if TCT Nos. T-3699 and T-9262 had been declared null and void in Civil Case No. 373, the proper procedure would be to secure the proper execution of the decision in the same proceedings and not thru the filing of a new case." He further contended "that there is another action pending between the same parties for the same cause," and points to the above-mentioned mandamus case, G.R. No. L-26112 anent execution of Civil Case No. 373 as the said pending case. His aforesaid motion, however, was denied by the trial court in its order of December 13, 1967, and accordingly he was required to file his answer;

But in his answer with counterclaim, respondent Zobel averred, among others, that the subject TCT Nos. 3699 and 9262 registered in his name are valid and subsisting since in the decision under G.R. No. L-20950 "only TCT No. T-9550 was specifically declared as null and void and no other;" and that when Civil Case No. 373 was docketed, respondent Enrique Zobel "was and still is at present one of the members and managing partners of Ayala y Cia., one of the defendants in the said civil case, and, therefore, privy thereto." He then prayed for a writ of preliminary mandatory injunction restoring to him possession of the subject land, and further prayed for judgment ordering Zoila de Chavez and Guillermo Mercado to vacate the premises in question and to surrender possession thereof to defendant Zobel. This was unfortunately granted by respondent Judge De los Angeles per the impugned order at bar of October 1, 1968. (Annex D, petition). Hence, the filing of the instant petition.

On March 7, 1969, the Court issued a restraining order in the case at bar, enjoining respondent judge from enforcing the writ of preliminary mandatory injunction until further orders;

While G.R. No. L-26112 (re: execution) and G.R. No. L-30240 (the case at bar) were pending, the Republic filed its motion of July 8, 1970 in Civil Case No. 373, for authority to conduct the necessary resurvey of the lands affected so as to properly segregate from Ayala and Zobel's private land originally covered by TCT No. 722 the areas outside thereof comprising about 2,000 hectares of public land, beach, foreshore and territorial sea. Ayala and Zobel vigorously opposed the same, contending again that the proper step for the government was to ask for a writ of execution; that no other subdivision titles, beside TCT No. T-9550 were really declared null and void in the 1965 judgment; and that the lower court could not make a ruling on the motion for resurvey "without requiring the presentation of additional evidence, and that, in effect, would be tantamount to reopening a case where the judgment is already final and executory and that the Government's failure to seek a "clarification of the decision to find out what other titles should have been declared null and void" precludes it from doing so now, "since the decision is now final and executory." The respondent judge, having earlier denied execution of the

1965 final judgment, issued his order of October 27, 1970 denying the Government's motion for authority to conduct such prerequisite resurvey;

Ayala and Zobel's technical maneuvers to impede execution of the 1965 final judgment again bore fruit, as above indicated, when their second motion for reconsideration in G.R. No. L-26112 was granted by a split Court in a Resolution dated October 4, 1971 (41 SCRA 422). As a result, the earlier decision of June 30, 1967 directing the issuance of the writ of execution was set aside and the Republic's petition for certiorari and mandamus impugning the lower court's quashal and denial of the writ of execution was dismissed.

While the Court's new majority denied the Republic's motion for reconsideration of aforesaid resolution, per its resolution of April 11, 1972, it, however, made the important modification that said denial "does not constitute a denial of the right of the Republic to the cancellation of the titles nullified by the decision of Judge Tengco (in Civil Case No. 373) affirmed by this Court (in G.R. No. L-20950)." It also stated that: "(E)ven the (trial court's) order of October 27, 1970 about the resurvey merely held the remedy to be premature until the decision in this case has become final. Of course, it is understood that in such eventuality, the resurvey requested by the Provincial Fiscal would be in order and as soon as the same is completed, the proper writ of execution for the delivery of possession of the portions found to be public land should issue." (G.R. No. L-26112, 44 SCRA 255, 262 [1972]) Thus, the majority's denial of the motions for reconsideration was made expressly "with the clarification aforemade of the rights of the Republic."

[Note: My attached Memorandum, Annex A hereof (at pages 2 to 6 thereof), quotes more extensively the same pronouncements of the ponente, Justice Villamor, speaking for the majority, that the Resolution simply cancelled out the final damage award in favor of intervenor Tolentino, as government permittee/lessee; it covers as well similar pronouncements from Justice Makalintal in his separate concurrence that "The resolution in no way affects the rights of the Government as declared in the decision," and Justice Barredo's separate concurrence that "I am sure that the five justices whom I am joining in denying Petitioner's motion for reconsideration are as firm as the three distinguished dissenters in the resolution not to allow this Court to be an instrument of land-grabbing as they are against the reversal or even modification in any substantial degree of any final and executory judgment whether of this Court or any other court in this country, and, that if there were such possibilities in consequence of the resolution of October 4, 1971 and the present resolution of denial, they would not give their assent to said resolutions. We are certain that in deciding against Petitioner Tolentino, We are not condoning nor permitting that the lands in question remain with the Dizons or with the Ayalas."

In my dissenting opinion, I expressed gratification that the dissents (submitted by then Chief Justice Roberto Concepcion and myself, both concurred in by Justice J.B.L. Reyes) had contributed to the overriding clarification "that the majority's position - although it denies reconsideration and maintains reversal of the June 30, 1967 decision at bar - is that the Government may now finally effect reversion and recover possession of all usurped areas of the public domain 'outside (Ayala's) private land covered by TCT No. 722, which including the lots in T-9550 (Lots 360, 362, 363 and 182) are hereby reverted to public dominion.' (Paragraph [a] of 1965 judgment)."[10]

After said G.R. No. L-26112 was finally disposed of, herein petitioner filed in Civil Case No. 373, a "Motion to Resurvey." This was granted in an Order dated August 21, 1973, as well as in the Orders of December 27, 1973 and February 26, 1974, respectively. About three (3) years later, a Report on the Resurvey dated August 5, 1977 (Annex "A" to Republic's Comment dated March 30, 1981), as well as the "Final Report" thereon dated September 2, 1977 and the "Resurvey Plan" (Annexes "B" and "C", *ibid*) were approved by the Director of Lands and the Secretary of Agriculture and Natural Resources. The Resurvey further confirmed the uncontroverted fact that the disputed areas in the case at bar form part of the expanded area already reverted to

public dominion.

Upon approval of said Resurvey Plan and Report, petitioner submitted the same to the trial court in Civil Case No. 373. However, notwithstanding its approval by the Director of Lands, and the Secretary of Agriculture and Natural Resources, Judge Jesus P. Arlegui [who had been assigned to respondent Judge De los Angeles' court in Batangas upon the latter's retirement] arrogating unto himself the function which properly belongs to the Director of Lands, disapproved the said Report and Resurvey Plan, thereby preventing execution of the subdivision (a) of the decision in Civil Case No. 373. In effect, such disapproval by Judge Arlegui was intended to negate the earlier resolution in G.R. No. L-26112 (44 SCRA 255, 263) that as soon as resurvey "is completed the proper writ of execution for the delivery of possession of the portions found to be public land should issue;"

Earlier, in Civil Case No. 653, respondent Zobel filed on July 10, 1969 a Motion to Suspend Further Hearing, etc., praying that the hearings in said Civil Case be indefinitely suspended until the case at bar is resolved by this Honorable Court. He contended that the issues raised in the case at bar are the very issues pending in the case below, Civil Case No. 653, and that the decision that the Court renders here "would greatly affect the respective claims of said parties in (said) case." (G.R. No. L-46396, Record, pp. 128-130)

The aforesaid motion was followed by respondent Zobel's Motion for Immediate Resolution of Defendant-Movant's Motion to Suspend, etc., dated August 20, 1969. An opposition thereto was filed by plaintiff therein and a reply was filed in turn by respondent Zobel on July 30, 1969. Acting on the said motions, the trial court issued an order on September 2, 1969 giving the parties certain periods to file their pleadings and cancelling a scheduled hearing until it shall have resolved the motion to suspend.

Since that time, however, the trial court chose not, or failed, to act formally on the aforesaid motion to suspend hearings. Then after five (5) years, with the trial court now presided by Judge Arlegui, respondent Zobel flip-flopped and filed a Motion to Dismiss the case below dated January 14, 1976, claiming alleged failure to prosecute and res judicata, which was vigorously opposed by herein petitioner. Judge Arlegui, robot-like, nonetheless dismissed the Republic's complaint for Zobel's alleged grounds of failure to prosecute for an unreasonable length of time and res judicata per his order of January 12, 1977.

A 35-page motion for reconsideration thereof was filed by petitioner within the extended period sought for in an earlier motion. The then Presiding Judge Arlegui summarily denied the motion for extension of time earlier filed, per its order of March 3, 1977.

The "Motion for Reconsideration of Order" dated March 3, 1977, and "Supplement to Motion for Reconsideration of Order" dated March 3, 1977, were similarly denied by Judge Arlegui in his order dated June 14, 1977. Petitioner Republic thus elevated the matter to this Court by certiorari and mandamus which was docketed as G.R. No. L-46396,[11] and asked that it be consolidated with the case at bar which from the beginning was assigned to the Court en banc. However, G.R. No. L-46396 was somehow assigned to the Second Division of the Court which peremptorily dismissed the petition per its minute resolution dated December 17, 1977, which reads:

"Acting on the petition for certiorari and mandamus in this case as well as the comment thereon of the private respondent and the reply of petitioner and rejoinder thereto of said respondent, the Court resolved to DISMISS the petition, considering that although the motion for extension of time to file a motion for reconsideration of petitioner dated February 19, 1977 may be deemed as filed within the reglementary period for appeal, the same did not suspend said period which expired on February 21, 1977 (Gibbs vc. Court of First Instance of Manila, 80 Phil. 160, where the appeal, albeit late by one day, was nevertheless allowed on the ground that under the peculiar circumstances of the case showing utmost effort on the part of appellant to make the same on time, there was excusable neglect, which does not obtain here) because 'the petition for extension of time should not

interrupt the period fixed by law for the taking of the appeal' on the ground that the 'the only purpose of said petition is to ask the court to grant an additional period to that fixed by law to that end.' (Alejandro v. Endencia, 64 Phil. 321)."

Soon after the dismissal of the petition in G.R. No. 46396, respondent Zobel filed in this case a "Motion to Dismiss Petition" and "Manifestation and Motion to Lift Temporary Restraining Order" issued on March 7, 1969, and another supplemental motion, on the ground that the instant case has become moot and academic by the dismissal of the complaint in Civil Case No. 653 in the court below. This was refuted by the herein petitioner in its Comment dated March 30, 1981.

On December 15, 1981, Judge Arlegui precipitately rendered in Civil Case No. 653 a decision on the Counterclaim of herein respondent Zobel, declaring him the true, absolute and registered owner of the lands covered by Transfer Certificate of Title Nos. 3699, T-7702 and 9262 (now No. 10031) and directing the Government's licensees and permittees occupying the same to vacate the lands held by them.

Subsequently, on March 9, 1982, Judge Arlegui issued a writ of execution in Civil Case No. 653, prompting the heirs of Guillermo Mercado to file in this case an Urgent Motion dated March 22, 1982 to stay the same. Acting on the Urgent Motion, the Court issued another restraining order dated June 17, 1982, emphasizing the necessity therefor in this wise:

"x x x the issuance of the restraining order now prayed for by movants-heirs of Guillermo Mercado is necessary to retain the status quo since whatever rights they have are only in representation of the petitioner Republic who claims the said lands by virtue of their reversion to the public dominion as specifically adjudged by this Court in G.R. No. L-26112."

Respondent Zobel then moved for a reconsideration and lifting of aforesaid restraining order. The heirs of intervenor Zoila de Chavez, on the other hand, moved for a preliminary mandatory injunction to restore them in possession of a portion of the land in dispute from where they had been ousted by virtue of the writ of execution issued in Civil Case No. 653.

In a Consolidated Comment dated September 30, 1982, petitioner Republic opposed the said motion of respondent Zobel, and at the same time concurred with the motion filed by the heirs of Zoila de Chavez for the issuance of a writ of preliminary mandatory injunction.

On or about November 8, 1983, the heirs of intervenor Guillermo Mercado filed an "Urgent Motion for Contempt and Issuance of a Temporary Restraining Order, etc.," as respondent Zobel's representative, in spite of the restraining order enjoining them from enforcing the writ of execution, had begun to acquire possession of the land in question by cutting off trees in the undeveloped fishpond being leased by Mercado from the Government.

On November 10, 1983, the Court issued the corresponding restraining order prayed for "enjoining respondent Enrique Zobel or his duly authorized representative from further cutting off trees in the undeveloped fishpond of Guillermo Mercado having an area of Two (2) hectares, more or less, and from hauling the big trees already cut off costing P10,000.00 (Resolution dated November 10, 1983).

On or about November 23, 1983, the heirs of Guillermo Mercado filed a "Second Urgent Motion for Contempt and a Second Restraining Order, etc." since, in spite of the foregoing restraining order issued by this Court, respondent Zobel and his agent were still cutting off the trees in the disputed areas.

On December 6, 1983, after the hearing en banc of this case on the merits, a resolution was rendered by this Court "to ISSUE a second temporary restraining order enjoining respondent Enrique Zobel and agents, representatives and/or any other person or persons acting on his behalf to desist from cutting off or removing any tree in the

questioned areas which were declared reverted to the public domain and which are claimed by the Republic, effective immediately and until further orders by the Court.”

Against this background, respondent Zobel now contends that his TCT No. 3699 and TCT No. 9262 (now T-10031) are valid and subsisting as said titles “cannot be considered automatically annulled” by the decision in G.R. No. L-20950; that the decision in G.R. No. L-20950 annulled only TCT No. 9550 and no other; that he cannot be bound by the decision in said G.R. No. L-20950 since he was not a party thereto; that the dismissal of Civil Case No. 653 and of the appeal therefrom by the Republic has quieted his questioned titles and has rendered the instant petition moot and academic; that the decision on his counterclaim in Civil Case No. 653 declaring him to be the true and registered owner of the subject land had long become final and executory, and that under the principle of *res judicata* the present petition ought to be dismissed; and that intervenors Mercado and Chavez have no right of possession over the land in question.

The Republic’s petition is patently meritorious.

- On the original issue at bar brought against respondent Judge Angeles’ issuance of preliminary mandatory injunction per the questioned Order of October 1, 1968, petitioner Republic and its co-petitioners licensees are manifestly entitled to the restraining orders issued by the Court on March 7, 1969 enjoining respondent judge from enforcing the preliminary mandatory injunction that he had issued that would oust the Republic and its licensees from the public lands in question and transfer possession thereof to respondent Zobel; that issued on June 17, 1982 enjoining enforcement of respondent Judge Arlegui’s writ of execution issued on March 9, 1982 declaring without trial respondent Zobel (on his counterclaim to the dismissed complaint) as the true and registered owner of the lands covered by TCT Nos. 3699, T-7702 and 9262 (now 10031) and directing the Republic’s licensees to vacate the same; and that issued on December 6, 1983 after the hearing on the merits, “enjoining respondent Enrique Zobel and his agents, representatives and/or any other person or persons acting on his behalf to desist from cutting off or removing any tree in the questioned areas which were declared reverted to the public domain and which are claimed by the Republic.”

Respondent Judge Arlegui, after he succeeded Judge Angeles as presiding judge, committed the gravest abuse of discretion, when, instead of granting the preliminary injunction sought by the Republic and its co-petitioners to enjoin respondent Zobel from usurping lands of the public domain covered by his voided expanded subdivision titles, he dismissed the complaint on January 12, 1977 and almost four years later on December 15, 1981, without any trial, granted said respondent’s counter prayer in his Answer to the complaint in Civil Case No. 653 for the issuance of a mandatory injunction upon a P10,000.00 bond to oust petitioner Republic and its permittees and/or lessees from the property and to deliver possession thereof to respondent Zobel. It is settled doctrine that as a preliminary mandatory injunction usually tends to do more than to maintain the status quo, it is generally improper to issue such an injunction prior to the final hearing and that it may issue only in cases of extreme urgency, where the right is very clear.[12]

Contrary to respondent Zobel’s assertion, the 1965 final judgment in favor of the Republic declared as null and void, not only TCT No. 9550, but also “other subdivision titles” issued over the expanded areas outside the private land of Hacienda Calatagan covered by TCT No. 722. As shown at the outset,[13] after respondents ordered subdivision of the Hacienda Calatagan which enabled them to acquire titles to and “illegally absorb” the subdivided lots which were outside the hacienda’s perimeter, they converted the same into fishponds and sold them to third parties. But as the Court stressed in the 1965 judgment and time and again in other cases, it is an elementary principle of law that said areas not being capable of registration, their inclusion in a certificate of title does not convert the same into properties of private ownership or confer title on the registrant.”[14] This is crystal clear from the dispositive portion or judgment which reads:

WHEREFORE, judgment is hereby rendered as follows:

(a) Declaring as null and void Transfer Certificate of Title No. T-9550 (or Exhibit “24”) of the Register of Deeds of the Province of Batangas and other subdivision titles issued in favor of Ayala y Cia and/or Hacienda de Calatagan over the areas outside its private land covered by TCT No. 722, which, including the lots in T-9550 (lots 360, 362, 363 and 182) are hereby reverted to public dominion.”

This final 1965 judgment reverting to public dominion all public lands unlawfully titled by respondent Zobel and Ayala and/or Hacienda Calatagan is now beyond question, review or reversal by any court, although as sadly shown hereinabove, respondents’ tactics and technical maneuvers have all these 23 long years thwarted its execution and the Republic’s recovery of the lands and waters of the public domain.

Respondent Zobel is bound by his admission in his Answer to the complaint below that when Civil Case No. 373 was docketed, he “was and still is at present one of the members and managing partners of Ayala y Cia., one of the defendants in the said civil case, and, therefore, privy thereto.”

Clearly, the burden of proof lies on respondent Zobel and other transferees to show that his subdivision titles are not among the unlawful expanded subdivision titles declared null and void by the said 1965 judgment. Respondent Zobel not only did not controvert the Republic’s assertion that his titles are embraced within the phrase “other subdivision titles” ordered cancelled but failed to show that the subdivision titles in his name cover lands within the original area covered by Ayala’s TCT No. 722 (derived from OCT No. 20) and not part of the beach, foreshore and territorial sea belonging and ordered reverted to public dominion in the aforesaid 1965 judgment.

- The issues at bar have been expanded by the parties, as shown by the voluminous records of the case (which have expanded to 2,690 pages in three volumes); to cover the questioned actions of respondent Judge Arlegui (a) in dismissing the Republic’s complaint in Civil Case No. 653 of his court per his Order of January 12, 1977 (subject of the Court’s Second Division’s Resolution of December 17, 1979 dismissing the Republic’s petition for review in Case G.R. No. L-46396); and (b) his decision of December 15, 1981, after almost four years, on respondent Zobel’s counterclaim in the same case, declaring him the true and registered owner of the lands covered by some three subdivision titles in his name,[15] as well as (c) the resurvey of the lands affected so as to properly segregate from Ayala’s expanded TCT No. 722 the estimated 2,000 hectares of territorial sea, foreshore and navigable waters, etc., of the public domain and enforcement and execution of the 1965 final judgment reverting these usurped public areas to public dominion.[16]

- On the first question of the precipitate dismissal of the Republic’s complaint in the case below, Civil Case No. 653, the records show respondent judge’s action to have been capricious, arbitrary and whimsical. His first ground of non-prosecution of the action by the Republic is belied by his very Order which shows that the proceedings had been suspended all the while since its filing in 1967 upon insistent motions of respondent Zobel, against petitioner’s vigorous opposition, that it was necessary as a *cuestion previa* to await the Court’s resolution of the case at bar.

His second ground of *res judicata* is likewise devoid of logic and reason. The first case (the 1965 judgment in Case L-20950) decreeing the reversion to public dominion of the public lands and waters usurped by respondent’s unlawfully expanded titles and ordering the cancellation of all such titles and their transfers could not possibly be invoked as *res judicata* the case at bar on respondent Zobel’s untenable submission that his unlawfully expanded titles were not specifically mentioned in the 1965 judgment. The Court in said 1965 judgment had stressed the elementary rule that the generally incontestable and indefeasible character of a Torrens Certificate of Title does not operate when the land covered thereby is not capable of registration, as in this case, being part of the sea, beach, foreshore or navigable water or other public lands incapable of registration.[17] It should be noted further that the doctrine of estoppel or laches does not apply when the Government sues as a Sovereign or asserts

governmental rights, nor does estoppel or laches validate an act that contravenes law or public policy,[18] and that res judicata is to be disregarded if its application would involve the sacrifice of justice to technicality.[19]

Respondent Judge Arlegui's refusal to grant the Republic a simple 15-day extension of time to file a Motion for Reconsideration on the ground that such motion was filed on the last day (following a Sunday) and he could no longer act thereon within the original period per his Orders of March 3, 1977 and June 14, 1977[20] depict an incomprehensible disregard of the cardinal principle that procedural rules are supposed to help and not hinder the administration of justice and gross indifference, if not outright hostility against the public interest.

At any rate, such dismissal of the complaint and dismissal on December 17, 1979 of the petition for certiorari thereof by the Court's Second Division, based on purely procedural and technical grounds, does not and cannot in any way have any legal significance or prejudice the Republic's case. Such dismissal by the Second Division cannot in any way affect, much less render nugatory, the final and executory 1965 judgment in G.R. No. L-20950 reverting the public lands and waters to public dominion. Much more so when we take into account the mandatory provisions of Article VIII, section 4(3) of the 1987 Constitution (and its counterpart Article X, section 2(3) of the 1973 Constitution) to the effect that only the Supreme Court en banc may modify or reverse a doctrine or principle of law or ruling laid down by the Court in a decision rendered en banc or in division.

- Respondent judge's "decision" on respondent Zobel's counterclaim and declaring him, four years after dismissal of the Republic's complaint, as the true owner of the lands unlawfully titled in Zobel's name is properly before the Court in the case at bar. We declare the same null and void for want of jurisdiction over the subject properties which were reverted to public dominion in the final 1965 judgment which annulled all expanded titles unlawfully secured by respondents and their transferees to public waters and lands.

- As to the third and most important question of finally executing and enforcing the 1965 judgment in favor of the Republic and reverting all usurped areas to public dominion, the Solicitor General has complained rightfully in his Memorandum that "mass usurpation of public domain remains unabated for almost (23) years now execution of the 1965 final judgment in G.R. No. L-20950, ordering the cancellation of the subdivision titles covering the expanded areas outside the private lands of Hacienda Calatagan, is being frustrated by respondent Zobel, the Ayala and/or Hacienda Calatagan. As a consequence, the mass usurpation of lands of public domain consisting of portions of the territorial sea, the foreshore, beach and navigable water bordering Balayan Bay, Pagaspas Bay and the China Sea, still remain unabated. (T)he efforts of Ayala and Zobel to prevent execution of said final judgment are evident from the heretofore-mentioned technical maneuvers they have resorted to. In brief, they moved to quash and secured the quashal of the writ of execution, succeeded in opposing the issuance of another writ of execution, opposed the motion to conduct resurvey, opposed the approval and secured a disapproval of resurvey plan, moved to dismiss and got a dismissal of Civil Case No. 653, ousted government fishpond permittees from the subject lands and threatened to eject the other permittees therefrom, and secured from the lower court a declaration of validity of their void titles. Also, in this case, respondent Zobel is trying to prevent the cancellation of his void titles by resorting to frivolous technicalities thus flouting this Honorable Court's decision in G.R. No. L-20950." [21]

We heed the Republic's pleas that

"It bears stressing that the Resurvey Plan (Annex 'C', together with Annexes 'A' and 'B' of Republic's Comment dated March 30, 1981, being a Report on the Resurvey dated August 5, 1977 and the 'Final Report' dated September 2, 1977, respectively) delineating the expanded areas covered by subdivision titles derived from TCT No. 722 has been prepared by a Committee created by the Secretary of Agriculture and Natural Resources wherein Ayala and/or Hacienda Calatagan was represented by Engineer Tomas Sanchez, Jr. and approved by the Director of Lands. Well to recall that under G.R. No. 26112 (44 SCRA 255, 263), this Honorable Court, in a Resolution dated April 11, 1972, declared that as soon as said resurvey 'is completed the proper writ of execution for the delivery of possession of the portion found to be public land should issue.'

Thus: [See pages 3-5 of Annex 'A' hereof for text of Resolution.]

“By virtue of the aforesaid resolution, therefore, there should no longer be any legal impediment against the execution of the final judgment in Civil Case No. 373 (G.R. No. L-20950), the issuance of which is purely ministerial - the dubious decision in Civil Case No. 653 notwithstanding. Accordingly, to give legal significance to the earlier decision and resolution of this Honorable Court in G.R. No. L-20950 and 26112, respectively, and to foreclose any further legal obstacle on the matter, we pray this Honorable Court to declare the proceedings conducted by respondent judge in Civil Case No. 653 null and void ab initio, and to consider the resurvey plan as sufficient basis for the immediate issuance of the corresponding writ of execution in Civil Case No. 373. For it is only upon said execution that the oft revived issues of ownership and possession over the land in question, as well as over all other lots covered by subdivision titles outside the private land covered by TCT No. 722, may be finally laid to rest. Indeed, under the facts and circumstances obtaining in the case at bar, execution of the final judgment in Civil Case No. 373 is long overdue.”[22]

To allow repetition after repetition of the maneuvers hereinabove set forth in detail, notwithstanding the final 1965 judgment in favor of the Republic, and to protract further the return to the Republic of the usurped lands pertaining to the public domain would be to sanction a legal abomination. As stated by the late Chief Justice Roberto Concepcion, to frustrate delivery and return of the usurped lands to the Republic would:

“(1)

Establish a precedent - fraught with possibilities - tending to impair the stability of judicial decisions and affording a means to prolong court proceedings or justify the institution of new ones, despite the finality of the judgment or decree rendered in the main case, by sanctioning a departure from the clear, plain and natural meaning of said judgment or decree;

(2)

Contribute to the further increase of the steadily mounting number of cases pending before our courts of justice, and thus generate greater delay in the determination of said cases, as well as offset the effect of legislative and administrative measures taken - some upon the suggestion or initiative of the Supreme Court - to promote the early disposal of such cases;

“(3)

Impair a normal and legitimate means to implement the constitutional mandate for the protection and conservation of our natural resources and the patrimony of the nation; and

“(4)

Promote usurpations of the public domain, as well as the simulation of sales thereof by the original usurper, by exempting him from responsibility for damages - which would not have been sustained were it not for the irregularities committed by him - so long as he has conveyed the subject matter thereof to a purchaser for value, in good faith.”[23]

As in *Air Manila, Inc. v. CIR*[24] and several other cases, in order to avoid further intolerable delay and bring to reality the execution of the 1965 judgment that would enable the State to recover at last the estimated 2000 hectares of lands and waters of the public domain, the Court will order its Clerk of Court to issue directly the corresponding writ of execution of judgment addressed to the sheriffs of the locality. We declare respondent

judge's gratuitous "disapproval" of the Resurvey Plan and Report duly approved by the Director of Lands and the then Secretary of Agriculture and Natural Resources as null and void for being ultra vires and lack of jurisdiction over the same. It is well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts. In general, courts have no supervising power over the proceedings and actions of the administrative departments of government. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact.[25] There should be no thought of disregarding the traditional line separating judicial and administrative competence, the former being entrusted with the determination of legal questions and the latter being limited as a result of its expertise to the ascertainment of the decisive facts.[26]

WHEREFORE, judgment is hereby rendered

- Annulling the questioned mandatory injunction of October 1, 1968 issued by respondent judge and making permanent the restraining orders issued by the Court;
- Declaring as null and void the questioned decision of December 15, 1981, as well as the corresponding writ of execution therefor, having been issued by respondent judge with grave abuse of discretion and without jurisdiction, and for being in contravention of the final 1965 decision in Civil Case No. 373 as affirmed in G.R. No. L-20950;
- Declaring the Resurvey Plan duly approved by the Director of Lands as sufficient basis for the execution of the final judgment in the aforesaid Case No. 373 as affirmed in G.R. No. L-20950; and
- Directing the Clerk of this Court to forthwith issue the corresponding writ of execution in the case at bar for Civil Case No. 373 of the Regional Trial Court (formerly Court of First Instance) of Batangas (Balayan, Branch) reverting to public dominion and delivering to the duly authorized representatives of the Republic all public lands and lots, fishponds, territorial bay waters, rivers, manglares, foreshores and beaches, etc. as delineated of the aforesaid duly approved Resurvey Plan (Annex "C") and any supplemental Resurvey Plan as may be found necessary* and duly approved by the Secretary of Agriculture.

This decision is IMMEDIATELY EXECUTORY and no action for extension of time to file a motion for reconsideration will be granted.

Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, and Cortes, JJ., concur.

Padilla, and Griño-Aquino, JJ., took no part.

[1] Rep. of the Phil. vs. Ayala y Cia, and/or Hacienda Calatagan, Alfonso Zobel, et al.; Miguel Tolentino, et al., intervenors, reported in 14 SCRA 259, per Barrera, J. (May 31, 1965).

[2] Solicitor General's Memorandum of June 1, 1984, page 2.

[3] 14 SCRA at pp. 262-263, emphasis supplied.

[4] At pages 3-4; see fn. 2, supra.

[5] Idem, at page 1.

[6] Reported in 20 SCRA 608, per Concepcion, C.J., Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concurring; Dizon, J. took no part.

[7] Reported in 41 SCRA 422, per Villamor, J., Makalintal, Zaldivar, Ruiz Castro, Fernando and Barredo, JJ. concurring; Concepcion, C.J., Reyes, J.B.L. and Teehankee, JJ., dissenting; Dizon and Makasiar, JJ, took no part.

[8] Reported in 44 SCRA 264.

[9] Reported in 60 SCRA 497. Villamor, J. had retired. Four members, Makalintal, Zaldivar, Ruiz Castro and Fernando, JJ, voted for denial. Teehankee, J., joined by Esguerra, J., voted to grant. (Concepcion, C.J. and Reyes, J.B.L., J. had retired.) The remaining three members of the 9-member Court (namely, Barredo, Makasiar and Antonio, JJ.) did not take part.

Justice Barredo took no part because of petitioners' supplemental motion for reconsideration to declare him disqualified and nullify his vote in the Resolution of October 4, 1971 which would revive the original decision of June 30, 1967.

The following pertinent excerpts from my dissenting opinion against the Resolution of April 27, 1973 would be of interest to legal scholars and researchers who have followed this classic case on finality (or non-finality) of judgments (since it was not given much currency at the time and was reported quite late in 60 SCRA 497, more than a year after its promulgation):

"6. A word as to petitioner's motion - incorporated in his pending second motion for reconsideration of May 11, 1972 to strike out the remarks of Justice Makalintal in his concurring opinion of 11 April 1972 with reference to my dissenting opinion of the same date that 'x x x The undisguised bitterness of the dissent, it would seem, proceeds from the fact that Tolentino has failed to collect this huge and, in our view, undeserved largesse.'

"As per the Court's resolution of 2 August 1972, the Court unanimously denied the motion to strike out. The writer himself was first to vote for such denial, in view of his conviction that every member of this Court should be perfectly free to express his views in any manner he deems fit when he chooses to write a separate personal opinion, accountable to no one except to himself, his conscience and his own sense of propriety and decorum.

"Hence, the incident was disposed of much earlier on 2 August 1972, without the Court as yet having deliberated upon the merits of petitioner's second motion for reconsideration, contrary to respondents' erroneous conjecture in their urgent motion for resolution dated January 16, 1973 that the Court then already took up the merits of said motion for reconsideration.

"7. From the writer's own viewpoint, he strove, as has been his norm, to state the grounds of his dissent forcefully, but objectively and with due regard for the contrary views of his colleagues. He was solely concerned with upholding the views shared by him with Chief Justice Concepcion (who had penned the original decision at bar of 30 June 1967 overturned by the resolution of 4 October 1971 and who filed the main dissenting opinion thereto) against usurpations of the public domain and violating the settled rules on finality conclusiveness of the law of the case and the accepted norms of due process and fair play. These were the very views expounded and amplified by him when he wrote the main dissenting opinion against the resolution of 11 April 1972 denying the State's and Tolentino's motions for reconsideration."

[10] 60 SCRA at page 503.

[11] Entitled "Republic of the Philippines v. Hon. Jesus Arlegui, presiding judge, Court of First Instance of Batangas, Br. VII (Balayan), Enrique Zobel and the Register of Deeds of Batangas".

[12] Manila Electric Railroad & Light Company v. Del Rosario, et al., 22 Phil. 433

[13] Supra, pp. 1-4 hereof

[14] 14 SCRA at pp. 262-263

[15] Supra, at page 19 hereof.

[16] Supra, at pages 1-4 hereof.

[17] Dizon v. Rodriguez, 13 SCRA 704, per Barrera, J.

[18] Go Tian An v. Republic, 17 SCRA 1053.

[19] Santiago v. Ramirez, 8 SCRA 157 (1963); Ronquillo v. Marasigan, 5 SCRA 304 (1962)

[20] Record in G.R. No. L-46396, pp. 329-347; 348-357; and 358-368.

[21] Solicitor General's Memo of June 1, 1984, pp. 23-24.

[22] Idem, pp. 33-35.

[23] Record in G.R. No. L-26112, pp. 735-736 separate opinion.

[24] 101 SCRA 472, 484.

[25] Abejo v. de la Cruz, 149 SCRA 654 (1987); Pajo v. Ago, 108 Phil. 905; Lim, Sr. v. Secretary of Agriculture and Natural Resources, 34 SCRA 751.

[26] Ozaeta v. Oil Industry Commission, 49 SCRA 409.

MEMORANDUM FOR GRANTING OF PETITION

Backgrounder

The case directly stems from Civil Case No. 653 of the Batangas court of first instance filed on August 2, 1967 by then Solicitor General now Justice Antonio P. Barredo on behalf of the Republic of the Philippines and its co-petitioners as co-plaintiffs: (as permittees and/or lessees of public fishponds) for the cancellation of TCT Nos. 3699 and 9262 issued in the name of respondent (defendant) Enrique Zobel (covering the fishponds granted in lease by the Republic) and for the reconveyance of the properties covered in part thereby and of other properties of the public domain to the Republic, to enable it to maintain its co-plaintiffs in peaceful possession of their respective fishponds. Besides, damages and back rentals, the complaint further prayed for the issuance of a preliminary injunction restraining Zobel and his agents "from usurping and exercising further acts of dominion and ownership over the land subject matter of this litigation."

The Republic's position is simple: By virtue of this Court's judgment in Republic vs. Ayala (14 SCRA 259, May 31, 1965) affirming (with modification affecting the Dizons only as transferees of Ayala) the trial court's judgment in Civil Case 373, all expanded subdivision titles of Ayala (derived from its TCT No. 722) covering an estimated excess of from 1, 091 hectares to 2, 500 hectares of the public domain, including over 400 hectares of the beach, fore-shore and territorial sea which are manifestly not capable of private appropriation or registration, were declared null and void, as follows:

"WHEREFORE, judgment is hereby rendered as follows:

"(a) Declaring as null and void Transfer Certificate of Title No. T-9550 (or Exhibit 24) of the Register of Deeds of the Province of Batangas and other subdivision titles issued in favor of Ayala y Cia. and/or Hacienda Calatagan over the areas outside its private land covered by TCT No. 722 which, including the lots in T-9550 (Lots 360, 362, 363 and 182) are hereby reverted to public dominion.

"xxx xxx xxx"

(CFI judgment as affirmed by Supreme Court)

The Republic's position is supported by all the series of decisions and extended resolutions rendered subsequently (to its May 31, 1965 judgment in the basic case of Republic vs. Ayala) by this Court: - Decision in Republic vs. Angeles (20 SCRA 608, June 30, 1967) issuing a writ of mandamus ordering the court a quo to enforce the judgment; Resolution of October 4, 1971 reversing on respondents' second and supplemental motion for re-consideration the decision of June 30, 1967 and dismissing the petition for mandamus, (41 SCRA 422); Resolution of April 11, 1972, denying petitioners' first motion for reconsideration (44 SCRA 255) and Resolution of April 27, 1973 denying petitioners' second motion for reconsideration "for lack of necessary votes"[1] unreported in SCRA).1-a

Although the writ of mandamus for execution of judgment (with a preliminary resurvey to determine specifically by metes and bounds the huge excess area encroached and usurped by Ayala's expanded subdivision titles) was denied by this Court when the majority of six reversed the original unanimous decision of June 30, 1967, still even the majority made it clear that its disposition "does not affect at all the interests of the Republic but only those of intervenor Tolentino. . ."

Thus, the ponente, Justice Villamor, stressed this for the majority in the Resolution of April 11, 1972 (in response to the point raised in the dissenting opinion that there was "no justification for denying writ of execution for cancellation of void titles [of Ayala] and reversion of public lands covered thereby to public dominion. The writ of mandamus should issue at least for this purpose as ordered in the original decision of June 30, 1967 now set aside), as follows:

"At this juncture, it seems necessary to clarify a point, which surprisingly is not raised in the motion for reconsideration of the Solicitor General, limited as it is to invoking or reiterating the arguments advanced in the dissenting opinions of the Chief Justice and Justice Teehankee justifying the award, not to the government but to petitioner Tolentino, namely, the effect of the resolution of October 4, 1971, upon the refusal of the court a quo to issue, per its order of February 8, 1966, the writ of execution prayed for by the Republic for the implementation of paragraph (a) of the dispositive part of Judge Tengco's decision of June 2, 1962 in Civil Case No. 373, the said resolution having denied the petition for certiorari and mandamus unqualifiedly. It is suggested in the motions for reconsideration of petitioner Tolentino that such denial leaves the government practically with an empty victory, since it looks as if respondent judge is determined not to give full effect to the annulment of the titles referred to in the aforementioned paragraph (a) of Judge Tengco's judgment. In fact, the same apprehensive suggestion may be gleaned from the 'Reply to Opposition' dated January 31, 1972 of petitioner Tolentino wherein the attention of this Court is invited to a subsequent order of respondent Judge of October 27, 1970 denying the motion filed by the Provincial Fiscal of Batangas praying for authority to conduct a resurvey of the lands herein in question preparatory to implementing the same paragraph of Judge Tengco's judgment already referred to.

"We do not believe there is real ground for such fear, no matter how apparent it does appear that private respondents are very cautious in seeing to it that the implementation of Judge Tengco's judgment does not go beyond what they feel it warrants or contemplates. Examined objectively and overlooking their infelicitous phraseology, We cannot discern from the orders in question any repudiation by Judge de los Angeles of the declaration of nullity not only of TCT 9550, covering lots 360, 362, 363 and 182, but also of 'other subdivision titles issued in favor of Ayala y Cia. and/or Hacienda Calatagan over the areas outside its private land covered by TCT No. 722. . . which are hereby reverted to public dominion' per Judge Tengco's decision. Surely, no one can deduce such a repudiation from the positive holding in the order of February 8, 1966 that 'there is no need of issuing a writ of execution because the declaration of nullity in itself is already executory.' One might perhaps question the legal correctness of such proposition, but it is clear to Us that there is here a reaffirmation rather than a denial of the rights of the Government in the premises, albeit His Honor could be mistaken in his view that it would be only after private respondents and Dizon have refused or failed to surrender their titles for cancellation that 'resort' to the court would be proper. And with respect to the holding

in said order that 'it is clear that the Dizons being purchasers in good faith have the right to retain possession of all the lots covered by TCT No. 9550 ..., ' it is obvious that such was the judgment of this Court in G. R. No. L-20950, and it would have been a manifest error of His Honor had he ruled otherwise. It is thus clear that even after the issuance of the order of February 8, 1966, nothing adverse to the government or the Republic was being done by anyone that was not expressly authorized by the final and executory decision of this Court.

"Coming now to the order of October 27, 1970, which, incidentally, was never brought to the attention of this Court before October 4, 1971, We cannot see how the same can be cause for apprehension on the part of the Republic because as We read the same, it does not actually deny the right of the government to a resurvey; rather, it simply held basically that 'it is only wise, prudent and proper not to give due course to the instant motion (to resurvey) which.... is tantamount to giving due course to a motion for execution even before the Supreme Court had ruled on the matter' of whether or not to grant the mandamus ordering the court 'to execute the final decision in Civil Case 373.' And having declared itself without authority to act in the meanwhile, it stands to reason that anything else it might have said in the order which could be interpreted as adversely affecting the government's position in any respect would be of no consequence, the same being pure obiter dictum.

"Upon these premises, We hold that even if the prayer for certiorari and mandamus in the basic petition herein is denied, still it is clear that what this Court is disposing of in the present case does not affect at all the interests of the Republic but only those of Intervenor Tolentino in relation to the lower court's orders of January 18, 1966, February 2, 1966 and April 13, 1966. As already explained, the order of February 8, 1966 does not constitute a denial of the right of the Republic to the cancellation of the titles nullified by the decision of Judge Tengco affirmed by this Court. Indeed, the respondent Judge expressly made the reservation for the Republic to 'resort' to the court should private res-pondents refuse or fail to have their titles cancelled. Incidentally, even the order of October 27, 1970 about the resurvey merely held the remedy to be premature until the decision in this case has become final. Of course, it is understood that in such eventuality, the resurvey requested by the Provincial Fiscal would be in order and as soon as the same is completed the proper writ of execution for the delivery of possession of the portions found to be public land should issue.

"WHEREFORE, and with the clarification aforemade of the rights of the Republic, the motion and supplemental motion for reconsideration of petitioner Tolentino are denied for lack of merit. The motion for reconsideration of the Solicitor General, which is no more than a duplication of Petitioner Tolentino's motions in support of his private claim for damages, is likewise denied."[2]

Then Justice Makalintal in his separate concurrence stressed that "The resolution in no way affects the rights of the Government as declared in the decision."[3]

Justice Barredo in his separate concurrence even more vigorously stressed also that -

"xxx xxx If in any manner the dispositive portion of the resolution of October 4, 1971 denying the mandamus did give rise to apprehensions, the present resolution should serve to make it definitely clear that such denial cannot affect the Government adversely. I am sure that the five justices whom I am joining in denying Petitioner's motion for reconsideration are as firm as the three distinguished dissenters in the resolution not to allow this Court to be an instrument of land-grabbing as they are against the reversal or even modification in any substantial degree of any final and executory judgment whether of this Court or any other court in this country, and, that if there were such possibilities in consequence of the resolution of October 4, 1971 and the present resolution of denial, they would not give their assent to said resolutions. We are certain that in deciding against Petitioner Tolentino, We are not condoning nor permitting that the lands in question remain with the Dizons or with the Ayalas. What We see very clearly is that the respondent Judge has not denied any right of the Government, and if he has refused to take definite action so far, it is only because he disagrees with the procedure of execution pursued by the representatives of the Government or is otherwise awaiting the final judgment of this Court in deference to its superiority."[4]

Respondent court, however, instead of granting the preliminary injunction sought by the Republic, et al. to enjoin Ayala from usurping the lands of the public domain covered by Ayala's voided expanded subdivision titles, granted Zobel's (as Ayala's transferee of said void title) counter-prayer in his answer to the complaint for the issuance of a mandatory injunction upon a P10,000-bond per its orders of October 1 and 21, 1968 and of February 21, 1969 (denying reconsideration) to oust petitioner Republic and its permittees and/or lessees (particularly Chavez and Mercado) from the fishponds in question and to restore Zobel to the possession thereof, notwithstanding that the case of accion reivindicatoria filed below is still pending trial on the merits.

Hence, the present petition for certiorari as filed on March 3, 1969 filed by then Solicitor General now Justice Felix V. Makasiar on behalf of the Republic and its co-petitioners for the setting aside of such mandatory injunction. As prayed for, the Court issued on March 7, 1969 a restraining order enjoining the enforcement of respondent court's mandatory injunction.

The issue

The issue as posed by Justice Fernandez' draft is "whether it is the private petitioners (particularly Chavez and Mercado) or the private respondent, Enrique Zobel, who at this stage of Civil Case No. 653 of the court a quo which is still pending trial on the merits has a better right to the possession of certain areas constituting portions of properties covered by Transfer Certificates of Title in the name of the latter [Zobel] but allegedly covered by fishpond permits and/or applications therefor in favor of the former" (at pages 2-3) is incomplete as it goes and omits three essential factors:

- The main protagonists are really the Republic of the Philippines on one side (with Chavez and Mercado as its permittees and/or lessees) and Zobel on the other;
- The lands in question are alleged to be lands of the public domain covered by void expanded subdivision titles wrongfully secured by Ayala (Zobel's predecessor) and which were declared null and void and the lands ordered reverted to the public domain by this Court's May 31, 1965 decision in Republic vs. Ayala, supra; and
- The question at issue in the case below is not one merely of possession but of ownership as found and held by respondent court itself in its order of December 13, 1967 (Annex B, petition) denying Zobel's motion to dismiss, in this wise: "the issue in the instant case is ownership, that is, whether defendant Enrique Zobel's Transfer Certificates of Title Nos. 3699 and 9262 can be considered valid as it is alleged by plaintiffs that they actually cover portions of the territorial waters of the Philippines." [5]

Reasons for Granting of Petition

Basic and fundamental reasons abound for maintaining the status quo and maintaining the possession by the Republic of the lands in litigation (which it has placed with the lessees or permittees) rather than respondent court's arbitrarily transferring possession to Zobel by mandatory injunction while awaiting trial on the merits of the case below, among them the following:

- As was stressed by the Solicitor-General in his comment of November 23, 1972 on Zobel's motion for modification and/or dissolution of temporary restraining order filed on November 2, 1972 (Rollo, p. 180), the property herein involved is "part of the public domain;" this Court had in its May 31, 1965 decision affirmed the Batangas court of first instance decision dated June 2, 1962 in Civil Case No. 373 "which orders the cancellation as null and void of all expanded subdivision titles secured by Ayala y Cia. over the original area of Hacienda Calatagan as stated in TCT No. 722 and the reversion to public dominion of the public lands usurped thereby xxxx ;" "(I)t cannot be overemphasized that portions of the public domain are not subject to private appropriation and, therefore, not registerable under the Torrens System" (cases cited); and that "it would certainly be condoning an illegal act if the private respondent-movant is allowed to perpetuate what he has committed -- an affront and an offense against the State. What is asked for in the instant motion is a prayer which, if granted, would be to the prejudice of the Government." [6]

The Court per its resolution of January 23, 1973 after considering the pleadings of the parties consequently "Resolved to deny the motion for lack of merit." [7]

- When Zobel renewed on December 18, 1973 under the guise of a "supplemental memorandum" his motion to dissolve the same restraining order, the Solicitor General after invoking this Court's previous resolution of January 23, 1973 which denied "for lack of merit" the same relief now sought again, underscored the following in his Opposition of January 4, 1974:

a)

The alleged copy of a plan and aerial photograph submitted by Zobel as showing that the lots possessed by co-petitioners Chavez and Mercado under permit from the Republic "are very well within the boundaries of the parcel of land embraced in and covered by (Ayala's) Transfer Certificate of Title No. 722" cannot serve to overturn the final and executory judgment of the court of first instance in Civil Case No. 373 as affirmed by this Court's May 31, 1965 judgment in Republic vs. Ayala and its subsequent resolutions of October 4, 1971 and April 11, 1972 in Republic vs. Angeles, supra;

b)

Respondent court's very order of October 1, 1968 (Annex D, petition) for the issuance of a mandatory injunction justified the same on the premise that the judgment declaring Ayala's expanded titles null and void "cannot as yet be executed because the matter of execution is still the subject of a motion for reconsideration which is still pending in the Supreme Court." This premise is no longer true - for both the majority and dissenting opinions in resolving the motion for reconsideration left no doubt that all such expanded titles of Ayala were and are null and void and cannot be honored;

c)

Thus, the Solicitor General stressed that "There is, to us, no question -- as it is obvious in the record -- that the lots or fishponds herein involved were adjudged as included in those 'other subdivision titles' outside of Transfer Certificate of Title No. 722, and that, as described, the transfer certificates of title, in the name of the private respondent concerning said lots encroach upon and cover res publicae" [8]

d)

The plan submitted by Zobel "merely illustrates what had been previously surveyed under TCT No. 722 and the different surveys under fishpond permit applications" and cannot overcome this Court's findings in Republic vs. Ayala affirming those of the court of first instance decision in Civil Case 373 that even assuming to be true Ayala's contention that the fishpond permit applications were for areas covered by its T.C.T. 722, nevertheless the areas in dispute (covered by permits issued to Chavez, Mercado, et al. who were also parties in said Case 373) "were found to be portions of the foreshore, beach or of the navigable water itself. And it is an elementary principle of law that said areas not being capable of registration, their inclusion in a certificate of title does not convert the same into properties of private ownership or confer title on the registrant. "

- At any rate, it appears that such map and plan raise questions of fact as to the actual location of the fishponds and properties which according to the Republic are part of the public domain and were reverted to the public dominion under the May 31, 1965 decision in Republic vs. Ayala wherein Ayala's (and Zobel's as successor-transferee) expanded subdivision titles were declared null and void while Zobel as defendant claims the contrary in his answer. As far as the record shows, said map and plan have not yet been presented to

respondent court - which has yet to hold trial on the merits of petitioners' complaint below, but were submitted to this Court only on December 18, 1973 with Zobel's supplemental memo and second motion to dissolve restraining order - long (over 4 years) after this case was submitted for decision on June 25, 1969.

It is elementary that this Court is not a trier nor even a reviewer of facts and certainly cannot at this stage consider such map and plan which have not yet even been presented to the court below.

- Respondent court issued the mandatory injunction on the basis of the counterclaim in Zobel's answer that co-petitioners Chavez and Mercado allegedly dispossessed him of the fishponds and properties in question by having illegally and forcibly taken possession thereof in the first week of June, 1966.[9] Such a bare allegation is contrary to the admitted facts of record, as witness respondent court's own order of December 13, 1967, wherein in denying Zobel's motion to dismiss, it made of record that the Republic's co-petitioners and private plaintiffs "were entitled to be placed in possession" of the fishponds as "lessees of the Republic of the Philippines", as follows:

"The third ground is also untenable because the private plaintiffs in this case being lessees of the Republic of the Philippines with regards to the areas covered by Transfer Certificates of Title Nos. 3699 and 9262, they are therefore entitled to be placed in possession thereof as their applications had been duly approved. In fact it has been alleged that plaintiffs-lessees have introduced substantial improvements and incurred expenses on their leased properties. " [10]

- The previous successful action for ejectment of Zobel against Chavez, et al. on May 25, 1960 under color of his torrens subdivision title (which had not yet been voided then by this Court's May 31, 1965 judgment in Republic vs. Ayala) and which per his own averments was executed with the ouster of Chavez, et al. in 1961 patently has no relevance here. The situation has completely changed since this Court's May 31, 1965 judgment voiding of all the expanded subdivision titles of Ayala and the Zobel's (Alfonso and Jacob, father of respondent Enrique here), whereby the Republic placed back the Chavezes, et al. in possession of the fishponds as its permittees and lessees. Such leases as official acts of the Government have the presumption of regularity and cannot be summarily, prematurely and capriciously set aside without trial as respondent court has done.

Furthermore, if it be true that the Chavezes et al. forcibly took possession of the fishponds in June 1966 as per Zobel's bare allegation in his counterclaim, why did he not file an action for forcible entry within one year instead of just making such an allegation in his answer with counterclaim dated January 12, 1968?

Since no forcible entry case was filed by Zobel, it is obvious no writ of preliminary mandatory injunction to restore him in his alleged prior possession can issue, since the requirements of Article 539[11] for such issuance are not present.

The inference that by virtue of the ouster in 1961 by execution of the judgment of forcible entry effected by Zobel against the Chavezes, respondent court's mandatory injunction issued seven years later in a completely separate case for reivindicacion filed by the Republic as the judicially recognized owner of the lands of the public dominion encroached upon and usurped by Zobel's expanded subdivision on titles would serve "to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new re-lation"[12] is manifestly untenable and baseless.

A third party, the Republic, has stepped into the picture as the judicially recognized owner of the public domain usurped by Zobel's expanded titles. The Chavezes are duly in possession of the fishponds as permittees/lessees of the Republic (as respondent court itself recognizes in its order of December 13, 1967, supra at page 10). There is no "continuing relation" between the Chavezes et al as the Government's lessees and Zobel that is "reestablished and maintained" by respondent court's arbitrary writ of mandatory injunction.

- The whole prop of respondent court's mandatory writ, to wit, that the titles of Zobel are presumed to be valid and must be honored until judicially voided has thus been shown to be bereft of basis, in fact and in law.

It has no basis in fact - because as indisputably shown above, all expanded subdivision titles of Ayala and the Zobel's (covering an estimated 1,091 hectares to 2,500 hectares of public lands) in excess of the original area of Hacienda Calatagan as stated in TCT 722 were declared null and void (not merely T-9550 which covered only the Dizons' fishponds in Civil Case 373 as Zobel would contend now in his answer below,[13] contrary to the express and undisputed holding of both majority and minority in the supplemental case of Republic vs. Angeles, supra, at pages 3-6) and the lands ordered reverted to the public dominion under this Court's final judgment of May 31, 1965 in Republic vs. Ayala.

It has no basis in law - because the burden has thus been shifted to Ayala and the Zobel's to show that their subdivision titles are not among the expanded titles declared null and void. Zobel's titles therefore do not enjoy the presumption of validity as erroneously presumed by respondent court in view of the congenital infirmity of usurpation of inalienable lands of the public domain which accompanied their wrongful issuance. Zobel's titles have to undergo the test of scrutiny and survey - as to whether they fall under the usurped public domain or within the original area of Hacienda Calatagan - and this can only be determined after due trial on the merits which has yet to be held.

- Respondent court, in issuing the disputed mandatory in-junction while awaiting trial on the merits utterly disregarding the Republic's rights as judicially recognized owner of lands of the public domain usurped by Zobel's expanded titles and ordering in effect that the Republic and its permittees/lessees be ousted from their lawful possession of the fishponds and that possession be restored to Zobel despite its express and correct finding in its December 13, 1967 order (Annex B) that the issue in the case below is ownership (between the Republic of the Philippines and Zobel) and that the private petitioners are entitled to possession as lessees of the government) - acted with grave abuse of discretion and in gross violation of elementary and fundamental principles of injunctions (many of which principles respondent court correctly cited in its disputed basic order of October 1, 1968, Annex D, but unfortunately failed to apply correctly and instead misapplied) as to call for the corrective process of certiorari, as follows:

- a - A mandatory injunction will not issue in favor of a party whose rights are not clear and free from doubt or are as yet undetermined;
- b - No advantage may be unduly given to one litigant to the prejudice of the other, hence a court should not by preliminary injunction transfer the property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession (the Republic) asserts ownership thereto by right of a final decision of the Supreme Court and claims the lands involved as lands of the public domain.
- c - The primary purpose of a preliminary injunction is the preservation of the status quo. The court must leave the parties where they are until it is able to hold trial and determine the conflict-ing claims of ownership between the Republic and Zobel;
- d - Respondent court's mandatory injunction prematurely prejudged the Republic's complaint without trial or evidence by arbitrarily ordering the restoration of possession of the fishponds in favor of Zobel (when Zobel had failed to even file a forcible entry case against petitioners and in gross disregard of this Court's final decisions and resolutions in Republic vs. Ayala (1965) and Republic vs. Angeles (1967) et seq., supra) all declaring the nullity of Ayala's and the Zobel's ex-panded subdivision titles which usurped the public domain;
- e - Contrary to the mistaken assumption in Justice Fernandez' draft[14] that the judgment in Civil Case 373, as affirmed by this Court, was limited to declaring void only TCT T-9550 of Ayala, the judgment proper, as affirmed

by this Court, clearly and indisputably declared null and void all "other subdivision titles (of Ayala and/or Hda. Calatagan) over the areas outside its private land covered by TCT No. 722 which... are hereby reverted to public dominion." (Supra, at page 2).

Respondent court thus violated the fundamental rule that a party should not be deprived of possession until the court is prepared to adjudicate the controverted right in favor of the adverse party (Zobel and until the controverted question (of ownership) is adjudicated, the status quo should be preserved and the party in possession (the Republic through its lessees, the private plaintiffs) should not be ousted.

The question raised by Zobel that if all his expanded titles were declared null and void in the 1962 judgment of the lower court as affirmed by this Court's May 31, 1965 judgment, then all that petitioners have to do is to have that decision executed without need of the separate action below would be well taken, were it not for two factors: (1) The Republic did seek execution of the judgment but the lower court hedged and refused on the ground that there was no need for execution "because the declaration of nullity in itself is already executory" (supra, at page 4) and (2) The Republic filed mandamus for a writ of execution in Republic vs. Angeles which was at first unanimously granted by this Court in its decision of June 30, 1967 but which underwent a series of modificatory resolutions until April 27, 1973 (supra, at page 2) but finally ended up with the pronouncement that such execution would issue upon the finality of said April 27, 1973 resolution should further obstacles towards keeping Ayala and the Zobel in possession of the usurped public lands come up (supra, at page 5).

- In the writer's dissenting opinion against the April 11, 1972 resolution, he expressed gratification "that the majority's position - although it denies reconsideration and maintains reversal of the June 30, 1967 decision at bar - is that the Government may now finally effect reversion and recover possession of all usurped areas of the public domain 'outside (Ayala's) private land covered by TCT No. 722, which including the lots in T-9550 (Lots 360, 362, 363 and 182) are hereby reverted to public dominion (Paragraph (a) of 1965 judgment)."[15] hereinabove.[16]

It would be a terrible retrogression if these ringing pronouncements against further frustration of reversion of the public lands and waters decreed in the May 31, 1965 judgment and further retention by Ayala and the Zobel and their purchasers and transferees of usurped public lands were to be now negated by sustaining the arbitrary, capricious and untenable disputed orders of respondent court.

(In his same dissenting opinion, the writer did recount how up to then and up to now, Ayala and Zobel as its successor have successfully blocked at every turn the Government's efforts to enforce the 1965 judgment, contending that the proper step is for the Government to ask for execution of the judgment and yet opposing the Government's motion to resurvey the lands affected to determine the precise extent of their usurpation by expansion of their titles of lands and waters of the public domain and taking below actions that are "diametrically the opposite of Ayala's posture before this Court of avowed adherence and submission to the judgment reverting all its usurped lands to public dominion and declaring null and void its subdivision titles thereto." [17]

It would be incomprehensible if the claim to the lands and fish-ponds in question as lands of the public domain of the Republic of the Philippines itself, fully supported by final judgments of this Supreme Court were not to be given faith and credit and were to be arbitrarily disregarded (without trial and evidence and on the basis of mere assumptions and conjectures of fact made by this Court on the very *lis mota*, viz, whether Zobel's expanded titles are for lands of the public domain duly voided by this Court's 1965 judgment) and instead the Republic would be arbitrarily ousted of the possession that it enjoys through its lessees and that possession transferred pending trial on the merits to private respondent whose predecessor (Ayala) has been found by final judgment of this Supreme Court to be a usurper by unlawful expanded subdivision titles of immense areas of inalienable lands and waters of the public domain.

The petition for certiorari should therefore be granted and the temporary restraining order issued by the Court against the enforcement of respondent court's disputed orders should be made permanent. With costs against private respondent.

[1] The existence of an eight-member quorum to act on the matter and issue this resolution as required under Article X, section 2 of the 1973 Constitution then being implemented is open to grave question, since only six members of the then nine-member Court took part in the issuance thereof (Makalintal, Acting C.J. and Zaldivar, Castro and Fernando, JJ, voted to deny, with Teehankee and Esguerra, JJ. dissenting; Barredo, Makasiar and Antonio, JJ. did not take part).

1-a The April 27, 1973 Resolution is reported in 60 SCRA 497, 44 SCRA, at pp. 261-264;

[2] emphasis and notes in brackets supplied.

[3] *Idem*, at page 271.

[4] *Idem*, at page 276, emphasis supplied.

[5] Page 40, Rollo.

[6] Rollo, pp. 203-205; emphasis supplied.

[7] Rollo, p. 224.

[8] Rollo, p. 240.

[9] Rollo, pp. 47, 48.

[10] Rollo, p. 41; emphasis supplied.

[11] "ART. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

"A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The Court shall decide the motion within thirty (30) days from the filing thereof. (44 6a)" (Civil Code)

[12] Order of Oct. 1, 1968, Annex D, in Rollo, p. 53.

[13] Rollo, at page 45.

[14] At page 9 thereof.

[15] 44 SCRA at pp. 285-286.

[16] *Supra*, at pages 3-6 hereof.

[17] 44 SCRA, at pages 286-289.

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