

REPUBLIC OF THE PHILIPPINES, MIGUEL TOLENTINO, SR., ZOILA DE CHAVEZ, DEOGRACIAS MERCADO, MARIANO PANTOJA, GUILLERMO MERCADO, AGAPITO REYES, ISIDRO BESAS, LEONA LACHICA, ELENO MA...

G.R. No. L-26112. April 11, 1972

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Before us for resolution are the motion for reconsideration filed by the Republic of the Philippines thru the Office of the Solicitor General, the motion for reconsideration filed by petitioner Miguel Tolentino, Sr. thru Counsellors Bautista Angelo, Tolentino, Antonio, Lopez & Associates, and the supplement to the motion for reconsideration filed by said petitioner thru Counsellors Paredes, Poblador, Nazareno, Azada & Tomacruz.

At the outset, it must be stressed that this proceeding constitutes a special civil action for certiorari and mandamus involving the issue of whether or not the order of the respondent judge of the Court of First Instance of Batangas, Branch III, of February 2, 1966, quashing the writ of execution issued on December 27, 1965, on the ground that nowhere in the decision of the Court a quo of June 2, 1962, in Civil Case No. 373 or in the decision of this Court in G.R. No. L-20950 is there any pronouncement that defendants Ayala y Cia., Hacienda Calatagan, and/or Alfonso Zobel have been found to be possessors in bad faith and, therefore, liable for the payment of compensatory damages to petitioner Miguel Tolentino, Sr., is correct. It is the considered opinion of this Court that any issue which is not within the sphere or scope of a special civil action for certiorari and mandamus, i.e., any issue which seeks to delve into the merits of the aforesaid Civil Case No. 373 or the correctness of the findings of fact or conclusions of law of the Court a quo in the said case, may no longer be entertained by this Court, the judgment therein having become final after the expiration of the reglementary period from the promulgation of our decision in case G.R. No. L-20950.

It is the contention of the petitioners that our resolution of October 4, 1971, has set aside a judgment of the Court a quo in the said Civil Case No. 373 as modified by our decision in G.R. No. L-20950, which had long become final and executory. This is not true. If ever the petitioners have impressed upon themselves the notion that such is the case, it must have been due to the fact that they, particularly petitioner Miguel Tolentino, Sr., have sought to inject so many extraneous matters into this special civil action. Of course, our having taken extra effort in our resolution of October 4, 1971, to refer back to the jurisprudence squarely applicable, and the factual background of the case, source of this special civil action, in order that the process whereby the consensus of opinion in the said resolution was arrived at can be better understood, may have helped in having this special civil action become apparently open to the injection of issues which are not proper in this proceeding. We, therefore, stress the fact that our resolution of October 4, 1971, does not in any way set aside or reopen the already final judgment of the Court a quo in the said Civil Case No. 373, as modified by our decision in G.R. No. L-20950. The resolution of October 4, 1971, merely clarifies the ambiguity and settles the question once and for all of whether or not the private respondents in this special civil action may be considered as included in the award of damages

in favor of petitioner Miguel Tolentino, Sr., as contained in sub-paragraph (c) of the dispositive portion of the decision of the Court a quo in the said Civil Case No. 373. And as stated on page 4 of said resolution of October 4, 1971, it has all along been the impression of the parties in said Civil Case No. 373 of the Court a quo that the private respondents in this special civil action were not so included. This observation finds particular application to petitioner Miguel Tolentino Sr., when he filed a motion for reconsideration in G.R. No. L-20950 on May 31, 1965, wherein he insisted, after our decision therein absolved the Dizons from liability for compensatory damages to him, that all the defendants be declared possessors in bad faith and liable for such compensatory damages. The said motion for reconsideration having been denied by this Court in the same case, it is obvious that the private respondents herein, co-defendants in the said case, G.R. No. L-20950, were considered by us as not liable for compensatory damages to petitioner Miguel Tolentino, Sr.

We have studied meticulously the said motions for reconsideration of the petitioners, including that filed by the Solicitor General which, properly speaking, has no place in this special civil action since it is only the interest (for damages) of petitioner Miguel Tolentino, Sr., which is in issue in this case. While it is not far-fetched to say that the said motion for reconsideration is merely a reproduction, with recastings here and there, of the dissenting opinions to the majority resolution of October 4, 1971, suffice it to say that in all the four (4) years from the date of the decision in this case, or June 30, 1967, up to the time of the promulgation of our resolution of October 4, 1971, this Court has been studying and deliberating upon the issues involved in this special civil action; it can be safely said that we have made a very thorough and painstaking study of all the issues of this case, as well as the aspects and legal implications of our resolution of October 4, 1971. We find untenable the arguments of the petitioners that there is nothing ambiguous in the dispositive portion of the decision of the Court a quo in Civil Case No. 373. We have construed the phrase "all the defendants" in sub-paragraph (c) of the judgment of the Court a quo to refer merely to the Dizons who were the only ones mentioned in the preceding sub-paragraph (b) of the same judgment of the Court a quo. In brief, our resolution of October 4, 1971, does not in any manner disturb the decision or judgment of the Court a quo in Civil Case No. 373. What was in issue in this special civil action was merely the interpretation or construction of the dispositive portion thereof which was explained in our resolution of October 4, 1971. The alleged erroneous conclusions of fact and of law which did not and do not impress us, are likewise fully discussed in the same resolution.

With respect to the contention of the petitioners that our resolution of October 4, 1971, controverts the findings, as to the private respondents herein, in Civil Case No. 373 and G.R. No. L-20950, and reverses the clear and explicit pronouncement against them for damages, suffice it to say that a minute examination of the Record on Appeal in G.R. No. L-20950, particularly the decision of the Court a quo contained therein, does not support the contention that there were such findings. Neither is there any such finding in our decision in G.R. No. L-20950. We, therefore, find the contention that our resolution of October 4, 1971 reversed the clear and explicit pronouncement against the private respondents herein for compensatory damages in favor of petitioner Miguel Tolentino, Sr., as absolutely devoid of merit. Further, it is error to say that our resolution of October 4, 1971, "leaves in shambles the said basic decision which has long been final and executory since entry of this Court's judgment in SC-G.R. No. L-20950 on December 11, 1965". This is so for the simple reason, as aforesaid, that our resolution of October 4, 1971, does not disturb the said decision in G.R. No. L-20950 but merely clarifies the judgment of the Court a quo in Civil Case No. 373 as modified by our decision in the same case G.R. No. L-20950.

Petitioners would now have us reconsider our resolution of October 4, 1971, "in order to serve as a lesson against usurpations of the public domain as well as simulation of sales thereof by the original usurper by not exempting the latter from responsibility for damages which would not have been sustained if it were not for the irregularities committed by him * * *." Petitioners' contention is not within the sphere or scope of the instant special civil action.

With respect to the alleged ground of fraud, this has been adequately discussed in our resolution of October 4, 1971. Suffice it to say, however, that even if the act of the private respondents herein of preparing a composite plan which included part of the navigable portions of the public domain and causing these areas to be titled in their names may be considered a tortious act, nevertheless, there is still lacking the juridical tie or *vinculum juris* between them and petitioner Miguel Tolentino, Sr. In other words, for one to obtain damages against another, he must show that he is clearly and unequivocally entitled to them as against the latter. This, petitioner Miguel Tolentino, Sr. had failed to prove before the Court a quo as shown in the discussion in our resolution of October 4, 1971, with respect to the elements of a cause of action. In fact, the records of Civil Case No. 373 showed that he did not even testify. The case of *Pitargue vs. Sorilla*, 92 Phil., 7, basis of the decision of the Court a quo in its award of damages in favor of petitioner Miguel Tolentino, Sr. from the date of the filing of his fishpond lease application on March 11, 1954 (page 254, Record on Appeal, G.R. No. L-20950), is, in fact, applicable against the latter. In that case, we ruled that for an applicant of public land to be entitled to damages as against an adverse occupant, the former must have had prior possession and prior bona-fide occupancy, and that the latter was the one who ousted him from such prior possession. In Civil Case No. 373 of the Court a quo, however, petitioner Miguel Tolentino, Sr. was never in possession.

Moreover, we take judicial cognizance of the fact that in all fishpond permits issued by the Bureau of Fisheries of the Department of Agriculture and Natural Resources, there is the condition that such permit does not authorize the permitted to interfere with any prior claim by settlement or occupancy within the areas granted to him until the consent of the occupant or settler is first had and obtained or until such claim shall have been legally extinguished. It was, therefore, error to consider Miguel Tolentino, Sr. entitled to compensatory damages from the date of the filing of his fishpond application on March 11, 1954, since the claim and occupancy of the Dizons of Lot 360, Psd-40891, had not been legally extinguished. But this is already going to the merits of Civil Case No. 373 of the Court a quo which, as previously pointed out, are improper to touch upon in this special civil action for certiorari and mandamus.

In brief, nothing said here and in Our resolution of October 4, 1971, is meant to modify, much less overrule, the time-honored doctrine that a final and executory judgment may not be substantially amended or altered, save and except as permitted in unquestioned jurisprudence already existing before Our resolution, such as, *Locsin vs. Paredes*, 63 Phil. 87, and other cases cited in Our resolution. Likewise, it should be evident that whatever We have said about the possible claims of Petitioner Tolentino against the Republic for damages for its failure to place him in possession of lands leased to him are intended to be mere academic discussions, simply because with the finality of the decision of this Court in G.R. No. L-20950, all such claims are now foreclosed, hence the improbability of the Republic being liable to any of the parties under any conceivable situation.

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 on 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 any thing 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 *orbiter 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 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 respondents 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.

Zaldivar, and Castro, JJ., concur.

Concepcion, C.J. and Reyes J.B.L., J., concur in the dissent of Mr. Justice Teehankee.

Makalintal, J., concurs and also reserves the right to file a separate concurring opinion.

Zaldivar and Castro, JJ., also concur in the separate concurring opinion of Mr. Justice Makalintal.

Fernando, J., in the result.

Teehankee, J., dissents in a separate opinion.

Barredo, J., concurs in a separate opinion.

Makasias, J., took no part.

CONCURRING OPINION

MAKALINTAL, J.:

I concur in the resolution penned by Mr. Justice Julio Villamor denying reconsideration of the resolution of this Court dated October 4, 1971.

However, I am constrained to write this concurrence in view of certain assumptions in the dissenting opinion penned by Mr. Justice Claudio Teehankee, which to my mind not only begs the very question at issue by asserting as a categorical fact that "it reverses and sets aside the damage award therein against Ayala in favor of Tolentino (estimated at close to P2 million now)," the existence of such award being precisely the bone of contention, but also misreads the scope and import of said resolution by ascribing to it consequences which are neither expressed nor implied, namely, that it "would promote usurpations of the public domain, as well as simulation of sales thereof by the usurper * * *."

To make my own position clear, I deem it proper and necessary to state the question as I see it and thereby circumscribe what I understand to be the real thrust of the majority resolution. That question is whether respondent Ayala, under the judgment of the Court of First Instance as affirmed with modification by this Court on appeal, is liable to petitioner Tolentino for the compensatory damages mentioned in said judgment, "in the sum of P3,000 a year per hectare of Lot 360 from March 11, 1954, until he is placed in lawful possession of said area." Considering the area of the said lot, the damages reach a total of P90,000 yearly or over P1 1/2 million from 1954 up to the present, plus the corresponding predictable increase every year hereafter. 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. Thus it is said: "Tolentino has been left now holding an empty verdict awarding him against Ayala compensatory damages of close to P2 million * * * " Again there is here a begging of the question.

The basis -- the only one in fact -- of the award of damages to Tolentino is set forth in the decision of the trial court as follows:

"From the evidence thus submitted, only intervenor Miguel Tolentino has submitted evidence to substantiate his claim to Lot 360 of Psd 40891 in TCT No. T 9550 which this Court has found it to be a portion of the land belonging to the public dominion. Tolentino's contention that he is entitled to damages consisting of fruits of fishpond received by the defendants Dizons is well taken. x x x To the mind of the Court, insofar as this Lot 360 is concerned, the Dizons began possessing in bad faith from the time that they became aware of a defect in

their title or mode of acquisition (Art. 526 of the Civil Code, *Leong Yee vs. Strong Machinery Company*, 37 Phil. 644). This was on March 11, 1954, when the Director of Fisheries dismissed their protest to the fishpond application of the Tolentinos on the ground that the fishpond was outside the boundaries of Hacienda de Calatagan and a part of the territorial sea. As such possessor, they are liable for the fruits received as well as those which the lawful possessors would have received pursuant to Article 549 of the Civil Code. From the time this complaint has been filed up to the present, it has been admitted that the defendants Dizons are in possession of the portion of the sea denominated as Lot 360 of Psd-40891. Evidence shows that the fruits that could be received were P1,000.00 per hectare of milk-fish or bangos, and P2,000.00 per hectare of shrimps, crabs, and other fishes. Intervenor Tolentino should therefore be awarded damages in the sum of P3,000.00 a year per hectare from March 11, 1954 until he is placed in lawful possession of the fishpond in Lot 360." (Italics supplied)

Several points, legal and factual, are implicit in the foregoing statement of the trial court: (1) Tolentino is entitled to damages because he is entitled to the possession of the property, and his right to the possession started in 1954; (2) the defendants Dizon are liable to pay such damages because since 1954 they have been possessors in bad faith; and (3) the damages consist of the fruits received by the Dizons in the form of fish, crabs and shrimps during that period. This is in accordance with Article 549 of the Civil Code, which provides that "a possessor in bad faith shall reimburse the fruits received and those which the legitimate possessor could have received." It should be noted that the liability for damages is imposed by this provision upon the possessor, if his possession is in bad faith, and upon no other person. This, of course, is but the logical consequence of the fact that the damages are for the fruits received and the fruits are received only by the possessor.

However, when the case was appealed to this Court; the judgment of the trial court was modified. We held, in the decision penned by Mr. Justice Barrera (G.R. No. L-20950, May 31, 1965), that the Dizons were possessors in good faith, that "they have a right to retention of the property until they are reimbursed of the necessary expenses made on the land, which must properly be established and determined * * * (and) that as such possessors in good faith the defendants Dizon cannot also be held liable for damages allegedly suffered by the other parties on account of their possession of the property."

The necessary and logical implications of our decisions are: (1) the Dizons, being possessors in good faith, are entitled to retain possession of the land and receive the fruits thereof until they are reimbursed the necessary expenses they have incurred on the property; (2) as long as they have a right to the fruits the same right cannot be recognized in favor of Tolentino; and (3) and by same token, as long as they continue in rightful possession, Tolentino can have no right thereto. For possession is indivisible and cannot be exercised by two or more persons having adverse interests.

The real question of substantive law which has a material and persuasive bearing on the interpretation of the Judgment of the trial court insofar as Ayala is concerned is not who should pay damages to Tolentino but rather whether or not he is entitled to damages at all. His right thereto being inexistent, his claim should not be entertained, against whichever party he may address it. To recognize such right by reason of an ambiguous and unhappy phrasing of the judgment of the trial court would do violence to one of the most basic principles in equity - that no one may enrich himself unjustly at the expense of another.

Viewing the situation from Ayala's standpoint, it must be remembered that the said defendant was not a possessor vis-a-vis Tolentino, for when Tolentino applied for a fishpond permit, on which his claim of the right to possess is based, Ayala had already sold and delivered the land to the Dizons. Ayala was completely out of the picture when Tolentino came in for the first time. If Ayala had any liability at all it was in favor of the Dizons, upon the implied warranty of title in connection with the sale. But certainly not in favor of any party subsequent to the sale who does not claim under any derivative title proceeding directly or through intermediate parties from Ayala as

original holder of the registered title. As far as Tolentino is concerned the question of whether Ayala acquired the property in good faith or in bad faith is entirely immaterial. As a matter of fact, however, there is nothing in the decision of the trial court or in the decision of this Court on appeal which declares or even suggests that Ayala's possession prior to the sale to the Dizons was in bad faith. Neither is there any reference in the body of either decision to Ayala's responsibility for damages. The entire discussion on the point is focused on the Dizons, as logically it should be, for under the law it is only the Dizons who could possibly be made liable to Tolentino, considering that they were the ones in possession.

The liability allegedly imposed on Ayala in the decision of this Court relative to the execution of the judgment is predicated exclusively on paragraph (c) of said judgment of the trial court which states as follows:

"Ordering all the defendants to jointly and severally pay Intervener Miguel Tolentino compensatory damages in the sum of P3,000.00 a year per hectare of Lot 360 from March 11, 1954, until he is placed in lawful possession of the said area."

Tolentino clings to the phrase "all the defendants" and contends that Ayala, being necessarily included therein, remains liable after the Dizons were eliminated therefrom by the amendatory decision of this Court of May 31, 1965. A situation unthinkable in its consequences - is at once conjured by the contention. The Dizons have been declared possessors in good faith and entitled to retain the land until they are reimbursed the necessary expenses they have incurred thereon. Presumably - the decision does not say so - Tolentino is the party called upon to make the reimbursement, since it is he who wants to take possession. Indeed, if he was serious in asserting his right to such possession all he had to do was to reimburse the Dizons for the value of the improvements, of which he would then be the beneficiary. But of course he can hardly be expected to reimburse the Dizons, because, under his theory, as long as he does not do so he will continue to receive from Ayala the amount of P90,000 a year in concept of damages as awarded in the judgment, without investing a single centavo for production. In short, at Ayala's expense, Tolentino will be receiving indefinitely the equivalent value of the fruits which rightfully pertain to the Dizons, this in spite of the fact that Ayala had already divested itself of the title and possession of the land before Tolentino's claim even started its period of gestation.

The issues presented to us in Ayala's second and supplemental second motions for reconsideration[*] do not involve a change or modification of the judgment which has already become final, but rather its interpretation for purposes of execution. In view of the consideration herein-above set forth it is not only a fair but compelling inference that the trial court, in using the phrase "all the defendants" in paragraph (c) of the dispositive portion of the decision, had in mind all the defendants enumerated in the paragraph immediately preceding, namely, "Antonino Dizon, Lucia Dizon, Adelaida Dizon Reyes, Consolacion Dizon Degollacion, Artemio Dizon, Ruben Dizon, Amando Dizon and Zenaida Dizon," who were ordered "to vacate lot 360 in favor of Intervenor Miguel Tolentino." Not having made any reference to the previous possession of Ayala and having confined its discussion concerning the question of damages to the issue of good or bad faith in the possession of the Dizons alone, the trial court could not have meant to include Ayala in the award of damages. The ambiguity in the judgment proceeds, on one hand, from the loose wording and juxtaposition of the different paragraphs thereof, and on the other hand, from the entire absence of rationale in the body of the decision to justify the interpretation insisted upon by Tolentino. To construe the ambiguous portion in the light of justice and substantive law and of what the trial court obviously meant in its exposition of the case is not to change the judgment at all.

Article 10 of the Civil Code states that "in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail." This injunction cannot be any less binding upon the courts in relation to its judgments. The following citations are apropos:

"The judgment must be read in its entirety and it must be construed as a whole so as to bring all of its parts into

harmony as far as this can be done by fair and reasonable interpretation and so as to give effect to every word and part, if possible, and to effectuate the obvious intention and purpose of the Court, consistent with the provisions of the organic law." (49 C.J.S. 436)

"Doubtful or ambiguous judgments are to have a reasonable intentment to do justice and avoid wrong. When a judgment is susceptible of two interpretations, that will be adopted which renders it the more reasonable, effective, and conclusive, and which makes the judgment harmonize with the facts and law of the case and be such as ought to have been rendered." (supra)

"When language of decree is susceptible of two constructions, from one of which it follows that the law has been correctly applied to facts and from other that law has been incorrectly applied, that construction should be adopted which correctly applies the law." (Footnote of 49 C.J.S., 436)

"x x x Necessary legal implications are included altho not expressed in terms, but the adjudication does not extend beyond what the language, governs. In case of doubt or ambiguity, the entire record may be examined and considered. Where a judgment is susceptible of two interpretations, that one will be adopted which renders it more reasonable, effective and conclusive and which makes the judgment harmonize with the facts and law of the case and be such as ought to have been rendered." (34 C.J.P. 501)

"As a general rule, judgments are to be construed like other written instruments. The determinative factor is the intention of the court, as gathered from all parts of the judgment itself. In applying this rule, effect must be given to that which is unavoidably and necessarily implied in a judgment, as well as to that which is expressed in the most appropriate language. Such construction should be given to a judgment as will give force and effect to every word of it, if possible, and make it as a whole consistent, effective, and reasonable. Sometimes, it is declared that the interpretation of a judgment must be characterized by justice and fairness. If a judgment is susceptible of two interpretations, one of which would render it legal and the other illegal, the court will adopt the former.

"The judgment may be read in connection with the entire record and construed accordingly, at least where there is uncertainty and ambiguity. In the latter case, it is proper to consider the pleadings, and verdicts or findings, in light of the applicable statutes. If a finding is inconsistent with the judgment proper or decretal part of the decree, the latter must control. The issues involved in the action are also important factors in determining what was intended by the judgment." (30 Am. Jur., pp. 212-213)

In the case of *Locsin vs. Paredes and Hodges*, 63 Phil. 87, this Court allowed a judgment that had become final and executory to be "clarified" by supplying a word which had been inadvertently omitted and which, when supplied, in effect changed the literal import of the original phraseology. This Court said:

"x x x it clearly appears from the allegations of the complaint, the promissory note reproduced therein and made a part thereof, the prayer and the conclusions of fact and of law contained in the decision of the respondent judge, that the obligation contracted by the petitioners is joint and several and that the parties as well as the trial judge so understood it. Under the juridical rule that the judgment should be in accordance with the allegations, the evidence and the conclusions of fact and of law, the dispositive part of the judgment under consideration should have ordered that the debt be paid severally, and in omitting the word or adverb "severally" inadvertently, said judgment became ambiguous. This ambiguity may be clarified at any time after the decision is rendered and even after it had become final (34 Corpus Juris, 235, 236). The respondent judge did not, therefore, exceed his jurisdiction in clarifying the dispositive part of the judgment by supplying the omission."

Language is, at times, less than perfect as a medium of expression, and the imperfection is great or small according to the linguistic proficiency of each individual. Equity and justice, on the other hand, are fairly constant, being moral values that have evolved through the long period of man's civilized existence. I would not

sacrifice these values simply out of a stubborn adherence to a dictum that, through careless and imprecise phrasing, turns out to be equivocal and seems to mean something different from what was really intended - something which upon close analysis not only flies in the face of the law, of reason and of common sense, but is indeed utterly devoid of support in the rationale of the decision. To set things aright, to clarify the dictum in its setting for purposes of proper implementation is not to change or amend it; and this is all that the resolution of the majority does, the clarification being only insofar as the claim of Tolentino to damages against Ayala is concerned. The resolution in no way affects the rights of the Government as declared in the decision.

[*] Subject of our resolution of October 4, 1971.

CONCURRING OPINION

BARREDO, J.:

I concurred in the resolution of October 4, 1971 and I find no cogent reason why I should change my vote now that the motions for the reconsideration thereof are being denied. Except for the matter of the alleged disqualification of the writer of this separate opinion to act with the Court in this case, which, anyway, the undersigned already considered best to explain in his separate opinion concurring in the resolution of October 4, 1971, there are no points of consequence raised therein which have not been previously considered and ruled upon in the aforesaid resolution, notwithstanding the hard work and diligent study undertaken by the distinguished array of counsel of petitioners, evident from a careful reading of their voluminous and numerous pleadings, manifestations and memoranda.

All the arguments advanced to support the aforementioned supposed disqualification are predicated on the theory or assumption that since I co-signed the petition that initiated this case, I stand in the position of having been counsel of the petitioners now before the Court, hence it is violative of Section I of Rule 137 for me to act here, there being no showing that all the parties have given their written consent thereto. As I have already explained in my previous concurrence, this premise had already lost every factual and legal pass by the time I became a member of the Court.

Indeed, from the very outset of my participation in the deliberations in this case in this Court, after December 17, 1968, the date of my assumption of office as Associate Justice, what was before the Court was no longer the petition which I had co-signed, but the motions for reconsideration of the private respondents of the decision of this Court of June 30, 1967, penned by the Chief Justice. All these motions as well as the related manifestations and motions subsequent thereto alleged nothing adverse to the Government and, as a matter of fact, had only the following practically identical and specifically limited prayers:

"WHEREFORE, respondents respectfully pray that the judgment at bar be set aside insofar as it orders respondent Ayala y Cia and Alfonso Zabel, jointly and severally, to pay Miguel Tolentino the sum of P3,000 per hectare per year for 29.8639 hectares of Lot No. 360, from March 11, 1954 until he is placed in lawful possession thereof." [1]

"WHEREFORE, respondents respectfully pray that the decision of this Honorable Court herein promulgated on June 30, 1967, be set aside insofar as the execution of the award of damages is concerned, and the corresponding portion of the order dated February 2, 1966 of the respondent Judge be affirmed." [2]

"WHEREFORE, premises considered, respondents respectfully reiterate their prayer that the Decision of this Honorable Court herein promulgated on June 30, 1967 be set aside insofar as the execution of the award of

damages is concerned, and the corresponding portion of the order dated February 2, 1966 of the respondent Judge be affirmed."[3]

"WHEREFORE, premises considered, respondents respectfully reiterate their prayer that the Decision of this Honorable Court herein promulgated on June 30, 1967 be set aside insofar as the execution of the award of damages is concerned, and the corresponding portion of the Order dated February 2, 1966 of the respondent Judge be affirmed."[4]

"WHEREFORE, respondents-movants Ayala y Cia and Alfonso Zobel respectfully reiterate their prayer as contained in their Second Motion for Reconsideration under date of September 19, 1967, or pray, that the decision of this Honorable Court under date of June 30, 1967 be reversed and set aside, and that this proceeding be dismissed with costs against petitioner Miguel Tolentino, Sr."[5]

WHEREFORE, in view of the foregoing premises, respondents respectfully reiterate their prayer as contained in their Second Motion for Reconsideration dated September 19, 1967, their Supplemental Second Motion for Reconsideration dated September 22, 1967, and their Second Supplement to the Second Motion for Reconsideration dated October 12, 1968."[6]

Hence, all other matters involved in this case as well as all matters and claims which could have been raised herein, other than those referring to Petitioner Tolentino's claim for damages had been definitely settled for failure of any of the interested parties, including the Government, to file any motion for reconsideration within the reglementary period.

In other words, when I reached this Court, the Republic's aspect of the case had already been fully and finally terminated and the only matter left for resolution in this case affected no one else but Petitioner Tolentino who had a claim of around P1,500,000.00 against private respondents. As Solicitor General, I never acted nor was I supposed to act as counsel for Petitioner Tolentino in regard to such claim, and whether I believed in it or not is immaterial, as long as in co-signing the petition my purpose was to protect properly the interests of the Government, and if it served to at least clarify the evict position of the Government in the premises my doing so could not have any bearing at all on Tolentino's present claim for damages, which are different and distinct from those which might have arisen from the Government's failure to deliver to him possession of the property leased to him, which, if at all actionable,[7] has, however, been barred already the finality of the decision in G.R. No. L-20950, not having been set up therein.

It is claimed that the best refutation of my disclaimer of Government interest in this case at the time I took part and voted is that the present Solicitor General has filed a motion for reconsideration of the resolution of October 4, 1971. In this connection, I must say that I am not privy to the Solicitor General's motivations and, surely, his having filed such motion which hardly touches on any interest of the Government even as it fully and vigorously supports Petitioner Tolentino's claim for damages in which the Government has no share or interest whether actual or inchoate, present or future, positive or contingent, is not for me to explain. All I know is that neither during my incumbency nor that of Justice Makasiar, when he succeeded me, was there any opposition ever filed by the Office of the Solicitor General to respondents' motion for reconsideration, whose prayers exclusively against the award of damages to Petitioner Tolentino, I have quoted above. Frankly, I cannot see very clearly why the Solicitor General has to move for reconsideration of the granting of a motion which his office never opposed and had no reason to oppose since it dealt exclusively with the private and personal interests of Petitioner Tolentino, particularly if the motion for reconsideration does not specifically discuss the Government's interests at all.

It is also averred that my position that the Government has no more interest in this case is contradicted by the portion of the October 4, 1971 resolution stating that "Tolentino's cause of action was necessarily against his

lessor (the Government) due to the failure of the latter to place him in peaceful possession of the property leased to him." As I have stated above and as explained in the main opinion now of Justice Villamor, such discussion is merely academic and could pose no danger to the Government, considering that Tolentino's failure to make his claim before this case was decided in Civil Case No. 373 of the lower court and in G.R., No. L-20950 in this Court precludes any possibility of his enforcing the same after the finality of said decisions. Indeed, the possibility of Petitioner Tolentino having such a claim against the Government was not even within the scope anymore of this case before the decision of June 30, 1967 and more so after the said decision became final as to the Government.

As to the observations of Counsel Paredes to the effect that the Republic asked for mandamus against Judge de los Angeles to compel said Judge to enforce the nullification of the titles of private respondents and Dizon, I feel that the clarification contained in the present main opinion of Justice Villamor sufficiently elucidates that the interests of the Government cannot be prejudiced by the denial of said prayer for mandamus. Withal, if the decision of this Court of June 30, 1967 satisfies the interests of the Government, as I am sure it does, separately from Tolentino's I cannot see how the granting of respondents' motion for reconsideration thereof only insofar as the award of damages to Tolentino is concerned should cause so much concern about my vote in favor of such grant. 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 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. With the same firm resolution, we will never allow ourselves to wittingly justify a claim for any amount, even less than that of Petitioner Tolentino, in favor of a party who files and perfects a lease application of a portion of the public domain knowing it is somebody else's possession. I have my grave doubts as to whether or not a lessee of a public land who has applied for his lease knowing that the said land is under litigation and delivery thereof to him would have to be contingent upon the results of the suit can have moral or legal basis to claim damages against the Government, in the same manner that I am not yet convinced of the correctness of the ruling in G.R. No. L-20950 that Dizon is entitled to any reimbursement as against the Government for improvements he has placed on land that by mere physical examination appears obviously to be part of the sea, even as I agree that in this particular case that point is already part of the law of the case in consequence of the final decision in G.R. No. L-20950, which in this respect, cannot be said to be suffering from any ambiguity.

IN VIEW OF ALL THE FOREGOING, and it being clear to me that the court a quo cannot put any legal obstacle, since there are none, as explained above and in the herein opinion of Justice Villamor, to the implementation of the decision of this Court favorable to the Government, specially, after the decision and resolution herein have become final, I maintain my vote to deny Petitioner Tolentino's claim for damages. I reiterate my views expressed in my earlier concurrence of October 4, 1971 and I concur in the clarifications in the main opinion of Justice Villamor, for all of which considerations, the plea that the writer of this separate opinion be considered disqualified from participating in this and in the resolution of October 4, 1971 must be as it is

hereby denied, for lack of factual, legal and moral basis.

[1] Motion for Partial Reconsideration of Attys. Jalandoni and Jamir dated Aug. 3, 1967, reiterated verbatim in the Second Motion for Reconsideration of Sept. 19, 1967.

[2] Atty. Rafael Recto's Supplemental Second Motion for Reconsideration of Sept. 22, 1967.

[3] Atty. Rafael Recto's Answer to Petitioner's Petition for Resolution dated March 8, 1968.

[4] Atty. Rafael Recto's Answer to Petitioner's Memorandum dated Sept. 28, 1968.

[5] Atty. Rafael Recto's Second Supplement to the Second Motion for Reconsideration dated Oct. 12, 1968. While this prayer is somewhat modified, a reading of eight (8) grounds alleged in the supplement and the discussion thereunder show that they are exclusively limited to the award of damages to Petitioner Tolentino.

[6] Rejoinder to Reply of Petitioner Tolentino filed by Atty. Rafael Recto dated Sept. 19, 1968, reiterated verbatim in Respondent's fourth Motion for Immediate Resolution dated March 19, 1969.

[7] It is my view that even if Tolentino had timely claimed against the Government, he could not have succeeded, since he knew or ought to have known at the time of his application that the Government would not be in a position to deliver possession of the land covered by his application until after the actual possessors thereof have vacated the same, apart from the fact that from the very nature of the land herein involved as a part of the public domain, it does not seem justified that the Government be bound by the general laws on contracts of lease, since it is more of a grant of a privilege rather than the recognition of a right that the act of the Government in approving a lease application amounts to judicial speaking.

DISSENTING OPINION

TEEHANKEE, J.:

I

The majority resolution would, as stressed by the Chief Justice, "promote usurpations of the public domain, as well as the simulation of sales thereof by the usurper, by exempting him from responsibility for damages" and violate the settled rules on the finality and conclusiveness of the law of the case and the accepted norms of due process and fair play .

The present majority resolution denies reconsideration of its resolution of October 4, 1971, as sought by petitioner Republic of the Philippines[1] and Tolentino. It not only maintains its reversal of the unanimous decision at bar of June 30, 1967 and recall of the writ of mandamus therein issued for execution and enforcement petitioners' long final and executory (also unanimous.) judgment of May 31, 1965 against respondents Ayala y Cia., et. al.[2] but also reaffirms its unprecedented reversal of said final judgment, entry of which had been made over six (6) years ago.[3]

The present majority resolution has left in shambles the 1965 final judgment in that it reverses and sets aside the damage award therein against Ayala in favor of Tolentino (estimated at close to P2 million now) and unprecedentedly breaks the universal and absolute rule that a final judgment is beyond review, revision or reversal

and not subject even to any correction except for patent clerical errors. In the process, it has thus exempted Ayala from any and all liability for damages notwithstanding Ayala's having literally usurped at least 1,091 hectares of the public domain (including over 400 hectares of the beach, foreshore and territorial sea)[4] and unlawfully included as part of its vast Hacienda Calatagan, through a "magnetic resurvey and composite subdivision plan whereby it secured titles to the subdivision lots outside the hacienda's perimeter -- which as early as 1954 were officially found and declared to be part of the public domain.

This Court's final affirmance in 1965 of the lower court's 1962 judgment for compensatory damages against Ayala has now been turned, almost seven years later, into a negation and reversal. Tolentino has been left now holding an empty verdict awarding him against Ayala compensatory damages of close of P2 million[5] without anybody to enforce it against. His affirmed and long final damage award against Ayala has now been nullified by the unprecedented expedient of the majority's October 4, 1971 resolution's pronouncement six years after finality of the judgment "that it was never in the mind nor in the contemplation of the Court that [Ayala et. al] were also considered by the court a quo as liable for the compensatory damages in question" and since the Torrens Titles of the Dizons served to shield them Against any stigma of bad faith, the same legal rule must obtain as respects any imputation of bad faith against [Ayala][6] – despite the glaring fact that the judgment expressly ordered all the defendants jointly and severally to pay Tolentino said damages.

These pronouncements go against the grain of the cardinal principles of our Civil Code that call for payment of indemnification and damages from those "who, contrary to law, willfully or negligently cause damage to another"[6a] or "who willfully cause loss or injury to another in a manner, that is contrary to morals, good customs or public policy."[6b]

Since over 20 years now, Ayala has unlawfully usurped and titled at least 1,091 hectares of the public domain, greatly expanding thereby its already huge Hacienda Calatagan (said to comprise 9,6524 hectares) and thereafter for thousands of pesos leasing and selling to others such as the Dizons the Government's own property (as usurped and subdivided by Ayala). The lower court endorsed in its extensive 94-page decision[6c] the district land officer's report on Ayala's unlawful usurpation (eventually affirmed in the 1965 judgment which is quoted as follows:

“x x x It has also been observed that the hacienda is encroaching portions of public marshy land claiming to be parts of the hacienda covered by said title, and leasing the same to individuals who converted them into fishponds. A fishpond called by the hacienda as fishpond no. 1 is clearly seen in the photostatic plan of the hacienda as part public marshy land, hut the Ayala y Compania claiming it as part of the hacienda leased it to a certain individual who is now paying the hacienda several thousands of pesos in concept of rentals. This amount should have been collected by the government who is entitled to it because the land is part of the public domain.

"The practice of the owners of the hacienda covered by this transfer certificate of title No. 722 of causing partial subdivision surveys of the hacienda covered by their said title without com-puting the remaining portion is considered prejudi-cial to the interest of the national government x x x"[6d]

The lower court therein cited also the investigation report of the forestry and fishery authorities recounting how Tolentino and his co-applicants for fishpond permits from the government "were marked as enemies and open agitators of the existing rules and regulations of the hacienda"[6e] in support of its factual findings (confirmed by this Court in the 1965 judgment) of mass usurpation by Ayala of lands of the public domain bordering Balayan Bay, Pagaspas Bay and the China Sea.

Ayala has thus received, retained and exclusively benefited for over two decades from the moneys paid to it for rentals and purchases from it of public lands and waters belonging to the Government. Just taking the P49,721.72

that Ayala was paid in 1954 by the Dizons for the four fishpond lots "sold" by it and covered by T.C.T. No. 9550. one can readily realize that by simply investing the sum thus received on a 10% 12% annual return and re-investing the earnings thereof on the same basis, the original amount of P50,000.00 (rounding out the figure) would have grown easily 10 times in 20 years to P500,000.00. All that Ayala would eventually return to the Dizons, if at all, is the purchase price of P50,000.00 which it never had a right to receive in the first place, leaving Ayala a handsome gain on its unlawful usurpation. –[6f] The Dizons on their part, have all this time likewise deprived the lawful lessee, Tolentino, of the possession and enjoyment of the fishpond and its fruits at a minimum of P3,000. per hectare –[7] so they likewise have profitably gained from Ayala's usurpation of the lands.

Verily, the majority resolution would with such dubious incentives and benefits "promote usurpations of the public domain, as well as the simulation of sales" as noted by the Chief Justice in his separate October 4, 1971 dissent. Tolentino, who "rendered a service to the nation by establishing its title to over 1,000 hectares of the public domain appropriated by respondents herein" is left holding the bag and is chided for having acquired something "controversial". As stressed by the Chief Justice, Tolentino, the winner ostensibly but indubitably now the loser, is penalized "by denying any relief for the damages sustained by him in defense of what is right" while the ostensible losers, Ayala et al., are rewarded" by allowing them to keep the income and other benefits derived by them by wrongfully defying the rulings of the proper administrative and judicial authorities." [8]

The majority's pronouncement now that the Dizons' Torrens Titles, served to shield Ayala of any stigma of bad faith cannot stand of course in the face of the record. As elsewhere stated, the very magnitude and character of the usurpation manifestly showing perse usurpation of public waters and bays stretching out to the sea rule out any such disclaimer of bad faith on Ayala's part.

The majority resolutions disregard the settled rule of finality and conclusiveness of the law of the case which may no longer be disturbed or modified in a second appeal or proceeding on the same case. Worse, they violate the accepted norms of dueprocess and fair play in that the rules can no longer be changed and then applied to a long finished case to reverse the verdict. Granting that the majority resolution may adopt a revised interpretation of the law and of the rules as applied in the 1965 judgment, such subsequent revised interpretation may be applied only prospectively to new cases but certainly cannot, without violating due process, be applied to the 1965 judgment which was already then finally and conclusively determined. The majority resolution may not change the rules of the game six years after Ayala lost the verdict and now completely reverse the score card and declare Ayala the winner after all!

II

No justification for denying writ of execution for cancellation of void titles 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 .

Paragraph (a) of the 1965 judgment[9] is the part that exclusively favors the Government. It orders the cancellation as null and void of all expanded subdivision titles secured by Ayala 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. This part of the judgment is undisputed by all parties. Ayala herein expressly avows that "the question of ownership over the foreshore lands had already been decided in favor of petitioner Republic of the Philippines, with respondents making no pretensions whatsoever of contesting the same." [10]

But respondent judge had denied per his order of February 8, 1966[11] the Government's motion for the issuance of a writ for execution of this undisputed part of the judgment for cancellation of the void expanded titles procured by or derived from Ayala. Hence, this Court's original decision at bar of June 30, 1967 annulled inter

alia said order and directed the issuance of a writ of mandamus for execution of the entire 1965 final judgment.

The October 4, 1971 majority resolution simply set aside the original decision at bar of June 30, 1967, without giving any reason why it was refusing the issuance of a writ of mandamus for execution of this undisputed portion of the judgment in favor of the Government – as specifically pointed out in the writer's dissent thereto.[12]

Hence, to this date, even the Dizons' void title T-9550 expressly ordered cancelled in the 1965 judgment as well as all other expanded and void subdivision titles of Ayala remain precariously uncanceled!

The present majority resolution would deny the Govern-ment's motion at least on the erroneous misconception that "it is only the interest (for damages) of petitioner Miguel Tolentino, Sr. which is in issue in this case,"[13] and 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."[14]

The whole record of this case shows the misconception to be patently erroneous. The Government precisely filed this petition for mandamus since May 27, 1966 to get respondent judge to execute the 1965 judgment ordering the cancellation of Ayala's expanded titles usurping over 1000 hectares of the public domain and their reversion to the dominion of the State, complaining in the petition that "it seems that the trial judge is bent on making things difficult for the plaintiff . . . in this case. Since it is agreed that par. (a) of the dispositive part of the decision of the lower court has not been modified by the decision of the Supreme Court, there should be no problem about its implementation. All that the trial judge has to do is to issue an order addressed to the Register of Deeds directing him to cancel the title in question . . ."

In the Court's deliberations on the question, the majority did categorically affirm its premise and position that the Government's right of reversion to public dominion of the public lands and waters decreed in the 1965 judgment was not being prejudiced at all and that Ayala and its purchasers were not thereby being permitted to retain the usurped public lands. The majority in justification has now apparently adopted – contrary to its October 4, 1971 resolution where it passed the question sub silencio – the posture in Mr. Justice Barredo's separate concurrence that "the judgment in this case ordering Judge de Los Angeles to issue the writ of execution for cancellation of the annulled titles (is) now final and executory because respondents have not asked for reconsideration in respect thereto * * *"[15] If this is so, it should be so stated expressly so that this portion of the judgment at bar may be reinstated and implemented.

I take it with 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."[16] I so expressly state my understanding of the majority's stand, so that it may be corrected by them, if erroneously or inaccurately stated. In the same vein and so that the majority's clarification in its present resolution[17] may be taken in context, I reproduce hereunder the considerations that I had urged for reconsideration of the majority resolution in this aspect and in response to which the majority has made the clarification that the serious consequences feared by me therein have no basis and are outside the intent and content of the majority resolutions:

Dismissal of Government's mandamus petition for execution of judgment means total frustration of reversion of public lands and waters decreed in the 1965 judgment and retention by Ayala and its purchasers of usurped public

lands.

Special note should also be taken that while Ayala, in opposing the Government's motion for reconsideration, has been with its "right hand" so to speak, disavowing any "pretensions whatsoever of contesting (the 1965 judgment in favor of the Government)"[18] and reassuring this Court that it "had manifested no intention to thwart or set at naught that portion of the decision in Civil Case No. 373 (in favor of the Government)."[19] Ayala has on the contrary progressed very far, with its "left hand", precisely to accomplish this very objective of barring the Government from enforcing the said judgment in its favor.

All that Ayala needs for the coup de grace against the Government's judgment is the present majority resolution!

Petitioner Tolentino's reply of January 31, 1972 to Ayala's opposition and the annexes submitted therewith show conclusively – and no denial has here been made by Ayala that contrary to Ayala's protestations here of its adherence to and noncontesting of the 1965 judgment that all subdivision titles over areas outside the private land covered by TCT No. 722 are null and void and reverted to public domain, Ayala has successfully blocked at every turn the Government's efforts to enforce such judgment!

Even at this very stage, Ayala has opposed the Government's motion for reconsideration asking this Court to reinstate its decision of June 30, 1967 ordering execution of the Government's judgment which Ayala had successfully opposed in the lower court, which in disregard of its ministerial duty, refused to issue such execution – constraining the Government to file the mandamus petition at bar.

In Mr. Justice Barredo's view per his concurrence of October 4, 1971, supra, the judgment in this case ordering respondent judge to issue the writ of execution for cancellation of the annulled subdivision titles has long been final and executory since the promulgation of June 30, 1967 of the decision at bar (now set aside in toto by the majority resolution of October 4, 1971), as "respondents have not asked for reconsideration in respect thereto."

The fact, is, however, when long after the purported finality of the decision at bar of June 30, 1967, the Government filed its motion of July 8, 1970 with the respondent judge in the case below (Case No. 373)[20] for authority to conduct the necessary resurvey of the lands affected so as to properly segregate from Ayala's private land originally covered by TCT No. 722, the areas outside thereof comprising at least 1,091 hectares of public land, beach, foreshore and territorial sea usurped by Ayala and for which it had unlawfully secured subdivision titles[21] and to determine the precise extent of Ayala's usurpation by expansion, of its title of lands and waters of the public domain, Ayala filed its opposition of July 29, 1970.[22]

Ayala contended in its opposition that the proper step for the government was to ask for a writ of execution (which the lower court had long denied since February 8, 1966, giving rise precisely to the Government's long-pending petition at bar [six years now] for mandamus); that no other subdivision titles, besides 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[23] 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." [24]

All these actions of Ayala before respondent judge in the case below 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 Obviously, to cancel such titles, a proper resurvey is desirable as asked by the Government, not to reopen but to implement the final judgment in its favor!

Expectedly, respondent judge, having since February 8, 1966 denied execution of the judgment, issued his order

of October 27, 1970 denying the Government's motion for authority to conduct such prerequisite resurvey, as follows:

"It is very relevant to remember in this connection that the mandamus case which is still pending in the Supreme Court specifically prays that this Court be ordered by the Supreme Court to execute the final decision in Civil Case 373. No such order has been received by this Court. Consequently, lest it be said that this Court has forgotten to give due regard to a superior Court, it is only wise, prudent and proper not to give due course to the instant motion which, as correctly stated by the defendants, is tantamount to giving due course to a motion for execution even before the Supreme Court had ruled on the matter. Such a conclusion is certainly not unwarranted considering the complexity of Civil Case 373. If the execution of the decision in Civil Case 373 is as simple as plaintiff-movant wants this Court to believe, the mandamus case would have not been pending in the Supreme Court for the past three or four years now. This is one valid reason why this Court cannot agree with plaintiff-movant's contention. x x x

"Finally, the Court also agrees with the arguments of the defendants that it will be very difficult, if not impossible, to resolve the merits of the instant motion for resurvey without the plaintiff-movant presenting evidence which were available to the parties during the trial of Civil Case 373 but not availed of by them, so that to give due course in the instant motion for resurvey would in effect allow reopening of the decision which has already, become final.

"WHEREFORE, the motion to authorize a resurvey of the land in question is hereby DENIED." [24a]

With this background, can there be the least doubt that should this Court not reconsider and set aside the October 4, 1971 majority resolution dismissing in toto the mandamus petition at bar, the respondent judge would summarily turn down any second motion for resurvey to effect reversion of the usurped public lands and cancellation of the annulled subdivision titles of Ayala? That dismissal herein of the Government's petition for a writ of mandamus for execution of its judgment would mean the total frustration of the reversion in its favor of the over 1,000 hectares of public land and waters decreed in the 1965 judgment? That Ayala would invoke dismissal of the petition at bar as *res judicata* barring the right of the Government to enforce its said judgment for reversion and recover the areas of the public domain illegally usurped and titled by Ayala? That as a consequence, Ayala and its purchasers would continue retaining possession and enjoyment, indefinitely if not forever, of such usurped lands of the public domain to the great and irreparable prejudice of the Republic of the Philippines and the public interest!

The point simply is: I submit that if the over 1,000 hectares of public lands and waters usurped by Ayala are indisputably and concededly of the public domain as per the 1965 judgment, this Court should effect without further delay their reversion to public dominion and the actual cancellation of the annulled titles by ordering the execution of the judgment which Ayala has persistently opposed and which respondent judge has refused to issue, *supra*, avowedly because he has been "prudently and properly" waiting for such an order in this case from this Court!

III

Defendants Dizons may no longer be left free to retain and enjoy for all time the admittedly public (foreshore) areas usurped and converted by them into fishponds .

This Court in its 1965 judgment affirming the lower court's basic decision of June 2, 1961 modified it in two particulars both favoring defendants Dizons (purchasers from Ayala of the foreshore fishponds usurped by Ayala and titled by them per TCT No. T-9550); by reserving the Dizons' right to retain the property (Lot 360— the very same lot lawfully leased by the Government to Tolentino) until they are reimbursed of their necessary expenses

thereon (by Tolentino, who would do so from the damages awarded him against Ayala) and by excluding them from the joint and several award of damages to Tolentino granted by the lower court.

As already recited in my dissenting opinion of October 4, 1971,[25] such modification in the 1965 judgment was made precisely at Ayala's instance and insistence in their appellants' 105-page brief, which alternative relief was sought by Ayala not on its own behalf but on behalf of the Dizons (its purchasers). Thus, Ayala as vendor and source of the illegally titled lots, remained as the party liable to pay the damages awarded to Tolentino who in turn would reimburse therefrom the Dizons' necessary expenses and effect their surrender of the property to him as the Government's lawful lessee thereof.

Here again, I take it from the present majority resolution that since the areas occupied by the Dizons are concededly part of the territorial waters and that even going by the unfortunate dictum of the Court of Appeals, as adopted by this Court in *Dizon vs. Rodriguez*, supra, and in 1965 judgment[26] that the Dizons' "possession in good faith does not lose this character except in the case and from the moment their Torrens titles are declared null and void by the Courts," the Dizons may not continue indefinitely retaining and enjoying the fruits of the fishpond lot usurped by them from the Government.

From and after the finality of the judgment at bar in 1965, even by the said dictum of the appellate court, the Dizons' possession was converted into one of bad faith since their unlawful title (null and void ab initio by the very pronouncement of the case since the public foreshore and navigable waters were not capable of registration) was declared null and void by final judgment.

The circumstance that Tolentino, under the majority resolutions depriving him of his damage award cannot now reimburse the Dizons for their necessary expenses or improvements prior to 1965, cannot and does not mean that the Dizons can indefinitely continue their possession in bad faith. And it would be the height of absurdity, if after the Dizons (and Ayala) have benefited from and exploited the fruits of the usurped lands for 20 years now in the amount of millions, the Dizons would still be held entitled to retain the usurped lands even against the Government unless reimbursed by the Government for necessary improvements (as the Government was in fact sentenced to so reimburse them in the *Dizon* decision of April 30, 1965).

As stated earlier, I take it from the majority's pronouncements now that all such claims (against the Government) are now foreclosed hence the improbability of the Republic being liable to any of the parties under any conceivable situation" that the Government may now unconditionally without reimbursement and without further delay recover possession of the area occupied by the Dizons.

IV

What has come clearly through all this is that problems, problems and more problems have arisen and have been left unresolved by the majority resolutions setting aside the unanimous decision at bar of June 30, 1967 and refusing execution of petitioners' long final and executory 1965 judgment against Ayala .

The Government is left with the problem of a final judgment, which it has not been able to execute for close to 7 years now, for reversion of over 1,000 hectares of the inalienable public domain wrongfully titled by Ayala and for cancellation of the titles therein ordered to be cancelled. The majority resolutions dismiss its petition at bar for a writ of mandamus ordering respondent judge to perform his ministerial duty of issuing the corresponding writ of execution notwithstanding that Ayala in its very opposition to petitioners' motions for reconsideration of the October 4, 1971 majority resolution presently being resolved, ostensibly manifests that it "(makes) no pretensions whatsoever of contesting the (judgment)." I trust that this problem may now be deemed resolved, with the majority's pronouncement in its current resolution that "the right of the Republic to the cancellation of the titles

nullified by the decision of Judge Tengco affirmed by this Court" is not being denied (at page 7). Still I submit that the time-honored rule requires that such order of cancellation of all such annulled titles and reversion of the lands covered thereby to public dominion be ordered through the issuance of the writ of mandamus in the dispositive part of the decision at bar rather than in the form of a mere statement in the opinion.

Petitioner Tolentino is handed the problem of his close to P2 million – final and executory judgments for damages against Ayala being negated and reversed six (6) years later by an interpretation that is against Ayala's own interpretation and acknowledgment that indeed it has been held solidarily liable to pay such damages. The October 4, 1971 majority resolution "considered as null and void" his judgment against Ayala for being "a judgment or fallo without any basis at all in fact and in law or in the opinion portion of the decision from which it draws its breath and life"[27] – notwithstanding that no such claim of nullity of the said judgment has ever been made by Ayala, and much less, has any action for annulment of the judgment ever been filed by Ayala.[28]

From the majority's premise now that it is "improbable" the Government should "be liable to any of the parties under any conceivable situation" (at page 5) even if no one is left to reimburse the Dizons, and from the deliberations held by the Court, I take it that the majority concurs and agrees with the following logical propositions as a necessary consequence of the premise:

– – Even if we were to grant that Tolentino as lessee of the fishpond lot from the Government cannot oust and take over from the Dizons without reimbursement of their necessary expenditures thereon, the Government as owner of the public domain ordered reverted to it, cannot be barred from recovering unconditionally its own public land and waters that Ayala and the Dizons had no right to enclose and appropriate for themselves.

– – The alleged good faith of the Dizons[29] in buying the fishpond lot from Ayala can only protect them against Ayala who sold them the property. But such alleged good faith cannot protect them against the Government's rightful claims for reversion thereof as part of the inalienable public domain, since the Government had nothing to do with the unlawful sale thereof by Ayala to the Dizons.

– – Ayala's sale to the Dizons of the fishpond lot – admittedly "actually part of the territorial waters"[30] cannot impair the Government's rights to the sea bed or to recover it from whosoever usurped it, since as far as the Government is concerned, the contract of sale thereof between Ayala and the Dizons is purely *res inter alios acta*. To hold otherwise would be to legitimize a scheme of usurpation of the public domain through conveyance of the usurped lands to third persons acting ostensibly in good faith – and as the Chief Justice emphasized, "foster the simulation – difficult to prove in court – of sales to dummies or alter egos." [31]

– – Since Ayala acquired possession of extensive portions of the public domain through fraud,[32] and the Dizons of the fishpond lot (still occupied them after nearly 20 years) through mistake, they are by force of law deemed trustees thereof for the benefit of the Government as the real owner. (Article 1456, Civil Code.[33] Hence, they are bound and liable to reconvey the public properties to the Government at any time, since prescription does not run against the Government.[34] The rule that statutes of limitation do not run against the State, unless therein expressly provided, is founded on "the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided." [35]

– – Even if it be held *arguendo* that upon Tolentino's failure or refusal to reimburse the Dizons' necessary expenses, the Government cannot recover the fishpond lot occupied and exploited by the Dizons without itself paying for such expenses, (as the Government was in fact sentenced to pay them in *Dizon vs. Rodriguez*, supra) Ayala "as the ultimate cause of said damages"[36] should be liable in turn to reimburse the Government for such payments, especially, since it was Ayala that had sold to the Dizons the Government's own property and without right received from them payment of the price, which Ayala has retained and benefited from during all these 20 years up to now.[37]

V

The majority resolution has not spelled out what distinct ambiguity and special factors mark this case such as to warrant an unprecedented breach of the universal and absolute rule that a final judgment is beyond review, revision or reversal.

It seems apparent from the October 4, 1971 majority resolution and from the current majority resolution sustaining the dismissal of the petition at bar and the setting aside of the Court's unanimous decision of June 30, 1967, that the unprecedented breach of the universal, and heretofore absolute rule that a final judgment is beyond review, revision or reversal is intended to be limited to this case.

The entire Court, collectively and individually, subscribes to and endorses the validity of the cardinal principle of *Interest rei publicae ut finis sit litium*.^[38]

The Chief Justice in his separate dissent of October 4, 1971^[39] aptly restated the rule as based on public interest and public policy in this wise: "We have thus consistently adhered to the rule that the dispositive part of a decision is the judgment properly speaking; that the same prevails over the opinion set forth in the body of the decision; and that, in case of conflict between the former and the latter, the former is controlling, 'regardless of any possible injustice in a particular case.' "

He went on to cite the classical concept that "public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by the law. The very object for which courts were instituted was to put an end to controversies," and "(I)t is a rule that must be adhered to regardless of any possible injustice in a particular case. It is not a legal concept of the flexible kind, capable of being individualized to meet the needs of varying conditions. "We have to subordinate the equity of a particular situation to the overmastering need' of certainty and immutability of judicial pronouncements. The loss to the litigants in particular and to society in general 'would in the long run be greater than the gain if judges were clothed with power to revise' their decisions at will."

Indeed, litigation would be made intolerable for the judges and "more unendurable than the wrongs it is intended to redress for the parties if every decided case were to be deemed subject to further interpretation and clarification of an alleged "ambiguity" in the decision as raised or dug up by the losing party if upon the loser's making a plea for clarification of an ambiguity in the decision, the whole record of the case has to be retrieved from the musty archives and thrown wide open again. Witness the case at bar where the majority's October 4, 1971 resolution went back through 16 pieces comprising the record of Civil Case 373 of the lower court (wherein the judgment against Ayala et al. was affirmed by this Court's 1965 judgment) containing a total of two thousand two hundred ninety nine (2,299) pages to come up with the conclusions:

---That Tolentino's complaint did not adequately allege the "ultimate facts" to constitute a sufficient cause of Action for damages (at pages 7-9):

---"That only the Dizons, and not [Ayala] were intended by the Court a quo to be liable for compensatory damages to petitioner Miguel Tolentino, Sr." (at page 10);

— That in case of doubt in the interpretation of laws, it is presumed that right and justice should prevail, and hence, amendments of an already final decision may be made either by supplying an omission or in the reverse striking off "words which were not really intended by the body of the decision to appear in the fallo thereof" (at pp. 11-16).

All these "conclusions" were but the contentions repeatedly urged by Ayala and which were just as repeatedly rejected in the 1965 judgment and in the present case until the majority's October 4, 1971 resolution. It is

submitted that it is too late in the day to even consider such contentions now, much less make them the basis for overturning the unanimous 1965 judgment deliberated upon and resolved by a different membership of this Court a majority of whom has since retired. The time to raise them was when the main case was still before the Court and before the 1965 judgment became *res judicata*. They were so raised and the 1965 judgment is now *res judicata* – it's the law of the case and is no longer subject to review or reversal. They can no longer be raised in the present *mandamus* case where the issue simply is whether or not respondent judge has failed and refused to, perform his ministerial duty of enforcing the final judgment which is to be found only in the dispositive part.

Hence, the universal rule that regardless of any possible injustice in a particular case, the dispositive part of the decision inconsistent or incongruous though it may be with the body or opinion of the decision, if not properly amended before the decision becomes final – is the judgment properly speaking. And the absolute rule that the dispositive part of the decision which is the only portion entered per entry of judgment under the Rules of Court[40] shall prevail and control over the opinion set forth in the body of the decision and shall be the part properly enforceable by execution, not subject to alteration or amendment (except for correction of patent clerical errors), once final.

Mr. Justice Makalintal in *Maramba vs. Lozano*[41] likewise succinctly restated the rule to mean that: "A decision which has become final and executory can no longer be amended or corrected by the court except for clerical errors or mistakes, and however erroneous it may be cannot be disobeyed; otherwise litigations would be endless and no questions could be considered finally settled. The amendment sought by appellee involves not merely clerical errors but the very substance of the controversy. And it cannot be accomplished by the issuance of a 'nunc pro tunc' order such as that sought in this case."

The present majority resolution (like the October 14, 1971 resolution) repeatedly stresses at least in five separate portions thereof that "any issue which is not within the sphere or scope of a special civil action for certiorari and mandamus, i.e. any issue which seek to delve into the merits of the aforesaid Civil Case No. 373 or the correctness of the findings of fact or conclusions of law of the Court *a quo* in the said case, may no longer be entertained by this Court, the judgment therein having become final after the expiration of the reglementary period from the promulgation of our decision in case G.R. No. L-20950,"[42] that "our resolution of October 4, 1971 does not in any way set aside or reopen the already final judgment of the Court *a quo* in the said civil Case No. 373, as modified by our decision in G.R. No. L-20950. The resolution of October 4, 1971, merely clarifies the ambiguity * * * "[43] and that "our resolution * * * does not disturb the said decision in G.R. No. L-20950 but merely clarifies the judgment of the court *a quo* * * * as modified by our decision."[44]

Yet it is self-evident from the very same majority resolutions that they have definitely disturbed, reopened, set aside and reversed the already final 1965 judgment:

– – In holding that "it was never in the mind nor in the contemplation of this Court" to hold Ayala responsible for the damages awarded to Tolentino[45] the majority definitely set aside and substituted with zero the very essence of the substantial damages (estimated at close to P2 million now) awarded against Ayala in favor of Tolentino.

– – In going as far back as reviewing the allegations of the pleadings filed since May 12, 1960, dissecting the punctuations used by the lower court in its decision of June 2, 1962 as affirmed with modification by this Court's 1965 judgment, and even availing of pure speculation regarding the Court of Appeals' decision in *Dizon vs. Rogriguez*[46] to sustain the present conclusion that "justice and equity now compel this Court to depart in this case from the general rule that for purposes of execution, only the dispositive portion of a decision should be referred to."[47]

The majority resolution's above arguments and dissertations expressing its view that the judgment in paragraph

(c) had nointention to hold Ayala liable jointly and severally to Tolentino for the damages awarded lose all meaning when it is considered that Ayala itself acknowledged that it had been so held liable, expressly assigned this as an error of the trial court's decision and alternatively prayed for and secured the modification on behalf of the Dizons, that the Dizons be held entitled to retain possession of their illegally titled fishponds purchased from Ayala until reimbursed for their necessary expenses.[48] Hence, the record of the 1965 judgment shows that Ayala apparently satisfied with this portion of the said judgment no longer moved for reconsideration thereof insofar as it was sentenced thereby to pay Tolentino the compensatory damages (with the Dizons discharged from solidary liability therefor) and instead concentrated its motion for reconsideration on paragraph (a) of the judgment which decreed the cancellation of all its subdivision titles and the reversion of the areas covered thereby to public dominion, which reconsideration was denied on December 6, 1965 by this Court.

The majority resolution has thus failed to enlighten us on counsel Quintin Paredes' comment that "he cannot understand how this Honorable Court arrived at the conclusion that when the trial Judge used the phrase 'all the defendants' (in pars. (c) and (d) of the dispositive portion of his decision) he referred to only some of the defendants, and that when he omitted the word 'all' in par. (e) he meant 'all the defendants' (p. 13, resolution). It is obvious that this Honorable Court's interpretation is not only uncalled for, but is illogical. A correction made where no error exists cannot be anything but erroneous." [49]

As above stated, the modification of the damage award found in paragraph (c) of the judgment against "all the defendants * * * jointly and severally" excluded the defendants Dizons and held them entitled to reimbursement for necessary expenses at the very instance of Ayala, "there being no showing that defendants Dizons are not purchasers in good faith and for value." [50] Hence, the Chief Justice in the Court's now discarded decision of June 30, 1967 pointed out that the simple modification of paragraph (c) of the 1965 judgment consisted of inserting the simple phrase "except the Dizons" so that it would read as follows:

"(c) Ordering all the defendants, except the Dizons, to jointly and severally pay intervenor Miguel Tolentino compensatory damages in the sum of P3,000.00 a year per hectare of lot 360 from March 11, 1954, until he is placed in lawful possession of the said area." [51]

The majority resolution in now "interpreting and clarifying" the alleged "ambiguity" of the modification would now except not only the Dizons but all the other defendants, i. e. Ayala y Cia. and/or Hacienda Calatagan and Alfonso Zobel. The majority does not however clarify why this was not plainly stated, if this were the real import and tenor of the simple modification excepting only the Dizons expressly, and why the 1965 judgment did not just eliminate and set aside in toto the damage award provided in paragraph (c), i.e. suppress and do away then with the entire paragraph (c) of the judgment as it has now done through the medium of the present "clarificatory" majority resolutions. It strikes one as rather peculiar that if the real intent of the 1965 judgment was to award no damages to Tolentino and to hold no one thus liable, after the exclusion of the Dizons, as the majority would now "clarify", why the Court did not so expressly state, instead of affirming the whole judgment with the sole modification in paragraph (c) thereof, excluding the Dizons. Read the way the majority now reads said paragraph (c) of the judgment would result in the absurdity that this Court then "ordered all the defendants, i.e. none of the defendants, jointly and severally to pay intervenor Miguel Tolentino compensatory damages, etc."

For the guidance of bench and bar, in view of the obvious intent to limit future application of the un-precedented departure in this case from the hitherto absolute rule of finality of judgments and that there can be no individualization even at the risk of occasional error or injustice to particular litigants, it is respectfully submitted that the majority is called upon to mark the distinct ambiguity and special factors that called for its wide-ranging interpretation that in fact and in effect culminated in the reversal and setting aside of the long final and executory judgment against Ayala.

The present majority resolution asserts that:

" * * * it has all along been the impression of the parties in the said Civil Case No. 373 of the Court a quo that the private respondents in this special civil action were not so included. This observation finds particular application to petitioner Miguel Tolentino, Sr., when he filed a motion for reconsideration in G.R.No. L-20950 on May 31, 1965, wherein he insisted, after our decision therein absolved the Dizons from liability for compensatory damages to him, that all the defendants be declared possessors in bad faith and liable for such compensatory damages. The said motion for reconsideration having been denied by this Court in the same case, it is obvious that the private respondents herein, co-defendants in the said case, G.R. No. L-20950, were considered by us as not liable for compensatory damages to petitioner Miguel Tolentino, Sr." (at pp. 2-3)

It is respectfully noted that the record of the 1965 judgment i.e. Case L-20950, in the Court's archives, does not bear this out. (Parenthetically, this shows the validity of the rule that the judgment is found in the dispositive part and that courts and parties, in execution proceedings such as the case at bar, should not be called upon to dig into the old records of finished cases and speculate, as respondent judge did, on "impressions" of the parties and "intention" of the decision and judgment rendered, which are at any rate irrelevant.)

The rollo of L-20950 shows clearly that after the rendition on May 31, 1965 of the Court's judgment therein affirming the lower court's judgment with the sole modification of excluding the Dizons from the damage award to Tolentino and allowing the Dizons as alleged possessors in good faith to retain the property until reimbursement of their necessary expenses, the Solicitor-General's office and Miguel Tolentino, Sr. as counsel of record for the other intervenors-appellees (twenty of them, named as co-petitioners herein, excluding himself) whom Tolentino had from the beginning so represented upon the filing of their intervention in Case 373 in the lower court, filed jointly[52] a printed "motion for reconsideration of portion of decision" wherein the Government prayed that the Dizons be ordered "to immediately vacate the premises of the public fishponds in question" and Tolentino as such counsel prayed that the Court reconsider and instead "(3) Order the defendants Ayala y Cia., and/or Hacienda Calatagan or the Zobels to also pay the plaintiff-appellee Republic of the Philippines and the other intervenors-appellees compensatory damages in the sum of P3,000.00 a year per hectare at least from 1952." [53]

The basis of such joint motion for reconsideration was vigorously restated by herein petitioners in their therein concluding statement immediately preceding their prayer, which bears reproduction hereinbelow.[54] As already stated, this as well as Ayala's motion for reconsideration were denied on Dec. 6, 1965.

It is of special significance for the efficient administration of justice and expeditious execution of final judgments that the special cases such as the case at bar be spelled out where, notwithstanding this being a special civil action for mandamus to compel the respondent judge to discharge his ministerial duty of issuing a writ for the execution of a final judgment, this Court would sanction going into the interpretation and ultimate reversal and setting aside of the judgment sought to be executed and direct the dismissal of the petition for mandamus. The lower courts would then be duly put on notice that the general rule still applies, as stated in the discarded decision at bar of June 30, 1967, that the issuance of a writ of execution for the enforcement of a judgment reviewed and affirmed by this court is a ministerial duty, regardless of any doubts entertained by the lower courts. The judgment creditor is entitled as a matter of right to the issuance of the writ of execution; the propriety or validity of such writ may then be questioned in a special action of certiorari or prohibition by the adverse party and the reviewing court may then summarily dismiss the petition if it lacks merit, whereas if the lower court should disregard his ministerial duty to issue execution of a final judgment, the judgment creditor's petition for mandamus to enforce his right to execution would in all cases have to be given due course and the reviewing courts' dockets would needlessly be overburdened.

WHEREFORE, for the foregoing reasons in addition to the reasons extensively discussed in the Chief Justice's dissenting opinion of October 4, 1971 and in my separate dissent of the same date, I vote to grant the motions for reconsideration of petitioners Republic of the Philippines and Miguel Tolentino, Sr. and the latter's supplement to motion for reconsideration, and consequently, for the reinstatement of the Court unanimous decision of June 30, 1967.

[1] Referred to hereinafter simply as the Government.

[2] Referred to hereinafter simply as Ayala since it is the main respondent-protagonist, and predecessor-in-interest of Alfonso Zobel and Jacobo Zobel as owner of Hda. Calatagan (Answer, p. 5).

[3] Case L-20950, May 31, 1965 entitled "Republic of the Philippines vs. Ayala y Cia. et al; Miguel Tolentino, et. al., intervenors," judgment entered on December 11, 1965. Reported in 14 SCRA 259. This judgment affirmed with modification the Batangas CFI judgment in Civil Case No. 373 thereof, and is hereinafter simply referred to as the 1965 judgment or just plainly, the judgment.

[4] As stated by the Chief Justice in his dissent of Oct 4, 1971, six (6) decisions - two of the Court of First Instance of Batangas, one of the Court of Appeals and three of this Supreme Court since 1956 apprised Ayala that its expanded subdivision titles were usurping, i.e. grabbing lands of the public domain: "(1) that on April 28, 1956, this Court had declared (Dizon vs. Bayona) that, if the disputed area is part of the beach or foreshore – as respondent knew it was – said area could not be registered under the Torrens System; 2) that this pronouncement was reiterated in the decision of Judge Vasquez, dated January 30, 1958, which further declared that said area is not and was not part of the Hacienda Calatagan and that the subdivision titles thereto, of the Dizons and Sy-Juco, et al., are null and void; and (3) that said pronouncement and declaration were affirmed by the Court of Appeals on October 31, 1961, reiterated by Judge Tengco on June 2, 1962, and affirmed by the Supreme Court, on April 30 and May 31, 1965.

The modus operandi is expressly made of record in the cited case of Dizon vs. Rodriguez, 13 SCRA 704 (April 30, 1965) where it is recounted that Hda. Calatagan, owned by Alfonso and Jacobo Zobel was originally covered by T.C.T. No. T-722. In 1948 upon cessation of their sugar mill's operations, the hacienda owners converted the pier (used by vessels loading sugar) which stretched "about 600 meters long from the shore into the navigable waters of Pagaspas Bay" into a fishpond dike and enclosed 30 and 37 hectares of the bay on both sides of the pier as fishponds. In 1949, they ordered the subdivision of the hacienda and these fishpond lots were thus absorbed as part of the hacienda and titled in the name of Jacobo, which they sold later to the Dizons and Gocos. This Court affirmed the findings that the subdivision plan was "prepared not in accordance with the technical descriptions in T.C.T. No. T-722 but in disregard of it" and that the appropriated fishpond lots "an, actually part of the territorial waters and belong to the State."

[5] Paragraph (c) of dispositive portion of the 1965 judgment sentenced defendants except the defendants Dizons to jointly and severally pay Tolentino "compensatory damages in the sum of P3,000.00 a year per hectare of lot 360 from March 11, 1954 until he in lawful possession of the said area."

[6] Majority's Oct, 4, 1971 resolution at page 24.

[6a] Art. 20. Civil Code.

[6b] Art, 21 Civil Code.

[6c] Rec. on Appeal (272 pages) in L-20950, pp. 167 to 260.

[6d] Rec. on Appeal in L-20950, pp, 173-174. Italics applied.

[6e] *Idem*, at page 179

[6f] The magnitude of Ayala's gains can be realized, when we consider the total area of at least 1,091 hectares that has been usurped.

[7] This was the conservative estimate at the time of the lower court's decision in 1962. Ten years later now, one can see that the value of such fruits must have easily increased by at least ten times to P30,000 per hectare.

[8] At pp. 25-26.

[9] It reads: "(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."

[10] Ayala's opposition of December 15, 1971 to motions for reconsideration, at page 6.

[11] See original decision of June 30, 1967 penned by the Chief Justice, at pages 4-5. See 20 SCRA 608, 612.

[12] Writer's separate Oct. 4, 1971 dissent; par. 8, at page 11.

[13] At page 3.

[14] At page 7, italics supplied.

[15] J. Barredo's Oct. 4, 1971 concurrence, at page 2.

[16] Paragraph (a) of 1965 judgment.

[17] At pages 5-7.

[18] Ayala's opposition of Dec. 15, 1971 to motions for reconsideration, at page 6; note in italics supplied.

[19] *Idem*, at page 7; note in italics supplied.

[20] Tolentino's reply of Jan. 31, 1972 to opposition, Annex "A".

[21] As pungently stated by former Justice Barrera for the Court in *Dizon vs. Rodriguez* 13 SCRA 704, 709, "it is an elementary principle that the uncontestable and indefeasible character of a Torrens Certificate of Title does not operate when the land thus covered is not capable of registration."

[22] Tolentino's reply of Jan. 31, 1972 to opposition, Annex "B".

[23] *Idem*, par. 5.

[24] *Idem*, par. 6.

[24a] *Idem*, Annex "C", italics supplied.

[25] At pages 8, 11.

[26] The writer disagrees with the dictum since it goes against the very course of human experience and this Court's own pronouncement in the very same cases that "it is an elementary principle that the incontestable and indefeasible character of a Torrens Certificate of title does not operate when the land thus covered is not capable of registration" (in *Dizon*) and 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" (in the 1965 judgment, 14 SCRA, 263).

[27] At page 22.

[28] Ayala's position, reiterated in its opposition of December 15, 1971, is that "(T)he Resolution of October 4, 1971 did not disturb a final and executory judgment, but the same is merely a correct interpretation of the final judgment in G.R. No. L-20950 and of the dispositive portion of the decision of the court a quo in Civil Case No. 373."

[29] The Court's actual finding in the 1965 judgment was negative: "However, as we have ruled in the case of *Dizon et al. vs. Rodriguez etc. et al.*, there being no showing that defendants Dizon are not purchasers in good faith and for value." 14 SCRA 259, 263.

[30] *Dizon vs. Rodriguez*, 13 SCRA 704, 709.

[31] Chief Justice' dissent of Oct. 4, 1971, p. 40.

[32] The Chief Justice's dissent noted that the contention that the usurped area was part of Hda. Calatagan "upon due investigation, conducted in 1954 * * * was found to be false" (at p. 14); and that "its being part of the shore and territorial waters manifestly revealed that status (of "being part of the inalienable public domain") to the whole world" (at p. 15). The dissent further specifically noted Ayala's "several unlawful Acts" of "unlawful invasion of the public domain" — "such as, inter alia, illegally securing title to 1,091 hectares of the public domain, including the territorial waters of the State; illegally causing said portion of the public domain to be subdivided, and certificates of title to be issued for the subdivision lots; and illegally selling and/or leasing a number of said lots and other parts of that segment of the public domain, including Lot 360, to third persons."

[33] Art. 1456, Civil Code reads: "If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

[34] *Republic vs. Hernaez*, 31 SCRA 219 (Jan. 30, 1970) and cases cited. See also Art. 1108, Civil Code and *Li Seng Giap vs. Director of Lands*, 59 Phil. 687 (1934).

[35] *Viña vs. Government of P.I.*, 65 Phil 262 (1938).

[36] Chief Justice's Oct. 4, 1971 dissent, p. 40. In respect to the particular case of lot 360 lawfully leased to Tolentino but still retained by the Dizons, it is specially noted therein at p. 17 that "respondents knew positively that, by selling the lot, they were acting in derogation of the rights or claims of the Government and Tolentino, of which they had previous notice."

[37] *Idem*, at p. 23.

[38] Pp. 13-17, Tolentino's motion for reconsideration cites a number of decisions penned by present members of the Court in reaffirmation of this settled rule.

[39] At page 38, emphasis copied.

[40] Rule 36, sec. 2 provides: "Sec. 2. Entry of judgments and orders. * * * The recording of the judgment or order in the book of entries of judgments shall constitute its entry. The record shall contain the dispositive part of the judgment or order * * *." See also Rule 51, sec. 10.

[41] 20 SCRA 474, 477 (June 26, 1967).

[42] At page 2, italics supplied.

[43] *Idem*.

[44] At page 4, italics supplied; see also page 5.

[45] Oct, 4, 1971 majority resolution, at p. 24.

[46] The October 4, 1971 resolution advanced the novel view (see pp. 2, 18) that "(T)he said resolution of the Court of Appeals of August 20, 1962 (absolving the Dizons from liability therein for damages to Tolentino was affirmed in toto by this Court in G.R. Nos. L-20300-01 and 10355-56. It is therefore the opinion of this Court now that were it not for this circumstance of fate regarding dates, i.e., that the said resolution in cases CA-G.R. Nos. 24186-87-R was promulgated subsequent to the decision of the court a quo in Civil Case No. 373, there would surely be no dispute about this matter since the lower court would then not have relied for its ruling on this issue of damages upon the original decision of the Court of Appeals in those cases as cited above. In brief, the court a quo would not have made any award of damages in favor of petitioner Miguel Tolentino, Sr. in Civil Case No. 373 if its decision had been promulgated after the issuance by the Court of Appeals of its said modifying resolution as affirmed later on by this Court in cases G.R. Nos. L-20300-01 and L-20355-56." This purely speculative and conjectural theory of the majority resolution is not borne out by the record, however. This Court rendered its decision in Case L-20950 (Republic vs. Ayala) on May 31, 1965 after the Dizon vs. Rodriguez case was decided by it on April 30, 1965. Both decisions were penned by former Justice Barrera for the Court. Precisely, by virtue of its Rodriguez decision, this Court likewise absolved the Dizons from liability to Tolentino in Case, L-20950 but affirmed AYALA's liability therefor, the lower court having sentenced AYALA and the Dizons jointly and severally to pay said damages. Both decisions were the subject of motions for reconsideration. Reconsideration of the Rodriguez decision was denied earlier on July 20, 1965. Denial of reconsideration of the Republic vs. Ayala case (L-20950) came much later on December 6, 1965. This Court had before it the Rodriguez decision in handing down the 1965 judgment and absolved in both cases the Dizons from liability for damages but maintained the damage award against Ayala in L-20950.

[47] Oct 4, 1971, Majority resolution, at page 22.

[48] See writer's October 4, 1971 dissenting opinion, pars. 5 and 6 at pp. 6 to 9.

[49] Petitioner's supplement to motion for reconsideration, p. 18; italics supplied.

[50] 14 SCRA 259, 263.

[51] 20 SCRA 608, 614, emphasis copied.

[52] The rollo will show that the pleadings and briefs were invariably filed jointly by the Republic and Tolentino and his co-intervenors on one hand as against Ayala and the Dizons on the other.

[53] Motion for Reconsideration of portion of Decision, p. 17; italics supplied.

[54] The joint motion's conclusion reads:

"In conclusion, we respectfully lay special stress and submit that the right, if at all, of defendants Dizons is well protected by the vendor's warranty against eviction to the full extent, including the filing of criminal action for estafa, etc., against their multi-millionaire co-defendants who sold to them the public properties in question. Obviously, the defendants-appellants Dizons should no longer be allowed to unlawfully possess and occupy, not to say usurp, the property of the Government, in gross and flagrant violation of the existing special law, or rather Act No. 4003, as amended by Republic Act. No. 3512.

By virtue of the said special law, the plaintiff-appellee Republic of the Philippines, thru the Secretary of Agriculture and Natural Resources, already entered into the fishpond lease agreements with many of the intervenors-appellees who are bona fide fishpond applicants-permittees-lessees. Those lawful lessees religiously

paid the entrance fees as well as the annual rentals; and also filed the required bonds. They should had in fact and in law been entitled to the possession and enjoyment of the public fishponds and the fishpond areas in question.

"Besides, as this Honorable Court wisely ruled in said G.R.No. L-8654 that "the right they (defendants Dizons) claimed to have and sought to enforce did not exist or had no foundation in law and in fact"; in G.R. Nos. 20300-01 and 20355-56, 'that the incontestable and indefeasible character of a Torrens certificate of title does not operate when the kind thus covered is not capable of registration' and in the instant case, this Honorable Court further ruled: 'And, it is an elementary principle of law that said area not being capable of registration, its inclusion in a certificate of title does not convert the same into properties of private ownership or confer title on the registrant' – it is also submitted that it is far better to uphold the provisions of the special law, Act No. 4003, as amended by Act No. 3512, vesting the Secretary of Agriculture and Natural Resources with the supervision and control over properties of the public dominion in the Philippines than to tolerate the usurpers to retain possession of the public property. Inasmuch as the defendant Ayala y Cia. and/or Hacienda Calatagan or the Zobels illegally and maliciously sold those public properties, the Courts of Justice have the say on the matter in due time." (at pp. 15-16, emphasis copied).

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