

MANILA LODGE NO. 761, BENEVOLENT AND PROTECTIVE ORDER OF THE ELKS, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, CITY OF MANILA, AND TARLAC DEVELOPMENT CORPORATION, RESP...

G.R. No. L-41001. September 30, 1976

Ponente: CASTRO, C.J.

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CASTRO, C.J.:

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

These two cases are petitions on certiorari to review the decision dated June 30, 1975 of the Court of Appeals in CA-G.R. No. 51590-R entitled "Tarlac Development Corporation vs. City of Manila, and Manila Lodge No. 761, Benevolent and Protective Order of Elks, Inc.," affirming the trial court's finding in Civil Case No. 83009 that the property subject of the decision a quo is a "public park or plaza."

On June 26, 1905 the Philippine Commission enacted Act No. 1360 which authorized the City of Manila to re-claim a portion of Manila Bay. The reclaimed area was to form part of the Luneta extension. The Act provided that the reclaimed area "shall be the property of the City of Manila" and that "the City of Manila is hereby authorized to set aside a tract of the reclaimed land formed by the Luneta extension x x x at the north end not to exceed five hundred feet by six hundred feet in size, for a hotel site, and to lease the same, with the approval of the Governor General, to a responsible person or corporation for a term not to exceed ninety-nine years."

Subsequently, the Philippine Commission passed on May 18, 1907 Act No. 1657, amending Act No. 1360, so as to authorize the City of Manila either to lease or to sell the portion set aside as a hotel site.

The total area reclaimed was a little over 25 hectares. The City of Manila applied for the registration of the reclaimed area, and on January 20, 1911, O.C.T. No. 1909 was issued in the name of the City of Manila. The title described the registered land as "un terreno conocido con el nombre de Luneta Extension, situado en el distrito de la Ermita x x x." The registration was "subject, however, to such of the incumbrances mentioned in Article 39 of said law (Land Registration Act) as may be subsisting" and "sujeto a las disposiciones y condiciones impuestas en la Ley No. 1360; y sujeto tambien a los contratos de venta, celebrados y otorgados por la Ciudad de Manila a favor del Army and Navy Club y la Manila Lodge No. 761, Benevolent and Protective Order of Elks, fechados respectivamente, en 29 de Diciembre de 1908 y 16 de Enero de 1909." [1]

On July 13, 1911 the City of Manila, affirming a prior sale dated January 16, 1909, conveyed 5,543.07 square meters of the reclaimed area to the Manila Lodge No. 761, Benevolent and Protective Order of Elks of the U.S.A. (BPOE, for short) on the basis of which TCT No. 2195 [2] was issued to the latter over the "parcela de terreno que es parte de la Luneta Extension, Situada en el Distrito de la Ermita x x x." At the back of this title was annotated document 4608/T-1635, which in part reads as follows: "que la citada Ciudad de Manila tendrá derecho a su opción, de recomprar la expresada propiedad para fines públicos solamente, en cualquier tiempo después de

cincuenta años desde el 13 de Julio de 1911, previo pago a la entidad compradora, o a sus sucesores del precio de la venta de la misma propiedad, mas el valor que entonces tengan las mejoras."

For the remainder of the Luneta extension, that is, after segregating therefrom the portion sold to the Manila Lodge No. 761, BPOE, a new Certificate of Title No. 2196[3] was issued on July 17, 1911 to the City of Manila.

Manila Lodge No. 761, BPOE, subsequently sold the said 5,543.07 square meters to the Elks Club, Inc., to which was issued TCT No. 67488.[4] The registered owner, "The Elks Club, Inc.," was later changed by court order to "Manila Lodge No. 761, Benevolent and Protective Order of Elks, Inc."

In January 1963 the BPOE petitioned the Court of First Instance of Manila, Branch IV, for the cancellation of the right of the City of Manila to repurchase the property. This petition was granted on February 15, 1963.

On November 19, 1963 the BPOE sold for the sum of P4,700,000 the land together with all the improvements thereon to the Tarlac Development Corporation (TDC, for short) which paid P1,700,000 as down payment and mort-gaged to the vendor the same realty to secure the payment of the balance to be paid in quarterly installments.[5] At the time of the sale, there was no annotation of any subsisting lien on the title to the property. On December 12, 1963 TCT No. 73444 was issued to TDC over the subject land still described as "UNA PARCELA DE TERRENO, que es parte de la Luneta Extension, situada en el Distrito de Ermita x x x."

In June 1964 the City of Manila filed with the Court of First Instance of Manila a petition for the reannotation of its right to repurchase; the court, after hearing, issued an order, dated November 19, 1964, directing the Register of Deeds of the City of Manila to reannotate in toto the entry regarding the right of the City of Manila to repurchase the property after fifty years. From this order TDC and BPOE appealed to this Court which on July 31, 1968 affirmed in G.R. Nos. L-24557 and L-24469 the trial court's order of reannotation, but reserved to TDC the right to bring another action for the clarification of its rights.

As a consequence of such reservation, TDC filed on April 28, 1971 against the City of Manila and the Manila Lodge No. 761, BPOE, a complaint, docketed as Civil Case No. 83009 of the Court of First Instance of Manila, containing three causes of action and praying --

"a) On the first cause of action, that the plaintiff TDC be declared to have purchased the parcel of land now in question with the buildings and improvements thereon from the defendant BPOE for value and in good faith, and accordingly ordering the cancellation of Entry No. 4608/T-1635 on Transfer Certificate of Title No. 73444 in the name of the Plaintiff;

"b) On the second cause of action, ordering the defendant City of Manila to pay the plaintiff TDC damages in the sum of not less than one hundred thousand pesos (P100,000.00);

"c) On the third cause of action, reserving to the plaintiff TDC the right to recover from the defend-ant BPOE the amounts mentioned in par. XVI of the complaint in accordance with Art. 1555 of the Civil Code, in the remote event that the final judgment in this case should be that the parcel of land now in question is a public park; and

"d) For costs, and for such other and further relief as the Court may deem just and equitable."[6]

Therein defendant City of Manila, in its answer dated May 19, 1971, admitted all the facts alleged in the first cause of action except the allegation that TDC purchased said property "for value and in good faith," but denied for lack of knowledge or information the allegations in the second and third causes of action. As special and affirmative defense, the City of Manila claimed that TDC was not a purchaser in good faith for it had actual notice of the City's right to repurchase which was annotated at the back of the title prior to its cancellation, and that, assuming arguendo that TDC had no notice of the right to repurchase, it was, never-theless, under obligation to

investigate inasmuch as its title recites that the property is a part of the Luneta extension.[7]

The Manila Lodge No. 761, BPOE, in its answer dated June 7, 1971, admitted having sold the land together with the improvements thereon for value to therein plaintiff which was in good faith, but denied for lack of knowledge as to their veracity the allegations under the second cause of action. It furthermore admitted that TDC had paid the quarterly installments until October 15, 1964 but claimed that the latter failed without justifiable cause to pay the subsequent installments. It also asserted that it was a seller for value in good faith without having mis-represented or concealed facts relative to the title on the property. As counterclaim, Manila Lodge No. 761 (BPOE) sought to recover the balance of the purchase price plus interest and costs.[8]

On June 15, 1971 TDC answered the aforesaid counterclaim, alleging that its refusal to make further payments was fully justified.[9]

After due trial the court a quo rendered on July 14, 1972 its decision finding the subject land to be part of the "public park or plaza" and, therefore, part of the public domain. The court consequently declared that the sale of the subject land by the City of Manila to Manila Lodge No. 761, BPOE, was null and void; that plaintiff TDC was a purchaser thereof in good faith and for value from BPOE and can enforce its rights against the latter; and that BPOE is entitled to recover from the City of Manila whatever consideration it had paid the latter. The dispositive part of the decision reads:

"WHEREFORE, the Court hereby declares that the parcel of land formerly covered by Transfer Certificate of Title Nos. 2195 and 67488 in the name of BPOE and now by Transfer Certificate of Title No. 73444 in the name of Tarlac Development Corporation is a public park or plaza, and, consequently, instant complaint is dismissed, without pronouncement as to costs.

"In view of the reservation made by plaintiff Tarlac Development Corporation to recover from defendant BPOE the amounts mentioned in paragraph XVI of the complaint in accordance with Article 1555 of the Civil Code, the Court makes no pronouncement on this point." [10]

From said decision the therein plaintiff TDC as well as the defendant Manila Lodge No. 761, BPOE, appealed to the Court of Appeals.

In its appeal docketed as CA-G.R. No. 51590-R, the Manila Lodge No. 761, BPOE, avers that the trial court committed the following errors, namely:

1. In holding that the property subject of the action is not patrimonial property of the City of Manila; and
2. In holding that the Tarlac Development Corporation may recover and enforce its right against the defendant BPOE.[11]

The Tarlac Development Corporation, on the other hand, asserts that the trial court erred:

1. In finding that the property in question is or was a public park and in consequently nullifying the sale thereof by the City of Manila to BPOE;
2. In applying the cases of Municipality of Cavite vs. Rojas, 30 Phil. 602, and Government vs. Cabangis, 53 Phil. 112 to the case at bar; and
3. In not holding that the plaintiff-appellant is entitled to recover damages from the defendant City of Manila.[12]

Furthermore, TDC, as appellee regarding the second assignment of error raised by BPOE, maintained that it can recover and enforce its right against BPOE in the event that the land in question is declared a public park or part

thereof.[13]

In its decision promulgated on June 30, 1975, the Court of Appeals concurred in the findings and conclusions of the lower court upon the ground that they are supported by the evidence and are in accordance with law, and accordingly affirmed the lower court's judgment.

Hence, the present petitions for review on certiorari.

G.R. No. L-41001

The Manila Lodge No. 761, BPOE, contends, in its petition for review on certiorari docketed as G.R. No. L-41001, that the Court of Appeals erred in (1) dis-regarding the very enabling acts and/or statutes according to which the subject property was, and still is, patrimonial property of the City of Manila and could therefore be sold and/or disposed of like any other private property; and (2) in departing from the accepted and usual course of judicial proceedings when it simply made a general affirmance of the court a quo's findings and conclusions without bothering to discuss or resolve several vital points stressed by the BPOE in its assigned errors.[14]

G.R. No. L-41012

The Tarlac Development Corporation, in its petition for review on certiorari docketed as G.R. No. L-41012, relies on the following grounds for the allowance of its petition:

1. that the Court of Appeals did not correctly interpret Act No. 1360, as amended by Act No. 1657 of the Philippine Commission; and
2. that the Court of Appeals has departed from the accepted and usual course of judicial proceedings in that it did not make its own findings but simply recited those of the lower court.[15]

ISSUES AND ARGUMENTS

FIRST ISSUE

Upon the first issue, both petitioners claim that the property subject of the action, pursuant to the provisions of Act No. 1360, as amended by Act No. 1657, was patrimonial property of the City of Manila and not a park or plaza.

Arguments of Petitioners

In G.R. No. L-41001, the Manila Lodge No. 761, BPOE, admits that "there appears to be some logic in the conclusion" of the Court of Appeals that "neither Act No. 1360 nor Act No. 1657 could have meant to supply the City of Manila the authority to sell the subject property which is located at the south end -- not the north -- of the reclaimed area." [16] It argues, however, that when Act No. 1360, as amended, authorized the City of Manila to undertake the construction of the Luneta extension by reclaiming land from the Manila Bay, and declared that the reclaimed land shall be the "property of the City of Manila," the State expressly granted the ownership thereof to the City of Manila which, consequently, could enter into transactions involving it; that upon the issuance of O.C.T. No. 1909, there could be no doubt that the reclaimed area owned by the City was its patrimonial property; [17] that the south end of the reclaimed area could not be for public use for, as argued by TDC, a street, park or promenade can be property for public use pursuant to Article 344 of the Spanish Civil Code only when it has already been so constructed or laid out, and the subject land, at the time it was sold to the Elk's Club, was neither actually constructed as a street, park or promenade nor laid out as a street, park or promenade; [18] that even assuming that the subject property was at the beginning property of public dominion, it was subsequently

converted into patrimonial property pursuant to Art. 422 of the Civil Code, inasmuch as it had never been used, regarded, or utilized since it was reclaimed in 1905 for purposes other than that of an ordinary real estate for sale or lease; that the subject property had never been intended for public use, is further shown by the fact that it was neither included as a part of the Luneta Park under Plan No. 30 of the National Planning Commission nor considered a part of the Luneta National Park (now Rizal Park) by Proclamation No. 234 dated December 19, 1955 of President Ramon Magsaysay or by Proclamation Order No. 274 dated October 4, 1967 of President Ferdinand E. Marcos;[19] that, such being the case, there is no reason why the subject property should not be considered as having been converted into patrimonial property, pursuant to the ruling in *Municipality vs. Roa*, 7 Phil. 20, inasmuch as the City of Manila has considered it as its patrimonial property not only by bringing it under the operation of the Land Registration Act but also by disposing of it;[20] and that to consider now the subject property as a public plaza or park would not only impair the obligations of the parties to the contract of sale dated July 13, 1911, but also authorize deprivation of property without due process of law.[21]

G.R. No. L-41012

In L-41012, the petitioner TDC stresses that the principal issue is the interpretation of Act No. 1360, as amended by Act No. 1657 of the Philippine Commission,[22] and avers that inasmuch as Section 6 of Act No. 1360, as amended by Act 1657, provided that the reclamation of the Luneta extension was to be paid for out of the funds of the City of Manila which was authorized to borrow P350,000 "to be expended in the construction of Luneta Extension," the reclaimed area became "public land" belonging to the City of Manila that spent for the reclamation, conformably to the holding in *Cabangis*, [23] and consequently, said land was subject to sale and other disposition; that the Insular Government itself considered the reclaimed Luneta extension as patrimonial property subject to disposition as evidenced by the fact that Sec. 3 of Act 1360 declared that "the land hereby reclaimed shall be the property of the City of Manila;" that this property cannot be property for public use for, according to Article 344 of the Civil Code, the character of property for public use can only attach to roads and squares that have already been constructed or at least laid out as such, which conditions did not obtain regarding the subject land; that Sec. 5 of Act 1360 authorized the City of Manila to lease the northern part of the reclaimed area for hotel purposes; that Act No. 1657 furthermore authorized the City of Manila to sell the same;[24] that the express statutory authority to lease or sell the northern part of the reclaimed area cannot be interpreted to mean that the remaining area could not be sold inasmuch as the purpose of the statute was not merely to confer authority to sell the northern portion but rather to limit the city's power of disposition thereof, to wit: to prevent disposition of the northern portion for any purpose other than for a hotel site;[25] that the northern and southern ends of the reclaimed area cannot be considered as extension of the Luneta for they lie beyond the sides of the original Luneta when extended in the direction of the sea, and that is the reason why the law authorized the sale of the northern portion for hotel purposes, and, for the same reason, it is implied that the southern portion could likewise be disposed of.[26]

TDC argues likewise that there are several items of uncontradicted circumstantial evidence which may serve as aids in construing the legislative intent and which demonstrate that the subject property is patrimonial in nature, to wit: (1) Exhibits "J" and "J-1," or Plan No. 30 of the National Planning Commission showing the Luneta and its vicinity, do not include the subject property as part of the Luneta Park; (2) Exhibit "K," which is the plan of the subject property covered by TCT No. 67488 of BPOE, prepared on November 11, 1963, indicates that said property is not a public park; Exhibit "T," which is a certified copy of Proclamation No. 234 issued on December 15, 1955 by President Magsaysay, and Exhibit "U" which is Proclamation Order No. 273 issued on October 4, 1967 by President Marcos, do not include the subject property in the Luneta Park; Exhibit "W," which is the location plan of the Luneta National Park under Proclamations Nos. 234 and 273, further confirms that the subject property is not a public park; and (5) Exhibit "Y," which is a copy of O.C.T. No. 7333 in the name of the United

States of America covering the land now occupied by the American Embassy, the boundaries of which were delineated by the Philippine Legislature, states that the said land is bounded on the northwest by properties of the Army and Navy Club (Block No. 321) and the Elks Club (Block No. 321), and this circumstance shows that even the Philippine Legislature recognized the subject property as private property of the Elks Club.[27]

TDC furthermore contends that the City of Manila is estopped from questioning the validity of the sale of the subject property that it executed on July 13, 1911 to the Manila Lodge No. 761, BPOE, for several reasons, namely: (1) the City's petition for the reannotation of Entry No. 4608/T-1635 was predicated on the validity of said sale; (2) when the property was bought by the petitioner TDC it was not a public plaza or park as testified to by both Pedro Cojuangco, treasurer of TDC, and the surveyor, Manuel Añonuevo, according to whom the subject property was from all appearances private property as it was enclosed by fences; (3) the property in question was cadastrally surveyed and registered as property of the Elks Club, according to Manuel Añonuevo; (4) the property was never used as a public park, for, since the issuance of T.C.T. No. 2195 on July 17, 1911 in the name of the Manila Lodge No. 761, the latter used it as private property, and as early as January 16, 1909 the City of Manila had already executed a deed of sale over the property in favor of the Manila Lodge No. 761; and (5) the City of Manila has not presented any evidence to show that the subject property has ever been proclaimed or used as a public park.[28]

TDC, moreover, contends that Sec. 60 of Com. Act No. 141 cannot apply to the subject land, for Com. Act No. 141 took effect on December 1, 1936 and at that time the subject land was no longer part of the public domain.[29]

TDC also stresses that its rights as a purchaser in good faith cannot be disregarded, for the mere mention in the certificate of title that the lot it purchased was "part of the Luneta extension" was not a sufficient warning that the title of the City of Manila was invalid; and that although the trial court, in its decision affirmed by the Court of Appeals, found the TDC to have been an innocent purchaser for value, the court disregarded the petitioner's rights as such purchaser that relied on a Torrens certificate of title.[30]

The Court, continues the petitioner TDC, erred in not holding that the latter is entitled to recover from the City of Manila damages in the amount of P100,000 caused by the City's petition for reannotation of its right to repurchase.

DISCUSSION AND RESOLUTION OF FIRST ISSUE

It is a cardinal rule of statutory construction that courts must give effect to the general legislative intent that can be discovered from or is unraveled by the four corners of the statute,[31] and in order to discover said intent, the whole statute, and not only a particular provision thereof, should be considered.[32] It is, therefore, necessary to analyze all the provisions of Act No. 1360, as amended, in order to unravel the legislative intent.

Act No. 1360 which was enacted by the Philippine Commission on June 26, 1905, as amended by Act No. 1657 enacted on May 18, 1907, authorized the "construction of such rock and timber bulkheads or sea walls as may be necessary for the making of an extension to the Luneta" (Sec. 1 [a]), and the placing of the material dredged from the harbor of Manila "inside the bulkheads constructed to inclose the Luneta extension above referred to" (Sec. 1 [c]). It likewise provided that the plan of Architect D.H. Burnham as "a general outline for the extension and improvement of the Luneta in the City of Manila" be adopted; that "the reclamation from the Bay of Manila of the land included in said projected Luneta extension x x x is hereby authorized and the land thereby reclaimed shall be the property of the City of Manila" (Sec. 3); that "the city of Manila is hereby authorized to set aside a tract of the reclaimed land formed by the Luneta extension authorized by this Act at the north end of said tract, not to exceed five hundred feet by six hundred feet in size, for a hotel site, and to lease the same with the approval of the

Governor General, x x x for a term not exceeding ninety-nine years;" that "should the Municipal Board x x x deem it advisable it is hereby authorized to advertise for sale to sell said tract of land x x x;" "that said tract shall be used for hotel purposes as herein prescribed, and shall not be devoted to any other purpose or object whatever;" "that should the grantee x x x fail to maintain on said tract a first-class hotel x x x then the title to said tract of land sold, conveyed, and transferred to the grantee shall revert to the City of Manila, and said City of Manila shall thereupon become entitled to the immediate possession of said tract of land" (Sec. 5); that the construction of the rock and timber bulkheads or sea wall "shall be paid for out of the funds of the City of Manila, but the area to be reclaimed by said proposed Luneta extension shall be filled, without cost to the City of Manila, with material dredged from Manila Bay at the expense of the Insular Government" (Sec. 6); and that "the City of Manila is hereby authorized to borrow from the Insular Government x x x the sum of three hundred thousand pesos, to be expended in the construction of the Luneta extension provided for by paragraph (a) of section one hereof" (Sec. 7).

The grant made by Act No. 1360 of the reclaimed land to the City of Manila is a grant of a "public" nature, the same having been made to a local political subdivision. Such grants have always been strictly construed against the grantee.[33] One compelling reason given for the strict interpretation of a public grant is that there is in such grant a gratuitous donation of public money or resources which results in an unfair advantage to the grantee and for that reason, the grant should be narrowly restricted in favor of the public.[34] This reason for strict interpretation obtains relative to the aforesaid grant, for, although the City of Manila was to pay for the construction of such work and timber bulkheads or sea walls as may be necessary for the making of the Luneta extension, the area to be reclaimed would be filled at the expense of the Insular government and without cost to the City of Manila, with material dredged from Manila Bay. Hence, the letter of the statute should be narrowed to exclude matters which if included would defeat the policy of the legislation.

The reclaimed area, an extension to the Luneta, is declared to be property of the City of Manila. Property, however, is either of public ownership or of private ownership.[35] What kind of property of the City is the reclaimed land? Is it of public ownership (dominion) or of private ownership?

We hold that it is of public dominion, intended for public use.

Firstly, if the reclaimed area was granted to the City of Manila as its patrimonial property, the City could, by virtue of its ownership, dispose of the whole reclaimed area without need of authorization to do so from the lawmaking body. Thus Article 348 of the Civil Code of Spain provides that "ownership is the right to enjoy and dispose of a thing without further limitations than those established by law." [36] The right to dispose (*jus disponendi*) of one's property is an attribute of ownership. Act No. 1360, as amended, however, provides by necessary implication, that the City of Manila could not dispose of the reclaimed area without being authorized by the lawmaking body. Thus the statute provides that "the City of Manila is hereby authorized to set aside a tract x x x at the north end, for a hotel site, and to lease the same x x x should the municipal board x x x deem it advisable, it is hereby authorized x x x to sell said tract of land x x x" (Sec. 5). If the reclaimed area were patrimonial property of the City, the latter could dispose of it without need of the authorization provided by the statute, and the authorization to set aside x x x lease x x x or sell x x x given by the statute would indeed be superfluous. To so construe the statute as to render the term "authorize," which is repeatedly used by the statute, superfluous would violate the elementary rule of legal hermeneutics that effect must be given to every word, clause, and sentence of the statute and that a statute should be so interpreted that no part thereof becomes inoperative or superfluous.[37] To authorize means to empower, to give a right to act.[38] Act No. 1360 furthermore qualifies the verb "authorize" with the adverb "hereby," which means "by means of this statute or section." Hence without the authorization expressly given by Act No. 1360, the City of Manila could not lease or sell even the northern

portion; much less could it dispose of the whole reclaimed area. Consequently, the reclaimed area was granted to the City of Manila, not as its patrimonial property. At most, only the northern portion reserved as a hotel site could be said to be patrimonial property, for, by express statutory provision it could be disposed of, and the title thereto would revert to the City should the grantee fail to comply with the terms provided by the statute.

TDC, however, contends that the purpose of the authorization provided in Act No. 1360 to lease or sell was really to limit the City's power of disposition. To sustain such contention is to beg the question. If the purpose of the law was to limit the City's power of disposition, then it is necessarily assumed that the City had already the power to dispose, for if such power did not exist, how could it be limited? It was precisely Act 1360 that gave the City the power to dispose -- for it was "hereby authorized" -- by lease or sale. Hence, the City of Manila had no power to dispose of the reclaimed land had such power not been granted by Act No. 1360, and the purpose of the authorization was to empower the City to sell or lease the northern part and not, as TDC claims, to limit only the power to dispose. Moreover, it is presumed that when the law-making body enacted the statute, it had full knowledge of prior and existing laws and legislation on the subject of the statute and acted in accordance or with respect thereto.[39] If by another previous law, the City of Manila could already dispose of the reclaimed area, which it could do if such area were given to it as its patrimonial property, would it then not be a super-fluity for Act No. 1360 to authorize the City to dispose of the reclaimed land? Neither has petitioner TDC pointed to any other law that authorized the City to do so, nor have we come across any. What we do know is that if the reclaimed land were patrimonial property, there would be no need of giving special authorization to the City to dispose of it. Said authorization was given because the reclaimed land was not intended to be patrimonial property of the City of Manila, and without the express authorization to dispose of the northern portion, the City could not dispose of even that part.

Secondly, the reclaimed area is an "extension to the Luneta in the City of Manila." [40] If the reclaimed area is an extension of the Luneta, then it is of the same nature or character as the old Luneta. Anent this matter, it has been said that a power to extend (or continue an act or business) cannot authorize a transaction that is totally distinct.[41] It is not disputed that the old Luneta is a public park or plaza and it is so considered by Section 859 of the Revised Ordinances of the City of Manila.[42] Hence the "extension to the Luneta" must be also a public park or plaza and for public use.

TDC, however, contends that the subject property cannot be considered an extension of the old Luneta because it is outside of the limits of the old Luneta when extended to the sea. This is a strained interpretation of the term "extension," for an "extension," it has been held, "signifies enlargement in any direction --- in length, breadth, or circumstance." [43]

Thirdly, the reclaimed area was formerly a part of the Manila Bay. A bay is nothing more than an inlet of the sea. Pursuant to Article 1 of the Law of Waters of 1866, bays, roadsteads, coast sea, inlets and shores are parts of the national domain open to public use. These are also property of public ownership devoted to public use, according to Article 339 of the Civil Code of Spain.

When the shore or part of the bay is reclaimed, it does not lose its character of being property for public use, according to *Government of the Philippine Islands vs. Cabangis*. [44] The predecessor of the claimants in this case was the owner of a big tract of land including the lots in question. From 1896 said land began to wear away due to the action of the waters of Manila Bay. In 1901 the lots in question became completely submerged in water in ordinary tides. It remained in such a state until 1912 when the Government undertook the dredging of the Vitas estuary and dumped the sand and silt from estuary on the low lands completely submerged in water, thereby gradually forming the lots in question. Tomas Cabangis took possession thereof as soon as they were reclaimed; hence, the claimants, his successors in interest, claimed that the lots belonged to them. The trial court found for

the claimants and the Government appealed. This Court held that when the lots in question were completely submerged and remained under water, the owners having abandoned the same, said lots became a part of the shore. As they remained in that condition until reclaimed by the filling done by the Government, they belonged to the public domain for public use.[45] Hence, a part of the shore, and for that purpose, a part of the bay, did not lose its character of being for public use after it was reclaimed.

Fourthly, Act 1360, as amended, authorized the lease or sale of the northern portion of the reclaimed area as a hotel site. The subject property is not that northern portion authorized to be leased or sold; the subject property is the southern portion. Hence, applying the rule of *expresio unius est exclusio alterius*, the City of Manila was not authorized to sell the subject property. The application of this principle of statutory construction becomes the more imperative in the case at bar inasmuch as not only must the public grant of the reclaimed area to the City of Manila be, as above stated, strictly construed against the City of Manila, but also because a grant of power to a municipal corporation, as happens in this case where the city is authorized to lease or sell the northern portion of the Luneta extension, is strictly limited to such as are expressly or impliedly authorized or necessarily incidental to the objectives of the corporation.

Fifthly, Article 344 of the Civil Code of Spain provides that "property of public use, in provinces and in towns, comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service paid for by such towns or provinces." A park or plaza, such as the extension to the Luneta, is undoubtedly comprised in said article.

The petitioners, however, argue that, according to said Article 344, in order that the character of property for public use may be so attached to a plaza, the latter must be actually constructed or at least laid out as such, and since the subject property was not yet constructed as a plaza or at least laid out as a plaza when it was sold by the City, it could not be property for public use. It should be noted, however, that properties of provinces and towns for public use are governed by the same principles as properties of the same character belonging to the public domain.[46] In order to be property of public domain an intention to devote it to public use is sufficient.[47] The petitioners' contention refuted by Manresa himself who said, in his comments[48] on Article 344, that:

"Las plazas, calles y paseos públicos corresponden, sin duda alguna, al dominio publico municipal, porque se hallan establecidos sobre suelo municipal y están destinadas al uso de todos. Laurent presenta, tratando de las plazas, una cuestión relativa a si deben conceptuarse como de dominio publico los lugares vacíos, libres, que se encuentran en los Municipios rurales. x x x Laurent opina contra Proudhon, que toda vez que están al servicio de todos esos lugares, deben considerarse públicos y de dominio público. Realmente, para decidir el punto, bastará siempre fijarse en el destino real y efectivo de los citados lugares, y si este destino entraña un uso común de todos, no hay duda que son de dominio público municipal si no patrimoniales."

It is not necessary, therefore, that a plaza be already constructed or laid out as a plaza in order that it be considered property for public use. It is sufficient that it be intended to be such. In the case at bar, it has been shown that the intention of the lawmaking body in giving to the City of Manila the extension to the Luneta was not a grant to it of patrimonial property but a grant for public use as a plaza.

We have demonstrated *ad satietatem* that the Luneta extension was intended to be property of the City of Manila for public use. But, could not said property later on be converted, as the petitioners contend, to patrimonial property? It could be. But this Court has already said, in *Ignacio vs. The Director of Lands*,[49] that it is only the executive and possibly the legislative department that has the authority and the power to make the declaration that said property is no longer required for public use, and until such declaration is made the property must continue to form part of the public domain. In the case at bar, there has been no such explicit or unequivocal declaration. It should be noted, furthermore, anent this matter, that courts are undoubtedly not primarily called

upon, and are not in a position, to determine whether any public land is still needed for the purposes specified in Article 4 of the Law of Waters.[50]

Having disposed of the petitioners' principal arguments relative to the main issue, we now pass to the items of circumstantial evidence which TDC claims may serve as aids in construing the legislative intent in the enactment of Act No. 1360, as amended. It is noteworthy that all these items of alleged circumstantial evidence are acts far removed in time from the date of the enactment of Act No. 1360 such that they cannot be considered con-temporaneous with its enactment. Moreover, it is not far-fetched that this mass of circumstantial evidence might have been influenced by the antecedent series of invalid acts, to wit: the City's having obtained over the reclaimed area OCT No. 1909 on January 20, 1911; the sale made by the City of the subject property to Manila Lodge No. 761; and the issuance to the latter of T.C.T. No. 2195. It cannot be gainsaid that if the subsequent acts constituting the circumstantial evidence have been based on, or at least influenced, by those antecedent invalid acts and Torrens titles, they can hardly be indicative of the intent of the lawmaking body in enacting Act No. 1360 and its amendatory act.

TDC claims that Exhs. "J," "J-1," "K," "T," "U," "W" and "Y" show that the subject property is not a park.

Exhibits "J" and "J-1," the "Luneta and vicinity showing proposed development" dated May 14, 1949, were prepared by the National Urban Planning Commission of the Office of the President. It cannot be reasonably expected that this plan for development of the Luneta should show that the subject property occupied by the Elks Club is a public park, for it was made 38 years after the sale to the Elks, and after T.C.T. No. 2195 had been issued to Elks. It is to be assumed that the Office of the President was cognizant of the Torrens title of BPOE. That the subject property was not included as a part of the Luneta only indicates that the National Urban Planning Commission that made the plan knew that the subject property was occupied by Elks and that Elks had a Torrens title thereto. But this in no way proves that the subject property was originally intended to be patrimonial property of the City of Manila or that the sale to Elks or that the Torrens title of the latter is valid.

Exhibit "K" is the "Plan of land covered by T.C.T. No.____, as prepared for Tarlac Development Company." It was made on November 11, 1963 by Felipe F. Cruz, private land surveyor. This surveyor is admittedly a surveyor for TDC.[51] This plan cannot be expected to show that the subject property is a part of the Luneta Park, for the plan was made to show the lot that "was to be sold to petitioner." This plan must have also assumed the existence of a valid title to the land in favor of Elks.

Exhibits "T" and "U" are copies of Presidential Proclamations No. 234 issued on November 15, 1955 and No. 273 issued on October 4, 1967, respectively. The purpose of the said Proclamations was to reserve certain parcels of land situated in the District of Ermita, City of Manila, for park site purposes. Assuming that the subject property is not within the boundaries of the reservation, this cannot be interpreted to mean that the subject property was not originally intended to be for public use or that it has ceased to be such. Conversely, had the subject property been included in the reservation, it would not mean, if it really were private property, that the rights of the owners thereof would be extinguished, for the reservation was "subject to private rights, if any there be." That the subject property was not included in the reservation only indicates that the Presidents knew of the existence of the Torrens titles mentioned above. The failure of the Proclamations to include the subject property in the reservation for park site could not change the character of the subject property as originally for public use and to form part of the Luneta Park. What has been said here applies to Exhibits "V," "V-1" to "V-3," and "W" which also refer to the area and location of the reservation for the Luneta Park.

Exhibit "Y" is a copy of O.C.T. No. 7333 dated November 13, 1935, covering the lot where now stands the American Embassy /Chancery/. It states that the property is "bounded x x x on the Northwest by properties of

Army and Navy Club (Block No. 321) and Elks Club (Block No. 321)." Inasmuch as the said boundaries were delineated by the Philippine Legislature in Act No. 4269, the petitioners contend that the Legislature "recognized and conceded the existence of the Elks Club property as a private property (the property in question) and not as a public park or plaza. This argument is non sequitur, plain and simple. Said Original Certificate of Title cannot be considered as an incontrovertible declaration that the Elks Club was in truth and in fact the owner of such boundary lot. Such mention as boundary owner is not a means of acquiring title nor can it validate a title that is null and void.

TDC finally claims that the City of Manila is estopped from questioning the validity of the sale it executed on July 13, 1911 conveying the subject property to the Manila Lodge No. 761, BPOE. This contention cannot be seriously defended in the light of the doctrine repeatedly enunciated by this Court that the Government is never estopped by mistakes or errors on the part of its agents, and estoppel does not apply to a municipal corporation to validate a contract that is prohibited by law or is against public policy, and the sale of July 13, 1911 executed by the City of Manila to Manila Lodge was certainly a contract prohibited by law. Moreover, estoppel cannot be urged even if the City of Manila accepted the benefits of such contract of sale and the Manila Lodge No. 761 had performed its part of the agreement, for to apply the doctrine of estoppel against the City of Manila in this case would be tantamount to enabling it to do indirectly what it could not do directly.[52]

The sale of the subject property executed by the City of Manila to the Manila Lodge No. 761, BPOE, was void and inexistent for lack of subject matter.[53] It suffered from an incurable defect that could not be ratified either by lapse of time or by express ratification. The Manila Lodge No. 761 therefore acquired no right by virtue of the said sale. Hence to consider now the contract inexistent as it always has been, cannot be, as claimed by the Manila Lodge No. 761, an impairment of the obligations of contracts, for there was in contemplation of law, no contract at all.

The inexistence of said sale can be set up against anyone who asserts a right arising from it, not only against the first vendee, the Manila Lodge No. 761, BPOE, but also against all its successors, including the TDC, which are not protected by law.[54] The doctrine of bona fide purchaser without notice, being claimed by the TDC, does not apply where there is a total absence of title in the vendor, and the good faith of the purchaser TDC cannot create title where none exists.[55]

The so-called sale of the subject property having been executed, the restoration or restitution of what has been given is in order.[56]

SECOND ISSUE

The second ground alleged in support of the instant petitions for review on certiorari is that the Court of Appeals has departed from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision. TDC, in L-41012, argues that the respondent Court did not make its own findings but simply recited those of the lower court and made a general affirmance, contrary to the requirements of the Constitution; that the respondent Court made glaring and patent mistakes in recounting even the copied findings, palpably showing lack of deliberate consideration of the matters involved, as, for example, when said court said that Act No. 1657 authorized the City of Manila to set aside a portion of the reclaimed land "formed by the Luneta Extension or to lease or sell the same for park purposes;" and that respondent Court, furthermore, did not resolve or dispose of any of the assigned errors, contrary to the mandate of the Judiciary Act.[57]

The Manila Lodge No. 761, in L-41001, likewise alleges, as one of the reasons warranting review, that the Court of Appeals departed from the accepted and usual course of judicial proceedings by simply making a general affirmance of the court a quo's findings without bothering to resolve several vital points mentioned by the BPOE

in its assigned errors.[58]

COMMENTS ON SECOND ISSUE

We have shown in our discussion of the first issue that the decision of the trial court is fully in accordance with law. It follows that when such decision was affirmed by the Court of Appeals, the affirmance was likewise in accordance with law. Hence, no useful purpose will be served in further discussing the second issue.

CONCLUSION

ACCORDINGLY, the petitions in both G.R. Nos. L-41001 and L-41012 are denied for lack of merit, and the decision of the Court of Appeals of June 30, 1975, is hereby affirmed, at petitioners' cost.

Makasiar, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., concurs in the result which is wholly consistent with the basic rulings and judgment of this Court in its decision of July 31, 1968.

[1] Exh. "H," Exh. "13-Elks."

[2] Exh. "I."

[3] Exh. "X."

[4] Exh. "B."

[5] Exh. "C."

[6] Joint Record on Appeal of the Plaintiff and the Defendant Manila Lodge No. 761, Benevolent and Protective Order of Elks, Inc., pp. 33-34.

[7] Ibid., pp. 49-63.

[8] Ibid., pp. 64-71.

[9] Ibid., pp. 87-88.

[10] Ibid., pp. 92-110.

[11] Record, L-41001, p. 7.

[12] Record, L-41012, p. 11; Brief for Plaintiff-Appellant in CA-G.R. No. 51590-R, pp. 1-2.

[13] Brief for the Plaintiff-Appellant Tarlac Development Corporation in C A -G.R. No. 51590-R, p. 2.

[14] Record, L-41001, pp. 14-16.

[15] Record, L-41012, pp. 16, 46.

[16] L-41001, Record, p. 17.

[17] Ibid., p. 19.

[18] Ibid., pp. 19-20.

[19] Ibid., p. 21.

- [20] Ibid., pp. 21-22.
- [21] Ibid., pp. 22-23.
- [22] L-41012, Record, pp. 16-17.
- [23] 53 Phil. 112 (1930).
- [24] L-41012, Record, pp. 22-23, 25-26.
- [25] Ibid., pp. 23-25.
- [26] Ibid., pp. 27-28.
- [27] Ibid., pp. 28-34.
- [28] Ibid., pp. 34-41.
- [29] Ibid., pp. 42-43.
- [30] Ibid., pp. 44-45.
- [31] *Borromeo vs. Mariano*, 41 Phil. 322.
- [32] *Aboitiz Shipping Corporation vs. The City of Cebu*, L-14526, March 31, 1965, 13 SCRA 449, 453.
- [33] Sutherland, *Statutes and Statutory Construction*, 3rd ed., Vol. II, p. 240.
- [34] Ibid., Vol.III, pp. 204-208.
- [35] Art. 338, Civil Code of Spain; Art. 419 of the Civil Code of the Philippines provides: "Property is either of public dominion or of private ownership."
- [36] Art. 428, Civil Code.
- [37] Sutherland, *op. cit.*, p. 339.
- [38] 4 Words and Phrases, p. 830, citing *State vs. Board of Com'rs of Franklin County*, 114 P 247, 248; 24 Kan. 404.
- [39] *Tamiami Trial Tours vs. Lee*, 194 So. 305, 306.
- [40] Sec. 1, Act No. 1360.
- [41] See 15-A Words and Phrases, p. 602, citing *Clements' Ex'rs vs. Dickey*, 5 Fed. Cas. 1025, 1027.
- [42] Bureau of Printing, 1908, p. 281.
- [43] 15-A Words and Phrases, p. 614, citing *Mayor, etc. of Monroe vs. Ouachita Parish*, 17 So. 498, 499, 47 La. Ann. 1061.
- [44] 53 Phil. 112.
- [45] Syllabus, citing *Aragon vs. Insular Government*, 19 Phil. 223; *Francisco vs. Government of the Philippine Islands*, 28 Phil. 505.
- [46] *Viuda de Tan Toco vs. Municipal Council of Iloilo*, 49 Phil. 52, 55.
- [47] Art. 420, Civil Code.

[48] 3 Código Civil Español, 6a edición, p. 106.

[49] 108 Phil. 335, 339.

[50] *Monteverde vs. Director of Lands*, 93 Phil. 134, cited in *Ignacio vs. The Director of Lands*, *supra*.

[51] L-41012, Record, p. 29.

[52] *Republic vs. Go Bon Lee*, L-11499, April 29, 1961, 1 SCRA 1166, 1170; *Go Tian An vs. Republic*, L-19833, August 31, 1966, 17 SCRA 1053, 1055; *Pechueco Sons Company vs. Provincial Board of Antique*, L-27038, January 30, 1970, 31 SCRA 320, 327, citing *San Diego vs. Municipality of Naujan*, L-9920, 29 February 1960, cited in *Favis vs. Municipality of Sabangan*, L-26522, 27 February 1969, 27 SCRA 92; see also *City of Manila vs. Tarlac Development Corporation*, L-24557, L-24469 and L-24481, 31 July 1968, 24 SCRA 466.

[53] Arts. 1409 and 1458, Civil Code.

[54] 4 Tolentino, Civil Code, p. 575, citing 1 Von Tuhr, *Obligaciones*, p. 164.

[55] 92 CJS p. 219, citing *Chestnut vs. Weekes*, 188 S.E. 714, 183 Ga. 367; *Bradbury vs. Green*, 351 P. 2d 807, 207 Okl. 586; *Noble vs. Kahn*, 240 P. 2d 757, 206 Okl. 13, 35 A.L.R. 2d 119.

[56] 4 Tolentino, Civil Code, p. 576, citing *Perez Gonzalez and Alguer*; I-II *Enneccerus*, *Kipp and Wolff*, 364-366; 3 *Von Tuhr* 311; 3 *Fabres* 231. See also 92 CJS p. 550, citing *Bologna Bros. vs. Stephens*, 18 So. 2d 914, 206 La. 112; *Partlow vs. Mulligan*, 76 N.Y.S. 2d 181.

[57] L-41012, Record, pp. 40-49.

[58] L-41001, Record, p. 15.

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