

SOCIAL SECURITY SYSTEM, PETITIONER, VS. COURT OF APPEALS AND DAVID B. CRUZ, SOCORRO CONCIO CRUZ, AND LORNA C. CRUZ, RESPONDENTS.

G.R. No. L-41299. February 21, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition for Review on Certiorari of the Decision of the Court of Appeals[1] stems from the following facts, as narrated by the Trial Court, adopted by the Court of Appeals, and quoted by both petitioner[2] and private respondents[3]:

"Sometime in March, 1963 the spouses David B. Cruz and Socorro Concio Cruz applied for and were granted a real estate loan by the SSS with their residential lot located at Lozada Street, Sto. Rosario, Pateros, Rizal covered by Transfer Certificate of Title No. 2000 of the Register of Deeds of Rizal as collateral. Pursuant to this real estate loan said spouses executed on March 26, 1963 the corresponding real estate mortgage originally in the amount of P39,500.00 which was later increased to P48,000.00 covering the aforementioned property as shown in their mortgage contract, Exhibit A and I. From the proceeds of the real estate loan the mortgagors constructed their residential house on the mortgaged property and were furnished by the SSS with a passbook to record the monthly payments of their amortizations (Exhibits B and B-1). The mortgagors, plaintiffs herein, complied with their monthly payments although there were times when delays were incurred in their monthly payments which were due every first five (5) days of the month (Exhibits 3-A to 3-N). On July 9, 1968, defendant SSS filed an application with the Provincial Sheriff of Rizal for the foreclosure of the real estate mortgage executed by the plaintiffs on the ground, among others:

'that the conditions of the mortgage have been broken since October, 1967 with the default on the part of the mortgagor to pay in full the installments then due and payable on the principal debt and the interest thereon, and, all of the monthly installments due and payable thereafter up to the present date; . . .

'That by the terms of the contract herein above referred to, the indebtedness to the mortgagee as of June, 1968 amounts to Ten Thousand Seven Hundred Two Pesos & 58/100 (P10,702.58). Philippine Currency, excluding interests thereon, plus 20% of the total amount of the indebtedness as attorney's fees, also secured by the said mortgage." (Exhibit "C")

"Pursuant to this application for foreclosure, the notice of the Sheriff's Sale of the mortgaged property was initially published in the Sunday Chronicle in its issue of July 14, 1968 announcing the sale at public auction of the said mortgaged property. After this first publication of the notice, and before the second publication of the notice, plaintiff herein thru counsel formally wrote defendant SSS, a letter dated July 19, 1968 and received on the same date by said entity demanding, among others, for said defendant SSS to withdraw the foreclosure and discontinue the publication of the notice of sale of their property claiming that plaintiffs were up-to-date in the payment of their monthly amortizations (Exhibits "E" and "E-1"). In answer to this letter defendant SSS sent a telegram to Atty. Eriberto Ignacio requesting him to come to their office for a conference. This telegram was

received by said counsel on July 23, 1968 (Exhibit "G" and "G-1"). To this telegraphic answer, Atty. Ignacio sent a telegraphic reply suggesting instead that a representative of the SSS be sent to him because his clients were the aggrieved parties (Exhibit "G-2"). Nothing came out of the telegraphic communications between the parties and the second and third publications of the notice of foreclosure were published successively in the Sunday Chronicle in its issues of July 21 and 28, 1968 (Exhibits. "N-1" and "O-1")."[4]

On July 24, 1968, the Cruz spouses, together with their daughter Lorna C. Cruz, instituted before the Court of First Instance of Rizal an action for damages and attorney's fees against the Social Security System (SSS) and the Provincial Sheriff of Rizal alleging, among other things, that they had fully and religiously paid their monthly amortizations and had not defaulted in any payment.

In its Answer, with counterclaim, the SSS stressed its right to foreclose the mortgage executed in its favor by private respondents by virtue of the automatic acceleration clause provided in the mortgage contract, even after private respondents had paid their amortization installments. In its counterclaim, the SSS prayed for actual and other damages, as well as attorney's fees, for malicious and baseless statements made by private respondents and published in the Manila Chronicle.

On September 23, 1968, the Trial Court enjoined the SSS from holding the sale at public auction of private respondent's property upon their posting of a P2,000.00 bond executed in favor of the SSS.

The Trial Court rendered judgment on March 5, 1971, the dispositive portion of which reads:

"WHEREFORE, judgment is rendered against defendant SSS, directing it to pay plaintiffs the following amounts:

- (a) P2,500.00 as actual damage;
- (b) P35,000.00 as moral damage;
- (c) P10,000.00 as exemplary or corrective damages; and
- (d) P5,000.00 as attorney's fees.

Defendant SSS shall further pay the costs."[5]

In respect of the moral and temperate damages awarded, the Trial Court stated:

"With respect to moral and temperate damages, the Court holds that the first publication of the notice was made in good faith but committed by defendant SSS in gross negligence considering the personnel at its command and the ease with which verifications of the actual defaulting mortgagors may be made. On this initial publication of the notice of foreclosure (Exhibits "M" and "M-1"), the Court believes plaintiffs are entitled to the amount of P5,000.00. The second publication of the notice of foreclosure is another matter. There was already notice by plaintiffs to defendant SSS that there was no reason for the foreclosure of their mortgaged property as they were never in default. Instead of taking any corrective measure to rectify its error, defendant SSS adopted a position of righteousness and followed the same course of action contending that no error has been committed. This act of defendant indeed was deliberate, calculated to cow plaintiffs into submission, and made obviously with malice. On this score, the Court believes defendant SSS should pay and indemnify plaintiffs jointly in the sum of P10,000.00. Lastly, on the third publication of the notice of foreclosure, the Court finds this continued publication an outright disregard for the reputation and standing of plaintiffs. The publication having reached a bigger segment of society and also done with malice and callous disregard for the rights of its clients, defendant SSS should compensate plaintiffs jointly in the sum of P20,000.00. All in all, plaintiffs are entitled to P35,000.00 by way of moral damages."[6]

On appeal, the Court of Appeals affirmed the lower Court judgment in a Decision promulgated on March 14, 1975, but upon SSS's Motion for Reconsideration, modified the judgment by the elimination of the P5,000.00 moral damages awarded on account of the initial publication of the foreclosure notice. To quote:

".....

After a re-examination of the evidence, we find that the negligence of the appellant is not so gross as to warrant moral and temperate damages. The amount of P5,000.00 should be deducted from the total damages awarded to the plaintiffs.

"WHEREFORE, the decision promulgated on March 14, 1975 is hereby maintained with the sole modification that the amount of P5,000.00 awarded on account of the initial publication is eliminated so that the said amount should be deducted from the total damages awarded to the plaintiffs.

SO ORDERED."[7]

In so far as exemplary and corrective damages are concerned, the Court of Appeals had this to say:

"The Court finds no extenuating circumstances to mitigate the irresponsible action of defendant SSS and for this reason, said defendant should pay exemplary and corrective damages in the sum of P10,000.00 . . ."

Upon denial of its Motion for Reconsideration by respondent Court, the SSS filed this Petition alleging:

"I. Respondent Court of Appeals erred in not finding that under Condition No. 10 of the Mortgage contract, which is a self-executing, automatic acceleration clause, all amortizations and obligations of the mortgagors become ipso jure due and demandable if they at any time fail to pay any of the amortizations or interest when due;

"II. Respondent Court of Appeals erred in holding that a previous notice to the mortgagor was necessary before the mortgage could be foreclosed;

"III. Respondent Court of Appeals erred in not holding that, assuming that there was negligence committed by subordinate employees of the SSS in mistaking 'Socorro C. Cruz' for 'Socorro J. Cruz' as the defaulting borrower, the fault cannot be attributed to the SSS, much less should the SSS be made liable for their acts done without its knowledge and authority;

"IV. Respondent Court of Appeals erred in holding that there is no extenuating circumstance to mitigate the liability of petitioner;

"V. Respondent Court of Appeals erred in not holding that petitioner is not liable for damages not being a profit-oriented governmental institution but one performing governmental functions."[8]

For failure of the First Division to obtain concurrence of the five remaining members (Justices Plana and Gutierrez, Jr. could take no part), the case was referred to the Court en banc.

The pivotal issues raised are: (1) whether the Cruz spouses had, in fact, violated their real estate mortgage contract with the SSS as would have warranted the publications of the notices of foreclosure; and (2) whether or not the SSS can be held liable for damages.

The first issue revolves around the question of appreciation of the evidence by the lower Court as concurred in by the Court of Appeals. The appraisal should be left undisturbed following the general rule that factual findings of the Court of Appeals are not subject to review by this Court, the present case not being one of the recognized exceptions to that rule.[9] Accordingly, we are upholding the finding of the Court of Appeals that the SSS application for foreclosure was not justified, particularly considering that the real estate loan of P48,000.00 obtained by the Cruzes in March, 1963, was payable in 15 years with a monthly amortization of P425.18, and that

as of July 14, 1968, the date of the first notice of foreclosure and sale, the outstanding obligation was still P38,875.06 and not P10,702.58, as published.

"The appellant was not justified in applying for the extra-judicial foreclosure of the mortgage contract executed in its favor by the spouses, David B. Cruz and Socorro Concio-Cruz, Exh. 'A'. While it is true that the payments of the monthly installments were previously not regular, it is a fact that as of June 30, 1968 the appellee, David B. Cruz and Socorro Concio-Cruz were up-to-date and current in the payment of their monthly installments. Having accepted the prior late payments of the monthly installments, the appellant could no longer suddenly and without prior notice to the mortgagors apply for the extra-judicial foreclosure of the mortgage in July 1968." [10]

A similar conclusion was reached by the trial Court:

"Defendant's contention that there was clerical error in the amount of the mortgage loan due as of June, 1968 as per their application for foreclosure of real estate mortgage is a naive attempt to justify an untenable position. As a matter of fact plaintiffs were able to establish that the mortgagor who actually committed the violation of her mortgage loan was a certain 'Socorro J. Cruz' who was in arrears in the amount of P10,702.58 at the time the application for foreclosure of real estate mortgage was filed (Exhibits "BB" and "EE"). Defendant mortgagee must have committed an error in picking the record of plaintiff 'Socorro C. Cruz' instead of the record of 'Socorro J. Cruz'. Defendant SSS, however, denied having committed any error and insists that their motion for foreclosure covers the real estate mortgage of spouses David E. Cruz and Socorro C. Cruz. This Court is nonetheless convinced that the foreclosure proceedings should have been on the real estate mortgage of 'Socorro J. Cruz' who was in arrears as of June, 1968 in the amount of P10,702.58, the exact amount mentioned in the application for foreclosure of real estate mortgage by defendant SSS." [11]

We come now to the amenability of the SSS to judicial action and legal responsibility for its acts. To our minds, there should be no question on this score considering that the SSS is a juridical entity with a personality of its own.[12] It has corporate powers separate and distinct from the Government.[13] SSS' own organic act specifically provides that it can sue and be sued in Court.[14] These words "sue and be sued" embrace all civil process incident to a legal action.[15] So that, even assuming that the SSS, as it claims, enjoys immunity from suit as an entity performing governmental functions, by virtue of the explicit provision of the aforecited enabling law, the Government must be deemed to have waived immunity in respect of the SSS, although it does not thereby concede its liability. That statutory law has given to the private citizen a remedy for the enforcement and protection of his rights. The SSS thereby has been required to submit to the jurisdiction of the Courts, subject to its right to interpose any lawful defense. Whether the SSS performs governmental or proprietary functions thus becomes unnecessary to belabor. For by that waiver, a private citizen may bring a suit against it for varied objectives, such as, in this case, to obtain compensation in damages arising from contract[16], and even for tort.

A recent case squarely in point anent the principle, involving the National Power Corporation, is that of *Rayo vs. Court of First Instance of Bulacan*, 110 SCRA 457 (1981), wherein this Court, speaking through Mr. Justice Vicente Abad Santos, ruled:

"It is not necessary to write an extended dissertation on whether or not the NPC performs a governmental function with respect to the management and operation of the Angat Dam. It is sufficient to say that the government has organized a private corporation, put money in it and has allowed it to sue and be sued in any court under its charter. (R.A. No. 6395, Sec. 3[d]). As a government owned and controlled corporation, it has a personality of its own, distinct and separate from that of the Government. (See *National Shipyards and Steel Corp. vs. CIR, et al.*, L-17874, August 31, 1963, 8 SCRA 781). Moreover, the charter provision that the NPC can 'sue and be sued in any court' is without qualification on the cause of action and accordingly it can include a tort claim such as the one instituted by the petitioners."

The proposition that the SSS is not profit-oriented was rejected in the case of SSS Employees' Association vs. Hon. Soriano.[17] But even conceding that the SSS is not, in the main, operated for profit, it cannot be denied that, in so far as contractual loan agreements with private parties are concerned, the SSS enters into them for profit considering that the borrowers pay interest, which is money paid for the use of money, plus other charges.

In so far as it is argued that to hold the SSS liable for damages would be to deplete the benefit funds available for its covered members, suffice it to say, that expenditures of the System are not confined to the payment of social security benefits. For example, the System also has to pay the salaries of its personnel. Moreover, drawing a parallel with the NASSCO and the Virginia Tobacco Administration, whose funds are in the nature of public funds, it has been held that those funds may even be made the object of a notice of garnishment.[18]

What is of paramount importance in this controversy is that an injustice is not perpetrated and that when damage is caused a citizen, the latter should have a right of redress particularly when it arises from a purely private and contractual relationship between said individual and the System.

We find, however, that under the circumstances of the case, the SSS cannot be held liable for the damages as awarded by the Trial Court and the Appellate Tribunal.

As basis for the award of actual damages, the Trial Court relied on the alleged expenses incurred by private respondents for the wardrobe they were supposed to use during their trip abroad, which was allegedly aborted because of the filing of the foreclosure application by the SSS. We find the foregoing too speculative. There could have been other reasons why the trip did not materialize. Moreover, it appears that private respondents' passports had already expired but that they made no effort to secure new passports.[19] Nor did they secure the necessary visas from the local consulates of foreign countries they intended to visit for their trip abroad.[20]

Nor can the SSS be held liable for moral and temperate damages. As concluded by the Court of Appeals "the negligence of the appellant is not so gross as to warrant moral and temperate damages",[21] except that, said Court reduced those damages by only P5,000.00 instead of eliminating them. Neither can we agree with the findings of both the Trial Court and respondent Court that the SSS had acted maliciously or in bad faith. The SSS was of the belief that it was acting in the legitimate exercise of its right under the mortgage contract in the face of irregular payments made by private respondents, and placed reliance on the automatic acceleration clause in the contract. The filing alone of the foreclosure application should not be a ground for an award of moral damages in the same way that a clearly unfounded civil action is not among the grounds for moral damages.[22]

With the ruling out of compensatory, moral and temperate damages, the grant of exemplary or corrective damages should also be set aside.[23] Moreover, no proof has been submitted that the SSS had acted in a wanton, reckless and oppressive manner.[24]

However, as found by both the Trial and Appellate Courts, there was clear negligence on the part of SSS when they mistook the loan account of Socorro J. Cruz for that of private respondent Socorro C. Cruz. Its attention was called to the error, but it adamantly refused to acknowledge its mistake. The SSS can be held liable for nominal damages. This type of damages is not for the purpose of indemnifying private respondents for any loss suffered by them but to vindicate or recognize their rights which have been violated or invaded by petitioner SSS.[25]

The circumstances of the case also justify the award of attorney's fees, as granted by the Trial and Appellate Courts, particularly considering that private respondents were compelled to litigate for the protection of their interests.[26]

WHEREFORE, the judgment sought to be reviewed is hereby-modified in that petitioner SSS shall pay private respondents: P3,000.00 as nominal damages; and P5,000.00 as attorney's fees.

Costs against petitioner Social Security System.

SO ORDERED.

Teehankee, Concepcion Jr., Guerrero, Abad Santos, De Castro, Vasquez and Relova, JJ., concur.

Fernando, C.J., concurs in the result.

Aquino, J., I concur. The award of moral damages is not justified under Arts. 2219 and 2220 of the Civil Code. I vote to award the private respondents the additional sum of P2,000.00 as litigation expenses.

Makasiar, J., dissents in a separate opinion.

Plana and Escolin, JJ., took no part, have taken part in the decision under review.

Gutierrez, Jr., J., no part, then Acting Solicitor General, filed brief for petitioner.

[1] Penned by Justice Ramon C. Fernandez and concurred in by Justices Efren I. Plana and Venicio Escolin.

[2] pp. 3-7, Petitioner's Brief.

[3] pp. 2-5, Respondents' Brief.

[4] pp. 70-71, Record on Appeal.

[5] p. 74, Record on Appeal, p. 62, Rollo.

[6] pp. 73-74, Record on Appeal.

[7] p. 59, Rollo.

[8] pp. A-B, Brief for the Petitioner, p. 136, Rollo.

[9] Talosig vs. Vda. de Nieva, 43 SCRA 473; Evangelista & Co. vs. Abad Santos, 51 SCRA 416; Tiongco vs. De la Merced, 58 SCRA 90; Perido vs. Perido, 63 SCRA 98; Alaras vs. Court of Appeals, 64 SCRA 671; T.J. Wolff & Co., Inc. vs. Moralde, 81 SCRA 624.

[10] p. 54, Rollo.

[11] pp. 72-73, Record on Appeal.

[12] SSS Employees' Association (PAFLU) vs. Soriano, 7 SCRA 1016 (1963).

[13] SSS Employees' Association vs. Soriano, 9 SCRA 511 (1963).

[14] Sec. 4(k), RA 1161; Sec. 4(k), PD 24.

[15] Sinco, Philippine Political Law, Revised Ed., p. 34.

[16] See Noda vs. Social Security System, 109 SCRA 218 (1981).

[17] 9 SCRA 511 (1963).

[18] NASSCO vs. Court of Industrial Relations, 8 SCRA 781 (1963); PNB vs. Pabalan, 83 SCRA 595 (1978).

[19] T.s.n., August 20, 1969, pp. 91-101.

[20] T.s.n., *ibid.*, 101; p. 20, Brief for defendant-appellant, Court of Appeals.

[21] p. 2, Resolution, p. 59, Rollo.

[22] Malonzo vs. Galang, 109 Phil. 16 (1960); Enervida vs. de la Torre, 55 SCRA 339 (1974).

[23] Art. 2234, Civil Code.

[24] Art. 2232, *ibid.*

[25] Art. 2221, *ibid.*

[26] Art. 2208, *ibid.*

DISSENTING OPINION

MAKASIAR, J.:

I dissent.

I

To begin with, the negligent acts committed by the officers and employees of the petitioner, Social Security System, amounted to not simply a contractual breach but tort. For the record is clear that petitioner's officers and employees were grossly negligent bordering on malice or bad faith in applying for the extrajudicial foreclosure of the mortgage contract executed in its favor by the spouses David B. Cruz and Socorro Concio-Cruz, and that even after private respondents had brought to the attention of the petitioner's officers and employees their mistake, they insisted on their course of action, instead of making the necessary rectifications, which grossly negligent and oppressive acts caused damage to private respondents. As found by the Court of Appeals:

"The appellant was not justified in applying for the extra-judicial foreclosure of the mortgage contract executed in its favor by the spouses David B. Cruz and Socorro Concio-Cruz, Exh. 'A'. While it is true that the payments of the monthly installments were previously not regular, it is a fact that as of June 30, 1968 the appellees, David B. Cruz and Socorro Concio-Cruz were up-to-date and current in the payment of their monthly installments. Having accepted the prior late payments of the monthly installments, the appellant could no longer suddenly and without prior notice to the mortgagors apply for the extra-judicial foreclosure of the mortgage in July, 1968.

"It is obvious that the appellant applied for the extra-judicial foreclosure of the mortgage in question because of the gross negligence of its employees. This negligence was aggravated when the appellant, after being informed of the error, insisted on proceeding with the extra-judicial foreclosure by invoking alleged violations of the mortgage contract. But these violations are either too minor to warrant the drastic step of foreclosure or were deemed condoned when the appellant accepted late payments prior to June 30, 1968. Hence the trial court did not err in concluding that 'the act of defendant indeed was deliberate, calculated to cow plaintiffs into submission and made obviously with malice.'" (p. 54, *rec.*; italics supplied).

The circumstance that there was a pre-existing contractual relationship between the herein contending parties, does not bar the tort liability of the officers and employees of petitioner; because tort liability may still exist despite presence of contractual relations as the act that breaks the contract may also be a tort, as in this case (*Air France vs. Carrascoso*, L-21438, Sept. 28, 1966, 18 SCRA 155, 168-169; *Singson & Castillo vs. Bank of the Philippine Islands*, L-24837, June 27, 1968, 23 SCRA 1117, 1119-20).

Consequently, a tortious act being involved, the applicable provision of law is Article 2180 in relation to Article 2176 of the New Civil Code. Under Article 2180, ". . . The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains,

in which case what is provided in Article 2176 shall be applicable."

In the case at bar, the petitioner Social Security System as the instrumentality of the State to implement the social justice guarantee enunciated in the Constitution, did not act through a special agent. Hence, the Social Security System cannot be liable for the damages caused by the tortious acts of its officers and employees while in the performance of their regular functions. The remedy therefore of private respondents is to proceed against the guilty officers and employees of petitioner Social Security System as mandated by Article 2176 of the New Civil Code.

For as held in the leading case of *Merritt vs. Government of the Philippine Islands* (34 Phil. 311),

"The responsibility of the State is limited by Article 1903 to the case wherein it acts through a special agent, . . . so that in representation of the state and being bound to act as an agent thereof, he executes the trust confided to him. This concept does not apply to any executive agent who is an employee of the active administration and who on his own responsibility performs the functions which are inherent in and naturally pertain to his office and which are regulated by law and the regulations."

While Article 2180 of the New Civil Code was not invoked by the petitioner as a defense, this does not prevent this Tribunal from taking cognizance of the same. For as stressed in *Ortigas, Jr. vs. Lufthansa German Airlines* (June 30, 1975, 64 SCRA 610, 633), failure to assign a defense as an error on appeal is a pure technicality that should not prevail over the substantial issues in a controversy as the same would not serve the interest of justice, and "this Court is clothed with ample authority to review matters even if they are not assigned as errors in the appeal, if it finds that our consideration is necessary in arriving at a just decision of the case" (citing *Saura & Export Co., Inc.*, May 31, 1963, 8 SCRA 143). Further, We have, time and again, re-stated the rule that the Supreme Court can suspend its own rules to serve the ends of justice (*Jose vs. C.A., et al.*, L-38581, March 31, 1976; *Phil. Blooming Mills Employees Organization, et al. vs. PBM Co., et al.*, L-31195, 51 SCRA 189, 215; *Ronquillo vs. Marasigan*, May 31, 1962, 5 SCRA 304, 312-313; *Ordoveza vs. Raymundo*, 63 Phil. 275).

The principle that a defense not expressly pleaded is deemed waived unless such failure is satisfactorily explained, is merely a general rule which is subject to exceptions, among which is when the Court can take judicial notice of such defense. In this case, We can take judicial notice of the law, like Article 2180 of the New Civil Code. It must be emphasized that the courts have as much duty as the Commission on Audit to protect the public treasury from being mulcted or raided illegally. And this becomes more imperative considering that a substantial portion of the funds of the petitioner comes from the contributions of employees and workers in private firms and is therefore in the nature of a trust fund to be expended only for their welfare and benefit, with the government merely giving some subsidy. Any amount of damages illegally assessed against the Social Security System will deplete the benefit funds available to its covered members for the contingencies of sickness, disability, retirement or death.

It cannot likewise be seriously questioned that the Social Security System is comprehended in the definition in Section 2 of the Revised Administrative Code of the term "Government of the Republic of the Philippines . . . which refers to the corporate governmental entity through which the functions of government are exercised throughout the Philippine Islands, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the central Government or to the provincial or municipal branches or other forms of local government." And the second paragraph of said Section 2 provides that the term "national government" refers to the central government as distinguished from the different forms of local government. There is nothing therein nor in the Social Security Act, as amended, intimating that the national government does not include the Social Security System.

It is true that the Social Security System has a corporate or juridical personality of its own. But this does not remove it as an integral part of the national or central government. For such corporate or juridical personality invested in it is more for facility and convenience in the attainment of the objectives for which it was created by the legislative. Such vesting of corporate or juridical personality in the Social Security System was never intended to destroy the shield from liability afforded it as an integral part of the State or Government by Article 2180 of the New Civil Code. Relatedly, such corporate or juridical personality of the Social Security System and the express provision of the law creating the same that it can sue and be sued, have the effect of merely waiving its immunity from suit as an entity performing governmental functions. Such waiver of its immunity from suit is not an admission of its liability. Such waiver merely allows a private citizen a remedy for the enforcement and protection of his rights, but always subject to the lawful defenses of the Social Security System—one of which is Article 2180 of the New Civil Code as aforesaid. In other words, such waiver of immunity from suit is not equivalent to instant liability. The Social Security System can only be held liable for damages arising from the tortious acts of its officers and employees only if it acts through a special agent, which is not true in the case at bar.

II

It must be finally stressed that the Social Security System cannot be liable for damages because it is an entity of government performing governmental functions; hence, not profit-oriented. The 1963 doctrine in *SSSEA vs. Soriano* (7 SCRA 1016 [1963]) that the system is exercising proprietary functions, is no longer controlling.

For in 1969, the distinction between constituent and ministrant functions of the Government as laid down in the case of *Bacani vs. Nacoco* (100 Phil. 468 [1956]) has been obliterated. In the case of *Agricultural Credit and Cooperative Financing Administration (ACCFA) vs. Confederation of Unions in Government Corporations and Offices (CUGCO)* [30 SCRA 649 (1969)], this Court in re-examining the aforesaid *Bacani* ruling observed that the trend has been to abandon and reject the traditional "Constituent-Ministrant" criterion in governmental functions in favor of the more responsive postulate that the growing complexities of modern society have rendered the traditional classification of government functions unrealistic and obsolete.

WE held in the *ACCFA* case, thus:

"The growing complexities of modern society, however, have rendered this traditional classification of the functions of government quite unrealistic, not to say obsolete. The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only 'because it was better equipped to administer for the public welfare than is any private individual or groups of individuals,' continue to lose their well-defined boundaries and to be absorbed within activities that the government must have undertaken in its sovereign capacity if it is to meet the increasing social challenges of the times. Here as almost everywhere, else, the tendency is undoubtedly towards a greater socialization of economic forces. Here of course, this development was envisioned indeed adopted as a national policy, by the Constitution itself in its declaration of principle concerning the promotion of social justice."

Chief Justice Fernando, then Associate Justice, in his concurring opinion stressed that:

"The decision reached by this Court so ably given expression in the opinion of Justice Makalintal, characterized with vigor, clarity and precision, represents what for me is a clear tendency not to be necessarily bound by our previous pronouncements on what activities partake of a nature that is governmental. Of even greater significance, there is a definite rejection of the 'constituent-ministrant' criterion of governmental functions, followed in *Bacani vs. National Coconut Corporation*. That indeed is cause for gratification. For me at least, there is again full adherence to the basic philosophy of the Constitution as to the extensive and vast power lodged in our government to cope with the social and economic problems that even now sorely beset us. There is therefore full concurrence on my part to the opinion of the court, distinguished by its high quality of

juristic craftsmanship' (pp. 666-667).

.....

"4. With the decision reached by us today, the government is freed from the compulsion exerted by the Bacani doctrine of the 'constituent-ministrant' test as a criterion for the type of activity in which it may engage. Its constricting effect is consigned to oblivion. No doubts or misgivings need assail us that government efforts to promote the public weal, whether through regulatory legislation of vast scope and amplitude or through the undertaking of business activities, would have to face a searching and rigorous scrutiny. It is clear that their legitimacy cannot be challenged on the ground alone of their being offensive to the implications of the laissez-faire concept. Unless there be a repugnancy then to the limitations expressly set forth in the Constitution to protect individual rights, the government enjoys a much wider latitude of action as to the means it chooses to cope with grave social and economic problems that urgently press for solution. For me, at least, that is to manifest deference to the philosophy of our fundamental law. Hence my full concurrence, as announced at the outset" (pp. 682-683, italics supplied).

The 1935 Constitution declared:

"Sec. 5. The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State" (Art. II, Declaration of Principles).

The present 1973 Constitution provides under its Declaration of Principles and State Policies (Article II), that

"The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits" (Section 6);

and

"The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living" (Section 7).

The strictly governmental function of the SSS is spelled out unmistakably in Section 2 of R.A. No. 1161 entitled "The Social Security Act of 1954," thus:

"It is hereby declared to be the policy of the Republic of the Philippines to develop, establish gradually and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines, and shall provide protection against the hazards of disability, sickness, old age and death."

As stated in the Explanatory Note to the Bill that became R.A. No. 1161, the Social Security Act of 1954:

"It is a recognized principle in free societies that the State must help its citizens to make provision for emergencies beyond their control, such as unemployment, sickness requiring expensive medical treatment, and similar emergencies to a greater or lesser degree by means of social security legislation in a variety of forms."

And this Court, in *Roman Catholic Archbishop of Manila vs. SSS* (L-15045, 1 SCRA 10 [1961]), declared that "the Social Security Law was enacted pursuant to the 'policy of the Republic to develop, establish gradually and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines and provide protection to employees against the hazards of disability, sickness, old age and death' (Sec. 2, Republic Act No. 1161, as amended). Such enactment is a legitimate exercise of the police power. It affords protection to labor, especially to working women and minors, and is in full accord with the constitutional provisions on the 'promotion of social justice to insure the well being and economic security of all the people.'"

It is interesting to note that aforesaid pronouncement of this Court was incorporated in the Social Security Act (R.A. 1161) by Presidential Decree No. 24 issued on October 19, 1972. Thus, as amended by said Decree, its section 2 now reads: "It is the policy of the Republic of the Philippines to establish, develop, promote and perfect a sound viable tax-exempt social security service suitable to the needs of the people throughout the Philippines, which shall provide to covered employees and their families protection against the hazards of disability, sickness, old age, and death, with a view to promoting their well-being in the spirit of social justice" (*italics supplied*). And one of its whereases expressly states that "the measure is necessary to effect reforms in SSS operations and to revitalize its structure as an important agency in the promotion of the social and economic development programs of the Government;. . ." (*italics supplied*).

Considering therefore that the establishment and maintenance of an adequate social security and social services, which the Social Security System seeks to perform and achieve are functions pursuant to the basic constitutional mandate directing the State to promote "social justice to insure the well-being and economic security of all the people" (1935 Constitution) or "to insure the dignity, welfare and security of all the people" as well as the police power of the State, the inescapable conclusion is that the function of the SSS is and has always been governmental.

It thus becomes clear that petitioner Social Security System, under the obtaining facts and applicable laws in the case, is not liable for the damages caused to private respondents by the tortious acts of its officers and employees to whom the task done properly pertained.

A contrary rule as that enunciated in the majority opinion invites conspiracy between officials and employees of the Social Security System and private parties to create financial liabilities against the System. Its funds are public funds and more importantly trust funds, which must be protected.

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