

[G.R. No. L-37187. September 15, 1975]*G.R. No. L-37187. September 15, 1975*

Ponente: BARREDO, J.

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Three cases related to the decision of the Court of First Instance of Manila dated July 13, 1973 in Civil Case No. 89442, Armando Capistrano, et al. vs. The City of Manila, et al., declaring null and void the Management and Operating Contract between defendant City (for short) and its co-defendant Asiatic Integrated Corporation (Asiatic, for short) involving all the public markets in Manila and ordering in consequence the turning over of said markets to the City, an accounting of all income earned by Asiatic under the contract and the payment of attorney's fees and costs by the same respondent.

The first case, G.R. No. L-37187, is for certiorari with preliminary injunction to restrain respondent judge from enforcing his aforementioned decision during the pendency of the appeals therefrom of the defendants City and Asiatic. The other two cases, G.R. Nos. L-37248 and L-37249 are precisely the separate appeals or petitions for review of the City and Asiatic, respectively, which, however, were deemed by the Court as special civic actions in its resolution of December 10, 1973.

I

On December 13, 1972, the Market Committee created by Republic Act 6039, approved a resolution recommending that the City Mayor of Manila urgently consider the immediate lease and/or assignment of the administration of the city public markets and talipapas to "a multi-million peso corporation under such terms and conditions as (would be) most advantageous to the City of Manila." Evidently in pursuance of such recommendation, on December 28, 1972, an agreement captioned "Management and Operating Contract" was executed by and between the City, represented by its Mayor, and Asiatic covering all the thirty-five public markets and talipapas in Manila. Said contract is as follows:

"MANAGEMENT AND OPERATING CONTRACT**KNOW ALL MEN BY THESE PRESENTS:**

This Agreement, made and entered into at Manila, Philippines, this 28 day of December, 1972, by and between
—

The City of Manila, a municipal corporation organized existing under and by virtue of the laws of the Philippines (R.A. No. 409) with principal office at City Hall, Manila, represented in this act by RAMON D. BAGATSING, Mayor of said City, hereinafter known as the FIRST PARTY;

— and —

Asiatic Integrated Corporation, a 100% Filipino-owned corporation, organized and existing pursuant to Philippine Laws and with principal office at the 2nd Floor, Rojas Center Building, C. M. Recto Avenue,

Manila, represented in this act by its President, JOSE A. ROJAS, duly authorized therefor, hereinafter known as the SECOND PARTY;

W I T N E S S E T H: That

WHEREAS, the concept and main objectives of a public market are to provide an accessible, clean, safe, convenient and economical shopping services to the public; to provide livelihood to stallholders, peddlers, distributors, brokers, middlemen and other low income groups; provide income for the maintenance, repair and establishment of new public markets and to provide income for other areas of city improvement;

WHEREAS, physically, the state of our public markets had been turning from bad to worse, there being no major repair and maintenance done in the public markets for the last ten (10) years as can be seen from the following building and sanitary deficiencies now prevalent in all public markets:

- Out of the sixteen (16) major markets, fourteen (14) are of prewar vintage. No major reconstruction has been made.
- Building and sanitary deficiencies are prevalent in all public markets such as defective electrical system, broken down and inadequate drainage and sewerage facilities, wornout and unsafe market floorings, defective plumbing and water pipe fixtures, structural defects, rusted, dilapidated roofs, gutters and down spouts, building hazards, lack of ventilation facilities, etc.

WHEREAS, economically because of the proliferation of supermarkets, groceries, wholesalers and retailers, profit-wise, the public markets have no chance at all to outlive, let alone survive, the unbalanced competition coming from those well entrenched sectors due to commodity economics and lack of adequate service facilities as well as credit and financial sources at legal interests;

WHEREAS, based on an in depth analysis and study of the conditions prevailing in the public markets, it will take the City ten (10) to fifteen (15) years of massive capital infusion to put to service Class B shape the public markets and that without immediate total physical and economic rehabilitation, the public markets will be driven into obsolescence:

WHEREAS, the City of Manila presently does not have the necessary funds to improve and develop the public markets the way they should be improved and developed to conform to modern marketing concepts and standard;

WHEREAS, cognizant of the foregoing, the Market Committee in its regular meeting held on December 13, 1972, adopted a Resolution requesting the Mayor to urgently consider "the immediate lease and/ or assignment of administration of the City public markets and talipapas and this be awarded to a reputable multi-million peso corporation with such terms and conditions that are most advantageous to the City of Manila";

WHEREAS, the ASIATIC INTEGRATED CORPORATION has offered to improve, repair, develop, reconstruct and rehabilitate the City Public Markets and taiipapas presently existing, which are listed and indicated in Annex "A" hereof.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and stipulations contained in the following clauses, the respective parties hereto do contract and agree as follows:

- I -

That the SECOND PARTY shall conduct, manage, operate, develop and maintain the City public markets and talipapas enumerated in Annex "A", hereof for a period of ten (10) years commencing from the date of execution of this Contract, Provided, However, that the FIRST PARTY may at any time during the lifetime of

this Contract revoke the same (if the services are unsatisfactory) or for violation of its terms and conditions.

- II -

That immediately after the execution of this Contract, the SECOND PARTY shall start the painting, cleaning, sanitizing and repair of the public markets and talipapas and within ninety (90) days thereof, the SECOND PARTY shall submit a program of improvement, development, rehabilitation and reconstruction of the City public markets and talipapas subject to prior approval of the FIRST PARTY.

- III -

The SECOND PARTY shall, during the terms of this Contract, pay and defray all costs for utilities, repairs, maintenance, new equipment, improvement, rehabilitation and reconstruction, and any and all other expenses incurred incident to the management and operation of the City public markets and talipapas.

- IV -

That all constructions and improvements introduced by the SECOND PARTY, inclusive of equipment shall, upon expiration of this Contract, remain the property of the FIRST PARTY without payment of any amount to the SECOND PARTY.

- V -

That all government licenses and permits required for the management and operation of the City public markets and talipapas and for the improvement, development, rehabilitation and reconstruction made by the SECOND PARTY pursuant to the provisions of this Contract shall be taken out and paid for by the SECOND PARTY in the name of the FIRST PARTY.

- VI -

That all present personnel of the City public markets and talipapas shall be retained by the SECOND PARTY as long as their services remain satisfactory and they shall be extended the same rights and privileges as heretofore enjoyed by them. Provided, however, that the SECOND PARTY shall have the right, subject to prior approval of the FIRST PARTY to discharge any of the present employees for cause.

- VII -

That the SECOND PARTY may from time to time be required by the FIRST PARTY, or his duly authorized representative or representatives, to report on the activities and operation of the City public markets and talipapas and the facilities and conveniences installed therein, particularly as to their cost of construction, operation and maintenance in connection with the stipulations contained in this Contract.

- VIII -

That considering the investments which shall be made by the SECOND PARTY for improvement, maintenance, operation and rehabilitation of the City public markets and talipapas, the SECOND PARTY may not be removed from the management operation of the City public markets and talipapas during the period of this Contract except for any violation of the terms and conditions hereof.

- IX -

That the SECOND PARTY hereby warrants that it has sufficient credit and banking facilities to effectuate the improvement, repair, development, reconstruction and rehabilitation of the public markets as well as the necessary maintenance and upkeep thereof and for this purpose, binds itself to submit within ten (10) days from the execution of this Contract such document or documents from any local responsible bank attesting to this fact.

- X -

That the SECOND PARTY further agrees to execute and file a performance bond in the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS in cash or equivalent amounts in surety bond acceptable to the FIRST PARTY, or in lien of such bond, to deposit with the City Treasurer of Manila a certified check in the amount of FIVE HUNDRED THOUSAND (P-500,000.00) PESOS drawn in favor of the City against any local responsible bank in the Philippines, which shall answer for the following:

- Faithful compliance by the SECOND party with any and all of the terms and conditions of this Contract;
- All lossess, damages and destructions of properties the public markets arising from the negligence of of misdemeanor on the part of the employees, laborers and all other personnel of the SECOND PARTY;
- Any claims for unpaid wages that the market laborers employees may have against it including obligations of the SECOND PARTY under the Workmen's Compensation. Act and other pertinent laws.

-XI-

That it is understood and agreed that the SECOND PARTY binds itself to pay the salaries and wages, insurance and all other benefits of the retained market employees and shall at all times hold the FIRST PARTY from any liability for salaries, wages, insurance and any benefits due its laborers and employees under existing labor and other laws and for damages suffered by third persons for any cause attributable to the SECOND PARTY, its laborers or employees.

- XII -

That it is further expressly stipulated and agreed that the SECOND PARTY shall hold the FIRST PARTY free and harmless from any action or liability whatsoever, arising from any claim by any or all the personnel assigned by the SECOND PARTY to perform the services herein agreed upon under the Workmen's Compensation Act, the Minimum Wage Law, the Eight-Hour Labor Laws, it being understood and agreed upon that the faithful compliance with the said laws shall devolve entirely upon the SECOND PARTY.

- XIII -

That the SECOND PARTY will appropriate a yearly amount of not less than thirty (30%) per cent of the gross income of the public markets and talipapas for the fiscal year 1971-1972 to answer for the maintenance and repair, reconstruction, development and rehabilitation of the public markets and talipapas and proof of such appropriation and minimum expenditure must be submitted to the FIRST PARTY or his duly authorized representative or representatives. The SECOND PARTY further agrees to insure the public markets against fire.

- XIV -

That the SECOND PARTY further warrants that it will honor and respect the rights of the present stallholders and will make available to the stallholders, loans and financing (product purchase and/or inventory) at legal rates to eliminate loan sharks and will establish buying cooperatives to assist the stallholders on the purchase of products at the maximum volume discount and such other services like free seminars on practical small business management and marketing as a means of assisting the stallholders in increasing their profits.

- XV -

That during the term of this Contract, the SECOND PARTY shall be entitled to the annual gross income from the City public markets and talipapas in excess of ₱500,000.00 for the first year thereof and for the succeeding years in such terms as hereinafter enumerated: —

2nd year -

—

₱550,000.00

3rd year - —

600,000.00

4th year ' - —

650,000.00

5th year - —

700,000.00

6th year - —

750,000.00

7th year - —

800,000.00

8th year - —

850,000.00

9th year - —

900,000.00

10th year - —

950,000.00

said sums being payable to the FIRST PARTY within sixty (60) days after the anniversary date of the execution of this contract, Provided, However, that the SECOND PARTY shall immediately advance to the FIRST PARTY the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS within seven (7) days and the further amount of FOUR HUNDRED THOUSAND (P400,000.00) PESOS within ninety (90) days from the extension of this Contract.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures in the City of Manila, Philippines, on the day and year first above stated.

CITY OF MANILA

ASIATIC INTEGRATED CORPORATION

By:

By:

(Sgd.)

RAMON D. BAGATSING

(Sgd.)

Mayor

JOSE A. ROJAS

President

WITNESSES:

(Sgd.) SERAFIN LUZ CUI

(Sgd.) Illegible"

xxx xxx xxx

In connection with this contract, We find annexed as Annex G of the petition in G.R. No. L-37248, the following:

"RESOLUTION EXPRESSING CONCURRENCE WITH AND SUPPORT FOR THE CONTRACT

ENTERED INTO BY THE CITY OF MANILA TURNING OVER THE MANAGEMENT AND OPERATION OF PUBLIC MARKETS AND TALIPAPAS IN THE CITY TO A PRIVATE CONCERN.

WHEREAS, a contract has been entered into by the City of Manila with the Asiatic Integrated Corporation for the latter to handle the management and operation of Manila's outmoded and deteriorating public markets and talipapas;

WHEREAS, the deplorable state of these markets, most of which are of prewar vintage, has always been the constant source of headaches of past administration, considering the mismanagement and corruption that have attended their operation for years;

WHEREAS, the state of finances of the City Government does not permit it to undertake the massive and expensive task of rehabilitating and modernizing these public markets as to enable them to survive the stiff competition offered by mushrooming and sophisticated supermarkets without sacrificing other more vital and essential public services;

WHEREAS, the members of the Municipal Board cannot close their eyes to the perennial problem affecting the interests of their constituents, particularly the poor and underprivileged, but must take positive steps to bring about a change for the better;

WHEREAS, the Municipal Board finds the contract entered into by the City to be a step in the right direction in that it may well be the only lasting solution to the ills that have continuously beset the administration and operation of public markets in the City and thus bring about the change long envisioned by this Body: Now therefore, be it.

Resolved by the Municipal Board of the City of Manila, to express, as it hereby expresses, its concurrence with and support for the contract entered into by the. City of Manila turning over the management and operation of public markets in the City to the Asiatic Integrated Corporation.

Resolved, further That a copy of this Resolution be transmitted to His Honor, Mayor Ramon D. Bagatsing.

Adopted, January 12, 1973.

(SGD) DANILO LACUNA
(SGD) MANUEL UY, JR.
(SGD) QUIRINO MARQUINEZ
(SGD) ROSALINA ROBLES GONZALES
(SGD) JOSE M. SEMBRANO
(SGD) MARIANO M. MAGSALIN
(SGD) AVELINO VILLACORTA
(SGD) ROBERTO OCA, JR.
(SGD) CARLOS FERNANDEZ
(SGD) ALFONSO MENDOZA, JR.
(SGD) AMBROSIO LORENZO, JR.
(SGD) HERMOGENES PABLO"

(Pp. 82-83, Rollo of L-37248.)

All the signatories are councilors of the City of Manila.

The contract must have been brought to the attention of President Ferdinand E. Marcos, for on January 12, 1973, the President sent a memorandum to City Mayor Ramon D. Bagatsing, reading thus:

"In connection with the contract between the City of Manila and Asiatic Integrated Corporation for the management and operation by the latter of 35 markets in Manila, it is my desire, in the interest of the public welfare, that the following conditions be incorporated therein:

1. All market vendors should form cooperatives and should be sold shares in the market thus becoming co-owners.
2. The market cooperatives should be authorized to directly procure from producers' cooperatives and other sources, domestically or internationally, and be given allocations for imports, provided they bring down prices in accordance with the policy and the regulations set forth by the Price Control Council, through its chairman.
3. The public should be part owner of such markets by the public sale of shares.

(SGD.) FERDINANDE. MARCOS

"(P. 119-Rollo of L-37249, Annex "O".)

In an effort evidently to comply with the foregoing presidential memorandum, a "Supplementary Contract" was executed by the parties on March 30, 1973, which provides:

"SUPPLEMENTARY CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This SUPPLEMENTARY CONTRACT, made and entered into the City of Manila, Philippines, this 30th day of March, 1973, by and between —

The CITY OF MANILA, a municipal corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines (R.A. No. 409 - Revised Charter of the City of Manila), with principal office at the City Hall Building, Manila, represented in this Act by the Hon. RAMON D. BAGATSING, Mayor of the City of Manila, hereunto duly authorized and hereinafter referred to as the CITY;

- and -

ASIATIC INTEGRATED CORPORATION, a 100% Filipino owned Corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at the 2nd Floor, Rojas Center Building, Claro M. Recto Avenue, Manila, represented in this Act by JOSE A ROJAS, President thereof, hereunto duly authorized and hereinafter referred to as the CORPORATION;

WITNESSETH THAT:

WHEREAS, on December 28, 1972, a contract was entered into by and between the City of Manila and the Asiatic Integrated Corporation, described as Doc. No. 5, Page No. 2, Book I, Series of 1972, of Notary Public Gabriel L. Gonzales of Manila, for the operation and management of the thirty-five (35) public markets and talipapas of the City of Manila, subject to the terms and conditions therein set forth;

WHEREAS, on January 12, 1973, His Excellency, President Ferdinand E. Marcos, sent a Memorandum to Mayor Ramon D. Bagatsing of Manila directing the incorporation of certain conditions in the Management and Operating Contract of December 28, 1972, copy of which is hereto attached as Annex "A";

WHEREAS, the parties hereby agree that the conditions set forth in the Presidential Memorandum, if incorporated in the said Contract dated December 28, 1972 and implemented, will undoubtedly redound to the benefit not only of the market vendors concerned but also the public in general;

NOW THEREFORE, for and in consideration of the foregoing principles and of the conditions hereinafter set

forth, the parties have agreed as they hereby agree as follows;

I

That all legitimate vendors in the public markets and talipapas of the City of Manila who have or may hereafter form and/or organize cooperatives shall be extended and fullest help and assistance by the parties.

II

That the market cooperatives so formed or may hereafter be formed shall be extended the necessary aid and assistance by the CORPORATION so that they may directly procure from producers' cooperatives and other legitimate sources, domestically or internationally, such goods or products needed by said cooperatives: PROVIDED that they bring down prices of commodities in accordance with the policy and the regulations set forth by the Price Control Council, through its Chairman.

III

That the CORPORATION hereby binds itself to take the necessary steps to put up shares to be sold to the public to the extent of allowing them to participate in the management and operation of the markets, PROVIDED that the market vendors shall be given preference in the sale of such shares.

IN WITNESS WHEREOF, the parties hereunto set their hands at the place and on the date first above written.

CITY OF MANILA

ASIATIC INTEGRATED CORPORATION

T.A.N. 0201-022-1

By: By:

RAMON D. BAGATSING

JOSE A. ROJAS

City Mayor

President

T.A.N. 1701-719-4

ATTESTED:

RAMON S. MENDOZA

Secretary to the Mayor

SIGNED IN THE PRESENCE OF:

SERAFIN LUZ CUI

ROMAN G. GARGANTIEL

In further connection with the contract at issue, on November 26, 1973, President Marcos issued the following decree:

"PRESIDENTIAL DECREE NO. 345

AUTHORIZING THE REVERSION OF THE ACCUMULATED THIRTY (30%) PERCENT SINKING FUND TO THE GENERAL FUND OF THE CITY OF MANILA, FOR THE UNDERTAKING OF ITS PUBLIC WORKS PROJECTS, AND FOR OTHER PURPOSES.

WHEREAS, paragraph V, Sec. 1 of Republic Act No. 6039, amending Sec. 18(cc) of Republic Act No. 409, otherwise known as the Revised Charter of the City of Manila, expressly provides that 'the sinking fund shall be created from thirty per centum¹ of the annual gross receipts from market fees which shall be used to amortize or to finance the construction of new markets, to remodel or replace old market buildings, the purchase of privately-owned building utilized as public markets, and purchase of new market sites and the construction of market building and facilities thereof: Provided, that for as long as self-liquidating old markets have not been replaced, reconstructed, or remodeled in accordance with the specifications adopted and recommended by the Market Committee, the gross revenue from all market fee collections shall, be apportioned and appropriated as follows:

'a. To the special fund of the City

----- 70%

b. To the sinking fund ----- 30%

WHEREAS, on December 28, 1972, the City of Manila entered into a Management and Operating Contract with the Asiatic Integrated Corporation over its thirty-five (35) public markets and talipapas, wherein it is expressly stipulated that the latter shall appropriate a yearly amount of not less than thirty (30%) per centum of the gross receipts from market fees for the fiscal year 1971-1972 to answer for the maintenance, repair, reconstruction, development and rehabilitation of the said markets and talipapas;

WHEREAS, prior to the conclusion of the aforementioned contract, there accumulated the sum of Three Million Six Hundred Ninety Six Thousand Nine Hundred Twenty-One & 99/100 (P3,696,921.99) Pesos, equivalent to thirty (30%) per centum of the gross receipts from market fees, which amount, however, was not appropriated for the purpose stated in Republic Act No. 6039;

WHEREAS, there is no more need to appropriate the accumulated sinking fund of P3,696,921.99, since it is already the Asiatic Integrated Corporation, under the contract referred to above, which shall undertake the improvements stated in Republic Act No. 6039;

WHEREAS, there are in the City of Manila pending urgent public works projects, such as the construction and repair of streets and dredging and clearing of esteros, which cannot be successfully undertaken for lack of funds:

WHEREAS, in order to generate funds with which to undertake and thereby carry out successfully the foregoing

objectives, it is imperative to tap the other resources of the City of Manila;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President the Philippines, by virtue of the powers in me vested by the Constitution as Commander-in-Chief of the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, as amended, do hereby authorize the reversion of the accumulated thirty (30%) per cent sinking fund amounting to P3,696,921.99 to the General Fund of the City of Manila and the appropriation of the same by the City for the undertaking of its public works projects.

This Decree shall take effect immediately.

DONE in the City of Manila this 26th day of November, in the year of Our Lord, nineteen hundred and seventy-three.

(SGD.) FERDINAND E. MARCOS

President

Republic of the Philippines

By the President:

(SGD.) ROBERTO V. REYES

Assistant Executive Secretary"

(P. 101, Rollo L-37248.).

Relatedly also, on January 3, 1974, the Municipal Board passed Ordinance No. 7451 providing as follows:

"AN ORDINANCE AUTHORIZING HIS HONOR, THE MAYOR TO LEASE VACANT, UNUSED AND UNENCUMBERED PATRIMONIAL PROPERTIES, OR OTHER LEASABLE PATRIMONIAL PROPERTIES TO REPUTABLE AND HIGHLY QUALIFIED PERSONS, FIRMS OR CORPORATIONS, UNDER CERTAIN CONDITIONS.

Be it ordained by the Municipal Board of Manila, that:

SECTION 1. His Honor, the Mayor is hereby authorized to lease vacant, unused and unencumbered patrimonial properties, or other leasable patrimonial properties to reputable and highly (qualified persons, firms or corporations, subject to the following conditions:

1. That the contract shall not exceed twenty-five (25) years;
2. That the price or consideration of the transaction shall be determined by the City Appraisal Committee or by the City Rental Committee;
3. That the Municipal Board shall be furnished, for its information and guidance, copies of the contracts covering the transaction;
4. That the Mayor shall consider other terms and conditions most beneficial to the city government;
5. That this ordinance shall not be utilized to create a monopoly in favor of any corporation or enterprise;
6. That the amount of P25,000,000.00 which will be derived from the lease of the patrimonial and other leasable patrimonial properties shall be set aside for the construction of a new city hall building or a temple of justice; and
7. That the Municipal Board shall retain the power to enact ordinances to make use of vacant and unused properties of the City for public purposes

SEC. 2. This ordinance shall take effect upon its approval.

Enacted by the Municipal Board of Manila at its regular session, today, January 3, 1974.

Approved by His Honor, the Mayor on January 11, 1974. APPROVED:

APPROVED:

(SGD) RAMON D. BAGATSING

(SGD) MARTIN B. ISIDRO

Mayor

Vice Mayor and

Presiding Officer, Municipal Board

ATTESTED:

(SGD) ROMAN G. GARGANTIEL

(SGD) HERMINIO R. NORIEGA

Acting as Secretary

Municipal Board

A Note:

SEC. 7, is unnecessary it being one of the inherent powers of the Board in the same way that it is the inherent power of the Mayor to approve or disapprove resolution and/or ordinance.

(SGD) RAMON D. BAGATSING

(P. 209 - Rollo of L-37187, Annex "2".)

Then, on February 13, 1974, an amended contract was executed between the same parties, which reads:

"AMENDED CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This AMENDED CONTRACT executed in the City of Manila, Philippines, this 13[th] day of February 1974, by and between:

The CITY OF MANILA, a municipal corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines (R.A. No. 409 - Revised Charter of the City of Manila), with principal office at the City Hall Building, Manila (represented in this Act by the Hon. RAMON D. BAGATSING, Mayor of the City of Manila, hereunto duly authorized and hereinafter referred to as the city;

- and -

ASIATIC INTEGRATED CORPORATION, a 100% Filipino-owned Corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at the 2nd Floor, Rojas

Center Building, Claro M. Recto Avenue, Manila represented in this Act by JOSE A. ROJAS, President thereof, hereunto duly authorized and hereinafter referred to as the CORPORATION;

WITNESSETH THAT:

WHEREAS, on the 28th day of December 1972, under authority of existing laws, the parties hereto entered into a Management and Operating Contract, the same providing among others, in numbered paragraphs I and XV thereof, the following:

Paragraph I

"That the SECOND PARTY shall conduct, manage, operate, develop and maintain the city public markets and taiipapas enumerated in Annex "A" hereof for a period often (10) years commencing from the date of execution of this Contract. Provided, however, that the FIRST PARTY may at any time during the lifetime of this Contract revoke the same (if the services are unsatisfactory) or for violation of the terms and conditions.

Paragraph XV

"That during the term of this Contract, the SECOND PARTY shall be entitled to the annual gross income from the city public markets and taiipapas in excess of P500,000.00 for the first year thereof and for the succeeding years in such terms as hereinafter enumerated: —

2nd year

—

P550,000.00

3rd year —

600,000.00

4th year —

650,000.00

5th year —

700,000.00

6th year —

750,000.00

7th year —

800,000.00

8th year —

850,000.00

9th year —

900,000.00

10th year —

950,000.00

said sums being payable to the FIRST PARTY within sixty (60) days after the anniversary date of the execution of the Contract, Provided, however, that the SECOND PARTY shall immediately advance to the FIRST PARTY the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS within seven (7) days and the further amount of FOUR HUNDRED THOUSAND (P400,000.00) PESOS within ninety (90) days from the execution of this Contract.

WHEREAS, under Ordinance No. 7451, enacted by the Municipal Board on January 3, 1974, and approved by the City Mayor on January 11, 1974, the City Mayor is expressly authorized to lease patrimonial properties of the City for a period not exceeding 25 years;

WHEREAS the improvement, rehabilitation and reconstruction of the City's public markets and talipapas is a long, tedious and continuing process and, in the light of the worldwide rise of the cost of all commodities, including building and construction materials, will necessarily entail huge and substantial expenditures on the part of the SECOND PARTY;

WHEREAS, the SECOND PARTY has made known to the FIRST PARTY its problem of rising costs of materials as well as labor and related matters, which has affected and will continue to affect its program and projection of improvement, rehabilitation and reconstruction of the City's public markets and talipapas;

WHEREAS, the SECOND PARTY has requested the FIRST PARTY to extend the term of the Management and Operating Contract to Twenty-five (25) years in lieu often (10) years as provided for in the aforesaid numbered paragraph I of the Management and Operating Contract to cope with the said problem, not foreseen and anticipated, and to enable the SECOND PARTY to ensure the fulfillment of its program and projection;

WHEREAS the FIRST PARTY, cognizant of the problem which is of public knowledge, is disposed to grant the request of the SECOND PARTY and the extension requested ultimately will redound to the benefit of the City and its constitutes;

NOW THEREFORE, for and in consideration of the foregoing premises and the covenants herein set forth, the parties have agreed as they hereby agree to AMEND as they hereby amend the aforesaid numbered paragraph I and XV of the Management and Operating Contract to read as follows:

PARAGRAPH I

'That the SECOND PARTY shall conduct, manage, operate, develop and maintain the City public markets and talipapas enumerated in Annex "A" hereof for the period TWENTY FIVE (25) years commencing from December 28, 1972; PROVIDED, However, that the FIRST PARTY may at anytime during the lifetime of this

Contract revoke the same (if the services are unsatisfactory or for violation of its terms and conditions.

PARAGRAPH II

"That during the term of this Contract, the SECOND PARTY shall, from the annual gross income from the City public markets and talipapas, pay to the FIRST PARTY the sum of FIVE HUNDRED THOUSAND (P500,000.00) PESOS, for the first year, and additional sum of FIFTY THOUSAND (P-50,000.00) PESOS such that in the progression of this yearly increase, the FIRST PARTY shall be receiving the sum of ONE MILLION SEVEN HUNDRED THOUSAND (P1,700,000.00) PESOS on the 25th year, said sums being payable to the FIRST PARTY within sixty (60) days after the anniversary date of execution of this Contract, Provided, However, that the SECOND PARTY shall immediately advance to the FIRST PARTY the amount of ONE HUNDRED THOUSAND (PI 00,000.00) PESOS within ninety (90) days from the execution of this Contract; Provided, FURTHER, That in the event of any increase in the prescribed rentals for fixed stalls, booths and tiendas or other market fees at any time during the life of this Contract, within the limits set forth under the Local Tax Code, the amounts payable by the SECOND PARTY to the FIRST PARTY UNDER THIS Paragraph shall automatically be increased in the same proportion as the increase of such rentals or fees and shall thereafter be the basis for fixing the share of the FIRST PARTY for the succeeding years.

Subject to the amendments above set forth, all other terms and conditions of the original contract dated December 28,1972 and the supplementary contract dated March 30, 1973, copy each of which herein attached as Annexes "A" and "B", respectively, and made integral parts thereof, are hereby reproduced en toto herein and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto affixed O their signature in the CITY OF MANILA, Philippines, on the ? day and year first above stated.

CITY OF MANILA

ASIATIC INTEGRATED CORPORATION

By:

By:

(SGD) RAMON D. BAGATSING

(SGD)JOSEA.ROJAS

Mayor

President

ATTESTED:

(SGD) ROMAN G. GARGANTIEL

Secretary to the Mayor

xxx xxx xxx

(Pp. 122-126, Rollo of L-37248.)

And in obedience to the provisions of Section 1, paragraph 3, of the ordinance, two days later or on February 15, 1974, Mayor Bagatsing wrote the Municipal Board as follows:

"The Honorable
The Municipal Board
Manila
Lady and Gentlemen:

In pursuance of the provisions of Ordinance No. 7451 authorizing the Mayor of Manila to lease vacant, unused and unencumbered patrimonial properties or other leasable patrimonial properties of the City for a period not exceeding twenty-five (25) years, please find enclosed, for the information and guidance of that Honorable Body, a copy of the Amended Contract entered into by and between the City of Manila and The Asiatic Integrated Corporation relative to, the operation and management of the City's public markets, and, talipapas.

Very truly yours,

(SGD) RAMON D. BAGATSING
City Mayor"

(P. 193 - Rollo of L-37187.)

Now, in case G.R. No L-37187, the petition was filed on July 25, 1973. The decision being impugned in these cases was rendered on July 13, 1973. The petition in G.R. No. L-37248 was actually filed on August 27, 1973, while that in G.R. No. L-3 7249 on August 21, 1973.[1] Upon being required to comment on the petitions, private respondents filed theirs on July 31, 1973 and respondent Judge filed his own on August 3, 1973.[2] So it is that some of the facts aforesaid which gave rise to new issues took place and were brought to the attention of the Court after the original issues were already joined. Indeed, they were never considered by the trial court. In view, however, of the fact that they are material and relevant, if not decisive, as they are indisputable, the Court will overlook the resulting technicalities regarding the need for corresponding supplemental pleadings. The matters of public interest herein involved need to be promptly settled, and considering that after all the new issues have no factual facets which would call for a new trial and that they are purely legal, We do not see any practical purpose that can be served by requiring the return of these cases to the trial court. For these same reasons, We can also pass over two other technical points: (1) the apparent incompleteness of the judgment of the trial court, the accounting ordered by it not having been rendered yet by Asiatic and (2) the fact that some of the matters. We are to resolve have not been passed upon by the lower court. Anyway, for one thing, under the view We take of these cases, there would not be need anymore for the ordered accounting. Withal, as a matter of fact, the parties have fully presented their respective positions in regard to all the issues without suggesting the need for further proceedings in the court below.

II

The first question for Our determination is whether or not the petitioners in the trial court, private respondents here, possess the requisite interest to prosecute these cases. In this connection, it is to be noted that in initially resolving the petition for preliminary injunction filed by said respondents together with their main petition, His Honor ruled this wise:

"The contract sought to be annulled was entered into by and between defendants City of Manila and Asiatic Integrated Corporation, and the present action was brought by persons who are not even parties thereto.

Besides, the basis of the action is on the alleged illegality of the contract, and this question may only be resolved after the trial of the case on the merits. The allegations of the complaint and the evidence presented at the hearing, do not show that the plaintiffs have a clear legal right to the relief prayed for.

Moreover, it was not alleged much less proven that the defendants have committed or attempted to commit any act which endangered or tends to endanger the rights of the employees of the Market Administration of the City of Manila to their respective position, or of the market vendors to the stalls that they are presently occupying and leased to them by the City of Manila.

The apprehensions and fears entertained by the plaintiffs of removal from their respective jobs or deprivation of their stalls are at best speculative and may never arise. It has been held that injunction, whether preliminary or final, is not designed to protect contingent or future rights. The possibility of irreparable damage without proof of violation of an actually existing right being mere *damnum absque injuria* is no ground for the issuance of a writ of preliminary injunction (*Bacolod Murcia Milling Co. vs. Capitol Sub-division Inc., et al.*, 17 SCRA 73 1, 737)." (Pp. 32-33, Rollo of L-37187.)

But seemingly, the point as to the personality of the plaintiffs was deemed no longer important in the final decision, since His Honor made no final ruling thereon. It may be said then that the adequacy of their personality and interest was assumed.

We view the matter differently. Herein private respondents are employees and vendors in the public markets referred to in the contract in dispute. But under the said contract, Asiatic has not been given any power of supervision or control over the employees of the markets. Their civil service status is not affected, nay, it is expressly respected and protected. Thus, Paragraph VI of the contract reads as follows:

"That all present personnel of the City public markets and talipapas shall be retained by the SECOND PARTY as long as their services remain satisfactory and they shall be extended the same rights and privileges as heretofore enjoyed by them. Provided, however, that the SECOND PARTY shall have the right, subject to prior approval of the FIRST PARTY to discharge any of the present employees for cause. " (Page 60, Rollo of L-37249.)

This provision must be understood to mean that for all intents and purposes, the employees in the markets remain to be in the employment of the City. In other words, they continue as employees of the city government, subject to the pertinent civil service laws, rules and regulations, albeit the application of these insofar as supervision of their work is concerned would have to be reconciled with the degree of control over operation and management given to Asiatic under the contract. Of course, when it comes to appointment, transfer, discipline and dismissal, the civil service laws prevail, but in the matter of collection of the stall fees and the proper upkeep of the markets, it is but natural and logical that Asiatic should have a say in their supervision, and its recommendations regarding the selection, transfer, discipline and dismissal of the corresponding employees should have due weight. Indeed, if it is considered that the markets can be wholly leased to effect economy, it should not be difficult to see that the consequent lay-off of the employees therein is legally tenable, provided the rules applicable to such a situation are observed.[3]

Moreover, We note that it is stipulated in the contract that:

"XI

That it is understood and agreed that the SECOND PARTY binds itself to pay the salaries and wages, insurance and all other benefits of the retained market employees and shall at all times hold the FIRST PARTY free from any liability for salaries, wages, insurance and and benefits due its laborers and employees under existing labor and other laws and for damages suffered by third persons for any cause attributable to the SECOND PARTY, its

laborers or employees.

XII

That it is further expressly stipulated and agreed that the SECOND PARTY shall hold the FIRST PARTY, free and harmless from any action or liability whatsoever, arising from any claim by any or all the personnel assigned by the SECOND PARTY to perform the services herein agreed upon under the Workmen's Compensation Act, the Minimum Wage Law, the Eight-Hour Labor Laws, it being understood and agreed upon that the faithful compliance with the said laws shall devolve entirely upon the SECOND PARTY." (Page 61; Rollo of L-37249.)

To Our mind, these provisions constitute further proof that the rights of the employees in the markets to their public or government employment under existing terms and conditions are not impaired. In fact, it is clear that the responsibility and liability of the city to pay the salaries and benefits referred to is still primary, and the obligation of Asiatic in respect thereto is to reimburse fully what the city has to pay. In the cases at bar, therefore, that the said employees are being retained in their governmental status, as above-explained, deprives herein employees-respondents of the requisite interest to judicially impugn the contract.

And with respect to the vendors, neither the award of the stalls nor the fixing of the fees to be paid by them are removed from the city authorities. The contract does not empower the corporation to interfere with any of these matters. Thus, Paragraph XIV thereof provides:

"XIV

That the SECOND PARTY further warrants that it will honor and respect the rights of the present smallholders and will make available to the stallholders, loans and financing (product purchase and/or inventory) at legal rates to eliminate loan sharks and will establish having cooperatives to assist the stallholders on the purchase of products at the maximum volume discount and such other services like free seminars on practical small business management and marketing as a means of assisting the stallholders in increasing their profits." (Page 62, Rollo of L-37249.)

The only proper construction of this provision is that all matters relative to the awarding and holding of the stalls to and by the vendors have still to be done by the city authorities themselves and in accordance with the laws and ordinances governing the same.

Now, having in view the foregoing stipulation in favor of the vendors as well as those embodied in the supplementary contract of March 30, 1973, pursuant to the directive of the President in his memorandum of January 12, 1973, which would enable them to be eventually co-operators of the markets, cannot see how the vendors can be prejudiced by the contract.

Accordingly, We hold that herein private respondents do not possess the requisite interest or personality to file the complaint herein. If for this reason alone, the same should be dismissed.

III

Even if We laid aside the lack of requisite interest of private respondents, We would still have to find in favor of petitioners insofar as the legality of the contract in controversy is concerned.

Respondents assail the legality of said contract on the following grounds: (1) the Management and Operating Contract, involving as it does public markets, is ultra vires or beyond the authority of the City to enter into; (2) the Mayor of Manila had no power to execute the same and bind the City without the corresponding authority given in an ordinance duly approved by the Municipal Board; (3) it is violative of Republic Act No. 37 nationalizing

public markets and of the existing civil service laws, rules and regulations; and (4) it is grossly disadvantageous to the City. We are of the considered opinion, however, that none of these contentions can be upheld.

- A -

The trial court sustained respondents' contention that the City has no power to enter into a contract of management and operation of its public markets under the operational arrangement and conditions stipulated in the contract in dispute. We do not agree. We hold that the said contract is not ultra vires.

His honor predicated his ruling on an analogy from the lease of public wharves. We hold the analogy does not hold. In the law on municipal corporations, public wharves belong to a different category from public markets.

Indeed, there can be hardly any doubt that public markets owned by a municipality or city may be leased. (Salgado vs. de la Fuente, 87 Phil. 343.) Municipal corporations have both governmental and corporate or business functions, and to the latter belongs the construction and maintenance of markets. (Mendoza vs. de Leon, 33 Phil. 508). Section 2318 of the Revised Administrative Code expressly authorizes that markets be "let for a stipulated return to private parties." In *Chamber of Filipino Retailers, Inc. vs. Villegas*, 44 SCRA 405. We held that "it is idle .. to contend that public markets (in Manila) are for public use, hence not patrimonial property susceptible of lease. Earlier, citing *Esteban vs. City of Cabanatuan*, G. R. No. L-13662, May 30, 1960, 108 Phil. 1245, We made it clear in *Guillergan vs. Ganzon*, 17 SCRA 257, that the operation of a market is not strictly a governmental function, albeit in *Aprueba vs. Ganzon*, 18 SCRA 8, it was held that the leasing of a market stall is subject to police power and in *Co Chiong vs. Mayor of Manila*, 83 Phil. 257, *Co Chiong vs. Cuaderno*, 83 Phil. 251 and *Salgado vs. de la Fuente*, supra, the Court ruled that for purposes of excluding aliens from the public markets, the establishment, maintenance and operation thereof are part of the functions of government in which aliens may not take part. It is obvious then that since markets can be leased, the management and operation thereof may by contract be given to private parties. In fact, one of the powers expressly granted to the Municipal Board by Section 17 of the Charter of Manila is to "prohibit or permit the establishment or operation within the city limits of public markets ... by any person, entity, association or corporation other than the city." (Par. cc).[3a]

In this connection, We reiterate it would indeed seem immaterial, from the legal point of view, that as a consequence of leasing a market, the government employees and workers therein are retained or laid-off. And so, that the contract at issue provides specifically for their continuation, including their respective civil service status and their existing conditions of work, subject to no control at all by Asiatic, including as to their salaries and benefits, which are reserved for determination by the city authorities, is certainly not prejudicial to said employees, much less a valid ground for annulling the same.

- B -

The second issue raised by respondents relative to the alleged invalidity of the contract in dispute, allegedly due to the fact that it was not previously approved or authorized in an ordinance passed by the municipal board, makes it imperative for Us to consider certain facts which as earlier noted were not only not before the trial court but were not even existing yet during the first joining of the issues in this Court. We reiterate in that for the reasons stated in the first part of this opinion, there is no legal impediment to Our taking said facts into account, only because they are indubitable and the issues arising from them are purely of law which under the peculiar circumstances of these cases it would be impractical and dilatory, nay, prejudicial to the interests of justice to require that they be first passed upon by the lower court.

As stated earlier, when the subject contract came to the attention of the Municipal Board, twelve councilors, out of the twenty composing the Board, or three-fifths (3/5) of its whole membership signed the aforementioned resolution expressing the Board's "concurrence with and support for (said) contract" because it "finds the

contract., to be a step in the right direction in that it may well be the only lasting solution to the ills that have continuously beset the administration and operation of public markets in the City and thus bring about the change long envisioned by this Body." Of course, respondents maintain that no such resolution exists or, that, in any event, it does not appear to have been passed in regular session. But that it exists is plain for anyone to see, the certified true copy of the copy thereof received by the Mayor being now part of the record, as submitted by petitioners, and the signatures therein appearing not being impugned by anyone of those concerned, not even the councilors themselves to whom they are attributed. And with respect to the certification of the Assistant Secretary of the Municipal Board to the effect that "the records of this office (the Municipal Board) do not show that the Municipal Board of Manila has adopted" such a resolution, it may be stated that there is no showing that the one who made such certification is the legal custodian of the records of the Board.

In this connection, it is important to note that under Republic Act 6039, the Market Committee that recommend to the Mayor the immediate lease and/or assignment of the administration of the city public markets and talipapas to "a multi-million peso corporation under such terms and conditions as (would be) most advantageous to the City of Manila," has the following powers:

"1) The market committee shall formulate, recommended and adopt, subject to the ratification of the municipal board, and approval of the mayor, policies and rules or regulation repealing or amending existing provisions of the market code as amended and embodied the compilation of City Ordinances No. 1600 provided they are not inconsistent with the provisions of this Act. After all such promulgated rules and regulations and provisions of the market code may have been modified, amended, or repealed, within one year from date of the approval of this Act, all the new, modifying and amendatory provisions, rules and regulations, shall be codified into a new market code. The internal rules and regulations of the market committee shall not require ratification by the municipal board or the mayor;

xxx xxx xxx."

Under this provision, it would seem that when it comes to public markets in the City of Manila, the action of the Market Committee is considered more basic, if not more controlling, than that of the municipal board.

Withal, considering that the said Market Committee is composed, per Republic Act 6039, of the market administrator, as chairman, a representative each of the city treasurer, the municipal board, the Chamber of Filipino Retailers, Inc. and the Manila Market Vendors Association, inc. as members, it can be readily appreciated that it is more representative of all the different public and private officials and persons directly concerned or having interest in the proper operation and maintenance of the public markets, and as such should be in a better position than the municipal board itself to study and deliberate on the problems connected therewith from their respective and/or collective points of view. Importantly, the representative of the municipal board therein, who is actually one of the councilors, is supposed to speak for the board in all the committee's actuations, hence it may be said that the municipal board was not entirely a stranger to the contract under discussion, even from its conception. With these facts borne in mind, no one should be surprised with the resolution above-quoted and signed by twelve members of the municipal board indicative of their ratification, required by Republic Act 6039, of the contract which had been precisely recommended by the Market Committee.

Be that as it may. We deem it unnecessary to pass on the issue relative to the initial form in which the contract at bar was authorized or sanctioned by the city authorities.[4] There are two later developments which by their legal force make it of little consequence juridically how the contract was originally entered into. It will be recalled that when the execution of the contract came to the attention of President Marcos, as early as January 12, 1973, a memorandum was addressed by the President to the City Mayor directing that certain conditions included therein. Those conditions, contrary to the observation of the trial judge, were accordingly embodied substantially in a

supplementary contract executed by the parties on March 30, 1973. And then, on November 26, 1973, the President issued Presidential Decree 345 under which he declared that there is no more need for the city authorities to create the sinking fund required by Section 1 of Republic Act 6039 consisting of thirty per centum (30%) of the annual gross receipts from market fees in the City, precisely because, according to the decree, "the maintenance, repair, reconstruction, development and rehabilitation of the . . . markets and talipapas" in the City are to be undertaken already by Asiatic at its own expense pursuant to the contract in dispute.

Having been virtually sanctioned thus by a presidential decree, which in the present constitutional situation in the Philippines amounts to a legislative enactment.[5] We cannot see how the contract in dispute can be declared invalid. A municipal corporation, such as the City of Manila, is a creature of the national legislative authority and, therefore, it is within the power of such authority to validate and legalize any legally deficient act of the municipal officials, including those that could otherwise be ultra vires.

Petitioners contend, however, that Presidential Decree 345 refers solely to the sinking fund and does not, therefore, amount to a conferment of legality upon the contract. The point is stressed that the decree merely takes cognizance of the existence of the contract "and it does not assert, much less in any way establish, the validity" thereof. Moreover, it is claimed that inasmuch as the contract was executed before the effectivity of the present Constitution, under Section 8 of Article XVII of the Charter, the issue of validity of the contract should be decided in the light of the laws then prevailing and not of P.D. 345 which was issued subsequent to January 17, 1973 when the Constitution went into effect.

None of these arguments is sufficiently convincing. The developments subsequent to the execution of the contract were such that it would be tantamount to imputing utter carelessness to the President to hold that he issued the decree without being aware of said developments. To recall again, it was upon his directive that the Supplementary Contract of March 30, 1973 embodied the conditions enumerated in his letter of January 12, 1973. indeed, the knowledge of the President of the terms and conditions of the contract deducible from his directive that it be amended conformably to his desires, suggests that he must have subsequently checked whether or not his directive had been obeyed before issuing any decree based on the provisions of the contract. We are loath to hold the President would predicate a decree on a contract which he does not sanction or without being assured of its propriety. As a matter of fact, We are inclined to believe that even the resolution signed by twelve members of the Municipal Board on January 12, 1973 and Presidential Decree 231 known as the Local Tax Code must have been taken into account when P.D. 345 was conceived. In other words, it must have been seen to it whether or not the contract was legally tenable before the decree was issued, for it is but consistent with the dignity of the presidential office for the Court to assume that the President would not have issued the decree unless he were certain his act would not be meaningless and academic.

In effect, the decree directs the enforcement of the contract, for it authorizes "the reversion of the accumulated thirty (30%) per centum sinking fund amounting to P3,696,921.99 to the General Fund of the City of Manila and the appropriation of the same by the City for the undertaking of its public works projects' precisely because, according to it, "there is no more need (for said appropriation), since it is already the Asiatic Integrated Corporation, under the contract . . . which shall undertake the improvements stated in Republic Act 6039." The purpose of the reversion, according also to the decree, is "to generate funds with which to undertake and thereby carry out successfully the objectives" of "construction and repair of streets and dredging and clearing of esteros, which cannot be successfully undertaken for lack of funds."

In the light of these circumstances, to hold that the decree did not amount to an approval of the contract in question by the President, which, as already explained, is the present equivalent of ratification by legislative enactment, is to refuse to see something that is logically ineluctable from facts that are indubitable.

Anent the contention relative to the applicability of P.D. 345 to the subject contract, said decree having been issued after the Constitution went into effect, suffice it to say that constitutional provision cited" does not and could not have the effect of preventing the President, under the present set-up and, later on, the legislature from exercising the prerogative of validating acts of local governments and officials done prior to the effectivity of the Constitution. And in this connection, it may be added that the circumstances that, as in the cases at bar, there were already litigations when the decree was issued could not in any manner affect the jurisdiction already acquired by the Court over the issue of legality of the contract. There is here no derogation of the court's authority. Rather, it is the cause of action itself that is removed. Instead of being offensive, the decree has produced the salutary effect of keeping the city away from litigations, there being no vested rights prejudiced anyway.

Incidentally, with respect to respondent's contention that under Presidential Decree No. 231 or the Local Tax Code, the city treasurer has been vested with" the powers of administration, supervision and control of the city markets and its personnel, it may be observed that Presidential Decree 345 is a later one. Indeed, the Code took effect on June 28, 1973 and cannot apply retroactively as to affect a contract executed in December, 1972, since it would then impair the obligation of contracts in violation of the Constitution. (Section II, Article IV, Bill of Rights.) Moreover, it is not clear to Us that the Local Tax Code completely derogates the inherent power of supervision and control of the Mayor of Manila over the affairs of the city government and its departments and the legislative power of the municipal board over its markets. (Sees. 9, 13 and 1 8 (cc) of the Charter of Manila, Republic Act 409, as amended by Republic Act 6039.)

To top it all, the issuance of P.D. 345 has been known by the Municipal Board of Manila since the beginning of its enforcement in November, 1973. If the Board were not agreeable to the continued enforcement of the contract, immediate steps would have been taken to make the decree in operative, which could have been easily done by the Board by expressly disapproving the contract and continuing the reserve for the sinking fund. But as it is, it is a matter of public knowledge that the Board has not only failed to take such a step; on the contrary, nowhere in their pleadings is there any claim that the reversion directed by the decree has not been done and that the corresponding appropriations therefrom have not been made. Besides, respondents do not pretend that in the approval of the budget ordinances for the fiscal years 1973-74 and 1974-75 the income of P500,000 and P550,000, for the years 1973 and 1975, coming from Asiatic under the contract were not used as basis for the estimate of incomes of the City. There is absolutely no showing here that any of the salaries, wages, insurance and other benefits due the market employees under existing labor and other laws as well as damages suffered by third parties, as contemplated in Paragraph XI of the contract, has not been paid by Asiatic. Neither is it alleged that Asiatic has not faithfully complied with its liability, pursuant to Paragraph XII, for claims under the Workmen's Compensation Act, the Minimum Wage Law, the Eight-Hour Labor Law of the personnel assigned to the markets. Considering that all these payment made by Asiatic pursuant to the terms of the contract have accrued to the benefit of the City without any protest on the part of the Municipal Board, We cannot but conclude that in fact the said Board has already acquiesced to the validation of the contract by P.D. 345.

What is more, by approving Ordinance No. 7451, the Municipal Board may be deemed to have done a more positive act of ratification, practically explicit, of the contract in issue. Contrary to the view of petitioners, the scope of said ordinance specifically embraces not only "vacant, unused and unencumbered patrimonial properties" but also any "other leasable properties" of the City. And as discussed earlier, public markets form part of said "leasable patrimonial properties." We need not determine whether the nature of the contract here is that of a lease wholly of the markets themselves or of only the management or operation thereof, for if the markets can be wholly leased, it follows that something less, like their operation and management, can also be allowed by the City to be undertaken by private parties for a consideration, under terms that would be beneficial to the public interest. Stated differently, the authority to lease public markets necessarily includes that of awarding the

operation and management thereof to private parties.

Now, after Ordinance 7451 was enacted, the original and supplementary contracts were correspondingly amended mainly for the purpose of enlarging the period from ten to twenty-five years. In accordance with the provisions of the ordinance, the Municipal Board was notified of this amendment for "its information and guidance.¹¹ In his letter to the Board dated February 15, 1974, the Mayor made it a point to state that the amended contract was executed "in pursuance of the provisions of Ordinance No. 7451 authorizing the Mayor of Manila to lease . . . leasable patrimonial properties of the City." There is absolutely no showing, and it is quite apparent that none such can be made, to the effect that after the Board received the Mayor's letter, it has in any form repudiated the contract as not being within its contemplation when it approved the ordinance. Indeed, in the light of the resolution of January 12, 1973, signed by twelve of its members, it can hardly be expected that the Municipal Board could have taken a different attitude. And it would be too late, if not absurd, for it to do otherwise now.

As We see it, even if there could be some doubt that any of the circumstances just discussed could be individually adequate in law as a ratification or validation of the contract, assuming it suffers from any congenital infirmity, verily, the combined effect of all of them together cannot but lead to the inevitable conclusion that there is more than enough legal basis for upholding its validity. Incidentally, it is interesting to note that while petitioners who, as already discussed earlier herein, have no actionable interest in the contract, appear to be persistent in their effort to have the contract in dispute annulled, the Municipal Board, in whom rested the power to repudiate the contract from the outset, were it really opposed to it, has become significantly silent in the face of the material developments above pointed out, thereby indicating that as far as it is concerned, things may well be left as they are.

IV

The third contention of respondents to the effect that contract in question is violative of Republic Act 37 which nationalizes public markets by providing that citizens of the Philippines shall have preference in the award of stalls therein and also of the civil service laws, rules and regulations governing the terms and conditions of employment and security of tenure of the city employees assigned to the public markets is even less persuasive.

As regards the awarding of the market stalls, there is nothing in the contract which in any manner confers upon Asiatic any authority to have any part in it. The basic nature of the management and operation contemplated to be undertaken by Asiatic covers only the collection of stall fees and the maintenance, repair and rehabilitation of the buildings, premises and facilities of the markets. The awarding of stalls is left in the hands of the City authorities, and even if this had been given to Asiatic, it would have to do it in accordance with the provisions of Republic Act 37. And with respect to the status and security of the employees, as We have already discussed earlier in this opinion, there is no basis for the claim that the contract violates the provisions of the civil service laws, rules and regulations.

- V -

Finally, respondents maintain that the contract in dispute is grossly disadvantageous to the City.

In respect to such contention, the first point to bear in mind is that the determination of the reasonableness and propriety of the terms and conditions embodied in the contract rests primarily with the city authorities and not with the courts. It is only in instances wherein the contract is ultra vires or clearly unreasonable that the courts can interfere. (*Umali vs. City of Naga*, 96 Phil. 379.) In the cases at bar, We have failed to find, after a careful consideration of the circumstances extant in the records, sufficient basis for holding that the terms and conditions of the subject contract are grossly disadvantageous ' to the city, as claimed by respondents.

In their Comment on the petition in G.R. No. L-37187, respondents support their contention thus:

"Contract is grossly disadvantageous to the City.

Assuming that the contract is valid, the same should be rescinded i because the questioned contract is grossly disadvantageous to the ; City of Manila. A perusal of the statement of Income and Expenditures" of the city markets of Manila will readily show that the City of Manila ; realized the following net incomes in the following fiscal years:

FY- 1969-70

..... P1,609,899.96

FY-1971-72 1,657,668.85

FY- 1971-72 1,455,932.95

A copy of the aforesaid statement of income and expenditures of the city public markets as prepared by the Office of the City Auditor of Manila is attached to and made part hereof as Annex "C".

For the first year of the term of the contract alone, the City of Manila stands to lose close to one million (P1,000,000.00) pesos. Multiply this amount by the lifetime of the contract which is ten (10) years, the total prejudice to the City would indeed come to a huge and staggering sum of millions upon millions of pesos. The tragedy of it all is that these millions which should properly go to city residents by way of public services will instead find their way into the already bulging pocketbooks of private individuals." (Pp. 101-102, Rollo of L-37187.)

Examining the figures referred to closely, We find however that counsel's argument is less than candid. It is true that according to the Annex C, relied upon by respondents the net incomes from the markets of Manila for the fiscal years 1969-1970, 1970-1971 and 1971-1972, comparable to what would be received from Asiatic of P500,000 yearly, with additional P50,000 each year after 1973 were P1,609,899.96, P1,657,668.85 and P1,455,932.95. But to jump from these figures to the conclusion that the city stands to lose P1M annually under the contract is entirely misleading.

As can be clearly seen from said certification, Annex C, the 30% annual sinking fund reserve for the year 1969-1970, as required by Republic Act 6039, was P999,263.33. Assuming hypothetically that the contract in question had started that year, this amount would have been 30% of the hypothetical total collections or income of Asiatic that year. Under the contract, Asiatic would have had to reserve at least the same amount exclusively for the improvement of the markets. In other words, said amount would have been in effect income for the City to be used for the stated statutory purpose. Now, adding to this the P500,000 lump sum which, as stipulated in the contract, Asiatic supposed to have paid the City on the first year, the total effective income of the City for the year 1969-1970 would have been P1,499,263.30. Using the same method of computation on the basis of the figures certified in Annex C, We can see that the hypothetical income of the City from Asiatic would have been P1,578,042.48 for the year 1970-1971 (i.e. 30% amounting to P1,028,042.48 plus P550,000, the second annual payment of Asiatic) and P1,095,548.70 for the year 1971 -1972 (i.e. 30% amounting to P1,095,548.70 plus P600,000, the third annual payment of Asiatic). Thus, the total effective income of the City from Asiatic for the three years indicated would have been P4,772,854.51, which compared with the total of P4,723,501.76 appearing in Annex C as net income of the City from its market collections for the same period, would have been P49,352.75 more. In other words, instead of losing P3M as claimed by petitioners, the City would have been benefited by the said amount of P49,952.75.7

Not only that. While there is no reliable assurance that the income of the markets would increase, considering

there has been no notable substantial differences in the past annual incomes on record, the other expenditures for which Asiatic would have to answer, such as "the salaries and wages, insurance and all other benefits of the retained market employees" (Par. XI) including the payment of "claims by any or all the (such) personnel under the Workmen's Compensation Act, the Minimum Wage Law and the Eight-Hour Labor Law" (Par. XII) have not only increased in the meanwhile but at, surely bound to increase more or be higher, what with the new policies of the government providing for higher salaries and more fringe or emergency benefits for the employees.

In connection with the point under discussion, it will be recalled that in their resolution of January 12, 1973, the twelve councilors who signed the contract described its advantages to the city in these words:

"WHEREAS, a contract has been entered into by the City of Manila with the Asiatic Integrated Corporation for the latter to handle the management and operation of Manila's outmoded and deteriorating public markets and talipapas;

WHEREAS, the deplorable state of these markets, most of which are of prewar vintage, has always been the constant source of headaches of past administration, considering the mismanagement and corruption that have attended their operation for years;

WHEREAS, the state of finances of the City Government does not permit it to undertake the massive and expensive task of rehabilitating and modernizing these public markets as to enable them to survive the stiff competition offered by mushrooming and sophisticated supermarkets without unduly sacrificing other more vital and essential public services;

WHEREAS, the members of the Municipal Board cannot close their eyes to the perennial problem affecting the interests of their constituents, particularly the poor and underprivileged, but must take positive steps to bring about a change for the better;

WHEREAS, the Municipal Board finds the contract entered into by the City to be a step in the right direction in that it may well be the only lasting-solution to the ills that have continuously beset the administration and operation of public markets in the City and thus bring about the change long envisioned by this Body: x x x."

And on the whereases of the contract which, as already discussed, the councilors ratified in the above resolution as well as by approving Ordinance 7451, it is stated:

"WHEREAS, the concept and main objectives of a public market are to provide an accessible, clean, safe, convenient and economical shopping services to the public; to provide livelihood to stallholders peddlers, distributors, brokers, middlemen and other low income groups; provide income for the maintenance, repair and establishment of new public markets and to provide income for other areas of city improvement;

WHEREAS, physically, the state of our public markets had been turning from bad to worse, there being no major repair and maintenance done in the public markets for the last ten (10) years can be seen from the following building and sanitary deficiencies now prevalent in all public markets;

- Out of the sixteen (16) major markets, fourteen (14) of prewar vintage. No major reconstruction has been made.

- Building and sanitary deficiencies are prevalent in public markets such as defective electrical system, broken down and inadequate drainage and sewerage facilities, wornout and unsafe market floorings, defective plumbing and water pipe fixtures, structural defects, rusted, dilapidated roofs, gutters and down spouts, building hazards, lack of ventilation facilities, etc.

WHEREAS, economically because of the proliferation of supermarkets, groceries, wholesalers and retailers, profit-wise, the public markets have no chance at all to outlive, let alone survive, the unbalanced competition

coming from those well-entrenched sectors due to commodity economics and lack of adequate service facilities as well as credit and financial sources at legal interests;

WHEREAS, based on the in-depth analysis and study of the conditions prevailing in the public markets, it will take the City ten (10) to fifteen (15) years of massive capital infusion to put to service Class B shape the public markets and that without immediate total physical and economic rehabilitation, the public markets will be driven into obsolescence;

WHEREAS, the City of Manila presently does not have the necessary funds to improve and develop the public markets the way they should be improved and developed to conform to modern marketing concepts and standard;

WHEREAS, the cognizant of the foregoing, the Market Committee in its regular meeting held on December 13, 1972, adopted a Resolution requesting the Mayor to urgently consider the immediate lease and/ or assignment of administration of the City public markets and talipapas and this be awarded to a reputable multi-million peso corporation with such terms and conditions that are most advantageous to the City of Manila';

WHEREAS, the ASIATIC INTEGRATED CORPORATION has offered to improve, repair, develop, reconstruct and rehabilitate the City public markets and talipapas presently existing, which are listed and indicated in Annex 'A' hereof." (Page 58-59, Rollo of L-37249.)

Relatedly, in Presidential Decree 345, the President appears to have taken note of a particular benefit that has accrued to the City from the operation of the contract:

"WHEREAS, on December 28, 1972, the City of Manila entered into a Management and Operating Contract with the Asiatic Integrated Corporation over its thirty-five (35) public markets and talipapas, wherein it is expressly stipulated that the latter shall appropriate a yearly amount of not less than thirty (30%) per centum of the gross receipts from market fees for the fiscal year 1971-1972 to answer for the maintenance, repair, reconstruction, development and rehabilitation of the said markets and talipapas;

WHEREAS, prior to the conclusion of the aforementioned contract, there accumulated the sum of Three Million Six Hundred Ninety Six Thousand Nine Hundred Twenty-One & 99/100 (P3,696,921.99) Pesos, equivalent to thirty (30%) per centum of the gross receipts from market fees, which amount, however, was not appropriated for the purpose stated in Republic Act No. 6039;

WHEREAS, there is no more need to appropriate the accumulated sinking fund of P3,696,921.99, since it is already the Asiatic Integrated Corporation, under the contract referred to above, which shall undertake the improvements stated in Republic Act No. 6039;

WHEREAS, there are in the City of Manila pending urgent public works projects, such as the construction and repair of streets and dredging and clearing of esteros, which cannot be successfully undertaken for lack of funds."

In the light of all these more authoritative pronouncements, We are not prepared to go along with respondents' contention that the contract they are impugning is grossly disadvantageous to the City of Manila.

The foregoing conclusions render moot and academic private respondents' motion to declare Mayor Bagatsing, petitioner Asiatic and others in contempt of this Court.

Premises considered, We hold that the trial court committed grave abuse of discretion in annulling the contract here in dispute.

J U D G M E N T

IN VIEW OF ALL THE FOREGOING, the decision of the trial court of July 13, 1973, subject of the petitions in G.R. Nos. L-37248 and L-37249, is set aside and the Management and Operating Contract of December 28, 1972 between the City and Asiatic, as supplemented on March 30, 1973 and amended on February 13, 1974 is hereby declared legal and valid. In consequence, the prayer in G.R. No. L-37187 that the trial court be enjoined from executing its decision annulling the said contract need not be acted upon, the basis of the said execution being no longer existent. No costs.

Makalintal, C.J., Castro, Fernando, Muñoz Palma, Martin, and Antonio, JJ., concur.

Teehankee, J., concurs and dissent in a separate opinion.

Makasiar and Aquino, JJ., in the result.

Esguerra, J., concur in the foregoing judgment.

Conception, J., is on official leave.

[1] The petitions were preceded by motions for extension of time for their filing. The two separate extension motions were both filed on August 7, 1973.

[2] These comments were considered as answers.

[3] Employees laid-off as a result of legitimate reorganization or abolition of their offices are entitled to certain benefits as may be provided by law.

[3a] Sec discussion of ratification by the Municipal Board of the contract here in dispute, *infra.*, pp. 31-38,

[4] In *Zobel vs. City of Manila*, 47 Phil. 169, it was held that the municipal board's action relative to a contract for the purchase of real property may be expressed in a resolution.

[5] *Aquino et al. vs. Comelec, et al.*, G.R. No. L-40004, January 31, 1975; *Aquino vs. Military Commission No. 2, et al.*, G.R. No. L-37364, May 9, 1975.

[6] Section 8 of Article XVII of the 1973 Constitution which provides as follows:

"Sec. 8. All courts existing at the time of ratification this Constitution shall continue and exercise their jurisdiction, until otherwise provided by law in accordance with this Constitution, and all cases pending in said courts shall be heard, tried, and determined under the laws then in force. The provisions of the existing Rules of Court not inconsistent with this Constitution shall remain operative unless amended, modified, or repealed by the Supreme Court or the National Assembly."

[7] Under the contract, what Asiatic is supposed to appropriate the purposes indicated in Republic Act 6039 is not only "thirty centum of the annual gross receipts" but "not less than thirty (30%) of the gross income .. for the fiscal year 1971-1972" which P3,653,274.91 or P1,455,932.95, meaning to say that the authorities may in the appropriate instances require the expenditure by Asiatic of more in order to make the works and improvements which it is bound to undertake come up to the standards and the satisfaction of said authorities. In other words, it is entirely the rights of the City to require Asiatic to make the reserve for improvement of the markets equivalent to 30% or more of its every year instead of "thirty per centum (30%) of gross income for the fiscal year 1971-1972."

CONCURRING AND DISSENTING OPINION

TEEHANKEE, J.:

I concur qualifiedly with the main opinion insofar as it reverses the trial court's decision of July 13, 1973 which declared the Management and Operating Contract of December 28, 1972 between petitioners City of Manila and Asiatic Integrated Corporation null and void ab initio. I qualify this concurrence because although the serious objections against the contract (viz, lack of authority, and that the contract is ultra vires and grossly disadvantageous) appear as per the main opinion to have been over ridden by the President's memorandum of January 12, 1973, compliance therewith, in my view, has not been satisfactorily shown,

In the President's memorandum of January 12, 1973, he expressed" (his) desire, in the interest of the public welfare," that three conditions be incorporated in the contract as follows:

"1. All market vendors should form cooperatives and should he sold shares in the market thus becoming co-owners.

"2. The market cooperatives should be authorized to directly procure from producers' cooperatives and other sources, domestically or internationally, and be given allocations for imports, provided they bring allocations for imports, provided they bring down prices in accordance with the policy and the regulations set forth by the Price Control Council through its chairman.

"3. The public should be part owner of such markets by the public sale of shares."

While a supplementary contract was executed by the parties on March 30, 1973 in an apparent effort to comply with the President's memorandum, a reading of the same shows that no specifics have been provided for substantial compliance with the presidential requirements- As stated by the lower court its decision, "as a matter of fact, the supplementary agreement did not embody one of the provisions which the President of the Philippines desired to be incorporated, more particularly with respect to giving the market vendors and the public opportunity to become part owners of the public markets, thru the sale of shares of stock."

This necessarily had to be so, because the President's memorandum did not lay down specific guidelines and ratios. It apparently expressed the policy against a single corporation obtaining sole management operation of the city public markets (assuming that this could validly be done) and hence expressed the President's desire that the public should be given the opportunity to become part owners (with the City) of such markets to be operated by Asiatic as manager, and that market vendors should form cooperatives and should be given the opportunity to acquire shares of Asiatic, so that the prices in the markets may be brought down.

(Parenthetically, these are perforce presidential requirements as viewed from the substance and spirit of the President's memorandum which is couched in general terms. Unlike the trial court, I do not think that the President's memorandum contemplated a "change of ownership" of the city markets, since Asiatic's contract was avowedly per its title one for management and operation of the markets.)

These specifics have yet to be worked out satisfactorily, and in the event that the conditions in the President's memoranda (assuming that the City and Asiatic have incorporated faithfully the presidential requirements which does not appear to be clearly the case) are shown not to have been duly complied with, then and in such event respondents as well as other taxpayers should be reserved the right to bring up the matter in a suit for performance or cancellation of the contract.

I dissent from the main opinion insofar as it would declare "legal and valid¹" the Amended Contract executed

between the City of Manila and Asiatic only on February 13, 1974 extending the term of the contract from ten (10) years under the original contract of December 28, 1972 to twenty-five (25) years, notwithstanding that this completely new issue was not raised in nor passed upon by the trial court which had already rendered its decision of July 13, 1973 declaring the original contract null and void,

As stated in the main opinion, these facts "which gave rise to new issues took place and were brought to the attention of the trial court after the original issues were already joined. Indeed, they were never considered by the trial court,"[*] since as stated above, the trial court had already rendered its judgment July 13, 1973 and these new facts or events occurred long after in the following year 1974.

On January 3, 1974, the city municipal board Ordinance No. 7451 authorizing the mayor "to lease vacant, unused and unencumbered patrimonial properties, or other leasable patrimonial properties to reputable and highly qualified persons, firms or corporations, under certain conditions." After the ordinance's passage, the parties executed on February 13, 1974 their amended contract extending the term of Asiatic's management and operating contract from 10 years to 25 years. These new facts certainly have given rise to a host of new issues which admittedly were never raised below nor considered therein, nor by the President for that matter.

Off-hand, such new issues would cover the new questions of whether the ordinance does apply to and cover the lease of the city markets; assuming that it did, whether the contract violates the condition of the ordinance itself that it "shall not be utilized to create a monopoly in favor of any corporation or enterprise;" and of course, whether such a long extension of term up to the turn of the century in 1997 (without even waiting for the results of the original contract for the stipulated ten-year term which would expire in 1982 and considering the long-range developments and conditions that may intervene by then) does not place the City at a gross disadvantage.

No premature judgment declaring "legal and valid" such extension of the term to 25 years without the issues having been raised nor considered in the trial court nor in its appealed judgment and which are based on the entirely new matter of an amended contract which was executed long after the trial court's decision of July 13, 1973 should therefore issue from this Court, as such new matters should properly be the object of new and separate case.

[*] Italics supplied.

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