

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND REPUBLIC REAL ESTATE CORPORATION, RESPONDENTS. CULTURAL CENTER OF THE PHILIPPINES, INTERVENOR.

G.R. No. 103882. November 25, 1998

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar are two consolidated petitions for review on certiorari under Rule 45 of the Revised Rules of Court. Here, the Court is confronted with a case commenced before the then Court of First Instance (now Regional Trial Court) of Rizal in Pasay City, in 1961, more than 3 decades back, that has spanned six administrations of the Republic and outlasted the tenure of ten (10) Chief Justices of the Supreme Court.

In G.R. No. 103882, the Republic of the Philippines, as petitioner, assails the Decision, dated January 29, 1992 and Amended Decision, dated April 28, 1992, of the Court of Appeals[1], which affirmed with modification the Decision of the former Court of First Instance of Rizal (Branch 7, Pasay City) in Civil Case No. 2229-P, entitled "Republic of the Philippines versus Pasay City and Republic Real Estate Corporation."

The facts that matter are, as follows:

Republic Act No. 1899 ("RA 1899"), which was approved on June 22, 1957, authorized the reclamation of foreshore lands by chartered cities and municipalities. Section I of said law, reads:

"SECTION 1. Authority is hereby granted to all municipalities and chartered cities to undertake and carry out at their own expense the reclamation by dredging, filling, or other means, of any foreshore lands bordering them, and to establish, provide, construct, maintain and repair proper and adequate docking and harbor facilities as such municipalities and chartered cities may determine in consultation with the Secretary of Finance and the Secretary of Public Works and Communications."

On May 6, 1958, invoking the aforecited provision of RA 1899, the Pasay City Council passed Ordinance No. 121, for the reclamation of Three Hundred (300) hectares of foreshore lands in Pasay City, empowering the City Mayor to award and enter into reclamation contracts, and prescribing terms and conditions therefor. The said Ordinance was amended on April 21, 1959 by Ordinance No. 158, which authorized the Republic Real Estate Corporation ("RREC") to reclaim foreshore lands of Pasay City under certain terms and conditions.

On April 24, 1959, Pasay City and RREC entered into an Agreement[2] for the reclamation of the foreshore lands in Pasay City.

On December 19, 1961, the Republic of the Philippines ("Republic") filed a Complaint[3] for Recovery of Possession and Damages with Writ of Preliminary Preventive Injunction and Mandatory Injunction, docketed as Civil Case No. 2229-P before the former Court of First Instance of Rizal, (Branch 7, Pasay City).

On March 5, 1962, the Republic of the Philippines filed an Amended Complaint[4] questioning subject Agreement between Pasay City and RREC (Exhibit "P") on the grounds that the subject-matter of such Agreement is outside the commerce of man, that its terms and conditions are violative of RA 1899, and that the said Agreement was executed without any public bidding.

The Answers[5] of RREC and Pasay City, dated March 10 and March 14, 1962, respectively, averred that the subject-matter of said Agreement is within the commerce of man, that the phrase "foreshore lands" within the contemplation of RA 1899 has a broader meaning than the cited definition of the term in the Words and Phrases and in the Webster's Third New International Dictionary and the plans and specifications of the reclamation involved were approved by the authorities concerned.

On April 26, 1962, Judge Angel H. Mojica, (now deceased) of the former Court of First Instance of Rizal (Branch 7, Pasay City) issued an Order[6] the dispositive portion of which was to the following effect:

"WHEREFORE, the court hereby orders the defendants, their agents, and all persons claiming under them, to refrain from 'further reclaiming or committing acts of dispossession or dispoilation over any area within the Manila Bay or the Manila Bay Beach Resort', until further orders of the court."

On the following day, the same trial court issued a writ of preliminary injunction[7] which enjoined the defendants, RREC and Pasay City, their agents, and all persons claiming under them "from further reclaiming or committing acts of dispossession".

Thereafter, a Motion to Intervene[8], dated June 27, 1962, was filed by Jose L. Bautista, Emiliano Custodio, Renato Custodio, Roger de la Rosa, Belen Gonzales, Norma Martinez, Emilia E. Paez, Ambrosio R. Parreno, Antolin M. Oreta, Sixto L. Orosa, Pablo S. Sarmiento, Jesus Yujuico, Zamora Enterprises, Inc., Industrial and Commercial Factors, Inc., Metropolitan Distributors of the Philippines, and Bayview Hotel, Inc. stating inter alia that they were buyers of lots in the Manila Bay area being reclaimed by RREC, whose rights would be affected by whatever decision to be rendered in the case. The Motion was granted by the trial court and the Answer attached thereto admitted.[9]

The defendants and the intervenors then moved to dismiss[10] the Complaint of the Republic, placing reliance on Section 3 of Republic Act No. 5187, which reads:

"Sec. 3. Miscellaneous Projects

x x x

m. For the construction of seawall and limited access highway from the south boundary of the City of Manila to Cavite City, to the south, and from the north boundary of the City of Manila to the municipality of Mariveles, province of Bataan, to the north, including the reclamation of the foreshore and submerged areas: Provided, That priority in the construction of such seawalls, highway and attendant reclamation works shall be given to any corporation and/or corporations that may offer to undertake at its own expense such projects, in which case the President of the Philippines may, after competitive bidding, award contracts for the construction of such projects, with the winning bidder shouldering all costs thereof, the same to be paid in terms of percentage fee of the contractor which shall not exceed fifty percent of the area reclaimed by the contractor and shall represent full compensation for the purpose, the provisions of the Public Land Law concerning disposition of reclaimed and foreshore lands to the contrary notwithstanding: Provided, finally, that the foregoing provisions and those of other laws, executive orders, rules and regulations to the contrary notwithstanding, existing rights, projects and/or contracts of city or municipal governments for the reclamation of foreshore and submerged lands shall be respected. x x x." (underscoring ours)

Since the aforecited law provides that existing contracts shall be respected, movants contended that the issues

raised by the pleadings have become "moot, academic and of no further validity or effect."

Meanwhile, the Pasay Law and Conscience Union, Inc. ("PLCU") moved to intervene[11], alleging as legal interest in the matter in litigation the avowed purpose of the organization for the promotion of good government in Pasay City. In its Order of June 10, 1969, the lower court of origin allowed the said intervention[12].

On March 24, 1972, the trial court of origin came out with a Decision, disposing, thus:

"WHEREFORE, after carefully considering (1) the original complaint, (2) the first Amended Complaint, (3) the Answer of Defendant Republic Real Estate Corporation to the first Amended Complaint, (4) the Answer of Defendant Pasay City to the first Amended Complaint, (5) the Second Amended Complaint, (6) the Answer of Defendant Republic Real Estate Corporation to the Second Amended Complaint, (7) the Answer of Defendant Pasay City to the Second Amended Complaint, (8) the Memorandum in Support of Preliminary Injunction of Plaintiff, (9) the Memorandum In Support of the Opposition to the Issuance of Preliminary Injunction of Defendant Pasay City and Defendant Republic Real Estate Corporation, (10) the Answer in Intervention of Intervenors Bautista, et. al., (11) Plaintiff's Opposition to Motion to Intervene, (12) the Reply to Opposition to Motion to Intervene of Intervenors Bautista, et. al. , (13) the Stipulation of Facts by all the parties, (14) the Motion for Leave to Intervene of Intervenor Pasay Law and Conscience Union, Inc., (15) the Opposition to Motion For Leave to Intervene of Intervenors Bautista, et. al., (16) the Reply of Intervenor Pasay Law and Conscience Union, Inc., (17) the Supplement to Opposition to Motion to Intervene of Defendant Pasay City and Republic Real Estate Corporation, (18) the Complaint in Intervention of Intervenor Pasay Law and Conscience Union, Inc., (19) the Answer of Defendant Republic Real Estate Corporation, (20) the Answer of Intervenor Jose L. Bautista, et. al., to Complaint in Intervention, (21) the Motion to Dismiss of Defendant Republic Real Estate Corporation, and Intervenors Bautista, et. al., (22) the Opposition of Plaintiff to said Motion to Dismiss, (23) the Opposition of Intervenor Pasay Law and Conscience Union, Inc., (24) the Memorandum of the Defendant Republic Real Estate Corporation, (25) the Memorandum for the Intervenor Pasay Law and Conscience Union, Inc., (26) the Manifestation of Plaintiff filed by the Office of the Solicitor General, and all the documentary evidence by the parties to wit: (a) Plaintiff's Exhibits "A" to "YYY-4", (b) Defendant Republic Real Estate Corporation's Exhibits "1-RREC" to "40-a" and (c) Intervenor Pasay Law and Conscience Union, Inc's., Exhibits "A-PLACU" to "C-PLACU", the Court hereby:

(1) Denies the "Motion to Dismiss" filed on January 10, 1968, by Defendant Republic Real Estate Corporation and Intervenors Bautista, et. al., as it is the finding of this Court that Republic Act No. 5187 was not passed by Congress to cure any defect in the ordinance and agreement in question and that the passage of said Republic Act No. 5187 did not make the legal issues raised in the pleadings "moot, academic and of no further validity or effect; - and

(2) Renders judgment:

(a) dismissing the Plaintiff's Complaint;

(b) Dismissing the Complaint in Intervention of Intervenor Pasay Law and Conscience Union, Inc.,

(c)Enjoining Defendant Republic Real Estate Corporation and Defendant Pasay City to have all the plans and specifications in the reclamation approved by the Director of Public Works and to have all the contracts and sub-contracts for said reclamation awarded by means of, and only after, public bidding; and

(d) Lifting the preliminary Injunction issued by the Court on April 26, 1962, as soon as Defendant Republic Real Estate Corporation and Defendant Pasay City shall have submitted the corresponding plans and specifications to the Director of Public Works, and shall have obtained approval thereof, and as soon as the corresponding public bidding for the award to the contractor and sub-contractor that will undertake the reclamation project shall have been effected.

No pronouncement as to costs.

SO ORDERED." (See Court of Appeals' Decision dated January 28, 1992; pp. 6-8)

Dissatisfied with the said judgment, the Republic appealed therefrom to the Court of Appeals. However, on January 11, 1973, before the appeal could be resolved, Presidential Decree No. 3-A issued, amending Presidential Decree No. 3, thus:

"SECTION 1. Section 7 of Presidential Decree No. 3, dated September 26, 1972, is hereby amended by the addition of the following paragraphs:

The provisions of any law to the contrary notwithstanding, the reclamation of areas under water, whether foreshore or inland, shall be limited to the National Government or any person authorized by it under a proper contract.

All reclamations made in violation of this provision shall be forfeited to the State without need of judicial action.

Contracts for reclamation still legally existing or whose validity has been accepted by the National Government shall be taken over by the National Government on the basis of quantum meruit, for proper prosecution of the project involved by administration."

On November 20, 1973, the Republic and the Construction Development Corporation of the Philippines ("CDCP") signed a Contract[13] for the Manila-Cavite Coastal Road Project (Phases I and II) which contract included the reclamation and development of areas covered by the Agreement between Pasay City and RREC. Then, there was issued Presidential Decree No. 1085 which transferred to the Public Estate Authority ("PEA") the rights and obligations of the Republic of the Philippines under the contract between the Republic and CDCP.

Attempts to settle amicably the dispute between representatives of the Republic, on the one hand, and those of Pasay City and RREC, on the other, did not work out. The parties involved failed to hammer out a compromise.

On January 28, 1992, the Court of Appeals came out with a Decision[14] dismissing the appeal of the Republic and holding, thus:

"WHEREFORE, the decision appealed from is hereby AFFIRMED with the following modifications:

1. The requirement by the trial court on public bidding and the submission of RREC's plans and specification to the Department of Public Works and Highways in order that RREC may continue the implementation of the reclamation work is deleted for being moot and academic;
2. Ordering the plaintiff-appellant to turn over to Pasay City the ownership and possession over all vacant spaces in the twenty-one hectare area already reclaimed by Pasay City and RREC at the time it took over the same. Areas thereat over which permanent structures has (sic) been introduced shall, including the structures, remain in the possession of the present possessor, subject to any negotiation between Pasay City and the said present possessor, as regards the continued possession and ownership of the latter area.
3. Sustaining RREC's irrevocable option to purchase sixty (60%) percent of the Twenty-One (21) hectares of land already reclaimed by it, to be exercised within one (1) year from the finality of this decision, at the same terms and condition embodied in the Pasay City-RREC reclamation contract, and enjoining appellee Pasay City to respect RREC's option.

SO ORDERED."

On February 14, 1992, Pasay City and RREC presented a Motion for Reconsideration of such Decision of the Court of Appeals, contending, among others, that RREC had actually reclaimed Fifty-Five (55) hectares, and not

only Twenty-one (21) hectares, and the respondent Court of Appeals erred in not awarding damages to them, movants.

On April 28, 1992, the Court of Appeals acted favorably on the said Motion for Reconsideration, by amending the dispositive portion of its judgment of January 28, 1992, to read as follows:

"WHEREFORE, the dispositive portion of our Decision dated January 28, 1992 is hereby AMENDED to read as follows:

1. The requirement by the trial court on public bidding and the submission of the RREC's plans and specification to the Department of Public Works and Highways in order that RREC may continue the implementation of the reclamation work is deleted for being moot and academic.
2. Ordering plaintiff-appellant to turn over to Pasay City the ownership and possession of the above enumerated lots (1 to 9).
3. Sustaining RREC's irrevocable option to purchase sixty (60%) percent of the land referred to in No. 2 of this dispositive portion, to be exercised within one (1) year from the finality of this Decision, at the same terms and condition embodied in the Pasay City-RREC reclamation contract, and enjoining Pasay City to respect RREC's irrevocable option.

SO ORDERED."

From the Decision and Amended Decision of the Court of Appeals aforementioned, the Republic of the Philippines, as well as Pasay City and RREC, have come to this Court to seek relief, albeit with different prayers.

On September 10, 1997, the Court commissioned the former thirteenth Division of Court of Appeals to hear and receive evidence on the controversy. The corresponding Commissioner's Report, dated November 25, 1997, was submitted and now forms part of the records.

On October 11, 1997, the Cultural Center of the Philippines ("CCP") filed a Petition in Intervention, theorizing that it has a direct interest in the case being the owner of subject nine (9) lots titled in its (CCP) name, which the respondent Court of Appeals ordered to be turned over to Pasay City. The CCP, as such intervenor, was allowed to present its evidence, as it did, before the Court of Appeals, which evidence has been considered in the formulation of this disposition.

In G.R. No. 103882, the Republic of the Philippines theorizes, by way of assignment of errors, that:

I

THE COURT OF APPEALS ERRED IN UPHOLDING THE VALIDITY OF PASAY CITY ORDINANCE NO. 158 DATED APRIL 21, 1959 AND THE RECLAMATION CONTRACT ENTERED INTO BETWEEN PASAY CITY AND RREC;

II

THE COURT OF APPEALS ERRED IN FINDING THAT RREC HAD RECLAIMED 55 HECTARES AND IN ORDERING THE TURN-OVER TO PASAY CITY OF THE OWNERSHIP AND POSSESSION OF NINE (9) LOTS TITLED IN THE NAME OF CCP.

In G.R. No. 105276, the petitioners, Pasay City and RREC, contend, that::

I

THE COURT OF APPEALS ERRED IN NOT DECLARING PRESIDENTIAL DECREE NO. 3-A UNCONSTITUTIONAL;

II

THE COURT OF APPEALS ERRED IN NOT AWARDING DAMAGES IN FAVOR OF PASAY CITY AND RREC.

Let us first tackle the issues posed in G.R. No. 103882.

On the first question regarding the validity of Pasay City Ordinance No. 158 dated April 21, 1959 and the Agreement dated April 24, 1959 between Pasay City and RREC, we rule in the negative.

Section 1 of RA 1899, reads:

"SECTION 1. Authority is hereby granted to all municipalities and chartered cities to undertake and carry out at their own expense the reclamation by dredging, filling, or other means, of any foreshore lands bordering them, and to establish, provide, construct, maintain and repair proper and adequate docking and harbor facilities as such municipalities and chartered cities may determine in consultation with the Secretary of Finance and the Secretary of Public Works and Communications."

It is the submission of the petitioner, Republic of the Philippines, that there are no foreshore lands along the seaside of Pasay City[15]; that what Pasay City has are submerged or offshore areas outside the commerce of man which could not be a proper subject matter of the Agreement between Pasay City and RREC in question as the area affected is within the National Park, known as Manila Bay Beach Resort, established under Proclamation No. 41, dated July 5, 1954, pursuant to Act No. 3915, of which area it (Republic) has been in open, continuous and peaceful possession since time immemorial.

Petitioner faults the respondent court for unduly expanding what may be considered "foreshore land" through the following disquisition:

"The former Secretary of Justice Alejo Mabanag, in response to a request for an opinion from the then Secretary of Public Works and Communications as to whether the term 'foreshore areas' as used in Section I of the immediately aforequoted law is that defined in Webster's Dictionary and the Law of Waters so as to make any dredging or filling beyond its prescribed limit illegal, opined:

'According to the basic letter of the Director of Public Works, the law of Waters speaks of 'shore' and defines it thus: 'that space movement of the tide. Its interior or terrestrial limit in the line reached by highest equinoctial tides.'

Webster's definition of foreshore reads as follows:

That part of the shore between high water and low-water marks usually fixed at the line to which the ordinary means tide flows: also, by extension, the beach, the shore near the water's edge.'

If we were to be strictly literal the term foreshore or foreshore lands should be confined to but a portion of the shore, in itself a very limited area.' (p. 6, Intervenor-appellees' brief).

Bearing in mind the (Webster's and Law of Waters) definitions of 'shore' and of foreshore lands, one is struck with the apparent inconsistency between the areas thus described and the purpose to which that area, when reclaimed under the provision of Republic Act No. 1899, shall be devoted. Section I (of said Law) authorizes the construction thereof of 'adequate docking and harbor facilities'. This purpose is repeated in Sections 3 and 4 of the Act.

And yet, it is well known fact that foreshore lands normally extend only from 10 to 20 meters along the coast. Not very much more if at all. In fact, certain parts in Manila bordering on Manila Bay, has no foreshore to speak of since the sea washes the sea wall.

It does not seem logical, then, that Congress had in mind. Webster's limited concept of foreshore when it enacted Republic Act No. 1899, unless it intends that the wharves, piers, docks, etc. should be constructed

parallel to the shore, which is impractical.

Since it is to be presumed that Congress could not have intended to enact an ineffectual measure not one that would lead to absurd consequences, it would seem that it used 'foreshore' in a sense wider in scope than that defined by Webster. xxx'

To said opinion on the interpretation of the R.A. 1899, plaintiff-appellant could not offer any refutation or contrary opinion. Neither can we. In fact, the above construction is consistent with the 'rule on context' in statutory construction which provides that in construing a statute, the same must be construed as a whole. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole (see *Araneta vs. Concepcion*, 99 Phil. 709). There are two reasons for this. Firstly, the force and significance of particular expressions will largely depend upon the connection in which they are found and their relation to the general subject-matter of the law. The legislature must be understood to have expressed its whole mind on the special object to which the legislative act is directed but the vehicle for the expressions of that meaning is the statute, considered as one entire and continuous act, and not as an agglomeration of unrelated clauses. Each clause or provision will be illuminated by those which are cognate to it and by the general tenor of the whole statute and thus obscurities and ambiguities may often be cleared up by the most direct and natural means. Secondly, effect must be given, if it is possible, to every word and clause of the statute, so that nothing shall be left devoid of meaning or destitute of force. To this end, each provision of the statute should be read in the light of the whole. For the general meaning of the legislature, as gathered from the entire act, may often prevail over the construction which would appear to be the most natural and obvious on the face of a particular clause. It is by this means that contradiction and repugnance between the different parts of the statute may be avoided.' (See *Black, Interpretation of Laws*, 2nd Ed., pp. 317-319).

Resorting to extrinsic aids, the 'Explanatory Note' to House Bill No. 3630, which was subsequently enacted as Republic Act No. 1899, reads:

'In order to develop and expand the Maritime Commerce of the Philippines, it is necessary that harbor facilities be correspondingly improved, and, where necessary, expanded and developed. The national government is not in a financial position to handle all this work. On the other hand, with a greater autonomy, many chartered cities and provinces are financially able to have credit position which will allow them to undertake these projects. Some cities, such as the City of Bacolod under R.A. 161, has been authorized to reclaim foreshore lands bordering it.

Other cities and provinces have continuously been requesting for authority to reclaim foreshore lands on the basis of the Bacolod City pattern, and to undertake work to establish, construct on the reclaimed area and maintain such port facilities as may be necessary. In order not to unduly delay the undertaking of these projects, and in order to obviate the passage of individual pieces of legislation for every chartered city and province, it is hereby recommended that the accompanying bill be approved. It covers Authority for All chartered cities and provinces to undertake this work. x x x (underscoring supplied)

Utilizing the above explanatory note in interpreting and construing the provisions of R.A. 1899, then Secretary of Justice Mabanag opined:

It is clear that the 'Bacolod City pattern' was the basis of the enactment of the aforementioned bill of general application. This so-called 'Bacolod City pattern' appears to be composed of 3 parts, namely: Republic Act No. 161, which grants authority to Bacolod City to undertake or carry out ... the reclamation ... of any [sic] carry out the reclamation project conformably with Republic Act No. 161; and Republic Act No. 1132 authorizing Bacolod City to contract indebtedness or to issue bonds in the amount not exceeding six million pesos to finance the reclamation of land in said city.

Republic Act No. 161 did not in itself specify the precise space therein referred to as 'foreshore' lands, but it

provided that docking and harbor facilities should be erected on the reclaimed portions thereof, while not conclusive would indicate that Congress used the word 'foreshore' in its broadest sense. Significantly, the plan of reclamation of foreshore drawn up by the Bureau of Public Works maps out an area of approximately 1,600,000 square meters, the boundaries of which clearly extend way beyond Webster's limited concept of the term 'foreshore'. As a contemporaneous construction by that branch of the Government empowered to oversee at least, the conduct of the work, such an interpretation deserves great weight. Finally, Congress in enacting Republic Act No. 1132 (supplement to RA 161), 'tacitly confirmed and approved the Bureau's interpretation of the term 'foreshore' when instead of taking the occasion to correct the Bureau of over extending its plan, it authorized the city of Bacolod to raise the full estimated cost of reclaiming the total area covered by the plan. The explanatory note to House Bill No. 1249 which became Republic Act No. 1132 states among the things:

'The Bureau of Public Works already prepared a plan for the reclamation of about 1,600,000 square meters of land at an estimated costs of about P6,000,000.00. The project is self-supporting because the proceeds from the sales or leases of lands so reclaimed will be more than sufficient to cover the cost of the project.'

Consequently, when Congress passed Republic Act No. 1899 in order to facilitate the reclamation by local governments of foreshore lands on the basis of the Bacolod City pattern and in order to obviate the passage of individual pieces of legislation for every chartered city and provinces requesting authority to undertake such projects, the lawmaking body could not have had in mind the limited area described by Webster as 'foreshore' lands. x x x'.

If it was really the intention of Congress to limit the area to the strict literal meaning of "foreshore" lands which may be reclaimed by chartered cities and municipalities, Congress would have excluded the cities of Manila, Iloilo, Cebu, Zamboanga and Davao from the operation of RA 1899 as suggested by Senator Cuenco during the deliberation of the bill considering that these cities do not have 'foreshore' lands in the strict meaning of the term. Yet, Congress did not approve the proposed amendment of Senator Cuenco, implying therefore, that Congress intended not to limit the area that may be reclaimed to the strict definition of 'foreshore' lands.

The opinion of the then Secretary of Justice Mabanag, who was at that time the chief law officer and legal adviser of the government and whose office is required by law to issue opinions for the guidance of the various departments of the government, there being then no judicial interpretation to the contrary, is entitled to respect (see *Bengzon vs. Secretary of Justice and Insular Auditor*, 68 Phil. 912).

We are not unmindful of the Supreme Court Resolution dated February 3, 1965 in *Ponce vs. Gomez* (L-21870) and *Ponce vs. City of Cebu* (L-2266), by a unanimous vote of six (6) justices (the other five (5) members deemed it unnecessary to express their view because in their opinion the questions raised were not properly brought before the court), which in essence applied the strict dictionary meaning of "foreshore lands" as used in RA 1899 in the case of the city of Cebu. But this was promulgated long after the then Secretary of Justice Mabanag rendered the above opinion on November 16, 1959 and long after RREC has started the subject reclamation project.

Furthermore, as held by the lower court, Congress, after the Supreme Court issued the aforementioned Resolution, enacted RA 5187. In Sec. 3 (m) of said law, Congress appropriated money 'for the construction of the seawall and limited access highway from the South boundary of the city of Manila to Cavite City, to the South, and from the North boundary of the city of Manila to the municipality of Mariveles, province of Bataan, to the North (including the reclamation of foreshore and submerged areas ... provided ... that ... existing projects and/or contracts of city or municipal governments for the reclamation of foreshore and submerged lands shall be respected...' This is a clear manifestation that Congress in enacting RA 1899, did not intend to limit the interpretation of the term "foreshore land" to its dictionary meaning.

It is presumed that the legislature was acquainted with and had in mind the judicial construction given to a

former statute on the subject, and that the statute on the subject, and that the statute was enacted having in mind the judicial construction that the prior enactment had received, or in the light of such existing judicial decisions as have direct bearing upon it (see 50 Am. Jur., Sec. 321, pp. 312-313). But notwithstanding said interpretation by the Supreme Court of RA 1899 in the Ponce cases, Congress enacted a law covering the same areas previously embraced in a RA 1899 (as mentioned earlier, cities without foreshore lands which were sought to be excluded from the operation of RA 1899 were not excluded), providing that respect be given the reclamation of not only foreshore lands but also of submerged lands signifying its non-conformity to the judicial construction given to RA 1899. If Congress was in accord with the interpretation and construction made by the Supreme Court on RA 1899, it would have mentioned reclamation of "foreshore lands" only in RA 5187, but Congress included "submerged lands" in order to clarify the intention on the grant of authority to cities and municipalities in the reclamation of lands bordering them as provided in RA 1899. It is, therefore, our opinion that it is actually the intention of Congress in RA 1899 not to limit the authority granted to cities and municipalities to reclaim foreshore lands in its strict dictionary meaning but rather in its wider scope as to include submerged lands."

The Petition is impressed with merit.

To begin with, erroneous and unsustainable is the opinion of respondent court that under RA 1899, the term "foreshore lands" includes submerged areas. As can be gleaned from its disquisition and rationalization aforequoted, the respondent court unduly stretched and broadened the meaning of "foreshore lands", beyond the intentment of the law, and against the recognized legal connotation of "foreshore lands". Well entrenched, to the point of being elementary, is the rule that when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.[16] So also, resort to extrinsic aids, like the records of the constitutional convention, is unwarranted, the language of the law being plain and unambiguous.[17] Then, too, opinions of the Secretary of Justice are unavailing to supplant or rectify any mistake or omission in the law.[18] To repeat, the term "foreshore lands" refers to:

"The strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide." (Words and Phrases, "Foreshore")

"A strip of land margining a body of water (as a lake or stream); the part of a seashore between the low-water line usually at the seaward margin of a low-tide terrace and the upper limit of wave wash at high tide usually marked by a beach scarp or berm." (Webster's Third New International Dictionary)

The duty of the court is to interpret the enabling Act, RA 1899. In so doing, we cannot broaden its meaning, much less widen the coverage thereof. If the intention of Congress were to include submerged areas, it should have provided expressly. That Congress did not so provide could only signify the exclusion of submerged areas from the term "foreshore lands".

Neither is there any valid ground to disregard the Resolution of this Court dated February 3, 1965 in *Ponce v. Gomez* (L-21870) and *Ponce v. City of Cebu* (L-22669) despite the enactment of Republic Act No. 5187 ("RA 5187"), the relevant portion of which, reads:

"Sec. 3. Miscellaneous Projects

x x x

m. For the construction of seawall and limited access highway from the south boundary of the City of Manila to Cavite City, to the south, and from the north boundary of the City of Manila to the municipality of Mariveles, province of Bataan, to the north, including the reclamation of the foreshore and submerged areas: Provided, That priority in the construction of such seawalls, highway and attendant reclamation works shall be given to any corporation and/or corporations that may offer to undertake at its own expense such projects, in

which case the President of the Philippines may, after competitive bidding, award contracts for the construction of such projects, with the winning bidder shouldering all costs thereof, the same to be paid in terms of percentage fee of the contractor which shall not exceed fifty percent of the area reclaimed by the contractor and shall represent full compensation for the purpose, the provisions of the Public Land Law concerning disposition of reclaimed and foreshore lands to the contrary notwithstanding: Provided, finally, that the foregoing provisions and those of other laws, executive orders, rules and regulations to the contrary notwithstanding, existing rights, projects and/or contracts of city or municipal governments for the reclamation of foreshore and submerged lands shall be respected. x x x."

There is nothing in the foregoing provision of RA 5187 which can be interpreted to broaden the scope of "foreshore lands." The said law is not amendatory to RA 1899. It is an Appropriations Act, entitled "AN ACT APPROPRIATING FUNDS FOR PUBLIC WORKS, SYNCHRONIZING THE SAME WITH PREVIOUS PUBLIC WORKS APPROPRIATIONS."

All things viewed in proper perspective, we reiterate what was said in *Ponce v. Gomez* (L-21870) and *Ponce v. City of Cebu* (L-22669) that the term "foreshore" refers to "that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides." As opined by this Court in said cases:

"WHEREAS, six (6) members of the Court (Justices Bautista Angelo, Concepcion, Reyes, Barrera, Dizon and Jose P. Bengzon) opine that said city ordinance and contracts are ultra vires and hence, null and void, insofar as the remaining 60% of the area aforementioned, because the term 'foreshore lands' as used in Republic Act No. 1899 should be understood in the sense attached thereto by common parlance;" (underscoring ours)

The aforesaid ruling was applied by then Secretary of Justice Claudio Teehankee, in his opinion dated December 22, 1966, in a case with analogous facts as the present one, to wit:

"December 22, 1966

The Secretary of Agriculture
and Natural Resources
Diliman, Quezon City

Sir:

x x x

I. Facts -

1. On January 19, 1961, pursuant to the provisions of Republic Act No. 1899, the Municipality of Navotas enacted Ordinance No. 1 authorizing the Municipal Mayor to enter into a reclamation contract with Mr. Chuanico.

2. On March 15, 1961, a reclamation contract was concluded between the Municipality of Navotas, represented by the Municipal Mayor, and Mr. Chuanico in accordance with the above ordinance. Thereunder, Mr. Chuanico shall be the attorney-in-fact of the Municipality in prosecuting the reclamation project and shall advance the money needed therefor; that the actual expenses incurred shall be deemed a loan to the Municipality; that Mr. Chuanico shall have the irrevocable option to buy 70% of the reclaimed area at P7.00 per square meter; that he shall have the full and irrevocable powers to do any and all things necessary and proper in and about the premises," including the power to hire necessary personnel for the prosecution of the work, purchase materials and supplies, and purchase or lease construction machineries and equipment, but any and all contracts to be concluded by him in behalf of the Municipality shall be submitted to public bidding.

x x x

3. On March 16, 1961, the Municipal Council of Navotas passed Resolution No. 22 approving and ratifying the contract.

x x x

III. Comments -

1. The above reclamation contract was concluded on the basis of Navotas Ordinance No. 1 which, in turn, had been enacted avowedly pursuant to Republic Act No. 1899. This being so, the contract, in order to be valid, must conform to the provisions of the said law.

By authorizing local governments "to execute by administration any reclamation work," (Republic Act No. 1899 impliedly forbids the execution of said project by contract. Thus, in the case of *Ponce et al. vs. Gomez* (February 3, 1966), five justices of the Supreme Court voted to annul the contract between Cebu Development Corporation and Cebu City for the reclamation of foreshore lands because "the provisions of said ... contract are not ... in accordance with the provisions of Republic Act No. 1899," as against one Justice who opined that the contract substantially complied with the provisions of the said law. (Five Justices expressed no opinion on this point.)

Inasmuch as the Navotas reclamation contract is substantially similar to the Cebu reclamation contract, it is believed that the former is likewise fatally defective.

2. The Navotas reclamation project envisages the construction of a channel along the Manila Bay periphery of that town and the reclamation of approximately 650 hectares of land from said channel to a seaward distance of one kilometer. In the basic letter it is stated that "practically, all the 650 hectares of lands proposed to be reclaimed under the agreement" do not constitute foreshore lands and that "the greater portion of the area . . . is in fact navigable and presently being used as a fishing harbor by deep-sea fishing operators as well as a fishing ground of sustenance fisherman. Assuming the correctness of these averments, the Navotas reclamation contract evidently transcends the authority granted under Republic Act No. 1899, which empowers the local governments to reclaim nothing more than "foreshore lands," i.e., "that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides." (26 C.J. 890.) It was for this reason that in the cited case *Ponce* case, the Supreme Court, by a vote of 6-0 with five Justices abstaining, declared ultra vires and void the contractual stipulation for the reclamation of submerged lands off Cebu City, and permanently enjoined its execution under Republic Act No. 1899.

x x x

In accordance with the foregoing, I have the honor to submit the view that the Navotas reclamation contract is not binding and should be disregarded for non-compliance with law.

Very truly yours,

(SGD) CLAUDIO TEEHANKEE
Secretary of Justice"

The said opinion of Justice Secretary Teehankee who became Associate Justice, and later Chief Justice, of this Court, did, in our considered view, supersede the earlier opinion of former Justice Secretary Alejo Mabanag, aforestated, as the cases, in connection with which subject opinions were sought, were with similar facts. The said Teehankee opinion accords with RA 1899.

It bears stressing that the subject matter of Pasay City Ordinance No. 121, as amended by Ordinance No. 158, and the Agreement under attack, have been found to be outside the intendment and scope of RA 1899, and therefore ultra vires and null and void.

What is worse, the same Agreement was vitiated by the glaring absence of a public bidding.

Obviously, there is a complete dearth of evidence to prove that RREC had really reclaimed 55 hectares. The letter of Minister Baltazar Aquino relied upon by RREC is no proof at all that RREC had reclaimed 55 hectares. Said letter was just referring to a tentative schedule of work to be done by RREC, even as it required RREC to submit the pertinent papers to show its supposed accomplishment, to secure approval by the Ministry of Public Works and Highways to the reclamation plan, and to submit to a public bidding all contracts and sub-contracts for subject reclamation project but RREC never complied with such requirements and conditions *sine qua non*.

No contracts or sub-contracts or agreements, plans, designs, and/or specifications of the reclamation project were presented to reflect any accomplishment. Not even any statement or itemization of works accomplished by contractors or subcontractors or vouchers and other relevant papers were introduced to describe the extent of RREC's accomplishment. Neither was the requisite certification from the City Engineer concerned that "portions of the reclamation project not less than 50 hectares in area shall have been accomplished or completed" obtained and presented by RREC.

As a matter of fact, no witness ever testified on any reclamation work done by RREC, and extent thereof, as of April 26, 1962. Not a single contractor, sub-contractor, engineer, surveyor, or any other witness involved in the alleged reclamation work of RREC testified on the 55 hectares supposedly reclaimed by RREC. What work was done, who did the work, where was it commenced, and when was it completed, was never brought to light by any witness before the court. Certainly, onus probandi was on RREC and Pasay City to show and point out the as yet unidentified 55 hectares they allegedly reclaimed. But this burden of proof RREC and Pasay City miserably failed to discharge.

So also, in the decision of the Pasay Court of First Instance dismissing the complaint of plaintiff-appellant, now petitioner Republic of the Philippines, the lifting of the writ of Preliminary Injunction issued on April 26, 1962 would become effective only "as soon as Defendant Republic Real Estate Corporation and Defendant Pasay City shall have submitted the corresponding plans and specifications to the Director of Public Works, and shall have obtained approval thereof, and as soon as corresponding public bidding for the award to the contractor and sub-contractor that will undertake the reclamation project shall have been effected." (Rollo, pp. 127-129, G.R. No. 103882)

From the records on hand, it is abundantly clear that RREC and Pasay City never complied with such prerequisites for the lifting of the writ of Preliminary Injunction. Consequently, RREC had no authority to resume its reclamation work which was stopped by said writ of preliminary injunction issued on April 26, 1962.

From the Contract for Dredging Work, dated November 26, 1960, marked Exhibit "21-A" for RREC before the lower court, and Exhibit "EE" for CCP before the Court of Appeals, it can be deduced that only on November 26, 1960 did RREC contract out the dredging work to C and A Construction Company, Inc., for the reclamation of the 55 hectares initially programmed to be reclaimed by it. But, as stated by RREC itself in the position paper filed with this Court on July 15, 1997, with reference to CDCP's reclamation work, mobilization of the reclamation team would take one year before a reclamation work could actually begin. Therefore, the reclamation work undertaken by RREC could not have started before November 26, 1961.

Considering that on April 26, 1962 RREC was enjoined from proceeding any further with its reclamation work, it had barely five (5) months, from November, 1961 to April, 1962, to work on subject reclamation project. It was thus physically impossible for RREC to reclaim 55 hectares, with the stipulated specifications and elevation, in such a brief span of time. In the report of RREC (Exhibit "DD" for CCP), it was conceded that due to the writ of preliminary injunction issued on April 26, 1962, C and A Construction Co., Inc. had suspended its dredging

operation since May, 1962.

The "graphical report" on the Pasay Reclamation project, as of April 30, 1962, attached to the Progress Report marked Exhibit "DD", is a schematic representation of the work accomplishment referred to in such Progress Report, indicating the various elevations of the land surface it embraced, ranging from 0.00 meters to the highest elevation of 2.5 meters above MLLW. Such portrayal of work accomplished is crucial in our determination of whether or not RREC had actually "reclaimed" any land as under its Contract for Dredging Work with C and A Construction Company (Exhibit "EE"), the required final elevation for a completely reclaimed land was 3.5 meters above MLLW, as explicitly provided in said Contract for Dredging Work. So, the irresistible conclusion is - when the work on subject RREC-Pasay City reclamation project stopped in April, 1962 in compliance with the writ of preliminary injunction issued by the trial court of origin, no portion of the reclamation project worked on by RREC had reached the stipulated elevation of 3.5 meters above MLLW. The entire area it worked on was only at sea level or 0.00 meter above MLLW. In short, RREC had not yet reclaimed any area when the writ of preliminary injunction issued in April 1962.

On this point, the testimonies of Architect Ruben M. Protacio, Architect and Managing partner of Leandro V. Locsin and partners, Architect and City Planner Manuel T. Mañosa, Jr. of Planning Resources and Operation System, Inc., Rose D. Cruz, Executive Assistant, Office of the President, from 1966 to 1970, and Dr. Lucrecia Kasilag, National Artist and member of CCP Advisory Committee, come to the fore. These credible, impartial and knowledgeable witnesses recounted on the witness stand that when the construction of the Main Building of the Cultural Center of the Philippines (CCP) began in 1966, the only surface land available was the site for the said building (TSN, Sept. 29, 1997, pages 8, 14 and 50), what could be seen in front of and behind it was all water (TSN, Sept. 29, 1997, pages 127-128). When the CCP Main Building was being constructed, from 1966 to 1969, the land above sea level thereat was only where the CCP Main Building was erected and the rest of the surroundings were all under water, particularly the back portion fronting the bay. (TSN, Sept. 13, 1997, pp. 181, 182, 185, 186, 188). Dr. Lucrecia R. Kasilag stressed that on April 16, 1966, during the ground breaking for the CCP Main Building, it was water all around (TSN, Sept. 30, 1997, pp. 320, 324, 325).

There was indeed no legal and factual basis for the Court of Appeals to order and declare that "the requirement by the trial court on public bidding and the submission of RREC's plans and specification to the Department of Public Works and Highways in order that RREC may continue the implementation of the reclamation work is deleted for being moot and academic." Said requirement has never become moot and academic. It has remained indispensable, as ever, and non-compliance therewith restrained RREC from lawfully resuming the reclamation work under controversy, notwithstanding the rendition below of the decision in its favor.

Verily, contrary to what the Court of Appeals found, RREC had not reclaimed any area with the prescribed elevation of 3.5 meters above MLLW, so much so that in 1978, it (RREC) opted to file with the former Ministry of Public Highways, a claim for compensation of P30,396,878.20, for reclamation work allegedly done before the CDCP started working on the reclamation of the CCP grounds. On September 7, 1979, RREC asked the Solicitor General to settle its subject claim for compensation at the same amount of P30,396,878.20. But on June 10, 1981, guided by the cost data, work volume accomplished and other relevant information gathered by the former Ministry of Public Highways, the Solicitor General informed RREC that the value of what it had accomplished, based on 1962 price levels, was only P8,344,741.29, and the expenses for mobilization of equipment amounted to P2,581,330.00. The aforesaid evaluation made by the government, through the then Minister of Public Highways, is factual and realistic, so much so that on June 25, 1981, RREC, in its reply letter to the Solicitor General, stated:

"We regret that we are not agreeable to the amount of P10,926,071.29, based on 1962 cost data, etc., as compensation based on quantum meruit. The least we would consider is the amount of P10,926,071.29 plus

interest at the rate of 6% per annum from 1962 to the time of payment. We feel that 6% is very much less than the accepted rate of inflation that has supervened since 1962 to the present, and even less than the present legal rate of 12% per annum."[19]

Undoubtedly, what RREC claimed for was payment for what it had done, and for the dredge fill of 1,558,395 cubic meters it used, on subject reclamation project.

Respondent Court likewise erred in ordering the turn-over to Pasay City of the following titled lots, to wit:

LOT NO.

BUILDING

AREA

OCT/TCT

42

Gloria Maris Restaurant

9,516 sq.m.

OCT 159 in the name of GSIS

3

Asean Garden

76,299 sq. m.

OCT 10251 in the name of CCP

12

Folk Arts Theater and PICC parking space

1,7503 hec.

TCT 18627 in the name of CCP

22

landscaped with sculpture of Asean Artists-site of Boom na Boom

132,924 sq. m.

TCT 75676 in the name of CCP

23

open space, back of Philcite

34,346 sq. m.

TCT 75677 in the name of CCP

24

Parking space for Star City, CCP,Philcite

10,352 sq.m.

TCT 75678 in the name of CCP

25

open space occupied by Star City

11,323 sq.m.

TCT 75679 in the name of CCP

28

open space beside PICC

27,689 sq.m.

TCT 75684 in the name of CCP

29

open space, leased by El Shaddai

106,067 sq.m.

TCT 75681 in the name of CCP

We discern no factual basis nor any legal justification therefor. In the first place, in their answer to the Complaint and Amended Complaint below, RREC and Pasay City never prayed for the transfer to Pasay City of subject lots, title to which had long become indefeasible in favor of the rightful title holders, CCP and GSIS, respectively.

The annotation of a notice of lis pendens on the certificates of title covering the said lots is of no moment. It did not vest in Pasay City and RREC any real right superior to the absolute ownership thereover of CCP and GSIS. Besides, the nature of the action did not really warrant the issuance of a notice of lis pendens.

Section 14 of Rule 13, Revised Rules of Civil Procedure, reads:

"Sec. 14. Notice of lis pendens. - In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

The notice of lis pendens herein above mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded."

Under the aforecited provision of law in point, a notice of lis pendens is necessary when the action is for recovery of possession or ownership of a parcel of land. In the present litigation, RREC and Pasay City, as defendants in the main case, did not counterclaim for the turnover to Pasay City of the titled lots aforementioned.

What is more, a torrens title cannot be collaterally attacked. The issue of validity of a torrens title, whether fraudulently issued or not, may be posed only in an action brought to impugn or annul it. (Halili vs. National Labor Relations Commission, 257 SCRA 174; Cimafranca vs. Intermediate Appellate Court, 147 SCRA 611.)

Unmistakable, and cannot be ignored, is the germane provision of Section 48 of P.D. 1529, that a certificate of title can never be the subject of a collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding instituted in accordance with law.

Although Pasay City and RREC did not succeed in their undertaking to reclaim any area within subject reclamation project, it appearing that something compensable was accomplished by them, following the applicable provision of law and hearkening to the dictates of equity, that no one, not even the government, shall unjustly enrich oneself/itself at the expense of another[20], we believe; and so hold, that Pasay City and RREC should be paid for the said actual work done and dredge-fill poured in, worth P10,926,071.29, as verified by the former Ministry of Public Highways, and as claimed by RREC itself in its aforequoted letter dated June 25, 1981.

It is fervently hoped that long after the end of our sojourn in this valley of tears, the court, for its herein historic disposition, will be exalted by the future generations of Filipinos, for the preservation of the national patrimony and promotion of our cultural heritage. As writer Channing rightly puts it: "Whatever expands the affections, or enlarges the sphere of our sympathies - Whatever makes us feel our relation to the universe and all that it inherits in time and in eternity, and to the great and beneficent cause of all, must unquestionably refine our nature, and elevate us in the scale of being."

WHEREFORE:

In G.R. No. 103882, the Petition is GRANTED; the Decision, dated January 28, 1992, and Amended Decision, dated April 28, 1992, of the Court of Appeals, are both SET ASIDE; and Pasay City Ordinance No. 121, dated May 6, 1958, and Ordinance No. 158, dated April 21, 1959, as well as the Reclamation Agreements entered into by Pasay City and Republic Real Estate Corporation (RREC) as authorized by said city ordinances, are declared NULL and VOID for being ultra vires, and contrary to Rep. Act 1899.

The writ of preliminary injunction issued on April 26, 1962 by the trial court a quo in Civil Case No. 2229-P is made permanent, and the notice of lis pendens issued by the Court of Appeals in CA G.R. CV No. 51349 ordered CANCELLED. The Register of Deeds of Pasay City is directed to take note of and annotate on the certificates of title involved, the cancellation of subject notice of lis pendens.

The petitioner, Republic of the Philippines, is hereby ordered to pay Pasay City and Republic Real Estate Corporation the sum of TEN MILLION NINE HUNDRED TWENTY-SIX THOUSAND SEVENTY-ONE AND TWENTY-NINE CENTAVOS (P10,926,071.29) PESOS, plus interest thereon of six (6%) percent per annum from May 1, 1962 until full payment, which amount shall be divided by Pasay City and RREC, share and share alike.

In G.R. No. 105276, the Petition is hereby DENIED for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Davide Jr., Bellosillo, Melo, Vitug, Mendoza, Quisumbing, and Pardo, JJ., concur.

Narvasa, C.J., (Chairman), I DISSENT: Ponce is not binding precedent, and P.D. 3-A is in utter nullity.

Davide, Jr., J., also that & the concurring opinion of Mr. Justice Puno.

Romero, J., Please see Separate Opinion

Puno, J., Please see Concurring Opinion

Vitug, J., In the result.

Kapunan, J., No part, having opposed to the Gov't when I was in the OSG.

Mendoza, J., I concur in this and in the concurring opinion of Justice Puno.

Panganiban, J., Please see Separate Opinion

Martinez, J., I am the Ex Justice in his dissent.

[1] Penned by Associate Justice Quirino D. Abad Santos and concurred by Associate Justices Arturo B. Buena and Minerva Gonzaga-Reyes.

[2] Exhibit "P"; Folder No. I, Record on Appeal, p. 24.

[3] Annex "A"; Record on Appeal, pp. 10-17.

[4] Annex "E"; Record on Appeal, p. 64-73.

[5] Annexes "F" and "G"; Record on Appeal, pp. 74-105.

[6] Annex "H", Record on Appeal, p. 106.

[7] Annex "I"; Record on Appeal, p. 107.

[8] Annex "J", Record on Appeal, pp. 109-128.

[9] Annex "H"; Record on Appeal, p. 129.

[10] Annex "N"; Record on Appeal, pp. 169-172.

[11] Annex "O"; Record on Appeal, pp. 175-176.

[12] Annex "T"; Record on Appeal, p. 193.

[13] Rollo, G.R. No. 103882, pp. 853-869.

[14] Rollo, G.R. No. 105276, pp. 7-47.

[15] See Amended Complaint; supra, footnote 4.

[16] Land Bank of the Philippines v. Court of Appeals, 258 SCRA 405.

[17] People v. Amigo, 252 SCRA 43.

[18] Largado v. Masaganda, 5 SCRA 552.

[19] CA Rollo, p. 760.

[20] Article 2142, Civil Code:

"Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another."

SEPARATE OPINION

PANGANIBAN, J.:

I concur with the persuasive ponencia of Mr. Justice Fidel P. Purisima, as fortified by the Separate Opinion of Mr. Justice Reynato S. Puno, insofar as it (1) nullifies (a) the Reclamation Agreement between Pasay City and the Republic Real Estate Corporation (RREC) and (b) Pasay City Ordinance Nos. 121 and 158, and (2) retains ownership of the reclaimed land in favor of the Cultural Center of the Philippines. With due respect, I submit, however, that the majority has no factual basis for its determination of the compensation awarded to RREC and

Pasay City.

(1) Nullity of Reclamation Agreement
and Ordinance Nos. 121 and 158

Pasay City justifies its execution of the Reclamation Agreement with RREC and the Passage of Ordinance Nos. 121 and 158 on the basis of Republic Act No. 1899 (RA 1899), the law authorizing chartered cities and municipalities to undertake the reclamation of foreshore lands. The questioned Agreement and Ordinances, however, cover submerged areas of the Manila Bay. As explained in the ponencia, with which I agree, the legal and common definition of foreshore land does not include areas that are fully submerged by the sea.

The Manila Bay area is, therefore, definitely outside the scope of RA 1899. It remains part of the public domain and is, as such, outside the commerce of man. It could not be the object of ordinary contracts or ordinances. The questioned Agreement and Ordinances, the objects of which involve such public property, are thus null and void.

(2) Reclaimed Area
Belongs to CCP

As a consequence, the Cultural Center of the Philippines (CCP), to which PD Nos. 15 and 774 have conveyed ownership of the reclaimed land, remains the lawful owner of the subject land. Titles to the nine (9) lots, which Respondent Court wrongfully ordered to be turned over to Pasay City, had long been issued in favor of CCP (one subsequently to the GSIS as a successor-in-interest). Such titles are unaffected by the claims of RREC and cannot be collaterally attacked^[1] in this litigation.

(3) No Factual Basis for
Determination of Compensation

Even if the Agreement and Ordinances were null and void, it cannot be denied that RREC and the city government of Pasay spent time, money and effort which undoubtedly inured to the benefit of the government. It is a time-honored that no one, not even the government, may be enriched at the expense of another,^[2] particularly one who, like RREC and Pasay City, acted in good faith.

While RREC and Pasay City should be compensated for their work on the reclamation project, I respectfully submit that the amount of such compensation must be supported by substantial and material proof of the reasonable expenses they incurred. But, the records of the case are bereft of any such factual evidence.

However, the records do indicate some attempts of the parties to reach an amicable settlement as a consequence of the promulgation of PD 3-A by former President Ferdinand Marcos. Thus, in 1978, RREC sought the amount of P30,396,878.20 representing the supposed monetary value of the reclamation work that it had undertaken so far. The then Ministry of Public Highways (MPH) (and later the solicitor general also) rejected this offer in 1981 and, instead, counteroffered P10,926,071.29 as the reasonable value of such work. RREC replied that it would consider such amount only if it would bear six (6) percent interest per annum from 1962 up to the time of payment. It submitted other proposals, but all were rejected by the government. No final-extrajudicial settlement was ever reached.

Obviously, the offers and counteroffer were made by the parties with a view to arriving at a compromise agreement. At that point, they were not submitted as evidence, but only as a means of arriving at a peaceful settlement prior to judgment. By then, the case, which had commenced in December 1961 and was still on appeal with the Court of Appeals, was already dragging on for two decades.

Nature of Compromise

A compromise is an agreement between two or more parties whereby their differences are adjusted in a manner which they mutually agree on, and which they prefer to "the hope of gaining, balanced by the danger of losing." [3] The parties usually make reciprocal concessions in order to avoid litigation or terminate a pending one. [4]

However, basic is the rule on evidence that in civil cases, an offer of compromise cannot be taken as an admission of liability; nor can it be admissible as an evidence against the offeror. [5] The offer to compromise a claim or a clause of action is not an admission that the claim is valid, but merely admits that there is a dispute and that an amount is to be paid to avoid or end the controversy. [6] I submit that an unaccepted offer or counteroffer of compromise cannot be the basis of the sum to be adjudged in favor of or against a party, more so if such sum is unsupported by competent evidence. In such case, the court itself insofar as it adopts the amount either offered or counteroffered would be bereft of factual basis for its decision. Where the proposed compromise is not accepted, the parties to the litigation would be back to square one: they have to present before the court sufficient and credible evidence to prove their respective claims.

As a rule, an offer or a counteroffer given in an effort to reach a compromise should not be accorded evidentiary value on its face, because by its very nature, a compromise is concessionary. And if one of the parties does not concur, the court cannot impose an amount based on the unaccepted offer, even if the culpability of a party has been duly established. The amount of any such liability must be independently ascertained with competent evidence. Otherwise, this Court would be setting a dangerous precedent. Hence, parties would not submit offers to compromise for fear that such offers, if not accepted, would be used by the Court against them. Upon the other hand, parties may offer bloated amounts in the hope that said sums could influence the court to eventually grant them a relief more than they deserve. In any event, the rationale for the policy encouraging compromises would be defeated.

In the case at bar, we should bear in mind that when RREC conceded in 1981 to the solicitor general's counteroffer of P10,926,071.29, provided the amount would bear 6 percent interest per annum, it was with the caveat that such interest rate was already "very much less than the accepted rate of inflation that has supervened since 1962 xxx." Indeed, if we are to compare current prices with those of three and a half decades ago, or even seventeen years ago, such interest rate on the principal may no longer compensate the 1962 expense. In other words, what may have been a "fair and reasonable" compromise in 1981 may no longer be acceptable at this time. In any event, the solicitor general's counteroffer, not being supported with factual evidence, still cannot be the basis of a judicial award.

Need to Receive Evidence of Value of RREC Accomplishment

In the instant case, there appears no dispute that RREC has undertaken partial work for the Manila Bay reclamation project to the extent of P1,558,395 cubic meters of dredge-fill work. In the words of the ponencia:

"Undoubtedly, what RREC claimed for was the payment for what it had done on, and for the dredge-fill of 1,558,395 cubic meters used for the reclamation project worked on."

This case must therefore be remanded for the purpose of receiving evidence of the peso value of the 1,558,395 cubic meters of dredge-fill work undisputedly done by RREC.

WHEREFORE, I vote for the following:

1. The DECLARATION of the nullity of (a) the Reclamation Agreement between Pasay City and RREC and (b) Ordinance Nos. 121 and 158 of Pasay City

2. The RETENTION of ownership of the reclaimed land in favor of the Cultural Center of the Philippines
3. The REMAND of the case to the Commission composed of the former Thirteenth Division of the Court of Appeals (consisting of Associate Justices Arturo B. Buena, chairman; Minerva P. Gonzaga-Reyes and Quirino D. Abad Santos Jr.) for the sole purpose of receiving evidence of the peso value of the work accomplished by RREC and Pasay City for which they shall be paid by the National government.

[1] *Halili v. Court of Industrial Relations*, 257 SCRA 174, 184, May 30, 1996.

[2] Art. 22, Civil Code. *Commissioner of Internal Revenue v. Fireman's Fund Ins. Co.*, 148 SCRA 315, 324, March 9, 1987; *Ramie Textiles, Inc. v. Mathay Sr.*, 89 SCRA 586, 592, April 30, 1979.

[3] *Del Rosario v. Madayag*, 247 SCRA 767, August 28, 1995.

[4] *Galay v. Court of Appeals*. 250 SCRA 629, December 4, 1995; *Domingo v. Court of Appeals*, 255 SCRA 189, March 20, 1996; *Sanchez v. Court of Appeals*, 279 SCRA 647, 675, September 29, 1997.

[5] § 26, Rule 130, Rules of Court. See also *Servicewide Specialists, Inc. v. Court of Appeals*, 257 SCRA 643, 656, June 26, 1996.

[6] *Servicewide Specialists, Inc. ibid.*, citing 15A CJS Compromise and Settlement § 22.

CONCURRING OPINION

PUNO, J.:

Petitioners seek to modify the Decision and Amended Decision of the Court of Appeals in CA-G.R. CV No. 51349[1] which ordered the Republic of the Philippines to award thirty-five (35) hectares of the Cultural Center Complex to Pasay City and the Republic Real Estate Corporation.

The cases at bar span forty (40) years and the administrations of six (6) Presidents - Garcia, Macapagal, Marcos, Aquino, Ramos and Estrada. The opening scene saw the passage on June 22, 1957 of Republic Act (R.A.) No. 1899 authorizing chartered cities and municipalities to reclaim foreshore lands along their borders. On May 6, 1958, the Pasay City Government, through its legislative council, passed City Ordinance No. 121 authorizing "the reclamation of three hundred (300) hectares, more or less, of the foreshore lands of Pasay City, "beginning from the present boundary of Pasay City and Parañaque, and from the present sea-wall of Pasay City to a distance of one kilometer towards Manila Bay." The Ordinance empowered the City Mayor, in behalf of Pasay City to "issue bonds in the amounts fixed by the Secretary of Finance; or contract and award the reclamation work to any person or persons, associations, corporations, or institutions." It is also provided that the cost of such reclamation works shall not be paid or reimbursed by the city government but the award shall be subject to terms and conditions enumerated therein.

On May 8, 1958, the Mayor of Pasay City, Pablo Cuneta, entered into an Agreement with the Republic Real Estate Corporation (RREC) to undertake the reclamation project contemplated in Ordinance No. 121.[2]

Almost a year later, on April 21, 1959, the Pasay City Government amended Ordinance No. 121 by passing Ordinance No. 158 "to make the terms and conditions of the reclamation work more beneficial to Pasay City." On April 24, 1959, the Mayor of Pasay City, for and in behalf of Pasay City, entered into another Agreement with the Republic Real Estate Corporation (RREC) for the reclamation project authorized in Ordinance Nos. 121 and 158.[3] This became the Agreement that was to govern the reclamation project itself.

Under the terms of the Reclamation Agreement, Pasay City was to borrow from RREC and nobody else, at the rate of six per cent (6%) per annum, such sums of money that may be needed for the reclamation project; that Pasay City shall pay RREC this debt upon written demand and after at least fifty (50) hectares shall have been reclaimed; that in consideration for this loan, RREC shall have the irrevocable option to purchase sixty percent (60%) of the area reclaimed at P10.00 per square meter; and that this option shall be exercised not later than twelve (12) months from the date the City Engineer certifies that fifty (50) hectares have been reclaimed in accordance with the plans and specifications approved by the Director of Public Works.

Pursuant to this Agreement, RREC immediately undertook the reclamation of Manila Bay. It conducted public biddings for and in behalf of Pasay City and contracted with third persons for particular works on the project. RREC submitted to Pasay City monthly progress reports and statements of disbursements incurred in the course of the project. To generate additional funds, RREC entered into contracts to sell with third persons^[4] over portions of the area reclaimed and those to be reclaimed which RREC shall have purchased from Pasay City under its irrevocable option.

On March 5, 1962, the Republic of the Philippines (National Government) represented by the Solicitor General filed against Pasay City and RREC Civil Case No. 229-P for "Recovery of Possession and Damages with Writ of Preliminary Preventive Injunction and Mandatory Injunction" before the then Court of First Instance of Rizal, Seventh Judicial District, Branch VII, Pasay City.^[5] The National Government prayed for recovery of possession of the land, damages, and for the declaration of nullity of City Ordinance Nos. 121 and 158, the Reclamation Agreement and other contracts executed between Pasay City and RREC as well as all Contracts to Sell between RREC and buyers of the land. The National Government alleged that the Manila Bay and the area covered by the reclamation project between Pasay City and RREC is land of the public domain and belongs to the state; that as early as July 5, 1954, President Magsaysay issued Proclamation No. 41 pursuant to Act 3915 declaring the Manila Bay area a national park known as the "Manila Bay Beach Resort" and placing it under the management and administration of the Commission on Parks and Wildlife of the Department of Agriculture and Natural Resources; that the reclamation of areas within its territorial jurisdiction may be made by Pasay City, a chartered city, pursuant to R.A. No. 1899 but this authority is limited to foreshore lands only; that Manila Bay has no foreshore land and the reclamation area subject of the Ordinances and Reclamation Agreement is under sea water; that the Pasay City Government and RREC entered into the Reclamation Agreement without authority from the National Government, without public bidding and with full knowledge of its illegality; that the Reclamation Agreement is illegal, contrary to morals and public policy, and the subject matter is beyond the commerce of man; that Ordinance Nos. 121 and 158 are likewise illegal and ultra vires for being contrary to the provisions of R.A. 1899; that verbal and written demands to vacate the reclamation site were made by the National Government on Pasay City and RREC but these were not heeded.^[6]

In their separate answers, Pasay City and RREC claimed that the Manila Bay Beach Resort reserved as national park under Proclamation No. 41 covers a parcel of "land" in the cities of Manila and Pasay and the municipality of Paranaque and does not include a portion of "Manila Bay" as certified by the Acting Chief of the Bureau of Lands; that assuming that the reclaimed area encroaches the national park, the Pasay City government is authorized by R.A. 1899 which empowers chartered cities and municipalities to reclaim foreshore lands bordering them; the term "foreshore lands" as used in R.A. 1899 is not limited to its technical meaning but extends to submerged areas beyond the high and low-water marks of the beach; that the Commission on Parks and Wildlife never managed nor administered any portion of the Manila Bay; that the complaint was filed to harass and vilify the Pasay City Government and RREC who acted in good faith and with good intentions for the benefit of the city and national government.^[7]

On April 26, 1962, the CFI issued a writ of preliminary injunction ordering Pasay City and RREC and their agents from "further reclaiming or committing acts of dispossession or dispoilation [sic] over any area within the Manila Bay or the Manila Bay Beach Resort until further orders of the court." [8] RREC ceased its reclamation work.

On June 28, 1962, Jose L. Bautista and sixteen (16) others who were buyers of portion of the reclaimed land moved to intervene and join in the cause of Pasay City and RREC.

On September 16, 1967, Congress passed Republic Act (R.A.) No. 5187, the Public Works Act. This Act appropriated P600,000,000.00 for the construction of seawall and limited access highway from the south boundary of the City of Manila to Cavite City, and from the north boundary of the City of Manila to the Municipality of Mariveles, Bataan to the north, "including the reclamation of the foreshore and submerged areas." The law also provided that "the provisions and those of other laws to the contrary notwithstanding, existing rights, projects and/or contracts of city or municipal governments for the reclamation of foreshore and submerged lands shall be respected." This project was referred to as the "Manila-Cavite Coastal Road Project."

In view of R.A. 5187, RREC and Intervenors Jose Bautista, et al. moved to dismiss the complaint in Civil Case No. 2229-P. They alleged that R.A. No. 5187 expressly acknowledged existing reclamation projects and contracts and rendered the issues raised by the National Government moot and academic. Meanwhile, the Pasay Law and Conscience Union, Inc., a civic organization dedicated to the interest of "good government and public welfare" and organized to "fight for, defend, uphold and preserve the rule of law and conscience in Pasay City" filed a complaint in intervention, joining cause with the National Government.

On February 8, 1972, intervenors Jose Bautista, et al. filed a motion for a judgment on the pleadings. There being no opposition, the CFI granted the motion. On March 24, 1972, after almost eleven (11) years, the trial court rendered a decision based on the pleadings. The court upheld the validity of Ordinance Nos. 121 and 158 and the Reclamation Agreement between Pasay City and RREC. The trial court, however, ordered RREC and Pasay City to secure the approval of the Director of Public Works to all the plans and specifications of the reclamation and for the City Government to award the contract by public bidding. The dispositive portion of the decision reads as follows:

"WHEREFORE, after carefully considering (1) the original complaint, (2) the first Amended Complaint, (3) the Answer of Defendant Republic Real Estate Corporation to the First Amended Complaint, (4) the Answer of Defendant Pasay City to the First Amended Complaint, (5) the Second Amended Complaint, (6) the Answer of Defendant Republic Real Estate Corporation to the Second Amended Complaint, (7) the Answer of Defendant Pasay City to the Second Amended Complaint, (8) the Memorandum in Support of Preliminary Injunction of Plaintiff, (9) the Memorandum in Support of the Opposition to the Issuance of Preliminary Injunction of defendant Pasay City and Defendant Republic Real Estate Corporation, (10) the Answer in Intervention of Intervenors Bautista, et al., (11) Plaintiff's Opposition to Motion to Intervene, (12) the Reply to Opposition to Motion to Intervene of Intervenors Bautista, et al., (13) the Stipulation of Facts by all the parties, (14) the Motion for Leave to Intervene of Intervenor Pasay Law and Conscience Union, Inc., (15) the Opposition to Motion For Leave to Intervene of Intervenors Bautista, et al., (16) the Reply of Intervenor Pasay Law and Conscience Union, Inc., (17) the Supplement to Opposition to Motion to Intervene of Defendant Pasay City and Republic Real Estate Corporation, (18) the Complaint in Intervention of Intervenor Pasay Law and Conscience Union, Inc., (19) the Answer of Defendant Republic Real Estate Corporation, (20) the Answer of Intervenor Jose L. Bautista, et al., to Complaint in Intervention, (21) the Motion to Dismiss of Defendant Republic Real Estate Corporation, and Intervenors Bautista, et al., (22) the Opposition of Plaintiff to said Motion to Dismiss, (23) the Opposition of Intervenor Pasay Law and Conscience Union, Inc., (24) the Memorandum of the Defendant Republic Real Estate Corporation, (25) the Memorandum for the Intervenor Pasay Law and Conscience Union, Inc., (26) the Manifestation of Plaintiff filed by the Office of the Solicitor General, and all the documentary evidence by the parties to wit: (a) Plaintiff's Exhibits "A" to "YYY-4", (b)

Defendant Republic Real Estate Corporation's Exhibits "1-RREC" to "40-a" and (c) Intervenor Pasay Law and Conscience Union, Inc, Exhibits "A-PLACU" to C-PLACU", the Court hereby;

(1) Denies The 'Motion To Dismiss' filed on January 10, 1968, by Defendant Republic Real Estate Corporation and Intervenor Bautista, et al., as it is the finding of this Court that Republic Act No. 5187 was not passed by Congress to cure any defect in the Ordinance and agreement in question and that the passage of said Republic Act No. 5187 did not make the legal issues raised in the pleadings 'moot, academic and of no further validity or effect;' and

(2) Renders judgement;

(a) Dismissing Plaintiff's Complaint;

(b) Dismissing the Complaint In Intervention of Intervenor Pasay Law and Conscience Union, Inc.;

(c) Enjoining Defendant Republic Real Estate Corporation and Defendant Pasay City to have all the plans and specifications in the reclamation approved by the Director of Public Works, and to have all the contracts and subcontracts for said reclamation awarded by means of, and only after, public bidding; and

(d) Lifting the preliminary injunction issued by this Court on April 26, 1962, as soon as defendant Republic Real Estate Corporation and Defendant Pasay City shall have submitted the corresponding plans and specifications to the Director of Public Works, and shall have obtained approval thereof, and as soon as the corresponding public bidding for the award to the contractor and subcontractor that will undertake the reclamation project shall have been effected."

The National Government appealed to the Court of Appeals.

Earlier, while the case was pending before the CFI, then President Marcos issued Proclamation No. 100 on September 10, 1966 reserving a parcel of land in the District of Malate, City of Manila consisting of 245,690 square meters under Swo-40880 for Philippine Cultural Center site purposes. On December 15, 1967 President Marcos issued Proclamation No. 316 revoking Proclamation No. 100 and reserving another parcel of land in the Manila Bay area consisting of 257,898 square meters[9] under Swo-40880, as site for a Philippine Cultural Center. On October 5, 1972, when the case was before the Court of Appeals, President Marcos issued Presidential Decree (P.D.) No. 15 creating the Cultural Center of the Philippines (CCP). In the same decree, the President assigned and conveyed to the CCP the parcel of land reserved in Proclamation No. 316.[10]

On January 11, 1973, President Marcos issued P.D. No. 3-A amending the Public Works Act, R.A. No. 5187. P.D. No. 3-A provided that "the reclamation of areas under water, whether foreshore or inland, shall be limited to the National Government or any person authorized by it under a proper contract," and that existing reclamation contracts "whose validity has been accepted by the National Government shall be taken over by the National Government on the basis of quantum meruit." Pursuant to P.D. 3-A, on November 20, 1973, the National Government, represented by the Commissioner of Public Highways, contracted the services of the Construction and Development Corporation of the Philippines (CDCP) to undertake the "Manila-Cavite Coastal Road Project." [11] CDCP immediately entered into its obligation and continued the reclamation of the Manila Bay area. CDCP developed the area reclaimed by RREC and reclaimed more areas towards the south of Manila. This gave birth to what is now known as the Cultural Center Complex and the Financial Center Complex.[12]

On August 22, 1975, President Marcos issued P.D. No. 774 assigning and conveying additional two (2) parcels of reclaimed land consisting of 104,717 square meters under Swo-04-000078 and 400,000 square meters under Swo-04-00141 totalling 504,717 square meters[13] to the Cultural Center of the Philippines.

On February 4, 1977, President Marcos issued P.D. No. 1084 creating the Public Estates Authority (PEA). The

PEA was established for the purpose of reclaiming land, including foreshore and submerged areas, and developing, improving and disposing all kinds of real property owned and operated by the government.[14] On the same day, President Marcos issued P.D. No. 1085 decreeing that the reclaimed "foreshore and off-shore areas of the Manila Bay from the CCP, passing through Pasay City, Paranaque, Las Pinas, Zapote, Bacoar up to Cavite City" of the Manila-Cavite Coastal Road Project and all other reclamation contracts covering the same area be conveyed to the PEA. The PEA was to assume the obligations of the National Government in the reclamation project.

In 1978, RREC filed a claim with the then Ministry of Public Highways pursuant to P.D. No. 3-A. RREC proposed to settle the case amicably by seeking from the government payment of P30,396,878.20 representing the value of the reclamation work based on 1974 price levels.[15] The Solicitor General, with the assistance of the Ministry of Public Highways, counter-proposed the payment of the amount of P10,926,071.29 based on price levels obtaining in 1962 when the reclamation work was restrained by the court. RREC rejected the counter-proposal unless an additional six per cent (6%) interest from 1962 up to the time of payment be made.[16] In 1983, RREC again offered to settle the case amicably if it were to be paid in land. Nothing positive came out of it.

On October 20, 1986, RREC filed before the Court of Appeals a "Motion to Admit Additional Evidence" in view of the events that transpired following the promulgation of P.D. No. 3-A. Without objection from the Solicitor General, RREC and Pasay City presented their additional evidence.[17]

On January 14, 1987, RREC again proposed to settle on the basis of (1) a cash settlement of P35,455,101.31, or (2) property settlement of three point five (3.5) hectares within the CCP Complex covered by TCT No. 75676 of the CCP.[18] The amount of P35,455,101.31 was based on the principal sum of P10,926,071.29 representing actual reclamation cost at 1962 price levels plus interest at six per cent (6%) and twelve per cent (12%) per annum from 1962 to December 31, 1986.[19] The proposal was referred to the Office of the President for consideration.[20] While the proposal was pending, RREC increased its cash demand to P175,000,000.00 and then to P245,000,000.00. The Office of the President found the proposals unacceptable.[21]

The proceedings before the Court of Appeals resumed on November 14, 1990.[22] On January 28, 1992, the Court of Appeals affirmed with modification the decision of the trial court. The appellate court upheld the validity of the Reclamation Agreement between Pasay City and RREC but dispensed with the required public bidding in the trial court's decision. It found that RREC reclaimed twenty-one (21) hectares of Manila Bay per admission of RREC's counsel in its appellee's brief,[23] and ordered the National Government to turn over to Pasay City all spaces with no permanent improvement on the 21-hectare reclaimed area. The Court of Appeals also sustained RREC's irrevocable option to purchase sixty per cent (60%) of the 21-hectare land to be exercised within one (1) year from finality of the decision. The dispositive portion of the decision reads as follows:

"WHEREFORE, the decision appealed from is hereby AFFIRMED with the following modifications:

1. The requirement by the trial court on public bidding and the submission of RREC's plans and specifications to the Department of Public Works and Highways in order that RREC may continue the implementation of the reclamation work is deleted for being moot and academic;
2. Ordering the plaintiff-appellant to turn over to Pasay City the ownership and possession over all vacant spaces in the twenty-one hectare area already reclaimed by Pasay City and RREC at the time it took the same. Areas thereat over which permanent structures have been introduced shall, including the structures, remain in the possession of the present possessor, subject to any negotiation between Pasay City and the said present possessor, as regards the continued possession and ownership of the latter area.

3. Sustaining RREC's irrevocable option to purchase sixty (60) per cent of the twenty-one (21) hectares of land already reclaimed by it, to be exercised within one (1) year from the finality of this decision, at the same terms and conditions embodied in the Pasay City-RREC reclamation contract, and enjoining appellee Pasay City to respect RREC's option."[24]

RREC and Pasay City moved for reconsideration of the decision mainly claiming that RREC had reclaimed a total of fifty-five (55), not twenty-one (21), hectares of Manila Bay.

In an Amended Decision dated April 28, 1992, the Court of Appeals held that RREC and Pasay City actually reclaimed fifty-five (55) hectares of the Manila Bay before the project was taken over by the National Government. The appellate court declared that since RREC and Pasay City were willing to accept only thirty-five (35) hectares of open land, specifically the Trade and Convention Site and several vacant lots in the CCP Complex,[25] the National Government should reconvey to Pasay City and RREC these "open spaces" totalling nine (9) parcels of land in the name of the CCP. These parcels of land were as follows:

- "1. Lot No. 12 with an area of 17,503 sq. m. covered by TCT 18627;
2. Lot No. 3 covered by OCT NO. 10251;
3. Lot No. 22 with an area of 132,924 sq. m. covered by TCT 75676;
4. Lot No. 24 with an area of 10,352 sq. m. covered by TCT 75678;
5. Lot No. 25 with an area of 11,323 sq. m. covered by TCT NO. 75679;
6. Lot No. 28 with an area of 17,689 sq. m. covered by TCT No. 757684;
7. Lot No. 29 with an area of 106,067 sq. m. covered by TCT 75681;
8. Lot No. 42 with an area of 9,516 sq. m. covered by OCT 159.
9. Lot No. 23 (portion only) with an area of 15,925 sq. m. covered by TCT 75677.[26]

The Court of Appeals held:

"WHEREFORE, the dispositive portion of our Decision dated January 28, 1992 is hereby AMENDED to read as follows:

1. The requirement by the trial court on public bidding and the submission of the RREC's plans and specifications to the Department of Public Works and Highways in order that RREC may continue the implementation of the reclamation work is deleted for being moot and academic;
2. Ordering the plaintiff-appellant to turn over to Pasay City the ownership and possession of the above-enumerated lots (1 to 9);
3. Sustaining RREC's irrevocable option to purchase sixty (60) percent of the land referred to in No. 2 of this dispositive portion, to be exercised within one (1) year from finality of this Decision, at the same terms and conditions embodied in the Pasay City-RREC reclamation contract, and enjoining Pasay City to respect RREC's irrevocable option."[27]

Both parties appealed to this Court.

In September 1992, the Cultural Center of the Philippines, through the Office of the Government Corporate Counsel, filed a petition-in-intervention in G.R. No. 103882 joining cause with the National Government. It alleged that the Amended Decision of the Court of Appeals reconveying to RREC the parcels of land in CCP's name did not bind CCP because CCP was never made a party to the case; and that CCP was compelled to intervene to protect its properties which are indispensable to its existence.[28]

Oral arguments were held on June 18, 1997 by the Second Division of this Court where the parties and the CCP were heard. CCP argued, among others, that the nine (9) lots ordered by the Court of Appeals to be reconveyed to RREC and Pasay City are integral to the Cultural Center Complex and are important for the use and enjoyment of

the Public. One of the lots, i.e., Lot 23 has a permanent improvement which is the Philcote; the four vacant lots are the parking lots of the Philcote, the Cultural Center main building, the Folk Arts Theater (FAT), the Philippine International Convention Center (PICC); and that three (3) of the lots have been leased out to third parties, i.e., the El Shaddai, the Boom na Boom and Star City. CCP claimed that since 1986, the CCP has not been receiving financial support from the National Government and to finance its projects, it has been subsisting on the income derived from the earnings of its real property.[29]

On September 10, 1997, the Second Division of this Court issued a Resolution remanding the case to the Court of Appeals, former Thirteenth Division,[30] to receive evidence and thereafter determine:

"(1) the actual area reclaimed by the RREC; and

(2) the areas of the Cultural Center Complex which are "open spaces" and/or "areas reserved for certain purposes." Determining in the process the validity of such postulates and the respective measurements of the areas referred to."[31]

The Court of Appeals received evidence presented by CCP and the Solicitor General, and the rebuttal evidence of Pasay City and RREC. In a Commissioners' Report dated November 25, 1997, the Court of Appeals found that CCP and Solicitor General failed to present sufficient evidence to disprove the finding in the Amended Decision that RREC and Pasay City were able to reclaim fifty-five (55) hectares of Manila Bay. The Commissioners, after ocular inspection of the CCP Complex and consultation with the parties, submitted a list enumerating the lots in the Complex where permanent structures were found and those without structures, otherwise referred to as "open spaces." [32]

In June 1998, the Court en banc decided to accept the cases at bar in view of the constitutional issues involved.

In G.R. No. 103882, petitioner Republic of the Philippines (National Government) and petitioner-intervenor Cultural Center of the Philippines (CCP) seek to annul and set aside the Decision and Amended Decision of respondent Court of Appeals.

In G.R. No. 105276, petitioners Pasay City and RREC seek to modify the said Amended decision by ordering respondents National Government and CCP to pay damages and convey fifty-five (55) instead of merely thirty-five (35) hectares of the land the former allegedly reclaimed from Manila Bay.

The National Government claims that:

"I. THE COURT OF APPEALS ERRED IN UPHOLDING THE VALIDITY OF PASAY CITY ORDINANCE NO. 158 DATED APRIL 21, 1959 AND THE RECLAMATION CONTRACT ENTERED INTO BETWEEN PASAY CITY AND RREC;

II. THE COURT OF APPEALS ERRED IN ORDERING THE TURN OVER TO PASAY CITY OF THE OWNERSHIP AND POSSESSION OF NINE (9) LOTS TITLED IN THE NAME OF CCP." [33]

CCP claims that:

"I. THE COURT OF APPEALS ERRED IN FINDING THAT RREC ACTUALLY RECLAIMED AN AREA OF FIFTY-FIVE HECTARES OF THE MANILA BAY.

II. THE HONORABLE COURT OF APPEALS ERRED IN ORDERING THE TURNOVER TO RREC OF NINE PARCELS OF LAND REGISTERED IN THE NAME OF CCP." [34]

RREC and Pasay City contend that:

"I. THE COURT OF APPEALS ERRED IN NOT DECLARING P.D. No. 3-A UNCONSTITUTIONAL.

II. THE COURT OF APPEALS ERRED IN NOT AWARDING DAMAGES IN FAVOR OF PASAY CITY AND RREC FOR THE ILLEGAL TAKEOVER BY THE REPUBLIC OF THE PHILIPPINES OF THE QUESTIONED RECLAMATION CONTRACT AND THE RECLAIMED AREA."[35]

In sum, the main issues are:

1 (a) Does R.A. No. 1899, the law authorizing chartered cities and municipalities to reclaim foreshore lands on their borders, allow the reclamation of submerged lands?

(b) Are the Reclamation Agreements between Pasay City RREC and City Ordinance Nos. 121 and 158 in accord with R.A. No. 1899?

2 (a) Is P.D. No. 3-A unconstitutional?

(b) Can the President, by the issuance of P.D. No. 3-A, empower the National Government to take over reclamation projects undertaken pursuant to R.A. No. 1899?

3 (a) Did the Court of Appeals, in its Amended Decision and Commissioners' Report, correctly determine the size of the area reclaimed by RREC before it was enjoined and taken over by the National Government?

FIRST ISSUE

A. R.A. 1899 authorized municipalities and chartered cities to undertake reclamation of foreshore lands only.

Republic Act No. 1899 entitled "An Act to Authorize the Reclamation of Foreshore Lands by Chartered Cities and Municipalities" was passed on June 22, 1957. Section 1 of the law provides:

"Section 1. Authority is hereby granted to all municipalities and chartered cities to undertake and carry out at their own expense the reclamation by dredging, filling, or other means, of any foreshore lands bordering them, and to establish, provide, construct, maintain and repair proper and adequate docking and harbor facilities as such municipalities and chartered cities may determine in consultation with the Secretary of Finance and the Secretary of Public Works and Communications."

R.A. No. 1899 authorizes municipalities and chartered cities to undertake and carry out at their own expense the reclamation by dredging, filling or other means, of any foreshore lands bordering their respective territories. The law itself specifies what lands may be reclaimed and these are foreshore lands. It did not, however, define the term foreshore lands.

Four years before R.A. No. 1899 was passed, the term "foreshore lands" was defined by the Court of Appeals in the case of *Hacut v. Director of Lands*[36] which involved a parcel of land along Basilan Island. The appellate court, quoting from *Bouvier's Law Dictionary*, defined foreshore lands as:

"that part of the land immediately in front of the shore; the part which is between high and low water marks, and alternately covered with water and left dry by the flux and reflux of the tides. It is indicated by a middle line between the highest and lowest tides."[37]

RREC and Pasay City contend that this dictionary definition should not be read into R.A. No. 1899 because it runs counter to the intent of the law. It is alleged that R.A. No. 1899 was patterned after R.A. No. 161 passed by Congress in 1947 authorizing the City of Bacolod to reclaim foreshore lands within its territory. Congress authorized Bacolod City to raise funds not exceeding P6 million to finance the project.[38] Bacolod City, according to RREC and Pasay City reclaimed 1,600,000 square meters which was not limited to the foreshore as defined in *Hacut* but extended to lands submerged by the sea. The city later constructed docking and harbor facilities on the land it reclaimed.

It is our duty in construing a law to determine legislative intention from its language.[39] The history of events transpiring during the process of enacting a law, from its introduction in the legislature to its final validation has generally been the first extrinsic aid to which courts turn to construe an ambiguous act.[40] We bear in mind, however, that extrinsic aids are resorted to only if the words of the statute are ambiguous.[41] The clear, unambiguous and unequivocal language of a statute precludes any court from further construing it and gives it no discretion but to apply the law.[42] When a statute is clear, it must be taken to mean exactly what it says.[43]

Under settled principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[44] The verba legis[45] or the plain meaning rule rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently.[46] The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.[47]

"Foreshore lands" has a settled meaning. It was the dictionary meaning of the term that the Court of Appeals adopted in *Hacut*. This Court upheld this dictionary meaning in 1965 in the cases of *Ponce v. Gomez* [48] and *Ponce v. City of Cebu*. [49] In these cases, the City of Cebu entered into a reclamation contract with the Cebu Development Corporation to reclaim foreshore land along the coast of Cebu City pursuant to R.A. 1899. This Court declared that the authority to reclaim granted to chartered cities and municipalities under R.A. 1899 is limited to foreshore lands only which, quoting *Corpus Juris*, is

"that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides."

According to this Court, this is how the term "foreshore" is "generally understood." As a consequence, this Court declared the reclamation contract ultra vires insofar as sixty per cent (60%) of the area sought to be reclaimed was beyond the foreshore, and sustained as valid only forty per cent (40%) of the area covered by the ordinance and contract within the foreshore.

Almost twenty years thereafter, this Court again defined foreshore lands in the 1984 case of *Republic v. Court of Appeals*. [50] The case involved the registration of a parcel of land reclaimed by adjoining owners along the shores of the Laguna de Bay. The Director of Lands opposed the application on the ground that the subject land was foreshore land and part of the lake bed. Although the case did not involve the sea, this Court, again citing *Bouvier's Law Dictionary*, applied the definition of foreshore land as:

"that part of [the land] which is between high and low water and left dry by the flux and reflux of the tides x x x"

"The strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide." [51]

Based on this definition, this Court found that the reclaimed property was not part of the foreshore nor of the lake bed and consequently allowed its registration as private property.

Clearly, the judiciary had adopted the dictionary meaning of "foreshore lands" years before and after the enactment of R.A. No. 1899. Our courts applied this meaning consistently without extending it to include submerged areas or areas under water. We are seldom at liberty to set aside a rule of long standing. Our decisions from part of the law of the land. And when they interpret certain statutes they should be taken into consideration in construing subsequent statutes of similar nature. It is fair to assume that the legislature, at the time of the enactment of a statute was advised of the prior holdings of the courts, and that it would have specifically altered

the courts' interpretation if it so desired.[52] The presumption is that the legislature was acquainted with, and had in mind, the judicial construction of the words in the prior enactment.[53]

It was the dictionary definition the judiciary gave to the word "foreshore" that the Legislature recognized in subsequent laws. In 1967, two years after this Court promulgated the Ponce cases, Congress passed R.A. 5187, the Public Works Act. Congress approved and appropriated P600 million for the construction of the Manila-Cavite Coastal Road Project, to wit:

"Sec. 3 (m). For the construction of a seawall and limited access highway from the south boundary of the City of Manila to Cavite City, to the south, and from the north boundary of the City of Manila to the Municipality of Mariveles, Province of Bataan, to the north, including the reclamation of foreshore and submerged areas: provided That priority in the construction of such seawalls, highway and attendant reclamation works shall be given to any corporation and/or corporations that may offer to undertake at its own expense such projects, in which case the President of the Philippines may, after competitive bidding, award contracts for the construction of such projects, with the winning bidder shouldering all costs thereof, the same to be paid in terms of percentage fee of the contractor which shall not exceed fifty per cent of the area reclaimed by the contractor and shall represent full compensation for the purpose, the provisions of the Public Land Law concerning disposition of reclaimed and foreshore lands to the contrary notwithstanding: Provided, finally, That the foregoing provisions and those of other laws, executive orders, rules and regulations to the contrary notwithstanding, existing rights, projects and/or contracts of city or municipal governments for the reclamation of foreshore and submerged lands shall be respected-----P600,000,000."

By adding the term "submerged areas" in the reclamation of Manila Bay for the Coastal Road Project, Congress tacitly recognized the limited dictionary meaning of "Foreshore lands."

This definition of foreshore lands was again recognized in P.D. No. 3-A, a legislative measure issued by the Chief Executive in 1972. P.D. 3-A authorized the reclamation of "areas under water, whether foreshore or inland." In 1977, P.D. 1084 created the PEA and authorized it to "reclaim land, including foreshore and submerged areas."

The term "foreshore lands" clearly does not include submerged lands. If it were otherwise, there would have been no need for the legislative and executive branches of government to include "submerged area" or "areas under water" in subsequent laws. R.A. 5187 and P.D. 3-A were passed after this Court defined "foreshore lands" in the Ponce cases. The adoption of an amendment throws light on the meaning of the act before it was amended.[54] Indeed, where the terms of a statute have acquired a settled meaning through judicial interpretation, and the statute is changed by amendment or re-enactment, and the terms to which judicial interpretation have been given remain in the law thereafter, they are to be understood and interpreted in the same sense theretofore attributed to them by the court, unless by qualifying or explanatory addition a contrary intention of the legislature is made clear. The judicial construction becomes a part of the law, as it is presumed that the legislature in passing the latter law knew the judicial construction which had been given to the words of the prior enactment.[55]

Both the judicial and legislative interpretations lead to the inescapable conclusion that R.A. No. 1899 is limited to the reclamation of foreshore lands and does not include offshore and submerged lands.

It must also be noted that R.A. No. 1899 is a legislative grant of the right to reclaim, the right to develop the land reclaimed and the right to own the reclaimed land. Assuming that the term "foreshore land" is ambiguous and does not have a settled meaning but requires construction, legislative grants are to be construed most favorably to the sovereign and most strongly as against the grantee.[56] Statutory grants by the legislature, when they delegate sovereign authority, or confer special benefits or exemptions are to be construed strictly against the grantee.[57] Statutes in derogation of common or general rights are strictly construed and rigidly confined to cases clearly within their scope and purpose.[58] Grants of public land derogate from sovereign authority and are to be

construed strictly against the grantee.[59]

RREC and Pasay City claim that reclamation under R.A. No. 1899 cannot be limited to foreshore lands only because this would render the law absurd and useless. They cite sections 1 and 4 of R.A. 1899 which provide:

"Section 1. Authority is hereby granted to all municipalities and chartered cities to undertake and carry out at their own expense the reclamation by dredging, filling, or other means, of any foreshore lands bordering them, and to establish, provide, construct, maintain and repair proper and adequate docking and harbor facilities as such municipalities and chartered cities may determine in consultation with the Secretary of Finance and the Secretary of Public Works and Communications.

xxx

"Section 4. All lands reclaimed as herein provided, except such as may be necessary for wharves, piers and embankments, roads, parks and other public improvements, may be sold or leased under such rules and regulations as the municipality or chartered city may prescribe."

It is contended that reclamation under R.A. No. 1899 was granted to local government units for the primary purpose of establishing, providing, constructing, maintaining and repairing "proper and adequate docking and harbor facilities," as well as the construction of "wharves, piers, embankments, roads, parks and other public improvements." According to RREC and Pasay City, if what may be reclaimed is limited to the area between the high-and-low-water marks which is some 10 to 20 meters along the coast, then there will be practically nothing for the construction of the facilities envisioned in the law. They cite the Opinion of former Secretary of Justice Alejo Mabanag to the effect that the technical definition of foreshore land will limit the construction of wharves, piers, docks, etc. to the area parallel to the shore which is an absurd situation. To avoid this perceived absurdity, it is opined that the term "foreshore" should be construed to include offshore or submerged lands.

A close examination of the law, however, will reveal that the purpose of the grant will not be defeated if reclamation is limited to foreshore land. For one, the purpose of reclamation under R.A. No. 1899 is not only to be able to construct piers, docks, etc. Reclaimed foreshore lands can be devoted to a lot of public and private purposes. Roads, parks and other public improvements may be made on reclaimed foreshore land especially if these are extensions of already existing roads and parks adjacent to the foreshore. Indeed, RREC sold lots to private individuals and these lots are presumably part of the foreshore lands. For another, it is not impossible to reclaim foreshore land, construct wharves and piers on the reclaimed land and extend these structures from the reclaimed land to the submerged areas out in the deep waters. Undeniably, wharves and piers may be constructed on water. Moreover, in some navigable waters of the archipelago, the sea, river or lake bed do not gradually descend from the shore into the deep but at some point from the shore drop into the deep abruptly. In the Ponce cases, this Court did not nullify the entire reclamation agreement of the City of Cebu. It nullified only sixty per cent (60%) of the area sought to be reclaimed as beyond the foreshore but upheld as valid forty per cent (40%) of the area. The plain meaning of provision not contradicted by any other provision in the same statute, cannot be regarded as absurd. An absurdity means anything which is irrational, unnatural or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion.[60] The plain meaning of the word must be one in which the absurdity and injustice of applying the provisions to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application.[61] This situation does not obtain in R.A. No. 1899 limiting reclamation to foreshore lands. And even assuming that R.A. No. 1899 is defective because it only authorized the reclamation of foreshore land, still the remedy is to amend the law and not to torture its contextual meaning by judicial interpretation.

RREC and Pasay City also contend that R.A. No. 161, on which R.A. No. 1899 was patterned, granted the City of Bacolod the authority to reclaim foreshore lands bordering the city. It is claimed that Bacolod City actually

reclaimed areas beyond the foreshore under R.A. No. 161. Assuming the truth of the allegation, the act of Bacolod City does not authorize other chartered cities and municipalities under R.A. No. 1899 to likewise reclaim beyond the foreshore. Government cannot be estopped by the mistakes, errors or omissions of its agents.[62] The government's alleged acquiescence in the Bacolod City reclamation project does not estop it from 'questioning future acts of cities and municipalities especially after the Court of Appeals defined "foreshore lands" years after R.A. No. 161 was enacted and before R.A. No. 1899 became law.

The view that Hacut and the Ponce cases are inapplicable to the case at bar is not well-taken. Hacut may have involved the registration of a parcel of land acquired by accretion but the issue of whether said land could be registered depended on whether it was foreshore land. If it was not, it could be registered; otherwise, it was public property and could not be registered. In fine, the resolution of the issue depended on the definition of foreshore land and the Court of Appeals adopted its dictionary meaning.

The Ponce cases squarely dealt with the application of R.A. No. 1899. To disregard these cases is to ignore the doctrine of stare decisis. The Ponce cases were decided by this Court en banc and we should not thoughtlessly overturn its ruling, lest our decisions become as unpredictable as lotto results.

In sum, the reclamation of lands beyond the foreshore of Manila Bay was ultra vires and therefore null and void.

B. The Reclamation Agreement
and Pasay City Ordinance
Nos. 121 and 159 are
contrary to R.A. No. 1899
and are null and void.

In the instant cases, the Reclamation Agreement between RREC and Pasay City as well as Ordinance Nos. 121 and 158 are not in accordance with the provisions of R.A. No. 1899.

The full text of R.A. No. 1899 reads:

"SECTION 1. Authority is hereby granted to all municipalities and chartered cities to undertaken and carry out at their own expense the reclamation by dredging, filling, or other means, of any foreshore lands bordering them, and to establish, provide, construct, maintain and repair proper and adequate docking and harbor facilities as such municipalities and chartered cities may determine in consultation with the Secretary of Finance and the Secretary of Public Works and Communications.

SECTION 2. Any and all lands reclaimed, as herein provided, shall be the property of the respective municipalities or chartered cities: Provided, however, That the new foreshore along the reclaimed areas shall continue to be the property of the National Government.

SECTION 3. For the purpose of this reclamation, and of the construction, maintenance and repair of such wharves, piers, docking and other harbor facilities as may be provided in accordance with Section One hereof, the municipalities and chartered cities are hereby authorized to contract indebtedness with any person, association, corporation, or lending institution. Upon proper application, a municipality or chartered city may, for the same purpose, likewise issue bonds in such amounts and under such terms and conditions as may be fixed by the Secretary of Finance. Such bonds shall be guaranteed by the Government of the Philippines and their issue, servicing and liquidation shall be undertaken by the Central Bank of the Philippines.'

SECTION 4. All lands reclaimed as herein provided, except such as may be necessary for wharves, piers and embankments, roads, parks and other public improvements, may be sold or leased under such rules and regulations as the municipality or chartered city may prescribed. All proceeds derived from such sale or lease, and all berthing and other fees and such other earnings as the municipality or chartered city shall derive from

the use of the port facilities and improvements contemplated under this Act, shall be credited to a special fund which shall accrue in the first instance to the sinking fund hereafter provided. Any balance thereof in excess of periodic sinking fund requirements shall be available for other permanent public improvements of the municipality or chartered city.

SECTION 5. Upon application by a municipality or chartered city to issue bonds, the Secretary of Finance shall determine the borrowing and paying capacity of the applicant, the amount of the issue that may be authorized, and, in consultation with the Monetary Board of the Central Bank of the Philippines, the form, rate of interest, and redemption of said bonds. In the redemption of these bonds the Secretary of Finance may apply the lottery principle by which bonds, drawn by lot, may be redeemed before maturity.

SECTION 6. All loans contracted, and bonds issued, under this Act shall be payable, both as to the principal and interest, in Philippine currency or in the currency in which the principal has been originally received, which fact shall be acknowledge on the face of the note or certificate accomplished therefor, free from any tax or other public impost arising from currency conversion, any existing law to the contrary notwithstanding.

SECTION 7. Bonds issued under this Act shall be exempt from taxation, which fact shall be stated on the face of the certificates which shall be issued in accordance with this Act.

SECTION 8. Should the receipts accruing under section four be insufficient to service adequately bonds issued under this Act, the sinking fund deficiency shall be made good by the general funds of the municipality or chartered city in such manner that the annual contribution shall be sufficient to redeem at maturity the bonds issued under this Act. The sinking fund shall be under the custody of the Central Bank of the Philippines which shall invest the same in such manner as the Monetary Board shall approve.

SECTION 9. The provisions of existing law to the contrary notwithstanding, municipalities and chartered cities are hereby authorized and empowered to execute by administration any reclamation work or any construction authorized in section one hereof: Provided, That all such works shall be prosecuted on the basis of plans and specifications approved by the Director or City Engineer concerned who shall certify every statement of accomplished work that the same is in accordance with the approved plans and specifications.

SECTION 10. This Act shall take effect upon its approval."

R.A No. 1899 grants authority to municipalities and chartered cities to undertake and carry out the reclamation of lands along bodies of water in their respective territorial jurisdiction. The grant of this power is for a public purpose, i.e., to "establish, provide, construct, maintain and repair proper and adequate docking and harbor facilities." The reclamation project must be undertaken by the municipality or chartered city itself by administration in consultation with the Secretary of Finance and the Secretary of Public Works and Communications. To finance the project, the municipality government is authorized to contract indebtedness with any third person, or issue bonds under terms and conditions to be fixed by the Secretary of Finance. All loans contracted and bonds issued shall be paid in Philippine currency or in the currency in which the principal loan was originally received. All lands reclaimed shall become the property of the municipality or chartered city. Any new foreshore land along the reclaimed areas shall, however, continue to be property of the National Government. Except as may be necessary for public improvements, the reclaimed land may be sold or leased by the municipality or chartered city and all proceeds therefrom and such other fees shall be credited to a special fund. The Special fund must first accrue to a sinking fund to pay off the loan incurred from the issuance of bonds. Any excess in the sinking fund shall be used for other permanent public improvements of the municipality or chartered city.

The Agreement dated April 24, 1959 between Pasay City and RREC and Ordinance Nos. 121 and 158 were made under the authority of R.A. No. 1899. The Reclamation Agreement substantially carries the provisions of

Ordinance Nos. 121 and 158 and reads as follows:

"AGREEMENT"

"This AGREEMENT entered into by and between PASAY CITY, represented in this act by its duly authorized City Mayor, Pablo Cuneta, and the REPUBLIC REAL ESTATE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at the 2nd Floor, Magsaysay Building, 520 San Luis, Ermita, Manila, represented in this act by its duly authorized officer, Esperanza Zamora.

WITNESSETH:

WHEREAS, Republic Act No. 1899 authorizes municipalities and chartered cities to undertake and carry out at their own expense the reclamation by dredging, filling or other means of any foreshore lands bordering them;

WHEREAS, Ordinance No. 121 of Pasay City, approved on May 6, 1958, declared a reclamation area aggregating to 300 hectares more or less, of lands bordering Pasay City, beginning from the present boundary of Pasay City and Manila, and extending to the present boundary of Pasay City and Parañaque, and from the present seawall of Pasay City to a distance of one kilometer towards the Manila Bay;

WHEREAS, said Ordinance No. 121 authorized the Republic Real Estate Corporation for and in behalf of Pasay City to reclaim foreshore lands bordering Pasay City, for and in behalf of the said City;

WHEREAS, after consultation with the aforementioned corporation, it was deemed advisable to amend Ordinance No. 121 so to make the terms and conditions of the reclamation work more beneficial to Pasay City;

WHEREAS, the Republic Real Estate Corporation has agreed to the amendment of the aforementioned Ordinance No. 121;

WHEREAS, Amendatory Ordinance No. 158 was approved on April 21, 1959;

WHEREAS, under said Amendatory Ordinance, the Mayor of Pasay City is authorized, empowered and directed to sign and execute any and all papers, documents, contract or contracts necessary and proper to be signed and executed with the Republic Real Estate Corporation or with any person or entity in order to immediately put into effect the provisions of this Ordinance.

NOW THEREFORE, for and in consideration of the foregoing premises and the hereunder stipulations, the parties have hereby agreed and covenanted that:

1. Pasay City will borrow from the Republic Real Estate Corporation and from nobody else, such sum or sums of money which may be needed from time to time to undertake the reclamation of foreshore lands bordering the City, in accordance with plans and specifications submitted to the Director of Public Works for approval; provided, however, that the loan or loans shall be made by the Republic Real Estate Corporation from time to time as disbursements are made for the purchase of materials and supplies, the purchase or lease of construction machinery and equipment, the payment of salaries and wages and the payment of other contractual obligations in any form incurred in connection with the reclamation of foreshore lands above mentioned.
2. The sum or sums of money to be borrowed by Pasay City under this Ordinance, shall bear interest at the rate of 6% per annum computed from the date of the actual disbursement made by Republic Real Estate Corporation in behalf of the City.
3. The Republic Real Estate Corporation shall, as soon as practicable, after the end of each month, submit to Pasay City a complete and accurate statement of the amount of disbursement and expenditures during the preceding month.

4. The sum or sums of money loaned by the Republic Real Estate Corporation to Pasay City, including the accrued interest thereon, shall be payable to the said corporation upon its written demand but not before 50 hectares of foreshore lands shall have been reclaimed and certified by the City Engineer and accomplished in accordance with plans and specifications approved by the Director of Public Works; provided, however, that further demands for payment may be made from time to time as reclamation of every additional 50 hectares of foreshore lands shall have been accomplished and certified by the District Engineer, until the entire project envisioned under this ordinance is finally completed.

5. The Republic Real Estate Corporation, in consideration of its agreeing to loan to the City the funds necessary for the reclamation of the foreshore lands abovementioned is hereby granted the irrevocable option to purchase from Pasay City all the reclaimed lands which the City, in accordance with law, has the power to sell but which shall not exceed 60% of the entire area reclaimed, it being understood that 40% of the reclaimed area shall be reserved by the City for use as wharves, piers, embankments, roads, gutters, sites for schoolrooms, municipal areas, sites for civic buildings, parks, estuaries, lagoons, and other public improvements as are indicated in the plans submitted to the Director of Public Works; provided, however, that the Republic Real Estate Corporation shall have the right to select that portion of the reclaimed land which it shall purchase; provided, further, that the option to purchase herein granted to the Republic Real Estate Corporation shall be exercised not later than 12 months from the date or dates the City Engineer shall certify that portions of the reclamation project not less than 50 hectares in area shall have been accomplished or completed in accordance with the plans and specifications approved by the Director of Public Works; and provided, furthermore, that the purchase price to be paid by the Republic Real Estate Corporation under its irrevocable option shall be P10.00 per square meter.

6. In case Pasay City has outstanding obligations in favor of the Republic Real Estate Corporation in connection with the loans made pursuant to this Ordinance at the time that the Republic Real Estate Corporation exercises its option to purchase the reclaimed land to be designated by said corporation within the limits stated in Section 5 hereof, the amount of said obligations may be directed by said Corporation to be applied against the purchase price thereof and as soon as the full purchase price of the reclaimed area or a portion thereof is paid by the Republic Real Estate Corporation, it shall be the obligation of this City to deliver to the said Corporation possession of the land purchased and immediately take such step or steps as are necessary to obtain for the Republic Real Estate Corporation title to the property purchased in accordance with the Land Registration Act or any other law or laws of the Philippines, provided, however, that, at its option, the Republic Real Estate Corporation may take such step or steps as are necessary to obtain such title in its name in accordance with the laws aforementioned at the expense of the City.

7. In the event that all the saleable portion of the reclaimed land is purchased by the Republic Estate Corporation in accordance with this ordinance, and the purchase price thereof is less than the actual outstanding loans payable by the City to said Corporation under this ordinance, this City shall be relieved from paying the difference and the Republic Real Estate Corporation shall have no recourse, absolutely and forever, against the City or any of its properties.

8. The area of the foreshore lands to be reclaimed by Pasay City shall be 300 hectares; provided, however, that should it be deemed necessary to reclaim a larger area than 300 hectares, then such reclamation of the additional area shall be undertaken under the same terms and conditions of this ordinance, except that with regard to such additional area the Republic Real Estate Corporation shall continue to have irrevocable option to purchase these additional lands at the same price fixed in Section 5 of this Ordinance; provided, however, in such a case Republic Real Estate Corporation shall have the option to purchase only 50% of the additional area so reclaimed, the other 50% being reserved by the City for itself and the said 50% shall not be held liable to the republic Real Estate Corporation for any indebtedness that the City may incur in favor of the said corporation, but the Republic Real Estate Corporation shall have the option to make or not to make further loans to the City.

9. The Republic Real Estate Corporation, for and in consideration of the loan that it will extend to Pasay City,

is hereby constituted, appointed, nominated, and made as the Attorney-in-fact of the said City, with full and irrevocable powers to do any and all things necessary and proper in and about the premises to carry out the reclamation of foreshore lands bordering Pasay City, to the extent indicated in the next preceding Section, including, but not limited to, the power to hire the services of contractors or sub-contractors, to retain the services of any person or persons, natural or juridical, as technical consultants and supervisors; provided, however, that any and all contracts to be entered into by the said Attorney-in-fact, for and in behalf of Pasay City, in connection with the reclamation work to be undertaken, shall be submitted to public bidding; provided, furthermore, that in the event that there are no bidders or that the bids submitted by the contractors or sub-contractors are not acceptable because prejudicial to the interest of the City in the discretion of the Attorney-in-fact, then, the Attorney-in-fact may itself undertake the work to be performed so as not to delay or hamper the reclamation.

10. The Republic Real Estate Corporation shall upon the signing of this agreement, immediately undertake for and in behalf of Pasay City, all the works on the reclamation of the whole three hundred (300) hectares, more or less, mentioned in the second WHEREAS Clause of this Agreement, and shall start or commence the initial work thereon like dredging, filling and others, not later than December 31, 1959.

11. That the Republic Real Estate Corporation shall also be required to put a fishermen's wharf where banca-owners can take their bancas; but this area may be extended beyond the one kilometer limit from the original shoreline but not to exceed one and one-half kilometers.

12. The Republic Real Estate Corporation shall be responsible for all damages actually sustained by owners of private property by virtue of the reclamation project and suits by employees and workers arising from or in connection with their employment or service in the reclamation project that will be undertaken by the Republic Real Estate Corporation, provided, however, that the Republic Real Estate Corporation can avail itself of all defenses pertaining to Pasay City.

13. The Republic Real Estate Corporation thereby agrees, in connection with hiring of laborers for the construction and reclamation hereinabove mentioned, to hire 80% of the laborers who are bona-fide residents of Pasay City, thru the City Mayor, except those which may require highly technical skills.

14. That to insure the compliance by the Republic Real Estate Corporation of any and all the conditions hereinabove mentioned, in favor of the Pasay City Government, the Republic Real Estate Corporation shall execute a performance bond in an amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS.

IN WITNESS WHEREOF, the parties have hereunto set their hands in the City of Manila this 24 day of April, 1959.

REPUBLIC REAL ESTATE CORPORATION PASAY CITY

By: (Sgd.) Esperanza Zamora By: (Sgd.) Pablo Cuneta

(T.W.) ESPERANZA ZAMORA (T.W.) PABLO CUNETTA

Treasurer Mayor

SIGNED IN THE PRESENCE OF:

(Sgd.) Illegible (Sgd.) Lorenzo S. Ramos"

x x x."[63]

The Reclamation Agreement does not conform with R.A. No. 1899 for the following reasons:

(1) The Agreement does not only cover foreshore lands but starts from the seawall on Paay City and extends one kilometer into the Bay. The one-kilometer stretch shall start from the Pasay City-Manila border and end at the Pasay City-Parañaque border for a total of three hundred hectares (300) with right to reclaim a larger area when deemed necessary by RREC. It is of judicial notice that Manila Bay does not have substantial foreshore lands. The

waters of the bay wash against the seawall and any foreshore is confined to a few meters along the coast;[64]

(2) The reclamation under R.A. No. 1899 must be undertaken by the chartered city or municipality by administration.[65] In the Agreement, reclamation was undertaken and administered by RREC, not Pasay City.[66]

RREC and Pasay City claim that RREC was the attorney-in-fact or agent of Pasay City, therefore, in effect, Pasay City itself administered the reclamation.

This arrangement does not conform with R.A. No. 1899. The law expressly provides that reclamation shall be done by the local government unit by administration. "Administration" is synonymous with management. The required "administration" by the municipal corporation excludes the idea of an agency for the purpose of performing the reclamation work. In other words, the chartered city or municipality should itself administer or manage the reclamation project. Where a statute directs the performance of certain things in a particular manner or by a particular person, it implies that it shall not be done otherwise or by a different person.[67] *Expressio unius est exclusio alterius*.

(3) Assuming that R.A. No. 1899 allows reclamation by contract, the reclamation contract with RREC was not awarded by Pasay City through public bidding.[68]

RREC and Pasay City argue that RREC's authority to reclaim did not attach ipso facto but was subject to the condition that all reclamation contracts and sub-contracts be submitted first to Public bidding. In short, RREC was also under obligation to bid for the reclamation contract. It is only when no bidders shall have appeared or qualified, or when the bids submitted were "not acceptable because they are prejudicial to the interest of the city" that RREC could undertake the reclamation.

Paragraph 9 of the Agreement provides that any and all contracts entered into by the attorney-in-fact in connection with the reclamation work shall be submitted to public bidding and if there are no bidders or the bids submitted are not acceptable because they are prejudicial to the interest of the City "in the discretion of the attorney-in-fact," then the attorney-in-fact "may itself undertake the work to be performed." The Agreement does not state whether Pasay City conducted a bidding before it awarded the principal contract to RREC. The required public bidding in the Agreement refers to the sub-contracting of works in the project which works may likewise be undertaken by RREC itself.

(4) The reclamation under R.A. No. 1899 is to be undertaken and carried out by the chartered city or municipality itself, at its own expense and to be financed by loans obtained from third persons or lending institutions.

Under the Agreement, Pasay City was to borrow money from RREC to finance the reclamation project.[69] For and in consideration of this loan, RREC was to be paid the following: (1) the principal sum of what Pasay City borrowed; (2) interest on the sums borrowed at the rate of 6 per cent (6%) per annum computed from the date of its actual disbursement in behalf of the City;[70] and (3) by the express grant of an irrevocable option to purchase 60% of the entire lands reclaimed.[71]

The Agreement does not mention the amount of money Pasay City was to borrow from RREC. Strangely enough, the Agreement provides that Pasay City was to borrow money from the RREC, and nobody else. This implies that Pasay City was not free to contract indebtedness with any person, association or corporation or lending institution. Pasay City was to borrow money only from RREC to finance the reclamation which RREC itself, and not Pasay City, was to undertake. Pasay City bound itself to pay this undetermined loan with interest after RREC shall have reclaimed fifty (50) hectares of the contract area. Indeed, even before RREC could reclaim said fifty (50) hectares, it was already selling lots to the public. In sum, RREC was to lend money to Pasay City to finance the project

which RREC was going to undertake.[72] RREC was, in effect, giving itself its own money!

(5) Under R.A. No. 1899, the loan contracted by Pasay City is to be payable in Philippine currency or in the currency in which the principal had been originally received.[73]

There is nothing in the Agreement that indicates how much Pasay City proposed to borrow from RREC and in what currency the loan was to be given. Paragraph 1 of the Agreement merely declares that Pasay City was to borrow "such sum or sums of money as may be needed from time to time x x x."

Paragraph 2 of the Agreement states that this "debt" was to bear interest at 6% per annum which shall be paid to RREC upon written demand after 50 hectares shall have been reclaimed.[74] There is no clear and categorical statement as to the amount of the principal "loan of Pasay City, or whether this "loan" was delivered to and received by Pasay City, directly or indirectly.

The Agreement, however, grants RREC, in consideration of its loan to Pasay City, the irrevocable option to purchase sixty per cent (60%) of the land reclaimed at a fixed price of P10.00 per square meters. The irrevocable option shall be exercised not later than twelve (12) months from the time the City Engineer certifies that fifty (50) hectares of the project have been reclaimed in accordance with the plans and specifications approved by the Director of Public Works.[75] The Agreement provides that in case Pasay City is unable to pay its "debt" to RREC, the debt shall be applied to the purchase price of the land under RREC's irrevocable option.

In short, the irrevocable option to purchase granted by Pasay City to RREC implies that Pasay City's "debt" shall be payable in the land.[76]

Foreshore lands are lands of public dominion. They belong to the State. In derogation of the State's sovereign power over its property, R.A. No. 1899 gave chartered cities and municipalities the right to acquire these lands for a stated public purpose, provided that the conditions of the law are met. The State is possessed of the plenary power as the persona in a law to determine who shall be the favored recipients of public lands, as well as under what terms they may be granted such privilege.[77] It is clear from a reading of R.A. No. 1899 that at every stage of the procedure-- before, during and after the reclamation-- the State retains control and regulation over the disposition of its own property. Unless the land is alienated in accordance with law, the State retains its rights over its property as dominus.[78]

The provisions of the Reclamation Agreement do not meet the requirements of R.A. No. 1899. City Ordinance Nos. 121 and 158 which are substantially reproduced in the said Agreement are illegal. They purport to grant Pasay City the authority to reclaim lands in Manila Bay for purposes stated in the law. The Agreement, however, gives RREC the power to reclaim and own practically almost all of the land sought to be reclaimed. The complex provisions of the Agreement reveals an insidious attempt to circumvent R.A. No. 1899 for the benefit of RREC. The agreement is in reality a sweetheart contract; it is grossly disadvantageous and iniquitous to Pasay City.

Since the Reclamation Agreement and City Ordinance Nos. 121 and 158 are illegal, it follows that the reclamation project by RREC and Pasay City is null and void and the State retains ownership over the land reclaimed.

SECOND ISSUE

Assuming, nevertheless, that the Reclamation Agreement is valid, the take over of the reclamation project by the National Government was well within the sovereign power of the State.

The National Government, by virtue of P.D. 3-A, took over the reclamation project of RREC and Pasay City. P.D. No. 3-A provides that the reclamation of areas under water, whether foreshore or inland, shall be limited to the National Government or any person authorized thereby. All reclamations made by entities other than the National Government are deemed forfeited to the State without need of judicial action. All ongoing reclamation projects

shall likewise be taken over by the National Government which shall, however, compensate the parties to the reclamation projects quantum meruit.

In the cases at bar, Pasay City and RREC claim that P.D. No. 3-A is unconstitutional because it is legislative measure issued by the Chief Executive; that it impaired the obligation of contracts and amounts to a deprivation of property without just compensation and due process of law. These submissions lack merit.

A. Reclamation, which includes ownership of the land reclaimed is essentially a function of the sovereign.

All lands and water of the public domain are owned by the state. This principle is derived from the jura regalia or Regalian doctrine which is the prerogative or proprietary right belonging to the sovereign.[79] The doctrine was adopted and enshrined in the 1935,[80] 1973[81] and 1987 Constitutions.[82] The State is, by the Constitution, the owner of all lands belonging to the public domain, the waters, minerals, fisheries, forests and all natural resources therein.

Spain, in its earlier decrees, embodied the universal Feudal theory that all lands were held from the Crown.[83] In one of the royal decrees incorporated in the Recopilacion de Leyes de las Indias, the Spaniards declared that:

"We, having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant be restored to us according as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish." [84]

This decree dictated that all those lands which had not been granted by Philip, or in his name, or by the kings who preceded him, belonged to the Crown.[85] The king, as the representative of the people, assumed, asserted, and had title to all the land in the Philippines, except as far as he saw fit to permit private titles to be acquired.[86]

The Regalian doctrine was also recognized in the common law of England and was introduced into the United States.[87] The English possessions in America were claimed by right of discovery.[88] Having been discovered by subjects of the King of England, and taken possession of in his name, by his authority or with his assent, they were held by the King as the representative of and in trust for the nation; and all vacant lands, and the exclusive power granted them, were vested in him.[89] The Crown, according to the principles of the British law, was the proper organ to dispose of the public domains.[90]

The Crown's title to the land extended to all land covered by navigable waters in which the tide ebbs and flows. By the common law, both the title and the dominion of the sea, and of the rivers and arms of the sea, where the tide ebbs and flows, and of all lands below high-water mark, within the jurisdiction of the Crown of England, were in the King.[91] Such waters and the lands they covered, either at all times, or when the tide was in, were incapable of ordinary and private occupation, cultivation and improvement; and their natural and primary uses were public in their nature, for highways of navigation and commerce, domestic and foreign, and for the purpose of fishing by all the King's subjects. Therefore, the title, *jus privatum*, in such lands, as of waste and unoccupied lands, belonged to the King as the sovereign; and the dominion thereof, *jus publicum*, was vested in him as the

representative of the nation and for the public benefit.[92]

Similarly in the Philippines, the Spanish Law of Waters of 1866 provided that the coasts or maritime frontiers of Spanish territory with their coves, inlets, creeks, roadsteads, bays and ports were part of the national dominion and open to public use. They belonged to the sovereign, now the state, and to no one person in particular.[93] These bodies of water are within the land boundaries of the state or are closely linked to its land domain that they are treated as internal waters in International Law. International waters have been considered as legally equivalent to the national land.[94]

Articles 1 and 18 of the Spanish Law of Waters of 1866 provide:

"Article 1. The following are part of the national domain open to public use:

1. The coasts or maritime frontiers of Spanish territory, with their coves, inlets, creek, roadsteads, bays and ports.
2. The coast sea, that is, the maritime zone encircling the coasts, to the full width recognized by international law. The State provides for and regulates the police supervision and uses of this zone, as well as the right of refuge and immunity therein, in accordance with law and international treaties.
3. The Shores.-- By the shore is understood that space covered and uncovered by the movement of the tide.

Its interior or terrestrial limit is the line reached by the highest equinoctial tides. Where the tides are not appreciable, the shore begins on the land side at the line reached by the sea during ordinary storms or tempests."

x x x

Article 18. In no place on the coasts, shores, ports, or entrances of rivers, nor on the islands referred to in Art. 3, shall new works of any kind whatever be constructed, nor any building be erected, without proper permission, in accordance with the provisions of this law and with those of the law regarding ports.

x x x."

The coast sea and its shores[95] with its coves, inlets, creeks, roadsteads, ports, bays, etc. are part of the national domain and are open to public use. They have remained property of public ownership devoted to public use under the Civil Code of 1889[96] and property of public dominion under the Civil Code of 1950.[97] Property of the public domain is held by the State in the exercise of its sovereignty for the public interest. The State takes care of it, preserves and regulates it whenever it must be brought into use. It is part of the patrimony under safeguard of the State.[98]

Since the sea and its shores belong to the national domain, Article 18 of the Spanish Law of Waters of 1866 as afore-quoted strictly prohibited the construction any works or the erection of any building at any place on the coasts and shores, without proper authorization from the government.[99] The foreshore lands and those under water were controlled by the government as agent of the State and were held in trust for the benefit of the public.[100]

The State, as sovereign owner of the sea and its shores, recognized the right to reclaim the land it owns. Article 5 of the Spanish Law of Waters, provides:

"Article 5. Lands reclaimed from the sea in consequence of works constructed by the State, or by the provinces, pueblos or private persons, with proper permission, shall become the property of the party constructing such works, unless otherwise provided by the terms of the grant of authority."

This provision recognized the power of the State and the provinces, pueblos and private persons, with proper permission, to reclaim lands from the sea. The grant to provinces, pueblos or private persons to undertake reclamation of lands of the sea, however, did not divest the State of its ownership and control over these lands. The State remained owner of the lands. Ownership of land reclaimed from the sea and its shores could be given the adjoining owner or of the person reclaiming, pursuant only to an express grant.[101] There must be a formal declaration through the executive or legislative branches of government that land reclaimed from the sea was no longer needed for coast guard service, for public use or for special industries in order that such land could be considered as having ceased to part of the public domain and was now available for private appropriation or ownership.[102] Absent a valid grant and declaration from the State, any land reclaimed from the sea, whether foreshore or under water, remained property of the State.

The public nature of reclaimed land was affirmed in 1907 when the Philippine Commission passed Act 1654, "An Act to Provide for the Leasing of Reclaimed Land for Commercial Purposes, for the Leasing of the Foreshore and Lands Under Water, and to Regulate the Construction of Bridges over Navigable Waterways." Act 1654 affirmed the power of the National Government, as agent of the State, to reclaim the foreshore and lands under water. The law, in pertinent part, reads:

"Section 1. The control and disposition of the foreshore as defined in existing law, and the title to all Government or public lands made or reclaimed by the Government by dredging or filling or otherwise throughout the Philippines Islands, shall be retained by the Government without prejudice to vested rights and without prejudice to rights conceded to the City of Manila in the Luneta Extension."

Section 2. (a) The Secretary of the Interior shall cause all Government or public lands made or reclaimed by the Government by dredging or filling or otherwise to be divided into lots or blocks, with the necessary streets and alleyways located thereon, and shall cause plats and plans of such surveys to be prepared and filed in the Bureau of Lands.

(b) Upon the completion of such plats[103] and plans the Governor-General shall give notice to the public that such parts of the lands so made or reclaimed as are not needed for public purposes will be leased for commercial and business purposes, and upon receipts of an application or applications for lease or leases, the Governor-General shall designate and specify certain portions of the land for such use, and shall give notice by public advertisement that such applications have been made and that the Government will lease lots or blocks, to be specified in said advertisement, for commercial and business purposes, such leases to run for a period of ninety-nine years x x x."

xxx

Section 5. Upon receipt of an application or applications for the lease of any portion of the foreshore or lands under water in the Philippine Islands for the purpose of erecting and maintaining wharves, docks, piers, marine railways, or other appropriate structures, and upon the recommendation of the Secretary of Commerce and Police, the Governor-General may designate and specify such portions of the foreshore lands or lands under water for such use, and shall give notice by public advertisement that such applications have been made and that the Government will lease such portion of the foreshore, to be specified in said advertisement, for wharves, docks, piers, marine railways, or other appropriate structures for a term not to exceed ninety-nine years, with the right on the part of the lessee to erect and maintain such wharves, docks, piers, marine railways, or other appropriate structures, or to make such other beneficial use of such leased foreshore or lands under water as may be specified in the lease, subject, however, to all vested rights or easements of owners of lands adjacent to such foreshore or lands under water.

xxx."[104]

In 1919, the Philippine Legislature passed Act 2874, the Public Lands Act. This law declared which lands of the

public domain may be disposed to the public. Lands reclaimed by the government and the foreshore could only be disposed of by lease. Title III of the law was devoted to lands for commercial or industrial purposes and for this purpose classified disposable lands as follows:

"Sec. 56. The lands disposable under this title shall be classified as follows:

- (a) Lands reclaimed by the Government by dredging, filling, or other means;
- (b) Foreshore;
- (c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;
- (d) Lands not included in any of the foregoing classes.

xxx

Sec. 58. The lands comprised in classes (a), (b), and (c) of section fifty-six shall be disposed of to private parties by lease only and not otherwise, as soon as the Governor-General, upon recommendation by the Secretary of Agriculture and Natural Resources, shall declare that the same are not necessary for the public service and are open to disposition under this chapter. The lands included in class (d) may be disposed of by sale or lease under the provisions of this Act."

The provision of Act 2874 as amended, specifically Title III thereof, were substantially reenacted in Commonwealth Act 141, the Public Land Act of 1936.[105] Commonwealth Act No. 141 has remained in effect at present.

Foreshore lands are lands of public dominion intended for public use.[106] So too are lands reclaimed by the government by dredging, filling, or other means. Act 1654 mandated that the control and disposition of the foreshore and lands under water remained in the national government. Said law allowed only the "leasing" of reclaimed land. The Public Land Acts of 1919 and 1936 also declared that the foreshore and lands reclaimed by the government were to be "disposed of to private parties by lease only and not otherwise." Before leasing, however, the Governor General, upon recommendation of the Secretary of Agriculture and Natural Resources, had first to determine that the land reclaimed was not necessary for the public service. This requisite must have been met before the land could be disposed of. But even then, the foreshore and lands under water were not to be alienated and sold to private parties. The disposition of the reclaimed land was only by lease. The land remained property of the State.

Reclamation refers to the filling of submerged land by deliberate act and reclaiming title thereto.[107] The right to reclaim is a function of the sovereign who owns title to all the lands and waters of the public domain. The authority to reclaim is not a right or privilege accorded any person and the land reclaimed does not belong to whosoever undertakes its reclamation. Even private owners of lands adjoining bodies of water, especially the sea and navigable waters, cannot *motu proprio* undertake reclamation of shores and submerged lands and claim title thereto. Unless the State, through Congress, grants this right, it is only the National Government that can undertake reclamation work and assert title to reclaimed land.[108]

B. The State, in derogation of its sovereign power, delegated to municipalities and chartered cities the right to reclaim foreshore lands on their borders with the passage of R.A. No. 1899.

After the war, the State delegated to specific municipalities the right to reclaim land. The Philippine Legislature passed laws granting municipalities the right to reclaim foreshore or marshy lands within their respective territories.[109] The rule remained, nonetheless, that no person, public or private, could undertake reclamation work and own the land they reclaimed without a specific grant from Congress. It was only with the passage of R.A. 1899 in 1957 that Congress granted to chartered cities and municipalities a general authority to reclaim foreshore lands bordering their respective territories.[110] The law was in keeping the trend of giving more autonomy to local governments.

It is beyond debate that the grant of the right to reclaim and assert title to the land reclaimed is a public grant and must be subject to strict scrutiny. We have announced this principle in *Manila Lodge No. 761 v. Court of Appeals*[111] where in 1905, the Philippine Commission enacted Act No. 1360 authorizing the City of Manila to reclaim a portion of the Luneta to form part of the Luneta Extension. The Act provided that the reclaimed area "shall be property of the City of Manila." This Court held that the grant made by Act No. 1360 was a grant of a public nature, the same having been made to a local political subdivision. It was a gratuitous donation of public resources which resulted in unfair advantage to the grantee.[112] The exercise of the right by the grantee must therefore be in accordance with, and is limited by, the conditions expressly and impliedly imposed by the State, the grantor.

It ought to be self-evident that being a public grant, the right to reclaim and own public land granted by the sovereign to municipal corporations may be revoked by the sovereign itself.

C. The State, through P.D. No.

3-A, validly revested in the
National Government the
right to reclaim.

P.D. No. 3-A revoked the power delegated to municipalities and chartered cities to reclaim foreshore lands in their territories. It returned to the National Government the power to reclaim "areas under water, whether foreshore or inland." In effect, it repealed R.A. No. 1899.

Presidential Decree No. 3-A was promulgated on January 11, 1973 and reads as follows:

"AMENDING SECTION 7 OF PRESIDENTIAL DECREE NO. 3, DATED SEPTEMBER 26, 1972, BY PROVIDING FOR THE EXCLUSIVE PROSECUTION BY ADMINISTRATION OR BY CONTRACT OF RECLAMATION PROJECTS.

I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution as Commander-in-Chief of all 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 order and decree:

SECTION 1. Section 7 of Presidential Decree No. 3 dated September 26, 1972, is hereby amended by the addition of the following paragraphs:

"The provisions of any law to the contrary notwithstanding, the reclamation of areas under water, whether foreshore or inland, shall be limited to the National Government or any person authorized by it under a proper contract.

"All reclamation made in violation of this provision shall be forfeited to the State without need of judicial action.

"Contracts for reclamation still legally existing or whose validity has been accepted by the National

Government shall be taken over by the National Government on the basis of quantum meruit, for proper prosecution of the project involved by administration."

SECTION 2. This Decree shall take effect immediately.

xxx."

P.D. No. 3-A revested in the National Government the power to undertake reclamation projects. P.D. No. 3-A was an amendment to P.D. No. 3 which reads as follows:

"PRESIDENTIAL DECREE NO. 3

"APPROPRIATING FUNDS FOR PUBLIC WORKS INVOLVING REHABILITATION AND CAPITAL DEVELOPMENT, SYNCHRONIZING THE SAME WITH PREVIOUS PUBLIC WORKS APPROPRIATIONS"

WHEREAS, the rehabilitation and reconstruction of damaged infrastructure facilities due to the recent calamities is a primordial duty of the Government, to bring about normality in the economic and social activities of the people;

WHEREAS, in addition to rehabilitation and reconstruction, development efforts must be carried on with even greater effect, to avoid economic stagnation;

WHEREAS, the implementation of the rehabilitation and reconstruction and the undertaking of other development projects would require the availment of financial assistance proffered by international lending institutions and other governments;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 22, 1972, as amended, and for sustained development of the economy, do hereby issue this decree.

For this purpose, the attached appropriations measure is hereby adopted and decreed as part of the law of the land.

Done in the City of Manila, this 26th day of September, in the year of our Lord, nineteen hundred and seventy-two."

P.D. No. 3 appropriated funds for public works for the "rehabilitation and reconstruction of damaged infrastructure facilities due to recent calamities," and at the same time, carry "development efforts with greater effect to avoid economic stagnation." In other words, P.D. No. 3 was aimed at reconstructing damaged infrastructure facilities and developing other public works in line with the national infrastructure and development plan. P.D. No. 3-A amended P.D. No. 3 by declaring reclamation as a national infrastructure project.

D. No right to irrepealable laws---

R.A. No. 1899 validly repealed.

P.D. No. 3-A is an amendatory law and was impelled by a public purpose, i.e., the necessity to provide for a centralized mechanism in the implementation of public works projects. The National Government obtained loans from international lending institutions and foreign governments to finance vital infrastructure projects. To ensure the priority and completion of these projects, the National Government saw it fit to integrate all reclamation projects and take over the same in sync with the national agenda.[113]

It is thus clear that the National Government did not revest to itself the right to reclaim foreshore and submerged lands for a frivolous purpose. It used the reclaimed land to construct a cultural and financial center complex in

these areas and dedicated the entire land reclaimed and to be reclaimed to this noble vision. The Cultural Center Complex covers an area of eighty-seven point two (87.2) hectares and is composed of lots where several buildings now stand. The Complex principally has the main CCP building which houses the main theater, smaller theaters, an art gallery and library under one structure. Behind the main building are the Folk Arts Theater, the Tahanang Pilipino, the Philcote, Philippine International Convention Center, the Philippine Plaza Hotel, etc. South of the CCP Complex is the Financial Center Complex. It is composed of lots for the Central Bank of the Philippines, the Government Service Insurance System, the Social Security System, the Philippine National Bank and the Development Bank of the Philippines.[114]

The CCP is a "non-municipal public corporation"[115] established for the primary purpose of propagating arts and culture in the Philippines. It was created to awaken the consciousness of the Filipino people to their artistic and cultural heritage, and encourage them to assist in its preservation, promotion, enhancement and development.[116] The CCP Complex was established as a worthy venue for Filipino artists to express their art and for the people to appreciate art and the Filipino culture. In furtherance of this objective, the CCP, through its Board of Trustees, was likewise mandated to come up with programs and projects that cultivate and enhance public interest in, and appreciation of Philippine art; discover and develop talents connected with Philippine cultural pursuits; create opportunities for individual and national self-expression in cultural affairs; and encourage the organization of cultural groups and the staging of cultural exhibitions.[117] The properties of the CCP, both real and personal, are administered and held in trust by the Board of Trustees of the CCP for the benefit of the Filipino people.[118] Income derived from its projects and operations are invested by the Board of Trustees in a Cultural Development Fund set up to attain the objectives of the CCP.[119]

The site of the CCP was chosen for historical reasons, much of our history and culture flourished along the shores of Manila Bay. This is where the early Filipinos under Rajah Lakandula made their settlement. This is also where the Spaniards and their armadas landed to established Intramuros. It was also in Manila Bay where the Spanish-American battle was fought, and in nearby Corregidor, the Filipinos and Americans heroically fought the Japanese.[120]

Unlike other decrees of President Marcos, P.D. No. 3-A was not revoked by President Corazon C. Aquino.[121] Today, the reclamation of foreshore and submerged lands within the national territory continues to be a function of the National Government, through the PEA. The PEA was created by P.D. No. 1084 in 1977 and until now, it still exists under the same charter. It discharges the same functions in its charter and continues to coordinate and exercise jurisdiction over all reclamation projects throughout the country in accordance with the national agenda.[122]

E. P.D. No. 3-A does not violate the equal protection clause.

P.D. No. 3-A does not violate the equal protection clause of the Constitution. Equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[123] The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class. P.D. 3-A does not discriminate against Pasay City and RREC. The law is couched in general terms and applies to all persons, natural or juridical, under the same class. It addresses all "contracts for reclamation x x x legally existing or whose validity has been accepted by the National Government x x x." It provides for the take-over of all reclamation projects and applies to all reclamation contracts regardless of the parties and the size or location of the area being reclaimed.

F. P.D. No. 3-A is not an undue delegation of legislative power

Nor is it the law an undue delegation of legislative power. Neither is it a usurpation of legislative power. P.D. Nos. 3 and 3-A were promulgated after then President Marcos declared martial law on September 21, 1972.[124] The President invoked his emergency powers under Proclamation No. 1081 and General Order No. 1 in enacting both P.D.'s.[125] As Commander-in-Chief of the Armed Forces, the power of then President Marcos to promulgate proclamations, orders and decrees essential to the security of the Republic, and the power to institute political and economic reforms to meet the impact of worldwide recession, inflation and economic crisis was recognized by this Court in *Aquino, Jr. v. Commission on Elections*. [126] This Court upheld the legislative power of the President as flowing from his martial law powers and the transitory provisions of the 1973 Constitution.[127] Noteworthy, the Freedom Constitution also granted former President Aquino legislative power to cope with the emergency posed by the transition from former President Marcos' government.

G. P.D. No. 3-A does not authorize taking of property without just compensation.

No property can be taken without just compensation. P.D. No. 3-A recognized the existence of "reclamation contracts still legally existing or those whose validity has been accepted by the National Government" and provided compensation on the basis of quantum meruit.

Quantum meruit means that payment shall be made in an action for work and labor as much as the plaintiff reasonably deserves.[128] P.D. No. 3-A did not declare a fixed non-negotiable price for compensation, in disregard of due process. It set compensation at the common law concept of quantum meruit, "as much as the person deserves" which is a fair and equitable consideration. Moreover, compensation is not limited to reclamation contracts that are valid under the law. Compensation also extends to those contracts "whose validity has been accepted by the National Government."

H. RREC cannot invoke P.D. No. 3-A and later attack it as unconstitutional.

RREC and Pasay City did not challenge the constitutionality of P.D. No. 3-A before the Court of Appeals. For this Court to exercise the power of judicial review, the question of constitutionality must be raised at the earliest opportunity.[129] And RREC and Pasay City not only failed to challenge the constitutionality of the decree, worse, they used P.D. No. 3-A in seeking compensation from the National Government. P.D. No. 3-A was issued in 1973. Five (5) years later, in 1978, RREC filed a claim for quantum meruit compensation on the basis of P.D. No. 3-A with the then Ministry of Public Highways and the Solicitor General. In 1983, RREC offered to accept land and negotiated with the PEA for such payment. On October 20, 1986, RREC filed with the Court of Appeals, a Motion to Admit Additional Evidence to prove the area of land it reclaimed so it can be compensated under P.D. No. 3-A on the basis of quantum meruit. RREC's flip-flopping stance on P.D. No. 3-A cannot be countenanced. It cannot be allowed to use P.D. No. 3-A upon its convenience. Its attack on P.D. No. 3-A is a clear afterthought, a bargaining chip against the National Government.

THIRD ISSUE

A. The Amended Decision of the Court of Appeals is based on

insufficient and doubtful evidence.

In its Amended Decision, the Court of Appeals found that RREC reclaimed fifty-five (55) hectares of Manila Bay from 1959 to 1962. This was allegedly confirmed by RREC's evidence adduced at the Commissioners' hearings.[130] The contrary evidence presented by the CCP was considered insufficient.

The Court of Appeals' ruling is based on three documents issued by the government to RREC during the pendency of the case. The first is the "Costa Data for Items of Work Covered by the Republic Real Estate Corporation for Work Performed In the Manila Bay" issued by the Ministry of Public Highways (MPH).[131] The second is the letter dated June 6, 1979 of then Minister of Public Highways Baltazar Aquino addressed to Mr. Vicente Asuncion, Jr., Executive Vice-President of RREC.[132] The third is the letter dated June 10, 1981 of then Solicitor General Estelito Mendoza also to Mr. Asuncion, Jr.[133] The Court of Appeals held:

"One of said evidences (Exh. 17-A) shows that the then Ministry of Public Highways conducted actual and physical investigation, inspection and measurement of RREC's accomplishment as far as reclaimed lands are concerned. Their report on said inspection and measurement was reduced into a document entitled "Cost Data Items of Work Covered By the Republic Real Estate Corporation For Work Performed In the Manila Bay," prepared by Supervising Civil Engineer III Ignacio Gallego and noted by staff Civil Engineer Juan Mendoza and Executive Director for Special Projects Antonio Goco, all of the Ministry of Public Highways. This document shows the technical measurement and costs, among others, of the work accomplished by RREC: "reclamation of approximately fifty-five (55) hectares:"

On the basis of this actual inspection, the then Minister of Public Highways, Minister Baltazar Aquino, wrote the Executive Vice-President of RREC acknowledging RREC's accomplishment at "approximately fifty-five (55) hectares." The said letter (Exh. 15) reads in part:

xxx

In the letter subsequently sent by the Solicitor General to the RREC as regards the settlement of this case (Exh. 18), the Solicitor General did not dispute but instead made reference to the facts stated in the above letter of the then Minister of Public Highways certifying to RREC's having reclaimed approximately fifty-five (55) hectares of Manila Bay.

These documents and their contents were not even disputed by plaintiff-appellant as far as "the extent of the work accomplished as above certified" (see p. 3, Comment of OSG), only that, it asserts that the documents are not conclusive proofs of RREC's allegation that it was one which reclaimed the entire fifty-five hectares.

To our mind, plaintiff-appellant's assertion needs no further elaboration since thru the naked eye it can easily be seen and discerned that plaintiff-appellant, all along, believed and admitted that the fifty-five (55) hectares were undoubtedly reclaimed by RREC in contract with Pasay City.

The then Minister of Public Works (now deceased), who was the protector of the government interest as far as public works is concerned has already certified that RREC has reclaimed approximately fifty-five (55) hectares after having weighed and examined the proper documents and has made the actual inspection. A person in his position would not have made the declaration unless he believed it to be true and correct.

Besides, actual, physical inspection reduced to a documentary evidence executed by high public officials of the government, who is [sic] always presumed to have regularly performed his [sic] functions (see Sec. 3[m], Rule 131 of the Rules of Court), is always accorded high probative value by courts." [134]

In determining the size of the land reclaimed by RREC and Pasay City, and rejecting the contrary evidence of CCP and the National Government, the Court of Appeals Commissioners concluded that:

"There was no competent evidence presented by CCP and RP from which the actual area reclaimed by RREC can be conclusively established. While the thrust of CCP's evidence is to challenge the correctness of the assumption in Exh. "15" that the area reclaimed by RREC from 1959 to 1962 was approximately 55 hectares, the evidence presented was not based on personal knowledge of the witnesses as to the actual condition and / or depth of the seabed at the time of the reclamation. Moreover, even the actual or required elevation of the reclaimed area at that time was not satisfactorily established.

The testimonies of RREC's witnesses tend to confirm the correctness of the assumption in Exhibit 15 that RREC has reclaimed approximately fifty-five (55) hectares as of 1962."[135]

These findings and conclusions of the Court of Appeals are grossly erroneous and cannot be affirmed. The "Cost Data Items of Work Covered by the Republic Real Estate Corporation For Work Performed in Manila Bay" is a tabulation of the findings of the MPH on the extent of RREC's reclamation work in Manila Bay. Item No. 2 of the table states "[r]eclamation of approximately 55 has." Contrary to the finding of the Court of Appeals, this entry does not amount to a certification by the MPH. It merely describes the item of work where dredge fill was allegedly measured. The "Cost Data Items of Work x x x" was summarized in the letter of then Minister Baltazar Aquino. The full text of Minister Aquino's letter reads as follows:

"Sir:

This has reference to your claim based on "quantum meruit" pursuant to Presidential Decree No. 3-A for the reclamation work undertaken on the Manila Bay during the period from 1959 to 1962.

Considering that your claim is still the subject of Civil Case No. 2229-R, CFI of Rizal, Branch VIII, Pasay City, now pending appeal with the Court of Appeals (CA-G.R. 51349-R), we are confining our action hereon only on the determination of the physical measurement of your work accomplished in the reclamation project.

Based on the documents you have submitted, we have tentatively made, pending submittal of corroborative documents, such as latest partial payment vouchers (and its supporting papers) and release of retention vouchers, the findings on your accomplishments shown below in comparison with your claimed accomplishments:

ITEMS OF WORK QUANTITY

RREC CLAIM MPH FINDINGS

1.Improvement of existing submerged breakwater, 353.00 m. long (Sta 0+000-Sta. 0+353); construction of a seawall/breakwater, 47 M. long (Sta. 0+353-Sta. +440) and construction of submerged seawall / breakwater, 819 M. long (Sta. 0+400-Sta. 1+219 involving the following material:

- a) Class I Rocks 28,869.47 M.T. 25,675.84 M.T.
 - b) Class II Rocks 20,623.45 M.T. 19,021.98 M.T.
 - c) Class III Rocks 32,321.15 M.T. 26,704.25 M.T.
 - d) Bedding Rocks 31,866.62 M.T. 21,514.90 M.T.
(Protective coverings)
 - e) Class "B" 488.36 Cu. M. 467.40 Cu.M.
concretefiller
 - f). Sand Mattress 4,792.65 Cu.M. 61,188.11 Cu.M.
(Sand Fill)
- 2) Reclamation of approximately
55 Has. Involving:
- a) Dredge Fill 1,134,837.00 Cu.M. 1,173,993.00 Cu.M.
for Area A
(Trade & Convention Site Area)
 - b) Dredge Fill for 423,558.00 Cu.M. 400,958.00 Cu.M.
Area B (CulturalCenter Complex Area)
- 3) Construction of a
drainage Interceptor,
262.49 M. long
including manholes and
tappings to existing
pipes, involving:
- a) Class "A" Concrete 502.77 Cu.M. 488.87 Cu.M.
 - b) Reinforcing Steel 28,280.05 Cu.M. 27,329.44 Cu.M.
 - c) Foundation Fill 325.51 Cu.M. 525.04 Cu.M.
 - d) Excavation for Structures 2,707.02 Cu.M. 1,806.24 Cu.M.
 - e) Manholes and R.C. 4 units 4 units Pipes

In this connection, please submit all the statements of work accomplished by your Contractors including the quantities of pay items and accompanying vouchers.

Your claim for pre-operating (planning and detailed engineering) expenses and the mobilization of L.S. Dillingham Dredger, as well as clearing and grubbing of quarry site, preparation of two quarry benches, and construction and repair of marginal wharf may well be taken up when the cost issue is discussed after your case in court shall have been finally resolved in your favor.

Very truly yours,

(SGD)
BALTAZAR AQUINO

Minister."[136]

The letter above-quoted was rendered by Baltazar Aquino in his capacity as the head of the Ministry of Public Highways (MPH), the department tasked with the public works program of government. His alleged "certification" that RREC was able to reclaim 55 hectares of Manila Bay was merely "tentative, pending the submittal of corroborative documents." This is expressly stated in the letter itself. A tentative finding is provisional; it is not final. Its finality was conditioned on RREC's submission of documents to corroborate the

MPH's tentative findings. And there is no showing RREC submitted such documents so as to elevate the tentative status of the MPH findings to a full-fledged certification.

The "Items of Work" tabulating RREC's claim and the Ministry of Public Highways' findings do not state that the Ministry found RREC to have reclaimed 55 hectares. No. 2 of the "Items of Work" is merely a description of the area where dredge fill was found and measured. In fact, the quantity of dredge fill found by the MPH substantially differed from the quantity claimed by RREC.

Compromise negotiations continued. On June 10, 1981, then Solicitor General Estelito Mendoza wrote Mr. Vicente Asuncion, Jr. This letter reads in full:

"Sir:

This is with reference to your letter dated September 7, 1979 offering a compromise of the above-noted case by asking payment, based on quantum meruit, of the amount of P30,396,878.20 for the reclamation work on a portion of the Manila Bay area.

We have considered the proposal in the light of cost data, work volume accomplished and other information given us by the Ministry of Public Highways, and have found the amount of your claim to be unjustified. If settlement should be proper, the amount of P10,926,071.29 based on price levels obtaining in 1962 when the reclamation work was stopped by the court, and not on prevailing prices, would seem to be reasonable. The cost breakdown would be:

a. Work accomplished
based on 1962
price levels----- P 8,344,741.29

b. Mobilization of
equipment ----- 2,581,330.00

P10,926,071.29

We should like to inform you, in this connection, that we referred to the Public Estates Authority for consideration your offer for settlement on the belief that it has jurisdiction over all reclaimed lands. The PEA replied (see annex) stating that the land in question is not under its administration.

Pending determination of the proper Government agency authorized to entertain and consider your proposals and without prejudice to whatever funding requirements the proposed agreement may entail, we would like to know, as a start, if Republic Real Estate Corporation is agreeable to the amount of P10,926,071.29 as compensation in the event settlement is to be pursued.

We will appreciate your early reply.

Very truly yours,

(SGD)

ESTELITO P. Mendoza
Solicitor General."[137]

Then Solicitor General Mendoza rejected RREC's proposed compromise amount on the basis of "cost data, work volume accomplished and other information given by the Ministry of Public Highways." The Solicitor did not accept RREC's proposal on the basis of the Cost Data Report and Minister Aquino's letter only. He based it also on "other information given by the MPH." The Solicitor General's rejection of RREC's proposals affirms the tentativeness of the MPH findings.

In Item of Work No. 2 of Minister Aquino's letter, the MPH found that RREC was able to deposit 1,574,891 cubic meters of dredge fill for the reclamation of Manila Bay.[138] RREC now claims before this Court that this amount of dredge fill covered 55 hectares and the entry "reclamation of approximately 55 has." in Minister Aquino's letter certified to such finding. The Solicitor General Presented evidence before the Court of Appeals Commissioners that disproves RREC's claim. In its reply to an official query by then Solicitor General Ramon S. Desuaso, the Public Estates Authority made the following observations:

“The Public Estates Authority (PEA) as the primary agency of the national government on reclamation would like to call attention to a mis-reading or mis-appreciation, to the point of certainty, of the letter of the Ministry of Public Highways (MPH) dated 6 June 1979. This was used as exhibit in the case and served as the basis of the conclusion that RREC was able to reclaim 55 has. Covering the period 1959 to 1962.

An examination of the aforecited letter-exhibit will indicate that it is simply not possible physically for RREC to have reclaimed 55 has. Based on scientific, technical and engineering considerations. Please note the following, viz:

(i) The hydrographic nature of the area or the physical contour and configuration of the seabed measured at sea level (technically called MLLW or mean lower low water level representing the average of the low tide observed over a 20-year period) indicates an average depth of -7 meters. To undertake a reclamation under such a condition, the requirement is not only 7 cu.m. of dredge fill but an additional 3 more (technically described as +3 meters above MLLW) or a total of 10 cu.m. to make allowance for natural land settlement over time.

With the above in mind, a 55 has. Reclamation would therefore require a 5.5 Million cubic meters of dredge fill based on this computation i.e., 10 cu.m. of dredge fill x 10,000 sq.m. or 1 ha. Or 100,000 cu.m. per hectare x 55 has. Equals a total of 5,500,000 cu.m. The above cited letter-exhibit of the MPH validated only a total accomplishment of 1,574,891 cu.m. of dredge fill. In terms of hectares, this is equivalent to only 15.74 has of accomplishment.

(ii) The abovecited letter-exhibit of the MPH did not really certify to a 55 ha. accomplishment. What was certified or validated was the quantity of work accomplished measured principally in terms of cubic meters of dredge fill through a tabular comparison of what is claimed by RREC vis a vis the findings of MPH. Looking at the tabular presentation and noting the big difference in physical accomplishment between the claims of RREC and the findings of MPH it is simply untenable to come to the same conclusion that 55 has. was accomplished based on differing set of physical data.

(iii) The fact is, the 55 has. was mentioned in the column "Items of Work" which was simply a description or list of work to be done and not in the column under "Quantity" where the physical measure of work accomplished was made by MPH in comparison with RREC's claims. It is clear that the 55 has. was indicated under "Items of Work" simply as a target benchmark of work to be done x x x.

(iv) Finally, we wish to note that the original claim of RREC that it has reclaimed 21 has. is closer to the quantity in terms of cubic meters validated and certified by the MPH in the cited letter-exhibit of some 1,574,891 cu.m. or 15.74 has (say 16 has). To insist that this volume of cubic meters as certified by the MPH is sufficient to reclaim 55 has. is to come to the ridiculous conclusion that there was no reclamation undertaken (in the sense of recovering land submerged under water), that the Manila Bay of shore area has no depth or that the land is equivalent to the sea level, and what was done was simply to put it up to +3 meters above sea level (computation "3 cu.m. x 10,000 sq.m. or 1 ha. X 55 has. equals 1,650,000 cu.m. nearly approximating the 1,574,891 cu.m. validated by MPH. This is simply not possible.[139]

This opinion was rendered on June 19, 1992 by then Acting General Manager Manuel R. Berina, Jr. of the PEA. Engineer Berina affirmed the contents of his opinion before the Court of Appeals Commissioners. As an expert

witness, Engineer Berina testified that he and his staff exhausted the scenarios of reclaiming land in Manila Bay with 1,574,891 cubic meters of dredge fill. They found that in no way could such quantity of dredge fill reclaim fifty-five (55) hectares. Assuming that 1,574,891 cubic meters indeed filled 55 hectares, this produced a slice of land 55 hectares in area but with a thickness or depth of only 2.8 meters of dredge fill.[140] The reclamation of Manila Bay requires that the seabed be filled up to sea level, in addition, this filled up portion must be raised to minimum of three (3) meters from sea level to withstand the changing tide.[141] The 55 hectares of 2.8 meters of reclaimed land means that the land was never below sea level. If so, there was nothing to reclaim from the beginning.[142]

B. There is overwhelming evidence
that RREC did not reclaim
fifty-five hectares
of Manila Bay.

The general rule in this jurisdiction is that actual findings of the Court of Appeals are not reviewable but are final and conclusive on the Supreme Court. This is not a hard and fast rule, however. The Supreme Court may review such findings where the judgment of the appellate court is based on a misapprehension of facts, or the inferences made therein are manifestly mistaken, absurd or impossible.[143]

The allegation that RREC failed to reclaim fifty-five (55) hectares of Manila Bay is supported by the following evidence:

(1) The aerial photographs of the Manila Bay area taken by the Armed Forces of the Philippines (AFP) in 1966 and 1968 and filed with the AFP Mapping Center.[144] The AFP Mapping Center is the custodian of aerial films, negatives, photographs and documents kept by the government for the making of military maps and other purposes.[145] Captain Bailey Nograles, Chief of the AFP Mapping and Surveying Division of the Center, testified that the negatives of the photographs have been in the possession of his office since the time they were taken and have never been altered.[146] The photographs were reproduced by his staff from the office archives upon request by the CCP in 1997. They were released upon approval by the commanding officer of the Mapping Center.[147]

The photographs form a series of aerial views of Manila Bay.[148] On the left margin of each photograph are some figures-- a square, rectangle, circle and clocks and dials. Capt. Nograles identified these as indicators of the time the photograph was taken, the date and location of the area when the photograph was taken, the calibrated focal lens size of the camera used, the film roll number, the lens serial number, the camera number, the type of plane used in taking the photograph, and the altitude.[149] The first photograph indicates that it was taken on March 8, 1966.[150] The second third, fourth and fifth photographs do not indicate the date clearly although the other entries show that they were taken by the same camera, same lens and at the same altitude at approximately five-second intervals from the other.[151] The second series of photographs clearly indicate the date they were taken as "4-2-68" or April 2, 1968, and all other entries.[152]

The entries in the photographs have been summarized in the flight data presented by Capt. Nograles. Flight data are usually entered into the film negatives by the company or person who developed the aerial photographs.[153] Capt. Nograles merely reproduced the data from the film negative. The flight data for the first six aerial photographs indicate that they were taken on March 8, 1966.[154] The second flight data showed that the next three photographs were taken in 1968.[155]

The photographs are presumed to have been taken by the military in the regular course of duty.[156] They form part of the official records of the AFP Mapping Center which is a technical service of the AFP, the military arm of

government under the Department of National Defense.[157] As official documents, the photographs are public documents and therefore need no authentication.[158] Moreover, the 1966 photographs are ancient documents. They are unblemished and were more than thirty (30) years old when produced from the custody of the AFP Mapping Center in 1997. Under the Revised Rules on Evidence, ancient documents require no authentication.[159]

The series of photographs show a strip of mass jutting out from the mainland towards Manila Bay. The mass is an irregularly-shaped rectangle with its right side (eastern side) adjacent to the mainland. The length of the right side (eastern side) is twice the length of the left side (western side) with the base (south) sharply curving inwards. Within the rectangle are light and dark patches. This formation was examined by Architect Manuel T. Manosa, Jr. who measured, analyzed and verified his findings with the use of maps and computer digital analysis. Architect Manosa found that the mass extended from the mainland to the bay for about one kilometer.[160] The light patches in the rectangle showed surface land located primarily in the center and lower right side (or southeastern side) and some patches in the southwestern and northeastern portions. The dark patches showed water. The total area of visible land measure approximately sixteen point 8 (16.8) hectares in the 1966 photographs. The 1968 photographs showed that two point eight (2.8) hectares were added to the land thereby increasing the area to nineteen point six (19.6) hectares.[161]

Architect Manosa is an architect and environmental planner and has been President for twenty-one years of the Planning Resources and Operations Systems, Inc., a corporation specializing in city planning and consulting services.[162] Testifying as an expert witness, he declared that aerial photographs are taken by special cameras and, although expensive, are very accurate. These photographs are important in city planning and development because they accurately trace the sequence of changes in an urban area.[163] Architect Manosa's testimony was not discredited on cross and additional cross-examinations by RREC and Pasay City.[164]

(2) The photographs of the CCP site taken in 1967 and 1968 during the construction of the CCP main building as identified and presented by Architect Ruben A. Protacio, the Managing Partner of the architectural firm of Leandro V. Locsin and Partners.[165] Leandro V. Locsin and Partners conceptualized the blueprint of the CCP main building. As a member of the firm, Architect Protacio was personally involved in the project from the design to the completion of the building.[166] Architect Protacio presented and identified seven (7) photographs taken during the construction of the CCP main building. The Photographs were part of progress reports submitted by the building contractor to Leandro Locsin and Partners which reports were verified by Architect Protacio and his team members by personal inspection of the site.[167] These photographs were found in the archives of Leandro V. Locsin and Partners and were certified by Architect Protacio as a true and faithful reproduction of the main building construction site from 1967 to 1968.

The general rules in this jurisdiction is that photographs, when presented in evidence, must be identified by the photographer as to their production and testified as to the circumstances under which they were produced. The photographer, however, is not the only witness who can identify the pictures. The faithful representation of the photograph may be proved prima facie by the testimony of those who were present at the time it was taken, or by any other competent witness who can testify as to its exactness and accuracy.[168] Once proved, the court may admit it subject to impeachment as to its accuracy.[169] The exactness and accuracy of the photographs were certified by Architect Protacio and these have not been impeached.

The value of a photograph lies in its being a correct representation or reproduction of the original, and its admissibility is determined by its accuracy in portraying the scene at the time the picture was taken.[170] The photographs show that the CCP main building was the very first improvement constructed on the reclaimed area. The area where the CCP main building itself was being constructed was clearly above-water. Behind the

construction was land but further beyond where the Folk Arts Theater (FAT) now stands had some parts in water.[171] The CCP main building was constructed facing east, towards Roxas Boulevard on the mainland. To the immediate left of the main building[172] was land but further to its left rear where the Philippine International Convention Center (PICC), the Philippine Plaza Hotel, the Film Center and all structures now existing are located, were the waters of the bay.[173] It was all sea.

Architect Protacio himself testified that when his firm, Leandro V. Locsin and Partners, constructed the FAT in 1974, and the PICC and the Philippine Plaza in 1975, reclamation of the land was done simultaneously with the construction of the buildings.[174]

(3) The eyewitness testimony of Architect Antonio S. Dimalanta whose firm, Trans-Asia Phil., of which he was President from 1965 to 1983, was the engineering consultant and project manager for the construction of the CCP main building, the FAT, the PICC and Philippine Plaza Hotel. Architect Dimalanta visited the proposed site for the CCP in 1965. He saw that the CCP site topography was irregular and that there was no road or any improvement on the land except for a seawall running parallel to Roxas Boulevard starting from the breakwater of the Manila Yacht Club and the Philippine Navy extending southwards to the area where the Coconut Palace or Tanghalang Pilipino now stands. He saw that within the seawall was a large patch of visible land but that its elevation was lower than Roxas Boulevard. To prepare the site for CCP, his firm surveyed the area and coordinated with the Department of Public Works (DPW) who filled in the land to bring it to the level of Roxas Boulevard.[175] During the construction of the CCP main building, his firm surveyed the land periodically as the DPW continuously reclaimed.[176] The DPW also filled in the patches of water behind the CCP main building such that by 1968, the condition of the land improved.[177] Architect Dimalanta supported his testimony with a photograph of the reclamation site taken by the company photographer in 1968 which was part of the progress reports his office submitted to the the firm of Leandro V. Locsin and Partners.[178] The photograph shows continuous land, sandy, behind the CCP main building all the way to the seawall.[179] To the left rear of the CCP main building, however, were the waters of the bay and along its shores were shanties.[180]

According to Architect Dimalanta, reclamation by the DPW never ceased and was never interrupted.[181] The FAT was constructed in 1974. Reclamation continued and the land steadily increased in size. Reclamation extended to the left rear of the CCP main building where PICC and Philippine Plaza Hotel were eventually constructed. And even during the construction of these two buildings, reclamation never ceased.

(4) The eyewitness accounts of Dr. Lucrecia Kasilag and Mrs. Rose Duavit Cruz. Dr. Lucrecia Kasilag was the Artistic Director of the CCP in 1966 and its President from 1976 to 1986. She attended the formal ground-breaking ceremony of the CCP main building on April 17, 1966 at the reclamation site. The only visible land was the area where the building was to be constructed and the neighboring Philippine Navy Compound.[182] Much of the surrounding area of the site was under water.[183]

Mrs. Rose Duavit Cruz was with the Office of the President in 1966 and was assigned to the CCP project as Project Coordinator and Comptroller. She became Administrative Director of the CCP from 1970 to 1976. She testified that in 1966, the immediate area where the CCP main building was being constructed was the only land available in Manila Bay. The area behind was under water during high tide and had to be filled in.[184] In 1970, when the main Central Bank building was being constructed across Roxas Boulevard, she allowed Central Bank, per their request, to dump debris and rocks on the land behind the CCP main building. She "welcome all the filling materials in Manila to be dumped there." [185] Central Bank dumped its debris on the lot where the Design Center Building now stands. Beyond the Design Center Building was the FAT which was constructed from 1973 to 1974. The lot of the FAT was then below sea level such that CCP had to finance the cost of filling it up. It was the Department of Public Works and the Philippine Navy that filled up the land and continued the

reclamation.[186] Eventually, the land was filled by materials delivered by trucks twenty-four (24) hours a day.[187] Reclamation extended to the area to the left rear of the CCP main building which was still underwater.[188] In the early 1970's the Construction Development Corporation of the Philippines (CDCP) took over and continued the reclamation southwards to Buendia.[189]

(5) The testimony of RREC's and Pasay City's witness, Mr. Lauro Marquez and the "General Development Plan"[190] and "contract to Sell"[191] he identified. Mr. Marquez is a member of the Board of Directors of RREC since 1993 until the present. When RREC was organized in 1958, he was a stockholder of the corporation and one of its two (2) exclusive brokers for the sale of portions of the reclaimed land.

Mr. Marquez testified that in 1961, RREC, through him and the other broker, sold to various third persons 165 subdivided lots in the reclaimed land totalling 250,600 square meters in area, or approximately 25 hectares. Each sale was evidenced by a Contract to Sell[192] executed by RREC and the buyer. The Contract to Sell incorporated and made reference to the Reclamation Agreement between RREC and Pasay City, specifically the provision where RREC must reclaim at least fifty (50) hectares before it can be allowed to subdivide, develop and sell portions thereon. According to Mr. Marquez, since RREC was able to sell lots, then the presumption is that RREC had already reclaimed and developed at least fifty (50) hectares of Manila Bay.[193]

This presumption has been rebutted by Mr. Marquez's testimony itself. The lots sold by RREC were subdivided in accordance with a General Development Plan approved by the City Engineer and City Mayor of Pasay in November 1960.[194] The General Development Plan was attached to the Contract to Sell. The Fourth Whereas Clause of the Contract to Sell states that the "City Mayor and City engineer of Pasay have approved the attached General Development Plan for the first fifty-five (55) hectares of the Pasay reclamation project." Mr. Marquez admitted on the witness stand that the General Development Plan attached the Contract to Sell covered Phase I of the project and that this covered an aggregate area of 347,752 square meters of thirty four point seven (34.7) hectares only.[195] In other words, the General Development Plan did not cover fifty-five (55) hectares but merely thirty-four hectares of reclaimed land. Mr. Marquez said that RREC had another General Development Plan for other portions of the reclaimed property. When requested to produce this Plan, Mr. Marquez declared that he could not produce it before the Commissioners.[196] The records of the then CFI and the Court of Appeals do not reveal whether such other Plan has ever been submitted.

The words of the Contract to Sell provides that RREC promised to sell the lots after shall have been reclaimed. The pertinent portions of the Contract read as follows:

"WHEREAS, the PARTY OF THE SECOND PART[197] will require and use additional funds to proceed with the reclamation project on the terms and conditions of the above-mentioned agreements, and the PARTY OF THE FIRST PART,[198] being fully aware thereof and in view therefor, is hereby offering to advance and remit to the PARTY OF THE SECOND PART the amount hereinunder stated, provided, that the PARTY OF THE SECOND PART promises to sell to the PARTY OF THE FIRST PART the lot indicated in the attached General Development Plan after said lot is reclaimed and the City of Pasay transfers and delivers possession of and title to said lot in favor of the PARTY OF THE SECOND PART hereof in accordance with the above-mentioned agreement attached as Annex "A" hereof, at the price which the PARTY OF THE FIRST PART considers cheap, and on the terms and conditions, hereunder fixed;

WHEREAS, in view therefore, and in accordance with the above-quoted provisions of the Agreement attached as Annex "A" hereof, the PARTY OF THE SECOND PART is going to exercise at the proper time its irrevocable option to purchase from Pasay City the reclaimed land indicated in the attached General Development Plan;

NOW, THEREFORE, premises considered, the PARTY OF THE FIRST PART hereby offers and agrees to buy, and the PARTY OF THE SECOND PART hereby accepts said offer, and hereby agrees to sell to the PARTY OF THE FIRST PART, the lot to be reclaimed by the PARTY OF THE SECOND PART as attorney-in-fact of Pasay City, and to be sold, transferred and delivered by said City in favor of the PARTY OF THE SECOND PART, in accordance with the abovementioned agreements, indicated and identified in the attached General Development Plan, Annex "B" hereof, as follows:

Lot No. ..., Block No... with an approximate area of ... (...) square meters, under the following terms and conditions:

1.xxx[199]

As the area covered by the attached General Development Plan after reclamation, shall still be surveyed and subdivided and the technical description of each lot therein, subject to review and approval by the proper governmental authority, the area of the lot covered by this Contract to Sell is subject to change; if said area is bigger than the area stated above upon actual survey and subdivision of the lots of the attached General Development Plan and per its approved technical description, the PARTY OF THE FIRST PART shall pay the corresponding proportionate increase of the total purchase price on the basis of the above terms and conditions; conversely, if the area is smaller than the area as stated above, the PARTY OF THE SECOND PART shall make the corresponding refund to the PARTY OF THE FIRST PART also taking into account the above terms and conditions and the amount of each of the above installments shall also be reduced accordingly;

2.xxx.

3. The PARTY OF THE FIRST PART may take possession of the above-mentioned lot and make improvements thereon, not contrary to law, ordinance, governmental zoning rules and regulations, as well as rules and regulations, easements, and restrictions contained in the Deed of Restrictions hereto attached and marked as Annex "C" hereof, adopted by the PARTY OF THE SECOND PART for some areas covered by the attached General Development Plan, after said lot is reclaimed and possession and title thereto are delivered and transferred by Pasay City to the PARTY OF THE SECOND PART.

xxx.

6. Upon full payment of the above-payment total purchase price together with the interests thereon, the PARTY OF THE SECOND PART shall execute the corresponding deed of absolute sale in favor of the PARTY OF THE FIRST PART of the abovementioned lot, when reclaimed and after the City of Pasay delivers and transfers possession and title to said lot to the PARTY OF THE SECOND PART, free and clear of all liens and encumbrances, except such rules and regulations, and such easements, restrictions and zoning regulations referred to in paragraph 3 hereof; and all expenses for any documentary stamps and registration fees for the registration of said instrument is for any reason invalidated by the court, nor for any fortuitous events."[200]

RREC promised to sell the lot indicated in the General Development Plan "after said lot is reclaimed and the City of Pasay transfers and delivers possession of and title to said lot "in favor of RREC. RREC expressly acknowledged that it was going to exercise its irrevocable option to purchase the reclaimed land indicated in the General Development Plan "at the proper time;" and that as the area covered in the Plan after reclamation "shall still be surveyed and subdivided x x x subject to the review and approval by the government, the area may be subject to change."

The contract speaks for itself. At the time RREC sold lots on the reclaimed land, the lands had not yet been reclaimed and RREC could not have, in any way, exercised its irrevocable option to purchase the land. The money paid by the buyers was used by RREC to finance the reclamation project. The lots did not yet exist and the

Contract to Sell fully apprised the buyers of this fact. Mr. Marquez himself admitted that some buyers did not inspect the reclamation site but merely looked at the General Development Plan before they decided to buy.[201]

There is no evidence that the provisions of the Contract to Sell had been amended and that RREC had been able to exercise this irrevocable option. Lacking such evidence, the Contract to Sell stands as the only instrument that governed the sale of the lots. And this Contract unmistakably shows that RREC engaged in preselling the lots. RREC, of and by itself, directly sold to third persons lots it did not own and did not yet exist, and used the proceed from this sale to produce the land promised to sell.

RREC's claim that it had reclaimed and developed fifty-five (55) hectares of Manila Bay before it was taken over by the National Government is belied by the evidence--overwhelmingly and unmistakably so. What the evidence shows is that RREC, as attorney-in-fact of Pasay City, started reclaiming land in Manila Bay in 1959 pursuant to the Reclamation Agreement and Pasay City Ordinances Nos. 161 and 158. As the reclamation proceeded, RREC, citing its irrevocable option to purchase under the Reclamation Agreement, directly sold portions of the land being reclaimed to third persons and used the funds derived from the sale to finance the reclamation project. The inexistent lots were subdivided and sold by RREC on the basis of the General Development Plan, a proposed subdivision plan of the reclaimed area approved and certified by the City Mayor and City Engineer of Pasay. Reclamation work begun by RREC ceased after the CFI issued a writ of preliminary injunction on April 26, 1962. The land RREC reclaimed and left unfinished was rectangular in shape, with a large patch of land in the center and patches of land and water surrounding it. The visible land on the eastern portion of the rectangle covered the lots where the CCP main building now stands. There were patches of water further behind the main building where now stand the Design Center Building, the FAT, the FAT Parking Lot, Tahanang Pilipino, the Administration Building, and the Flagpole site. The southeast portion of the rectangle was a small mass of land which is now part of the land leased by Boom na Boom. Behind it, where the Philcite, the PICC and the Philippine Plaza were erected and the bulk of the Boom na Boom are located, were the waters of Manila Bay. In 1965, the National Government, through the then Department of Public Works, entered into the area and continued the reclamation work of RREC by filling in the patches of water within the rectangle. It was within this area that the CCP main building was constructed from 1965 to 1967. On September 10, 1966, President Marcos issued Proclamation No. 100 reserving the parcel of land where the CCP main building was being constructed as site for a Philippine Cultural Center. The land reserved was surveyed as Swo-40880 and covered a total of 245,690 square meters or 24.5 hectares. On December 15, 1967, after the completion of the CCP main building, President Marcos issued Proclamation No. 315 revoking Proclamation No. 100 and reserving a larger parcel of land as site for a Philippine Cultural Center. The land reserved was 257,898 square meters. Or approximately 25.79 hectares under Swo-40880. It was the same land originally reserved under Proclamation No. 100 but with almost two hectares added on the western side adjacent to the seawall.[202] The land granted by Proclamation Nos. 100 and 316 is composed of the lots of the CCP main building, the CCP open parking lot, the Design Center Building, the FAT, the FAT parking lot, and all other lots within the rectangular mass left by RREC.[203] In other words, Swo-40880 encompassed the entire rectangular mass reclaimed by RREC. On October 5, 1972, the CCP was created by P.D. No. 15 which conveyed to it the 25.79 hectares reserved in Proclamation No. 315. In 1973, the reclamation by the Department of Public Works was taken over by CDCP which continued and extended reclamation south of the rectangle where the waters of the bay were. On August 22, 1975, P.D. No. 774 conveyed to CCP two or more parcels totalling 504,717 square meters or approximately 50 hectares under Swo-04-000078 and Swo-04-00141. These parcels covered the land outside of the rectangular mass reclaimed by RREC and these are the lots where the PICC, Philippine Plaza, Philcite, Fiesta Island Pavilion, the parking lots and Boom na Boom now stand. [204]

The Solicitor General, through the PEA, claims that RREC was able to reclaim fifteen point seventy-four (15.74)

hectares of land from Manila Bay.[205] The CCP claims that based on the 1966 aerial photographs examined by Architect Protacio the rectangular land mass reclaimed by RREC measured approximately sixteen point eight (16.8) hectares.[206] RREC and Pasay City did not present further evidence before the Court of Appeals Commissioners to prove the size of the area they actually reclaimed. They relied solely on the contents of Minister Aquino's letter and the "Cost Data Items of Work" allegedly certifying that they reclaimed fifty-five (55) hectares of Manila Bay. What is clear, nevertheless, is that RREC, on behalf of Pasay City, was able to reclaim, albeit unfinished, that mass of land in Manila Bay on which the CCP main building was constructed.

Given all the facts, Pasay City and RREC cannot be left uncompensated. The National Government should not be unjustly enriched[207] at the expense of Pasay City and RREC. Pasay City and RREC deserve to be compensated quantum meruit and on equitable consideration for their work. It is not practical at this stage to award Pasay City and RREC any land by way of compensation. The controversy as to the location of the lots location of the lots to be awarded will certainly result in another cycle of cases as all these lots are now part of the Cultural Center Complex. The compensation should therefore be in cash plus legal interest of six per cent (6%) per annum from 1962 until full payment.

I agree with the majority of the Court that RREC and Pasay City should be paid the amount of P10,976,071.29 plus legal interest of six per cent (6%) per annum from 1962 until full payment. During the pendency of the case before the Court of Appeals, RREC proposed an amicable settlement with the National Government upon payment of a certain sum of money. The Solicitor General counterproposed the amount of P10,976,071.29 as a fair valuation of RREC's and Pasay City's reclamation project based on 1962 price levels. In a letter dated June 15, 1981, RREC and Pasay City accepted the amount of P10,926,071.29 but with the addition of six per cent (6%) interest per annum from 1962 until full payment of the obligation.

The rule in civil cases is that an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror.[208] Where, however, the amount named in the offer to accept a certain sum in settlement appears to have been arrived at as a fair estimate of value, it is relevant. Hence, the rule of exclusion of compromise negotiations does not apply when there is no denial, expressed or implied, of liability and the only question discussed relates to the amount to be paid.[209] In the instant case, the compromise negotiations show that the only question addressed by the parties was the amount of compensation to be paid by the National Government to RREC and Pasay City. The aforementioned offer of RREC can therefore be used as a basis for compensation. The offer is used to compensate RREC and not to impose any liability.

CONCLUSION

By affirming the Decision and Amended Decision of the Court of Appeals, the people will lose billions of pesos, the conservative approximate of which runs from 20 to 30 billion. But more than its peso and centavo significance, the Decision and Amended Decision, unless reversed, will deal arts and culture a debilitating blow. Arts and culture are not empty words in the Filipino psyche. Our great national hero, Dr. Jose Rizal, strove zealously to awaken in his countrymen a meaningful awareness of their indigenous culture and to develop in them a suitable appreciation.[210] To this end, Rizal did everything he could to preserve and promote the cultural advancement of his countrymen. He wrote poetry in the Tagalog dialect, now the Filipino language. He annotated Morga's "Sucesos de las Islas Filipinas" for the purpose of making "our past known so as to better judge the present and assess our movement in three centuries." [211] Rizal saw our rich cultural heritage and believed in the potentialities of his countrymen in the field of arts and letters. He took pride in the awards reaped by the paintings of Juan Luna and Felix Resurreccion Hidalgo. He also proudly acknowledged the fiery and convincing editorials of Marcelo H. del Pilar which earned for him the respect of his own antagonists.

Rizal, however, was not blind, bigoted and intolerant nationalist. He stood not only for the preservation and

development of Philippine culture, cleansed of its imperfections. He also favored the freest possible assimilation of the best there is in the culture of other lands.[212]

The CCP has helped us realized the vision of our national hero. The CCP Complex is the only area in the Philippines that is fully devoted to the growth and propagation of arts and culture. It is the only venue in the country where artists, Filipino and foreign alike, may express their art in its various forms, be it in music, dance, theater, or in the visual arts such as painting, sculpture and installation art or in literature such as prose, poetry and the indigenous oral and written literary forms. The theaters and facilities of the Complex have been utilized for the staging of cultural presentations and for the conduct of lectures and demonstrations by renowned visiting artists. The wide open spaces of the Complex are the only open spaces in Metropolitan Manila that have been used to accommodate huge crowds in cultural, artistic and even religious events.

But the fulfillment of CCP's mandate did not start and end in Manila Bay. The CCP, through its Board of Trustees, has reached out to the provinces through programs, scholarships and national competitions for young artists. It has helped young artists hone their craft and develop their creativity and ingenuity. It has also exposed the Filipino artists to foreign art and advanced instruction, and thereby develop world-class artists, earning for the Philippines the respect and admiration of other countries. The CCP has likewise exposed the ordinary Filipino to the national culture. It has enhanced public interest in Philippine art in various forms, in our history, in our indigenous and modern culture, and at the same time, enriched us with the culture of other countries. The CCP has indeed emerged as a dynamic force in the promotion of the country's artistic and cultural heritage and the development of new and modern art forms. Through the years, it has helped raise the Filipino consciousness to our nationhood, and in the process, inculcated love for our country.

Article XV of the 1987 Constitution provides:

"Sec. 14. The State shall foster the preservation, enrichment, and dynamic evolution of a Filipino national culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression.

Sec. 15. Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

x x x

The state recognizes the vital role arts and culture play in national development, indeed, a nation that would give up its cultural patrimony in exchange for economic and material pursuits cannot be doomed as a "people without a soul." [213] The Cultural Center of the Philippines has helped us capture this "soul."

I vote to annul the Decision dated January 28, 1992 and the Amended Decision dated April 28, 1992 of the Court of Appeals in CA-G.R. No. 51349. The Reclamation Agreement between Pasay City and RREC as well as Pasay City Ordinance Nos. 121 and 158 are contrary to the provisions of R.A. No. 1899 and should also be voided.

I also vote to award Pasay City and Republic Real Estate Corporation the sum of P10,926,071.29 plus interest thereon of 6% per cent annum from May 1, 1962 until full payment. The amount shall be paid by the National Government and shall be shared equally by Pasay City and RREC.

I also vote to dismiss the petition in G.R. No. 105276.

[1] Penned by Justice Quirino Abad-Santos and concurred in by Justices Arturo Buena and Minerva Gonzaga-Reyes.

[2] Agreement dated May 8, 1958, Exhibit "P-1", Folder No. of Plaintiff's Exhibits, pp. 40-44.

- [3] Exhibit "P," Folder No. 1 of Plaintiff's Exhibits, pp. 45-46. By its express terms, Ordinance No. 158 "amended" Ordinance No. 121. However, Ordinance No. 158 is a re-enactment of Ordinance No. 121.
- [4] Jose Bautista, et al.
- [5] See Second Amended Complaint, Annex "E" to the Record on Appeal.
- [6] Id.
- [7] Answer of RREC to the Amended Complaint, Annex "F" to the Record on Appeal; Answer of Pasay City to the Amended Complaint, Annex "G" to the Record on Appeal, CA Records.
- [8] Annex "H" to the Record on Appeal; CA Records.
- [9] Approximately 25.78 hectares.
- [10] Section 12, P.D. No. 15.
- [11] Memorandum for the Defendant-Appellee Republic Real Estate Corporation, p. 3, Court of Appeals Rollo, p. 501.
- [12] Court of Appeals Decision, p. 11
- [13] Approximately 50.47 hectares.
- [14] Section 4, P.D. 1084.
- [15] Comment of the Republic of the Philippines, p. 10, Rollo, p. 191.
- [16] Id., p. 11, Rollo, p. 191; see also Annex "I" to the Manifestation of CCP, Court of Appeals Rollo, p. 479.
- [17] Manifestation and Motion of Appellant, Court of Appeals Rollo, pp. 528-529.
- [18] This is at the intersection of Puyat Avenue (formerly Buendia) and Roxas Boulevard.
- [19] Letter of counsel for RREC, V. Asuncion, to the Solicitor General, Annex "K" to the Memorandum for Intervenor CCP, Rollo, G.R. No. 103882, pp. 880-884.
- [20] Manifestation of Appellant, Court of Appeals Rollo, pp. 562-563.
- [21] Comment of the Republic of the Philippines, p. 12, Rollo, p. 193.
- [22] Court of Appeals Rollo, pp. 568, 586.
- [23] Court of Appeals' Decision, pp. 40-41.
- [24] Court of Appeals' Decision, pp. 41-42, Rollo, pp. 162-163.
- [25] CA Amended Decision, p. 12, Rollo, p. 176.
- [26] CA Amended Decision, p. 14, Rollo, p. 177.
- [27] CA Amended Decision, p. 19, Rollo, p. 178.
- [28] Motion for Leave to File Attached Petition-in-Intervention, Rollo, G.R. No. 103882, pp. 322-324.
- [29] TSN of June 18, 1997, pp. 51, 59, 66.
- [30] Justices Arturo Buena, Chairman; Minerva Gonzaga-Reyes, Senior Member; and Quirino Abad-Santos,

ponente.

[31] Resolution dated September 10, 1997, p. 2.

[32] *Id.*, pp. 54-59.

[33] G.R. No. 103882, Petition, p. 18, Rollo, p. 32.

[34] G.R. No. 103882, Petition-in-Intervention, p. 8, Rollo, p. 338.

[35] G.R. No. 105276, Petition, pp. 14-15, Rollo, pp. 79-80.

[36] 6724-R, 49 O.G. No. 5, p. 1863 [1953].

[37] *Id.*, at 1865.

[38] R.A. 1132 amending R.A. 161.

[39] *Village of Glencoe v. Hurford*, 148 N.E. 69, 73 [1925].

[40] *Sutherland*, *Statutes and Statutory Construction*, vol. 2A, 4th ed., p. 197 [1973].

[41] *Id.*, at 182.

[42] *Ramos v. Court of Appeals*, 108 SCRA 728 [1981]; *Republic Flour Mills, Inc. v. Commissioner of Customs*, 39 SCRA 269 [1971].

[43] *Banawa v. Mirano*, 97 SCRA 517 [1980]; *Espiritu v. Cipriano*, 55 SCRA 533 [1974]; see also *Agpalo*, *Statutory Construction*, pp. 94-95 [1990].

[44] *Victoria v. Commission on Elections*, 229 SCRA 269, 273 [1994]; *Globe-Mackay Cable and Radio Corporation v. NLRC*, 206 SCRA 701, 711 [1992].

[45] This is derived from the maxim *index animi sermo est*, i.e., speech is index of intention (*Globe-Mackay Cable and Radio Corporation v. NLRC*, at 711).

[46] *Globe-Mackay Cable and Radio Corporation v. NLRC*, *supra*.

[47] *Id.*, *Aparri v. Court of Appeals*, 127 SCRA 231, 241 [1984]; *Espino v. Cleofe*, 52 SCRA 92, 98 [1973].

[48] L-21870, February 3, 1965.

[49] L-22669, February 3, 1965. Before the Ponce cases, the Supreme Court, in an obiter dictum in *Ignacio v. Director of Lands*, 108 Phil. 335, 337-338 [1960]) declared that foreshore land is covered by the ebb and flow of the tide, and, pursuant to the Spanish Law of Waters of 1866, formed part of the public domain.

[50] 131 SCRA 532, 539 [1984].

[51] *Id.*, at 539.

[52] *State v. Stueve*, 150 N.W. 2d 597, 599 (Iowa 1967); see also *Sutherland*, *supra*, at 256-261.

[53] *Village of Glencoe v. Hurford*, *supra*; *People v. Illinois Central Railroad Co.*, 314 Ill. 373, 145 N.E. 731 [1924]; see also *Martin*, *Statutory Construction*, p. 123, citing *Lenawee County Gas. v. Adrian*, 10 ALR 1328.

[54] *Calvert v. Audio Center, Inc.*, *supra*; *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 648, 75 L Ed 1324, 51 S Ct 587 [1931]; *U.S. v. Henning*, 344 U.S. 66, 97 L Ed 101, 73 S Ct 114 [1952]

[55] *People ex rel James v. Illinois Cent. R. Co.*, 145 N.E. 731, 733 [1924]; *Village of Glencoe*, *supra*, at 75-76 [1925]; see also Black, *Handbook on the Construction and Interpretation of Laws*, p. 596 [1911].

[56] *Manila Lodge No. 761 v. Court of Appeals*, 73 SCRA 162, 178 [1976]; *River Dev. Corp. v. Liberty Corp.*, 144 A. 2d 180, 191, 51 N.J. Super. 447 [1958]; *City of Passaic v. State*, 109 A. 2d 294, App. Div. [1954].

[57] Black, *supra*, at 499.

[58] *Realty Investment, Inc. v. Valderama*, 84 Phil 842 [1951]; *Philippine National Bank v. Jacinto*, 88 Phil. 376 [1951]; *Herrerias v. Javellana*, 84 Phil. 608 [1949]; see also Agpalo, *supra*, at 212.

[59] *Manila Lodge No. 761 v. Court of Appeals*, *supra*, at 178-- this involved the reclamation of a portion of Manila Bay by the City of Manila; see also *Home for Aged Women v. Commonwealth*, 202 Mass 422, 89 NE 124, 129 [1909].

[60] Black, *supra*, at 130.

[61] *Sturges v. Crowninshield*, 4 Wheat (17 US) 122, 4 L. Ed. 529 [1819].

[62] *Manila Lodge No. 761 v. Court of Appeals*, 73 SCRA 162, 186 [1976]; *Development Bank of the Philippines v. Commission on Audit*, 231 SCRA 202 [1994]; *Government Service Insurance System v. Court of Appeals*, 218 SCRA 233 [1993].

[63] Exhibit "P", Folder No. 1 of Plaintiff's Exhibits, pp. 40-44.

[64] See Photographs of Manila Bay and the area to be reclaimed, Exhibits "C-3" to "C-20"; "D" to "G-1;" Folder No. 1 of Plaintiff's Exhibits, pp. 5 to 17.

[65] Sections 1 and 9.

[66] Paragraph 9.

[67] Martin, *Statutory Construction*, p. 62 [1967] citing *Martin v. Com. of Internal Revenue*, C.C.A. 61 F. 2d, p. 942; *Breedlove v. Gen. Baking Co.*, 23 2d, pp. 428, 483; *Acosta v. Flor*, 5 Phil. 18 [1905].

[68] Commonwealth Act No. 541 (1940) then mandated all government branches, offices and subdivisions to undertake a public bidding in the awarding of contracts for the construction or repair of public works.

[69] Second Whereas Clause; Paragraph 1.

[70] Section 2.

[71] Section 5.

[72] Paragraphs 1 and 2.

[73] Section 6.

[74] Paragraph 4.

[75] Once RREC exercises this option, it has the right to choose the portion of the land it shall purchase and "take steps necessary to obtain title to the lands in its name at the expense of Pasay City" (Paragraphs 5 and 6).

[76] Section 5.

[77] *Gonzaga v. Court of Appeals*, 51 SCRA 381, 388 [1973].

[78] Santiago v. de los Santos, 61 SCRA 146, 152 [1974].

[79] Pinero v. Director of Lands, 57 SCRA 386, 391 [1974].

[80] Lee Hong Hok v. David, 48 SCRA 372, 377 [1972]; Krivenko v. Register of Deeds, 79 Phil. 461, 468 [1947].

Section 1, Article XIII of the 1935 Constitution reads:

"Sec. 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources belong to the State x x x."

[81] Section 8, Article XIV of the 1973 Constitution reads:

"Sec. 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. x x x."

[82] Section 2, Article XII of the 1987 Constitution reads:

"Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. x x x."

[83] Lee Hong Hok v. David, *supra*, at 377; Carino v. Insular Government, 212 U.S. 449, 457 [1909]; Valenton v. Murciano, 3 Phil. 537, 543 [1904].

[84] Lee Hong Hok v. David, *supra*, at 378; Valenton v. Murciano, *supra*, at 542-543.

[85] Valenton v. Murciano, *supra*, at 543.

[86] Carino v. Insular Government, *supra*, at 457.

[87] Shively v. Bowlby, 152 U.S. 331, 337 [1893]

[88] Martin v. Waddell, 10 L. ed. 997, 1012, 41 U.S. 16 Pet. 367 [1842].

[89] Shively v. Bowlby, *supra*, at 337.

[90] Martin v. Waddell, *supra*, at 1012.

[91] Shively v. Bowlby, *supra*, at 336; Stein v. Brown Properties, Inc., 104 So. 2d 495, 499 [1958]; Money v. Wood, 118 So. 357, 359, 153 Miss. 17 [1928].

[92] *Id.*, *Id.*

[93] Ker & Co. v. Couden, 223 U.S. 268, 56 L. ed. 432, 435 [1912].

[94] Coquia and Defensor-Santiago, Public International Law, p. 357 [1993]; Salonga and Yap, Public International Law, p. 79 [1992].

Article 2 of the 1982 UN Convention of the Law of the Sea provides:

"1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of the sea, described as the territorial sea.

2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

x x x."

[95] The Shores include the foreshore. As defined in Hacut, the foreshore is that part of the land immediately in front of the shore. It is that part between the high-and low-water marks.

[96] *Insular Government v. Aldecoa*, 19 Phil. 505, 514 [1911]; *Manila Lodge No. 761 v. Court of Appeals*, 73 SCRA 162, 181 [1976].

Article 339 of the Civil Code of Spain reads:

"Art. 339. Property of public ownership is

1. That devoted to public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, riverbanks, shores, roadsteads, and that of a similar character.

x x x."

[97] Article 420 of the Civil Code of the Philippines reads:

"Art. 420. The following are property of public dominion:

1. Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character

x x x."

[98] *Kock Wing*, 54 Phil. 436, 444 [1930] citing *Manresa's Commentaries*, vol. 3, p. 68, 5th ed.

[99] *Insular Government v. Aldecoa & Co.*, 19 Phil. 505, 513 [1911].

[100] *Kock Wing v. Phil. Railway Co.*, *supra*, at 444.

[101] Private lands near Manila Bay which disappeared due to natural erosion because of the ebb and flow of the tide and which were later reclaimed by the government by filling in belongs to the public domain for public use (*Government of P.I. v. Cabangis*, 53 Phil. 112 [1929]). Land reclaimed from the sea as a result of the construction by the government of a breakwater belongs to the government (*Lamprea v. Director of Lands*, 67 Phil. 388 [1939]). Reclaimed land covered and uncovered by the movement of the tide is a shore which is property of the public domain (*Francisco v. Government of P.I.*, 28 Phil. 505, 507 [1914]).

[102] *Ignacio v. Dir. of Lands*, 108 Phil. 335, 339 [1960]; *Joven v. Director of Lands*, 93 Phil. 134, 136-137 [1953]; See *Aquino*, *The Civil Code of the Philippines*, vol. 1, p. 449 [1990].

[103] "plats"--as stated in the law.

[104] Act 1654 expressly empowered the National Government to reclaim foreshore and submerged lands within the Philippine archipelago and retain ownership of the land reclaimed. The National Government was to reclaim the land, bear the cost of reclamation and undertake the construction of streets, alleyways and curbs on the reclaimed land. The streets, alleyways and curbs were to be maintained, however, by the municipal government in which the reclaimed land was situated, who was likewise mandated to shoulder the cost of the sewers and water mains. The municipal government was encouraged to construct on the reclaimed land wharves, piers, docks and other structures for shipping in accordance with plans and specifications given by the National Government (Sections 3 and 8).

[105] C.A. No. 141 was a reenactment of Act No. 2874 with slight modifications to conform with the nationalistic provisions of the 1935 Constitution (*Noblejas*, *Land Titles and Deeds*, p. 250 [1961]).

[106] Article 420, Civil Code.

[107] Pena, Registration of Land Titles and Deeds, p. 19 [1994]; Noblejas, Registration of Land Titles and Deeds, p. 20 [1986].

[108] Pena, *supra*, at 19; Noblejas, *supra*, at 20.

"In some states [of the United States], there exists some sort of an express or implied grant to the effect that the owners of the adjacent upland may fill the adjacent land under water, subject only to the paramount power of the government to establish harbor lines, and as soon as this is completed the reclaimed land becomes an integral part of the adjoining land so that the owner has full title to one as much as the other."

"In the Philippines, there exists no such grant, express or implied, to private landowners, and it is only the government that can assert title to reclaimed land." (Pena, *supra*.)

[109] R.A. 161, Bacolod City; R.A. 287, Catbalogan, Samar; R.A. 1099, Romblon, etc.

[110] Explanatory Note to H.B. 3630 (R.A. 1899).

[111] 73 SCRA 162, 178 [1976].

[112] *Id.*, at 178.

[113] The Solicitor General, in its Appellant's Brief before the Court of Appeals, apprised the said court that the municipal councils of Las Pinas and Paranaque, Rizal, and the municipal councils of Bacoor, Kawit and Noveleta, Cavite issued ordinances authorizing RREC to undertake the reclamation of Manila Bay along their coastal borders (Brief for Plaintiff-Appellant, Annex "A" to the Petition for Review of the Republic of the Philippines, pp. 42-43, Rollo, G.R. No. 103882, pp. 102-103). Mr. Lauro Marquez, a member of the Board of Directors of RREC, declared before the CA Commissioners that all the municipalities adjacent to Manila Bay from Pasay City all the way to Noveleta, Cavite entered into reclamation contracts with RREC pursuant to R.A. No. 1899 (TSN of Oct. 6, 1997, p. 32).

[114] See Memorandum for Defendant-Appellee RREC, pp. 4-6, CA Rollo, pp. 502-504.

[115] P.D. 15, Second Whereas Clause

[116] *Id.*, Sec. 2 (b).

[117] *Id.*, Sections 2 (c) to (e).

[118] *Id.*, Sections 3 and 6.

[119] *Id.*, Section 3.

[120] See Imelda Marcos, "Sanctuary of the Filipino Soul," Remarks delivered at the formal dedication of the Cultural Center of the Philippines, Sept. 10, 1969.

[121] Former President Aquino issued Executive Orders revoking several P.D.'s of former President Marcos. Examples of the P.D.'s revoked are: P.D. 33 (E.O. 29); P.D.'s 1404, 1836, 1977 and 1877-A (E.O. 59); P.D. 90 and LOI 50 (E.O. 65), P.D.'s 1727-A and 1804 (E.O. 99); P.D.'s 1835 and 1975 (E.O. 167), etc.

[122] Engr. Manuel Berina, Jr., Deputy General Manager of the PEA, testified before the CA Commissioners that the PEA exercises jurisdiction over all reclamation projects in the country. Government agencies whose charters allow reclamation work, like the Phil. Ports Authority for port-related facilities, may undertake reclamation but must coordinate with the PEA (TSN of October 3, 1997, p. 30). To date, the PEA has undertaken reclamation projects in Cebu, Laguna de Bay, Cavite, Smokey Mountain, etc. (*Id.*, at 249-250).

[123] Lao Ichong v. Hernandez, 101 Phil. 1155, 1164 [1957].

[124] P.D.'s Nos 3 and 3-A were published in the Official Gazette. P.D. 3 was published in 68 O.G. No. 40, 7800, Oct. 2, 1972. P.D. 3-A was published in 69 O.G. No. 3, 412-1 Supp., Jan. 15, 1973.

[125] First Paragraph of P.D. 3.

[126] 62 SCRA 275, 298-300 [1975].

[127] Article XVII, Section 3 (2) of the 1973 Constitution provides:

"Sec. 3 (2). All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

[128] Black's Law Dictionary, 4th ed. p. 1408 [1957].

[129] People v. Vera, 65 Phil. 56, 88 [1937]; see also Bernas, The Constitution of the Republic of the Philippines, Vol. II, pp. 279-280 [1988].

[130] Commissioner's Report, p. 54.

[131] Exhibit "17-A" for RREC, CA Rollo, p. 756; marked as p. 56.

[132] Exhibit "15" for RREC, CA Rollo, pp. 750-751; marked as pp. 50-51.

[133] Exhibit "18" for RREC, CA Rollo, pp. 758-759; marked as pp. 58-59.

[134] Amended Decision, pp. 9-10.

[135] Commissioners' Report, pp. 53-54.

[136] CA Rollo, pp. 750-751; also marked as pp. 50-51.

[137] CA Rollo, p. 758-759; also marked as pp. 58-59.

[138] MPH Findings on Dredge Fill for Areas A & B total, 1,574,891 cu.m.

[139] Exhibit "B-RP," Exhibit "AA-CCP;" Underline as copied.

[140] TSN of October 3, 1997, pp. 254-258.

[141] TSN of October 3, 1997, pp. 254, 264.

[142] TSN of October 3, 1997, pp. 256-258.

[143] Republic v. Court of Appeals, 258 SCRA 712, 721-722 [1996]; Valenzuela v. Court of Appeals, 253 SCRA 303, 313 [1996]; Geronimo v. Court of Appeals, 224 SCRA 494, 498-499 [1993].

[144] Exhibits "D-CCP," "D-1-CCP" to "D-12-CCP."

[145] Nograles, TSN of Sept. 29, 1997, pp. 70-72, 83-84.

[146] Affidavit of Capt. Nograles, Exhibit "C-CCP," Rollo, G.R. No. 103882, p. 895.

[147] Nograles- TSN of Sept. 29, 1997, p. 77.

- [148] Capt. Nograles verified the geographical location of the photographs--TSN of Sept. 29, 1997, p. 10.
- [149] Nograles-- TSN of Sept. 29, 1997, pp. 80-81.
- [150] Exhibit "D-2-CCP," Folder of CA Exhibits.
- [151] Exhibits "D-3-CCP" to D-7-CCP," Folder of CA Exhibits.
- [152] Exhibits "D-8-CCP" to "D-10-CCP," supra..
- [153] Capt. Nograles testified that the flight data are usually entered in the third frame of the spool of negatives of the aerial photographs-- TSN of Sept. 29, 1997, pp. 101-102.
- [154] Exhibit "D-11-CCP," Folder of CA Exhibits; Nograles-- TSN of Sept. 29, 1997, pp. 98-100.
- [155] Exhibit "D-12-CCP," Folder of CA Exhibits.
- [156] The aerial photographs were ordered released by the Commanding Officer of the AFP Mapping Center (Nograles-- TSN of Sept. 29, 1997, p. 77).
- [157] Chapter 6, Subtitle II, Title VIII, Book IV, Administrative Code of 1987.
- [158] Section 19(a), Rule 132, Revised Rules on Evidence provides:
- "Sec. 19. Classes of Documents.-- xxx. Public documents are:
- (a) The written official acts, or records of the officials acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country; x x x."
- [159] Section 21, Rule 132, Revised Rules on Evidence provides:
- "Sec. 21. When evidence of authenticity of private document not necessary.- Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given."
- [160] Manosa- TSN of Sept. 29, 1997, p. 114.
- [161] Exhibit "F-CCP," Professional Report of Architect Manosa, Rollo, G.R. No. 103882, pp. 900-903.
- [162] Affidavit of Arch. Manuel Manosa, Jr., Exhibit "E-CCP," Rollo, G.R. No. 103882, pp. 898-899.
- [163] Manosa-- TSN of Sept. 29, 1997, pp. 113, 158.
- [164] Manosa-- TSN of Sept. 29, 1997, pp. 134-175.
- [165] Exhibits "B," "B-1" to "B-6," Rollo, G.R. No. 103882, pp. 908- 1011.
- [166] Protacio-- TSN of Sept. 29, 1997, p. 7.
- [167] Id., pp. 27-29.
- [168] Sison v. People, 250 SCRA 58, 75-76 [1995].
- [169] Id.
- [170] Id., at 75-76.
- [171] Exhibits "B-3-CCP," B-4-CCP," "B-6-CCP," Rollo, G.R. No. 103882, pp. 1008, 1009, 1011.

- [172] Perspective is from Roxas Boulevard facing the CCP main building.
- [173] Exhibits "B-2," B-3," B-4," "B-6," Rollo, G.R. No. 103882, pp. 1000, 1008, 1009, 1011.
- [174] Protacio-- TSN of Sept. 29, 1997, pp. 34-36.
- [175] Dimalanta-- TSN of Oct. 3, 1997, pp. 23-24, 30-31.
- [176] Affidavit of Arch. Dimalanta, Exhibit "N," Rollo, G.R. No. 103882, p. 904; TSN of Oct. 3, 1997, pp. 26-27, 30-31.
- [177] Id., p. 36; Exhibit "O-3," SC Rollo, p. 906.
- [178] Dimalanta-- TSN of Oct. 3, 1997, pp. 37-38.
- [179] Exhibit "O," Rollo, G.R. No. 103882, p. 906.
- [180] Exhibit "O-CCP," "O-3-CCP," supra.
- [181] Dimalanta-- TSN of Oct. 3, 1997, pp. 74, 89, 93-94.
- [182] Kasilag-- TSN of Sept. 30, 1997, p. 324.
- [183] Affidavit of Dr. Lucrecia R. Kasilag, Exhibit, "M-CCP," Rollo, G.R. No. 103882, p. 1015.
- [184] Exhibit "L-CCP," Rollo, G.R. No. 103882, p. 1018; Cruz- TSN of Sept. 30, 1997, pp. 181-182.
- [185] Cruz- TSN of Sept. 30, 1997, p. 195.
- [186] Affidavit of Mrs. Rose D. Cruz, Exhibit "L-CCP," Rollo, G.R. No. 103882, p. 1018.
- [187] Id., p. 208.
- [188] Id., pp. 213, 216.
- [189] Now Gil Puyat Ave; Cruz- TSN of Sept. 30, 1997, pp. 210-214.
- [190] Exhibit "17-Pasay City and RREC," Folder of CA Exhibits.
- [191] Exhibit "19-Pasay City and RREC," Folder of CA Exhibits.
- [192] Exhibit "19-Pasay City and RREC."
- [193] Affidavit of Lauro Marquez, Exhibit "16-Pasay City and RREC;" Marquez- TSN of Oct. 6, 1997, p. 17.
- [194] Exhibit "17-Pasay City and RREC."
- [195] Marquez- TSN of Oct. 6, 1997, pp. 19, 22.
- [196] Id., p. 23.

[197] RREC.

- [198] The buyer.
- [199] The price was to be paid in installments.
- [200] Exhibit "19-Pasay City and RREC."
- [201] Marquez- TSN of Oct. 6, 1997, pp. 13, 36.

[202] Annexes "Y" and "F-1" to Intervenor CCP's Memorandum dated July 31, 1997; Exhibit A-CCP, Diagram on the Illustration Board.

[203] Exhibit "2-Pasay City and RREC."

[204] Exhibit "2-Pasay City and RREC."

[205] Opinion of PEA Acting Administrator Eng'r. Berina, Exhibit "B-RP," Folder of CA Exhibits.

[206] Exhibit "F," Professional Report of Arch. Manosa, Jr.

[207] Unjust enrichment is used here as an equitable principle under Article 19 of the Civil Code on Human Relations, not the quasi-contracts of unjust enrichment in Articles 2142-2175 of the same Code).

[208] Sec. 27, Rule 130, Revised Rules on Evidence.

[209] *Varadero de Manila v. Insular Lumber Co.*, 46 p. 176, 178 [1924] also cited in Padilla, *Evidence*, vol. 1, pp. 448-449 [1988]; *Regalado Remedial Law Compendium*, vol. 2, p. 586 [1995]; see also *Soriano v. Cia. General de Tabacos de Filipinas*, 18 SCRA 999, 1019-1020 [1966]).

[210] Former Chief Justice Roberto R. Concepcion, "Rizal and Philippine Culture," *The Seventh Annual Rizal Lectures*, pp. 5-18 [1975].

[211] Morga, ed. *Rizal*, cf. Leon Ma. Guerrero, *The First Filipino*, p. 210 [1969].

[212] Concepcion, *supra*, at 7.

[213] *El Filibusterismo*, Guerrero translation, p. 49 [1965].

SEPARATE OPINION

ROMERO, J.:

"Culture doesn't save anything or anyone, it doesn't justify. But it's a product of man: he projects himself into it, he recognizes himself in it; that critical mirror alone offers him his image." So said Jean Paul Sarte, one of the greatest philosophical thinkers of our time. Matthew Arnold referred to it as the "pursuit of our total perfection" or the "study of perfection." The English mathematician and philosopher Alfred North Whitehead, placing premium on human subjectivity, declared, "Culture is activity of thought, and receptiveness to beauty and humane feeling."

Image, perfection, beauty, and feeling. These are elements which are also associated with art and creation. Yet, art in itself is a multi-faceted concept. The referred and, at times, controversial President John Fitzgerald Kennedy, in one of his numerous speeches, elevated art to the level of a psycho-social necessity of man when he said, ". . . (A)rt establishes the basic human truths which must serve as the touchstone of our judgment." Indeed, there is no question that art satisfies one of the deepest spiritual needs of man.

Of course, when one speaks of art and culture, he in fact speaks of it in two ways: the abstract and the concrete. What is abstract is conditioned by time; that which is concrete is ravaged by it. While the concept of "culture and art" endures man's follies, amassing innumerable, priceless enhancements as it effortlessly slides through generations of human progress, its tangible counterpart, that which is preserved for our children's appreciation, is unfortunately fragile. Art works, music, architecture, literature, and other cultural embellishments which exhibit extraordinary longevity are proclaimed as national treasures, and rightly so, for they are lasting testimonials of man's boundless imagination and creativity, that single trait that places the human species above all other creatures of the Almighty.

Most evidence of a culture's richness are lost, not in the tide of nature's frivolity, but through man's foolishness and capriciousness. Wars used to be the main culprit in the virtual obliteration of the works of ancient scholars. We are now, and for the past century or so, faced with a greater foe: progress. Progress and development are the hallmarks of successful governance. Our leaders, and there are so many of them now, decide "what is best" for the public. Inopportunely, what is perceived to be in the "best interest" of the majority in the name of "progress" may sometimes, and in the long run, be calamitous to the entire people in terms of cultural atrophy. This is the quandary in which this Court finds itself as it attempts to weigh once more private rights against sovereignty and the general welfare.

Background Facts

In a nutshell, the undisputed facts in these consolidated petitions follow.

Pursuant to Republic Act No. 1899, which authorized chartered cities and municipalities to reclaim adjoining foreshore lands, the City Council of Pasay resolved to reclaim a portion of the Manila Bay covering the Manila-Pasay-Parañaque boundaries and, for this purpose, enacted Ordinance No. 121 on May 6, 1958. Two days later, on the strength of said ordinance, Pasay City Mayor Pablo Cuneta contracted with Republic Real Estate Corporation (RREC) for the reclamation of portions of the Manila Bay. On April 21, 1959, the City Council of Pasay amended Ordinance No. 121 by enacting Ordinance No. 158. A new agreement between the parties (the Reclamation Agreement) was executed three days thereafter, which, among other things, granted the reclamation project to RREC and gave it an irrevocable option to purchase a maximum of 60 % of the area reclaimed at P10.00 per square meter; the amount of which could be set off against any outstanding obligation of the City to RREC. Such an option could only be effected within a year from the time the City Engineer certified that 50 hectares had been reclaimed. The reclamation itself was made by the RREC through third parties who were awarded contracts on the various phases of the project through public bidding. To raise more funds, RREC entered into contracts to sell the reclaimed areas which it could purchase from Pasay City by exercising its option under the Reclamation Agreement.

Proceedings before the trial court

On December 19, 1961, the Republic of the Philippines filed a complaint (amended on March 5, 1962) against Pasay City and RREC for "Recovery of Possession and Damages with Writ of Preliminary Preventive Injunction and Mandatory Injunction" before Branch 7 of the then Court of First Instance of Rizal, Pasay City, praying for the declaration of nullity of Ordinance Nos. 121 and 158, the Reclamation Agreement, and the Contracts to Sell between RREC and the buyers of the reclaimed land. Among other things, the following matters were alleged: (a) the area reclaimed was already reserved as a national park under Proclamation No. 41, dated July 5, 1954 and Act No. 3915, hence, the subject of the Reclamation Agreement was beyond man's commerce; (b) Ordinance Nos. 121 and 158 were ultra vires and void ab initio for being violative of R.A. No. 1899, because they involved the reclamation of "submerged areas" and not "foreshore lands" as allowed by said law; and (c) the Reclamation Agreement was illegal, contrary to morals and public policy because it was executed with neither authority from the National Government nor any public bidding.

In their answers, Pasay City and RREC set forth the following negative defenses: (a) Pasay City was empowered by R.A. No. 1899 to reclaim any portion of the Manila Bay; (b) the area reclaimed was not a portion of the Manila Bay Beach Resort, which was the area reserved as a national park under Proclamation No. 41 and Act No. 3915; (c) under R.A. No. 1899, the term "foreshore lands" meant much more than its technical definition and extended to submerged areas beyond the water marks of the shore; and (d) all the actuations of the City and RREC regarding the reclamation project were in accordance with R.A. No. 1899 and related laws.

On April 26, 1962, the trial court issued a writ of preliminary injunction ordering Pasay City and RREC to refrain from their activities at the Manila Bay. On January 10, 1968, however, RREC filed a "Motion to Dismiss" the complaint on the ground that the passage of Republic Act. No. 5187 (otherwise known as the Public Works Act) on September 16, 1967, rendered the issues raised by the Republic of the Philippines moot and academic. Specifically, RREC relied on Section 3(m) thereof which stated that all "contracts of city or municipal governments for the reclamation of foreshore and submerged lands shall be respected" during the construction by the national government of a sea wall and limited access highway passing through the projected area of the reclamation. In the meantime, the trial court allowed Jose Bautista and others who allegedly bought in good faith and for value from RREC some portions of the reclaimed land, to intervene in the action and join cause with Pasay City and RREC. On the other hand, the Pasay Law and Conscience Union, Inc. (PLCUI), a civic organization, joined with the Republic of the Philippines and filed a complaint in intervention.

On May 24, 1972, the court a quo rendered a judgment on the pleadings, upholding the validity of Ordinance Nos. 121 and 158 and of the Reclamation Agreement; dismissing the complaint as well as PLCUI's complaint in intervention; enjoining RREC and Pasay City "to have all the plans and specifications in the reclamation approved by the Director of Public Works, and to have all the contracts and subcontracts for said reclamation awarded by means of, and only after, public bidding"; and lifting the preliminary injunction, dated April 26, 1962, as soon as said conditions shall have been met by RREC and Pasay City.

Proceedings before the Court of Appeals

During the pendency of the State's appeal with the Court of Appeals, President Marcos issued on January 11, 1973, Presidential Decree No. 3-A, providing, inter alia, that "the reclamation of areas under water, whether foreshore or inland, shall be limited to the National Government or any person authorized by it under a proper contract," and that it shall take over any validity existing reclamation contract on the basis of quantum meruit. On the strength of P.D. No. 3-A, the Commission of Public Highways and the Construction Development Corporation of the Philippines (CDCP) took over the reclamation contract between Pasay City and RREC for the construction of the Manila-Cavite City Coastal Road. CDCP developed the area already reclaimed by RREC and continued reclaiming where the latter left off. These areas, which came to be known as the Cultural Center Complex and the Financial Center Complex, were registered in the name of the CCP.

On February 4, 1977, the Public Estates Authority (PEA) was created by virtue of President Decree No. 1084. It was designated as the agency primarily responsible for all the reclamation projects of the national government. The PEA then took over the Manila Bay reclamation contract between the Republic of the Philippines and CDCP.

In 1978, RREC filed a claim for P30,396,878.20 with the then Ministry of Public Highways (MPH) for its actual reclamation in the CCP Complex before CDCP assumed authority over the project. The MPH, on the other hand, determined the amount of reclamation by RREC to be only P10,926,071.29. Later, RREC offered to settle the case with the Office of the Solicitor General for the original amount of its claim. The OSG would, however, settle only for the lesser amount assessed by the MPH. This was acceptable to RREC only with an additional 6% interest per annum from 1962 up to the time of payment. Within the decade that followed, RREC's proposals for settling the case ballooned from a P35,455,011.31 cash settlement of a property settlement of 3.5 hectares in the CCP Complex covered by TCT No. 75676, to a cash settlement of P175 million, then later, P245 million. The Office of the President, to which the proposals were referred, rejected the same. In other words, no amicable settlement was reached.

The first decision

On January 28, 1992, the Court of Appeals rendered a decision, affirming the trial court's judgment with the

following modifications: (a) the requirement on public bidding and submission of plans and specifications to the DPWH by RREC was deleted; (b) the Republic of the Philippines was ordered to turn over to Pasay City the ownership and possession of the 21 hectares already reclaimed by RREC; and (c) RREC's irrevocable option to purchase 60 % of the 21 hectares it had already reclaimed was sustained.

The amended decision

On April 28, 1992, the appellate court rendered an amended decision. It agreed with the position of Pasay City and RREC in their motion for reconsideration that the actual area reclaimed was 55, not 21, hectares. Considering, however, that the latter were willing to accept 35 hectares of open land in the CCP Complex, the court ordered the Republic of the Philippines to reconvey to Pasay City and RREC said parcels of land comprising nine lots registered in the name of CCP. This is the decision being assailed by both parties in the instant consolidated petitions.

Issues raised

In G.R. No. 103882

Are ordinance Nos. 121 and 158, as well as the Reclamation Agreement between Pasay City and RREC, valid and binding as against the National Government and the Cultural Center of the Philippines?

The Republic of the Philippines claims that the Court of Appeals erred in sustaining the validity of Ordinance Nos. 121 and 158 and the Reclamation Agreement executed pursuant thereto, and in ordering the reconveyance of the nine lots titled in the name of CCP to the City of Pasay and RREC. It stresses that the reclamation project undertaken by Pasay City and RREC violated R.A. No. 1899, especially since the subject areas were "submerged lands," not "foreshore lands" which are the only lands that may be reclaimed by local governments under said law.

The CCP, as intervenor in G.R. No. 103882, alleges that the appellate court's amended decision was not binding upon it because it was never made a party to the action and that it was compelled to intervene in the instant petitions to protect its proprietary interests. It claims that the Court of Appeals erred in finding that the actual area reclaimed by RREC was 55 hectares, and in ordering it to turn over to RREC and Pasay City the nine lots registered in its name.

In G.R. No. 105276

Is P.D. 3-A constitutional?

The City of Pasay and RREC claim it is not and that the Court of Appeals erred in not ruling upon its constitutionality, considering that said decree deprived them of their property and rights of ownership without due process of law and without payment of just compensation, and that it violated the non-impairment clause of the Constitution; and in not awarding them damages for the alleged illegal takeover of the reclamation contract and the reclaimed area. Thus, they pray for the modification of the assailed amended decision by awarding them damages and conveying to them, not merely 35, but 55 hectares of the land allegedly reclaimed.

The Commissioners' Report

On September 10, 1997, the Court's Second Division issued a Resolution remanding the case to the Court of Appeals to receive further evidence and determine the actual area reclaimed by RREC and the areas of the CCP Complex which are "open spaces." In its Commissioner's Report dated November 25, 1997, the appellate court concluded that the CCP and the Solicitor General failed to refute its earlier finding that RREC and Pasay City were able to reclaim 55 hectares of the Manila Bay.

Discussion of issues

1) Ordinance Nos. 121 and 158, as well as the Reclamation Agreement between Pasay City and RREC, are null and void for violating the clear and unambiguous provisions of R.A. No. 1899.

In 1984, the term "foreshore lands" was defined by this Court in the case of *Republic v. Court of Appeals*.^[1] Although the subject of this case was part of the Laguna de Bay, the Court nevertheless applied Bouvier's definition of "foreshore lands," viz.: "that part of the land immediately in front of the shore; the part which is between high and low water marks, and alternately covered with water and left dry by the flux and reflux of the tides. It is indicated by a middle line between the highest and lowest tides."

This judicial interpretation did not escape the attention of the legislature in the enactment of later related laws. In R.A. No. 5187, for example, Congress specified the areas that may be reclaimed in the construction of the Manila-Cavite City Coastal Road to include both "foreshore and submerged areas." The Chief Executive also recognized the disparity between the two terms when he signed into law P.D. No. 3-A, authorizing the reclamation of "areas under water, whether foreshore or inland." Similarly, P.D. No. 1084, creating the Public Estates Authority, granted it authority to "reclaim land, including foreshore and submerged areas."

Initially, legislative intent and later jurisprudential usage clearly delimited the term "foreshore lands" to that part of the land where the tides literally converge, thus excluding submerged lands. This restricted explication was unquestionably acknowledged by the other branches of government when, in passing subsequent related statutes, they added the terms "submerged areas" or "areas under water" to "foreshore lands." Under the principles of legal construction, since R.A. No. 1899 partakes of the nature of a legislative grant of a sovereign right to municipalities and chartered cities, that is, the right "to reclaim," it must be strictly construed against the latter.

R.A. No. 1899 was, therefore, enacted to apply strictly to "foreshore lands." Thus, when RREC was permitted by the City of Pasay, through Ordinance Nos. 121 and 158 and the ensuing Reclamation Agreement, to reclaim up to a one-kilometer stretch into the Manila Bay, more than just "foreshore lands" was obviously contemplated and involved. Furthermore, R.A. No. 1899 mandates that any reclamation must be carried out by the municipality or chartered city concerned ^[2]with the aid of funds which it may borrow from third persons or lending institutions.^[3] The reclamation of Manila Bay was undertaken, not by Pasay City, but by RREC itself under a special power of attorney from Pasay City using funds exclusively borrowed by the latter from RREC. To compound the anomaly of it all, the reclamation project itself was awarded by Pasay City to RREC without any public bidding. Finally, to complete Pasay City's absolute abdication of its duty to champion public over private interest, RREC was granted an irrevocable option to purchase the land reclaimed in lieu of simply paying for it using a determinable and liquidated amount "in Philippine currency or in the currency on which the principal has been originally received,"^[4] as required by R.A. No. 1899. In fact, RREC began disposing of the land by entering into contracts to sell with various third persons while the reclamation project was still in progress and long before it acquired any right of dominion over the lands yet to be reclaimed. These are all blatant violations of R.A. No. 1899. Hence, Ordinance Nos. 121 and 158, no less than the Reclamation Agreement and the Contracts to Sell it has spawned, should all be deemed null and void, the reclamation itself being *ultra vires*.

2. P.D. No. 3-A is constitutional and valid.

Applying the regalian doctrine, the State owns all waters and lands of the public domain, including those physically reclaimed. As a general rule, therefore, only the National Government can reclaim foreshore lands and other submerged areas. At times, though, the State, to effectuate an expressed public policy, delegates some of its sovereign powers either to the legislature or to some of its alter egos. One such instance was R.A. No. 1899 which was intended to increase the autonomy of local governments, an innovation introduced by the Marcos

administration. There is no doubt, however, that R.A. No. 1899 was a mere public grant, a privilege which may be withdrawn by the granting authority, the sovereign, in the exercise of police power. This is precisely what President Marcos did when he issued P.D. No. 3-A, a valid and effective means of regaining the State's right to reclaim. It must be noted that this decree was not revoked by President Aquino when she assumed the presidency.

P.D. No. 3-A does not violate the equal protection clause, as claimed by Pasay City and RREC, because, far from singling out the latter, its terminology is simple and extensive enough to cover just about any municipality or city. The decree was signed by President Marcos under his emergency powers when martial law was in effect throughout the country. Thus, it is not an undue delegation or usurpation of legislative power. Neither does it authorize the taking of property without just compensation, for it specifically allows such payment, albeit based on quantum meruit. Incidentally, while RREC attacks the constitutionality of P.D. No. 3-A, and only at this late stage in the proceedings, it relied on this "quantum meruit compensation" clause in the same decree when it filed a claim before the then Ministry of Public Works way back in 1978 and again in 1983. This is an oddity which this Court takes notice of in disallowing RREC from taking contrary positions regarding the validity of a statute in this action. It cannot take advantage of a provision of law even as it attacks the same.

Finally, the Court notes that the amended decision of the Court of Appeals dated April 28, 1992, is based on inadequate evidence. Its conclusion that RREC was able to reclaim 35 hectares is totally unsupported by the dubious proof presented by Pasay City and RREC.

In ruling in favor of Pasay City and RREC, the appellate court relied mostly on three documents issued by the government to the RREC, namely, the "Cost of Data for Items of Works Covered by the Republic Estate Corporation for Work Performed in the Manila Bay" issued by the Ministry of Public Highways, and two letters both addressed to RREC Executive Vice President Vicente Asuncion, Jr., one dated June 6, 1979, from then Minister of Public Highways Baltazar Aquino, and another, dated June 10, 1981, from then Solicitor General Estelito Mendoza. These documents, however, never proved that RREC was able to reclaim 35 hectares. In fact, the letter of Aquino, finding that RREC had reclaimed 55 hectares, was, in its own words, merely "tentative, pending the submittal of corroborative documents"; hence, it does not amount to the "certification" contemplated in R.A. No. 1899. Mendoza's letter, on the other hand, far from supporting RREC's position, rejected RREC's proposal in the latter's attempt at settlement. It is puzzling why the appellate court even considered this letter in favor of RREC and Pasay City.

On the other hand, there is ample proof that RREC was not able to reclaim the 55 hectares which it claims it did, or even 35 hectares, as found by the Court of Appeals; as follows: aerial photographs of the Manila Bay area in 1966 and 1968; photographs of the CCP taken in 1967 and 1968 during construction of the main building; and the testimonies of the persons familiar with the circumstances under which said photographs were taken, as well as the other witnesses who were, one way or another, connected with the construction of the CCP main building, including a member of the Board of Directors of RREC.

3. RREC is entitled to some monetary award.

While the extent of reclamation actually done by RREC is debatable, there is no dispute that it did reclaim some portion of the Manila Bay. In the preceding discussion, we declared the nullity of Ordinance Nos. 121 and 158 and the Reclamation Agreement, which are the wellsprings of RREC's right to be compensated. Its reclamation efforts were also to be ultra vires. Equity and fairness, however, dictate that it be compensated for the work actually performed by it. After all, the State cannot deny that it did benefit from such reclamation. RREC was initially willing to settle the case for P30,396,878.20. In view of the foregoing premises, we believe that RREC should only be given the amount which the State was willing to pay, that is, P10,929,071.29, without legal

interest. It is axiomatic that legal interest is given either for the use of the money (a loan or forbearance of money) or as a penalty for breach of an obligation (damages). In the case of *Eastern Shipping Lines, Inc. v. Court of Appeals*,^[5] the Court had occasion to set the guidelines by which litigants may claim or be awarded interest as or by way of actual or compensatory damages. Thus,

"II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation not consisting of a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged. x x x." (Citations omitted)

These are the only circumstances under which interest in the concept of actual or compensatory damages, liquidated or otherwise, may be justified. In the case at bar, no loan or forbearance of money is involved; neither is there any breach of obligation. Consequently, the lone commitment of the State would be the payment for services allegedly rendered, services for which RREC would have the National Government cede to it its property, the value of which has been inflated to unimaginable proportions since the inception of the reclamation project. This is manifestly cupidity at its worst. Neither should the State be penalized for something for which it is entirely blameless. The circumstances which led to the filing of these twin actions have been long overtaken by supervening events, rendering the issues incipiently raised moot and academic. Thus, RREC and Pasay City are, as they should be, only entitled to P10,926,071.29. No more, no less.

Conclusion

For almost three decades, the Cultural Center of the Philippines has been the principal, if not the sole, purveyor of the arts in this country. It has weathered criticism, in civil unrest, and "internecine" politics. It relies on the occasional beneficence of loyal patrons, the so-called "cultured" class scorned and spurned by the "Masa." Otherwise, it subsists on the rental income it receives from private entities leasing portions of the CCP Complex. With the trial and appellate courts upholding their claims, Pasay City and RREC wish to dismember this bastion of cultural heritage and stunt its growth by claiming ownership over a substantial portion of its property, that which literally serves as its bloodline. This must not be countenanced. The CCP is certainly not about to draw its curtains and take a final bow. As Matthew Arnold said more than a century ago, "I am a Liberal, yet I am a Liberal tempered by experience, reflection, and renouncement, and I am above all, a believer in culture."

I vote to grant the State's petition, with the qualification adverted to above.

[1]131 SCRA 532.

[2]At Section 1, in relation to Section 9.

[3]At Section 3.

[4]At Section 6.

[5]234 SCRA 78, 95-96 (1994).

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