

**HON. ALFREDO S. LIM, IN HIS CAPACITY AS MAYOR OF MANILA,
PETITIONERS, VS. HON. FELIPE G. PACQUING, AS JUDGE, BRANCH 40,
REGIONAL TRIAL COURT OF MANILA AND ASSOCIATED
DEVELOPMENT...**

G.R. No. 115044. January 27, 1995

Ponente: PADILLA, J.

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PADILLA, J.:

These two (2) cases which are inter-related actually involve simple issues. If these issues have apparently become complicated, it is not by reason of their nature but because of the events and *dramatis personae* involved.

The petition in G.R. No. 115044 was dismissed by the First Division of this Court on 01 September 1994 based on a finding that there was “no abuse of discretion, much less lack of or excess of jurisdiction, on the part of respondent judge [Pacquing]”, in issuing the questioned orders. Judge Pacquing had earlier issued in Civil Case No. 88--45660, RTC of Manila, Branch 40, the following orders which were assailed by the Mayor of the City of Manila, Hon. Alfredo S. Lim, in said G.R. No. 115044:

- a. order dated 28 March 1994 directing Manila Mayor Alfredo S. Lim to issue the permit/license to operate the jai-alai in favor of Associated Development Corporation (ADC).
- b. order dated 11 April 1994 directing Mayor Lim to explain why he should not be cited for contempt for non-compliance with the order dated 28 March 1994.
- c. order dated 20 April 1994 reiterating the previous order directing Mayor Lim to immediately issue the permit/license to Associated Development Corporation (ADC).

The order dated 28 March 1994 was in turn issued upon motion by ADC for execution of a final judgment rendered on 9 September 1988 which ordered the Manila Mayor to immediately issue to ADC the permit/license to operate the jai-alai in Manila, under Manila Ordinance No. 7065.

On 13 September 1994, petitioner Guingona (as executive secretary) issued a directive to then chairman of the Games and Amusements Board (GAB) Francisco R. Sumulong, Jr. to hold in abeyance the grant of authority, or if any had been issued, to withdraw such grant of authority, to Associated Development Corporation to operate the jai-alai in the City of Manila, until the following legal questions are properly resolved:

- “1. Whether P.D. 771 which revoked all existing Jai-Alai franchises issued by local governments as of 20 August 1975 is unconstitutional.
2. Assuming that the City of Manila had the power on 7 September 1971 to issue a Jai-Alai franchise to Associated Development Corporation, whether the franchise granted is valid considering that the franchise has no duration, and appears to be granted in perpetuity.
3. Whether the City of Manila had the power to issue a Jai-Alai franchise to Associated Development

Corporation on 7 September 1971 in view of Executive Order No. 392 dated 1 January 1951 which transferred from local governments to the Games and Amusements Board the power to regulate Jai-Alai." [1]

On 15 September 1994, respondent Associated Development Corporation (ADC) filed a petition for prohibition, mandamus, injunction and damages with prayer for temporary restraining order and/or writ of preliminary injunction in the Regional Trial Court of Manila against petitioner Guingona and then GAB chairman Sumulong, docketed as Civil Case No. 94-71656, seeking to prevent GAB from withdrawing the provisional authority that had earlier been granted to ADC. On the same day, the RTC of Manila, Branch 4, through presiding Judge Vetino Reyes, issued a temporary restraining order enjoining the GAB from withdrawing ADC's provisional authority. This temporary restraining order was converted into a writ of preliminary injunction upon ADC's posting of a bond in the amount of P2,000,000.00. [2]

Subsequently, also in G.R. No. 115044, the Republic of the Philippines, through the Games and Amusements Board, filed a "Motion for Intervention; for Leave To File a Motion For Reconsideration in Intervention; and to Refer the Case to the Court En Banc" and later a "Motion for Leave to File Supplemental Motion for Reconsideration-in-Intervention and to Admit Attached Supplemental Motion for Reconsideration-in-Intervention".

In an En Banc Resolution dated 20 September 1994, this Court referred G.R. No. 115044 to the Court En Banc and required the respondents therein to comment on the aforementioned motions.

Meanwhile, Judge Reyes on 19 October 1994 issued another order, this time, granting ADC a writ of preliminary mandatory injunction against Guingona and GAB to compel them to issue in favor of ADC the authority to operate the jai-alai.

Guingona, as executive secretary, and Dominador Cepeda, Jr. as the new GAB chairman, then filed the petition in G.R. No. 117263 assailing the abovementioned orders of respondent Judge Vetino Reyes.

On 25 October 1994, in G.R. No. 117263, this Court granted petitioners' motion for leave to file supplemental petition and to admit attached supplemental petition with urgent prayer for restraining order. The Court further required respondents to file their comment on the petition and supplemental petition with urgent prayer for restraining order. The Court likewise set the case and all incidents thereof for hearing on 10 November 1994.

At the hearing on 10 November 1994, the issues to be resolved were formulated by the Court as follows:

1. whether or not intervention by the Republic of the Philippines at this stage of the proceedings is proper;
2. assuming such intervention is proper, whether or not the Associated Development Corporation has a valid and subsisting franchise to maintain and operate the jai-alai;
3. whether or not there was grave abuse of discretion committed by respondent Judge Reyes in issuing the aforementioned temporary restraining order (later, writ of preliminary injunction); and
4. whether or not there was grave abuse of discretion committed by respondent Judge Reyes in issuing the aforementioned writ of preliminary mandatory injunction.

On the issue of the propriety of the intervention by the Republic of the Philippines, a question was raised during the hearing on 10 November 1994 as to whether intervention in G.R. No. 115044 was the proper remedy for the national government to take in questioning the existence of a valid ADC franchise to operate the jai-alai or whether a separate action for quo warranto under Section 2, Rule 66 of the Rules of Court was the proper remedy.

We need not belabor this issue since counsel for respondent ADC agreed to the suggestion that this Court once

and for all settle all substantive issues raised by the parties in these cases. Moreover, this Court can consider the petition filed in G.R. No. 117263 as one for quo warranto which is within the original jurisdiction of the Court under Section 5(1), Article VIII of the Constitution. [3]

On the propriety of intervention by the Republic, however, it will be recalled that this Court in *Director of Lands v. Court of Appeals* (93 SCRA 238) allowed intervention even beyond the period prescribed in Section 2 Rule 12 of the Rules of Court. The Court ruled in said case that a denial of the motions for intervention would “lead the Court to commit an act of injustice to the movants, to their successor-in-interest and to all purchasers for value and in good faith and thereby open the door to fraud, falsehood and misrepresentation, should intervenors' claim be proven to be true.”

In the present case, the resulting injustice and injury, should the national government's allegations be proven correct, are manifest, since the latter has squarely questioned the very existence of a valid franchise to maintain and operate the jai-alai (which is a gambling operation) in favor of ADC. As will be more extensively discussed later, the national government contends that Manila Ordinance No. 7065 which purported to grant to ADC a franchise to conduct jai-alai operations is void and ultra vires since Republic Act No. 954, approved on 20 June 1953, or very much earlier than said Ordinance No. 7065, the latter approved 7 September 1971, in Section 4 thereof, requires a legislative franchise, not a municipal franchise, for the operation of jai-alai.

Additionally, the national government argues that even assuming, arguendo, that the abovementioned ordinance is valid, ADC's franchise was nonetheless effectively revoked by Presidential Decree No. 771, issued on 20 August 1975, Sec. 3 of which expressly revoked all existing franchises and permits to operate all forms of gambling facilities (including the jai-alai) issued by local governments.

On the other hand, ADC's position is that Ordinance No. 7065 was validly enacted by the City of Manila pursuant to its delegated powers under its charter, Republic Act No. 409. ADC also squarely assails the constitutionality of PD No. 771 as violative of the equal protection and non-impairment clauses of the Constitution. In this connection, counsel for ADC contends that this Court should really rule on the validity of PD No. 771 to be able to determine whether ADC continues to possess a valid franchise.

It will undoubtedly be a grave injustice to both parties in this case if this Court were to shirk from ruling on the issue of constitutionality of PD No. 771. Such issue has, in our view, become the very *lis mota* in resolving the present controversy, in view of ADC's insistence that it was granted a valid and legal franchise by Ordinance No. 7065 to operate the jai-alai.

The time-honored doctrine is that all laws (PD No. 771 included) are presumed valid and constitutional until or unless otherwise ruled by this Court. Not only this; Article XVIII Section 3 of the Constitution states:

“Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked.”

There is nothing on record to show or even suggest that PD No. 771 has been repealed, altered or amended by any subsequent law or presidential issuance (when the executive still exercised legislative powers).

Neither can it be tenably stated that the issue of the continued existence of ADC's franchise by reason of the unconstitutionality of PD No. 771 was settled in G.R. No. 115044, for the decision of the Court's First Division in said case, aside from not being final, cannot have the effect of nullifying PD No. 771 as unconstitutional, since only the Court En Banc has that power under Article VIII, Section 4(2) of the Constitution. [4]

And on the question of whether or not the government is estopped from contesting ADC's possession of a valid franchise, the well-settled rule is that the State cannot be put in estoppel by the mistakes or errors, if any, of its

officials or agents (Republic v. Intermediate Appellate Court, 209 SCRA 90).

Consequently, in the light of the foregoing expostulation, we conclude that the Republic (in contra distinction to the City of Manila) may be allowed to intervene in G.R. No. 115044. The Republic is intervening in G.R. No. 115044 in the exercise, not of its business or proprietary functions, but in the exercise of its governmental functions to protect public morals and promote the general welfare.

II

Anent the question of whether ADC has a valid franchise to operate the Jai-Alai de Manila, a statement of the pertinent laws is in order.

1. The Charter of the City of Manila was enacted by Congress on 18 June 1949. Section 18 thereof provides:

“Section 18. Legislative Powers. - The Municipal Board shall have the following legislative powers:

x x x

(jj) To tax, license, permit and regulate wagers or betting by the public on boxing, sipa, bowling, billiards, pools, horse and dog races, cockpits, jai-alai, roller or ice-skating on any sporting or athletic contests, as well as grant exclusive rights to establishments for this purpose, notwithstanding any existing law to the contrary.”

2. On 1 January 1951, Executive Order No. 392 was issued transferring the authority to regulate jai-alais from local governments to the Games and Amusements Board (GAB).

3. On 20 June 1953, Congress enacted Republic Act No. 954, entitled “An Act To Prohibit Certain Activities In Connection With Horse Races and Basque Pelota Games (Jai-Alai), And To Prescribe Penalties For Its Violation”. The provisions of Republic Act No. 954 relating to jai-alai are as follows:

“Sec. 4. No person, or group of persons other than the operator or maintainer of a fronton with legislative franchise to conduct basque pelota games (Jai-Alai), shall offer, take or arrange bets on any basque pelota game or event, or maintain or use a totalizator or other device, method or system to bet or gamble on any basque pelota game or event. (underscoring supplied).

Sec. 5. No person, operator or maintainer of a fronton with legislative franchise to conduct basque pelota games shall offer, take, or arrange bets on any basque pelota game or event, or maintain or use a totalizator or other device, method or system to bet or gamble on any basque pelota game or event outside the place, enclosure, or fronton where the basque pelota game is held.” (Underscoring supplied).

4. On 07 September 1971, however, the Municipal Board of Manila nonetheless passed Ordinance No. 7065 entitled “An Ordinance Authorizing the Mayor To Allow And Permit The Associated Development Corporation To Establish, Maintain And Operate A Jai-Alai In The City Of Manila, Under Certain Terms And Conditions And For Other Purposes.”

5. On 20 August 1975, Presidential Decree No. 771 was issued by then President Marcos. The decree, entitled “Revoking All Powers and Authority of Local Government(s) To Grant Franchise, License or Permit And Regulate Wagers Or Betting By The Public On Horse And Dog Races, Jai-Alai Or Basque Pelota, And Other Forms Of Gambling”, in Section 3 thereof, expressly revoked all existing franchises and permits issued by local governments.

6. On 16 October 1975, Presidential Decree No. 810, entitled “An Act Granting The Philippine Jai-Alai And Amusement Corporation A Franchise To Operate, Construct And Maintain A Fronton For Basque Pelota And Similar Games Of Skill In The Greater Manila Area,” was promulgated.

7. On 08 May 1987, then President Aquino, by virtue of Article XVIII, Section 6, of the Constitution, which allowed the incumbent President to continue exercising legislative powers until the first Congress was convened, issued Executive Order No. 169 expressly repealing PD 810 and revoking and cancelling the franchise granted to the Philippine Jai-Alai and Amusement Corporation.

Petitioners in G.R. No. 117263 argue that Republic Act No. 954 effectively removed the power of the Municipal Board of Manila to grant franchises for gambling operations. It is argued that the term “legislative franchise” in Rep. Act No. 954 is used to refer to franchises issued by Congress.

On the other hand, ADC contends that Republic Act No. 409 (Manila Charter) gives legislative powers to the Municipal Board to grant franchises, and since Republic Act No. 954 does not specifically qualify the word “legislative” as referring exclusively to Congress, then Rep. Act No. 954 did not remove the power of the Municipal Board under Section 18(jj) of Republic Act No. 409 and consequently it was within the power of the City of Manila to allow ADC to operate the jai-alai in the City of Manila.

On this point, the government counter-argues that the term “legislative powers” is used in Rep. Act No. 409 merely to distinguish the powers under Section 18 of the law from the other powers of the Municipal Board, but that the term “legislative franchise” in Rep. Act No. 954 refers to a franchise granted solely by Congress.

Further, the government argues that Executive Order No. 392 dated 01 January 1951 transferred even the power to regulate Jai-Alai from the local governments to the Games and Amusements Board (GAB), a national government agency.

It is worthy of note that neither of the authorities relied upon by ADC to support its alleged possession of a valid franchise, namely, the Charter of the City of Manila (Rep. Act No. 409) and Manila Ordinance No. 7065 uses the word “franchise”. Rep. Act No. 409 empowers the Municipal Board of Manila to “tax, license, permit and regulate wagers or betting” and to “grant exclusive rights to establishments”, while Ordinance No. 7065 authorized the Manila City Mayor to “allow and permit” ADC to operate jai-alai facilities in the City of Manila.

It is clear from the foregoing that Congress did not delegate to the City of Manila the power “to franchise” wagers or betting, including the jai-alai, but retained for itself such power “to franchise”. What Congress delegated to the City of Manila in Rep. Act No. 409, with respect to wagers or betting, was the power to “license, permit, or regulate” which therefore means that a license or permit issued by the City of Manila to operate a wager or betting activity, such as the jai-alai where bets are accepted, would not amount to something meaningful UNLESS the holder of the permit or license was also FRANCHISED by the national government to so operate. Moreover, even this power to license, permit, or regulate wagers or betting on jai-alai was removed from local governments, including the City of Manila, and transferred to the GAB on 1 January 1951 by Executive Order No. 392. The net result is that the authority to grant franchises for the operation of jai-alai frontons is in Congress, while the regulatory function is vested in the GAB.

In relation, therefore, to the facts of this case, since ADC has no franchise from Congress to operate the jai-alai, it may not so operate even if it has a license or permit from the City Mayor to operate the jai-alai in the City of Manila.

It cannot be overlooked, in this connection, that the Revised Penal Code punishes gambling and betting under Articles 195 to 199 thereof. Gambling is thus generally prohibited by law, unless another law is enacted by Congress expressly exempting or excluding certain forms of gambling from the reach of criminal law. Among these forms of gambling allowed by special law are the horse races authorized by Republic Acts Nos. 309 and 983 and gambling casinos authorized under Presidential Decree No. 1869.

While jai-alai as a sport is not illegal per se, the accepting of bets or wagers on the results of jai-alai games is undoubtedly gambling and, therefore, a criminal offense punishable under Articles 195-199 of the Revised Penal Code, unless it is shown that a later or special law had been passed allowing it. ADC has not shown any such special law.

Republic Act No. 409 (the Revised Charter of the City of Manila) which was enacted by Congress on 18 June 1949 gave the Municipal Board certain delegated legislative powers under Section 18. A perusal of the powers enumerated under Section 18 shows that these powers are basically regulatory in nature. [5] The regulatory nature of these powers finds support not only in the plain words of the enumerations under Section 18 but also in this Court's ruling in *People v. Vera* (65 Phil. 56).

In *Vera*, this Court declared that a law which gives the Provincial Board the discretion to determine whether or not a law of general application (such as, the Probation law-Act No. 4221) would or would not be operative within the province, is unconstitutional for being an undue delegation of legislative power.

From the ruling in *Vera*, it would be logical to conclude that, if ADC's arguments were to prevail, this Court would likewise declare Section 18(jj) of the Revised Charter of Manila unconstitutional for the power it would delegate to the Municipal Board of Manila would give the latter the absolute and unlimited discretion to render the penal code provisions on gambling inapplicable or inoperative to persons or entities issued permits to operate gambling establishments in the City of Manila.

We need not go to this extent, however, since the rule is that laws must be presumed valid, constitutional and in harmony with other laws. Thus, the relevant provisions of Rep. Acts Nos. 409 and 954 and Ordinance No. 7065 should be taken together and it should then be clear that the legislative powers of the Municipal Board should be understood to be regulatory in nature and that Republic Act No. 954 should be understood to refer to congressional franchises, as a necessity for the operation of jai-alais.

We need not, however, again belabor this issue further since the task at hand which will ultimately, and with finality, decide the issues in this case is to determine whether PD No. 771 validly revoked ADC's franchise to operate the jai-alai, assuming (without conceding) that it indeed possessed such franchise under Ordinance No. 7065.

ADC argues that PD No. 771 is unconstitutional for being violative of the equal protection and non-impairment provisions of the Constitution. On the other hand, the government contends that PD No. 771 is a valid exercise of the inherent police power of the State.

The police power has been described as the least limitable of the inherent powers of the State. It is based on the ancient doctrine - *salus populi est suprema lex* (the welfare of the people is the supreme law.) In the early case of *Rubi v. Provincial Board of Mindoro* (39 Phil. 660), this Court through Mr. Justice George A. Malcolm stated thus:

“The police power of the State x x x is a power coextensive with self-protection, and is not inaptly termed the 'law of overruling necessity.' It may be said to be that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety and welfare of society. Carried onward by the current of legislation, the judiciary rarely attempts to dam the onrushing power of legislative discretion, provided the purposes of the law do not go beyond the great principles that mean security for the public welfare or do not arbitrarily interfere with the right of the individual.”

In the matter of PD No. 771, the purpose of the law is clearly stated in the “whereas clauses” as follows:

“WHEREAS, it has been reported that in spite of the current drive of our law enforcement agencies against

vices and illegal gambling, these social ills are still prevalent in many areas of the country;

“WHEREAS, there is need to consolidate all the efforts of the government to eradicate and minimize vices and other forms of social ills in pursuance of the social and economic development program under the new society;

“WHEREAS, in order to effectively control and regulate wagers or betting by the public on horse and dog races, jai-alai and other forms of gambling there is a necessity to transfer the issuance of permit and/ or franchise from local government to the National Government.”

It cannot be argued that the control and regulation of gambling do not promote public morals and welfare. Gambling is essentially antagonistic to the objectives of national productivity and self-reliance. It breeds indolence and erodes the value of good, honest and hard work. It is, as very aptly stated by PD No. 771, a vice and a social ill which government must minimize (if not eradicate) in pursuit of social and economic development.

In *Magtajas v. Pryce Properties Corporation* (20 July 1994, G.R. No. 111097), this Court stated thru Mr. Justice Isagani A. Cruz:

“In the exercise of its own discretion, the legislative power may prohibit gambling altogether or allow it without limitation or it may prohibit some forms of gambling and allow others for whatever reasons it may consider sufficient. Thus, it has prohibited jueteng and monte but permits lotteries, cockfighting and horse-racing. In making such choices, Congress has consulted its own wisdom, which this Court has no authority to review, much less reverse. Well has it been said that courts do not sit to resolve the merits of conflicting theories. That is the prerogative of the political departments. It is settled that questions regarding wisdom, morality and practicability of statutes are not addressed to the judiciary but may be resolved only by the executive and legislative departments, to which the function belongs in our scheme of government.”
(Underscoring supplied)

Talks regarding the supposed vanishing line between right and privilege in American constitutional law has no relevance in the context of these cases since the reference there is to economic regulations. On the other hand, jai-alai is not a mere economic activity which the law seeks to regulate. It is essentially gambling and whether it should be permitted and, if so, under what conditions are questions primarily for the lawmaking authority to determine, taking into account national and local interests. Here, it is the police power of the State that is paramount.

ADC questions the motive for the issuance of PD Nos. 771. Clearly, however, this Court cannot look into allegations that PD No. 771 was enacted to benefit a select group which was later given authority to operate the jai-alai under PD No. 810. The examination of legislative motivation is generally prohibited. (*Palmer v. Thompson*, 403 U.S. 217, 29 L. Ed. 2d 438 [1971], per Black, J.) There is, in the first place, absolute lack of evidence to support ADC's allegation of improper motivation in the issuance of PD No. 771. In the second place, as already averred, this Court cannot go behind the expressed and proclaimed purposes of PD No. 771, which are reasonable and even laudable.

It should also be remembered that PD No. 771 provides that the national government can subsequently grant franchises “upon proper application and verification of the qualifications of the applicant.” ADC has not alleged that it filed an application for a franchise with the national government subsequent to the enactment of PD No. 771; thus, the allegations abovementioned (of preference to a select group) are based on conjectures, speculations and imagined biases which do not warrant the consideration of this Court.

On the other hand, it is noteworthy that while then President Aquino issued Executive Order No. 169 revoking PD No. 810 (which granted a franchise to a Marcos-crony to operate the jai-alai), she did not scrap or repeal PD No. 771 which had revoked all franchises to operate jai-alais issued by local governments, thereby re-affirming the

government policy that franchises to operate jai-alais are for the national government (not local governments) to consider and approve.

On the alleged violation of the non-impairment and equal protection clauses of the Constitution, it should be remembered that a franchise is not in the strict sense a simple contract but rather it is, more importantly, a mere privilege specially in matters which are within the government's power to regulate and even prohibit through the exercise of the police power. Thus, a gambling franchise is always subject to the exercise of police power for the public welfare.

In *RCPI v. NTC* (150 SCRA 450), we held that:

“A franchise started out as a ‘royal privilege or (a) branch of the King’s prerogative, subsisting in the hands of a subject.’ This definition was given by Finch, adopted by Blackstone, and accepted by every authority since x x x Today, a franchise, being merely a privilege emanating from the sovereign power of the state and owing its existence to a grant, is subject to regulation by the state itself by virtue of its police power through its administrative agencies.”

There is a stronger reason for holding ADC's permit to be a mere privilege because jai-alai, when played for bets, is pure and simple gambling. To analogize a gambling franchise to a franchise for the operation of a public utility, such as public transportation company, is to trivialize the great historic origin of this branch of royal privilege.

As earlier noted, ADC has not alleged ever applying for a franchise under the provisions of PD No. 771. And yet, the purpose of PD No. 771 is quite clear from its provisions, i.e., to give to the national government the exclusive power to grant gambling franchises. Thus, all franchises then existing were revoked but were made subject to reissuance by the national government upon compliance by the applicant with government-set qualifications and requirements.

There was no violation by PD No. 771 of the equal protection clause since the decree revoked all franchises issued by local governments without qualification or exception. ADC cannot allege violation of the equal protection clause simply because it was the only one affected by the decree, for as correctly pointed out by the government, ADC was not singled out when all jai-alai franchises were revoked. Besides, it is too late in the day for ADC to seek redress for alleged violation of its constitutional rights for it could have raised these issues as early as 1975, almost twenty (20) years ago.

Finally, we do not agree that Section 3 of PD No. 771 and the requirement of a legislative franchise in Republic Act No. 954 are “riders” to the two (2) laws and are violative of the rule that laws should embrace one subject which shall be expressed in the title, as argued by ADC. In *Cordero v. Cabatuando* (6 SCRA 418), this Court ruled that the requirement under the Constitution that all laws should embrace only one subject which shall be expressed in the title is sufficiently met if the title is comprehensive enough reasonably to include the general object which the statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of the objective.

III

On the issue of whether or not there was grave abuse of discretion committed by respondent Judge Reyes in issuing the temporary restraining order (later converted to a writ of preliminary injunction) and the writ of preliminary mandatory injunction, we hold and rule there was.

Section 3, Rule 58 of the Rules of Court provides for the grounds for the issuance of a preliminary injunction. While ADC could allege these grounds, respondent judge should have taken judicial notice of Republic Act No. 954 and PD 771, under Section 1 Rule 129 of the Rules of Court. These laws negate the existence of any legal

right on the part of ADC to the reliefs it sought so as to justify the issuance of a writ of preliminary injunction. Since PD No. 771 and Republic Act No. 954 are presumed valid and constitutional until ruled otherwise by the Supreme Court after due hearing, ADC was not entitled to the writs issued and consequently there was grave abuse of discretion in issuing them.

WHEREFORE, for the foregoing reasons, judgment is hereby rendered:

1. allowing the Republic of the Philippines to intervene in G.R. No. 115044.
2. declaring Presidential Decree No. 771 valid and constitutional.
3. declaring that respondent Associated Development Corporation (ADC) does not possess the required congressional franchise to operate and conduct the jai-alai under Republic Act No. 954 and Presidential Decree No. 771.
4. setting aside the writs of preliminary injunction and preliminary mandatory injunction issued by respondent Judge Vetino Reyes in Civil Case No. 94-71656.

SO ORDERED.

Feliciano, Bidin, Regalado, Romero, Vitug, and Mendoza, JJ., concur.

Davide, Jr., and Kapunan, JJ., separate opinion.

Belosillo and Melo, JJ., joins Puno and Quason in their dissent.

Narvasa, C.J. and Francisco, J., no part.

[1] Annex "D", Petition in G.R. No. 117263.

[2] Annex "C", Petition in G.R. No. 117263.

[3] "Sec. 5. The Supreme Court shall have the following powers: (1) Exercise original jurisdiction x x x over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus. x x x"

[4] "Sec. 4 x x x

(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc x x x shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

[5] It will be noted that under Executive Order No. 392, issued on 1 January 1951, even the power to regulate jai-alais was transferred from the local governments to the Games and Amusement Board (GAB).

SEPARATE OPINION

DAVIDE, JR. J.:

The core issues submitted for the Court's resolution are: (1) in G.R. No. 115044, whether intervention by the Republic of the Philippines is proper, and (2) in G.R. No. 117263, whether public respondent Judge Vetino Reyes acted with grave abuse of discretion in issuing the temporary restraining order and subsequently the writ of preliminary mandatory injunction in Civil Case No. 94-71656.

I

As to the first issue, I submit that unless we either amend the rule on intervention or suspend it, the motion to intervene must be denied. Under Section 2, Rule 12 of the Rules of Court, such motion may be allowed only before or during a trial. Said section reads:

SEC. 2. Intervention. -- A person may, before or during a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

This provision was taken from Section 1, Rule 13 of the old Rules of Court with the modification that the phrase "at any period of a trial" in the latter was changed to "before or during a trial." [1]

Section 1, Rule 13 of the old Rules of Court was based on Section 121 of the Code of Civil Procedure which, in turn, was taken from Section 387 of the Code of Civil Procedure of California. [2]

The phrase "at any period of a trial" in Section 1, Rule 13 of the old Rules of Court has been construed to mean the period for the presentation of evidence by both parties. [3] And the phrase "before or during the trial" in Section 2, Rule 12 of the present Rules of Court "simply means anytime before the rendition of the final judgment." [4] Accordingly, intervention could not be allowed after the trial had been concluded [5] or after the trial and decision of the original case. [6]

Fundamentally then, intervention is never an independent action but is ancillary and supplemental to an existing litigation. Its purpose is not to obstruct nor unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interest. [7]

The grant of an intervention is left to the discretion of the court. Paragraph (b), Section 2, Rule 12 of the Rules of Court provides:

(b) Discretion of court. -- In allowing or disallowing a motion for intervention, the court, in the exercise of discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding.

It is thus clear that, by its very nature, intervention presupposes an existing litigation or a pending case, [8] and by the opening paragraph of Section 2, Rule 12 of the Rules of Court, it may be properly filed only before or during the trial of the said case. Even if it is filed before or during the trial, it should be denied if it will unduly delay or prejudice the adjudication of the rights of the original parties and if the intervenor's rights may be fully protected in a separate proceeding. [9]

It is not disputed that the motion to intervene was filed only on 16 September 1994, or on the fifteenth (15th) day after the First Division had promulgated the decision, and after petitioner Mayor Alfredo Lim complied with or voluntarily satisfied the judgment. The latter act brought to a definite end or effectively terminated G.R. No. 115044. Consequently, intervention herein is impermissible under the rules. To grant it would be a capricious exercise of discretion. The decision of this Court in *Director of Lands vs. Court of Appeals* [10] cannot be used to sanction such capriciousness for such decision cannot be expanded further to justify a new doctrine on intervention. In the first place, the motions to intervene in the said case were filed before the rendition by this Court of its decision therein. In the second place, there were unusual and peculiar circumstances in the said case which this Court took into account. Of paramount importance was the fact that the prospective intervenors were indispensable parties, and so this Court stated therein:

But over and above these considerations and circumstances which We have pointed out, there is the basic and fundamental requirement under the Rules of Court, Section 7, Rule 3, that "Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiff or defendants." The joinder of indispensable parties is compulsory under any and all conditions, their presence being a sine qua non of the exercise of judicial power.' [Borlasa vs. Polistico, 47 Phil. 345, 348].

The herein movants, Greenfield Development Corporation, Alabang Development Corporation, Ramon D. Bagatsing, and all buyers from them, at least those with ostensible proprietary interests as the MERALCO, Alabang Hills Subdivision, Cielito Homes Subdivision, Tahanan Village, the Ministry of Highways insofar as the South Super Highway is affected, are indispensable parties to these proceedings as it has been shown affirmatively that they have such an interest in the controversy or subject matter that a final adjudication cannot be made, in their absence, without injuring or affecting such interest. The joinder must be ordered in order to prevent multiplicity of suits, so that the whole matter in dispute may be determined once and for all in one litigation.

And, squarely on the aspect of intervention, it found that the denial thereof

will lead the Court to commit an act of injustice to the movants, to their successors-in-interest and to all purchasers for value and in good faith and thereby open the door to fraud, falsehood and misrepresentation, should intervenors' claims be proven to be true. For it cannot be gainsaid that if the petition for reconstitution is finally granted, the chaos and confusion arising from a situation where the certificates of title of the movants covering large areas of land overlap or encroach on properties the title to which is being sought to be reconstituted by private respondent, who herself indicates in her Opposition that, according to the Director of Lands, the overlapping embraces some 87 hectares only, is certain and inevitable.

Then too, it may be stressed that said case originated from a proceeding to reconstitute a certificate of title filed by private respondent. After trial, the Court of First Instance issued an order denying the petition for insufficiency of evidence. After a motion for new trial was granted and a hearing to receive the newly discovered evidence was completed, the court issued an order again denying the reconstitution sought for as it still doubted the authenticity and genuineness of the Transfer Certificate of Title sought to be reconstituted. The private respondent appealed the order to the Court of Appeals which thereafter promulgated a decision reversing the aforesaid orders of the trial court. The Director of Lands, which was the remaining oppositor, filed a motion for a new period to file a motion for reconsideration of the decision alleging excusable negligence. Private respondent filed an opposition thereto. Without waiting for the resolution of the motion, the Director filed a motion to admit the motion for reconsideration attaching thereto said motion for reconsideration. The Court of Appeals issued a resolution denying both motions on the ground that the decision had already become final. This was the resolution which the Director assailed in his petition for review filed with this Court.

Considering then that the intervention in the case at bar was commenced only after the decision had been executed, a suspension of the Rules to accommodate the motion for intervention and the intervention itself would be arbitrary. The Government is not without any other recourse to protect any right or interest which the decision might have impaired.

May the motion to intervene and intervention proper be, nevertheless, treated as a petition for quo warranto? The majority opinion answers it in the affirmative because all the essential requisites for a petition for quo warranto are present in said pleadings. I am almost tempted to agree with that opinion if not for the fact that there is pending before the Regional Trial Court of Manila Civil Case No. 94-71656 which is a petition for prohibition, mandamus, injunction, and damages filed by the Associated Development Corporation against Executive Secretary Guingona and then Games and Amusement Board (GAB) Chairman Sumulong. That is the more

appropriate forum where the Government and petitioner Guingona may challenge the validity of ADC's franchise. Its filing was provoked by the withdrawal by the GAB of the provisional authority it granted to ADC in view of the 13 September 1994 directive of Executive Secretary Guingona informing the GAB of sufficient bases to hold in abeyance the operation of the jai-alai until the legal questions stated therein are properly resolved. Said legal questions go into the validity of the franchise issued to ADC. Consequently, it is to be logically presumed that for its affirmative defenses in Civil Case No. 94-71656 the Government would raise the same issues raised in the intervention in G.R. No. 117263.

Accordingly, I vote to deny the motion for intervention in G.R. No. 115044.

II

However, I vote to partially grant the petition in G.R. No. 117263 insofar as wagering or betting on the results of jai-alai is concerned. The temporary restraining order and the preliminary mandatory injunction issued by respondent Judge cannot legally and validly allow such wagering and betting. It was precisely for this reason that I earlier voted to grant a temporary restraining order in G.R. No. 115044 and G.R. No. 117263 to restrain wagering or betting. I wish to reiterate here what I stated in my supplemental concurring opinion in G.R. No. 115044:

Secondly, to make my position clear that the dismissal of the petition should not be construed as compelling the City of Manila to authorize gambling by allowing betting on the results of jai-alai. The decision merely dismissed the petition because the Court found "no abuse of discretion, much less lack or excess of jurisdiction, on the part of the respondent judge" in issuing the challenged order directing the petitioner to issue a permit or license in favor of the private respondent pursuant to Ordinance No. 7065. That order was to enforce the final and executory decision of the Regional Trial Court of 9 September 1988 in Civil Case No. 88-45660, the appeal therefrom to the Court of Appeals by the City of Manila having been withdrawn by it on 9 February 1989. That decision ordered the City of Manila to immediately issue to the private respondent "the permit/license required under Ordinance No. 7065." The City of Manila did in fact issue the required permit or license to the private respondent for the operation of the jai-alai in Manila for the years 1988 to 1992. Nevertheless, when the jai-alai complex was almost completed, the City Mayor refused to renew the Mayor's Permit.

There is a clear distinction between the initial duty of the City Mayor under Ordinance No. 7065 to issue the necessary license or permit to establish the jai-alai fronton and to maintain and operate the jai-alai, and his subsequent discretion to impose other terms and conditions for the final contract relative to such operation. The trial court specifically said so in its decision of 9 September 1989. Thus:

"A suggestion has been made in the Answer that a writ of mandamus will not lie against respondents, particularly the Mayor, because 'the availment of the franchise... is subject to the terms and conditions which the respondent Mayor may impose.'

A careful reading, however, of Ordinance 7065 will readily show that the discretion, if any, allowed respondent Mayor, under the ordinance, will be exercisable only after the permit, which he is mandated to issue, had been issued and the jai-alai fronton is already operational. The ordinance stipulates that the Mayor is authorized 'to allow and permit petitioner to establish, maintain and operate a jai-alai in the City of Manila,' under the five conditions enumerated in subparagraphs 'a' to 'e' of Section 1 of the Ordinance. By a simple reading of these 'terms and conditions' patently shows that subparagraphs 'b' to 'e' are clearly conditions that will only come into play after the jai-alai has been put up or established; while the condition under subparagraph 'a' appears to have been complied with satisfactorily by the petitioner, since no objection at all has been made by respondents to the proposed site for jai-alai fronton, that is, the 25,000 sq. m. land area behind the present Harrison Plaza Complex located at Ermita, Manila."

Consequently, the Mayor's Permit sought to be renewed or the motion before the lower court to compel the Mayor to renew it, has reference only to subparagraph (a), Section 1 of Ordinance No. 7065. The renewal of the permit can by no stretch of the imagination be taken as a final contract between the private respondent and the City of Manila for otherwise it would remove the power and authority of the Mayor under the ordinance to impose "other terms and conditions as he may prescribe for good reasons of general interest."

It follows then that the Mayor's Permit ordered by the trial court to be issued to the private respondent is not a license or authority to allow betting or wagering on the results of the jai-alai games. Jai-alai is a sport based on skill. Under Article 197 of the Revised Penal Code, before it was amended by P.D. No. 1602, betting upon the result of any boxing or other sports contests was penalized with *arresto menor* or a fine not exceeding P200.00, or both. Article 2019 of the Civil Code provides that "[b]etting on the results of sports, athletic competitions, or games of skill may be prohibited by local ordinances."

P.D. No. 483, enacted on 13 June 1974, penalizes betting, game fixing or point shaving and machinations in sports contests, including jai-alai. Section 2 thereof expressly provides:

"SECTION 2. Betting, game fixing, point shaving or game machinations unlawful. -- Game fixing, point shaving, machination, as defined in the preceding Section, in connection with the games of basketball, volleyball, softball, baseball; chess; boxing bouts, 'jai-alai,' 'sipa,' 'pelota' and all other sports contests, games or races; as well as betting therein except as may be authorized by law, is hereby declared unlawful."

The succeeding Section 3 provides for the penalties.

On 11 June 1978, P.D. No. 1602 (75 O.G. No. 15, 3270), Prescribing Stiffer Penalties on Illegal Gambling, was enacted to increase the penalties provided in various "Philippine Gambling Laws such as Articles 195-199 of the Revised Penal Code (Forms of Gambling and Betting), R.A. No. 3063 (Horse Racing Bookies), P.D. No. 449 (Cockfighting), P.D. No. 483 (Game Fixing), P.D. No. 510 (Slot Machines) in relation to Opinion Nos. 33 and 97 of the Ministry of Justice, P.D. No. 1306 (Jai-alai Bookies), and other City and Municipal Ordinances on gambling all over the country." Section 1 thereof reads:

x x x

Both P.D. No. 483 and P.D. No. 1602 were promulgated in the exercise of the police power of the State.

Pursuant to Section 2 of P.D. No. 483, which was not repealed by P.D. No. 1602 since the former is not inconsistent with the latter in that respect, betting in jai-alai is illegal unless allowed by law. There was such a law, P.D. No. 810, which authorized the Philippine Jai-Alai and Amusement Corporation as follows:

"SECTION 2. The grantee or its duly authorized agent may offer, take or arrange bets within or outside the place, enclosure or court where the Basque pelota games are held: Provided, That bets offered, taken or arranged outside the place, enclosure or court where the games are held, shall be offered, taken or arranged only in places duly licensed by the corporation, Provided, however, That the same shall be subject to the supervision of the Board. No person other than the grantee or its duly authorized agents shall take or arrange bets on any *pelotari* or on the game, or maintain or use a totalizator or other device, method or system to bet on any *pelotari* or on the game within or without the place, enclosure or court where the games are held by the grantee. Any violation of this section shall be punished by a fine of not more than two thousand pesos or by imprisonment of not more than six months, or both in the discretion of the Court. If the offender is a partnership, corporation or association, the criminal liability shall devolve upon its president, directors or any officials responsible for the violation."

However, as stated in the ponencia, P.D. No. 810 was repealed by E.O. No. 169 issued by then President Corazon C. Aquino. I am not aware of any other law which authorizes betting in jai-alai. It follows then that while the

private respondent may operate the jai-alai fronton and conduct jai-alai games, it can do so solely as a sports contest. Betting on the results thereof, whether within or off-fronton, is illegal and the City of Manila cannot, under the present state of the law, license such betting. The dismissal of the petition in this case sustaining the challenged orders of the trial court does not legalize betting, for this Court is not the legislature under our system of government.

Accordingly, I vote to grant the petition in G.R. No. 117263 and to set aside the questioned temporary restraining order and the writ of preliminary mandatory injunction but only to the extent that they allow wagering or betting on the results of jai- alai.

[1] 1 VICENTE J. FRANCISCO, *The Revised Rules of Court in the Philippines* 718 (1973 ed.).

[2] *Garcia vs. David*, 67 Phil. 279, 283 [1939].

[3] *Trazo vs. Manila Pencil Co.*, 1 SCRA 403 [1961], citing *Felismino vs. Gloria*, supra note 2; *Bool vs. Mendoza*, G.R. No. L-5339, 17 April 1953.

[4] *Lichauco vs. Court of Appeals*, 63 SCRA 123 [1975].

[5] *Trazo vs. Manila Pencil Co.*, supra note 3, citing *Lim Tek Goan vs. Azores*, 76 Phil. 363 [1946]; *El Hogar Filipino vs. National Bank*, 64 Phil. 582 [1937].

[6] *Rizal Surety and Insurance Co. vs. Tan*, 83 Phil. 732 [1949].

[7] *Garcia vs. David*, supra note 2 at 282; 59 Am Jur 2d 575; 67 C.J.S. 975; *Clareza vs. Rosales*, G.R. No. L-15364, 31 May 1961, 59 O.G. No. 23, 3605.

[8] *Garcia vs. David*, supra note 2.

[9] *Batama Farmers' Cooperative Marketing Association, Inc. vs. Rosal*, 42 SCRA 408 [1971].

[10] 93 SCRA 238 [1979].

SEPARATE OPINION

KAPUNAN, J.:

Government encroachments on private property however valid, are always subject to limitations imposed by the due process and impairment of contracts clauses of the Constitution. The government challenge in the case at bench, ostensibly involving a franchise granted pursuant to legitimate local legislative authority, on the surface appears to be an easy one, clothed, as it were in the State's inherent and almost illimitable prerogative to promote the general welfare and the common good. As the challenge involves a facile conflict between good and evil, between a universally recognized vice and the State's virtuous posture, the instant case lends itself to easy adjudication.

Not necessarily. Economic realities have blurred distinctions. The State itself, though in virtuous garb, has at various times allowed a relaxation of existing rules proscribing gambling and devised a system of regulations, local and national, through which gambling and otherwise illicit gaming operations may be maintained by those licensed to do so. As the system has never been perfect, conflict, such as that which exists in the case at bench, occasionally arises.

The constitutionality of P.D. 771 was not in issue in *Lim vs. Pacquing*, promulgated by the Court's First Division last September, 1994, where this court sustained an order by Judge Pacquing issued in Civil Case No. 88-45660 compelling Manila Mayor Alfredo S. Lim to issue a permit to operate a jai alai fronton in favor of the Associated Development Corporation (ADC) pursuant to Manila City Ordinance No. 7065.

After the City of Manila subsequently granted ADC a permit to operate the jai-alai fronton, Chairman Francisco Sumulong, Jr. of the Games and Amusements Board issued on September 9, 1994 a provisional authority to open the fronton subject to certain conditions imposed therein. In relation to this, the GAB likewise issued to the ADC, on 12 September 1994, License No. 94-008 upon payment of the corresponding fees.

On September 13, 1994, Executive Secretary Teofisto Guingona directed GAB Chairman Sumulong "to hold in abeyance the grant of authority or if any has been issued, to withdraw such grant of authority" [1] to the ADC. Consequently, on September 14, 1994, the GAB Chairman revoked the provisional authority issued by his office, until the legal issues raised in the September 13 directive of the Executive Secretary are resolved in the proper court. Said directive identified the legal issues as centering on 1) the constitutionality of P.D. 771; 2) the validity of the apparent grant in perpetuity of a municipal franchise to maintain jai-alai operations; and, 3) the power of the City of Manila to issue a jai-alai franchise in view of Executive Order 392 which transferred from local governments to the GAB the power to regulate jai-alai.

Reacting to the cancellation of its provisional authority to maintain jai-alai operations, ADC, on September 15, 1994 filed a petition for prohibition, mandamus, injunction and damages with prayer for temporary restraining order and writ of preliminary injunction in the Manila Regional Trial Court of against Executive Secretary Guingona and Chairman Sumulong. The Regional Trial Court of Manila, Branch 4, through Judge Vetino Reyes on the same day issued an order enjoining the Executive Secretary and the GAB Chairman from implementing their directive and memorandum, respectively.

On September 16, 1994 GAB, representing the Republic of the Philippines, filed a motion for intervention, for leave to file a motion for reconsideration-in-intervention and for reference of the case to the Court en banc in G.R. No. 115044. Acting on this motion, the First Division referred the case to the Court en banc, which, in a resolution dated 20 September 1994, accepted the same and required the respondents therein to comment.

On October 11, 1994 the Executive Secretary and the new GAB Chairman Domingo Cepeda, Jr. filed with this Court a petition for certiorari, prohibition and mandamus assailing Judge Vetino Reyes' earlier orders.

On October 19, 1994, Judge Reyes issued another order granting the ADB's motion for a writ of preliminary mandatory injunction against the Executive Secretary and the GAB Chairman and to compel them to issue the necessary authority, licenses and working permits to the ADC, its personnel and players.

The government sought leave to file a supplemental petition (and to admit attached supplemental petition) with urgent prayer for a restraining order assailing the October 19, 1994 Order of Judge Reyes. We granted leave to file said supplemental petition and to admit supplemental petition and required respondents therein to file their comment on October 25, 1994.

The ADC maintains its original position that Ordinance No. 7065, enacted pursuant to the Charter of the City of Manila under Republic Act No. 409 granted a valid and subsisting municipal franchise for the operation of the Basque pelota game jai alai. In response to the government's vehement objections against ADC's operation of its gambling operations [2] the ADC for the first time challenged the constitutional validity of P.D. No. 771 insofar as it revoked the authority granted to it by Ordinance No. 7065 as violative of the non-impairment of contracts and equal protection clauses of the constitution. Ordinance 7065 reads:

Section 1. The Mayor is authorized, as he is hereby authorized to allow and permit the Associated Development Corporation to establish, maintain and operate a jai-alai in the City of Manila under the following terms and conditions and such other terms and conditions as he (the Mayor) may prescribe for good reasons of general interest:

- a. That the construction, establishment, and maintenance of the jai-alai shall be at a place permissible under existing zoning ordinances of Manila;
- b. That the games to be played daily shall commence not earlier than 5:00 o'clock(sic) in the afternoon;
- c. That the City of Manila will receive a share of $2\frac{1}{2}\%$ of the annual gross receipts of all wagers or bets $1/2\%$ of which will accrue to the Games and Amusements Board as now provided by law;
- d. That the corporation will in addition pay to the city an annual license fee of P 3,000.00 and a daily permit fee of P200.00;
- e. That the corporation will to insure its faithful compliance of all the terms and conditions under this ordinance, put up a performance bond from a surety acceptable to the City, in the amount of at least P30,000.00.

xxx xxx xxx

SEC. 3 This ordinance shall take effect upon its approval.

The above-quoted ordinance is notable in two respects: 1) the absence of a period of expiration suggests that the grant of authority to operate the Basque pelota game jai-alai seems to have been granted in perpetuity and 2) while the grant of authority under the Ordinance was made pursuant to R.A. 409, the City Charter of Manila, the authority granted could best be viewed as a grant of a license or a permit, not a franchise. Nowhere is it pretended that Ordinance 7065 is a franchise enacted pursuant to the legislative powers of the Municipal Board of the City of Manila under Section 18(jj) thereof.

The absence of authority of the Manila Municipal Board to issue a franchise, notwithstanding its legislative powers, is furthermore evident in the above-cited Charter provision regulating gambling and other gaming establishments which enumerates the following powers:

(jj) To tax, license, permit and regulate wagers or betting by the public on boxing...cockpits, jai-alai...as well as grant exclusive rights to establishments for this purpose, notwithstanding any existing law to the contrary.

Clearly then, if Ordinance 7065 merely grants a permit or a license to operate the jai-alai fronton, I see no conflict with a national law, duly enacted pursuant to legitimate legislative authority, requiring a legislative franchise to operate certain gambling and gaming operations, generally viewed as deleterious to the public welfare and morals, for the purpose of regulating the same and raising revenue. In other words, the national government may well validly require operators of such establishments to first secure a legislative franchise before starting their operations. After securing the proper legislative franchise, they may then exercise whatever authority granted to them by local legislative bodies pursuant to the permits or licenses granted by these bodies. This is essentially the spirit ordained by at least two legislative issuances relating to jai-alai and other gambling operations passed before and after the Manila City Council issued the ADC's permit to operate.

In June of 1952, Congress enacted R.A. 392 which forbade the taking or arranging of bets on any basque pelota game by any person or entity other than one with a legislative franchise. [3] After the ADC was issued its permit by the City of Manila in 1971, President Marcos issued P.D. 771 pursuant to his legislative powers during Martial Law, which revoked local authority to grant franchises to certain gambling operations including jai-alai. Section 3

thereof expressly revoked existing gambling franchises issued by the local governments. When President Corazon Aquino cancelled the franchise granted to the Philippine Jai-alai and Amusement Corporation in 1987, she kept P.D. 771 intact.

I find no incompatibility therefore, between P.D. 771, which revoked all authority by local governments to issue franchises for gambling and gaming establishments on one hand, and the municipal ordinance of the City of Manila, granting a permit or license to operate subject to compliance with the provisions found therein, on the other hand, a legislative franchise may be required by the government as a condition for certain gambling operations. After obtaining such franchise, the franchisee may establish operations in any city or municipality allowed under the terms of the legislative franchise, subject to local licensing requirements. While the City of Manila granted a permit to operate under Ordinance No 7065, this permit or authority was at best only a local permit to operate and could be exercised by the ADC only after it shall have obtained a legislative franchise.

This skirts the constitutional issue. Both P.D. 771 and Ordinance 7065 can stand alongside each other if one looks at the authority granted by the charter of the City of Manila together with Ordinance No. 7065 merely as an authority to "allow" and "permit" the operation of jai-alai facilities within the City of Manila. While the constitutional issue was raised by the respondent corporation in the case at bench, I see no valid reason why we should jump into the fray of constitutional adjudication in this case, or on every other opportunity where a constitutional issue is raised by parties before us. It is a settled rule of avoidance, judiciously framed by the United States Supreme Court in *Ashwander v. TVA* [4] that where a controversy may be settled on a platform other than one involving constitutional adjudication, the court should exercise becoming modesty and avoid the constitutional question.

The State has every legitimate right, under the police power, to regulate gambling operations [5] by requiring legislative franchises for such operations. Gambling, in all its forms, unless specifically authorized by law and carefully regulated pursuant to such law, is generally proscribed as offensive to the public morals and the public good. In maintaining a "state policy" on various forms of gambling, the political branches of government are best equipped to regulate and control such activities and therefore assume full responsibility to the people for such policy. [6] Parenthetically, gambling, in all its forms, is generally immoral.

The disturbing implications of a grant of a "franchise," in perpetuity, to the ADC militates against its posture that the government's insistence that the ADC first obtain a legislative franchise violates the equal protection and impairment of contracts clauses of the Constitution. By their very nature, franchises are subject to amendment, alteration or revocation by the State whenever appropriate. Under the exercise of its police power, the State, through its requirement for permits, licenses and franchises to operate, undertakes to regulate what would otherwise be an illegal activity punished by existing penal laws. The police power to establish all manner of regulation of otherwise illicit, immoral and illegal activities is full, virtually illimitable and plenary. [7]

In *Edu v. Ericta* [8] we defined the police power as "the state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." In its exercise, the State may impose appropriate impositions or restraints upon liberty or property in order to foster the common good. [9] Such imposition or restraint neither violates the impairment of contracts nor the equal protection clauses of the Constitution if the purpose is ultimately the public good. [10]

Restraints on property are not examined with the same microscopic scrutiny as restrictions on liberty. [11] Such restraints, sometimes bordering on outright violations of the impairments of contract principle have been made by this Court for the general welfare of the people. Justice Holmes in *Noble State Bank v. Haskell* [12] once expansively described the police power as "extending to all public needs." Franchise and licensing regulations

aimed at protecting the public from the pernicious effects of gambling are extensions of the police power addressed to a legitimate public need.

In *Lim vs. Pacquing*, I voted to sustain the ADC's position on issues almost purely procedural. A thorough analysis of the new issues raised this time, compels a different result since it is plainly obvious that the ADC, while possessing a permit to operate pursuant to Ordinance 7065 of the City of Manila, still has to obtain a legislative franchise, P.D 771 being valid and constitutional.

On the question of the propriety of the Republic of the Philippines's intervention late in the proceedings in G.R. No. 117263, the ADC counsel's agreeing to have all the issues raised by the parties in the case at bench paves the way for us to consider the petition filed in G.R. No. 117263 as one for quo warranto.

WHEREFORE, on the basis of the foregoing premises, judgment is hereby rendered:

1. Allowing the Republic to intervene in G.R. No. 115044.
2. Declaring that P.D. 771 is a valid and subsisting law.
3. Declaring that the ADC does not possess the required legislative franchise to operate the jai-alai under R.A. 954 and P.D. 771.
4. Setting aside the writs of preliminary injunction and preliminary mandatory injunction issued by Judge Vetino Reyes.

[1] G.R. No. 117263, Rollo, pp. 7-8.

[2] The government contends that 1) Republic Act No. 954 approved on June 20, 1953 requires a legislative not a municipal franchise and that 2) Sec 3 of P.D. 771 issued on 20 August 1975 expressly revoked all existing franchises and permits issued by local governments to operate all forms of gambling facilities. In G.R. No. 117263 the government contends that the ADC has no right to the issuance of a preliminary mandatory injunction because the ADC had no legislative franchise and that mandamus was not available to compel performance of a discretionary function.

[3] R.A. No. 954, sec. 4 and 5.

[4] It is a cardinal principle that this court will first ascertain whether a construction of a statute is fairly possible by which the constitutional question may be avoided. 297 SA 288 (1936).

[5] *Basco vs. Pagcor* 197 SCRA 52 (1991).

[6] *Id.*

[7] "It has almost become impossible to limit its sweep." *Barbier vs Connolly*, 113 U.S. 27 (1884) "It may be said to be that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety and welfare of society." *Lake View vs Rose Hill Cemetery Co.* 70 Ill. 191 (1873) See also, *U.S. v. Toribio*, 15 Phil 85; *U.S. vs. Gomez Jesus* 31 Phil 218; *U.S. vs. Pompeya* 31 Phil 245; *Rubi vs Provincial Board* 39 Phil 600, and *Edu v. Ericta*, *infra*, note 6.

[8] 35 SCRA 481, 487.

[9] ENRIQUE M. FERNANDO, *THE CONSTITUTION OF THE PHILIPPINES*, 515 (1987).

[10] *Supra*, note 5.

[11] Supra, note 7, at 518.

[12] 219 U.S. 104 (1911).

DISSENTING OPINION

QUIASON, J.:

I vote: (1) to deny the motion to intervene and motion for reconsideration qua petition for quo warranto in G.R. No. 115044, and (2) to dismiss the petition for certiorari in G.R. No. 117263. I shall set forth the reason why.

I

Following the decision of the First Division of this Court on September 1, 1994 in G.R. No. 115044, the City of Manila issued on September 7, 1994 the Mayor's permit and Municipal license to Associated Development Corporation (ADC) upon the latter's payment of the required fees (G.R. No. 115044, Rollo, pp. 253-254, 301).

In his letter dated September 8, 1944 to President Fidel V. Ramos, Chairman Francisco Sumulong, Jr. of the Games and Amusements Board (GAB) said that he would not authorize the opening of ADC's jai-alai unless he was given a clearance from the President and until after ADC had complied with "all the requirements of the law, such as, the distribution of wager funds, [and] licensing of Pelotaris and other personnel" (Exh. F, Civil Case No. 94-71656, RTC, Br. 4, Manila; G.R. No. 117263, Rollo, p. 304).

In the position paper annexed to the letter, the GAB Chairman recommended the reopening and operation of the jai-alai, stating in pertinent part:

"There are several reasons to justify the operation of Jai-Alai, first and foremost of which is the generation of much needed revenues for the national and local governments. Other significant justifications are its tourism potential, the provision for employment, and the development of Basque pelota as an amateur and professional sport.

"Specifically, the establishment, maintenance and operation of a Jai-Alai fronton in Metro-Manila shall be by virtue of the original and still legally existing franchise granted to the Associated Development Corporation (ADC) by the City Government of Manila in 1971" (G.R. No. 115044, Rollo, p. 350; Underscoring supplied).

On September 9, 1994, Chairman Sumulong granted ADC provisional authority to open, subject to the following conditions:

"1. We prohibit you from offering to the public 'Pick 6' and 'Winner Take All' betting events until such time as this Board shall have approved the rules and regulations prepared by management governing the mechanics of these events.

"2. Licensing of officials and employees whose duties are connected directly or indirectly with the supervision and operation of jai-alai games, as mandated by Executive Order 141 dated February 25, 1965, shall be fully complied with by you within thirty (30) days from date hereof.

"3. Any other deficiencies we may discover will be accordingly rectified by management as directed by the Board.

"4. Failure to comply with any of the rules and regulations prescribed by existing laws and lawful orders of the Board, may justify withdrawal/revocation of this provisional authority without prejudice to such administrative sanctions that the Board may deem proper to impose under the circumstances.

"5. By accepting this provisional authority, Associated Development Corporation (ADC) is deemed to have agreed to the conditions above provided" (G.R. No. 117263, Rollo, pp. 8-9, 49, 238, 288).

On September 12, 1994, the GAB issued to ADC jai-alai License No. 94-008 upon payment of the corresponding permit fee. The license reads as follows:

"Under and by virtue of the provisions of Section 7 of Executive Order No. 392, series of 1950, in conjunction with Executive Order No. 824, series of 1982, this Board has this date granted ADC Represented by Gen. Alfredo B. Yson permit to hold or conduct a [sic] jai alai contests/exhibitions on September 12 to 14, 1994, at the Harrison Plaza Complex, located in Harrison Plaza, Malate, Manila.

"This permit is issued subject to the condition that the Promoter shall comply with the provisions of Executive Order No. 824, S. 1982, the rules and regulations, orders and/or policies adopted or which may hereafter be adopted by the Board, and with the conditions set forth in the application for which this permit has been granted; and failure on the part of the promoter to comply with any of which shall be deemed sufficient cause for the revocation thereof" (G.R. No. 117263, Rollo, pp. 50, 238, 289).

In compliance with GAB Rules and Regulations, ADC submitted its programs of jai-alai events for approval (Exhs. O, P and Q, Civil Case No. 94-71656, RTC, Br. 4, Manila; G.R. No. 117263, Rollo, pp. 290-292).

It appears that as early as May 23, 1994, Jai-Alai de Manila (the business name of ADC's fronton) had inquired from GAB about the laws and rules governing its jai-alai operation. In reply, Chairman Sumulong furnished Jai-Alai de Manila with copies of E.O. Nos. 392 and 824 and the Revised Rules and Regulations for Basque Pelota Games (Exhs. K and L, Civil Case No. 94-71656, RTC, Br. 4, Manila; G.R. No. 117263, Rollo, pp. 301-302).

On September 13, 1994, Executive Secretary Teofisto Guingona, Jr. issued the following Directive to GAB Chairman Sumulong:

"In reply to your letter dated 9 September 1994 requesting for the President's approval to re-open the Jai-Alai in Manila, please be informed that after a review and study of existing laws, there is sufficient basis to hold in abeyance the operation of the Jai-Alai until the following legal questions are properly resolved:

1. Whether P.D. 771 which revoked all existing Jai-Alai franchises issued by local government as of 20 August 1975 is unconstitutional.
2. Assuming that the City of Manila had the power on 7 September 1971 to issue a Jai-Alai franchise to Associated Development Corporation, whether the franchise granted is valid considering that the franchise has no duration, and appears to be granted in perpetuity.
3. Whether the City of Manila had the power to issue a Jai-Alai franchise to Associated Development Corporation on 7 September 1971 in view of Executive Order No. 392 dated 1 January 1951 which transferred from local governments to the Games and Amusements Board the power to regulate Jai-Alai.

"This Office has directed the Solicitor General to bring before the proper court the foregoing issues for resolution. Pending such resolution, you are directed to hold in abeyance the grant of authority, or if any has been issued, to withdraw such grant of authority, to Associated Development Corporation to operate the Jai-Alai in the City of Manila" (G.R. No. 117263, Rollo, pp. 7-8, 48, 1939; Underscoring supplied).

On September 14, 1994, Chairman Sumulong issued a Memorandum to ADC stating that:

"In view of the directive from the Office of the President dated 13 September 1994, Associated Development Corporation is hereby ordered to cease and desist from operating the Jai-Alai until the legal issues raised in the said directive are resolved by the proper court. The provisional authority issued pending further scrutiny and

evaluation to ADC on 9 September 1994 is hereby withdrawn" (G.R. No. 117263, Rollo, pp. 51, 194; Underscoring supplied).

On September 15, 1994, ADC filed with the Regional Trial Court, Branch 4, Manila a petition for prohibition, mandamus, injunction and damages with prayer for temporary restraining order or writ of preliminary injunction (Case No. 94-71656) against Executive Secretary Guingona and Chairman Sumulong assailing the former's Directive and the latter's Memorandum (G.R. No. 117263, Rollo, pp. 3, 20-21, 53-75, 167-168).

On the same day, Judge Vetino Reyes issued a temporary restraining order enjoining Executive Secretary Guingona and Chairman Sumulong from implementing their respective Directive and Memorandum (G.R. No. 117263, Rollo, pp. 2, 10, 44).

On September 16, 1994, Executive Secretary Guingona and Chairman Sumulong filed an urgent motion to recall the temporary restraining order, with opposition to the motion for issuance of a writ of preliminary injunction. The said motion was reiterated in the supplemental motion filed on September 20, 1994 (G.R. No. 117263, Rollo, pp. 66-75, 76-86).

Meanwhile, on September 16, 1994, the Republic of the Philippines, represented by GAB, filed in G.R. No. 115044 a motion for intervention; for leave to file a motion for reconsideration-in-intervention; to admit the attached motion for reconsideration-in-intervention; and to refer the case to the Court en banc (Rollo, pp. 219-249).

Subsequently, and on the different dates, the Republic filed in G.R. No. 115044 the following pleadings: "Motion for Leave to File Supplemental Motion for Reconsideration--In-Intervention and to Admit Attached Supplemental Motion For Reconsideration-In-Intervention" (Rollo, pp. 262-265); "Supplemental Motion for Reconsideration-In-Intervention" (Rollo, pp. 266-280); "Motion for Leave to File Second Supplemental Motion for Reconsideration-In-Intervention and to Admit Attached Second Supplemental Motion For Reconsideration-In-Intervention" (Rollo, pp. 380-382); and "Second Supplemental Motion for Reconsideration-In--Intervention" (Rollo, pp. 383-400).

Acting on the motion of the Republic dated September 16, 1994, the First Division referred, in its Resolution dated September 19, 1994, Case G.R. No. 115044 to the Court en banc, and the latter accepted the same in its Resolution dated September 20, 1994 (Rollo, p. 255).

In the meantime, Chairman Sumulong resigned and Dominador R. Cepeda, Jr. was appointed as his successor.

On September 30, 1994, Judge Reyes issued a writ of preliminary injunction (G.R. No. 117263, Rollo, pp. 2, 47).

On October 11, 1994, Executive Secretary Guingona and GAB Chairman Cepeda, Jr. filed with this Court a petition for certiorari, prohibition and mandamus (G.R. No. 117263, Rollo, pp. 1-151) and on October 24, 1994, a supplemental petition (G.R. No. 117263, Rollo, pp. 161-165, 166-306). Petitioners assailed the following issuances of Judge Reyes in Civil Case No. 94-71656:

- (1.) Temporary Restraining Order dated September 15, 1994 directing Executive Secretary Guingona and Chairman Sumulong to desist from enforcing the Directive dated September 13, 1994 and the Memorandum dated September 15, 1994 (Rollo, p. 44);
- (2.) Order dated September 25, 1994 denying the Urgent Motion to Recall Temporary Restraining Order and the Urgent Supplemental Motion to Recall Temporary Restraining Order (Rollo, p. 46);
- (3.) Order dated September 30, 1994 directing the issuance of a Writ of Preliminary Injunction directed against the aforesaid Directive and Memorandum (Rollo, p. 47);

(4.) Order dated October 19, 1994 granting ADC's Motion to Amend the Petition to Conform to the Evidence and directing the issuance of a writ of preliminary mandatory injunction "directing (Executive Secretary and the GAB Chairman), their successors, representatives and any government office/agency acting for and in their behalf or in implementation of their orders earlier enjoined by a writ of preliminary injunction issued by this Court on September 30, 1994, to issue the necessary authority, licenses and working permits to x x x Associated Development Corporation, and its personnel and players (Rollo, pp. 216-217).

They prayed that the trial court be enjoined from conducting further proceedings in Civil Case No. 94-71656 and that said case be dismissed. They also filed a motion for consolidation of G.R. No. 117263 with G.R. No. 115044 (G.R. No. 117263, Rollo, pp. 152-160). As prayed for, we considered the two cases together.

In their petition in G.R. No. 117263, Executive Secretary Guingona and Chairman Cepeda claimed that ADC had no clear right to the issuance of the preliminary mandatory injunction because:

- (1) ADC had no legislative franchise;
- (2) ADC admitted in G.R. No. 115044 that GAB had no authority to issue the license or permit subject of the order in question; and
- (3) Mandamus was not available to compel the performance of a discretionary function (G.R. No. 117263, Rollo, pp. 182-189).

On November 2, 1994, ADC and Judge Reyes filed their Consolidated Comment to the petition and supplemental petition (G.R. No. 117263, Rollo, pp. 230-305).

On November 25, 1994, the Republic, Executive Secretary Guingona and GAB Chairman Cepeda moved for the issuance of a restraining order enjoining Judge Pacquing and Judge Reyes from enforcing their questioned orders and ADC from operating the jai-alai fronton (G.R. No. 117263, Rollo, pp. 629-635). Action on the motion was deferred.

II

G.R. No. 115044

Motion for Intervention

The Republic of the Philippines (Republic) represented by GAB justifies its belated intervention in G.R. No. 115044 on the grounds that "it has an interest involved in this case and will be affected by the Decision dated September 1, 1994" (G.R. No. 115044, Rollo, p. 225).

The purpose of its intervention is to nullify the decision of Judge Augusto E. Villarin of the Regional Trial Court, Branch 40, Manila, dated September 9, 1989 in Civil Case No. 88-45660, which upheld the validity of Ordinance No. 7065 of the City of Manila granting ADC a franchise to operate a jai-alai fronton. Mayor Gemiliano Lopez appealed said decision to the Court of Appeals, but on February 9, 1989, he filed a Withdrawal of Appeal. The Court of Appeals approved the withdrawal in a resolution dated May 5, 1989. An entry of judgment was made by the Court of Appeals on May 26, 1989 and by the Regional Trial Court, Branch 40, Manila, on October 27, 1992.

In 1991, the City of Manila filed an action to annul the franchise of ADC with the Regional Trial Court, Branch 23, Manila (Civil Case No. 91-58913). The complaint was dismissed on December 21, 1991. No appeal was taken from said dismissal of the case.

The City of Manila filed with this Court a petition for declaratory judgment to nullify the franchise of ADC (G.R. No. 101768). The petition was dismissed in a resolution dated October 3, 1991 "for lack of jurisdiction."

Three members of the Sangguniang Panglunsod of Manila also filed with the Regional Trial Court, Branch 37, Manila, a petition to compel Mayor Lopez to cancel the permit and license he issued in favor of ADC pursuant to Ordinance No. 7065 (Civil Case No. 91-58930). The petition was dismissed on June 4, 1992. No appeal was taken from said dismissal of the case.

In the Motion for Reconsideration-in-Intervention, Supplemental Motion for Reconsideration-in-Intervention and Second Supplemental Motion for Reconsideration-in-Intervention, the Republic merely claimed that Ordinance No. 7065 had been repealed by P.D. No. 771 (Rollo, pp. 228-248), that the authority to issue permits and licenses for the operation of jai-alai had been transferred to GAB by E.O. No. 392 of President Quirino effective July 1, 1951 and that ADC was never issued a franchise by Congress (Rollo, pp. 383-390). Nowhere in its pleadings did the Republic point out where the First Division erred in resolving the two grounds of the petition for certiorari in G.R. No. 115044, which were:

- (1) The decision of Judge Villarin dated September 9, 1988 in Civil Case No. 88-45660 is null and void for failure to rule that P.D. No. 771 had revoked Ordinance No. 7065; and
- (2) The decision of Judge Villarin could not be executed by a mere motion filed on March 14, 1994, or more than five years and six months after its promulgation.

In resolving the first issue, the First Division of this Court, explained that there was no way to declare the Villarin decision null and void because the trial court had jurisdiction over the subject matter of the action and if it failed to rule that Ordinance No. 7065 was nullified by P.D. No. 771, that was only an error of judgment. The First Division noted the distinction between a void and an erroneous judgment and between jurisdiction and the exercise of jurisdiction.

In *Tan v. Intermediate Appellate Court*, 163 SCRA 752 (1988), the Court held:

"It is settled jurisprudence that except in the case of judgments which are void ab initio or null and void per se for lack of jurisdiction which can be questioned at any time - and the decision here is not of this character - once a decision becomes final, even the court which has rendered it can no longer alter or modify it, except to correct clerical errors or mistakes. Otherwise, there would be no end to litigation, thus setting to naught the main role of courts of justice, which is, to assist in the enforcement of the rule of law and the maintenance of peace and order, by settling justifiable controversies with finality." (See also *Fabular v. Court of Appeals*, 119 SCRA 329 [1982]; *Fariscal Vda. de Emnas v. Emnas*, 95 SCRA 470 [1980]; *Ocampo v. Caluag*, 19 SCRA 917 [1967]).

As to the second issue, the First Division held that the five-year period for executing a judgment by simple motion under Section 6 of Rule 39 of the Revised Rules of Court should be counted from the finality of the judgment and not from the date of its promulgation as was done by Mayor Lim and the City of Manila. Inasmuch as the Villarin decision was appealed to the Court of Appeals and the authority to withdraw the appeal was approved by the Court of Appeals only on May 26, 1989, the five-year period should be counted, at the earliest, from May 26, 1989. Reckoning the five-year period from said date, the motion for execution of the Villarin decision was filed timely on March 14, 1994.

Intervention as contemplated by Section 9, Rule 12 of the Revised Rules of Court is a proceeding whereby a third person is permitted by the court "before or during a trial" to make himself a party by joining plaintiff or uniting with defendant or taking a position adverse to both of them (*Gutierrez v. Villegas*, 5 SCRA 313 [1962]). The term "trial" is used in its restrictive sense and means the period for the introduction of evidence by both parties (*Bool v. Mendoza*, 92 Phil. 892 [1953]; *Provincial Government of Sorsogon v. Stamatelaky*, 65 Phil. 206 [1937]). The period of trial terminates when the period of judgment begins (*El Hogar Filipino v. Philippine National Bank*, 64

Phil. 582 [1937]).

Intervention as an action is not compulsory. As deduced from the permissive word "may" in the Rule, the availment of the remedy is discretionary on the courts (*Garcia v. David*, 67 Phil. 279 [1939]). An important factor taken into consideration by the courts in exercising their discretion is whether the intervenor's rights may be fully protected in a separate proceeding (*Peyer v. Martinez*, 88 Phil. 72 [1951]).

The case of *Director of Lands v. Court of Appeals*, 93 SCRA 238 (1979), can not serve as authority in support of the Republic's intervention at this late stage. While said case involved an intervention for the first time in the Supreme Court, the motion to be allowed to intervene was filed before the appeal could be decided on the merits. The intervention allowed in *Republic v. Sandiganbayan*, G.R. No. 96073, Resolution, March 3, 1992, was also made before the decision on the merits by this Court. In contrast, the intervention of the Republic was sought after this Court had decided the petition in G.R. No. 115044 and petitioners had complied with and satisfied the judgment. While the intervention in *Director of Lands* was in a case that was timely appealed from the Regional Trial Court to the Court of Appeals and from the Court of Appeals to the Supreme Court, the intervention of the Republic was in a case that had become final and executory more than five years prior to the filing of the motion to intervene.

As of September 16, 1994, therefore, when the Republic moved to intervene, there was no longer any pending litigation between the parties in G.R. No. 115044. Intervention is an auxiliary and supplemental remedy to an existing, not a settled litigation (cf. *Clareza v. Rosales*, 2 SCRA 455 [1961]). An intervention was disallowed in a case which has become final and executory (*Trazo v. Manila Pencil Co.*, 77 SCRA 181 [1977]).

The case of *Suson v. Court of Appeals*, 172 SCRA 70 (1989) invoked by the Republic (G.R. No. 117263, Rollo, pp. 517-518) is inappropriate because the intervention therein was before the trial court, not in this Court.

In its Reply, the Republic admitted that the First Division only ruled on the procedural issues raised in the petition and not on the constitutionality of P.D. No. 771. It even urged that GAB was not a party to the case and therefore was not bound by the Villarin decision because under Section 49 of Rule 39, a judgment is conclusive only "between the parties and their successor-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity" (Rollo, pp. 228--234, 431).

With more reason than that the Republic should have ventilated its claim against ADC in a separate proceeding.

Lastly, an intervenor should not be permitted to just sit idly and watch the passing scene as an uninterested overlooker before he wakes up to seek judicial relief (*Pacursa v. Del Rosario*, 24 SCRA 125 [1968]).

The Office of the President was aware of the plans of ADC to start operation as early as 1988. On May 5, 1988, ADC informed said Office of its intention to operate under Ordinance No. 7065. The said Office perfunctorily referred the letter of ADC to the Manila mayor, implying that the matter was not the concern of the National Government.

Motion qua

Quo Warranto petition

Be that as it may, the Court may consider the motion to intervene, motion for reconsideration-in-intervention, supplemental motion for reconsideration-in-intervention and second supplemental motion-in-intervention as a petition for quo warranto under Rule 66 of the Revised Rules of Court. In the liberal construction of the Rules in order to attain substantial justice, the Court has treated petitions filed under one Rule as petitions filed under the

more appropriate Rule (*Davao Fruits Corporation v. Associated Labor Union*, 225 SCRA 562 [1993]).

In quo warranto, the government can require a corporation to show cause by what right it exercises a privilege, which ordinarily can not legally be exercised except by virtue of a grant from the state. It is a proceeding to determine the right to the use of a franchise or exercise of an office and to oust the holder from its enjoyment if his claim is not well-founded (*Castro v. Del Rosario*, 19 SCRA 196 [1967]).

All the essential requisites for a petition for quo warranto are compresent. The motions were filed by the Solicitor General for the Republic of the Philippines, represented by GAB, to question the right of ADC to operate and maintain the jai-alai.

The motions qua petition for quo warranto assert that the authority of the City of Manila to issue to ADC a jai-alai franchise in 1971 had been withdrawn by E.O. No. 392 in 1951 and by R.A. No. 954 in 1954 and that assuming the issuance of the franchise to ADC in 1971 under Ordinance No. 7065 was valid, such franchise, together with whatever authority of the City of Manila to grant the same, was voided by P.D. No. 771 in 1975.

In the case of *Stone v. State of Mississippi*, 101 U.S. 814, cited by the Republic, the State Attorney General resorted to a quo warranto proceeding to question the authority of petitioner therein to operate and maintain a gambling establishment.

The franchise of ADC granted by the City of Manila under Ordinance No. 7065 reads as follows:

"AN ORDINANCE AUTHORIZING THE MAYOR TO ALLOW AND PERMIT THE ASSOCIATED DEVELOPMENT CORPORATION TO ESTABLISH, MAINTAIN AND OPERATE A JAI-ALAI IN THE CITY OF MANILA, UNDER CERTAIN TERMS AND CONDITIONS AND FOR OTHER PURPOSES.

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

SECTION 1. The Mayor is authorized, as he is hereby authorized to allow and permit the Associated Development Corporation to establish, maintain and operate a jai-alai in the City of Manila, under the following terms and conditions and such other terms and conditions as he (the Mayor) may prescribe for good reasons of general interest:

- a. That the construction, establishment and maintenance of the jai-alai shall be at a place permissible under existing zoning ordinances of Manila;
- b. That the games to be played daily shall commence not earlier than 5:00 o'clock (sic) in the afternoon;
- c. That the City of Manila will received a share of 2 1/2% on the annual gross receipts on all wagers or bets, 1/2% of which will accrue to the Games and Amusements Board as now provided by law;
- d. That the corporation will, in addition, pay to the city an annual license fee of P3,000.00 and a daily permit fee of P200.00;
- e. That the corporation will, to insure its faithful compliance of all the terms and conditions under this ordinance, put up a performance bond from a surety acceptable to the city, in the amount of at least P30,000.00.

"SEC. 2. The Mayor and the City Treasurer or their duly authorized representatives are hereby empowered to inspect at all times during regular business hours the books, records and accounts of the establishment, as well as to prescribe the manner in which the books and financial statement of the entrepreneur shall be kept.

"SEC. 3. This ordinance shall take effect upon its approval.

"Enacted originally by the Municipal Board on September 7, 1971; vetoed by the Mayor on September 27, 1971;

modified and amended by the Municipal Board at its regular session today, October 12, 1971.

"Approved by His Honor, the Mayor on 13 November 1971."

The said Ordinance was enacted pursuant to Section 18 (jj), the Charter of the City of Manila (R.A. No. 409), which took effect in 1949. The charters of two other cities - Quezon City and Cebu City — contained a similar delegation of authority to grant jai-alai franchises.

Said Section 18(jj) provides:

"Legislative powers. - The Municipal Board shall have the following legislative powers:

xxx xxx xxx

(jj) To tax, license, permit and regulate wagers or betting by the public on boxing, sipa, bowling, billiards, pools, horse or dog races, cockpits, jai-alai, roller or ice-skating or any sporting or athletic contests, as well as grant exclusive rights to establishments for this purpose, notwithstanding any existing law to the contrary."

A. It is the posture of the Republic that the power of local governments to issue franchises for the operation of jai-alai was "consolidated and transferred" to the GAB under E.O. No. 392. In its Supplemental Motion for Reconsideration-In-Intervention filed on September 27, 1994, the Republic averred:

"12. As early as 1951, the power of the local governments to issue licenses and permits for the operation of jai-alai was "consolidated and transferred" to the Games and Amusements Board under E.O. No. 392 issued by then President Elpidio Quirino (sic) took effect on January 1, 1951. Thus, in 1971, the City of Manila was without authority to enact an ordinance authorizing the City Mayor to issue a license/permit to private respondent for the operation of jai-alai in Manila" (Rollo, pp. 271--272).

Furthermore, the Republic alleged:

"13. Such consolidation and transfer of power manifest the policy of the Government to centralize the regulation, through appropriate institutions, of all games of chance authorized by existing franchises or permitted by law. xxx" (Rollo, p. 272).

There is no need to dwell upon this argument for surprisingly it was the Republic itself that repudiated it albeit after wrongfully attributing the argument to ADC.

In its Reply filed on November 9, 1994, the Republic stated that: "Contrary to respondent ADC's claim, it is not the position of the GAB that it is the body which grants franchises for the jai-alai either under E.O. No. 392 or under P.D. No. 771 xxx" (Rollo, pp. 420).

For certain, E.O. No. 392 merely reorganized the different departments, bureaus, offices and agencies of the government. There is absolutely nothing in the executive issuance which vests on GAB the power to grant, much less revoke, franchises to operate jai-alais.

B. After its volte-face, the Republic next claims that R.A. No. 954 had repealed Section 18 (jj) and that after the effectivity of said law, only Congress could grant franchises to operate jai-alais.

Section 4 of R.A. No. 954 provides:

"No person, or group of persons, other than the operator or maintainer of a fronton with legislative franchise to conduct basque pelota (jai-alai), shall offer, take or arrange bets on any basque pelota game or event, or maintain or use a totalizer or other device, method or system to bet or gamble on any basque pelota game or event."

Republic Act No. 954 did not expressly repeal Section 18(jj). In such a case, if there is any repeal of the prior law

by the later law, it can only be by implication. Such kind of repeals is not favored. There is even a presumption against repeal by implication (*The Philippine American Management Co. Inc. v. The Philippine American Management Employees Association*, 49 SCRA 194 [1973]).

In the absence of an express repeal, a subsequent law can not be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old law (*Iloilo Palay and Corn Planters Association, Inc. v. Feliciano*, 13 SCRA 377 [1965]).

But more importantly, the rule in legal hermeneutics is that a special law, like the Charter of the City of Manila, is not deemed repealed by a general law, like R.A. No. 954 (*Commissioner of Internal Revenue v. Court of Appeals*, 207 SCRA 487 [1992]).

In a way also, Ordinance No. 7065 can be considered a "legislative franchise" within the purview of R.A. No. 954, having been enacted by the Municipal Board of the City of Manila pursuant to the powers delegated to it by the legislature. A grant, under a delegated authority, binds the public and is considered the act of the state. "The franchise [granted by the delegate] is a legislative grant, whether made directly by the legislature itself or by any one of its properly constituted instrumentalities" (36 Am Jur 2d. 734).

As held in *Wright v. Nagle*, 101 U.S. 921, the grant of a franchise by the legislature may be done in two ways:

"It may exercise this authority by direct legislation, or through agencies duly established having power for that purpose. This grant when made binds the public, and is, directly or indirectly, the Act of the State. The easement is a legislative grant, whether made directly by the legislature itself, or by any one of its properly constituted instrumentalities" (*Justice of Pike Co. v. Plank Road*, 11 Ga. 246; Underscoring supplied).

If the intention of Congress in enacting R.A. No. 954 was to repeal Section 18(jj), it could have used explicit language to that effect in order not to leave room for interpretation.

If R.A. No. 954 repealed Section 18(jj), why did President Marcos still issue P.D. No. 771, expressly revoking the authority of the local governments to issue jai-alai franchises? It can never be presumed that the President deliberately performed useless acts.

C. The claim of the Republic that P.D. No. 771 had removed the power of local governments to grant franchises for the maintenance and operation of jai-alai is a non-issue. The issue raised by ADC is whether Section 3 of P.D. No. 771 validly cancelled Ordinance No. 7065, an issue entirely different from the claim of the Republic that P.D. No. 771 had revoked the power of the City of Manila to grant jai-alai franchises.

Insofar as it is applied to Ordinance No. 7065, Section 3 of P.D. No. 771 suffers from constitutional infirmities and transgresses several constitutional provisions. Said Section 3 provides:

"All existing franchises and permits issued by local governments are hereby revoked and may be renewed only in accordance with this Decree."

Section 3 violated the equal protection clause (Section 1 of Article IV) of the 1973 Constitution, which provided:

"No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

Less than two months after the promulgation of P.D. No. 771, President Marcos issued P.D. No. 810, granting the Philippine Jai-Alai and Amusement Corporation (PJAC) a franchise to operate jai-alai within the Greater Manila Area. It is obvious that P.D. No. 771 was decreed to cancel the franchise of ADC so that the same could be given to another entity under P.D. No. 810.

A facially neutral statute (P.D. No. 771) may become discriminatory by the enactment of another statute (P.D. No. 810) which allocates to a favored individual benefits withdrawn under the first statute (Ordinance No. 7065), and when there is no valid basis for classification of the first and the second grantees. The only basis for distinction we can think of is that the second grantee was Benjamin Romualdez, a brother-in-law of President Marcos.

Section 3 violated the due process clause of the Constitution, both in its procedural and substantive aspects. The right to due process is guaranteed by the same Section 1 of Article IV of the 1973 Constitution.

Ordinance No. 7065, like any franchise, is a valuable property by itself. The concept of "property" protected by the due process clause has been expanded to include economic interests and investments. The rudiments of fair play under the "procedural due process" doctrine require that ADC should at least have been given an opportunity to be heard in its behalf before its franchise was cancelled, more so when the same franchise was given to another company.

Under the "substantive due process" doctrine, a law may be voided when it does not relate to a legitimate end and when it unreasonably infringes on contractual and property rights. The doctrine as enunciated in *Allgeyer v. Louisiana*, 165 U.S. 578 (1897) can be easily stated, thus: the government has to employ means (legislation) which bear some reasonable relation to a legitimate end (Nowak, Rotunda and Young, *Constitutional Law* 436, 443 [2d ed]).

When President Marcos issued P.D. No. 771, he did not have public interest in mind; otherwise, he would have simply outlawed jai-alai as something pernicious to the public. Rather, all what he wanted to accomplish was to monopolize the grant of jai-alai franchises.

The motivation behind its issuance notwithstanding, there can be no constitutional objection to P.D. No. 771 insofar as it removed the power to grant jai-alai franchises from the local governments. We said so in *Basco v. Pagcor*, 197 SCRA 52 (1991). The constitutional objection arises, however, when P.D. No. 771 cancelled all the existing franchises. We search in vain to find any reasonable relation between Section 3 of P.D. No. 771 and any legitimate ends of government intended to be achieved by its issuance. Besides, the grant of a franchise to PJAC exposed P.D. No. 771 as an exercise of arbitrary power to divest ADC of its property rights.

Section 3 also violated Section 1 of Article VIII of the 1973 Constitution, which provided:

"Every bill shall embrace only one subject which shall be expressed in the title thereof."

The title of P.D. No. 771 reads as follows:

"REVOKING ALL POWERS AND AUTHORITY OF LOCAL GOVERNMENT TO GRANT FRANCHISE, LICENSE OR PERMIT AND REGULATE WAGERS OR BETTING BY THE PUBLIC ON HORSE AND DOG RACES, JAI-ALAI OR BASQUE PELOTA, AND OTHER FORMS OF GAMING."

The title of P.D. No. 771 refers only to the revocation of the power of local governments to grant jai-alai franchises. It does not embrace nor even intimate the revocation of existing franchises.

Lastly, Section 3 impaired the obligation of contracts prohibited by Section 11 of Article IV of the 1973 Constitution.

As authorized by Section 18(jj), Ordinance No. 7065 grants ADC a permit "to establish, maintain and operate a jai-alai in the City of Manila, under the following terms and conditions and such other terms and conditions as he [the Mayor] may prescribe for good reasons of general interest." (Rollo, p. 24).

Section 11 of Article IV of the 1973 Constitution provided:

"No law impairing the obligation of contracts shall be passed."

Any law which enlarges, abridges, or in any manner changes the intention of the parties, necessarily impairs the contract itself (U.S. v. Conde, 42 Phil. 766 [1922]; Clemens v. Nolting, 42 Phil. 702 [1922]). A franchise constitutes a contract between the grantor and the grantee. Once granted, it may not be invoked unless there are valid reasons for doing so (Papa v. Santiago, 105 Phil. 253 [1959]). A franchise is not revocable at the will of the grantor after contractual or property rights thereunder have become vested in the grantee, in the absence of any provision therefor in the grant or in the general law (Grand Trunk Western R. Co. v. South Bend, 227 U.S. 544).

D. The Republic hypothesized that the said Constitutional guarantees presuppose the existence of a contract or property right in favor of ADC. It claims that Ordinance No. 7065 is not a franchise nor is it a contract but merely a privilege for the purpose of regulation.

Ordinance No. 7065 is not merely a personal privilege that can be withdrawn at any time. It is a franchise that is protected by the Constitution.

The distinction between the two is that a privilege is bestowed out of pure beneficence on the part of the government. There is no obligation or burden imposed on the grantee except maybe to pay the ordinary license and permit fees. In a franchise, there are certain obligations assumed by the grantee which make up the valuable consideration for the contract. That is why the grantee is first required to signify his acceptance of the terms and conditions of the grant. Once the grantee accepts the terms and conditions thereof, the grant becomes a binding contract between the grantor and the grantee.

Another test used to distinguish a franchise from a privilege is the big investment risked by the grantee. In Papa v. Santiago, supra, we held that this factor should be considered in favor of the grantee. A franchise in which money has been expended assumes the character of a vested right (Brazosport Savings and Loan Association v. American Savings and Loan Association, 161 Tex. 543, 342 S.W. 2d. 747).

The cases cited by the Republic to the effect that gambling permits or licenses issued by municipalities can be revoked when public interest so requires, have never addressed this issue, obviously because there were no significant financial investments involved in the operation of the permits or licenses.

But assuming that Ordinance No. 7065 is a mere privilege, still over the years, the concept of a privilege has changed. Under the traditional form of property ownership, recipients of privileges, benefits or largesse from the government may be said to have no property rights because they have no traditionally recognized proprietary interest therein. The cases of Vinco v. Municipality of Hinigaran, 41 Phil. 790 (1917) and Pedro v. Provincial Board of Rizal, 56 Phil. 123 (1931), holding that a license to operate cockpits is a mere privilege, belong to this vintage. However, the right-privilege dichotomy has come to an end when the courts have realized that individuals should not be subjected to the unfettered whims of government officials to withhold privileges previously given them (Van Alstyne, The Demise of the Right - Privilege Distinction in Constitutional Law, 81 Harvard L. R. 1439 [1968]). To perpetuate such distinction would leave many individuals at the mercy of government officials and threaten the liberties protected by the Bill of Rights (Nowak, Rotunda and Young, Constitutional Law 546 [2nd ed]).

That a franchise is subject to regulation by the state by virtue of its police power is conceded. What is not acceptable is the Republic's proposition that the power to regulate and supervise includes the power to cancel the franchise altogether.

The stance of the Republic that the gambling franchises it issues are not covered by the constitutional mantle protecting property rights is ill-advised considering that it is planning to operate gambling establishments

involving substantial foreign investments in putting up the facilities thereof.

The belabored arguments of the Republic on the evils of gambling fall to the ground upon a showing that ADC is operating under an existing and valid franchise (Rollo, pp. 422-423).

E. The Republic questioned the siting of the ADC's fronton as violative of E.O. No. 135 of President Quirino. Under said executive issuance, no pelota fronton can be maintained and operated "within a radius of 200 lineal meters from any city hall or municipal building, provincial capital building, national capital building, public plaza or park, public school, church, hospital, athletic stadium, or any institution of learning or charity."

According to the certificate issued by the National Mapping Information Authority, the ADC fronton is within the proscribed radius from the Central Bank of the Philippines, the Rizal Stadium, the Manila Zoo, the public park or plaza in front of the zoo, the Ospital ng Maynila, a police precinct and a church (G.R. No. 115044, Rollo, pp. 424-427).

On the other hand, a certificate issued by the Officer-in-Charge of the Office of the City Engineer of the City of Manila attests to the fact that not one of the buildings or places mentioned in the certificate submitted by the Republic is within the 200-meter radial distance, "center to center" from the ADC's jai-alai building (Rollo, p. 260). How this variance in measurement came about is a matter that should have been submitted before the trial court for determination.

However, the operative law on the siting of jai-alai establishments is no longer E.O. No. 135 of President Quirino but R.A. No. 938 as amended by R.A. No. 1224.

Under said law only night clubs, cabarets, pavilions, or other similar places are covered by the 200-lineal meter radius. In the case of all other places of amusements except cockpits, the proscribed radial distance has been reduced to 50 meters. With respect to cockpits, the determination of the radial distance is left to the discretion of the municipal council or city board (Sec. 1).

F. The Republic also questions the lack of the period of the grant under Ordinance No. 7065, thus making it indeterminate (G.R. No. 117263, Rollo, pp. 500-505). The ordinance leaves it to the Mayor of the City of Manila to lay down other terms and conditions of the grant in addition to those specified therein. It is up to the parties to agree on the life or term of the grant. In case the parties fail to reach an agreement on the term, the same can be fixed by the courts under Article 1197 of the Civil Code of the Philippines, which provides as follows:

"If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

"The courts shall also fix the duration of the period when it depends upon the will of the debtor.

"In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them."

III

G.R. No. 117263

The petition in G.R. No. 117263 seeks to nullify the following orders of respondent Judge Reyes:

- (1) the Temporary Restraining Order dated September 15, 1994;
- (2) the Order dated September 25, 1994; and

(3) the Writ of Preliminary Injunction dated September 30, 1994 (Rollo, pp. 1-2).

The supplemental petition in said case seeks to nullify the Order dated October 19, 1994 (Rollo, pp. 166-225).

According to Executive Secretary Guingona and GAB Chairman Cepeda, respondent Judge Reyes acted without jurisdiction and with grave abuse of discretion in issuing said orders and writ of preliminary injunction because: (1) Civil Case No. 94-71656 was not properly assigned to him in accordance with Section 7, Rule 22 of the Revised Rules of Court; (2) the enforcement of the Directive and Memorandum sought to be enjoined had already been performed or were already fait accompli; and (3) respondent judge pre-empted this Court in resolving the basic issues raised in G.R. No. 115044 when he took cognizance of Civil Case No. 94-71656.

A. At the outset, it should be made clear that Section 7 of Rule 22 of the Revised Rules of Court does not require that the assignment of cases to the different branches of a trial court should always be by raffle. The Rule talks of assignment "whether by raffle or otherwise." What it requires is the giving of written notice to counsel or the parties "so that they may be present therein if they so desire."

Section 7 of Rule 22 provides:

"Assignment of cases. In the assignment of cases to the different branches of a Court of First Instance, or their transfer from one branch to another whether by raffle or otherwise, the parties or their counsel shall be given written notice sufficiently in advance so that they may be present therein if they so desire."

However, there may be cases necessitating the issuance of a temporary restraining order to prevent irreparable injury on the petitioner.

To await the regular raffle before the court can act on the motion for temporary restraining order may render the case moot and academic. Hence, Administrative Circular No. 1 dated January 28, 1988 was issued by this Court allowing a special raffle. Said Circular provides:

"8.3. Special raffles should not be permitted except on verified application of the interested party who seeks issuance of a provisional remedy and only upon a finding by the Executive Judge that unless a special raffle is conducted irreparable damage shall be suffered by the applicant. The special raffle shall be conducted by at least two judges in a multiple-sala station."

In a case where a verified application for special raffle is filed, the notice to the adverse parties may be dispensed with but the raffle has to "be conducted by at least two judges in a multiple-sala station."

The Republic does not claim that Administrative Circular No. 1 has been violated in the assignment of the case to respondent Judge. The presumption of regularity of official acts therefore prevails.

Going back to Section 7 of Rule 22, this Court has ruled in *Commissioner of Immigration v. Reyes*, 12 SCRA 728 (1964) that the purpose of the notice is to afford the parties a chance to be heard in the assignment of their cases and this purpose is deemed accomplished if the parties were subsequently heard. In the instant case, Executive Secretary Guingona and GAB Chairman Cepeda were given a hearing on the matter of the lack of notice to them of the raffle when the court heard on September 23, 1994 their Motion to Recall Temporary Restraining Order, Urgent Supplemental Motion to Recall Temporary Restraining Order and Opposition to Issuance of a Writ of Preliminary Issuance of a Writ of Preliminary Injunction (G.R. No. 117263, Rollo p. 434).

Petitioners in G.R. No. 117263 failed to show any irregularity attendant to the raffle or any prejudice which befell them as a result of the lack of notice of the raffle of Civil Case No. 94-71656.

On the other hand, petitioners never asked for a re-raffle of the case or for any affirmative relief from the trial court and proceeded with the presentation of evidence of ADC in connection with the motion for preliminary

injunction.

B. The purpose of a temporary restraining order or preliminary injunction, whether preventive or mandatory, is merely to prevent a threatened wrong and to protect the property or rights involved from further injury, until the issues can be determined after the hearing on the merits (*Ohio Oil Co. v. Conway*, 279 U.S. 813, 73 L. Ed. 972, 49 S. Ct. 256; *Gobbi v. Dilao*, 58 Or. 14, 111 p. 49, 113, p. 57). What is intended to be preserved is the status quo ante litem motam or the last actual, peaceable, noncontested status (Annotation, 15 ALR 2d 237).

In the case at bench, the status quo which the questioned orders of Judge Reyes sought to maintain was that ADC was operating the jai-alai pursuant to Ordinance No. 7065 of the City of Manila, the various decisions of the different courts, including the Supreme Court, and the licenses, permits and provisional authority issued by GAB itself.

At times, it may be necessary for the courts to take some affirmative act essential to restore the status quo (*Iowa Natural Resources Council v. Van Zee* [Iowa] 158 N.W. 2d. 111).

The right to conduct a business or to pursue one's business or trade without wrongful interference by others is a property right which equity will, in proper cases, protect by injunction, provided of course, that such occupation or vocation is legal and not prohibited by law (*Rance v. Sperry & Hutchinson Co.*, 410 p. 2d. 859).

Had not the Directive to close the operation of ADC's jai-alai and the implementing Memorandum been issued, there would have been no need for the issuance of the orders of the Regional Trial Court. The need for said equitable reliefs becomes more evident if we consider that the Executive Secretary himself had entertained doubts as to the legality of his action because in the same Directive he instructed the Solicitor General to obtain a judicial ruling on the legal issues raised.

C. Respondent Judge Reyes did not pre-empt this Court in deciding the basic issues raised in G.R. No. 115044 when it assumed jurisdiction over Civil Case No. 94-71656 and issued the orders questioned in G.R. No. 117263.

The orders of Judge Reyes are provisional in nature and do not touch on the merits of the case. The issues raised in Civil Case No. 94-71656 are the validity of the Directive and Memorandum, which were issued after the decision of this Court in G.R. No. 115044. The respondents in the civil case before the trial court are not even parties in G.R. No. 115044.

DISSENTING OPINION

PUNO, J.:

The petitions at bench involve great principles of law in tension. On balance at one end is the high prerogative of the State to promote the general welfare of the people thru the use of police power; on the opposite end is the right of an entity to have its property protected against unreasonable impairment by the State. Courts accord the State wide latitude in the exercise of its police power to bring about the greatest good of the greatest number. But when its purpose is putrefied by private interest, the use of police power becomes a farce and must be struck down just as every arbitrary exercise of government power should be stamped out.

I will confine myself to the jugular issue of whether or not Associated Development Corporation (ADC) still possesses a valid franchise to operate jai-alai in Manila. The issue is multi-dimensional considering its constitutional complexion.

First, the matrix of facts. On June 18, 1949, Congress enacted Republic Act No. 409, otherwise known as the

Charter of Manila. Section 18 (jj) gave to the Municipal Board (now City Council) the following power:

x x x

(jj) To tax, license, permit and regulate wagers or betting by the public on boxing, sipa, bowling, billiards, pools, horse or dog races, cockpits, jai-alai, roller or ice skating or any sporting or athletic contest, as well as grant exclusive rights to establishments for this purpose, notwithstanding any existing law to the contrary.

On June 20, 1953, Congress passed Republic Act No. 954 entitled "An Act to Prohibit Certain Activities in Connection with Horse Races and Basque Pelota Games (Jai-Alai) and to Prescribe Penalties for its Violation." Sections 4 and 5 of the law provide:

"x x x

"Sec. 4. No person, or group of persons, other than the operator or maintainer of a fronton with legislative franchise to conduct basque pelota games (Jai-Alai), shall offer, take or arrange bets on any basque pelota game or event, or maintain or use a totalizer or other device, method or system to bet or gamble on any basque pelota game or event.

Sec. 5. No person, operator, or maintainer of a fronton with legislative franchise to conduct basque pelota games shall offer, take, or arrange bets on any basque pelota game or event, or maintain or use a totalizer or other device, method or system to bet or gamble on any basque pelota game or event outside the place, enclosure, or fronton where the basque pelota game is held."

On September 7, 1971, the Municipal Board of Manila approved Ordinance No. 7065 "Authorizing the Mayor to Allow and Permit the Associated Development Corporation to Establish, Maintain and Operate a Jai-Alai in the City of Manila, Under Certain Terms and Conditions And For Other Purposes."

On September 21, 1972, martial law was declared by then President Ferdinand E. Marcos. The 1971 Constitution, as amended, authorized the former President to exercise legislative powers. Among the laws he decreed is P.D. No. 771, "Revoking All Powers And Authority Of Local Government(s) To Grant Franchise, License Or Permit And Regulate Wagers Or Betting By The Public On Horse And Dog Races, Jai-Alai, Or Basque Pelota And Other Forms of Gambling." Its text states:

"x x x x x x x x x

"Sec. 1. Any provision of law to the contrary notwithstanding, the authority of Chartered Cities and other local governments to issue license, permit or any form of franchise to operate, maintain and establish horse and dog race tracks, jai-alai or other forms of gambling is hereby revoked.

Sec. 2. Hereafter all permit or franchise to operate, maintain and establish horse and dog race tracks, jai-alai and other forms of gambling shall be issued by the national government upon proper application and verification of the qualifications of the applicant: Provided, That local governments may, upon clearance from the Chief of Constabulary and during town fiestas and holidays, continue to issue permits for minor games which are usually enjoyed by the people during such celebrations.

Sec. 3. All existing franchises and permits issued by local government are hereby revoked and may be renewed only in accordance with this Decree."

P.D. No. 771 was enacted on August 20, 1975 and purportedly revoked the permit of ADC to operate. Before two (2) months could elapse or on October 16, 1975, then President Marcos issued P.D. No. 810 granting a franchise to Philippine Jai-Alai and Amusements Corporation to conduct jai-alai games in Manila. It is not disputed that his brother-in-law, Mr. Alfredo "Bejo" Romualdez, held the controlling interest in Philippine Jai-Alai and

Amusements Corporation. Apparently, the favored treatment given to Mr. Romualdez and company did not sit well with former President Corazon C. Aquino. On May 8, 1987, she issued Executive Order No. 169 repealing P.D. No. 810. Nevertheless, she allowed P.D. No. 771 to stay in our statutes book.

ADC thought it could resume its jai-alai operation. On May 5, 1988, it sought from then Mayor Gemiliano C. Lopez, Jr., of Manila a permit to operate on the strength of Ordinance No. 7065. The request was refused and this spawned suits [1] all won by ADC. In Civil Case No. 88-45660, filed in Br. 40, RTC, Manila, Judge Augusto E. Villarin ruled that Ordinance No. 7065 created a binding contract between the City of Manila and ADC, and hence, the City Mayor had no discretion to deny ADC's permit. The ruling was appealed to the Court of Appeals where it was docketed as CA-G.R. SP No. 16477. On February 9, 1989, however, Mayor Lopez withdrew the city's appeal. Still, the legal problems of ADC did not disappear. Manila Mayor Alfredo Lim who succeeded Mayor Lopez again refused to issue ADC's permit despite orders of Judge Felipe G. Pacquing. [2] Threatened with contempt, Mayor Lim filed with this Court G.R. No. 115044, a petition for certiorari. He alleged that he could not be compelled to enforce the Decision in Civil Case No. 88-45660 as the same is null and void for want of jurisdiction of the court that rendered it. He likewise contended that Ordinance No. 7065 had been revoked by P.D. No. 771. On September 1, 1994, the First Division of this Court, speaking thru Mr. Justice Camilo Quiason, dismissed Mayor Lim's petition. It held:

x x x x x x x x

"Petitioners failed to appreciate the distinction between a void and an erroneous judgment and between jurisdiction and the exercise of jurisdiction.

....

Having jurisdiction over the civil case, whatever error may be attributed to the trial court, is simply one of judgment, not of jurisdiction. An error of judgment cannot be corrected by certiorari but by appeal (*Robles v. House of Representatives Electoral Tribunal*, 181 SCRA 780 [1990]; *De Castro v. Delta Motor Sales Corporation*, 57 SCRA 344 [1978]; *Galang v. Endencia*, 73 Phil. 391 [1941]).

The issue on the cancellation of Ordinance No. 7065 by President Marcos could have been raised as a special defense in Civil Case No. 88-54660 but was not . . .

The City of Manila should have pursued in the appellate courts its appeal questioning the dismissal of Civil Case No. 91-58913, where the trial court ruled that Mayor Lopez and the city could no longer claim that Ordinance No. 7065 had been cancelled by President Marcos because they failed to raise this issue in Civil Case No. 88-54660.

At any rate, the unilateral cancellation of the franchise, which has the status of a contract, without notice, hearing and justifiable cause is intolerable in any system where the Rule of Law prevails (*Poses v. Toledo Transportation Co.*; 62 Phil. 297 [1935]; *Manila Electric Co., v. Public Utility Commissioners*, 30 Phil. 387 [1915])."

Upon its receipt, Mayor Lim manifested he would comply with the Decision. He did not file a motion for reconsideration. It was then that the Republic started its own legal battle against ADC. It intervened in G.R. No. 115044, raising several issues, especially ADC's lack of a valid legislative franchise to operate jai-alai. No less than Executive Secretary Teofisto Guingona directed the Games and Amusement Board, then headed by Mr. Francisco R. Sumulong, Jr., to hold in abeyance the grant of authority, or if any had been issued, to withdraw such grant of authority in favor of ADC. The GAB dutifully ordered ADC to cease and desist from operating the Manila jai-alai. ADC again rushed to the RTC of Manila and filed Civil Case No. 94-71656 which was raffled to Br. IV, presided by respondent Judge Vetino Reyes. Acting with dispatch, respondent judge temporarily restrained the GAB from withdrawing the provisional authority of ADC to operate. After hearing, the temporary

restraining order was converted into writs of preliminary injunction and preliminary mandatory injunction upon posting by ADC of a P2 million bond. These writs are challenged in these consolidated petitions as having been issued in grave abuse of discretion amounting to lack of jurisdiction.

While the petitions at bench are checkered with significant substantive and procedural issues, I will only address the contention that ADC has no existing legislative franchise. The contention is anchored on two (2) submissions: first, ADC has no legislative franchise as required by R.A. No. 954, and second, even if the City of Manila licensed ADC to operate jai-alai, its authority was nevertheless revoked by section 3 of P.D. No. 771.

I find as completely baseless petitioners' submission that R.A. No. 954 requires a legislative franchise to operate a jai-alai, in effect, revoking the power of the City of Manila to issue permits for the same purpose as granted by its Charter. A 20-20 visual reading of R.A. No. 954 will not yield the suggested interpretation by petitioners. The title of R.A. No. 954 will immediately reveal that the law was enacted to achieve a special purpose. It states: "An Act To Prohibit Certain Activities In Connection With Horse Races And Basque Pelota Games (Jai-Alai), And To Prescribe Penalties For Its Violation." The prohibited activities related to jai-alai games are specified in sections 4 to 6, viz:

"SEC. 4. No person, or group of persons, other than the operator or maintainer of a fronton with legislative franchise to conduct basque pelota games (Jai-Alai), shall offer, take or arrange bets on any basque pelota game or event, or maintain or use a totalizator or other device, method or system to bet or gamble on any basque pelota game or event.

SEC. 5. No person, operator, or maintainer of a fronton with legislative franchise to conduct basque pelota games shall offer, take or arrange bets on any basque pelota game or event, or maintain or use a totalizator or other device, method or system to bet or gamble on any basque pelota game or event outside the place, enclosure, or fronton where the basque pelota game is held.

SEC. 6. No person or group of persons shall fix a basque pelota game for the purpose of insuring the winning of certain determined pelotari or pelotaris."

The title of R.A. No. 954 does not show that it seeks to limit the operation of jai-alai only to entities with franchise given by Congress. What the title trumpets as the sole subject of the law is the criminalization of certain practices relating to jai-alai games. The title of a law is a valuable intrinsic aid in determining legislative intent. [3]

The Explanatory Note [4] of House Bill 3204, the precursor of R. A. No. 954, also reveals that the intent of the law is only to criminalize the practice of illegal bookies and game-fixing in jai-alai. It states:

"This bill seeks to prohibit certain anomalous practice of 'bookies' in connection with the holding of horse races or 'basque pelota' games. The term 'bookie' as commonly understood refers to a person, who without any license therefor, operates outside the compounds of racing clubs and accepts bets from the public. They pay dividends to winners minus a commission, which is usually 10%. Prosecutions of said persons have been instituted under Act No. 4240 which was enacted in 1935. However, in a recent opinion released by the City Fiscal of Manila, he maintains that Act No. 4240 has already been repealed, so that the present law regulating ordinary horse races permits 'bookies' to ply their trade, but not on sweepstakes races and other races held for charitable purposes. With the operation of 'booking' places in the City of Manila, the Government has been losing no less than P600,000.00 a year, which amount represents the tax that should have been collected from bets made in such places. For these reasons, the approval of the bill is earnestly recommended."

As said Explanatory Note is expressive of the purpose of the bill, it gives a reliable keyhole on the scope and coverage of R.A. No. 954. [5] Nothing from the Explanatory Note remotely suggests any intent of the law to

revoke the power of the City of Manila to issue permits to operate jai-alai games within its territorial jurisdiction.

The Debates [6] in Congress likewise reject the reading of R.A. No. 954 by petitioners, thus:

"x x x

RESUMPTION OF SESSION

THE SPEAKER.

The session is resumed.

MR. CINCO.

Mr. Speaker, I withdraw my motion for postponement.

MR. CALO.

Mr. Speaker, will the gentleman from Cebu yield?

THE SPEAKER.

The gentleman may yield, if he so desires.

MR. ZOSA.

Willingly.

MR. CALO.

What is the national import of this bill?

MR. ZOSA.

Mr. Speaker, this bill prohibits certain activities in connection with horse races and Jai-Alai games which are licensed by the government. At present, there are many practices in connection with the holding of these games which deprive the government of income that should legally go into the government coffers as taxes.

MR. CALO.

Is not this matter of national importance because Jai-Alai games and horse races are held only in Manila?

MR. ZOSA.

Precisely, Mr. Speaker, they are played on a big scale, and there are many practices which deprive the government of income to which it is entitled. I think the gentleman from Agusan is a member of the Committee on Appropriations. The government will have more revenues, if we shall approve this bill."

Again, legislative debate is a good source to determine the intent of a law. [7]

To top it all, the text of R.A. No. 954 itself does not intimate that it is repealing any existing law, especially section 18 (jj) of R.A. No. 409, otherwise known as the Charter of Manila. Indeed, R.A. No. 954 has no repealing provision. The reason is obvious -- it simply prohibited certain practices in jai-alai then still unregulated by the laws of the land. It did not regulate aspects of jai-alai already regulated by existing laws, like the matter of whether it is the national government alone that should issue franchises to operate jai-alai games.

The subsequent enactment of P.D. No. 771 on August 20, 1975 further demolished the submission of petitioners.

In clear and certain language, P.D. No. 771 recalled the power of local governments to issue jai-alai franchises and permits. It also revoked existing franchises and permits issued by local governments. If R.A. No. 954 had already disauthorized local governments from granting franchises and permits, there would be no need to enact P.D. No. 771. No rule of statutory construction will consider any law a meaningless redundancy.

The passage of P.D. No. 771, also negates petitioners' insistence that for ADC to continue operating, it must show it has a franchise from Congress, not just a permit from the City of Manila. The suggested dichotomy between a legislative franchise and city permit does not impress. If the City of Manila is empowered to license the ADC it is because the power was delegated to it by Congress. The acts of the City of Manila in the exercise of its delegated power bind Congress as well. Stated otherwise, the permit given by the City to ADC is not any whit legally inferior to a regular franchise. Through the years, the permit given by the City endows the grantee complete right to operate. Not once, except in these cases, has the national government questioned the completeness of this right. For this reason, P.D. No. 771 has to revoke all existing franchises and permits without making any distinction. It treated permits in the same class as franchises.

Petitioners' second line of argument urges that in any event, section 3 of P.D. No. 771 expressly revoked all existing franchises and permits to operate jai-alai games granted by local governments, including the permit issued to ADC by the City of Manila through Ordinance No. 7065. For its resolution, petitioners' argument requires a re-statement of the requirements for the valid exercise of police power.

It was the legendary Chief Justice Marshall who first used the phrase police power in 1824. [8] Early attempts to fix the metes and bounds of police power were unsuccessful. [9] For of all the inherent powers of the State, police power is indubitably the most pervasive, [10] the most insistent and the least limitable. [11] Rooted on the Latin maxims, *salus populi suprema est lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others), it was not without reason for Justice Holmes to stress that its reach extends "to all the great public needs." [12] A similar sentiment was echoed by our own Justice Laurel in *Calalang v. Williams* [13] who defined police power as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." Over the years, courts recognized the power of legislature to enact police regulations on broad areas of state concern: (a) the preservation of the state itself and the unhindered execution of its legitimate functions; (b) the prevention and punishment of crime; (c) the preservation of the public peace and order; (d) the preservation of the public safety; (e) the purity and preservation of the public morals; (f) the protection and promotion of the public health; (g) the regulation of business, trades, or professions the conduct of which may affect one or other of the objects just enumerated; (h) the regulation of property and rights of property so far as to prevent its being used in a manner dangerous or detrimental to others; (i) the prevention of fraud, extortion, and oppression; (j) roads and streets, and their preservation and repair; and (k) the preservation of game and fish. [14]

But while the State is bestowed near boundless authority to promote public welfare, still the exercise of police power cannot be allowed to run riot in a republic ruled by reason. Thus, our courts have laid down the test to determine the validity of a police measure as follows: (1) the interest of the public generally, as distinguished from those of particular class, requires its exercise; and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. [15] Deeper reflexion will reveal that the test reiterates the essence of our constitutional guarantees of substantive due process, equal protection, and non-impairment of property rights.

We now apply this lucidly-lined test to the petitions at bench. To reiterate, P.D. No. 771 utilized two methods to regulate jai-alai: first, it reverted the power to issue franchise and permit to the national government, and second, it revoked all existing franchise and permit issued by local governments.

I concede that the first method is invulnerable even to the strongest of constitutional attack. Part of the plenary power of Congress to make laws is the right to grant franchises and permits allowing the exercise of certain privileges. Congress can delegate the exercise of this innate power to grant franchises as it did to the City of Manila when it granted its charter on June 18, 1949 thru R.A. No. 409. Congress can also revoke the delegated power and choose to wield the power itself as it did thru then President Marcos who exercised legislative powers by enacting P.D. No. 771. In the petitions at bench, Congress revoked the power of local governments to issue franchises and permits which it had priorly delegated. In doing so and in deciding to wield the power itself to meet the perceived problems of the time, the legislature exercised its distinct judgment and the other branches of government, including this Court, cannot supplant this judgment without running afoul of the principle of separation of powers. To be sure, this particular legislative method to regulate the problem of mushrooming applications for jai-alai franchise cannot be faulted as bereft of rationality. In the hearing of the petitions at bench, Executive Secretary Guingona established the fact that at the time of the enactment of P.D. No. 771, there were numerous applications to run jai-alai games in various cities and municipalities of the archipelago. To prevent the proliferation of these applications and minimize their ill effects, the law centralized their screening by the national government alone. The law excluded local governments in the process. The revocation of the delegated power to local governments does not impair any right. Applicants to franchises have no right to insist that their applications be acted upon by local governments. Their right to a franchise is only in posse.

The second method adopted by section 3 of P.D. No. 771 which revoked all existing franchises and permits is, however, constitutionally impermissible. On its face, section 3 purports to revoke all existing franchises and permits. During the oral argument of the petitions at bench, however, it was admitted that at the time P.D. No. 771 was enacted, only ADC is actually operating a jai-alai. [16] The purported revocation of all franchises and permits when there was only one existing permit at that time is an unmistakable attempt to mask the law with impartiality. No other permit was affected by said sec. 3 except ADC.

Truth, however, has its own time of sprouting out. The truth behind the revocation of ADC's franchise revealed itself when former President Marcos transferred ADC's franchise to the Philippine Jai-Alai and Amusements Corporation then under the control of his brother-in-law, Mr. Alfredo "Bejo" Romualdez. The favored treatment was extended hardly two (2) months after the revocation of ADC's franchise and it left Philippine Jai-Alai and Amusements Corporation the sole jai-alai operator in the Philippines. The Court is not informed of any distinction of PJAC that will justify its different treatment. The evidence is thus clear and the conclusion is irresistible that section 3 of P.D. No. 771 was designed with a malignant eye against ADC.

In light of the established facts in field, section 3 of P.D. No. 771 must be struck down as constitutionally infirmed. Despite its cosmetics, section 3 cannot be unblushingly foisted as a measure that will promote the public welfare. There is no way to treat the self-interest of a favored entity as identical with the general interest of the Filipino people. It will also be repulsive to reason to entertain the thesis that the revocation of the franchise of ADC is reasonably necessary to enable the State to grapple to the ground the evil of jai-alai as a form of gambling. Petitioners have not demonstrated that government lacks alternative options to succeed in its effort except to cancel the lone franchise of ADC. Well to stress, it is not the lofty aim of P.D. No. 771 to completely eradicate jai-alai games; it merely seeks to control its multiplication by restoring the monopoly of the national government in the dispensation of franchises.

Prescinding from these premises, I share the scholarly view of Mr. Justice Quiason that sec. 3 of P.D. No. 771 offends the Constitution which demands faithful compliance with the requirements of substantive due process, equal protection of the law, and non-impairment of contracts. Capsulizing their essence, substantive due process exacts fairness; equal protection disallows distinction to the distinctless; and the guaranty of non-impairment of

contract protects its integrity unless demanded otherwise by the public good. Constitutionalism eschews the exercise of unchecked power for history demonstrates that a meandering, aimless power ultimately tears apart the social fabric of society. Thus, the grant of police power to promote public welfare cannot carry with it the privilege to be oppressive. The Constitution ordained the State not just to achieve order or liberty but to attain ordered liberty, however elusive the balance may be. Cognizant of the truism that in life the only constant is change, the Constitution did not design that the point that can strike the balance between order and liberty should be static for precisely, the process of adjusting the moving point of the balance gives government greater elasticity to meet the needs of the time.

It is also my respectful submission that the unconstitutionality of section 3 of P.D. No. 771 was not cured when former President Aquino used it in revoking P.D. No. 810 which granted Philippine Jai-Alai and Amusements Corporation a franchise to operate jai-alai in Manila. The subsequent use of said section should not obfuscate the fact that the law was enacted in the wrongful exercise of the police power of the State. There is no sidestepping the truth that its enactment inflicted undue injury on the rights of ADC and there can be no reparation of these rights until and unless its permit to continue operating jai-alai in Manila is restored. Cancelling the franchise of Philippine Jai-Alai and Amusements Corporation is an act of justice but not justice to ADC if its franchise would be left unrecognized. Since the unconstitutionality of section 3 is congenital, it is beyond redemption.

But while I wholeheartedly subscribe to the many impeccable theses of Mr. Justice Quason, it is with regret that I cannot join his submittal that sec. 3 of P.D. No. 771 violates procedural due process. We are dealing with the plenary power of the legislature to make and amend laws. Congress has previously delegated to the City of Manila the power to grant permits to operate jai-alai within its territorial jurisdiction and ADC was given its permit thru Ordinance No. 7065. ADC's permit could have been validly revoked by law if it were demonstrated that its revocation was called for by the public good and is not capricious. In ascertaining the public good for the purpose of enacting a remedial law, it is not indispensable, albeit sometimes desirable, to give notice and hearing to an affected party. The data the legislature seeks when engaged in lawmaking does not focus on the liability of a person or entity which would require fair hearing of the latter's side. In fine, the legislature while making laws is not involved in establishing evidence that will convict, but in unearthing neutral data that will direct its discretion in determining the general good.

The suggested notice and hearing before a franchise can be cancelled has another undesirable dimension. It does not only unduly cramp the legislature in its method of data-gathering, it also burdens the legislature with too much encumbrance in the exercise of its police power to regulate gambling. However heavily laden with property rights a franchise to operate jai-alai maybe, it is still a contract which under appropriate circumstances can be revoked to enhance public interest. Jai-alai may be a game of a thousand thrills but its true thrill comes from the gambling on its indeterminate result. Beyond debate, gambling is an evil even if its advocates bleach its nefariousness by upgrading it as a necessary evil. In a country where it is a policy to promote the youth's physical, moral, spiritual, intellectual, and social well-being, [17] there is no right to gamble, neither a right to promote gambling for gambling is contra bonos mores. To require the legislature to strictly observe procedural due process before it can revoke a gambling franchise is to put too much primacy on property rights. We then stand in danger of reviving the long lamented 1905 ruling in *Lochner v. New York* [18] which unwisely struck down government interference in contractual liberty. The spirit of liberalism which provides the main driving force of social justice rebels against the resuscitation of the ruling in *Lochner* from its sarcophagus. We should not be seduced by any judicial activism unduly favoring private economic interest [19] at the expense of the public good.

I also support the stance of Mr. Justice Quason which resisted the stance that the Court should close its eyes to allegations that section 3 of P.D. No. 771 was conceived and effected to give naked preference to a favored entity

due to pedigree. I reiterate the view that section 1, Article VIII of the Constitution expanding the jurisdiction of this Court to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or agency of government is not a pointless postulate. Without the grant of this new power, it would be difficult, if not impossible, to pierce through the pretentious purposes of P.D. No. 771. P.D. No. 771 has no right to a reverential treatment for it is not a real law as it is not the product of an authentic deliberative legislature. Rather, it is the dictate of a public official who then had a monopoly of executive and legislative powers. As it was not infrequently done at that time, the whereas clauses of laws were used to camouflage a private purpose by the invocation of public welfare. The tragedy is that the bogus invocation of public welfare succeeded partly due to the indefensible deference given to official acts of government. The new Constitution now calls for a heightened judicial scrutiny of official acts. For this purpose, it has extirpated even the colonial roots of our impotence. It is time to respond to this call with neither a pause nor a half-pause.

I therefore vote to declare section 3 of P.D. No. 771 unconstitutional and to dismiss the petitions.

[1] Civil Case No. 88-45660; Civil Case No. 91-58913; Civil Case No. 91-58930; G.R. No. 101763.

[2] He succeeded Judge Villarin as Presiding Judge of Br. 40, RTC, Manila.

[3] Agpalo, Statutory Construction, 1986 ed., p. 12 citing *Government v. Municipality of Binalonan*, 32 Phil 634 [1915].

[4] See Memorandum of Respondents, p. 15.

[5] Agpalo, op. cit., pp. 70-71 citing *Baga v. PNB*, 99 Phil. 889 [1956]; *Nepomuceno v. Ocampo*, 95 Phil. 292 [1954].

[6] Congressional Record, Proceedings and Debates, Vol. III, Part II, No. 8, July 1, 1952 cited in Reply Memorandum of Respondents, p. 7.

[7] Agpalo, op. cit, pp. 71-72 citing *Arenas v. City of San Carlos*, 82 SCRA 318 [1978]; *People v. Olarte*, 108 Phil. 750 (1960).

[8] Tribe, American Constitutional Law, Foundation Press, Inc., 1978 ed., p. 323; *Gibbons v. Ogden*, 22 UF (9 Wheat) 1, 208 [1824].

[9] *Stone v. Mississippi*, 101 US 814.

[10] Cruz, Isagani, Constitutional Law, 1991 ed., p. 39.

[11] *Smith Bell and Co. v. Natividad*, 40 Phil. 136 [1919].

[12] *Noble State Bank v. Haskell*, 219 US 112 [1911].

[13] 70 Phil. 726 [1940].

[14] Black, Henry Campbell, Handbook on Constitutional Law, 2nd ed., 1985 ed., p. 342.

[15] Cruz, op. cit p. 48 citing *US v. Toribio*, 15 Phil. 85 [1910]; *Fabie v. City of Manila*, 21 Phil. 486 [1912]; *Case v. Board of Health*, 24 Phil. 256 [1913].

[16] Hearing on November 10, 1994, TSN, pp. 8-9.

[17] Article II, section 13 on State Policies.

[18] 198 US 25 SCT 539, 49 L ed 937 [1905], where Justice Holmes vigorously dissented, stating among others that "the Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics..." and "general propositions do not decide concrete cases."

[19] The *Lochner* ruling was junked in 1937 but recent writings on possible revival of economic activism include: Epstein, Richard, Takings. Private Property and the Power of Emminent Domain [1985]; Sunstein, Cass Interest Groups in American Public Law, 38 Stan L. Reo. 29, 68-85 [1985]; Mashaw, Jerry, Constitutional Deregulation: Notes Toward a Public, Public Law, 54 Tnl. L. Rev. 848 [1980].

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