

**REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONER,
VS. SANDIGANBAYAN, IMELDA COJUANGCO, THE ESTATE OF
RAMON COJUANGCO REPRESE...**

G.R. No. 119292. July 31, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Should a sequestration order be deemed invalid and “automatically lifted” on the grounds that (1) it was signed by only one PCGG Commissioner in contravention of the Presidential Commission on Good Government Rules and Regulations (“PCGG Rules” or simply “Rules”) requiring the authority of at least two commissioners; and in any event, (2) the PCGG failed, within the prescribed period, to institute or to implead or include private respondents in the proper judicial action, as required by the 1987 Constitution?

The Case

The Sandiganbayan answered the foregoing question in the affirmative in two Resolutions[1] dated December 17, 1993,[2] and August 29, 1994.[3] Declared “automatically lifted” in the earlier Resolution were the writs of sequestration that the PCGG had issued (a) against Prime Holdings, Inc. (PHI) and (b) over 111,415 shares of stock of the Philippine Telecommunications Investment Corporation (PTIC) registered in the name of PHI. The later Resolution denied the motion for reconsideration filed by the PCGG.

Disagreeing with the above rulings, the PCGG filed the instant petition for certiorari before us, imputing grave abuse of discretion on the part of the anti-graft court.

The Facts

The petition alleges that the PCGG issued the following communications, all dated May 9, 1986: (1) an Order of Sequestration[4] directed against all properties, assets, records and documents of PHI; (2) another Order[5] sequestering 111,415 shares of stock of PTIC registered in the books of PTIC in the name of PHI; and (3) a letter[6] addressed to Siguion Reyna, Montecillo & Ongsiako, advising the said law firm that the PCGG, in its session on May 2, 1986, resolved inter alia “[t]o order the sequestration of all the shareholdings of PRIME HOLDINGS, INC. (PHI), which owns approximately 46% of PHILIPPINE TELECOMMUNICATIONS INVESTMENT CORPORATION (PTIC), which in turn owns approximately 26% of PLDT [Philippine Long Distance Telephone Company].” The two Orders were signed solely by the late PCGG Commissioner Mary Concepcion Bautista, while the letter was signed by both Commissioner Bautista and then PCGG Commissioner Raul Daza.

On July 16, 1987, petitioner filed before the Sandiganbayan a Complaint for reconveyance, reversion, accounting, restitution and damages against Spouses Ferdinand and Imelda Marcos, Spouses Imelda (Imee) and Tomas Manotoc, Spouses Irene and Gregorio Ma. Araneta III, Ferdinand R. Marcos Jr., Constante Rubio, Nemesio G.

Co, Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan. Said Complaint, docketed as Civil Case No. 0002, principally sought to recover from defendants their alleged ill-gotten wealth, consisting of funds and property which were manifestly out of proportion to their salaries and other lawful income, having been allegedly acquired during the incumbency of the Spouses Marcos as public officers. Among such properties mentioned in the Complaint were shares of stock in various corporations, including PTIC and PLDT, a list of which was annexed to the Complaint.

An amended Complaint[7] filed on April 23, 1990, included in Civil Case No. 0002 as additional parties-defendants herein Private Respondents Imelda Cojuangco, the estate of Ramon Cojuangco represented by its administratrix Imelda Cojuangco, and Prime Holdings, Inc. The amended complaint further alleged inter alia that these new defendants held shares of stock in PLDT, which “in truth and in fact belong to defendants Ferdinand Marcos and his family.”

Three years later, on May 4, 1993, private respondents filed in Civil Case No. 0002 a Motion[8] seeking to declare the order of sequestration against PHI automatically lifted. In support of their Motion, private respondents cited (1) the non-observance by PCGG of its own rules and regulations requiring the authority of at least two commissioners for the issuance of sequestration orders; and (2) the failure of PCGG to file the appropriate judicial action within the period prescribed under Section 26,[9] Article XVIII of the 1987 Constitution, or “not later than 2 August 1987,” since the sequestration order was issued on May 9, 1986, which was “a date before the ratification of the Philippine Constitution on 2 February 1987.”

On December 20, 1993, the first assailed Resolution of public respondent, which granted the above-mentioned Motion, was promulgated. The sequestration orders against PHI and its shares of stock in PTIC were declared “automatically lifted” by the Sandiganbayan, which upheld the movants’ contentions in this wise:

“WHEREFORE, the Order of Sequestration dated May 9, 1986 directed (against) defendant Prime Holdings, Inc. and the Order dated May 9, 1986 sequestering 111,415 shares of stocks of Philippine Telecommunications Investment Corporation registered in the name of Prime Holdings, Inc. are hereby declared automatically lifted pursuant to Section 26 of Article XVIII of the 1987 Philippines Constitution.”[10]

Expectedly, PCGG filed a Motion for Reconsideration.[11] Noting that petitioner raised no new issue or matter that might materially affect its findings in its previous Resolution, public respondent denied said Motion “for lack of merit.”[12] Hence, the present recourse.[13]

The Issues

Petitioner PCGG charges Respondent Sandiganbayan with “grave abuse of discretion and act[ing] without jurisdiction,” viz.:

I. In declaring the writs of sequestration as defective for not being authorized by at least two commissioners pursuant to Section 3 of the PCGG Rules and Regulations.

II. In declaring the writs of sequestration to have been automatically lifted for alleged failure of petitioner to file the proper judicial action against private respondent corporation within the period fixed in Section 26 of Article XVIII of the 1987 Constitution.

III. In applying the rulings in PCGG vs. International Copra Export Corp. (G.R. No. 92755, July 26, 1991) and Republic vs. Sandiganbayan (200 SCRA 530 [1991]) that the filing by petitioner of the judicial action against a stockholder is not the judicial action contemplated by the Constitution.

IV. By misinterpreting or misapplying the ruling in *Filmerco vs. IAC* (149 SCRA 193 [1987]) as said ruling, being a mere obiter dictum, had not overturned the application of the doctrine of ‘piercing the veil of corporate

fiction’ as held in a long line of decisions by this Honorable Court.”[14]

Simply stated, the principal issues being raised by petitioner are: (1) the validity of the sequestration orders against PHI and PHI-held shares in PTIC; and (2) the alleged failure of PCGG to file the proper judicial action as contemplated under Section 26, Article XVIII of the 1987 Constitution.

Before this Court, private respondents initially filed a motion[15] to dismiss the petition on the ground of laches, the petition having been filed only after six and a half months from petitioner’s receipt of the public respondent’s denial of its Motion for Reconsideration. They assert that this interval of time was clearly beyond the “reasonable period” allowed under Rule 65 for filing a petition for certiorari.[16] Prior to the amendment of the Rules of Court on July 1, 1997, we had ruled in several cases that three (3) months from receipt of the challenged decision, order or resolution was a reasonable period within which to institute a certiorari proceeding.[17] Thus, in *People vs. Magallanes*,[18] the lapse of nine to ten months before assailing a denial of bail was no longer considered reasonable. Furthermore, in *Cruz vs. Court of Appeals*,[19] where certiorari was sought after more than two years, we held that there was unreasonable delay in the filing of the petition. We also ruled that laches sets in after an interval of seven months[20] or of ninety-nine days[21] has passed since the rendition of the order sought to be set aside.

Indeed, if “three months” is to be used as the yardstick for filing an action for certiorari, the present petition should have been dismissed long ago. In view, however, of this Court’s past pronouncements[22] that cases involving sequestered corporations are “endowed with public interest and involve a matter of public policy”; and in order to dispose, once and for all, the recurring issues herein raised, we (1) resolved on May 22, 1995, to note without action private respondents’ Motion to Dismiss and (2) reiterated the March 25, 1995 Resolution requiring them to comment on the petition. In effect, the “three-month rule” was suspended, but only in regard to this case.

The Court’s Ruling

After a careful study and analysis of both parties’ arguments, as well as the applicable law and jurisprudence, we find the petition to be without merit.

First Issue: Validity of Sequestration Orders Signed by Only One Commissioner

Section 3 of the PCGG Rules and Regulations, which took effect immediately after its promulgation on April 11, 1986, explicitly provides:

“Sec. 3. Who may issue. A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted.”

Undisputed is the fact that only one commissioner, the late Mary Concepcion Bautista, signed the two sequestration orders subject of this petition. To support its contention that there is no need for the signatures of two commissioners authorizing said orders, petitioner submits this excerpt[23] from the minutes of a PCGG meeting held on October 15, 1987:

“The authority of at least two commissioners which is required under Sec. 3 of the PCGG Rules and Regulations may be written or verbal authority. Such authority may be reflected in the Minutes of the Commission Meeting held *en banc* covering the pertinent recommendation/approval on the issuance of the order; or the Commissioner-in-charge intending to issue the Order may simply obtain the concurrence of another Commissioner after explaining the evidence supporting such order.

It is sufficient for only one Commissioner to sign the Order ‘FOR THE COMMISSION’. After April 11,

1986, the Commission has encouraged the practice of two Commissioners signing the Order.”

Generally, the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.[24] The reason behind this rule was explained in *Nestle Philippines, Inc. vs. Court of Appeals*[25] in this wise:

“The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. vs. Commissioner of Customs*[26] the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret.”

As a general rule, contemporaneous construction is resorted to for certainty and predictability in the laws,[27] especially those involving specific terms having technical meanings.

However, courts will not hesitate to set aside such executive interpretation when it is clearly erroneous, or when there is no ambiguity in the rule,[28] or when the language or words used are clear and plain or readily understandable to any ordinary reader[29] without need for interpretation or construction.

The construction advanced by petitioner creates rather than clears ambiguity. The fair and sensible interpretation of the PCGG Rule in question is that the authority given by two commissioners for the issuance of a sequestration, freeze or hold order should be evident in the order itself. Simply stated, the writ must bear the signatures of two commissioners, because their signatures are the best evidence of their approval thereof. Otherwise, the validity of such order will be open to question and the very evil sought to be avoided -- the use of spurious or fictitious sequestration orders -- will persist. The corporation or entity against which such writ is directed will not be able to visually determine its validity, unless the required signatures of at least two commissioners authorizing its issuance appear on the very document itself. The issuance of sequestration orders requires the existence of a *prima facie* case. The two-commissioner rule is obviously intended to assure a collegial determination of such fact. In this light, a writ bearing only one signature is an obvious transgression of the PCGG Rules.

Inasmuch as sequestration tends to impede or limit the exercise of proprietary rights by private citizens,[30] it should be construed strictly against the state, pursuant to the legal maxim that statutes in derogation of common rights are in general strictly construed and rigidly confined to cases clearly within their scope and purpose.[31] As *Mme. Justice Ameurfina Melencio-Herrera* aptly said:

“Sequestration is an extraordinary, harsh, and even severe remedy. It should be confined to its lawful parameters and exercised, with due regard, in the words of its enabling laws, to the requirements of fairness, due process, and justice.”[32]

Concededly, even the exercise of the “inherent and plenary” police power of the state to impose restrictions on property rights is subject to the conditions of reasonableness, public welfare, and necessity.[33]

Furthermore, petitioner’s attempted clarification of Section 3 of the PCGG Rules was made only on October 15, 1987, or a full year and six months from the promulgation[34] of said Rules. Such clarification by the then commissioners was obviously self-serving and cannot be given much value. Apparently, the commissioners were simply trying to save face over their mistaken issuance of sequestration orders contrary to the very Rules they themselves had crafted and promulgated. Even conceding for the nonce that the adverted Rule is indeed

ambiguous, the dictum is that such ambiguity should be taken contra proferentem; that is, it should be construed against the party who had caused the ambiguity and who could have avoided it by the exercise of a little more care.[35]

Significantly, in that same meeting where the strained clarification of the subject Rule was made, the commissioners also affirmed that the signing of sequestration orders by two commissioners had already been encouraged after April 11, 1986,[36] presumably pursuant to the PCGG Rules which took effect on said date. This affirmation plainly bolsters the proposition that the real intent behind the Rule was to require two commissioners to sign such orders. But still, on May 9, 1986, or only four weeks after the Rules had been promulgated, the Commission failed to heed its own declaration as proven by the signing of the questioned writs by only one commissioner.

Republic vs. Dio Island Resort and Republic vs. Provident International Resources Not Applicable to the Present Case

At this point, the present case will be examined and compared with two others involving the validity of sequestration orders issued by less than two PCGG commissioners: Republic vs. Sandiganbayan, Romualdez and Dio Island Resort,[37] (“Republic vs. Dio Island”), which voided the writ issued against the resort; and Republic vs. Sandiganbayan (Third Division), Provident International Resources Corp., and Phil. Casino Operators Corp.[38] (“Republic vs. Provident”), which upheld the writs issued against the respondent corporations.

In Republic vs. Dio Island, the sequestration order was issued on April 14, 1986, by the head of the PCGG Task Force in Region VIII. Ruling that such issuance by a non-commissioner was not valid, the Court explained that Section 3 of the PCGG Rules and Regulations, which is “couched in clear and simple language, leaves no room for interpretation. On the basis thereof, it is indubitable that under no circumstances can a sequestration or freeze order be validly issued by one not a Commissioner of the PCGG.”[39] Furthermore, “PCGG may not delegate to its representatives and subordinates its authority to sequester, and any such delegation is invalid and ineffective.”[40] In sum, not only was the authority of the official who issued the order absent; no such authority legally existed.

In Republic vs. Provident, on the other hand, the questioned writ bore the signature of only one commissioner, as in this case. Yet, the Court upheld its validity for the reason that the writ was issued on March 19, 1986, before the promulgation of the PCGG Rules and Regulations. In refusing to lift the writ, we reasoned that “we cannot reasonably expect the Commission to abide by said rules which were nonexistent at the time the subject writ was issued by then Commissioner Mary Concepcion Bautista. Basic is the rule that no statute, decree, ordinance, rule or regulation (or even policy) shall be given retrospective effect unless explicitly stated so. We find no provision in said Rules which expressly gives them retroactive effect, or implies the abrogation of previous writs issued not in accordance with the same Rules.”[41] Thus, the writ signed by only one commissioner was held valid.

The rationale in Provident has no relevance or application to the instant case, since the writ bearing the sole signature of the late Commissioner Bautista was issued after the promulgation and effectivity of the PCGG Rule requiring the authority of at least two commissioners for the issuance of a sequestration order.

Obviously, Section 3 of the PCGG Rules was intended to protect the public from improvident, reckless and needless sequestrations of private property. And since these Rules were issued by Respondent Commission, it should be the first entity to observe them.

Letter to Law Firm Not a Sequestration Writ

Nor can we accord probative value to the communication signed by Commissioners Daza and Bautista and

addressed to Siguion Reyna, Montecillo & Ongsiako. First, this letter is definitely not a writ of sequestration; it does not even purport to be one. It merely relays the information to the said law firm, and not to PHI (the company purported to be sequestered), that the Commission has resolved “(t)o order the sequestration of all the shareholdings of PRIME HOLDINGS, INC.” Second, the letter makes no reference to the questioned writ as one that embodies the Resolution of the Commission ordering the sequestration of the shareholdings of PHI. Third, nothing in the records shows that on the date the letter was written (May 9, 1986), the law firm to which it was addressed was the legal counsel of PHI on the matter at hand. And fourth, there is no proof that said letter was received by the law firm for and on behalf of PHI. With all the above considerations, private respondents cannot be presumed to have had constructive knowledge of the alleged sequestration order against PHI.

EO 2 Not a General Writ of Sequestration

Petitioner also argues that Executive Order No. 2[42] (EO 2), issued on March 12, 1986 by then President Corazon C. Aquino by virtue of her revolutionary powers under the Freedom Constitution, partakes of a general freeze and sequestration order which cannot be lifted by this Court without altogether nullifying the law. This contention is utterly without merit.

The PCGG was created[43] precisely “with the task of assisting the President in regard to x x x matters” among which was “[t]he recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.”[44] More specifically, the PCGG was granted this power and authority:

“to sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.”[45]

It appears, therefore, that while then President Corazon C. Aquino, through EO 2, froze all assets and properties in the Philippines in which former President Marcos and his wife, their close relatives, subordinates, business associates, dummies, agents, or nominees had any interest or participation, EO 1 is more specific in delegating to the PCGG the power to issue writs of sequestration. While EO 2 is a general policy statement affirming the right and duty of the government to recover ill-gotten wealth,[46] as well as a general notice to the public that it is pursuing such right, EO 1 gives authority to the PCGG to undertake the details to enable it to achieve such purpose. This is but logical, because sequestration presupposes the existence of a *prima facie* case,[47] the determination of which lies with the PCGG which is vested with investigatory powers pursuant to its mandate.[48] Furthermore, by virtue of the requirements of due process, EO 1, by itself, obviously cannot be equated with an all-encompassing writ of sequestration, since it names no particular person or property against whom or which it is directed.

Second Issue: Respondents Impleaded Beyond Prescribed Period

Petitioner contends that there is no need (1) to file a separate action or (2) to independently implead PHI in Civil Case No. 0002, because PTIC has already been included in the list of alleged ill-gotten wealth of defendants in said case. To buttress its position, petitioner cites *Republic vs. Sandiganbayan (First Division)*,[49] in which the Court, through Mr. Chief Justice Andres R. Narvasa, held:

“1) Section 26, Article XVIII of the Constitution does not, by its terms or any fair interpretation thereof,

require that corporations or business enterprises alleged to be repositories of 'ill-gotten wealth,' as the term is used in said provision, be actually and formally impleaded in the actions for the recovery thereof, in order to maintain in effect existing sequestrations thereof;

2) complaints for the recovery of ill-gotten wealth which merely identify and/or allege said corporations or enterprises to be the instruments, repositories or the fruits of ill-gotten wealth, without more, come within the meaning of the phrase 'corresponding judicial action or proceeding' contemplated by the constitutional provision referred to; the more so, that normally, said corporations, as distinguished from their stockholders or members, are not generally suable for the latter's illegal or criminal actuations in the acquisition of the assets invested by them in the former;

3) even assuming the impleading of said corporations to be necessary and proper so that judgment may comprehensively and effectively be rendered in the actions, amendment of the complaints to implead them as defendants may, under existing rules of procedure, be done at any time during the pendency of the actions thereby initiated, and even during the pendency of an appeal to the Supreme Court -- a procedure that, in any case, is not inconsistent with or proscribed by the constitutional time limits to the filing of the corresponding complaints 'for' -- i.e., with regard or in relation to, in respect of, or in connection with, or concerning -- orders of sequestration, freezing, or provisional takeover.”[50]

Petitioner misapplies our above-quoted pronouncements. The filing of an action directly against a sequestered corporation, or its impleading in a complaint for recovery of ill-gotten wealth, is not necessary when (1) a formal complaint has already been filed against the persons alleged to have unlawfully amassed wealth; (2) such complaint, whether in its body or in an attachment or annex, refers to specific funds or properties, among which is the sequestered entity or asset; and (3) such complaint was filed within the period prescribed in Section 26, Article XVIII of the Constitution. These requisites do not obtain in the case at bar.

First, the original Complaint for the recovery of ill-gotten wealth filed on July 16, 1987, did not implead any of private respondents as parties thereto. Neither were they included in the annexed list of alleged ill-gotten wealth. It was only on April 23, 1990, via an amended Complaint, that Imelda Cojuangco, the estate of Ramon Cojuangco, and Prime Holdings, Inc., were made parties-defendants. By then, three years -- well beyond the six months prescribed by the Constitution -- had passed since the issuance of the sequestration orders against the PHI and the PTIC shares it owned.

Second, even if PTIC was listed in the Annex to the Complaint, it must be understood that the case refers only to the extent of the shares in PTIC illegally acquired by the original defendants. As we stated in the *aforecited Republic vs. Sandiganbayan (First Division)*: [51]

“As regards actions in which the complaints seek recovery of defendants' shares of stock in existing corporations (e.g., San Miguel Corporation, Benguet Corporation, Meralco, etc.) allegedly purchased with misappropriated public funds, in breach of fiduciary duty, or otherwise under illicit or anomalous conditions, the impleading of said firms would clearly appear to be unnecessary. If warranted by the evidence, judgments may be handed against the corresponding defendants divesting them of ownership of their stock, the acquisition thereof being illegal and consequently burdened with a constructive trust, and imposing on them the obligation of surrendering them to the Government.”

Thus, whether PHI itself -- an entirely different corporate entity, though a major investor in PTIC -- has shareholdings unlawfully or anomalously acquired, or whether it was organized with ill-gotten wealth, is a different matter. Notably, the individual respondents are the registered owners of PHI and, as earlier stated, they had not been included as original defendants in Civil Case No. 0002. The judicial action against them was belatedly instituted long after the lapse of the constitutional time frame.

In its Memorandum,[52] petitioner vehemently argues that “although PHI was not initially included in the enumeration of the ill-gotten wealth of the Marcoses x x x in Annex A of the original complaint,” it is enough that “PTIC and PLDT were included in said list of ill-gotten wealth of the principal defendants.” This argument is absolutely in contravention of the due process guarantee. PHI is a corporation completely separate from PTIC and PLDT. Indeed, it has a personality distinct from said entities. Petitioner has shown no commonality in shareholding, management or operation among them. Neither has it alleged, much less proven, any ground why the separate corporate personality of PHI should be set aside or pierced. And definitely, the most basic considerations of due process prevent a suit against PTIC and PLDT from adversely affecting and prejudicing the proprietary rights of PHI and its likewise unimpleaded shareholders.[53]

Third, the filing of the amended Complaint on April 23, 1990 for the purpose of specifically impleading PHI, Imelda Cojuangco and the estate of Ramon Cojuangco represented by its administratrix, as defendants, cannot be deemed to date back to the filing of the original Complaint and to thereby imply compliance with the constitutional provision. The filing of an amended pleading does not retroact to the date of the filing of the original; hence, the statute of limitations runs until the submission of the amendment.[54]

While it has been held that “an amendment which merely supplements and amplifies facts originally alleged in the complaint relates back to the date of the commencement of the action and is not barred by the statute of limitations which expired after the service of the original complaint,”[55] such rule does not apply to a party who is impleaded for the first time in the amended complaint that was filed beyond the prescriptive period.[56]

Prescription is a legal defense accorded any person against whom a judicial action is belatedly brought after the lapse of the time specified by law. Here, it is the Constitution itself which defines the period within which judicial proceedings may be brought against sequestered entities. From the foregoing, it is clear that no judicial action was instituted against the private respondents within the prescribed period.

All in all, the sequestration orders issued against private respondents and the 111,415 shares of PTIC registered under the name of PHI must perforce be deemed automatically lifted due to (1) the invalidity of the alleged sequestration writs themselves, owing to the non-observance of the PCGG Rule requiring the authority of at least two commissioners; and, in any event, (2) the failure of PCGG to commence the proper judicial action, or to implead private respondents therein, within the period prescribed by Section 26, Article XVIII of the 1987 Constitution.

Corollary Matter: Disclosures of Jose Yao Campos

Petitioner, in a desperate final attempt to justify the continued sequestration of PHI and the subject shares it owns in PTIC, invokes an alleged deposition of Jose Yao Campos declaring that former President Marcos was the true owner of PHI. This argument is irrelevant and immaterial to the present petition.

The focal issues of this case pertain only to the validity of the sequestration order signed by just one commissioner and the timeliness of the judicial action against private respondents. The substantive issue on whether PHI or the PTIC shares are ill-gotten wealth is another matter and should be litigated in the main case for recovery and reconveyance (Civil Case No. 0002).

The lifting of the writs of sequestration will not necessarily be fatal to the main case. It is in the latter proceeding that Campos’ testimony may be properly offered and its value and credit-worthiness appreciated. Even with the lifting of the sequestration orders against PHI and the PTIC shares, these properties may still be recovered by the government upon substantial proof, proffered in the proper suit, that they indeed constitute unlawfully amassed wealth of the Marcoses and/or their conduits. The lifting of the subject orders does not ipso facto mean that the

sequestered properties are not ill-gotten; neither does it preempt a finding to that effect in the main action.

The effect of the lifting of the sequestration against PHI and the subject PTIC shares will merely be the termination of the role of the government as conservator thereof. In other words, the PCGG may no longer exercise administrative or housekeeping powers,[57] and its nominees may no longer vote the heretofore sequestered shares to enable them to sit on the corporate board of the subject firm.

In brief, sequestration is not the be-all and end-all of the efforts of the government to recover unlawfully amassed wealth. The PCGG may still proceed to prove in the main suit who the real owners of these assets are. Besides, as we reasserted in *Republic vs. Sandiganbayan*,[58] the PCGG may still avail itself of ancillary writs, since “*Sandiganbayan’s* jurisdiction over the sequestration cases demands that it should also have the authority to preserve the subject matter of the cases, the alleged ill-gotten wealth properties x x x.”

With the use of proper remedies and upon substantial proof, properties in litigation may, when necessary, be placed in custodia legis for the complete determination of the controversy or for the effective enforcement of the judgment. However, for violating the Constitution and its own Rules, the PCGG may no longer exercise dominion and custody over Respondent Corporation and the shares it owns in PTIC.

Epilogue

As stated earlier, sequestration is simply a provisional remedy; an extraordinary measure intended to prevent the destruction, concealment or dissipation of sequestered properties and, thereby, to conserve and preserve them, pending the judicial determination in the appropriate proceeding of whether the property was in truth ill-gotten.[59] Sequestration effectively deprives, to a considerable extent, the ostensible or apparent owners of administrative powers and voting rights. Essentially then, sequestration intrudes into private rights.

In the stead of the ostensible owners, PCGG nominees vote the shares and sit on the boards of private corporations supposedly for the purpose only of “safeguarding” or “preserving” the sequestered assets until they are finally adjudicated.[60] But beyond such custodial powers, the PCGG must hurdle its more important task: that of proving the ill-gotten nature of the sequestered assets and of causing their reversion or reconveyance to the people.[61]

About twelve years have now passed since most of the sequestration orders against corporations and assets, alleged to be unlawfully amassed by the Marcoses and their cronies, were issued; and the so-called “ill-gotten wealth cases” filed in the Sandiganbayan. Sadly, however, the substantiation of the claim that they are in fact ill-gotten most often remains pendent. In the instant case alone, the questioned sequestration orders were issued more than twelve years ago; and Civil Case No. 0002 has been pending before the Sandiganbayan for about eleven years now. Yet, we are still discussing the validity of such orders.

Undoubtedly, the PCGG has, in the past, reportedly[62] shown some success in: preventing improper dispositions of alleged ill-gotten properties in the United States; securing a landmark judgment in the Swiss Supreme Court turning over, albeit conditionally, certain “criminally acquired” bank deposits; entering into compromises with certain respondents in a number of cases; and transmitting recovered ill-gotten funds to the national treasury. Petitioner Commission, however, has yet to show its firm determination to prosecute to final resolution any of the cases it has dauntlessly filed in Philippine courts over a decade ago.

Time and again,[63] we have prodded the petitioner and the Sandiganbayan to speedily proceed with the hearings and resolutions of the main cases for recovery and reconveyance. It is about time that the PCGG, created with the primary and paramount task of recovering ill-gotten wealth, act with deliberate dispatch on its primordial work of substantiating its claims and, thereby, perform its bounden duty to the Filipino people: to render justice to all.

WHEREFORE, the petition is hereby DENIED for failure of petitioner to show grave abuse of discretion on the part of Respondent Court. The assailed Resolutions of Respondent Sandiganbayan are hereby AFFIRMED. SO ORDERED.

Davide, Jr., (Chairman), and Quisumbing, JJ., concur.

Bellosillo, J., see concurring opinion.

Vitug, J., reiterates his dissenting opinion in Republic vs. Sandiganbayan, 266 SCRA 515.

[1] Both Resolutions were penned by J. Sabino R. De Leon Jr. and concurred in by JJ. Regino C. Hermosisima, Jr. (now a retired associate justice of this Court) and Cipriano A. Del Rosario.

[2] Rollo, pp. 76-90.

[3] Ibid., pp. 91-97.

[4] Rollo, p. 98; Annex C to Petition.

[5] Ibid., p. 99; Annex D to Petition.

[6] Ibid., pp. 100-101; Annex E to Petition.

[7] Rollo, pp. 102-135; Annex F to Petition.

[8] Ibid., pp. 140-145; Annex G to Petition.

[9] Section 26, Article XVIII (Transitory Provisions) of the Constitution provides:

“Sec. 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.” (Underscoring supplied.)

[10] Rollo, p. 89.

[11] Rollo, pp. 226-259; Annex L to Petition.

[12] Ibid., pp. 91-97; Annex B to Petition.

[13] This case was deemed submitted for resolution upon receipt by this Court of petitioner’s Memorandum on December 12, 1997.

[14] Petition, p. 11; rollo, p. 11. (Original in capital letters.)

[15] Rollo, pp. 403-409. A Motion for Leave accompanied the Motion to Dismiss.

[16] Under the present Rules which took effect on July 1, 1997, petitions for certiorari must be filed “not later

than sixty (60) days from notice of the judgment, order or resolution sought to be assailed” (Sec. 4, Rule 65). However, this case was filed under the old Rules where no specific period was stated.

[17] Philgreen Trading Construction Corp. vs. Court of Appeals, GR No. 120408, April 18, 1997; citing *People vs. Magallanes*, 249 SCRA 212, 229, October 11, 1995, *Paderanga vs. Court of Appeals*; 247 SCRA 741, 759, August 28, 1995. See also *Caramol vs. NLRC*, 225 SCRA 582, 589, August 24, 1993; *Philec Workers’ Union vs. Young*, GR No. 101734, January 22, 1992; *Navarro vs. NLRC*, GR No. 101755, January 27, 1992; and *The President and Vice President of Travelers Life Assurance vs. NLRC*, GR No. 93998, February 17, 1992. In *Toledo vs. Pardo*, 118 SCRA 566, November 19, 1982, we allowed the petition that was filed “less than four (4) months” from the time of receipt of the assailed decision. We also considered ninety-five (95) days reasonable time, in *Allied Leasing & Finance Corp. vs. Court of Appeals*, 197 SCRA 71, 76, May 14, 1991.

[18] 249 SCRA 212, 229, October 11, 1995.

[19] 252 SCRA 599, 608, January 30, 1996.

[20] *Philgreen Trading Construction Corp. vs. Court of Appeals*, supra, citing *People vs. Castañeda Jr.*, 165 SCRA 327, 336, September 15, 1988.

[21] *Ibid.*, citing *Claridad vs. Santos*, 120 SCRA 148, 153, January 27, 1983.

[22] In *Republic vs. Sandiganbayan (Third Division)*, *Provident International Resources Corp. & Phil. Casino Operators Corp.*, 269 SCRA 316, March 7, 1997; *Republic vs. Sandiganbayan & Palanca*, 182 SCRA 911, February 28, 1990; *PCGG vs. Peña*, 159 SCRA 556, April 12, 1988; *Republic vs. Sandiganbayan (First Division)*, *Lobregat, et al.*, 240 SCRA 376, January 3, 1995.

[23] *Rollo*, pp. 290-291; Annex O to Petition.

[24] *Nestle Philippines, Inc. vs. Court of Appeals*, 203 SCRA 504, 510, November 13, 1991, citing *In re Allen*, 2 Phil 630, October 29, 1903.

[25] *Ibid.*, pp. 510-511, per Feliciano, J.

[26] 29 SCRA 617, September 30, 1969.

[27] *Lim Hoa Ting vs. Central Bank of the Phils.*, 104 Phil 573, 580, September 24, 1958, citing *Erwin N. Griswold of Harvard Law School*.

[28] *Divinagracia Jr. vs. Sto. Tomas*, 244 SCRA 595, 605, May 31, 1995.

[29] *Leveriza vs. Intermediate Appellate Court*, 157 SCRA 282, 292, January 25, 1988.

[30] In *Bataan Shipyard & Engineering Co., Inc. (BASECO) vs. PCGG*, 150 SCRA 181, 208-209, May 27, 1987, the Court described the effect of sequestration, thus:

“By the clear terms of the law, the power of the PCGG to sequester property claimed to be ‘ill-gotten’ means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including ‘business enterprises and entities’ -- for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same -- until it can be determined through appropriate judicial proceedings, whether the property was in truth ‘ill-gotten’ x x x.”

As to the scope and extent of the powers that may be exercised by the PCGG with regard to the properties of businesses sequestered, the Court said:

“x x x the PCGG cannot exercise acts of dominion over property sequestered, frozen or provisionally taken over. As already earlier stressed with no little insistence, the act of sequestration, freezing or provisional takeover of property does not import or bring about a divestment of title over said property; does not make the PCGG the owner thereof. In relation to the property sequestered, frozen or provisionally taken over, the PCGG is a conservator, not an owner. Therefore, it cannot perform acts of strict ownership; and this is specially true in the situations contemplated by the sequestration rules where, unlike cases of receivership, for example, no court exercises effective supervision or can, upon due application and hearing, grant authority for the performance of acts of dominion.

xxx xxx xxx

The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over, much like a court-appointed receiver, such as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator. In this context, it may in addition enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual its efforts to carry out its task; punish for direct or indirect contempt in accordance with the Rules of Court; and seek and secure the assistance of any office, agency or instrumentality of the government. In the case of sequestered businesses generally (i.e., going concerns, businesses in current operation), as in the case of sequestered objects, its essential role, as already discussed, is that of conservator, caretaker, ‘watchdog’ or overseer. It is not that of manager, or innovator, much less an owner.”

[31] Agpalo, Statutory Construction, 1990 ed., p. 212, citing Realty Investment, Inc. vs. Valderrama, 84 Phil 842, 1951; Philippine National Bank vs. Jacinto, 88 Phil 376, 1951; Herrerias vs. Javellana, 84 Phil 608, 1949.

[32] Concurring Opinion with Qualifications, in BASECO vs. PCGG, supra, p. 253.

[33] Bernas, The Constitution of the Republic of the Philippines : A Commentary, 1987 ed., pp. 33-34, quoting Commonwealth v. Alger, 7 Cush, 53 (Mass. 1851), quoted in US v. Pompeya, 31 Phil 245, 253-254 (1915); Churchill v. Rafferty, 32 Phil 580, 603 (1915); People v. Pomar, 46 Phil 440, 447 (1924); and citing US v. Toribio, 15 Phil 85, 97 (1910); Iloilo Ice & Storage Co. v. Municipal Council of Iloilo, 24 Phil 471, 485 (1913); Chuoco Tiaco v. Forbes, 40 Phil 1122, 1126 (1913); Cuunjieng v. Patstone, 42 Phil 818 (1922).

[34] On April 11, 1986.

[35] De Leon vs. Court of Appeals, 186 SCRA 345, 355, June 6, 1990.

[36] Annex O to Petition, supra.

[37] 258 SCRA 685, July 12, 1996.

[38] 269 SCRA 316, March 7, 1997.

[39] Supra, p. 692.

[40] Ibid., p. 693, per Panganiban, J.

[41] Supra, pp. 332-333, per Panganiban, J .

[42] “Regarding the Funds, Monies, Assets, and Properties Illegally Acquired or Misappropriated By Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees.

WHEREAS the government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly through or as a result of the improper or illegal use of funds or properties owned by the government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions or by taking undue advantage of their office, authority, influence, connections or relationships, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;

WHEREAS said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates and other kinds of real and personal properties in the Philippines and in various countries of the world;

xxx xxx xxx

NOW, THEREFORE, I, Corazon C. Aquino, President of the Philippines, hereby:

(1) Freeze all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation;

xxx xxx xxx”

[43] Under EO No. 1, promulgated on February 28, 1986 by then President Corazon C. Aquino.

[44] §2 (a), *ibid.* (Emphasis supplied)

[45] §3 (b), *ibid.*

[46] *BASECO vs. PCGG*, *supra*, p. 206.

[47] *Ibid.*, pp. 215-216; §26, Art. XVIII of the Constitution.

[48] *Ibid.*, p. 218.

[49] *Supra*.

[50] *Ibid.*, p. 474.

[51] *Ibid.*, p. 468.

[52] At p. 17 et seq.

[53] In *PCGG vs. Interco*, GR No. 92755, July 31, 1991 (en banc Resolution); and *Republic vs. Sipalay Trading*, 255 SCRA 438, March 29, 1996, cited in *PCGG vs. Sandiganbayan*, G.R. No. 125788, June 5, 1998, the Court even went one step further by holding that “xxx failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing.” In the present case, petitioners expressly admit that private respondents were not even included in the annex to Civil Case No. 0002.

[54] Florenz D. Regalado, *Remedial Law Compendium*, 5th Revised ed., Vol. 1, p. 112, citing *Ruymann vs. Director of Lands*, 34 Phil 429, March 28, 1916.

[55] *Ibid.*, citing *Panay Electric Co. vs. CA*, 119 SCRA 456, December 11, 1982. See also *Pangasinan Transportation Co. vs. Phil. Farming Co., Ltd.*, 81 Phil 273, July 22, 1948.

[56] Ibid., p. 113, citing *Aetna Insurance Co. vs. Luzon Stevedoring Corp.*, 62 SCRA 11, January 15, 1975; and *Seno vs. Mangubat*, 156 SCRA 113, December 2, 1987. *Republic vs. Sandiganbayan*, 255 SCRA 438, 490-491, March 29, 1996.

[57] See *BASECO vs. PCGG*, supra, pp. 236-239, on the scope of the powers of PCGG over properties sequestered, frozen or provisionally taken over.

[58] 186 SCRA 864, 872-873, June 27, 1990, citing several US cases.

[59] Ibid., p. 209.

[60] See however the extended Resolution in *Cojuangco, et al. vs. Calpo, et al.*, GR No. 115352, June 10, 1997, where the Court ruled that the issue of whether sequestered shares may be voted by the PCGG requires the determination of at least two factual matters, namely:

“1. Whether there is prima facie evidence showing that the said shares are ill-gotten and thus belong to the state; and

2. Whether there is an immediate danger of dissipation thus necessitating their continued sequestration and voting by PCGG while the main issue pendes with the Sandiganbayan.”

[61] EO No. 1, creating the PCGG, states in part:

“WHEREAS, there is an urgent need to recover all ill-gotten wealth;

NOW, THEREFORE, I CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. There is hereby created a Commission, to be known as the Presidential Commission on Good Government, x x x.

SECTION 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationships.

x x x x x x x x

SECTION 3. The Commission shall have the power and authority:

(a) To conduct investigations as may be necessary in order to accomplish and carry out the purposes of this order.

(b) To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

(c) To provisionally take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.

(d) To enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate, or otherwise make ineffectual the efforts of the Commission to carry out its tasks under this order.

(e) To administer oaths, and issue subpoenas requiring the attendance and testimony of witnesses and/or the production of such books, papers, contracts, records, statement of accounts and other documents as may be material to the investigation conducted by the Commission.”

[62] See Antonio T. Carpio, Crosscurrents (PCGG’s Track Record), Manila Times, July 16, 1998, p. 6; Belinda Olivares-Cunanan, Political Tidbits (Salonga: Marcoses need amicable settlement, not gov’t.), Philippine Daily Inquirer, July 16, 1998, p. 7; Neal H. Cruz, As I See It (Deal with Marcoses shows that crime pays, after all), Philippine Daily Inquirer, July 17, 1998, p. 7.

[63] See Republic vs. Provident, supra.

CONCURRING OPINION

BELLOSILLO, J.:

I concur in the intelligent dissertation of Mr. Justice Panganiban for the reason I discussed in Republic v. Sandiganbayan, G.R. No. 106244, 22 January 1997.[1]

Admittedly, sequestration is a severe, radical, cursory, extraordinary, and even harsh remedy. Thus, except for a general averment of a "showing of a prima facie case" as may be determined by the PCGG itself, which is not even a judicial body, a writ of sequestration may be immediately issued. And no bond is required to indemnify the property owner of any undue damage he may suffer as a consequence of an ill-issued writ. Consequently, its issuance should be restrained to its lawful confines and used with due caution and prudence, in the words of its enabling laws, to the demands of due process, justice and fair play. The provisions of Sec. 26, Art. XVIII, 1987 Constitution, are crystal clear -

A sequestration or freeze order shall be issued only upon showing of a prima facie case x x x. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

Quite obviously, the framers of the Constitution were well aware of the danger of invasion on property rights through the process of sequestration and the possible excesses of the agents and officials tasked to issue and implement sequestration orders. Consequently, to lessen, if not avoid, incursion on private rights and prevent abuses, the PCGG would have to institute "the corresponding judicial action or proceeding x x x within six months," failing in which, the sequestration or freeze order will be "deemed automatically lifted."

The evident reason for the constitutional precaution is to prevent the indefinite sequestration of private properties and to bring the case within the realm of judicial rule so that excesses may be controlled, if not prevented, and rights lawfully protected. For, sequestration was never meant to create a permanent situation where the registered owner is deprived of his property or divested of his rights over the same.

Accordingly, in the instant case, where the shares of stock in a corporation registered in the name of a particular stockholder, whether natural or judicial, have been sequestered by the PCGG but no judicial action or proceeding

was filed against the stockholder on record within the constitutionally prescribed period, the sequestration should be lifted forthwith otherwise it would be a clear violation of due process. As I said in *Republic v. Sandiganbayan*, supra, sequestration - if it is to adhere to constitutional due process - cannot be allowed to hang interminably and forever!

[1] 266 SCRA 515, 532.

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