

FRANCISCO I. CHAVEZ, PETITIONER, VS. PUBLIC ESTATES AUTHORITY AND AMARI COASTAL BAY DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 133250. May 06, 2003

Ponente: CARPIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-133250/>

CARPIO, J.:

For resolution of the Court are the following motions: (1) Motion to Inhibit and for Re-Deliberation filed by respondent Amari Coastal Bay Development Corporation ("Amari" for brevity) on September 13, 2002; (2) Motion to Set Case for Hearing on Oral Argument filed by Amari on August 20, 2002; (3) Motion for Reconsideration and Supplement to Motion for Reconsideration filed by Amari on July 26, 2002 and August 20, 2002, respectively; (4) Motion for Reconsideration and Supplement to Motion for Reconsideration filed by respondent Public Estates Authority ("PEA" for brevity) on July 26, 2002 and August 8, 2002, respectively; and (5) Motion for Reconsideration and/or Clarification filed by the Office of the Solicitor General on July 25, 2002. Petitioner Francisco I. Chavez filed on November 13, 2002 his Consolidated Opposition to the main and supplemental motions for reconsideration.

To recall, the Court's decision of July 9, 2002 ("Decision" for brevity) on the instant case states in its summary:

We can now summarize our conclusions as follows:

1. The 157.84 hectares of reclaimed lands comprising the Freedom Islands, now covered by certificates of title in the name of PEA, are alienable lands of the public domain. PEA may lease these lands to private corporations but may not sell or transfer ownership of these lands to private corporations. PEA may only sell these lands to Philippine citizens, subject to the ownership limitations in the 1987 Constitution and existing laws.
2. The 592.15 hectares of submerged areas of Manila Bay remain inalienable natural resources of the public domain until classified as alienable or disposable lands open to disposition and declared no longer needed for public service. The government can make such classification and declaration only after PEA has reclaimed these submerged areas. Only then can these lands qualify as agricultural lands of the public domain, which are the only natural resources the government can alienate. In their present state, the 592.15 hectares of submerged areas are inalienable and outside the commerce of man.
3. Since the Amended JVA seeks to transfer to AMARI, a private corporation, ownership of 77.34 hectares of the Freedom Islands, such transfer is void for being contrary to Section 3, Article XII of the 1987 Constitution which prohibits private corporations from acquiring any kind of alienable land of the public domain.
4. Since the Amended JVA also seeks to transfer to AMARI ownership of 290.156 hectares of still submerged areas of Manila Bay, such transfer is void for being contrary to Section 2, Article XII of the 1987 Constitution which prohibits the alienation of natural resources other than agricultural lands of the public domain. PEA may reclaim these submerged areas. Thereafter, the government can classify the reclaimed lands as alienable or disposable, and further declare them no longer needed for public service. Still, the transfer of such reclaimed

alienable lands of the public domain to AMARI will be void in view of Section 3, Article XII of the 1987 Constitution which prohibits private corporations from acquiring any kind of alienable land of the public domain.

Clearly, the Amended JVA violates glaringly Sections 2 and 3, Article XII of the 1987 Constitution. Under Article 1409 of the Civil Code, contracts whose "object or purpose is contrary to law," or whose "object is outside the commerce of men," are "inexistent and void from the beginning." The Court must perform its duty to defend and uphold the Constitution, and therefore declares the Amended JVA null and void ab initio.

Amari seeks the inhibition of Justice Antonio T. Carpio, ponente of the Decision, on the ground that Justice Carpio, before his appointment to the Court, wrote in his Manila Times column of July 1, 1997, "I have always maintained that the law requires the public bidding of reclamation projects." Justice Carpio, then a private law practitioner, also stated in the same column, "The Amari-PEA reclamation contract is legally flawed because it was not bid out by the PEA." Amari claims that because of these statements Justice Carpio should inhibit himself "on the grounds of bias and prejudgment" and that the instant case should be "re-deliberated" after being assigned to a new ponente.

The motion to inhibit Justice Carpio must be denied for three reasons. First, the motion to inhibit came after Justice Carpio had already rendered his opinion on the merits of the case. The rule is that a motion to inhibit must be denied if filed after a member of the Court had already given an opinion on the merits of the case,[1] the rationale being that "a litigant cannot be permitted to speculate upon the action of the Court xxx (only to) raise an objection of this sort after a decision has been rendered." Second, as can be readily gleaned from the summary of the Decision quoted above, the absence of public bidding is not one of the ratio decidendi of the Decision which is anchored on violation of specific provisions of the Constitution. The absence of public bidding was not raised as an issue by the parties. The absence of public bidding was mentioned in the Decision only to complete the discussion on the law affecting reclamation contracts for the guidance of public officials. At any rate, the Office of the Solicitor General in its Motion for Reconsideration concedes that the absence of public bidding in the disposition of the Freedom Islands rendered the Amended JVA null and void.[2] Third, judges and justices are not disqualified from participating in a case just because they have written legal articles on the law involved in the case. As stated by the Court in *Republic v. Cocofed*,[3] —

The mere fact that, as a former columnist, Justice Carpio has written on the coconut levy will not disqualify him, in the same manner that jurists will not be disqualified just because they may have given their opinions as textbook writers on the question involved in a case.

Besides, the subject and title of the column in question was "The CCP reclamation project" and the column referred to the Amari-PEA contract only in passing in one sentence.

Amari's motion to set the case for oral argument must also be denied since the pleadings of the parties have discussed exhaustively the issues involved in the case.

The motions for reconsideration reiterate mainly the arguments already discussed in the Decision. We shall consider in this Resolution only the new arguments raised by respondents.

In its Supplement to Motion for Reconsideration, Amari argues that the Decision should be made to apply prospectively, not retroactively to cover the Amended JVA. Amari argues that the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached, citing *De Agbayani v. PNB*,[4] thus:

x x x. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an

appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores*. x x x.

x x x

x x x That before the decision they were not constitutionally infirm was admitted expressly. There is all the more reason then to yield assent to the now prevailing principle that the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached.

Amari now claims that "assuming *arguendo* that Presidential Decree Nos. 1084 and 1085, and Executive Order Nos. 525 and 654 are inconsistent with the 1987 Constitution, the limitation imposed by the Decision on these decrees and executive orders should only be applied prospectively from the finality of the Decision."

Amari likewise asserts that a new doctrine of the Court cannot operate retroactively if it impairs vested rights. Amari maintains that the new doctrine embodied in the Decision cannot apply retroactively on those who relied on the old doctrine in good faith, citing *Spouses Benzonan v. Court of Appeals*,^[5] thus:

At that time, the prevailing jurisprudence interpreting section 119 of R.A. 141 as amended was that enunciated in *Monge and Tupas* cited above. The petitioners Benzonan and respondent Pe and the DBP are bound by these decisions for pursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional (*Francisco v. Certeza*, 3 SCRA 565 [1961]).

The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in *People v. Jabinal*, 55 SCRA 607 [1974] "x x x when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

There may be special cases where weighty considerations of equity and social justice will warrant a retroactive application of doctrine to temper the harshness of statutory law as it applies to poor farmers or their widows and orphans. In the present petitions, however, we find no such equitable considerations. Not only did the private respondent apply for free agricultural land when he did not need it and he had no intentions of applying it to the noble purposes behind the law, he would now repurchase for only P327,995.00, the property purchased by the petitioners in good faith for P1,650,000.00 in 1979 and which, because of improvements and the appreciating value of land must be worth more than that amount now.

The buyers in good faith from DBP had a right to rely on our rulings in *Monge* and *Tupas* when they purchased the property from DBP in 1979 or thirteen (13) years ago. Under the rulings in these two cases, the period to repurchase the disputed lot given to respondent Pe expired on June 18, 1982. He failed to exercise his right. His lost right cannot be revived by relying on the 1988 case of *Belisario*. The right of petitioners over the subject lot had already become vested as of that time and cannot be impaired by the retroactive application of the *Belisario* ruling.

Amari's reliance on *De Agbayani* and *Spouses Benzonan* is misplaced. These cases would apply if the prevailing law or doctrine at the time of the signing of the Amended JVA was that a private corporation could acquire alienable lands of the public domain, and the Decision annulled the law or reversed this doctrine. Obviously, this is not the case here.

Under the 1935 Constitution, private corporations were allowed to acquire alienable lands of the public domain. But since the effectivity of the 1973 Constitution, private corporations were banned from holding, except by lease, alienable lands of the public domain. The 1987 Constitution continued this constitutional prohibition. The prevailing law before, during and after the signing of the Amended JVA is that private corporations cannot hold, except by lease, alienable lands of the public domain. The Decision has not annulled or in any way changed the law on this matter. The Decision, whether made retroactive or not, does not change the law since the Decision merely reiterates the law that prevailed since the effectivity of the 1973 Constitution. Thus, *De Agbayani*, which refers to a law that is invalidated by a decision of the Court, has no application to the instant case.

Likewise, *Spouses Benzonan* is inapplicable because it refers to a doctrine of the Court that is overruled by a subsequent decision which adopts a new doctrine. In the instant case, there is no previous doctrine that is overruled by the Decision. Since the case of *Manila Electric Company v. Judge Castro-Bartolome*,^[6] decided on June 29, 1982, the Court has applied consistently the constitutional provision that private corporations cannot hold, except by lease, alienable lands of the public domain. The Court reiterated this in numerous cases, and the only dispute in the application of this constitutional provision is whether the land in question had already become private property before the effectivity of the 1973 Constitution.^[7] If the land was already private land before the 1973 Constitution because the corporation had possessed it openly, continuously, exclusively and adversely for at least thirty years since June 12, 1945 or earlier, then the corporation could apply for judicial confirmation of its imperfect title. But if the land remained public land upon the effectivity of the 1973 Constitution, then the corporation could never hold, except by lease, such public land. Indisputably, the Decision does not overrule any previous doctrine of the Court.

The prevailing doctrine before, during and after the signing of the Amended JVA is that private corporations cannot hold, except by lease, alienable lands of the public domain. This is one of the two main reasons why the Decision annulled the Amended JVA. The other main reason is that submerged areas of Manila Bay, being part of the sea, are inalienable and beyond the commerce of man, a doctrine that has remained immutable since the Spanish Law on Waters of 1886. Clearly, the Decision merely reiterates, and does not overrule, any existing judicial doctrine.

Even on the characterization of foreshore lands reclaimed by the government, the Decision does not overrule existing law or doctrine. Since the adoption of the Regalian doctrine in this jurisdiction, the sea and its foreshore areas have always been part of the public domain. And since the enactment of Act No. 1654 on May 18, 1907 until the effectivity of the 1973 Constitution, statutory law never allowed foreshore lands reclaimed by the government to be sold to private corporations. The 1973 and 1987 Constitution enshrined and expanded the ban to include any alienable land of the public domain.

There are, of course, decisions of the Court which, while recognizing a violation of the law or Constitution, hold

that the sale or transfer of the land may no longer be invalidated because of "weighty considerations of equity and social justice." [8] The invalidation of the sale or transfer may also be superfluous if the purpose of the statutory or constitutional ban has been achieved. But none of these cases apply to Amari.

Thus, the Court has ruled consistently that where a Filipino citizen sells land to an alien who later sells the land to a Filipino, the invalidity of the first transfer is corrected by the subsequent sale to a citizen. [9] Similarly, where the alien who buys the land subsequently acquires Philippine citizenship, the sale is validated since the purpose of the constitutional ban to limit land ownership to Filipinos has been achieved. [10] In short, the law disregards the constitutional disqualification of the buyer to hold land if the land is subsequently transferred to a qualified party, or the buyer himself becomes a qualified party. In the instant case, however, Amari has not transferred the Freedom Islands, or any portion of it, to any qualified party. In fact, Amari admits that title to the Freedom Islands still remains with PEA. [11]

The Court has also ruled consistently that a sale or transfer of the land may no longer be questioned under the principle of *res judicata*, provided the requisites for *res judicata* are present. [12] Under this principle, the courts and the parties are bound by a prior final decision, otherwise there will be no end to litigation. As the Court declared in *Toledo-Banaga v. Court of Appeals*, [13] "once a judgement has become final and executory, it can no longer be disturbed no matter how erroneous it may be." In the instant case, there is no prior final decision adjudicating the Freedom Islands to Amari.

There are, moreover, special circumstances that disqualify Amari from invoking equity principles. Amari cannot claim good faith because even before Amari signed the Amended JVA on March 30, 1999, petitioner had already filed the instant case on April 27, 1998 questioning precisely the qualification of Amari to acquire the Freedom Islands. Even before the filing of this petition, two Senate Committees [14] had already approved on September 16, 1997 Senate Committee Report No. 560. This Report concluded, after a well-publicized investigation into PEA's sale of the Freedom Islands to Amari, that the Freedom Islands are inalienable lands of the public domain. Thus, Amari signed the Amended JVA knowing and assuming all the attendant risks, including the annulment of the Amended JVA.

Amari has also not paid to PEA the full reimbursement cost incurred by PEA in reclaiming the Freedom Islands. Amari states that it has paid PEA only P300,000,000.00 [15] out of the P1,894,129,200.00 total reimbursement cost agreed upon in the Amended JVA. Moreover, Amari does not claim to have even initiated the reclamation of the 592.15 hectares of submerged areas covered in the Amended JVA, or to have started to construct any permanent infrastructure on the Freedom Islands. In short, Amari does not claim to have introduced any physical improvement or development on the reclamation project that is the subject of the Amended JVA. And yet Amari claims that it had already spent a "whopping P9,876,108,638.00" as its total development cost as of June 30, 2002. [16] Amari does not explain how it spent the rest of the P9,876,108,638.00 total project cost after paying PEA P300,000,000.00. Certainly, Amari cannot claim to be an innocent purchaser in good faith and for value.

In its Supplement to Motion for Reconsideration, PEA claims that it is "similarly situated" as the Bases Conversion Development Authority (BCDA) which under R.A. No. 7227 is tasked to sell portions of the Metro Manila military camps and other military reservations. PEA's comparison is incorrect. The Decision states as follows:

As the central implementing agency tasked to undertake reclamation projects nationwide, with authority to sell reclaimed lands, PEA took the place of DENR as the government agency charged with leasing or selling reclaimed lands of the public domain. The reclaimed lands being leased or sold by PEA are not private lands, in the same manner that DENR, when it disposes of other alienable lands, does not dispose of private lands but alienable lands of the public domain. Only when qualified private parties acquire these lands will the lands

become private lands. In the hands of the government agency tasked and authorized to dispose of alienable or disposable lands of the public domain, these lands are still public, not private lands.

PEA is the central implementing agency tasked to undertake reclamation projects nationwide. PEA took the place of Department of Environment and Natural Resources ("DENR" for brevity) as the government agency charged with leasing or selling all reclaimed lands of the public domain. In the hands of PEA, which took over the leasing and selling functions of DENR, reclaimed foreshore lands are public lands in the same manner that these same lands would have been public lands in the hands of DENR. BCDA is an entirely different government entity. BCDA is authorized by law to sell specific government lands that have long been declared by presidential proclamations as military reservations for use by the different services of the armed forces under the Department of National Defense. BCDA's mandate is specific and limited in area, while PEA's mandate is general and national. BCDA holds government lands that have been granted to end-user government entities — the military services of the armed forces. In contrast, under Executive Order No. 525, PEA holds the reclaimed public lands, not as an end-user entity, but as the government agency "primarily responsible for integrating, directing, and coordinating all reclamation projects for and on behalf of the National Government."

In *Laurel v. Garcia*,^[17] cited in the Decision, the Court ruled that land devoted to public use by the Department of Foreign Affairs, when no longer needed for public use, may be declared patrimonial property for sale to private parties provided there is a law authorizing such act. Well-settled is the doctrine that public land granted to an end-user government agency for a specific public use may subsequently be withdrawn by Congress from public use and declared patrimonial property to be sold to private parties. R.A. No. 7227 creating the BCDA is a law that declares specific military reservations no longer needed for defense or military purposes and reclassifies such lands as patrimonial property for sale to private parties.

Government owned lands, as long they are patrimonial property, can be sold to private parties, whether Filipino citizens or qualified private corporations. Thus, the so-called Friar Lands acquired by the government under Act No. 1120 are patrimonial property^[18] which even private corporations can acquire by purchase. Likewise, reclaimed alienable lands of the public domain if sold or transferred to a public or municipal corporation for a monetary consideration become patrimonial property in the hands of the public or municipal corporation. Once converted to patrimonial property, the land may be sold by the public or municipal corporation to private parties, whether Filipino citizens or qualified private corporations.

We reiterate what we stated in the Decision is the rationale for treating PEA in the same manner as DENR with respect to reclaimed foreshore lands, thus:

To allow vast areas of reclaimed lands of the public domain to be transferred to PEA as private lands will sanction a gross violation of the constitutional ban on private corporations from acquiring any kind of alienable land of the public domain. PEA will simply turn around, as PEA has now done under the Amended JVA, and transfer several hundreds of hectares of these reclaimed and still to be reclaimed lands to a single private corporation in only one transaction. This scheme will effectively nullify the constitutional ban in Section 3, Article XII of the 1987 Constitution which was intended to diffuse equitably the ownership of alienable lands of the public domain among Filipinos, now numbering over 80 million strong.

This scheme, if allowed, can even be applied to alienable agricultural lands of the public domain since PEA can "acquire x x x any and all kinds of lands." This will open the floodgates to corporations and even individuals acquiring hundreds, if not thousands, of hectares of alienable lands of the public domain under the guise that in the hands of PEA these lands are private lands. This will result in corporations amassing huge landholdings never before seen in this country — creating the very evil that the constitutional ban was designed to prevent. This will completely reverse the clear direction of constitutional development in this country. The 1935 Constitution allowed private corporations to acquire not more than 1,024 hectares of public lands. The

1973 Constitution prohibited private corporations from acquiring any kind of public land, and the 1987 Constitution has unequivocally reiterated this prohibition.

Finally, the Office of the Solicitor General and PEA argue that the cost of reclaiming deeply submerged areas is "enormous" and "it would be difficult for PEA to accomplish such project without the participation of private corporations." [19] The Decision does not bar private corporations from participating in reclamation projects and being paid for their services in reclaiming lands. What the Decision prohibits, following the explicit constitutional mandate, is for private corporations to acquire reclaimed lands of the public domain. There is no prohibition on the directors, officers and stockholders of private corporations, if they are Filipino citizens, from acquiring at public auction reclaimed alienable lands of the public domain. They can acquire not more than 12 hectares per individual, and the land thus acquired becomes private land.

Despite the nullity of the Amended JVA, Amari is not precluded from recovering from PEA in the proper proceedings, on a quantum meruit basis, whatever Amari may have incurred in implementing the Amended JVA prior to its declaration of nullity.

WHEREFORE, finding the Motions for Reconsideration to be without merit, the same are hereby DENIED with FINALITY. The Motion to Inhibit and for Re-Deliberation and the Motion to Set Case for Hearing on Oral Argument are likewise DENIED.

SO ORDERED.

Davide, Jr., C.J., Vitug, Panganiban, Quisumbing, Austria-Martinez, Carpio-Morales, and Callejo, Sr., JJ., concur.

Bellosillo, J., please see separate opinion, concurring and dissenting.

Puno, J., please see separate opinion.

Ynares-Santiago, and Sandoval-Gutierrez, JJ., please see dissenting opinion.

Corona, J., I dissent.

Azcuna, J., I take no part.

[1] *Limpin, Jr. v. IAC*, 161 SCRA 83 (1988); *Araneta v. Dinglasan*, 84 Phil. 368 (1949).

[2] Motion for Reconsideration of the Office of the Solicitor General, p. 3.

[3] En Banc Resolution of February 26, 2002.

[4] 38 SCRA 429 (1971).

[5] 205 SCRA 515 (1992).

[6] 114 SCRA 799 (1982).

[7] *Republic v. CA and Iglesia ni Cristo*, and *Republic v. Cendaña and Iglesia ni Cristo*, 119 SCRA 449 (1982); *Republic v. Villanueva and Iglesia ni Cristo*, 114 SCRA 875 (1982); *Director of Lands v. Lood*, 124 SCRA 460 (1983); *Republic v. Iglesia ni Cristo*, 128 SCRA 44 (1984); *Director of Lands v. Hermanos y Hermanas de Sta. Cruz de Mayo, Inc.*, 141 SCRA 21 (1986); *Director of Lands v. IAC and Acme Plywood & Veneer Inc.*, 146 SCRA 509 (1986); *Republic v. IAC and Roman Catholic Bishop of Lucena*, 168 SCRA 165 (1988); *Natividad v.*

CA, 202 SCRA 493 (1991); *Villaflor v. CA and Nasipit Lumber Co.*, 280 SCRA 297 (1997). In *Ayog v. Cusi, Jr.*, 118 SCRA 492 (1982), the Court did not apply the constitutional ban in the 1973 Constitution because the applicant corporation, *Biñan Development Co., Inc.*, had fully complied with all its obligations and even paid the full purchase price before the effectivity of the 1973 Constitution, although the sales patent was issued after the 1973 Constitution took effect.

[8] *Spouses Benzonan v. Court of Appeals*, note 5.

[9] *United Church Board for World Ministries v. Sebastian*, 159 SCRA 446 (1988); *Sarsosa Vda. de Barsobia v. Cuenco*, 113 SCRA 547 (1982); *Godinez v. Pak Luen*, 120 SCRA 223 (1983); *Vasquez v. Giap and Li Seng Giap & Sons*, 96 Phil. 447 (1955).

[10] *Lee v. Republic*, G.R. No. 128195, October 3, 2001; *Yap v. Maravillas*, 121 SCRA 244 (1983); *De Castro v. Teng*, 129 SCRA 85 (1984).

[11] *Amari's Motion for Reconsideration*, p. 10.

[12] *Republic v. Court of Appeals*, G.R. No. 101115, August 22, 2002; *Firestone Ceramics v. Court of Appeals*, 313 SCRA 522 (1999); *Herrera v. Canlas*, 310 SCRA 318 (1999); *People's Homesite and Housing Corporation v. Mencias*, 20 SCRA 1031 (1967); *Galvez v. Tuason*, 10 SCRA 344 (1964).

[13] 302 SCRA 331 (1999).

[14] *Committee on Government Corporations and Public Enterprises, and Committee on Accountability of Public Officers and Investigations*.

[15] *Amari's Motion for Reconsideration*, p. 49.

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

[17] 187 SCRA 797 (1990); See also *Ignacio v. Director of Lands*, 108 Phil. 335 (1960); *Cebu Oxygen & Acetylene Co., Inc. v. Bercilles*, 66 SCRA 481 (1975).

[18] *Central Capiz v. Ramirez*, 40 Phil. 883 (1920); *Jacinto v. Director of Lands*, 49 Phil. 853 (1926); *Pugeda v. Trias*, 4 SCRA 849 (1962); *De la Cruz v. De la Cruz*, 130 SCRA 666 (1984).

[19] *OSG's Motion for Reconsideration*, pp. 22-24; *PEA's Supplement to Motion for Reconsideration*, p.12.

SEPARATE OPINION, CONCURRING AND DISSENTING

And in the naked light I saw
Ten thousand people, maybe more.
People talking without speaking,
People hearing without listening,
People writing songs that voices never share
And no one dared
Disturb the sound of silence.
- Paul Simon, Sound of Silence

BELLOSILLO, J.:

A STEREOTYPICAL ACTION, AN ARCHETYPAL RESPONSE, A MATTER OF DUE PROCESS — a motion for reconsideration relieves the pressure of mistakes shrouded in the mystified body of putative precedents. It serves the traditional and standard procedure for a second chance not only in favor of party-litigants but the courts as well, before taking that great leap of faith into stare decisis where even our errors are etched as rules of conduct or, as our conscious choice would have it, into the jural postulate of a civilized society where men are able to assume that they may control, for purposes beneficial to them, what they have created by their own labor and what they have acquired under the existing social and economic order. With such opportunity presenting itself in the instant case, I am up to the task of scrutinizing a monumental challenge to the course of economic decision-making inherent not in the mandate of this Court but in those of the accountable political branches of our government whose long-standing discretion we have thrashed — a perfunctory acquiescence amidst the disturbing sound of silence is certainly feckless and inappropriate.

First, my concurrence. I am happy that this Court has stuck to a civil libertarian's honesty and transparency in government service when interpreting the ambit of the people's right to information on matters of public concern. Nothing can be more empowering on this aspect than to compel access to all information relevant to the negotiation of government contracts including but not limited to evaluation reports, recommendations, legal and expert opinions, minutes of meetings, terms of reference and other documents attached to such reports or minutes, all relating to any proposed undertaking. This to me encourages our people to watch closely the proprietary acts of State functionaries which more often than not, because they have been cloaked in technical jargon and speculation due to the absence of verifiable resource materials, have been left unaccounted for public debate and searching inquiry.

Having said what is positively remarkable about the ponencia, let me discuss the crux of my dissent.

Firstly, as explained by the contracting parties now adversely affected by the Decision to nullify ab initio the Amended Joint Venture Agreement (AJVA), there is no reason to go that far to prove a point. I agree with them. According to the ponencia, the AJVA was intended to —

x x x develop the Freedom Islands. The JVA also required the reclamation of an additional 250 hectares of submerged areas surrounding these islands to complete the configuration in the Master Development Plan of the Southern Reclamation Project-MCCRRP x x x x The subject matter of the Amended JVA, as stated in its second Whereas clause, consists of three properties, namely: 1. '[T]hree partially reclaimed and substantially eroded islands along Emilio Aguinaldo Boulevard in Paranaque and Las Piñas, Metro Manila, with a combined titled area of 1,578,441 square meters;' 2. '[A]nother area of 2,421,559 square meters contiguous to the three islands;' and 3. '[A]t AMARI's option as approved by PEA, an additional 350 hectares more or less to regularize the configuration of the reclaimed area.' PEA confirms that the Amended JVA involves "the development of the Freedom Islands and further reclamation of about 250 hectares. . .,' plus an option 'granted to AMARI to subsequently reclaim another 350 hectares . . .' In short, the Amended JVA covers a reclamation area of 750 hectares. Only 157.84 hectares of the 750-hectare reclamation project have been reclaimed, and the rest of the 592.15 hectares are still submerged areas forming part of Manila Bay. Under the Amended JVA, AMARI will reimburse PEA the sum of P1,894,129,200.00 for PEA's 'actual cost' in partially reclaiming the Freedom Islands. AMARI will also complete, at its own expense, the reclamation of the Freedom Islands. AMARI will further shoulder all the reclamation costs of all the other areas, totaling 592.15 hectares, still to be reclaimed. AMARI and PEA will share, in the proportion of 70 percent and 30 percent, respectively, the total net usable area which is defined in the Amended JVA as the total reclaimed area less 30 percent earmarked for common areas. Title to AMARI's share in the net usable area, totaling 367.5 hectares, will be issued in the name of AMARI. Section 5.2 (c) of the Amended JVA provides that — '. . . , PEA shall have the duty to execute without delay the necessary deed of transfer or conveyance of the title pertaining to AMARI's land

share based on the Land Allocation Plan. PEA, when requested in writing by AMARI, shall then cause the issuance and delivery of the proper certificates of title covering AMARI's Land Share in the name of AMARI,. . . ; provided, that if more than seventy percent (70%) of the titled area at any given time pertains to AMARI, PEA shall deliver to AMARI only seventy percent (70%) of the titles pertaining to AMARI, until such time when a corresponding proportionate area of additional land pertaining to PEA has been titled.' Indisputably, under the Amended JVA AMARI will acquire and own a maximum of 367.5 hectares of reclaimed land which will be titled in its name. To implement the Amended JVA, PEA delegated to the unincorporated PEA-AMARI joint venture PEA's statutory authority, rights and privileges to reclaim foreshore and submerged areas in Manila Bay. Section 3.2.a of the Amended JVA states that - 'PEA hereby contributes to the joint venture its rights and privileges to perform Rawland Reclamation and Horizontal Development as well as own the Reclamation Area, thereby granting the Joint Venture the full and exclusive right, authority and privilege to undertake the Project in accordance with the Master Development Plan.' The Amended JVA is the product of a renegotiation of the original JVA dated April 25, 1995 and its supplemental agreement dated August 9, 1995.[1]

But the AJVA, which is basically a specie of an "I do, you give" contract, is severable in the sense that AMARI's share in the project need not be paid in parcels of the reclaimed land but also in cash. The majority cannot set this alternative aside since lawyers for AMARI are also interested in this substitute option if all else fail.[2] Another tame solution, so they say, is for the Public Estates Authority to hold title to the reclaimed lands until transferred to a qualified transferee.[3] This too is possible in the name of equity. To be sure, the prestation in the PEA-AMARI contract is not contrary to law or public policy since the government stands to be benefited by AMARI's part of the bargain while the latter must in turn be compensated for its efforts; in the present context service and compensation, "I do, you give" are certainly not illegal considerations. Since the baseless anxiety about the AJVA lies only in the mode of recompense for AMARI, and the AJVA offers an abundance of means to get it done, even granting that the ponencia has correctly understood the law to prevent permanently the transfer of reclaimed lands to AMARI, no reason could sanely justify voiding the entire contract and eternally deny a party its due for its onerous activities. As we have held in *Republic v. Court of Appeals*,[4]

x x x it appearing that something compensable was accomplished by them, following the applicable provision of law and hearkening to the dictates of equity, that no one, not even the government shall unjustly enrich oneself/itself at the expense of another, we believe and so hold, that Pasay City and RREC should be paid for the said actual work done and dredge-fill poured in xxxx

Secondly, I am not comfortable with the idea of forever withholding reclaimed lands as unmovable assets in our developmental concerns.

Government lands are classified in a number of ways. They may be lands of the public domain, either alienable or inalienable, or lands of the private domain, which refer to "land belonging to and owned by the state as a private individual, without being devoted for public use, public service or the development of national wealth x x x similar to patrimonial properties of the State." [5] Under the Civil Code, government lands can either be properties of the public dominion, or those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character, or those which belong to the State, without being for public use, intended for some public service or for the development of the national wealth; [6] or patrimonial properties of the State, i.e., properties other than properties of the public dominion or former properties of the public dominion that are no longer intended for public use or for public service. [7] Clearly, the government owns real estate which is part of the "public lands" or alienable lands of the public domain and other real estate which is not a part thereof.

Alienable lands of the public domain, or those available for alienation or disposition, are part of the patrimonial

properties of the State.[8] They are State properties available for private ownership except that their appropriation is qualified by Secs. 2 and 3 of Art. XII of the Constitution and the public land laws.[9] Before lands of the public domain are declared available for private acquisition, or while they remain intended for public use or for public service or for the development of national wealth, they would partake of properties of public dominion just like mines before their concessions are granted,[10] in which case, they cannot be alienated or leased or otherwise be the object of contracts.[11] In contrast, patrimonial properties may be bought or sold or in any manner utilized with the same effect as properties owned by private persons.[12] Lands of the private domain, being patrimonial properties, are valid objects of contracts generally unfettered by the terms and conditions set forth in Secs. 2 and 3 of Art. XII of the Constitution, which refer only to lands of the public domain, nor by statutes for the settlement, prescription or sale of public lands.

The ponencia classified the reclaimed lands herein involved to be lands of the public domain. Thus, as summarized in the ponencia sought to be reconsidered —

1. The 157.84 hectares of reclaimed lands comprising the Freedom Islands, now covered by certificates of title in the name of PEA, are alienable lands of the public domain. PEA may lease these lands to private corporations but may not sell or transfer ownership of these lands to private corporations. PEA may only sell these lands to Philippine citizens, subject to the ownership limitations in the 1987 Constitution and existing laws.
2. The 592.15 hectares of submerged areas of Manila Bay remain inalienable natural resources of the public domain until classified as alienable or disposable lands open to disposition and declared no longer needed for public service. The government can make such classification and declaration only after PEA has reclaimed these submerged areas. Only then can these lands qualify as agricultural lands of the public domain, which are the only natural resources the government can alienate. In their present state, the 592.15 hectares of submerged areas are inalienable and outside the commerce of man.
3. Since the Amended JVA seeks to transfer to AMARI, a private corporation, ownership of 77.34 hectares of the Freedom Islands, such transfer is void for being contrary to Section 3, Article XII of the 1987 Constitution which prohibits private corporations from acquiring any kind of alienable land of the public domain.
4. Since the Amended JVA also seeks to transfer to AMARI ownership of 290.156 hectares of still submerged areas of Manila Bay, such transfer is void for being contrary to Section 2, Article XII of the 1987 Constitution which prohibits the alienation of natural resources other than agricultural lands of the public domain. PEA may reclaim these submerged areas. Thereafter, the government can classify the reclaimed lands as alienable or disposable, and further declare them no longer needed for public service. Still, the transfer of such reclaimed alienable lands of the public domain to AMARI will be void in view of Section 3, Article XII of the 1987 Constitution which prohibits private corporations from acquiring any kind of alienable land of the public domain.[13]

This is where I also disagree. Reclaimed lands are lands *sui generis*, as the majority would rule, and precisely because of this characterization we cannot lump them up in one telling swoop as lands of the public domain without due regard for vested rights as well as joint executive and legislative intent to provide otherwise. For, after all, it is the executive and legislative powers that determine land classification.[14] To illustrate, in *Province of Zamboanga del Norte v. City of Zamboanga*[15] this Court took note of the diverging "norms" provided by laws, i.e., the Civil Code and the Law of Municipal Corporations, in classifying municipal lands into either public or patrimonial, and held that "applying the norm obtaining under the principles constituting the Law of Municipal Corporations, all those x x x properties in question which are devoted to public service are deemed public; the rest remain patrimonial. Under this norm, to be considered public, it is enough that the property be held and devoted for governmental purposes like local administration, public education, public health, etc." Clearly, the

categorization of government lands depends upon legislative intent which the courts must implement.

The Freedom Islands was reclaimed by the Construction and Development Corporation of the Philippines (CDCP) pursuant to a contract with the Republic whereby the former in exchange for its efforts would receive fifty percent (50%) of the total reclaimed land. This arrangement is authorized under Art. 5 of the Spanish Law of Waters which provides, "[l]ands reclaimed from the sea in consequence of works constructed by the State, or by the provinces, pueblos or private persons, with proper permission, shall become the property of the party constructing such works, unless otherwise provided by the terms of the grant of authority," and by PD 3-A (1973) stating that, "[t]he provisions of any law to the contrary notwithstanding, the reclamation of areas under water, whether foreshore or inland, shall be limited to the National Government or any person authorized by it under a proper contract (underscoring supplied)." Both statutes are still effective since neither one repeals the other but only a modification is inserted in that reclamation by a private contractor must now be governed by a "contract." As the standing laws, i.e., Art. 5 of the Spanish Law of Waters and PD 3-A, treat reclaimed lands as proper objects for disposition whether by grant of authority or contract, such reclaimed lands as they have been acquired by the State by means of a contract are not properties of public dominion but patrimonial lands of the State that it can dispose, and lands of the private domain that the State may alienate to anyone since the statutes make no restriction altogether.

The reclaimed lands pertaining to CDCP under the contract with the Republic are private properties of CDCP. The Republic is authorized to convey them to CDCP, a corporation duly organized and registered under the laws of the Philippines,[16] and the lands themselves are products of CDCP's efforts, money and expertise. When CDCP acquires property, it does so in its private capacity in the course of the exercise of its corporate powers as a juridical entity and acting as an ordinary person capable of entering into contracts or making transactions for the transmission of title or other real rights.[17] Under Art. 712 of the Civil Code, ownership and other real rights over property are acquired and transmitted by tradition in consequence of certain contracts. In fact, PD 1085 (1977)[18] acknowledges the existence of rights in favor of CDCP and conditions the transfer of assets from CDCP to PEA upon the recognition and respect for "the rights and interests of the Construction and Development Corporation of the Philippines pursuant to the aforesaid contract," and furthermore, upon the transfer of "such portion or portions of the land reclaimed or to be reclaimed as provided for in the above-mentioned contract" to the contractor or his assignees.

The rest of the lands reclaimed by CDCP as Freedom Islands but belonging to the Republic under the contract, i.e., the other fifty percent (50%) thereof, are lands of the private domain. The reason is simple: this fifty percent (50%) to which the Republic is entitled is only an extension of the other fifty percent (50%) that went to CDCP as its private property in consideration of its reclamation. An "extension," signifies enlargement in any direction — in length, breadth, or circumstance.[19] Thus, in *Manila Lodge No. 761 v. Court of Appeals*[20] we held: "[i]f the reclaimed area is an extension of the Luneta, then it is of the same nature or character as the old Luneta. Anent this matter, it has been said that a power to extend (or continue an act or business) cannot authorize a transaction that is totally distinct." Moreover, as in the case of lands obtained in escheat proceedings or succession which are properties of the private domain, the reclaimed lands are procured through the contract between the Republic and CDCP without which they would not have come into being.

The transfer of the Freedom Islands to the PEA under PD 1085 (both the fifty percent (50%) owned by CDCP and the other half owned by the Republic) does not alter the description of the reclaimed lands — they remain lands of the private domain. In fact, the conveyance bolsters such characterization: fifty percent (50%) was obtained from a private owner, CDCP, hence subsuming it under the private domain.[21] The other fifty percent (50%) belonging to the Republic is given to PEA in exchange for a participation in the latter's equity. As explained in

DoJ Opinion No. 026, s. 1994, which answers negatively whether the President may transfer gratuitously the title of the Republic over all lands within the Old Bilibid Compound (OBC) in favor of the PEA, subject to the existing valid private rights if there be any, to form part of PEA's project-related asset pool —

First and foremost, PEA's Charter delimits the contributions of the National Government to the PEA which are to be compensated by the equivalent number of shares of stocks of the PEA in the name of the Republic (Secs. 7 and 15, P. D. 1084). The proposed gratuitous transfer of valuable national government property of the PEA by a Presidential Proclamation would go beyond the amount of the contribution/exposure of the National Government to the capital of the PEA as prescribed by law and do away with the consideration therefor that is the equivalent number of shares of stocks of the PEA to be issued in the name of the National Government. Accordingly, the said proposal would run counter to the provisions of the abovementioned Charter, or amount to an amendment of the said law (underscoring supplied).

Consequently, under LOI 1390 (1984), to accelerate the development of the First Neighborhood Unit Project within the Manila-Cavite Coastal Road Project, an excess of the reclaimed land was ceded by PEA to the Marina Properties Corporation. Administrative Order No. 348 (1997) authorized PEA to undertake "pursuant to its charter (PD 1084 and PD 1085) ancillary reclamation works to put in place the drainage canals and outfalls and to negotiate and enter into such agreements including land-swapping, on a value for value basis, as may be necessary for the acquisition of rights-of-way (ROW) for the said major roads/drainage canals in order that these are undertaken at no cost or budgetary outlay on the part of PEA or the National Government (underscoring supplied)."[22] Subsequently, AO No. 397 (1998) of then President Ramos settled claims of CDCP against PEA by conveying portions of the lands previously reclaimed under CDCP's contract with the Republic.

Evidently, by these official measures making the reclaimed lands available for the ownership of private corporations as transferees, the portions of land reclaimed by CDCP were not intended by the executive and legislative branches of government as proper authorities for such purpose to be labeled alienable lands of the public domain but lands of the private domain, hence, generally not subject to the strictures of Secs. 2 and 3 of Art. XII of the Constitution. There is none of the intention to devote them to public use in order that they may be considered as properties still of the public domain.[23] As it is "only the executive and possibly the legislative department that have the authority and the power to make the declaration that said property is no longer required for public use,"[24] or for that matter, already belongs to the private domain, and with the declaration having been made by enlisting the reclaimed lands as pieces of assets available for commercial use, they continue as private lands of the State when transferred to PEA, and from the latter as mode of compensation for AMARI in the assailed AJVA.

The authority to dispose of government lands is a strong indicum of the patrimonial composition of the properties.[25] Ownership is the right to enjoy and dispose of a thing without further limitations than those established by law, and *jus disponendi* of one's property is an attribute of ownership. This is clear from PD 1084 (1977), the charter of PEA which states as among the purposes thereof to "reclaim land, including foreshore and submerged areas, by dredging, filling or other means, or to acquire reclaimed lands," or to "develop, improve, acquire, administer, deal in, subdivide, dispose, lease and sell any and all kinds of lands, buildings, estates and other forms of real property, owned, managed, controlled and/or operated by the government." To this end, PEA was empowered to "purchase, lease, build, alter, construct, erect, enlarge, occupy, manage, sell, mortgage, dispose of or otherwise deal in, buildings of every kind and character whatsoever, whether belonging to, or to be acquired by the Authority."

Significantly, to stress the legislative intent to segregate PEA's patrimonial lands or lands of the private domain which are being used as assets in its commercial undertakings from the realm of alienable lands of the public domain, PD 1084 purposely vested it with the right to "hold lands of the public domain in excess of [the] area

permitted to private corporations by statute." In the same DoJ Opinion No. 026, s. 1994 mentioned above, it is articulated although ruefully that the power of PEA to dispose of its assets constitutes adequate legal basis under Sec. 48, Chapt. 12, Bk. I, of EO 292, the Administrative Code of 1997,[26] as well as under our ruling in *Laurel v. Garcia*[27] that "[i]t is not for the President to convey valuable real property of the government on his or her own sole will x x x [a]ny such conveyance must be authorized and approved by a law enacted by Congress x x x [i]t requires executive and legislative concurrence" for PEA to exercise validly such mandate.

The proscription of Secs. 2 and 3 of Art. XII of the Constitution finds no application in the instant case, especially as regards the 157.84 hectares of reclaimed lands comprising the Freedom Islands. As explained above, this real estate is not of the public domain but of the private domain. In the same way, the various public land laws in their essential parts do not govern the alienation of the Freedom Islands. What is more, reclaimed lands are not plain and simple patches of the earth as agricultural, timber or mineral lands are, in the full sense of being products of nature, but are the results of the intervention of man just like in the extraction of mineral resources, i.e., gold, oil, petroleum, etc. Landform encompasses only six (6) major categories: high mountains, low mountains, hills, plains with high relief features, plains of moderate relief and plains of slight relief.[28] The terrain types identified by this system are established by a uniform set of descriptive properties, and nowhere do we read therein reclaimed lands. The origin of our islands as other islands in the western Pacific is believed to be "the upfoldings of ancient continental rocks with deep troughs between representing downfolds or down-dropped blocks x x x [h]ence, the elevations of those islands x x x which rest upon submarine platforms has been aided by deformation of the earth's crust"[29] — our islands were not created through the process of reclamation but through natural formation.

In fact, reclaimed lands are the result of man's interference with nature. They are not akin to land categories as we know them but more representative of the exploitation of natural resources coupled with the inventiveness of man. As mentioned above, the more relevant comparisons would be the exploration and utilization of mineral resources that are turned over to the private contractor in exchange for certain fees and royalties.[30] To be sure, the constitutional injunction in Sec. 2 of Art XII that "[w]ith the exception of agricultural lands, all other natural resources shall not be alienated" was never intended to restrict our leaders in the executive branch to require in mineral agreements a stipulation "requiring the Contractor to dispose of the minerals and by-products produced at the highest market price and to negotiate for more advantageous terms and conditions subject to the right to enter into long-term sales or marketing contracts or foreign exchange and commodity hedging contracts which the Government acknowledges to be acceptable x x x x (underscoring supplied)"[31]

Without doubt, what applies to reclamation projects is this portion of Sec. 2, Art. XII of the Constitution —

x x x [t]he exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements [are] x x x under such terms and conditions as may be provided by law (underscoring supplied)."

The clause "under such terms and conditions as may be provided by law" refers to the standing laws affecting reclaimed lands, such as the PEA charter. The orientation to this portion of Sec. 2 explains why in most executive issuances and statutes relating to reclamation of lands we would read references to joint venture or production-sharing agreements. Hence, in EO 405 (1997) Authorizing the Philippine Ports Authority (PPA) to Reclaim and Develop Submerged Areas Vested in the PPA For Port-Related Purposes, it was noted in the "Whereas" Clauses that land reclamation and development projects are capital intensive infrastructure enterprises requiring huge financial outlays through joint venture agreements. In this light, we ought to resolve the instant reclamation project according to the clear intendment of the executive and legislative branches of government to

handle reclaimed lands as patrimonial properties and lands of the private domain of the State.

As regards the real character of reclaimed lands, Sec. 302 of RA 7160 (1991)[32] provides that "[t]he contractor shall be entitled to a reasonable return of its investment in accordance with its bid proposal as accepted by the local government unit concerned x x x x In case of land reclamation or construction of industrial estates, the repayment plan may consist of the grant of a portion or percentage of the reclaimed land or the industrial estate constructed." Under Sec. 6 of RA 6957 (1990),[33] "the contractor shall be entitled to a reasonable return of its investment and operating and maintenance costs x x x x In the case of land reclamation or the building of industrial estates, the repayment scheme may consist of the grant of a portion or percentage of the reclaimed land or industrial estate built, subject to the constitutional requirements with respect to the ownership of lands." The mention of the "constitutional requirements" in RA 6957 has to do with the equity composition of the corporate recipient of the land, i.e., "corporations or associations at least sixty per centum of whose capital is owned by such citizens" and not to the outright prohibition against corporate ownership of lands of the public domain.[34] It is also important to note that a "contractor" is any "individual, firm, partnership, corporation, association or other organization, or any combination of any thereof,"[35] thus qualifying AMARI to receive a portion of the reclaimed lands.

There is nothing essentially wrong with the agreement between PEA and AMARI in that the latter would receive a portion of the reclamation project if successful. This is a common payment scheme for such service done. It is recognized under the Spanish Law of Waters and authorized by the PEA charter as well as by RA 6957. The assailed AJVA is not awarding AMARI a portion of the Manila Bay, a property of public dominion, but a fraction of the land to be uplifted from it, a land of the private domain. While the reclamation project concerns a future thing or one having potential existence, it is nonetheless a legitimate object of a contract.[36]

We do not have to be confused regarding the nature of the lands yet to be reclaimed. They are the same as the Freedom Islands. Both are meant to serve legitimate commercial ends, hence, lands of the private domain intended by both the executive and legislative branches of government to be used as commercial assets. This objective is obvious from PD 1084 which empowers PEA to "enter into, make, perform and carry out contracts of every class and description, including loan agreements, mortgages and other types of security arrangements, necessary or incidental to the realization of its purposes with any person, firm or corporation, private or public, and with any foreign government or entity." Executive Order No. 525 (1979)[37] provides that "[a]ll lands reclaimed by PEA shall belong to or be owned by the PEA which shall be responsible for its administration, development, utilization or disposition in accordance with the provisions of Presidential Decree No. 1084. Any and all income that the PEA may derive from the sale, lease or use of reclaimed lands shall be used in accordance with the provisions of Presidential Decree No. 1084." Finally, EO 654 (1981)[38] mandates that "[i]n the disposition of its assets and properties, the Authority shall have the authority to determine the kind and manner of payment for the transfer thereof to any third party." Since the principal task of PEA is to reclaim lands or to approve the execution of it by others, its power to contract must necessarily involve dealings with the reclaimed lands.

Admittedly, our public land laws classify reclaimed lands as alienable lands of the public domain.[39] Under such taxonomy, the real estate would fall within the prohibition against ownership by private corporations under Secs. 2 and 3, Art. XII, of the Constitution. Under the public land laws, the mode of disposing them is mainly through lease, or if titled in the name of a government entity, by sale but only to individual persons. But herein lies the rub - the nomenclature attached to reclaimed lands as belonging to the public domain is statutory in origin. This means, and ought to import, that the category may change according to legislative intent. The power to make laws includes the power to alter and repeal them. Nothing sacrosanct like a constitutional injunction exists that

reclaimed lands be always classified as lands of the public domain; the class is statutory in foundation and so it may change accordingly, as it was modified for purposes of the mandate of the Public Estates Authority.

The issuance of a "special patent" under PD 1085, i.e., "Special Land Patent/Patents shall be issued by the Secretary of Natural Resources in favor of the Public Estate Authority without prejudice to the subsequent transfer to the contractor or his assignees of such portion or portions of the land reclaimed or to be reclaimed as provided for in the above-mentioned contract x x x [o]n the basis of such patents, the Land Registration Commission shall issue the corresponding certificates of title," does not mean that the reclaimed lands prior to such "special patent" are classified as lands of the public domain.

As a matter of ordinary land registration practice, a special patent is a "patent to grant, cede, and convey full ownership of alienable and disposable lands formerly covered by a reservation or lands of the public domain" and is issued upon the "promulgation of a special law or act of Congress or by the Secretary of Environment and Natural Resources as authorized by an Executive Order of the President." [40] This meaning of a "special patent" cannot override the overwhelming executive and legislative intent manifest in PDs 1084 and 1085 to make the reclaimed lands available for contract purposes. What is important in the definition of "special patent" is the grant by law of a property of the Republic for the full ownership of the grantee while the classification of the land is not at all decisive in such description since the "special law or act of Congress" or the "Executive Order" may classify the subject land differently, as is done in the instant case. Thus the Department of Environment and Natural Resources (DENR), through the Reservation and Special Land Grants Section of the Land Management Division, is tasked to issue special patents in favor of "government agencies pursuant to special laws, proclamations, and executive orders x x x (underscoring supplied)." [41] Verily, in the absence of a general law on the authority of the President to transfer to a government corporation real property belonging to the Republic, [42] PD 1085 is free to choose the means of conveying government lands from the Republic to PEA, a government corporation, whether by special patent or otherwise without adjusting their character as lands of private domain.

Additionally, nothing momentous can be deduced from the participation of the Secretary of Natural Resources in the signing of the "special patent" since he is by law, prior to the transfer of the reclaimed lands to PEA, the land officer of the Republic for lands of the private domain as may be gleaned from Sec. 1 of Act 3038, the general law dealing with the disposition of lands of the private domain, [43] i.e., "[t]he Secretary of Agriculture and Natural Resources is hereby authorized to sell or lease land of the private domain of the Government of the Philippines Islands x x x." [44] This is because under the organization of the DENR, the Land Management Division is charged with the "planning, formulating, and recommending policies for the sound management and disposition of x x x friar lands, patrimonial properties of the government, and other lands under the region's administration as well as guidelines on land use and classification," while the Reservation and Special Land Grants Section thereof prepares the special patents proposed to be issued in favor of "government agencies pursuant to special laws, proclamations, and executive orders x x x (underscoring supplied)" [45]

The reference to a "special patent" is called for since the conveyance of the reclaimed lands begins with the Republic not with PEA. Once the transfer of the reclaimed lands is perfected by the issuance of special land patents signed by the Secretary of Natural Resources in favor of PEA, the subsequent disposition thereof, e.g. the transfer from PEA to AMARI, falls within the coverage of PEA's charter and cognate laws. The reason is that PEA is henceforth the owner of all lands reclaimed by it or by virtue of its authority "which shall be responsible for its administration, development, utilization or disposition in accordance with the provisions of Presidential Decree No. 1084." [46] Significantly, for the registration of reclaimed lands alienated by PEA pursuant to its mandate, it is only necessary to file with the Register of Deeds the "instrument of alienation, grant, patent or conveyance" whereupon a certificate of title shall be entered as in other cases of registered land and an owner's

duplicate issued to the grantee.

Indeed, there should be no fear calling reclaimed lands "lands of the private domain" and making them available for disposition if this be the legislative intent. The situation is no different from the trade of mineral products such as gold, copper, oil or petroleum. Through joint ventures that are allowed under the Constitution, our government disposes minerals like private properties. At the end of the pendulum, if we refer to reclaimed lands as lands of the public domain inalienable except to individual persons, then it is time to end all reclamation projects because these efforts entail too much expense and no individual person would have the capital to undertake it himself. We must not hamstring both the Executive and Congress from making full use of reclaimed lands as an option in following economic goals by the declaration made in the ponencia.

And what about rights that have been vested in private corporations in the meantime? In the words of Dean Roscoe Pound, "[i]n civilized society men must be able to assume that they may control, for purposes beneficial to themselves, what they have discovered and appropriated to their own use, what they have created by their own labor and what they have acquired under the existing social and economic order. This is a jural postulate of civilized society as we know it. The law of property in the widest sense, including incorporeal property and the growing doctrines as to protection of economically advantageous relations, gives effect to the social want or demand formulated in this postulate."^[47] It appears we have not accounted for the rights of others who are not even involved in the instant case.

The underlying issue is about trust and confidence in our government. If we want to deal with the perceived mistrust in the motivation of our leaders, the solution rests elsewhere. In the same manner that we do not have to scorch the face to treat a pimple, so must we not prevent executive and legislative intent from disposing reclaimed lands, which in the first place had to be "constructed" so it would exist, very much unlike the permanent patches of earth that we should rightly control.

Giving petitioner Chavez a full recognition of his right to access matters of public concern is a correct step in the appropriate direction. The ponencia should have cut and cut clean there as we must do now. Anything beyond that, as the ponencia has done previously, is ivory-tower and unaccountable interventionism at its worst.

PREMISES CONSIDERED, I vote to GRANT the Motions for Reconsideration and DISMISS the Petition for Mandamus with prayer for a writ of preliminary injunction and a temporary restraining order EXCEPT as to the right of petitioner Francisco I. Chavez to have access to all information relevant to the negotiation of government contracts including but not limited to evaluation reports, recommendations, legal and expert opinions, minutes of meetings, terms of reference and other documents attached to such reports or minutes, all relating to any proposed legitimate undertaking, which shall at all times be respected, without prejudice to any appropriate action the petitioner may hereafter take in the premises.

[1] Decision, pp. 3, 44-45.

[2] Rollo, p. 622.

[3] Ibid.

[4] G.R. No. 103882, 25 November 1998, 299 SCRA 199, 238.

[5] DENR AO 20-98, re: "Revised Rules and Regulations on the Conduct of Appraisal of Public Lands and Other Patrimonial Properties of the Government."

[6] Civil Code, Art. 420.

[7] Id., Arts. 421 and 422.

[8] II Tolentino, Civil Code of the Philippines 38 (1992).

[9] Sec. 2 reads in part, "[a]ll lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant x x x," while Sec. 3 provides "[l]ands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant."

[10] Tolentino, *supra*.

[11] *Montano v. Insular Government*, 12 Phil. 572 (1909).

[12] *Manila Lodge No. 761 v. Court of Appeals*, No. L-41001, 30 September 1976, 73 SCRA 162.

[13] *Decision*, pp. 73-74.

[14] *Laurel v. Garcia*, G.R. Nos. 92013 and 92047, 25 July 1990, 187 SCRA 797.

[15] No. L-24440, 28 March 1968, 22 SCRA 1334, 1342.

[16] See PD 1113 (1977) entitled "Granting the Construction and Development Corporation of the Philippines (CDCP) a Franchise to Operate, Construct and Maintain Toll Facilities in the North and South Luzon Toll Expressways and for Other Purposes."

[17] See *Salas v. Jarencio*, No. L-29788, 30 August 1972, 46 SCRA 734.

[19] PD 1085 is entitled "Conveying the Land Reclaimed in the Foreshore and Offshore of the Manila Bay (The Manila-Cavite Coastal Road Project) as Property of the Public Estates Authority as well as Rights and Interest with Assumption of Obligations in the Reclamation Contract Covering Areas of the Manila Bay between the Republic of the Philippines and the Construction and Development Corporation of the Philippines."

[19] *Manila Lodge No. 761 v. Court of Appeals*, *supra*, citing 15-A Words and Phrases, p. 614, citing *Mayor, etc. of Monroe vs. Quachita Parish*, 17 So. 498, 499, 47 La. Ann. 1061.

[20] See Note 12 at 181.

[21] See *Pindangan Agricultural Co., Inc. v. Dans*, No. L-14591, 26 September 1962, 6 SCRA 14.

[22] AO 348 is entitled "Directing the Public Estates Authority to Adopt Measures for the immediate

implementation of the Boulevard 2000 Framework Plan to Alleviate the Problems of Traffic and Flooding in the Area during the Rainy Season."

[23] Manila Lodge No. 761 v. Court of Appeals, *supra*; see Montano v. Insular Government,.

[24] *Ibid*.

[25] Manila Lodge No. 761 v. Court of Appeals, *supra*.

[26] This provision reads: "Whenever real property of the Government is authorized by law to be conveyed, the deed of conveyance shall be executed in behalf of the government by the following x x x x (underscoring supplied)"

[27] See Note 14 at 812.

[28] The Social Science I committee, University of the Philippines, Foundations of Behavioral Science: A Book of Readings 11 (1987).

[29] *Id.* at 24.

[30] See e.g. RA 7942 (1995) entitled "An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation" stating "[a] mineral agreement shall grant to the contractor the exclusive right to conduct mining operations and to extract all mineral resources found in the contract area."

[31] DENR AO 40-96, is entitled: "Revised Implementing Rules and Regulations of Republic Act No. 7942, otherwise known as the `Philippine Mining Act of 1995.'"

[32] The Local Government Code of 1991.

[33] This is the Build, Operate and Transfer Law.

[34] See 8 February 1990 and 26 March 1990, 12[th] Congress, Regular Session, S.B. No. 1285, pp. 9-12, 32-33.

[35] Republic Act 4566 (1965) entitled "An Act Creating the Philippine Licensing board for contractors, Prescribing Its Powers, Duties and Functions, Providing Funds Therefor, and for Other Purposes."

[36] Civil Code, Arts. 1347 and 1461.

[37] EO 525 is entitled: "Designating the Public Estates Authority as the Agency Primarily Responsible for all Reclamation Projects."

[38] EO 654 is entitled: "Further Defining Certain Functions and Powers of the Public Estates Authority."

[39] CA 141 (1936), Sec. 59 which states: "The lands disposable under this title shall be classified as follows: (a) Lands reclaimed by the Government by dredging, filing, or other means x x x;" Act No. 2874 (1919), Sec. 56 which provides: "The lands disposable under this title shall be classified as follows: (a) Lands reclaimed by the Government by dredging, filing, or other means x x x x"

[40] DENR Manual for Land Disposition, p. 3.

[41] *Id.* at 6.

[42] DoJ Opinion No. 026, s. 1994, promulgated by Sec. of Justice Franklin M. Drilon.

[43] Act 3038, Sec. 2 reads: "The sale or lease of the land referred to in the preceding section shall, if such land is agricultural, be made in the manner and subject to the limitations prescribed in chapter five and six, respectively,

of said Public Land Act, and if it be classified differently in conformity with the provisions of chapter nine of said Act: Provided, however, That the land necessary for the public service shall be exempt from the provision of this Act."

[44] See also PD 461 (1974) entitled "Reorganizing the Department of Agriculture and Natural Resources into two Departments, Namely: Department of Agriculture and Department of Natural Resources, Amending for this Purpose Chapter I, Part VIII of the Integrated Reorganization Plan."

[45] DENR Manual For Land Disposition at 5-6.

[46] EO 525 (1979).

[47] An Introduction to the Philosophy of Law 192 (1922).

SEPARATE OPINION

PUNO, J.:

I respectfully submit that the plea of the private respondent AMARI for a prospective application of our Decision of July 26, 2002 deserves serious attention. From the mosaic of facts, it appears that private respondent is a Philippine corporation whose capital structure includes a heavy mix of public investment and foreign equity. It further appears that respondent AMARI did not conclude its Amended Joint Venture Agreement (AJVA) with the government, thru the public respondent Public Estates Authority (PEA) without exercising the due diligence required by law. Private respondent AMARI claims and the records support it, that its AJVA passed the proverbial eye of the needle before it was approved by the Chief Executive of the country.

The submission of private respondent AMARI that it believed in good faith that its AJVA does not suffer from any legal infirmity should not be dismissed with a cavalier attitude. First, respondent AMARI contends that it relied on the unbroken opinions of the Department of Justice allowing the entity that undertook the reclamation project to be paid with part of the reclaimed lands. It calls our attention to DOJ Opinion No. 130, dated July 15, 1939, given under the 1935 Constitution, and rendered by no less than the eminent Chief Justice Jose Abad Santos, then the Secretary of Justice, to the effect that "reclaimed land belong to the entity or person constructing the work for the reclamation of the land," viz:

"Section 1, Article XII of the Constitution classifies lands of the public domain in the Philippines into agricultural, timber and mineral. This is the basic classification adopted since the enactment of the Act of Congress of July 1, 1902, known as the Philippine Bill. At the time of the adoption of the Constitution of the Philippines, the term "Agricultural public lands" had, therefore, acquired a technical meaning in our public land laws. The Supreme Court of the Philippines in the leading case of *Mapa vs. Insular Government*, 10 Phil. 175, held that the phrase 'agricultural public lands' means those public lands acquired from Spain which are neither timber or mineral lands. This definition has been followed by our Supreme Court in many subsequent cases (*Montano vs. Ins. Gov't.*, 12 Phil. 572) by prescribing distinct rules as to their disposition. Lands added to the shore by accretion belong to the State while lands reclaimed belong to the entity or person constructing the work for the reclamation of the land."

The advent of the 1973 and the 1987 Constitutions does not appear to have changed the opinion of the DOJ.[1] Secondly, respondent AMARI avers that Congress has consistently enacted laws allowing portions of reclaimed lands to be paid to whoever undertook the work. These laws passed under the 1935 Constitution are, among others, the following:

"(i) Rep. Act No. 161 (1947) which authorizes the City of Bacolod to undertake reclamation and own the reclaimed lands;

(ii) Rep. Act No. 287 (1948) which authorizes the Municipality of Catbalogan, Samar to undertake reclamation and own the reclaimed lands;

(iii) Rep. Act No. 1132 (1954) which also authorizes the City of Bacolod to lease out or sell reclaimed lands;

(iv) Rep. Act No. 3857 (1964), as amended by Rep. Act No. 4654 (1966), which authorizes Cebu to reclaim lands and own the reclaimed lands;

(v) Rep. Act No. 4663 (1966) which authorizes the Cagayan De Oro Port Authority to undertake reclamation and own the reclaimed lands;

(vi) Rep. Act No. 4776 (1966) which provides for the authority of Tacloban City to undertake reclamation and to lease, sell or barter such reclaimed land;

(vii) Rep. Act No. 4850 (1966) which authorizes the Laguna Lake Development Authority to undertake reclamation and to own such reclaimed land;

(viii) Rep. Act No. 5412 (1968) which authorizes General Santos City to undertake reclamation and to own such reclaimed land;

(ix) Rep. Act No. 5518 (1969) which authorizes the city of Oroquieta to undertake reclamation and to own such reclaimed land;

(x) Rep. Act No. 5519 (1969) which authorizes the City of Mandaue to undertake reclamation and to own such reclaimed land;

(xi) Rep. Act No. 5798 (1969) which authorizes the City of Dumaguete to undertake reclamation and to own such reclaimed land;

(xii) Rep. Act No. 5956 (1969) [An Act Making the Municipality of Dapa, Province of Surigao Del Norte, a Sub-Port of Entry, and Authorizing the Appropriation of the Necessary Funds for the Operation of a Customs Service Therein] which authorizes the City to undertake reclamation and to own such reclaimed land."

The same kind of laws was passed by Congress under the 1973 and 1987 Constitutions. Respondent AMARI cites, among others, the following laws:

"(i) Exec. Order No. 1086 (1986) [Tondo Foreshore Area], as amended by Proclamation No. 39 (1992), which provides that reclaimed lands shall be owned by the National Housing Authority;

(ii) Rep. Act No. 6957 (1990) [Build-Operate-Transfer Law] which provides that in case of reclamation, the repayment scheme may consist of a grant of a portion of the reclaimed land;

(iii) Rep. Act No. 7160 (1992) [Bases Conversion Development Authority] which authorizes the BCDA to reclaim lands and to own the reclaimed lands;

(iv) Rep. Act No. 7621 (1992) [Cebu Port Authority] which authorizes the Cebu Port Authority to reclaim lands and to own the reclaimed lands."

Republic Act No. 6957, enacted in 1990, otherwise known as the Build-Operate-and-Transfer Law (BOT Law), as amended by R.A. No. 7718, is of great significance to the case at bar. The Senate deliberations on the law clearly show that in case of reclamation undertakings, the repayment scheme may consist of the grant of a portion of the reclaimed land. I quote the pertinent deliberations, viz:[2]

<"x x="">The President Pro Tempore. We are still in the period of interpellations.

Senator Gonzales. Mr. President.

The President Pro Tempore. Senator Gonzales is recognized.

Senator Gonzales. Mr. President, may I be permitted to ask a few questions from the distinguished Sponsor.

Senator Ziga. Yes, Mr. President.

The President Pro Tempore. Please proceed.

Senator Gonzales. Mr. President, Section 6 provides for the repayment scheme. It provides here that for the financing, construction, operation, and maintenance of any infrastructure project undertaken pursuant to the provisions of this Act, the contractor shall be entitled to a reasonable return of his investment, operating and maintenance costs in accordance with the bid proposal of the contractor as accepted by the concerned contracting infrastructure agency or local government unit and incorporated in the contract terms and conditions. This repayment scheme is to be effected by authorizing the contractor to charge and collect reasonable tolls, fees and rentals for the use of the project facilities, et cetera. May I know, distinguished colleague, whether this repayment scheme is exclusive, in the sense that the repayment here would always consist in authorizing the contractor to charge and collect reasonable tools, fees, or rentals for the use of the project facilities?

Senator Ziga. Exclusive to the ...?

Senator Gonzales. Exclusive in the sense that no other repayment scheme may be pursued or adopted?

Senator Ziga. Yes, Mr. President.

Senator Gonzales. If it be so, Mr. President, I notice that, among others, the project that can be the subject of the build-operate-and-transfer scheme are land reclamations.

Senator Ziga. That is correct, Mr. President.

Senator Gonzales. Now, in land reclamation, does the distinguished Gentleman expect that the one or the builder or contractor who effects or undertakes the reclamation project will be merely repaid or will be required to recoup his investments, plus profits, and otherwise, by imposing tolls. That is not the usual arrangement as far as land reclamation is concerned.

Senator Ziga. Yes, Mr. President. "Tolls" here are concentrated more on horizontal constructions, such as roads and bridges.

Senator Gonzales. Yes, Mr. President, but undoubtedly, the priority projects here would be land reclamation. In land reclamation, the usual arrangement is that there should be a certain percentage of the reclaimed area that would be under the ownership of the Government. On the other hand, a certain percentage of the land area reclaimed would go to the contractor or the reclaiming entity.

Senator Ziga. Yes, Mr. President.

Senator Gonzales. If as the Gentleman now say that Section 6, which is the repayment scheme, is exclusive, then that would not be allowable and we cannot effect land reclamation.

Senator Ziga. Yes, Mr. President. I believe that there is a little bit of difference that probably this concept, that the Gentleman put into light here by the reclamation project, could be met under the build-and-transfer scheme only.

Senator Gonzales. Yes, Mr. President, the build-and-transfer scheme, but there is no question that they are

already covered, either by the build-operate-and-transfer scheme and build-and-transfer scheme. The question is repayment. How will the contractor be able to recoup his investments, plus reasonable returns of whatever amount that he had invested for the purpose?

I think, the distinguished Gentleman is agreeable that the imposition of tolls, fees, and rentals would not be appropriate.

Senator Ziga. In reclamation.

Senator Gonzales. Yes, Mr. President.

Senator Ziga. Yes, Mr. President. I believe that there is a space for improvement on these reclamation projects.

Senator Gonzales. So, we can provide for another scheme of repayment outside of the repayment scheme as provided for in Section 6 of the bill now.

Senator Ziga. Yes, Mr. President.

Senator Gonzales. Now, would a foreign entity, probably, wholly owned by foreigners, be authorized to engage in land reclamation?

Senator Ziga. In the earlier interpellation, we have stated that the issue of the sharing of 60:40 is one of the acceptable points of amendment. I believe that, in this bill, we are still covered by that ratio. As of now, this bill intends that it can only allow contractor or developers, whether they be private corporations, but with the requirements of the Constitution as to foreign participation.

Senator Gonzales. Yes, Mr. President. Because, in Section 2, paragraph a provides:

... any private individual, partnership, corporation or firm desiring to undertake the construction and operation of any of the infrastructure facilities mentioned in Section 3 of this Act. The private individual contractor/developer must be a Filipino citizen. For a corporation, partnership or firm, 75 percent of the capital must be owned by the citizens of the Philippines in accordance with Letter of Instructions No. 630.

My problem here is in land reclamation, Mr. President. Normally, the arrangement here is that a certain percentage goes to the Government, and a certain percentage of the reclaimed land would go to the developer or the contractor. Now, would the distinguished Gentleman require a 75:25 percent ratio as far as the ownership of stocks are concerned, while the Constitution allows a 60:40 ratio as far as ownership of the land is concerned?

Senator Ziga. Mr. President, we have stated that the requirements of the Constitution would be adhered to.

Senator Gonzales. I see. So it would be sufficient that an entity, a corporation, or a partnership that undertakes a land reclamation project be owned on the basis of the 60:40 ratio between Filipino citizens and foreigners.

Senator Ziga. Yes, that is correct, Mr. President.

Senator Gonzales. All of these would require undoubtedly amendments in this bill. Would the distinguished Gentleman be willing to, at least, consider these amendments at the opportune time?

Senator Ziga. Yes, Mr. President.

Senator Gonzales. Thank you, Mr. President."

On the basis of his interpellations, Senator Gonzales then introduced the following amendment which was accepted by Senator Ziga and approved by the Senate, viz:[3]

"GONZALES AMENDMENT

Senator Gonzales. Mr. President, between lines 8 and 9, I am proposing a new paragraph which would read as follows:

IN CASE OF LAND RECLAMATION OR THE BUILDING OF INDUSTRIAL ESTATES, THE REPAYMENT SCHEME MAY CONSIST OF THE GRANT OF A PORTION OR PERCENTAGE OF THE RECLAIMED LAND OR INDUSTRIAL ESTATE BUILT SUBJECT TO CONSTITUTIONAL REQUIREMENT WITH RESPECT TO THE OWNERSHIP OF LANDS.'

Because, Mr. President, the repayment scheme includes all of these — payment of tolls, fees, rentals, and charges. But in case of land reclamation, that is not the ordinary arrangement. Usually, the compensation there takes the form of a portion or a percentage of the reclaimed land. And I would apply it all, as far as the building of industrial estates is concerned. Of course, we have to respect the constitutional provision that only Filipino citizens or corporations-at least, 60 percent of the capital of which is owned by citizens of the Philippines-may acquire or own lands.

The President. What is the pleasure of the Sponsor?

Senator Ziga. Accepted, Mr. President.

Mr. President. Is there any objection? Any comment? (Silence) Hearing none, the same is approved.

Senator Gonzales. Thank you, Mr. President."

Section 6 of R.A. No. 6957 (BOT Law), as amended, thus provides:

"Section 6. Repayment Scheme. — For the financing, construction, operation and maintenance of any infrastructure project undertaken through the Build-Operate-and-Transfer arrangement or any of its variations pursuant to the provisions of this Act, the project proponent shall be repaid by authorizing it to charge and collect reasonable tolls, fees, and rentals for the use of the project facility not exceeding those incorporated in the contract and, where applicable, the proponent may likewise be repaid in the form of a share in the revenue of the project or other non-monetary payments, such as, but not limited to, the grant of a portion or percentage of the reclaimed land, subject to the constitutional requirements with respect to the ownership of land..."

The Rules and Regulations implementing R.A. No. 6957 (BOT Law), as amended, likewise provide:

"Sec. 12.13 Repayment Scheme

x x x

"Where applicable, the proponent may likewise be repaid in the form of a share in the revenue of the project or other non-monetary payments, such as, but not limited to the grant of commercial development rights or the grant of a portion or percentage of the reclaimed land, subject to the constitutional requirement that only Filipino citizens or in the case of corporations only those with at least 60% Filipino equity will be allowed to own land."

But this is not all. Respondent AMARI points to P.D. No. 1085, the charter of the respondent PEA, which conveyed to it the reclaimed lands within the Manila-Cavite Coastal Road and Reclamation Project (MCCRRP) including the lands subject of the case at bar and which authorized respondent PEA to dispose of said lands. Pursuant to existing laws, rules, and regulations, it appears that respondent PEA has the discretion to pay the entity reclaiming the lands a portion or percentage of said lands. P.D. No. 1085 pertinently provides:

"WHEREAS, the National Government acting through the Department of Public Highways is presently undertaking pursuant to the provisions of Section 3(m) of Republic Act No. 5137, as amended by Presidential Decree No. 3-A, the reclamation of a portion of the foreshore and offshore areas of the Manila Bay from the

Cultural Center of the Philippines passing through Pasay City, Parañaque, Las Piñas, Zapote, Bacoor up to Cavite City;

WHEREAS, in the implementation of the above-cited laws bidding was held for the reclamation works and the corresponding contract awarded to the Construction and Development Corporation of the Philippines;

WHEREAS, it is in the public interest to convert the land reclaimed into a modern city and develop it into a governmental, commercial, residential and recreational complex and this is better accomplished through a distinct entity organized for the purpose;

NOW, THEREFORE, I FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order the following:

The land reclaimed in the foreshore and offshore area of Manila Bay pursuant to the contract for the reclamation and construction of the Manila-Cavite Coastal Road Project between the Republic of the Philippines and the Construction and Development Corporation of the Philippines dated November 20, 1973 and/or any other contract or reclamation covering the same area is hereby transferred, conveyed and assigned to the ownership and administration of the Public Estates Authority established pursuant to P.D. No. 1084; Provided, however, That the rights and interest of the Construction and Development Corporation of the Philippines pursuant to the aforesaid contract shall be recognized and respected.

Henceforth, the Public Estates Authority shall exercise the rights and assume the obligations of the Republic of the Philippines (Department of Public Highways) arising from, or incident to, the aforesaid contract between the Republic of the Philippines and the Construction and Development Corporation of the Philippines.

In consideration of the foregoing transfer and assignment, the Public Estates Authority shall issue in favor of the Republic of the Philippines the corresponding shares of stock in said entity with an issued value of said shares of stock shall be deemed fully paid and non-assessable.

The Secretary of Public Highways and the General Manager of the Public Estates Authority shall execute such contracts or agreements, including appropriate agreements with the Construction and Development Corporation of the Philippines, as may be necessary to implement the above.

Special land patent/patents shall be issued by the Secretary of Natural Resources in favor of the Public Estates Authority without prejudice to the subsequent transfer to the contractor or his assignees of such portion or portions of the land reclaimed or to be reclaimed as provided for in the above-mentioned contract. On the basis of such patents, the Land Registration Commission shall issue the corresponding certificates of title."

Former President Corazon C. Aquino also implemented P.D. No. 1085 by issuing Special Patent No. 3517 ceding absolute rights over the said properties to respondent PEA, which rights include the determination whether to use parts of the reclaimed lands as compensation to the contractor, viz:

"TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS, under Presidential Decree No. 1085 dated February 4, 1977 the ownership and administration of certain reclaimed lands have been transferred, conveyed and assigned to the Public Estates Authority, a government entity created by virtue of Presidential Decree No. 1084 dated February 4, 1977, subject to the terms and conditions imposed in said Presidential Decree No. 1085;

WHEREAS, pursuant to said decree the parcels of land so reclaimed under the Manila-Cavite Coastal Road and Reclamation Project (MCCRPP) of the Public Estates Authority consist of a total area of 1,915,894 square meters surveyed under Plans RL-13-000002 to RL-13-000005 situated in the Municipality of Parañaque;

NOW, THEREFORE, KNOW YE, that by authority of the Constitution of the Philippines and in conformity with the provisions thereof and of Presidential Decree No. 1085, supplemented by Commonwealth Act No.

141, as amended, there are hereby granted and conveyed unto the Public Estates Authority the aforesaid tracts of land containing a total area of one million nine hundred fifteen thousand eight hundred ninety-four (1,915,894) square meters; the technical descriptions of which are hereto attached and made an integral part hereof;

TO HAVE AND TO HOLD the said tracts of land, with appurtenances thereunto of right belonging unto the Public Estates Authority, subject to private rights, if any there be, and to the condition that the said land shall be used only for the purposes authorized under Presidential Decree No. 1085;

IN TESTIMONY WHEREOF, and by authority vested in me by law, I, CORAZON C. AQUINO, President of the Philippines, hereby caused these letters to be made patent and the seal of the Republic of the Philippines to be hereunto affixed."

Respondent AMARI further claims that the administration of former President Fidel V. Ramos upheld the legality of the original JVA. On the other hand, it alleges that the amended JVA was the subject of prior exhaustive study and approval by the Office of the General Corporate Counsel, and the Government Corporate Monitoring and Coordinating Committee composed of the Executive Secretary of Finance, Secretary of Budget and Management, Secretary of Trade and Industry, the NEDA Director-General, the head of the Presidential Management Staff, the Governor of the Bangko Sentral ng Pilipinas and the Office of the President.[4] The amended JVA was executed on March 30, 1999 and approved on May 28, 1999 under the administration of former President Joseph E. Estrada.[5]

In sum, the records give color to the claim of respondent AMARI that it should not be blamed when it consummated the JVA and AJVA with its co-respondent PEA. It relied on our laws enacted under the 1935, 1973 and 1987 Constitutions and their interpretations by the executive departments spanning the governments of former Presidents Aquino, Ramos and Estrada, all favorable to the said JVA and AJVA. Finding no legal impediments to these contracts, it claims to have invested some P9 billion on the reclamation project.

Should this P9 billion investment just come to naught? The answer, rooted in the concept of fundamental fairness and anchored on equity, is in the negative. Undoubtedly, our Decision of July 26, 2002 is one of first impression as the ponente himself described it. As one of first impression, it is not unexpected that it will cause serious unsettling effects on property rights which could have already assumed the color of vested rights. Our case law is no stranger to these situations. It has consistently held that new doctrines should only apply prospectively to avoid inequity and social injustice. Thus in *Co vs. Court of Appeals, et al.*,^[6] this Court, thru Chief Justice Andres Narvasa, held:

"The principle of prospectivity of statutes, original or amendatory, has been applied in many cases. These include: *Buyco v. PNB*, 961, (sic) 2 SCRA 682 (June 30, 1961), holding that Republic Act No. 1576 which divested the Philippine National Bank of authority to accept back pay certificates in payment of loans, does not apply to an offer of payment made before effectivity of the act; *Lagardo v. Masaganda, et al.*, 5 SCRA 522 (June 30, 1962), ruling that RA 2613, as amended by RA 3090 on June, 1961, granting to inferior courts jurisdiction over guardianship cases, could not be given retroactive effect, in the absence of a saving clause; *Larga v. Ranada, Jr.*, 64 SCRA 18, to the effect that Sections 9 and 10 of Executive Order No. 90, amending Section 4 of PD 1752, could have no retroactive application; *People v. Que Po Lay*, 94 SCRA 640, holding that a person cannot be convicted of violating Circular No. 20 of the Central Bank, when the alleged violation occurred before publication of the Circular in the Official Gazette; *Baltazar v. CA*, 104 SCRA 619, denying retroactive application to P.D. No. 27 decreeing the emancipation of tenants from the bondage of the soil, and P.D. No. 316 prohibiting ejectment of tenants from rice and corn farm holdings, pending the promulgation of rules and regulations implementing P.D. No. 27; *Nilo v. Court of Appeals*, 128 SCRA 519, adjudging that RA 6389 which removed 'personal cultivation' as a ground for the ejectment of a tenant cannot be given retroactive

effect in the absence of a statutory statement for retroactivity; *Tac-An v. CA*, 129 SCRA 319, ruling that the repeal of the old Administrative Code by RA 4252 could not be accorded retroactive effect; *Ballardo v. Borromeo*, 161 SCRA 500, holding that RA 6389 should have only prospective application; (see also *Bonifacio v. Dizon*, 177 SCRA 294 and *Balatbat v. CA*, 205 SCRA 419).

The prospectivity principle has also been made to apply to administrative rulings and circulars, to wit: *ABS-CBN Broadcasting Corporation v. CTA*, October 12, 1981, 108 SCRA 142, holding that a circular or ruling of the Commissioner of Internal Revenue may not be given retroactive effect adversely to a taxpayer; *Sanchez v. COMELEC*, 193 SCRA 317, ruling that Resolution No. 90-0590 of the Commission on Elections, which directed the holding of recall proceedings, had no retroactive application; *Romualdez v. CSC*, 197 SCRA 168, where it was ruled that CSC Memorandum Circular No. 29, s. 1989 cannot be given retrospective effect so as to entitle to permanent appointment an employee whose temporary appointment had expired before the Circular was issued.

The principle of prospectivity has also been applied to judicial decisions which, 'although in themselves not laws, are nevertheless evidence of what the laws mean, (this being) the reason why under Article 8 of the New Civil Code, Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system.'

So did this Court hold, for example, in *People v. Jabinal*, 55 SCRA 607, 611:

'It will be noted that when appellant was appointed Secret Agent by the Provincial Government in 1962, and Confidential Agent by the Provincial Commander in 1964, the prevailing doctrine on the matter was that laid down by Us in *People v. Macarandang* (1959) and *People v. Lucero* (1958). Our decision in *People v. Mapa*, reversing the aforesaid doctrine, came only in 1967. The sole question in this appeal is: should appellant be acquitted on the basis of our rulings in *Macarandang* and *Lucero*, or should his conviction stand in view of the complete reversal of the *Macarandang* and *Lucero* in *Mapa*?

Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system.' The interpretation upon a law was originally passed, since this Court's construction merely established the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim 'legis interpretatio legis vim obtinet' - the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law of the land, at the time appellant was found in possession of the firearm in question and when he was arraigned by the trial court. It is true that the doctrine was overruled in the *Mapa* case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is specially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.'

So, too, did the Court rule in *Spouses Gauvain and Bernardita Benzonan v. Court of Appeals, et al.* (G.R. No. 97973) and *Development Bank of the Philippines v. Court of Appeals, et al.* (G.R. No. 97998), January 27, 1992, 205 SCRA 515, 527-528:

'We sustain the petitioner's position. It is undisputed that the subject lot was mortgaged to DBP as the highest bidder at a foreclosure sale on June 18, 1977, and then sold to the petitioners on September 29, 1979.

At that time, the prevailing jurisprudence interpreting section 119 of R.A. 141 as amended was that enunciated in *Monge and Tupas* cited above. The petitioners Benzonan and respondent Pe and the DBP are bound by these decisions for pursuant to Article 8 of the Civil Code 'judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.' But while our decisions form part of the

law of the land, they are also subject to Article 4 of the Civil Code which provides that 'laws shall have no retroactive effect unless the contrary is provided.' This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional (*Francisco v. Certeza*, 3 SCRA 565 [1061 (sic)]).

The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in *People v. Jabinal*, 55 SCRA 607 [1974] when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.'

A compelling rationalization of the prospectivity principle of judicial decisions is well set forth in the oft-cited case of *Chicot County Drainage Dist v. Baxter States Bank*, 308 US 371, 374 [1940]. The Chicot doctrine advocates the imperative necessity to take account of the actual existence of a statute prior to its nullification, as an operative fact negating acceptance of "a principle of absolute retroactive invalidity."

Thus, in this Court's decision in *Tañada v. Tuvera*, promulgated on April 24, 1985 — which declared 'that presidential issuances of general application, which have not been published, shall have no force and effect,' and as regards which declaration some members of the Court appeared 'quite apprehensive about the possible unsettling effect (the) decision might have on acts done in reliance on the validity of those presidential decrees' — the Court said:

The answer is all too familiar. In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter States Bank* (308 U.S. 371, 374) to wit:

'The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. *Norton v. Shellby County*, 118 US 425, 442; *Chicago, I. & L. Ry. Co. v. Hackett*, 228 U.S. 559, 566.

It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects - with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, or prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.'

Much earlier, in *De Agbayani v. PNB*, 38 SCRA 429 —concerning the effects of the invalidation of "Republic Act No. 342, the moratorium legislation, which continued Executive Order No. 32, issued by the then President Osmeña, suspending the enforcement of payment of all debts and other monetary obligations payable by war sufferers," and which had been "explicitly held in *Rutter v. Esteban* (93 Phil. 68 [1953]) (to be) in 1953 unreasonable, and oppressive, and should not be prolonged a minute longer" — the Court made substantially the same observations, to wit:

'The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from the infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or

executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular relations, individual and corporate, and particular conduct, private and official (*Chicot County Drainage Dist. v. Baxter States Bank*, 308 US 371, 374 [1940]). This language has been quoted with approval in a resolution in *Araneta v. Hill* (93 Phil. 1002 [1953]) and the decision in *Manila Motor Co., Inc. v. Flores* (99 Phil. 738 [1956]). An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.* (L-21114, Nov. 28, 1967, 21 SCRA 1095).'

Again, treating of the effect that should be given to its decision in *Olaguer v. Military Commission No. 34*, — declaring invalid criminal proceedings conducted during the martial law regime against civilians, which had resulted in the conviction and incarceration of numerous persons — this Court, in *Tan vs. Barrios*, 190 SCRA 686, at p. 700, ruled as follows:

‘In the interest of justice and consistency, we hold that *Olaguer* should, in principle, be applied prospectively only to future cases and cases still ongoing or not yet final when that decision was promulgated. Hence, there should be no retroactive nullification of final judgments, whether of conviction or acquittal, rendered by military courts against civilians before the promulgation of the *Olaguer* decision. Such final sentences should not be disturbed by the State. Only in particular cases where the convicted person or the State shows that there was serious denial of constitutional rights of the accused, should the nullity of the sentence be declared and a retrial be ordered based on the violation of the constitutional rights of the accused, and not on the *Olaguer* doctrine. If a retrial is no longer possible, the accused should be released since the judgment against him is null on account of the violation of his constitutional rights and denial of due process.

The trial of thousands of civilians for common crimes before the military tribunals and commissions during the ten-year period of martial rule (1971-1981) which were created under general orders issued by President Marcos in the exercise of his legislative powers is an operative fact that may not just be ignored. The belated declaration in 1987 of the unconstitutionality and invalidity of those proceedings did not erase the reality of their consequences which occurred long before our decision in *Olaguer* was promulgated and which now prevent us from carrying *Olaguer* to the limit of its logic. Thus did this Court rule in *Municipality of Malabang v. Benito*, 27 SCRA 533, where the question arose as to whether the nullity of creation of a municipality by executive order wiped out all the acts of the local government abolished.'

It would seem, then, that the weight of authority is decidedly in favor of the proposition that the Court's decision of September 21, 1987 in *Que v. People*, 154 SCRA 160 (1987) — i.e., that a check issued merely to guarantee the performance of an obligation is nevertheless covered by B.P. Blg. 22 — should not be given retrospective effect to

the prejudice of the petitioner and other persons similarly situated, who relied on the official opinion of the Minister of Justice that such a check did not fall within the scope of B.P. Blg. 22."

Despite the stream of similar decisions, the majority holds that it would have been sympathetic to the plea for a prospective application of our Decision "x x x if the prevailing law or doctrine at the time of the signing of the amended JVA was that a private corporation could acquire alienable lands of the public domain and the Decision annulled the law or reversed the doctrine." [7] It explains that "under the 1935 Constitution, private corporations were allowed to acquire alienable lands of the public domain. But since the effectivity of the 1973 Constitution, private corporations were banned from holding, except by lease, alienable lands of the public domain. The 1987 Constitution continued this constitutional prohibition." [8]

I beg to disagree. We should put section 2 of Article XII of the Constitution in its proper perspective. It provides:

"All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant." (Emphasis supplied.)

With due respect, the plea for prospectivity is based on the ground that our Decision is novel not because it bars private corporations like respondent AMARI from acquiring alienable lands of the public domain except by lease but because for the first time we held, among others, that joint venture agreements cannot allow entities undertaking reclamation of lands to be paid with portions of the reclaimed lands. This is the first case where we are interpreting that portion of section 2, Article XII of the Constitution which states that "x x x the exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production sharing agreements with Filipino citizens or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years and under such terms and conditions as may be provided by law." Indisputably, this part of section 2, Article XII of the 1987 Constitution is new as it is neither in the 1973 or 1935 Constitutions. Undoubtedly too, our Decision goes against the grain of understanding of the said provision on the part of the Executive and Legislative Departments of our government. The disquieting effects of our Decision interpreting said provision in a different light cannot be gainsaid.

The majority concedes that in *Benzonan*, [9] we held that the sale or transfer of the land involved in said case may no longer be invalidated because of "weighty considerations of equity and social justice." [10] Nonetheless, the majority holds that there are "special circumstances that disqualify AMARI from invoking equity principles," viz: [11]

"There are, moreover, special circumstances that disqualify Amari from invoking equity principles. Amari cannot claim good faith because even before Amari signed the Amended JVA on March 30, 1999, petitioner had already filed the instant case on April 27, 1998 questioning precisely the qualification of Amari to acquire the Freedom Islands. Even before the filing of this petition, two Senate Committees had already approved on September 16, 1997 Senate Committee Report No. 560. This Report concluded, after a well-publicized investigation into PEA's sale of the Freedom Islands to Amari, that the Freedom Islands are inalienable lands

of the public domain. Thus, Amari signed the Amended JVA knowing and assuming all the attendant risks, including the annulment of the Amended JVA.

Amari has also not paid to PEA the full reimbursement cost incurred by PEA in reclaiming the Freedom Islands. Amari states that it has paid PEA only P300,000,000.00 out of the P1,894,129,200.00 total reimbursement cost agreed upon in the Amended JVA. Moreover, Amari does not claim to have even initiated the reclamation of the 592.15 hectares of submerged areas covered in the Amended JVA, or to have started to construct any permanent infrastructure on the Freedom Islands. In short, Amari does not claim to have introduced any physical improvement or development on the reclamation project that is the subject of the Amended JVA. And yet Amari claims that it had already spent a "whopping P9,876,108,638.00 as its total development cost as of June 30, 2002. Amari does not explain how it spent the rest of the P9,876,108,638.00 total project cost after paying PEA P300,000,000.00. Certainly, Amari cannot claim to be an innocent purchaser in good faith and for value."

Again, with due respect, I beg to disagree. The alleged facts and factors cited by the majority do not provide sufficient basis to condemn respondent AMARI of bad faith. First, the petition at bar was filed before the amended JVA was consummated. As alleged by the petitioner, he filed the petition to:[12]

"x x x

5.1 Compel respondent to make public all documents, facts and data related to or in connection with the ongoing RENEGOTIATIONS between respondents PEA and AMARI, and

5.2 Enjoin respondents from privately entering into perfecting and/or executing any new agreement with AMARI."

Petitioner invoked section 7, Article III of the Constitution which recognizes the right of people to information on matters of public concern and section 28, Article II of the Constitution which provides that the State adopts and implements a policy of full public disclosure of all its transactions involving public interest. In fine, the amended JVA was yet inexistent at the time the petition at bar was filed and could not provide a basis for a finding of bad faith on the part of respondent AMARI. Secondly, Senate Committee Report No. 560 also pertains to the original JVA. Precisely because of the report, former President Ramos issued Presidential Order No. 365 which established a presidential legal task force to study the legality of the original JVA. The legal task force did not reach the same conclusions as the Senate. In any event, the original JVA was renegotiated and was approved by former President Estrada on May 28, 1999 following intensive review by the Office of the General Corporate Counsel and the Government Corporate Monitoring and Coordinating Committee which, as aforesaid, is composed of the Executive Secretary, the Secretary of Finance, the Secretary of Budget and Management, the Secretary of Trade and Industry, the NEDA Director General, the Head of the Presidential Management Staff and the Governor of the Bangko Sentral ng Pilipinas and the Office of the President. To be sure, the value of Senate Report No. 560 is not as proof of good or bad faith of any party but as a study in aid of legislation. As a legislative body, the Senate does not determine adjudicative facts. Thirdly, the allegation that respondent AMARI has not complied with its obligation to PEA is a matter that cannot be resolved in the case at bar. If at all it can be raised, it is PEA that should raise it in a proper action for breach of contract or specific performance. This Court is not a trier of facts and it cannot resolve these allegations that respondent AMARI violated its contract with PEA. The majority cannot condemn respondent AMARI of acting in bad faith on the basis of patently inadmissible evidence without running afoul of the rudimentary requirements of due process. At the very least, the majority should hear respondent AMARI on the issue of its alleged bad faith before condemning it to certain bankruptcy.

This is not all. There is another dimension of unfairness and inequity suffered by respondent AMARI as a consequence of our Decision under reconsideration. It cannot be denied that respondent AMARI spent substantial amount of money (the claim is P9 billion), fulfilling its obligation under the AJVA, i.e., provide the financial,

technical, logistical, manpower, personnel and managerial requirements of the project. Our Decision is silent as a sphinx whether these expenses should be reimbursed. Respondent AMARI may not be paid with reclaimed lands, but it can be remunerated in some other ways such as in cash. Our omission to order that respondent AMARI be paid commensurate to its expenses does not sit well with our decision in *Republic of the Philippines vs. CA and Republic Estate Corporation, et al.*[13] where we held:

"x x x

Although Pasay City and RREC did not succeed in their undertaking to reclaim any area within the subject reclamation project, it appearing that something compensable was accomplished by them, following the applicable provision of law and hearkening to the dictates of equity, that no one, not even the government shall unjustly enrich oneself/itself at the expense of another, we believe, and so hold, that Pasay City and RREC should be paid for the said actual work done and dredge-fill' poured in..."

Needless to state, the government will be unjustly enriched if it will not be made to compensate the respondent AMARI for the expenses it incurred in reclaiming the lands subject of the case at bar.

We should strive for consistency for rights and duties should be resolved with reasonable predictability and cannot be adjudged by the luck of a lottery. Just a month ago or on March 20, 2003 this Court en banc resolved a motion for reconsideration in *Land Bank vs. Arlene de Leon, et al.*, G.R. No. 143275. In this case, we resolved unanimously to give a prospective effect to our Decision which denied LBP's petition for review. Written by our esteemed colleague, Mr. Justice Corona, our resolution held:

"Be that as it may, we deem it necessary to clarify our Decision's application to and effect on LBP's pending cases filed as ordinary appeals before the Court of Appeals. It must first be stressed that the instant case poses a novel issue; our Decision herein will be a landmark ruling on the proper way to appeal decisions of Special Agrarian Courts. Before this case reached us, LBP had no authoritative guideline on how to appeal decisions of Special Agrarian Courts considering the seemingly conflicting provisions of Sections 60 and 61 of RA 6657.

More importantly, the Court of Appeals has rendered conflicting decisions on this precise issue. On the strength of *Land Bank of the Philippines vs. Hon. Feliciano Buenaventura*, penned by Associate Justice Salvador Valdez, Jr. of the Court of Appeals, certain decisions of the appellate court held that an ordinary appeal is the proper mode. On the other hand, a decision of the same court, penned by Associate Justice Romeo Brawner and subject of the instant review, held that the proper mode of appeal is a petition for review. In another case, the Court of Appeals also entertained an appeal by the DAR filed as a petition for review.

On account of the absence of jurisprudence interpreting Sections 60 and 61 of RA 6657 regarding the proper way to appeal decisions of Special Agrarian Courts as well as the conflicting decisions of (the) Court of Appeals thereon, LBP cannot be blamed for availing of the wrong mode. Based on its own interpretation and reliance on the Buenaventura ruling, LBP acted on the mistaken belief that an ordinary appeal is the appropriate manner to question decisions of Special Agrarian Courts.

Hence, in the light of the aforementioned circumstances, we find it proper to emphasize the prospective application of our Decision dated September 10, 2002. A prospective application of our Decision is not only grounded on equity and fair play but also based on the constitutional tenet that rules of procedure shall not impair substantive rights.

In accordance with our constitutional power to review rules of procedure of special courts, our Decision in the instant case actually lays down a rule of procedure, specifically, a rule on the proper mode of appeal from decisions of Special Agrarian Courts. Under Section 5 (5), Article VIII of the 1987 Philippine Constitution, rules of procedure shall not diminish, increase or modify substantive rights. In determining whether a rule of procedure affects substantive rights, the test is laid down in *Fabian vs. Desierto*, which provides that:

'[I]n determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter, but if it operates as a means of implementing an existing right then the rule deals merely with procedure.'

We hold that our Decision, declaring a petition for review as the proper mode of appeal from judgments of Special Agrarian Courts, is a rule of procedure which affects substantive rights. If our ruling is given retroactive application, it will prejudice LBP's right to appeal because pending appeals in the Court of Appeals will be dismissed outright on mere technicality thereby sacrificing the substantial merits thereof. It would be unjust to apply a new doctrine to a pending case involving a party who already invoked a contrary view and who acted in good faith thereon prior to the issuance of said doctrine."

Our Decision under reconsideration has a far reaching effect on persons and entities similarly situated as the respondent AMARI. Since time immemorial, we have allowed private corporations to reclaim lands in partnership with government. On the basis of age-old laws and opinions of the executive, they entered into contracts with government similar to the contracts in the case at bar and they invested huge sums of money to help develop our economy. Local banks and even international lending institutions have lent their financial facilities to support these reclamation projects which government could not undertake by itself in view of its scant resources. For them to lose their invaluable property rights when they relied in good faith on these unbroken stream of laws of congress passed pursuant to our 1935, 1973 and 1987 Constitutions and executive interpretations is a disquieting prospect. We cannot invite investors and then decapitate them without due process of law.

I vote to give prospective application to our Decision of July 26, 2002.

[1] Private respondent cites DOJ Opinion No. 100 dated July 13, 1994 rendered by then Secretary of Justice Franklin Drilon, holding:

x x x Water is a natural resource, the development, exploitation or utilization of which is reserved for citizens of the Philippines, or corporations or associations at least 60% of the capital of which is owned by such citizens (Opinion No. 243, Secretary Of Justice, s. 1989).

x x x The appropriation of waters is the acquisition of rights over the use of waters or the taking or divesting of waters from natural source in the manner and for any purpose allowed by law (Art. 9, id.).

It may be observed, however, that while the Water Code imposes a nationality requirement for the grant of water permits, the same refers to the privilege "to appropriate and use water." We have consistently interpreted this to mean the extraction of water directly from its natural source. However, once removed therefrom, they cease to be part of the natural resources of the country and are subject of ordinary commerce and they can be acquired by foreigners (Sec. of Justice Opn. No. 55, s. 1939; No. 173, s. 1984; No. 243, s. 1989).

[2] CP-Senate, TSP, 8 February 1990, 12th Congress, Regular Session, S.B. No. 1285 pp. 9-12.

[3] Ibid.

[4] Supplement to Motion for Reconsideration, p. 16.

[5] Ibid.

[6] 227 SCRA 444, 448-455 (1993).

[7] Resolution, p. 6.

[8] Ibid.

[9] Op cit.

[10] Resolution, p. 8.

[11] Id., p. 9.

[12] Petition, p. 5.

[13] 299 SCRA 199 (1998).

DISSENTING OPINION

YNARES-SANTIAGO, J.:

The moving force behind the main decision is sound. It proceeds from policies embodied in our Constitution that seek to guard our natural resources from the exploitation of the few and to put our precious land under the stewardship of the common Filipino. Yet we, perched upon our lofty seat in the heights of Olympus, cannot close our eyes to the far-reaching effects that the decision will have. Neither can we pretend that practical realities supported by our legal system have to be conceded. These considerations are so basic that we cannot ignore them. They represent very fundamental rules of law, upon which decades of Philippine jurisprudence have been built.

I, for one, refuse to close my eyes or remain silent.

The sweeping invalidation of the Amended Joint Venture Agreement (JVA) between the Public Estates Authority (PEA) and Amari Coastal Bay Development Corporation (hereinafter, Amari) has left me ill at ease. The draft resolution and the main decision have taken great pains to explain the majority position with copious research and detailed exposition. However, scant consideration was given to the fact that P9,876,108,638.00 had already been spent by the private respondent and that the voiding of the Amended JVA would compel all the parties to return what each has received.[1] I submit that there was no need to resort to such a drastic measure.

First of all, a historical analysis of the laws affecting reclaimed lands indicates that the same have been treated by law as alienable.

Article 5 of the Spanish Law of Waters of 1866 reads:

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

The foregoing clearly mandates that reclaimed property shall belong to the party who undertook the works. It was on the basis of this provision of law that the Manila Port Area, which was developed from land dredged by the Department of Public Works and Communications during the construction of the Manila South Harbor, became private property of the National Government and registered in its name under the Torrens system.

Republic Act No. 1899, and Act to Authorize the Reclamation of Foreshore Lands by Chartered Cities and Municipalities, provided:

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

Again on the basis of the above provision, the Pasay City Government entered into a reclamation contract with the Republic Resources Realty Corporation under which a portion of the reclaimed land shall be conveyed to the latter corporation.[2] However, before the reclamation was completed, then President Ferdinand E. Marcos issued Presidential Decree No. 3-A, which provided:

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

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

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

Thus, the Pasay reclamation project was taken over by the National Government. Later, the Department of Public Works and Highways (DPWH) entered into a contract with the Construction and Development Corporation of the Philippines (CDCP) for the reclamation of the same area and agreed on a sharing arrangement of the land to be reclaimed.

In 1979, PD 1084 was issued, creating the PEA. EO 525 was issued, Section 3 of which states:

All lands reclaimed by PEA shall belong to or be owned by the PEA which shall be responsible for its administration, development, utilization or disposition in accordance with the provisions of Presidential Decree No. 1084. Any and all income that the PEA may derive from the sale, lease or use of reclaimed lands shall be used in accordance with the provisions of Presidential Decree No. 1084.

Clearly, all the foregoing statutes evince a legislative intent to characterize reclaimed lands as alienable public lands. In other words, there was never an intention to categorize reclaimed lands as inalienable lands of the public domain; rather they were expressly made private property of the National Government subject to disposition to the person who undertook the reclamation works.

Inasmuch as reclaimed lands are not public lands, the provisions of the Constitution prohibiting the acquisition by private corporations of lands of the public domain do not apply. In the same vein, the Court, in *Director of Lands v. Intermediate Appellate Court, et al.*, [3] held that public lands which have become private may be acquired by private corporations. This dictum is clearly enunciated by Chief Justice Claudio Teehankee in his concurring opinion, viz:

Such ipso jure conversion into private property of public lands publicly held under a bona fide claim of acquisition or ownership is the public policy of the Act and is so expressly stated therein. By virtue of such conversion into private property, qualified corporations may lawfully acquire them and there is no "alteration or defeating" of the 1973 Constitution's prohibition against corporations holding or acquiring title to lands of the public domain, as claimed in the dissenting opinion, for the simple reason that no public lands are involved.[4]

Indeed, the Government has the authority to reclaim lands, converting them into its own patrimonial property. It can contract out the reclamation works and convey a portion of the reclaimed land by way of compensation.

Secondly, the reason behind the total nullification of the Amended JVA must be reexamined. I believe there is some confusion with regard to its infirmities. We must remember that the Amended JVA is a contract and, as such, is governed by the Civil Code provisions on Contracts, the essential requisites of which are laid out in the following provision:

Art. 1318. There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established.[5]

The main decision states that the Amended JVA is void because its "object" is contrary law, morals, good customs, public order or public policy, and that the "object" is also outside the commerce of man, citing as authority Article 1409 of the Civil Code. However, it has been opined, and persuasively so, that the object of a contract is either the thing, right or service which is the subject matter of the obligation arising from the contract.[6] In other words, the object of the contract is not necessarily a physical thing that by its very nature cannot be the subject of a contract. The object of a contract can, as it appears so in this case, contemplate a service. I submit, therefore, that the object herein is not the reclaimed land, no matter how much emotion these piles of wet soil have stirred up. The proper object is the service that was to be rendered by Amari, which is the act of reclamation. Surely, reclamation, in and of itself, is neither contrary to law, morals, good customs, public order nor to public policy. The act of reclamation is most certainly not outside the commerce of man. It is a vital service utilized by the Republic to increase the national wealth and, therefore, cannot be cited as an improper object that could serve to invalidate a contract.

Furthermore, in Section 1.1 (g) of the Amended JVA, the term "Joint Venture Proceeds" is defined as follows:

"Joint Venture Proceeds" shall refer to all proceeds, whether land or money or their equivalent arising from the project or from the sale, lease or any other form or disposition or from the allocation of the Net Usable Area of the Reclamation Area.

It is actually upon this provision of the Amended JVA that its validity hinges. If it is the contemplated transfer of lands of the public domain to private corporation which renders the Amended JVA constitutionally infirm, then resort to the alternative prestation referred to in this provision will cure the contract. The Civil Code provision on alternative obligations reads as follows:

Art. 1199. A person alternatively bound by different prestations shall completely perform one of them.

The creditor cannot be compelled to receive part of one and part of the other undertaking.

In an alternative obligation, there is more than one object, and the fulfillment of one is sufficient, determined by the choice of the debtor who generally has the right of election.[7] From the point of view of Amari, once it fulfills its obligations under the Amended JVA, then it would be entitled to its stipulated share of the Joint Venture Profits. In this instance, Amari would stand as creditor, with PEA as the debtor who has to choose between two payment forms: 70% of the Joint venture Profits, in the form of cash or a corresponding portion of the land reclaimed.[8] Since it has been ruled that the transfer of any of the reclaimed lands to Amari would be unconstitutional,[9] one of the prestations of this alternative obligation has been rendered unlawful. In such case, the following Civil Code provision becomes pertinent:

Art. 1202. The debtor shall lose the right of choice when among the prestations whereby he is alternatively bound, only one is practicable.

If all the prestations, except one, are impossible or unlawful, it follows that the debtor can choose and perform

only one. The obligation ceases to be alternative, and is converted into a simple obligation to perform the only feasible or practicable prestation.[10] Even if PEA had insisted on paying Amari with tracts of reclaimed land, it could not have done so, since it had no right to choose undertakings that are impossible or illegal.[11]

We must also remember that, in an alternative obligation, the fact that one of the prestations is found to be unlawful does not result in the total nullity of the Amended JVA. The Civil Code provides:

Art. 1420. In case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced.

As a general rule, Article 1420 is applied if there are several stipulations in the contract, some of which are valid and some void. If the stipulations can be separated from each other, then those which are void will not have any effect, but those which are valid will be enforced. In case of doubt, the contract must be considered as divisible or separable.[12] The contract itself provides for severability in case any of its provisions are deemed invalid.[13] Curiously, the main decision makes no mention of the alternative form of payment provided for in Section 1.1 (g) of the Amended JVA. A reading of the main decision would lead one to conclude that the transfer of reclaimed land is the only form of payment contemplated by the parties.[14] In truth, the questionable provisions of the Amended JVA can be excised without going against the intent of the parties or the nature of the contract. Removing all references to the transfer of reclaimed land to Amari or its transferees will leave us with a simple contract for reclamation services, to be paid for in cash.

It should also be noted that declaring the Amended JVA to be completely null and void would result in the unjust enrichment of the state. The Civil Code provision on human relations states:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.[15]

Again, in *Republic v. Court of Appeals*,[16] it was the finding of this Court that the reclamation efforts of the Pasay City government and the RREC resulted in "something compensable." Mr. Justice Reynato Puno explained it best in his concurring opinion:

Given all the facts, Pasay City and RREC cannot be left uncompensated. The National Government should not be unjustly enriched at the expense of Pasay City and RREC. Pasay City and RREC deserve to be compensated quantum meruit and on equitable consideration for their work.[17]

Following the applicable provision of law and hearkening to the dictates of equity, that no one, not even the government, shall unjustly enrich himself at the expense of another,[18] I believe that Amari and its successors in interest are entitled to equitable compensation for their proven efforts, at least in the form of cash, as provided for under the Amended JVA.

At this juncture, I wish to express my concern over the draft resolution's pronouncement that the Court's Decision can be made to apply retroactively because "(t)he Decision, whether made retroactive or not, does not change the law since the Decision merely reiterates the law that prevailed since the effectivity of the 1973 Constitution." This statement would hold true for the constitutions, statutes and other laws involved in the case that existed before the Decision was rendered. However, the issues involved are so novel that even the esteemed ponente concedes that this case is one of first impression.

For example, Section 3 of E.O. 525 declares that:

All lands reclaimed by PEA shall belong to or be owned by the PEA which shall be responsible for its administration, development, utilization or disposition in accordance with the provisions of Presidential Decree No. 1084.

Can we really blame respondents for concluding that any kind of land reclaimed by PEA becomes the latter's patrimonial property? It is spelled out as such. It was only the filing of the present petition which brought to light the possibility that this provision may have already been modified, even partially repealed by Section 4, Subsections 4, 14 and 15 of the Revised Administrative Code of 1987.[19]

Another doctrine which was set aside by the Court's Decision is the general rule that alienable land of the public domain automatically becomes private land upon the grant of a patent or the issuance of a certificate of title.[20] Curiously, this legal principle was held to be inapplicable to government entities,[21] despite several analogous cases which may have reasonably led the respondents to a different conclusion.[22]

Most significantly, the ruling laid down by the Decision that: "In the hands of the government agency tasked and authorized to dispose of alienable or disposable lands of the public domain, these lands are still public, not private land,"[23] is not based on any previous jurisprudence, nor is it spelled out in any law. It is the result of a process of induction and interpretation of several laws which have not been set side by side in such a manner before.[24] This pronouncement has never been made before, and yet now it is law. So when the Decision claimed that it, "does not change the law," and that it, "merely reiterates the law that prevailed since the effectivity of the 1973 Constitution," we believe such a statement to be inaccurate, to say the least.

Since new doctrines, which constitute new law, are espoused in the Decision, these should be subject to the general rule under the Civil Code regarding prospective application:

Art. 4. Laws shall have no retroactive effect, unless the contrary is provided.

Moreover, *lex prospicit, non respicit* — the law looks forward not backward. If decisions that repeal the rulings in older ones are given only prospective application,[25] why should not doctrines that resolve questions of first impression be treated in like manner? Therefore, it is my considered view that, if the amended JVA should be nullified, the ruling must be given prospective effect and all vested rights under contracts executed during the validity thereof must be respected.

The foregoing are basic principles in civil law which have been brushed aside in the wake of this Court's haste to stamp out what it deems unjust. Zeal in the pursuit of justice is admirable, to say the least, especially amid the cynicism and pessimism that has prevailed among our people in recent times. However, in our pursuit of righteousness, we must not lose sight of our duty to dispense justice with an even hand, always mindful that where we tread, the rights of others may be trampled upon underfoot.

Therefore, I vote to GRANT the Motion for Reconsideration and to DENY the petition for lack of merit.

[1] IV TOLENTINO 632, (1990 ed.), citing Perez Gonzalez & Alguer; I-II Enneccerus, Kipp & Wolff 364-366; 3 Von Tuhr 311; 3 Fabres 231.

[2] See Republic v. Court of Appeals, 359 Phil. 530 (1998).

[3] G.R. No. 73002, 29 December 1986, 146 SCRA 509.

[4] Id., at pp. 526-527.

[5] Emphasis supplied.

[6] IV Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines (Quezon City, 1991), p. 520.

- [7] Id., p. 203.
- [8] Amended Joint Venture Agreement, Sections 1.1 (g) and 5.1, Private Respondent's Annex B.
- [9] Chavez v. Public Estates Authority, G.R. No. 133250, 9 July 2002.
- [10] Supra note 2, at 209.
- [11] Legarda v. Miaailhe, 88 Phil. 637 (1951).
- [12] Supra note 2, at 642, citing 4 Llerna 93.
- [13] Amended Joint Venture Agreement, Section 7.4, Private Respondent's Annex B.
- [14] Chavez v. Public Estates Authority, supra.

The decision states:

xxx xxx xxx

AMARI and PEA will share, in the proportion of 70 percent and 30 percent, respectively, the total net usable area which is defined in the Amended JVA as the total reclaimed area less 30 percent earmarked for common areas.

xxx xxx xxx

Indisputably, under the Amended JVA AMARI will acquire and own a maximum of 367.5 hectares of reclaimed land which will be titled in its name. (Emphasis in the original)

- [15] Emphasis supplied.
- [16] 359 Phil. 530 (1998).
- [17] Republic v. Court of Appeals, 359 Phil. 530 (1998), (concurring opinion of Puno, J.), citing Civil Code, art. 19.
- [18] Republic v. Court of Appeals, supra.
- [19] Chavez v. Public Estates Authority, supra.
- [20] Sumail v. Judge of the Court of First Insatnce of Cotabato, 96 Phil. 946 (1955).
- [21] Chavez v. Public Estates Authority, supra.
- [22] Heirs of Gregorio Tengco v. Heirs of Jose Aliwalas, G.R. No. 77541, 29 November 1988, 168 SCRA 198; Manalo v. Intermediate Appellate Court, G.R. No. 64753, 26 April 1989, 172 SCRA 795.
- [23] Chavez v. Public Estates Authority, supra.
- [24] These laws are C.A. 141, P.D. 1084, P.D. 1085, P.D. 3-A, E.O. 525, the 1973 Constitution and the 1987 Constitution, among others.
- [25] People v. Jabinal, 154 Phil. 565 (1974); Benzonan v. Court of Appeals, G.R. No. 97973, 27 January 1992, 205 SCRA 515.

DISSENTING OPINION

SANDOVAL-GUTIERREZ, J.:

It is after deep introspection that I am constrained to dissent from the denial by the majority of the motions for reconsideration filed by respondents PEA and AMARI.

Chief Justice Charles Evans Hughes of the United States Supreme Court stated that a dissent is of value because it is "an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed." [1]

While I joined in the initial grant of the petition, I realized, however, that the tenor of our interpretation of the Constitutional prohibition on the acquisition of reclaimed lands by private corporations is so absolute and circumscribed as to defeat the basic objectives of its provisions on "The National Economy and Patrimony." [2]

The Constitution is a flexible and dynamic document. It must be interpreted to meet its objectives under the complex necessities of the changing times. Provisions intended to promote social and economic goals are capable of varying interpretations. My view happens to differ from that of the majority. I am confident, however, that the demands of the nation's economy and the needs of the majority of our people will bring the majority Decision and this Dissenting Opinion to a common understanding. Always, the goals of the Constitution must be upheld, not defeated nor diminished.

Infrastructure building is a function of the government and ideally should be financed exclusively by public funds. However, present circumstances show that this cannot be done. Thus, private corporations are encouraged to invest in income generating national construction ventures.

Investments on the scale of reclamation projects entail huge amounts of money. It is a reality that only private corporations can raise such amounts. In the process, they assist this country in its economic development. Consequently, our government should not take arbitrary action against these corporate developers. Obviously, the courts play a key role in all disputes arising in this area of national development.

This is the background behind my second hard look at the issues and my resulting determination to dissent.

The basic issue before us is whether a private corporation, such as respondent AMARI, can acquire reclaimed lands.

The Decision being challenged invokes the Regalian doctrine that the State owns all lands and waters of the public domain. The doctrine is the foundation of the principle of land ownership that all lands that have not been acquired by purchase or grant from the Government belong to the public domain. [3] Property of public dominion is that devoted to public use such as roads, canals, rivers, torrents, ports and bridges constructed by the State, riverbanks, shores, roadsteads and that of a similar character. [4] Those which belong to the State, not devoted to public use, and are intended for some public service or for the development of the national wealth, are also classified as property of public dominion. [5] All other property of the State which is not of public dominion is patrimonial. [6] Also, property of public dominion, when no longer intended for public use or public service, shall form part of the patrimonial property of the State. [7]

In our Decision sought to be reconsidered, [8] we held that the following laws, among others, are applicable to the particular reclamation project involved in this case: the Spanish Law of Waters of 1866, the Civil Code of 1889, Act No. 1654 enacted by the Philippine Commission in 1907, Act No. 2874 (the Public Land Act of 1919), and Commonwealth Act No. 141 of the Philippine National Assembly, also known as the Public Land Act of 1936. Certain dictums are emphasized. Reclaimed lands of the government may be leased but not sold to private

corporations and private individuals. The government retains title to lands it reclaims. Only lands which have been officially delimited or classified as alienable shall be declared open to disposition or concession.

Applying these laws and the Constitution, we then concluded that the submerged areas of Manila Bay are inalienable natural resources of the public domain, outside the commerce of man. They have to be classified by law as alienable or disposable agricultural lands of the public domain and have to be declared open to disposition. However, there can be no classification and declaration of their alienable or disposable nature until after PEA has reclaimed these submerged areas. Even after the submerged areas have been reclaimed from the sea and classified as alienable or disposable, private corporations such as respondent AMARI, are disqualified from acquiring the reclaimed land in view of Section 3, Article XII of the Constitution, quoted as follows:

"Lands of the Public domain are classified into agricultural, forest or timbre, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

"Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor."

I dissent from the foregoing conclusions which are based on general laws mainly of ancient vintage. Reclaimed lands, especially those under the Manila-Cavite Coastal Road and Reclamation Project (MCCRPP), are governed by PD 1084[9] and PD 1085[10] enacted in 1976 and 1977, respectively, or more than half a century after the enactment of the Public Lands Acts of 1919 and 1936.

PD 1084 and PD 1085 provide:

PD 1084-

"Section 4. Purposes. — The Authority is hereby created for the following purposes:

- a. To reclaim land, including foreshore and submerged areas, by dredging, filling or other means, or to acquire reclaimed land;
- b. To develop, improve, acquire, administer, deal in, subdivide, dispose, lease and sell any and all kinds of lands, buildings, estates and other forms of real property, owned, managed, controlled and/or operated by the government;
- c. To provide for, operate or administer such services as may be necessary for the efficient, economical and beneficial utilization of the above properties. (Emphasis ours)

PD 1085—

"The land reclaimed in the foreshore and offshore area of Manila Bay pursuant to the contract for the reclamation and construction of the Manila-Cavite Coastal Road Project between the Republic of the Philippines and the Construction and Development Corporation of the Philippines dated November 20, 1973 and/or any other contract or reclamation covering the same area is hereby transferred, conveyed and assigned to the ownership and administration of the Public Estates Authority established pursuant to P.D. No. 1084; Provided, however, that the rights and interest of the Construction and Development Corporation of the Philippines pursuant to the aforesaid contract shall be recognized and respected.

x x x x x x x x

"Special land patent/patents shall be issued by the Secretary of Natural Resources in favor of the Public Estates Authority without prejudice to the subsequent transfer to the contractor or his assignees of such portion or portions of the land reclaimed or to be reclaimed as provided for in the above-mentioned contract. On the basis of such patents, the Land Registration Commission shall issue the corresponding certificates of title." (Emphasis Ours)

Pursuant to the above provisions, PEA is mandated inter alia to reclaim land, including foreshore and submerged areas, or to acquire reclaimed land. Likewise, PEA has the power to sell any and all kinds of lands and other forms of real property owned and managed by the government. Significantly, PEA is authorized to transfer to the contractor or its assignees portion or portions of the land reclaimed or to be reclaimed.

It is a fundamental rule that if two or more laws govern the same subject, every effort to reconcile and harmonize them must be taken. Interpretare et concordare legibus est optimus interpretandi. Statutes must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[11] However, if several laws cannot be harmonized, the earlier statute must yield to the later enactment. The later law is the latest expression of the legislative will.[12] Therefore, it is PD 1084 and PD 1085 which apply to the issues in this case.

Moreover, the laws cited in our Decision are general laws which apply equally to all the individuals or entities embraced by their provisions.[13] The provisions refer to public lands in general.

Upon the other hand, PD 1084 and PD 1085 are special laws which relate to particular economic activities, specific kinds of land and a particular group of persons.[14] Their coverage is specific and limited. More specifically, these special laws apply to land reclaimed from Manila Bay by private corporations.

If harmonization and giving effect to the provisions of both sets of laws is not possible, the special law should be made to prevail over the general law, as it evinces the legislative intent more clearly. The special law is a specific enactment of the legislature which constitutes an exception to the general statute.[15]

Our Decision cites the constitutional provision banning private corporations from acquiring any kind of alienable land of the public domain.[16]

Under the Constitution, lands of the public domain are classified into agricultural, forest or timber, mineral lands, and natural parks.[17] Land reclaimed from the sea cannot fall under any of the last three categories because it is neither forest or timber, mineral, nor park land. It is, therefore, agricultural land.[18] Agricultural land of the public domain may be alienated.[19] However, the Constitution states that private corporations may not hold such alienable land except by lease. It follows that AMARI, being a private corporation, cannot hold any reclaimed area. But let it be made clear that PD 1084 transfers the public agricultural land formed by reclamation to the "ownership and administration" of PEA, a government owned corporation. The transfer is not to AMARI, a private corporation, hence, the constitutional prohibition does not apply. Corollarily, under PD 1085, PEA is empowered to subsequently transfer to the contractor portion or portions of the land reclaimed or to be reclaimed.

Does the Constitution restrain PEA from effecting such transfer to a private corporation? Under Article 421 of the Civil Code, all property of the State which is not of public dominion is patrimonial. PEA does not exercise sovereign functions of government. It handles business activities for the government. Thus, the property in its hands, not being of public dominion, is held in a patrimonial capacity. PEA, therefore, may sell this property to private corporations without violating the Constitution. It is relevant to state that there is no constitutional obstacle to the sale of real estate held by government owned corporations, like the National Development Corporation, the

Philippine National Railways, the National Power Corporation, etc. to private corporations. Similarly, why should PEA, being a government owned corporation, be prohibited to sell its reclaimed lands to private corporations?

I take exception to the view of the majority that after the enactment of the 1935 Constitution, Section 58 of Act 2874 continues to be applicable up to the present and that the long established state policy is to retain for the government title and ownership of government reclaimed land. This simply is an inaccurate statement of current government policy. When a government decides to reclaim the land, such as the area comprising and surrounding the Cultural Center Complex and other parts of Manila Bay, it reserves title only to the roads, bridges, and spaces allotted for government buildings. The rest is designed, as early as the drawing board stage, for sale and use as commercial, industrial, entertainment or services-oriented ventures. The idea of selling lots and earning money for the government is the motive why the reclamation was planned and implemented in the first place.

May I point out that there are other planned or on-going reclamation projects in the Philippines. The majority opinion does not only strike down the Joint Venture Agreement (JVA) between AMARI and PEA but will also adversely affect or nullify all other reclamation agreements in the country. I doubt if government financial institutions, like the Development Bank of the Philippines, the Government Service Insurance System, the Social Security System or other agencies, would risk a major portion of their funds in a problem-filled and highly speculative venture, like reclamation of land still submerged under the sea. Likewise, there certainly are no private individuals, like business tycoons and similar entrepreneurs, who would undertake a major reclamation project without using the corporate device to raise and disburse funds and to recover the amounts expended with a certain margin of profits. And why should corporations part with their money if there is no assurance of payment, such as a share in the land reclaimed or to be reclaimed? It would be most unfair and a violation of procedural and substantive rights^[20] to encourage investors, both Filipino and foreign, to form corporations, build infrastructures, spend money and efforts only to be told that the invitation to invest is unconstitutional or illegal with absolutely no indication of how they could be compensated for their work.

It has to be stressed that the petition does not actually assail the validity of the JVA between PEA and AMARI. The petition mainly seeks to compel PEA to disclose all facts on the then on-going negotiations with respondent AMARI with respect to the reclamation of portions of Manila Bay. Petitioner relies on the Constitutional provision that the right of the people to information on matters of public concern shall be recognized and that access to papers pertaining to official transactions shall be afforded the citizen.^[21] I believe that PEA does not have to reveal what was going on from the very start and during the negotiations with a private party. As long as the parties have the legal capacity to enter into a valid contract over an appropriate subject matter, they do not have to make public, especially to competitors, the initial bargaining, the give-and-take arguments, the mutual concessions, the moving from one position to another, and other preliminary steps leading to the drafting and execution of the contract. As in negotiations leading to a treaty or international agreement, whether sovereign or commercial in nature, a certain amount of secrecy is not only permissible but compelling.

At any rate, recent developments appear to have mooted this issue, and anything in the Decision which apparently approves publicity during on-going negotiations without pinpointing the stage where the right to information appears is obiter. The motions for reconsideration all treat the JVA as a done thing, something already concrete, if not finalized.

Indeed, it is hypothetical to identify exactly when the right to information begins and what matters may be disclosed during negotiations for the reclamation of land from the sea.

Unfortunately for private respondent, its name, "AMARI," happens to retain lingering unpleasant connotations. The phrase "grandmother of all scams," arising from the Senate investigation of the original contract, has not been

completely erased from the public mind. However, any suspicion of anything corrupt or improper during the initial negotiations which led to the award of the reclamation to AMARI are completely irrelevant to this petition. It bears stressing that the Decision and this Dissenting Opinion center exclusively on questions of constitutionality and legality earlier discussed.

To recapitulate, it is my opinion that there is nothing in the Constitution or applicable statutes which impedes the exercise by PEA of its right to sell or otherwise dispose of its reclaimed land to private corporations, especially where, as here, the purpose is to compensate respondent AMARI, the corporate developer, for its expenses incurred in reclaiming the subject areas. Pursuant to PD 1084 and PD 1085, PEA can transfer to the contractor, such as AMARI, such portion or portions of the land reclaimed or to be reclaimed.

WHEREFORE, I vote to GRANT the motions for reconsideration and to DISMISS the petition for lack of merit.

[1] Hughes, *The Supreme Court of the United States*, p. 68; cited in Sinco, *Philippine Political Law*, Eleventh Edition, 326.

[2] Sections 1, 3 and 6, Article XII; Section 9, Article II, Constitution.

[3] *Cariño vs. Insular Government*, 41 Phil. 935 (1909).

[4] Article 420, Civil Code.

[5] *Id.*

[6] Article 421, *id.*

[7] Article 422, *id.*

[8] Pp. 27-28.

[9] Creating the Public Estate Authority, defining its powers and functions, providing funds therefor and for other purposes.

[10] Conveying the land reclaimed in the foreshore and offshore of the Manila Bay (The Manila-Cavite Coastal Road Project) as property of the Public Estates Authority as well as rights and interest with assumption of obligations in the reclamation contract covering areas of the Manila Bay between the Republic of the Philippines and the Construction and Development Corporation of the Philippines.

[11] *Valera vs. Tuazon*, 80 Phil. 823 (1948).

[12] *Eraña vs. Vergel de Dios*, 85 Phil. 17 (1947); *City of Naga vs. Agna*, 71 SCRA 176 (1976).

[13] *U.S. vs. Serapio*, 23 Phil. 584 (1912); *Villegas vs. Subido*, 41 SCRA 190 (1971); *Bagatsing vs. Ramirez*, 74 SCRA 306 (1976).

[14] *U.S. vs. Serapio*, *supra*; *Valera vs. Tuazon*, *supra*.

[15] *Licauco & Co. vs. Apostol*, 44 Phil. 138 (1922); [*De Jesus vs. People*], 120 SCRA 760 (1983).

[16] Section 3, Article XII, Constitution.

[17] *Id.*

[18] *Krivenko vs. Register of Deeds*, 79 Phil. 461 (1947).

[19] Section 3, Article XII, Constitution.

[20]20 Section 1, Article III, id. on deprivation of property without due process of law, Section 9 on eminent domain is also infringed.

[21] Section 7, Article III, id.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.