

ERNESTO FRANCISCO, JR., PETITIONER, VS. OMBUDSMAN ANIANO A. DESIERTO, JOSEPH EJERCITO ESTRADA, MARIANO Z. VELARDE, FRANKLIN M. VELARDE, ROBERT C. NACIANCENO, REY DIVINO S. DAVAL...

G.R. No. 154117. October 02, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before the Court is a petition for review on certiorari filed under Rule 45 of the 1997 Rules of Civil Procedure to review and set aside the Resolution[1] issued by the Office of the Ombudsman dated November 16, 2001 dismissing, for lack of evidence, the case filed by petitioner Ernesto B. Francisco, Jr. (hereinafter, petitioner); and the Order,[2] likewise issued by said Office, dated June 24, 2002 denying, for lack of merit, petitioner's Motion for Reconsideration.

I. STATEMENT OF FACTS.

On 16 April 2001, petitioner filed a Complaint-Affidavit docketed as OMB-0-01-0577 with the Office of the Ombudsman, alleging that the following respondents, by their individual acts and/or by conspiring and confederating with one another, have committed the offenses/acts enumerated hereunder:

a) For violation of Republic Act No. 7080, otherwise known as an Act Defining and Penalizing the Crime of Plunder, specifically Section 2, in relation to Section 1, sub-paragraph d(1), (3) and (6), as amended, by Republic Act No. 7659[:]

- Joseph Ejercito Estrada - former President of the Republic of the Philippines

- Mariano "Bro. Mike" Z. Velarde

- Franklin M. Velarde

- Gregorio R. Vigilar - former Secretary of [Department of Public Works and Highways (DPWH)] and Chairman, [Toll Regulatory Board (TRB)]

- Mariano E. Benedicto II - Executive Director, TRB

- Ramon V. Dumaul - former Officer-in-Charge, TRB

- Frisco San Juan - former Chairman, [Public Estates Authority (PEA)]

- John Does and Jane Does

b) For violation of Section 3(a) of [Republic Act No. 3019:]

- Joseph Ejercito Estrada

- Gregorio R. Vigilar
- Mariano E. Benedicto
- Ramon V. Dumaul
- Frisco San Juan
- John Does and Jane Does

c) For violation of Section 3(e) of R.A. No. 3019:

- Joseph Ejercito Estrada
- Mariano "Brother Mike" Z. Velarde
- Franklin M. Velarde
- Gregorio R. Vigilar
- Mariano E. Benedicto II
- Ramon V. Dumaul
- Ruben de Ocampo
- Frisco San Juan
- Arsenio B. Yulo - former Chairman and [General] Manager, PEA
- Robert Nacianceno - former [Metro Manila Development Authority (MMDA)] Manager and Chairman, Parañaque City Appraisal Committee (PCAC)
- Patrick B. Gatan - DPWH Representative, PCAC Member
- Luis V. Medina-Cue - Pasay City Assessor, PCAC Member
- Soledad V. Medina-Cue - Parañaque City Assessor, PCAC Member
- Rey Divino Daval-Santos - OIC Parañaque City Engineer's Office, PCAC Member
- Silvestre de Leon - Parañaque City Treasurer, PCAC Member
- Ronaldo B. Zamora - former Executive Secretary
- Luis J. L. Virata
- Manuel B. Zamora, Jr.
- Cesar E.A. Virata
- John Does and Jane Does

d) For violation of Section 3(g) of R.A. 3019;

- Joseph Ejercito Estrada
- Mariano "Brother Mike" Z. Velarde
- Franklin M. Velarde
- Gregorio R. Vigilar

- Mariano E. Benedicto, II

- Ramon V. Dumaul

- Ruben de Ocampo

- Frisco San Juan

- Ronaldo B. Zamora

- Luis J. L. Virata

- Manuel B. Zamora, Jr.

- Cesar E.A. Virata

- John Does and Jane Does

e) For violation of Section 3(h) of R.A. 3019;

- Ronaldo B. Zamora

f) For violation of Section 3(j) of R.A. 3019;

- Joseph Ejercito Estrada

- Mariano "Brother Mike" Z. Velarde

- Franklin M. Velarde

- Gregorio R. Vigilar

- Mariano E. Benedicto, II

- Frisco San Juan

- Ronaldo B. Zamora

- Luis J. L. Virata

- Manuel B. Zamora, Jr.

- Cesar E.A. Virata

- John Does and Jane Does

[g] For violation of Section 7(a) and (d) of R.A. 6713;

- Ronaldo B. Zamora[3]

On May 31, 1990, during the administration of President Corazon Aquino, the Republic of the Philippines, through the Toll Regulatory Board (TRB),[4] granted the Public Estates Authority (PEA) a Toll Operation Certificate to construct, rehabilitate, maintain and operate a toll expressway, namely, (a) Seaside Drive at Parañaque to C-6 at Bacoar, Cavite; and (b) Expressway Extension to Noveleta/Kawit.

On February 3, 1994, during the administration of President Fidel Ramos, Renong Berhad, Majlis Amanah Rakyat (MARA), and the PEA entered into a Memorandum of Understanding to jointly undertake the implementation of the tollway project.[5]

On December 27, 1994, also during the administration of President Ramos, Renong Berhad, MARA and the PEA

entered into a Joint Venture Agreement to develop and operate as a toll road the R-1 Expressway Extension. The entire project became known as the "MCTE Project." [6]

On August 17, 1995, Renong Berhad, MARA, PEA and United Engineers (Malaysia) Berhad entered into a Novation Agreement whereby Renong Berhad assigned to United Engineers (Malaysia) Berhad (UEM) its rights, liabilities and obligations under the Joint Venture Agreement. [7]

On July 26, 1996, the Republic of the Philippines, acting through the TRB, PEA and UEM-MARA Philippines Corporation (UMPC) entered into a Toll Operations Agreement (TOA) [8] for the design, construction, operation and maintenance of the MCTE project, which covered the Manila-Cavite Toll Expressway, the R-1 Expressway, the C-5 Link Expressway, and the R-1 Expressway Extension. President Fidel Ramos approved the TOA on the same day, July 26, 1996. Under the terms of the TOA:

- UEM-MARA shall design and construct the expressways covered by the TOA;
- TRB shall ensure the availability and assume responsibility for the acquisition of the lands required for the right of way including the costs for procuring the area for the right of way;
- PEA shall operate and maintain the expressways; and
- PEA shall advance the funds necessary for the acquisition of the Right of Way subject to reimbursement by the Republic of the Philippines. [9]

On August 9, 1997, the TRB approved the original alignment for the C-5 link. On the basis of this alignment, the TRB issued notices to the owners of all properties affected, some of which either belonged to AMVEL Land Corporation (AMVEL) or were part of joint venture agreements between AMVEL and the property owners. Private respondent Mariano Z. Velarde is the Chairman of AMVEL while private respondent Franklin M. Velarde is the Executive Vice President.

Among those property owners to whom TRB sent notices were the following:

- Mariano Z. Velarde;
- Asuncion de Jugo;
- Cornelia Medina;
- Rosario Medina; and
- Silvestre Medina. [10]

Under the Memorandum of Agreement [11] (MOA) between PEA and the Republic of the Philippines through the TRB and the DPWH, the obligations of PEA and TRB/DPWH with respect to the acquisition of the right-of-way were set forth. Under the MOA, the parties agreed that PEA shall have the following obligations:

- To pay the purchase price of the lots to be expropriated for right of way as determined and requested by TRB/DPWH, x x x
- To pay the expenses incurred in the relocation or eviction of squatters for the right-of-way requirements, subject to TRB/DPWH's repayment x x x;
- The total amount to be disbursed in the acquisition of right-of-way and the additional expenses incurred in the relocation and eviction of squatters shall not exceed the amount borrowed under the loan agreement. [12]

On the other hand, TRB shall have the following obligations:

- To identify and locate the lots to be acquired for the right-of-way;
- To negotiate with individual owners of the lands their purchase price in accordance with Executive Order No. 329 dated July 11, 1988, Executive Order No. 368 dated August 24, 1989 and Executive Order No. 369 dated September 14, 1989;
- To cause the removal and/or relocation of the squatters that may hinder the construction of the expressway;
- To prepare the necessary documents between the TRB/DPWH and the lot owners and owners of improvements;
- To cause the cancellation of the Certificate of Title in the name of individual lot owners; [and]
- To certify to the PEA that the lots for payment are free from all encumbrances and liens in accordance with the TOA.

It was pursuant to this MOA that the TRB identified and negotiated with the owners of the properties affected by the construction of the Tollway Project C-5 Link Expressway. Among the properties affected by the Tollway Project were properties owned or held by AMVEL Land Development Corporation (AMVEL), namely:

Land No.

Landowner

TCT No.

Affected Area (sq m)

Lot 1-A

Corazon & Cornelia Medina

33989

1,520

Lot 1-B

AMVEL Land Development Corp. (AMVEL)

33989

6,583

Lot 2-A

AMVEL

33988

6,062

Lot B-3-1

ADV Realty Corp.

122510

2,153

Lot 1

AMVEL

33550

6,643

Lot 2-B

AMVEL

31446

3,908

Lot 2-C-1

AMVEL

31460

3,813

Lot 2-D-1

Ma. Asuncion de Jugo

113793

753

Lot 2-F-1

Rona Agustines

113796

2,973

Lot 1

Julieta Evangelista, et al.

122378

5,229

Lot 3-A E.

Tirona, et al.

133990

16,543

Lot 2-B

AMVEL

31988

16,313

Lot 4-A

Tirona, et al.

133991

7,075

Total

79,568

Pursuant to the MOA, the TRB requested the Parañaque City Appraisal Committee (PCAC) of the Metropolitan Manila Development Authority (MMDA) to appraise the affected properties. This Appraisal Committee was created by virtue of Executive Order No. 329 dated July 11, 1988 as amended by Executive Order No. 369 dated August 24, 1989 specifically for the purpose of determining the fair valuation of properties to be purchased or acquired for development and infrastructure projects for public use.[13]

On April 21, 1998, PCAC issued Resolution Nos. 98-5,[14] 98-6[15] and 98-7[16] appraising properties along Dr. A. Santos Avenue as follows:

- All lots abutting Dr. A. Santos Avenue at TWENTY FIVE THOUSAND PESOS (P25,000.00) per sq. m.;
- All lots interior of Dr. A. Santos Avenue particularly along Palasan and Calang-Calangan, Bgy. San Dionisio at TWENTY THOUSAND PESOS (P20,000.00) per sq. m.;
- All untitled lots abutting Dr. A. Santos Avenue at SEVENTEEN THOUSAND FIVE HUNDRED PESOS (P17,500.00) per sq. m.; and
- All untitled lots interior of Dr. A. Santos Avenue along Palasan and Calang-Calangan at FOURTEEN THOUSAND PESOS (P14,000.00) per sq. m.[17]

On May 6, 1998, the PCAC transmitted copies of Resolution Nos. 98-5, 98-6, 98-7 to the TRB.[18]

On May 7, 1998, the TRB, through its Resolution No. 98-26, approved the acquisition of properties affected by the C-5 Link in accordance with the PCAC appraisals.[19]

On May 8, 1998, the TRB, through Ramon V. Dumaual, made Payment Instructions[20] to PEA to pay AMVEL's property at P20,000.00 per sq. m. pursuant to the PCAC Recommendation.

On April 28, 1998, PEA received a copy of the Memorandum from then President Fidel Ramos, dated April 27, 1998, regarding the "Request of Bro. Mike Velarde Re: DPWH Road Right of Way Payments/Settlement on C-5 (PEA-Renong Berhad)." The Memorandum contained the handwritten marginal note of then President Fidel V. Ramos directing the DPWH to "Fast-Track the remaining issues NLT April 30, 1998 re the C5-Coastal Road Project in order to alleviate heavy traffic congestion in the area." At that time, one of the remaining issues was the payment of the purchase price of AMVEL lands for the right of way, which was then fixed at P20,000.00 per sq. m.[21]

To determine further the fair market value of the affected lands, the matter was referred to three independent appraisers, namely: Asian Appraisal, Inc.; Royal Asia Appraisal Corporation, and Cuervo Appraisal, Inc.

On October 6, 1998, Asian Appraisal, Inc. submitted its Appraisal Report[22] on the affected lands. It determined the fair market value at P422,622,000.00 for 130,848 sq. m., or P3,229.87 per sq. m.

In its letters dated October 19 and 20, 1998, AMVEL questioned the valuation and sought a reconsideration of

said appraisal. In reply thereto, the TRB, in its letter dated October 20, 1998, informed AMVEL that it would commission another private appraisal company to determine the true market value of the properties in the area.

On December 28, 1998, Royal Asia Appraisal Corporation submitted its Appraisal Report[23] on the affected lands. It determined the fair market value at P4,395,179,000.00 for 319,398 sq. m., or P13,760.82 per sq. m.

In a letter[24] dated November 8, 1998, AMVEL also questioned the valuation of Royal Asia and claimed that it was "not realistically indicative of the prevailing market value of the properties." To break the impasse, AMVEL proposed that a third appraisal be conducted to which then Secretary of the DPWH, respondent Gregorio Vigilar, agreed. For this purpose, Cuervo Appraisers, Inc. was engaged to conduct a third appraisal.

On December 9, 1998, AMVEL complained of the "long-delayed payment" for its lands while "other landowners adjoining [their] property also affected by the C-5 road right-of-way have already been paid at a price of P25,000.00 per sq. m." [25]

In his reply dated December 29, 1998, respondent Vigilar took exception to the claim of AMVEL that there was "long-delayed payment," considering that several appraisals of the affected properties were made. In the same letter, he proposed that the average of the three (3) private appraisals be used as a final valuation.

On January 11, 1999, Cuervo Appraisers, Inc. submitted its Fair Market Value Appraisal[26] of the affected lands. It determined the fair market value at P4,531,752,000 for 251,764 sq. m., or P18,000 per sq. m.

Further negotiations ensued between the parties. Finally, a consensus was reached to fix the price by averaging the four appraisals done by MMDA, Royal Asia, Asian Appraisal, and Cuervo.

On January 15, 1999, the TRB, through its Resolution No. 99-02,[27] approved the purchase price of P1,221,799,804.00 for the acquisition of a total area of 79,598 sq. m. The average price per sq. m., as approved by the TRB, was P15,350.00.

On February 17, 1999, respondent Joseph E. Estrada, then President of the Republic of the Philippines, issued Administrative Order No. 50 entitled "Prescribing the Guidelines for the Acquisition of Certain Parcels of Private Land for Public Use including the Right of Way, Easement of Several Public Infrastructure Projects."

On March 30, 1999, respondent Estrada issued two (2) Memoranda to respondent Benedicto, the Executive Director of TRB. The first Memorandum[28] states:

"You are hereby directed to proceed with right of way acquisition of properties covered by the TRB Resolution #99-02 dated January 15, 1999, subject to existing laws, rules and regulations."

The second Memorandum[29] states:

"The contracts for acquisition of the right of way at the C-5 Link of the Manila-Cavite Toll Expressway, stated in Resolution No. 99-02 of the Toll Regulatory Board, is hereby approved, subject to compliance with existing laws, rules and regulations.

"Further, you are directed to submit to this office a certification, stating that the said contracts are above board, that due diligence has been complied with, that these contracts are free from all defects and that the terms of the contract are the most advantageous to the government."

On March 30, 1999, TRB transmitted to PEA the Deeds of Absolute Sale executed by TRB and AMVEL as well as the other parties represented by AMVEL. TRB advised PEA that it shall immediately inform PEA of the approval by the President, and that, in the meantime, PEA should take note of the Deed of Sale and prepare for the eventual payment of the properties in accordance with the TOA and the MOA.[30]

On April 5, 1999, the TRB, in compliance with the Memorandum of the President dated March 30, 1999 and pursuant to its express obligations under the MOA to certify to PEA that the lots to be acquired were free from all liens and encumbrances, issued its Compliance and Certification[31] stating that the Deed of Sale between the Republic of the Philippines and AMVEL Land Development Corp., dated March 30, 1999 "was above-board; that due diligence had been complied with in the negotiation and execution thereof; that to the best of our knowledge, the same are free from defects and that the terms thereof are not disadvantageous to the Government."

Based on such Compliance and Certification issued by the TRB, PEA paid fifty percent (50%) of the purchase price to AMVEL.[32]

On April 8, 1999, respondent Benedicto sent a memorandum[33] to the TRB informing it that:

- The parties executed three (3) deeds of sale on [March 30, 1999];
- The amounts for the right of way acquisition were those stated in the TRB's Resolution No. 99-02;
- Total amount payable of P1,221,766,640 actually lower by 33,244 from the Board approved amount of P1,221,799,884. [34]

On April 29, 1999, or after nearly a year of negotiations for the purchase of the properties subject of the Right of Way and upon receipt of the required documentation, PEA released the balance of the purchase price for the AMVEL properties.[35]

II. PETITIONER'S ALLEGATIONS

Petitioner, in his complaint-affidavit[36] filed before the Office of the Ombudsman, alleges irregularities in the above-mentioned transactions. In particular, petitioner contends that the government acquisition of the AMVEL lands took place in just two and a half working days, considering that it was Holy Tuesday on March 30, 1999, the date that respondent Estrada issued the Memorandum to TRB and PEA to proceed with the acquisition of lands for the right-of-way of the C-5 Link of the MCTE Project, and PEA immediately released on April 5, 1999 fifty percent (50%) of the total purchase price. He points out that Holy Wednesday was a half-working day, and what followed was a long holiday, commencing on Holy Thursday and ending on Easter Sunday.[37] Petitioner alleges that it was due to the personal intervention of respondent Estrada and his close association with respondent Mariano Velarde that AMVEL was able to close this deal. In his 183-page petition, he alleges:

65. Respondent Mike Velarde received a P685,892,495.00 windfall from the government for a property which he acquired for almost nothing! His only capital was his closeness to respondent Estrada and the tremendous amount of influence he wielded in the latter's administration. Of course, all of these he owes to his mostly impoverished flock who voted for respondent Estrada after "Brother Mike" endorsed him as "tiyak yon." [38]

Petitioner claims that the nine (9) parcels of land sold by AMVEL to the government, subject of his complaint, were outrageously overpriced. He alleges that the Transfer Certificates of Title covering said parcels of land and their corresponding areas, declared market values, assessed values and selling prices are as follows:[39]

Transfer Certificate of Title

Area (sq. meters) Declared Market Value (Pesos) Assessed Value (Pesos) Selling Price (Pesos)

140389

2,153

1,507,100

301,420
33,059,315
140388
6,643
4,650,100
930,020
102,003,265
131446
3,908
1,914,920
382,980
60,007,340
140402
3,813
1,868,370
373,670
58,548,615
140396
9,427
6,598,900
1,319,780
144,751,585
140397
44,669
31,268,300
6,253,660
685,892,495
140404
753
368,970
73,790

11,562,315

140405

2,973

1,456,770

291,350

45,650,415

140408

5,299

2,562,210

512,440

81,366,145

Total

79,638

52,195,640

10,439,110

1,222,841,490

Petitioner likewise claims that based on the 1999 tax declarations, AMVEL sold parcels of land, which were "undeveloped agricultural lands and salt-making beds (salinar) but which had been reclassified as 'residential,' to the government at a price which was more than 2,300% percent of their total declared market value and 11,700% percent of their total assessed value." [40]

Petitioner asserts that the purchase price for right-of-way acquisition "should be the equivalent of the zonal value plus ten (10%) percent thereof," based on Administrative Order No. 50, [41] which respondent Estrada issued on February 17, 1999 and was made effective immediately. Since the zonal value of the subject parcels of land was set the year before at Four Thousand Five Hundred Pesos (P4,500.00) per sq. m. by the Department of Finance, [42] the purchase price should have been Four Thousand Nine Hundred Fifty Pesos (P4,950.00) only, for a total purchase price of Three Hundred Ninety-Four Million Two Hundred-Eight Thousand and One Hundred Pesos only (P394,208,100.00). He claims that the price that the government paid (P15,355.00 per sq. m.) was 310% of the zonal value. [43]

Petitioner argues that "[by] not following the guidelines set by Administrative Order No. 50, the government was defrauded of the staggering amount of [P828,633,390.00]" and burdened with the payment of interest. The government was made to pay in full when the guidelines set by said Administrative Order provided that, should the landowner refuse to accept the purchase price, the government would be mandated to initiate expropriation proceedings and deposit only ten (10%) percent of the offered amount. [44]

Petitioner notes that even respondent Estrada chose not to follow the guidelines prescribed by Administrative Order No. 50 by "directing TRB to proceed with the acquisition and approving [AMVEL's] Deeds of Sale." He alleges that there was no legal impediment to its application because the Deeds of Sale for the AMVEL

acquisitions were executed long after the effectivity date of Administrative Order No. 50.[45]

Petitioner questions the findings of the government appraisal body, MMDA-PCAC, that the subject parcels of land "have already been developed," and that these were classified as commercial lands. He relies on "a document found among the records of the Legal Office of the Presidential Management Staff"[46] that states that the lands were "formerly salt-making beds (SALINAR) which are not suitable for residential or commercial purposes;" that "AMVEL merely covered these salt factories with trash and other low-grade filling materials;" that the properties "did not even have access to the highway .. [until] AMVEL built a bridge from said properties to Dr. A. Santos Avenue ... when it was already negotiating with the government;" and that AMVEL knew beforehand about the proposed highway when it acquired the properties at a purchase price of Two Thousand Pesos (P2,000.00) per sq. m., properties that were later sold to the government at Fifteen Thousand Three Hundred Fifty-Five Pesos (P15,355.00) per sq. m.[47]

The rest of petitioner's allegations were summarized by respondent Office of the Ombudsman in the questioned Resolution,[48] which summary we find to be succinct and hereby quote in part below:

The complainant points out that much earlier, in March 1996, the heirs of a certain Andres Buenaventura filed an action for annulment of title and reconveyance against the Tirona-Medina families before the RTC-Paranaque, docketed as Civil Case No. 96-0141. The Buenaventura heirs claimed that they were rightful owners of the parcel of land covered by TCT No. 14729. The Buenaventura heirs caused the annotation of a Notice of Lis Pendens on TCT No. 14729. This notice of Lis Pendens was carried over to the subdivided lots covered by TCT Nos. 133988, 133990 and 133991.

On 06 November 1998, AMVEL submitted to the TRB what it claimed to be a Decision dated 29 October 1998 of the Court of Appeals First Division in CA-G.R. No. 54402, which supposedly affirmed the Decision of the RTC-Paranaque dismissing the case filed by the Buenaventura heirs. The purported Court of Appeals Decision was signed by Associate Justices Oswaldo Agcaoili, Fidel Purisima and Corona Ibay-Somera.

The complainant alleges that the supposed 28 October 1998 Decision was falsified and non-existent. In fact, the records of the Court of Appeals show that, on 22 February 1999, "its Docket was instructed to (a)wait result of the investigation of NBI as per instructions of J. Valdez." However, based on the same records, nothing was heard or mentioned again about the result of the said NBI investigation.

Notwithstanding the attempt to defraud the government with the submission of the falsified and non-existent Court of Appeals Decision, TRB did not charge AMVEL and, instead, proceeded with the execution of the Deeds of Sale on 30 March 1999.

The complainant further alleges that the original projected cost of the right-of-way for the MCTE Project at the time the Toll Operation Agreement between the government and the foreign investor, Renong Berhad, was being deliberated in late 1995, was P900 million only. However, by the time the Toll Operation Agreement was approved by the Office of the President on 26 July 1996, the cost of the right-of-way acquisition had already risen to P1.7 billion.

The Toll Operation Agreement dated 26 July 1996 itself, in paragraph 5.04 thereof, likewise provides that "the Grantee (PEA) shall advance the funds necessary for the acquisition of the Right of Way except land to be reclaimed subject to a limit of [P1.7 million] and such funds shall be reimbursed by the Grantor to the Grantee."

As late as October 1998, UEM-MARA Philippines Corporation ("UMPC"), the local subsidiary of UEM Berhad and a signatory to the Toll Operation Agreement, in a report to the Board of Investments entitled "Manila Cavite Toll Expressway Project-Project Description October 1998," reported in its Summary of Project Costs that the total right-of-way cost is only P1.7 billion. This is broken down as follows: C-5 Link

Expressway, P1.356 billion; and R-1 Extension Expressway, P344 million. UMPC further reported that "TRB on the other hand will be responsible for the acquisition of the right-of-way which will be financed by PEA in accordance to the terms and conditions of NEDA as stipulated in the TOA."

Also, under the aforesaid NEDA Board Resolution No. 2, the Malaysian government agency, Majilis Amanah Rakyat ("MARA") and Renong Berhad's construction affiliate, United Engineers Berhad (UEB), were supposed to advance P900 million of the P1.7 billion cost of right-of-way acquisition to be guaranteed by the national government. Further, MARA and UEB would secure foreign currency denominated loans for the P900 million that they were willing to advance.

It appears that the project proponents did not even comply with the aforesaid condition for NEDA's approval of the project. The Malaysian firms were no longer made to advance the sum of P900 million.

Instead, on 5 December 1997, a Loan Agreement was executed among PEA, as borrower, the Republic of the Philippines, as guarantor, and a syndicate of local and foreign banks, namely, Solidbank Corporation, Far East Bank and Trust Company (now part of the Bank of the Philippine Islands), Asianbank Corporation, Chinatrust (Phils.) Commercial Bank Corporation, Australia and New Zealand Banking Group Limited, Standard Chartered Bank, The Bank of Nova Scotia (Manila Offshore Branch), The Development [Bank] of Singapore Ltd., and Bank of America (hereinafter collectively referred to as the "lender banks").

The Lead Arranger for the loan was Exchange Capital Corporation, which is majority-owned by respondents Luis J. L. Virata and Manuel B. Zamora, Jr. [The] Co-Lead Arrangers were FEB Investments, Inc. and SolidBank.

As earlier mentioned, TRB sent notices of acquisition to the landowners of the parcels of land that would be affected by the C-5 Link sometime in 1997. Thereafter, the TRB Officer-in-Charge requested the Paranaque City Appraisal Committee to appraise the said parcels of land. Thus, the City Appraisal Committee came out with Resolution No. 98-5 dated 21 April 1998 with bloated appraisals of said properties.

Complainant asseverates that in what appears to be an attempt to "legitimize" the bloated appraisal made by the Paranaque City Appraisal Committee on 21 April 1998, on 7 May 1998, TRB and PEA entered into a Memorandum of Agreement which, among others, explicitly provides that TRB shall "identify and locate the lots of land sought to be acquired for the right-of-way" and "negotiate with the individual owners of the land the purchase price in accordance with Executive Order No. 329 dated July 11, 1998, Executive Order No. 368 dated August 24, 1989 and Executive Order NO. 269 dated September 4, 1989." These Executive Orders were even made part of the Memorandum of Agreement.

The complainant points out that seven (7) months after respondent Mike Velarde got his P1,222,841,490.00, on 23 November 1999, respondent Estrada, together with respondents Ronaldo B. Zamora, then Executive Secretary, Gregorio R. Vigilar, then Public Works and Highways Secretary, and Frisco San Juan, then PEA Chairman, gave his imprimatur and approval to the proposal of a four (4) month-old, P15 million company, the Coastal Road Corporation ("CRC"), to take over UMPC and the P7.73 billion MCTE Project (including the 800-hectare reclamation project along Manila Bay going towards Cavite). This is now the subject of a separate case before the Ombudsman entitled "Ernesto B. Francisco, Jr. vs. Joseph Ejercito Estrada, et al.," docketed as OMB Case NO. 0-00-1758.

Complainant Francisco further points out that the beneficial owners of CRC are respondents Luis J. L. Virata and Manuel B. Zamora, Jr. Respondent Luis J. L. Virata is also CRC's President and Chief Executive Officer, while respondent Cesar E.A. Virata is CRC's Chairman of the Board and is also a beneficial owner of CRC to the extent of ten (10%) [percent] of its equity.

Also, on 23 November 1999, respondent Estrada, in the presence of respondents Ronaldo B. Zamora, Gregorio R. Vigilar and Frisco San Juan, gave his imprimatur and approval to CRC's proposal to de-prioritize the

construction of the C-5 Link Expressway, on the one hand, and to prioritize the R-1 Expressway Extension, on the other. This was done despite the lack of the requisite evaluation and approval of the TRB Board and the fact that CRC does not have the requisite financial and technical capability and track record to take over the MCTE Project. Worse, the de-prioritization of the C-5 Link despite the P1.85 billion already spent for right-of-way acquisitions caused the government tremendous losses in terms of the interest on the dollar-denominated loan used to fund the said acquisitions.

Respondents LUIS J. L. VIRATA and MANUEL B. ZAMORA, JR. had another reason for pushing the prioritization of the R-1 Expressway Extension. Respondents wanted to expedite the development of the Caylabne Bay Resort in Ternate, Cavite. In the words of respondent Luis J. L. Virata, the Caylabne Bay Resort will be developed into a "top-quality resort . . . with a whole bunch of a Mediterranean-looking buildings" and with "a first-class resort operation." In an interview with Mr. Philip Cu-Unjieng, which appeared in the 7 February 1999 issue of the Philippine Star, respondent Virata himself had categorically admitted how critical is the R-1 Expressway Extension to the development of the Caylabne Bay Resort.

The real problem is that under UMPC's project timetable, the construction schedule of the C-5 Link Expressway was set from March 1997 to September 1999, while that of the R-1 Extension was set almost near the same period, from October 1997 to September 1999. Thus, the idea is for both expressways to be constructed and finished almost at the same time. However, by October 1998, both were already delayed by eighteen (18) months and fourteen (14) months, respectively. Instead of correcting the problem, the government allowed respondent Luis J. L. Virata and Manuel B. Zamora, J. to take over the project despite their lack of financial and technical capability to do so. They even tried to borrow from public funds from the Development Bank of the Philippines to finance their acquisition of UEM Berhad's share in UMPC.

Respondents Mariano Z. Velarde, Franklin M. Velarde, Luis Juan L. Virata, Cesar E.A. Virata, Manuel Zamora, Jr., Ronaldo Zamora, Mariano E. Benedicto II, Frisco F. San Juan, Ruben A. de Ocampo, and Ramon V. Dumaual filed individual Counter-Affidavits; while respondents Robert C. Nacianceno, Reydivino Bernabe Daval-Santos, Soledad Samonte Medina-Cue, Patrick Beltran Gatan, Luis Vicente Medina-Cue, and Silvestre San Agustin de Leon, all members of PCAC, filed a Joint Counter-Affidavit. Respondents Joseph Estrada and Arsenio Yulo were ordered to file their counter-affidavits, but they did not file any.

Based on its findings of fact, the Office of the Ombudsman resolved to dismiss the case for lack of evidence. [49]

Petitioner filed a Motion for Reconsideration[50] on January 14, 2002, alleging that serious errors of law and/or irregularities had been committed prejudicial to his interest, as follows:

- The Ombudsman did not conduct fact-finding in the instant case and pursue investigation requested by the complainant.
- The Ombudsman did not issue the subpoena duces tecum requested by the complainant as would afford the complainant the chance to file a reply-affidavit.
- The inhibition of Desierto came too late since he had already prejudged the case.
- The Ombudsman did not act on the motion for the inhibition of Overall Deputy Ombudsman Margarito P. Gervacio, Jr. At any rate, Gervacio, out of delicadeza or sense of decency, should have voluntarily inhibited himself.
- The Overall Deputy Ombudsman does not have authority to approve the dismissal of the instant case.
- The Ombudsman took at their face value the arguments of, and interpretation of the law by, the respondents, on the one hand, and totally disregarded the evidence of complainant, on the other.

- In their haste to dismiss the instant case, Desierto and Gervacio did not consider additional evidence submitted by the complainant. [51]

Respondent Office of the Ombudsman denied petitioner's Motion for Reconsideration in an Order[52] dated June 24, 2002.

III. ASSIGNMENT OF ERRORS

Petitioner raises the following assignment of errors against the questioned Resolution and Order issued by the Office of the Ombudsman:

I

The respondent Ombudsman committed a serious error of law in ruling that "the transaction/negotiation for the purchase of affected lands was consummated as early as May 1998" and that "Administrative Order No. 50 finds no application to the already perfected contract between TRB and AMVEL.

II

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to excess or lack of jurisdiction, in concluding, without basis in fact, "that respondents complied with the prescribed procedure in determining a fair and reasonable valuation of the properties in question" and in not finding that respondents committed plunder and/or graft.

III

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed plunder and/or graft when they changed the original alignment of the Sucat Interchange which increased the affected land area of Amvel from 63,629 sq. mtrs. to 80,256 sq. mtrs. or a difference of 16,897 sq. mtrs. which was sold to the government for about P259,115,495.00.

IV

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed plunder and/or graft when respondent Mike Velarde made a billion-peso killing from the transaction.

V

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed graft when they proceeded with the transaction despite the fact that 44,699 sq. mtrs. of land sold to the government did not have a clean title at the time of sale.

VI

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed plunder and graft when they bloated the cost of the road-right-of-way and depleted the proceeds of the US\$68.6 Million loan for right-of-way acquisition.

VII

The respondent Ombudsman committed a serious error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in not finding that respondents committed graft when they de-prioritized the R-1 Expressway Extension over that of the C-5 Link Expressway.

VIII

The respondent Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when he deliberately did not conduct fact-finding to gather more evidence in the case below despite repeated requests by the complainant.

IX

The respondent Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when he deliberately failed to act on motions to issue subpoena duces tecum and ad testificandum to further strengthen the case.

X

The Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when he failed to act on the motion for the inhibition of Overall Deputy Ombudsman Margarito P. Gervacio, Jr. Likewise, Overall Deputy Ombudsman Gervacio committed grave abuse of discretion amounting to lack of jurisdiction when he failed to voluntarily inhibit himself out of delicadeza or a sense of decency.

IV. THEORY OF RESPONDENTS

A. COMMENT OF RESPONDENTS ROBERT C. NACIANCENO, REYDIVINO B. DAVAL-SANTOS, SILVESTRE S.A. DE LEON, PATRICK B. GATAN, SOLEDAD S. MEDINA-CUE, AND LUIS V. MEDINA-CUE

The case docketed as OMB-0-01-0577 is "primarily an action to hold them accountable for violation of Section 3 (e) of R.A. 3019, the Anti-Graft and Corrupt Practices Act, on account of their approval, in 1998, of PCAC Resolution No. 9805 ... as the same resolution had been allegedly used to justify the alleged over-pricing and related graft and corrupt practices of other respondents in connection with the acquisition of lands by the national government, in 1999, for the right of way of the C-5 Link of the Manila-Cavite Toll Expressway Project".

Respondents were "charged in their respective [capacities] as the Chairman and members of the [PCAC] created under [Executive] Order No. 329, as amended by Executive Order No. 369, primarily for the determination of the reasonable compensation to be paid to properties that will be affected by public works and projects in Parañaque City." [53]

Section 3(e) of Rep. Act No. 3019, under which respondents are charged, provides:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. (Underscoring supplied by respondents.)

Respondents claim that they are neither alleged nor shown to be, as they in fact are not, "officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions." [54]

Respondents assert that PCAC Resolution No. 98-5 is recommendatory in nature, and that the adoption of the recommendations was within the prerogative and discretion of the implementing officers, most of all Fidel V. Ramos, then the President of the Republic at the time of issuance of said resolution.

Respondents note that the alleged acts of plunder and graft and corrupt practices attributed to the other respondents have been shown to have transpired during the incumbency of respondent Joseph E. Estrada as

President of the Republic, and after the issuance of said PCAC Resolution No. 98-5.[55]

Respondents further argue as follows:

[PCAC] had undertaken diligently and carefully the study and evaluation of the properties that will be affected by the C-5 Link Expressway in Barangay San Dionisio, Parañaque City, taking cognizance of the sale of comparable property, the applicable BIR Zonal Value, the opinion solicited from the residents of the properties near the subject parcels of land, the condition or status of the parcels of land, the presence of other buildings and structure near the vicinity of the properties, and the consequential damages to the owners of the affected properties. And, contrary to the allegation of petitioner, the BIR Zonal Value (6[th] Revision) which took effect on February 2, 1998 provides for P20,000.00 per sq. m. value for commercial land along Dr. A. Santos Avenue; and P30,000.00 per sq. m. value for Commercial land along Ninoy Aquino Avenue; furthermore, while the allegations of the complainant that the zonal value of the residential regular (RR) lands in Dr. A. Santos Avenue, San Dionisio, Parañaque City, was fixed by the Department of Finance at P4,500.00 per sq. m. just a year before the AMVEL sale, the same department has fixed the zonal value of commercial land along Dr. A. Santos Avenue, Brgy. San Dionisio, Parañaque City at P20,000.00 and along Ninoy Aquino Avenue at P30,000.00 per sq. m. Parañaque City Ordinance No. 97-08, prescribes the land use plan and the zoning of the Municipality of Parañaque, [and] provides that the lands along Dr. A. Santos Avenue is classified as within C-3 high intensity commercial zone.[56] (Emphasis added)

[The] valuation of the subject properties is justified, and shown to be consonant and consistent with existing accepted appraisal practice and procedures in the appraisal of properties, considering that:

- a) The appraisal of the properties was based on such factors as location, accessibility, selling prices of comparable properties, opinion of people living within the vicinity of the subject properties, the amenities present like water, electricity, transportation and communication with the vicinity of the property and the status or condition of the parcels of land. The Committee has noted that the parcels of land have been developed to mean a great change in its former condition as salt beds or Salinas and the complainant has acknowledged this truth in his complaint when he stated that the former salt beds are filled up or covered by filling materials;
- b) During the ocular inspection conducted by the technical committee tasked to inspect the subject properties, these parcels of land were already filled and developed.
- c) Ordinance No. 98-08, which prescribed the land use plan and zoning of the Municipality of Parañaque, provides that Barangay San Dionisio where subject properties are located, is within C-3 high intensity commercial zone.[57]

B. COMMENT OF PRIVATE RESPONDENTS MARIANO Z. VELARDE AND FRANKLIN M. VELARDE

Private respondents Velarde allege that the transactions involving the purchase of the subject nine (9) parcels of land were perfected before Administrative Order No. 50 came into effect. The sale was perfected on May 8, 1998, almost a year before the issuance of Administrative Order No. 50, when the TRB sent a letter to the PEA instructing the latter to prepare the checks representing payments for the subject properties.[58]

Private respondents Velarde aver that Amvel never questioned the amount of the purchase price, gave its imprimatur to the purchase price set by TRB, and the last thing to be done was the actual receipt of the checks in payment thereof by Amvel. Unfortunately, however, Amvel was not paid. Instead, TRB conducted a series of appraisals of the subject property.

As of December 9, 1998, Amvel wrote to the DPWH Secretary, asking that it be paid the purchase price set by the PCAC as directed by TRB.[59] In a letter dated January 20, 1999, TRB informed Amvel that it was willing to purchase the latter's properties at a price arrived at by adopting a formula close to averaging all four (4) appraisals obtained from the PCAC, as well as the three (3) private appraisal companies.[60] Thereafter, TRB issued

Resolution No. 99-02 on January 15, 1999 approving the purchase of the subject properties in the aggregate amount of P1,221,799,804.00.[61]

On April 22, 1999, Amvel was able to receive full payment of the agreed purchase price, but the amount received was P1,221,766,640.00.[62]

Private respondents argue that the subject properties were not overpriced. The properties were zoned and classified as commercial areas, not agricultural or residential. Massive development and improvement works were immediately carried out and introduced after these properties were acquired by Amvel through purchase or joint venture agreements.[63]

Private respondents cited several factors why a higher appraisal value than the one eventually used should be adopted, and these are:

- The PCAC, as early as April 21, 1998 (way before the election of respondent Estrada to the presidency in the May 10, 1998 elections), had already fixed the price of the properties on the site, along with those found in the area: between P20,000.00 and P25,000.00 per sq. m.

- In 1997, the site was appraised at P18,000.00 per sq. m., and a portion of the same with an area of 49,316 sq. m. covered by TCT No. 133550 was given a development loan accommodation by Metrobank in the amount of P550,000,000.00.

- The current Bureau of Internal Revenue (BIR) zonal valuation appraised the vicinity at P25,000.00 per sq. m.

Private respondents claim that the other properties affected by the C-5 Link Project adjacent to and near the vicinity of the site were acquired and paid for by the government at P25,000.00 per sq. m. in accordance with the MMDA appraisal.[64] For the subject properties, the government was able to save P4,645.00 per sq. m.[65]

The private appraisal companies were engaged by TRB and not Amvel. The final purchase price was imposed upon Amvel by the government, and respondents Velarde had no hand in fixing the said amount. Private respondents Velarde merely acted within the bounds of their duties and powers as officers of Amvel. It was only natural that they would negotiate for an amount most advantageous to the said company. The fact that the purchase price of the subject properties considerably plummeted would certainly negate the allegation that respondent Mariano Z. Velarde exerted influence on respondent Estrada or any other public officer for that matter.

Furthermore, private respondents aver that, except for a small portion, Amvel acquired the properties at prices ranging from not less than P7,500.00 per sq. m. to as high as P9,000.00 per sq. m. Petitioner thus failed to take into consideration the significant incidental expenses for the acquisition, consolidation, improvement and development of the subject properties.

Private respondents claim that the re-alignment of the C-5 Link Project has actually resulted in the significant reduction and decrease of the affected areas, that is, from the original 12 hectares to 7.9 hectares. Hence, petitioner completely erred in claiming that the realignment had actually resulted in a greater profit to Amvel. The subject property, measuring 79,568 sq. m., was just 34.28% of the total area of the site, which was 232,078 sq. m.

To provide a background of the transactions leading to the purchase by the government of the subject properties, private respondents gave its version of the antecedent facts, as follows:

- As early as June 1994, a company by the name of "ADV Realty" had set its sights in developing [a] large expanse of undeveloped parcels of raw lands around the Ninoy Aquino International Airport (NAIA) and in Barangay San Dionisio, Parañaque City into a commercial and business park by entering into various joint venture agreements with several landowners, particularly the Medina- Tirona family.[66]

- A large amphitheater would also be constructed to serve as a multi-purpose complex that would principally serve as the venue for the weekly prayer meetings and healing sessions of the members of the El Shaddai Movement of which herein respondent Mariano Z. Velarde is the Servant Leader.
- In order to consolidate the whole area, joint ventures were likewise forged with the other landowners of the adjacent properties who were all prominent families of Parañaque City (e.g., Medina-Evangelista, Balinghasay and Santos). More importantly, for those properties that were not available for joint venture, ADV Realty acquired them by purchase.
- In 1996, development efforts were immediately poured and instituted into the properties in accordance with the master plan and the business development concepts for the area. In 1997, ADV Realty was able to consolidate a 23-hectare property and pre-development operations thereon were in full blast. ADV Realty's name was then changed into Amvel Land Development Corporation.
- However, Amvel was notified by the government, through the TRB, in the last quarter of 1997 that the site will be affected by the C-5 Link Project. Ex-president Fidel V. Ramos was still the incumbent president at that time.
- Upon examining the proposed alignment of the aforesaid project, Amvel was surprised to find out that it would cut across right at the center of the site. This would render the whole property unattractive to prospective investors as the C-5 Link Project would block all possible ingress to and egress from the property, making accessibility a major concern.
- This would entail a re-evaluation and a radical change in the master plan of the commercial and business park. Once the C-5 Link Project would be constructed, the remaining property of Amvel would be divided into two (2) portions. Both portions would be enclosed by the proposed C-5 Link Project and the rivers found on the north and west side of the property.
- Even other property owners in the area, most notably the SM Holdings Property and ADELFA Property, Inc., also raised objections to the C-5 link Project as the original plan of the said Project posed serious threat to their respective developmental plans for their properties.
- As a result, Amvel, along with SM Holdings Property and ADELFA Property, Inc., negotiated for the re-alignment of the C-5 Link Project.
- As a consequence thereof, Amvel was constrained to construct another bridge as a passageway for the portion located at the southern side of the property. To accomplish such a task, Amvel was forced to purchase the property where the bridge would be constructed.
- The final re-alignment plan that was jointly prepared by Amvel, SM Prime Holdings and ADELFA Properties, Inc. and duly approved by the TRB, had actually and in reality resulted in the substantial reduction of the portion of the site that would be affected by the C-5 Link Project. From the original area of TWELVE (12) hectares, it was reduced to only 7.9 hectares.
- Had Amvel really intended to capitalize on the business opportunity brought about by the C-5 Link Project, as wrongfully alleged by petitioner, it could have proposed a re-alignment plan that would consume a larger portion of the site.

Private respondents argue that the subject properties were not bought by Amvel for the purpose of selling them to the government, in the light of the proposed construction of the C-5 Link Project. After Amvel and TRB finally agreed on the terms of the sale, all the portions of the site that were caught along the path of the C-5 Link Project were sold to the government.[67] These properties are described in the following table:

TCT No.

Original Size (sq m)

Previous owner

Date of JVA/
Purchase

Size sold to gov't.

140397 140396

122,694
10,099

Emmanuel Tirona, Ma. Aurora T. Mercado, Rosario T. Medina and Corazon T. Medina

(JVA with ADV Realty)
November 16, 1994

44,669 9,427

140388

49,316

Josefina, Adelaida, Jose and Teofilo, all surnamed Balinghasay

Purchased by ADV realty on
January 23 1998.

6,643

140389

15,721

Balinghasays

Purchased, by ADV Realty
on January 21, 1997

2,153

140402

3,813

Arcadio C. Santos

Purchased by ADV realty
on September 12, 1997

3,813

131446

3,908

Victor B. Santos

Purchased by ADV

Realty in 1997

3,908

140404 140405

2 parcels 19,543 sq m

Ma. Asuncion Jugo, Jose Ramon L. Santos and Rona S. Agustines

JVA with ADV Realty on

May 27, 1997

753 2,973

140408

62,448

Leonor Crisostomo, Julieta, Amelia, Elizabeth, Angela Katrina and Kristina Isabela, all surnamed Medina

Land Development Agreement

with ADV Realty on December 19, 1996

5,229

The properties acquired by the government that were previously owned by (1) Emmanuel Tirona, Ma. Aurora T. Mercado, Rosario T. Medina and Corazon T. Medina; (2) Ma. Asuncion Jugo, Jose Ramon L. Santos and Rona S. Agustines; and (3) Leonor Crisostomo, Julieta, Amelia, Elizabeth, Angela Katrina and Kristina Isabela, all surnamed Medina, were all part and parcel of larger tracts of land that were subject of several joint venture agreements. The remaining portions were developed in accordance with the undertaking of Amvel under said agreements.

In a Memorandum of Agreement[68] dated February 2, 2000 entered into by Emmanuel Tirona, Ma. Aurora T. Mercado, Rosario T. Medina and Corazon T. Medina, and Amvel, the latter paid the former the amount of P320,000,000.00 as their share of the purchase price paid by the government in acquiring the portion of the property subject of the Development Joint Venture Agreement (with a Lease Clause) entered into by the same parties.

Private concrete roads were already constructed within the vicinity and modern drainage systems were already installed therein. More than one (1) million cubic meters of soil were deposited on the site to raise its elevation above the highest flood level recorded in the area, appropriately compacted with the use of heavy equipment as required in a business/commercial land use.

If Amvel had an advance information that the C-5 Link Project would traverse a portion of the site way back in 1996, then it should have only focused its sight and poured its resources on the 79,568 sq. m. of land affected by the said Project by simply purchasing only to the extent of the same. Because of the intrusion of the C-5 Link Project into its property, Amvel had to re-evaluate and change the master plan to conform to the significant changes in the shape and configuration of the site, which was destructively broken into two parts by the C-5 Link Project. That the C-5 Link Project greatly reduced the viability and marketability of the intended commercial and business park is beyond cavil, as the construction of the C-5 Link Project would leave Amvel with a property enclosed or bounded by a highway and rivers without any access, thereby forcing it to incur major additional costs and expenses to build the necessary bridges and access roads to connect the remaining portions to the Ninoy

Aquino Avenue.

Amvel, as a consequence of the Project, likewise incurred delays in introducing the needed developments it undertook to infuse into the property, subject of the Land Development Agreement it entered into with the Medina family. The amount of P10,000,000.00 was paid by Amvel to the Medina family as penalty for the aforementioned delay.[69]

Respondents Velarde allege that they had no participation whatsoever in the preparation of the fabricated CA Decision[70] dated October 29, 1998 in Buenaventura- Santiago, et al. v. Sps. Medina, et al., docketed as CA G.R. No. CV 54402. Amvel received a copy of said decision on November 25, 1998. After receiving the same, Amvel immediately furnished a copy to the TRB and the Register of Deeds of Parañaque City, to have the same annotated on the Transfer Certificates of Title covering the parcels of land subject of the aforesaid case. When Amvel tried to secure a certified true copy of the said decision from the CA, as required by the Register of Deeds and the TRB, it discovered that the case was still pending for resolution and no such decision had been promulgated. Amvel sent a letter dated February 8, 1999 to the Register of Deeds of Parañaque City to explain what happened and request that the annotations already made on the titles be immediately canceled.[71] On the same date, Amvel sent a letter to the TRB informing the latter of its discovery that the alleged decision was spurious.[72] Amvel requested that the CA conduct a full-blown investigation regarding the matter.

C. COMMENT OF RESPONDENT DUMAUAL[73]

Respondent Dumauual was Officer-in-Charge of the TRB from November 28, 1997 to September 8, 1998.

In his statement of the facts, he pointed out that the alignment of the C-5 Link Expressway project was revised on April 1998 because, during the discussion with AMVEL on the acquisition of right-of-way ("ROW") for the revised alignment, it was found that an area between the south slip road and the main C-5 Link would not be acquired for ROW, which in effect would have produced a pocket with limited use.[74]

On September 16, 1998, a Memorandum was sent by respondent to the Board suggesting that "the south slip road be located nearer to the main C-5 Link to maximize use of real estate." As of that date, TRB was still unable to formalize the transaction with AMVEL and to pay the latter. Respondent Dumauual, despite due diligence, was unable to determine the veracity of the relevant titles submitted for payment. He wrote to the TRB about the problems with the titles and recommended that said properties be expropriated. He was relieved as OIC of TRB on September 8, 1998 and had no more personal knowledge regarding the other allegations of petitioner.[75]

D. COMMENT OF PRIVATE RESPONDENT VIGILAR

Private respondent Vigilar raises the following grounds for the dismissal of the petition:

- The petition is not the proper remedy. Petitioner cannot invoke Rule 45 to question the subject resolution and order of the Ombudsman.
- The petition fails to raise any question of law.
- In any case, the Office of the Ombudsman acted correctly, on the basis of evidence presented, in dismissing the complaint considering that -
- Private respondent Vigilar, being the ex-officio chairman of the TRB during the relevant period, was in no position to be legally responsible for the TRB's acquisition of AMVEL's properties.
- The transaction between the TRB and AMVEL concerning the right-of-way for the C-5 Link was perfected before the promulgation of Administrative Order No. 50.

- The transaction between the TRB and AMVEL concerning the right-of-way for the C-5 Link is valid, regular, and complies faithfully with Executive Order No. 132, the law governing at the time the contract of sale was perfected. The said purchase was not grossly and manifestly disadvantageous to the government.
- The evidence does not support a finding of probable cause for the crime of plunder against private respondent Vigilar.
- The evidence does not support a finding of probable cause for violation of Section 3 (A), (E), (G) and (J) of Republic Act 3019 against private respondent Vigilar.
- The petition, like petitioner's complaint before the Ombudsman, is built on malicious half-truths, hearsay and even fabricated evidence.

Private respondent Vigilar avers that he only exercised administrative supervision over the TRB under the provisions of Sec. 38, Ch. 7, Book IV of the Revised Administrative Code of 1987; and that he acted in good faith, relying on the recommendation of the technical officers of the TRB, and cites *Arias v. Sandiganbayan*[76] to support this averment.

He asserts that as early as May 7, 1998, the TRB had already approved the properties to be affected by the C-5 Link based on the PCAC recommendation of P20,000 per sq. m., and such approval was made in accordance with Executive Order No. 132, the law then prevailing. Unfortunately, the TRB had limited funds, so, hoping for a lower price, it started negotiations with the property owners, including AMVEL. The TRB and AMVEL agreed subsequently that the price should be adjusted by hiring independent appraisers and getting the average of the values to be determined by these independent appraisers and the values stated in the PCAC resolutions. Later, on January 15, 1999, in keeping with that agreement, the TRB approved the new, substantially reduced purchase price of P15,350.00 per sq. m. More than a month later, on February 17, 1999, Administrative Order No. 50 was promulgated setting new standards for the determination of the fair and reasonable value of private lands that would be expropriated for government infrastructure projects. This Administrative Order was intended to supplant Executive Order No. 132.

Private respondent alleges that it is a basic fact that a "contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price" (Article 1475 [1], Civil Code). Therefore, at the time TRB and AMVEL agreed as to the process for determining the purchase price, the contract of sale was already perfected.

The requisites for a valid price in a contract of sale are: (1) it must be real; (2) it must be in money or its equivalent; and (3) it must be certain or ascertainable at the time of the perfection of the contract (Articles 1471, 1458, 1468, 1469 and 1473, Civil Code).[77] Under Article 1469, price is considered certain if "it be so with reference to another thing certain, or that the determination thereof be left to the judgment of a specified person or persons." Said article further provides: "Even before the fixing of the price by the designated third party, a contract of sale is deemed to be perfected and existing."

Private respondent Vigilar avers that from the time AMVEL agreed sometime in the middle of 1998 that the price would be the average of the values stated in the independent appraisers' reports and the PCAC resolutions, the government could no longer re-negotiate for a lower price. Thus, even before the TRB approved the price at P15,350.00 per sq.m. on January 15, 1999, the price had already become certain. It was immaterial that the Deeds of Sale were signed later. The execution of these Deeds of Sale was a mere formality; it was meant to document a contract that had been perfected earlier.[78]

Private respondent claims that applying Administrative Order No. 50 retroactively to the contract between the

TRB and AMVEL violates Article 4 of the Civil Code, which provides that "[l]aws shall have no retroactive effect, unless the contrary is provided." Administrative Order No. 50 does not state that it is exempt from this rule; it does not provide for retroactive effect.

Petitioner has not shown that private respondent Vigilar, as Secretary of the DPWH and concurrent TRB chairman, amassed any ill-gotten wealth to warrant a charge of plunder. Petitioner does not allege that private respondent Vigilar received any money or derived any benefit, of any kind, from the right-of-way acquisition of the affected lands.

Regarding the allegation that he violated Sec. 3 (a) of R.A. No. 3019, private respondent points out that it is not clear whether he was accused of being the public official who persuaded, induced, or influenced another public officer to perform an act in violation of rules and regulations; or the one who was so persuaded, induced, or influenced. Petitioner likewise failed to prove that the elements of violation of Section 3 (a), (e), (g) and (j) of Rep. Act No. 3019 have been committed by private respondent Vigilar. Thus, petitioner's case against him is inadequate.

Private respondent argues that petitioner likewise failed to prove conspiracy. He states that a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[79] He cites the "well-settled rule" that "conspiracy must be proven as clearly as the commission of the offense itself." [80]

Petitioner alleges that respondents Estrada, Ronaldo Zamora, and Vigilar gave their imprimatur to the takeover by the Coastal Road Corporation of the UMPC, as well as the de-prioritization of the construction of the C-5 Link when, on November 23, 1999, they were present in a "photo-op" that took place in Malacañang. Private respondent avers that the "photo-op" was staged by Cavite government officials to show their constituents that the MCTE Project was being fast-tracked. Respondents merely graced the occasion in response to requests made by these local officials. They could not be taken to court simply because of this; otherwise, it would be "guilt by photograph," which was contrary to plain and common sense.[81]

Private respondent points out petitioner's reliance on a certain "executive summary" [82] to support the latter's allegation that the subject transaction was grossly anomalous. This document, according to private respondent, has absolutely no evidentiary value, as its origin is unknown, and it is unsigned. As regards petitioner's submission of a Special Report dated August 16, 2000 from the Philippine Daily Inquirer as evidence, private respondent points out that newspaper and magazine articles are "hearsay twice removed and have no evidentiary value whatsoever." Private respondent Vigilar cites in support of this contention the decision laid down by this Court in *People v. Woolcock, et al.* [83]

E. COMMENT OF RESPONDENT OFFICE OF THE OMBUDSMAN

Public respondent raises the following grounds for the denial of the instant petition:

- The assailed resolution and order of the public respondent are not appealable under Rule 45 of the Rules of Court.
- Petitioner has not adduced sufficient evidence to show that the transactions involving the purchase of the AMVEL lands under Executive Order No. 132, Series of 1937 are unlawful or irregular.
- Whether under Administrative Order No. 50, Series of 1999 or Executive Order No. 132, Series of 1937, respondents substantially complied with the prescribed procedure in determining a fair and reasonable valuation of the properties in question while exercising the power of eminent domain.

- There is no law or particular rule that prohibits the re-alignment of the C-5 Link Project.
- There is nothing unlawful or irregular in getting a reasonable return on investment; neither is there evidence of bloating of prices.
- Petitioner's assertion that TCT No. 140397 (formerly TCT No. (S-14729) 876474) comprising fifty-six (56%) percent of the total area sold by AMVEL to the government was not a clean title is rendered moot and academic by the Court of Appeals' Decision dated 21 April 1999 and the Memorandum of Agreement executed by and between the contending parties.
- The public respondent cannot act on complaints based on mere speculations and conjectures.
- Matters that are left to the exercise of wisdom and discretion of the Office of the Ombudsman are not appealable under Rule 45 of the 1997 Rules of Civil Procedure, and absent any jurisdictional infirmity, the Ombudsman's determination of probable cause, or the lack of it, deserves great respect and finality.

According to public respondent, the law on sales contemplates the consummation of the sales transaction at the moment there is a meeting of minds of the parties thereto, upon the thing which is the object of the contract and upon the price.[84] In the case at bar, the meeting of the minds for the purchase of AMVEL properties occurred on May 8, 1998, the date TRB instructed PEA to pay the checks for the properties expropriated through the mode of voluntary sales. Public respondent alleges:

Significantly, the purchase transactions over the subject properties are negotiated ones. On 9 August 1997, notices of acquisition were sent by TRB to the affected landowners. In view of the acceptance by AMVEL of the amount offered by the government during the negotiation process, no expropriation proceeding was initiated in court. Upon appraisal by the [PCAC], the parties successfully arrived into an agreement as to the value or purchase price of the affected properties on or before 08 May 1998, as evidenced by a letter sent by respondent Ramon V. Dumaul, Officer-in-Charge, Toll Regulatory Board, to the Public Estates Authority, instructing the latter to prepare the checks representing payments for the subject properties. It is therefore clear that the governing law at that given time was still Executive Order No. 132, Series of 1937, and not Administrative Order No. 50, which took effect on 17 February 1999.[85]

Public respondent Ombudsman contends that in claiming that the subject properties were overpriced, petitioner failed to consider that the transactions were entered into by the State in the exercise of the power of eminent domain, which necessarily involves a derogation of a fundamental or private right of the people. Public respondent asserts that "[the] appraisal or assessment of the property subject of the taking is not based solely on the market value or zonal valuation made thereof by the Bureau of Internal Revenue (BIR)." [86]

Administrative Order No. 50, which petitioner believes should have been followed, provides the following standards for the assessment of the value of the land:

SECTION 3. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceeding. x x x

(a)

The classification and use for which the property is suited;

(b)

The developmental costs for improving the land;

(c)

The value declared by the owners;

(d)

The current selling price of similar lands in the vicinity;

(e)

The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f)

The size, shape or location, tax declaration and zonal valuation of the land;

(g)

The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h)

Such facts and events so as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

Executive Order No. 132 issued on December 27, 1937, on the other hand, laid down the following procedure:

(i) The Director of the Bureau of Public Works, City or District Engineer or other officials concerned shall make the necessary negotiations with [the] owner of the property needed for public use with a view to having it donated, or sold to the government at not to exceed the assessed valuation prior to the investigation and survey of the project.

(j) If the negotiation fails, the officials concerned shall forthwith and by formal notification submit the matter to an Appraisal Committee which is hereby created and which shall be composed of the Provincial Treasurer, as Chairman, and the District Engineer and the District Auditor, as members, of the province where the land is located. If the property is situated in a chartered city the Appraisal Committee shall be composed of the City Treasurer, as Chairman and the City Engineer and City Auditor, as members thereof. x x x

Public respondent contends that there was sufficient compliance with the guidelines and prescribed procedure set forth in both issuances. The referral to PCAC for the determination of the fair market value of the properties was in order. PCAC's appraisal of P20,000.00 per sq. m. was a result of several factors: assessing the location accessibility; selling prices of comparable properties; the amenities present like water, electricity, transportation and communication within the vicinity; and the status or condition of the parcels of land. TRB's act of subjecting the properties to another round of appraisal by independent appraisal companies was but a manifestation that it was protecting the government's interests by ensuring that it would not be put to a disadvantageous position by the appraisal recommended by PCAC. The result of the appraisals conducted by the three independent appraisal companies led TRB to come up with an average appraisal in the amount of P15,355.00 per sq. m. in purchasing AMVEL's properties. The amount was below the original recommendation of PCAC to purchase AMVEL's properties at P20,000.00 per sq. m. The determination of this just compensation price was fair and reasonable.

The Zonal Valuation (6[th] Revision) that took effect on February 2, 1997 fixed the amount of P4,500.00 per sq. m. as valuation of the residential regular (RR) lands situated on Dr. A. Santos Avenue, San Dionisio, Parañaque City. Commercial land along the same place was fixed at P20,000.00 per sq. m. and along Ninoy Aquino International Airport at P30,000.00 per sq. m. The affected AMVEL properties were classified by Ordinance No. 97-08 as within the C-3 high-intensity commercial zone.

Public respondent claims that the Appraisal Committees created under E.O. 132 are endowed with special technical knowledge, skills, expertise and training on the subject of appraisal; that the discretion given to the authorities on this matter is of such wide latitude that the Court will not interfere therewith, unless it is apparent that it is being used as a shield to a fraudulent transaction; and that government agencies or bodies dealing with basically technical matters deserve to be disentangled from undue interference from the courts, and so from the Ombudsman as well (Concerned Officials of the Metropolitan Waterworks and Sewerage System [MWSS] v. Vasquez,[87] citing Felipe Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary[88]).[89]

Public respondent further contends:

[The] final re-alignment plan duly approved by the TRB resulted in the substantial reduction of the area traversed by the C-5 Link Project from the original area of twelve (12) hectares to only 7.9 hectares, and only after averaging the appraisals of government and private appraisers. This factual circumstance indicated prudence on the part of private respondent PEA and TRB officials in effecting the power of eminent domain, as they gave due regard to the rights of the landowners thereof. Again, the reduction in the expropriated private lands upon consideration of the rights of the landowners may not be criminally actionable absent any showing of irregularity aliunde.

x x x

There are well-observed rules in the field of real estate. Judicial notice may be taken of a cardinal rule, which is likewise of common knowledge, that the value of real property appreciates over time and at a rate which depends on the extent of development of the area where the land is situated. Thus, the price sold at any given time does not mean that the same price would be utilized for a subsequent sale thereof, especially where the property has undergone development or has been converted into land for commercial purposes. [Even] petitioner concedes that AMVEL developed the lands which were sold to the government. Thus, it was but reasonable for the price of the lands to have appreciated. Besides, private respondents Velarde and/or AMVEL being engaged in real estate business, it is only natural for them to ensure that profits are obtained on top of their investments, or even speculate, for that matter. As declared by this Honorable Court in the case of Tatad vs. Garcia, Jr., "in all cases where a party enters into a contract with the government, he does so, not out [of] charity and not to lose money, but to gain pecuniarily."[90]

x x x

In relation to petitioner's allegation that the bloated cost of right-of-way (ROW) project depleted the proceeds of the US \$68.6 Million loan for the right of way acquisition, the public respondent finds the said allegation vague and without factual basis. The amount of loan proceeds was not a factor that should be considered in appraising the value of the subject properties.[91] (Emphasis ours)

F. COMMENT OF RESPONDENTS RONALDO B. ZAMORA, MANUEL B. ZAMORA, JR., CESAR E.A. VIRATA, AND LUIS L. VIRATA

1. Petition should be dismissed as Petitioner is guilty of forum-shopping

Private respondents allege that petitioner admits that he previously filed a complaint[92] with respondent Office of the Ombudsman against respondents Ronaldo B. Zamora, Manuel B. Zamora, Jr., and Luis J. L. Virata (OMB Case No. 0-00-1758); however, he did not attach a copy of said complaint to his petition filed before this Court. Said complaint was dismissed by the Ombudsman. Petitioner's Motion for Reconsideration in said case was still pending as of the time of the filing of the Comment. Private respondents conclude that petitioner had filed multiple suits involving the very same issues against respondents, and he merely rehashed the very same charges and allegations in the second complaint. This, according to private respondents, was forum shopping, defined by this Court in *Gatmaytan v. Court of Appeals*,[93] as "the institution of two (2) or more actions or proceedings

grounded on the same cause on the supposition that one or the other court would make a favorable disposition."

Both complaints filed by petitioner are grounded on the same causes and allegations surrounding the purported illegality of the "transfer" of the Coastal Road Project to the Coastal Road Corporation. Respondents contend further:

[Petitioner] simultaneously and successively availed himself of several judicial remedies by filing two (2) separate complaints against herein respondents, all substantially founded on the same essential facts and circumstances, and all raising substantially the same issues. Petitioner obviously did this to increase his chances of obtaining a favorable decision if not in one case or one court or tribunal, then in another.[94]

2. Petition does not raise any question of law.

Private respondents submit that a question of law "exists when there is a doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts." They further submit that "[one] test is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case it is a question of law; otherwise it will be a question of fact. The question must not involve the examination of the probative value of the evidence presented." [95]

3. Petition, on its face, does not raise any credible factual issue in respect to the dismissal of the complaint against respondents.

Petitioner failed to controvert the findings of fact and law made by the Ombudsman in his assailed Resolution. Furthermore, the Ombudsman, in its Resolution dated July 16, 2001 in OMB Case No. 00-00-1758, comprehensively passed upon the very same allegations of petitioner in OMB Case No. 0-001-00577.

Petitioner's allegations in his complaint are contradictory. On the one hand, he claims that the de-prioritization of the C-5 Link Expressway and the prioritization of the R-1 Expressway Extension would benefit Caylabne Bay Resort. On the other hand, complainant himself alleges that the de-prioritization of the C-5 Link Expressway will result in a minimal increase in vehicle volume along the R-1 Expressway. Clearly then, no appreciable benefit would result if Coastal Road Corporation indeed pushed for the de-prioritization of the C-5 Link Expressway because the alleged benefit to Caylabne Bay Resort would be negated by the revenue loss due to minimal increase in the vehicular volume along the entire expressway.[96]

4. The petition, like petitioner's complaint before the Ombudsman, is anchored on hearsay evidence twice removed.

Private respondents allege that in building a case against them regarding the purported de-prioritization of the C-5 Link Expressway, petitioner quotes extensively from the February 7, 1999 article from the Philippine Star newspaper. They contend that "[it] is elementary that newspaper and magazine articles are hearsay twice removed and have no evidentiary value whatsoever.[97]

G. COMMENT OF PRIVATE RESPONDENT RUBEN A. DE OCAMPO[98]

Private respondent Ruben de Ocampo (de Ocampo) argues that the dismissal by the public respondent of the complaint in the proceedings a quo should be sustained in toto because:

- Petitioner fails to raise distinct and pure questions of law in the instant petition which omission is fatal to his appeal by certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure.
- The petitioner has no legal standing to institute the charges with the Office of the Ombudsman for alleged

violations of Sec.2 in relation to Sec. 1 sub-paragraph d(1), (3) and (6) of R.A. 7080, and Sec. 3 sub- paragraph (e) and (g) of R.A. 3019.

- The facts as alleged in the complaint-affidavit and herein petition for review do not constitute the commission of any offense on the part of respondent De Ocampo and no evidence whatsoever was presented against respondent De Ocampo to support the allegations in petitioner's complaint-affidavit.

De Ocampo avers that he held the position of Public Utility Regulation Officer II at the Toll Regulatory Board, a position rated at Salary Grade-15, and one that was neither managerial nor supervisory in nature. As such, he neither had recommendatory nor decision-making powers or functions as regards the TRB.

De Ocampo contends that petitioner lacks the required personal knowledge of facts constitutive of the charges in the latter's Complaint before the Office of the Ombudsman. Petitioner failed to allege the means by which he supposedly came to be acquainted with the material facts stated in his Complaint. According to him:

It is patent and undeniable that Petitioner was never privy to the contracts and communications alleged in his Complaint and in this Petition for Review. Nowhere in the records does it appear that Petitioner ever participated in any of the transactions referred to. Petitioner's conclusions are merely hearsay and should therefore be disregarded. x x x [99]

De Ocampo cites Section 20 of Rep. Act No. 6770, "The Ombudsman Act of 1989," which states:

SECTION 20.Exceptions. -- The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

- (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
- (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
- (3) The complaint is trivial, frivolous, vexatious or made in bad faith;
- (4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
- (5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of.

In this case, de Ocampo alleges that petitioner failed to show any interest in or show proof of personal knowledge of the transactions as investigated by the Office of the Ombudsman, and has neither alleged nor proven that his rights have been violated or that he has been put at a disadvantage by the consummation of the assailed transactions through any act or omission of de Ocampo.[100]

Furthermore, private respondent contends:

[The] acts complained of by Petitioner occurred more than one (1) year prior to the institution of the original Complaint before the Office of the Ombudsman on 16 April 2001. The last assailed transaction, more specifically, the act of then President Estrada in granting his imprimatur and approval to CRC's proposal to deprioritize the construction of the C-5 Link Expressway and to prioritize the R-1 Expressway Extension, was consummated on 23 November 1999 or at least one (1) year and four (4) months prior to the filing of the Complaint. The above-quoted Sec. 20 par. 5 of R.A. 6770 clearly states that "The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission of if it believes that ... The complaint was filed after one year from the occurrence of the act or omission complained of." Considering the length of time which elapsed between the act complained of and the filing of the Complaint, the Office of the Ombudsman should not have even considered the charges put ... forth by Petitioner. In any event, the Complaint was correctly and cogently dismissed by the Ombudsman for utter lack of merit. x x x [101]

H. COMMENT OF PRIVATE RESPONDENT FRISCO F. SAN JUAN

Private respondent Frisco F. San Juan (San Juan) raises the following arguments in his Comment:

- The petition must be dismissed outright as it does not raise pure questions of law or cite any special and important reasons for its allowance under Rule 45 of the Revised Rules of Court.
- In any case, respondent Ombudsman did not commit any reversible error or grave abuse of discretion in dismissing petitioner's complaint a quo, in that:
- Petitioner completely failed to establish the existence of any of the elements of plunder in order for the complaint to prosper as against respondent San Juan or any of his co-respondents.
- Nor was petitioner able to establish any violation by respondent San Juan of the Anti-Graft and Corrupt Practices Act. On the contrary, the acquisition of the AMVEL Properties for the government's tollway project was neither disadvantageous to the government nor did it give any unwarranted benefits, advantages or preference to any party.
- Petitioner failed to otherwise specify any act or behavior on the part of Respondent San Juan which constitutes a breach of the Code of Conduct and Ethical Behavior for public officials and employees.
- Petitioner's other imputations and insinuations of anomalies in respect of the subject expressway construction are equally baseless and purely speculative accusations of wrongdoing on respondent's part.
- Given the patently baseless and utterly deficient complaint for "plunder", "graft", etc., the additional "fact-finding" proceedings which petitioner sought to have in the case would have added nothing to petitioner's cause against respondents.[102]

San Juan, the Chairman of the PEA from July 1998 to February 2001, submits that a petition for review on certiorari, under the mode of appeal provided by Rule 45 of the 1997 Rules of Civil Procedure, is required to raise "only questions of law" which shall be distinctly set forth in the petition, the Honorable Court not being a trier of facts. Thus, in certiorari proceedings under Rule 45, the findings of fact below as well as the conclusions on the credibility of witnesses are generally not disturbed, the question before the court being limited to questions of law.[103]

According to San Juan, Rule 45 likewise provides that for the petitions to be filed under it to be allowed, there must be special and important reasons therefor, as when the court a quo has decided a question of substance not heretofore determined by the Honorable Court, or has decided it in any way probably not in accord with law or with the applicable decisions thereof; or when the court a quo has so far departed from the accepted and usual course of proceedings, or so far sanctioned such departure by a lower court as to call for the exercise of the power of supervision of this Court.

San Juan contends that at the heart of all the purported "serious errors of law" raised by petitioner are essentially factual questions, which petitioner would have the Honorable Court resolve. Thus, San Juan avers that petitioner asks that this Honorable Court determine:

- if based on the appraisals of the properties involved, the right-of-way acquisitions were "overpriced";
- if the purchase of the subject properties "had been consummated on 7 May 1998" ;
- if there was "compliance with the procedure for the valuation of the properties involved";
- if respondents "amassed wealth" from the subject transaction as to be liable for plunder;
- if President Estrada "intervened" in the purchase of the right-of-way and the payment thereof;

- if the titles transferred to the Republic were clean;
- and so on.

San Juan concludes from the above that all these questions require an appreciation of the evidence and an examination of the probative value of the proofs presented to determine the truth or falsity of the factual claims of the parties below; these are thus factual questions.

As regards petitioner's allegations of plunder, San Juan notes that "nowhere in the complaint was it alleged that respondent San Juan or any of his co-respondents received any part of the purchase price for the lands purchased by the Government from AMVEL from the right of way." [104] The initiative of the TRB not only in renegotiating the purchase price and in causing the re-appraisal of the properties by three (3) appraisers but also in successfully reducing the purchase price cannot be the product of, and is in fact inconsistent with, respondents' supposed "connivance" or "collusion" with AMVEL.

San Juan further alleges that the negotiation, perfection and execution of the Deed of Sale of the lands in question between TRB and Amvel were all done without the participation or involvement of PEA, as it was never involved in the renegotiation efforts. This is consistent with the terms of the TOA and the MOA, where the "responsibility for acquiring the lands," "the negotiation with its individual owners" and "the preparation of the necessary documents" including the "cancellation of the titles in the name of the individual lot owners" and the "transfer thereof in the name of the government" were all vested in TRB without the intervention of PEA.

San Juan alleges that the following steps were taken to ensure the regularity of the questioned transaction:

- Prior to the full payment of the purchase price to the sellers, TRB ensured that the Deeds of Sale were executed by authorized signatories, with the required Board resolutions and Special Powers of Attorney and duly notarized.
- TRB likewise made certain that the real estate taxes covering the remaining quarters of the year and the documentary stamp taxes due on the transactions equivalent to 1.5% of the purchase price were shouldered and paid for by AMVEL with the corresponding tax clearance duly issued by the Bureau of Internal Revenue; and that all titles to the properties were clean and transferred in the name of the Republic of the Philippines before the balance of the purchase price was fully paid.
- Other than paying the purchase price for the properties, the Government did not pay any expenses for notarization, taxes and transfer fees, registration and processing of the transfer of titles to the Republic of the Philippines and clearing the properties of occupants and their relocation.

San Juan concludes that contrary to petitioner's claims, AMVEL never received a "windfall from the government for which it acquired for almost nothing." In truth, apart from receiving a purchase price reduced to the extent of P370 million, AMVEL was required to pay, as it did, expenses normally shouldered by a seller - all these on top of what petitioner himself recognized as developments undertaken by AMVEL on the properties prior to their acquisition by the government. [105]

San Juan contends that tax declarations, which petitioner presented as evidence of the alleged overpriced purchase price of the properties, are neither proof of the true market value of properties nor conclusive evidence of their value, but only enable the assessor to identify the same for their assessment levels. [106]

Furthermore, San Juan alleges that the acquisition cost of a property cannot be the sole basis for determining its fair value; the current value of similar properties and their actual or potential uses must be considered together with other factors. [107]

Regarding petitioner's insistence that Administrative Order (A.O.) No. 50 should have been applied, San Juan's averments are summarized below:

- A.O. No. 50 would have no application to the contract between TRB and AMVEL which had been priorly perfected on May 7, 1998.
- The Zonal valuation (6th Division) which took effect on February 2, 1997, fixing the amount of P4,500/sq m as valuation of the affected properties, refers to residential regular (RR) lands situated in Dr. A. Santos Avenue, San Dionisio, Paranaque City. The commercial lands along same place was fixed at P20,000.00/ sq m and along Ninoy Aquino International Airport at P30,000/00 per sq m. The affected AMVEL properties were classified by Ordinance No. 97-08 as within the C-3 high intensity commercial zone.
- A.O. No. 50 does not in any way prohibit the conduct of a negotiated sale which is more expeditious and less expensive for the Government than engaging in a protracted expropriation proceedings over the properties with the owners thereof. The purported costs in terms of time, resources and money will not necessarily result in savings for the Government.
- Even in expropriation proceedings, just compensation for the properties must be determined. And by "just compensation" is meant "a fair and full equivalent for the loss sustained, which is the measure of the indemnity x x x the market value of the land taken x x x being the sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property." Thus, to determine just compensation, the parties must add to the market value, the consequential damages. (Tuason v. LTA, 31 SCRA 413) In the present case, the final valuation agreed upon by the TRB and AMVEL, upon consideration of the market value as determined by four (4) independent appraisers, constitutes such just compensation that is not only fair to the seller but to the Government as well.
- The Honorable Court itself had occasion to observe that protracted expropriation proceedings do not only mean delay and difficulty for the Government, it also results in the citizen losing faith in the Government and in its readiness to pay for what it appropriates. x x x

In this case, the properties affected by the right-of-way involve numerous owners. Thus, in pursuing a negotiated sale instead of opting for expropriation proceedings and arriving at a mutually acceptable acquisition price in consideration for the transfer of clean and unencumbered titles to the Republic, the Government did not suffer any losses, contrary to petitioner's claims.[108]

San Juan claims that neither the TRB nor PEA could have aborted the purchase of the AMVEL properties based on the alleged falsification of the Court of Appeals Decision dated October 29, 1998. These properties were essential for the Tollway Project - a fact which petitioner himself concedes is a reasonable, necessary and urgent public work. Thus, the TRB, more so PEA, could not have simply re-arranged the project plans and decided not to acquire the AMVEL properties. In fact, it is absurd to even suggest that PEA could override the decision to build a cheaper and faster expressway traversing the AMVEL properties. Not only did the AMVEL properties have the most advantageous access to the NAIA, their development was the easiest to implement, because they had already been cleared of squatters and other occupants.[109]

As for San Juan's purported "approval" of the take-over of the Tollway Project by the Coastal Road Corporation (CRC), San Juan states that there is simply no basis for this claim, for the following reasons:

- At the end of 1999, the Malaysian counterpart could no longer fund the project due to currency regulations. After CRC offered to take over the interest of Renong-Berhad, PEA in fact required it so show proof of its financial and technical capability. When respondent San Juan's term as PEA chairman ended, CRC had not yet submitted the PEA requirements. Consequently, respondent San Juan could not have given my approval to de-prioritize the C-5 project and to prioritize the R-1 Expressway extension as allegedly proposed by CRC.

Other than his bare allegations, petitioner has not presented any proof to show that respondent San Juan and the other respondents have turned-over the project to CRC and acceded to its proposal to de-prioritize C-5 project and to prioritize the R-1 Expressway Extensions.

- x x x [The] Ombudsman had already dismissed a related complaint by the same petitioner when he similarly questioned the transfer and takeover of the Project to CRC. Thus, in a Resolution dated 16 July 2001, the Ombudsman dismissed the complaint for plunder and violation of RA 3019 filed by the herein petitioner against Joseph Estrada and other respondents for the transfer and take-over of the MCTE Project to CRC.[110]

San Juan also claims that in asserting that the acquisition price arrived at for the questioned transaction exceeded the limit of P1.7 billion for the right-of-way purchase, petitioner ignores that the landowners of the affected properties are entitled to just compensation for the taking of their properties. San Juan contends that such just compensation is not based on the budget of the government for the project, but is "the fair and full equivalent for the loss sustained, which is the measure of the indemnity x x x the market value of the land taken x x x being the sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property." San Juan further contends that petitioner has not otherwise shown how the entire MCTE Project could be achieved within the said limit of P1.7 billion.[111]

V. ISSUES

The following issues were raised in the petition as well as in respondents' respective Comments:

A. Whether or not the petition should be dismissed for using the wrong mode of appeal and for raising questions of fact

B. Whether or not public respondent Office of the Ombudsman committed serious errors of law as well as grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the questioned Resolution and Order

VI. DISCUSSION

A. Whether or not petition should be dismissed for using the wrong mode of appeal and for raising questions of fact

Respondents Office of the Ombudsman, Mariano Z. Velarde, Franklin M. Velarde, Gregorio R. Vigilar, Ronaldo B. Zamora, Manuel B. Zamora Jr., Cesar E.A. Virata, Luis L. Virata, and Frisco F. San Juan contend that a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure before this Honorable Court is not the proper mode of appeal in questioning any final order or resolution of the Office of the Ombudsman; thus, the instant petition should be outrightly dismissed *motu proprio*.

Section 1 of Rule 45 of the 1997 Rules of Civil Procedure provides:

Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

Private respondents Velarde aver that the "courts" referred to in the provision quoted above are "the courts that compose the integrated judicial system and do not include quasi-judicial bodies or agencies such as the Office of the Ombudsman." [112] They claim that the proper mode of appeal in questioning the final judgment, order, or resolution of quasi-judicial bodies or agencies is provided under Rule 43 of the 1997 Rules of Civil Procedure. Section 1 of said Rule states:

Section 1. Scope.. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax

Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6557, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law."

To support their contention that Rule 43 applies to this case, private respondents rely on the Court's ruling in *Fabian v. Desierto*,^[113] which provides:

Under the present Rule 45, appeals may be brought through a petition for review on certiorari but only from judgments and final orders of the courts enumerated in Section 1 thereof. Appeals from judgments and final orders of quasi-judicial agencies are now required to be brought to the Court of Appeals on a verified petition for review, under the requirements and conditions in Rule 43 which was precisely formulated and adopted to provide for a uniform rule of appellate procedure for quasi-judicial agencies.

It is suggested, however, that the provisions of Rule 43 should apply only to "ordinary" quasi-judicial agencies, but not to the Office of the Ombudsman which is a "high constitutional body." We see no reason for this distinction for, if hierarchical rank should be a criterion, that proposition thereby disregards the fact that Rule 43 even includes the Office of the President and the Civil Service Commission, although the latter is even an independent constitutional commission, unlike the Office of the Ombudsman which is a constitutionally-mandated but statutorily-created body. (Emphasis ours.)

Public respondent Ombudsman likewise argues that petitioner has taken the wrong mode of appeal, citing the rule as laid down by this Court in *Tirol v. del Rosario*,^[114] which states:

Section 27 of R.A. No. 6770 provides that orders, directives and decisions of the Ombudsman in administrative cases are appealable to the Supreme Court via Rule 45 of the Rules of Court. However, in *Fabian v. Desierto*, we declared that Section 27 is unconstitutional since it expanded the Supreme Court's jurisdiction, without its advice and consent, in violation of Article VI, Section 30 of the Constitution. Hence, all appeals from decisions of the Ombudsman in administrative disciplinary cases may be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure.

True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

Public respondent avers that no information has been filed with either the Sandiganbayan or the Regional Trial Court; and not only did petitioner resort to the wrong mode of appeal, he also raised factual issues in his petition, which are not proper grounds for appeal under the rule. Public respondent further avers that an error in the choice or mode of appeal is one of the grounds for the dismissal of the appeal under Section 5, Rule 56 of the 1997 Rules of Civil Procedure.^[115] This, aggravated by improper grounds raised on appeal, has rendered the instant petition dismissible.

Although we agree with private respondents Velarde that a petition for review on certiorari under Rule 45 is not the proper remedy for parties seeking relief from final judgments, orders, or resolutions of quasi-judicial bodies or agencies like the Office of the Ombudsman, as has been repeatedly held by this Court,[116] we find that the remedy of appeal under Rule 43 posited by private respondents Velarde is not proper either. This Court subsequently held that under the ruling in Fabian, "all appeals from decisions of the Ombudsman in administrative disciplinary cases may be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure." [117] Said remedy, therefore, is not applicable to cases involving criminal or non-administrative charges filed before the Office of the Ombudsman, which is the situation in the case before us now. As we further stated in Tirol v. Del Rosario:

[An] aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.

In Fabian v. Desierto,[118] the case was dismissed and remanded to the Court of Appeals. This case being criminal and not administrative in nature, however, the conclusion in Fabian is not applicable.

Thus, due to the nature of this case and the allegations involving grave abuse of discretion committed by the Office of the Ombudsman, it should have been filed under Rule 65, and not Rule 45, of the 1997 Rules of Civil Procedure.

This Court had already provided this remedy in Nava v. Commission on Audit,[119] wherein we held:

The remedy availed of by petitioner is erroneous. Instead of a petition for certiorari under Rule 65 of the Rules of Court, petitioner filed with this Court the present petition for review on certiorari under Rule 45 of the Rules of Court pursuant to the provisions of Section 27 of Republic Act No. 6770.

Rule 45 of the Rules of Court provides that only judgments or final orders or resolutions of the Court of Appeals, Sandiganbayan, the Regional Trial Court and other courts, whenever authorized by law, may be the subject of an appeal by certiorari to this Court. It does not include resolutions of the Ombudsman on preliminary investigations in criminal cases. Petitioner's reliance on Section 27 of R.A. No. 6770 is misplaced. Section 27 is involved only whenever an appeal by certiorari under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for certiorari under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In other words, the right to appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like the case at bar. Such right is granted only from orders or decisions of the Ombudsman in administrative cases.

An aggrieved party is not left without any recourse. Where the findings of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may file a petition for certiorari under Rule 65 of the Rules of Court. (Emphasis ours.)

Again, in Flores v. Office of Ombudsman,[120] we ruled as follows:

x x x The instant petition was captioned as a petition for review by certiorari under Rule 45 of the Rules of Court. However, the arguments raised refer to alleged grave abuse of discretion committed by the Office of the Ombudsman. In determining the nature of an action, it is not the caption, but the averments in the petition and the character of the relief sought, that are controlling. Accordingly, we are compelled to consider the instant petition as one under Rule 65 of the Rules of Court.

This case involves a significant amount of money that was already released by the government to a private institution, AMVEL, as purchase price for the road right-of-way in a major infrastructure project that was

undertaken by the former and that naturally affected the general public. Therefore, even if this case was erroneously filed as shown above, and may be dismissed outright under the rules, the Court deems it appropriate to brush aside technicalities of procedure, as this involves matters of transcendental importance to the public;^[121] and to consider the petition as one for certiorari filed under Rule 65 of the Rules of Court.^[122]

Respondents argue further that the petition should be instantly dismissed for failing to raise purely questions of law. As may be gleaned from petitioner's assignment of errors, this Court is being asked to determine the following, which involve questions of fact:

- Whether or not Administrative Order No. 50, s. 1999 is applicable to the sale of the subject properties in this case;
- Whether or not private respondents complied with the prescribed procedure in determining a fair and reasonable valuation of the subject properties;
- Whether or not respondents bloated the purchase price;
- Whether or not respondents changed the original alignment of the Sucat Interchange, which resulted in an increase in the size of the AMVEL property sold to the government;
- Whether or not respondent Mariano Z. Velarde "made a killing" in the sale of the subject properties;
- Whether or not a portion of the subject properties did not have a clean title at the time they were sold to the government;
- Whether or not the cost of the right-of-way was bloated, which led to the depletion of the proceeds of the US\$68.6 Million loan for the right-of-way acquisition; and
- Whether or not respondents de-prioritized the R-1 Expressway Extension over the C-5 Link Expressway.

It is settled that this Court is not a trier of facts^[123] and its jurisdiction is limited to errors of law. As we held in *Tirol v. Commission on Audit*, "There is a question of law in any given case when the doubt or difference arises as to what the law is on a certain state of facts. A question of fact arises when the doubt or difference arises as to the truth or falsehood of alleged facts."^[124]

Moreover, in *Medina v. City Sheriff, Manila*,^[125] we have stated:

For this petition to be granted, it must be shown that the respondent appellate court committed grave abuse of discretion equivalent to lack of jurisdiction and not mere errors of judgment, for certiorari is not a remedy for errors of judgment, which are correctible by appeal.

B. Whether or not public respondent Office of the Ombudsman committed serious errors of law as well as grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the questioned Resolution and Order

In the case now before us, petitioner wants this Court to review the evidence that was already thoroughly studied by public respondent Ombudsman and passed upon in the questioned Resolution.^[126] Thus, public respondent found that:

The uncontroverted facts clearly show that Administrative Order No. 50 was issued on February 17, 1999, while the transaction/ negotiation for the purchase of affected lands was consummated as early as May 1998. As correctly pointed out by respondents, the governing law is Executive Order No. 132, (E.O. No. 132) issued on December 27, 1937, which laid down the following procedure:

- a) The Director of the Bureau of Public Works, City or District Engineer or other officials concerned shall

make the necessary negotiations with owner of the property needed for public use with a view to having it donated, or sold to the government at not to exceed the assessed valuation prior to the investigation and survey of the project.

b) If the negotiation fails, the officials concerned shall forthwith and by formal notification submit the matter to an Appraisal Committee which is hereby created and which shall be composed of the Provincial Treasurer, as Chairman, and the District Engineer and the District Auditor, as members, of the province where the land is located. If the property is situated in a chartered city the Appraisal Committee shall composed (sic) of the City Treasurer, as Chairman and the City Engineer and City Auditor, as members. x x x

A perusal of the guidelines as well as the documentary evidence on the transaction reveals that respondents complied with the prescribed procedure in determining a fair and reasonable valuation of the properties in question. The referral for the determination of the fair market value of the properties to [the] Paranaque City Appraisal Committee which recommended the payment of P20,000.00 per sq. m. thereof was in order. The appraisal was a result of several [factors] ranging from assessing the location accessibility, selling prices of comparable properties, the amenities present like water, electricity, transportation and communication within the vicinity and the status or condition of the parcels of land. TRB's act of subjecting the properties to another round of appraisal, this time, by three independent appraisal companies is a manifestation that TRB had made sure that the Government would not be put in a disadvantageous position in view of a very high appraisal recommended by PCAC. Clearly, the result of the appraisals conducted by the three (3) independent appraiser companies led TRB to come up with an average appraisal in the amount of P15,355.00 per square [meter] in purchasing AMVEL's property. The amount is far below the original recommendation of PCAC to purchase AMVEL's property at P20,000.00 per sq. m.

Complainant merely relied on ... Administrative Order No. 50 issued by respondent Estrada and on the fact that the valuation must be based on zonal valuation fixed by BIR at P4,000.00 per sq. m. a year prior to the sale.

As earlier stated, Administrative Order No. 50 finds no application to the already perfected contract between TRB and AMVEL. On the Zonal Valuation (6[th] Revision) that took effect on February 2, 1997 whereby it fixed the amount of P4,500.00 per sq. m. as valuation of the affected properties however refers to residential regular (RR) lands situated in Dr. A. Santos Avenue, San Dionisio, Paranaque City. The commercial lands along same place was fixed at P20,000.00 per sq. m. and along Ninoy Aquino International Airport at P30,000.00 per sq. m. The affected AMVEL properties were classified by Ordinance No. 97-08, pages 32, 33, 34 as within the C-3 high intensity commercial zone. The properties in question being within commercial zone, PCAC properly recommended valuation of P20,000.00 is justified (sic). We agree with the PCAC that the appraisal of a property is not limited only to the zonal valuation by the BIR. As correctly pointed out by respondents Nacianceno, Daval-Santos, Medina-Cue and de Leon, the appraisal of properties are also based on location, accessibility, selling prices of comparable properties, the amenities present like water, electricity, transportation and communication, etc. In fact, in Administrative Order No. 50, zonal valuation is only one of the many factors being considered in the payment of just compensation.

Complainant also anchored his complaint on two (2) Memoranda dated March 30, 1999, from then President Estrada x x x.

x x x

We find no circumstance to consider the two (2) Memoranda anomalous or irregular. The approval of the Deeds of Sale between TRB and AMVEL by respondent Estrada was in pursuance to the provisions of P.D. 1112.

It may not be amiss to state that the transaction between TRB and AMVEL was consummated as early as May

1998 during the administration of former President Fidel V. Ramos. The payment of the purchase price was only delayed as the TRB conducted a re-appraisal of the property until the new administration of respondent Estrada in June 1998. It was only in January 1999 that TRB, then having come out with a new price per sq. m. after averaging the appraisal of the three (3) independent appraisers and of PCAC, approved the purchase price of P1,221,799,806.00 for the acquisition of AMVEL's property totaling 79,598 per sq. m. at P15,350.00. This delay in the determination of the consideration did not affect the already perfected contract as the consideration thereof was already determined or determinable. The events negate complainant's claim that the transaction was concluded in just 2 ½ working days. The insinuation that respondent Estrada favored AMVEL in approving the purchase of subject properties . . . has no basis. If indeed AMVEL persuaded respondent Estrada to act on its favor, then AMVEL could have pushed for the acquisition of the properties not at P15,350.00 but at P20,000.00 per sq. m. Besides, the valuation of P15,355.00 per sq. m. paid to AMVEL is much lower than the advertised price of the properties adjacent to AMVEL pegged at least P19,000.00 to P55,000.00 per sq. m. x x x Further, [with] respondents Velarde and/or AMVEL, being engaged in business, it is natural that they engage in profit scheme (sic) which in this case appears justified.

While there was a complete payment in favor of AMVEL of the purchase price of P1,221,766,640.00 within one (1) month from the time respondent Estrada approved the transaction, we find the same not anomalous. The several [Deeds] of Sale executed by the parties, TRB and AMVEL, stipulate that fifty (50%) percent of the purchase price shall be paid upon execution of the contract. The other fifty (50%) percent upon issuance by the Register of Deeds of the corresponding Transfer Certificate of Title covering the properties in the name of the Republic of the Philippines.

In the crime of Plunder, the following elements must exist:

2. A public officer acquires wealth by himself or in connivance with another person;
3. The acquisition of the wealth was obtained through the means described in Section 1 (d).

In the instant case, the alleged ill-gotten wealth consisting of the overpriced purchase price of the properties affected by C-5 Link, was allegedly obtained by respondents by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense of the Filipino People.

We find no evidence to support complainant's claim of the existence of ill-gotten wealth. The purchase price of P1,221,799,804 paid to AMVEL could not be considered as ill-gotten wealth as said amount is a consideration of a legally entered Deeds (sic) of Sale. There is no evidence that public respondents benefited/profited or had taken shares with private respondents in the transaction.

Complainant contends that public and private [respondents'] acts constitute also violation of Section 3(a), (e), (g), (h) and (j) of Republic Act 3019, as amended.

We find no evidence to support said allegation.

In reference to Section 3(a), there is no sufficient evidence showing that respondents, especially respondent Estrada, induced or influenced anybody to perform an act in violation of rules and regulation (sic). Neither was there proof of a violation of any rules or regulations promulgated by competent authority. Administrative Order No. 50 cannot be considered as the rule violated since it finds no applications (sic) on the questioned transaction.

Insofar as Section 3(e) is concerned, there was no showing that the government suffered undue injury when the AMVEL properties were purchased at P15,355.00 per sq. m. As earlier pointed out, complainant relied on the valuation of P4,500.00 per sq. m. fixed by the BIR when the said valuation applies to regular residential land and not to commercial lots fixed at least P20,000.00 per sq. m. The P15,355.00 per square meter [price] is relatively

low compared to that recommended by PCAC and contained at BIR Zonal Valuation which was P20,000.00 per sq. m.

Referring to Section 3(g), there was no basis to conclude that the contract was grossly disadvantageous to the government. On the contrary, the government was able to save money when it decided to purchase the questioned properties at P15,355.00 per sq. m. and not at P20,000.00.

Section 3(j) has no application in the instant case as it pertains to the granting of a license, permit or benefit. Assuming as it does, it established a record that the affected properties were purchased from persons or [entities] who were legally authorized to sell or own the same in accordance with the applicable laws, rules and regulations.

We find no evidence that the elements of Section 3(h) exist. The provision requires that there must be an actual intervention in the transaction for financial or pecuniary interest by public respondent. While there was an intervention by public respondents the same were in pursuance to the exercise official duties. Neither public respondents have direct or indirect financial or pecuniary interest with AMVEL.

Considering that the crimes imputed against the respondents were not shown to exist, conspiracy could not likewise be appreciated. It is a well settled ruled that conspiracy must be proven as clearly as the commission of the offense itself.

WHEREFORE, premises considered, this case is hereby DISMISSED for lack of evidence.

SO RESOLVED.[127]

Upon Motion for Reconsideration of petitioner, respondent Office of the Ombudsman issued an Order,[128]the pertinent portions of which are quoted below:

There is no truth to the allegation that the Ombudsman deliberately failed to order the conduct of fact- finding investigation. To conduct a fact-finding investigation is a question addressed to the sound discretion of the Ombudsman and not therefore as a matter of right. When the instant complaint was filed complainant attached voluminous documents which when evaluated was sufficient in form and substance to conduct preliminary investigation. To that matter, there is no need to conduct fact-finding activities as the compliant already reached the formal stage of investigation to determine whether or not probable cause exists to charge respondents. In the same manner, the request for subpoena duces tecum cannot be demanded as a matter of policy for every [case] filed before this Office. From the very beginning it is the duty of the complainant to present complete and ample evidence to support his allegation and not to rely on the coercive processes of this Office lest to be accused of being a tool for every complainant's crusade and be labeled as engaged in fishing evidence.

[Complainant] questions the inhibition of the Honorable Ombudsman. We view however the same inhibition a prudent exercise of impartiality. Prudence dictates that the Honorable Ombudsman himself should inhibit to clear any suspicion that he would engage in any retaliatory [act] against the complainant in view of the impeachment case filed by the latter. Far from the accusation that the Honorable Ombudsman prejudged the case as well as the members of the Panel, we submit that the resolution was arrived [at] after a painstaking appreciation of the available evidence of the complainant and respondents.

As a consequence of the inhibition of the Honorable Ombudsman, the Overall Deputy Ombudsman, Hon. Margarito P. Gervacio, Jr. had to perform the duties of the Ombudsman and assumed and took charge of the disposition of the case. This finds support under Section 8 of R.A. 6770, otherwise known as "Ombudsman Act of 1989". On the contrary, complainant failed to cite the particular provision of law allegedly violated when the Overall Deputy Ombudsman approved the dismissal of the case. In the same manner we find the insinuations of the complainant against the Overall Deputy Ombudsman baseless much more sufficient to affect or disturb

whatever findings we have in our resolution.

Complainant alleges that his evidence were totally disregarded. He forgot however, that respondents have evidence too. Notwithstanding with the voluminous documents complainant submitted, this Office has to weigh the evidentiary value and credibility of the evidence as well as the arguments of both parties. It so happened that in the appreciation thereof, we gave credence to the evidence of the other parties. That judgment cannot be put as an issue that would warrant the reversal of our decision.

In general, the Motion for Reconsideration failed to advance new arguments that would warrant the reversal of the questioned Resolution. There was no new evidence submitted by the complainant to warrant a second look of our resolution. The supposed documents he attached in the Motion were already passed upon and examined by this Office. Lastly, complainant miserably failed to point out specifically the findings or conclusion of the resolution which was contrary to law.

WHEREFORE, premises considered, the Motion for Reconsideration of the complainant is hereby DENIED for lack of merit.

SO ORDERED.

We find no cogent reason to weigh all over again the evidence in this case and to reverse the findings of the public respondent quoted above. This is because, as we held in *Tirol v. COA*:

[This] Court ordinarily does not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. This rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise the functions of the courts will be grievously hampered by immeasurable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in as much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[129]

More recently, we had occasion to pass upon a similar case, the core issue of which was whether the Ombudsman committed grave abuse of discretion in dismissing petitioners' complaint against the respondents. In that case, we ruled in the negative and, accordingly, dismissed the petition.[130] Thus, we held:

We cannot overemphasize the fact that the Ombudsman is a constitutional officer duty bound to "investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient." The *raison d'être* for its creation and endowment of broad investigative authority is to insulate it from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the execution of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers.

In *Presidential Commission on Good Government (PCGG) v. Desierto*, we dwelt on the powers, functions and duties of the Ombudsman, to wit:

The prosecution of offenses committed by public officers is vested primarily in the Office of the Ombudsman. It bears emphasis that the Office has been given a wide latitude of investigatory and prosecutory powers under the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989). This discretion is all but free from legislative, executive or judicial intervention to ensure that the Office is insulated from any outside pressure and improper influence.

Indeed, the Ombudsman is empowered to determine whether there exist reasonable grounds to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. The Ombudsman may thus conduct an investigation if the complaint filed is found to be in the proper form and substance. Conversely, the Ombudsman may also dismiss the complaint should it be found insufficient in form or substance.

Unless there are good and compelling reasons to do so, the Court will refrain from interfering with the exercise of the Ombudsman's powers, and respect the initiative and independence inherent in the latter who, beholden to no one, acts as the champion of the people and the preserver of the integrity of public service.

The pragmatic basis for the general rule was explained in *Ocampo v. Ombudsman*:

The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by private complainants.

From the foregoing, it is crystal clear that we do not interfere with the Ombudsman's exercise of his investigatory and prosecutory powers vested by the Constitution. In short, we do not review the Ombudsman's exercise of discretion in prosecuting or dismissing a complaint except when the exercise thereof is tainted with grave abuse of discretion.[131]

In the recent case *Lazatin v. Ombudsman*,^[132] this Court held that the question of whether "the Ombudsman correctly ruled that there was enough evidence to support a finding of probable cause pertains to a mere error of judgment." The Court further held:

It must be stressed that certiorari is a remedy meant to correct only errors of jurisdiction, not errors of judgment. This has been emphasized in *First Corporation v. Former Sixth Division of the Court of Appeals*, to wit:

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of certiorari, which is extra ordinem -- beyond the ambit of appeal. In certiorari proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by certiorari. An error of judgment is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. Certiorari will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court a quo.[133]

Even if the issues involved here are factual, petitioner invokes the power of the Court to reverse the decision of the Ombudsman by alleging that the latter acted with grave abuse of discretion amounting to lack or excess of jurisdiction. However, as in *Morong Water District v. Office of the Deputy Ombudsman*,^[134] we find that:

[The] Order and the Resolution of the Ombudsman are based on substantial evidence. In dismissing the complaint of petitioner, we cannot say that the Ombudsman committed grave abuse of discretion so as to call for the exercise of our supervisory powers over him. This court is not a trier of facts. As long as there is

substantial evidence in support of the Ombudsman's decision, that ... decision will not be overturned.

As regards petitioner's insistence that the Office of the Ombudsman should have conducted a fact-finding investigation and issued subpoena duces tecum as requested, we find that the Ombudsman's action not to issue the same was not made in grave abuse of discretion.[135] We have previously ruled regarding this matter in this wise:

If the Ombudsman may dismiss a complaint outright for lack of merit, it necessarily follows that it is also within his discretion to determine whether the evidence before him is sufficient to establish probable cause. Thus, petitioners may not compel the Ombudsman to order the production of certain documents, if in the Ombudsman's judgment such documents are not necessary in order to establish the guilt, or innocence, of the accused.

It has been the consistent policy of the Supreme Court not to interfere with the Ombudsman's exercise of his investigatory powers. xxx

[It] is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.

The rationale underlying the Court's policy of non-interference was laid down in *Ocampo v. Ombudsman* and reiterated in the more recent case of *Venus v. Desierto*, to wit:

The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[136]

Grave abuse of discretion has been defined as "such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction." The abuse of discretion must be "so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility." [137] We do not find this situation to be present in the instant case so as to merit a reversal of the questioned Resolution and Order issued by respondent Office of the Ombudsman.

WHEREFORE, premises considered, the petition is hereby DISMISSED. The assailed Resolution and Order of the Ombudsman in OMB-0-01-0577 are AFFIRMED.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

WE CONCUR:

REYNATO S. PUNO

Chief Justice

(On official leave)

LEONARDO A. QUISUMBING

Associate Justice

CONSUELO YNARES-SANTIAGO

Associate Justice

ANTONIO T. CARPIO

Associate Justice

RENATO C. CORONA

Associate Justice

CONCHITA CARPIO MORALES

Associate Justice

MINITA V. CHICO-NAZARIO

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice

ANTONIO EDUARDO B. NACHURA

Associate Justice

(On leave)

ARTURO D. BRION

Associate Justice

DIOSDADO M. PERALTA

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

ROBERTO A. ABAD

Associate Justice

[1] Rollo, pp. 184-216.

[2] Id. at 220.

[3] Complaint-Affidavit in OMB-0-01-0577, rollo, pp. 490-494.

[4] Under Presidential Decree No. 1112, dated March 31, 1977, the Toll Regulatory Board was created, with powers and functions that include:

Subject to the approval of the President of the Philippines, to enter into contracts in behalf of the Republic of the Philippines with persons, natural or judicial, for the construction, operation and maintenance of toll and facilities such as but not limited to national highways, roads, bridges, and public thoroughfares. Said contract shall be open to citizens of the Philippines and/or to corporation or association qualified under the Constitution and authorized by law to engage in toll operations.

[5] The PEA entered into a Joint Venture Agreement (JVA) with two Malaysian companies, following an

exchange of state visits between President Ramos and the Malaysian Prime Minister, Dr. Mahathir Mohammad. The two Malaysian companies were: Mara, a corporate agency of the Malaysian government; and Renong, a publicly listed company incorporated in Malaysia.

[6] Rollo, p. 452.

[7] Renong was replaced by United Engineers Malaysia (UEM), a public company incorporated in Malaysia.

[8] Rollo, pp. 463-468.

[9] Id. at 1750.

[10] Id. at 850.

[11] Id. at 474-478.

[12] Id. at 1751-52.

[13] Id. at 1752.

[14] Id. at 249.

[15] Id. at 251.

[16] Id. at 252.

[17] Id. at 249-252.

[18] Id. at 1406.

[19] Id. at 1198.

[20] Id. at 1176.

[21] Id. at 1754.

[22] Id. at 1078.

[23] Id. at 1104.

[24] Id. at 290-295.

[25] Id. at 1190.

[26] Id. at 1095.

[27] Id. at 1197.

[28] Id. at 224.

[29] Id. at 226.

[30] Id. at 1200.

[31] Id. at 227.

[32] Ibid.

[33] Id. at 227.

[34] Id. at 207-210.

[35] Id. at 1753-1760.

[36] Id. at 490.

[37] Id. at 494-499.

[38] Id. at 64.

[39] Id. at 499.

[40] Id. at 500.

[41] Administrative Order No. 50 provides:

SECTION 1. Conditions to be complied with during the Negotiated Sale. -- All government agencies and instrumentalities which are engaged in public infrastructure projects, including but not limited to the Department of Public Works and Highways, National Power Corporation, and the Department of Transportation and Communication, shall first negotiate with the owner for the acquisition of parcels of private land intended for public use including the right-of-way easement of such projects by offering in writing a purchase price of an amount equivalent to ten per cent (10%) higher than the zonal value of the said property. During the negotiation, the landowner shall be given fifteen (15) days within which to accept the amount offered by the concerned government agency as payment for the land.

SECTION 2. Expropriation Proceedings. -- After the abovementioned period and no acceptance is made by the landowner, the concerned agency, in coordination with the Solicitor General, shall initiate expropriation proceedings in the proper court, depositing ten per cent (10%) of the offered amount.

[42] Id. at 247.

[43] Id. at 505.

[44] Id. at 504.

[45] Id. at 505.

[46] Id. at 253-260.

[47] Id. at 508-509.

[48] Supra note 1 at 193-197.

[49] Id. at 216.

[50] Id. at 971.

[51] Id. at 974-981.

[52] Supra note 2 at 223.

[53] Id. at 1019.

[54] Id. at 1020.

[55] Id.

[56] Id. at 1025.

- [57] Id. at 1026.
- [58] Id. at 1176.
- [59] Id. at 1190.
- [60] Id. at 1197.
- [61] Id. at 1199.
- [62] Id. at 1140.
- [63] Id. at 1205.
- [64] Id. at 1143.
- [65] Id. at 1144.
- [66] Id. at 1147-1149.
- [67] Id. at 1152-1155.
- [68] Id. at 1301.
- [69] Id. at 1310.
- [70] Id. at 356-360.
- [71] Id. at 1318.
- [72] Id. at 1319.
- [73] Id. at 1355.
- [74] Id. at 850.
- [75] Id. at 852.
- [76] G.R. No. 81563, December 19, 1989, 180 SCRA 309, 316.
- [77] Id. at 1375.
- [78] Id. at 1375.
- [79] Art. 8, par. 2, Revised Penal Code.
- [80] People v. Quilaton, G.R. No. 131835, February 3, 2000, 324 SCRA 670.
- [81] Rollo, pp. 1387-1388.
- [82] Id. at 253-260.
- [83] G.R. No. 110658, May 22, 1995, 244 SCRA 235.
- [84] Art. 1475, Civil Code.
- [85] Id. at 1577.
- [86] Id. at 1578.
- [87] G.R. No. 109113, January 25, 1995, 240 SCRA 502.

- [88] G.R. No. 79538, October 18, 1990, 190 SCRA 673.
- [89] Id. at 1581-1582.
- [90] Id. at 1582-1584.
- [91] Id. at 1586.
- [92] Id. at 1628-1672.
- [93] G.R. No. 123332, February 3, 1997, 267 SCRA 487.
- [94] Id. at 1601-1602.
- [95] Regalado, F.B. Remedial Law Compendium. 1988 Revised Edition, Volume 1, p. 340.
- [96] Rollo, p. 1618.
- [97] Id. at 1620.
- [98] Id. at 1708.
- [99] Id. at 1730.
- [100] Id. at 1731-1732.
- [101] Id.
- [102] Rollo, pp. 1760-1761.
- [103] Universal Motors v. Court of Appeals, G.R. No. 47432, January 27, 1992, 205 SCRA 448.
- [104] Rollo, p. 1765.
- [105] Id. at 1767-1769.
- [106] Patalinhug v. CA, G.R. No. 104786, January 27, 1994, 229 SCRA 554.
- [107] Sesbreño v. Central Board of Assessment Appeals, G.R. No. 106588, March 24, 1997, 270 SCRA 360.
- [108] Rollo, pp. 1773-1775.
- [109] Id. at 1783-1784.
- [110] Id. at 1784-1785.
- [111] Id. at 1786.
- [112] Id. at 1130-1131.
- [113] G.R. No. 129742, September 16, 1998, 295 SCRA 470, 486-487.
- [114] G.R. No. 135913, November 4, 1999, 317 SCRA 779, 785.
- [115] Sec. 5. Grounds for dismissal of appeal. The appeal may be dismissed motu proprio or on motion of the respondent on the following grounds:

x x x

(f) Error in the choice or mode of appeal;

x x x.

[116] Fabian v. Desierto, supra note 113; Namuhe v. Ombudsman, G.R. No. 124965, October 29, 1998, 298 SCRA 298; Tirol, Jr. v. Del Rosario, supra note 114; Tirol, Jr. v. Commission on Audit, G.R. No. 133954, August 3, 2000, 337 SCRA 198.

[117] Tirol, Jr. v. Del Rosario, supra note 114, at 46. Emphasis ours.

[118] Supra note 113.

[119] G.R. No. 136470, October 16, 2001, 367 SCRA 263, 269-270.

[120] G.R. No. 136769, September 17, 2002, 389 SCRA 127, 132.

[121] Tirol v. COA, supra note 116, at 208.

[122] See Santiago Santiago v. COMELEC, G.R. No. 127325, March 19, 1997, 270 SCRA 106, 134-135 citing Kilosbayan, Inc. v. Guingona, Jr., G.R. No. 113375, May 5, 1994, 232 SCRA 110, 134.

[123] Sps. Uy v. Court of Appeals, G.R. No. 109197, June 21, 2001, 359 SCRA 262, 268-269 citing Abalos v. CA, G.R. No. 106029, October 19, 1999, 317 SCRA 14; and Valmonte v. CA, G.R. No. L-41621, February 18, 1999, 303 SCRA 278.

[124] Tirol v. COA, supra note 116, at 207.

[125] G.R. No. 113235, July 24, 1997, 276 SCRA 133, 138.

[126] Supra note 1.

[127] Supra note 1 at 210-216.

[128] Supra note 2 at 221-223.

[129] Tirol v. COA, supra note 116, at 208.

[130] ABS-CBN Broadcasting Corp. v. Office of the Ombudsman, G.R. No. 133347, October 15, 2008.

[131] Id., citing PCGG v. Desierto, G.R. No. 139675, July 21, 2006, 496 SCRA 112 and Ocampo v. Ombudsman, G.R. Nos. 103446-47, August 30, 1993, 225 SCRA 726.

[132] G.R. No. 147097, June 5, 2009.

[133] Citing First Corporation v. Former Sixth Division of the Court of Appeals, G.R. No. 171989, July 4, 2007, 526 SCRA 564, 578.

[134] G.R. No. 116754, March 17, 2000, 328 SCRA 363, 373.

[135] See Mamburao, Inc. v. Office of the Ombudsman, G.R. Nos. 139141-42, November 15, 2000, 344 SCRA 805, 817.

[136] Id. at 819, citing Venus v. Desierto, 298 SCRA 196 (1998); Velasco v. Casclang, 294 SCRA 394 (1998), citing Republic v. Sandiganbayan, 200 SCRA 667 (1991) and Zaldivar v. Sandiganbayan, 160 SCRA 843 (1988); Knecht v. Desierto, 291 SCRA 292 (1998), citing Lastimosa v. Ombudsman, 243 SCRA 497 (1995); Ocampo v. Ombudsman, 225 SCRA 725 (1993).

[137] Supra note 130.

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