

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SOUTHSIDE HOMEOWNERS ASSOCIATION, INC. AND THE REGISTER OF DEEDS OF PASIG, RIZAL, RESPONDENTS.

G.R. NO. 156951. September 22, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Before the Court are these two petitions having, as common denominator, the issue of ownership of a large tract of land.

In the first, a petition for review under Rule 45 of the Rules of Court and docketed as G.R. No. 156951, the petitioner Republic of the Philippines seeks to nullify and set aside the Decision[1] dated January 28, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 59454, affirming the dismissal by the Regional Trial Court (RTC) of Pasig City, Branch 71, of the Republic's complaint for declaration of nullity and cancellation of a land title against the herein private respondent, the Southside Homeowners Association, Inc. (SHAI).

In the second, docketed as G.R. No. 173408, petitioners Rene Saguisag and five (5) retired military officers pray that Lt. Gen. Hermogenes C. Esperon, Jr., the present Chief of Staff of the Armed Forces of the Philippines (AFP), be asked to show cause why he should not be cited for contempt for having announced time and again that the military officers and their families in the contempt action would be ousted and evicted from the property subject of the main petition even before the issue of ownership thereof is finally resolved by the Court.

After the private respondent SHAI had filed its Comment[2] to the petition in G.R. No. 156951, the Bases Conversion Development Authority (BCDA), followed by the Department of National Defense (DND) and the AFP, joined causes with the petitioner Republic and thus sought leave to intervene. The Court, per its Resolutions dated September 3, 2003,[3] and September 29, 2003,[4] respectively, allowed the intervention and admitted the corresponding petitions-for-intervention.

Per Resolution of the Court dated August 09, 2006, both petitions were ordered consolidated.

The Republic's recourse in G.R. No. 156951 is cast against the following backdrop:

On July 12, 1957, then President Carlos P. Garcia issued Proclamation No. 423[5] establishing a military reservation known as Fort William McKinley - later renamed Fort Andres Bonifacio Military Reservation (FBMR). The proclamation "withdr[ew] from sale or settlement and reserve[d] for military purposes, under the administration of the Chief of Staff of the [AFP] " the [certain] parcels of the public domain [indicated in plan Psu-2031]" situated in the several towns and a city of what was once the Province of Rizal. On its face, the proclamation covers three (3) large parcels of land, to wit: Parcel No. 2 (portion), Parcel No. 3 (or 3-A) and Parcel No. 4 (or 4-A). Parcel No. 3 with an area of 15,912,684 square meters and Parcel No. 4 with an area of 7,660,128 square meters are described in the proclamation as situated inside Fort McKinley, Rizal. Specifically mentioned as excluded from Parcel No. 4 albeit within its boundaries are the American Battle Monument Cemetery (606,985

sq. m.), the Traffic Circle (7,093 sq. m.) and the Diplomatic and Consular area (100,000 sq.m.).

Several presidential proclamations would later issue excluding certain defined areas from the operation of Proclamation No. 423 and declaring them open for disposition. These are Proclamation No. 461[6] and Proclamation No. 462,[7] both series of 1965, excluding portions of the reservation and declaring them the AFP Officers' Village and the AFP EM's Village, respectively, to be disposed of under Republic Act (R.A.) 274[8] and R.A. 730[9] in relation to the Public Land Act (C.A. 141, as amended). Excluded, too, under Proclamation No. 172 dated October 16, 1987 and to be disposed pursuant to the same laws aforementioned, save those used or earmarked for public/quasi-public purposes, are portions of the reservation known as Lower and Upper Bicutan, Western Bicutan and the Signal Village, all in Taguig, Metro Manila.

In 1992, Congress enacted the Bases Conversion and Development Act (R.A. 7227, as amended), investing the BCDA the power to own, hold and administer portions of Metro Manila military camps that may be transferred to it by the President[10] and to dispose, after the lapse of a number of months, portions of Fort Bonifacio.[11]

At the core of the instant proceedings for declaration of nullity of title are parcels of land with a total area of 39.99 hectares, more or less, known as or are situated in what is referred to as the JUSMAG housing area in Fort Bonifacio. As may be gathered from the pleadings, military officers, both in the active and retired services, and their respective families, have been occupying housing units and facilities originally constructed by the AFP on the JUSMAG area.

Private respondent SHAI is a non-stock corporation organized mostly by wives of AFP military officers. Records show that SHAI was able to secure from the Registry of Deeds of the Province of Rizal a title - Transfer Certificate of Title (TCT) No. 15084[12] - in its name to the bulk of, if not the entire, JUSMAG area. TCT No. 15084 particularly describes the property covered thereby as follows:

A parcel of land (Lot 3-Y-1, Psd-76057, being a portion of Parcel 3 of plan Psu-2031) situated in Jusmang (sic) Area, Fort Bonifacio, Province of Rizal. ... containing an area of ...(398,602) SQUARE METERS. xxx.

A parcel of land (Lot 3-Y-2, Psd-76057 as shown on subdivision Plan Psd 76057, being a portion of parcel 3 of plan Psu-2031, LRC Rec. No.) situated in Jusmang (sic) Area, Fort Bonifacio, Province of Rizal. ... containing an area of ... (1,320) SQUARE METERS xxx.. (Underscoring added.)

The Rizal Registry issued TCT No. 15084 on October 30, 1991 on the basis of a notarized Deed of Sale[13] purportedly executed on the same date by then Director Abelardo G. Palad, Jr. (Palad, for brevity) of the Lands Management Bureau (LMB) in favor of SHAI. The total purchase price as written in the conveying deed was P11,997,660.00 or P30.00 per square meter.

It appears that in the process of the investigation conducted by the Department of Justice on reported land scams at the FBMR, a copy of the aforesaid October 30, 1991 deed of sale surfaced and eventually referred to the National Bureau of Investigation (NBI) for examination. The results of the examination undertaken by NBI Document Examiner Eliodoro Constantino are embodied in his Questioned Documents Report (QDR) No. 815-1093.[14] Its highlights:

QUESTIONED SPECIMENS:

1. Original copy of the Deed of Sale ... issued in favor of the Navy Officers Village Association (NOVA) ... containing the ... signature of "ABELARDO G. PALAD, JR." ... designated as "Q-961"
2. Original copy of the Deed of Sale ... issued in favor of SHAI ... containing the signature of "ABELARDO G. PALAD, JR." ... designated as "Q-962".

xxx xxx xxx

PURPOSE OF EXAMINATION:

To determine whether or not the questioned and sample/specimen signatures "ABELARDO G. PALAD, JR." were written by one and the same person.

FINDINGS:

Scientific comparative examination and analysis of the specimens, submitted, under stereoscopic microscope and magnifying lens, with the aid of photographic enlargement ... reveals that there exist fundamental, significant differences in writing characteristics between the questioned and the standard/sample signatures "ABELARDO G. PALAD, JR." such as in:

-The questioned signatures show slow, drawn, painstaking laborious manner in execution of strokes; that of the standard/sample signatures show free, rapid coordinated and spontaneous strokes in the manner of execution of letters/elements.

xxx xxx xxx

Furthermore, the questioned signature "ABELARDO G. PALAD, JR." marked "Q-961" is a product of TRACING PROCESS by CARBON-OUTLINE METHOD.

CONCLUSION:

Based on the above FINDINGS, the questioned and the standard/sample signatures "ABELARDO G. PALAD, JR." were not written by one and the same person.

The questioned signature "ABELARDO G. PALAD, JR." marked "Q-961" is a TRACED FORGERY by carbon process.

REMARKS:

The other questioned Deeds of Sale containing the signatures of "ABELARDO G. PALAD, JR." are still in the process of examination.[15]

On October 16, 1993, then President Fidel V. Ramos issued Memorandum Order No. 173[16] directing the Office of the Solicitor General (OSG) to institute action towards the cancellation of TCT No. 15084 and the title acquired by the Navy Officer's Village Association (NOVA) over a bigger parcel within the reservation. A month later, the OSG, in behalf of the petitioner Republic, filed with the RTC of Pasig City the corresponding nullification and cancellation of title suit against the private respondent SHAI. In its complaint, docketed as Civil Case No. 63883 and eventually raffled to Branch 71 of the court, the Republic alleged that fraud attended SHAI's procurement of TCT No. 15084. In paragraph No. 5 of the complaint, the Republic alleged that TCT No. 15084 is void owing, inter alia, to the following circumstances: a) the conveying deed is spurious as the purported signature thereon of Palad is a forgery; b) there are no records with the LMB of (i) the application to purchase and (ii) the alleged payment of the purchase price; and c) the property in question is inalienable, being part of a military reservation established under Proclamation No. 423.[17]

In its ANSWER with counterclaim, respondent SHAI denied the material allegations of the complaint and countered that the impugned title as well as the October 30, 1991 Deed of Sale are valid documents which the Republic is estopped to deny.[18] SHAI also alleged paying in full the purchase price indicated in the deed as evidenced by Official Receipt No. 6030203-C dated October 29, 1991.

On October 19, 1994, the case was heard on pre-trial in the course of which the Republic, as plaintiff therein,

marked (and later offered in evidence) the Deed of Sale dated October 30, 1991 as its Exhibit "A," and TCT No. 15084 as Exhibit "B." Respondent, then defendant SHAI adopted Exhibits "A" and "B" as its Exhibits "1" and "2," respectively. As the pre-trial order was written, it would appear that the parties agreed to limit the issue to the due execution and genuineness of Exhs. "A" and "B." [19]

During the trial, the Republic presented as expert witness NBI Document Examiner Eliodoro Constantino who testified on NBI QDR No. 815-1093 and asserted that the signature of Palad in Exhibit "A" is a forgery. For his part, Palad dismissed as forged his signature appearing in the same document and denied ever signing the same, let alone in front of a notary public holding office outside of the LMB premises. Pressing the point, Palad stated that he could not have had signed the conveying deed involving as it did a reservation area which, apart from its being outside of the LMB's jurisdiction, is inalienable in the first place. The testimony of other witnesses revolved around the absence of bureau records respecting SHAI's application to acquire, payment of the purchase price and Psd-76057, the plan described in TCT No. 15084. [20]

For its part, then defendant SHAI presented an opposing expert witness in the person of Police Inspector Redencion Caimbon who brought with him PNP QDR No. 001-96 and testified that Palad's signature in Exhibit "A" (same as Exh. "1") is genuine. Mrs. Virginia Santos, then SHAI president, likewise testified, saying that applications to purchase were signed and then filed with the LMB by one Engr. Eugenia Balis, [21] followed by the payment in full of the contract price. Atty. Vicente Garcia, the then Register of Deeds of Rizal, also testified about his having endorsed to Palad a letter-inquiry he received from SHAI respecting the authenticity of TCT No. 15084. Palad's response-letter dated January 23, 1992 (Exh. "10"), according to Atty. Garcia, is to the effect that TCT No. 15084 must be genuine as it emanated from the Registry's office on the basis of the October 30, 1991 Deed of Sale. [22]

On rebuttal, Palad would deny authorship of Exhibit "10" and an LMB official would disclaim transmitting the same to Atty. Garcia.

Eventually, in a decision [23] dated October 7, 1997, the trial court rendered judgment dismissing the Republic's complaint, to wit:

WHEREFORE, in view of the foregoing, the Complaint dated November 15, 1991 is hereby DISMISSED without pronouncement as to costs.

The counterclaims are also DISMISSED.

SO ORDERED.

In not so many words, the trial court considered the parcels covered by the deed in question as no longer part of the FBMR.

Therefrom, the Republic went on appeal to the CA whereat its appellate recourse was docketed as CA-G.R. CV No. 59454.

In the herein assailed Decision [24] dated January 28, 2003, the appellate court affirmed in toto that of the trial court.

Hence, this petition of the Republic on the threshold abstract submission that the CA "completely ignored, overlooked and/or grossly misappreciated facts of substance which, if duly considered, will materially affect the outcome of this case."

In its COMMENT To Petition, private respondent SHAI parlays the "what-can-be-raised" line. It urges the dismissal of the petition on the ground that the issues raised therein, particularly those bearing on the authenticity

of Exhibit "A"/"1," are mainly questions of fact, adding that the matter of the inalienability of the area purportedly sold is outside the issue agreed upon during the pre-trial stage.

The desired dismissal cannot be granted on the bases of the reasons proffered above.

While the Court, in a petition for review of CA decisions under Rule 45 of the Rules of Court, usually limits its inquiry only to questions of law, this rule is far from absolute. *Reyes v. Court of Appeals*,^[25] citing *Floro v. Llenado*,^[26] for one, suggests as much. In *Floro*, we wrote:

xxx There are, however, exceptional circumstances that would compel the Court to review the finding of facts of the [CA], summarized in ... and subsequent cases as follows: 1) when the inference made is manifestly mistaken, absurd or impossible; 2) when there is grave abuse of discretion; 3) when the finding is grounded entirely on speculations, surmises or conjectures; 4) when the judgment of the [CA] are based on misapprehension of facts; 5) when the findings of facts are conflicting; 6) ...; 7) ...; 8) ...; 9) when the [CA] manifestly overlooked certain relevant facts not disputed by the parties and which if properly considered would justify a different conclusion; and 10) when the findings of facts ... are premised on the absence of evidence and are contradicted by the evidence on record. (Words in bracket, added.)

To the mind of the Court, the instant case is within the purview of at least three of the exceptions listed above, foremost of which is item #9.

Private respondent SHAI's stance about the petitioner Republic being barred from raising the issue of inalienability since it failed to plead or assert the same at the pre-trial proceedings is, to a degree, correct. For the general rule, as articulated in *Permanent Concrete Products, Inc. v. Teodoro*,^[27] is that the determination of issues at a pre-trial conference bars the consideration of others on appeal. It should be pointed out, however, that the rationale for such preliminary, albeit mandatory, conference is to isolate as far as possible the trial out of the realm of surprises and back-handed maneuverings. And lest it be overlooked, the adverted rule on the procedure to be observed in pre-trials is, as *Bergano v. Court of Appeals*^[28] teaches, citing *Gicano v. Gegato*,^[29] subject to exceptions. And without meaning to diminish the importance of the same rule, the Court is possessed with inherent power to suspend its own rules or to except a particular case from its operations whenever the demands of justice so require.^[30]

Given the foregoing considerations, the rule to be generally observed in pre-trial conferences hardly poses an insurmountable obstacle to tackling the question of inalienability which, under the premises, is an issue more legal than factual. As it were, the element of surprise is not really present here. For the issue of inalienability, which is central to the Republic's cause of action, was raised in its basic complaint, passed upon by the CA and, before it, by the trial court^[31] and of which at least one witness (Palad) was examined as follows:

Q: Mr. Witness you stated that the parcel of land in question at the time of the land alleged sale was part of the ... [FBMR]. Now as part of the ...[FBRM] do you know whether the said parcel of land can be the subject of disposition?

A: If it is part of the reservation it cannot be sold and it is already part of those government lands that has been assigned to other government agencies that is no longer within my jurisdiction. Meaning to say I have no more say on that because the proclamation to the effect was reserving this for particular purpose under the DND^[32] (Words in bracket added.)

At any rate, Palad's testimony drew nary an objection from private respondent SHAI. It even cross-examined said witness.^[33] The rule obtains that the introduction of evidence bearing on an issue not otherwise included in the pre-trial order amounts to implied consent conferring jurisdiction on the court to try such issue.^[34]

Digressing from the procedural aspects of this case, we now consider the clashing assertions regarding the

JUSMAG area. Was it, during the period material, alienable or inalienable, as the case may be, and, therefore, can or cannot be subject of a lawful private conveyance?

Petitioner Republic, as do the intervenors, asserts the inalienable character of the JUSMAG area, the same having not effectively been separated from the military reservation and declared as alienable and disposable.

The Republic's and the intervenor's parallel assertions are correct.

The President, upon the recommendation of the Secretary of Environment and Natural Resources, may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Republic or any of its branches, or for quasi-public uses or purposes.[35] Such tract or tracts of land thus reserved shall be non-alienable and shall not be subject to sale or other disposition until again declared alienable.[36] Consistent with the foregoing postulates, jurisprudence teaches that a military reservation, like the FBMR, or a part thereof is not open to private appropriation or disposition and, therefore, not registrable,[37] unless it is in the meantime reclassified and declared as disposable and alienable public land.[38] And until a given parcel of land is released from its classification as part of the military reservation zone and reclassified by law or by presidential proclamation as disposable and alienable, its status as part of a military reservation remains,[39] even if incidentally it is devoted for a purpose other than as a military camp or for defense. So it must be here.

There can be no quibbling that the JUSMAG area subject of the questioned October 30, 1991 sale formed part of the FBMR as originally established under Proclamation No. 423. And while private respondent SHAI would categorically say that the petitioner Republic had not presented evidence that "subject land is within military reservation,"[40] and even dared to state that the JUSMAG area is the private property of the government and therefore removed from the concept of public domain per se,[41] its own evidence themselves belie its posture. We start with its Exhibit "2" (petitioner's Exh. "B"), a copy of TCT No. 15084, which described the area covered thereby measuring 399,922 square meters as a "portion of Parcel 3 of plan Psu-2031 situated in Jusmang (sic) area Fort Bonifacio." Complementing its Exhibit "2" is its Exhibit "1" - the deed of sale - which technically described the property purportedly being conveyed to private respondent SHAI as follows:

A PARCEL OF LAND (Lot 3-Y-1, Psd-76067, being a portion of Parcel 3 of plan Psu-2031) situated in Jusmag (sic) area, Fort Bonifacio, Province of Rizal. Xxx (Emphasis added)

As the Court distinctly notes, the disputed property, as described in private respondent's Exhibits "1" and "2," formed part of that wide expanse under Proclamation No. 423 which lists, as earlier stated, three (3) parcels of land of the public domain as falling within its coverage. These include, inter alia, the entire 15,912,684-square meter area constituting Parcel No. 3 of Plan Psu 2031 located inside the now renamed Fort Mckinley which, to a redundant point, was declared a military reservation.

The Court has, on the issue of inalienability, taken stock of the Compilation Map of Approved Surveys Plan inside Parcels 1, 2, 3 and 4, of plan Psu 2031[42] prepared in September 1995 and certified by the Department of Environment and Natural Resources (DENR). It indicates in colored ink the outlines of Parcels 2, 3 and 4 covered by Proclamation No. 423. As there also shown, the 399,992-square meter area embraced by SHAI's TCT No. 15084, defined in the legend by red-colored stripes, is within the violet-colored borders of Parcel No. 3 and Parcel No. 4 of Proclamation No. 423.

Indubitably, the area covered by SHAI's TCT No. 15084 was and is still part of the FBMR, more particularly within the 15,912,684- square meter Parcel No. 3 of the reservation. The petitioner Republic, joined by the intervenors BCDA, DND and AFP in this appellate proceedings, has maintained all along this thesis. Towards discharging its burden of proving that the disputed property is part of the reservation, the petitioner Republic need only to demonstrate that all of the 15,912,684 square meters of Parcel No. 3 of Plan Psu 2031 have been reserved

for military purposes. The evidence, however, of the fact of reservation is the law or, to be more precise, Proclamation No. 423 itself, the contents and issuance of which courts can and should take judicial notice of under Section 1, Rule 129 of the Rules of Court.[43]

The Republic has, since the filing of its underlying complaint, invoked Proclamation No. 423. In the process, it has invariably invited attention to the proclamation's specific area coverage to prove the nullity of TCT No. 15084, inasmuch as the title embraced a reserved area considered inalienable, and hence, beyond the commerce of man. In this regard, the appellate court seemed to have glossed over, if not entirely turned a blind eye on, certain admissions made by the private respondent, the most basic being those made in its answer to the Republic's allegations in paragraph 5 (e) and (g) of its complaint. To the Republic's allegations that the property covered by TCT No. 15084 was and remains part the FBMR, SHAI's answer thereto reads:

2. It specifically denies the allegations in paragraphs ... 5 of the complaint, the truth of the matter being that - in the Deed of Sale -, the Director of Lands Certificate (sic) that he is "authorized under the law to sell" the subject property and that the "lots were duly awarded by the [LBM] to the vendee.[44] (Emphasis and word in bracket added.)

In net effect, private respondent SHAI admitted what the petitioner Republic alleged in par. 5 (e) and (g) of the complaint, the former's denial to such allegations on the inalienable nature of the property covered by TCT No. 15084 being in the nature of a general denial. Under the rules on pleadings, a specific, not a general, denial is required; a denial is not specific because it is so qualified or termed "specific" by the pleader.[45] The defendant must specify each material factual allegation the truth of which he absolutely denies and, whenever practicable, shall set forth the substance of the matters upon which he will rely to support his denial.[46] Else, the denial will be regarded as general and will, therefore, be regarded as an admission of a given material fact/s stated in the complaint.

What private respondent SHAI did under the premises was to enter what, under the Rules, is tantamount to a general denial of the Republic's averments that what SHAI's TCT No. 15084 covers is part of the military reservation. In the process, private respondent SHAI is deemed to admit the reality of such averment.

To be sure, the petitioner Republic, as plaintiff below, had more than sufficiently established its claim on the inalienability of the parcels of land covered by TCT No. 15084. In fine, it had discharged the burden of proof on the issue of inalienability. Be that as it may, the burden of evidence to disprove inalienability or, to be precise, that said parcels of land had, for settlement purposes, effectively been withdrawn from the reservation or excluded from the coverage of Proclamation No. 423, devolves upon the private respondent. This is as it should be for the cogency of SHAI's claim respecting the validity of both the underlying deed of sale (Exh. "A"/"1") and its TCT No. 15084 (Exh. "B"/"2") rests on the postulate that what it purportedly bought from the LMB had ceased to be part of the reserved lands of the public domain. Elsewise put, SHAI must prove that the JUSMAG area had been withdrawn from the reservation and declared open for disposition, failing which it has no enforceable right over the area as against the State.

Private respondent SHAI has definitely not met its burden by reason of lack of evidence. To be sure, it has not, because it cannot even if it wanted to, pointed to any presidential act specifically withdrawing the disputed parcels from the coverage of Proclamation No. 423. Worse still, its own Exhibit "5,"[47] a letter dated March 19, 1991 of then PA Commanding General, M/Gen Lisandro Abadia, to one Mrs. Gabon, then President of the SHAI, cannot but be viewed as a party's judicial admission that the disputed land has yet to be excluded from the military reservation. The Abadia letter, with its feature dis-serving to private respondent SHAI, reads in part as follows:

Dear Mrs. Gabon:

This is in connection with your move to make a petition to President Aquino regarding the possible exclusion of Southside Housing Area from the military reservation and for its eventual allotment to the ... military officers presently residing thereat. Allow me to state that I interpose no objection I find it ... helpful to our officers to be provided a portion of the Fort Bonifacio military reservation (Underscoring added.)

Owing to the foregoing considerations, the Court is hard put to understand how the CA could still have found for SHAI.. The appellate court, apparently swayed by what SHAI said in its Brief for the Appellees[48] that:

Appellant [petitioner Republic] is probably unaware that, then President Diosdado Macapagal issued Proclamation 461 when he excluded from the operation of Proclamation No. 423 an area of 2,455,810 square meters more or less.... Likewise on October 16, 1987, then President Corazon Aquino issued Proclamation No. 172 excluding five (5) parcels of land from the operation of Proclamation No. 423 also located at Fort Bonifacio containing an area of 4,436, 478 So if we deduct the 6,892,288 [2,455,810 + 4,436,478 = 6,892,288] square meters covered by Proclamation Nos. 461 and 172 of the areas reserved for military purposes of 7,053,143 square meters, what is only left is 160,857 square meters or more or less 16 hectares[49]

justified its holding on the alienability of the disputed land with the following disquisition:

The foregoing admission aside, appellant's [now petitioner's] reliance on Proclamation No. 493 [should be 423] in insisting that the land in litigation is inalienable because it is part of the [FBMR] is too general to merit serious consideration. While it is true that, under the said July 12, 1957 Proclamation, then President Carlos P. Garcia reserved the area now known as Fort Bonifacio for military purposes, appellee [now respondent] correctly calls our attention to the fact, among other matters, that numerous exceptions thereto had already been declared through the years. The excluded areas under Proclamation No. 461, dated September 29, 1965 and Proclamation No. 172, dated October 16, 1987 alone already total 6,892,338 square meters. (Figures in bracket added.)

The CA's justifying line does not commend itself for concurrence.

For one, it utilizes SHAI's misleading assertion as a springboard to justify speculative inferences. Per our count, Proclamation 423 reserved for military purposes roughly a total area of 25,875,000 square meters, not 7,053,143. On the other hand, Proclamation Nos. 461 and 172 excluded a combined area of 6,892,338 square meters. Now then, the jump from an acknowledgment of the disputed parcels of land having been reserved for military purposes to a rationalization that they must have been excluded from the reservation because 6,892,338 square meters had already been withdrawn from Proclamation 423 is simply speculative. Needless to stress, factual speculations do not make for proof.

Corollary to the first reason is the fact that private respondent SHAI - and quite understandably, the appellate court - had not pointed to any proclamation, or legislative act for that matter, segregating the property covered by TCT No. 15084 from the reservation and classifying the same as alienable and disposable lands of the public domain. To reiterate what we earlier said, lands of the public domain classified as a military reservation remains as such until, by presidential fiat or congressional act, the same is released from such classification and declared open to disposition.[50] The October 30, 1991 Deed of Sale purportedly executed by Palad, assuming for the nonce its authenticity, could not plausibly be the requisite classifying medium converting the JUSMAG area into a disposable parcel. And private respondent SHAI's unyielding stance that would have the Republic in estoppel to question the transfer to it by the LMB Director of the JUSMAG area is unavailing. It should have realized that the Republic is not usually estopped by the mistake or error on the part of its officials or agents.[51]

Since the parcels of land in question allegedly sold to the private respondent are, or at least at the time of the supposed transaction were, still part of the FBMR, the purported sale is necessarily void ab initio.

The Court can hypothetically concede, as a matter of fact, the withdrawal of the JUSMAG area from the ambit of Proclamation No. 423 and its reclassification as alienable and disposable lands of the public domain. Still, such hypothesis would not carry the day for private respondent SHAI. The reason therefor is basic: Article XII, Section 3[52] of the 1987 Constitution forbids private corporations from acquiring any kind of alienable land of the public domain, except through lease for a limited period. While Fr. Bernas had stated the observation that the reason for the ban is not very clear under existing jurisprudence,[53] the fact remains that private corporations, like SHAI, are prohibited from purchasing or otherwise acquiring alienable public lands.

Even if on the foregoing score alone, the Court could write *finis* to this disposition. An appropriate closure to this case could not be had, however, without delving to an extent on the issue of the validity of the October 30, 1991 Deed of Sale which necessarily involves the question of the authenticity of what appears to be Palad's signature thereon.

With the view we take of the case, the interplay of compelling circumstances and inferences deducible therefrom, would, as a package, cast doubt on the authenticity of such deed, if not support a conclusion that the deed is spurious. Consider:

1. Palad categorically declared that his said signature on the deed is a forgery. The Court perceives no reason why he should lie, albeit respondent states, without elaboration, that Palad's declaration is aimed at avoiding "criminal prosecution".[54] The NBI signature expert corroborated Palad's allegation on forgery.[55] Respondent SHAI's expert witness from the PNP, however, disputes the NBI's findings. In net effect, both experts from the NBI and the PNP cancel each other out.
2. Palad signed the supposed deed of sale in Manila, possibly at the LMB office at Plaza Cervantes, Binondo. Even if he acted in an official capacity, Palad nonetheless proceeded on the same day to Pasig City to appear before the notarizing officer. The deed was then brought to the Rizal Registry and there stamped "Received" by the entry clerk. That same afternoon, or at 3:14 p.m. of October 30, 1991 to be precise, TCT No. 15084 was issued. In other words, the whole conveyance and registration process was done in less than a day. The very unusual dispatch is quite surprising. Stranger still is why a bureau head, while in the exercise of his functions as the bureau's authorized contracting officer, has to repair to another city just to have a deed notarized.
3. There is absolutely no record of the requisite public land application to purchase required under Section 89 of the Public Land Act.[56] There is also no record of the deed of sale and of documents usually accompanying an application to purchase, inclusive of the investigation report and the property valuation. The Certification under the seal of the LMB bearing date November 24, 1994 and issued/signed by Alberto Recalde, OIC, Records Management Division of the LMB pursuant to a subpoena issued by the trial court[57] attest to this fact of absence of records. Atty. Alice B. Dayrit, then Chief, Land Utilization and Disposition Division, LMB, testified having personally looked at the bureau record book, but found no entry pertaining to SHAI.[58]
4. In its Answer as defendant *a quo*, respondent SHAI states that the "deed of sale specifically meritorious Official Receipt No. 6030203-C dated 29 October 1991, (sic) as evidence of full payment ... of the agreed purchase price...." An official receipt (O.R.) is doubtless the best evidence to prove payment. While it kept referring to O.R. No. 6030203 as its evidence of the required payment,[59] it failed to present and offer the receipt in evidence. A Certification under date September 15, 1993 of the OIC Cash Division, LMB, states that "OR # 6030203 in the amount of P11,977,000.00 supposedly paid by [SHAI] is not among the series of [ORs] issued at any time by the National Printing Office to the Cashier, LMB, Central Office." [60] A copy of the OR receipt is not appended to any of the pleadings filed before the Court. We can thus validly presume that no such OR exists or, if it does, that its presentation would be adverse to SHAI.

A contract of sale is void where the price, which appears in the document as paid has, in fact, never been paid.[61]

5. The purchase price was, according to the witnesses for SHAI, paid in full in cash to the cashier of the LMB the corresponding amount apparently coming in a mix of P500 and P100 denominations. Albeit plausible, SHAI's witnesses' account taxes credulity to the limit.

A final consideration in G.R. No. 156951. This case could not have come to pass without the participation of a cabal of cheats out to make a dishonest buck at the expense of the government and most likely the members of SHAI. No less than its former president (Ms. Virginia Santos) testified that a "facilitator" did, for a fee, the necessary paper and leg work before the LMB and the Registry of Deeds that led to the execution of the Deed of Sale and issuance of the certificate of title in question.[62] Ms. Santos identified Eugenia Balis, a geodetic engineer, as the "facilitator"[63] who "facilitated all these presentation" of documents,[64] and most of the time, "directly transacted" with the LMB and the Register of Deeds leading to acquisition of title.[65] Engr. Balis was, in the course of Ms. Santos' testimony, directly mentioned by name for at least fifteen (15) times. Not surprisingly, Engr. Balis did not appear in court, despite SHAI's stated intention to present her as witness.[66]

The extent of the misappropriation of the Fort Bonifacio land involved in this and the NOVA area litigations is, as described in the Report of the Fact-Finding Commission,[67] "so epic in scale as to make the overpricing of land ... complained of in the two hundred AFP [Retirement and Separation Benefits System] RSBS cases (P703 million) seem like petty shoplifting in comparison." [68] The members of private respondent SHAI may very well have paid for what they might have been led to believe as the purchase price of the JUSMAG housing area. The sad reality, however, is that the over P11 Million they paid, if that be the case, for a piece of real estate contextually outside the commerce of man apparently fell into the wrong hands and did not enter the government coffers. Else, there must be some memorials of such payment.

At bottom, this disposition is nothing more than restoring the petitioner Republic, and eventually the BCDA, to what rightfully belongs to it in law and in fact. There is nothing unjust to this approach.

With the foregoing disquisitions, the petition for contempt in G.R. No. 173408 need not detain us long. As it were, the question raised by the petitioners therein respecting the ownership of the JUSMAG area and, accordingly, of the right of the petitioning retired military officers to remain in the housing units each may be occupying is now moot and academic. However, contempt petitioners' expressed revulsion over the efforts of the military establishment, particularly the AFP Chief of Staff, to oust them from their respective dwellings, if that really be the case, even before G.R. No. 156951 could be resolved, is understandable as it is justified. We thus end this ponencia with a reminder to all and sundry that might is not always right; that ours is still a government of laws and not of men, be they in the civilian or military sector. Accordingly, the Court will not treat lightly any attempt to trifle, intended or otherwise, with its processes and proceedings. A becoming respect to the majesty of the law and the prerogatives of the Court is a must for the orderly administration of justice to triumph.

WHEREFORE, the petition in G.R. No. 156951 is GRANTED and the appealed CA Decision is REVERSED and SET ASIDE. Accordingly, the Deed of Sale dated October 30, 1991 (Exh. "A"/"1") purportedly executed in favor of private respondent SHAI and TCT No. 15084 (Exh. "B"/"2") of the Registry of Deeds of Rizal issued on the basis of such deed are declared VOID. The Register of Deeds of Pasig or Taguig, as the case may be, is hereby ordered to CANCEL TCT No. 15084 in the name of SHAI and the area covered thereby is DECLARED part of the Fort Bonifacio Military Reservation, unless the same has, in the interim, been duly excluded by law or proclamation from such reservation. Private respondent SHAI, its members, representatives and/or their assigns shall vacate the subject parcels of land immediately upon the finality of this decision, subject to the provisions of Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act.

Cost against the private respondent SHAI.

Having said our piece in G.R. No. 173408, we need not speak any further thereon other than to deny as we hereby similarly DENY the same.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

Puno, JJ., No part. Brother is with intervenor.

[1] Penned by Associate Justice Rebecca De Guia- Salvador and concurred in by Associate Justices Rodrigo V. Cosico and Regalado E. Maambong; rollo, pp. 130-141.

[2] Id. at 757 et seq.

[3] Id. at 1056.

[4] Id. at 1060.

[5] Entitled "Reserving for Military Purposes Certain Parcels of Land of the Public Domain Situated in the Municipality of Pasig, Taguig, Parañaque, Province of Rizal and Pasay City"; Annex "C," Petition, pp. 164 et seq.; published in Vol. 53 (No. 22) O.G., pp. 8011-8015.

[6] Published in Vol. 61 (No. 49) O.G., pp. 8011-8015.

[7] Id. at 7838-7840.

[8] Directs the Director of Lands to subdivide lands within military reservations declared by the President as no longer needed for military purposes and, with the approval of the President, to sell lands so subdivided to persons qualified under Com. Act No. 141 to acquire agricultural public lands, subject to the priority established under Sec. 3 of RA 274.

[9] Gives Filipino citizens of age who is without a homelot in the place where he resides and who has established his residence on a parcel of public land of the Republic preference to purchase at a private sale not more than 1,000 sq. m. of such lot.

[10] Sec. 4.

[11] Sec. 1 of RA 7917 provides that six months after the approval of this Act, the President shall authorize BCDA to dispose certain areas of Fort Bonifacio.

[12] Exh. "B," RTC Records, pp. 867-870.

[13] Annex "E," Petition; Rollo, pp. 170 et seq.

[14] Annex "G," Petition, Rollo, pp. 174 -177.

[15] Petitioner's Exh. "J," pp. 954-955, Ibid.

[16] Annex "G," DND's Petition-in-Intervention, Rollo, p. 1054.

[17] Annex "H," Petition, Rollo, pp. 178 et seq.

[18] Annex "I," Petition, Rollo, pp. 183 et seq. 50-53.

[19] CA Decision, p. 6; Rollo, p. 135.

- [20] TSN, Dec. 13, 1994, pp. 5-17; TSN, Aug. 28, 1996, pp. 33-36; RTC Decision, pp. 2-5; Rollo, pp. 143-145.
- [21] TSN, April 25, 1995, pp. 23-27.
- [22] RTC Decision, p. 15; Rollo, p. 157.
- [23] Per Judge Celso D. Laviña; Rollo, pp. 142 et seq.
- [24] Supra note 1.
- [25] G.R. No. 110207, July 11, 1996, 258 SCRA 651.
- [26] G.R. No. 75723, June 2, 1995, 244 SCRA 713, citing *Remalante v. Tibe*, G.R. No. 59514, February 25, 1988, 158 SCRA 145.
- [27] G.R. No. L-29766, November 29, 1968, 26 SCRA 332.
- [28] G.R. No. 84051, May 19, 1989, 173 SCRA 497.
- [29] G.R. No. L-63575, January 20, 1988, 157 SCRA 140.
- [30] *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998, 296 SCRA 38.
- [31] RTC Decision, pp. 21-22; Rollo, pp. 161-162.
- [32] TSN, December 13, 1994, pp. 16-17.
- [33] *Id.* at 30-33, 43-44.
- [34] *Velasco v. Apostol*, G.R. No. 44588, May 9, 1989, 173 SCRA 228.
- [35] Sec. 83, Public Land Act (C.A. 141, as amended).
- [36] Sec. 88, supra.
- [37] *Republic v. Marcos*, No. L-32941, July 31, 1973, 52 SCRA 238.
- [38] *Republic v. IAC*, No. L-71285, Nov. 5, 1987, 155 SCRA 412; *Director of Lands v. CA*, G.R. No. 45061, November 20, 1989, 179 SCRA 522.
- [39] *Ibid.*
- [40] Comment to Petition, p. 15, Rollo, p. 771.
- [41] Respondent's Consolidated Reply, pp. 9-10; Rollo, pp. 1837-38.
- [42] Appended to Republic's MANIFESTATION AND MOTION dated January 29, 2004; Rollo, 1276 et seq.; Also attached as Annex "F" to DND's and AFP's petition-in-intervention; Rollo, p. 1053.
- [43] Section 1. Judicial Notice when mandatory. ... A court shall take judicial notice, without introduction of evidence ... of the official acts of legislative, executive and judicial departments of the Philippines ...
- [44] Rollo, p. 183.
- [45] *Feria and Noche*, Civil Procedure Annotated, 2001 ed., p. 313, citing *Cortes v. Co Bun Kim*, 90 Phil. 167 (1951).
- [46] Rule 8, Sec. 10, Rules of Court.

[47] RTC Records, p. 304.

[48] Rollo, pp. 524 et seq.

[49] Pages 15 & 16 of Brief; Rollo, pp. 538-539.

[50] Supra note 39.

[51] Republic v. Marcos, supra; Luciano v. Estrella, L-31622, Aug. 31, 1970, 34 SCRA 769.

[52] Sec. 3. xxx. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease ..."

[53] Chavez v. Public Estates Authority, G.R. No. 133250, July 9, 2002, 384 SCRA 152.

[54] Par. 2.3 of respondent's answer to complaint; Rollo, p. 184.

[55] Pages 21-40, TSN, February 21, 1995.

[56] The application to be filed under oath shall set forth: the name of the applicant and other personal circumstances; that the applicant has all the qualifications and none of the disqualifications; an accurate description of the land, its limits and boundaries, etc.

[57] Exh. "C," Original Records, p. 871.

[58] TSN, Aug. 28, 1996, pp. 30-31.

[59] The receipt number is mentioned in Exhs. "A" and "1."

[60] Exh. "D," RTC Records, p. 872.

[61] Ladanga v. Court of Appeals, No. L-55999, Aug. 24, 1984, 131 SCRA 361; Mapalo v. Mapalo, 123 Phil. 979 (1966), and other cases.

[62] TSN April 25, 1995, pp. 23-25, 27.

[63] Id.

[64] Id. at 27.

[65] Id. at 51-52.

[66] Id. at 54.

[67] Created pursuant to Presidential AO # 78, s. of 2003; Rollo, pp. 1345 et seq.

[68] P. 100 of the Report; Rollo, p. 1453.

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