

**SULTAN OSOP B. CAMID, PETITIONER, VS. THE OFFICE OF THE
PRESIDENT, DEPARTMENT OF THE INTERIOR AND LOCAL
GOVERNMENT, AUTONOMOUS REGION IN MUSLIM MINDANAO,
DEPARTMENT OF FINANCE, ...**

G.R. NO. 161414. January 17, 2005

Ponente: TINGA, J.

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TINGA, J.:

This Petition for Certiorari presents this Court with the prospect of our own Brigadoon[1]—the municipality of Andong, Lanao del Sur which like its counterpart in filmdom, is a town that is not supposed to exist yet is anyway insisted by some as actually alive and thriving. Yet unlike in the movies, there is nothing mystical, ghostly or anything even remotely charming about the purported existence of Andong. The creation of the putative municipality was declared void ab initio by this Court four decades ago, but the present petition insists that in spite of this insurmountable obstacle Andong thrives on, and hence, its legal personality should be given judicial affirmation. We disagree.

The factual antecedents derive from the promulgation of our ruling in *Pelaez v. Auditor General*[2] in 1965. As discussed therein, then President Diosdado Macapagal issued several Executive Orders[3] creating thirty-three (33) municipalities in Mindanao. Among them was Andong in Lanao del Sur which was created by virtue of Executive Order No. 107.[4]

These executive orders were issued after legislative bills for the creation of municipalities involved in that case had failed to pass Congress.[5] President Diosdado Macapagal justified the creation of these municipalities citing his powers under Section 68 of the Revised Administrative Code. Then Vice-President Emmanuel Pelaez filed a special civil action for a writ of prohibition, alleging in main that the Executive Orders were null and void, Section 68 having been repealed by Republic Act No. 2370,[6] and said orders constituting an undue delegation of legislative power.[7]

After due deliberation, the Court unanimously held that the challenged Executive Orders were null and void. A majority of five justices, led by the ponente, Justice (later Chief Justice) Roberto Concepcion, ruled that Section 68 of the Revised Administrative Code did not meet the well-settled requirements for a valid delegation of legislative power to the executive branch,[8] while three justices opined that the nullity of the issuances was the consequence of the enactment of the 1935 Constitution, which reduced the power of the Chief Executive over local governments.[9] Pelaez was disposed in this wise:

WHEREFORE, the Executive Orders in question are declared null and void ab initio and the respondent permanently restrained from passing in audit any expenditure of public funds in implementation of said Executive Orders or any disbursement by the municipalities above referred to. It is so ordered.[10]

Among the Executive Orders annulled was Executive Order No. 107 which created the Municipality of Andong.

Nevertheless, the core issue presented in the present petition is the continued efficacy of the judicial annulment of the Municipality of Andong.

Petitioner Sultan Osop B. Camid (Camid) represents himself as a current resident of Andong,[11] suing as a private citizen and taxpayer whose locus standi “is of public and paramount interest especially to the people of the Municipality of Andong, Province of Lanao del Sur.”[12] He alleges that Andong “has metamorphosed into a full-blown municipality with a complete set of officials appointed to handle essential services for the municipality and its constituents,”[13] even though he concedes that since 1968, no person has been appointed, elected or qualified to serve any of the elective local government positions of Andong.[14] Nonetheless, the municipality of Andong has its own high school, Bureau of Posts, a Department of Education, Culture and Sports office, and at least seventeen (17) “barangay units” with their own respective chairmen.[15] From 1964 until 1972, according to Camid, the public officials of Andong “have been serving their constituents through the minimal means and resources with least (sic) honorarium and recognition from the Office of the then former President Diosdado Macapagal.” Since the time of Martial Law in 1972, Andong has allegedly been getting by despite the absence of public funds, with the “Interim Officials” serving their constituents “in their own little ways and means.”[16]

In support of his claim that Andong remains in existence, Camid presents to this Court a Certification issued by the Office of the Community Environment and Natural Resources (CENRO) of the Department of Environment and Natural Resources (DENR) certifying the total land area of the Municipality of Andong, “created under Executive Order No. 107 issued [last] October 1, 1964.”[17] He also submits a Certification issued by the Provincial Statistics Office of Marawi City concerning the population of Andong, which is pegged at fourteen thousand fifty nine (14,059) strong. Camid also enumerates a list of governmental agencies and private groups that allegedly recognize Andong, and notes that other municipalities have recommended to the Speaker of the Regional Legislative Assembly for the immediate implementation of the revival or re-establishment of Andong.[18]

The petition assails a Certification dated 21 November 2003, issued by the Bureau of Local Government Supervision of the Department of Interior and Local Government (DILG).[19] The Certification enumerates eighteen (18) municipalities certified as “existing,” per DILG records. Notably, these eighteen (18) municipalities are among the thirty-three (33), along with Andong, whose creations were voided by this Court in *Pelaez*. These municipalities are Midaslip, Pitogo, Naga, and Bayog in Zamboanga del Sur; Siayan and Pres. Manuel A. Roxas in Zamboanga del Norte; Magsaysay, Sta. Maria and New Corella in Davao; Badiangan and Mina in Iloilo; Maguing in Lanao del Sur; Gloria in Oriental Mindoro; Maasim in Sarangani; Kalilangan and Lantapan in Bukidnon; and Maco in Compostela Valley.[20]

Camid imputes grave abuse of discretion on the part of the DILG “in not classifying [Andong] as a regular existing municipality and in not including said municipality in its records and official database as [an] existing regular municipality.”[21] He characterizes such non-classification as unequal treatment to the detriment of Andong, especially in light of the current recognition given to the eighteen (18) municipalities similarly annulled by reason of *Pelaez*. As appropriate relief, Camid prays that the Court annul the DILG Certification dated 21 November 2003; direct the DILG to classify Andong as a “regular existing municipality;” all public respondents, to extend full recognition and support to Andong; the Department of Finance and the Department of Budget and Management, to immediately release the internal revenue allotments of Andong; and the public respondents, particularly the DILG, to recognize the “Interim Local Officials” of Andong.[22]

Moreover, Camid insists on the continuing validity of Executive Order No. 107. He argues that *Pelaez* has already been modified by supervening events consisting of subsequent laws and jurisprudence. Particularly cited is our Decision in *Municipality of San Narciso v. Hon. Mendez*,[23] wherein the Court affirmed the unique status of the

municipality of San Andres in Quezon as a “de facto municipal corporation.”[24] Similar to Andong, the municipality of San Andres was created by way of executive order, precisely the manner which the Court in Pelaez had declared as unconstitutional. Moreover, San Narciso cited, as Camid does, Section 442(d) of the Local Government Code of 1991 as basis for the current recognition of the impugned municipality. The provision reads:

Section 442. Requisites for Creation. - xxx

(d) Municipalities existing as of the date of the effectivity of this Code shall continue to exist and operate as such. Existing municipal districts organized pursuant to presidential issuances or executive orders and which have their respective sets of elective municipal officials holding office at the time of the effectivity of (the) Code shall henceforth be considered as regular municipalities.[25]

There are several reasons why the petition must be dismissed. These can be better discerned upon examination of the proper scope and application of Section 442(d), which does not sanction the recognition of just any municipality. This point shall be further explained further on.

Notably, as pointed out by the public respondents, through the Office of the Solicitor General (OSG), the case is not a fit subject for the special civil actions of certiorari and mandamus, as it pertains to the de novo appreciation of factual questions. There is indeed no way to confirm several of Camid’s astonishing factual allegations pertaining to the purported continuing operation of Andong in the decades since it was annulled by this Court. No trial court has had the opportunity to ascertain the validity of these factual claims, the appreciation of which is beyond the function of this Court since it is not a trier of facts.

The importance of proper factual ascertainment cannot be gainsaid, especially in light of the legal principles governing the recognition of de facto municipal corporations. It has been opined that municipal corporations may exist by prescription where it is shown that the community has claimed and exercised corporate functions, with the knowledge and acquiescence of the legislature, and without interruption or objection for period long enough to afford title by prescription.[26] These municipal corporations have exercised their powers for a long period without objection on the part of the government that although no charter is in existence, it is presumed that they were duly incorporated in the first place and that their charters had been lost.[27] They are especially common in England, which, as well-worth noting, has existed as a state for over a thousand years. The reason for the development of that rule in England is understandable, since that country was settled long before the Roman conquest by nomadic Celtic tribes, which could have hardly been expected to obtain a municipal charter in the absence of a national legal authority.

In the United States, municipal corporations by prescription are less common, but it has been held that when no charter or act of incorporation of a town can be found, it may be shown to have claimed and exercised the powers of a town with the knowledge and assent of the legislature, and without objection or interruption for so long a period as to furnish evidence of a prescriptive right.[28]

What is clearly essential is a factual demonstration of the continuous exercise by the municipal corporation of its corporate powers, as well as the acquiescence thereto by the other instrumentalities of the state. Camid does not have the opportunity to make an initial factual demonstration of those circumstances before this Court. Indeed, the factual deficiencies aside, Camid’s plaint should have undergone the usual administrative gauntlet and, once that was done, should have been filed first with the Court of Appeals, which at least would have had the power to make the necessary factual determinations. Camid’s seeming ignorance of the principles of exhaustion of administrative remedies and hierarchy of courts, as well as the concomitant prematurity of the present petition, cannot be countenanced.

It is also difficult to capture the sense and viability of Camid’s present action. The assailed issuance is the

Certification issued by the DILG. But such Certification does not pretend to bear the authority to create or revalidate a municipality. Certainly, the annulment of the Certification will really do nothing to serve Camid's ultimate cause- the recognition of Andong. Neither does the Certification even expressly refute the claim that Andong still exists, as there is nothing in the document that comments on the present status of Andong. Perhaps the Certification is assailed before this Court if only to present an actual issuance, rather than a long-standing habit or pattern of action that can be annulled through the special civil action of certiorari. Still, the relation of the Certification to Camid's central argument is forlornly strained.

These disquisitions aside, the central issue remains whether a municipality whose creation by executive fiat was previously voided by this Court may attain recognition in the absence of any curative or reimplementing statute. Apparently, the question has never been decided before, San Narciso and its kindred cases pertaining as they did to municipalities whose bases of creation were dubious yet were never judicially nullified. The effect of Section 442(d) of the Local Government Code on municipalities such as Andong warrants explanation. Besides, the residents of Andong who belabor under the impression that their town still exists, much less those who may comport themselves as the municipality's "Interim Government," would be well served by a rude awakening.

The Court can employ a simplistic approach in resolving the substantive aspect of the petition, merely by pointing out that the Municipality of Andong never existed.[29] Executive Order No. 107, which established Andong, was declared "null and void ab initio" in 1965 by this Court in *Pelaez*, along with thirty-three (33) other executive orders. The phrase "ab initio" means "from the beginning,"[30] "at first,"[31] "from the inception." [32] *Pelaez* was never reversed by this Court but rather it was expressly affirmed in the cases of *Municipality of San Joaquin v. Siva*,[33] *Municipality of Malabang v. Benito*,[34] and *Municipality of Kapalong v. Moya*. [35] No subsequent ruling by this Court declared *Pelaez* as overturned or inoperative. No subsequent legislation has been passed since 1965 creating a Municipality of Andong. Given these facts, there is hardly any reason to elaborate why Andong does not exist as a duly constituted municipality.

This ratiocination does not admit to patent legal errors and has the additional virtue of blessed austerity. Still, its sweeping adoption may not be advisedly appropriate in light of Section 442(d) of the Local Government Code and our ruling in *Municipality of San Narciso*, both of which admit to the possibility of de facto municipal corporations.

To understand the applicability of *Municipality of San Narciso* and Section 442(b) of the Local Government Code to the situation of Andong, it is necessary again to consider the ramifications of our decision in *Pelaez*.

The eminent legal doctrine enunciated in *Pelaez* was that the President was then, and still is, not empowered to create municipalities through executive issuances. The Court therein recognized "that the President has, for many years, issued executive orders creating municipal corporations, and that the same have been organized and in actual operation" [36] However, the Court ultimately nullified only those thirty-three (33) municipalities, including Andong, created during the period from 4 September to 29 October 1964 whose existence petitioner Vice-President *Pelaez* had specifically assailed before this Court. No pronouncement was made as to the other municipalities which had been previously created by the President in the exercise of power the Court deemed unlawful.

Two years after *Pelaez* was decided, the issue again came to fore in *Municipality of San Joaquin v. Siva*. [37] The Municipality of Lawigan was created by virtue of Executive Order No. 436 in 1961. Lawigan was not one of the municipalities ordered annulled in *Pelaez*. A petition for prohibition was filed contesting the legality of the executive order, again on the ground that Section 68 of the Revised Administrative Code was unconstitutional. The trial court dismissed the petition, but the Supreme Court reversed the ruling and entered a new decision

declaring Executive Order No. 436 void ab initio. The Court reasoned without elaboration that the issue had already been squarely taken up and settled in *Pelaez* which agreed with the argument posed by the challengers to *Lawigan*'s validity.[38]

In the 1969 case of *Municipality of Malabang v. Benito*,[39] what was challenged is the validity of the constitution of the Municipality of Balabagan in Lanao del Sur, also created by an executive order,[40] and which, similar to *Lawigan*, was not one of the municipalities annulled in *Pelaez*. This time, the officials of Balabagan invoked de facto status as a municipal corporation in order to dissuade the Court from nullifying action. They alleged that its status as a de facto corporation cannot be collaterally attacked but should be inquired into directly in an action for quo warranto at the instance of the State, and not by a private individual as it was in that case. In response, the Court conceded that an inquiry into the legal existence of a municipality is reserved to the State in a proceeding for quo warranto, but only if the municipal corporation is a de facto corporation.[41]

Ultimately, the Court refused to acknowledge Balabagan as a de facto corporation, even though it had been organized prior to the Court's decision in *Pelaez*. The Court declared void the executive order creating Balabagan and restrained its municipal officials from performing their official duties and functions.[42] It cited conflicting American authorities on whether a de facto corporation can exist where the statute or charter creating it is unconstitutional.[43] But the Court's final conclusion was unequivocal that Balabagan was not a de facto corporation.

In the cases where a de facto municipal corporation was recognized as such despite the fact that the statute creating it was later invalidated, the decisions could fairly be made to rest on the consideration that there was some other valid law giving corporate vitality to the organization. Hence, in the case at bar, the mere fact that Balabagan was organized at a time when the statute had not been invalidated cannot conceivably make it a de facto corporation, as, independently of the Administrative Code provision in question, there is no other valid statute to give color of authority to its creation.[44]

The Court did clarify in *Malabang* that the previous acts done by the municipality in the exercise of its corporate powers were not necessarily a nullity.[45] *Camid* devotes several pages of his petition in citing this point,[46] yet the relevance of the citation is unclear considering that *Camid* does not assert the validity of any corporate act of *Andong* prior to its judicial dissolution. Notwithstanding, the Court in *Malabang* retained an emphatic attitude as to the unconstitutionality of the power of the President to create municipal corporations by way of presidential promulgations, as authorized under Section 68 of the Revised Administrative Code.

This principle was most recently affirmed in 1988, in *Municipality of Kapalong v. Moya*.^[47] The municipality of Santo Tomas, created by President Carlos P. Garcia, filed a complaint against another municipality, who challenged Santo Tomas's legal personality to institute suit. Again, Santo Tomas had not been expressly nullified by prior judicial action, yet the Court refused to recognize its legal existence. The blunt but simple ruling: "Now then, as ruled in the *Pelaez* case supra, the President has no power to create a municipality. Since [Santo Tomas] has no legal personality, it can not be a party to any civil action...."^[48]

Nevertheless, when the Court decided *Municipality of San Narciso*^[49] in 1995, it indicated a shift in the jurisprudential treatment of municipalities created through presidential issuances. The questioned municipality of San Andres, Quezon was created on 20 August 1959 by Executive Order No. 353 issued by President Carlos P. Garcia. Executive Order No. 353 was not one of the thirty-three issuances annulled by *Pelaez* in 1965. The legal status of the Municipality of San Andres was first challenged only in 1989, through a petition for quo warranto filed with the Regional Trial Court of Gumaca, Quezon, which did cite *Pelaez* as authority.^[50] The RTC dismissed the petition for lack of cause of action, and the petitioners therein elevated the matter to this Court.

In dismissing the petition, the Court delved in the merits of the petition, if only to resolve further doubt on the legal status of San Andres. It noted a circumstance which is not present in the case at bar—that San Andres was in existence for nearly thirty (30) years before its legality was challenged. The Court did not declare the executive order creating San Andres null and void. Still, acting on the premise that the said executive order was a complete nullity, the Court noted “peculiar circumstances” that led to the conclusion that San Andres had attained the unique status of a “de facto municipal corporation.”[51] It noted that Pelaez limited its nullificatory effect only to those executive orders specifically challenged therein, despite the fact that the Court then could have very well extended the decision to invalidate San Andres as well.[52] This statement squarely contradicts Camid’s reading of San Narciso that the creation of San Andres, just like Andong, had been declared a complete nullity on the same ground of unconstitutional delegation of legislative power found in Pelaez.[53]

The Court also considered the applicability of Section 442(d)[54] of the Local Government Code of 1991. It clarified the implication of the provision as follows:

Equally significant is Section 442(d) of the Local Government Code to the effect that municipal districts “organized pursuant to presidential issuances or executive orders and which have their respective sets of elective municipal officials holding office at the time of the effectivity of (the) Code shall henceforth be considered as regular municipalities.” No pretension of unconstitutionality per se of Section 442(d) of the Local Government Code is preferred. It is doubtful whether such a pretext, even if made, would succeed. The power to create political subdivisions is a function of the legislature. Congress did just that when it has incorporated Section 442(d) in the Code. Curative laws, which in essence are retrospective, and aimed at giving “validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with,” are validly accepted in this jurisdiction, subject to the usual qualification against impairment of vested rights. (Emphasis supplied)[55]

The holding in San Narciso was subsequently affirmed in *Municipality of Candijay v. Court of Appeals*[56] and *Municipality of Jimenez v. Baz*[57] In *Candijay*, the juridical personality of the Municipality of Alicia, created in a 1949 executive order, was attacked only beginning in 1984. Pelaez was again invoked in support of the challenge, but the Court refused to invalidate the municipality, citing *San Narciso* at length. The Court noted that the situation of the Municipality of Alicia was strikingly similar to that in *San Narciso*; hence, the town should likewise “benefit from the effects of Section 442(d) of the Local Government Code, and should [be] considered as a regular, de jure municipality.” [58]

The valid existence of Municipality of Sinacaban, created in a 1949 executive order, was among the issues raised in *Jimenez*. The Court, through Justice Mendoza, provided an expert summation of the evolution of the rule.

The principal basis for the view that Sinacaban was not validly created as a municipal corporation is the ruling in *Pelaez v. Auditor General* that the creation of municipal corporations is essentially a legislative matter and therefore the President was without power to create by executive order the Municipality of Sinacaban. The ruling in this case has been reiterated in a number of cases later decided. However, we have since held that where a municipality created as such by executive order is later impliedly recognized and its acts are accorded legal validity, its creation can no longer be questioned. In *Municipality of San Narciso, Quezon v. Mendez, Sr.*, this Court considered the following factors as having validated the creation of a municipal corporation, which, like the Municipality of Sinacaban, was created by executive order of the President before the ruling in *Pelaez v. Auditor General*: (1) the fact that for nearly 30 years the validity of the creation of the municipality had never been challenged; (2) the fact that following the ruling in *Pelaez* no quo warranto suit was filed to question the validity of the executive order creating such municipality; and (3) the fact that the municipality was later classified as a fifth class municipality, organized as part of a municipal circuit court and considered part of a legislative district in the Constitution apportioning the seats in the House of Representatives. Above all, it was held that whatever doubt there might be as to the de jure character of the municipality must be

deemed to have been put to rest by the Local Government Code of 1991 (R. A. No. 7160), §442(d) of which provides that "municipal districts organized pursuant to presidential issuances or executive orders and which have their respective sets of elective officials holding office at the time of the effectivity of this Code shall henceforth be considered as regular municipalities."

Here, the same factors are present so as to confer on Sinacaban the status of at least a de facto municipal corporation in the sense that its legal existence has been recognized and acquiesced publicly and officially. Sinacaban had been in existence for sixteen years when *Pelaez v. Auditor General* was decided on December 24, 1965. Yet the validity of E.O. No. 258 creating it had never been questioned. Created in 1949, it was only 40 years later that its existence was questioned and only because it had laid claim to an area that apparently is desired for its revenue. This fact must be underscored because under Rule 66, §16 of the Rules of Court, a quo warranto suit against a corporation for forfeiture of its charter must be commenced within five (5) years from the time the act complained of was done or committed. On the contrary, the State and even the Municipality of Jimenez itself have recognized Sinacaban's corporate existence. Under Administrative Order No. 33 dated June 13, 1978 of this Court, as reiterated by §31 of the Judiciary Reorganization Act of 1980 (B. P. Blg. 129), Sinacaban is constituted part of a municipal circuit for purposes of the establishment of Municipal Circuit Trial Courts in the country. For its part, Jimenez had earlier recognized Sinacaban in 1950 by entering into an agreement with it regarding their common boundary. The agreement was embodied in Resolution No. 77 of the Provincial Board of Misamis Occidental.

Indeed Sinacaban has attained de jure status by virtue of the Ordinance appended to the 1987 Constitution, apportioning legislative districts throughout the country, which considered Sinacaban part of the Second District of Misamis Occidental. Moreover, following the ruling in *Municipality of San Narciso, Quezon v. Mendez, Sr.*, 442(d) of the Local Government Code of 1991 must be deemed to have cured any defect in the creation of Sinacaban....[59]

From this survey of relevant jurisprudence, we can gather the applicable rules. *Pelaez* and its offspring cases ruled that the President has no power to create municipalities, yet limited its nullificatory effects to the particular municipalities challenged in actual cases before this Court. However, with the promulgation of the Local Government Code in 1991, the legal cloud was lifted over the municipalities similarly created by executive order but not judicially annulled. The de facto status of such municipalities as San Andres, Alicia and Sinacaban was recognized by this Court, and Section 442(b) of the Local Government Code deemed curative whatever legal defects to title these municipalities had labored under.

Is Andong similarly entitled to recognition as a de facto municipal corporation? It is not. There are eminent differences between Andong and municipalities such as San Andres, Alicia and Sinacaban. Most prominent is the fact that the executive order creating Andong was expressly annulled by order of this Court in 1965. If we were to affirm Andong's de facto status by reason of its alleged continued existence despite its nullification, we would in effect be condoning defiance of a valid order of this Court. Court decisions cannot obviously lose their efficacy due to the sheer defiance by the parties aggrieved.

It bears noting that based on Camid's own admissions, Andong does not meet the requisites set forth by Section 442(d) of the Local Government Code. Section 442(d) requires that in order that the municipality created by executive order may receive recognition, they must "have their respective set of elective municipal officials holding office at the time of the effectivity of [the Local Government] Code." Camid admits that Andong has never elected its municipal officers at all.[60] This incapacity ties in with the fact that Andong was judicially annulled in 1965. Out of obeisance to our ruling in *Pelaez*, the national government ceased to recognize the existence of Andong, depriving it of its share of the public funds, and refusing to conduct municipal elections for the void municipality.

The failure to appropriate funds for Andong and the absence of elections in the municipality in the last four decades are eloquent indicia of the non-recognition by the State of the existence of the town. The certifications relied upon by Camid, issued by the DENR-CENRO and the National Statistics Office, can hardly serve the purpose of attesting to Andong's legal efficacy. In fact, both these certifications qualify that they were issued upon the request of Camid, "to support the restoration or re-operation of the Municipality of Andong, Lanao del Sur,"[61] thus obviously conceding that the municipality is at present inoperative.

We may likewise pay attention to the Ordinance appended to the 1987 Constitution, which had also been relied upon in Jimenez and San Narciso. This Ordinance, which apportioned the seats of the House of Representatives to the different legislative districts in the Philippines, enumerates the various municipalities that are encompassed by the various legislative districts. Andong is not listed therein as among the municipalities of Lanao del Sur, or of any other province for that matter.[62] On the other hand, the municipalities of San Andres, Alicia and Sinacaban are mentioned in the Ordinance as part of Quezon,[63] Bohol,[64] and Misamis Occidental[65] respectively.

How about the eighteen (18) municipalities similarly nullified in Pelaez but certified as existing in the DILG Certification presented by Camid? The petition fails to mention that subsequent to the ruling in Pelaez, legislation was enacted to reconstitute these municipalities.[66] It is thus not surprising that the DILG certified the existence of these eighteen (18) municipalities, or that these towns are among the municipalities enumerated in the Ordinance appended to the Constitution. Andong has not been similarly reestablished through statute. Clearly then, the fact that there are valid organic statutes passed by legislation recreating these eighteen (18) municipalities is sufficient legal basis to accord a different legal treatment to Andong as against these eighteen (18) other municipalities.

We thus assert the proper purview to Section 442(d) of the Local Government Code—that it does not serve to affirm or reconstitute the judicially dissolved municipalities such as Andong, which had been previously created by presidential issuances or executive orders. The provision affirms the legal personalities only of those municipalities such as San Narciso, Alicia, and Sinacaban, which may have been created using the same infirm legal basis, yet were fortunate enough not to have been judicially annulled. On the other hand, the municipalities judicially dissolved in cases such as Pelaez, San Joaquin, and Malabang, remain inexistent, unless recreated through specific legislative enactments, as done with the eighteen (18) municipalities certified by the DILG. Those municipalities derive their legal personality not from the presidential issuances or executive orders which originally created them or from Section 442(d), but from the respective legislative statutes which were enacted to revive them.

And what now of Andong and its residents? Certainly, neither Pelaez or this decision has obliterated Andong into a hole on the ground. The legal effect of the nullification of Andong in Pelaez was to revert the constituent barrios of the voided town back into their original municipalities, namely the municipalities of Lumbatan, Butig and Tubaran.[67] These three municipalities subsist to this day as part of Lanao del Sur,[68] and presumably continue to exercise corporate powers over the barrios which once belonged to Andong.

If there is truly a strong impulse calling for the reconstitution of Andong, the solution is through the legislature and not judicial confirmation of void title. If indeed the residents of Andong have, all these years, been governed not by their proper municipal governments but by a ragtag "Interim Government," then an expedient political and legislative solution is perhaps necessary. Yet we can hardly sanction the retention of Andong's legal personality solely on the basis of collective amnesia that may have allowed Andong to somehow pretend itself into existence despite its judicial dissolution. Maybe those who insist Andong still exists prefer to remain unperturbed in their blissful ignorance, like the inhabitants of the cave in Plato's famed allegory. But the time has come for the light to seep in, and for the petitioner and like-minded persons to awaken to legal reality.

WHEREFORE, the Petition is DISMISSED for lack of merit. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario and Garcia, JJ., concur.

[1] A 1954 film based on the well-known eponymous Broadway musical by Alan Jay Lerner and Frederick Loewe. The plot pertains to a magical Scottish town touted to appear once every hundred years on some otherworldly plain according to legend.

[2] 122 Phil. 965 (1965).

[3] Executive Orders Nos. 93 to 121, 124 and 126 to 129. *Pelaez v. Auditor General*, supra note 1 at 969.

[4] *Pelaez v. Auditor General*, supra note 1 at 970.

[5] *Id.* at 980.

[6] The Barrio Charter Act.

[7] *Id.* at 971.

[8] The particular flaws included the failure to enunciate any policy to be carried out or implemented by the President, the absence of standards sufficiently precise to avoid the evil effects. *Id.* at 975. Moreover, the creation of municipalities was declared to be a function eminently legislative in character, and not administrative. *Id.* at 977.

[9] *Id.* at 986, J. Bengzon, concurring and dissenting.

[10] *Id.* at 983.

[11] Rollo, p. 5.

[12] *Ibid.*

[13] *Id.* at 13.

[14] *Id.* at 14.

[15] *Id.* at 15.

[16] *Id.* at 16.

[17] *Id.* at 17.

[18] *Ibid.*

[19] *Id.* at 44. The Certification was signed by OIC Assistant Director Mariano A. Gabito.

[20] Rollo, p. 11.

[21] *Id.* at 22.

[22] Rollo, pp. 36-37.

[23] G.R. No. 103702, 6 December 1994, 239 SCRA 11.

[24] Id. at 32-33.

[25] Id. at 31-32.

[26] R. Martin, *Public Corporations* (1983 ed.) at 18, citing *Cooley's Mun. Corp.* 52.

[27] Id. at 18 citing 37 Am Jur., 629-630.

[28] Ibid.

[29] Such an approach was employed by the Court in *Municipality of Kapalong v. Moya*, *infra*.

[30] Webster's Third New International Dictionary: Unabridged (1993 ed.), p.3.

[31] W. Burton, *Burton's Legal Thesaurus* (3rd ed. 2001), p. 1.

[32] H.C. Black, *Black's Law Dictionary* (6th ed., 1990), p. 6.

[33] 125 Phil. 1004 (1967).

[34] 137 Phil. 358 (1969).

[35] G.R. No. L-41322, 29 September 1988, 166 SCRA 70.

[36] Pelaez, *supra* note 2, at 983.

[37] *Supra* note 32.

[38] Id. at 1005.

[39] *Supra* note 34.

[40] Particularly, Balabagan was created by Executive Order No. 386 by President Carlos P. Garcia. Id. at 360.

[41] Id. at 361, citing *Hunt v. Atkinson*, (Tex. Com. App.), 12 S.W. 2d 142, 145 (1929), *re'g* 300 S.W. 656 (1927).

[42] Id. at 365.

[43] Particularly citing the ruling in *Brandenstein v. Hoke*, 101 Cal. 131, 35 P. 562 (1894) and *Atchison T. & S.F.R.R. v. Board of Commissioners*, 58 Kan. 19, 48 P. 583 (1897) on one hand, and *Lang v. City of Bayonne*, 74 N.J.L. 455, 68 A. 90 (1907); *St. Louis v. Shields*, 62 Mo. 247 (1876); *School District No. 25 v. State*, 29 Kan. 57 (1882) on the other hand. Id. at 362.

[44] Id. at 363-364.

[45] Citing primarily the opinion of U.S. Supreme Court Chief Justice Charles Evans Hughes in *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 374 (1940), which noted in part: "The actual existence of a statute, prior to such a determination [of invalidity], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects—with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature of both the statute and of its previous application, demand examination." *Municipality of Malabang v. Benito*, *supra* note 34, at 364. See also J. Gutierrez, concurring and dissenting, *Cruz v. Ponce Enrile*, G.R. No. L-75983, 15 April 1988, 160 SCRA 700, 713-714.

[46] See Rollo, pp. 25-30.

[47] Supra note 35.

[48] Id. at 72.

[49] Supra note 23.

[50] Id. at 15.

[51] “Created in 1959 by virtue of Executive Order No. 353, the Municipality of San Andres had been in existence for more than six years when, on 24 December 1965, Pelaez v. Auditor General was promulgated. The ruling could have sounded the call for a similar declaration of the unconstitutionality of Executive Order No. 353 but it was not to be the case. On the contrary, certain governmental acts all pointed to the State's recognition of the continued existence of the Municipality of San Andres. Thus, after more than five years as a municipal district, Executive Order No. 174 classified the Municipality of San Andres as a fifth class municipality after having surpassed the income requirement laid out in Republic Act No. 1515. Section 31 of Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, constituted as municipal circuits, in the establishment of Municipal Circuit Trial Courts in the country, certain municipalities that comprised the municipal circuits organized under Administrative Order No. 33, dated 13 June 1978, issued by this Court pursuant to Presidential Decree No. 537. Under this administrative order, the Municipality of San Andres had been covered by the 10th Municipal Circuit Court of San Francisco-San Andres for the province of Quezon.

At the present time, all doubts on the de jure standing of the municipality must be dispelled. Under the Ordinance (adopted on 15 October 1986) apportioning the seats of the House of Representatives, appended to the 1987 Constitution, the Municipality of San Andres has been considered to be one of the twelve (12) municipalities composing the Third District of the province of Quezon.” Id. at 20.

[52] Ibid.

[53] Rollo, p. 32.

[54] Infra.

[55] Municipality of San Narciso v. Mendez, supra note 23, at 21.

[56] 321 Phil. 922 (1995).

[57] 333 Phil. 1 (1996).

[58] Municipality of Candijay v. Court of Appeals, supra note 56 at 930.

[59] Supra note 57, at 192-193.

[60] Rollo, p.14.

[61] See Rollo, pp. 131, 135.

[62] Vide Appendix A to I. Cruz, Constitutional Law, 1998 ed., at 452, which replicates the 1987 Constitution and the appended Ordinance thereto.

[63] Id. at 446.

[64] Id. at 448.

[65] Id. at 426.

[66] The following are the eighteen (18) municipalities referred to in the DILG Certification, and their respective organic statutes, all of which were enacted after Pelaez was decided in 1965:

- Midsalip, Zamboanga del Sur – Republic Act No. 4871 entitled AN ACT CREATING THE MUNICIPALITY OF MIDSALIP IN THE PROVINCE OF ZAMBOANGA DEL SUR enacted without Executive approval on May 8, 1967.
- Pitogo, Zamboanga del Sur – Republic Act No. 6490 entitled AN ACT CREATING THE MUNICIPALITY OF PITOGO IN THE PROVINCE OF ZAMBOANGA DEL SUR approved on June 17, 1972.
- Naga, Zamboanga del Sur Republic Act No. 4875 entitled AN ACT CREATING THE MUNICIPALITY OF NAGA IN THE PROVINCE OF ZAMBOANGA DEL SUR approved on May 18, 1967.
- Magsaysay, Davao – Republic Act No. 4976 entitled AN ACT CREATING THE MUNICIPALITY OF MAGSAYSAY IN THE PROVINCE OF DAVAO enacted without Executive approval on June 17, 1967.
- Sta. Maria, Davao – Republic Act No. 4743 entitled AN ACT CREATING A NEW MUNICIPALITY IN THE PROVINCE OF DAVAO TO BE KNOWN AS THE MUNICIPALITY OF SANTA MARIA approved on June 18, 1966.
- Badiangan, Iloilo - Republic Act No. 5006 entitled AN ACT CREATING THE MUNICIPALITY OF BADIANGAN IN THE PROVINCE OF ILOILO enacted without Executive approval on June 17, 1967.
- Mina, Iloilo – Republic Act No. 5442 entitled AN ACT CREATING THE MUNICIPALITY OF MINA IN THE PROVINCE OF ILOILO enacted without Executive approval on September 9, 1968.
- Maguing, Lanao del Sur – Presidential Decree 1134 entitled CREATING THE MUNICIPALITY OF MAGUING IN THE PROVINCE OF LANA DEL SUR by then Pres. Ferdinand E. Marcos on May 4, 1977.
- Bayog, Zamboanga del Sur - Republic Act No. 4872 entitled AN ACT CREATING THE MUNICIPALITY OF BAYOG IN THE PROVINCE OF ZAMBOANGA DEL SUR approved on May 8, 1967.
- Gloria, Oriental Mindoro – Republic Act No. 4651 entitled AN ACT CREATING THE MUNICIPALITY OF GLORIA IN THE PROVINCE OF ORIENTAL MINDORO approved on June 9, 1966.
- Maasim, Sarangani – Republic Act No. 5866 entitled AN ACT CREATING THE MUNICIPALITY OF MAASIM IN THE PROVINCE OF SOUTH COTABATO enacted without Executive approval on June 21, 1969. However, said municipality was transferred to the Province of Sarangani by virtue of Section 1 of Republic Act No. 7228 enacted on March 16, 1992.
- Siayan, Zamboanga del Norte – Republic Act No. 2553 entitled AN ACT CREATING THE BARRIO OF SIAYAN IN THE MUNICIPALITY OF SINDANGAN, PROVINCE OF ZAMBOANGA DEL NORTE enacted without Executive approval on June 21, 1959.
- Pres. Manuel A Roxas, Zamboanga del Norte – Republic Act No. 5077 entitled AN ACT CREATING THE MUNICIPALITY OF PRESIDENT MANUEL A. ROXAS IN THE PROVINCE OF ZAMBOANGA DEL NORTE enacted without executive approval on June 17, 1967.
- Kalilangan, Bukidnon – Republic Act No. 4788, as amended entitled, AN ACT CREATING THE MUNICIPALITY OF KALILANGAN IN THE PROVINCE OF BUKIDNON approved on June 18, 1966.
- Lantapan, Bukidnon – Republic Act No. 4787 entitled AN ACT CREATING THE MUNICIPALITY OF LANTAPAN IN THE PROVINCE OF BUKIDNON approved on June 18, 1966.

- Tampakan, Cotabato – Republic Act No. 5661 entitled AN ACT CREATING THE MUNICIPALITY OF TAMPAKAN IN THE PROVINCE OF SOUTH COTABATO approved on June 21, 1969.

- Maco, Compostela Valley – Republic Act No. 4975 entitled AN ACT CREATING THE MUNICIPALITY OF MACO IN THE PROVINCE OF DAVAO which was enacted without Executive approval on June 17, 1967. Said municipality was transferred to the province of Compostela Valley by virtue of Section 1, Republic Act No. 8470 which was approved on January 30, 1998.

- New Corella, Davao – Republic Act No. 4747 entitled AN ACT CREATING THE MUNICIPALITY OF NEW CORELLA, PROVINCE OF DAVAO which took effect upon its approval on June 18, 1966.

[67] See Executive Order No. 107 (1964).

[68] See Cruz, *supra* note 62, at 452.

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