

YKR CORPORATION AND HEIRS OF LUIS A. YULO, PETITIONERS, VS. SANDIGANBAYAN AND REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 162079. March 18, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for certiorari[1] assailing the 17 March 2003[2] and 9 February 2004[3] Resolutions of the Sandiganbayan Special Fifth Division in Civil Case No. 0024 entitled Republic of the Philippines v. Peter Sabido, et al.[4] The 17 March 2003 Resolution denied the motion to lift the sequestration order against YKR Corporation while the 9 February 2004 Resolution denied the motion for reconsideration filed by YKR Corporation and the Heirs of Luis A. Yulo[5] (petitioners).

The Antecedent Facts

In a Sequestration Order[6] dated 2 April 1986 signed by then Commissioner Mary Conception Bautista, YKR Corporation, a ranch operator located in Busuanga, Palawan, was sequestered and placed under the control and possession of the Presidential Commission on Good Government (PCGG).

On 29 July 1987, the Republic of the Philippines (Republic) filed a Complaint[7] for reconveyance, reversion, accounting and damages, docketed as Civil Case No. 0024, against Peter Sabido (Sabido), et al.[8] Among the individual defendants in Civil Case No. 0024 was Luis Yulo (Yulo). In an Amended Complaint[9] dated 2 October 1991, the Republic impleaded YKR Corporation as additional defendant on the ground that it was beneficially owned or controlled by Sabido.[10]

In an unsigned resolution[11] dated 26 March 1996 in G.R. No. 96073 [12] and related cases, this Court directed the PCGG and/or its fiscal or authorized agent, the Bureau of Animal Industry (BAI), to submit an inventory and accounting of the assets of the YKR Corporation which had come into their possession and control by virtue of the sequestration order. Pursuant to this Court's order, petitioners filed a Motion to Order Compliance with Supreme Court Order before the Sandiganbayan. In a Resolution[13] promulgated on 29 July 1996, the Sandiganbayan considered that an updated inventory and accounting of the sequestered assets of YKR Corporation was long overdue. The Sandiganbayan also considered that this Court's 26 March 1996 Order was already final and executory. Thus, the Sandiganbayan granted petitioners' motion and ordered the PCGG and/or its fiscal or authorized agent, the BAI, to submit, within 90 days from notice, an updated inventory and accounting of the assets of YKR Corporation from the time such assets came under their possession and control by virtue of the PCGG's sequestration order. The Sandiganbayan further directed the PCGG to submit progress reports of the on-going inventory and accounting on the 30th and 60th day from receipt of the Sandiganbayan's resolution.

In a Manifestation/Motion[14] dated 17 October 1996, the PCGG requested the Sandiganbayan for the issuance of

a resolution directing the BAI or Director Romeo Alcasid to submit an updated inventory and accounting subject of the 29 July 1996 Resolution. The Manifestation/Motion states:

1. A Resolution dated My 25, 1996[15] (received on September 18, 1996) was issued by this Honorable Court requiring plaintiff and/or its "fiscal agent". Bureau of Animal Industry (BAI), to submit within 90 days from notice an updated inventory and accounting of the assets of the YKR Corporation;
2. It is a matter of record that since 1986, BAI took over and assumed full control of the management and operations of the YKR Corporations pursuant to the directive of then Minister of Agriculture and Food, Ramon V. Mitra, Jr.; a photocopy of the Memorandum/Directive is attached at ANNEX "A"; hereof;
3. As early as February 19, 1996, the plaintiff had requested BAI's assistance and cooperation on a forthcoming ocular inspection and inventory of all YKR assets at Coron, Palawan on or before March 1, 1996; [a] photocopy of the letter-request addressed to Dir. Romeo Alcasid is attached as ANNEX "B" hereof;
4. Before plaintiff could actually conduct the ocular inspection and inventory, a letter (in reply to the letter of February 19, 1996, Annex "B") was received by PCGG from the Department of Agriculture, through Asst. Secretary Lino Nazareno, citing Presidential Proclamation 1386 and P.D. 619, Busuanga Breeding and Experimental Station should be excluded from the sequestration case; (a photocopy of the letter dated February 27, 1996 is attached as Annex "C" hereof);
5. By letter dated May 9, 1996, Magtanggol C. Gunigundo, Chairman [of] PCGG, proposed to Sec. S. Escudero III of the Department of Agriculture the creation of a composite term of PCGG-BAI-COA personnel for the purpose of conducting an inventory of all assets of YKR; the said letter was ignored, copy attached as Annex "D" hereof;
6. To expedite the implementation of the Resolution subject hereof, another Resolution should be directed against the Bureau of Animal Industry/Director Romeo Alcasid, Quezon City, ordering it to submit the updated inventory and accounting of YKR assets subject of the Resolution of this Court[.][16]

YKR Corporation filed a Motion to Lift Sequestration[17] dated 31 October 1996. YKR Corporation, citing PCGG's 17 October 1996 Manifestation/Motion, alleged that the PCGG had lost control of the assets and records of the corporation to its own fiscal agent which it could not control. YKR Corporation alleged that PCGG was guilty of gross negligence in insisting on the sequestration despite the fact that it had already lost control of the corporation to its own fiscal agent. YKR Corporation alleged that the PCGG violated the constitutional rights of the corporation and its stockholders because of its continued sequestration without due process of law.

In a Resolution promulgated on 13 May 1997, the Sandiganbayan gave the PCGG and its fiscal or authorized agent, the BAI, another chance to render an updated inventory and accounting of the assets of YKR Corporation which came into their possession and control by virtue of the sequestration order, within 60 days from receipt of the Resolution. The Sandiganbayan further resolved to treat the Motion to Lift Sequestration separately.

In a Resolution[18] promulgated on 19 September 2002, the Sandiganbayan denied the compliance filed by the PCGG. The Sandiganbayan noted that the PCGG only submitted an inventory without any accounting, and it could not be considered compliance with the resolutions of the Supreme Court and the Sandiganbayan. The Sandiganbayan ruled:

WHEREFORE, the prayer of Plaintiff, PCGG that it be deemed to have complied with the resolution of this Court dated May 7, 1997 as embodied in its "COMPLIANCE" dated July 23, 1997 is hereby DENIED.

Within sixty (60) days from receipt of this Order, the Plaintiff, PCGG and its fiscal or authorized agent, the Bureau of Animal Industry are directed to submit an accounting of the livestock; supplies, structures, equipment and spare parts which have come into its possession using as beginning balances thereof the

inventory figures of October 1987 for livestock and May 30, 1990 for the supplies, structures, equipment and spare parts up to and until July 9, 1997.

Failure to comply with this Order shall constrain the court to cite the responsible PCGG and Bureau of Animals officials for contempt and appoint other government and/or private agencies to render the accounting, all at plaintiffs account.

SO ORDERED.[19]

The Ruling of the Sandiganbayan

In its Resolution promulgated on 17 March 2003, the Sandiganbayan ruled on YKR Corporation's Motion to Lift Sequestration as follows:

WHEREFORE, the Motion to Lift Sequestration Order against YKR Corporation is hereby DENIED. For the last time, the plaintiff PCGG and/or its Fiscal Agent, the Bureau of Animal Industry (BAI), are hereby directed to submit the required accounting adverted to in the Resolution of this Court promulgated on September 19, 2002 for an inextendible period of thirty (30) days upon receipt hereof. Failure to do so shall constrain this Court to hold PCGG and its fiscal agent, the Bureau of Animal Industry in contempt and impose the proper sanction on the officials of said agency.

SO ORDERED.[20]

The Sandiganbayan ruled that the PCGG's determination of prima facie evidence against the defendants in Civil Case No. 0024 was clearly spelled out in the allegations of the complaint and the findings of prima facie evidence should not be disturbed since the findings of administrative or quasi-judicial agencies like the PCGG are entitled to great respect.

The Sandiganbayan ruled that the basis for the motion to lift sequestration was the alleged mismanagement by the PCGG and its agents. The Sandiganbayan ruled that the records showed that neither the PCGG nor the BAI has complied with the accounting required by both the Supreme Court and the Sandiganbayan. However, the Sandiganbayan ruled that it could not apply its ruling in Civil Case No. 0033 entitled *Republic v. Cojuangco, et al.* and promulgated on 20 April 1998 because in that case, the Sandiganbayan allowed the voting for the shares of stock "on the basis of the immediate danger of dissipation to the San Miguel Corporation." In this case, the Sandiganbayan ruled that the grounds for the motion were mere allegations. The Sandiganbayan again directed the PCGG and BAI to submit the required accounting for an inextendible period of 30 days from receipt of the court's resolution.

Petitioners moved for the reconsideration of the Sandiganbayan's 17 March 2003 Resolution. In its 9 February 2004 Resolution, the Sandiganbayan denied the motion.

The Sandiganbayan ruled that it had already extensively passed upon the issue of the existence of prima facie evidence to warrant the issuance of the sequestration order. On the alleged failure of the PCGG to file the appropriate judicial action or proceeding against YKR Corporation within the time frame provided under Section 26, Article XVIII of the 1987 Constitution, the Sandiganbayan cited this Court's ruling in *Republic v. Sandiganbayan*[21] that the fact that the sequestered corporations had not been impleaded as defendants in the original complaints filed did not adversely affect the actuality that judicial actions or proceedings had been brought within the time limit laid down by the Constitution. The Sandiganbayan further ruled that the two-commissioner rule provided under Section 3 of the PCGG Rules and Regulations Implementing Executive Orders No. 1 and 2 (PCGG Rules) would not apply to the case since the writ of sequestration was issued against YKR Corporation before the effectivity of the PCGG Rules on 11 April 1986. Finally, as regards the alleged

dissipation of the assets of YKR Corporation, the Sandiganbayan ordered PCGG and BAI to show cause why they should not be held in contempt for their continued failure to submit an accounting of the assets of YKR Corporation. The dispositive portion of the 9 February 2004 Resolution reads:

WHEREFORE, finding no sufficient ground to overturn the assailed Resolution, the Motion for Reconsideration filed by Defendants YKR Corporation and Heirs of Luis A. Yulo dated April 8, 2003 is hereby DENIED.

The plaintiff PCGG and its Fiscal Agent, the Bureau of Animal Industry (BAI), are hereby ordered to show cause why they should not be cited for contempt now for their failure to comply with the aforementioned resolutions of the Court dated September 19, 2002 and March 17, 2003 within fifteen (15) days upon receipt hereof (Emphasis supplied)

SO ORDERED.[22]

Hence, the petition before this Court.

The Issues

Petitioners raise the following issues in their Memorandum:

- a) Whether the Sandiganbayan acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in not lifting the order of sequestration even if there is sufficient showing of continuous wastage and dissipation of the assets of YKR Corporation by PCGG and BAI;
- b) Whether the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not lifting the order of sequestration despite the absence of prima facie evidence to warrant the issuance and maintenance of an order or sequestration against YKR Corporation;
- c) Whether the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not lifting the order of sequestration even if PCGG failed to file the proper judicial action against YKR Corporation within the prescribed 6-month period from ratification of the 1987 Constitution;
- d) Whether the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it did not construe in favor [of] YKR Corporation the refusal of PCGG to amend the order of sequestration to conform with the two-commissioner rule; and
- e) Whether there is no appeal or any other plain, speedy and adequate remedy available to petitioners in the ordinary course of law.[23]

The Republic raised as additional issue whether petitioners' counsel has the authority to represent petitioners in view of the Sandiganbayan's Resolutions dated 29 February 2004 and 10 September 2004 disqualifying it from further representing petitioners in Civil Case No. 0024;

The Ruling of this Court

On Disqualification of Petitioners' Counsel

The Republic cites the Sandiganbayan's Resolutions promulgated on 29 February 2004[25] and 10 September 2004[26] which disqualified the law firm of Belo Gozon Elma Parel Asuncion and Lucila from representing petitioners because its senior partner, Atty. Magdangal B. Elma, was PCGG Chairman from 4 November 1998 to 16 February 2001.[27] As such, he had access to confidential records of the case as well as to all the records of the PCGG.

In its 25 April 2005 Resolution,[28] the Court granted the withdrawal of appearance of Attys. Gener E. Asuncion and Eric Vincent A. Estoesta of Belo Gozon Elma Parel Asuncion and Lucila as counsel for petitioners. In the same resolution, the Court noted the appearance of Atty. Jose P.O. Aliling IV of Yulo Aliling Pascua and Zuñiga as counsel for petitioners.

Thus, this issue had been rendered moot.

Propriety of Filing a Petition for Certiorari

The Republic alleges that a special civil action for certiorari under Rule 65 may only be availed of if there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the tribunal, body, court or officer exercising judicial or quasi-judicial functions, and there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. The Republic alleges that the issues raised by petitioners involve errors of judgment that cannot be corrected by a special civil action for certiorari. Further, the Republic alleges that petitioners failed to convincingly show that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law which they could have availed of.

We do not agree.

Decisions of the Sandiganbayan are normally brought before this Court under Rule 45, not Rule 65.[29] In this case, the 17 March 2003 and 9 February 2004 Resolutions of the Sandiganbayan Special Fifth Division are interlocutory in character as they did not finally dispose of Civil Case No. 0024 and thus, are not the proper subject of a special civil action for certiorari. The rule is that when an adverse interlocutory order is rendered, the remedy is not to resort to certiorari but to continue with the case in due course and when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law.[30] It is only where there are special circumstances clearly demonstrating the inadequacy of an appeal that the special action for certiorari may be allowed.[31]

We find that the issues raised in this case constitute special circumstances that justifies the relaxation of the rules. Further, this Court held that where the case is undeniably ingrained with immense public interest, public policy and deep historical repercussions, certiorari is allowed notwithstanding the existence and availability of the remedy of appeal.[32]

The Two-Commissioner Rule

Petitioners assail the validity of the 2 April 1986 Sequestration Order signed by then Commissioner Mary Concepcion Bautista for violation of the two-commissioner rule. The two-commissioner rule is embodied in Section 3 of the PCGG Rules which states:

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

The two-commissioner rule took effect after its promulgation on 11 April 1986. In this case, the sequestration order was issued on 2 April 1986 prior to the promulgation of the PCGG Rules. The Court had already settled this issue, thus:

The questioned sequestration order was, however, issued on March 19, 1986. prior to the promulgation of the PCGG Rules and Regulations. As a consequence, we cannot reasonably expect the Commission to abide by said rules which were nonexistent at the time the subject writ was issued by then Commissioner Mary Concepcion Bautista. Basic is the rule that no statute, decree, ordinance, rule or regulation (and even policies)

shall be given retrospective effect unless explicitly stated so. We find no provision in said Rules which expressly gives them retroactive effect, or implies the abrogation or previous writs issued not in accordance with the same Rules. Rather, what said Rules provide is that they "shall be effective immediately," which, in legal parlance, is understood as "upon promulgation." Only penal laws are given retroactive effect insofar as they favor the accused.[33]

Hence, we uphold the validity of the 2 April 1986 Sequestration Order signed and issued by then Commissioner Mary Concepcion Bautista against YKR Corporation.

Filing of Appropriate Action within the Prescribed Period

Section 26, Article XVIII of the 1987 Constitution provides:

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

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

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

Petitioners allege that the sequestration order against YKR Corporation should be lifted for PCGG's failure to file the appropriate action within the prescribed period. Petitioners allege that the deadline for the PCGG to file the corresponding judicial action against entities it sequestered prior to the ratification of the 1987 Constitution was 2 August 1987. However, PCGG only filed the Amended Complaint which impleaded YKR Corporation on 2 October 1991.

The Republic argues that this Court: already settled in *Republic v. Sandiganbayan*[34] that the procedural defect does not contradict or adversely affect the actuality that judicial actions or proceedings had been brought within the time limits laid down by the Constitution.

We agree with the Republic. One of the cases in *Republic v. Sandiganbayan*[35] is G.R. No. 107233 (*Republic v. Sandiganbayan [Second Division], Luis Yulo and YKR Corporation*). G.R. No. 107233 also originated from Case No. 0024. The Court traced its origin as follows:

H. Case No. 0024

1. G.R No. 107233

Luis D. Yulo, a defendant in this case (No. 0024) filed a motion on October 1, 1991 to lift the sequestration over the YKR Corporation, one of those listed in Annex "A" of the complaint as a "dummy" or "shell" company of the defendants. The Sandiganbayan (Second Division) found merit in the motion and, by Resolution dated November 29, 1991, declared the sequestration of said YKR Corporation to have been automatically lifted pursuant to the 1987 Constitution. The resolution is now subject of a certiorari action in this Court, G.R. No. 107233.

The issue raised by petitioners in this case, on whether PCGG failed to file the proper judicial action against YKR Corporation within the prescribed six-month period from ratification of the 1987 Constitution, was already

resolved in G.R. No. 107233. The issue in Republic v. Sandiganbayan[36] and its related cases, including G.R. No. 107233, was stated in the Court's Decision as follows:

DOES INCLUSION IN THE COMPLAINTS FILED BY THE PCGG BEFORE THE SANDIGANBAYAN OF SPECIFIC ALLEGATIONS OF CORPORATIONS BEING "DUMMIES" OR UNDER THE CONTROL OF ONE OR ANOTHER OF THE DEFENDANTS NAMED THEREIN AND USED AS INSTRUMENTS FOR ACQUISITION, OR AS BEING DEPOSITARIES OR PRODUCTS OF ILL-GOTTEN WEALTH; OR THE ANNEXING TO SAID COMPLAINTS OF A LIST OF SAID FIRMS, BUT WITHOUT ACTUALLY IMPLEADING THEM AS DEFENDANTS, SATISFY THE CONSTITUTIONAL REQUIREMENT THAT IN ORDER TO MAINTAIN A SEIZURE EFFECTED IN ACCORDANCE WITH EXECUTIVE ORDER NO. 1. s. 1986, THE CORRESPONDING "JUDICIAL ACTION OR PROCEEDING" SHOULD BE FILED WITHIN THE SIX-MONTH PERIOD PRESCRIBED IN SECTION 26, ARTICLE XVIII, OF THE (1987) CONSTITUTION?

The Court ruled in those cases:

X. Purpose of Constitutional Requirement for filing of "Judicial Action or Proceeding" Within Fixed Period Re Orders of Sequestration, Etc.

The purpose of the constitutional requirement that the corresponding judicial action or proceeding be filed within a definite period as regards orders of sequestration, freezing or provisional takeover, is not difficult to discern. Sequestration, freezing, provisional takeover are fundamentally remedies which are temporary, interim, provisional. In the very nature of tilings, as emphasized in BASECO, they are not meant to bring about a permanent state of affairs. They are severe, radical measures taken against apparent, ostensible owners of property, or parties against whom, at the worst, there are merely prima facie indications of having amassed "ill-gotten wealth," indications which must still be shown to lead towards actual facts in accordance with the judicial procedures of the land.

Thus, the rationale for the limitations placed upon the power of sequestration, etc. by the Constitution, these being the following:

1. The authority to issue such orders was made "operative for not more than eighteen months after ratification of ** (the) Constitution;" i.e., not beyond 18 months from February 2, 1987. unless extended by the Congress "in the national interest, as certified by the President;"
2. Said orders could issue only upon showing of a prima facie case;
3. The order and the list of sequestered or frozen properties had to be registered forthwith with the proper court: the Sandiganbayan, according to law;
4. For orders issued before ratification of the 1987 Constitution, the corresponding judicial action or proceeding should be filed within six months therefrom (i.e.. six months from February 2. 1987); and for those issued thereafter, within six months from issuance of the order of sequestration, etc.

The issue in all the cases at bar chiefly concerns the fourth limitation pursuant to which the PCGG had to file "the corresponding judicial action or proceeding" within a fixed period of six months. The evident purpose was to preclude the possibility that the PCGG indefinitely maintain its orders of sequestration, etc. and to compel it, within a reasonable time, to bring them into the realm of judicial oversight, evaluation and control, to the end that excesses of the officials and agents enforcing and implementing said orders might be prevented and avoided and private rights duly protected and vindicated, while the main business of determining the character of the property as "ill-gotten wealth" or not was being attended to.

XI. Nature of Contemplated "Judicial Action or Proceeding"

There is no particular description or specification of the kind and character of the "judicial action or proceeding" contemplated, much less an explicit requirement for the impleading of the corporations sequestered, or of the ostensible owners of property suspected to be ill-gotten. The only modifying or qualifying requirement in the constitution is that the action or proceeding be filed "for" — i.e., with regard or in relation to, in respect of, or in connection with, or concerning — orders of sequestration, freezing, or provisional takeover. What is apparently contemplated is that the action or proceeding concern or involve the matter of sequestration, freezing or provisional takeover of specific property, corporeal or incorporeal, personal or real; and should have as objective, the demonstration by competent evidence that the property thus sequestered, frozen or taken over is indeed "ill-gotten wealth" over which the government has a legitimate claim for recovery and other relief. Stated otherwise, the action or proceeding contemplated is one for the final substantiation or proof of the prima facie showing on the basis of which a particular order of sequestration, freezing or takeover was issued.

XII. Character of Actions Actually Brought

Now, there would seem to be no dispute about the fact that in all the cases at bench, an "action or proceeding" was actually filed with regard or in relation to, in respect of in connection with, or concerning the sequestration, freezing or provisional takeover of corporations and other property, and that said "action or proceeding" was filed within the six-month period provided by the Constitution.

As regards the sequestered corporations, the complaints in the actions thus brought all alleged that said entities were either the instruments or conduits for personal aggrandizement or the acquisition of ill-gotten wealth, or were the depositaries, or were themselves the fruits, of ill-gotten wealth. In other words, they were organized so that they could be used for improper, illegal and anomalous availment of financial or other advantage; or were formed or being operated or manipulated by public officers sub rosa, or by private individuals, with the use of public funds or property or assets otherwise illegally acquired, or in breach of public trust or violation of fiduciary duty; or in the case of existing firms, that their stock had been purchased by or for public officers and their relatives, friends, and associates, with the use of public funds or illegally acquired money, or in violation of law or fiduciary duty, etc. Elsewise stated, following the classic pattern of a money-laundering operation, they were either sham, "shell" "dummy" corporations serving as fraudulent devices or conduits for private gain of public officers and employees; or companies from which stock had been acquired, or firms into which capital had been infused, or shares of stock purchased, with the use of illegally acquired assets, and which therefore constituted the res: the thing or object treated of in the action.

x x x x

XIII. Postulated Procedural Error in PCGG Complaints

It is postulated, however, that the judicial actions instituted by the PCGG in relation to or in connection with its orders of sequestration or seizure against corporations or shares of stock held by supposed dummies, suffered from a grave procedural defect. The sequestered corporations — which, in the above mentioned view of the PCGG had served as tools or instruments for acquisition of ill-gotten wealth, or were the depositaries or fruits thereof — or the natural persons ostensibly owning stock as "dummies," had not been impleaded as defendants in the various complaints.

A. Error Immaterial to Requirement to File Actions or Proceedings within Constitutional Time Limits

Such a procedural defect, however, conceding its existence for the nonce, does not contradict or adversely affect the actuality that judicial actions or proceedings had been brought within the time limits laid down by the Constitution "for" them; i.e., with regard or in relation to, in connection with, or involving or concerning the sequestration or seizure by the PCGG of the assets or properties in question.[37]

In addition, the Court ruled in those cases that even if the Republic failed to implead the sequestered corporations

as defendants, the error is procedural and is not fatal to the sequestration case, thus:

D. In any Case, Omission to Implead firms not Fatal, but Curable Error

Even in those cases where it might reasonably be argued that the failure of the Government to implead the sequestered corporations as defendants is indeed a procedural aberration, as where said firms were allegedly used, and actively cooperated with the defendants, as instruments or conduits for conversion of public funds or property or illicit or fraudulent obtention of favored Government contracts, etc., slight reflection would nevertheless lead to the conclusion that the defect is not fatal, but one correctible under applicable adjective rules — e.g., Section 10, Rule 5 of the Rules of Court [specifying the remedy of amendment during trial to authorize or to conform to the evidence; Section 1. Rule 20 [governing amendments before trial], in relation to the rule respecting the omission of so-called necessary or indispensable parties, set out in Section 11, Rule 3 of the Rules of Court. It is relevant in this context to advert to the old, familiar doctrines that the omission to implead such parties "is a mere technical defect which can be cured at any stage of the proceedings even after judgment;" and that, particularly in the case of indispensable parties, since their presence and participation is essential to the very life of the action, for without them no judgment may be rendered, amendments of the complaint in order to implead them should be freely allowed, even on appeal, in fact even after rendition of judgment by this Court, where it appears that the complaint otherwise indicates their identity and character as such indispensable parties.

Again, even conceding the adjective imperfection of the omission to implead the sequestered corporations as indispensable or necessary parties, it bears repeating that their sequestration would not thereby be rendered *functus officio*, since, as already pointed out, judicial actions or proceedings have in truth been filed concerning or regarding said sequestration in literal and faithful compliance with Section 26. Article XVIII of the Constitution.[38]

In short, insofar as the filing of the complaint against YKR Corporation within the prescribed period is concerned, it has long been settled that the Republic had faithfully complied with Section 26, Article XVIII of the Constitution.

On Lifting the Order of Sequestration

Petitioners allege that the order of sequestration should be lifted in view of the continuous wastage and dissipation of the assets of YKR Corporation. The Republic counters that petitioners' allegation has no factual basis.

The basis of petitioners' allegation is the failure of PCGG and its fiscal agent, the BAI, to submit an inventory and accounting of the assets of YKR Corporation. According to petitioners, the continued failure of the PCGG and BAI to submit the required accounting and inventory only confirmed the dissipation and loss of YKR Corporation's assets.

As early as March 1996, in G.R. No. 96073,[39] this Court already directed the PCGG and the BAI to submit an inventory and. accounting of the assets of YKR Corporation which had come into their possession and control by virtue of the sequestration order. Despite several resolutions by the Sandiganbayan requiring the PCGG and BAI to comply, they still failed to do so until in its 10 September 2004 Resolution,[40] the Sandiganbayan found the PCGG and the BAI guilty for indirect contempt, thus:

The record of this case will show that as early as March 26, 1996, in the Supreme Court En Banc's Resolution in G.R. No. 107233,[41] the High Court directed the PCGG and/or its fiscal or authorized agent, the Bureau of Animal Industry, to submit an inventory and accounting of the assets of th YKR Corporation which have come into their possession and control by virtue of the corresponding sequestration orders issued.

On July 29, 1996, the Second Division of the Sandiganbayan directed the PCGG to comply with the Supreme Court's directive. This was reiterated in another Resolution promulgated on May 13, 1997.

In a Resolution promulgated on March 17, 2003, this Court denied YKR Corporation's Motion to Lift Sequestration. The Court likewise made the observation that while PCGG filed an Inventory on July 23, 1997, the same was considered insufficient compliance pursuant to this Court's Resolution promulgated on September 19, 2002, as the Inventory did not contain the required accounting of the YKR Corporation's Assets. As a consequence thereof, the Court made a pronouncement stating that:

"(F)or the last time, the plaintiff PCGG and/or its Fiscal Agent, the Bureau of Animal Industry (BAI), are hereby directed to submit the required accounting adverted to in the Resolution of this Court promulgated on September 19, 2002 for an inextendible period of thirty (30) days upon receipt hereof. Failure to do so shall constrain this Court to hold PCGG and its fiscal agent, the Bureau of Animal Industry in contempt and impose the proper sanction on the officials of the said agency." (Underlining supplied).

Thereafter, in a Resolution promulgated on February 9, 2004, which Resolved the Motion for Reconsideration filed by YKR Corporation questioning the Court's denial of their Motion to Lift Sequestration, this Court again reminded PCGG that it has not yet complied with its orders issued on September 19, 2002 and March 17, 2003. In the dispositive portion of the February 9, 2004 Resolution, this Court stated that:

"The plaintiff and its Fiscal Agent, the Bureau of Animal Industry, are hereby ordered to show cause why they should not be cited, in contempt now for their failure to comply with the aforementioned resolutions of the Court dated September 19, 2002 and March 17, 2003 within fifteen (15) days upon receipt hereof. (Emphasis supplied)."

The required accounting of YKR Corporation's assets had been required of PCGG since 1996. or for almost eight (8) years now, hence, it is clear that the failure of the PCGG and its fiscal agent BAI, to comply with the Court's various directives up to the present clearly constitutes as wanton and contumacious disobedience of and resistance to a lawful order of the Court. Hence, this Court now invokes its inherent authority to preserve its authority and power and vindicate its dignity by punishing those which disobey its orders and compel obedience thereto.

WHEREFORE, this Court hereby finds PCGG and the BAT liable for indirect contempt and imposes on the said agencies a fine of Php30,000.00 each, payable to this Court within thirty (30) days from receipt of this Resolution.

As this Court had warned the PCGG and the BAI in its Resolution dated September 19, 2002, should PCGG still refuse to render the accounting, the Court will appoint other government agencies and/or private agencies to render the accounting, all at plaintiffs account. Pursuant to this Resolution, the Court hereby mandates the Commission on Audit (COA), at plaintiffs account, to render the required accounting and inventory of YKR Corporation's assets and equipment which have come into the possession of PCGG by virtue of the sequestration of the said corporation, within sixty (60) days from receipt of this Resolution.

SO ORDERED.[42]

The PCGG and the BAI filed a motion for reconsideration of the 10 September 2004 Resolution. In its 14 March 2005 Resolution,[43] the Sandiganbayan ruled:

WHEREFORE, premises considered, the PCGG and BAI are hereby directed to submit to this Court, within sixty (60) days from receipt of this resolution, an accounting of the livestock, supplies and equipment and spare parts which have come into its possession by virtue of the sequestration of YKR Corporation, using as beginning balances thereof the inventory figures of October 1987 for livestock and May 30; 1990 for the supplies, structures, equipment and spare parts up to and until September, 2004. Rollo, pp. 325-326. Underscoring and emphasis in the original Records, Vol. 32, pp. 319-321. Penned by Associate Justice Ma. Cristina Cortez-Estrada, Chairman, with Associate Justices Francisco H. Villaruz, Jr. and Teresita V. Diaz-Baldos

Should the PCGG and the BAI fail to comply with this Court's directive, this Court finds no justifiable reason to reconsider the questioned resolution finding them liable for indirect contempt and imposing on them a fine of Php30,000.00 each, which shall be paid within fifteen (15) days counted from the expiry of the sixty-day period granted heretofore. As to the plaintiffs argument that court fines are not included in the budget of government agencies such as the BAI and the PCGG, the same is not a valid excuse for non-payment thereof, considering that while it is indeed not included in the budget of government agencies, the said amount could be taken from their allocation for current operating expenses.

SO ORDERED.[44]

The Republic submitted its Compliance and Manifestation[45] on 17 May 2005, of the "inventories conducted at the Busuanga Breeding Station (BBES) of the Bureau of Animal Industry, x x x without prejudice to plaintiffs repeated claim that the livestock, supplies, structures and equipment found at the BBES in Busuanga, Palawan are owned by the government and not by defendant YKR Corporation." [46] In its 23 September 2005 Resolution,[47] the Sandiganbayan ruled that the Certification on the Audit report lacked the exact reference to the beginning and end of the page numbers of the inventory form which contain the physical inventory, and the signature of Jose Q. Molina, head of the Inventory Team and Director IV of the BAI, in violation of Section 490 of the Government Accounting and Auditing Manual. The Sandiganbayan ruled:

As the Court had likewise stated in its March 14, 2005 Resolution, should the PCGG and the BAI fail to comply with this Court's directive, there is no justifiable reason to reconsider the Court's finding holding PCGG and BAI liable for indirect contempt. Hence, the fine of Php30,000.00, each imposed on the said two agencies should now be paid to this Court immediately upon receipt of this notice.

The PCGG and the BAI are likewise ordered to submit to this Court within thirty (30) days from receipt of this Resolution, an Inventory Report duly signed by all the accountable officers for the properties listed in the inventory and an updated proper accounting of the properties of the

YKR Corporation which it had sequestered in 1987 up to the present.

SO ORDERED.[48]

The Republic filed a motion for reconsideration⁴⁹ dated 13 October 2005 and a Compliance and Manifestation[50] dated 28 October 2005, resubmitting the Inventory Report duly signed by all the accountable officers of BAI. Again, the Republic manifested that the resubmission of the Inventory Report is "without prejudice to its repeated claim that the livestock, supplies, structures and equipment found at the BBES in Busuanga, Palawan are owned by the government through the Bureau of Animal Industry (BAI) and not by defendant YKR Corporation, x x x." [51] The Republic likewise manifested that the inventory for 2005 of all the properties found in BBES was scheduled for November 2005 and the Sandiganbayan would be furnished with a copy as soon as it was finalized.[52]

In its 12 September 2006 Resolution,[53] the Sandiganbayan accepted the Inventory Report submitted by the Republic. While the Sandiganbayan noted that the Inventory Report was long overdue, it stated that the delay should not hinder the progress of the case. The Sandiganbayan accepted the report as "a true, detailed and complete inventory of the YKR Corporation's assets as of the time indicated in the inventory." [54] The Sandiganbayan directed the Republic to submit an Inventory Report on the BBES conducted in November 2005.

The Republic submitted its Compliance and Manifestation[55] dated 8 November 2006. The Sandiganbayan noted the Compliance and Manifestation on 22 November 2006.[56]

The Court deplores the fact that it took nine years for the PCGG and BAI to submit an inventory and accounting of YKR Corporation's assets. The inventory and accounting was long overdue considering that YKR Corporation

was sequestered in 1986. The PCGG should always be mindful of its role as a conservator of the property sequestered, frozen, or provisionally taken over.[57]

Petitioners anchored their allegation of continuous wastage and systematic dissipation of YKR Corporation's assets on an "undisputed 4-page report" dated 18 June 1990 by the YKR Palawan Inventory Team which contained the following "findings":

V. Allegations by some people of BAI mismanagement of the Busuanga Ranch particularly the systematic dissipation of YKR cattle:

1. Out of more than four thousand cattle-head as per 1987 inventory of PCGG-BAI less than two thousand head remains now.
2. YKR cattle, quarter horses, utility vehicles, lumber and barbed wire have found their place in ranches of DA officials and employees.
3. Superior breeding stocks were mysteriously replaced with cattle of inferior breed on orders of high government officials.
4. Incoming shipments (2 barges) of imported cattle were diverted to some other place on orders of high government officials.
5. BAI cattle dispersal program is being used as a front by a high level cattle rustling syndicate in YKR.
6. Rampant illegal logging within the territories of the ranch goes on unabated up to this time. This is confirmed by a previous DENR report (Annex "D").
7. Livestock inventory reports were never furnished to PCGG by BAI even after repeated requests. Our records confirm this. At the ranch office, no records of livestock were on file. Records are kept personally by the ranch manager who visits the ranch for only a few days each month.

COMMENTS AND RECOMMENDATIONS:

xxxx

2. PCGG is apparently being prevented by BAI Director Romeo Alcasid and DA Undersecretary Dante Barbosa to conduct inventory of the cattle, or to know the actual livestock population based on their file records.
3. Allegations of dissipation of YKR cattle, horses, equipment and other assets, and mismanagement of the ranch by the BAI managers must be investigated by the commission or recommended for investigation to the office of Secretary Bacani.

xxx[58]

Mere allegations, without further proof, could not be considered as findings of facts. Standing alone, the four-page report by the YKR Palawan Inventory Team is not enough to prove the allegation of dissipation of YKR Corporation's assets. However, the Court notes that the Summary of Livestock Inventory[59] included in the Inventory Report[60] submitted by the Republic shows that when BAI took over the management of YKR Corporation, it had 5,477 cattle and 115 horses.[61] By 1992, it had 3,137 cattle and 57 horses.[62] As of the inventory for Calendar Year (CY) 2004, there were 2,621 cattle and 69 horses.[63] As for the Accounting Explanation[64] for CY 2005, there were 2,565 cattle and 76 horses.

The decrease in the cattle population was not sufficiently explained in the Summary of Livestock Inventory. It merely stated:

The decrease in the cattle population is due perhaps to the dispersal program of the Department of Agriculture (DA) (no documentation available) introduced after the EDSA revolution. Other reason is due to animal mortalities since there are no records and accounts of the details.[65] (Emphasis supplied)

The Accounting Explanation for CY 2005 simply explained:

A comparative summary of livestock inventory conducted in 2004 and 2005 will show the reduction/increase of livestock at the station due to dispersal of animals and animal mortalities.[66]

There was nothing in the Accounting Explanation that would show that the dispersal of animals and animal mortalities were documented or supported by records.

The Court notes that the Sandiganbayan directed the PCGG and BAI to submit an accounting using as beginning balances the inventory figures of October 1987 for livestock and 30 May 1990 for the supplies, structures, equipment and spare parts. The Summary of Livestock Inventory of CY 2004 indicated the number of cattle and horses when the BAI took over YKR Corporation in 1987. The inventory of the properties, supplies and equipment only indicated the date and cost of acquisition, the depreciation value[67] and the net value. Some of the entries only stated the acquisition cost. There was no beginning balance submitted from which the Court can compare the current value and status of the assets of YKR Corporation. However, from the unexplained and undocumented dwindling of the number of the livestock, the Court can see that the PCGG and BAI had been remiss in preserving the assets of YKR Corporation.

The case has been pending before the Sandiganbayan since 1987. In the meantime, YKR Corporation suffered from mismanagement. It took the PCGG and the BAI nine years just to submit an inventory and accounting of the assets of YKR Corporation. The compliance by the PCGG and BAI painted a bleak picture of the state of the corporation. In order to prevent the wastage of the assets of the YKR Corporation, the Court deems it proper to lift the writ of sequestration pending the final resolution of the main case before the Sandiganbayan.

Sequestration is simply a provisional remedy.[68] It is an extraordinary measure intended to prevent the destruction, concealment or dissipation of sequestered properties, and thereby to conserve and preserve them, pending the judicial determination in the appropriate proceeding of whether the property was in truth ill-gotten.[69] In *Presidential Commission on Good Government v. Sandiganbayan*TM the Court clarified:

The lifting of the writs of sequestration will not necessarily be fatal to the main case since the lifting of the subject orders does not ipso facto mean that the sequestered property are not ill-gotten. The effect of the lifting of the sequestration x x x will merely be the termination of the role of the government as conservator thereof, x x x.[71]

Hence, the Republic, while turning over the management and administrative powers back to YKR Corporation, may still prove that the corporation is ill-gotten and belongs to the government. Thus:

In brief, sequestration is not the be-all and end-all of the efforts of the government to recover unlawfully amassed wealth. The PCGG may still proceed to prove in the main suit who the real owners of these assets are. Besides, as we reasserted in *Republic v. Sandiganbayan* [G.R. No. 88228, 27 June 1990, 186 SCRA 864], the PCGG may still avail itself of ancillary writs, since "Sandiganbayan's jurisdiction over the sequestration cases demands that it should also have the authority to preserve the subject matter of the cases, the alleged ill-gotten wealth properties x x x."

With the use of proper remedies and upon substantial proof, properties in litigation may, when necessary, be placed in custodia legis for the complete determination of the controversy or for the effective enforcement of the judgment. However, x x x the PCGG may no longer exercise dominion and custody over [corporation x x x].[72]

WHEREFORE, we GRANT the petition. We LIFT the writ of sequestration issued against YKR Corporation. We DIRECT the Presidential Commission on Good Government and the Bureau of Animal Industry to restore to petitioners all their assets, properties, records and documents subject of the sequestration.

No costs.

SO ORDERED.

Brion, Del Castillo, Abad, and Perez, JJ., concur.

[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 36-47. Penned by Associate Justice Francisco H. Villaruz, Jr. with Associate Justices Minita V. Chico-Nazario and Ma. Cristina G. Cortez-Estrada, concurring.

[3] Id. at 48-50.

[4] The individual defendants in Civil Case No. 0024 are Peter Sabido, Roberto S. Benedicto, Luis Yulo, Nicolas Dehesa, Ferdinand E. Marcos, Imelda R. Marcos, Jose R. Tengco, Jr., Rafael Sison, Cesar Zalamea and Don M. Ferry while the defendant-corporations are the Liangga Bay Logging Co., Phil. Integrated Meat Corporation, YKR Corporation and Pimeco Marketing Corporation.

[5] The heirs of Luis A Yulo are Teresa J. Yulo, Ma. Teresa J. Yulo-Gomez. Jose Enrique J. Yulo, Ma. Antonia J. Yulo-Loyzaga, Jose Manuel J. Yulo, Ma. Carmen J. Yulo and Jose Maria J. Yulo.

[6] Rollo, p. 51.

[7] Records, Vol. 1, pp. 1-25.

[8] The original Complaint impleaded JO defendants: Feter Sabido, Roberto S. Benedicto, Luis D. Yulo, Nicolas Dehesa, Ferdinand E. Marcos, Imelda R. Marcos, Jose R. Tengco, Jr., Rafael Sison, Cesar C. Zalamea, and Don M. Ferry (Records, Vol. 1, pp. 1-23). In Annex "A" of the Complaint, Yulo King Ranch was listed as Sabido's real property (id. at 24). The list of Sabido's personal property included shares of stock in YKR Corporation and 3,900 cattle and 140 horses in Yulo King Ranch (id. at 25). In Luis A. Yulo's Answer dated 19 August 1987, he averred that YKR Coiporation listed as Sabido's real property is principally public land leased to YKR Corporation, with an occupied and developed area of 7,000 hectares, and some 120 titled hectares acquired from private persons (Records, vol. 41, p. 260.)

[9] Rollo, pp. 53-75.

[10] Id. at 55.

[11] Id. at 85-90.

[12] Entitled Republic v. Sandiganbayan (First Division), Maria Clara Lobregat, et al.

[13] Rollo, pp. 91-94. Penned by Associate Justice Jose S. Balajadia with Associate Justices Minita V. Chico-Nazario and Roberto M. Lagman.

[14] Id. at 95-97. Signed by PCGG Legal Director Reuben A. Cosuco.

[15] It should be 29 July 1996.

[16] Rollo, pp. 95-96.

[17] Id. at 98-101.

[18] Id. at 136-140. Penned by Associate Justice Francisco H. Villaruz, Jr. with Associate Justices Minita V. Chico-Nazario and Ma. Cristina G. Cortez-Estrada, concurring.

[19] Id. at 139-140.

[20] Id. at 46.

[21] 310 Phil. 401(1995).

[22] Rollo, p. 50. Emphasis in the original.

[23] Id. at 368-369.

[24] Id. at 258.

[25] Id. at 313-316. Permed by Associate Justice Ma. Cristina Cortez-Estrada with Associate Justices Minita V. Chico-Nazario, Chairman, and Francisco H. Villaruz, Jr., concurring.

[26] Id. at 318-327. Penned by Associate Justice Ma. Cristina G. Cortez-Estrada, Chairman, with Associate Justices Francisco H. Villaruz, Jr. and Teresita V. Diaz-Baldos concurring.

[27] Id. at 313.

[28] Id. at 356.

[29] Republic of the Phils, v. Sandiganbayan, 453 Phil. 1059 (2003).

[30] See Quiñion v. Sandiganbayan, 338 Phil. 290 (1997).

[31] Id.

[32] Republic of the Phils, v. Sandiganbayan, supra note 29.

[33] Republic of the Phils, v. Sandiganbayan, 336 Phil. 304, 318-319 (1997).

[34] Supra note 21.

[35] Id.

[36] Id. at 502.

[37] Id. at 503-509.

[38] Id. at 511-513.

[39] Rollo, pp. 85-90.

[40] Id. at 318-327.

[41] As stated earlier, G.R. No. 107233 is one of the companion cases of G.R. No. 96073.

[42] Rollo, pp. 325-326. Underscoring and emphasis in the original.

[43] Records, Vol. 34, pp. 256-258. Signed by Associate Justice Ma. Cristina Cortez-Estrada, Chairman, with Associate Justices Francisco H. Villaruz, Jr. and Teresita V. Diaz-Baldos

[44] Id. at 320-321.

[45] Records, Vol. 33, pp. 191-317.

[46] Id. at 192.

[47] records, Vol. 34, pp. 256-258. Signed by Associate Justice Ma. Cristina Cortez-Estrada, Chairman, with Associate Justices Francisco H. Villaruz, jr. and Teresita V. Diaz-Baldos.

[48] Id. at 258.

[49] Records, Vol. 35, pp. 61-65.

[50] Id. at 101-257.

[51] Id. at 101-A.

[52] Id.

[53] Records, Vol. 38, pp. 232-285. Penned by Associate Justice Ma. Cristina G. Cortez-Estrada, Chairman, with Associate Justices Roland B. Jurado and Teresita V. Diaz -Baldos, concurring.

[54] Id. at 284.

[55] Records, Vol. 39; pp. 168-362.

[56] Id. at 427.

[57] See Presidential Commission on Good Government v. Sandiganbayan, 41 8 Phil. 8 (2001) citing Bataan Shipyard & Engineering Co., Inc. v. PCGG, 234 Phil. 180 (1987).

[58] Rollo, pp. 370-372. Petitioners' Memorandum.

[59] Records, Vol. 35, pp. 185-194.

[60] Id. at 104-257.

[61] Id. at 187.

[62] Id.

[63] Id.

[64] Records, Vol. 39, pp. 171-194.

[65] Records, Vol. 35, pp. 187-188.

[66] Records, Vol. 39, p. 186.

[67] Using the Straight Line Method.

[68] Republic of the Phils, v. Sandiganbayan, 355 Phil. 181 (1998).

[69] Id.

[70] Supra note 57.

[71] Id. at 20.

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