FRANCISCO I. CHAVEZ, PETITIONER, VS. NATIONAL HOUSING AUTHORITY, R-II BUILDERS, INC., R-II HOLDINGS, INC., HARBOUR CENTRE PORT TERMINAL, INC., AND MR. REGHIS ROMERO II, RESPONDE...

G.R. No. 164527. August 15, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

In this Petition for Prohibition and Mandamus with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction under Rule 65, petitioner, in his capacity as taxpayer, seeks:

> to declare NULL AND VOID the Joint Venture Agreement (JVA) dated March 9, 1993 between the National Housing Authority and R-II Builders, Inc. and the Smokey Mountain Development and Reclamation Project embodied therein; the subsequent amendments to the said JVA; and all other agreements signed and executed in relation thereto - including, but not limited to the Smokey Mountain Asset Pool Agreement dated 26 September 1994 and the separate agreements for Phase I and Phase II of the Project--as well as all other transactions which emanated therefrom, for being UNCONSTITUTIONAL and INVALID;
>
> to enjoin respondents--particularly respondent NHA--from further implementing and/or enforcing the said project and other agreements related thereto, and from further deriving and/or enjoying any rights, privileges and interest therefrom x x x; and
>
> to compel respondents to disclose all documents and information relating to the project--including, but not limited to, any subsequent agreements with respect to the different phases of the project, the revisions over the original plan, the additional works incurred thereon, the current financial condition of respondent R-II Builders, Inc., and the transactions made respecting the project.[1]

The Facts

On March 1, 1988, then President Corazon C. Aquino issued Memorandum Order No. (MO) 161[2] approving and directing the implementation of the Comprehensive and Integrated Metropolitan Manila Waste Management Plan (the Plan). The Metro Manila Commission, in coordination with various government agencies, was tasked as the lead agency to implement the Plan as formulated by the Presidential Task Force on Waste Management created by Memorandum Circular No. 39. A day after, on March 2, 1988, MO 161-A[3] was issued, containing the guidelines which prescribed the functions and responsibilities of fifteen (15) various government departments and offices tasked to implement the Plan, namely: Department of Public Works and Highway (DPWH), Department of Health (DOH), Department of Environment and Natural Resources (DENR), Department of Transportation and Communication, Department of Budget and Management, National Economic and Development Authority (NEDA), Philippine Constabulary Integrated National Police, Philippine Information Agency and the Local Government Unit (referring to the City of Manila), Department of Social Welfare and Development, Presidential Commission for Urban Poor, National Housing Authority (NHA), Department of

Labor and Employment, Department of Education, Culture and Sports (now Department of Education), and Presidential Management Staff.

Specifically, respondent NHA was ordered to "conduct feasibility studies and develop low-cost housing projects at the dumpsite and absorb scavengers in NHA resettlement/low-cost housing projects."[4] On the other hand, the DENR was tasked to "review and evaluate proposed projects under the Plan with regard to their environmental impact, conduct regular monitoring of activities of the Plan to ensure compliance with environmental standards and assist DOH in the conduct of the study on hospital waste management."[5]

At the time MO 161-A was issued by President Aquino, Smokey Mountain was a wasteland in Balut, Tondo, Manila, where numerous Filipinos resided in subhuman conditions, collecting items that may have some monetary value from the garbage. The Smokey Mountain dumpsite is bounded on the north by the Estero Marala, on the south by the property of the National Government, on the east by the property of B and I Realty Co., and on the west by Radial Road 10 (R-10).

Pursuant to MO 161-A, NHA prepared the feasibility studies of the Smokey Mountain low-cost housing project which resulted in the formulation of the "Smokey Mountain Development Plan and Reclamation of the Area Across R-10" or the Smokey Mountain Development and Reclamation Project (SMDRP; the Project). The Project aimed to convert the Smokey Mountain dumpsite into a habitable housing project, inclusive of the reclamation of the area across R-10, adjacent to the Smokey Mountain as the enabling component of the project.[6] Once finalized, the Plan was submitted to President Aquino for her approval.

On July 9, 1990, the Build-Operate-and-Transfer (BOT) Law (Republic Act No. [RA] 6957) was enacted.[7] Its declared policy under Section 1 is "[t]o recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate favorable incentives to mobilize private resources for the purpose." Sec. 3 authorized and empowered "[a]ll government infrastructure agencies, including government-owned and controlled corporations and local government units x x x to enter into contract with any duly pre-qualified private contractor for the financing, construction, operation and maintenance of any financially viable infrastructure facilities through the build-operate-transfer or build and transfer scheme."

RA 6957 defined "build-and-transfer" scheme as "[a] contractual arrangement whereby the contractor undertakes the construction, including financing, of a given infrastructure facility, and its turnover after the completion to the government agency or local government unit concerned which shall pay the contractor its total investment expended on the project, plus reasonable rate of return thereon." The last paragraph of Sec. 6 of the BOT Law provides that the repayment scheme in the case of "land reclamation or the building of industrial estates" may consist of "[t]he grant of a portion or percentage of the reclaimed land or industrial estate built, subject to the constitutional requirements with respect to the ownership of lands."

On February 10, 1992, Joint Resolution No. 03[8] was passed by both houses of Congress. Sec. 1 of this resolution provided, among other things, that:

> Section 1. There is hereby approved the following national infrastructure projects for implementation under the provisions of Republic Act No. 6957 and its implementing rules and regulations:
>
> x x x x
>
> (d) Port infrastructure like piers, wharves, quays, storage handling, ferry service and related facilities;
>
> x x x x
>
> (k) Land reclamation, dredging and other related development facilities;

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> (l) Industrial estates, regional industrial centers and export processing zones including steel mills, iron-making and petrochemical complexes and related infrastructure and utilities;
>
> x x x x
>
> (p) Environmental and solid waste management-related facilities such as collection equipment, composting plants, incinerators, landfill and tidal barriers, among others; and
>
> (q) Development of new townsites and communities and related facilities.

This resolution complied with and conformed to Sec. 4 of the BOT Law requiring the approval of all national infrastructure projects by the Congress.

On January 17, 1992, President Aquino proclaimed MO 415[9] approving and directing the implementation of the SMDRP. Secs. 3 and 4 of the Memorandum Order stated:

> Section 3. The National Housing Authority is hereby directed to implement the Smokey Mountain Development Plan and Reclamation of the Area Across R-10 through a private sector joint venture scheme at the least cost to the government.
>
> Section 4. The land area covered by the Smokey Mountain dumpsite is hereby conveyed to the National Housing Authority as well as the area to be reclaimed across R-10. (Emphasis supplied.)

In addition, the Public Estates Authority (PEA) was directed to assist in the evaluation of proposals regarding the technical feasibility of reclamation, while the DENR was directed to (1) facilitate titling of Smokey Mountain and of the area to be reclaimed and (2) assist in the technical evaluation of proposals regarding environmental impact statements.[10]

In the same MO 415, President Aquino created an Executive Committee (EXECOM) to oversee the implementation of the Plan, chaired by the National Capital Region-Cabinet Officer for Regional Development (NCR-CORD) with the heads of the NHA, City of Manila, DPWH, PEA, Philippine Ports Authority (PPA), DENR, and Development Bank of the Philippines (DBP) as members.[11] The NEDA subsequently became a member of the EXECOM. Notably, in a September 2, 1994 Letter,[12] PEA General Manager Amado Lagdameo approved the plans for the reclamation project prepared by the NHA.

In conformity with Sec. 5 of MO 415, an inter-agency technical committee (TECHCOM) was created composed of the technical representatives of the EXECOM "[t]o assist the NHA in the evaluation of the project proposals, assist in the resolution of all issues and problems in the project to ensure that all aspects of the development from squatter relocation, waste management, reclamation, environmental protection, land and house construction meet governing regulation of the region and to facilitate the completion of the project."[13]

Subsequently, the TECHCOM put out the Public Notice and Notice to Pre-Qualify and Bid for the right to become NHA's joint venture partner in the implementation of the SMDRP. The notices were published in newspapers of general circulation on January 23 and 26 and February 1, 14, 16, and 23, 1992, respectively. Out of the thirteen (13) contractors who responded, only five (5) contractors fully complied with the required pre-qualification documents. Based on the evaluation of the pre-qualification documents, the EXECOM declared the New San Jose Builders, Inc. and R-II Builders, Inc. (RBI) as the top two contractors.[14]

Thereafter, the TECHCOM evaluated the bids (which include the Pre-feasibility Study and Financing Plan) of the top two (2) contractors in this manner:

(1) The DBP, as financial advisor to the Project, evaluated their Financial Proposals;

(2) The DPWH, PPA, PEA and NHA evaluated the Technical Proposals for the Housing Construction and Reclamation;

(3) The DENR evaluated Technical Proposals on Waste Management and Disposal by conducting the Environmental Impact Analysis; and

(4) The NHA and the City of Manila evaluated the socio-economic benefits presented by the proposals.

On June 30, 1992, Fidel V. Ramos assumed the Office of the President (OP) of the Philippines.

On August 31, 1992, the TECHCOM submitted its recommendation to the EXECOM to approve the R-II Builders, Inc. (RBI) proposal which garnered the highest score of 88.475%.

Subsequently, the EXECOM made a Project briefing to President Ramos. As a result, President Ramos issued Proclamation No. 39[15] on September 9, 1992, which reads:

> WHEREAS, the National Housing Authority has presented a viable conceptual plan to convert the Smokey Mountain dumpsite into a habitable housing project, inclusive of the reclamation of the area across Road Radial 10 (R-10) adjacent to the Smokey Mountain as the enabling component of the project;
>
> x x x x
>
> These parcels of land of public domain are hereby placed under the administration and disposition of the National Housing Authority to develop, subdivide and dispose to qualified beneficiaries, as well as its development for mix land use (commercial/industrial) to provide employment opportunities to on-site families and additional areas for port-related activities.
>
> In order to facilitate the early development of the area for disposition, the Department of Environment and Natural Resources, through the Lands and Management Bureau, is hereby directed to approve the boundary and subdivision survey and to issue a special patent and title in the name of the National Housing Authority, subject to final survey and private rights, if any there be. (Emphasis supplied.)

On October 7, 1992, President Ramos authorized NHA to enter into a Joint Venture Agreement with RBI "[s]ubject to final review and approval of the Joint Venture Agreement by the Office of the President."[16]

On March 19, 1993, the NHA and RBI entered into a Joint Venture Agreement[17] (JVA) for the development of the Smokey Mountain dumpsite and the reclamation of the area across R-10 based on Presidential Decree No. (PD) 757[18] which mandated NHA "[t]o undertake the physical and socio-economic upgrading and development of lands of the public domain identified for housing," MO 161-A which required NHA to conduct the feasibility studies and develop a low-cost housing project at the Smokey Mountain, and MO 415 as amended by MO 415-A which approved the Conceptual Plan for Smokey Mountain and creation of the EXECOM and TECHCOM. Under the JVA, the Project "involves the clearing of Smokey Mountain for eventual development into a low cost medium rise housing complex and industrial/commercial site with the reclamation of the area directly across [R-10] to act as the enabling component of the Project."[19] The JVA covered a lot in Tondo, Manila with an area of two hundred twelve thousand two hundred thirty-four (212,234) square meters and another lot to be reclaimed also in Tondo with an area of four hundred thousand (400,000) square meters.

The Scope of Work of RBI under Article II of the JVA is as follows:

> a) To fully finance all aspects of development of Smokey Mountain and reclamation of no more than 40 hectares of Manila Bay area across Radial Road 10.
>
> b) To immediately commence on the preparation of feasibility report and detailed engineering with emphasis to the expedient acquisition of the Environmental Clearance Certificate (ECC) from the DENR.

c) The construction activities will only commence after the acquisition of the ECC, and

d) Final details of the contract, including construction, duration and delivery timetables, shall be based on the approved feasibility report and detailed engineering.

Other obligations of RBI are as follows:

2.02 The [RBI] shall develop the PROJECT based on the Final Report and Detailed Engineering as approved by the Office of the President. All costs and expenses for hiring technical personnel, date gathering, permits, licenses, appraisals, clearances, testing and similar undertaking shall be for the account of the [RBI].

2.03 The [RBI] shall undertake the construction of 3,500 temporary housing units complete with basic amenities such as plumbing, electrical and sewerage facilities within the temporary housing project as staging area to temporarily house the squatter families from the Smokey Mountain while development is being undertaken. These temporary housing units shall be turned over to the [NHA] for disposition.

2.04 The [RBI] shall construct 3,500 medium rise low cost permanent housing units on the leveled Smokey Mountain complete with basic utilities and amenities, in accordance with the plans and specifications set forth in the Final Report approved by the [NHA]. Completed units ready for mortgage take out shall be turned over by the [RBI] to NHA on agreed schedule.

2.05 The [RBI] shall reclaim forty (40) hectares of Manila Bay area directly across [R-10] as contained in Proclamation No. 39 as the enabling component of the project and payment to the [RBI] as its asset share.

2.06 The [RBI] shall likewise furnish all labor materials and equipment necessary to complete all herein development works to be undertaken on a phase to phase basis in accordance with the work program stipulated therein.

The profit sharing shall be based on the approved pre-feasibility report submitted to the EXECOM, viz:

For the developer (RBI):

1. To own the forty (40) hectares of reclaimed land.

2. To own the commercial area at the Smokey Mountain area composed of 1.3 hectares, and

3. To own all the constructed units of medium rise low cost permanent housing units beyond the 3,500 units share of the [NHA].

For the NHA:

1. To own the temporary housing consisting of 3,500 units.

2. To own the cleared and fenced incinerator site consisting of 5 hectares situated at the Smokey Mountain area.

3. To own the 3,500 units of permanent housing to be constructed by [RBI] at the Smokey Mountain area to be awarded to qualified on site residents.

4. To own the Industrial Area site consisting of 3.2 hectares, and

5. To own the open spaces, roads and facilities within the Smokey Mountain area.

In the event of "extraordinary increase in labor, materials, fuel and non-recoverability of total project expenses,"[20] the OP, upon recommendation of the NHA, may approve a corresponding adjustment in the enabling component.

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The functions and responsibilities of RBI and NHA are as follows:

For RBI:

> 4.01 Immediately commence on the preparation of the FINAL REPORT with emphasis to the expedient acquisition, with the assistance of the [NHA] of Environmental Compliance Certificate (ECC) from the Environmental Management Bureau (EMB) of the [DENR]. Construction shall only commence after the acquisition of the ECC. The Environment Compliance Certificate (ECC) shall form part of the FINAL REPORT.
>
> The FINAL REPORT shall provide the necessary subdivision and housing plans, detailed engineering and architectural drawings, technical specifications and other related and required documents relative to the Smokey Mountain area.
>
> With respect to the 40-hectare reclamation area, the [RBI] shall have the discretion to develop the same in a manner that it deems necessary to recover the [RBI's] investment, subject to environmental and zoning rules.
>
> 4.02 Finance the total project cost for land development, housing construction and reclamation of the PROJECT.
>
> 4.03 Warrant that all developments shall be in compliance with the requirements of the FINAL REPORT.
>
> 4.04 Provide all administrative resources for the submission of project accomplishment reports to the [NHA] for proper evaluation and supervision on the actual implementation.
>
> 4.05 Negotiate and secure, with the assistance of the [NHA] the grant of rights of way to the PROJECT, from the owners of the adjacent lots for access road, water, electrical power connections and drainage facilities.
>
> 4.06 Provide temporary field office and transportation vehicles (2 units), one (1) complete set of computer and one (1) unit electric typewriter for the [NHA's] field personnel to be charged to the PROJECT.

For the NHA:

> 4.07 The [NHA] shall be responsible for the removal and relocation of all squatters within Smokey Mountain to the Temporary Housing Complex or to other areas prepared as relocation areas with the assistance of the [RBI]. The [RBI] shall be responsible in releasing the funds allocated and committed for relocation as detailed in the FINAL REPORT.
>
> 4.08 Assist the [RBI] and shall endorse granting of exemption fees in the acquisition of all necessary permits, licenses, appraisals, clearances and accreditations for the PROJECT subject to existing laws, rules and regulations.
>
> 4.09 The [NHA] shall inspect, evaluate and monitor all works at the Smokey Mountain and Reclamation Area while the land development and construction of housing units are in progress to determine whether the development and construction works are undertaken in accordance with the FINAL REPORT. If in its judgment, the PROJECT is not pursued in accordance with the FINAL REPORT, the [NHA] shall require the [RBI] to undertake necessary remedial works. All expenses, charges and penalties incurred for such remedial, if any, shall be for the account of the [RBI].
>
> 4.10 The [NHA] shall assist the [RBI] in the complete electrification of the PROJECT. x x x
>
> 4.11 Handle the processing and documentation of all sales transactions related to its assets shares from the venture such as the 3,500 units of permanent housing and the allotted industrial area of 3.2 hectares.
>
> 4.12 All advances outside of project costs made by the [RBI] to the [NHA] shall be deducted from the proceeds due to the [NHA].

> 4.13 The [NHA] shall be responsible for the acquisition of the Mother Title for the Smokey Mountain and Reclamation Area within 90 days upon submission of Survey returns to the Land Management Sector. The land titles to the 40-hectare reclaimed land, the 1.3 hectare commercial area at the Smokey Mountain area and the constructed units of medium-rise permanent housing units beyond the 3,500 units share of the [NHA] shall be issued in the name of the [RBI] upon completion of the project. However, the [RBI] shall have the authority to pre-sell its share as indicated in this agreement.

The final details of the JVA, which will include the construction duration, costs, extent of reclamation, and delivery timetables, shall be based on the FINAL REPORT which will be contained in a Supplemental Agreement to be executed later by the parties.

The JVA may be modified or revised by written agreement between the NHA and RBI specifying the clauses to be revised or modified and the corresponding amendments.

If the Project is revoked or terminated by the Government through no fault of RBI or by mutual agreement, the Government shall compensate RBI for its actual expenses incurred in the Project plus a reasonable rate of return not exceeding that stated in the feasibility study and in the contract as of the date of such revocation, cancellation, or termination on a schedule to be agreed upon by both parties.

As a preliminary step in the project implementation, consultations and dialogues were conducted with the settlers of the Smokey Mountain Dumpsite Area. At the same time, DENR started processing the application for the Environmental Clearance Certificate (ECC) of the SMDRP. As a result however of the consultative dialogues, public hearings, the report on the on-site field conditions, the Environmental Impact Statement (EIS) published on April 29 and May 12, 1993 as required by the Environmental Management Bureau of DENR, the evaluation of the DENR, and the recommendations from other government agencies, it was discovered that design changes and additional work have to be undertaken to successfully implement the Project.[21]

Thus, on February 21, 1994, the parties entered into another agreement denominated as the Amended and Restated Joint Venture Agreement[22] (ARJVA) which delineated the different phases of the Project. Phase I of the Project involves the construction of temporary housing units for the current residents of the Smokey Mountain dumpsite, the clearing and leveling-off of the dumpsite, and the construction of medium-rise low-cost housing units at the cleared and leveled dumpsite.[23] Phase II of the Project involves the construction of an incineration area for the on-site disposal of the garbage at the dumpsite.[24] The enabling component or consideration for Phase I of the Project was increased from 40 hectares of reclaimed lands across R-10 to 79 hectares.[25] The revision also provided for the enabling component for Phase II of 119 hectares of reclaimed lands contiguous to the 79 hectares of reclaimed lands for Phase I.[26] Furthermore, the amended contract delineated the scope of works and the terms and conditions of Phases I and II, thus:

> The PROJECT shall consist of Phase I and Phase II.
>
> Phase I shall involve the following:
>
> - the construction of 2,992 units of temporary housing for the affected residents while clearing and development of Smokey Mountain [are] being undertaken
>
> - the clearing of Smokey Mountain and the subsequent construction of 3,520 units of medium rise housing and the development of the industrial/commercial site within the Smokey Mountain area
>
> - the reclamation and development of a 79 hectare area directly across Radial Road 10 to serve as the enabling component of Phase I
>
> Phase II shall involve the following:

- the construction and operation of an incinerator plant that will conform to the emission standards of the DENR

- the reclamation and development of 119-hectare area contiguous to that to be reclaimed under Phase I to serve as the enabling component of Phase II.

Under the ARJVA, RBI shall construct 2,992 temporary housing units, a reduction from 3,500 units under the JVA.[27] However, it was required to construct 3,520 medium-rise low-cost permanent housing units instead of 3,500 units under the JVA. There was a substantial change in the design of the permanent housing units such that a "loft shall be incorporated in each unit so as to increase the living space from 20 to 32 square meters. The additions and changes in the Original Project Component are as follows:

ORIGINAL

CHANGES/REVISIONS

1. TEMPORARY HOUSING

Wood/Plywood, ga. 31 G.I. Sheet usable life of 3 years, future 12 SM floor area.

Concrete/Steel Frame Structure gauge 26 G.I. roofing sheets use as permanent structures for factory and warehouses mixed 17 sm & 12 sm floor area.

2. MEDIUM RISE MASS HOUSING

Box type precast Shelter component 20 square meter floor area with 2.4 meter height; bare type, 160 units/ building.

Conventional and precast concrete structures, 32 square meter floor area with loft floor (sleeping quarter) 3.6 m. floor height, painted and improved architectural facade, 80 units/ building.

3. MITIGATING MEASURES

3.1 For reclamation work

Use of clean dredgefill material
below the MLLW and SM material mixed with dredgefill above MLLW.

a. 100% use of Smokey
Mountain material as
dredgefill

Use of Steel Sheet Piles needed for longer depth of embedment.

b. Concrete Sheet Piles
short depth of
embedment

c. Silt removal
approximately
1.0 meter only

Need to remove more than 3.0 meters of silt after sub-soil investigation.[28]

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These material and substantial modifications served as justifications for the increase in the share of RBI from 40 hectares to 79 hectares of reclaimed land.

Under the JVA, the specific costs of the Project were not stipulated but under the ARJVA, the stipulated cost for Phase I was pegged at six billion six hundred ninety-three million three hundred eighty-seven thousand three hundred sixty-four pesos (PhP 6,693,387,364).

In his February 10, 1994 Memorandum, the Chairperson of the SMDRP EXECOM submitted the ARJVA for approval by the OP. After review of said agreement, the OP directed that certain terms and conditions of the ARJVA be further clarified or amended preparatory to its approval. Pursuant to the President's directive, the parties reached an agreement on the clarifications and amendments required to be made on the ARJVA.

On August 11, 1994, the NHA and RBI executed an Amendment To the Amended and Restated Joint Venture Agreement (AARJVA)[29] clarifying certain terms and condition of the ARJVA, which was submitted to President Ramos for approval, to wit:

> Phase II shall involve the following:
>
> - the construction and operation of an incinerator plant that will conform to the emission standards of the DENR
>
> - the reclamation and development of 119-hectare area contiguous to that to be reclaimed under Phase I to serve as the enabling component of Phase II, the exact size and configuration of which shall be approved by the SMDRP Committee[30]

Other substantial amendments are the following:

> 4. Paragraph 2.05 of Article II of the ARJVA is hereby amended to read as follows: 2.05. The DEVELOPER shall reclaim seventy nine (79) hectares of the Manila Bay area directly across Radial Road 10 (R-10) to serve as payment to the DEVELOPER as its asset share for Phase I and to develop such land into commercial area with port facilities; provided, that the port plan shall be integrated with the Philippine Port Authority's North Harbor plan for the Manila Bay area and provided further, that the final reclamation and port plan for said reclaimed area shall be submitted for approval by the Public Estates Authority and the Philippine Ports Authority, respectively: provided finally, that subject to par. 2.02 above, actual reclamation work may commence upon approval of the final reclamation plan by the Public Estates Authority.
>
> x x x x

9. A new paragraph to be numbered 5.05 shall be added to Article V of the ARJVA, and shall read as follows:

> 5.05. In the event this Agreement is revoked, cancelled or terminated by the AUTHORITY through no fault of the DEVELOPER, the AUTHORITY shall compensate the DEVELOPER for the value of the completed portions of, and actual expenditures on the PROJECT plus a reasonable rate of return thereon, not exceeding that stated in the Cost Estimates of Items of Work previously approved by the SMDRP Executive Committee and the AUTHORITY and stated in this Agreement, as of the date of such revocation, cancellation, or termination, on a schedule to be agreed upon by the parties, provided that said completed portions of Phase I are in accordance with the approved FINAL REPORT.

Afterwards, President Ramos issued Proclamation No. 465 dated August 31, 1994[31] increasing the proposed area for reclamation across R-10 from 40 hectares to 79 hectares,[32] to wit:

> NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the law, and as recommended by the SMDRP Executive Committee, do hereby authorize the increase of the area of foreshore or submerged lands of Manila Bay to be reclaimed, as

> previously authorized under Proclamation No. 39 (s. 1992) and Memorandum Order No. 415 (s. 1992), from Four Hundred Thousand (400,000) square meters, more or less, to Seven Hundred Ninety Thousand (790,000) square meters, more or less.

On September 1, 1994, pursuant to Proclamation No. 39, the DENR issued Special Patent No. 3591 conveying in favor of NHA an area of 211,975 square meters covering the Smokey Mountain Dumpsite.

In its September 7, 1994 letter to the EXECOM, the OP through then Executive Secretary Teofisto T. Guingona, Jr., approved the ARJVA as amended by the AARJVA.

On September 8, 1994, the DENR issued Special Patent 3592 pursuant to Proclamation No. 39, conveying in favor of NHA a 401,485-square meter area.

On September 26, 1994, the NHA, RBI, Home Insurance and Guaranty Corporation (HIGC), now known as the Home Guaranty Corporation, and the Philippine National Bank (PNB)[33] executed the Smokey Mountain Asset Pool Formation Trust Agreement (Asset Pool Agreement).[34] Thereafter, a Guaranty Contract was entered into by NHA, RBI, and HIGC.

On June 23, 1994, the Legislature passed the Clean Air Act.[35] The Act made the establishment of an incinerator illegal and effectively barred the implementation of the planned incinerator project under Phase II. Thus, the off-site disposal of the garbage at the Smokey Mountain became necessary.[36]

The land reclamation was completed in August 1996.[37]

Sometime later in 1996, pursuant likewise to Proclamation No. 39, the DENR issued Special Patent No. 3598 conveying in favor of NHA an additional 390,000 square meter area.

During the actual construction and implementation of Phase I of the SMDRP, the Inter-Agency Technical Committee found and recommended to the EXECOM on December 17, 1997 that additional works were necessary for the completion and viability of the Project. The EXECOM approved the recommendation and so, NHA instructed RBI to implement the change orders or necessary works.[38]

Such necessary works comprised more than 25% of the original contract price and as a result, the Asset Pool incurred direct and indirect costs. Based on C1 12 A of the Implementing Rules and Regulations of PD 1594, a supplemental agreement is required for "all change orders and extra work orders, the total aggregate cost of which being more than twenty-five (25%) of the escalated original contract price."

The EXECOM requested an opinion from the Department of Justice (DOJ) to determine whether a bidding was required for the change orders and/or necessary works. The DOJ, through DOJ Opinion Nos. 119 and 155 dated August 26, 1993 and November 12, 1993, opined that "a rebidding, pursuant to the aforequoted provisions of the implementing rules (referring to PD 1594) would not be necessary where the change orders inseparable from the original scope of the project, in which case, a negotiation with the incumbent contractor may be allowed."

Thus, on February 19, 1998, the EXECOM issued a resolution directing NHA to enter into a supplemental agreement covering said necessary works.

On March 20, 1998, the NHA and RBI entered into a Supplemental Agreement covering the aforementioned necessary works and submitted it to the President on March 24, 1998 for approval.

Outgoing President Ramos decided to endorse the consideration of the Supplemental Agreement to incoming President Joseph E. Estrada. On June 30, 1998, Estrada became the 13th Philippine President.

However, the approval of the Supplemental Agreement was unacted upon for five months. As a result, the utilities

and the road networks were constructed to cover only the 79-hectare original enabling component granted under the ARJVA. The 220-hectare extension of the 79-hectare area was no longer technically feasible. Moreover, the financial crises and unreliable real estate situation made it difficult to sell the remaining reclaimed lots. The devaluation of the peso and the increase in interest cost led to the substantial increase in the cost of reclamation.

On August 1, 1998, the NHA granted RBI's request to suspend work on the SMDRP due to "the delay in the approval of the Supplemental Agreement, the consequent absence of an enabling component to cover the cost of the necessary works for the project, and the resulting inability to replenish the Asset Pool funds partially used for the completion of the necessary works."[39]

As of August 1, 1998 when the project was suspended, RBI had "already accomplished a portion of the necessary works and change orders which resulted in [RBI] and the Asset Pool incurring advances for direct and indirect cost which amount can no longer be covered by the 79-hectare enabling component under the ARJVA."[40]

Repeated demands were made by RBI in its own capacity and on behalf of the asset pool on NHA for payment for the advances for direct and indirect costs subject to NHA validation.

In November 1998, President Estrada issued Memorandum Order No. 33 reconstituting the SMDRP EXECOM and further directed it to review the Supplemental Agreement and submit its recommendation on the completion of the SMDRP.

The reconstituted EXECOM conducted a review of the project and recommended the amendment of the March 20, 1998 Supplemental Agreement "to make it more feasible and to identify and provide new sources of funds for the project and provide for a new enabling component to cover the payment for the necessary works that cannot be covered by the 79-hectare enabling component under the ARJVA."[41]

The EXECOM passed Resolution Nos. 99-16-01 and 99-16-02[42] which approved the modification of the Supplemental Agreement, to wit:

> a)
>
> Approval of 150 hectares additional reclamation in order to make the reclamation feasible as part of the enabling component.
>
> b)
>
> The conveyance of the 15-hectare NHA Vitas property (actually 17 hectares based on surveys) to the SMDRP Asset Pool.
>
> c)
>
> The inclusion in the total development cost of other additional, necessary and indispensable infrastructure works and the revision of the original cost stated in the Supplemental Agreement dated March 20, 1998 from PhP 2,953,984,941.40 to PhP 2,969,134,053.13.
>
> d)
>
> Revision in the sharing agreement between the parties.

In the March 23, 2000 OP Memorandum, the EXECOM was authorized to proceed and complete the SMDRP subject to certain guidelines and directives.

After the parties in the case at bar had complied with the March 23, 2000 Memorandum, the NHA November 9, 2000 Resolution No. 4323 approved "the conveyance of the 17-hectare Vitas property in favor of the existing or a

newly created Asset Pool of the project to be developed into a mixed commercial-industrial area, subject to certain conditions."

On January 20, 2001, then President Estrada was considered resigned. On the same day, President Gloria M. Arroyo took her oath as the 14th President of the Philippines.

As of February 28, 2001, "the estimated total project cost of the SMDRP has reached P8.65 billion comprising of P4.78 billion in direct cost and P3.87 billion in indirect cost,"[43] subject to validation by the NHA.

On August 28, 2001, NHA issued Resolution No. 4436 to pay for "the various necessary works/change orders to SMDRP, to effect the corresponding enabling component consisting of the conveyance of the NHA's Vitas Property and an additional 150-hectare reclamation area" and to authorize the release by NHA of PhP 480 million "as advance to the project to make the Permanent Housing habitable, subject to reimbursement from the proceeds of the expanded enabling component."[44]

On November 19, 2001, the Amended Supplemental Agreement (ASA) was signed by the parties, and on February 28, 2002, the Housing and Urban Development Coordinating Council (HUDCC) submitted the agreement to the OP for approval.

In the July 20, 2002 Cabinet Meeting, HUDCC was directed "to submit the works covered by the PhP 480 million [advance to the Project] and the ASA to public bidding."[45] On August 28, 2002, the HUDCC informed RBI of the decision of the Cabinet.

In its September 2, 2002 letter to the HUDCC Chairman, RBI lamented the decision of the government "to bid out the remaining works under the ASA thereby unilaterally terminating the Project with RBI and all the agreements related thereto." RBI demanded the payment of just compensation "for all accomplishments and costs incurred in developing the SMDRP plus a reasonable rate of return thereon pursuant to Section 5.05 of the ARJVA and Section 6.2 of the ASA."[46]

Consequently, the parties negotiated the terms of the termination of the JVA and other subsequent agreements.

On August 27, 2003, the NHA and RBI executed a Memorandum of Agreement (MOA) whereby both parties agreed to terminate the JVA and other subsequent agreements, thus:

> 1. ERMINATION 1.1 In compliance with the Cabinet directive dated 30 July 2002 to submit the works covered by the P480 Million and the ASA to public bidding, the following agreements executed by and between the NHA and the DEVELOPER are hereby terminated, to wit:
> a. Joint Venture Agreement (JVA) dated 19 March 1993
>
> b. Amended and Restated Joint Venture Agreement (ARJVA) dated 21 February 1994
>
> c. Amendment and Restated Joint Venture Agreement dated 11 August 1994
>
> d. Supplemental Agreement dated 24 March 1998
>
> e. Amended Supplemental Agreement (ASA) dated 19 November 2001.
>
> x x x x
>
> **5. SETTLEMENT OF CLAIMS**
>
> 5.1 Subject to the validation of the DEVELOPER's claims, the NHA hereby agrees to initially compensate the Developer for the abovementioned costs as follows: a. Direct payment to DEVELOPER of the amounts herein listed in the following manner: a.1 P250 Million in cash from the escrow account in accordance with Section 2

herewith;

a.2 Conveyance of a 3 hectare portion of the Vitas Industrial area immediately after joint determination of the appraised value of the said property in accordance with the procedure herein set forth in the last paragraph of Section 5.3. For purposes of all payments to be made through conveyance of real properties, the parties shall secure from the NHA Board of Directors all documents necessary and sufficient to effect the transfer of title over the properties to be conveyed to RBI, which documents shall be issued within a reasonable period.

5.2 Any unpaid balance of the DEVELOPERS claims determined after the validation process referred to in Section 4 hereof, may be paid in cash, bonds or through the conveyance of properties or any combination thereof. The manner, terms and conditions of payment of the balance shall be specified and agreed upon later within a period of three months from the time a substantial amount representing the unpaid balance has been validated pursuant hereto including, but not limited to the programming of quarterly cash payments to be sourced by the NHA from its budget for debt servicing, from its income or from any other sources.

5.3 In any case the unpaid balance is agreed to be paid, either partially or totally through conveyance of properties, the parties shall agree on which properties shall be subject to conveyance. The NHA and DEVELOPER hereby agree to determine the valuation of the properties to be conveyed by getting the average of the appraisals to be made by two (2) mutually acceptable independent appraisers.

Meanwhile, respondent Harbour Centre Port Terminal, Inc. (HCPTI) entered into an agreement with the asset pool for the development and operations of a port in the Smokey Mountain Area which is a major component of SMDRP to provide a source of livelihood and employment for Smokey Mountain residents and spur economic growth. A Subscription Agreement was executed between the Asset Pool and HCPTI whereby the asset pool subscribed to 607 million common shares and 1,143 million preferred shares of HCPTI. The HCPTI preferred shares had a premium and penalty interest of 7.5% per annum and a mandatory redemption feature. The asset pool paid the subscription by conveying to HCPTI a 10-hectare land which it acquired from the NHA being a portion of the reclaimed land of the SMDRP. Corresponding certificates of titles were issued to HCPTI, namely: TCT Nos. 251355, 251356, 251357, and 251358.

Due to HCPTI's failure to obtain a license to handle foreign containerized cargo from PPA, it suffered a net income loss of PhP 132,621,548 in 2002 and a net loss of PhP 15,540,063 in 2003. The Project Governing Board of the Asset Pool later conveyed by way of dacion en pago a number of HCPTI shares to RBI in lieu of cash payment for the latter's work in SMDRP.

On August 5, 2004, former Solicitor General Francisco I. Chavez, filed the instant petition which impleaded as respondents the NHA, RBI, R-II Holdings, Inc. (RHI), HCPTI, and Mr. Reghis Romero II, raising constitutional issues.

The NHA reported that thirty-four (34) temporary housing structures and twenty-one (21) permanent housing structures had been turned over by respondent RBI. It claimed that 2,510 beneficiary-families belonging to the poorest of the poor had been transferred to their permanent homes and benefited from the Project.

The Issues

The grounds presented in the instant petition are:

I

Neither respondent NHA nor respondent R-II builders may validly reclaim foreshore and submerged land because:

- Respondent NHA and R-II builders were never granted any power and authority to reclaim lands of the public domain as this power is vested exclusively with the PEA.

- Even assuming that respondents NHA and R-II builders were given the power and authority to reclaim foreshore and submerged land, they were never given the authority by the denr to do so.

II

Respondent R-II builders cannot acquire the reclaimed foreshore and submerged land areas because:

- The reclaimed foreshore and submerged parcels of land are inalienable public lands which are beyond the commerce of man.

- Assuming arguendo that the subject reclaimed foreshore and submerged parcels of land were already declared alienable lands of the public domain, respondent R-II builders still could not acquire the same because there was never any declaration that the said lands were no longer needed for public use.

- Even assuming that the subject reclaimed lands are alienable and no longer needed for public use, respondent R-II builders still cannot acquire the same because there was never any law authorizing the sale thereof.

- There was never any public bidding awarding ownership of the subject land to respondent R-II builders.

- Assuming that all the requirements for a valid transfer of alienable public had been performed, respondent R-II Builders, being private corporation is nonetheless expresslyprohibited by the Philippine Constitution to acquire lands of the public domain.

III

Respondent harbour, being a private corporation whose majority stocks are owned and controlled by respondent Romero's Corporations - R-II builders and R-II Holdings - is disqualified from being a transferee of public land.

IV

Respondents must be compelled to disclose all information related to the smokey mountain development and reclamation project.

The Court's Ruling

Before we delve into the substantive issues raised in this petition, we will first deal with several procedural matters raised by respondents.

Whether petitioner has the requisite locus standi to file this case

Respondents argue that petitioner Chavez has no legal standing to file the petition.

Only a person who stands to be benefited or injured by the judgment in the suit or entitled to the avails of the suit can file a complaint or petition.[47] Respondents claim that petitioner is not a proper party-in-interest as he was unable to show that "he has sustained or is in immediate or imminent danger of sustaining some direct and personal injury as a result of the execution and enforcement of the assailed contracts or agreements."[48] Moreover, they assert that not all government contracts can justify a taxpayer's suit especially when no public funds were utilized in contravention of the Constitution or a law.

We explicated in Chavez v. PCGG[49] that in cases where issues of transcendental public importance are presented, there is no necessity to show that petitioner has experienced or is in actual danger of suffering direct and personal injury as the requisite injury is assumed. We find our ruling in Chavez v. PEA[50] as conclusive

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authority on locus standi in the case at bar since the issues raised in this petition are averred to be in breach of the fair diffusion of the country's natural resources and the constitutional right of a citizen to information which have been declared to be matters of transcendental public importance. Moreover, the pleadings especially those of respondents readily reveal that public funds have been indirectly utilized in the Project by means of Smokey Mountain Project Participation Certificates (SMPPCs) bought by some government agencies.

Hence, petitioner, as a taxpayer, is a proper party to the instant petition before the court.

Whether petitioner's direct recourse to this Court was proper

Respondents are one in asserting that petitioner circumvents the principle of hierarchy of courts in his petition. Judicial hierarchy was made clear in the case of People v. Cuaresma, thus:

> There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[51] x x x

The OSG claims that the jurisdiction over petitions for prohibition and mandamus is concurrent with other lower courts like the Regional Trial Courts and the Court of Appeals. Respondent NHA argues that the instant petition is misfiled because it does not introduce special and important reasons or exceptional and compelling circumstances to warrant direct recourse to this Court and that the lower courts are more equipped for factual issues since this Court is not a trier of facts. Respondents RBI and RHI question the filing of the petition as this Court should not be unduly burdened with "repetitions, invocation of jurisdiction over constitutional questions it had previously resolved and settled."

In the light of existing jurisprudence, we find paucity of merit in respondents' postulation.

While direct recourse to this Court is generally frowned upon and discouraged, we have however ruled in Santiago v. Vasquez that such resort to us may be allowed in certain situations, wherein this Court ruled that petitions for certiorari, prohibition, or mandamus, though cognizable by other courts, may directly be filed with us if "the redress desired cannot be obtained in the appropriate courts or where exceptional compelling circumstances justify availment of a remedy within and calling for the exercise of [this Court's] primary jurisdiction."[52]

The instant petition challenges the constitutionality and legality of the SMDRP involving several hectares of government land and hundreds of millions of funds of several government agencies. Moreover, serious constitutional challenges are made on the different aspects of the Project which allegedly affect the right of Filipinos to the distribution of natural resources in the country and the right to information of a citizen--matters which have been considered to be of extraordinary significance and grave consequence to the public in general. These concerns in the instant action compel us to turn a blind eye to the judicial structure meant to provide an orderly dispensation of justice and consider the instant petition as a justified deviation from an established precept.

Core factual matters undisputed

Respondents next challenge the projected review by this Court of the alleged factual issues intertwined in the

issues propounded by petitioner. They listed a copious number of questions seemingly factual in nature which would make this Court a trier of facts.[53]

We find the position of respondents bereft of merit.

For one, we already gave due course to the instant petition in our January 18, 2005 Resolution.[54] In said issuance, the parties were required to make clear and concise statements of established facts upon which our decision will be based.

Secondly, we agree with petitioner that there is no necessity for us to make any factual findings since the facts needed to decide the instant petition are well established from the admissions of the parties in their pleadings[55] and those derived from the documents appended to said submissions. Indeed, the core facts which are the subject matter of the numerous issues raised in this petition are undisputed.

Now we will tackle the issues that prop up the instant petition.

Since petitioner has cited our decision in PEA as basis for his postulations in a number of issues, we first resolve the query--is PEA applicable to the case at bar?

A juxtaposition of the facts in the two cases constrains the Court to rule in the negative.

The Court finds that PEA is not a binding precedent to the instant petition because the facts in said case are substantially different from the facts and circumstances in the case at bar, thus:

(1) The reclamation project in PEA was undertaken through a JVA entered into between PEA and AMARI. The reclamation project in the instant NHA case was undertaken by the NHA, a national government agency in consultation with PEA and with the approval of two Philippine Presidents;

(2) In PEA, AMARI and PEA executed a JVA to develop the Freedom Islands and reclaim submerged areas without public bidding on April 25, 1995. In the instant NHA case, the NHA and RBI executed a JVA after RBI was declared the winning bidder on August 31, 1992 as the JVA partner of the NHA in the SMDRP after compliance with the requisite public bidding.

(3) In PEA, there was no law or presidential proclamation classifying the lands to be reclaimed as alienable and disposal lands of public domain. In this RBI case, MO 415 of former President Aquino and Proclamation No. 39 of then President Ramos, coupled with Special Patents Nos. 3591, 3592, and 3598, classified the reclaimed lands as alienable and disposable;

(4) In PEA, the Chavez petition was filed before the amended JVA was executed by PEA and AMARI. In this NHA case, the JVA and subsequent amendments were already substantially implemented. Subsequently, the Project was terminated through a MOA signed on August 27, 2003. Almost one year later on August 5, 2004, the Chavez petition was filed;

(5) In PEA, AMARI was considered to be in bad faith as it signed the amended JVA after the Chavez petition was filed with the Court and after Senate Committee Report No. 560 was issued finding that the subject lands are inalienable lands of public domain. In the instant petition, RBI and other respondents are considered to have signed the agreements in good faith as the Project was terminated even before the Chavez petition was filed;

(6) The PEA-AMARI JVA was executed as a result of direct negotiation between the parties and not in accordance with the BOT Law. The NHA-RBI JVA and subsequent amendments constitute a BOT contract governed by the BOT Law; and

(7) In PEA, the lands to be reclaimed or already reclaimed were transferred to PEA, a government entity tasked to

dispose of public lands under Executive Order No. (EO) 525.[56] In the NHA case, the reclaimed lands were transferred to NHA, a government entity NOT tasked to dispose of public land and therefore said alienable lands were converted to patrimonial lands upon their transfer to NHA.[57]

Thus the PEA Decision[58] cannot be considered an authority or precedent to the instant case. The principle of stare decisis[59] has no application to the different factual setting of the instant case.

We will now dwell on the substantive issues raised by petitioner. After a perusal of the grounds raised in this petition, we find that most of these issues are moored on our PEA Decision which, as earlier discussed, has no application to the instant petition. For this reason alone, the petition can already be rejected. Nevertheless, on the premise of the applicability of said decision to the case at bar, we will proceed to resolve said issues.

First Issue: Whether respondents NHA and RBI have been granted
the power and authority to reclaim lands of the public domain as
this power is vested exclusively in PEA as claimed by petitioner

Petitioner contends that neither respondent NHA nor respondent RBI may validly reclaim foreshore and submerged land because they were not given any power and authority to reclaim lands of the public domain as this power was delegated by law to PEA.

Asserting that existing laws did not empower the NHA and RBI to reclaim lands of public domain, the Public Estates Authority (PEA), petitioner claims, is "the primary authority for the reclamation of all foreshore and submerged lands of public domain," and relies on PEA where this Court held:

> Moreover, Section 1 of Executive Order No. 525 provides that PEA "shall be primarily responsible for integrating, directing, and coordinating all reclamation projects for and on behalf of the National Government." The same section also states that "[A]ll reclamation projects shall be approved by the President upon recommendation of the PEA, and shall be undertaken by the PEA or through a proper contract executed by it with any person or entity; x x x." Thus, under EO No. 525, in relation to PD No. 3-A and PD No. 1084, PEA became the primary implementing agency of the National Government to reclaim foreshore and submerged lands of the public domain. EO No. 525 recognized PEA as the government entity "to undertake the reclamation of lands and ensure their maximum utilization in promoting public welfare and interests." Since large portions of these reclaimed lands would obviously be needed for public service, there must be a formal declaration segregating reclaimed lands no longer needed for public service from those still needed for public service.[60]

In the Smokey Mountain Project, petitioner clarifies that the reclamation was not done by PEA or through a contract executed by PEA with another person or entity but by the NHA through an agreement with respondent RBI. Therefore, he concludes that the reclamation is null and void.

Petitioner's contention has no merit.

EO 525 reads:

> Section 1. The Public Estates Authority (PEA) shall be primarily responsible for integrating, directing, and coordinating all reclamation projects for and on behalf of the National Government. All reclamation projects shall be approved by the President upon recommendation of the PEA, and shall be undertaken by the PEA or through a proper contract executed by it with any person or entity; Provided, that, reclamation projects of any national government agency or entity authorized under its charter shall be undertaken in consultation with the PEA upon approval of the President. (Emphasis supplied.)
>
> The aforequoted provision points to three (3) requisites for a legal and valid reclamation project, viz: (1) approval by the President;

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(2) favorable recommendation of PEA; and

(3) undertaken by any of the following:

- by PEA

- by any person or entity pursuant to a contract it executed with PEA

- by the National Government agency or entity authorized under its charter to reclaim lands subject to consultation with PEA

Without doubt, PEA under EO 525 was designated as the agency primarily responsible for integrating, directing, and coordinating all reclamation projects. Primarily means "mainly, principally, mostly, generally." Thus, not all reclamation projects fall under PEA's authority of supervision, integration, and coordination. The very charter of PEA, PD 1084,[61] does not mention that PEA has the exclusive and sole power and authority to reclaim lands of public domain. EO 525 even reveals the exception--reclamation projects by a national government agency or entity authorized by its charter to reclaim land. One example is EO 405 which authorized the Philippine Ports Authority (PPA) to reclaim and develop submerged areas for port related purposes. Under its charter, PD 857, PPA has the power "to reclaim, excavate, enclose or raise any of the lands" vested in it.

Thus, while PEA under PD 1084 has the power to reclaim land and under EO 525 is primarily responsible for integrating, directing and coordinating reclamation projects, such authority is NOT exclusive and such power to reclaim may be granted or delegated to another government agency or entity or may even be undertaken by the National Government itself, PEA being only an agency and a part of the National Government.

Let us apply the legal parameters of Sec. 1, EO 525 to the reclamation phase of SMDRP. After a scrutiny of the facts culled from the records, we find that the project met all the three (3) requirements, thus:

1. There was ample approval by the President of the Philippines; as a matter of fact, two Philippine Presidents approved the same, namely: Presidents Aquino and Ramos. President Aquino sanctioned the reclamation of both the SMDRP housing and commercial-industrial sites through MO 415 (s. 1992) which approved the SMDRP under Sec. 1 and directed NHA "x x x to implement the Smokey Mountain Development Plan and Reclamation of the Area across R-10 through a private sector joint venture scheme at the least cost to government" under Section 3.

For his part, then President Ramos issued Proclamation No. 39 (s. 1992) which expressly reserved the Smokey Mountain Area and the Reclamation Area for a housing project and related commercial/industrial development.

Moreover, President Ramos issued Proclamation No. 465 (s. 1994) which authorized the increase of the Reclamation Area from 40 hectares of foreshore and submerged land of the Manila Bay to 79 hectares. It speaks of the reclamation of 400,000 square meters, more or less, of the foreshore and submerged lands of Manila Bay adjoining R-10 as an enabling component of the SMDRP.

As a result of Proclamations Nos. 39 and 465, Special Patent No. 3591 covering 211,975 square meters of Smokey Mountain, Special Patent No. 3592 covering 401,485 square meters of reclaimed land, and Special Patent No. 3598 covering another 390,000 square meters of reclaimed land were issued by the DENR.

Thus, the first requirement of presidential imprimatur on the SMDRP has been satisfied.

2. The requisite favorable endorsement of the reclamation phase was impliedly granted by PEA. President Aquino saw to it that there was coordination of the project with PEA by designating its general manager as member of the EXECOM tasked to supervise the project implementation. The assignment was made in Sec. 2 of MO 415 which

provides:

> Section 2. An Executive Committee is hereby created to oversee the implementation of the Plan, chaired by the NCR-CORD, with the heads of the following agencies as members: The National Housing Authority, the City of Manila, the Department of Public Works and Highways, the Public Estates Authority, the Philippine Ports Authority, the Department of Environment and Natural Resources and the Development Bank of the Philippines. (Emphasis supplied.)

The favorable recommendation by PEA of the JVA and subsequent amendments were incorporated as part of the recommendations of the EXECOM created under MO 415. While there was no specific recommendation on the SMDRP emanating solely from PEA, we find that the approbation of the Project and the land reclamation as an essential component by the EXECOM of which PEA is a member, and its submission of the SMDRP and the agreements on the Project to the President for approval amply met the second requirement of EO 525.

3. The third element was also present--the reclamation was undertaken either by PEA or any person or entity under contract with PEA or by the National Government agency or entity authorized under its charter to reclaim lands subject to consultation with PEA. It cannot be disputed that the reclamation phase was not done by PEA or any person or entity under contract with PEA. However, the reclamation was implemented by the NHA, a national government agency whose authority to reclaim lands under consultation with PEA is derived from its charter--PD 727 and other pertinent laws--RA 7279[62] and RA 6957 as amended by RA 7718.

While the authority of NHA to reclaim lands is challenged by petitioner, we find that the NHA had more than enough authority to do so under existing laws. While PD 757, the charter of NHA, does not explicitly mention "reclamation" in any of the listed powers of the agency, we rule that the NHA has an implied power to reclaim land as this is vital or incidental to effectively, logically, and successfully implement an urban land reform and housing program enunciated in Sec. 9 of Article XIII of the 1987 Constitution.

Basic in administrative law is the doctrine that a government agency or office has express and implied powers based on its charter and other pertinent statutes. Express powers are those powers granted, allocated, and delegated to a government agency or office by express provisions of law. On the other hand, implied powers are those that can be inferred or are implicit in the wordings of the law[63] or conferred by necessary or fair implication in the enabling act.[64] In Angara v. Electoral Commission, the Court clarified and stressed that when a general grant of power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred by necessary implication.[65] It was also explicated that when the statute does not specify the particular method to be followed or used by a government agency in the exercise of the power vested in it by law, said agency has the authority to adopt any reasonable method to carry out its functions.[66]

The power to reclaim on the part of the NHA is implicit from PD 757, RA 7279, MO 415, RA 6957, and PD 3-A,[67] viz:

1. NHA's power to reclaim derived from PD 757 provisions:

a. Sec. 3 of PD 757 implies that reclamation may be resorted to in order to attain the goals of NHA:

> Section 3. Progress and Objectives. The Authority shall have the following purposes and objectives:
>
> x x x x b) To undertake housing, development, resettlement or other activities as would enhance the provision of housing to every Filipino;
>
> c) To harness and promote private participation in housing ventures in terms of capital expenditures, land, expertise, financing and other facilities for the sustained growth of the housing industry. (Emphasis supplied.)

Land reclamation is an integral part of the development of resources for some of the housing requirements of the NHA. Private participation in housing projects may also take the form of land reclamation.

b. Sec. 5 of PD 757 serves as proof that the NHA, as successor of the Tondo Foreshore Development Authority (TFDA), has the power to reclaim, thus:

> Section 5. Dissolution of Existing Housing Agencies. The People's Homesite and Housing Corporation (PHHC), the Presidential Assistant on Housing Resettlement Agency (PAHRA), the Tondo Foreshore Development Authority (TFDA), the Central Institute for the Training and Relocation of Urban Squatters (CITRUS), the Presidential Committee for Housing and Urban Resettlement (PRECHUR), Sapang Palay Development Committee, Inter-Agency Task Force to Undertake the Relocation of Families in Barrio Nabacaan, Villanueva, Misamis Oriental and all other existing government housing and resettlement agencies, task forces and ad-hoc committees, are hereby dissolved. Their powers and functions, balance of appropriations, records, assets, rights, and choses in action, are transferred to, vested in, and assumed by the Authority. x x x (Emphasis supplied.)

PD 570 dated October 30, 1974 created the TFDA, which defined its objectives, powers, and functions. Sec. 2 provides:

> Section 2. Objectives and Purposes. The Authority shall have the following purposes and objectives:
>
> a) To undertake all manner of activity, business or development projects for the establishment of harmonious, comprehensive, integrated and healthy living community in the Tondo Foreshoreland and its resettlement site;
>
> b) To undertake and promote the physical and socio-economic amelioration of the Tondo Foreshore residents in particular and the nation in general (Emphasis supplied.)

The powers and functions are contained in Sec. 3, to wit:

> a) To develop and implement comprehensive and integrated urban renewal programs for the Tondo Foreshore and Dagat-dagatan lagoon and/or any other additional/alternative resettlement site and to formulate and enforce general and specific policies for its development which shall ensure reasonable degree of compliance with environmental standards.
>
> b) To prescribe guidelines and standards for the reservation, conservation and utilization of public lands covering the Tondo Foreshore land and its resettlement sites;
>
> c) To construct, acquire, own, lease, operate and maintain infrastructure facilities, housing complex, sites and services;
>
> d) To determine, regulate and supervise the establishment and operation of housing, sites, services and commercial and industrial complexes and any other enterprises to be constructed or established within the Tondo Foreshore and its resettlement sites;
>
> e) To undertake and develop, by itself or through joint ventures with other public or private entities, all or any of the different phases of development of the Tondo Foreshore land and its resettlement sites;
>
> f) To acquire and own property, property-rights and interests, and encumber or otherwise dispose of the same as it may deem appropriate (Emphasis supplied.)

From the foregoing provisions, it is readily apparent that the TFDA has the explicit power to develop public lands covering the Tondo foreshore land and any other additional and alternative resettlement sites under letter b, Sec. 3 of PD 570. Since the additional and/or alternative sites adjacent to Tondo foreshore land cover foreshore and submerged areas, the reclamation of said areas is necessary in order to convert them into a comprehensive and

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integrated resettlement housing project for the slum dwellers and squatters of Tondo. Since the powers of TFDA were assumed by the NHA, then the NHA has the power to reclaim lands in the Tondo foreshore area which covers the 79-hectare land subject of Proclamations Nos. 39 and 465 and Special Patents Nos. 3592 and 3598.

c. Sec. 6 of PD 757 delineates the functions and powers of the NHA which embrace the authority to reclaim land, thus:

> Sec. 6. Powers and functions of the Authority.--The Authority shall have the following powers and functions to be exercised by the Board in accordance with its established national human settlements plan prepared by the Human Settlements Commission:
>
> (a) Develop and implement the comprehensive and integrated housing program provided for in Section hereof;
>
> x x x x
>
> (c) Prescribe guidelines and standards for the reservation, conservation and utilization of public lands identified for housing and resettlement;
>
> x x x x
>
> (e) Develop and undertake housing development and/or resettlement projects through joint ventures or other arrangements with public and private entities;
>
> x x x x
>
> (k) Enter into contracts whenever necessary under such terms and conditions as it may deem proper and reasonable;
>
> (l) Acquire property rights and interests and encumber or otherwise dispose the same as it may deem appropriate;
>
> x x x x
>
> (s) Perform such other acts not inconsistent with this Decree, as may be necessary to effect the policies and objectives herein declared. (Emphasis supplied.)

The NHA's authority to reclaim land can be inferred from the aforequoted provisions. It can make use of public lands under letter (c) of Sec. 6 which includes reclaimed land as site for its comprehensive and integrated housing projects under letter (a) which can be undertaken through joint ventures with private entities under letter (e). Taken together with letter (s) which authorizes NHA to perform such other activities "necessary to effect the policies and objectives" of PD 757, it is safe to conclude that the NHA's power to reclaim lands is a power that is implied from the exercise of its explicit powers under Sec. 6 in order to effectively accomplish its policies and objectives under Sec. 3 of its charter. Thus, the reclamation of land is an indispensable component for the development and construction of the SMDRP housing facilities.

2. NHA's implied power to reclaim land is enhanced by RA 7279.

PD 757 identifies NHA's mandate to "[d]evelop and undertake housing development and/or resettlement projects through joint ventures or other arrangements with public and private entities."

The power of the NHA to undertake reclamation of land can be inferred from Secs. 12 and 29 of RA 7279, which provide:

> Section 12. Disposition of Lands for Socialized Housing.--The National Housing Authority, with respect to lands belonging to the National Government, and the local government units with respect to other lands within

> their respective localities, shall coordinate with each other to formulate and make available various alternative schemes for the disposition of lands to the beneficiaries of the Program. These schemes shall not be limited to those involving transfer of ownership in fee simple but shall include lease, with option to purchase, usufruct or such other variations as the local government units or the National Housing Authority may deem most expedient in carrying out the purposes of this Act.
>
> x x x x
>
> Section 29. Resettlement.--With two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places as sidewalks, roads, parks, and playgrounds. The local government unit, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of the affected families. (Emphasis supplied.)

Lands belonging to the National Government include foreshore and submerged lands which can be reclaimed to undertake housing development and resettlement projects.

3. MO 415 explains the undertaking of the NHA in SMDRP:

> WHEREAS, Memorandum Order No. 161-A mandated the National Housing Authority to conduct feasibility studies and develop low-cost housing projects at the dumpsites of Metro Manila;
>
> WHEREAS, the National Housing Authority has presented a viable Conceptual Plan to convert the Smokey Mountain dumpsite into a habitable housing project inclusive of the reclamation area across R-10 as enabling component of the Project;
>
> WHEREAS, the said Plan requires the coordinated and synchronized efforts of the City of Manila and other government agencies and instrumentalities to ensure effective and efficient implementation;
>
> WHEREAS, the government encourages private sector initiative in the implementation of its projects. (Emphasis supplied.)

Proceeding from these "whereas" clauses, it is unequivocal that reclamation of land in the Smokey Mountain area is an essential and vital power of the NHA to effectively implement its avowed goal of developing low-cost housing units at the Smokey Mountain dumpsites. The interpretation made by no less than the President of the Philippines as Chief of the Executive Branch, of which the NHA is a part, must necessarily command respect and much weight and credit.

4. RA 6957 as amended by RA 7718--the BOT Law--serves as an exception to PD 1084 and EO 525.

Based on the provisions of the BOT Law and Implementing Rules and Regulations, it is unequivocal that all government infrastructure agencies like the NHA can undertake infrastructure or development projects using the contractual arrangements prescribed by the law, and land reclamation is one of the projects that can be resorted to in the BOT project implementation under the February 10, 1992 Joint Resolution No. 3 of the 8th Congress.

From the foregoing considerations, we find that the NHA has ample implied authority to undertake reclamation projects.

Even without an implied power to reclaim lands under NHA's charter, we rule that the authority granted to NHA, a national government agency, by the President under PD 3-A reinforced by EO 525 is more than sufficient statutory basis for the reclamation of lands under the SMDRP.

PD 3-A is a law issued by then President Ferdinand E. Marcos under his martial law powers on September 23, 1972. It provided that "[t]he provisions of any law to the contrary notwithstanding, the reclamation of areas, underwater, whether foreshore or inland, shall be limited to the National Government or any person authorized by it under the proper contract." It repealed, in effect, RA 1899 which previously delegated the right to reclaim lands to municipalities and chartered cities and revested it to the National Government.[68] Under PD 3-A, "national government" can only mean the Executive Branch headed by the President. It cannot refer to Congress as it was dissolved and abolished at the time of the issuance of PD 3-A on September 23, 1972. Moreover, the Executive Branch is the only implementing arm in the government with the equipment, manpower, expertise, and capability by the very nature of its assigned powers and functions to undertake reclamation projects. Thus, under PD 3-A, the Executive Branch through the President can implement reclamation of lands through any of its departments, agencies, or offices.

Subsequently, on February 4, 1977, President Marcos issued PD 1084 creating the PEA, which was granted, among others, the power "to reclaim land, including foreshore and submerged areas by dredging, filling or other means or to acquire reclaimed lands." The PEA's power to reclaim is not however exclusive as can be gleaned from its charter, as the President retained his power under PD 3-A to designate another agency to reclaim lands.

On February 14, 1979, EO 525 was issued. It granted PEA primary responsibility for integrating, directing, and coordinating reclamation projects for and on behalf of the National Government although other national government agencies can be designated by the President to reclaim lands in coordination with the PEA. Despite the issuance of EO 525, PD 3-A remained valid and subsisting. Thus, the National Government through the President still retained the power and control over all reclamation projects in the country.

The power of the National Government through the President over reclamation of areas, that is, underwater whether foreshore or inland, was made clear in EO 543[69] which took effect on June 24, 2006. Under EO 543, PEA was renamed the Philippine Reclamation Authority (PRA) and was granted the authority to approve reclamation projects, a power previously reposed in the President under EO 525. EO 543 reads:

> Section 1. The power of the President to approve reclamation projects is hereby delegated to the Philippine Reclamation Authority [formerly PEA], through its governing board, subject to compliance with existing laws and rules and subject to the condition that reclamation contracts to be executed with any person or entity go through public bidding.
>
> Section 2. Nothing in the Order shall be construed as diminishing the President's authority to modify, amend or nullify PRA's action.
>
> Section 3. All executive issuances inconsistent with this Executive Order are hereby repealed or amended accordingly. (Emphasis supplied.)

Sec. 2 of EO 543 strengthened the power of control and supervision of the President over reclamation of lands as s/he can modify, amend, or nullify the action of PEA (now PRA).

From the foregoing issuances, we conclude that the President's delegation to NHA, a national government agency, to reclaim lands under the SMDRP, is legal and valid, firmly anchored on PD 3-A buttressed by EO 525 notwithstanding the absence of any specific grant of power under its charter, PD 757.

Second Issue: Whether respondents NHA and RBI were given the power and authority by DENR to reclaim foreshore and submerged lands

Petitioner Chavez puts forth the view that even if the NHA and RBI were granted the authority to reclaim, they

were not authorized to do so by the DENR.

Again, reliance is made on our ruling in PEA where it was held that the DENR's authority is necessary in order for the government to validly reclaim foreshore and submerged lands. In PEA, we expounded in this manner:

> As manager, conservator and overseer of the natural resources of the State, DENR exercises "supervision and control over alienable and disposable public lands." DENR also exercises "exclusive jurisdiction on the management and disposition of all lands of the public domain." Thus, DENR decides whether areas under water, like foreshore or submerged areas of Manila Bay, should be reclaimed or not. This means that PEA needs authorization from DENR before PEA can undertake reclamation projects in Manila Bay, or in any part of the country.
>
> DENR also exercises exclusive jurisdiction over the disposition of all lands of the public domain. Hence, DENR decides whether reclaimed lands of PEA should be classified as alienable under Sections 6 and 7 of CA No. 141. Once DENR decides that the reclaimed lands should be so classified, it then recommends to the President the issuance of a proclamation classifying the lands as alienable or disposable lands of the public domain open to disposition. We note that then DENR Secretary Fulgencio S. Factoran, Jr. countersigned Special Patent No. 3517 in compliance with the Revised Administrative Code and Sections 6 and 7 of CA No. 141.
>
> In short, DENR is vested with the power to authorize the reclamation of areas under water, while PEA is vested with the power to undertake the physical reclamation of areas under water, whether directly or through private contractors. DENR is also empowered to classify lands of the public domain into alienable or disposable lands subject to the approval of the President. On the other hand, PEA is tasked to develop, sell or lease the reclaimed alienable lands of the public domain.[70]

Despite our finding that PEA is not a precedent to the case at bar, we find after all that under existing laws, the NHA is still required to procure DENR's authorization before a reclamation project in Manila Bay or in any part of the Philippines can be undertaken. The requirement applies to PEA, NHA, or any other government agency or office granted with such power under the law.

Notwithstanding the need for DENR permission, we nevertheless find petitioner's position bereft of merit.

The DENR is deemed to have granted the authority to reclaim in the Smokey Mountain Project for the following reasons:

1. Sec. 17, Art. VII of the Constitution provides that "the President shall have control of all executive departments, bureaus and offices." The President is assigned the task of seeing to it that all laws are faithfully executed. "Control," in administrative law, means "the power of an officer to alter, modify, nullify or set aside what a subordinate officer has done in the performance of his duties and to substitute the judgment of the former for that of the latter."[71]

As such, the President can exercise executive power motu proprio and can supplant the act or decision of a subordinate with the President's own. The DENR is a department in the executive branch under the President, and it is only an alter ego of the latter. Ordinarily the proposed action and the staff work are initially done by a department like the DENR and then submitted to the President for approval. However, there is nothing infirm or unconstitutional if the President decides on the implementation of a certain project or activity and requires said department to implement it. Such is a presidential prerogative as long as it involves the department or office authorized by law to supervise or execute the Project. Thus, as in this case, when the President approved and ordered the development of a housing project with the corresponding reclamation work, making DENR a member of the committee tasked to implement the project, the required authorization from the DENR to reclaim land can

be deemed satisfied. It cannot be disputed that the ultimate power over alienable and disposable public lands is reposed in the President of the Philippines and not the DENR Secretary. To still require a DENR authorization on the Smokey Mountain when the President has already authorized and ordered the implementation of the Project would be a derogation of the powers of the President as the head of the executive branch. Otherwise, any department head can defy or oppose the implementation of a project approved by the head of the executive branch, which is patently illegal and unconstitutional.

In Chavez v. Romulo, we stated that when a statute imposes a specific duty on the executive department, the President may act directly or order the said department to undertake an activity, thus:

> [A]t the apex of the entire executive officialdom is the President. Section 17, Article VII of the Constitution specifies [her] power as Chief executive departments, bureaus and offices. [She] shall ensure that the laws be faithfully executed. As Chief Executive, President Arroyo holds the steering wheel that controls the course of her government. She lays down policies in the execution of her plans and programs. Whatever policy she chooses, she has her subordinates to implement them. In short, she has the power of control. Whenever a specific function is entrusted by law or regulation to her subordinate, she may act directly or merely direct the performance of a duty x x x. Such act is well within the prerogative of her office (emphasis supplied).[72]

Moreover, the power to order the reclamation of lands of public domain is reposed first in the Philippine President. The Revised Administrative Code of 1987 grants authority to the President to reserve lands of public domain for settlement for any specific purpose, thus:

> Section 14. Power to Reserve Lands of the Public and Private Domain of the Government.--(1) The President shall have the power to reserve for settlement or public use, and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation. (Emphasis supplied.)

President Aquino reserved the area of the Smokey Mountain dumpsite for settlement and issued MO 415 authorizing the implementation of the Smokey Mountain Development Project plus the reclamation of the area across R-10. Then President Ramos issued Proclamation No. 39 covering the 21-hectare dumpsite and the 40-hectare commercial/industrial area, and Proclamation No. 465 and MO 415 increasing the area of foreshore and submerged lands of Manila Bay to be reclaimed from 40 to 79 hectares. Having supervision and control over the DENR, both Presidents directly assumed and exercised the power granted by the Revised Administrative Code to the DENR Secretary to authorize the NHA to reclaim said lands. What can be done indirectly by the DENR can be done directly by the President. It would be absurd if the power of the President cannot be exercised simply because the head of a department in the executive branch has not acted favorably on a project already approved by the President. If such arrangement is allowed then the department head will become more powerful than the President.

2. Under Sec. 2 of MO 415, the DENR is one of the members of the EXECOM chaired by the NCR-CORD to oversee the implementation of the Project. The EXECOM was the one which recommended approval of the project plan and the joint venture agreements. Clearly, the DENR retained its power of supervision and control over the laws affected by the Project since it was tasked to "facilitate the titling of the Smokey Mountain and of the area to be reclaimed," which shows that it had tacitly given its authority to the NHA to undertake the reclamation.

3. Former DENR Secretary Angel C. Alcala issued Special Patents Nos. 3591 and 3592 while then Secretary Victor O. Ramos issued Special Patent No. 3598 that embraced the areas covered by the reclamation. These patents conveyed the lands to be reclaimed to the NHA and granted to said agency the administration and

disposition of said lands for subdivision and disposition to qualified beneficiaries and for development for mix land use (commercial/industrial) "to provide employment opportunities to on-site families and additional areas for port related activities." Such grant of authority to administer and dispose of lands of public domain under the SMDRP is of course subject to the powers of the EXECOM of SMDRP, of which the DENR is a member.

4. The issuance of ECCs by the DENR for SMDRP is but an exercise of its power of supervision and control over the lands of public domain covered by the Project.

Based on these reasons, it is clear that the DENR, through its acts and issuances, has ratified and confirmed the reclamation of the subject lands for the purposes laid down in Proclamations Nos. 39 and 465.

Third Issue: Whether respondent RBI can acquire reclaimed foreshore and submerged lands considered as inalienable and outside the commerce of man

Petitioner postulates that respondent RBI cannot acquire the reclaimed foreshore and submerged areas as these are inalienable public lands beyond the commerce of man based on Art. 1409 of the Civil Code which provides:

> Article 1409. The following contracts are inexistent and void from the beginning:
>
> (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
>
> x x x x
>
> (7) Those expressly prohibited or declared void by law.
>
> These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

Secs. 2 and 3, Art. XII of the Constitution declare that all natural resources are owned by the State and they cannot be alienated except for alienable agricultural lands of the public domain. One of the State's natural resources are lands of public domain which include reclaimed lands.

Petitioner contends that for these reclaimed lands to be alienable, there must be a law or presidential proclamation officially classifying these reclaimed lands as alienable and disposable and open to disposition or concession. Absent such law or proclamation, the reclaimed lands cannot be the enabling component or consideration to be paid to RBI as these are beyond the commerce of man.

We are not convinced of petitioner's postulation.

The reclaimed lands across R-10 were classified alienable and disposable lands of public domain of the State for the following reasons, viz:

First, there were three (3) presidential proclamations classifying the reclaimed lands across R-10 as alienable or disposable hence open to disposition or concession, to wit:

(1) MO 415 issued by President Aquino, of which Sec. 4 states that "[t]he land covered by the Smokey Mountain Dumpsite is hereby conveyed to the National Housing Authority as well as the area to be reclaimed across R-10."

The directive to transfer the lands once reclaimed to the NHA implicitly carries with it the declaration that said lands are alienable and disposable. Otherwise, the NHA cannot effectively use them in its housing and resettlement project.

(2) Proclamation No. 39 issued by then President Ramos by which the reclaimed lands were conveyed to NHA for

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subdivision and disposition to qualified beneficiaries and for development into a mixed land use (commercial/industrial) to provide employment opportunities to on-site families and additional areas for port-related activities. Said directive carries with it the pronouncement that said lands have been transformed to alienable and disposable lands. Otherwise, there is no legal way to convey it to the beneficiaries.

(3) Proclamation No. 465 likewise issued by President Ramos enlarged the reclaimed area to 79 hectares to be developed and disposed of in the implementation of the SMDRP. The authority put into the hands of the NHA to dispose of the reclaimed lands tacitly sustains the conversion to alienable and disposable lands.

Secondly, Special Patents Nos. 3591, 3592, and 3598 issued by the DENR anchored on Proclamations Nos. 39 and 465 issued by President Ramos, without doubt, classified the reclaimed areas as alienable and disposable.

Admittedly, it cannot be said that MO 415, Proclamations Nos. 39 and 465 are explicit declarations that the lands to be reclaimed are classified as alienable and disposable. We find however that such conclusion is derived and implicit from the authority given to the NHA to transfer the reclaimed lands to qualified beneficiaries.

The query is, when did the declaration take effect? It did so only after the special patents covering the reclaimed areas were issued. It is only on such date that the reclaimed lands became alienable and disposable lands of the public domain. This is in line with the ruling in PEA where said issue was clarified and stressed:

> PD No. 1085, coupled with President Aquino's actual issuance of a special patent covering the Freedom Islands, is equivalent to an official proclamation classifying the Freedom Islands as alienable or disposable lands of the public domain. PD No. 1085 and President Aquino's issuance of a land patent also constitute a declaration that the Freedom Islands are no longer needed for public service. The Freedom Islands are thus alienable or disposable lands of the public domain, open to disposition or concession to qualified parties.[73] (Emphasis supplied.)

Thus, MO 415 and Proclamations Nos. 39 and 465 cumulatively and jointly taken together with Special Patent Nos. 3591, 3592, and 3598 more than satisfy the requirement in PEA that "[t]here must be a law or presidential proclamation officially classifying these reclaimed lands as alienable or disposable and open to disposition or concession (emphasis supplied)."[74]

Apropos the requisite law categorizing reclaimed land as alienable or disposable, we find that RA 6957 as amended by RA 7718 provides ample authority for the classification of reclaimed land in the SMDRP for the repayment scheme of the BOT project as alienable and disposable lands of public domain. Sec. 6 of RA 6957 as amended by RA 7718 provides:

> For the financing, construction, operation and maintenance of any infrastructure projects undertaken through the build-operate-and transfer arrangement or any of its variations pursuant to the provisions of this Act, the project proponent x x x may likewise be repaid in the form of a share in the revenue of the project or other non-monetary payments, such as, but not limited to, the grant of a portion or percentage of the reclaimed land, subject to the constitutional requirements with respect to the ownership of the land. (Emphasis supplied.)

While RA 6957 as modified by RA 7718 does not expressly declare that the reclaimed lands that shall serve as payment to the project proponent have become alienable and disposable lands and opened for disposition; nonetheless, this conclusion is necessarily implied, for how else can the land be used as the enabling component for the Project if such classification is not deemed made?

It may be argued that the grant of authority to sell public lands, pursuant to PEA, does not convert alienable lands of public domain into private or patrimonial lands. We ruled in PEA that "alienable lands of public domain must be transferred to qualified private parties, or to government entities not tasked to dispose of public lands, before

these lands can become private or patrimonial lands (emphasis supplied)."[75] To lands reclaimed by PEA or through a contract with a private person or entity, such reclaimed lands still remain alienable lands of public domain which can be transferred only to Filipino citizens but not to a private corporation. This is because PEA under PD 1084 and EO 525 is tasked to hold and dispose of alienable lands of public domain and it is only when it is transferred to Filipino citizens that it becomes patrimonial property. On the other hand, the NHA is a government agency not tasked to dispose of public lands under its charter--The Revised Administrative Code of 1987. The NHA is an "end-user agency" authorized by law to administer and dispose of reclaimed lands. The moment titles over reclaimed lands based on the special patents are transferred to the NHA by the Register of Deeds, they are automatically converted to patrimonial properties of the State which can be sold to Filipino citizens and private corporations, 60% of which are owned by Filipinos. The reason is obvious: if the reclaimed land is not converted to patrimonial land once transferred to NHA, then it would be useless to transfer it to the NHA since it cannot legally transfer or alienate lands of public domain. More importantly, it cannot attain its avowed purposes and goals since it can only transfer patrimonial lands to qualified beneficiaries and prospective buyers to raise funds for the SMDRP.

From the foregoing considerations, we find that the 79-hectare reclaimed land has been declared alienable and disposable land of the public domain; and in the hands of NHA, it has been reclassified as patrimonial property.

Petitioner, however, contends that the reclaimed lands were inexistent prior to the three (3) Presidential Acts (MO 415 and Proclamations Nos. 39 and 465) and hence, the declaration that such areas are alienable and disposable land of the public domain, citing PEA, has no legal basis.

Petitioner's contention is not well-taken.

Petitioner's sole reliance on Proclamations Nos. 39 and 465 without taking into consideration the special patents issued by the DENR demonstrates the inherent weakness of his proposition. As was ruled in PEA cited by petitioner himself, "PD No. 1085, coupled with President Aquino's actual issuance of a special patent covering the Freedom Islands is equivalent to an official proclamation classifying the Freedom islands as alienable or disposable lands of public domain." In a similar vein, the combined and collective effect of Proclamations Nos. 39 and 465 with Special Patents Nos. 3592 and 3598 is tantamount to and can be considered to be an official declaration that the reclaimed lots are alienable or disposable lands of the public domain.

The reclaimed lands covered by Special Patents Nos. 3591, 3592, and 3598, which evidence transfer of ownership of reclaimed lands to the NHA, are official acts of the DENR Secretary in the exercise of his power of supervision and control over alienable and disposable public lands and his exclusive jurisdiction over the management and disposition of all lands of public domain under the Revised Administrative Code of 1987. Special Patent No. 3592 speaks of the transfer of Lots 1 and 2, and RI-003901-000012-D with an area of 401,485 square meters based on the survey and technical description approved by the Bureau of Lands. Lastly, Special Patent No. 3598 was issued in favor of the NHA transferring to said agency a tract of land described in Plan RL-00-000013 with an area of 390,000 square meters based on the survey and technical descriptions approved by the Bureau of Lands.

The conduct of the survey, the preparation of the survey plan, the computation of the technical description, and the processing and preparation of the special patent are matters within the technical area of expertise of administrative agencies like the DENR and the Land Management Bureau and are generally accorded not only respect but at times even finality.[76] Preparation of special patents calls for technical examination and a specialized review of calculations and specific details which the courts are ill-equipped to undertake; hence, the latter defer to the administrative agency which is trained and knowledgeable on such matters.[77]

Subsequently, the special patents in the name of the NHA were submitted to the Register of Deeds of the City of

Manila for registration, and corresponding certificates of titles over the reclaimed lots were issued based on said special patents. The issuance of certificates of titles in NHA's name automatically converts the reclaimed lands to patrimonial properties of the NHA. Otherwise, the lots would not be of use to the NHA's housing projects or as payment to the BOT contractor as the enabling component of the BOT contract. The laws of the land have to be applied and interpreted depending on the changing conditions and times. Tempora mutantur et legis mutantur in illis (time changes and laws change with it). One such law that should be treated differently is the BOT Law (RA 6957) which brought about a novel way of implementing government contracts by allowing reclaimed land as part or full payment to the contractor of a government project to satisfy the huge financial requirements of the undertaking. The NHA holds the lands covered by Special Patents Nos. 3592 and 3598 solely for the purpose of the SMDRP undertaken by authority of the BOT Law and for disposition in accordance with said special law. The lands become alienable and disposable lands of public domain upon issuance of the special patents and become patrimonial properties of the Government from the time the titles are issued to the NHA.

As early as 1999, this Court in Baguio v. Republic laid down the jurisprudence that:

> It is true that, once a patent is registered and the corresponding certificate of title is issued, the land covered by them ceases to be part of the public domain and becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of issuance of such patent.[78]

The doctrine was reiterated in Republic v. Heirs of Felipe Alijaga, Sr.,[79] Heirs of Carlos Alcaraz v. Republic,[80] and the more recent case of Doris Chiongbian-Oliva v. Republic of the Philippines.[81] Thus, the 79-hectare reclaimed land became patrimonial property after the issuance of certificates of titles to the NHA based on Special Patents Nos. 3592 and 3598.

One last point. The ruling in PEA cannot even be applied retroactively to the lots covered by Special Patents Nos. 3592 (40 hectare reclaimed land) and 3598 (39-hectare reclaimed land). The reclamation of the land under SMDRP was completed in August 1996 while the PEA decision was rendered on July 9, 2002. In the meantime, subdivided lots forming parts of the reclaimed land were already sold to private corporations for value and separate titles issued to the buyers. The Project was terminated through a Memorandum of Agreement signed on August 27, 2003. The PEA decision became final through the November 11, 2003 Resolution. It is a settled precept that decisions of the Supreme Court can only be applied prospectively as they may prejudice vested rights if applied retroactively.

In Benzonan v. Court of Appeals, the Court trenchantly elucidated the prospective application of its decisions based on considerations of equity and fair play, thus:

> At that time, the prevailing jurisprudence interpreting section 119 of R.A. 141 as amended was that enunciated in Monge and Tupas cited above. The petitioners Benzonan and respondent Pe and the DBP are bound by these decisions for pursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws of the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim lex prospicit, non respicit, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.
>
> The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in People v. Jabinal, 55 SCRA 607 [1974] "x x x when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not

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> apply to parties who had relied on the old doctrine and acted on the faith thereof.[82]

Fourth Issue: Whether respondent RBI can acquire reclaimed lands when there was no declaration that said lands are no longer needed for public use

Petitioner Chavez avers that despite the declaration that the reclaimed areas are alienable lands of the public domain, still, the reclamation is flawed for there was never any declaration that said lands are no longer needed for public use.

We are not moved by petitioner's submission.

Even if it is conceded that there was no explicit declaration that the lands are no longer needed for public use or public service, there was however an implicit executive declaration that the reclaimed areas R-10 are not necessary anymore for public use or public service when President Aquino through MO 415 conveyed the same to the NHA partly for housing project and related commercial/industrial development intended for disposition to and enjoyment of certain beneficiaries and not the public in general and partly as enabling component to finance the project.

President Ramos, in issuing Proclamation No. 39, declared, though indirectly, that the reclaimed lands of the Smokey Mountain project are no longer required for public use or service, thus:

> These parcels of land of public domain are hereby placed under the administration and disposition of the National Housing Authority to develop, subdivide and dispose to qualified beneficiaries, as well as its development for mix land use (commercial/industrial) to provide employment opportunities to on-site families and additional areas for port related activities. (Emphasis supplied.)

While numerical count of the persons to be benefited is not the determinant whether the property is to be devoted to public use, the declaration in Proclamation No. 39 undeniably identifies only particular individuals as beneficiaries to whom the reclaimed lands can be sold, namely--the Smokey Mountain dwellers. The rest of the Filipinos are not qualified; hence, said lands are no longer essential for the use of the public in general.

In addition, President Ramos issued on August 31, 1994 Proclamation No. 465 increasing the area to be reclaimed from forty (40) hectares to seventy-nine (79) hectares, elucidating that said lands are undoubtedly set aside for the beneficiaries of SMDRP and not the public--declaring the power of NHA to dispose of land to be reclaimed, thus: "The authority to administer, develop, or dispose lands identified and reserved by this Proclamation and Proclamation No. 39 (s.1992), in accordance with the SMDRP, as enhance, is vested with the NHA, subject to the provisions of existing laws." (Emphasis supplied.)

MO 415 and Proclamations Nos. 39 and 465 are declarations that proclaimed the non-use of the reclaimed areas for public use or service as the Project cannot be successfully implemented without the withdrawal of said lands from public use or service. Certainly, the devotion of the reclaimed land to public use or service conflicts with the intended use of the Smokey Mountain areas for housing and employment of the Smokey Mountain scavengers and for financing the Project because the latter cannot be accomplished without abandoning the public use of the subject land. Without doubt, the presidential proclamations on SMDRP together with the issuance of the special patents had effectively removed the reclaimed lands from public use.

More decisive and not in so many words is the ruling in PEA which we earlier cited, that "PD No. 1085 and President Aquino's issuance of a land patent also constitute a declaration that the Freedom Islands are no longer needed for public service." Consequently, we ruled in that case that the reclaimed lands are "open to disposition or concession to qualified parties."[83]

In a similar vein, presidential Proclamations Nos. 39 and 465 jointly with the special patents have classified the reclaimed lands as alienable and disposable and open to disposition or concession as they would be devoted to units for Smokey Mountain beneficiaries. Hence, said lands are no longer intended for public use or service and shall form part of the patrimonial properties of the State under Art. 422 of the Civil Code.[84] As discussed a priori, the lands were classified as patrimonial properties of the NHA ready for disposition when the titles were registered in its name by the Register of Deeds.

Moreover, reclaimed lands that are made the enabling components of a BOT infrastructure project are necessarily reclassified as alienable and disposable lands under the BOT Law; otherwise, absurd and illogical consequences would naturally result. Undoubtedly, the BOT contract will not be accepted by the BOT contractor since there will be no consideration for its contractual obligations. Since reclaimed land will be conveyed to the contractor pursuant to the BOT Law, then there is an implied declaration that such land is no longer intended for public use or public service and, hence, considered patrimonial property of the State.

Fifth Issue: Whether there is a law authorizing sale of
reclaimed lands

Petitioner next claims that RBI cannot acquire the reclaimed lands because there was no law authorizing their sale. He argues that unlike PEA, no legislative authority was granted to the NHA to sell reclaimed land.

This position is misplaced.

Petitioner relies on Sec. 60 of Commonwealth Act (CA) 141 to support his view that the NHA is not empowered by any law to sell reclaimed land, thus:

> Section 60. Any tract of land comprised under this title may be leased or sold, as the case may be, to any person, corporation or association authorized to purchase or lease public lands for agricultural purposes. The area of the land so leased or sold shall be such as shall, in the judgment of the Secretary of Agriculture and Natural Resources, be reasonably necessary for the purposes for which such sale or lease if requested and shall in no case exceed one hundred and forty-four hectares: Provided, however, That this limitation shall not apply to grants, donations, transfers, made to a province, municipality or branch or subdivision of the Government for the purposes deemed by said entities conducive to the public interest; but the land so granted donated or transferred to a province, municipality, or branch or subdivision of the Government shall not be alienated, encumbered, or otherwise disposed of in a manner affecting its title, except when authorized by Congress; Provided, further, That any person, corporation, association or partnership disqualified from purchasing public land for agricultural purposes under the provisions of this Act, may lease land included under this title suitable for industrial or residential purposes, but the lease granted shall only be valid while such land is used for the purposes referred to. (Emphasis supplied.)

Reliance on said provision is incorrect as the same applies only to "a province, municipality or branch or subdivision of the Government." The NHA is not a government unit but a government corporation performing governmental and proprietary functions.

In addition, PD 757 is clear that the NHA is empowered by law to transfer properties acquired by it under the law to other parties, thus:

> Section 6. Powers and functions of the Authority. The Authority shall have the following powers and functions to be exercised by the Boards in accordance with the established national human settlements plan prepared by the Human Settlements Commission:
>
> x x x x

> (k) Enter into contracts whenever necessary under such terms and conditions as it may deem proper and reasonable;
>
> (l) Acquire property rights and interests, and encumber or otherwise dispose the same as it may deem appropriate (Emphasis supplied.)

Letter (l) is emphatic that the NHA can acquire property rights and interests and encumber or otherwise dispose of them as it may deem appropriate. The transfer of the reclaimed lands by the National Government to the NHA for housing, commercial, and industrial purposes transformed them into patrimonial lands which are of course owned by the State in its private or proprietary capacity. Perforce, the NHA can sell the reclaimed lands to any Filipino citizen or qualified corporation.

Sixth Issue: Whether the transfer of reclaimed lands to RBI
was done by public bidding

Petitioner also contends that there was no public bidding but an awarding of ownership of said reclaimed lands to RBI. Public bidding, he says, is required under Secs. 63 and 67 of CA 141 which read:

> Section 63. Whenever it is decided that lands covered by this chapter are not needed for public purposes, the Director of Lands shall ask the Secretary of Agriculture and Commerce for authority to dispose of the same. Upon receipt of such authority, the Director of Lands shall give notice by public advertisement in the same manner as in the case of leases or sales of agricultural public land, that the Government will lease or sell, as the case may be, the lots or blocks specified in the advertisement, for the purpose stated in the notice and subject to the conditions specified in this chapter.
>
> x x x x
>
> Section 67. The lease or sale shall be made through oral bidding; and adjudication shall be made to the highest bidder. However, where an applicant has made improvements on the land by virtue of a permit issued to him by competent authority, the sale or lease shall be made by sealed bidding as prescribed in section twenty-six of this Act, the provisions of which shall be applied whenever applicable. If all or part of the lots remain unleased or unsold, the Director of Lands shall from time to time announce in the Official Gazette or in any other newspapers of general circulation, the lease of sale of those lots, if necessary.

He finds that the NHA and RBI violated Secs. 63 and 67 of CA 141, as the reclaimed lands were conveyed to RBI by negotiated contract and not by public bidding as required by law.

This stand is devoid of merit.

There is no doubt that respondent NHA conducted a public bidding of the right to become its joint venture partner in the Smokey Mountain Project. Notices or Invitations to Bid were published in the national dailies on January 23 and 26, 1992 and February 1, 14, 16, and 23, 1992. The bidding proper was done by the Bids and Awards Committee (BAC) on May 18, 1992. On August 31, 1992, the Inter-Agency Techcom made up of the NHA, PEA, DPWH, PPA, DBP, and DENR opened the bids and evaluated them, resulting in the award of the contract to respondent RBI on October 7, 1992.

On March 19, 1993, respondents NHA and RBI signed the JVA. On February 23, 1994, said JVA was amended and restated into the ARJVA. On August 11, 1994, the ARJVA was again amended. On September 7, 1994, the OP approved the ARJVA and the amendments to the ARJVA. From these factual settings, it cannot be gainsaid that there was full compliance with the laws and regulations governing public biddings involving a right, concession, or property of the government.

Petitioner concedes that he does not question the public bidding on the right to be a joint venture partner of the

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NHA, but the absence of bidding in the sale of alienable and disposable lands of public domain pursuant to CA 141 as amended.

Petitioner's theory is incorrect.

Secs. 63 and 67 of CA 141, as amended, are in point as they refer to government sale by the Director of Lands of alienable and disposable lands of public domain. This is not present in the case at bar. The lands reclaimed by and conveyed to the NHA are no longer lands of public domain. These lands became proprietary lands or patrimonial properties of the State upon transfer of the titles over the reclaimed lands to the NHA and hence outside the ambit of CA 141. The NHA can therefore legally transfer patrimonial land to RBI or to any other interested qualified buyer without any bidding conducted by the Director of Lands because the NHA, unlike PEA, is a government agency not tasked to sell lands of public domain. Hence, it can only hold patrimonial lands and can dispose of such lands by sale without need of public bidding.

Petitioner likewise relies on Sec. 79 of PD 1445 which requires public bidding "when government property has become unserviceable for any cause or is no longer needed." It appears from the Handbook on Property and Supply Management System, Chapter 6, that reclaimed lands which have become patrimonial properties of the State, whose titles are conveyed to government agencies like the NHA, which it will use for its projects or programs, are not within the ambit of Sec. 79. We quote the determining factors in the Disposal of Unserviceable Property, thus:

> Determining Factors in the Disposal of Unserviceable Property

- Property, which can no longer be repaired or reconditioned;

- Property whose maintenance costs of repair more than outweigh the benefits and services that will be derived from its continued use;

- Property that has become obsolete or outmoded because of changes in technology;

- Serviceable property that has been rendered unnecessary due to change in the agency's function or mandate;

- Unused supplies, materials and spare parts that were procured in excess of requirements; and

- Unused supplies and materials that [have] become dangerous to use because of long storage or use of which is determined to be hazardous.[85]

Reclaimed lands cannot be considered unserviceable properties. The reclaimed lands in question are very much needed by the NHA for the Smokey Mountain Project because without it, then the projects will not be successfully implemented. Since the reclaimed lands are not unserviceable properties and are very much needed by NHA, then Sec. 79 of PD 1445 does not apply.

More importantly, Sec. 79 of PD 1445 cannot be applied to patrimonial properties like reclaimed lands transferred to a government agency like the NHA which has entered into a BOT contract with a private firm. The reason is obvious. If the patrimonial property will be subject to public bidding as the only way of disposing of said property, then Sec. 6 of RA 6957 on the repayment scheme is almost impossible or extremely difficult to implement considering the uncertainty of a winning bid during public auction. Moreover, the repayment scheme of a BOT contract may be in the form of non-monetary payment like the grant of a portion or percentage of reclaimed land. Even if the BOT partner participates in the public bidding, there is no assurance that he will win the bid and therefore the payment in kind as agreed to by the parties cannot be performed or the winning bid prize might be below the estimated valuation of the land. The only way to harmonize Sec. 79 of PD 1445 with Sec. 6 of RA 6957 is to consider Sec. 79 of PD 1445 as inapplicable to BOT contracts involving patrimonial lands. The law

does not intend anything impossible (lex non intendit aliquid impossibile).

Seventh Issue: Whether RBI, being a private corporation,
is barred by the Constitution to acquire lands of public domain

Petitioner maintains that RBI, being a private corporation, is expressly prohibited by the 1987 Constitution from acquiring lands of public domain.

Petitioner's proposition has no legal mooring for the following reasons:

1. RA 6957 as amended by RA 7718 explicitly states that a contractor can be paid "a portion as percentage of the reclaimed land" subject to the constitutional requirement that only Filipino citizens or corporations with at least 60% Filipino equity can acquire the same. It cannot be denied that RBI is a private corporation, where Filipino citizens own at least 60% of the stocks. Thus, the transfer to RBI is valid and constitutional.

2. When Proclamations Nos. 39 and 465 were issued, inalienable lands covered by said proclamations were converted to alienable and disposable lands of public domain. When the titles to the reclaimed lands were transferred to the NHA, said alienable and disposable lands of public domain were automatically classified as lands of the private domain or patrimonial properties of the State because the NHA is an agency NOT tasked to dispose of alienable or disposable lands of public domain. The only way it can transfer the reclaimed land in conjunction with its projects and to attain its goals is when it is automatically converted to patrimonial properties of the State. Being patrimonial or private properties of the State, then it has the power to sell the same to any qualified person--under the Constitution, Filipino citizens as private corporations, 60% of which is owned by Filipino citizens like RBI.

3. The NHA is an end-user entity such that when alienable lands of public domain are transferred to said agency, they are automatically classified as patrimonial properties. The NHA is similarly situated as BCDA which was granted the authority to dispose of patrimonial lands of the government under RA 7227. The nature of the property holdings conveyed to BCDA is elucidated and stressed in the May 6, 2003 Resolution in Chavez v. PEA, thus:

> BCDA is an entirely different government entity. BCDA is authorized by law to sell specific government lands that have long been declared by presidential proclamations as military reservations for use by the different services of the armed forces under the Department of National Defense. BCDA's mandate is specific and limited in area, while PEA's mandate is general and national. BCDA holds government lands that have been granted to end-user government entities--the military services of the armed forces. In contrast, under Executive Order No. 525, PEA holds the reclaimed public lands, not as an end-user entity, but as the government agency "primarily responsible for integrating, directing, and coordinating all reclamation projects for and on behalf of the National Government."
>
> x x x Well-settled is the doctrine that public land granted to an end-user government agency for a specific public use may subsequently be withdrawn by Congress from public use and declared patrimonial property to be sold to private parties. R.A. No. 7227 creating the BCDA is a law that declares specific military reservations no longer needed for defense or military purposes and reclassifies such lands as patrimonial property for sale to private parties.
>
> Government owned lands, as long as they are patrimonial property, can be sold to private parties, whether Filipino citizens or qualified private corporations. Thus, the so-called Friar Lands acquired by the government under Act No. 1120 are patrimonial property which even private corporations can acquire by purchase. Likewise, reclaimed alienable lands of the public domain if sold or transferred to a public or municipal corporation for a monetary consideration become patrimonial property in the hands of the public or municipal corporation. Once converted to patrimonial property, the land may be sold by the public or municipal

> corporation to private parties, whether Filipino citizens or qualified private corporations.[86] (Emphasis supplied.)

The foregoing Resolution makes it clear that the SMDRP was a program adopted by the Government under Republic Act No. 6957 (An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and For Other Purposes), as amended by RA 7718, which is a special law similar to RA 7227. Moreover, since the implementation was assigned to the NHA, an end-user agency under PD 757 and RA 7279, the reclaimed lands registered under the NHA are automatically classified as patrimonial lands ready for disposition to qualified beneficiaries.

The foregoing reasons likewise apply to the contention of petitioner that HCPTI, being a private corporation, is disqualified from being a transferee of public land. What was transferred to HCPTI is a 10-hectare lot which is already classified as patrimonial property in the hands of the NHA. HCPTI, being a qualified corporation under the 1987 Constitution, the transfer of the subject lot to it is valid and constitutional.

Eighth Issue: Whether respondents can be compelled to disclose
all information related to the SMDRP

Petitioner asserts his right to information on all documents such as contracts, reports, memoranda, and the like relative to SMDRP.

Petitioner asserts that matters relative to the SMDRP have not been disclosed to the public like the current stage of the Project, the present financial capacity of RBI, the complete list of investors in the asset pool, the exact amount of investments in the asset pool and other similar important information regarding the Project.

He prays that respondents be compelled to disclose all information regarding the SMDRP and furnish him with originals or at least certified true copies of all relevant documents relating to the said project including, but not limited to, the original JVA, ARJVA, AARJVA, and the Asset Pool Agreement.

This relief must be granted.

The right of the Filipino people to information on matters of public concern is enshrined in the 1987 Constitution, thus:

> ARTICLE II
>
> x x x x
>
> SEC. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.
>
> ARTICLE III
>
> SEC. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

In Valmonte v. Belmonte, Jr., this Court explicated this way:

> [A]n essential element of these freedoms is to keep open a continuing dialogue or process of communication between the government and the people. It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to

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> formulate its will intelligently. Only when the participants in the discussion are aware of the issues and have access to information relating thereto can such bear fruit.[87]

In PEA, this Court elucidated the rationale behind the right to information:

> These twin provisions of the Constitution seek to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. These twin provisions are essential to the exercise of freedom of expression. If the government does not disclose its official acts, transactions and decisions to citizens, whatever citizens say, even if expressed without any restraint, will be speculative and amount to nothing. These twin provisions are also essential to hold public officials "at all times x x x accountable to the people," for unless citizens have the proper information, they cannot hold public officials accountable for anything. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. An informed citizenry is essential to the existence and proper functioning of any democracy.[88]

Sec. 28, Art. II compels the State and its agencies to fully disclose "all of its transactions involving public interest." Thus, the government agencies, without need of demand from anyone, must bring into public view all the steps and negotiations leading to the consummation of the transaction and the contents of the perfected contract.[89] Such information must pertain to "definite propositions of the government," meaning official recommendations or final positions reached on the different matters subject of negotiation. The government agency, however, need not disclose "intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the exploratory stage." The limitation also covers privileged communication like information on military and diplomatic secrets; information affecting national security; information on investigations of crimes by law enforcement agencies before the prosecution of the accused; information on foreign relations, intelligence, and other classified information.

It is unfortunate, however, that after almost twenty (20) years from birth of the 1987 Constitution, there is still no enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions. Hopefully, the desired enabling law will finally see the light of day if and when Congress decides to approve the proposed "Freedom of Access to Information Act." In the meantime, it would suffice that government agencies post on their bulletin boards the documents incorporating the information on the steps and negotiations that produced the agreements and the agreements themselves, and if finances permit, to upload said information on their respective websites for easy access by interested parties. Without any law or regulation governing the right to disclose information, the NHA or any of the respondents cannot be faulted if they were not able to disclose information relative to the SMDRP to the public in general.

The other aspect of the people's right to know apart from the duty to disclose is the duty to allow access to information on matters of public concern under Sec. 7, Art. III of the Constitution. The gateway to information opens to the public the following: (1) official records; (2) documents and papers pertaining to official acts, transactions, or decisions; and (3) government research data used as a basis for policy development.

Thus, the duty to disclose information should be differentiated from the duty to permit access to information. There is no need to demand from the government agency disclosure of information as this is mandatory under the Constitution; failing that, legal remedies are available. On the other hand, the interested party must first request or even demand that he be allowed access to documents and papers in the particular agency. A request or demand is required; otherwise, the government office or agency will not know of the desire of the interested party to gain access to such papers and what papers are needed. The duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions

involving public interest, but any matter contained in official communications and public documents of the government agency.

We find that although petitioner did not make any demand on the NHA to allow access to information, we treat the petition as a written request or demand. We order the NHA to allow petitioner access to its official records, documents, and papers relating to official acts, transactions, and decisions that are relevant to the said JVA and subsequent agreements relative to the SMDRP.

Ninth Issue: Whether the operative fact doctrine applies to the instant petition

Petitioner postulates that the "operative fact" doctrine is inapplicable to the present case because it is an equitable doctrine which could not be used to countenance an inequitable result that is contrary to its proper office.

On the other hand, the petitioner Solicitor General argues that the existence of the various agreements implementing the SMDRP is an operative fact that can no longer be disturbed or simply ignored, citing Rieta v. People of the Philippines.[90]

The argument of the Solicitor General is meritorious.

The "operative fact" doctrine is embodied in De Agbayani v. Court of Appeals, wherein it is stated that a legislative or executive act, prior to its being declared as unconstitutional by the courts, is valid and must be complied with, thus:

> As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
>
> Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.
>
> In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in Araneta v. Hill and the decision in Manila Motor Co., Inc. v. Flores. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in Fernandez v. Cuerva and Co.[91] (Emphasis supplied.)

This doctrine was reiterated in the more recent case of City of Makati v. Civil Service Commission, wherein we

ruled that:

> Moreover, we certainly cannot nullify the City Government's order of suspension, as we have no reason to do so, much less retroactively apply such nullification to deprive private respondent of a compelling and valid reason for not filing the leave application. For as we have held, a void act though in law a mere scrap of paper nonetheless confers legitimacy upon past acts or omissions done in reliance thereof. Consequently, the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached. It would indeed be ghastly unfair to prevent private respondent from relying upon the order of suspension in lieu of a formal leave application.[92] (Emphasis supplied.)

The principle was further explicated in the case of Rieta v. People of the Philippines, thus:

> In similar situations in the past this Court had taken the pragmatic and realistic course set forth in Chicot County Drainage District vs. Baxter Bank to wit: The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. x x x It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to [the determination of its 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 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 both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

In the May 6, 2003 Resolution in Chavez v. PEA,[93] we ruled that De Agbayani[94] is not applicable to the case considering that the prevailing law did not authorize private corporations from owning land. The prevailing law at the time was the 1935 Constitution as no statute dealt with the same issue.

In the instant case, RA 6957 was the prevailing law at the time that the joint venture agreement was signed. RA 6957, entitled "An Act Authorizing The Financing, Construction, Operation And Maintenance Of Infrastructure Projects By The Private Sector And For Other Purposes," which was passed by Congress on July 24, 1989, allows repayment to the private contractor of reclaimed lands.[95] Such law was relied upon by respondents, along with the above-mentioned executive issuances in pushing through with the Project. The existence of such law and issuances is an "operative fact" to which legal consequences have attached. This Court is constrained to give legal effect to the acts done in consonance with such executive and legislative acts; to do otherwise would work patent injustice on respondents.

Further, in the May 6, 2003 Resolution in Chavez v. PEA, we ruled that in certain cases, the transfer of land, although illegal or unconstitutional, will not be invalidated on considerations of equity and social justice. However, in that case, we did not apply the same considering that PEA, respondent in said case, was not entitled to equity principles there being bad faith on its part, thus:

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

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> of the public domain. Thus, Amari signed the Amended JVA knowing and assuming all the attendant risks, including the annulment of the Amended JVA.[96]

Such indicia of bad faith are not present in the instant case. When the ruling in PEA was rendered by this Court on July 9, 2002, the JVAs were all executed. Furthermore, when petitioner filed the instant case against respondents on August 5, 2004, the JVAs were already terminated by virtue of the MOA between the NHA and RBI. The respondents had no reason to think that their agreements were unconstitutional or even questionable, as in fact, the concurrent acts of the executive department lent validity to the implementation of the Project. The SMDRP agreements have produced vested rights in favor of the slum dwellers, the buyers of reclaimed land who were issued titles over said land, and the agencies and investors who made investments in the project or who bought SMPPCs. These properties and rights cannot be disturbed or questioned after the passage of around ten (10) years from the start of the SMDRP implementation. Evidently, the "operative fact" principle has set in. The titles to the lands in the hands of the buyers can no longer be invalidated.

The Court's Dispositions

Based on the issues raised in this petition, we find that the March 19, 1993 JVA between NHA and RBI and the SMDRP embodied in the JVA, the subsequent amendments to the JVA and all other agreements signed and executed in relation to it, including, but not limited to, the September 26, 1994 Smokey Mountain Asset Pool Agreement and the agreement on Phase I of the Project as well as all other transactions which emanated from the Project, have been shown to be valid, legal, and constitutional. Phase II has been struck down by the Clean Air Act.

With regard to the prayer for prohibition, enjoining respondents particularly respondent NHA from further implementing and/or enforcing the said Project and other agreements related to it, and from further deriving and/or enjoying any rights, privileges and interest from the Project, we find the same prayer meritless.

Sec. 2 of Rule 65 of the 1997 Rules of Civil Procedure provides:

> Sec. 2. Petition for prohibition.--When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

It has not been shown that the NHA exercised judicial or quasi-judicial functions in relation to the SMDRP and the agreements relative to it. Likewise, it has not been shown what ministerial functions the NHA has with regard to the SMDRP.

A ministerial duty is one which is so clear and specific as to leave no room for the exercise of discretion in its performance. It is a duty which an officer performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of his/her own judgment upon the propriety of the act done.[97]

Whatever is left to be done in relation to the August 27, 2003 MOA, terminating the JVA and other related agreements, certainly does not involve ministerial functions of the NHA but instead requires exercise of judgment. In fact, Item No. 4 of the MOA terminating the JVAs provides for validation of the developer's (RBI's) claims arising from the termination of the SMDRP through the various government agencies.[98] Such validation requires the exercise of discretion.

In addition, prohibition does not lie against the NHA in view of petitioner's failure to avail and exhaust all administrative remedies. Clear is the rule that prohibition is only available when there is no adequate remedy in the ordinary course of law.

More importantly, prohibition does not lie to restrain an act which is already a fait accompli. The "operative fact" doctrine protecting vested rights bars the grant of the writ of prohibition to the case at bar. It should be remembered that petitioner was the Solicitor General at the time SMDRP was formulated and implemented. He had the opportunity to question the SMDRP and the agreements on it, but he did not. The moment to challenge the Project had passed.

On the prayer for a writ of mandamus, petitioner asks the Court to compel respondents to disclose all documents and information relating to the project, including, but not limited to, any subsequent agreements with respect to the different phases of the Project, the revisions of the original plan, the additional works incurred on the Project, the current financial condition of respondent RBI, and the transactions made with respect to the project. We earlier ruled that petitioner will be allowed access to official records relative to the SMDRP. That would be adequate relief to satisfy petitioner's right to the information gateway.

WHEREFORE, the petition is PARTIALLY GRANTED.

The prayer for a writ of prohibition is DENIED for lack of merit.

The prayer for a writ of mandamus is GRANTED. Respondent NHA is ordered to allow access to petitioner to all public documents and official records relative to the SMDRP--including, but not limited to, the March 19, 1993 JVA between the NHA and RBI and subsequent agreements related to the JVA, the revisions over the original plan, and the additional works incurred on and the transactions made with respect to the Project.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, and Nachura, JJ., concur.
Carpio, J., no part.
Reyes, J., no part, Did not participate in Deliberations.

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[1] Rollo, pp. 3-4.

[2] Id. at 513.

[3] Id. at 513-514.

[4] Id. at 515.

[5] Id. at 513.

[6] Id. at 297; Proclamation No. 39 dated September 9, 1992.

[7] RA 7718 was later enacted on May 5, 1994, amending certain sections of the BOT Law.

[8] "Joint Resolution Approving the List of National Projects to be Undertaken by the Private Sector Pursuant to Republic Act No. 6957."

[9] Rollo, pp. 519-521.

[10] Id. at 296.

[11] Id. at 295.

[12] Id. at 436.

[13] Id. at 476.

[14] Id. at 477.

[15] Id. at 297-298.

[16] Id. at 479.

[17] Id. at 69-79.

[18] "Creating the National Housing Authority and Dissolving the Existing Housing Agencies, Defining its Powers and Functions, Providing Funds Therefor, and for Other Purposes" (1975).

[19] Rollo, p. 70.

[20] Id. at 73.

[21] Id. at 479.

[22] Id. at 80-94.

[23] Id. at 83.

[24] Id.

[25] Id.

[26] Id.

[27] Id. at 84.

[28] Id. at 93.

[29] Id. at 95-104.

[30] Id. at 98.

[31] Id. at 526-533.

[32] Id. at 435.

[33] The PNB was later replaced by the Planters Development Bank.

[34] Rollo, p. 105.

[35] Id. at 18. RA 8749, "The Clean Air Act of 1999."

[36] Id.

[37] Id. at 244.

[38] Id. at 747-751.

[39] Id. at 858.

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[40] Id. at 860.

[41] Id. at 859.

[42] Id.

[43] Id. at 860.

[44] Id.

[45] Id. at 861.

[46] Id.

[47] 1997 Rules of Civil Procedure, Rule 3, Sec. 2.

[48] Bayan (Bagong Alyansang Makabayan) v. Zamora, G.R. Nos. 138570, 138572, 138587, 138680 & 138698, October 10, 2000, 342 SCRA 449, 478.

[49] G.R. No. 130716, December 9, 1998, 299 SCRA 744.

[50] G.R. No. 133250, July 9, 2002, 384 SCRA 152.

[51] G.R. No. 67787, April 18, 1989, 172 SCRA 415, 424.

[52] G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 652.

[53] 1. Petitioner claimed that NHA awarded the Smokey Mountain project to R-II Builders through contract negotiations and that there was no public bidding awarding ownership of the subject land to respondent R-II Builders, while respondents alleged that NHA publicly bidded out the right to become NHA's joint venture partner in the prosecution of the SMDRP;

2. Petitioner averred that "PEA had no participation whatsoever in the reclamation of the subject lands" while respondents stated PEA had a name therein;

3. Petitioner alleged that "neither respondent NHA nor respondent R-II Builders was given the authority [by DENR] to reclaim the subject lands" while respondents claimed such authority was granted;

4. Mr. Chavez claimed "that there is no legislative or Presidential act classifying the submerged areas around Smokey Mountain as alienable or disposable lands of the public domain open to disposition" while respondents said that Presidents Aquino and Ramos made the classification;

5. Whether respondent R-II Builders complied with its obligation to "fully finance" the Project;

6. Whether the Project has been terminated by agreements of the parties;

7. Whether respondents Harbour Centre and Romero fraudulently caused the dilution of the Asset Pool's Holdings in HCPTI;

8. Whether Harbour Centre contracts attached to the Petition are genuine.

[54] Rollo, p. 871.

[55] Petition, Comments, Reply, and Memoranda.

[56] "Designating the Public Estates Authority as the Agency Primarily Responsible for All Reclamation Projects" (1979).

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[57] Rollo, p. 235.

[58] The July 9, 2002 Decision entitled Chavez v. PEA was concurred in by 13 members of this Court who voted to grant the petition. However, in the May 6, 2003 Resolution, the Court was divided when it voted 8-5 to affirm the Decision. And in the most recent November 11, 2003 Resolution of this Court, a 7-7 vote was arrived at. Thus, the July 9, 2002 Decision is still the valid case law.

[59] The doctrine of stare decisis provides that a conclusion reached in one case should, for the sake of certainty, be applied to those which follow if the facts are substantially the same even though the parties may be different.

[60] Supra note 50, at 221.

[61] "Creating the Public Estates Authority, Defining its Power and Functions, Providing Funds Therefor and for Other Purposes" (1977).

[62] "An Act to Provide for a Comprehensive and Continuing Urban Development and Housing Program, Establish the Mechanism for its Implementation, and for Other Purposes" (1992).

[63] Radio Communications of the Philippines, Inc. v. Santiago, Nos. L-29236 & L-29247, 58 SCRA 493, August 21, 1974, 58 SCRA 493, 497.

[64] Azarcon v. Sandiganbayan, G.R. No. 116033, February 26, 1997, 268 SCRA 747, 761.

[65] 63 Phil. 139, 177 (1936).

[66] Provident Tree Farms, Inc. v. Batario, Jr., G.R. No. 92285, March 28, 1994, 231 SCRA 463, 469; cited in Agpalo, Administrative Code 14.

[67] "Amending Section 7 of Presidential Decree No. 3 dated September 26, 1972, by Providing for the Exclusive Prosecution by Administration or by Contract of Reclamation Projects" (2005).

[68] Republic v. Court of Appeals, G.R. No. 103882, November 25, 1998, 299 SCRA 199, 303.

[69] "Delegating to the Philippine Reclamation Authority the Power to Approve Reclamation Projects" (2006).

[70] Supra note 50, at 222-223.

[71] Taule v. Santos, G.R. No. 90336, August 12, 1991, 200 SCRA 512, 521-522.

[72] G.R. No. 157036, June 9, 2004, 431 SCRA 534, 555; citing EO 292, Book IV, Chapter 7.

[73] Supra note 50, at 217.

[74] Id. at 216.

[75] Id. at 235.

[76] Republic of the Philippines v. Manila Electric Company, G.R. No. 141314, April 9, 2003, 401 SCRA 130, 141.

[77] Id. at 142.

[78] G.R. No. 119682, January 21, 1999, 301 SCRA 450, 454-455.

[79] G.R. No. 146030, December 3, 2002, 393 SCRA 361, 373.

[80] G.R. No. 131667, July 28, 2005, 464 SCRA 280, 291.

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[81] G.R. No. 163118, April 27, 2007.

[82] G.R. No. 97973, January 27, 1992, 205 SCRA 515, 527.

[83] Supra note 73.

[84] Article 422. Property of public dominion, when no longer intended for public use or public service, shall form part of the patrimonial property of the State.

[85] Commission on Audit, Professional Development Center, Handbook on Property & Supply Management System 91-92 (2003).

[86] G.R. No. 133250, May 6, 2003, 403 SCRA 1, 31-32.

[87] G.R. No. 74930, February 13, 1989, 170 SCRA 256, 265.

[88] Supra note 50, at 184.

[89] Id. at 185; citing V Record of the Constitutional Commission 24-25 (1986).

[90] G.R. No. 147817, August 12, 2004, 436 SCRA 273, 291-292.

[91] No. L-23127, April 29, 1971, 38 SCRA 429, 434-435.

[92] G.R. No. 131392, February 6, 2002, 376 SCRA 248, 257.

[93] Supra note 86, at 26.

[94] Supra note 91.

[95] RA 6957, Sec. 6 provides:

Section 6. Repayment Scheme.--For the financing, construction, operation, and maintenance of any infrastructure project undertaken pursuant to the provisions of this Act, the constructor shall be entitled to a reasonable return of its investment and operating and maintenance costs in accordance with its bid proposal as accepted by the concerned contracting infrastructure agency or local government unit and incorporated in the contract's terms and conditions. In the case of a build-operate-and-transfer arrangement, this repayment scheme is to be affected by authorizing the contractor to charge for the use of the project facility not exceeding those proposed in the bid and incorporated in the contract: Provided, That the government infrastructure agency or local government unit concerned shall approve the fairness and equity of the tolls, fees, rentals and charges except in case of tolls for national highways, roads, bridges and public thoroughfares which shall be approved by the Toll Regulatory Board: Provided, further, That the imposition and collection of tolls, fees, rentals and charges shall be for a fixed term as proposed in the bid and incorporated in the contract but in no case shall this term exceed fifty (50) years: Provided, finally, That during the lifetime of the franchise, the contractor shall undertake the necessary maintenance and repair of the facility in accordance with standards prescribed in the bidding documents and in the contract. In the case of a build-and-transfer arrangements, the repayment scheme is to be affected through amortization payments by the government unit concerned to the contractor according to the scheme proposed in the bid and incorporated in the contract.

In the case of land reclamation or the building of industrial estates, the repayment scheme may consist of the grant of a portion of percentage of the reclaimed land or industrial estate built, subject to the constitutional requirements with respect to the ownership of lands.

[96] Supra note 86, at 29-30.

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[97] Symaco v. Hon. Aquino, etc., 106 Phil. 1130, 1135 (1960).

[98] Rollo, p. 866.

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