MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), PETITIONER, VS. CITY OF LAPU-LAPU AND ELENA T. PACALDO, RESPONDENTS.

G.R. No. 181756. June 15, 2015

Ponente: LEONARDO-DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-181756/

LEONARDO-DE CASTRO, J.:

This is a clear opportunity for this Court to clarify the effects of our two previous decisions, issued a decade apart, on the power of local government units to collect real property taxes from airport authorities located within their area, and the nature or the juridical personality of said airport authorities.

Before us is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse and set aside the October 8, 2007 Decision[1] of the Court of Appeals (Cebu City) in CA-G.R. SP No. 01360 and the February 12, 2008 Resolution[2] denying petitioner's motion for reconsideration.

THE FACTS

Petitioner Mactan-Cebu International Airport Authority (MCIAA) was created by Congress on July 31, 1990 under Republic Act No. 6958[3] to "undertake the economical, efficient and effective control, management and supervision of the Mactan International Airport in the Province of Cebu and the Lahug Airport in Cebu City x x x and such other airports as may be established in the Province of Cebu." It is represented in this case by the Office of the Solicitor General.

Respondent City of Lapu-Lapu is a local government unit and political subdivision, created and existing under its own charter with capacity to sue and be sued. Respondent Elena T. Pacaldo was impleaded in her capacity as the City Treasurer of respondent City.

Upon its creation, petitioner enjoyed exemption from realty taxes under the following provision of Republic Act No. 6958:

> Section 14. Tax Exemptions. – The Authority shall be exempt from realty taxes imposed by the National Government or any of its political subdivisions, agencies and instrumentalities: Provided, That no tax exemption herein granted shall extend to any subsidiary which may be organized by the Authority.

On September 11, 1996, however, this Court rendered a decision in Mactan-Cebu International Airport Authority v. Marcos[4] (the 1996 MCIAA case) declaring that upon the effectivity of Republic Act No. 7160 (The Local Government Code of 1991), petitioner was no longer exempt from real estate taxes. The Court held:

> Since the last paragraph of Section 234 unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14

> of its Charter, R.A. No. 6958, has been withdrawn. x x x.

On January 7, 1997, respondent City issued to petitioner a Statement of Real Estate Tax assessing the lots comprising the Mactan International Airport in the amount of P162,058,959.52. Petitioner complained that there were discrepancies in said Statement of Real Estate Tax as follows:

> (a) [T]he statement included lots and buildings not found in the inventory of petitioner's real properties;
>
> (b) [S]ome of the lots were covered by two separate tax declarations which resulted in double assessment;
>
> (c) [There were] double entries pertaining to the same lots; and
>
> (d) [T]he statement included lots utilized exclusively for governmental purposes.[5]

Respondent City amended its billing and sent a new Statement of Real Estate Tax to petitioner in the amount of P151,376,134.66. Petitioner averred that this amount covered real estate taxes on the lots utilized solely and exclusively for public or governmental purposes such as the airfield, runway and taxiway, and the lots on which they are situated.[6]

Petitioner paid respondent City the amount of four million pesos (P4,000,000.00) monthly, which was later increased to six million pesos (P6,000,000.00) monthly. As of December 2003, petitioner had paid respondent City a total of P275,728,313.36.[7]

Upon request of petitioner's General Manager, the Secretary of the Department of Justice (DOJ) issued Opinion No. 50, Series of 1998,[8] and we quote the pertinent portions of said Opinion below:

> You further state that among the real properties deemed transferred to MCIAA are the airfield, runway, taxiway and the lots on which the runway and taxiway are situated, the tax declarations of which were transferred in the name of the MCIAA. In 1997, the City of Lapu-Lapu imposed real estate taxes on these properties invoking the provisions of the Local Government Code.
>
> It is your view that these properties are not subject to real property tax because they are exclusively used for airport purposes. You said that the runway and taxiway are not only used by the commercial airlines but also by the Philippine Air Force and other government agencies. As such and in conjunction with the above interpretation of Section 15 of R.A. No. 6958, you believe that these properties are considered owned by the Republic of the Philippines. Hence, this request for opinion.
>
> The query is resolved in the affirmative. The properties used for airport purposes (i.e. airfield, runway, taxiway and the lots on which the runway and taxiway are situated) are owned by the Republic of the Philippines.
>
> x x x x x x x x x
>
> Under the Law on Public Corporations, the legislature has complete control over the property which a municipal corporation has acquired in its public or governmental capacity and which is devoted to public or governmental use. The municipality in dealing with said property is subject to such restrictions and limitations as the legislature may impose. On the other hand, property which a municipal corporation acquired in its private or proprietary capacity, is held by it in the same character as a private individual. Hence, the legislature in dealing with such property, is subject to the constitutional restrictions concerning property (Martin, Public Corporations [1997], p. 30; see also Province of Zamboanga del [Norte] v. City of Zamboanga [131 Phil. 446]). The same may be said of properties transferred to the MCIAA and used for airport purposes, such as those involved herein. Since such properties are of public dominion, they are deemed held by the MCIAA in trust for the Government and can be alienated only as may be provided by law.
>
> Based on the foregoing, it is our considered opinion that the properties used for airport purposes, such as the

> airfield, runway and taxiway and the lots on which the runway and taxiway are located, are owned by the State or by the Republic of the Philippines and are merely held in trust by the MCIAA, notwithstanding that certificates of titles thereto may have been issued in the name of the MCIAA. (Emphases added.)

Based on the above DOJ Opinion, the Department of Finance issued a 2[nd] Indorsement to the City Treasurer of Lapu-Lapu dated August 3, 1998,[9] which reads:

> The distinction as to which among the MCIAA properties are still considered "owned by the State or by the Republic of the Philippines," such as the resolution in the above-cited DOJ Opinion No. 50, for purposes of real property tax exemption is hereby deemed tenable considering that the subject "airfield, runway, taxiway and the lots on which the runway and taxiway are situated" appears to be the subject of real property tax assessment and collection of the city government of Lapu-Lapu, hence, the same are definitely located within the jurisdiction of Lapu-Lapu City.
>
> Moreover, then Undersecretary Antonio P. Belicena of the Department of Finance, in his 1[st] Indorsement dated May 18, 1998, advanced that "this Department (DOF) interposes no objection to the request of Mactan Cebu International Airport Authority for exemption from payment of real property tax on the property used for airport purposes" mentioned above.
>
> The City Assessor, therefore, is hereby instructed to transfer the assessment of the subject airfield, runway, taxiway and the lots on which the runway and taxiway are situated, from the "Taxable Roll" to the "Exempt Roll" of real properties.
>
> The City Treasurer thereat should be informed on the action taken for his immediate appropriate action. (Emphases added.)

Respondent City Treasurer Elena T. Pacaldo sent petitioner a Statement of Real Property Tax Balances up to the year 2002 reflecting the amount of P246,395,477.20. Petitioner claimed that the statement again included the lots utilized solely and exclusively for public purpose such as the airfield, runway, and taxiway and the lots on which these are built. Respondent Pacaldo then issued Notices of Levy on 18 sets of real properties of petitioner.[10]

Petitioner filed a petition for prohibition[11] with the Regional Trial Court (RTC) of Lapu-Lapu City with prayer for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction, docketed as SCA No. 6056-L. Branch 53 of RTC Lapu-Lapu City then issued a 72-hour TRO. The petition for prohibition sought to enjoin respondent City from issuing a warrant of levy against petitioner's properties and from selling them at public auction for delinquency in realty tax obligations. The petition likewise prayed for a declaration that the airport terminal building, the airfield, runway, taxiway and the lots on which they are situated are exempted from real estate taxes after due hearing. Petitioner based its claim of exemption on DOJ Opinion No. 50.

The RTC issued an Order denying the motion for extension of the TRO. Thus, on December 10, 2003, respondent City auctioned 27 of petitioner's properties. As there was no interested bidder who participated in the auction sale, respondent City forfeited and purchased said properties. The corresponding Certificates of Sale of Delinquent Property were issued to respondent City.[12]

Petitioner claimed before the RTC that it had discovered that respondent City did not pass any ordinance authorizing the collection of real property tax, a tax for the special education fund (SEF), and a penalty interest for its nonpayment. Petitioner argued that without the corresponding tax ordinances, respondent City could not impose and collect real property tax, an additional tax for the SEF, and penalty interest from petitioner.[13]

The RTC issued an Order[14] on December 28, 2004 granting petitioner's application for a writ of preliminary injunction. The pertinent portions of the Order are quoted below:

> The supervening legal issue has rendered it imperative that the matter of the consolidation of the ownership of the auctioned properties be placed on hold. Furthermore, it is the view of the Court that great prejudice and damage will be suffered by petitioner if it were to lose its dominion over these properties now when the most important legal issue has still to be resolved by the Court. Besides, the respondents and the intervenor have not sufficiently shown cause why petitioner's application should not be granted.
>
> WHEREFORE, the foregoing considered, petitioner's application for a writ of preliminary injunction is granted. Consequently, upon the approval of a bond in the amount of one million pesos (P1,000,000.00), let a writ of preliminary injunction issue enjoining the respondents, the intervenor, their agents or persons acting in [their] behalf, to desist from consolidating and exercising ownership over the properties of the petitioner.

However, upon motion of respondents, the RTC lifted the writ of preliminary injunction in an Order[15] dated December 5, 2005. The RTC reasoned as follows:

> The respondent City, in the course of the hearing of its motion, presented to this Court a certified copy of its Ordinance No. 44 (Omnibus Tax Ordinance of the City of Lapu-Lapu), Section 25 whereof authorized the collection of a rate of one and one-half (1 ½) [per centum] from owners, executors or administrators of any real estate lying within the jurisdiction of the City of Lapu-Lapu, based on the assessed value as shown in the latest revision.
>
> Though this ordinance was enacted prior to the effectivity of Republic Act No. 7160 (Local Government Code of 1991), to the mind of the Court this ordinance is still a valid and effective ordinance in view of Sec. 529 of RA 7160 x x x [and the] Implementing Rules and Regulations of RA 7160 x x x.
>
> x x x x x x x x x
>
> The tax collected under Ordinance No. 44 is within the rates prescribed by RA 7160, though the 25% penalty collected is higher than the 2% interest allowed under Sec. 255 of the said law which provides:
> In case of failure to pay the basic real property tax or any other tax levied under this Title upon the expiration of the periods as provided in Section 250, or when due, as the case may be, shall subject the taxpayer to the payment of interest at the rate of two percent (2%) per month on the unpaid amount or a fraction thereof, until the delinquent tax shall have been fully paid: Provided, however, That in no case shall the total interest on the unpaid tax or portion thereof exceed thirty-six (36) months.

This difference does not however detract from the essential enforceability and effectivity of Ordinance No. 44 pursuant to Section 529 of RA 7160 and Article 278 of the Implementing Rules and Regulations. The outcome of this disparity is simply that respondent City can only collect an interest of 2% per month on the unpaid tax. Consequently, respondent City [has] to recompute the petitioner's tax liability.

It is also the Court's perception that respondent City can still collect the additional 1% tax on real property without an ordinance to this effect. It may be recalled that Republic Act No. 5447 has created the Special Education Fund which is constituted from the proceeds of the additional tax on real property imposed by the law. Respondent City has collected this tax as mandated by this law without any ordinance for the purpose, as there is no need for it. Even when RA 5447 was amended by PD 464 (Real Property Tax Code), respondent City had continued to collect the tax, as it used to.

It is true that RA 7160 has repealed RA 5447, but what has been repealed are only Section 3, a(3) and b(2) which concern the allocation of the additional tax, considering that under RA 7160, the proceeds of the additional 1% tax on real property accrue exclusively to the Special Education Fund. Nevertheless, RA 5447 has not been totally repealed; there is only a partial repeal.

It may be observed that there is no requirement in RA 7160 that an ordinance be enacted to enable the collection

of the additional 1% tax. This is so since RA 5447 is still in force and effect, and the declared policy of the government in enacting the law, which is to contribute to the financial support of the goals of education as provided in the Constitution, necessitates the continued and uninterrupted collection of the tax. Considering that this is a tax of far-reaching importance, to require the passage of an ordinance in order that the tax may be collected would be to place the collection of the tax at the option of the local legislature. This would run counter to the declared policy of the government when the SEF was created and the tax imposed.

As regards the allegation of respondents that this Court has no jurisdiction to entertain the instant petition, the Court deems it proper, at this stage of the proceedings, not to treat this issue, as it involves facts which are yet to be established.

x x x [T]he Court's issuance of a writ of preliminary injunction may appear to be a futile gesture in the light of Section 263 of RA 7160. x x x.

x x x x x x x x x

It would seem from the foregoing provisions, that once the taxpayer fails to redeem within the one-year period, ownership fully vests on the local government unit concerned. Thus, when in the present case petitioner failed to redeem the parcels of land acquired by respondent City, the ownership thereof became fully vested on respondent City without the latter having to perform any other acts to perfect its ownership. Corollary thereto, ownership on the part of respondent City has become a fait accompli.

WHEREFORE, in the light of the foregoing considerations, respondents' motion for reconsideration is granted, and the order of this Court dated December 28, 2004 is hereby reconsidered. Consequently, the writ of preliminary injunction issued by this Court is hereby lifted.

Aggrieved, petitioner filed a petition for certiorari[16] with the Court of Appeals (Cebu City), with urgent prayer for the issuance of a TRO and/or writ of preliminary injunction, docketed as CA-G.R. SP No. 01360. The Court of Appeals (Cebu City) issued a TRO[17] on January 5, 2006 and shortly thereafter, issued a writ of preliminary injunction[18] on February 17, 2006.

RULING OF THE COURT OF APPEALS

The Court of Appeals (Cebu City) promulgated the questioned Decision on October 8, 2007, holding that petitioner is a government-owned or controlled corporation and its properties are subject to realty tax. The dispositive portion of the questioned Decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered by us as follows:
>
> - We DECLARE the airport terminal building, the airfield, runway, taxiway and the lots on which they are situated NOT EXEMPT from the real estate tax imposed by the respondent City of Lapu-Lapu;
>
> - We DECLARE the imposition and collection of the real estate tax, the additional levy for the Special Education Fund and the penalty interest as VALID and LEGAL. However, pursuant to Section 255 of the Local Government Code, respondent city can only collect an interest of 2% per month on the unpaid tax which total interest shall, in no case, exceed thirty-six (36) months;
>
> - We DECLARE the sale in public auction of the aforesaid properties and the eventual forfeiture and purchase of the subject property by the respondent City of Lapu-Lapu as NULL and VOID. However, petitioner MCIAA's property is encumbered only by a limited lien possessed by the respondent City of Lapu-Lapu in accord with Section 257 of the Local Government Code.[19]

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Petitioner filed a Motion for Partial Reconsideration[20] of the questioned Decision covering only the portion of said decision declaring that petitioner is a GOCC and, therefore, not exempt from the realty tax and special education fund imposed by respondent City. Petitioner cited Manila International Airport Authority v. Court of Appeals[21] (the 2006 MIAA case) involving the City of Parañaque and the Manila International Airport Authority. Petitioner claimed that it had been described by this Court as a government instrumentality, and that it followed "as a logical consequence that petitioner is exempt from the taxing powers of respondent City of Lapu-Lapu."[22] Petitioner alleged that the 1996 MCIAA case had been overturned by the Court in the 2006 MIAA case. Petitioner thus prayed that it be declared exempt from paying the realty tax, special education fund, and interest being collected by respondent City.

On February 12, 2008, the Court of Appeals denied petitioner's motion for partial reconsideration in the questioned Resolution.

The Court of Appeals followed and applied the precedent established in the 1996 MCIAA case and refused to apply the 2006 MIAA case. The Court of Appeals wrote in the questioned Decision: "We find that our position is in line with the coherent and cohesive interpretation of the relevant provisions of the Local Government Code on local taxation enunciated in the [1996 MCIAA] case which to our mind is more elegant and rational and provides intellectual clarity than the one provided by the Supreme Court in the [2006] MIAA case."[23]

In the questioned Decision, the Court of Appeals held that petitioner's airport terminal building, airfield, runway, taxiway, and the lots on which they are situated are not exempt from real estate tax reasoning as follows:

> Under the Local Government Code (LGC for brevity), enacted pursuant to the constitutional mandate of local autonomy, all natural and juridical persons, including government-owned or controlled corporations (GOCCs), instrumentalities and agencies, are no longer exempt from local taxes even if previously granted an exemption. The only exemptions from local taxes are those specifically provided under the Code itself, or those enacted through subsequent legislation.
>
> Thus, the LGC, enacted pursuant to Section 3, Article X of the Constitution, provides for the exercise by local government units of their power to tax, the scope thereof or its limitations, and the exemptions from local taxation.
>
> Section 133 of the LGC prescribes the common limitations on the taxing powers of local government units. x x x.
>
> x x x x x x x x x
>
> The above-stated provision, however, qualified the exemption of the National Government, its agencies and instrumentalities from local taxation with the phrase "unless otherwise provided herein."
>
> Section 232 of the LGC provides for the power of the local government units (LGUs for brevity) to levy real property tax. x x x.
>
> x x x x x x x x x
>
> Section 234 of the LGC provides for the exemptions from payment of real property taxes and withdraws previous exemptions granted to natural and juridical persons, including government-owned and controlled corporations, except as provided therein. x x x.
>
> x x x x x x x x x
>
> Section 193 of the LGC is the general provision on withdrawal of tax exemption privileges. x x x.[24] (Citations omitted.)

The Court of Appeals went on to state that contrary to the ruling of the Supreme Court in the 2006 MIAA case, it finds and rules that:

> a) Section 133 of the LGC is not an absolute prohibition on the power of the LGUs to tax the National Government, its agencies and instrumentalities as the same is qualified by Sections 193, 232 and 234 which "otherwise provided"; and
>
> b) Petitioner MCIAA is a GOCC.[25] (Emphasis ours.)

The Court of Appeals ratiocinated in the following manner:

> Pursuant to the explicit provision of Section 193 of the LGC, exemptions previously enjoyed by persons, whether natural or juridical, like the petitioner MCIAA, are deemed withdrawn upon the effectivity of the Code. Further, the last paragraph of Section 234 of the Code also unequivocally withdrew, upon the Code's effectivity, exemptions from payment of real property taxes previously granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section. Petitioner MCIAA, undoubtedly a juridical person, it follows that its exemption from such tax granted under Section 14 of R.A. 6958 has been withdrawn.
>
> x x x x x x x x x
>
> From the [1996 MCIAA] ruling, it is acknowledged that, under Section 133 of the LGC, instrumentalities were generally exempt from all forms of local government taxation, unless otherwise provided in the Code. On the other hand, Section 232 "otherwise provided" insofar as it allowed local government units to levy an ad valorem real property tax, irrespective of who owned the property. At the same time, the imposition of real property taxes under Section 232 is, in turn, qualified by the phrase "not hereinafter specifically exempted." The exemptions from real property taxes are enumerated in Section 234 of the Code which specifically states that only real properties owned by the Republic of the Philippines or any of its political subdivisions are exempted from the payment of the tax. Clearly, instrumentalities or GOCCs do not fall within the exceptions under Section 234 of the LGC.
>
> Thus, as ruled in the [1996 MCIAA] case, the prohibition on taxing the national government, its agencies and instrumentalities under Section 133 is qualified by Sections 232 and 234, and accordingly, the only relevant exemption now applicable to these bodies is what is now provided under Section 234(a) of the Code. It may be noted that the express withdrawal of previously granted exemptions to persons from the payment of real property tax by the LGC does not even make any distinction as to whether the exempt person is a governmental entity or not. As Sections 193 and 234 of the Code both state, the withdrawal applies to "all persons, including GOCCs," thus encompassing the two classes of persons recognized under our laws, natural persons and juridical persons.
>
> x x x x x x x x x
>
> The question of whether or not petitioner MCIAA is an instrumentality or a GOCC has already been lengthily but soundly, cogently and lucidly answered in the [1996 MCIAA] case x x x.
>
> x x x x x x x x x
>
> Based on the foregoing, the claim of the majority of the Supreme Court in the [2006 MIAA] case that MIAA (and also petitioner MCIAA) is not a government-owned or controlled corporation but an instrumentality based on Section 2(10) of the Administrative Code of 1987 appears to be unsound. In the [2006 MIAA] case, the majority justifies MIAA's purported exemption on Section 133(o) of the Local Government Code which places agencies and instrumentalities: as generally exempt from the taxation powers of the LGUs. It further went on to hold that "By express mandate of the Local Government Code, local governments cannot impose any kind of tax on national government instrumentalities like the MIAA." x x x.[26] (Citations omitted.)

The Court of Appeals further cited Justice Tinga's dissent in the 2006 MIAA case as well as provisions from petitioner MCIAA's charter to show that petitioner is a GOCC.[27] The Court of Appeals wrote:

> These cited provisions establish the fitness of the petitioner MCIAA to be the subject of legal relations. Under its charter, it has the power to acquire, possess and incur obligations. It also has the power to contract in its own name and to acquire title to movable or immovable property. More importantly, it may likewise exercise powers of a corporation under the Corporation Code. Moreover, based on its own allegation, it even recognized itself as a GOCC when it alleged in its petition for prohibition filed before the lower court that it "is a body corporate organized and existing under Republic Act No. 6958 x x x."
>
> We also find to be not meritorious the assertion of petitioner MCIAA that the respondent city can no longer challenge the tax-exempt character of the properties since it is estopped from doing so when respondent City of Lapu-Lapu, through its former mayor, Ernest H. Weigel, Jr., had long ago conceded that petitioner's properties are exempt from real property tax.
>
> It is not denied by the respondent city that it considered, through its former mayor, Ernest H. Weigel, Jr., petitioner's subject properties, specifically the runway and taxiway, as exempt from taxes. However, as astutely pointed out by the respondent city it "can never be in estoppel, particularly in matters involving taxes. It is a well-known rule that erroneous application and enforcement of the law by public officers do not preclude subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its agents."[28] (Citations omitted.)

The Court of Appeals established the following:

> a) [R]espondent City was able to prove and establish that it has a valid and existing ordinance for the imposition of realty tax against petitioner MCIAA;
>
> b) [T]he imposition and collection of additional levy of 1% Special Education Fund (SEF) is authorized by law, Republic Act No. 5447; and
>
> c) [T]he collection of penalty interest for delinquent taxes is not only authorized by law but is likewise [sanctioned] by respondent City's ordinance.[29]

The Court of Appeals likewise held that respondent City has a valid and existing local tax ordinance, Ordinance No. 44, or the Omnibus Tax Ordinance of Lapu-Lapu City, which provided for the imposition of real property tax. The relevant provision reads:

> Chapter 5 – Tax on Real Property Ownership
>
> Section 25. RATE OF TAX. - A rate of one and one-half (1 ½) percentum shall be collected from owners, executors or administrators of any real estate lying within the territorial jurisdiction of the City of Lapu-Lapu, based on the assessed value as shown in the latest revision.[30]

The Court of Appeals found that even if Ordinance No. 44 was enacted prior to the effectivity of the LGC, it remained in force and effect, citing Section 529 of the LGC and Article 278 of the LGC's Implementing Rules and Regulations.[31]

As regards the Special Education Fund, the Court of Appeals held that respondent City can still collect the additional 1% tax on real property even without an ordinance to this effect, as this is authorized by Republic Act No. 5447, as amended by Presidential Decree No. 464 (the Real Property Tax Code), which does not require an enabling tax ordinance. The Court of Appeals affirmed the RTC's ruling that Republic Act No. 5447 was still in force and effect notwithstanding the passing of the LGC, as the latter only partially repealed the former law. What Section 534 of the LGC repealed was Section 3 a(3) and b(2) of Republic Act No. 5447, and not the entire law

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

that created the Special Education Fund.[32] The repealed provisions referred to allocation of taxes on Virginia type cigarettes and duties on imported leaf tobacco and the percentage remittances to the taxing authority concerned. The Court of Appeals, citing The Commission on Audit of the Province of Cebu v. Province of Cebu,[33] held that "[t]he failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and the old laws."[34] The Court of Appeals quoted the RTC's discussion on this issue, which we reproduce below:

> It may be observed that there is no requirement in RA 7160 that an ordinance be enacted to enable the collection of the additional 1% tax. This is so since R.A. 5447 is still in force and effect, and the declared policy of the government in enacting the law, which is to contribute to the financial support of the goals of education as provided in the Constitution, necessitates the continued and uninterrupted collection of the tax. Considering that this is a tax of far-reaching importance, to require the passage of an ordinance in order that the tax may be collected would be to place the collection of the tax at the option of the local legislature. This would run counter to the declared policy of the government when the SEF was created and the tax imposed.[35]

Regarding the penalty interest, the Court of Appeals found that Section 30 of Ordinance No. 44 of respondent City provided for a penalty surcharge of 25% of the tax due for a given year. Said provision reads:

> Section 30. – PENALTY FOR FAILURE TO PAY TAX. – Failure to pay the tax provided for under this Chapter within the time fixed in Section 27, shall subject the taxpayer to a surcharge of twenty-five percent (25%), without interest.[36]

The Court of Appeals however declared that after the effectivity of the Local Government Code, the respondent City could only collect penalty surcharge up to the extent of 72%, covering a period of three years or 36 months, for the entire delinquent property.[37] This was lower than the 25% per annum surcharge imposed by Ordinance No. 44.[38] The Court of Appeals affirmed the findings of the RTC in the decision quoted below:

> The tax collected under Ordinance No. 44 is within the rates prescribed by RA 7160, though the 25% penalty collected is higher than the 2% allowed under Sec. 255 of the said law which provides:
>
> x x x x x x x x x
>
> This difference does not however detract from the essential enforceability and effectivity of Ordinance No. 44 pursuant to Section 529 of RA No. 7160 and Article 278 of the Implementing Rules and Regulations. The outcome of this disparity is simply that respondent City can only collect an interest of 2% per month on the unpaid tax. Consequently, respondent city will have to [recompute] the petitioner's tax liability.[39]

It is worthy to note that the Court of Appeals nevertheless held that even if it is clear that respondent City has the power to impose real property taxes over petitioner, "it is also evident and categorical that, under Republic Act No. 6958, the properties of petitioner MCIAA may not be conveyed or transferred to any person or entity except to the national government."[40] The relevant provisions of the said law are quoted below:

> Section 4. Functions, Powers and Duties. – The Authority shall have the following functions, powers and duties:
>
> x x x x x x x x x
>
> (e) To acquire, purchase, own, administer, lease, mortgage, sell or otherwise dispose of any land, building, airport facility, or property of whatever kind and nature, whether movable or immovable, or any interest therein: Provided, That any asset located in the Mactan International Airport important to national security shall not be subject to alienation or mortgage by the Authority nor to transfer to any entity other than the

> National Government[.]
>
> Section 13. Borrowing Power. – The Authority may, in accordance with Section 21, Article XII of the Constitution and other existing laws, rules and regulations on local or foreign borrowing, raise funds, either from local or international sources, by way of loans, credit or securities, and other borrowing instruments with the power to create pledges, mortgages and other voluntary liens or encumbrances on any of its assets or properties, subject to the prior approval of the President of the Philippines.
>
> All loans contracted by the Authority under this section, together with all interests and other sums payable in respect thereof, shall constitute a charge upon all the revenues and assets of the Authority and shall rank equally with one another, but shall have priority over any other claim or charge on the revenue and assets of the Authority: Provided, That this provision shall not be construed as a prohibition or restriction on the power of the Authority to create pledges, mortgages and other voluntary liens or encumbrances on any asset or property of the Authority.
>
> The payment of the loans or other indebtedness of the Authority may be guaranteed by the National Government subject to the approval of the President of the Philippines.

The Court of Appeals concluded that "it is clear that petitioner MCIAA is denied by its charter the absolute right to dispose of its property to any person or entity except to the national government and it is not empowered to obtain loans or encumber its property without the approval of the President."[41] The questioned Decision contained the following conclusion:

> With the advent of RA 7160, the Local Government Code, the power to tax is no longer vested exclusively on Congress. LGUs, through its local legislative bodies, are now given direct authority to levy taxes, fees and other charges pursuant to Article X, Section 5 of the 1987 Constitution. And one of the most significant provisions of the LGC is the removal of the blanket inclusion of instrumentalities and agencies of the national government from the coverage of local taxation. The express withdrawal by the Code of previously granted exemptions from realty taxes applied to instrumentalities and government-owned or controlled corporations (GOCCs) such as the petitioner Mactan-Cebu International Airport Authority. Thus, petitioner MCIAA became a taxable person in view of the withdrawal of the realty tax exemption that it previously enjoyed under Section 14 of RA No. 6958 of its charter. As expressed and categorically held in the Mactan case, the removal and withdrawal of tax exemptions previously enjoyed by persons, natural or juridical, are consistent with the State policy to ensure autonomy to local governments and the objective of the Local Government Code that they enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.
>
> However, in the case at bench, petitioner MCIAA's charter expressly bars the alienation or mortgage of its property to any person or entity except to the national government. Therefore, while petitioner MCIAA is a taxable person for purposes of real property taxation, respondent City of Lapu-Lapu is prohibited from seizing, selling and owning these properties by and through a public auction in order to satisfy petitioner MCIAA's tax liability.[42] (Citations omitted.)

In the questioned Resolution that affirmed its questioned Decision, the Court of Appeals denied petitioner's motion for reconsideration based on the following grounds:

> First, the MCIAA case remains the controlling law on the matter as the same is the established precedent; not the MIAA case but the MCIAA case since the former, as keenly pointed out by the respondent City of Lapu-Lapu, has not yet attained finality as there is still yet a pending motion for reconsideration filed with the Supreme Court in the aforesaid case.
>
> Second, and more importantly, the ruling of the Supreme Court in the MIAA case cannot be similarly invoked in the case at bench. The said case cannot be considered as the "law of the case." The "law of the case"

> doctrine has been defined as that principle under which determinations of questions of law will generally be held to govern a case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort. It is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision. It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case. According to said doctrine, whatever has been irrevocably established constitutes the law of the case only as to the same parties in the same case and not to different parties in an entirely different case. Besides, pending resolution of the aforesaid motion for reconsideration in the MIAA case, the latter case has not irrevocably established anything.
>
> Thus, after a thorough and judicious review of the allegations in petitioner's motion for reconsideration, this Court resolves to deny the same as the matters raised therein had already been exhaustively discussed in the decision sought to be reconsidered, and that no new matters were raised which would warrant the modification, much less reversal, thereof.[43] (Emphasis added, citations omitted.)

PETITIONER'S THEORY

Petitioner is before us now claiming that this Court, in the 2006 MIAA case, had expressly declared that petitioner, while vested with corporate powers, is not considered a government-owned or controlled corporation, but is a government instrumentality like the Manila International Airport Authority (MIAA), Philippine Ports Authority (PPA), University of the Philippines, and Bangko Sentral ng Pilipinas (BSP). Petitioner alleges that as a government instrumentality, all its airport lands and buildings are exempt from real estate taxes imposed by respondent City.[44]

Petitioner alleges that Republic Act No. 6958 placed "a limitation on petitioner's administration of its assets and properties" as it provides under Section 4(e) that "any asset in the international airport important to national security cannot be alienated or mortgaged by petitioner or transferred to any entity other than the National Government."[45]

Thus, petitioner claims that the Court of Appeals (Cebu City) gravely erred in disregarding the following:

> I
>
> PETITIONER IS A GOVERNMENT INSTRUMENTALITY AS EXPRESSLY DECLARED BY THE HONORABLE COURT IN THE MIAA CASE. AS SUCH, IT IS EXEMPT FROM PAYING REAL ESTATE TAXES IMPOSED BY RESPONDENT CITY OF LAPU-LAPU.
>
> II
>
> THE PROPERTIES OF PETITIONER CONSISTING OF THE AIRPORT TERMINAL BUILDING, AIRFIELD, RUNWAY, TAXIWAY, INCLUDING THE LOTS ON WHICH THEY ARE SITUATED, ARE EXEMPT FROM REAL PROPERTY TAXES.
>
> III
>
> RESPONDENT CITY OF LAPU-LAPU CANNOT IMPOSE REAL PROPERTY TAX WITHOUT ANY APPROPRIATE ORDINANCE.
>
> IV
>
> RESPONDENT CITY OF LAPU-LAPU CANNOT IMPOSE AN ADDITIONAL 1% TAX FOR THE SPECIAL EDUCATION FUND IN THE ABSENCE OF ANY CORRESPONDING ORDINANCE.
>
> V

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> RESPONDENT CITY OF LAPU-LAPU CANNOT IMPOSE ANY INTEREST SANS ANY ORDINANCE MANDATING ITS IMPOSITION.[46]

Petitioner claims the following similarities with MIAA:

- MCIAA belongs to the same class and performs identical functions as MIAA;

- MCIAA is a public utility like MIAA;

- MIAA was organized to operate the international and domestic airport in Paranaque City for public use, while MCIAA was organized to operate the international and domestic airport in Mactan for public use.

- Both are attached agencies of the Department of Transportation and Communications.[47]

Petitioner compares its charter (Republic Act No. 6958) with that of MIAA (Executive Order No. 903).

Section 3 of Executive Order No. 903 provides:

> Sec. 3. Creation of the Manila International Airport Authority. There is hereby established a body corporate to be known as the Manila International Airport Authority which shall be attached to the Ministry of Transportation and Communications. The principal office of the Authority shall be located at the New Manila International Airport. The Authority may establish such offices, branches, agencies or subsidiaries as it may deem proper and necessary; x x x.

Section 2 of Republic Act No. 6958 reads:

> Section 2. Creation of the Mactan-Cebu International Airport Authority. – There is hereby established a body corporate to be known as the Mactan-Cebu International Airport Authority which shall be attached to the Department of Transportation and Communications. The principal office of the Authority shall be located at the Mactan International Airport, Province of Cebu.
>
> The Authority may have such branches, agencies or subsidiaries as it may deem proper and necessary.

As to MIAA's purposes and objectives, Section 4 of Executive Order No. 903 reads:

> Sec. 4. Purposes and Objectives. The Authority shall have the following purposes and objectives:
>
> (a) To help encourage and promote international and domestic air traffic in the Philippines as a means of making the Philippines a center of international trade and tourism and accelerating the development of the means of transportation and communications in the country;
>
> (b) To formulate and adopt for application in the Airport internationally acceptable standards of airport accommodation and service; and
>
> (c) To upgrade and provide safe, efficient, and reliable airport facilities for international and domestic air travel.

Petitioner claims that the above purposes and objectives are analogous to those enumerated in its charter, specifically Section 3 of Republic Act No. 6958, which reads:

> Section 3. Primary Purposes and Objectives. – The Authority shall principally undertake the economical, efficient and effective control, management and supervision of the Mactan International Airport in the Province of Cebu and the Lahug Airport in Cebu City, hereinafter collectively referred to as the airports, and such other airports as may be established in the Province of Cebu. In addition, it shall have the following objectives:
>
> (a) To encourage, promote and develop international and domestic air traffic in the central Visayas and

Mindanao regions as a means of making the regions centers of international trade and tourism, and accelerating the development of the means of transportation and communications in the country; and

(b) To upgrade the services and facilities of the airports and to formulate internationally acceptable standards of airport accommodation and service.

The powers, functions and duties of MIAA under Section 5 of Executive Order No. 903 are:

Sec. 5. Functions, Powers and Duties. The Authority shall have the following functions, powers and duties:

(a)

To formulate, in coordination with the Bureau of Air Transportation and other appropriate government agencies, a comprehensive and integrated policy and program for the Airport and to implement, review and update such policy and program periodically;

(b)

To control, supervise, construct, maintain, operate and provide such facilities or services as shall be necessary for the efficient functioning of the Airport;

(c)

To promulgate rules and regulations governing the planning, development, maintenance, operation and improvement of the Airport, and to control and/or supervise as may be necessary the construction of any structure or the rendition of any services within the Airport;

(d)

To sue and be sued in its corporate name;

(e)

To adopt and use a corporate seal;

(f)

To succeed by its corporate name;

(g)

To adopt its by-laws, and to amend or repeal the same from time to time;

(h)

To execute or enter into contracts of any kind or nature;

(i)

To acquire, purchase, own, administer, lease, mortgage, sell or otherwise dispose of any land, building, airport facility, or property of whatever kind and nature, whether movable or immovable, or any interest therein;

(j)

To exercise the power of eminent domain in the pursuit of its purposes and objectives;

(k)

To levy, and collect dues, charges, fees or assessments for the use of the Airport premises, works, appliances, facilities or concessions or for any service provided by the Authority, subject to the approval of the Minister of

Transportation and Communications in consultation with the Minister of Finance, and subject further to the provisions of Batas Pambansa Blg. 325 where applicable;

(l)

To invest its idle funds, as it may deem proper, in government securities and other evidences of indebtedness of the government;

(m)

To provide services, whether on its own or otherwise, within the Airport and the approaches thereof, which shall include but shall not be limited to, the following:

(1)

Aircraft movement and allocation of parking areas of aircraft on the ground;

(2)

Loading or unloading of aircrafts;

(3)

Passenger handling and other services directed towards the care, convenience and security of passengers, visitors and other airport users; and

(4)

Sorting, weighing, measuring, warehousing or handling of baggage and goods.

(n)

To perform such other acts and transact such other business, directly or indirectly necessary, incidental or conducive to the attainment of the purposes and objectives of the Authority, including the adoption of necessary measures to remedy congestion in the Airport; and

(o)

To exercise all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order.

Petitioner claims that MCIAA has related functions, powers and duties under Section 4 of Republic Act No. 6958, as shown in the provision quoted below:

Section 4. Functions, Powers and Duties. – The Authority shall have the following functions, powers and duties:

(a) To formulate a comprehensive and integrated development policy and program for the airports and to implement, review and update such policy and program periodically;

(b) To control, supervise, construct, maintain, operate and provide such facilities or services as shall be necessary for the efficient functioning of the airports;

(c) To promulgate rules and regulations governing the planning, development, maintenance, operation and improvement of the airports, and to control and supervise the construction of any structure or the rendition of any service within the airports;

(d) To exercise all the powers of a corporation under the Corporation Code of the Philippines, insofar as those

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> powers are not inconsistent with the provisions of this Act;
>
> (e) To acquire, purchase, own, administer, lease, mortgage, sell or otherwise dispose of any land, building, airport facility, or property of whatever kind and nature, whether movable or immovable, or any interest therein: Provided, That any asset located in the Mactan International Airport important to national security shall not be subject to alienation or mortgage by the Authority nor to transfer to any entity other than the National Government;
>
> (f) To exercise the power of eminent domain in the pursuit of its purposes and objectives;
>
> (g) To levy and collect dues, charges, fees or assessments for the use of airport premises, works, appliances, facilities or concessions, or for any service provided by the Authority;
>
> (h) To retain and appropriate dues, fees and charges collected by the Authority relative to the use of airport premises for such measures as may be necessary to make the Authority more effective and efficient in the discharge of its assigned tasks;
>
> (i) To invest its idle funds, as it may deem proper, in government securities and other evidences of indebtedness; and
>
> (j) To provide services, whether on its own or otherwise, within the airports and the approaches thereof as may be necessary or in connection with the maintenance and operation of the airports and their facilities.

Petitioner claims that like MIAA, it has police authority within its premises, as shown in their respective charters quoted below:

> EO 903, Sec. 6. Police Authority. — The Authority shall have the power to exercise such police authority as may be necessary within its premises to carry out its functions and attain its purposes and objectives, without prejudice to the exercise of functions within the same premises by the Ministry of National Defense through the Aviation Security Command (AVSECOM) as provided in LOI 961: Provided, That the Authority may request the assistance of law enforcement agencies, including request for deputization as may be required. x x x.
>
> R.A. No. 6958, Section 5. Police Authority. – The Authority shall have the power to exercise such police authority as may be necessary within its premises or areas of operation to carry out its functions and attain its purposes and objectives: Provided, That the Authority may request the assistance of law enforcement agencies, including request for deputization as may be required. x x x.

Petitioner pointed out other similarities in the two charters, such as:

1. Both MCIAA and MIAA are covered by the Civil Service Law, rules and regulations (Section 15, Executive Order No. 903; Section 12, Republic Act No. 6958);

2. Both charters contain a proviso on tax exemptions (Section 21, Executive Order No. 903; Section 14, Republic Act No. 6958);

3. Both MCIAA and MIAA are required to submit to the President an annual report generally dealing with their activities and operations (Section 14, Executive Order No. 903; Section 11, Republic Act No. 6958); and

4. Both have borrowing power subject to the approval of the President (Section 16, Executive Order No. 903; Section 13, Republic Act No. 6958).[48]

Petitioner suggests that it is because of its similarity with MIAA that this Court, in the 2006 MIAA case, placed it in the same class as MIAA and considered it as a government instrumentality.

Petitioner submits that since it is also a government instrumentality like MIAA, the following conclusion arrived by the Court in the 2006 MIAA case is also applicable to petitioner:

> Under Section 2(10) and (13) of the Introductory Provisions of the Administrative Code, which governs the legal relation and status of government units, agencies and offices within the entire government machinery, MIAA is a government instrumentality and not a government-owned or controlled corporation. Under Section 133(o) of the Local Government Code, MIAA as a government instrumentality is not a taxable person because it is not subject to "[t]axes, fees or charges of any kind" by local governments. The only exception is when MIAA leases its real property to a "taxable person" as provided in Section 234(a) of the Local Government Code, in which case the specific real property leased becomes subject to real estate tax. Thus, only portions of the Airport Lands and Buildings leased to taxable persons like private parties are subject to real estate tax by the City of Parañaque.
>
> Under Article 420 of the Civil Code, the Airport Lands and Buildings of MIAA, being devoted to public use, are properties of public dominion and thus owned by the State or the Republic of the Philippines. Article 420 specifically mentions "ports x x x constructed by the State," which includes public airports and seaports, as properties of public dominion and owned by the Republic. As properties of public dominion owned by the Republic, there is no doubt whatsoever that the Airport Lands and Buildings are expressly exempt from real estate tax under Section 234(a) of the Local Government Code. This Court has also repeatedly ruled that properties of public dominion are not subject to execution or foreclosure sale.[49] (Emphases added.)

Petitioner insists that its properties consisting of the airport terminal building, airfield, runway, taxiway and the lots on which they are situated are not subject to real property tax because they are actually, solely and exclusively used for public purposes.[50] They are indispensable to the operation of the Mactan International Airport and by their very nature, these properties are exempt from tax. Said properties belong to the State and are merely held by petitioner in trust. As earlier mentioned, petitioner claims that these properties are important to national security and cannot be alienated, mortgaged, or transferred to any entity except the National Government.

Petitioner prays that judgment be rendered:

> a)
>
> Declaring petitioner exempt from paying real property taxes as it is a government instrumentality;
>
> b)
>
> Declaring respondent City of Lapu-Lapu as bereft of any authority to levy and collect the basic real property tax, the additional tax for the SEF and the penalty interest for its failure to pass the corresponding tax ordinances; and
>
> c)
>
> Declaring, in the alternative, the airport lands and buildings of petitioner as exempt from real property taxes as they are used solely and exclusively for public purpose.[51]

In its Consolidated Reply filed through the OSG, petitioner claims that the 2006 MIAA ruling has overturned the 1996 MCIAA ruling. Petitioner cites Justice Dante O. Tinga's dissent in the MIAA ruling, as follows:

> [The] ineluctable conclusion is that the majority rejects the rationale and ruling in Mactan. The majority provides for a wildly different interpretation of Section 133, 193 and 234 of the Local Government Code than that employed by the Court in Mactan. Moreover, the parties in Mactan and in this case are similarly situated, as can be obviously deducted from the fact that both petitioners are airport authorities operating under similarly worded charters. And the fact that the majority cites doctrines contrapuntal to the Local Government Code as in Basco and Maceda evinces an intent to go against the Court's jurisprudential trend adopting the philosophy

> of expanded local government rule under the Local Government Code.
>
> x x x The majority is obviously inconsistent with Mactan and there is no way these two rulings can stand together. Following basic principles in statutory construction, Mactan will be deemed as giving way to this new ruling.
>
> x x x x x x x x x
>
> There is no way the majority can be justified unless Mactan is overturned. The MCIAA and the MIAA are similarly situated. They are both, as will be demonstrated, GOCCs, commonly engaged in the business of operating an airport. They are the owners of airport properties they respectively maintain and hold title over these properties in their name. These entities are both owned by the State, and denied by their respective charters the absolute right to dispose of their properties without prior approval elsewhere. Both of them are not empowered to obtain loans or encumber their properties without prior approval the prior approval of the President.[52] (Citations omitted.)

Petitioner likewise claims that the enactment of Ordinance No. 070-2007 is an admission on respondent City's part that it must have a tax measure to be able to impose a tax or special assessment. Petitioner avers that assuming that it is a non-exempt entity or that its airport lands and buildings are not exempt, it was only upon the effectivity of Ordinance No. 070-2007 on January 1, 2008 that respondent City could properly impose the basic real property tax, the additional tax for the SEF, and the interest in case of nonpayment.[53]

Petitioner filed its Memorandum[54] on June 17, 2009.

RESPONDENTS' THEORY

In their Comment,[55] respondents point out that petitioner partially moved for a reconsideration of the questioned Decision only as to the issue of whether petitioner is a GOCC or not. Thus, respondents declare that the other portions of the questioned decision had already attained finality and ought not to be placed in issue in this petition for certiorari. Thus, respondents discussed the other issues raised by petitioner with reservation as to this objection.

Respondents summarized the issues and the grounds relied upon as follows:

> STATEMENT OF THE ISSUES
>
> WHETHER OR NOT PETITIONER IS A GOVERNMENT INSTRUMENTALITY EXEMPT FROM PAYING REAL PROPERTY TAXES
>
> WHETHER OR NOT RESPONDENT CITY CAN [IMPOSE] REALTY TAX, SPECIAL EDUCATION FUND AND PENALTY INTEREST
>
> WHETHER OR NOT THE AIRPORT TERMINAL BUILDING, AIRFIELD, RUNWAY, TAXIWAY INCLUDING THE LOTS ON WHICH THEY ARE SITUATED ARE EXEMPT FROM REALTY TAXES
>
> GROUNDS RELIED UPON
>
> - PETITIONER IS A GOCC HENCE NOT EXEMPT FROM REALTY TAXES
>
> - TERMINAL BUILDING, RUNWAY, TAXIWAY ARE NOT EXEMPT FROM REALTY TAXES
>
> - ESTOPPEL DOES NOT LIE AGAINST GOVERNMENT
>
> - CITY CAN COLLECT REALTY TAX AND INTEREST
>
> - CITY CAN COLLECT SEF

- MCIAA HAS NOT SHOWN ANY IRREPARABLE INJURY WARRANTING INJUNCTIVE RELIEF

- MCIAA HAS NOT COMPLIED WITH PROVISION OF THE LGC[56]

Respondents claim that "the mere mention of MCIAA in the MIAA v. [Court of Appeals] case does not make it the controlling case on the matter."[57] Respondents further claim that the 1996 MCIAA case where this Court held that petitioner is a GOCC is the controlling jurisprudence. Respondents point out that petitioner and MIAA are two very different entities. Respondents argue that petitioner is a GOCC contrary to its assertions, based on its Charter and on DOJ Opinion No. 50.

Respondents contend that if petitioner is not a GOCC but an instrumentality of the government, still the following statement in the 1996 MCIAA case applies:

> Besides, nothing can prevent Congress from decreeing that even instrumentalities or agencies of the Government performing governmental functions may be subject to tax. Where it is done precisely to fulfill a constitutional mandate and national policy, no one can doubt its wisdom.[58]

Respondents argue that MCIAA properties such as the terminal building, taxiway and runway are not exempt from real property taxation. As discussed in the 1996 MCIAA case, Section 234 of the LGC omitted GOCCs such as MCIAA from entities enjoying tax exemptions. Said decision also provides that the transfer of ownership of the land to petitioner was absolute and petitioner cannot evade payment of taxes.[59]

Even if the following issues were not raised by petitioner in its motion for reconsideration of the questioned Decision, and thus the ruling pertaining to these issues in the questioned decision had become final, respondents still discussed its side over its objections as to the propriety of bringing these up before this Court.

1. Estoppel does not lie against the government.

2. Respondent City can collect realty taxes and interest.

- Based on the Local Government Code (Sections 232, 233, 255) and its IRR (Sections 241, 247).

- The City of Lapu-Lapu passed in 1980 Ordinance No. 44, or the Omnibus Tax Ordinance, wherein the imposition of real property tax was made. This Ordinance was in force and effect by virtue of Article 278 of the IRR of Republic Act No. 7160.[60]

- Ordinance No. 070-2007, known as the Revised Lapu-Lapu City Revenue Code, imposed real property taxes, special education fund and further provided for the payment of interest and surcharges. Thus, the issue is passé and is moot and academic.

3. Respondent City can collect Special Education Fund.

- The LGC does not require the enactment of an ordinance for the collection of the SEF.

- Congress did not entirely repeal the SEF law, hence, its levy, imposition and collection need not be covered by ordinance. Besides, the City has enacted the Revenue Code containing provisions for the levy and collection of the SEF.[61]

Furthermore, respondents aver that:

1. Collection of taxes is beyond the ambit of injunction.

- Respondents contend that the petition only questions the denial of the writ of preliminary injunction by the RTC and the Court of Appeals. Petitioner failed to show irreparable injury.

- Comparing the alleged damage that may be caused petitioner and the direct affront and challenge against the power to tax, which is an attribute of sovereignty, it is but appropriate that injunctive relief should be denied.

2. Petitioner did not comply with LGC provisions on payment under protest.

- Petitioner should have protested the tax imposition as provided in Article 285 of the IRR of Republic Act No. 7160. Section 252 of Republic Act No. 7160[62] requires that the taxpayer's protest can only be entertained if the tax is first paid under protest.[63]

Respondents submitted their Memorandum[64] on June 30, 2009, wherein they allege that the 1996 MCIAA case is still good law, as shown by the following cases wherein it was quoted:

- National Power Corporation v. Local Board of Assessment Appeals of Batangas [545 Phil. 92 (2007)];

- Mactan-Cebu International Airport Authority v. Urgello [549 Phil. 302 (2007)];

- Quezon City v. ABS-CBN Broadcasting Corporation [588 Phil. 785 (2008)]; and

- The City of Iloilo v. Smart Communications, Inc. [599 Phil. 492 (2009)].

Respondents assert that the constant reference to the 1996 MCIAA case "could hardly mean that the doctrine has breathed its last" and that the 1996 MCIAA case stands as precedent and is controlling on petitioner MCIAA.[65]

Respondents allege that the issue for consideration is whether it is proper for petitioner to raise the issue of whether it is not liable to pay real property taxes, special education fund (SEF), interests and/or surcharges.[66] Respondents argue that the Court of Appeals was correct in declaring petitioner liable for realty taxes, etc., on the terminal building, taxiway, and runway. Respondent City relies on the following grounds:

> - The case of MCIAA v. Marcos, et al., is controlling on petitioner MCIAA;
>
> - MCIAA is a corporation;
>
> - Section 133 in relation to Sections 232 and 234 of the Local Government Code of 1991 authorizes the collection of real property taxes (etc.) from MCIAA;
>
> - Terminal Building, Runway & Taxiway are not of the Public Dominion and are not exempt from realty taxes, special education fund and interest;
>
> - Respondent City can collect realty tax, interest/surcharge, and Special Education Fund from MCIAA; [and]
>
> - Estoppel does not lie against the government.[67]

THIS COURT'S RULING

The petition has merit. The petitioner is an instrumentality of the government; thus, its properties actually, solely and exclusively used for public purposes, consisting of the airport terminal building, airfield, runway, taxiway and the lots on which they are situated, are not subject to real property tax and respondent City is not justified in collecting taxes from petitioner over said properties.

DISCUSSION

The Court of Appeals (Cebu City) erred in declaring that the 1996 MCIAA case still controls and that petitioner is a GOCC. The 2006 MIAA case governs.

The Court of Appeals' reliance on the 1996 MCIAA case is misplaced and its staunch refusal to apply the 2006

MIAA case is patently erroneous. The Court of Appeals, finding for respondents, refused to apply the ruling in the 2006 MIAA case on the premise that the same had not yet reached finality, and that as far as MCIAA is concerned, the 1996 MCIAA case is still good law.[68]

While it is true, as respondents allege, that the 1996 MCIAA case was cited in a long line of cases,[69] still, in 2006, the Court en banc decided a case that in effect reversed the 1996 Mactan ruling. The 2006 MIAA case had, since the promulgation of the questioned Decision and Resolution, reached finality and had in fact been either affirmed or cited in numerous cases by the Court.[70] The decision became final and executory on November 3, 2006.[71] Furthermore, the 2006 MIAA case was decided by the Court en banc while the 1996 MCIAA case was decided by a Division. Hence, the 1996 MCIAA case should be read in light of the subsequent and unequivocal ruling in the 2006 MIAA case.

To recall, in the 2006 MIAA case, we held that MIAA's airport lands and buildings are exempt from real estate tax imposed by local governments; that it is not a GOCC but an instrumentality of the national government, with its real properties being owned by the Republic of the Philippines, and these are exempt from real estate tax. Specifically referring to petitioner, we stated as follows:

> Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.[72] (Emphases ours.)

In the 2006 MIAA case, the issue before the Court was "whether the Airport Lands and Buildings of MIAA are exempt from real estate tax under existing laws."[73] We quote the extensive discussion of the Court that led to its finding that MIAA's lands and buildings were exempt from real estate tax imposed by local governments:

> First, MIAA is not a government-owned or controlled corporation but an instrumentality of the National Government and thus exempt from local taxation. Second, the real properties of MIAA are owned by the Republic of the Philippines and thus exempt from real estate tax.
>
> 1. MIAA is Not a Government-Owned or Controlled Corporation
>
> x x x x x x x x x
>
> There is no dispute that a government-owned or controlled corporation is not exempt from real estate tax. However, MIAA is not a government-owned or controlled corporation. Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a government-owned or controlled corporation as follows:
> SEC. 2. General Terms Defined. - x x x
>
> (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x.

A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." MIAA

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares. x x x

x x x x x x x x x

Clearly, under its Charter, MIAA does not have capital stock that is divided into shares.

Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." A non-stock corporation must have members. Even if we assume that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.

Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers." MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "instrumentality" as follows:

> SEC. 2. General Terms Defined. - x x x
>
> (10) Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. x x x.

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers. Thus, MIAA exercises the governmental powers of eminent domain, police authority and the levying of fees and charges. At the same time, MIAA exercises "all the powers of a corporation under the Corporation Law, insofar as these powers are not inconsistent with the provisions of this Executive Order."

Likewise, when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework. The MIAA Charter expressly states that transforming MIAA into a "separate and autonomous body" will make its operation more "financially viable."

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned

or controlled corporation. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not government-owned or controlled corporations in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.[74] (Emphases ours, citations omitted.)

The Court in the 2006 MIAA case went on to discuss the limitation on the taxing power of the local governments as against the national government or its instrumentality:

> A government instrumentality like MIAA falls under Section 133(o) of the Local Government Code, which states:
> SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> x x x x x x x x x
>
> (o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities and local government units. x x x.

Section 133(o) recognizes the basic principle that local governments cannot tax the national government, which historically merely delegated to local governments the power to tax. While the 1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power "subject to such guidelines and limitations as the Congress may provide."

When local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation. This rule applies with greater force when local governments seek to tax national government instrumentalities.

Another rule is that a tax exemption is strictly construed against the taxpayer claiming the exemption. However, when Congress grants an exemption to a national government instrumentality from local taxation, such exemption is construed liberally in favor of the national government instrumentality. x x x.

x x x x x x x x x

There is, moreover, no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another.

There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations. There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments.

Thus, Section 133 of the Local Government Code states that "unless otherwise provided" in the Code, local governments cannot tax national government instrumentalities. x x x.[75] (Emphases ours, citations omitted.)

The Court emphasized that the airport lands and buildings of MIAA are owned by the Republic and belong to the public domain. The Court said:

> The Airport Lands and Buildings of MIAA are property of public dominion and therefore owned by the State or the Republic of the Philippines. x x x.
>
> x x x x x x x x x
>
> No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code, like "roads, canals, rivers, torrents, ports and bridges constructed by the State," are owned by the State. The term "ports" includes seaports and airports. The MIAA Airport Lands and Buildings constitute a "port" constructed by the State. Under Article 420 of the Civil Code, the MIAA Airport Lands and Buildings are properties of public dominion and thus owned by the State or the Republic of the Philippines.
>
> The Airport Lands and Buildings are devoted to public use because they are used by the public for international and domestic travel and transportation. The fact that the MIAA collects terminal fees and other charges from the public does not remove the character of the Airport Lands and Buildings as properties for public use. x x x.
>
> x x x x x x x x x
>
> The terminal fees MIAA charges to passengers, as well as the landing fees MIAA charges to airlines, constitute the bulk of the income that maintains the operations of MIAA. The collection of such fees does not change the character of MIAA as an airport for public use. Such fees are often termed user's tax. This means taxing those among the public who actually use a public facility instead of taxing all the public including those who never use the particular public facility. A user's tax is more equitable - a principle of taxation mandated in the 1987 Constitution.
>
> The Airport Lands and Buildings of MIAA x x x are properties of public dominion because they are intended for public use. As properties of public dominion, they indisputably belong to the State or the Republic of the Philippines.[76] (Emphases supplied, citations omitted.)

The Court also held in the 2006 MIAA case that airport lands and buildings are outside the commerce of man.

> As properties of public dominion, the Airport Lands and Buildings are outside the commerce of man. The Court has ruled repeatedly that properties of public dominion are outside the commerce of man. As early as 1915, this Court already ruled in Municipality of Cavite v. Rojas that properties devoted to public use are outside the commerce of man, thus:
>
> x x x x x x x x x
>
> The Civil Code, Article 1271, prescribes that everything which is not outside the commerce of man may be the object of a contract, x x x.
>
> x x x x x x x x x
>
> The Court has also ruled that property of public dominion, being outside the commerce of man, cannot be the subject of an auction sale.
>
> Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale. This will happen if the City of Parañaque can foreclose and compel the auction sale of the 600-hectare runway of the MIAA for non-payment of real estate tax.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> Before MIAA can encumber the Airport Lands and Buildings, the President must first withdraw from public use the Airport Lands and Buildings. x x x.
>
> x x x x x x x x x
>
> Thus, unless the President issues a proclamation withdrawing the Airport Lands and Buildings from public use, these properties remain properties of public dominion and are inalienable. Since the Airport Lands and Buildings are inalienable in their present status as properties of public dominion, they are not subject to levy on execution or foreclosure sale. As long as the Airport Lands and Buildings are reserved for public use, their ownership remains with the State or the Republic of the Philippines.
>
> The authority of the President to reserve lands of the public domain for public use, and to withdraw such public use, is reiterated in Section 14, Chapter 4, Title I, Book III of the Administrative Code of 1987, which states:
> SEC. 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;

x x x x x x x x x

There is no question, therefore, that unless the Airport Lands and Buildings are withdrawn by law or presidential proclamation from public use, they are properties of public dominion, owned by the Republic and outside the commerce of man.[77]

Thus, the Court held that MIAA is "merely holding title to the Airport Lands and Buildings in trust for the Republic. [Under] Section 48, Chapter 12, Book I of the Administrative Code [which] allows instrumentalities like MIAA to hold title to real properties owned by the Republic."[78]

The Court in the 2006 MIAA case cited Section 234(a) of the Local Government Code and held that said provision exempts from real estate tax any "[r]eal property owned by the Republic of the Philippines."[79] The Court emphasized, however, that "portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax." The Court further held:

> This exemption should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fees or charges of any kind on the National Government, its agencies and instrumentalities x x x." The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government. The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.
>
> The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption. Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the "beneficial use thereof has been granted, for consideration or otherwise, to a taxable person." MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax.
>
> However, portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a

> consideration to a taxable person and therefore such land area is subject to real estate tax. x x x.[80]

Significantly, the Court reiterated the above ruling and applied the same reasoning in Manila International Airport Authority v. City of Pasay,[81] thus:

> The only difference between the 2006 MIAA case and this case is that the 2006 MIAA case involved airport lands and buildings located in Parañaque City while this case involved airport lands and buildings located in Pasay City. The 2006 MIAA case and this case raised the same threshold issue: whether the local government can impose real property tax on the airport lands, consisting mostly of the runways, as well as the airport buildings, of MIAA. x x x.
>
> x x x x x x x x x
>
> The definition of "instrumentality" under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987 uses the phrase "includes x x x government-owned or controlled corporations" which means that a government "instrumentality" may or may not be a "government-owned or controlled corporation." Obviously, the term government "instrumentality" is broader than the term "government-owned or controlled corporation." x x x.
>
> x x x x x x x x x
>
> The fact that two terms have separate definitions means that while a government "instrumentality" may include a "government-owned or controlled corporation," there may be a government "instrumentality" that will not qualify as a "government-owned or controlled corporation."
>
> A close scrutiny of the definition of "government-owned or controlled corporation" in Section 2(13) will show that MIAA would not fall under such definition. MIAA is a government "instrumentality" that does not qualify as a "government-owned or controlled corporation." x x x.
>
> x x x x x x x x x
>
> Thus, MIAA is not a government-owned or controlled corporation but a government instrumentality which is exempt from any kind of tax from the local governments. Indeed, the exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code. Under Section 133(o) of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the MIAA. Hence, MIAA is not liable to pay real property tax for the NAIA Pasay properties.
>
> Furthermore, the airport lands and buildings of MIAA are properties of public dominion intended for public use, and as such are exempt from real property tax under Section 234(a) of the Local Government Code. However, under the same provision, if MIAA leases its real property to a taxable person, the specific property leased becomes subject to real property tax. In this case, only those portions of the NAIA Pasay properties which are leased to taxable persons like private parties are subject to real property tax by the City of Pasay. (Emphases added, citations omitted.)

The Court not only mentioned petitioner MCIAA as similarly situated as MIAA. It also mentioned several other government instrumentalities, among which was the Philippine Fisheries Development Authority. Thus, applying the 2006 MIAA ruling, the Court, in Philippine Fisheries Development Authority v. Court of Appeals,[82] held:

> On the basis of the parameters set in the MIAA case, the Authority should be classified as an instrumentality of the national government. As such, it is generally exempt from payment of real property tax, except those portions which have been leased to private entities.
>
> In the MIAA case, petitioner Philippine Fisheries Development Authority was cited as among the instrumentalities of the national government. x x x.

x x x x x x x x x

Indeed, the Authority is not a GOCC but an instrumentality of the government. The Authority has a capital stock but it is not divided into shares of stocks. Also, it has no stockholders or voting shares. Hence, it is not a stock corporation. Neither [is it] a non-stock corporation because it has no members.

The Authority is actually a national government instrumentality which is defined as an agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.

Thus, the Authority which is tasked with the special public function to carry out the government's policy "to promote the development of the country's fishing industry and improve the efficiency in handling, preserving, marketing, and distribution of fish and other aquatic products," exercises the governmental powers of eminent domain, and the power to levy fees and charges. At the same time, the Authority exercises "the general corporate powers conferred by laws upon private and government-owned or controlled corporations."

x x x x x x x x x

In light of the foregoing, the Authority should be classified as an instrumentality of the national government which is liable to pay taxes only with respect to the portions of the property, the beneficial use of which were vested in private entities. When local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation. This rule applies with greater force when local governments seek to tax national government instrumentalities.

Thus, the real property tax assessments issued by the City of Iloilo should be upheld only with respect to the portions leased to private persons. In case the Authority fails to pay the real property taxes due thereon, said portions cannot be sold at public auction to satisfy the tax delinquency. x x x.

x x x x x x x x x

In sum, the Court finds that the Authority is an instrumentality of the national government, hence, it is liable to pay real property taxes assessed by the City of Iloilo on the IFPC only with respect to those portions which are leased to private entities. Notwithstanding said tax delinquency on the leased portions of the IFPC, the latter or any part thereof, being a property of public domain, cannot be sold at public auction. This means that the City of Iloilo has to satisfy the tax delinquency through means other than the sale at public auction of the IFPC. (Citations omitted.)

Another government instrumentality specifically mentioned in the 2006 MIAA case was the Philippine Ports Authority (PPA). Hence, in Curata v. Philippine Ports Authority,[83] the Court held that the PPA is similarly situated as MIAA, and ruled in this wise:

This Court's disquisition in Manila International Airport Authority v. Court of Appeals – ruling that MIAA is not a government-owned and/or controlled corporation (GOCC), but an instrumentality of the National Government and thus exempt from local taxation, and that its real properties are owned by the Republic of the Philippines — is instructive. x x x. These findings are squarely applicable to PPA, as it is similarly situated as MIAA. First, PPA is likewise not a GOCC for not having shares of stocks or members. Second, the docks, piers and buildings it administers are likewise owned by the Republic and, thus, outside the commerce of man. Third, PPA is a mere trustee of these properties. Hence, like MIAA, PPA is clearly a government

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> instrumentality, an agency of the government vested with corporate powers to perform efficiently its governmental functions.
>
> Therefore, an undeniable conclusion is that the funds of PPA partake of government funds, and such may not be garnished absent an allocation by its Board or by statutory grant. If the PPA funds cannot be garnished and its properties, being government properties, cannot be levied via a writ of execution pursuant to a final judgment, then the trial court likewise cannot grant discretionary execution pending appeal, as it would run afoul of the established jurisprudence that government properties are exempt from execution. What cannot be done directly cannot be done indirectly. (Citations omitted.)

In Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila[84] the Court found that the GSIS was also a government instrumentality and not a GOCC, applying the 2006 MIAA case even though the GSIS was not among those specifically mentioned by the Court as similarly situated as MIAA. The Court said:

> GSIS an instrumentality of the National Government
>
> Apart from the foregoing consideration, the Court's fairly recent ruling in Manila International Airport Authority v. Court of Appeals, a case likewise involving real estate tax assessments by a Metro Manila city on the real properties administered by MIAA, argues for the non-tax liability of GSIS for real estate taxes. x x x.
>
> x x x x x x x x x
>
> While perhaps not of governing sway in all fours inasmuch as what were involved in Manila International Airport Authority, e.g., airfields and runways, are properties of the public dominion and, hence, outside the commerce of man, the rationale underpinning the disposition in that case is squarely applicable to GSIS, both MIAA and GSIS being similarly situated. First, while created under CA 186 as a non-stock corporation, a status that has remained unchanged even when it operated under PD 1146 and RA 8291, GSIS is not, in the context of the aforequoted Sec. 193 of the LGC, a GOCC following the teaching of Manila International Airport Authority, for, like MIAA, GSIS's capital is not divided into unit shares. Also, GSIS has no members to speak of. And by members, the reference is to those who, under Sec. 87 of the Corporation Code, make up the non-stock corporation, and not to the compulsory members of the system who are government employees. Its management is entrusted to a Board of Trustees whose members are appointed by the President.
>
> Second, the subject properties under GSIS's name are likewise owned by the Republic. The GSIS is but a mere trustee of the subject properties which have either been ceded to it by the Government or acquired for the enhancement of the system. This particular property arrangement is clearly shown by the fact that the disposal or conveyance of said subject properties are either done by or through the authority of the President of the Philippines. x x x. (Emphasis added, citations omitted.)

All the more do we find that petitioner MCIAA, with its many similarities to the MIAA, should be classified as a government instrumentality, as its properties are being used for public purposes, and should be exempt from real estate taxes. This is not to derogate in any way the delegated authority of local government units to collect realty taxes, but to uphold the fundamental doctrines of uniformity in taxation and equal protection of the laws, by applying all the jurisprudence that have exempted from said taxes similar authorities, agencies, and instrumentalities, whether covered by the 2006 MIAA ruling or not.

To reiterate, petitioner MCIAA is vested with corporate powers but it is not a stock or non-stock corporation, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation. Like MIAA, petitioner MCIAA has capital under its charter but it is not divided into shares of stock. It also has no stockholders or voting shares. Republic Act No. 6958 provides:

> Section 9. Capital. – The [Mactan-Cebu International Airport] Authority shall have an authorized capital stock

> equal to and consisting of:
>
> (a) The value of fixed assets (including airport facilities, runways and equipment) and such other properties, movable and immovable, currently administered by or belonging to the airports as valued on the date of the effectivity of this Act;
>
> (b) The value of such real estate owned and/or administered by the airports; and
>
> (c) Government contribution in such amount as may be deemed an appropriate initial balance. Such initial amount, as approved by the President of the Philippines, which shall be more or less equivalent to six (6) months working capital requirement of the Authority, is hereby authorized to be appropriated in the General Appropriations Act of the year following its enactment into law.
>
> Thereafter, the government contribution to the capital of the Authority shall be provided for in the General Appropriations Act.

Like in MIAA, the airport lands and buildings of MCIAA are properties of public dominion because they are intended for public use. As properties of public dominion, they indisputably belong to the State or the Republic of the Philippines, and are outside the commerce of man. This, unless petitioner leases its real property to a taxable person, the specific property leased becomes subject to real property tax; in which case, only those portions of petitioner's properties which are leased to taxable persons like private parties are subject to real property tax by the City of Lapu-Lapu.

We hereby adopt and apply to petitioner MCIAA the findings and conclusions of the Court in the 2006 MIAA case, and we quote:

> To summarize, MIAA is not a government-owned or controlled corporation under Section 2(13) of the Introductory Provisions of the Administrative Code because it is not organized as a stock or non-stock corporation. Neither is MIAA a government-owned or controlled corporation under Section 16, Article XII of the 1987 Constitution because MIAA is not required to meet the test of economic viability. MIAA is a government instrumentality vested with corporate powers and performing essential public services pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. As a government instrumentality, MIAA is not subject to any kind of tax by local governments under Section 133(o) of the Local Government Code. The exception to the exemption in Section 234(a) does not apply to MIAA because MIAA is not a taxable entity under the Local Government Code. Such exception applies only if the beneficial use of real property owned by the Republic is given to a taxable entity.
>
> Finally, the Airport Lands and Buildings of MIAA are properties devoted to public use and thus are properties of public dominion. Properties of public dominion are owned by the State or the Republic. x x x.
>
> x x x x x x x x x
>
> The term "ports x x x constructed by the State" includes airports and seaports. The Airport Lands and Buildings of MIAA are intended for public use, and at the very least intended for public service. Whether intended for public use or public service, the Airport Lands and Buildings are properties of public dominion. As properties of public dominion, the Airport Lands and Buildings are owned by the Republic and thus exempt from real estate tax under Section 234(a) of the Local Government Code.
>
> 4. Conclusion
>
> Under Section 2(10) and (13) of the Introductory Provisions of the Administrative Code, which governs the legal relation and status of government units, agencies and offices within the entire government machinery, MIAA is a government instrumentality and not a government-owned or controlled corporation. Under Section 133(o) of the Local Government Code, MIAA as a government instrumentality is not a taxable person because

> it is not subject to "[t]axes, fees or charges of any kind" by local governments. The only exception is when MIAA leases its real property to a "taxable person" as provided in Section 234(a) of the Local Government Code, in which case the specific real property leased becomes subject to real estate tax. Thus, only portions of the Airport Lands and Buildings leased to taxable persons like private parties are subject to real estate tax by the City of Parañaque.
>
> Under Article 420 of the Civil Code, the Airport Lands and Buildings of MIAA, being devoted to public use, are properties of public dominion and thus owned by the State or the Republic of the Philippines. Article 420 specifically mentions "ports x x x constructed by the State," which includes public airports and seaports, as properties of public dominion and owned by the Republic. As properties of public dominion owned by the Republic, there is no doubt whatsoever that the Airport Lands and Buildings are expressly exempt from real estate tax under Section 234(a) of the Local Government Code. This Court has also repeatedly ruled that properties of public dominion are not subject to execution or foreclosure sale.[85] (Emphases added.)

WHEREFORE, we hereby GRANT the petition. We REVERSE and SET ASIDE the Decision dated October 8, 2007 and the Resolution dated February 12, 2008 of the Court of Appeals (Cebu City) in CA-G.R. SP No. 01360. Accordingly, we DECLARE:

- Petitioner's properties that are actually, solely and exclusively used for public purpose, consisting of the airport terminal building, airfield, runway, taxiway and the lots on which they are situated, EXEMPT from real property tax imposed by the City of Lapu-Lapu.

- VOID all the real property tax assessments, including the additional tax for the special education fund and the penalty interest, as well as the final notices of real property tax delinquencies, issued by the City of Lapu-Lapu on petitioner's properties, except the assessment covering the portions that petitioner has leased to private parties.

- NULL and VOID the sale in public auction of 27 of petitioner's properties and the eventual forfeiture and purchase of the said properties by respondent City of Lapu-Lapu. We likewise declare VOID the corresponding Certificates of Sale of Delinquent Property issued to respondent City of Lapu-Lapu.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Perez, and Perlas-Bernabe, JJ., concur.

---

[1] Rollo, pp. 91-131; penned by Associate Justice Isaias P. Dicdican with Associate Justices Francisco P. Acosta and Stephen C. Cruz, concurring.

[2] Id. at 132-134.

[3] An Act Creating the Mactan-Cebu International Airport Authority, Transferring Existing Assets of the Mactan International Airport and the Lahug Airport to the Authority, Vesting the Authority With Power to Administer and Operate the Mactan International Airport and the Lahug Airport, And For Other Purposes.

[4] 330 Phil. 392, 414 (1996).

[5] Rollo, p. 59.

[6] Id. at 59-60.

[7] Id. at 60.

[8] Id. at 135-138.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[9] Id. at 139-141.

[10] Id. at 142-162.

[11] Id. at 163-172.

[12] Id. at 201-229.

[13] Id. at 64.

[14] Id. at 280-281.

[15] Id. at 298-301.

[16] Id. at 302-333.

[17] Id. at 334-335.

[18] Id. at 374-376.

[19] Id. at 130.

[20] Id. at 456-466.

[21] 528 Phil. 181 (2006).

[22] Rollo, p. 462.

[23] Id. at 100.

[24] Id. at 101-103.

[25] Id. at 108.

[26] Id. at 108-115.

[27] Id. at 115-118.

[28] Id. at 118-119.

[29] Id. at 119-120.

[30] CA rollo, p. 452.

[31] Section 529. Tax Ordinances or Revenue Measure. – All existing tax ordinances or revenue measures of local government units shall continue to be in force and effect after the effectivity of this Code unless amended by the sanggunian concerned, or inconsistent with, or in violation of, the provisions of this Code.

ARTICLE 278. Existing Tax Ordinances or Revenue Measures. — (a) All existing tax ordinances or revenue measures of provinces, cities, municipalities, and barangays imposing taxes, fees, or charges shall continue to be in force and effect after the effectivity of the Code, except those imposing levies on tax bases or tax subjects which are no longer within the taxing and revenue-raising powers of the LGU concerned and where the rates levied in the tax ordinance are higher than the taxes, fees, or charges prescribed in this Rule in which case, the lower rates shall be collected.

(b) In case of failure of the sanggunian to amend or revoke tax ordinances or revenue measures inconsistent with, or in violation of the provisions of this Rule, the same shall be deemed rescinded upon the effectivity of the Code and these Rules.

[32] Rollo, pp. 121-122.

[33] 422 Phil. 519 (2001).

[34] Rollo, p. 123.

[35] Id. at 300.

[36] CA rollo, p. 453.

[37] This is the Court of Appeals' interpretation of the following provisions of the LGC and its IRR:

LGC, Section 255. Interests on Unpaid Real Property Tax. - In case of failure to pay the basic real property tax or any other tax levied under this Title upon the expiration of the periods as provided in Section 250, or when due, as the case may be, shall subject the taxpayer to the payment of interest at the rate of two percent (2%) per month on the unpaid amount or a fraction thereof, until the delinquent tax shall have been fully paid: Provided, however, That in no case shall the total interest on the unpaid tax or portion thereof exceed thirty-six (36) months.

IRR of RA 7160, ARTICLE 278. Existing Tax Ordinances or Revenue Measures. — (a) All existing tax ordinances or revenue measures of provinces, cities, municipalities, and barangays imposing taxes, fees, or charges shall continue to be in force and effect after the effectivity of the Code, except those imposing levies on tax bases or tax subjects which are no longer within the taxing and revenue-raising powers of the LGU concerned and where the rates levied in the tax ordinance are higher than the taxes, fees, or charges prescribed in this Rule in which case, the lower rates shall be collected.

(b) In case of failure of the sanggunian to amend or revoke tax ordinances or revenue measures inconsistent with, or in violation of the provisions of this Rule, the same shall be deemed rescinded upon the effectivity of the Code and these Rules.

[38] Rollo, pp. 124-125.

[39] Id. at 125-126.

[40] Id. at 126.

[41] Id. at 127.

[42] Id. at 129-130.

[43] Id. at 133-134.

[44] Id. at 55-56.

[45] Id. at 58.

[46] Id. at 68.

[47] Id. at 69.

[48] Id. at 75.

[49] Manila International Airport Authority v. Court of Appeals, supra note 21 at 241.

[50] Rollo, p. 77.

[51] Id. at 86.

[52] Manila International Airport Authority v. Court of Appeals, Tinga, J., Dissent. Supra note 21 at 259-262.

[53] Rollo, p. 556.

[54] Id. at 572-608.

[55] Id. at 508-527.

[56] Id. at 515.

[57] Id. at 516.

[58] Mactan-Cebu International Airport Authority v. Marcos, supra note 4 at 419-420.

[59] Rollo, p. 519.

[60] The respondents further argued:

Hence, assuming arguendo that the provisions of RA 7160 are not self-executory in so far as realty taxes and its surcharges are concerned, and further granting without admitting that the City needs an enabling ordinance, the foregoing provision clearly shows that the City has all the right to impose and collect the taxes sought for payment. (Rollo, p. 522.)

[61] Rollo, pp. 519-524.

[62] Section 252. Payment Under Protest. - (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

> [Petitioner disregarded the aforesaid provision of law thereby depriving the courts from exercising jurisdiction over the matter in view of Section 267 of RA 7160 which states:
>
> Section 267. Action Assailing Validity of Tax Sale. - No court shall entertain any action assailing the validity of any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.]

[63] Rollo, pp. 524-526.

[64] Id. at 614-652.

[65] Id. at 616.

[66] Id. at 622.

[67] Id. at 623.

[68] In the 1996 MCIAA case, the Court held that Section 234 of Republic Act No. 7610, or the Local Government Code (LGC), "unequivocally withdrew, upon the effectivity of the LGC, exemptions from payment of real property taxes granted to natural or juridical persons, including government-owned or controlled corporations, except as provided in the said section, and the petitioner is, undoubtedly, a government-owned corporation, it necessarily follows that its exemption from such tax granted it in Section 14 of its Charter, R.A.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

No. 6958, has been withdrawn." (Mactan-Cebu International Airport Authority v. Marcos, supra note 4 at 414.)

[69] See City Government of San Pablo, Laguna v. Reyes, 364 Phil. 842 (1999); Manila Electric Company v. Province of Laguna, 366 Phil. 428 (1999); National Power Corporation v. City of Cabanatuan, 449 Phil. 233 (2003); Philippine Ports Authority v. City of Iloilo, 484 Phil. 784 (2004); The City of Davao v. The Regional Trial Court, Branch XII, Davao City, 504 Phil. 542 (2005); The City Government of Quezon City v. Bayan Telecommunications, Inc., 519 Phil. 159 (2006); FELS Energy, Inc. v. The Province of Batangas, 545 Phil. 93 (2007); The Provincial Assessor of Marinduque v. Court of Appeals, 605 Phil. 357 (2009).

[70] See Philippine Fisheries Development Authority v. Court of Appeals, 555 Phil. 661 (2007); Manila International Airport Authority v. City of Pasay, 602 Phil. 160 (2009); Curata v. Philippine Ports Authority, 608 Phil. 9 (2009); Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila, 623 Phil. 964 (2009); Philippine Fisheries Development Authority v. Central Board of Assessment Appeals, 653 Phil. 328 (2010); City of Pasig v. Republic of the Philippines, 671 Phil. 791 (2011); Republic of the Philippines v. City of Parañaque, G.R. No. 191109, July 18, 2012, 677 SCRA 246; Funa v. Manila Economic and Cultural Office, G.R. No. 193462, February 4, 2014, 715 SCRA 247.

[71] Philippine Fisheries Development Authority v. Court of Appeals, id. at 667.

[72] Manila International Airport Authority v. Court of Appeals, supra note 21 at 213.

[73] Id. at 209.

[74] Id. at 209-213.

[75] Id. at 213-215.

[76] Id. at 216-218.

[77] Id. at 218-221.

[78] Id. at 221.

[79] SEC. 234. Exemptions from Real Property Tax. - The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person[.]

[80] Manila International Airport Authority v. Court of Appeals, supra note 21 at 224-225.

[81] Supra note 70 at 174-179.

[82] Supra note 70 at 668-674.

[83] Supra note 70 at 87.

[84] Supra note 70 at 978-980.

[85] Manila International Airport Authority v. Court of Appeals, supra note 21 at 240-241.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.