

**BATAAN SHIPYARD & ENGINEERING CO., INC. (BASECO),
PETITIONER, VS. PRESIDENTIAL COMMISSION ON GOOD
GOVERNMENT, CHAIRMAN JOVITO SA-LONGA, COMMISSIONER
MARY CONCEPCION BAUTISTA, C...**

G.R. No. 75885. May 27, 1987

Ponente: NARVASA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-75885/>

NARVASA, J.:

Challenged in this special civil action of certiorari and prohibition by a private corporation known as the Bataan Shipyard and Engineering Co., Inc. are: (1) Executive Orders Numbered 1 and 2, promulgated by President Corazon C. Aquino on February 28, 1986 and March 12, 1986, respectively, and (2) the sequestration, takeover, and other orders issued, and acts done in accordance with said executive orders by the Presidential Commission on Good Government and/or its Commissioners and agents, affecting said corporation.

1. The Sequestration, Takeover, and Other Orders Complained of

a. The Basic Sequestration Order

The sequestration order which, in the view of the petitioner corporation, initiated all its misery, was issued on April 14, 1986 by Commissioner Mary Concepcion Bautista. It was addressed to three of the agents of the Commission, hereafter simply referred to as PCGG. It reads as follows:

"RE: SEQUESTRATION ORDER

By virtue of the powers vested in the Presidential Commission on Good Government by authority of the President of the Philippines, you are hereby directed to sequester the following companies:

1. Bataan Shipyard and Engineering Co., Inc. (Engineering Island Shipyard and Mariveles Shipyard)
2. Baseco Quarry
3. Philippine Jai-Alai Corporation
4. Fidelity Management Co., Inc.
5. Romson Realty, Inc.
6. Trident Management Co.
7. New Trident Management
8. Bay Transport
9. And all affiliate companies of Alfredo "Bejo" Romualdez

You are hereby ordered:

1. To implement this sequestration order with a minimum disruption of these companies' business activities.
2. To ensure the continuity of these companies as going concerns, the care and maintenance of these assets until such time that the Office of the President through the Commission on Good Government should decide otherwise.
3. To report to the Commission on Good Government periodically.

Further, you are authorized to request for Military/Security Support from the Military /Police authorities, and such other acts essential to the achievement of this sequestration order."[1]

b. Order for Production of Documents

On the strength of the above sequestration order, Mr. Jose M. Balde, acting for the PCGG, addressed a letter dated April 18, 1986 to the President and other officers of petitioner firm, reiterating an earlier request for the production of certain documents, to wit:

1. Stock Transfer Book
2. Legal documents, such as:
 - 2.1. Articles of Incorporation
 - 2.2. By-Laws
 - 2.3. Minutes of the Annual Stockholders Meeting from 1973 to 1986
 - 2.4. Minutes of the Regular and Special Meetings of the Board of Directors from 1973 to 1986
 - 2.5. Minutes of the Executive Committee Meetings from 1973 to 1986
 - 2.6. Existing contracts with suppliers/contractors/others.
3. Yearly list of stockholders with their corresponding share/stockholdings from 1973 to 1986 duly certified by the Corporate Secretary
4. Audited Financial Statements such as Balance Sheet, Profit & Loss and others from 1973 to December 31, 1985
5. Monthly Financial Statements for the current year up to March 31, 1986
6. Consolidated Cash Position Reports from January to April 15, 1986
7. Inventory listings of assets updated up to March 31, 1986
8. Updated schedule of Accounts Receivable and Accounts Payable
9. Complete list of depository banks for all funds with the authorized signatories for withdrawals thereof
10. Schedule of company investments and placements.[2]

The letter closed with the warning that if the documents were not submitted within five days, the officers would be cited for "contempt in pursuance with Presidential Executive Order Nos. 1 and 2."

c. Orders Re Engineer Island

(1) Termination of Contract for Security Services

A third order assailed by petitioner corporation, hereafter referred to simply as BASECO, is that issued on April 21, 1986 by a Capt. Flordelino B. Zabala, a member of the task force assigned to carry out the basic sequestration order. He sent a letter to BASECO's Vice-President for Finance,[3] terminating the contract for security services within the Engineer Island compound between BASECO and "Anchor and FAIRWAYS" and "other civilian security agencies," CAPCOM military personnel having already been assigned to the area.

(2) Change of Mode of Payment of Entry Charges

On July 15, 1986, the same Capt. Zabala issued a Memorandum addressed to "Truck Owners and Contractors", particularly a "Mr. Buddy Ondivilla, National Marine Corporation," advising of the amendment in part of their contracts with BASECO in the sense that the stipulated charges for use of the BASECO road network were made payable "upon entry and not anymore subject to monthly billing as was originally agreed upon".[4]

d. Aborted Contract for Improvement of Wharf at Engineer Island

On July 9, 1986, a PCGG fiscal agent, S. Berenguer, entered into a contract in behalf of BASECO with Deltamarine Integrated Port Services, Inc., in virtue of which the latter undertook to introduce improvements costing approximately P210,000.00 on the BASECO wharf at Engineer Island, allegedly then in poor condition, avowedly to "optimize its utilization and in return maximize the revenue which would flow into the government coffers," in consideration of Deltamarine's being granted "priority in using the improved portion of the wharf ahead of anybody" and exemption "from the payment of any charges for the use of wharf including the area where it may install its bagging equipments" "until the improvement remains in a condition suitable for port operations." [5] It seems however that this contract was never consummated. Capt. Jorge B. Siacunco, "Head-(PCGG) BASECO Management Team", advised Deltamarine by letter dated July 30, 1986 that "the new management is not in a position to honor the said contract" and thus "whatever improvements ** (may be introduced) shall be deemed unauthorized ** and shall be at ** (Deltamarine's) own risk." [6]

e. Order for Operation of Sesiman Rock Quarry, Mariveles, Bataan

By Order dated June 20, 1986, Commissioner Mary Bautista first directed a PCGG agent, Mayor Melba O. Buenaventura, "to plan and implement progress towards maximizing the continuous operation of the BASECO Sesiman Rock Quarry ** by conventional methods"; but afterwards, Commissioner Bautista, in representation of the PCGG, authorized another party, A.T. Abesamis, to operate the quarry, located at Mariveles, Bataan, an agreement to this effect having been executed by them on September 17, 1986.[7]

f. Order to Dispose of Scrap, etc.

By another Order of Commissioner Bautista, this time dated June 26, 1986. Mayor Buenaventura was also "authorized to clean and beautify the Company's compound," and in this connection, to dispose of or sell "metal scraps" and other materials, equipment and machineries no longer usable, subject to specified guidelines and safeguards including audit and verification.[8]

g. The TAKEOVER Order

By letter dated July 14, 1986, Commissioner Ramon A. Diaz decreed the provisional takeover by the PCGG of BASECO, "the Philippine Dockyard Corporation and all their affiliated companies." [9] Diaz invoked the provisions of Section 3 (c) of Executive Order No. 1, empowering the Commission -

" ** To provisionally takeover in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be

disposed of by the appropriate authorities."

A management team was designated to implement the order, headed by Capt. Siacunco, and was given the following powers:

- "1. Conducts all aspects of operation of the subject companies;
2. Installs key officers, hires and terminates personnel as necessary;
3. Enters into contracts related to management and operation of the companies;
4. Ensures that the assets of the companies are not dissipated and used effectively and efficiently; revenues are duly accounted for; and disburses funds only as may be necessary;
5. Does actions including among others, seeking of military support as may be necessary, that will ensure compliance to this order;
6. Holds itself fully accountable to the Presidential Commission on Good Government on all aspects related to this take-over order."

h. Termination of Services of BASECO Officers

Thereafter, Capt. Siacunco sent letters to Hilario M. Ruiz, Manuel S. Mendoza, Moises M. Valdez, Gilberto Pasimanero, and Benito R. Cuesta I, advising of the termination of their services by the PCGG.[10]

2. Petitioner's Plea and Postulates

It is the foregoing specific orders and acts of the PCGG and its members and agents which, to repeat, petitioner BASECO would have this Court nullify. More particularly, BASECO prays that this Court -

- 1) declare unconstitutional and void Executive Orders Numbered 1 and 2;
- 2) annul the sequestration order dated April 14, 1986, and all other orders subsequently issued and acts done on the basis thereof, inclusive of the takeover order of July 14, 1986 and the termination of the services of the BASECO executives.[11]

a. Re Executive Orders No. 1 and 2, and the Sequestration and Takeover Orders

While BASECO concedes that "sequestration, without resorting to judicial action, might be made within the context of Executive Orders Nos. 1 and 2 before March 25, 1986 when the Freedom Constitution was promulgated, under the principle that the law promulgated by the ruler under a revolutionary regime is the law of the land, it ceased to be acceptable when the same ruler opted to promulgate the Freedom Constitution on March 25, 1986 wherein under Section 1 of the same, Article IV (Bill of Rights) of the 1973 Constitution was adopted providing, among others, that 'No person shall be deprived of life, liberty and property without due process of law.' (Const., Art. IV, Sec. 1)."[12]

It declares that its objection to the constitutionality of the Executive Orders "as well as the Sequestration Order ** and Takeover Order ** issued purportedly under the authority of said Executive Orders, rests on four fundamental considerations: First, no notice and hearing was accorded ** (it) before its properties and business were taken over; Second, the PCGG is not a court, but a purely investigative agency and therefore not competent to act as prosecutor and judge in the same cause; Third, there is nothing in the issuances which envisions any proceeding, process or remedy by which petitioner may expeditiously challenge the validity of the takeover after the same has been effected; and Fourthly, being directed against specified persons, and in disregard of the constitutional presumption of innocence and general rules and procedures, they constitute a Bill of Attainder."[13]

b. Re Order to Produce Documents

It argues that the order to produce corporate records from 1973 to 1986, which it has apparently already complied with, was issued without court authority and infringed its constitutional right against self-incrimination, and unreasonable search and seizure.[14]

c. Re PCGG's Exercise of Right of Ownership and Management

BASECO further contends that the PCGG had unduly interfered with its right of dominion and management of its business affairs by -

1) terminating its contract for security services with Fairways & Anchor, without the consent and against the will of the contracting parties; and amending the mode of payment of entry fees stipulated in its Lease Contract with National Stevedoring & Lighterage Corporation, these acts being in violation of the non-impairment clause of the constitution;[15]

2) allowing PCGG Agent Silverio Berenguer to enter into an "anomalous contract" with Deltamarine Integrated Port Services, Inc., giving the latter free use of BASECO premises;[16]

3) authorizing PCGG Agent, Mayor Melba Buenaventura, to manage and operate its rock quarry at Sesiman, Mariveles;[17]

4) authorizing the same mayor to sell or dispose of its metal scrap, equipment, machinery and other materials;[18]

5) authorizing the takeover of BASECO, Philippine Dockyard Corporation, and all their affiliated companies;

6) terminating the services of BASECO executives: 0 President Hilario M. Ruiz; EVP Manuel S. Mendoza; GM Moises M. Valdez; Finance Mgr. Gilberto Pasimanero; Legal Dept. Mgr. Benito R. Cuesta I;[19]

7) planning to elect its own Board of Directors;[20]

8) "allowing willingly or unwillingly its personnel to take, steal, carry away from petitioner's premises at Mariveles ** rolls of cable wires, worth P600,000.00 on May 11, 1986;"[21]

9) allowing "indiscriminate diggings" at Engineer Island to retrieve gold bars supposed to have been buried therein.[22]

3. Doubts, Misconceptions regarding Sequestration, Freeze and Takeover Orders

Many misconceptions and much doubt about the matter of sequestration, takeover and freeze orders have been engendered by misapprehension, or incomplete comprehension if not indeed downright ignorance of the law governing these remedies. It is needful that these misconceptions and doubts be dispelled so that uninformed and useless debates about them may be avoided, and arguments tainted by sophistry or intellectual dishonesty be quickly exposed and discarded. Towards this end, this opinion will essay an exposition of the law on the matter. In the process many of the objections raised by BASECO will be dealt with.

4. The Governing Law

a. Proclamation No. 3

The impugned executive orders are avowedly meant to carry out the explicit command of the Provisional Constitution, ordained by Proclamation No. 3,[23] that the President -- in the exercise of legislative power which she was authorized to continue to wield "(u)ntil a legislature is elected and convened under a new Constitution" -- "shall give priority to measures to achieve the mandate of the people," among others to (r)ecover ill-gotten

properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts.”[24]

b. Executive Order No. 1

Executive Order No. 1 stresses the "urgent need to recover all ill-gotten wealth," and postulates that "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad.”[25] Upon these premises, the Presidential Commission on Good Government was created,[26] "charged with the task of assisting the President in regard to ** (certain specified) matters," among which was precisely -

*** The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.”[27]

In relation to the takeover or sequestration that it was authorized to undertake in the fulfilment of its mission, the PCGG was granted "power and authority" to do the following particular acts, to wit:

1. "To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task."
2. "To provisionally take over in the public interest or to prevent the disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities."
3. "To enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual the efforts of the Commission to carry out its task under this order.”[28]

So that it might ascertain the facts germane to its objectives, it was granted power to conduct investigations; require submission of evidence by subpoenae ad testificandum and duces tecum; administer oaths; punish for contempt.[29] It was given power also to promulgate such rules and regulations as may be necessary to carry out the purposes of ** (its creation)".[30]

c. Executive Order No. 2

Executive Order No. 2 gives additional and more specific data and directions respecting "the recovery of ill-gotten properties amassed by the leaders and supporters of the previous regime". It declares that:

- 1) " ** the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;" and

2) " ** said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world." [31]

Upon these premises, the President -

1) froze "all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation;"

2) prohibited former President Ferdinand Marcos and/or his wife ** , their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines";

3) prohibited "any person from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment, or dissipation under pain of such penalties as are prescribed by law;" and

4) required "all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make full disclosure of the same to the Commission on Good Government within thirty (30) days from publication of * (the) Executive Order, ** "[32]

d. Executive Order No. 14

A third executive order is relevant: Executive Order No.14,[33] by which the PCGG is empowered, "with the assistance of the Office of the Solicitor General and other government agencies, ** to file and prosecute all cases investigated by it ** as may be warranted by its findings." [34] All such cases, whether civil or criminal, are to be filed "with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof." [35] Executive Order No. 14 also pertinently provides that "(c)ivil suits for restitution, reparation of damages, or indemnification for consequential damages, forfeiture proceedings provided for under Republic Act No. 1379, or any other civil actions under the Civil Code or other existing laws, in connection with ** (said Executive Orders Numbered 1 and 2) may be filed separately from and proceed independently of any criminal proceedings and may be proved by a preponderance of evidence"; and that, moreover, the "technical rules of procedure and evidence shall not be strictly applied to ** (said) civil cases." [36]

5. Contemplated Situations

The situations envisaged and sought to be governed are self-evident, these being:

1) that "(i)ll-gotten properties (were) amassed by the leaders and supporters of the previous regime"; [37]

a) more particularly, that "(i)ll-gotten wealth (was) accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, * * located in the Philippines or abroad, ** (and) business enterprises and entities (came to be) owned or controlled by them, during ** (the Marcos) administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship;" [38]

b) otherwise stated, that "there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;"[39]

c) that "said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world;"[40] and

2) that certain "business enterprises and properties (were) taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos."[41]

6. Government's Right and Duty to Recover All Ill-Gotten Wealth

There can be no debate about the validity and eminent propriety of the Government's plan "to recover all ill-gotten wealth."

Neither can there be any debate about the proposition that assuming the above described factual premises of the executive orders and Proclamation No. 3 to be true, to be demonstrable by competent evidence, the recovery from Marcos, his family and his minions of the assets and properties involved, is not only a right but a duty on the part of Government.

But however plain and valid that right and duty may be, still a balance must be sought with the equally compelling necessity that a proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise which are deemed pillars of a free society such as ours, and to which all members of that society may without exception lay claim.

" * * Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. Along with these freedoms are included economic freedom and freedom of enterprise within reasonable bounds and under proper control. * * Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country."[42]

a. Need of Evidentiary Sub-stantiation in Proper Suit

Consequently, the factual premises of the executive orders cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated; although there are some who maintain that the fact -- that an immense fortune, and "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad", and they have resorted to all sorts of clever schemes and manipulations to disguise and hide their illicit acquisitions -- is within the realm of judicial notice, being of so extensive notoriety as to dispense with proof thereof. Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in Executive Order No. 14.

b. Need of Provisional Measures to Collect and Conserve Assets Pending Suits

Nor may it be gainsaid that pending the institution of the suits for the recovery of such "ill-gotten wealth" as the evidence at hand may reveal, there is an obvious and imperative need for preliminary, provisional measures to prevent the concealment, disappearance, destruction, dissipation, or loss of the assets and properties subject of the suits, or to restrain or foil acts that may render moot and academic, or effectively hamper, delay, or negate efforts to recover the same.

7. Provisional Remedies Prescribed by Law

To answer this need, the law has prescribed three (3) provisional remedies. These are: (1) sequestration; (3) freeze orders; and (3) provisional takeover.

Sequestration and freezing are remedies applicable generally to unearthed instances of "ill-gotten wealth." The remedy of "provisional takeover" is peculiar to cases where "business enterprises and properties (were) taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos." [43]

a. Sequestration

By the clear terms of the law, the power of the PCGG to sequester property claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities", -- for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same -- until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. [44] And this, too, is the sense in which the term is commonly understood in other jurisdictions. [45]

b. "Freeze Order"

A "freeze order" prohibits the person having possession or control of property alleged to constitute "ill-gotten wealth" "from transferring, conveying, encumbering or otherwise depleting or concealing such property, or from assisting or taking part in its transfer, encumbrance, concealment or dissipation" [46]. In other words, it commands the possessor to hold the property and conserve it subject to the orders and disposition of the authority decreeing such freezing. In this sense, it is akin to a garnishment by which the possessor or ostensible owner of property is enjoined not to deliver, transfer, or otherwise dispose of any effects or credits, in his possession or control, and thus becomes in a sense an involuntary depositary thereof. [47]

c. Provisional Takeover

In providing for the remedy of "provisional takeover", the law acknowledges the apparent distinction between "ill-gotten" "business enterprises and entities" (going concerns, businesses in actual operation), generally, as to which the remedy of sequestration applies, it being necessarily inferred that the remedy entails no interference, or the least possible interference with the actual management and operations thereof; and "business enterprises which were taken over by the government of the Marcos Administration or by entities or persons close to him", in particular, as to which a "provisional takeover" is authorized, "in the public interest or to prevent disposal or dissipation of the enterprises." [48] Such a "provisional takeover" imports something more than sequestration or freezing, more than the placing of the business under physical possession and control, albeit without or with the

least possible interference with the management and carrying on of the business itself. In a "provisional takeover," what is taken into custody is not only the physical assets of the business enterprise or entity, but the business operation as well. It is in fine the assumption of control not only over things, but over operations or on-going activities. But, to repeat, such a "provisional takeover" is allowed only as regards "business enterprises ** taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos."

d. No Divestment of Title Over Property Seized

It may perhaps be well at this point to stress once again the provisional, contingent character of the remedies just described. Indeed the law plainly qualifies the remedy of takeover by the adjective, "provisional." These remedies may be resorted to only for a particular exigency: to prevent in the public interest the disappearance or dissipation of property or business, and conserve it pending adjudgment in appropriate proceedings of the primary issue of whether or not the acquisition of title or other right thereto by the apparent owner was attended by some vitiating anomaly. None of the remedies is meant to deprive the owner or possessor of his title or any right to the property sequestered, frozen or taken over and vest it in the sequestering agency, the Government or other person. This can be done only for the causes and by the processes laid down by law.

That this is the sense in which the power to sequester, freeze or provisionally take over is to be understood and exercised, the language of the executive orders in question leaves no doubt. Executive Order No. 1 declares that the sequestration of property the acquisition of which is suspect shall last "until the transactions leading to such acquisition ** can be disposed of by the appropriate authorities." [49] Executive Order No. 2 declares that the assets or properties therein mentioned shall remain frozen "pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired" by illegal means. Executive Order No. 14 makes clearer that judicial proceedings are essential for the resolution of the basic issue of whether or not particular assets are "ill-gotten," and resultant recovery thereof by the Government is warranted.

e. State of Seizure Not To Be Indefinitely Maintained; The Constitutional Command

There is thus no cause for the apprehension voiced by BASECO [50] that sequestration, freezing or provisional takeover is designed to be an end in itself, that it is the device through which persons may be deprived of their property branded as "ill-gotten," that it is intended to bring about a permanent, rather than a passing, transitional state of affairs. That this is not so is quite explicitly declared by the governing rules.

Be this as it may, the 1987 Constitution should allay any lingering fears about the duration of these provisional remedies. Section 26 of its Transitory Provisions [51] lays down the relevant rule in plain terms, apart from extending ratification or confirmation (although not really necessary) to the institution by presidential fiat of the remedy of sequestration and freeze orders:

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

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

"The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided." [52]

f. Kinship to Attachment, Receivership

As thus described, sequestration, freezing and provisional takeover are akin to the provisional remedy of preliminary attachment, or receivership.[53] By attachment, a sheriff seizes property of a defendant in a civil suit so that it may stand as security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally or otherwise, pending the action.[54] By receivership, property, real or personal, which is subject of litigation, is placed in the possession and control of a receiver appointed by the Court, who shall conserve it pending final determination of the title or right of possession over it.[55] All these remedies -- sequestration, freezing, provisional takeover, attachment and receivership -- are provisional, temporary, designed for particular exigencies, attended by no character of permanency or finality, and always subject to the control of the issuing, court or agency.

g. Remedies, Non-Judicial

Parenthetically, that writs of sequestration or freeze or takeover orders are not issued by a court is of no moment. The Solicitor General draws attention to the writ of distraint and levy which since 1936 the Commissioner of Internal Revenue has been by law authorized to issue against property of a delinquent taxpayer.[56] BASECO itself declares that it has not manifested "a rigid insistence on sequestration as a purely judicial remedy ** (as it feels) that the law should not be ossified to a point that makes it insensitive to change." What it insists on, what it pronounces to be its "unyielding position, is that any change in procedure, or the institution of a new one, should conform to due process and the other prescriptions of the Bill of Rights of the Constitution." [57] It is, to be sure, a proposition on which there can be no disagreement.

h. Orders May Issue Ex Parte

Like the remedy of preliminary attachment and receivership, as well as delivery of personal property in replevin suits, sequestration and provisional takeover writs may issue ex parte.[58] And as in preliminary attachment, receivership, and delivery of personalty, no objection of any significance may be raised to the ex parte issuance of an order of sequestration, freezing or takeover, given its fundamental character of temporariness or conditionality; and taking account specially of the constitutionally expressed "mandate of the people to recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people";[59] as well as the obvious need to avoid alerting suspected possessors of "ill-gotten wealth" and thereby cause that disappearance or loss of property precisely sought to be prevented, and the fact, just as self-evident, that "any transfer, disposition, concealment or disappearance of said assets and properties would frustrate, obstruct or hamper the efforts of the Government" at the just recovery thereof.[60]

8. Requisites for Validity

What is indispensable is that, again as in the case of attachment and receivership, there exist a prima facie factual foundation, at least, for the sequestration, freeze or takeover order, and adequate and fair opportunity to contest it and endeavor to cause its negation or nullification.[61]

Both are assured under the executive orders in question and the rules and regulations promulgated by the PCGG.

a. Prima Facie Evidence as Basis for Orders

Executive Order No. 14 enjoins that there be due regard to the requirements of fairness and due process." [62] Executive Order No. 2 declares that with respect to claims on allegedly "ill-gotten" assets and properties, "it is the position of the new democratic government that President Marcos ** (and other parties affected) be afforded fair opportunity to contest these claims before appropriate Philippine authorities," [63] Section 7 of the Commission's

Rules and Regulations provides that sequestration or freeze (and takeover) orders issue upon the authority of at least two commissioners, based on the affirmation or complaint of an interested party, or motu proprio when the Commission has reasonable grounds to believe that the issuance thereof is warranted.[64] A similar requirement is now found in Section 26, Art. XVIII of the 1987 Constitution, which requires that a "sequestration or freeze order shall be issued only upon showing of a prima facie case".[65]

b. Opportunity to Contest

And Sections 5 and 6 of the same Rules and Regulations lay down the procedure by which a party may seek to set aside a writ of sequestration or freeze order, viz:

"SECTION 5. Who may contend.- The person against whom a writ of sequestration or freeze or hold order is directed may request the lifting thereof in writing, either personally or through counsel within five (5) days from receipt of the writ or order, or in the case of a hold order, from date of knowledge thereof.

"SECTION 6. Procedure for review of writ or order.- After due hearing or motu proprio for good cause shown, the Commission may lift the writ or order unconditionally or subject to such conditions as it may deem necessary, taking into consideration the evidence and the circumstances of the case. The resolution of the Commission may be appealed by the party concerned to the Office of the President of the Philippines within fifteen (15) days from receipt thereof."

Parenthetically, even if the requirement for a prima facie showing of "ill-gotten wealth" were not expressly imposed by some rule or regulation as a condition to warrant the sequestration or freezing of property contemplated in the executive orders in question, it would nevertheless be exigible in this jurisdiction in which the Rule of Law prevails and official acts which are devoid of rational basis in fact or law, or are whimsical and capricious, are condemned and struck down.[66]

9. Constitutional Sanction of Remedies

If any doubt should still persist in the face of the foregoing considerations as to the validity and propriety of sequestration, freeze and takeover orders, it should be dispelled by the fact that these particular remedies and the authority of the PCGG to issue them have received constitutional approbation and sanction. As already mentioned, the Provisional or "Freedom" Constitution recognizes the power and duty of the President to enact "measures to achieve the mandate of the people to *** (r)ecover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts". And as also already adverted to, Section 26, Article XVIII of the 1987 Constitution[67] treats of, and ratifies the "authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986."

The institution of these provisional remedies is also premised upon the State's inherent police power, regarded as "the power of promoting the public welfare by restraining and regulating the use of liberty and property",[68] and as "the most essential, insistent and illimitable of powers ** in the promotion of general welfare and the public interest",[69] and said to be "co-extensive with self-protection and ** not inaptly termed (also) the law of overruling necessity."[70]

10. PCGG not a "Judge"; General Functions

It should also by now be reasonably evident from what has thus far been said that the PCGG is not, and was never intended to act as, a judge. Its general function is to conduct investigations in order to collect evidence establishing instances of "ill-gotten wealth"; issue sequestration, and such orders as may be warranted by the evidence thus collected and as may be necessary to preserve and conserve the assets of which it takes custody and

control and prevent their disappearance, loss or dissipation; and eventually file and prosecute in the proper court of competent jurisdiction all cases investigated by it as may be warranted by its findings. It does not try and decide, or hear and determine, or adjudicate with any character of finality or compulsion, cases involving the essential issue of whether or not property should be forfeited and transferred to the State because "ill-gotten" within the meaning of the Constitution and the executive orders. This function is reserved to the designated court, in this case, the Sandiganbayan.[71] There can therefore be no serious regard accorded to the accusation, leveled by BASECO,[72] that the PCGG plays the perfidious role of prosecutor and judge at the same time.

11. Facts Preclude Grant of Relief to Petitioner

Upon these premises and reasoned conclusions, and upon the facts disclosed by the record, hereafter to be discussed, the petition cannot succeed. The writs of certiorari and prohibition prayed for will not issue.

The facts show that the corporation known as BASECO was owned or controlled by President Marcos "during his administration, through nominees, by taking undue advantage of his public office and/or using his powers, authority, or influence"; and that it was by and through the same means, that BASECO had taken over the business and/or assets of the National Shipyard and Engineering Co., Inc., and other government-owned or controlled entities.

12. Organization and Stock Distribution of BASECO

BASECO describes itself in its petition as "a shiprepair and shipbuilding company ** incorporated as a domestic private corporation ** (on Aug 30,) 1972 by a consortium of Filipino shipowners and shipping executives. Its main office is at Engineer Island, Port Area, Manila, where its Engineer Island Shipyard is housed, and its main shipyard is located at Mariveles, Bataan." [73] Its Articles of Incorporation disclose that its authorized capital stock is P60,000,000.00 divided into 60,000 shares, of which 12,000 shares with a value of P12,000,000.00 have been subscribed, and on said subscription, the aggregate sum of P3,035,000.00 has been paid by the incorporators.[74] The same articles identify the incorporators, numbering fifteen (15), as follows: (1) Jose A. Rojas, (2) Anthony P. Lee, (3) Eduardo T. Marcelo, (4) Jose P. Fernandez, (5) Generoso Tanseco, (6) Emilio T. Yap, (7) Antonio M. Ezpeleta, (8) Zacarias Amante, (9) Severino de la Cruz, (10) Jose Francisco, (11) Dioscoro Papa, (12) Octavio Posadas, (13) Manuel S. Mendoza, (14) Magiliw Torres, and (15) Rodolfo Torres.

By 1986, however, of these fifteen (15) incorporators, six (6) had ceased to be stockholders, namely: (1) Generoso Tanseco, (2) Antonio Ezpeleta, (3) Zacarias Amante, (4) Octavio Posadas, (5) Magiliw Torres, and (6) Rodolfo Torres. As of this year, 1986, there were twenty (20) stockholders listed in BASECO's Stock and Transfer Book.[75] Their names, and the number of shares respectively held by them are as follows:

1. Jose A. Rojas
1,248 shares
2. Severino G. de la Cruz
1,248 shares
3. Emilio T. Yap
2,508 shares
4. Jose Fernandez
1,248 shares

5. Jose Francisco
128 shares
6. Manuel S. Mendoza
96 shares
7. Anthony P. Lee
1,248 shares
8. Hilario M. Ruiz
32 shares
9. Constante L. Farinas
8 shares
10. Fidelity Management, Inc.
65,882 shares
11. Trident Management
7,412 shares
12. United Phil. Lines
1,240 shares
13. Renato M. Tanseco
8 shares
14. Fidel Ventura
8 shares
15. Metro Bay Drydock
136,370 shares
16. Manuel Jacela
1 share
17. Jonathan G. Lu
1 share
18. Jose J. Tanchanco
1 share
19. Dioscoro Papa
128 shares
20. Edward T. Marcelo

4 shares

TOTAL

218,819 shares.

13. Acquisition of NASSCO by BASECO

Barely six months after its incorporation, BASECO acquired from National Shipyard & Steel Corporation, or NASSCO, a government-owned or controlled corporation, the latter's shipyard at Mariveles, Bataan, known as the Bataan National Shipyard (BNS), and -- except for NASSCO's Engineer Island Shops and certain equipment of the BNS, consigned for future negotiation -- all its structures, buildings, shops, quarters, houses, plants, equipment and facilities, in stock or in transit. This it did in virtue of a "Contract of Purchase and Sale with Chattel Mortgage" executed on February 13 1973. The price was P52,000,000.00. As partial payment thereof, BASECO delivered to NASSCO a cash bond of P11,400,000.00, convertible into cash within twenty-four (24) hours from completion of the inventory undertaken pursuant to the contract. The balance of P41,600,000.00, with interest at seven percent (7%) per annum, compounded semi-annually, was stipulated to be paid in equal semi-annual installments over a term of nine (9) years, payment to commence after a grace period of two (2) years from date of turnover of the shipyard to BASECO.[76]

14. Subsequent Reduction of Price; Intervention of Marcos

Unaccountably, the price of P52,000,000.00 was reduced by more than one-half, to P24,311,550.00, about eight (8) months later. A document to this effect was executed On October 9, 1973, entitled "Memorandum Agreement," and was signed for NASSCO by Arturo Pacificador, as Presiding Officer of the Board of Directors, and David R. Ines, as General Manager.[77] This agreement bore, at the top right corner of the first page, the word "APPROVED" in the handwriting of President Marcos, followed by his usual full signature. The document recited that a down payment of P5,862,310.00 had been made by BASECO, and the balance of P19,449,240.00 was payable in equal semi-annual installments over nine (9) years after a grace period of two (2) years, with interest at 7% per annum.

15. Acquisition of 300 Hectares from Export Processing Zone Authority

On October 1, 1974, BASECO acquired three hundred (300) hectares of land in Mariveles from the Export Processing Zone Authority for the price of P10,047,940.00 of which, as set out in the document of sale, P2,000,000.00 was paid upon its execution, and the balance stipulated to be payable in installments.[78]

16. Acquisition of Other Assets of NASSCO; Intervention of Marcos

Some nine months afterwards, or on July 15, 1975, to be precise, BASECO, again with the intervention of President Marcos, acquired ownership of the rest of the assets of NASSCO which had not been included in the first two (2) purchase documents. This was accomplished by a deed entitled "Contract of Purchase and Sale"[79], which, like the Memorandum of Agreement dated October 9, 1973 supra also bore at the upper right-hand corner of its first page, the handwritten notation of President Marcos reading, "APPROVED, July 29, 1973," and underneath it, his usual full signature. Transferred to BASECO were NASSCO's "ownership and all its titles, rights and interests over all equipment and facilities including structures, buildings, shops, quarters, houses, plants and expendable or semi-expendable assets, located at the Engineer Island, known as the Engineer Island Shops, including all the equipment of the Bataan National Shipyards (BNS) which were excluded from the sale of BNS to BASECO but retained by BASECO and all other selected equipment and machineries of NASSCO at J. Panganiban Smelting Plant." In the same deed, NASSCO committed itself to cooperate with BASECO for the acquisition from the National Government or other appropriate Government entity of Engineer Island.

Consideration for the sale was set at P5,000,000.00; a downpayment of P1,000,000.00 appears to have been made, and the balance was stipulated to be paid at 7% interest per annum in equal semi-annual installments over a term of nine (9) years, to commence after a grace period of two (2) years. Mr. Arturo Pacificador again signed for NASSCO, together with the general manager, Mr. David R. Ines.

17. Loans Obtained

It further appears that on May 27, 1975 BASECO obtained a loan from the NDC, taken from "the last available Japanese war damage fund of \$19,000,000.00," to pay for "Japanese made heavy equipment (brand new)."[80] On September 3, 1975, it got another loan also from the NDC in the amount of P30,000,000.00 (id.). And on January 28, 1976, it got still another loan, this time from the GSIS, in the sum of P12,400,000.00.[81] The claim has been made that not a single centavo has been paid on these loans.[82]

18. Reports to President Marcos

In September, 1977, two (2) reports were submitted to President Marcos regarding BASECO. The first was contained in a letter dated September 5, 1977 of Hilario M. Ruiz, BASECO president.[83] The second was embodied in a confidential memorandum dated September 16, 1977 of Capt. A. T. Romualdez.[84] They further disclose the fine hand of Marcos in the affairs of BASECO, and that of a Romualdez, a relative by affinity.

a. BASECO President's Report

In his letter of September 5, 1977, BASECO President Ruiz reported to Marcos that there had been "no orders or demands for ship construction" for some time and expressed the fear that if that state of affairs persisted, BASECO would not be able to pay its debts to the Government, which at the time stood at the not inconsiderable amount of P165,854,000.00.[85] He suggested that, to "save the situation," there be a "spin-off (of their) shipbuilding activities which shall be handled exclusively by an entirely new corporation to be created"; and towards this end, he informed Marcos that BASECO was -?

" ** inviting NDC and LUSTEVECO to participate by converting the NDC shipbuilding loan to BASECO amounting to P341.165M and assuming and converting a portion of BASECO's shipbuilding loans from REPACOM amounting to P52.2M or a total of P83.365M as NDC's equity contribution in the new corporation. LUSTEVECO will participate by absorbing and converting a portion of the REPACOM loan of Bay Shipyard and Drydock, Inc., amounting to P32.538M." [86]

b. Romualdez' Report

Capt. A. T. Romualdez' report to the President was submitted eleven (11) days later. It opened with the following caption:

"MEMORANDUM:

FOR : The President

SUBJECT : An Evaluation and Re-assessment of a Performance of a Mission

FROM : Capt. A. T. Romualdez."

Like Ruiz, Romualdez wrote that BASECO faced great difficulties in meeting its loan obligations due chiefly to the fact that "orders to build ships as expected ** did not materialize."

He advised that five stockholders had "waived and/or assigned their holdings in blank," these being: (1) Jose A. Rojas, (2) Severino de la Cruz, (3) Rodolfo Torres, (4) Magiliw Torres, and (5) Anthony P. Lee. Pointing out that "Mr. Magiliw Torres ** is already dead and Mr. Jose A. Rojas had a major heart attack," he made the following

quite revealing, and it may be added, quite cynical and indurate recommendation, to wit:

** (that) their replacements (be effected) so we can register their names in the stock book prior to the implementation of your instructions to pass a board resolution to legalize the transfers under SEC regulations;

"2. By getting their replacements, the families cannot question us later on; and

"3. We will owe no further favors from them." [87]

He also transmitted to Marcos, together with the report, the following documents: [88]

1. "Stock certificates indorsed and assigned in blank with assignments and waivers;" [89]
2. The articles of incorporation, the amended articles, and the by-laws of BASECO;
3. "Deed of Sales, wherein NASSCO sold to BASECO four (4) parcels of land in 'Engineer Island', Port Area, Manila;"
4. "Transfer Certificate of Title No. 124822 in the name of BASECO, covering 'Engineer Island';"
5. "Contract dated October 9, 1973, between NASSCO and BASECO re structure and equipment at Mariveles, Bataan;"
6. "Contract dated July 16, 1975, between NASSCO and BASECO re structure and equipment at Engineer Island, Port Area, Manila;"
7. "Contract dated October 1, 1974, between EPZA and BASECO re 300 hectares of land at Mariveles, Bataan;"
8. "List of BASECO's fixed assets;"
9. "Loan Agreement dated September 3, 1975, BASECO's loan from NDC of P30,000,000.00;"
10. "BASECO-REPACOM Agreement dated May 27, 1975;"
11. "GSIS loan to BASECO dated January 28, 1976 of P12,400,000.00 for the housing facilities for BASECO's rank-and-file employees." [90]

Capt. Romualdez also recommended that BASECO's loans be restructured "until such period when BASECO will have enough orders for ships in order for the company to meet loan obligations", and that -

"An LOI may be issued to government agencies using floating equipment, that a linkage scheme be applied to a certain percent of BASECO's net profit as part of BASECO's amortization payments to make it justifiable for you, Sir." [91]

It is noteworthy that Capt. A. T. Romualdez does not appear to be a stockholder or officer of BASECO, yet he has presented a report on BASECO to President Marcos, and his report demonstrates intimate familiarity with the firm's affairs and problems.

19. Marcos' Response to Reports

President Marcos lost no time in acting on his subordinates' recommendations, particularly as regards the "spin-off" and the "linkage scheme" relative to "BASECO's amortization payments."

a. Instructions re "Spin-Off"

Under date of September 28, 1977, he addressed a Memorandum to Secretary Geronimo Velasco of the Philippine National Oil Company and Chairman Constante Farinas of the National Development Company, directing them

"to participate in the formation of a new corporation resulting from the spin-off of the shipbuilding component of BASECO along the following guidelines:

a. Equity participation of government shall be through LUSTEVECO and NDC in the amount of P115,903,000 consisting of the following obligations of BASECO which are hereby authorized to be converted to equity of the said new corporation, to wit:

1. NDC P83,865,000 (P31.165M loan & P52.2M Reparation)

2. LUSTEVECO P32,538,000 (Reparation)

b. Equity participation of government shall be in the form of non-voting shares.

For immediate compliance."[92]

Mr. Marcos' guidelines were promptly complied with by his subordinates. Twenty-two (22) days after receiving their president's memorandum, Messrs. Hilario M. Ruiz, Constante L. Farinas and Geronimo Z. Velasco, in representation of their respective corporations, executed a PRE-INCORPORATION AGREEMENT dated October 20, 1977.[93] In it, they undertook to form a shipbuilding corporation to be known as "PHIL-ASIA SHIPBUILDING CORPORATION," to bring to realization their president's instructions. It would seem that the new corporation ultimately formed was actually named "Philippine Dockyard Corporation (PDC)".[94]

b. Letter of Instructions No. 670

Mr. Marcos did not forget Capt. Romualdez' recommendation for a letter of instructions. On February 14, 1978, he issued Letter of Instructions No. 670 addressed to the Reparations Commission (REPACOM), the Philippine National Oil Company (PNOC), the Luzon Stevedoring Company (LUSTEVECO), and the National Development Company (NDC). What is commanded therein is summarized by the Solicitor General, with pithy and not inaccurate observations as to the effects thereof (in italics), as follows:

" ** 1) the shipbuilding equipment procured by BASECO through reparations be transferred to NDC subject to reimbursement by NDC to BASECO (of) the amount of P18.285M allegedly representing the handling and incidental expenses incurred by BASECO in the installation of said equipment (so instead of NDC getting paid on its loan to BASECO ,it was made to pay BASECO instead the amount of P18.285M); 2) the shipbuilding equipment procured from reparations through EPZA, now in the possession of BASECO and BSDI (Bay Shipyard & Drydocking, Inc) be transfered to LUSTEVECO through PNOC; and ; 3) the shipbuilding equipment (thus) transferred be invested by LUSTEVECO acting through PNOC and NDC, as the government's equity participation in a shipbuilding corporation to be established in partnership with the private sector "

" ** ** ** "

"And so, through a simple letter of instruction and memorandum, BASECO's loan obligations to NDC and REPACOM ** in the total amount of P83.365M and BCD's REPACOM loan of P32.438M were wiped out and converted into non-voting preferred shares.[95]

20. Evidence of Marcos' Ownership of BASECO

It cannot therefore be gainsaid that, in the context of the proceedings at bar, the actuality of the control by President Marcos of BASECO has been sufficiently shown.

Other evidence submitted to the Court by the Solicitor General proves that President Marcos not only exercised control over BASECO, but also that he actually owns well nigh one hundred percent of its outstanding stock.

It will be recalled that according to petitioner itself, as of April 23, 1986, there were 218,819 shares of stock outstanding, ostensibly owned by twenty (20) stockholders.[96] Four of these twenty are juridical persons: (1) Metro Bay Drydock, recorded as holding 136,370 shares; (2) Fidelity Management, Inc., 65,882 shares; (3) Trident Management, 7,412 shares; and (4) United Phil. Lines, 1,240 shares. The first three corporations, among themselves, own an aggregate of 209,664 shares of BASECO stock or 95.82% of the outstanding stock.

Now, the Solicitor General has drawn the Court's attention to the intriguing circumstance that found in Malacanang shortly after the sudden flight of President Marcos, were certificates corresponding to more than ninety-five percent (95%) of all the outstanding shares of stock of BASECO, endorsed in blank, together with deeds of assignment of practically all the outstanding shares of stock of the three (3) corporations above mentioned (which hold 95.82% of all BASECO stock), signed by the owners thereof although not notarized.[97]

More specifically, found in Malacanang (and now in the custody of the PCGG) were:

- 1) the deeds of assignment of all 600 outstanding shares of Fidelity Management Inc. -- which supposedly owns as aforesaid 65,882 shares of BASECO stock;
- 2) the deeds of assignment of 2,499,995 of the 2,500,000 outstanding shares of Metro Bay Drydock Corporation -- which Allegedly owns 136,370 shares of BASECO stock;
- 3) the deeds of assignment of 800 outstanding shares of Trident Management Co., Inc. -- which allegedly owns 7,412 shares of BASECO stock, assigned in blank;[98] and
- 4) stock certificates corresponding to 207,725 out of the 218,819 outstanding shares of BASECO stock; that is, all but 5% -- all endorsed in blank.[99]

While the petitioner's counsel was quick to dispute this asserted fact, assuring this Court that the BASECO stockholders were still in possession of their respective stock certificates and had "never endorsed ** them in blank or to anyone else,"[100] that denial is exposed by his own prior and subsequent recorded statements as a mere gesture of defiance rather than a verifiable factual declaration.

By resolution dated September 25, 1986, this Court granted BASECO's counsel a period of 10 days "to SUBMIT, as undertaken by him, ** the certificates of stock issued to the stockholders of ** BASECO as of April 23, 1986, as listed in Annex 'P' of the petition." [101] Counsel thereafter moved for extension; and in his motion dated October 2, 1986, he declared inter alia that "said certificates of stock are in the possession of third parties, among whom being the respondents themselves ** and petitioner is 'still endeavoring to secure copies thereof from them.'" [102] On the same day he filed another motion praying that he be allowed "to secure copies of the Certificates of Stock in the name of Metro Bay Drydock, Inc., and of all other Certificates of Stock of petitioner's stockholders in possession of respondents." [103]

In a Manifestation dated October 10, 1986,[104] the Solicitor General not unreasonably argued that counsel's aforestated motion to secure copies of the stock certificates "confirms the fact that stockholders of petitioner corporation are not in possession of ** (their) certificates of stock," and the reason, according to him, was "that 95% of said shares ** have been endorsed in blank and found in Malacanang after the former President and his family fled the country." To this manifestation BASECO's counsel replied on November 5, 1986, as already mentioned, stubbornly insisting that the firm's stockholders had not really assigned their stock.[105]

In view of the parties conflicting declarations, this Court resolved on November 27, 1986 among other things "to require ** the petitioner ** to deposit upon proper receipt with Clerk of Court Juanito Ranjo the originals of the stock certificates alleged to be in its possession or accessible to it, mentioned and described in Annex, 'P' of its

petition, ** (and other pleadings) ** within ten (10) days from notice.”[106] In a motion filed on December 5, 1986,[107] BASECO's counsel made the statement, quite surprising in the premises, that "it will negotiate with the owners (of the BASECO stock in question) to allow petitioner to borrow from them, if available, the certificates referred to" but that "it needs a more sufficient time therefor" (sic). BASECO's counsel however eventually had to confess inability to produce the originals of the stock certificates, putting up the feeble excuse that while he had "requested the stockholders to allow ** (him) to borrow said certificates, ** some of ** (them) claimed that they had delivered the certificates to third parties by way of pledge and/or to secure performance of obligations, while others allegedly have entrusted them to third parties in view of last national emergency.”[108] He has conveniently omitted, nor has he offered to give the details of the transactions adverted to by him, or to explain why he had not impressed on the supposed stockholders the primordial importance of convincing this Court of their present custody of the originals of the stock, or if he had done so, why the stockholders are unwilling to agree to some sort of arrangement so that the originals of their certificates might at the very least be exhibited to the Court. Under the circumstances, the Court can only conclude that he could not get the originals from the stockholders for the simple reason that, as the Solicitor General maintains, said stockholders in truth no longer have them in their possession, these having already been assigned in blank to then President Marcos.

21. Facts Justify Issuance of Sequestration and Takeover Orders

In the light of the affirmative showing by the Government that, prima facie at least, the stockholders and directors of BASECO as of April, 1986[109] were mere "dummies", nominees or alter egos of President Marcos; at any rate, that they are no longer owners of any shares of stock in the corporation, the conclusion cannot be avoided that said stockholders and directors have no basis and no standing whatever to cause the filing and prosecution of the instant proceeding; and to grant relief to BASECO, as prayed for in the petition, would in effect be to restore the assets, properties and business sequestered and taken over by the PCGG to persons who are "dummies," nominees or alter egos of the former president.

From the standpoint of the PCGG, the facts herein stated at some length do indeed show that the private corporation known as BASECO was "owned or controlled by former President Ferdinand E. Marcos ** during his administration, ** through nominees, by taking advantage of ** (his) public office and/or using ** (his) powers, authority, influence **", and that NASSCO and other property of the government had been taken over by BASECO; and the situation justified the sequestration as well as the provisional takeover of the corporation in the public interest, in accordance with the terms of Executive Orders No. 1 and 2, pending the filing of the requisite actions with the Sandiganbayan to cause divestment of title thereto from Marcos, and its adjudication in favor of the Republic pursuant to Executive Order No. 14.

As already earlier stated, this Court agrees that this assessment of the facts is correct; accordingly, it sustains the acts of sequestration and takeover by the PCGG as being in accord with the law, and, in view of what has thus far been set out in this opinion, pronounces to be without merit the theory that said acts, and the executive orders pursuant to which they were done, are fatally defective in not according to the parties affected prior notice and hearing, or an adequate remedy to impugn, set aside or otherwise obtain relief therefrom, or that the PCGG had acted as prosecutor and judge at the same time.

22. Executive Orders Not a Bill of Attainder

Neither will this Court sustain the theory that the executive orders in question are a bill of attainder.[110] "A bill of attainder is a legislative act which inflicts punishment without judicial trial.”[111] "Its essence is the substitution of a legislative for a judicial determination of guilt.”[112]

In the first place, nothing in the executive orders can be reasonably construed as a determination or declaration of

guilt. On the contrary, the executive orders, inclusive of Executive Order No. 14, make it perfectly clear that any judgment of guilt in the amassing or acquisition of "ill-gotten wealth" is to be handed down by a judicial tribunal, in this case, the Sandiganbayan, upon complaint filed and prosecuted by the PCGG. In the second place, no punishment is inflicted by the executive orders, as the merest glance at their provisions will immediately make apparent. In no sense, therefore, may the executive orders be regarded as a bill of attainder.

23. No Violation of Right against Self-Incrimination and Unreasonable Searches and Seizures

BASECO also contends that its right against self-incrimination and unreasonable searches and seizures had been transgressed by the Order of April 18, 1986 which required it "to produce corporate records from 1973 to 1986 under pain of contempt of the Commission if it fails to do so." The order was issued upon the authority of Section 3 (e) of Executive Order No. 1, treating of the PCGG's power to "issue subpoenas requiring ** the production of such books, papers, contracts, records, statements of accounts and other documents as may be material to the investigation conducted by the Commission", and paragraph (3), Executive Order No. 2 dealing with its power to "(r)equire all persons in the Philippines holding ** (alleged "ill--gotten") assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make full disclosure of the same ** ." The contention lacks merit.

It is elementary that the right against self-incrimination has no application to juridical persons.

"While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges **"[113]

Relevant jurisprudence is also cited by the Solicitor General.[114]

" ** corporations are not entitled to all of the constitutional protections which private individuals have. ** They are not at all within the privilege against self-incrimination, although this court more than once has said that the privilege runs very closely with the 4th Amendment's Search and Seizure provisions. It is also settled that an officer of the company cannot refuse to produce its records in its possession, upon the plea that they will either incriminate him or may incriminate it." (Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186; emphasis, the Solicitor General's)

"*** The corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It received certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its powers are limited by law It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserve right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that a state, having chartered a corporation to make use of certain franchises, could not, in the exercise of sovereignty inquire how these franchises had been employed, and whether they had been abused and demand the production of the corporate books and papers for that purpose. The defense amounts to this: that an officer of the corporation which is charged with a criminal violation of the statute may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and franchises may refuse to show its hand when charged with an abuse of such privileges. (Wilson v. United States, 55 Law Ed., 771, 780 [emphasis, the Solicitor General's])"

At any rate, Executive Order No.14-A, amending Section 4 of Executive Order No. 14 assures protection to individuals required to produce evidence before the PCGG against any possible violation of his right against self-incrimination. It gives them immunity from prosecution on the basis of testimony or information he is

compelled to present. As amended, said Section 4 now provides that -

“ ** ** ”

"The witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony, or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order."

The constitutional safeguard against unreasonable searches and seizures finds no application to the case at bar either. There has been no search undertaken by any agent or representative of the PCGG, and of course no seizure on the occasion thereof.

24. Scope and Extent of Powers of the PCGG

One other question remains to be disposed of, that respecting the scope and extent of the powers that may be wielded by the PCGG with regard to the properties or businesses placed under sequestration or provisionally taken over. Obviously, it is not a question to which an answer, can be easily given, much less one which will suffice for every conceivable situation.

a. PCGG May Not Exercise Acts of Ownership

One thing is certain, and should be stated at the outset: the PCGG cannot exercise acts of dominion over property sequestered, frozen or provisionally taken over. As already earlier stressed with no little insistence, the act of sequestration, freezing or provisional takeover of property does not import or bring about a divestment of title over said property; does not make the PCGG the owner thereof. In relation to the property sequestered, frozen or provisionally taken over, the PCGG is a conservator, not an owner. Therefore, it can not perform acts of strict ownership; and this is specially true in the situations contemplated by the sequestration rules where, unlike cases of receivership, for example, no court exercises effective supervision or can upon due application and hearing, grant authority for the performance of acts of dominion.

Equally evident is that the resort to the provisional remedies in question should entail the least possible interference with business operations or activities so that, in the event that the accusation of the business enterprise being "ill-gotten" be not proven, it may be returned to its rightful owner as far as possible in the same condition as it was at the time of sequestration.

b. PCGG Has Only Powers of Administration

The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over, much like a court-appointed receiver,^[115] such as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator. In this context, it may in addition enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual its efforts to carry out its task; punish for direct or indirect contempt in accordance with the Rules of Court; and seek and secure the assistance of any office, agency or instrumentality of the government.^[116] In the case of sequestered businesses generally (i.e., going concerns, businesses in current operation), as in the case of sequestered objects, its essential role, as already discussed, is that of conservator, caretaker, "watchdog" or overseer. It is not that of manager, or innovator, much less an owner.

c. Powers over Business Enterprises Taken Over by Marcos or Entities or Persons Close to him; Limitations Thereon

Now, in the special instance of a business enterprise shown by evidence to have been "taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos,"[117] the PCGG is given power and authority, as already adverted to, to "provisionally take (it) over in the public interest or to prevent ** (its) disposal or dissipation"; and since the term is obviously employed in reference to going concerns, or business enterprises in operation, something more than mere physical custody is connoted; the PCGG may in this case exercise some measure of control in the operation, running, or management of the business itself. But even in this special situation, the intrusion into management should be restricted to the minimum degree necessary to accomplish the legislative will, which is "to prevent the disposal or dissipation" of the business enterprise. There should be no hasty, indiscriminate, unreasoned replacement or substitution of management officials or change of policies, particularly in respect of viable establishments. In fact, such a replacement or substitution should be avoided if at all possible, and undertaken only when justified by demonstrably tenable grounds and in line with the stated objectives of the PCGG. And it goes without saying that where replacement of management officers may be called for, the greatest prudence, circumspection, care and attention should accompany that undertaking to the end that truly competent, experienced and honest managers may be recruited. There should be no role to be played in this area by rank amateurs, no matter how well meaning. The road to hell, it has been said, is paved with good intentions. The business is not to be experimented or played around with, not run into the ground, not driven to bankruptcy, not fleeced, not ruined. Sight should never be lost sight of the ultimate objective of the whole exercise, which is to turn over the business to the Republic once judicially established to be "ill-gotten." Reason dictates that it is only under these conditions and circumstances that the supervision, administration and control of business enterprises provisionally taken over may legitimately be exercised.

d. Voting of Sequestered Stock; Conditions Therefor

So, too, it is within the parameters of these conditions and circumstances that the PCGG may properly exercise the prerogative to vote sequestered stock of corporations, granted to it by the President of the Philippines through a Memorandum dated June 26, 1986. That Memorandum authorizes the PCGG, "pending the outcome of proceedings to determine the ownership of ** (sequestered) shares of stock," "to vote such shares of stock as it may have sequestered in corporations at all stockholders meetings called for the election of directors, declaration of dividends, amendment of the Articles of Incorporation, etc." The Memorandum should be construed in such a manner as to be consistent with, and not contradictory of the Executive Orders earlier promulgated on the same matter. There should be no exercise of the right to vote simply because the right exist, or because the stocks sequestered constitute the controlling or a substantial part of the corporate voting power. The stock is not to be voted to replace directors, or revise the articles or by-laws, or otherwise bring about substantial changes in policy, program or practice of the corporation except for demonstrably weighty and defensible grounds, and always in the context of the stated purposes of sequestration or provisional takeover, i.e., to prevent the dispersion or undue disposal of the corporate assets. Directors are not to be voted out simply because the power to do so exists. Substitution of directors is not to be done without reason or rhyme, should indeed be shunned if at all possible, and undertaken only when essential to prevent disappearance or wastage of corporate property, and always under such circumstances as assure that the replacements are truly possessed of competence, experience and probity.

In the case at bar, there was adequate justification to vote the incumbent directors out of office and elect others in their stead because the evidence showed prima facie that the former were just tools of President Marcos and were no longer owners of any stock in the firm, if they ever were at all. This is why, in its Resolution of October 28, 1986,[118] this Court declared that -

"Petitioner has failed to make out a case of grave abuse or excess of jurisdiction in respondents' calling and holding of a stockholders' meeting for the election of directors as authorized by the Memorandum of the

President ** (to the PCGG) dated June 26, 1986, particularly where as in this case, the government can, through its designated directors properly exercise control and management over what appear to be properties and assets owned and belonging to the government itself and over which the persons who appear in this case on behalf of BASECO have failed to show any right or even any shareholding in said corporation."

It must however be emphasized that the conduct of the PCGG nominees in the BASECO Board in the management of the company's affairs should henceforth be guided and governed by the norms herein laid down. They should never for a moment allow themselves to forget that they are conservators, not owners of the business; they are fiduciaries, trustees, of whom the highest degree of diligence and rectitude is, in the premises, required.

25. No Sufficient Showing of Other Irregularities

As to the other irregularities complained of by BASECO, i.e., the cancellation or revision, and the execution of certain contracts, inclusive of the termination of the employment of some of its executives,[119] this Court cannot, in the present state of the evidence on record, pass upon them. It is not necessary to do so. The issues arising therefrom may and will be left for initial determination in the appropriate action. But the Court will state that absent any showing of any important cause therefor, it will not normally substitute its judgment for that of the PCGG in these individual transactions. It is clear however, that as things now stand, the petitioner cannot be said to have established the correctness of its submission that the acts of the PCGG in question were done without or in excess of its powers, or with grave abuse of discretion.

WHEREFORE, the petition is dismissed. The temporary restraining order issued on October 14, 1986 is lifted.

Yap, Fernan, Paras, Gancayco, and Sarmiento, JJ., concur.

Teehankee, C.J., concurs in a separate opinion.

Feliciano, J., joins J. Melencio-Herrera's qualified concurring opinion.

Bidin and Cortes, JJ., join J. Gutierrez, Jr. in his concurring and dissenting opinion.

Cruz, J., dissents in a separate opinion.

Padilla, J., see concurring opinion.

[1] Annex A, petition, rollo, p. 26

[2] Annex B, petition, rollo, p. 27

[3] Annex C, petition, rollo, p. 28

[4] Annex D-A, petition, rollo, p. 38

[5] Annex E, petition, rollo, p. 39

[6] Annex F, petition, rollo, p. 41

[7] Annex G, petition, rollo, p. 42; Annex G-1, Suppl. Pleading; rollo, pp 150 et seq

[8] Annex H, petition, rollo, p. 43; see also Suppl. Pleading, rollo, pp. 136-137

[9] Annex J, petition, rollo, p. 56

[10] Annexes K, L, M, N and O, petition, rollo, pp. 57-61

[11] Rollo, p. 23

[12] Id., p. 11; emphasis supplied

- [13] Id., p. 12
- [14] Id., p. 6
- [15] Id., pp. 6-7
- [16] Id., p. 7
- [17] Id.
- [18] Id., p. 8.
- [19] Id., p. 9
- [20] Id., pp. 603-605
- [21] Id., p. 8: Annex I, petition
- [22] Id., p. 9
- [23] Promulgated on March 25, 1986
- [24] ART. II, Sec. 1, d; emphasis supplied
- [25] Whereas Clauses (Preamble)
- [26] Sec. 1
- [27] Sec. 2, a; emphasis supplied
- [28] Sec. 3, [b], [c], and [d]; emphasis supplied
- [29] Sec. 3, [a], [e], [f]
- [30] Sec. 3, [h]
- [31] First two Whereas Clauses; emphasis supplied
- [32] Emphasis supplied
- [33] Effective May 7, 1986
- [34] Sec. 1; emphasis supplied
- [35] Sec. 1; emphasis supplied
- [36] Sec. 3
- [37] Sec. 1, [d], ART. II, Provisional Constitution, Proclamation No. 3
- [38] Sec. 2, [a], Ex. Ord. No. 1
- [39] First Whereas Clause, Ex. Ord. No. 2
- [40] Second Whereas Clause, Ex. Ord. No. 2
- [41] Sec. 3 [c], Ex. Ord. No. 1
- [42] Tuason, J., in *Guido v. Rural Progress Administration*, 84 Phil. 847, emphasis supplied
- [43] Sec. 3 [c], Ex. Ord. No. 1

[44] Except for the statement as to the duration of the writ of sequestration, this is substantially the definition of sequestration set out in Section 1 (B) of the Rules and Regulations of the PCGG (Rollo, pp. 195-196). The term is used in the Revised Anti-Subversion Law, P.D. NO. 885, to mean "the seizure of private property or assets in the hands of any person or entity in order to prevent the utilization, transfer or conveyance of the same for purposes inimical to national security, or when necessary to protect the interest of the Government or any of its instrumentalities. It shall include the taking over and assumption of the management, control and operation of the private property or assets seized" (reiterated in P.D. No. 1835, the Anti- Subversion Law of 1981, repealed by P.D. No. 1975 prom. on May 2, 1985) (See Phil. Law Dictionary, Moreno, 1982 ed., pp. 568-569).

[45] "As employed under the statutory and code provisions of some states, the writ of sequestration is merely, but essentially, a conservatory measure, somewhat in the nature of a judicial deposit. It is a process which may be employed as a conservatory writ whenever the right of the property is involved, to preserve, pending litigation, specific property subject to conflicting claims of ownership or liens and privileges **." 79 C.J.S., 1047. "In Louisiana. A mandate of the court, ordering the sheriff, in certain cases, to take in his possession, and to keep, a thing of which another person has the possession, until after the decision of a suit, in order that it be delivered to him who shall be adjudged entitled to have the property or possession of that thing. ** ." Bouvier's Law Dictionary, 3rd Rev., Vol 2, p. 3046. "Sequester" means, according to Black's Law Dictionary, "to deposit a thing which is the subject of a controversy in the hands of a third person, to hold for the contending parties; to take a thing which is the subject of a controversy out of the possession of the contending parties, and deposit it in the hands of a third person."

[46] Ex. Ord. No. 2

[47] See, e.g., *de la Rama v. Villarosa*, 8 SCRA 413, citing 5 Am. Jur., 14; *Tayabas Land Co. v. Sharruf, et al.*, 41 Phil. 382

[48] Sec.3 [c], Ex. Ord. No. 1

[49] Id.

[50] Rollo, pp. 693-695

[51] ART. XVIII

[52] Emphasis supplied

[53] BASECO's counsel agrees (Rollo, p. 690).

[54] Rule 57, Rules of Court

[55] Rule 59, Rules of Court

[56] C.A. No. 466; Chap. II, Title IX, National Internal Revenue Code of 1977; rollo, pp. 197-198

[57] Rollo, p. 692

[58] Secs. 3 and 4, Rule 57; Sec. 3, Rule 59; Secs. 1-3, Rule 60, Rules of Court; see, e.g., *Filinvest Credit Corp. v. Relova*, 117 SCRA 420; see, too, 79 C.J.S. 1047 to the following effect: "The conservatory writ of sequestration has been held to be a process of the most extensive application, under which the whole of a person's estate may be seized. This writ of sequestration, like other conservatory remedies by which the property of defendant is taken from his possession before judgment without notice, and on the ex--parte showing of plaintiff; is a remedy stricti juris; summary in its nature. ** ."

[59] Sec. 1 (d), ART. II, Freedom Constitution (Proclamation No. 3); Ex Ord. No. 14

[60] Ex. Ord. No. 2

[61] What is anathema to due process is not so much the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard. See *Caltex (Phil.) v. Castillo, et al.*, 21 SCRA 1071, citing *Fuentes v. Binamira*, L-14965, Aug. 31, 1961; *Bermejo v. Barrios*, 31 SCRA 764; *Cornejo v. Sec. of justice, et al.*, 57 SCRA 663; *Superior Concrete Products, Inc. v. WCC*, 82 SCRA 270; *Tajonera v. Lamaroza*, 110 SCRA 440

[62] Last Whereas Clause

[63] Also, Last Whereas Clause

[64] Rollo, p. 206

[65] See footnote No. 50, *supra*

[66] "A decision with absolutely nothing to support it is a nullity ***" (*Ang Tibay v. C.I.R.*, 69 Phil. 635, 642, citing *Edwards v. McCoy*, 22 Phil. 598

[67] Eff., Feb. 2, 1987

[68] Freund, *The Police Power* (Chicago, 1904), cited by Cruz, I.A., *Constitutional Law*, 4th ed., p. 42

[69] *Smith, Bell & Co. v. Natividad*, 40 Phil. 136, citing *U.S. v. Toribio*, 15 Phil. 85, *Churchill and Tait v. Rafferty*, 32 Phil. 580, and *Rubi v. Provincial Board of Mindoro*, 39 Phil 660

[70] *Rubi v. Provincial Board*, *supra*

[71] Ex. Ord. No. 14

[72] Rollo, pp. 695-697

[73] Par. 6, petition; rollo, p. 4

[74] Annex 100, Solicitor General's Comment and Memorandum; rollo, p. 178

[75] Annex P, petition

[76] Annex 101, Solicitor General's Comment; etc.; rollo, pp. 367, 184

[77] Annex 102, *id.*, rollo, pp. 384, 185

[78] Annex 103, *id.*, rollo, pp. 393, 185

[79] Annex 104, *id.*, rollo, p. 404

[80] Annex 9 [par. 31], and Annex 1 [p. 4] of the Solicitor General's Manifestation dated Sept. 24, 1986

[81] *Id.*

[82] Annex 9 of Solicitor General's aforesaid Manifestation

[83] Annex 8, *id.*

[84] Annex 1, *id.*

[85] See footnotes No. 80-82 , *supra*

- [86] Emphasis supplied
- [87] Rollo, p. 72; emphasis supplied
- [88] Id., pp. 71-72
- [89] See par. 20, *infra*
- [90] Emphasis supplied; see par. 17, "Loans Obtained," *supra*
- [91] Emphasis supplied
- [92] Rollo, p 81
- [93] Annex 6 of Solicitor General's Manifestation, etc., dtd. Sept. 24, 1986, *supra*
- [94] Rollo, pp. 192, 688
- [95] Id., pp. 190-192
- [96] Annex P, petition, *supra*
- [97] Comment and Memorandum (in amplification of oral arguments) filed by the Solicitor General on Oct. 15, 1986 (rollo, pp. 178 et seq); Resolution, Oct. 28, 1986 (rollo, p. 611-A)
- [98] Annexes 1 to 19 and 19-A, *id.*
- [99] Annexes 20 to 99, inclusive, *id.*
- [100] Reply to Respondents' Manifestation, etc. dtd. Nov. 5, 1986; rollo, pp. 682 et seq
- [101] Rollo, p. 117
- [102] Id., p. 126; emphasis supplied
- [103] Id., pp. 128-129; emphasis supplied
- [104] Id., p. 177 (A)
- [105] Id., pp. 682 et seq
- [106] Id., p. 739
- [107] Id., p. 760
- [108] Compliance dtd. Dec. 20, 1986; rollo, p 775
- [109] Annex P, petition, *supra*
- [110] Art. IV, Sec. 1 (12), 1973 Constitution
- [111] *Peo. v. Ferrer*, 48 SCRA 382, 395-396, citing *Cummings v. U.S.*, 4 Wall. (71 U.S.) 277 (1867); accord, *Ex parte Garland*, 4 Wall. (71 U.S.) 333 (1867), it being observed that this definition "was adopted by this Court in *People vs. Carlos*, 78 Phil. 535, 544 (1947) and in *People vs. Montenegro*, 91 Phil. 883,885 (1952)."
- 112 Id., at pp. 396-397, citing *De Veau v. Braisted*, 363 U.S. 144, 160 (1960); *United States v. Lovett*, 328 U.S. 303,315 (1946)
- 113 *Martin, Law & Jurisprudence on the Freedom Constitution of the Philippines*, 1986 ed., p 310, citing *Hale v.*

Henkel, 201 US 43

114 Rollo, pp. 215-217

115 See Sec. 7, Rule 59, Rules of Court

116 Sec. 3, d, f, g, Ex. Ord. No. 1

117[117] Sec. 4 [c], Exh. Ord. No.1

118 Rollo, p. 611

119 See Supplemental Pleading, rollo, pp. 136 et seq, and Urgent Motion to Resolve Plea for Restraining Order, filed Oct. 16, 1986, rollo, pp. 413 et seq

Bataan Shipyard & Engineering Co Inc vs Salonga : 75885 : May 27, 1987 : J. Cruz : En Banc : Dissenting Opinion 6 pt 6 pt 0 3

DISSENTING OPINION

CRUZ, J.:

My brother Narvasa has written a truly outstanding decision that bespeaks a penetrating and analytical mind and a masterly grasp of the serious problem we are asked to resolve. He deserves and I offer him my sincere admiration.

There is no question that all lawful efforts should be taken to recover the tremendous wealth plundered from the people by the past regime in the most execrable thievery perpetrated in all history. No right-thinking Filipino can quarrel with this necessary objective, and on this score I am happy to concur with the ponencia.

But for all my full agreement with the basic thesis of the majority, I regret I find myself unable to support its conclusions in favor of the respondent PCGG. My view is that these conclusions clash with the implacable principles of the free society, foremost among which is due process. This demands our reverent regard.

Due process protects the life, liberty and property of every person, whoever he may be. Even the most despicable criminal is entitled to this protection. Granting this distinction to Marcos, we are still not justified in depriving him of this guaranty on the mere justification that he appears to own the BASECO shares.

I am convinced and so submit that the PCGG cannot at this time take over the BASECO without any court order and exercise thereover acts of ownership without court supervision. Voting the shares is an act of ownership. Reorgan-izing the board of directors is an act of ownership. Such acts are clearly unauthorized. As the majority opinion itself stresses, the PCGG is merely an administrator whose authority is limited to preventing the sequestered proper-ties from being dissipated or clandestinely transferred.

The court action prescribed in the Constitution is not inadequate and is available to the PCGG. The advantage of this remedy is that, unlike the ad libitum measures now being taken, it is authorized and at the same time also limited by the fundamental law. I see no reason why it should not now be employed by the PCGG, to remove all doubts regarding the legality of its acts and all suspi-cions concerning its motives.

Bataan Shipyard & Engineering Co Inc vs Salonga : 75885 : May 27, 1987 : J. Gutierrez, Jr : En Banc : Concurring and Dissenting Opinion 6 pt 6 pt 0 3

CONCURRING AND DISSENTING OPINION

GUTIERREZ, JR., J.:

I concur, in part, in the erudite opinion penned for the Court by my distinguished colleague Mr. Justice Andres R. Narvasa. I agree insofar as it states the principles which must govern PCGG sequestrations and emphasizes the limitations in the exercise of its broad grant of powers.

I concur in the general propositions embodied in or implied from the majority opinion, among them:

- (1) The efforts of Government to recover ill-gotten properties amassed by the previous regime deserve the fullest support of the judiciary and all sectors of society. I believe, however, that a nation professing adherence to the rule of law and fealty to democratic processes must adopt ways and means which are always within the bounds of lawfully granted authority and which meet the tests of due process and other Bill of Rights protections.
- (2) Sequestration is intended to prevent the destruction, concealment, or dissipation of ill-gotten wealth. The object is conservation and preservation. Any exercise of power beyond these objectives is law-less usurpation.
- (3) The PCGG exercises only such powers as are granted by law and not proscribed by the Constitution. The remedies it enforces are provisional and contin-gent. Whether or not sequestered property is indeed ill-gotten must be determined by a court of justice. The PCGG has absolutely no power to divest title over sequestered property or to act as if its findings are final.
- (4) The PCGG does not own sequestered property. It cannot and must not exercise acts of ownership. To quote the majority opinion, "one thing is certain x x x, the PCGG cannot exercise acts of dominion."
- (5) The provisional takeover in a sequestration should not be indefinitely maintained. It is the duty of the PCGG to immediately file appropriate criminal or civil cases once the evidence has been gathered.

It is the difference between what the Court says and what the PCGG does which constrains me to dissent. Even as the Court emphasizes principles of due process and fair play, it has unfortunately validated ultra vires acts violative of those very same principles. While we stress the rules which must govern the PCGG in the exercise of its powers, the Court has failed to stop or check acts which go beyond the power of se-questration given by law to the PCGG.

We are all agreed in the Court that the PCGG is not a judge. It is an investigator and prosecutor. Sequestration is only a preliminary or ancillary remedy. There must be a principal and independent suit filed in court to establish the true ownership of sequestered properties. The factual premise that a sequestered property was ill-gotten by former President Marcos, his family, relatives, subordinates, and close associates cannot be assumed. The fact of ownership must be established in a proper suit before a court of justice.

But what has the Court, in effect, ruled?

Pages 21 to 33 of the majority opinion are dedi-cated to a statement of facts which conclusively and indubitably shows that BASECO is owned by President Marcos – and that it was acquired and vastly enlarged by the former President's taking undue advantage of his public office and using his powers, authority, or influence.

There has been no court hearing, no trial, and no presentation of evidence. All that we have is what the PCGG has given us. The petitioner has not even been allowed to see this evidence, much less refute it.

What the PCGG has gathered in the course of its seizures and investigations may be gospel truth. How-ever, that truth must be properly established in a trial court, not unilaterally determined by the PCGG or declared by this

Court in a special proceeding which only asks us to set aside or enjoin an illegal exercise of power. After this decision, there is nothing more for a trial court to ascertain. Certainly, no lower court would dare to arrive at findings contrary to this Court's conclusions, no matter how insistent we may be in labelling such conclusions as "prima facie". To me, this is the basic flaw in PCGG procedures that the Court is, today, unwittingly legitimating. Even before the institution of a court case, the PCGG concludes that sequestered property is ill-gotten wealth and proceeds to exercise acts of ownership over said properties. It treats sequestered property as its own even before the oppositor-owners have been divested of their titles.

The Court declares that a state of seizure is not to be indefinitely maintained. This means that court proceedings to either forfeit the sequestered properties or clear the names and titles of the petitioners must be filed as soon as possible.

This case is a good example of disregard or avoidance of this requirement. With the kind of evidence which the PCGG professes to possess, the forfeiture case could have been filed simultaneously with the issuance of sequestration orders or shortly thereafter.

And yet, the records show that the PCGG appears to concentrate more on the means rather than the ends, in running the BASECO, taking over the board of directors and management, getting rid of security guards, disposing of scrap, entering into new contracts and otherwise behaving as if it were already the owner. At this late date and with all the evidence PCGG claims to have, no court case has been filed.

Among the interesting items elicited during the oral arguments or found in the records of this petition are:

- (1) Upon sequestering BASECO, some PCGG personnel lost no time in digging up paved premises with jack hammers in a frantic search for buried gold bars.
- (2) Two top PCGG volunteers charged each other with stealing properties under their custody. The PCGG had to step in, dismiss the erring representatives, and replace them with new ones.
- (3) The petitioner claims the lower bid of a rock quarry operator was accepted even as a higher and more favorable bid was offered. When the questionable deal was brought to our attention, the awardee allegedly raised his bid to the level of the better offer. The successful bidder later submitted a comment in intervention explaining his side. Whoever is telling the truth, the fact remains that multi-million peso contracts involving the operations of sequestered companies should be entered into under the supervision of a court, not freely executed by the PCGG even when the petitioner-owners question the propriety and integrity of those transactions.
- (4) The PCGG replaced eight out of eleven members of the BASECO board of directors with its own men. Upon taking over full control of the corporation, the newly installed board reversed the efforts of the former owners to protect their interests. The new board fired the BASECO lawyers who instituted the instant petition. It then filed a motion to withdraw this very same petition we are now deciding. In other words, the "new owners" did not want the Supreme Court to continue poking into the legality of their acts. They moved to abort the petition filed with us.

Any suspicion of impropriety would have been avoided if the PCGG had filed the required court proceedings and exercised its acts of management and control under court supervision. The requirements of due process would have been met.

One other matter I wish to discuss in this separate opinion is PCGG's selection of eight out of the eleven members of the BASECO board of directors.

The election of the members of a board of directors is distinctly and unqualifiedly an act of ownership. When

stockholders of a corporation elect or remove members of a board of directors, they exercise their right of ownership in the company they own. By no stretch of the imagination can the revamp of a board of directors be considered as a mere act of conserving assets or preventing the dissipation of sequestered assets. The broad powers of a sequestrator are more than enough to protect sequestered assets. There is no need and no legal basis to reach out further and exercise ultimate acts of ownership.

Under the powers which PCGG has assumed and wields, it can amend the articles and by-laws of a sequestered corporation, decrease the capital stock, or sell substantially all corporate assets without any effective check from the owners not yet divested of their titles or from a court of justice. The PCGG is tasked to preserve assets but when it exercises the acts of an owner, it could also very well destroy. I hope that the case of the Philippine Daily Express, a major newspaper closed by the PCGG, is an isolated example. Otherwise, banks, merchandizing firms, investment institutions, and other sensitive businesses will find themselves in a similar quandary.

I join the PCGG and all right thinking Filipinos in condemning the totalitarian acts which made possible the accumulation of ill-gotten wealth. I, however, dissent when authoritarian and ultra vires methods are used to recover that stolen wealth. One wrong cannot be corrected by the employment of another wrong.

I, therefore, vote to grant the petition. Pending the filing of an appropriate case in court, the PCGG must be enjoined from exercising any and all acts of ownership over the sequestered firm.

Bataan Shipyard & Engineering Co. Inc vs Salonga : 75885 : May 27, 1987 : J. Melencio-Herrera : En Banc : Concurring Opinion 6 pt 6 pt 0 3

CONCURRING OPINION

MELENCIO-HERRERA, J.:

I would like to qualify my concurrence in so far as the voting of sequestered stock is concerned.

The voting of sequestered stock is, to my mind, an exercise of an attribute of ownership. It goes beyond the purpose of a writ of sequestration, which is essentially to preserve the property in litigation (Article 2005, Civil Code). Sequestration is in the nature of a judicial deposit (ibid.).

I have no objection to according the right to vote sequestered stock in case of a take-over of business actually belonging to the government or whose capitalization comes from public funds but which, somehow, landed in the hands of private persons, as in the case of BASECO. To my mind, however, caution and prudence should be exercised in the case of sequestered shares of an on-going private business enterprise, specially the sensitive ones, since the true and real ownership of said shares is yet to be determined and proven more conclusively by the Courts.

It would be more in keeping with legal norms if forfeiture proceedings provided for under Republic Act No. 1379 be filed in Court and the PCGG seek judicial appointment as a receiver or administrator, in which case, it would be empowered to vote sequestered shares under its custody (Section 55, Corporation Code). Thereby, the assets in litigation are brought within the Court's jurisdiction and the presence of an impartial Judge, as a requisite of due process, is assured. For, even in its historical context, sequestration is a judicial matter that is best handled by the Courts.

I consider it imperative that sequestration measures be buttressed by judicial proceedings the soonest possible in order to settle the matter of ownership of sequestered shares and to determine whether or not they are legally

owned by the stockholders of record or are “ill-gotten wealth” subject to forfeiture in favor of the State. Sequestration alone, being actually an ancillary remedy to a principal action, should not be made the basis for the exercise of acts of dominion for an indefinite period of time.

Sequestration is an extraordinary, harsh, and severe remedy. It should be confined to its lawful parameters and exercised, with due regard, in the words of its enabling laws, to the requirements of fairness, due process (Executive Order No. 14, May 7, 1986), and justice (Executive Order No. 2, March 12, 1986).

Bataan Shipyard & Engineering Co. Inc vs Salonga : 75885 : May 27, 1987 : J. Padilla : En Banc : Concurring Opinion 6 pt 6 pt 0 3

CONCURRING OPINION

PADILLA, J.:

The majority opinion penned by Mr. Justice Narvasa maintains and upholds the valid distinction between acts of conservation and preservation of assets and acts of ownership. Sequestration, freeze and temporary take-over encompass the first type of acts. They do not include the second type of acts which are reserved only to the rightful owner of the assets or business sequestered or temporarily taken over.

The removal and election of members of the board of directors of a corporate enterprise is, to me, a clear act of ownership on the part of the shareholders of the corporation. Under ordinary circumstances, I would deny the PCGG the authority to change and elect the members of BASECO's Board of Directors. However, under the facts as disclosed by the records, it appears that the certificates of stock representing about ninety-five (95%) per cent of the total ownership in BASECO's capital stock were found endorsed in blank in Malacanang (presumably in the possession and control of Mr. Marcos) at the time he and his family fled in February 1986. This circumstance let alone the extent of the control Mr. Marcos exercised, while in power, over policy decisions affecting BASECO, entirely satisfies my mind that BASECO was owned and controlled by Mr. Marcos. This is calling a spade a spade. I am also entirely satisfied in my mind that Mr. Marcos could not have acquired the ownership of BASECO out of his lawfully-gotten wealth.

Consequently, even ahead of judicial proceedings, I am convinced that the Republic of the Philippines, through the PCGG, has the right and even the duty to take-over full control and supervision of BASECO.

Bataan Shipyard & Engineering Co., Inc vs PCGG : 75885 : May 27, 1987 : C.J. Teehankee : En Banc : Separate Concurring Opinion Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

SEPARATE CONCURRING OPINION

TEEHANKEE, C.J.:

I fully concur with the masterly opinion of Mr. Justice Narvasa. In the process of disposing of the issues raised by petitioner BASECO in the case at bar, it comprehensively discusses the laws and principles governing the Presidential Commission on Good Government (PCGG) and defines the scope and extent of its powers in the

discharge of its monu-mental task of recovering the "ill-gotten wealth, accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad (and) business enterprises and entities owned or controlled by them during (the Marcos) administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship." [1]

The Court is unanimous insofar as the judgment at bar upholds the imperative need of recovering the ill-gotten properties amassed by the previous regime, which "deserves the fullest support of the judiciary and all sectors of society." [2] To quote the pungent language of Mr. Justice Cruz, "(T)here is no question that all lawful efforts should be taken to recover the tremendous wealth plundered froth the people by the past regime in the most execrable thievery perpetrated in all history. No right-thinking Filipino can quarrel with this necessary objective, and on this score I am happy to concur with the ponencia." [3]

The Court is likewise unanimous in its judgment dismissing the petition to declare unconstitutional and void Executive Orders Nos. 1 and 2 and to annul the sequestration order of April 14, 1986. For indeed, the 1987 Constitution overwhelmingly adopted by the people at the February 2, 1987 plebiscite expressly recognized in Article XVIII, section 26 thereof [4] the vital functions of respondent PCGG to achieve the mandate of the people to recover such ill-gotten wealth and properties as ordained by Proclamation No. 3 promulgated on March 25, 1986.

The Court is likewise unanimous as to the general rule set forth in the main opinion that "the PCGG cannot exercise acts of dominion over property sequestered, frozen or provisionally taken over" and "(T)he PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over, much like a court-appointed receiver, such as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator. In this context, it may in addition enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual its efforts to carry out its task; punish for direct or indirect contempt in accordance with the Rules of Court; and seek and secure the assistance of any office, agency or instrumentality of the government. In the case of sequestered businesses generally (i.e. going concerns, businesses in current operation), as in the case of sequestered objects, its essential role, as already discussed, is that of conservator, caretaker, 'watchdog' or overseer. It is not that of manager, or innovator, much less an owner." [5]

Now, the case at bar involves one where the third and most encompassing and rarely invoked of provisional remedies [6], the provisional takeover of the Baseco properties and business operations has been availed of by the PCGG, simply because the evidence on hand, not only prima facie but convincingly with substantial and documentary evidence of record establishes that the corporation known as petitioner BASECO "was owned or controlled by President Marcos 'during his administration, through nominees, by taking undue advantage of his public office and/or using his powers, authority, or influence;' and that it was by and through the same means, that BASECO had taken over the business and/or assets of the [government-owned] National Shipyard and Engineering Co., Inc., and other government-owned or controlled entities." The documentary evidence shows that petitioner BASECO (read Ferdinand E. Marcos) in successive transactions all directed and approved by the former President - in an orgy of what according to the PCGG's then chairman, Jovito Salonga, in his statement before the 1986 Constitutional Commission, "Mr. Ople once called 'organized pillage'" - gobbled up the government corporation National Shipyard & Steel Corporation (NASSCO), its shipyard at Mariveles, 300 hectares of land in Mariveles from the Export Processing Zone Authority, Engineer Island itself in Manila and its complex of equipment and facilities including structures, buildings, shops, quarters, houses, plants and

expendable or semi-expendable assets and obtained huge loans of \$19,000,000.00 from the last available Japanese war damage fund, P30,000,000.00 from the NDC and P12,400,000.00 from the GSIS. The sordid details are set forth in detail in Paragraphs 11 to 20 of the main opinion. They include confidential reports from then BASECO president Hilario M. Ruiz and the deposed President's brother-in-law, then Captain (later Commodore) Alfredo Romualdez, who although not on record as an officer or stockholder of BASECO reported directly to the deposed President on its affairs and made the recommendations, all approved by the latter, for the gobbling up by BASECO of all the choice government assets and properties.

All this evidence has been placed of record in the case at bar. And petitioner has had all the time and opportunity to refute it, submittals to the contrary notwithstanding, but has dismally failed to do so. To cite one glaring instance: as stated in the main opinion, the evidence submitted to this Court by the Solicitor General "proves that President Marcos not only exercised control over BASECO, but also that he actually owns well nigh one hundred percent of its outstanding stock." It cites the fact that three corporations, evidently front or dummy corporations, among twenty shareholders, in name, of BASECO, namely Metro Bay Drydock, Fidelity Management, Inc. and Trident Management hold 209,664 shares or 95.82% of BASECO's outstanding stock. Now, the Solicitor General points out further that BASECO certificates "corresponding to more than ninety-five percent (95%) of all the outstanding shares of stock of BASECO, endorsed in blank, together with deeds of assignment of practically all the outstanding shares of stock of the three (3) corporations above mentioned (which hold 95.82% of all BASECO stock), signed by the owners thereof although not notarized"[7] were found in Malacañang shortly after the deposed President's sudden flight from the country on the night of February 25, 1986. Thus, the main opinion's unavoidable conclusion that "(W)hile the petitioner's counsel was quick to dispute this asserted fact, assuring this Court that the BASECO stockholders were still in possession of their respective stock certificates and had 'never endorsed *** them in blank or to anyone else,' that denial is exposed by his own prior and subsequent recorded statements as a mere gesture of defiance rather than a verifiable factual declaration.... Under the circumstances, the Court can only conclude that he could not get the originals from the stockholders for the simple reason that as the Solicitor General maintains, said stockholders in truth no longer have them in their possession, these having already been assigned in blank to President Marcos."[8]

With this strong un rebutted evidence of record in this Court, Justice Melencio-Herrera, joined by Justice Feliciano, expressly concurs with the main opinion upholding the commission's take-over, stating that "(I) have no objection to according the right to vote sequestered stock in case of a take-over of business actually belonging to the government or whose capitalization comes from public funds but which, somehow, landed in the hands of private persons, as in the case of BASECO." They merely qualify their concurrence with the injunction that such take-overs be exercised with "caution and prudence" pending the determination of "the true and real ownership" of the sequestered shares. Suffice it to say in this regard that each case has to be judged from the pertinent facts and circumstances and that the main opinion emphasizes sufficiently that it is only in the special instances specified in the governing laws grounded on the superior national interest and welfare and the practical necessity of preserving the property and preventing its loss or disposition that the provisional remedy of provisional take-over is exercised.

Here, according to the dissenting opinion, "the PCGG concludes that sequestered property is ill-gotten wealth and proceeds to exercise acts of ownership over said properties...." and adds that "the fact of ownership must be established in a proper suit before a court of justice" - which this Court has preempted with its finding that "in the context of the proceedings at bar, the actuality of the control by President Marcos of BASECO has been sufficiently shown."

But BASECO who has instituted this action to set aside the sequestration and take-over orders of respondent

commission has chosen to raise these very issues in this Court. We cannot ostrich-like hide our head in the sand and say that it has not yet been established in the proper court that what the PCGG has taken over here are government properties, as a matter of record and public notice and knowledge, like the NASSCO, its Engineer Island and Mariveles Shipyard and entire complex, which have been pillaged and placed in the name of the dummy or front company named BASECO but from all the documentary evidence of record shown by its street certificates all found in Malacañang should in reality read "Ferdinand E. Marcos" and/or his brother-in-law. Such take-over can in no way be termed "lawless usurpation", for the government does not commit any act of usurpation in taking over its own properties that have been channeled to dummies, who are called upon to prove in the proper court action what they have failed to do in this Court, that they have lawfully acquired ownership of said properties, contrary to the documentary evidence of record, which they must likewise explain away. This Court, in the exercise of its jurisdiction on certiorari and as the guardian of the Constitution and pro-tector of the people's basic constitutional rights, has entertained many petitions on the part of parties claiming to be adversely affected by sequestration and other orders of the PCGG. This Court set the criterion that such orders should issue only upon showing of a prima facie case, which criterion was adopted in the 1987 Constitution. The Court's judgment cannot be faulted if much more than a prima facie has been shown in this case, which the faceless figures claiming to represent BASECO have failed to refute or disprove despite all the opportunity to do so.

The record plainly shows that petitioner BASECO which is but a mere shell to mask its real owner did not and could not explain how and why they received such favored and preferred treatment with tailored Letters of Instruction and handwritten personal approval of the deposed President that handed it on a silver platter the whole complex and properties of NASSCO and Engineer Island and the Mariveles Shipyard.

It certainly would be the height of absurdity and helplessness if this government could not here and now take over the possession and custody of its very own properties and assets that had been stolen from it and which it had pledged to recover for the benefit and in the greater interest of the Filipino people, whom the past regime had saddled with a huge \$27-billion foreign debt that has since ballooned to \$28.5-billion.

Thus, the main opinion correctly concludes that "(I)n the light of the affirmative showing by the Government that, prima facie at least, the stockholders and directors of BASECO as of April, 1986 were mere 'dummies', nominees or alter egos of President Marcos, at any rate, that they are no longer owners of any shares of stock in the corporation, the conclusion cannot be avoided that said stockholders and directors have no basis and no standing whatever to cause the filing and prosecution of the instant proceeding; and to grant relief to BASECO, as prayed for in the petition, would in effect be to restore the assets, properties and business sequestered and taken over by the PCGG to persons who are 'dummies' nominees or alter egos of the former President." [9]

And Justice Padilla in his separate concurrence "called a spade a spade," citing the street certificates representing 95% of BASECO's outstanding stock found in Malacañang after Mr. Marcos' hasty flight in February, 1986 and the extent of the control he exercised over policy decisions affecting BASECO and concluding that "Consequently, even ahead of judicial proceedings, I am convinced that the Republic of the Philippines, thru the PCGG, has the right and even the duty to take over full control and supervision of BASECO."

Indeed, the provisional remedies available to respondent commission are rooted in the police power of the State, the most pervasive and the least limitable of the powers of Government since it represents "the power of sovereignty, the power to govern men and things within the limits of its domain." [10] Police power has been defined as the power inherent in the State "to prescribe regulations to promote the health, morals, education, good order or safety, and general welfare of the people." [11] Police power rests upon public necessity and upon the right of the State and of the public to self-protection. [12] "Salus populi suprema est lex" or "the welfare of the people is the Supreme Law." [13] For this reason, it is co-extensive with the necessities of the case and the

safeguards of public interest.[14] Its scope expands and contracts with changing needs.[15] "It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevail-ing morality or strong and preponderant opinion to be greatly and imme-diatly necessary to the public welfare." [16] That the public interest or the general welfare is subserved by sequestering the purported ill-gotten assets and properties and taking over stolen properties of the government channeled to dummy or front companies is stating the obvious. The recovery of these ill-gotten assets and properties would greatly aid our financially crippled government and hasten our national economic recovery, not to mention the fact that they rightfully belong to the people. While as a measure of self-protection, if, in the interest of general wel-fare, police power may be exercised to protect citizens and their businesses in financial and economic matters, it may similarly be exercised to protect the government itself against potential financial loss and the possible dis-ruption of governmental functions.[17] Police power as the power of self-protection on the part of the community bears the same relation to the com-munity that the principle of self-defense bears to the individual.[18] Truly, it may be said that even more than self-defense, the recovery of ill-gotten wealth and of the government's own properties involves the material and moral survival of the nation, marked as the past regime was by the obliteration of any line between private funds and the public treasury and abuse of unlimited power and elimination of any accountability in public office, as the evidence of record amply shows.

It should be mentioned that the tracking down of the deposed President's actual ownership of the BASECO shares was fortuitously facilitated by the recovery of the street certificates in Malacañang after his hasty flight from the country last year. This is not generally the case.

For example, in the ongoing case filed by the government to recover from the Marcoses valuable real estate holdings in New York and the Lindenmere estate in Long Island, former PCGG chairman Jovito Salonga has revealed that their names "do not appear on any title to the property. Every building in New York is titled in the name of a Netherlands Antilles corporation, which in turn is purportedly owned by three Panamanian corporations, with bearer shares. This means that the shares of this corporation can change hands any time, since they can be transferred, under the law of Panama, without previous registra-tion on the books of the corporation. One of the first documents that we discovered shortly after the February revolution was a declaration of trust handwritten by Mr. Joseph Bernstein on April 4, 1982 on a Manila Peninsula Hotel stationery stating that he would act as a trustee for the benefit of President Ferdinand Marcos and would act solely pursuant to the instructions of Marcos with respect to the Crown Building in New York." [19]

This is just to stress the difficulties of the tasks confronting respondent PCGG, which nevertheless has so far commendably produced unprecedented positive results. As stated by then chairman Salonga:

"PCGG has turned over to the Office of the President around 2 billion pesos in cash, free of any lien. It has also delivered to the President - - as a result of a compromise settlement - - around 200 land titles involving vast tracts of land in Metro Manila, Rizal, Laguna, Cavite, and Bataan, worth several billion pesos. These lands are now available for low-cost housing projects for the benefit of the poor and the dispossessed amongst our people.

"In the legal custody of the Commission, as a result of sequestration proceedings, are expensive jewelry amounting to 310 million pesos, 42 aircraft amounting to 718 million pesos, vessels amounting to 748 million pesos, and shares of stock amounting to around 215 million pesos.

"But, as I said, the bulk of the ill-gotten wealth is located abroad, not in the Philippines. Through the efforts of the PCGG, we have caused the freezing or sequestration of properties, deposits, and securities probably worth many billions of pesos in New York, New Jersey, Hawaii, California, and more importantly -- in Switzerland. Due to favorable developments in Switzerland, we may expect, according to our Swiss lawyers, the first

deliveries of the Swiss deposits in the foreseeable future, perhaps in less than a year's time. In New York, PCGG through its lawyers who render their services free of cost to the Philippine government, succeeded in getting injunctive relief against Mr. and Mrs. Marcos and their nominees and agents. There is now an offer for settlement that is being studied and explored by our lawyers there.

"If we succeed in recovering not all (since this is im-possible) but a substantial part of the ill-gotten wealth here and in various countries of the world -- something the re-revolutionary governments of China, Ethiopia, Iran and Nicaragua were not able to accomplish at all with respect to properties outside their territorial boundaries -- the Presidential Commission on Good Government, which has undertaken the difficult and thankless task of trying to undo what had been done so secretly and effectively in the last twenty years, shall have more than justified its existence." [20]

The misdeeds of some PCGG volunteers and personnel cited in the dissenting opinion do not detract at all from the PCGG's accomplishments, just as no one would do away with newspapers because of some undesirable elements. The point is that all such misdeeds have been subject to public exposure and as stated in the dissent itself, the erring PCGG representatives have been forthwith dismissed and replaced.

The magnitude of the tasks that confront respondent PCGG with its limited resources and staff support and volunteers should be appreciated, together with the assistance that foreign governments and lawyers have spontaneously given the commission.

A word about the PCGG's firing of the BASECO lawyers who filed the present petition challenging its questioned orders, filing a motion to withdraw the petition, after it had put in eight of its representatives as directors of the BASECO board of directors. This was entirely proper and in accordance with the Court's Resolution of October 28, 1986, which denied BASECO's motion for the issuance of a restraining order against such take-over and declared that "the government can, through its designated directors, properly exercise control and management over what appear to be properties and assets owned and belonging to the government itself and over which the persons who appear in this case on behalf of BASECO have failed to show any right or even any shareholding in said corporation." In other words, these dummies or fronts cannot seek to question the government's right to recover the very properties and assets that have been stolen from it by using the very same stolen properties and funds derived therefrom. If they wish to pursue their own empty claim, they must do it on their own, after first establishing that they indeed have a lawful right and/or shareholding in BASECO.

Under the 1987 Constitution, the PCGG is called upon to file the judicial proceedings for forfeiture and recovery of the sequestered or frozen properties covered by its orders issued before the ratification of the Constitution on February 2, 1987, within six months from such ratification, or by August 2, 1987. (For those orders issued after such ratification, the judicial action or proceeding must be commenced within six months from the issuance thereof.) The PCGG has not really been given much time, considering the magnitude of its tasks. It is entitled to some forbearance, in availing of the maximum time granted it for the filing of the corresponding judicial action with the Sandiganbayan.

[1] Executive Order No. 1, section 2.

[2] Gutierrez, J., concurring and dissenting opinion.

[3] Lone dissenting opinion of Cruz, J.

[4] Text reproduced in Par. 7, sub-par. 3 of main opinion.

[5] Main opinion, par. 24.

[6] The other two provisional remedies are the issuance of sequestration and (2) freeze orders. See main opinion, par. 7.

[7] Main opinion, par. 20.

[8] Idem.

[9] Main opinion, par. 21.

[10] Chief Justice Taney, cited in *Morfe vs. Mutuc*, 22 SCRA 424 (1968).

[11] Annotation, 35 SCRA 500, citing *Primicias vs. Fugoso*, 80 Phil. 71; *Ignacio vs. Elas*, 55 OG 2162.

[12] *Churchill vs. Rafferty*, 32 Phil. 580, citing 8 Cyc., 863.

[13] Annotation, 35 SCRA 500, at p. 501, citing *Coke* 139.

[14] Vol. 16A AMJUR 2d, Constitutional Law, Sec. 370.

[15] BERNAS, *Primer on the 1973 Constitution*, p. 32, 1983 ed.

[16] *Churchill vs. Rafferty*, 32 Phil. 580, citing *Noble State Bank vs. Haskell* (219 US [1911] 575).

[17] Vol. 16 AMJUR 2d, Constitutional Law, Sec. 420.

[18] Vol. 16 AMJUR 2d, Constitutional Law, Sec. 370.

[19] Jovito R. Salonga: "The Practical and Legal Aspects of the Recovery of Ill-gotten Wealth," Gregorio Araneta Memorial Lecture delivered on August 25, 1986 at the Ateneo Law School.

[20] Idem.

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.