

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (FIRST DIVISION), RESPONDENT.

G.R. No. 88336. December 26, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

The nature and scope of the power of administration of the Presidential Commission on Good Government (PCGG) over sequestered properties is again put in issue in this petition for certiorari to declare null and void the resolution[1] of the First Division of the Sandiganbayan, promulgated on May 18, 1989, denying the PCGG's motion to sell the aircraft subject of this petition.

The records show that on July 31, 1987, petitioner Republic of the Philippines, through the PCGG, filed with respondent court a complaint, docketed as Civil Case No. 0033, against Eduardo Cojuangco, Jr. and sixty (60) other defendants for reconveyance, reversion, accounting, restitution and damages. The complaint was subsequently amended and eventually expanded on January 25, 1988.

Among the sequestered assets involved in said Civil Case No. 0033 is an aircraft, more particularly described as Follows:

Avions Dassault - Breguet Falcon 50

Jet Model – 1982

Manufacturer's Serial No. 082

Cert, of Reg. No. RP-C754

On March 20, 1989, the PCGG filed in respondent court a Motion for Authority to Sell Sequestered Aircraft Pending Litigation, alleging inter alia that:

"2. From the time it was sequestered up to the present, the aircraft has been parked at the Villamor Airbase at Pasay City and due to non-use and continuous exposure to the elements like rust and corrosion, the same is fast deteriorating. Likewise, from the time of its sequestration the said aircraft has not been properly maintained or flown for maintenance purposes resulting in its depreciation and deterioration faster than usual.

"3. In a letter dated January 27, 1989 to the PCGG, International Enterprise, Inc. offered to buy the subject aircraft x x x.

"4. Pursuant to such offer, the PCGG requested the Philippine Airlines (PAL) for an evaluation of the same aircraft. PAL came up with the finding that buying a brand new aircraft is mere justified than reconditioning the subject aircraft into flying condition which would entail an expense of not less than \$6 to \$8 Million US Dollars, x x x

"5. Earlier, on January 11 and 20, 1989, an American firm named AVSTAR of Seattle, Washington, U.S.A. evaluated and appraised the aircraft to be worth no more than \$4 Million US Dollars, x x x

"6. Considering that the aircraft is fast depreciating and deteriorating, there is an imperative need for its sale so as not to render it valueless pending termination of the proceedings in the instant case, not to mention the maintenance expense that would be saved by PCGG if the sale were to be allowed.

"7. The sale of the aircraft has been recommended by the PCGG as shown in the attached copy of the Memorandum dated February 2, 1989, x x x.

"8. The proceeds of the sale, if allowed, may be deposited in escrow for the benefit of whoever shall be adjudged the rightful owner of the said aircraft in the instant case."[2]

At the scheduled hearing of the said motion on March 22, 1989, the Sandiganbayan deferred consideration thereof for the reason that "the Office of the Solicitor General has not been fully apprised of the relationships involved between the parties to the case, the airplane subject of sequestration and the owner thereof which is the United Chemicals Corporation x x x."[3]

On April 7, 1989, the PCGG filed with the Sandiganbayan a Motion for Early Resolution,[4] alleging that the PCGG's power of administration necessarily includes the authority to sell sequestered assets which are in immediate danger of deterioration, purportedly in accordance with the principle laid down in *Bataan Shipyard & Engineering Co., Inc. vs. Presidential Commission on Good Government, et al.*[5] (BASECO case), to the effect that the PCGG may exercise "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; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator." The PCGG likewise invoked Section 11 of Rule 57 of the Rules of Court.

At the hearing set on April 14, 1989, the PCGG, through counsel, argued on the urgency of the aircraft's sale. During the same hearing, Atty. Estelito P. Mendoza, appearing for defendant Eduardo Cojuangco, Jr., interposed no objection to PCGG's decision to sell and "categorically informed the Court that defendant Cojuangco would neither be benefited nor prejudiced by whatever disposition the Court might make on the motion to sell the aircraft." Thereafter, the incident was submitted for resolution.[6]

On April 27, 1989, the PCGG filed a Motion to Withdraw its Earlier Motion for Authority to Sell Aircraft,[7] after the Sandiganbayan failed to resolve the first motion filed by the PCGG. However, instead of resolving this last motion, the Sandiganbayan issued its aforesaid resolution,[8] now subject of this petition, denying PCGG's motion to sell the aircraft "since in the very first instance, no justification *prima facie* or otherwise has been demonstrated for its seizure from its Lessee,"[9] considering that the Certificate of Registration of the aircraft issued by the Bureau of Air Transportation on October 30, 1986, identifies the owner as "UNITED COCONUT CHEMICALS, INC. (Lessee)."[10]

In so holding, the Sandiganbayan declared that:

"Unquestionably, neither the issue of the ownership of the aircraft nor of the propriety of the sequestration thereof has been raised in the pleadings before the Court regard." (sic) to the motion to sell the aircraft in question.

"The invocation, however, of the power of the court to authorize the disposition of a sequestered asset or seized property (the sequestration or seizure of which was not upon this Court's authority) must necessarily, though perhaps implicitly, include a plea for the affirmance of the propriety of that seizure. And were there no reason for this Court to doubt the original seizure, then this Court would, as it must, accord the PCGG the rebuttable presumption of regularity in its acts.

"The plaintiff-movant through the PCGG itself, however, has presented this Court with facts which serve to dilute the presumption of regularity which this Court would accord PCGG's own acts, namely:

1. The aircraft in question is apparently NOT owned by UNICHEM;
2. It is apparently NOT owned by defendant Cojuangco either but, upon plaintiff's own admission, by 'Faysound'. Certainly, no averment has been made either by PCGG or anybody else to prove false the data on the Certificate of Registration of that aircraft to that effect;
3. UNICHEM itself is not a sequestered corporation (only the shares of stock therein owned by defendant Cojuangco appear to have been sequestered);
4. The lease over the aircraft, according to the plaintiff itself, lapsed (in 1987) more than two years ago;
5. The renewal of the Certificate of Registration was issued by the Bureau of Air Transportation on October 30, 1986, four months AFTER this and other aircraft had been ordered sequestered, per writ of sequestration on file with this Court.

"There is, then, every indication on the very face of the pleadings of plaintiff-movant and the allegations in open Court that the sequestration of the aircraft now sought to be sold was not in order. It is true that no one, not even the lessor, has come to Court nor, as far as this Court is properly informed, has anyone sought to question the propriety of the plaintiff's (or PCGG's) seizure thereof anywhere else. This silence from others who may be parties in interest to this aircraft, however, does not justify authorization of the projected sale of that aircraft when it becomes apparent that the premises for such an authorization do not exist - in this instance a valid sequestration.

"It will not do to say. that the issue of ownership can be taken up later when, the case proceeds to trial since one of the issues even now, remains the prima facie propriety of PCGG's seizure thereof which PCGG now makes abundantly apparent to have been absent.[11]

Hence, this petition with the Sandiganbayan as the respondent.

On June 6, 1989, a temporary restraining order was issued by the Court en banc ordering respondent Sandiganbayan, its agents, representatives or any person or persons acting in its place or stead to cease and desist from enforcing its resolution promulgated on May 18, 1989 in Civil Case-No. 0033.[12]

Under date of November 7, 1989, petitioner manifested to this Court that the aircraft subject of the petition had been sold by PCGG to Walter Fuller Aircraft, Inc. on September 28, 1989 "to preserve the value of the aircraft and to prevent its rapid deterioration," pursuant to which the "sequestration was (then) lifted, and it would be substituted by the proceeds of the sale deposited in escrow, x x x." [13]

The PCGG asseverates that the sale of the subject aircraft is in pursuance, of the exercise of its administrative power to preserve and conserve sequestered assets under its control and supervision; that the Sandiganbayan may not interfere with PCGG's decision to sell the aircraft or with an act involving an exercise of administrative discretion of PCGG consonant with PCGG's mandated duty to preserve and conserve the sequestered asset; that the "courtesy" motion to sell the sequestered aircraft pending litigation was "filed by the PCGG purely in deference to the Sandiganbayan and by way of informing the said court about the sale; that equitable and pragmatic considerations justify the PCGG decision to sell the aircraft; that the determination by the Sandiganbayan as to the ownership of the said aircraft prior to the termination of the trial of the case is premature; and that there exists prima facie evidence to justify the sequestration of the aircraft.

Contrarily and in support of its assailed resolution, the Sandiganbayan argues that no prima facie evidence exists to warrant the sequestration of the subject aircraft, and that the sale thereof requires prior judicial authority from the Sandiganbayan.

I. It is the submission of the PCGG that its power to administer and conserve necessarily includes the authority to sell sequestered assets which are in immediate danger of deterioration or dissipation, such as the aircraft subject of this petition, since, after all, the purpose of such sale is to preserve the remaining value of the assets in the form of cash placed in escrow. It avers that the sale of the aircraft is in pursuit of its mandated objectives of conserving or preserving the sequestered asset in the valid exercise of its discretionary administrative functions. It likewise asserts that in accordance with the ruling laid down in Presidential Commission on Good Government, et al. vs. Securities and Exchange Commission, et al.[14] (SEC case), it may resort to "acts of strict ownership" provided said acts are for the objective of conservation, preservation or otherwise prevention of dissipation of sequestered assets.

This Court, in the SEC case above adverted to, held that:

"x x x To our mind, though, it is not so much the nature of the act proposed to be done by the PCGG that is essential, but rather, the purpose for doing so. The prime consideration should be: is the act proposed to be done by the PCGG merely an act of administration or an act of strict ownership essential to the pursuit of its objectives? For it cannot be totally discounted that situations may arise wherein only through an act of strict ownership can the PCGG be able to prevent the dissipation of the assets of the sequestered corporation or business.'x x x."

The cited case involves the power of the PCGG to vote the sequestered shares for the purpose of deleting from the Articles of Incorporation and By-Laws of Eastern Telecommunications Philippines, Inc. (ETPI) the "right of first refusal" clause. While recognizing the PCGG's right to exercise acts of strict ownership necessary to the attainment of its objectives, the Court denied therein said right from the PCGG for the reason that "[w]e cannot see our way clear as to how this move could help prevent the dissipation of the corporation's assets, particularly when it has its own representatives in the Board of Directors, who can effectively provide such measures and safeguards to prevent such dissipation."

The leading BASECO case, hereinbefore cited, emphasized in no uncertain terms that the PCGG has only powers of administration, hence it may not exercise acts of ownership. It bears repeating for convenient reference what the Court underscored therein:

"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, 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." (Emphasis in the original text.)

To this, general rule, an exception was also provided for, to wit:

"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 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 exists 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, x x x"

The Presidential Memorandum of June 26, 1986 referred to in the BASECO case reads as follows:

"Consistent with Executive Order Nos. 1, 2 and 14, as regards recovery of ill-gotten wealth, the Commission is authorized 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; adoption and amendment of by-laws; sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of corporate properties, incurring, creating, or increasing bonded indebtedness; increase or decrease of capital stock; merger or consolidation of the corporation with another or other corporations; investment of corporate funds in another corporation or business or for purposes other than the primary purpose for which it was organized; or for similar purposes pending the outcome of proceedings to determine the ownership of said shares of stock." [15]

In the light of the foregoing pronouncements, we hold that the ruling laid down in the SEC case relied upon by the PCGG should be given a strict and limited interpretation and application. Firstly, the PCGG may perform such acts of strict ownership only as may necessarily be required by or result from the exercise of its vested power to vote on the sequestered shares of stock of a corporation; and, secondly, such act is essential to the attainment of the PCGG's stated purpose for sequestration, i.e., to prevent the dissipation of the corporate assets.

In the case at bar, the PCGG has categorically stated that the sale of the subject aircraft is in pursuance of its administrative duty to preserve and conserve the sequestered asset. We have earlier discussed, quoting our ruling in the BASECO case, the various acts falling within the ambit of the PCGG's power of administration. The sale of sequestered property, which is an attribute of ownership, is ordinarily not within the "preservation and conservation" aspect of the PCGG's administrative objectives. On the basis of our preceding discussions, the instant case is not necessarily one of the situations contemplated by the law and jurisprudence mentioned therein.

It is thus patently erroneous for the PCGG to rely only on our ruling in the SEC case, which involves the exercise of an act of strict ownership, in order to sanction an act which is clearly beyond the realm of its administrative powers. Hence, proper court authority, i.e., the approval of the Sandiganbayan, is a condition sine qua non to the sale of the sequestered aircraft, the lack of which constitutes a grave abuse of discretion on the part of PCGG and would render the sale null and void.

That the filing-of the motion to sell was merely in deference or an act of "courtesy "to the Sandiganbayan and did not necessarily mean that the PCGG was invoking the court's authority is, to our mind, a belated and contrived submission of the PCGG designed to becloud the resultant implications of such act. For all intents and purposes, the filing of the motion to sell must be considered as an outright recognition by the PCGG of the power of the Sandiganbayan to allow or disallow the sale. It cannot now dispute such authority after it, had submitted thereto and had obtained an adverse judgment therefrom.

II. The PCGG insists that respondent cannot interfere in its decision to sell the subject aircraft, on the former's assumption that the exercise of such discretion is in pursuance of it's administrative duty to preserve and conserve sequestered assets.

While we are not discounting the ruling enunciated in Presidential Commission on Good Government vs. Peña, et al.[16] (PENA case) invoked by the PCGG, reiterating the elementary principle that "purely administrative and discretionary functions may not be interfered with by the courts," suffice it to say that this doctrine finds no proper application to the case at bar. As hereinbefore explained, the sale of a sequestered asset is not within the limited .administrative powers vested in the PCGG.

III. It is likewise the theory of the PCGG that the similarity between its power of sequestration and the provisional remedy of preliminary attachment or receivership is exclusive. By this, it means that the similarity refers only to the fact that the property under sequestration, receivership or preliminary attachment may be sold pendente lite whenever necessary, such as perishable goods or where the sale will subserve the interests of all parties to the case. It contends that the only difference between the sale of assets under sequestration and those under ordinary attachment or receivership is that in the. former, the decision to sell involves PCGG's exercise of executive or administrative discretion, while in the latter, the decision involves the Sandiganbayan's exercise of judicial discretion. Finally, so it claims, while property under preliminary attachment may be sold only upon authority of the court having jurisdiction over the main case,[17] this rule does not apply to sequestered properties for the following reasons: (1) the writ of preliminary attachment is issued by the court while the writ of sequestration is issued by the PCGG; (2) the authority to sell the property under preliminary attachment is derived from the Rules of Court while that of sequestration emanates from Executive Order Nos. 1 and 2; and (3) while the property in preliminary attachment is deemed under the custody of the court, the sequestered property is under the custody of PCGG.[18]

The thesis does not merit acceptance.

We have deliberated on and resolved this issue in the BASECO case, which we reiterated in Republic of the Philippines vs. Sandiganbayan, et al.[19] (REPUBLIC case), thus:

"f. Kinship to Attachment, Receivership

As thus described, sequestration, freezing and provisional takeover are akin to the provisional remedy of preliminary attachment, or receivership. 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. 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. 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." (Emphasis ours.)

In the REPUBLIC case, we declared that "the PCGG's power to sequester alleged ill-gotten properties is likened to the provisional remedies of preliminary attachment or receivership which are always subject to the control of the court." As a matter of fact, there is nothing in the BASECO case nor in the REPUBLIC case which would at least indicate or suggest that there exists such an exception as is theorized by the PCGG. On the contrary, we have even likened a sequestration order to the remedies of preliminary attachment and receivership on several aspects, such as, that it may be issued ex parte; no objection of any significance may be raised to its ex parte issuance; and there must be prima facie evidence as basis for the issuance thereof. At any rate, the PCGG has not advanced any substantial argument as will justify a deviation from the broad authority of the courts in respect to the aforementioned provisional remedies. Necessarily, we cannot rule differently.

IV. The issue on the existence of prima facie evidence in support of the issuance of a sequestration order has likewise been laid to rest in the BASECO case, in this wise:

"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.

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." 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." 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. 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.'" [Emphasis in the original text.]

The orders or decisions of PCGG are appealable to the Sandiganbayan whose resolutions or decisions are, in turn reviewable by this Court.

The questioned resolution of respondent is premised primarily on the requirement that there can be no valid sequestration of the aircraft absent a showing that prima facie evidence exists in support thereof. The PCGG claims otherwise, and we quote at length its contentions in its reply dated April 25, 1990:

"Sometime in April 1986, PCGG agents duly armed with a search and seizure order, conducted a search on the Araza Building owned by Cojuangco located at Makati, Metro Manila. Among the documents seized by reason thereof are papers, concerning Faysound Limited (Faysound, for short). x x x.

"Handwritten entries on the foregoing documents reveal, among others, the minutes of meetings in Faysound Limited. For instance, the entry dated October 23, 1982 reads: "(I)ssuance of power of attorney to Mr. James

B. Jensen, Jr. of San Francisco, U.S.A. to act for the company to lease the company's aircraft Falcon Jet 50.' x x x.

“Another entry also bearing similarly shows the following:

Faysound Limited

Purchase price Falcon Jet 50-82. - \$9,875,000

1. US \$100,000 now with FJC (obviously referring .to Falcon Jet Corporation, the seller of the aircraft) as refundable be converted to non-refundable deposit before end of working hours Oct. 4, 1982 Monday San Francisco time on Tuesday Oct. 5, 1982 Manila time.

2. US \$100,000 to be remitted by Tuesday October 5, 1982 San Francisco time on Wed Oct. 6 Manila Time

3. US dollars 300,000 to be remitted by Monday Oct. (illegible) San Francisco time

This will aggregate to US \$500,000 as non-refundable deposit above-mentioned monies to be remitted to James Jensen, Jr. for transfer to FJC.

4. Balance of US \$9,375,000 either by direct remittance or letter of credit in favor of FJC to be due on Oct. 28, 1982 or three weeks from date of purchase agreement.

28-9-82 remittance to J B Jensen & Co. US \$100,000 c/o Bank Orient San Francisco as refundable deposit for one brand new Falcon 50 aircraft

5-10-82 JB Jensen US \$100,000 10-25-82 Faysound Ltd - credit Acct .(illegible) US \$100,000 by order of Long. Reach Business.

8-10 James B. Jensen US \$300,000

2-11-82 Johnson and Anton, Inc.promissory payment of insurance covered account full risk insurance (illegible).

x x x

"That Mr. Jensen acted as Faysound's agent in the purchase of the aircraft from Falcon Jet Corporation is confirmed by the delivery report dated October 30, 1982 which shows that the same aircraft was turned over to Faysound's representatives, namely J. Jensen. Jr., R. Tomacruz and F. Hedlund. x x x.

"Other documents reveal that Faysound borrowed the money utilized in the purchase of the aircraft from Long Reach Business S.A., a corporation incorporated under the laws of Panama which is managed by Robert Wang (a Director of Faysound Limited) and Mimi Ho who reported directly to Atty. Luis Vera-Cruz of the ACCRA Law Office, then the lawyer of Cojuangco. x x x.

"What unmasks the whole charade is the fact that Ms. Anna. Wu and Mr. Wang communicated and/or reported, directly to Mrs. Yolanda Uy, one of the very visible officers of Cojuangco here in Manila, x x x.

"As stated in the petition, James B. Jensen had consistently acted as Cojuangco's agent in the importation/purchase of farm machineries and heavy equipment in the U.S. x x x. Moreover, he is the same fellow who brought in the Porsche Targa 911S for Cojuangco in 1971 which vehicle is now under-sequestration.

"From the foregoing circumstances, the following facts unfair:

1. James B. Jensen actually and directly purchased the aircraft in question for Faysound Limited.
2. Faysound Limited is a Hongkong corporation with Mr. Wang and Ms. Ho as visible officers who reported

directly to Mrs. Yolanda Uy, a visible agent or representative of Cojuangco.

3. The money used in the purchase of the aircraft was borrowed by Faysound Limited from Long Reach Business S.A. a Panamanian corporation managed by Mr. Wang and Ms. Ho who also reported directly to Atty. Luis Vera-Cruz of the ACCRA Law Office, then the lawyer of Cojuangco.

"The connecting link of the above persons point to Cojuangco, who was then the president of UNICHEM to which the subject aircraft appears to have been leased, as the ostensible owner of the same aircraft.

"Even the lease agreement itself entered into between Faysound and UNICHEM shows that it was a sham document calculated to camouflage the actual owner of the same aircraft. As may be noted therein, the agreement appears to have been entered into on. October 23, 1982, or six (6) days before the aircraft was actually sold to Faysound on October 29, 1982 as indicated in the Bill of Sale. x x x. There is no stipulation or clause setting forth what happens if Faysound was not able to purchase the aircraft. But what renders the agreement even more dubious is the fact that on page 3 thereof under the heading 'RENT', the amount of rent is established as 'in such amounts and upon such terms as will be determined by the parties.' It is not reasonable to assume that two (2) unrelated parties would enter into a lease agreement involving a multi-million dollar aircraft without firmly and clearly establishing exactly when lease payments are to be made and the total amount of all such lease payments. On the other hand, if a single entity owned both the lessee and the lessor, then such a loosely drawn agreement would make sense. Moreover, on page 10 of the lease agreement, under the heading of 'USE OF AIRCRAFT FOR DEMONSTRATION,' the lessor demands the. right to take possession of the aircraft at any time for purposes of demonstrating the aircraft, provided that the lessor supplies the lessee with written notification at least three (3) days in advance. There is no indication of how many such demonstrations can be held during the life of the lease agreement or how long each such demonstration may last. In such a case, the lessor could ultimately have control of the aircraft more frequently than would the lessee even though the lessee is paying an undetermined amount of rent for the exclusive use of the aircraft. To suggest that this is not a standard part of an aircraft lease agreement is to grossly understate the matter.

x x x

"If Cojuangco's interest were not really connected with Faysound, how can one reasonably answer the following questions:

1. Why would documents relating to this company bearing on the minutes of the meeting of the company dealing on the acquisition of the aircraft and the increase in capitalization be in his custody thru his agents?
2. Why would the officers of this corporation report on the activities of the corporation directly to him also thru Mrs. Yolanda Uy?
3. Why would Long Reach Business S.A. extend a loan of approximately US \$9,000,000 to Faysound Limited whose authorized capital was even less than US \$10,000? It should be here stressed that the officers of Long Reach Business, Faysound Limited, Marvel and Wayumaku Limited have the same directors and officers. As hereinbefore stated, the officers of Long Reach Business reported directly on its activities to Atty. Vera-Cruz of the ACCRA Law Office, then lawyer for Cojuangco.
4. If the funds used in the purchase of the subject aircraft came from legitimate sources of Cojuangco, why was there a need to resort to the devious scheme hereinbefore demonstrated, Cojuangco hiding behind the cloak of anonymity?

"It should be emphasized that the acquisition of the subject aircraft is not an isolated scheme. It was also used in the purchase/lease of the King Air 200 SN BB-975. Said King Air was purchased from Beech Aircraft. Corporation thru Mr. Mike Campos of Liberty Aviation, and the funds used in the purchase thereof, came from

the United Coconut Planters Bank (UCPB), as shown in the letter dated March 21, 1983 of Domingo J. Polotan addressed to Mr. Amado C. Mamuric, both from UCPB. x x x. However, the deed of sale reflects the name of a different buyer, Faysound find not UCPB, as shown in a communication dated April 27, 1983 from A. Mamuric addressed to JIBCO ATTN: NG WAI SUN/HENRY SY,' x x x. Thus, in the lease agreement over the said King Air, Faysound Limited appears as the owner while UCPB appears merely as the lessor."[20]

It must be noted, however, that the hereinabove quoted dissertation, as well as the documents presented by the PCGG before this Court[21] to prove the existence of a prima facie case of ill-gotten wealth, were never presented to the Sandiganbayan, in spite of the latter's order to that effect. In his Comment, Presiding Justice Francis E. Garchitorena, of the Sandiganbayan, pointed out to this Court the following incidents, which, were not mentioned in the petition of the PCGG. viz.:

"15. On April 14, 1989, the Motion for Authority to Sell the AIRCRAFT was extensively argued with Solicitor Herminio Miranda appearing for the PCGG. At that time, the attention of the PCGG was called to the fact that the very Certificate of Registration of the AIRCRAFT showed that UNICHEM was not the owner but only a lessee of the AIRCRAFT so that:

(a) There appeared to have been no basis for the sequestration, to begin with, and

(b) Certainly, that there would be no basis for further keeping the AIRCRAFT in sequestration at all, since the lease of the AIRCRAFT, according to the PCGG itself during oral argument, had apparently expired in 1987, two years' prior to the PCGG's Motion for Authority to Sell that AIRCRAFT

The PCGG, however, through the Solicitor General's representatives, particularly Solicitor Miranda, categorically declared in open Court that it would not go into who was the owner of the AIRCRAFT at that time, even if the lease thereof, in favor of UNICHEM had already expired, and no prodding from the Court, produced any information or clarification on the matter of ownership of the AIRCRAFT or the basis for its original sequestration, much less on the continuation of the sequestration of the AIRCRAFT after the expiry of the lease thereof

At no time thereafter was the SANDIGANBAYAN informed by the PCGG nor by the OSG of, nor was there any intimation by the PCGG about, facts and circumstances surrounding the AIRCRAFT's ownership and sequestration other than what appeared in the AIRCRAFT'S Certificate of Registration.

x x x

The sequestrable character of the aircraft

[One of the first things that must be stated is that the PCGG NEVER even intimated to the Court anything that is now contained in pages 27 and 28 of the PCGG's Petition before this Honorable Supreme Court, namely that according to documents in PCGG's possession.:

(a) there is a close connection if not identity between Faysound (the lessor of the AIRCRAFT) and Cojuangco;

(b) James B. Jensen who allegedly acted a(s) Faysound's agent in the purchase and lease of the AIRCRAFT had also been Cojuangco's agent for the acquisition of fare machinery and heavy equipment and who brought into the country a Porsche Targa, 9115 in. 1971 for Cojuangco, which vehicle is also sequestered

(c) Documents seized from Cojuangco's Arraza Building reveal journal entries of various, transactions, concerning the same aircraft.

all of which allegedly constitute more than prima facie evidence for PCGG to have sequestered the AIRCRAFT.]"[22]

We cannot, therefore, fault the Sandiganbayan for denying the motion to sell the aircraft considering that the PCGG adamantly refused to present evidence in support of its claim that there was a valid sequestration thereof. Neither can the PCGG in all good faith impute a grave abuse of discretion on the part of the Sandiganbayan. For one, we do not subscribe to the theory of the Solicitor General that it is not supposed to present evidence during the hearing on the motion to sell since the proper time to litigate the issue of ownership over the aircraft is during the trial proper. At the outset, the Sandiganbayan was not trying to determine ownership of the aircraft but merely required prima facie evidence that it is ill-gotten wealth, precisely because the only evidence presented before it by the PCGG, which is the Certificate of Registration, did not sufficiently establish that the aircraft was owned, directly or indirectly, by Eduardo Cojuangco, Jr. It would have been improbable at that time for the Sandiganbayan to accept, on its face, the Solicitor General's representation that the aircraft is ill-gotten on the basis of the PCGG's lone evidence, without delving further into the actual relationship between the registered owner and Eduardo Cojuangco, Jr., which thus led to the denial of the motion to sell.

On this score, our attention has been invited by Presiding Justice Garchitorena to the fact that this is already the third time that the PCGG chose to disclose certain factual matters and evidence involved in a case in the Sandiganbayan distressingly only for 'the first time before this Court. Consequently, we digress to strictly enjoin the Office of the Solicitor General which represents the PCGG to scrupulously prevent and avoid such a procedure which cannot but unnecessarily produce an impasse, as in the case at bar, with the caveat that a repetition thereof will not be tolerated by the Court.

Furthermore, the belated revelations by PCGG before the Court of the alleged prima facie evidentiary support to warrant the sequestration of the aircraft evidently cannot subserve the purpose of its present petition. We need not belabor the rule that this Court is not a trier of facts and is not in a position to pass upon the merits of PCGG's present submissions based on unauthenticated and controverted evidence. Obviously, these matter should have been adduced in the first instance before the proper forum, the Sandiganbayan, especially considering that said court precisely called for such evidence and the crux of its assailed resolution rested on the existence velinon of said evidence.

Nor does the supervention of the sale of the airplane on September 28, 1989, during and despite the pendency of this case before the Court, completely render academic the proceedings herein as to leave us no alternative but to yield our imprimatur to a fait accompli. From the preceding discussion of the cases hereinbefore cited and the contending submissions of the parties in the present recourse, we cannot but make the observation that the decision to sell the aircraft is not within the limited administrative powers of the PCGG but requires the sanction of the Sandiganbayan which can grant or withhold the same in the exercise of sound discretion and on the basis of the evidence before it. Without such approval by the judicial authority concerned, and no abuse of discretion on its part having been established, it irresistibly follows that any sale of said aircraft under the circumstances obtaining in this case would constitute a prohibited and invalid disposition by the PCGG.

Also to put things in the proper perspective, it must be emphasized that our issuance of the temporary restraining order of June 6, 1989 did not in any way authorize PCGG to sell the aircraft. It was only to prevent the Sandiganbayan from taking further actions proceeding upon or pursuant to its assumption that the airplane has been unlawfully sequestered and should not be in the custody of the PCGG since that was the bone of contention to be resolved at that posture of the case. PCGG could not have been unaware that, as held in the BASECO and REPUBLIC cases, a definite and positive order of the Sandiganbayan authorizing the sale of the aircraft is required.

WHEREFORE, the petition at bar is hereby DISMISSED. The Presidential Commission on Good Government is hereby ordered to deposit the proceeds of the sale of the subject aircraft under a special time deposit with the

Philippine National Bank for the account of the Sandiganbayan in escrow for the person or persons natural or juridical, who may be adjudged lawfully entitled thereto. The Solicitor General is also ordered to submit to this Court, within ten (10) days from notice hereof, certified true copies of the bill of sale and all other pertinent documents regarding the sale of said aircraft to Walter Fuller Aircraft. Inc.

SO ORDERED.

Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Grino-Aquino, and Medialdea, JJ., concur.

Gutierrez, Jr., see concurring opinion.

[1] Penned by Presiding Justice Francis E. Garchitorena, with Associate Justices Regino Hermosisima, Jr. and Augusto M. Amores, concurring; Annex A, Petition; Rollo, 35.

[2] Annex E, Petition; Rollo, 57-59.

[3] Rollo, 8-9.

[4] Annex F, id.; ibid., 62-70.

[5] 150 SCRA 181 (1987).

[6] Rollo, 9.

[7] Annex G, id.; ibid., 72-74.

[8] Annex A, id.; ibid., 35-38.

[9] Rollo, 47.

[10] Ibid., 36.

[11] Ibid., 38-39.

[12] Ibid. 76.

[13] Ibid., 78.

[14] G.R. No. 82138, June 30, 1980.

[15] A copy of the said memorandum-was obtained b from the Presidential Commission on Good Government.

[16] 159 SCRA 556 (1988).

[17] Sec. 12, Rule 57, Rules of Court.

[18] Reply, 12; Rollo, 163.

[19] G.R. No. 88228; June 27, 1990.

[20] Reply. 13-21; Rollo. 164-172.

[21] Annexes "A" to "I" of the Reply; Rollo. 181-258.

[22] Comment, 10-11, 15-16; Rollo, 97-98, 103-104.

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CONCURRING OPINION

GUTIERREZ, JR., J.:

I concur in the Court's decision written with perspicuity by my distinguished colleague, Justice Florenz D. Regalado.

The Court declares clearly in this decision that in the absence of a court order, the PCGG has no authority to sell sequestered property. The PCGG is not the owner of the property it sequesters. It is only an overseer, a protector and preserver. Its powers involve only administration, not ownership. The sale of a sequestered asset is not within the limited administrative powers vested in the PCGG.

The above rules are clear and simple. They were laid down as early as *BASECO v. PCGG*, (150 SCRA 181 [1987]). I cannot understand why PCGG should be so interested and so fast in selling the Falcon jet in spite of the clear ruling against the exercise of acts of ownership by PCGG expressed in *BASECO*.

There are other strange circumstances of this case. I find it odd why the Republic should file suit against the Sandiganbayan alone without impleading any private respondent. Neither the registered owner Faysound Limited, the lessee UNICHEM, or the suspected owner Mr. Eduardo Cojuangco was impleaded and given a chance to defend its or his interests.

The PCGG claims that the ownership of the plane by Faysound Ltd. and its lease to UNICHEM are parts of a charade because the real owner of both corporations is Mr. Cojuangco. PCGG is, therefore, piercing the corporate veils of the two corporations and reaching out to the alleged owner without impleading the two corporations. It is assuming powers which even a court cannot exercise. It is an elementary principle in Corporation Law that the corporate veil cannot be pierced and the supposed owner held liable unless the corporation itself is first impleaded. Faysound Ltd. is not a respondent in this case and, as far as I can gather, is not a defendant before the Sandiganbayan.

I also wish to stress a point expressed in the Court's decision which I feel deserves emphasis.

Our temporary restraining order lifting the Sandiganbayan restraining order did not, by any stretch of the imagination, authorize PCGG to sell the Falcon aircraft. A definite and positive order of a court is needed before the jet plane may be sold. The proper procedure after the lifting of the restraining order was for PCGG to go to Sandiganbayan and ask for formal authority to sell the aircraft. It should have presented there the documents which Justice Regalado points out were deliberately withheld from Sandiganbayan but presented to the Supreme Court.

The alleged deteriorating condition of the airplane is no justification. As conservator and protector, the PCGG had the duty to store the plane in a safe place and repair any deteriorating parts, not to sell it. If PCGG has no competence to preserve sequestered property, it should return the same to the titled owner and ask the court to fix a bond to answer for its value. Instead of relishing the privileges of an owner such as selling valuable properties or entering into controversial contracts, the PCGG should stay within its powers as an overseer.

I, therefore, reiterate my concurrence in *BASECO v. PCGG* (supra) and my dissent in *PCGG v. Peña* (159 SCRA 556, 589 [1988]) where I emphasized how the PCGG has strained and broken beyond the already ample and generous powers bestowed on it by law. My separate opinions in those two cases are squarely applicable to this

unauthorized and, therefore, void sale of the Falcon aircraft.

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