

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,
PETITIONER, VS. SANDIGANBAYAN, SIPALAY TRADING
CORPORATION AND ALLIED BANKING CORPORATION, ...**

G.R. Nos. 112708-09. March 29, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Save for slight modification of a specific disquisition made by the SANDIGANBAYAN in its now-assailed judgment dated August 23, 1993, we affirm the same, as well as its Resolution promulgated on October 7, 1993 denying the Motion For Reconsideration.

The factual background of this case is as follows:

Petitioner PCGG issued separate orders against private respondents Sipalay Trading Corporation and Allied Banking Corporation (hereinafter referred to as SIPALAY and ALLIED) to effect their sequestration. Two (2) separate petitions were filed by SIPALAY and ALLIED before this Court assailing the sequestration orders. After the consolidation of these petitions and the filing of the comments, other pleadings and certain motions by the parties, this Court referred the cases to public respondent SANDIGANBAYAN for proper disposition,[1] where SIPALAY's petition was docketed as S.B. 0095, and that of ALLIED as S.B. 0100.

Concerning SIPALAY (S.B. 0095), its 360, 875, 513 shares of stock in Maranaw Hotels and Resort Corporation which owns the Century Park Sheraton Hotel are, according to the PCGG, part of Lucio C. Tan's ill-gotten wealth. The PCGG on July 24, 1986 thus sequestered these SIPALAY shares under a "Sequestration Order and Supervisory Committee" which reads:

"24 July 1986

Maranaw Hotels and Resort Corporation
C/O Mr. Lucio C. Tan
Allied Banking Corporation
Allied Bank Center
Ayala Ave., Makati
Metro Manila

Subject: Sequestration Order and Supervisory Committee

Gentlemen:

By virtue of the powers vested in the Presidential Commission on Good Government by authority of the President of the Republic of the Philippines, we hereby sequester the shares of stocks in Maranaw Hotels and Resort Corporation held by and/or in the name of Sipalay Trading Corporation.

We direct you not to cause any transfer, conveyance encumbrance, concealment, or liquidation of the aforementioned shares of stocks without any written authority from the commission.

xxx xxx xxx

This sequestration order and formation of the Supervisory Committee shall take effect upon your receipt of this Order.

For your immediate and strict compliance.

Very truly yours,

FOR THE COMMISSION:

(Sgd.) (Sgd.)

RAMON A. DIAZ QUINTIN S. DOROMAL

Commissioner Commissioner"[2]

SIPALAY was forced to litigate after the PCGG sought to implement the sequestration without acting on its motions "x x x To Lift Sequestration Order" and "x x x For Hearing For Specification Of Charges And For Copies Of Evidence." SIPALAY maintained that the sequestration was without evidentiary substantiation, violative of due process, and deemed automatically lifted when no judicial proceeding was brought against it within the period mandated under Article XVIII, Section 26 of the Constitution.

Anent ALLIED (S.B. 0100), its Valenzuela branch on August 13, 1986 was served a "Search and Seizure Order" by agents of the PCGG, the text of which reads:

"The Manager
Allied Banking Corporation
Valenzuela Branch
Valenzuela, Metro Manila

SEARCH AND SEIZURE ORDER

Gentlemen:

By virtue of the powers vested in this Commission by the President of the Republic of the Philippines, you are hereby directed to submit for search and seizure all bank documents in the abovementioned premises which our representative may find necessary and relevant to the investigation being conducted by this Commission.

Atty. Benjamin Alonte is deputized to head the team that will implement this Order.

August 13, 1986, Pasig, Metro Manila.

FOR THE COMMISSION:

(Sgd.)

RAMON A. DIAZ

Commissioner

(Sgd.)

MARY CONCEPCION BAUTISTA

Commissioner"[3]

ALLIED went to court for the same reason that the PCGG was bent on implementing the order. ALLIED contended that this order is not one for sequestration but is particularly a general search warrant which fails to

meet the constitutional requisites for its valid issuance.

The petitions were jointly heard by the SANDIGANBAYAN. Briefly, the more salient events which transpired therein are as follows:

At the presentation of their evidence, PCGG Secretary Ramon Hontiveros appeared as the lone witness for SIPALAY and ALLIED. He produced and identified excerpts of the minutes of the PCGG meetings held on March 13 and 12, 1986[4] in response to a subpoena duces tecum.

For the PCGG's part, its witnesses were Commissioner Dr. Quintin Doromal, former PCGG Commissioner Mary Concepcion Bautista, now deceased, and Atty. Benjamin Alonte, Director IV, Legal Department of the PCGG who headed the team that served the search and seizure order on ALLIED. Commissioner Doromal identified voluminous documents. Former Commissioner Bautista died midway her cross-examination. The PCGG almost failed to present Atty. Alonte, had the SANDIGANBAYAN not reconsidered[5] its Order of March 8, 1993[6] declaring the cases submitted for decision after the PCGG was deemed to have waived presentation of its evidence for its repeated postponements of the hearing. After Atty. Alonte's testimony and upon the PCGG's manifestation that it was no longer presenting any witness, the SANDIGANBAYAN[7] gave the PCGG twenty (20) days (from July 1, 1993) within which to submit its formal evidence in writing. SIPALAY and ALLIED were given the same period (20 days) from receipt of such written formal offer of evidence within which to file their formal comments and/or objections thereto, and after which, the incident will be deemed submitted for resolution.

What the PCGG filed on July 7, 1993 was not a written formal offer of its evidence as directed by the SANDIGANBAYAN, but a "Motion To Dismiss" the SIPALAY and ALLIED petitions. Admittedly, this motion to dismiss came nearly seven (7) years after SIPALAY and ALLIED originally filed their petitions before this Court on September 16, 1986 and August 26, 1986, respectively. The ground was SIPALAY's and ALLIED's alleged failure to exhaust administrative remedies. The PCGG argued that SIPALAY and ALLIED should have first appealed the sequestration orders to the Office of the President before challenging them in court, invoking Sections 5 and 6 of the PCGG Rules and Regulations. An "Oppositions" and a "Reply" were filed in relation to the motion.

At some earlier time (May 21, 1992), the PCGG filed a "Motion For The Consolidation Or Joint Trial" of SIPALAY's and ALLIED's petitions (S.B. 0095 and S.B. 0100) with Civil Case 0005 - a complaint for "Reversion, Reconveyance, Restitution, Accounting and Damages" dated July 17, 1987 likewise filed before the SANDIGANBAYAN by the PCGG against Lucio Tan, Ferdinand and Imelda Marcos, and other defendants.[8] The SANDIGANBAYAN formally denied this motion in an extended Resolution dated July 6, 1993. The PCGG filed a "Motion for Reconsideration" thereof. This motion was deemed submitted for resolution when no opposition and reply were filed. SIPALAY and ALLIED then filed a "Motion To Consider Cases Submitted For Decision," to which an opposition and reply were filed.

The PCGG lost in these cases below. The SANDIGANBAYAN in its now-assailed August 23, 1993 Decision[9] voided the orders issued against SIPALAY and ALLIED. The decretal portion reads:

"In S.B. No. 0095

"WHEREFORE, in the light of the foregoing, the Court has no judicious recourse but to declare, as it hereby declares, the writ of sequestration issued against petitioner Sipalay Trading Corporation's shares of stock in Maranaw Hotel and Resorts Corporation as deemed automatically lifted for respondent PCGG's failure to implead the petitioner within the period mandated under Section 26, Article XVIII of the 1987 Constitution. The same writ is likewise declared null and void for having issued without sufficient evidentiary foundation -respondent PCGG having failed to adduce and proffer that quantum of evidence-necessary for its validity

-without prejudice to the issue of illgotten wealth being attributed to petitioner Sipalay Trading Corporation and/or defendants Lucio C. Tan, et al. being threshed out and litigated in Civil Case No. 0005.

"In S.B. No. 0100

"WHEREFORE, premises duly considered, the Court hereby declares the subject search and seizure order issued by respondent PCGG directed against petitioner Allied Banking Corporation's Valenzuela branch on August 13, 1986 as null and void ab initio for having been issued without due process and in contravention of the organic law then in force, the Freedom Constitution, under which mantle, the Bill of Rights found in the 1973 Constitution was amply protected and enforced. Consequently, all documents, records and other tangible objections (sic) seized pursuant thereto are hereby ordered returned to petitioner Allied Banking Corporation through its duly authorized representative, after proper inventory and accounting shall have been made within thirty (30) days from receipt hereof.

SO ORDERED."

The resolution of PCGG's motion to dismiss and for reconsideration of the denial of its motion for consolidation or joint trial, as well as SIPALAY's and ALLIED's motion to consider the cases submitted for decision, was incorporated in the decision. And after its motion for reconsideration of the decision was denied in a Resolution promulgated on October 7, 1993,[10] the PCGG brought the instant petition. A comment, reply, and rejoinder were subsequently filed.

The key issues, in query form, are:

- (1) Was the SANDIGANBAYAN's denial of the PCGG's motion to dismiss proper?
- (2) Should the SANDIGANBAYAN have disposed first such motion to dismiss rather than resolving it as part of the judgment?
- (3) Was the nullification of the sequestration order issued against SIPALAY and of the search and seizure order issued against ALLIED correct?
- (4) Were the sequestration and search and seizure orders deemed automatically lifted for failure to bring an action in court against SIPALAY and ALLIED within the constitutionally prescribed period?

Hardly can it be disputed that a direct action in court without prior exhaustion of administrative remedies, when required, is premature, warranting its dismissal on a motion to dismiss grounded on lack of cause of action. The supporting cases cited by the PCGG in its petition indeed spell this out, to wit: "Pestanas v. Dyogi,"[11] Aboitiz v. Coil, of Customs,"[12] and Aquino-Sarmiento v. Morato."[13] And in the case of "Ocampo v. Buenaventura"[14] likewise cited by PCGG, the Court in essence approves of the filing of a motion to dismiss based upon failure to state a cause of action at any stage of the proceedings.

"As a general rule, a motion to dismiss is interposed before the defendant pleads (Section 1, Rule 16, Rules of Court). However, there is no rule or law prohibiting the defendant from filing a motion to dismiss after an answer had been filed. On the contrary, Section 2 of Rule 9, expressly authorizes the filing of such motion at any stage of the proceedings when it is based upon failure to state a cause of action x x x."

These principles, at first impression, appear to favor the PCGG. Sections 5 and 6 of the PCGG Rules and Regulations indeed provide an administrative mechanism for persons or entities contesting the sequestration orders issued against them.

"Section 5. - Who may contest - 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 the receipt of the writ of order x x x."

"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 condition as it may deem necessary, taking into consideration the evidence and 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."

Neither an initial request before the PCGG for the lifting of the sequestration orders nor an appeal to the Office of the President was made by SIPALAY and ALLIED before they filed their respective petitions in court. The PCGG's motion to dismiss was anchored on lack of cause of action, albeit filed beyond the period to answer.

However, the peculiarities of this case preclude the rightful application of the principles aforesated. The SIPALAY and ALLIED petitions were both filed on the third quarter of 1986 (September 16 and August 26, respectively), while the PCGG decided to file its motion to dismiss only in the middle of 1993 (July 7). Nearly seven (7) years came to pass in between that so much has already transpired in the proceedings during the interregnum. SIPALAY and ALLIED had rested their cases, and the PCGG had finished presenting all its witnesses, not to mention other various motions and incidents already disposed of by the SANDIGANBAYAN, with special attention to the numerous postponements granted the PCGG for presentation of its evidence which prevented an earlier termination of the proceedings. The motion to dismiss came only at the penultimate stage of the proceedings where the remaining task left for the PCGG was to file its written formal offer of evidence as required by the SANDIGANBAYAN. This Court, in *"Soto v. Janero"*[15] has made it quite clear that:

"Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the Court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can take cognizance of the case and try it." (Italics supplied)

The length of time the PCGG allowed to drift away and its decision to file its motion to dismiss only at the homestretch of the trial hardly qualify as "proper time." This factual scenario largely differs from the *"Ocampo"* case relied upon by the PCGG. In that case and the case of *"Community Investment & Finance Corp. v. Garcia"*[16] cited therein, the motions to dismiss involved were filed just after the filing of the answer, and not at some belated time nearing the end of the trial. The parties in those cases have not presented any testimonial or documentary evidence yet, as the trial proper has not commenced, and neither does it appear that the movants concerned took close to seven (7) years before filing their respective motions to dismiss. The PCGG therefore cannot seek refuge in the *"Ocampo"* case to justify the marked delay in filing its motion to dismiss. Such tardied maneuver made the PCGG guilty of estoppel by laches - the definition and effect of which this Court, speaking through Mr. Justice Regalado, had the occasion to visit anew in the relatively recent case of *"Olizon v. CA."*[17]

"Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."

With its undenied belated action, seven (7) years in the making at that, it is only proper to presume with conclusiveness that the PCGG has abandoned or declined to assert what it bewailed as the SIPALAY and ALLIED petitions' lack of cause of action. More accurately, the PCGG should be deemed to have waived such perceived defect in line with the *"Soto"* case,[18] for "proper time" cannot mean nor sanction an unexplained and unreasonable length of time such as seven (7) years. The leniency extended by the Rules (Rule 9, Section 2, Rules

of Court) and by jurisprudence ("Ocampo case") in allowing a motion to dismiss based on lack of cause of action filed after the answer or at any stage of the proceedings cannot be invoked to cover-up and validate the onset of laches - or the failure to do something which should be done or to claim or enforce a right at a proper time[19] which, in this case, was one of the PCGG's follies. Indeed, in matters of timeliness, "indecent waste" is just as reprehensible as "indecent haste."

Another equally forceful reason warranting the denial of the PCGG's motion to dismiss is that this case falls under two recognized exceptions to the general rule of prior exhaustion of administrative remedies, and the SANDIGANBAYAN's brief but lucid disquisition on one exception merits this Court's approval.

"Two. The rule on non-exhaustion of administrative (sic) remedies does not apply to petitioners' case. This rule, which is based on sound public policy and practical considerations, is not inflexible. It is subject to many exceptions, to wit: (i) where there is estoppel on the part of the party invoking the doctrine; (ii) where the challenged administrative act is patently illegal amounting to lack of jurisdiction; (iii) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; and (iv) where the question involved is purely legal and will ultimately have to be decided by the courts of justice." [20]

x x x xxx xxx

"x x x there was no absolute necessity of appealing respondent PCGG's resolution to the Office of the President, as purportedly required by Section 6 of the PCGG Rules and Regulations, inasmuch as respondent PCGG seemed to have exhibited indifference towards petitioners' pleas for the lifting of the sequestration and search and seizure orders. Official inaction or unreasonable delay, as heretofore intimated, is one of the exceptions to the rule on non-exhaustion of administrative remedies. Hence, under the circumstance, petitioners may not be faulted for seeking relief directly from the courts." [21]

The other exception is the first in the enumeration, i.e., "where there is estoppel on the part of the party invoking the doctrine," consisting in the PCGG's being guilty of estoppel by laches which has just been discussed in great length. In answer therefore to the first key issue, this Court rules in the affirmative. The denial of the PCGG's motion to dismiss was in order.

In respect of the second key issue, the PCGG faults the SANDIGANBAYAN for incorporating in the judgment the resolution of its motion to dismiss, arguing that said motion should have been resolved first and separately. That would have been unnecessary and injudicious in the light of the "peculiarities" of this case where the motion was filed only at the tail end of the trial and when the PCGG has virtually presented all its evidence. At that stage, there was in fact nothing left for the parties to do but to await the forthcoming judgment of the SANDIGANBAYAN, save for the submission of the PCGG's written formal offer of documentary evidence as directed by the court, which the PCGG failed to do within the 20-day period given it because it filed the motion to dismiss instead. In this connection, the PCGG's contention that the 20-day period for the submission of its written formal offer of evidence was suspended upon the filing of the motion to dismiss has no merit. The SANDIGANBAYAN's observation on this matter, as espoused by private respondents SIPALAY and ALLIED, is correct.

"The Court agrees with petitioners' (SIPALAY and ALLIED) stance that the only period suspended by a motion to dismiss is the period to file an answer (Section 4, Rule 16 of the Rules of Court)[22] and that where a period is to be suspended by the filing of a pleading, the Rules of Court expressly provides for such suspension (Section 1[b], Rule 12 of the Rules of Court, for instance, provides for the suspension of the period to file a responsive pleading if a motion for bill of particulars is filed).[23] Consequently, respondent's (PCGG) filing of a motion to dismiss, without seeking leave of court to stay or suspend the running of the period for filing its written formal offer of evidence - as agreed upon and ordered in open court during the hearing on July 1, 1993 - could not have the effect of suspending the period within which it should submit its

formal offer of evidence in writing. Without express leave of court, respondent (PCGG) could not improvidently assume that it has liberty to suspend the running of the period agreed upon. Respondent (PCGG) should have been prudent enough to seek the permission of this Court in respect of such matter to avert possible controversy arising therefrom. More importantly, respondent (PCGG) should not have made a unilateral presumption of procedural norm."^[24]

xxx xxx xxx

"In view of the foregoing, the Court has no judicious recourse but to sustain petitioners' (SIPALAY and ALLIED) stance and declare, as it hereby declares, that respondent (PCGG) is deemed to have waived presentation of further evidence and to have its evidence rested on the basis of the evidence on record."^[25]

Besides, to insist on a prior and separate resolution of the PCGG's motion to dismiss and the suspension of the 20-day period for the filing of the written formal offer of its evidence would have needlessly prolonged further the proceedings below - something that certainly does not, and will not, sit well with a "just, speedy and inexpensive determination of every action and proceeding" envisioned by Section 2, Rule 1, of the Rules of Court. The same reasoning likewise justifies dispensing with a prior determination of the PCGG's "Motion For Reconsideration" of the SANDIGANBAYAN's Resolution denying consolidation or joint trial of the SIPALAY and ALLIED petitions with Civil Case 0005, and private respondents' (SIPALAY and ALLIED) "Motion To Consider Cases Submitted For Decision." Thus, the second key issue should be resolved against the PCGG. The SANDIGANBAYAN was well-justified in incorporating in its decision the resolution of the PCGG's motion to dismiss, as well as its motion for reconsideration of the denial of the motion for consolidation or joint trial and private respondents' (SIPALAY and ALLIED) motion to consider the cases submitted for decision.

Going now to the third key issue, the sequestration order and the search and seizure order issued against SIPALAY and ALLIED, respectively, were nullified by the SANDIGANBAYAN on the ground of non-compliance with constitutional requirements. Let us examine the SIPALAY and ALLIED cases separately.

The pertinent constitutional provision in focus in SIPALAY's case is Section 26 of Article XVIII. It reads in full:

"Section 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of 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."

The SANDIGANBAYAN voided the sequestration order issued against SIPALAY "for lack of sufficient prima facie factual foundation, x x x."^[26] In so concluding, it only took into account the testimonies of PCGG witnesses Doromal, Bautista and Alonte. It appears further that the SANDIGANBAYAN particularly zeroed in on Commissioner Doromal's testimony, considering its observations that: 1) "The testimony of former PCGG Commissioner Mary Concepcion Bautista has no probative value and cannot be admitted in evidence in view of said witness' untimely demise prior to the completion of her cross-examination by petitioner's counsel." (citing the cases of "Bachrach Motor Co., Inc. v. CIR, et al."^[86 SCRA 27] and "Ortigas, Jr. v. Lufthansa German

Airlines" [64 SCRA 610]),[27] and 2) "Neither is Atty. Benjamin Alonte's testimony relevant. His oral declarations, aside from being hearsay, do not go into the substance of the cases." [28]

By way of preface, no serious objection can be raised insofar as the SANDIGANBAYAN's exclusive reliance on the testimonies of the three (3) PCGG witnesses is concerned. The SANDIGANBAYAN had no other choice, for these testimonies in fact constitute the entire evidence for the PCGG, inasmuch as no documentary evidence which might have supported the testimonial evidence were offered by the PCGG below. The Rules of Court[29] and jurisprudence[30] decree that "The court shall consider no evidence which has not been formally offered." There is no doubt that the testimonies of the PCGG witnesses were formally offered as evidence meriting due appreciation by the SANDIGANBAYAN, since Section 35, Rule 132 of the Rules requires that the offer of testimonial evidence "must be made at the time the witness is called to testify." With respect to documents, however, the same Section 35 (second paragraph) provides a different time for their offer, to wit:

"Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing."

The twenty (20)-day period from July 1, 1993, or until July 20, for the submission of a written formal offer of evidence given by the SANDIGANBAYAN to the PCGG after the latter's last witness (Atty. Alonte) has testified, was intended precisely to accommodate any and all documentary evidence - even object evidence for that matter, the PCGG would have wanted to offer. But, as previously discussed under the second key issue, the PCGG waived such offer when it opted to file a motion to dismiss sans/In lieu of the written formal offer of evidence within such given period that expired without interruption. Quite accurately therefore can it be said that due to its lapse in procedure, the PCGG brought it upon itself if the existence or non-existence of "prima facie factual foundation" had to be determined by the SANDIGANBAYAN only from what can be drawn from the PCGG's testimonial evidences - and from no other. And the Court, in reviewing that court's finding that no prima facie evidence exists to support the sequestration order, likewise has no other choice but to be similarly confined thereto.

But whose testimony or testimonies? The question becomes significant inasmuch as the SANDIGANBAYAN found as inadmissible some of the PCGG witnesses' testimonies.

Dr. Doromal's testimony is reviewable as no attack on its admissibility was ever launched by the SANDIGANBAYAN. With respect to Atty. Alonte's testimony, the SANDIGANBAYAN declared it as hearsay which finding the PCGG does not contest. The PCGG in fact now appears to do away with his testimony considering that the PCGG neither quoted in, nor annexed to its petition, such testimony or any portion thereof. Atty. Alonte's testimony therefore can be dispensed with. However, the Court disagrees with the SANDIGANBAYAN's ruling that Commissioner Bautista's supervening death in the course of her cross-examination rendered her entire testimony without probative value and inadmissible. The SANDIGANBAYAN apparently clung to the principle enunciated in the "Bachrach" and "Ortigas" cases,[31] to wit:

"Oral testimony may be taken into account only when it is complete, that is, if the witness has been wholly cross-examined by the adverse party or the right to cross-examine is lost wholly or in part thru the fault of such adverse party. But when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent.

"The right of a party to cross-examine the witness of his adversary is invaluable as it is inviolable in civil cases, no less than the right of the accused in criminal cases. The express recognition of such right of the accused in the Constitution does not render the right thereto of parties in civil cases less constitutionally based, for it is an indispensable part of the due process guaranteed by the fundamental law x x x. Until such

cross-examination has been finished, the testimony of the witness cannot be considered as complete and may not, therefore, be allowed to form part of the evidence to be considered by the court in deciding the case."

But the "Bachrach" and "Ortigas" cases involved different factual features. In those cases, the witnesses concerned whose testimonies were rightly stricken off the records either left for abroad or simply failed to appear at the time they were supposed to be cross-examined by the adverse party. In short, the lack of cross-examination by the opposing parties therein was occasioned by sudden or unexplained non-appearance, unlike in this case where no less than the witness Bautista's death prevented the completion of her cross-examination. The controlling case here is "Fulgado v. C.A., et. al." [32] where the Court, in allowing the testimony of therein plaintiff Ruperto Fulgado who died before his cross-examination, to remain in the record, ruled that:

"The wholesale exclusion of testimonies was too inflexible a solution to the procedural impasse because it prejudiced the party whose only fault during the entire proceedings was to die before he could be cross-examined. The prudent alternative should have been to admit the direct examination so far as the loss of cross-examination could have been shown to be not in that instance a material loss. And more compellingly so in the instant case where it has become evident that the adverse party was afforded a reasonable chance for cross-examination but through his own fault failed to cross-examine the witness.

"Where death prevents cross-examination under such circumstances that no responsibility of any sort can be ascribed to the plaintiff or his witness, it seems a harsh measure to strike out all that has been obtained in the direct examination." (Italics supplied)

If testimony is inexpugible where the witness dies prior to any cross-examination, with more reason should testimony partially cross-examined at the time of the witness' death (as in Commissioner Bautista's case) remain intact. Thus, with the exception of Atty. Alonte's testimony, Dr. Doromal's and deceased Commissioner Bautista's testimonies, together with the evidence of SIPALAY and ALLIED, deserve a second scrutiny in determining the correctness of the SANDIGANBAYAN's finding of "lack of prima facie factual foundation."

Here then are the highlights of Dr. Doromal's and deceased Commissioner Bautista's testimonies.

DR. DOROMAL
(DIRECT)

"JUSTICE ESCAREAL:

Purpose please?

"ATTY. LEYNES:

The testimony of this witness will cover the fact that at the time of sequestration there were issued (sic), there were more prima facie evidence.

xxx xxx xxx

ATTY. LEYNES:

q:

Dr. Doromal do you know the petitioner, Sipalay Trading Corporation?

a:

Yes, sir.

q:

Why do you know Sipalay Trading Corporation?

a:

It is one of those companies which we had investigated and eventually issued a Sequestration Order.

q:

Do you you (sic) Maranaw Hotels and Resorts?

a:

Yes, sir.

q:

Why do you know this Maranao Hotels and Resorts?

a:

Again it is one of those we had sequestered because of its relation with Sipalay Trading Corporation?

q:

Do you know the petitioner Allied Banking Corporation?

a:

Yes, sir.

q:

Why do you know it?

a:

In the same manner that the material of documents we had, we ended up having a Sequestration Order on Allied Banking Corporation.

xxx xxx xxx

"ATTY. LEYNES:

q:

Dr. Doromal at that time that the sequestration order which you have just recognized was issued and which sequestration order was signed by you and Commissioner Ramon Diaz, what documents if any did you consider?

a:

We considered documents which were gotten from Malacañang after the previous President had left. We had also document (sic) which were gotten from the U.S. which were given by the States Department to the PCGG and whatever had been gotten by our operation people.

q:

If I show to you some of these documents will you be able to recognize them?

a:

Yes, some of them I will be able to recognize.

q:

I show to you a set of documents, what relation have these set of documents to those documents which you have mentioned you and Commissioner Diaz or the Commission considered when the Sequestration Order dated July 24, 1986 was issued?

Will you please go over these documents?

COURT INTERPRETER:

Witness is going over the voluminous documents.

WITNESS:

a:

The documents that I have just slipped into here that would have to do with Sipalay Trading Corporation, this I remember.

ATTY. LEYNES:

q:

The question is, what relation has this document to the document you considered in issuing the Sequestration Order subject matter of this case?

a:

This one which I had flipped into this had been considered by the Commission at the time of the sequestration.

ATTY. LEYNES:

May I request that this document which the witness had identified, these documents consisted of seventy-six documents and we -have earlier inadvertently marked them as Exhibit A to WWW but if we can have them marked accordingly as Exhibits 1, 2 to 76 accordingly.

xxx xxx xxx

ATTY. LEYNES:

q:

Doctor Doromal when you issued, when the Sequestration Order was issued in the judgment of the Commission, what quantum of evidence do these documents amount to?

ATTY. MENDOZA:

Objection to the question, Your Honors (sic) please. First of all the witness did not identify all of those documents as he was going over the folder of documents. He was picking up particular documents in the folder and it is a question of law.

ATTY. LEYNES:

We are proving that there is more prima facie evidence in the judgment when he issued the Sequestration Order.
What is the quantum of evidence do these documents represent?

JUSTICE ESCAREAL:

For the purpose of issuance thereof?

ATTY. LEYNES:

Yes, Your Honor.

JUSTICE ESCAREAL:

With that qualification are you willing to accept that qualification?

ATTY. LEYNES:

Yes, your Honor.

JUSTICE ESCAREAL:

Witness may answer:

WITNESS:

a:

These documents are more than just prima facie evidence which is the only thing required of us before issuing the Sequestration Order.

In fact over and above what is needed there are plenty of evidence of these documents which movant amply justifies our issuing of the Sequestration Order in the sense that there is just no reason no(r) question that there is a preponderance of evidence for the sequestration.

ATTY. LEYNES:

That would be all, Your Honor.

JUSTICE ESCAREAL:

How about this 0095?

ATTY. LEYNES:

In both cases, Your Honor.

JUSTICE ESCAREAL:

Does the document include any reference to the Allied Banking Corporation?

ATTY. LEYNES:

Yes, Your Honor, but the Sequestration Order was issued by Commissioner Diaz and Mary Con Bautista.

JUSTICE ESCAREAL:

With respect to?

ATTY. LEYNES:

Allied Banking Corporation.

May I ask additional questions, Your Honor.

JUSTICE ESCAREAL:

Please proceed.

ATTY. LEYNES:

q:

Dr. Doromal what if any is your participation in the issuance of the Sequestration Order or the Search and Seizure Order against Allied Banking Corporation?

a:

All these Sequestration Orders were brought by the Commission in (sic) banc and we are present with the documents that had been available.

We listen to them and the action is made by the Commission and in the issuance of the Sequestration Order.

Then whoever is the Commissioner most involved in that particular company thus signs or do sign the Sequestration Order.

In this particular case that you mentioned about Allied Banking Corporation, the two other Commissioners who were there ahead of me were the ones who signed because they are most familiar with the Allied Banking Corporation.

xxx xxx xxx

ATTY. LEYNES:

q:

Specifically what is your participation in the issuance of the sequestration personally of Allied Banking Corporation?

a:

I am one of the most who participated in the discussion when I became a member and that was April in 1986.

xxx xxx xxx

ATTY. LEYNES:

q:

When deliberated upon what documents were considered?

xxx xxx xxx

WITNESS:

a:

First of all when this Search and Seizure Order was issued this was during the time that I was already a member of the PCGG as Commissioner and when this is brought before the group before the Commission there are the attached documents that backed up this Search and Seizure Order and for that matter other items that have to do with the sequestration or something similar to that so what I am saying the materials that go with this would indicate the reason for the Search and Seizure Order similar to the papers that are needed when we issued the Sequestration Order.

ATTY. LEYNES:

q:

I will show you again this Exhibit 1, these Exhibits 1 to 76 will you please go over the same and state before this Honorable court what relation have these documents to the documents which you mentioned were considered in the deliberation for the issuance of Search and Seizure Order against Allied Banking Corporation?

xxx xxx xxx

WITNESS:

a:

I am looking at some of these documents that have to do with the Allied Banking Corporation and I recognize some of these and the others I do not see because some of these are materials which were gathered by other groups and their attachments but the- others such as this letter, this I remember.

xxx xxx xxx

ATTY. LEYNES:

q:

Dr. Doromal in your recollection what is the reason or the finding of the PCGG why the Sequestration Order was issued against Sipalay Trading Corporation or Maranao Hotels and Resorts?

WITNESS:

a:

The reason was that in the Maranao Corporation which was the company which was later on acquired by Sipalay Trading Corporation which was the holding company it was our judgment that there are enough indications there

that these were acquired because of closeness to the president and that this was really in fact one of those that had been gotten from DBP, Development Bank of the Philippines with the idea being that it was, it could be gotten through the help of the Office of the President and the President himself.

xxx xxx xxx

ATTY. LEYNES:

q:

What if any is the finding of PCGG regarding the ownership of Sipalay Trading Corporation?

a:

Sipalay Trading Corporation was holding company and owner. The people in the ownership is not only Lucio Tan but looks like relatives of Mr. Tan.

q:

In your recollection Doctor Doromal, what is the finding or reason of companies why it issued the Search and Issue (sic) Order against Allied Banking Corporation?

WITNESS:

a:

The Commission wanted to find out documents that would indicate or prove the relationship between President Marcos and Lucio Tan and one way to do that is to have access to the papers to the documents that were in the Allied Banking Corporation.

ATTY. LEYNES:

That would be all, Your Honor."[33]

MARY CONCEPCION BAUTISTA
(DIRECT)

"JUSTICE ESCAREAL:

Purpose, please.

ATTY. LEYNES:

The testimony of the witness is offered for the purpose of proving that when the Presidential Commission on Good Government issued the search and seizure order dated August 13, 1988, the Commission considered ample evidence in the issuance thereof and also to prove that defendant Lucio Tan in concert with defendants Ferdinand Marcos and Imelda Marcos acquired General Bank and Trust Company in violation of existing rules and for remedial consideration and that later on Genbank was converted by defendant Lucio Tan and company to Allied Bank of which defendant Lucio Tan and defendants Ferdinand Marcos owned beneficially.

xxx xxx xxx

ATTY. LEYNES:

q:

Madam Witness, what basis or document, if any did the commission consider when it issued the search and seizure order?

a:

We had several documents in our possession at that time, one of the documents was a list which have been taken from the office of Imee M. Araneta on EDSA which contained a listing of the holdings of the late President Marcos in several corporations and the extent of his participation on these corporations. And the other, in addition to what have been given by certain informants, another was an affidavit of Mr. Gapud which he had issued wherein he had mentioned also the participation of Mr. Marcos in Allied Banking, I think that affidavit is here and also the fact that deposits were made from Allied Banking in the accounts of Mr. Marcos in the Security Bank.

xxx xxx xxx

q:

Madam Witness, you mentioned certain documents on the basis of which the PCGG issued the search and seizure order against Allied Banking Corporation, I am showing to you a folder containing Exhibit 1 to 18, will you please go over this document and state which of these documents were considered by the Commission when it issued the search and seizure order?

a:

These documents marked Exhibits I which is a list, which is a letter, unfortunately I don't see page two of this but this is the document which we have addressed principally, as far as we know addressed to the late President Marcos and together with this we have Exhibit 2, another letter dated March 28, 1977 addressed to the Deputy Governor Mr. Briñas about the intention to purchase General Bank and Trust Company and subsequently documents Exhibit 3 signed by Carlota Valenzuela, Special Assistant to the Governor, Exhibit 4 another document marked Confidential signed by Mr. Barin reporting on the action taken regarding Genbank.

xxx xxx xxx

WITNESS:

And another document which has been marked as Exhibit 4, 5, 6, 7, these documents refer to the acquisition by Lucio Tan of the Genbank for the amount of P500,000.00, the Commission then considered that plus the fact that the acquisition and transfer of Genbank to the Lucio Tan group was done in a short time without proper observance of public bidding which the Commission then considered to be irregular, so this is one of the documents we look at. Mr. Tan in the acquisition of Genbank had been given a favored treatment.

xxx xxx xxx

WITNESS:

This document dated May 17, 1989 under letterhead Allied Banking Corporation addressed to His Excellency President Marcos, President and Prime Minister signed by Lucio Tan. In addition we have a document which has already been marked as Exhibit 12 which is the affidavit of Mr. Rolando Gapud dated January 14, this is series of 1987, in this document Mr. Gapud (sic) has also made an enumeration of deposits made by certain individuals from certain banks among them Allied Banking Corporation for the account of Mr. Marcos in the Security Bank.

XXX XXX XXX

WITNESS:

Exhibits 13 and 13-a which is a listings (sic) of deposits made and placements in the bank, in the bank account of Mr. Marcos. In addition, we have the documents marked up to Exhibits 13-g, h, l, all showing checks or amounts received from Allied Bank deposited in the Security Bank and Trust Company. Exhibits up to Exhibit 13-k, 1, m, p, t, v, 2, y and x."[34]

XXX XXX XXX

"ATTY. LEYNES:

q:

Chairman Bautista, during the last hearing before it was adjourned we were going over this folder containing Exhibits 1 to 80 and we are indicating which of these exhibits. were considered by the PCGG when it issued the Search and Seizure Order against Allied Banking Corporation;

Will you please go over again this folder and indicate to this Exhibit to whether what was considered by the Presidential Commission on Good Government when it issued the Search and Seizure Order against Allied Banking Corporation.

a:

I recall that we had already pointed to the document marked Exhibit 7 in red which is a letter of Lucio Tan to the Governor Licaros of the Central Bank and the one marked in red as Exhibit 8 which is the letter to Mr. Gregorio Licaros signed by T.O. Domingo, the Allied Banking Report which is marked as Exhibit 9.

XXX XXX XXX

q:

Apart from these exhibits which you have just mentioned what other evidence if any did the Commission consider?

a:

There were for instance the verbal information given to us by individuals as well as the information given to us by Mr. Rolando Gapud verbally.

XXX XXX XXX

ATTY. LEYNES:

q:

What is the finding based on these Exhibits which you mentioned and the information given by Rolando Gapud which he later on formalized in an affidavit.

What finding if any with regards to the Allied Banking Corporation did the Commission arrive that led to the issuance of the Search and Seizure (sic) Order?

a:

The Commission after reviewing al (sic) of these exhibits as with all the information that had come into its possession had come to the conclusion that indeed Mr. Lucio Tan was a close associate of the late President Marcos and they were involved in business associates and transactions and that the late President had substantial holdings in this corporation in which Lucio Tan was also involved and therefore the commission would have to act in accordance to its powers of the sequestration granted under Executive Order No. 1.

xxx xxx xxx

ATTY. LEYNES:

q:

To what corporation do you refer to when you mentioned Mr. Marcos has equity in the corporation owned by Lucio Tan?

a:

Among them is precisely Allied Banking Corporation, Asia Brewery and Sipalay Trading Corporation. I mean these are some of the corporations.

q:

Chairman Bautista, what is the legal basis or authority by the commission of the Presidential Commission on Good Government when it issued the Search and Seizure Order against the Allied Banking Corporation?

a:

The Commission under Executive Order No. 1, the President has been given specifically the power to sequester business and property owned by the late President Marcos, Mrs. Marcos, relatives and closed business associates and to take possession or take over this business and assets in order to prevent dissipation of these assets or removal of these assets and concealment of these assets and also to take over such documents as the Commission may consider necessary in order that these documents may be preserved for the purpose of the filing of the case in order to prosecute or conduct civil action against President Marcos, Mrs. Marcos, relatives and other close business associates that is very clearly stated in Executive Order No. 1.

xxx xxx xxx

ATTY. LEYNES:

0100, Your Honor.

q:

Chairman Bautista, the Search and Seizure Order issued by PCGG dated August 13, 1986 against Allied Banking Corporation reads in pertinent part and I quote:

"You are hereby directed to submit for Search and Seizure all bank documents in the above mentioned premises which our representatives may find necessary and relevant to the investigation conducted by the Commission."

a:

Well I think we clearly specify there that we are to seize the bank documents.

It is specifically stated that the Search and Seizure Order refers to bank documents precisely because of the information that had been given to us that these documents could be found in the particular place.

xxx xxx xxx

ATTY. LEYNES:

q:

Now, Chairman Bautista do you know what happened after the Search and Seizure Order against Allied Banking Corporation?

WITNESS:

a:

We were not able to seize any document precisely because of the objection raised and so what happened is that the parties agreed to just seal this place so that neither of the parties would be able to remove any documents.

ATTY. LEYNES:

That will be all, Your Honor."[35]

Dr. Doromal was basically preoccupied with identifying and referring to documents purportedly coming from Malacañang, the US State Department and other sources. What his testimony essentially yields is the fact that the prima facie evidence/s -supporting the sequestration order issued against SIPALAY is/are buried and ascertainable in these documents. But, to repeat, any reference thereto is unwarranted since there was no offer thereof in evidence. And it must be emphasized at this point that mere identification of documents and the marking thereof as exhibits do not confer any evidentiary weight on documents not formally offered. In "People v. Santito, Jr.,"[36] the Court, speaking through Mr. Justice Regalado once again, thus said that:

"Even assuming that the same had been identified in court, it would have no evidentiary value. Identification of documentary evidence must be distinguished from its formal offer as an exhibit. The first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit. The second is done only when the party rests its case and not before. The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all."(Italics supplied.)

Verily then, without the PCGG documents having been formally offered, however decisive and compelling they may otherwise be, it is as if a prima facie case does not exist at all. That makes Dr. Doromal's testimony by and in itself worthless. The same can be said of deceased Commissioner Bautista as well who was similarly immersed in the mechanical process of identification. In fact, her testimony and the documents she referred to were totally unrelated to the sequestration order issued against SIPALAY, as they chiefly dwelt on the search and seizure order issued against ALLIED. Being immaterial, nothing therefrom can shore up a prima facie case against SIPALAY. And it may well be clarified at this juncture that it is the immateriality of deceased Commissioner Bautista's testimony that justified the SANDIGANBAYAN into paying particular attention to Dr. Doromal's testimony in its search for prima facie evidence - not the inadmissibility of her testimony arising from her death during cross-examination which we have heretofore adjudged to be a faulty observation. The SANDIGANBAYAN was therefore correct in saying that:

"No direct connection or relationship has been established, at least, as far as the evidence extant on the records

of these cases are concerned, between petitioner Sipalay Trading's acquisition and ownership of the sequestered shares of stock and Lucio C. Tan's alleged fraudulent business maneuverings and connivance with the late President Ferdinand E. Marcos. These oral testimonies are practically dependent on the existence of official records of respondent PCGG which, due to the latter's own doing, have not been formally offered. Hence, these oral testimonies have no leg to stand on." [37]

xxx xxx xxx

"Without credible and competent documentary evidence to fortify the witnesses' bare allegations as aforestated, it is difficult to sustain a finding of prima facie case in the proceedings - especially taking into account the fact that petitioner Sipalay Trading is presumed by law to possess a separate and distinct judicial personality from its principal stockholders, i.e., Lucio Tan, et. al. x x x." [38]

The difficulty is easier to grasp when reckoned with the various but uniform definitions of prima facie case/evidence aside from that given by the SANDIGANBAYAN, to wit:

"Prima facie evidence has been defined as evidence which, standing alone unexplained or uncontroverted, is sufficient to maintain the proposition affirmed. It is such as, in judgment of law, is sufficient to establish the fact, and if not rebutted, remains sufficient for that purpose." [39]

xxx xxx xxx

"It is evidence which suffices for the proof of a particular fact until contradicted and overcome by other evidence." [40]

xxx xxx xxx

"It is evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced." [41]

xxx xxx xxx

Prima facie case is such as will suffice until contradicted and overcome by other evidence." [42]

xxx xxx xxx

"A prima facie case is one which is apparently established by evidence adduced by plaintiff in support of his case up to the time such evidence stands unexplained and uncontradicted." [43]

xxx xxx xxx

"A prima facie case is one in which the evidence in favor of a proposition is sufficient to support a finding in its favor, if all the evidence to the contrary is disregarded." [44]

xxx xxx xxx

"A litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A prima facie case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side." [45]

From whatever definition we look at it, Dr. Doromal's and deceased Commissioner Bautista's testimonies are by no means sufficiently strong evidence to make up a prima facie case for the PCGG. What gave them colorable weight were the unoffered documents. But as things stand in the absence of such documentary evidence, they are empty and crumble on their own even without counter-explanation or contradiction, as anything that may tend to prove the proposition that the SIPALAY shares in Maranaw Hotels and Resort Corporation were/are ill-gotten is just nowhere extractable from these testimonies by and in themselves. These declarations unfortunately fail to

hurdle judicial inspection, proceeding from the principle that a party's evidence is "of necessity subject to a rigid scrutiny" when he possesses, but does not produce, documentary evidence which, would be far more satisfactory.[46] We are thus vividly and fittingly reminded of the proverbial words of Mr. Justice Story that:

"Naked statements must be entitled to little weight when the parties hold better evidence behind the scenes"[47] and

"A party's nonproduction of a document which courts almost invariably expect will be produced 'unavoidably throws a suspicion over the cause.'"[48]

Corollary to this is that the presumption is always and inevitably against a litigant who fails to furnish evidence within his reach, and it is the stronger when the documents, writings, etc., would be conclusive in establishing his case.[49] This is indeed an occasion to emphasize once again that the superiority of written evidence, compared with oral, is so pronounced, obvious and well known, that in most cases the deliberate and inexcusable withholding of the written evidence, and effort to secure favorable consideration of oral testimony in the place of it, is an affront to the intelligence of the court.[50]

At best, the bare testimonies of Dr. Doromal and deceased Commissioner Bautista, in the eyes of the Court, yield nothing but mere uncorroborated speculations or suspicions insofar as the PCGG attempted to establish the "prima facie factual foundation" that would hold up the sequestration order against SIPALAY. But a fact cannot be found by mere surmise or conjecture.[51] Suspicion cannot give probative force to testimony which in itself is insufficient to establish or to justify an inference of a particular fact,[52] for "the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass." [53] And as it is not the habit of any courts of justice to yield themselves up in matters of right to mere conjectures and possibilities,[54] courts are not permitted to render verdicts or judgments upon guesses or surmises.[55]

Turning now to the evidence for SIPALAY and ALLIED, it unveiled no "prima facie factual foundation" either. Former PCGG secretary and lone witness Atty. Hontiveros, in response to two (2) subpoenas duces tecum[56] requested by counsel for both corporations[57] which required him to bring to the court "all records, including minutes of meeting of the PCGG, its resolutions, together with all supporting evidence or documents of whatever nature" in connection with the issuance of the sequestration order against SIPALAY and the search and seizure order against ALLIED, could only produce the following excerpts of minutes of two (2) PCGG meetings held on March 13 and March 12, 1986:

"6. Commissioner Daza also informed the Commissioner that upon the instructions of Minister Salonga, any Commissioner can file or issue a sequestral order provided the order has the conformity verbal or written of another Commissioner. These could include any other order or seizure." [58]

xxx xxx xxx

"6. Commissioner Pedro L. Yap before his departure on a mission, reported the work he had accomplished during the past days. These included numerous 'freeze' and 'sequestration' orders. He asked that the list of orders should not be particularized in the minutes." [59]

after admittedly spending no less than two (2) months tracing documents to bring to court:

"ATTY. MENDOZA:

xxx xxx xxx

Q:

I am asking you how many months did it take looking for records?

A:

I think more than two months, sir.

Q:

And these were the records you found, marked Exhibits A and B?

A:

Yes, sir, during the time I devoted to them."[60]

xxx xxx xxx

"ATTY. MENDOZA:

Q:

But nonetheless, for two months you tried looking for records corresponding to the subpoena?

A:

Yes, sir."[61]

Other than being informative of PCGG internal procedure on how and by whom sequestration orders in general are issued and of the "accomplishments" of one of its then commissioners, the excerpts are absolutely unreflective of any deliberation by PCGG commissioners particularly concerning the sequestration order against SIPALAY, much less the factual basis for its issuance. They do not even make the slightest allusion to SIPALAY, or ALLIED. That Atty. Hontiveros devoted two (2) months for document-searching only to come up with minutes that are as barren as the testimonial evidences of the PCGG validates indeed the claim of respondent corporations which may well sum-up the PCGG's case specifically against SIPALAY, that:

"The only logical conclusion that may be reached by Atty. Hontiveros' inability to produce PCGG records in regard respondent Sipalay is that there was no evidence before the PCGG or any of its Commissioners which would tend to establish that the shares of stock in Maranaw registered in the name of private respondent Sipalay are ill-gotten."[62]

There being no evidence, not even a prima facie one, there was therefore no valid sequestration of the SIPALAY shares in the Maranaw Hotels and Resort Corporation. We hereby re-emphasize the indispensability of prima facie evidence by adverting to the Court's pronouncement in "Republic v. Sandiganbayan,"[63] to wit:

"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 were 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 x x x (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.' (Italics in the original text.)"

Notably the PCGG, in what apparently appears to be a desperate attempt to slither its way out of its failure to show a prima facie case, would now argue that:

"x x x it is worth-mentioning the fact that the FREEDOM CONSTITUTION under which Executive Order Nos. 1, 2, 14 and 14-A had been issued, categorically authorized the issuance of writs of sequestration without requiring any finding of prima facie evidence to support such issuance. Nevertheless the PCGG saw to it that before any writ of sequestration was issued, the Commissioners carefully examined and weighed the evidence on hand that would justify such issuance of sequestration order. The FREEDOM CONSTITUTION provides under Article II, Section 1, the following:

'SECTION 1. Until a legislature is elected and convened under a New Constitution, the President shall continue to exercise legislative power.

'The President shall give priority to measures to achieve the mandate of the people to:

a)x x x

b)x x x

c)x x x and

d)Recover 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.'

"It is only in the 1987 Constitution that the existence or finding of prima facie case was required before a sequestration order could be issued. The writ of sequestration in question was issued long before the ratification of the 1987 Constitution; hence, it was covered by the Freedom Constitution which did not require the prior finding of prima facie evidence." [64]

This argument is clearly without merit in the face of this Court's pronouncement in the "Baseco" case, [65] that:

"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 whimsically and capricious, are condemned and struck down."

Going now to the case of ALLIED, the principal objection raised regarding the order issued against it is that the PCGG made use of an unauthorized and constitutionally defective search warrant to effect the sequestration. The SANDIGANBAYAN saw and declared it as such. We agree.

There can be no doubt that the order which the PCGG issued against ALLIED typifies a search warrant (full text of which appears in the early part of this decision). Not only is the order captioned as SEARCH AND SEIZURE ORDER, the body thereof clearly enjoined the branch manager to make available to the PCGG team all bank documents precisely for the purpose. It is unauthorized because nowhere in the same Executive Order No. 1[66] (particularly Section 3) invoked by the PCGG to justify the search and seizure order was the PCGG expressly empowered to issue such specie of a process in pursuit of its mandated purpose of recovering ill-gotten/unexplained wealth. Section 3 of E.O. No. 1 enumerates the following powers of the PCGG:

"SECTION 3. - The Commission shall have the power and authority:

- (a) To conduct investigation as may be necessary in order to accomplish and carry out the purposes of this order.
- (b) 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.
- (c) To provisionally take over 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.
- (d) 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 tasks under this order.
- (e) To administer oaths, and issue subpoenas requiring the attendance and testimony of witnesses and/or the production of such books, papers, contracts, records, statement of accounts and other documents as may be material to the investigation conducted by the Commission.
- (f) To hold any person in direct or indirect contempt and impose the appropriate penalties, following the same procedures and penalties provided in the Rules of Court.
- (g) To seek and secure the assistance of any office agency or instrumentality of the government.
- (h) To promulgate such rules and regulations as may be necessary to carry out the purposes of this order."

The Court in "Cojuangco, Jr. v. PCGG"[67] simplified these powers in this wise:

"From the foregoing provisions of law, it is clear that the PCGG has the following powers and authority:

1. To conduct an investigation including the preliminary investigation and prosecution of the ill-gotten wealth cases of former President Marcos, relatives and associates, and graft and corruption cases assigned by the President to it;
2. Issue sequestration orders in relation to property claimed to be ill-gotten;
3. Issue 'freeze orders' prohibiting persons in possession of property alleged to be ill-gotten from transferring or otherwise disposing of the same;
4. Issue provisional takeover orders of the said property;
5. Administer oaths and issue subpoenas in the conduct of investigation;
6. Hold any person in direct or indirect contempt and impose the appropriate penalties as provided by the

rules."

Neither can it be validly argued by the PCGG that its authority to issue a search and seizure order possessing the essential features of a search warrant is derivable from subparagraphs (b) and (c) of Section 3 of E.O. No. 1 or from No. 4 of the simplified enumeration in the "Cojuangco" case, by implication. "Baseco" has clarified once and for all the essential nature of the provisional measures of sequestration, freeze orders and provisional takeover that the PCGG is explicitly equipped with:

"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 or possession over it. All these remedies—sequestration, freezing, provisional takeover, attachment and receivership—are provisional, temporary, designed for particular exigencies, attended by no character or permanency or finality, and always subject to the control of the issuing court or agency."

Attachment and receivership are legal processes purely conservatory in character, not involving an active and drastic intrusion into and confiscation of properties as what a search warrant (or search and seizure order) necessarily entails. All processes that the PCGG is allowed to issue in discharging the duty for which it was created, therefore, ought to be viewed strictly in this context. And this finds further support in "Philippine Coconut Producers Federation, Inc. [COCOFED] v. PCGG"[68] where the Court stressed anew that:

"The question of the validity of PCGG sequestration and freeze orders as provisional measures to collect and conserve the assets believed to be ill-gotten wealth has been laid to rest in BASECO vs. PCGG (150 SCRA 181) where this Court held that such orders are not confiscatory but only preservative in character, not designed to effect a confiscation of, but only to conserve properties believed to be ill-gotten wealth of the ex-president, his family and associates, and to prevent their concealment dissipation, or transfer, pending the determination of their true- ownership." (Italics supplied)

Being in fact a search warrant, the SEARCH AND SEIZURE ORDER cannot escape, and must pass, the acid test for validity as provided by the prevailing constitution under which it was issued - the FREEDOM CONSTITUTION which adopted verbatim the provision of the 1973 Constitution (Section 3, Article IV) relating to search warrants, to wit:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the person or things to be seized."

Supporting jurisprudence thus outlined the following requisites for a search warrant's validity, the absence of even one will cause its downright nullification:

- (1) it must be issued upon probable cause;
- (2) the probable cause must be determined by the judge himself and not by the applicant or any other person;
- (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and
- (4) the warrant issued must particularly describe the place to be searched and persons or things to be

seized.[69]

In addition to its unauthorized issuance (as just discussed), the SEARCH AND SEIZURE ORDER is so constitutionally defective.

Firstly, as it suffered from the same inherent weakness or emptiness as that which marred dr. Doromal's testimony (as earlier discussed extensively). deceased Commissioner Bautista's in-court declarations did not in any way establish probable cause which has been consistently defined as:

"x x x such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched. This probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay." [70]

This is so because, as what her testimony irresistibly suggested, the purported facts and circumstances supporting the order are exclusively traceable from documents she identified but which were never formally offered in evidence in the SANDIGANBAYAN. She never testified to any fact of her own personal knowledge to bolster the PCGG's claim that ALLIED was in possession and control of illegally-amassed wealth by Lucio Tan. Her testimony, therefore, is plain hearsay, self-serving, or uncorroborated suspicion. And the rule is that search warrants are not issued on loose, vague or doubtful basis of fact, nor on mere suspicion or belief. [71]

Secondly, the PCGG has no authority to issue the order in the first place. Only a "judge" and "such other responsible officer as may be authorized by law" were empowered by the FREEDOM CONSTITUTION to do so, and the PCGG is neither. It is not a judge, as clarified by the Court in "Baseco," to wit:

"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, 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. There can therefore be no serious regard accorded to the accusation, leveled by BASECO, that the PCGG plays the perfidious role of prosecutor and judge at the same time." (Italics supplied.)

And the PCGG cannot be considered as "such other responsible officer as may be authorized by law" because Executive Order No. 1, to reiterate, did not expressly nor impliedly grant the PCGG the power to issue search warrants/orders.

Thirdly, the order does not provide a specification of the documents sought to be searched/seized from ALLIED. The body thereof, to quote again, reads:

"By virtue of the powers vested in the Commission by the President of the Republic of the Philippines, you are hereby directed to submit for search and seizure all bank documents in the aforementioned premises which our representative may find necessary and relevant to the investigation being conducted by this Commission.

xxx xxx xxx"

It expressly refers to "all bank documents" which is too all-embracing, the obvious intent of which is to subject

virtually all records pertaining to all business transactions of ALLIED of whatever nature, to search and seizure. Such tenor of a seizure warrant is not a particular description,[72] thus contravening the explicit command of the Constitution that there be a particular description of things to be seized.[73] Being a general warrant, the SEARCH AND SEIZURE ORDER is constitutionally objectionable[74] and to be more precise, void for lack of particularity[75] We end our discussion on this matter with the Court's admonition in "People v. Veloso." [76]

"A search warrant must conform strictly to the requirements of the constitutional and statutory provisions under which it was issued. Otherwise, it is void. The proceedings upon search warrants, it has rightly been held, must be absolutely legal, 'for there is not a description of process known to the law, the execution of which is more distressing to the citizen. Perhaps there is none which excites such intense feeling in consequence of its humiliating and degrading effect.' The warrant will always be construed strictly without, however, going the full length of requiring technical accuracy. No presumptions of regularity are to be invoked in aid of the process when an officer undertakes to justify under it."

The third key issue should therefore be answered in the affirmative, i.e., the nullification of the sequestration and search and seizure orders was in order.

The last key issue involves another constitutional imperative - i.e., that the corresponding suit or suits against a sequestered entity or entities should be brought in the proper court, the Sandiganbayan to be precise, [77] within the prescribed period - failure of which automatically lifts the sequestration order or orders issued. Up for determination is whether under the factual features of the case, there was compliance with this rule as professed by the PCGG, or non-observance thereof, as argued and declared by respondent corporations and the SANDIGANBAYAN, respectively. Stress should be given to the fact that the Court's resolution of this crucial issue would particularly apply to SIPALAY inasmuch as it involves a sequestration order - not to ALLIED against whom was issued a search and seizure order that we have just heretofore declared as void. Nonetheless, for simplicity's sake, such resolution can be made to cover ALLIED's case as well. We thus forego with the distinction in this instance and assume that ALLIED was sequestered via sequestration order similar to that issued against SIPALAY.

At the fore once again in Section 26, Article XVIII of the 1987 Constitution, specifically the second and third paragraphs:

"Section 26.

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"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."

And here are the relevant and undisputable facts: The 1987 Constitution was ratified on February 2, 1987. Counting six (6) months therefrom, August 2, 1987 was the constitutional deadline for the PCGG to file the corresponding judicial action/proceeding against entity or entities it sequestered prior to February 2, 1987. Among such entity or entities were SIPALAY and ALLIED, the dates of their sequestration as appearing from the corresponding orders issued against them are July 14, 1986 and August 13, 1986, respectively. The PCGG admittedly did not file any direct complaint either against SIPALAY or ALLIED before the SANDIGANBAYAN

between February 2 and August 2 of 1987. But within such period, specifically on July 17, 1987, the PCGG filed before the SANDIGANBAYAN a civil case against Lucio Tan and others, for "Revision, Reconveyance, Restitution, Accounting and Damages," docketed as CC No. 0005.[78] The original complaint in CC No. 0005 did not name SIPALAY and ALLIED as defendants, as it enumerated only natural persons, except for one,[79] as such. SIPALAY and ALLIED were impleaded as defendants in CC No. 0005 for the first time only after the lapse of more than four (4) years from the filing of the original complaint in July of 1987, under an amended complaint filed by the PCGG in September of 1991.

Given this factual backdrop, two propositions are being bruited by the PCGG:

- 1) that the July 17, 1987 original complaint against Lucio C. Tan, et. al. (CC No. 0005) is the judicial action required by the 1987 Constitution to justify the continued sequestration of SIPALAY (and ALLIED), and
- 2) even assuming arguendo that such original complaint was defective for not naming therein SIPALAY and ALLIED as defendants, still there was faithful compliance with the constitutional mandate, since the September, 1991 amended complaint impleading SIPALAY and ALLIED as defendants - even when filed beyond the August 2, 1987 deadline - retroacted to July 17, 1987 which, thus, cured the defect.

Both propositions have to be rejected.

As to the first, the SANDIGANBAYAN correctly struck it down by following the doctrine laid down in "PCGG v. International Copra Export Corporation, Interco Manufacturing Corporation and Sandiganbayan"[80] ("INTERCO" case, for short). We thus quote with approval the pertinent disquisitions, to wit:

"x x x On not a few occasions, the Court has sustained the merit and logic of motions seeking the lifting of writs of sequestration for respondent PCGG's failure to institute the corresponding judicial action or proceeding against corporations which, either through sheer oversight or gross neglect, have not been expressly impleaded in the various civil complaints filed before this Court. The case of 'PCGG v. International Copra Export Corporation, et. al.' (INTERCO case) is illuminating on this point. Therein, the Supreme Court made a distinction between the judicial personalities of a corporation and its stockholders, ruling that if a corporation is not impleaded, it cannot be deemed to have been sued in an action against its stockholders.

"A perusal of the original complaint in Civil Case No. 0005, which was concededly filed within the six-month period provided for under the organic law, reveals that petitioner Sipalay Trading was not specifically impleaded therein as party-defendant, either in a nominal or principal capacity. If at all, the latter has been included therein as part of principal defendant's ill-gotten assets. Under Rule 3, Section 7 of the Rules of Court, '(P)arties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.'

"It bears emphasis along this vein that, as implied from INTERCO, petitioner Sipalay Trading has a juridical personality separate and distinct from its stockholders. As such, any civil charge filed against principal defendant Lucio C. Tan and/or his dummies or agents is not deemed a suit against the former. Neither does mere inclusion in the list of ill-gotten assets as part of principal defendant's ill-gotten wealth suffice to comply with the constitutional injunction. Impleading a party means bringing the suit against it. Listing or annexing it to the complaint, on the other hand, implies being the object of the action.

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"It must be stated with equal respect that the phrase 'judicial action or proceeding,' within the meaning of the organic law, is subject to the ordinary rules of procedure and is subordinate to the requirements of due process. Failure to implead petitioner corporation in the action within the constitutional period is, therefore, patently transgressive of the constitutional mandate against deprivation of life, liberty and property without due process

of law."[81]

To fortify this ruling, we need only to point out the similarity in factual antecedents obtaining in "INTERCO" and the instant case. In "INTERCO," no judicial action or proceeding was instituted by the PCGG directly against respondent corporations therein (International Copra Export and International Manufacturing) which it sequestered on June 10, 1987 purportedly upon a prima facie finding that certain shares of stocks in those corporations are beneficially owned but were acquired with ill-gotten wealth by Eduardo Cojuangco, Jr., within six (6) months from the date of their sequestration - i.e., between June 10, 1987 and December 10, 1987. And the PCGG in "INTERCO" likewise filed a complaint before the SANDIGANBAYAN on July 31, 1987 against Eduardo Cojuangco, Jr., among others (Civil case No. 0033) without, however, impleading respondent corporations as parties-defendants. The Court in "INTERCO" rejected the PCGG's contention that the July 31, 1987 complaint against Cojuangco, Jr., et. al. was substantial compliance with the requirement under Section 26, Article XVIII of the 1987 Constitution, by upholding very fundamental principles in corporation law:

"In this jurisdiction, a corporation has a legal personality .distinct and separate from its stockholders. Thus a suit against any of the stockholders is not ipso facto a suit against the corporation.

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"There is likewise no merit to petitioner's argument that the doctrine which justifies the 'piercing of the veil of corporate fiction' is applicable to the case at bar. The Sandiganbayan correctly found the record bereft of sufficient basis from which to conclude that private respondents' respective corporate identities have been used to defeat public convenience, protect fraudulent schemes, or evade obligations and liabilities under statutes. Whether or not Enrique Luy, a major stockholder of private respondents, acted as a dummy of Eduardo Cojuangco, Jr., and whether or not the shareholders of Enrique Luy are beneficially owned by Eduardo Cojuangco, Jr., are matters still to be established in Civil Case No. 0033. But as far as private respondents are concerned, inclusion of their major stockholder in Civil Case No. 0033 does not detract from, nor excuse, petitioner's failure to file the proper judicial action against them in compliance with the constitutional requirement under Section 26 of Article XVIII."

And following the rule, elsewhere stated, that cases circumstanced identically should be resolved consistently, adherence to the ruling of the Court in "INTERCO" is necessary and inescapable.

Regarding its second proposition, the PCGG erroneously relies on "Pangasinan Transportation Co. v. Philippine Farming Co., Ltd." [82] where it was ruled to the effect that:

"Where the original complaint states a cause of action, but does it imperfectly, and afterward an amended complaint is filed, correcting the defect, the plea of statute of limitations will relate to the time of filing the original complaint."

The "Pangasinan" case dealt solely with a defect in the cause of action stated in the original complaint filed by therein petitioner Pangasinan Transport against its competitor, respondent Philippine Farming before the Public Service Commission for illegal reduction of rates - i.e., non-specification of the acts constituting the offense. It did not in any way involve a failure to implead a party-defendant which is an entirely different thing from a defective cause of action. The scope of the retroactive and curative effect of an amended complaint as declared in "Pangasinan" therefore ought not be broadened so as to cover infirmities in the original complaint other than amendable imperfections in a cause of action. In fact, insofar as the failure to implead a party or parties in the original complaint is specifically concerned, the Court on at least two occasions said that the rule in "Pangasinan" would not apply to the party impleaded for the first time in the amended complaint. These are the cases of "Aetna Insurance Co. v. Luzon Stevedoring Corporation" [83] and "Seno, et. al., v. Mangubat, et. al." [84] cited by herein SIPALAY and ALLIED in their "Comment." In "Aetna," the amended complaint filed by therein appellant Aetna

Insurance Co. as plaintiff before the then CFI of Manila impleading Barber Line Far East Service as defendant for the first time, was filed beyond the one-year period fixed in the Carriage of Goods by Sea Act. In "Seno," one Andres Evangelista and Bienvenido Mangubat were likewise impleaded as defendants for the first time under an amended complaint filed beyond the ten-year period required under Article 1144 of the New Civil Code within which to bring an action upon a written contract. And in both cases, the Court affirmed the dismissal of the complaints against these newly impleaded defendants by refusing the application of the "Pangasinan" ruling and decreeing that the amended complaints did not stall the running of the prescription periods provided under the applicable laws. Bearing once again similar factual features as the "Aetna" and "Seno" cases, this particular sub-issue should, perforce, be resolved in accordance therewith.

This Court is, of course, fully aware of that very recent case of "Republic v. Sandiganbayan, et al.," 240 SCRA 376 [January 23, 1995], where its "Final Dispositions" relating to the judicial action/proceeding in sequestration cases appear to clash with "INTERCO." In resolving what appeared to be the "crucial question" involved in that 1995 "Republic v. Sandiganbayan" case, to wit:

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

the Court made these conclusions:

"It is thus both needful and timely to pronounce that:

- 1) Section 26, Article XVIII of the Constitution does not, by its terms or any fair interpretation thereof, require that corporations or business enterprises alleged to be repositories of 'ill-gotten wealth', as the term is used in said provision, be actually and formally impleaded in the actions for the recovery thereof, in order to maintain in effect existing sequestrations thereof;
- 2) complaints for the recovery of ill-gotten wealth which merely identify and/or allege said corporations or enterprises to be the instruments, repositories or the fruits of ill-gotten wealth without more, come within the meaning of the phrase 'corresponding judicial action or proceeding' contemplated by the constitutional provision referred to; the more so, that normally, said corporations, as distinguished from their stockholders or members, are not generally suable for the latter's illegal or criminal actuations in the acquisition of the assets invested by them in the former.
- 3) even assuming the impleading of said corporations to be necessary and proper so that judgment may comprehensively and effectively be rendered in the actions, amendment of the complaints to implead them as defendants may, under existing rules of procedure, be done at any time during the pendency of the actions thereby initiated, and even during the pendency of an appeal to the Supreme Court - a procedure that, in any case, is not inconsistent with or proscribed by the constitutional time limits to the filing of the corresponding complaints 'for' - i.e., with regard or in relation to, in respect of or in connection with, or concerning - orders or sequestration, freezing, or provisional takeover."

These fresh pronouncements, however did not reverse, abandon or supplant "INTERCO." What the Court did was to explain the two apparently colliding dispositions by making this "hairline," but critical, distinction:

"XVI. The "Interco" and "PJI" Rulings

"This Court is not unmindful of the fact that its Resolution of July 26, 1991 on the petitioner's motion for reconsideration in G.R. No. 92755 (PCGG vs. Interco) appears to sustain the proposition that actual impleading in the recovery action of a corporation under sequestration for being a repository of illegally-acquired wealth, is necessary and requisite for such proposed or pending seizure to come under the protective umbrella of the Constitution. But Interco is to be differentiated from the cases now under review in that in the former, as already elsewhere herein made clear, there was a lack of proof, even of the prima facie kind, that Eduardo Cojuangco, Jr. owned any stock in Interco, the evidence on record being in fact that said corporation had been organized as a family corporation of the Luys.

"So, too, this Court's judgment in the so-called 'PJI Case' (Republic of the Philippines [PCGG] v. Sandiganbayan and Rosario Olivares) may not be regarded as on all fours with the cases under consideration. The PJI Case involved the shares of stock in the name of eight (8) natural persons which had never been sequestered at all. What happened was that the PCGG simply arrogated unto itself the right to vote those unsequestered shares on the bare claim that the eight (8) registered owners thereof were 'dummies' of Benjamin Romualdez, the real owner of the shares; and all that the PCGG had done as predicate for that act of appropriation of the stock, was to include all the shares of PJI in a list (Annex A) appended to its complaint in Sandiganbayan Case no. 0035, describing them as among the properties illegally acquired by Romualdez. Unfortunately, as in Interco, the PCGG failed to substantiate by competent evidence its theory of clandestine ownership of Romualdez; and since moreover, there had been no sequestration of the alleged dummies' shares of stock, it was undoubtedly correct for the Sandiganbayan to grant the latter's motion for them to be recognized and declared as the true owners of the stock in question, which judgment this Court subsequently pronounced to be free from grave abuse of discretion." [85]

We need only to recall at this juncture that, as in "INTERCO," evidence of the PCGG is nil to even come up with a prima facie case against SIPALAY (and ALLIED). This similitude is the one decisive factor that draws the instant case away from the "Final Dispositions" made by the Court in the 1995 "Republic v. Sandiganbayan" case - thus making "INTERCO", as supported by the "Aetna" and "Seno" cases, the controlling precedent. The principle of Stare Decisis, indeed, is most compelling, for "when the court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same." [86] And it is in this light that Mr. Justice Padilla's lone "Dissent" in the 1995 "Republic v. Sandiganbayan" case becomes meaningfully relevant, to wit:

"x x x failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing.

"In cases where stocks of a corporation were allegedly the fruits of ill-gotten wealth, it should be remembered that in most of these cases the stocks involved constitute a substantial if not controlling interest in the corporations. The basic tenets of fair play demand that these corporations be impleaded as defendants since a judgment in favor of the government will undoubtedly substantially and decisively affect the corporations as distinct entities. The judgment could strip them of everything without being previously heard as they are not parties to the action in which the judgment is rendered.

"x x x Holding that the 'corresponding judicial action or proceeding' contemplated by the Constitution is any action concerning or involving the corporation under sequestration is oversimplifying the solution, the result of which is antagonistic to the principles of justice and fair play.

"x x x the actions contemplated by the Constitution should be those which include the corporation not as a mere annex to the complaint but as defendant. This is the minimum requirement of the due process guarantee. Short of being impleaded, the corporation has no standing in the judicial action. It cannot adequately defend

itself. It may not even be heard.

"On the x x x opinion that alternatively the corporations can be impleaded as defendants by amendment of the complaint, Section 26, Article XVIII of the Constitution would appear to preclude this procedure, for allowing amendment of the complaint to implead therefore unimpleaded corporations would in effect allow complaints against the corporations to be filed beyond the periods fixed by said Section 26.

"Justice Amuerfina Melencio-Herrera in her separate opinion in *Bataan Shipyard and Engineering Corporation, Inc. v. PCGG* (150 SCRA 181, 253) correctly stated what should be the rule, thus:

‘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 and Justice.’ (Italics supplied)

"While government efforts to recover illegally amassed wealth should have support from all its branches, eagerness and zeal should not be allowed to run berserk, overriding in the process the very principles that it is sworn to uphold. In our legal system, the ends do not always justify the means. Wrongs are never corrected by committing other wrongs, and as above-discussed the recovery of ill-gotten wealth does not and should never justify unreasonable intrusions into constitutionally forbidden grounds x x x."

In answer therefore to the last key issue, we hold that the sequestration and the search and seizure orders issued were indeed automatically lifted.

Finally, the PCGG in its "Reply" raises as "additional issue" the bias and partiality of the now-assailed decision's ponente and Chairman of the SANDIGANBAYAN's SECOND DIVISION, Justice Romeo Escareal. To bolster this charge, the PCGG harps on alleged prejudicial acts committed by Justice Escareal affecting CC No. 0005 - the case filed against Lucio C. Tan, and the instant case (S.B. Nos. 0095 against SIPALAY and 0100 against ALLIED).

This issue deserves no merit at all. Firstly, the PCGG's complaints against Justice Escareal's purported bias and partiality in CC No. 0005 have no bearing whatsoever to the instant case. That should be ventilated and passed upon there, not her. And secondly, SIPALAY and ALLIED in their "Rejoinder" meritoriously parried the PCGG's accusation by arguing that:

"1.02. Petitioner apparently overlooks that the Sandiganbayan is a collegiate court which sits in divisions composed of three (3) members each. The unanimous vote of all the three (3) members of a division is required for the rendition of a judgment (See Section 1(b), Rule XVIII, Revised Rules of the Sandiganbayan). The Decision and Resolution subject of the present - appeal, though penned by Justice Romeo Escareal, the Chairman of the Second Division of the Sandiganbayan, were concurred in by the two (2) other members of the Sandiganbayan's Second Division. Such being the case, petitioner's fears of bias or partiality on the part of Justice Romeo Escareal cannot affect the questioned Decision and Resolution rendered by the Sandiganbayan (Second Division). As held by this Honorable Court in *Miriam Defensor-Santiago vs. Hon. Justice Francis Garchitorena, Et Al.* (G.R. No. 109226, December 2, 1993):

‘Notwithstanding petitioner's misgiving, it should be taken into consideration that the Sandiganbayan sits in three divisions with three justices in each division. Unanimity among the three members is mandatory for arriving at any decision of a division. (P.D. 1606, Sec. 5). The collegiate character of the Sandiganbayan thus renders baseless petitioner's fear of prejudice and bias on the part of Presiding Justice Garchitorena (*Paredes vs. Gopenco*, 29 SCRA 688 [1969]).’"

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Davide, Jr., Melo and Panganiban, JJ., concur.

Narvasa, C.J. (Chairman), concurs in the result.

[1] En Banc Resolution dated February 15, 1990.

[2] Annex C, Rollo, pp. 133-134.

[3] Annex D, Rollo, p. 135.

[4] Annexes 1 and 2, Rollo pp. 591 and 592.

[5] Resolution dated April 26, 1993.

[6] Annex 3, Rollo, p. 593.

[7] Order dated July 1, 1993, Annex 4, Rollo, p. 594.

[8] Annex H, Rollo, p. 239.

[9] Annex A. Rollo, pp. 63-126.

[10] Annex B, Rollo, pp. 127-132.

[11] 81 SCRA 574.

[12] 83 SCRA 265.

[13] 203 SCRA 515.

[14] 55 SCRA 267.

[15] 144 SCRA 116,119.

[16] 88 Phil. 215.

[17] 236 SCRA 148 (September 1, 1994).

[18] Supra.

[19] *Hutchinson v. Kenney*, C.C.A.N.C., 27 F. 2d 254,256.

[20] Sandiganbayan Decision, pp. 22-23.

[21] Sandiganbayan Decision, pp. 24-25.

[22] Footnote No. 80 of SANDIGANBAYAN Decision, p. 30.

[23] Footnote No. 81, *ibid*.

[24] SANDIGANBAYAN Decision, pp. 30-31.

[25] SANDIGANBAYAN Decision, p. 34.

[26] SANDIGANBAYAN Decision. p. 43.

[27] SANDIGANBAYAN Decision, p.40.

[28] SANDIGANBAYAN Decision, p.42.

[29] Rule 132, Section 34.

[30] Veran v. C.A., 157 SCRA 438; De los Reyes v. IAC, 176 SCRA 394; People v. Carino, et al., 165 SCRA 664.

[31] Supra.

[32] 182 SCRA 81 (1990).

[33] TSN, August 15, 1991.

[34] TSN, November 26, 1991.

[35] TSN, January 8, 1991.

[36] 201 SCRA 87,95, citing Interpacific Transit, Inc. v. Aviles, 186 SCRA 385.

[37] SANDIGANBAYAN Decision, pp. 40-41.

[38] SANDIGANBAYAN Decision, pp. 43.

[39] SANDIGANBAYAN Decision, p. 39.

[40] Dodson v. Watson, 110 Tex. 355,220 S.W. 771, 772, 11 A.L.R. 583. Black's Law Dictionary, Revised 4th Ed.

[41] Gilmore v. Modern Brotherhood of America, 186 Mo. App. 445, 171 S.W. 629, 632, Id.

[42] Pacific Telephone & Telegraph Co. v. Wallace, 158 Or. 210,75 P. 2d 942,947. Id.

[43] Morrison v. Flowers, 308 Ill. 189, 139 N.E. 10, 12. Id.

[44] Schallert v. Boggs, Tex. Civ. App. 204 S.W. 1061, 1062. Id.

[45] Mozley & Whitley State v. Lawlo, 28 Minn. 216,9 N.W. 698. Id.

[46] The Fanny Tuthill, 17 Fed. Rep. 87,90. Moore on Facts, Vol. 1, p. 579.

[47] The Ship Francis, 1 Gall. [US] 618,9 Fed. Cas. No. 5,035. Moore on Facts, Vol. 1, p. 579.

[48] The London Racket, 1 Mason [US] 14, 15 Fed. Cas. No. 8,474. Moore on Facts, Vol. 1, p. 579.

[49] Moore on Facts, Vol. 1,581.

[50] Moore on Facts Vol. 1, pp. 580-581.

[51] Cunard Steamship v. Kelley, 126 Fed. Rep. 610,614,61 C.C.A. 532; Otterbourg's Case 5 Ct. Cl. 430,439; Hollingsworth v. Martin, 23 Ala. 591; Moore on Facts, Vol. 1, p. 596.

[52] People v. Van Zile, 143 N.Y. 372, 373, 38 N.E. Rep. 380, per Andrews, C.J.; Scott v. Crerar, 11 Ont. 541, 551. Moore on Facts, Vol. 1, p. 61.

[53] Boyd v. Glucklich, [C.C.A.] 116 Fed. Rep. 131, per Caidwell, J. Moore on Facts, Vol. 1, p. 61.

[54] The Ship Henry Ewbank, 1 Sumn. [US] 400, 11 Fed. Cas. No. 6, 376, per Mr. Justice Story. Moore on Facts, Vol. 1, p. 62.

[55] *Yaggle v. Allen*, 24 N.Y. App. Div. 594, 48 N.Y. Supp. 827; *Love v. New Fairview Corp.*, 10 British Columbia, 330. 341; *Storey v. Veach*, 22 U.C.C.P. 1 64, 176; *Graystock v. Barnhart*, 26 Ont. App. 545; *Saunders v. Toronto*, 26 Ont. App. 265. *Moore on Facts*, Vol. 1, p. 62.

[56] Records of "*ALLIED v. PCGG*," p. 90; Records of "*SIPALAY v. PCGG*," Vol. 2, p. 645.

[57] Records of "*ALLIED v. PCGG*," pp. 88-89; Records of "*SIPALAY v. PCGG*," Vol. 2, pp. 643-644.

[58] Minutes of 13 March 1986 meeting, Exhibit "A" for "*SIPALAY and ALLIED*, Annex 1 of Comment, Rollo, p. 591.

[59] Minutes of 12 March 1986 meeting, Exhibit "B" for "*SIPALAY and ALLIED*, Annex 2 of Comment, Rollo, p. 592.

[60] pp. 13-14, TSN of July 16, 1991, Direct Examination of Atty. Hontiveros.

[61] pp. 14-15, TSN of July 16, 1991. Direct Examination of Atty. Hontiveros.

[62] Comment, p. 32.

[63] 192 SCRA 743.

[64] Petition, pp. 43-45.

[65] 150 SCRA 181, 217.

[66] Issued by former President Corazon C. Aquino dated February 26, 1986.

[67] 190 SCRA 226, 249.

[68] 178 SCRA 236, 248.

[69] *Lim v. Ponce de Leon*, 66 SCRA 299. With the only exception that officers other than a judge are now bereft of any authority to issue warrants, the 1987 Constitution contains these very same requisites. Section 2, Article III thereof reads:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

[70] *Prudente v. Dayrit*, 180 SCRA 69, citing *Quintero v. NBI*, 162 SCRA 467; *20th Century Fox Film Corp. v. CA*, 164 SCRA 655; *People v. Sy Juco*, 64 Phil. 667; *Alvarez v. CFI*, 64 Phil. 33; *US v. Addison*, 28 Phil. 566.

[71] *Quintero v. NBI*, 162 SCRA 467.

[72] *Bache and Co. v. Ruiz*, 37 SCRA 823.

[73] *Castro v. Pabalan*, 70 SCRA 477; *Stonehill v. Diokno*, 20 SCRA 383.

[74] *Columbia Pictures, Inc. v. Flores*, 223 SCRA 761; *20th Century Fox Film Corp. v. CA*, 164 SCRA 655; *Corro v. Lising*, 137 SCRA 541.

[75] *Burgos, Sr. v. Chief of Staff, AFP*, 133 SCRA 800.

[76] 48 Phil. 169.

[77] PCGG v. Peña, 159 SCRA 556; Republic v. Sandiganbayan, 199 SCRA 39.

[78] Annex "H", Petition.

[79] With the exception of the Estate of Benito Tan Kee Hiong, the defendants named therein, aside from Lucio Tan, are: Ferdinand Marcos, Imelda Marcos, Carmen Khao Tan, Florencio T. Santos, Natividad P. Santos, Domingo Chua, Tan Hui Nee, Mariano Tang Eng Lian, Florencio N. Santos, Jr., Harry C. Tan, Tan Eng Chan, Chung Poe Kee, Mariano Khoo, Manuel Khoo, Miguel Khoo, Jaime Khoo, Elizabeth Khoo, Celso C. Ranola, William T. Wong, Ernesto B. Lim, Benjamin T. Albacita, Don Ferry, Willy Co, and Federico Moreno.

[80] G.R. No. 92755, en Banc Resolution of the Court dated October 2, 1990. The motion for its reconsideration was DENIED with FINALITY in the Court's En Bane Resolution dated July 26, 1991.

[81] SANDIGANBAYAN Decision, pp. 45-47; pp. 48-49.

[82] 81 Phil. 273.

[83] 62 SCRA 11.

[84] 156 SCRA 113.

[85] Republic v. Sandiganbayan, 240 SCRA 376, pp. 473-474.

[86] Government v. Jalandoni, 44 O.G. 1840.

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