

**NATIONAL DEVELOPMENT COMPANY AND NEW AGRIX, INC.,
PETITIONERS, VS. PHILIPPINE VETERANS BANK, THE EX-OFFICIO
SHERIFF AND GODOFREDO QUILING, IN HIS CAPACITY AS DEPUTY
SHERIFF OF C...**

G.R. Nos. 84132-33. December 10, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

This case involves the constitutionality of a presidential decree which, like all other issuances of President Marcos during his regime, was at that time regarded as sacrosanct. It is only now, in a freer atmosphere, that his acts are being tested by the touchstone of the fundamental law that even then was supposed to limit presidential action.

The particular enactment in question is Pres. Decree No. 1717, which ordered the rehabilitation of the Agrix Group of Companies to be administered mainly by the National Development Company. The law outlined the procedure for filing claims against the Agrix companies and created a Claims Committee to process these claims. Especially relevant to this case, and noted at the outset, is Sec. 4(1) thereof providing that "all mortgages and other liens presently attaching to any of the assets of the dissolved corporations are hereby extinguished."

Earlier, the Agrix Marketing, Inc. (AGRIX) had executed in favor of private respondent Philippine Veterans Bank a real estate mortgage dated July 7, 1978, over three (3) parcels of land situated in Los Baños, Laguna. During the existence of the mortgage, AGRIX went bankrupt. It was for the expressed purpose of salvaging this and the other Agrix companies that the aforementioned decree was issued by President Marcos.

Pursuant thereto, the private respondent filed a claim with the AGRIX Claims Committee for the payment of its loan credit. In the meantime, the New Agrix, Inc. and the National Development Company, petitioners herein, invoking Sec. 4 (1) of the decree, filed a petition with the Regional Trial Court of Calamba, Laguna, for the cancellation of the mortgage lien in favor of the private respondent. For its part, the private respondent took steps to extrajudicially foreclose the mortgage, prompting the petitioners to file a second case with the same court to stop the foreclosure. The two cases were consolidated.

After the submission by the parties of their respective pleadings, the trial court rendered the impugned decision. Judge Francisco Ma. Guerrero annulled not only the challenged provision, viz., Sec. 4 (1), but the entire Pres. Decree No. 1717 on the grounds that: (1) the presidential exercise of legislative power was a violation of the principle of separation of powers; (2) the law impaired the obligation of contracts; and (3) the decree violated the equal protection clause. The motion for reconsideration of this decision having been denied, the present petition was filed.

The petition was originally assigned to the Third Division of this Court but because of the constitutional questions involved it was transferred to the Court en banc. On August 30, 1988, the Court granted the petitioner's prayer for a temporary restraining order and instructed the respondents to cease and desist from conducting a public auction

sale of the lands in question. After the Solicitor General and the private respondent had filed their comments and the petitioners their reply, the Court gave due course to the petition and ordered the parties to file simultaneous memoranda. Upon compliance by the parties, the case was deemed submitted.

The petitioners contend that the private respondent is now estopped from contesting the validity of the decree. In support of this contention, it cites the recent case of *Mendoza v. Agrix Marketing, Inc.*,^[1] where the constitutionality of Pres. Decree No. 1717 was also raised but not resolved. The Court, after noting that the petitioners had already filed their claims with the AGRIX Claims Committee created by the decree, had simply dismissed the petition on the ground of estoppel.

The petitioners stress that in the case at bar the private respondent also invoked the provisions of Pres. Decree No. 1717 by filing a claim with the AGRIX Claims Committee. Failing to get results, it sought to foreclose the real estate mortgage executed by AGRIX in its favor, which had been extinguished by the decree. It was only when the petitioners challenged the foreclosure on the basis of Sec. 4 (1) of the decree, that the private respondent attacked the validity of the provision. At that stage, however, consistent with *Mendoza*, the private respondent was already estopped from questioning the constitutionality of the decree.

The Court does not agree that the principle of estoppel is applicable.

It is not denied that the private respondent did file a claim with the AGRIX Claims Committee pursuant to this decree. It must be noted, however, that this was done in 1980, when President Marcos was the absolute ruler of this country and his decrees were the absolute law. Any judicial challenge to them would have been futile, not to say foolhardy. The private respondent, no less than the rest of the nation, was aware of that reality and knew it had no choice under the circumstances but to conform.

It is true that there were a few venturesome souls who dared to question the dictator's decisions before the courts of justice then. The record will show, however, that not a single act or issuance of President Marcos was ever declared unconstitutional, not even by the highest court, as long as he was in power. To rule now that the private respondent is estopped for having abided with the decree instead of boldly assailing it is to close our eyes to a cynical fact of life during that repressive time.

This case must be distinguished from *Mendoza*, where the petitioners, after filing their claims with the AGRIX Claims Committee, received in settlement thereof shares of stock valued at P40,000.00 without protest or reservation. The herein private respondent has not been paid a single centavo on its claim, which was kept pending for more than seven years for alleged lack of supporting papers. Significantly, the validity of that claim was not questioned by the petitioner when it sought to restrain the extrajudicial foreclosure of the mortgage by the private respondent. The petitioner limited itself to the argument that the private respondent was estopped from questioning the decree because of its earlier compliance with its provisions.

Independently of these observations, there is the consideration that an affront to the Constitution cannot be allowed to continue existing simply because of procedural inhibitions that exalt form over substance.

The Court is especially disturbed by Section 4(1) of the decree, quoted above, extinguishing all mortgages and other liens attaching to the assets of AGRIX. It also notes, with equal concern, the restriction in Subsection (ii) thereof that all "unsecured obligations shall not bear interest" and in Subsection (iii) that "all accrued interests, penalties or charges as of date hereof pertaining to the obligations, whether secured or unsecured, shall not be recognized."

These provisions must be read with the Bill of Rights, where it is clearly provided in Section 1 that "no person shall be deprived of life, liberty or property without due course of law nor shall any person be denied the equal

protection of the law" and in Section 10 that "no law impairing the obligation of contracts shall be passed."

In defending the decree, the petitioners argue that property rights, like all rights, are subject to regulation under the police power for the promotion of the common welfare. The contention is that this inherent power of the state may be exercised at any time for this purpose so long as the taking of the property right, even if based on contract, is done with due process of law.

This argument is an over-simplification of the problem before us. The police power is not a panacea for all constitutional maladies. Neither does its mere invocation conjure an instant and automatic justification for every act of the government depriving a person of his life, liberty or property.

A legislative act based on the police power requires the concurrence of a lawful subject and a lawful method. In more familiar words, a) the interests of the public generally, as distinguished from those of a particular class, should justify the interference of the state; and b) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.[2]

Applying these criteria to the case at bar, the Court finds first of all that the interests of the public are not sufficiently involved to warrant the interference of the government with the private contracts of AGRIX. The decree speaks vaguely of the "public, particularly the small investors," who would be prejudiced if the corporation were not to be assisted. However, the record does not state how many there are of such investors, and who they are, and why they are being preferred to the private respondent and other creditors of AGRIX with vested property rights.

The public interest supposedly involved is not identified or explained. It has not been shown that by the creation of the New Agrix, Inc. and the extinction of the property rights of the creditors of AGRIX, the interests of the public as a whole, as distinguished from those of a particular class, would be promoted or protected. The indispensable link to the welfare of the greater number has not been established. On the contrary, it would appear that the decree was issued only to favor a special group of investors who, for reasons not given, have been preferred to the legitimate creditors of AGRIX.

Assuming there is a valid public interest involved, the Court still finds that the means employed to rehabilitate AGRIX fall far short of the requirement that they shall not be unduly oppressive. The oppressiveness is patent on the face of the decree. The right to property in all mortgages, liens, interests, penalties and charges owing to the creditors of AGRIX is arbitrarily destroyed. No consideration is paid for the extinction of the mortgage rights. The accrued interests and other charges are simply rejected by the decree. The right to property is dissolved by legislative fiat without regard to the private interest violated and, worse, in favor of another private interest.

A mortgage lien is a property right derived from contract and so comes under the protection of the Bill of Rights. So do interests on loans, as well as penalties and charges, which are also vested rights once they accrue. Private property cannot simply be taken by law from one person and given to another without compensation and any known public purpose. This is plain arbitrariness and is not permitted under the Constitution.

And not only is there arbitrary taking, there is discrimination as well. In extinguishing the mortgage and other liens, the decree lumps the secured creditors with the unsecured creditors and places them on the same level in the prosecution of their respective claims. In this respect, all of them are considered unsecured creditors. The only concession given to the secured creditors is that their loans are allowed to earn interest from the date of the decree, but that still does not justify the cancellation of the interests earned before that date. Such interests, whether due to the secured or the unsecured creditors, are all extinguished by the decree. Even assuming such cancellation to be valid, we still cannot see why all kinds of creditors, regardless of security, are treated alike.

Under the equal protection clause, all persons or things similarly situated must be treated alike, both in the privileges conferred and the obligations imposed. Conversely, all persons or things differently situated should be treated differently. In the case at bar, persons differently situated are similarly treated, in disregard of the principle that there should be equality only among equals.

One may also well wonder why AGRIX was singled out for government help, among other corporations where the stockholders or investors were also swindled. It is not clear why other companies entitled to similar concern were not similarly treated. And surely, the stockholders of the private respondent, whose mortgage lien had been canceled and legitimate claims to accrued interests rejected, were no less deserving of protection, which they did not get. The decree operated, to use the words of a celebrated case,[3] "with an evil eye and an uneven hand."

On top of all this, New Agrix, Inc. was created by special decree notwithstanding the provision of Article XIV, Section 4 of the 1973 Constitution, then in force, that:

SEC. 4. The Batasang Pambansa shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.[4]

The new corporation is neither owned nor controlled by the government. The National Development Corporation was merely required to extend a loan of not more than P10,000,000.00 to New Agrix, Inc. Pending payment thereof, NDC would undertake the management of the corporation, but with the obligation of making periodic reports to the Agrix board of directors. After payment of the loan, the said board can then appoint its own management. The stocks of the new corporation are to be issued to the old investors and stockholders of AGRIX upon proof of their claims against the abolished corporation. They shall then be the owners of the new corporation. New Agrix, Inc. is entirely private and so should have been organized under the Corporation Law in accordance with the above-cited constitutional provision.

The Court also feels that the decree impairs the obligation of the contract between AGRIX and the private respondent without justification. While it is true that the police power is superior to the impairment clause, the principle will apply only where the contract is so related to the public welfare that it will be considered congenitally susceptible to change by the legislature in the interest of the greater number.[5] Most present-day contracts are of that nature. But as already observed, the contracts of loan and mortgage executed by AGRIX are purely private transactions and have not been shown to be affected with public interest. There was therefore no warrant to amend their provisions and deprive the private respondent of its vested property rights.

It is worth noting that only recently in the case of the Development Bank of the Philippines v. NLRC,[6] we sustained the preference in payment of a mortgage creditor as against the argument that the claims of laborers should take precedence over all other claims, including those of the government. In arriving at this ruling, the Court recognized the mortgage lien as a property right protected by the due process and contract clauses notwithstanding the argument that the amendment in Section 110 of the Labor Code was a proper exercise of the police power.

The Court reaffirms and applies that ruling in the case at bar.

Our finding, in sum, is that Pres. Decree No. 1717 is an invalid exercise of the police power, not being in conformity with the traditional requirements of a lawful subject and a lawful method. The extinction of the mortgage and other liens and of the interest and other charges pertaining to the legitimate creditors of AGRIX constitutes taking without due process of law, and this is compounded by the reduction of the secured creditors to the category of unsecured creditors in violation of the equal protection clause. Moreover, the new corporation, being neither owned nor controlled by the Government, should have been created only by general and not special

law. And insofar as the decree also interferes with purely private agreements without any demonstrated connection with the public interest, there is likewise an impairment of the obligation of the contract.

With the above pronouncements, we feel there is no more need to rule on the authority of President Marcos to promulgate Pres. Decree No. 1717 under Amendment No. 6 of the 1973 Constitution. Even if he had such authority, the decree must fall just the same because of its violation of the Bill of Rights.

WHEREFORE, the petition is DISMISSED. Pres. Decree No. 1717 is declared UNCONSTITUTIONAL. The temporary restraining order dated August 30, 1988, is LIFTED. Costs against the petitioners.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Paras, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Melencio-Herrera, J., in the result. In *Dumlao v. COMELEC*, 95 SCRA 392 (1980), a portion of the second paragraph of section 4 of Batas Pambansa Blg. 52 was declared null and void for being unconstitutional.

Feliciano, J., on leave.

[1] G.R. No. 62259, April 19, 1989.

[2] *U.S. v. Toribio*, 15 Phil. 85; *Fabie v. City of Manila*, 21 Phil. 486; *Case v. Board of Health*, 24 Phil. 256; *Bautista v. Juinio*, 127 SCRA 329; *Ynot v. IAC*, 148 SCRA 659.

[3] *Yick Wo v. Hopkins*, 118 U.S. 356.

[4] Reworded in Art. XII, Sec. 16, 1987 Constitution.

[5] *Stone v. Mississippi*, 101 U.S. 814.

[6] G.R. Nos. 82763-64, March 19, 1990.

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