Republic of the Philippines
Supreme Court
Baguio City

EN BANC

FELIX GOCHAN & SONS REALTY CORPORATION,
Petitioner,

- versus -

COMMISSION ON AUDIT and THE CITY GOVERNMENT OF CEBU,
Respondents.

G.R. No. 223228

Present:

BERSAMIN, *C.J.*,
CARPIO,
PERALTA,
DEL CASTILLO,*
PERLAS-BERNABE,**
LEONEN,
JARDELEZA,*
CAGUIOA,
REYES, A. JR.,
GESMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG, and
LAZARO-JAVIER, *JJ.*

Promulgated:

April 10, 2019

x - x

DECISION

REYES, J. JR., *J.*:

Before this Court is a Petition for *Certiorari* under Rule 64 of the Rules of Court which seeks to reverse and set aside the Resolutions dated April 6, 2015[1] (Decision No. 2015-147) and December 23, 2015[2] (COA CP Case No. 2007-008) of the Commission on Audit (COA) which annulled the

---

* On official leave.

** On leave.

[1] Concurred in by Officer-in-Charge Commissioner Heidi L. Mendoza and Commissioner Jose A. Fabia; *rollo*, pp. 37-49.

[2] Id. at 36.

Deed of Exchange between petitioner Felix Gochan & Sons Realty Corporation (Gochan & Sons) and public respondent City Government of Cebu (Cebu City).

Factual background

Gochan & Sons owned two parcels of land in Cebu City. One was located in Barangay Guadalupe, Cebu City and registered under Transfer Certificate of Title (TCT) No. 24712[3] (Banawa Property). The Banawa Elementary School, however, occupied the Banawa Property, since April 1970. Another property was located in Lorega, San Miguel, Cebu City and registered under TCT No. 7840 (Lorega Property). Pursuant to City Ordinance No. 1684 dated August 14, 1997 declaring the Lorega Property as a Socialized Housing Site, beneficiaries of the Socialized Housing Program of the local government had settled therein. On the other hand, Cebu City owned a parcel of land found in Salinas Drive, Lahug, Cebu City and registered under TCT No. T-30916 (Lahug Property)[4]

On December 14, 2005, the *Sangguniang Panlungsod* of Cebu issued Resolution No. 05-1676[5] approving the proposed land swap between Gochan & Sons and Cebu City and authorizing the city mayor to sign and execute a Deed of Exchange with Gochan & Sons. In the said trade, Gochan & Sons will give its Banawa and Lorega Properties to Cebu City in place of the latter's Lahug Property. The possible ejectment case Gochan & Sons may file against the Banawa Elementary School, to the prejudice of the school children and the city government itself, motivated the parties to agree to the land swap.

Consequently, a Deed of Exchange[6] was made between the parties with Gochan & Sons' President Louise Y. Gochan and Cebu City Mayor Tomas R. Osmeña acting as their representatives. The COA Legal and Adjudication Office-Local Sector recommended the approval of the exchange after Gochan & Sons' properties were initially valued at ₱37,966,550.00 and Cebu City's Lahug Property only at ₱34,883,600.00.[7]

Sometime in 2008, an inspection was made on the properties subject of the exchange in compliance with the directives from the COA. As a result of the inspection, a committee composed of COA assistant commissioners recommended a re-appraisal of the properties involved. After the re-

---

3 Id. at 118.
4 Id. at 5-6.
5 Id. at 83-85.
6 Id. at 86-89.
7 Id. at 6.

appraisal, it was discovered that the value of Gochan & Sons' properties were about 45% lower compared to the Lahug Property.[8]

Proceedings before the COA

In its Decision No. 2009-049 dated June 5, 2009,[9] the COA held that it did not favor the approval of the Deed of Exchange. It opined that the exchange of properties would violate Republic Act (R.A.) No. 7279 because the property owned by Cebu City was more valuable than what Gochan & Sons had offered in exchange. The COA expounded that while it was aware of the objectives of City Ordinance No. 1684, it could not approve of the transaction because the difference of ₱20 Million is substantial, which Gochan & Sons should compensate if the transaction would be consummated.

Aggrieved, Gochan & Sons moved for reconsideration arguing that the rental losses should be considered in appraising its properties. It highlighted that for a period of 30 years its properties were used by Cebu City without paying rentals.[10]

In its January 20, 2011 Resolution in Decision No. 2011-002,[11] the COA denied Gochan & Sons' motion for reconsideration. It explained that while it may be true that Cebu City had occupied Gochan & Sons' properties since 1970, it does not necessarily follow that Cebu City is liable for rentals in the absence of any contract. The COA expounded that the fact that the Lorega Property was declared as a Socialized Housing Site would not make Cebu City liable to pay rentals because R.A. No. 7279 only provides for modes of land acquisition. Further, it noted that it was the Department of Education which mistakenly constructed the Banawa Elementary School on the Banawa Property because public schools were devolved to the local government units (LGUs) only upon the effectivity of the Local Government Code of 1991.

The COA added that if the Lahug property would be conveyed as payment for the alleged debts of Cebu City, then the transaction would no longer be a land swap but a *dacion en pago*. Lastly, it stressed that even if Cebu City's liability was valid, it will not be considered because it is a claim against the government subject to the COA's evaluation, which is distinct from the instant request for approval of the land swap.

---

8 Id. at 6-7.
9 Concurred in by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.; id. at 90-97.
10 Id. at 7.
11 Id. at 98-102.

Before receiving, but after the above-mentioned resolution was issued, Gochan & Sons filed its Supplemental Motion for Reconsideration[12] (Supplemental MR) on January 28, 2011.

On June 27, 2011, the COA issued a Notice of Finality of Decision. Gochan & Sons filed a Letter-Request to Recall the Notice of Finality of Decision assailing that the Notice of Finality of Decision was premature because the COA did not pass upon the issues contained in its Supplemental MR. It again filed another Supplemental MR dated December 5, 2011 reminding the COA about the pending motions it had filed.[13]

Meanwhile, on December 27, 2012, Cebu City enacted Budget Ordinance No. 2348 authorizing the sale of parcels of land, including the Lahug Property, for revenue generation. After public bidding, the Lahug Property was awarded to the lone bidder, Hotel of Asia, Inc. (HAI) upon payment of ₱83,673,500.00.[14]

Thereafter, on June 7, 2012, the COA, during its Regional Meeting, resolved to admit Gochan & Sons' Supplemental MR. Thus, it instructed its Legal Services Sector to re-evaluate the case.[15]

In its June 18, 2014 Resolution,[16] the COA ruled in favor of Gochan & Sons and approved the Deed of Exchange it had entered into with Cebu City. It reiterated that under R.A. No. 7279, the value of lands involved in land swapping is determined based on land classification, market value reflected in the zonal valuation and assessed value taken from existing tax declarations. The COA remained consistent that debts or rental losses are not part of the cost to be capitalized in determining the market value of the land for exchange. It echoed that even if Cebu City's liability is valid and admitted, it will not be considered because it would then partake of a money claim against the government, which is distinct from the request for approval of the property swap. Likewise, the COA maintained that the more accurate and reliable valuation was that done by two private appraisers showing that Gochan & Sons' properties were about ₱20 Million less than Cebu City's Lahug Property.

Nevertheless, the COA recognized the predicament that the Cebu City and the affected communities face should the school and the Socialized Housing Site be relocated in the event that Gochan & Sons takes back its properties. It noted that the government would spend millions; there would be interruption in the delivery of quality education; and disruption of on-

---

12 Id. at 103-108.
13 Id. at 7-8.
14 Id. at 8.
15 Id.
16 Denominated as Decision No. 2014-113; id. at 50-58.

going urban land reforms if the Banawa Elementary School and the Socialized Housing Site be moved. Thus, the COA surmised that the ₱20,137,100.00 difference between the properties of Gochan & Sons and Cebu City is insubstantial when measured against the immeasurable value of distortion that may result in the denial of the Deed of Exchange.

Aggrieved, Cebu City moved for reconsideration.

Assailed COA Resolutions

In its April 6, 2015 Resolution,[17] the COA granted Cebu City's motion for reconsideration. It explained that Gochan & Sons' Supplemental MR should have not been given due course because it was filed in the wrong office — it was filed before the office of a Commissioner and not the Commission Proper itself. The COA also noted that the Supplemental MR did not comply with the requirements for a supplemental pleading under Section 6, Rule 10 of the Rules of Court as it was filed without leave of court and it failed to set forth a supervening event that occurred since the date of the first motion for reconsideration. It highlighted that the Supplemental MR merely rehashed the issues already considered and passed upon in the June 5, 2009 Decision and the January 20, 2011 Resolution.

Moving to the substantive issues, the COA expounded that in all previous decision and resolutions of the COA involving the present controversy, it was consistently held that the supposed rental losses Gochan & Sons incurred should not be considered in the valuation of the properties for the land swap absent any contract or agreement. It highlighted that the June 18, 2014 Resolution only reversed the June 5, 2009 Decision and the January 20, 2011 Resolution for fear of displacement of the Banawa Elementary School and the Socialized Housing Site. Nevertheless, the COA pointed out that the said conclusion failed to take into account that the state could acquire Gochan & Sons properties through expropriation. In addition, it noted that relocation and construction costs should not be considered in the value-for-value evaluation of the Deed of Exchange because they could not be ascertained in terms of determinable peso value.

The COA opined that the Deed of Exchange between Cebu City and Gochan & Sons was void *ab initio* because it was without its approval. Thus, it reasoned that Cebu City acted within its rights when it decided to dispose of the Lahug property through public bidding. The COA highlighted that HAI purchased the said property for ₱83,673,500.00, which was higher than the ₱44,783,000.00 fair market value previously determined, and that the purchase price more accurately reflects the property's actual market value. Thus, it disposed:

---

[17] Supra note 1.

> **WHEREFORE**, premises considered, this Commission **GRANTS** the instant Motion for Reconsideration. Accordingly, COA Decision No. 2014-113 dated June 18, 2014 is hereby **REVERSED AND SET ASIDE**.[18]

Gochan & Sons moved for reconsideration but it was denied by the COA in its December 23, 2015 Resolution.[19]

Hence, this present petition, raising the following:

Issues

I

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF THE PUBLIC RESPONDENT'S 2015 DECISION[;]

II

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN REJECTING THE DEED OF EXCHANGE OR LAND SWAPPING BETWEEN PETITIONER'S BANAWA AND LOREGA PROPERTIES AND [CEBU CITY'S] LAHUG PROPERTY[;]

III

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN RULING THAT CEBU [CITY] IS NOT LIABLE TO PETITIONER FOR RENTALS OR USAGE OF THE BANAWA AND LOREGA PROPERTIES[;]

IV

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT HELD THAT THE 2014 [RESOLUTION] IMPROPERLY FACTORED IN THE COSTS IN RECONSTRUCTING THE SCHOOL BUILDINGS AND IN RELOCATING THE INFORMAL SETTLERS FROM THE HOUSING SITE AND THE PREJUDICE TO THE DELIVERY OF QUALITY EDUCATION IN APPROVING THE DEED OF EXCHANGE[;]

---

[18] Id. at 48.

[19] Supra note 2.

V

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT DECLARED THAT A) THE DEED OF EXCHANGE IS NULL [AND] VOID [*AB INITIO*] AS IT FAILED TO OBTAIN THE APPROVAL OF THE COMMISSION[;] AND B) CEBU [CITY] ACTED WITHIN ITS RIGHTS IN SELLING ITS LAHUG PROPERTY THAT WAS [THE] SUBJECT MATTER OF THE DEED OF EXCHANGE[; AND]

[VI]

WHETHER OR NOT THE SALE OF THE LAHUG PROPERTY TO HAI REQUIRES APPROVAL OF COA.[20]

Gochan & Sons argues that the COA committed grave abuse of discretion when it disregarded its motion for reconsideration of the April 6, 2015 Resolution for being a prohibited pleading and declaring that the said resolution to be final and immutable. It posits that the COA Rules of Procedure allows one motion for reconsideration per decision issued by the COA, and, as such, the motion for reconsideration assailing the April 6, 2015 Resolution should be treated separately because the prior decisions of the COA were in conflict with each other and the motions for reconsideration filed pertained to a particular decision of the COA.

In addition, Gochan & Sons laments that the COA erred in concluding that the Supplemental MR it filed did not bar the finality of the January 20, 2011 Resolution. It points out that the Cebu City never opposed to its filing and that the COA itself ordered a review of the said January 20, 2011 Resolution on the basis of the pending Supplemental MR. Gochan & Sons posits that the COA is now estopped from changing its admission of the Supplemental MR because it had already decided to accept it.

Further, Gochan & Sons theorizes that even assuming that the January 20, 2011 Resolution, which affirmed *in toto* the June 5, 2009 Decision, had attained finality, the tenor of the decision is that the COA is not inclined to approve the Deed of Exchange unless the parties consummate the same with Gochan & Sons' payment of the difference of the values of the properties. It highlights that it had acceded to compensate Cebu City of the difference in property values. Thus, Gochan & Sons surmises that the proper action of the COA should be to order Cebu City to accept its offered compensation.

In any case, Gochan & Sons believes that the COA erred in declaring the Deed of Exchange with Cebu City void *ab initio*. *First*, it postulates that the Commission had no power to decide on the validity of contracts since it

---

[20] Id. at 9-11.

is a judicial function and its role is limited to audit-related matters. *Second,* Gochan & Sons expounds that there was no basis to declare the Deed of Exchange void because the COA's disapproval is not among the grounds for declaring a contract void under Articles 1390 and 1409 of the Civil Code. *Third*, it bewails that Cebu City is liable for rentals for its use of the Banawa and Lorega properties and the same should have been considered in the valuation of the properties. *Finally*, Gochan & Sons avers that the COA should have factored in the costs of relocating the Banawa Elementary School and the Socialized Housing Site and that the Commission should not have substituted its judgment with the concerned officials of the LGUs, who have decided that land swap, and not expropriation, was the best way to settle the controversy over Gochan & Sons' properties.

In its Comment,[21] dated May 12, 2016, Cebu City countered that Gochan & Sons' present petition was filed out of time because if the latter wanted to question the January 20, 2011 Resolution of the COA, it should have filed a petition for *certiorari* under Rule 64 of the Rules of Court within the time prescribed and not a Supplemental MR. It assailed that the Supplemental MR merely repeated the arguments raised in Gochan & Sons' initial motion for reconsideration of the June 5, 2009 Decision and failed to raise any supervening events or arguments. Thus, Cebu City surmised that the Supplemental MR was, in fact, a second motion for reconsideration, which was a prohibited pleading under the COA's Rules of Procedure, and did not interrupt the running of the period to file a petition for *certiorari* under Rule 64 of the Rules of Court. Consequently, when it received the notice of finality of the January 20, 2011 Resolution, it decided to dispose of the Lahug Property through public bidding instead.

In its Comment,[22] dated July 5, 2016, the COA agreed that Gochan & Sons' present petition for *certiorari* was filed out of time. It highlighted that when Gochan & Sons' motion for reconsideration of the June 5, 2009 Decision was denied, the only legal remedy it had left was the filing of a petition for *certiorari* within the remaining 30-day period but not less than five days. The COA noted that the June 5, 2009 Decision, subsequently, the January 20, 2011 Resolution affirming it, had lapsed into finality when Gochan & Sons failed to file a timely petition for *certiorari*. Further, it expounded that it did not act with grave abuse of discretion in disregarding Gochan & Sons' Supplemental MR as it was a mere rehash of the initial motion for reconsideration.

The COA reiterated that the Deed of Exchange was correctly disapproved as it was contrary to the provisions of R.A. No. 7279 because Cebu City's property was more valuable than Gochan & Sons' properties. It disagreed with Gochan & Sons' position that there was no ground to declare

---

[21] Id. at 152-166.
[22] Id. at 169-190.

the Deed of Exchange void and countered that Article 1409 of the Civil Code declares contracts prohibited by law to be void.

In its Reply to the COA's Comment[23] dated September 15, 2016, Gochan & Sons countered that the present petition for *certiorari* was timely filed. It reasoned that it merely relied on COA when the latter recalled its Notice of Finality of Decision dated July 18, 2011, and admitted the former's Supplemental MR, which eventually led to the June 18, 2014 Resolution reversing the January 20, 2011 Resolution and approving the Deed of Exchange with Cebu City. In addition, Gochan & Sons explained that it was within the COA's discretion to admit the Supplemental MR. It also assailed that assuming that the January 20, 2011 Resolution had attained finality, the proper action for the COA was to order Cebu City to accept its offer to pay the variance of the value of the properties involved in the land swap. Gochan & Sons reiterated that the COA had no authority to declare the Deed of Exchange void as its jurisdiction was limited to audit-related matters.

The Court's Ruling

The petition is meritorious.

Supplemental pleadings must pertain to facts or events arising after the initial pleading was filed

Under Section 1, Rule XV of the 2009 COA Rules of Procedure, the Rules of Court applies suppletorily in the absence of any applicable provision. In this regard, Section 6, Rule 10 of the Rules of Court provides the procedure to be observed in filing supplemental pleadings, to wit:

> SEC. 6. *Supplemental Pleadings.* – Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading **setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented**. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading. (Emphasis supplied)

Considering that the 2009 COA Rules of Procedure does not have any provision on supplemental pleadings, the pertinent rules found in the Rules

---

[23] Id. at 202-210.

of Court should apply suppletorily. In *Young v. Spouses Sy*,[24] the Court explained the nature and purpose of supplementary pleadings, *viz.*:

> As its very name denotes, a supplemental pleading only serves to bolster or add something to the primary pleading. A supplement exists side by side with the original. It does not replace that which it supplements. Moreover, a supplemental pleading assumes that the original pleading is to stand and that the issues joined with the original pleading remained an issue to be tried in the action. It is but a continuation of the complaint. **Its usual office is to set up new facts which justify, enlarge or change the kind of relief with respect to the same subject matter** as the controversy referred to in the original complaint.
>
> **The purpose of the supplemental pleading is to bring into the records new facts which will enlarge or change the kind of relief** to which the plaintiff is entitled; hence, any supplemental facts which further develop the original right of action, or extend to vary the relief, are available by way of supplemental complaint even though they themselves constitute a right of action. (Emphases supplied)

A reading of Gochan & Sons' Supplemental MR of the June 5, 2009 Decision reveals that it merely expounded or reiterated the arguments it had raised in its initial MR. Primarily, the Supplemental MR simply elaborated how the COA erred in appreciating the correct valuation of the properties involved in the land swap.

Nevertheless, the Supplemental MR does not raise new facts or events, which have developed after the filing of the MR. Gochan & Sons could have already included the arguments it had raised in the Supplemental MR in its original MR. Thus, the COA had reason not to consider Gochan & Sons' Supplemental MR and treat it as a second MR.

Petition for Review on Certiorari before the Court timely filed

In its April 6, 2015 Resolution, the COA ruled that Gochan & Sons' Supplemental MR was, in fact, a second MR, and, thus, was a prohibited pleading. Subsequently, in its December 23, 2015 Resolution, the COA dismissed Gochan & Sons' MR to the April 6, 2015 Resolution for being a prohibited pleading and that the January 20, 2011 Resolution had attained finality. Thus, it is the COA's position that the present Petition for *Certiorari* was filed out of time. The COA highlighted that upon denial of Gochan & Sons' MR of the June 5, 2009 Decision, it had only the remainder of the 30-day period to file an appeal before the Court. As such, it believes that Gochan & Sons allowed the June 5, 2009 Decision to lapse into finality

---

[24] 534 Phil. 246, 260 (2006).

when it failed to timely file a Petition for *certiorari* under Rule 64 of the Rules of Court, instead of opting to file a Supplemental MR before the COA.

Under Section 3, Rule 64[25] of the Rules of Court, a petition for *certiorari* shall be filed within 30 days from notice of judgment, final order or resolution sought to be reviewed, and, in cases where a motion for reconsideration is allowed, within the remainder of the said period when the said motion is denied. Here, the COA mistakenly reckons the 30-day period from notice of the June 5, 2009 Decision.

It must be remembered that the COA withdrew the finality of the June 5, 2009 Decision and took cognizance of Gochan & Sons' Supplemental MR. In fact, the COA, in its June 18, 2014 Resolution, ruled in favor of Gochan & Sons' Supplemental MR and approved the Deed of Exchange with Cebu City. This prompted Cebu City to file a motion for reconsideration assailing the June 18, 2014 Resolution. However, in its April 6, 2015 Resolution, the COA granted Cebu City's motion for reconsideration and again disapproved the Deed of Exchange. Eventually, the COA denied the motion for reconsideration Gochan & Sons had filed to assail the latest resolution.

A closer look of the timeline, the decision and resolutions issued by the COA in the present case will indicate that the resolutions sought to be reviewed in Gochan & Sons' Petition for *Certiorari* are the April 6, 2015 and the December 23, 2015 Resolutions of the COA. It is true that in its June 5, 2009 Decision, the COA ruled against Gochan & Sons and disapproved the Deed of Exchange with Cebu City. However, the COA eventually reversed its earlier pronouncements and approved the Deed of Exchange in its June 18, 2014 Resolution. Unfortunately for Gochan & Sons, the COA again changed its mind and disapproved the Deed of Exchange after Cebu City filed its MR for the June 18, 2014 Resolution. Hence, the April 6, 2015 Resolution should be treated as a separate and different resolution from the June 5, 2009 Decision since the COA had previously ruled in Gochan & Sons' favor in its June 18, 2014 Resolution.

Consequently, the 30-day period should be reckoned from the April 6, 2015 and the December 23, 2015 Resolutions. Based on the records, Gochan & Sons received the April 6, 2015 Resolution on May 15, 2015 and received the denial of the motion for reconsideration, which was filed on June 9, 2015, on March 15, 2016. Thus, the present Petition for *Certiorari* was filed within the periods prescribed under Rule 64 of the Rules of Court.

---

[25] The petition shall be filed within thirty (30) days form notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

In addition, Gochan & Sons' MR assailing the April 6, 2015 Resolution should not be deemed a second MR — a pleading prohibited under the 2009 COA Rules of Procedure. In *Cristobal v. Philippine Airlines, Inc.*,[26] the Court elucidated that the prohibition against the filing of a second MR contemplates the same party assailing the same judgment and that a decision substantially reversing a determination in a prior decision is a different decision from the earlier one.

Applied analogously with the prohibition of filing a second MR under the 2009 COA Rules of Procedure, the same should pertain to an MR filed by a party assailing the same judgment. As discussed above, the June 5, 2009 Decision is distinct from the April 6, 2015 Resolution, and Gochan & Sons should not be precluded from filing a separate MR for the April 6, 2015 Resolution, apart from the one it filed to question the June 5, 2009 Decision.

Neither should Gochan & Sons be prejudiced by the fact that ultimately the Supplemental MR it filed in connection with the June 5, 2009 Decision was found to be a prohibited pleading under the COA Rules of Procedure. This is true since the COA itself withdrew the finality of its June 5, 2009 Decision and decided to take cognizance of the Supplemental MR — eventually reversing its June 5, 2009 Decision and ruling in Gochan & Sons' favor in its June 18, 2014 Resolution.

Going into the merits of the present case, Gochan & Sons essentially assails that the COA had acted beyond its power and authority in disapproving the Deed of Exchange with Cebu City. Even assuming that the COA had jurisdiction to annul a contract, Gochan & Sons surmises that the audit commission erred in voiding the aforementioned deed.

COA's jurisdiction defined

Section 26 of Presidential Decree (P.D.) No. 1445, or the Government Auditing Code of the Philippines, laid out the general jurisdiction of the COA.

> SEC. 26. *General Jurisdiction.* — The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and

[26] G.R. No. 201622, October 4, 2017.

> instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.

Essentially, COA's statutory mandate under P.D. No. 1445 is reiterated in the Constitution. Section 2, Article IX(D), reads:

> SEC. 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
>
> (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

As guardians of public funds, COA is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property including the exclusive authority to define the scope of its audit and examination, establish techniques and methods for such review, and promulgate accounting and auditing rules and regulations.[27] In recognition of its expertise in audit matters, as conferred by law and the Constitution, the findings of the COA are generally accorded

---

[27] *Yap v. Commission on Audit*, 633 Phil. 174, 189 (2010).

not only respect but at times finality if such findings are supported by substantial evidence.[28]

Nevertheless, the Court would not hesitate to annul decisions and resolutions of the COA when it is without jurisdiction or when it had exceeded its jurisdiction.[29] A tribunal is lacking of jurisdiction when it is devoid of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter.[30] On the other hand, there is excess of jurisdiction when an act, though within the general power of a tribunal, board, or officer, is not authorized and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting.[31]

In its April 6, 2015 Resolution, the COA declared the Deed of Exchange void *ab initio*, because it had previously disapproved the same in its June 5, 2009 Decision and the January 20, 2011 Resolution. It added that its approval is essential for the validity of the contract as held in *Danville Maritime, Inc. v. Commission on Audit (Danville)*.[32]

The determination of the validity of contracts is a judicial question, which is within the jurisdiction of the courts.[33] A judicial question is raised when the determination of the question involves the exercise of a judicial function; that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.[34]

The Court finds that the COA, in declaring the Deed of Exchange between Cebu City and Gochan & Sons void for lack of COA's prior approval, had acted in excess of its audit jurisdiction. While the COA exercises broad powers in audit matters and its findings afforded great weight if not finality in matters within its expertise, it could not pass upon the issue of validity of contracts as it would be an encroachment of judicial function. Again, it is recognized that the COA has broad jurisdiction within the realms of its expertise such that its findings are generally afforded great weight and finality. Nevertheless, the said jurisdiction is not infinite as it is limited only to audit matters. In declaring the Deed of Exchange void, the COA exceeded its broad, yet well-defined, constitutional powers as it encroaches on judicial power vested in the courts.

---

28 *Verzosa, Jr. v. Caragüe*, 660 Phil. 131, 168 (2011).
29 *Daraga Press, Inc. v. Commission on Audit*, 760 Phil. 391, 399 (2015).
30 *Chamber of Real Estate and Builders Association, Inc. v. Secretary of Agrarian Reform*, 635 Phil. 283, 303 (2010).
31 Id.
32 256 Phil. 1092 (1989).
33 *Asaphil Construction and Development Corporation v. Tuason, Jr.*, 522 Phil. 103, 113 (2006).
34 Id. at 113-114.

There is no law which requires that the Deed of Exchange should be previously approved by the COA, otherwise it would be null and void. It is worth pointing out that the COA, in its April 6, 2015 Resolution, mistakenly relied on *Danville* because the portion cited by it was not a ruling of the Court but merely a stipulation in a Memorandum of Agreement (MOA) executed by the parties therein. It is noteworthy that, unlike the MOA in *Danville*, the Deed of Exchange did not have any stipulations to the effect that a COA approval is vital to the validity of the contract.

Deed of Exchange not prohibited under R.A. No. 7279

R.A. No. 7279, or the "Urban Development and Housing Act of 1992," covers all lands in urban and urbanizable areas, including existing areas for priority development, zonal improvement sites, slum improvement and resettlement sites, and in other areas that may be identified by the LGUs as suitable for socialized housing.[35] Gochan & Sons' Lorega Property was previously declared as a Socialized Housing Site, bringing it within the ambit of the said law.

R.A. No. 7279 provides for various modes of land acquisition to be utilized for the purposes provided therein, one of which is land swapping.[36] Section 3(j) of R.A. No. 7279, defines land swapping as the "process of land acquisition by exchanging land for another piece of land of equal value, or for shares of stock in a government or quasi-government corporation whose book value is of equal value to the land being exchanged, for the purpose of planned and rational development and provision for socialized housing where land values are determined based on land classification, market value and assessed value taken from existing tax declarations: *Provided*, That more valuable lands owned by private persons may be exchanged with less valuable lands to carry out the objectives of this Act[.]"

Based on the records in the present case, the combined value of Gochan & Sons' properties had been consistently determined to be lower than Cebu City's Lahug property in accordance with the parameters of R.A. No. 7279. The appraised value of Gochan & Sons' properties and Cebu City's property was computed by the COA, and two private appraisers, CB Richard Ellis (CBRE) and Magaca Appraisal Konsult (MAK):[37]

---

35 Republic Act No. 7279, Article II, Sec. 4.
36 Id. at Article IV, Sec. 10.
37 *Rollo*, pp. 91-94.

Property	COA	CBRE	MAK
LAHUG	₱44,783,000.00	₱50,200,000.00	₱49,497,000.00
LOREGA	₱16,351,500.00	₱18,829,000.00	₱17,838,000.00
BANAWA	₱8,294,400.00	₱8,630,000.00	₱9,020,900.00
DIFFERENCE	**₱20,137,100.00**	**₱22,741,000.00**	**₱22,638,100.00**

Based on the evaluation of three different appraisers, the value of Cebu City's property was more than ₱20 Million than Gochan & Sons' properties combined. Gochan & Sons notes that the COA, in its June 5, 2009 Decision, did not categorically disapprove the Deed of Exchange as it was merely not inclined to approve it in light of the difference in the value of the properties involved. It highlights that the COA had opined that should the Deed of Exchange be consummated, the former should compensate the Cebu City with an amount equal to the average of the difference in the valuations of the three appraisers less 10% allowable variance. It is for this reason that Gochan & Sons filed a Manifestation and Motion before the COA[38] expressing its willingness to pay the amount required to the Cebu City for the approval of the Deed of Exchange.

At first blush, it appears that the Deed of Exchange is violative of R.A. No. 7279 because the value of the properties Gochan & Sons offered is lower than what the Cebu City is giving in exchange. The COA applied Section 3(j) of R.A. No. 7279 to mean that lands to be swapped should be more or less of equal value, and if a more valuable land is to be exchanged, that land should belong to the private individual and not to the government — otherwise, the transaction would be void.

A closer reading of the aforementioned provision, however, reveals that it did not expressly prohibit or declare void land swap deals where the private individual offers land of lesser value to the government. It only defined a land swap deal in such terms to ensure that the LGUs are never placed at a disadvantage, *i.e.*, they would only receive land of equal or higher value. Nevertheless, the provision does not preclude parties into agreeing that the private individual pay an additional amount in case the value of the private land is lesser compared to the public land involved in a land swap.

---

[38] Id. at 218-220.

It must be remembered that the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.[39] Section 10 of R.A. No. 7279 reads:

> SEC. 10. *Modes of Land Acquisition.* — The modes of acquiring lands for purposes of this Act shall include, **among others**, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the government, joint-venture agreement, negotiated purchase, and expropriation: *Provided, however*, That expropriation shall be resorted to only when other modes of acquisition have been exhausted: *Provided, further*, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act: *Provided, finally*, That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court. (Emphasis supplied)

It can be readily seen that while Section 10 of R.A. No. 7279 provides for specific modes of land acquisition, it was never meant to be an exclusive list. The law recognizes that there may be other transactions by which LGUs can acquire land for the purposes of R.A. No. 7279 which were not specifically stated therein, for so long as it is beneficial to the public and does not prejudice the government. Thus, Gochan & Sons and the Cebu City may enter into a modified land swap in that the former must pay an amount corresponding to the difference in value between the private and public lands involved. In doing so, the Cebu City would, in effect, be receiving properties of commensurate value to the property it would be giving in exchange.

WHEREFORE, the petition is **GRANTED**. The April 6, 2015 and December 23, 2015 Resolutions of the Commission on Audit are **REVERSED and SET ASIDE**. The Deed of Exchange between Felix Gochan & Sons Realty Corporation and the City Government of Cebu is **APPROVED,** subject to the payment by Felix Gochan & Sons Realty Corporation of the amount of ₱20,137,000.00 to the City Government of Cebu.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

---

[39] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 200 (2012).

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice

ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

(On Official Leave)
MARIANO C. DEL CASTILLO
Associate Justice

(On Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V. F. LEONEN
Associate Justice

(On Official Leave)
FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA