



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**METROPOLITAN MANILA
 DEVELOPMENT AUTHORITY,**
 represented by its Chairman,
Atty. Francis N. Tolentino,
Petitioner,

G.R. No. 213287

Present:

PERLAS-BERNABE, *SAJ.*,
Chairperson,
 HERNANDO,
 GAERLAN,*
 LOPEZ, J.Y.,** and
 DIMAAMPAO,* *JJ.*

- versus -

Promulgated:

**HIGH DESERT STOP OVERS,
 INC.**
Respondent.

DEC 06 2021

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DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ assails the July 31, 2013 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 125286 which dismissed petitioner's Petition for Annulment of Judgment³ and the June 6, 2014 Resolution⁴ denying petitioner's Motion for Reconsideration⁵ of the assailed Decision. Further, petitioner prays that a temporary restraining order and/or writ of preliminary injunction be issued to enjoin respondent, the appellate court, and the trial court from implementing the assailed Orders, including the July 2, 2010 Judgment,⁶ which approved the Memorandum of Agreement (MOA) dated June 16, 2010 between the Metro Manila Development Authority (MMDA) and High Desert Stop Overs, Inc. (HDSOI), and the Orders dated April 25, 2011⁷ and October 28, 2011,⁸ which granted

* On official leave.

** Designated additional Member per November 29, 2021 raffle vice J. Inting who recused himself due to prior action in the RTC.

¹ *Rollo*, pp. 29-59.

² *Id.* at 60-72; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan.

³ *CA rollo*, pp. 3-24.

⁴ *Rollo*, pp. 73-74.

⁵ *CA rollo*, pp. 184-196.

⁶ *Rollo*, pp. 203-209.

⁷ *Id.* at 115-117.

⁸ *Id.* at 118-119.

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the issuance of the writ of execution and denied petitioner's Motion for Reconsideration⁹ dated May 10, 2011, respectively.

The Factual Antecedents:

MMDA, then known as Metropolitan Manila Authority (MMA), entered into three agreements with HDSOI for the construction of new public passenger stations: (1) Memorandum of Agreement¹⁰ dated April 13, 1992; (2) Memorandum of Agreement¹¹ dated January 18, 1994; and (3) Supplemental Agreement¹² dated September 12, 1996. In the said agreements, MMDA granted HDSOI authority to construct, finance, operate, and maintain passenger stations under Republic Act (RA) No. 6957¹³ otherwise known as the Build-Operate-Transfer (BOT) Law. The agreements also authorized HDSOI to charge facility user's fees, rentals, and/or charges to cover operating and maintenance expenses, as well as to enter into advertising agreements with private advertisers.

However, in a Letter¹⁴ dated August 8, 2006, MMDA Chairman Bayani Fernando terminated the aforementioned agreements and directed HDSOI to remove all their installed waiting sheds and commercial advertisements pursuant to "MMDA's objective to clear investors corridors' route of all kinds of obstructions, and in compliance with the provisions of the National Building Code, existing rules and regulations prohibiting the installation/display of commercial advertisements along road rights-of-way, and in accord with the Supreme Court pronouncement that 'sidewalks are beyond the commerce of men'",¹⁵

Thus, on October 1, 2006, HDSOI filed a Complaint for Injunction and Damages with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction,¹⁶ which the trial court acted on favorably. While the case was pending, on May 27, 2010, the Metro Manila Council (MMC) authorized the MMDA Chairman under MMDA Resolution No. 10-10, Series of 2010¹⁷ to enter into an amicable settlement with HDSOI in connection with the civil case filed by the latter. On June 16, 2010, MMDA, through its then Chairman Judge Oscar Inocentes, and HDSOI entered into a Memorandum of Agreement¹⁸ (MOA) or a compromise agreement for and in consideration of dropping all pending suits against

⁹ Id. at 118.

¹⁰ Id. at 166-169.

¹¹ Id. at 170-173.

¹² Id. at 174-178.

¹³ AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES. Approved: July 9, 1990.

¹⁴ *Rollo*, p. 181.

¹⁵ Id.

¹⁶ Id. at 151-184.

¹⁷ Id. at 188-190.

¹⁸ Id. at 89-96.

MMDA. As culled from the Decision of the CA, the pertinent portions of the MOA are as follows:

1. MMDA granted HDSOI authority to (1) undertake and finance the improvement and maintenance of all existing MMDA owned passenger stations in all major streets in all cities and municipalities in Metro Manila; and (2) upgrade the streetscapes of Metro Manila cities and Municipalities thru renovation, construction, operation and maintenance of the passenger stations and such additional passenger stations as the parties shall agree;

2. HDSOI, in turn, obligates itself to repair worn-out passenger stations, maintain said passenger stations, install lighting facilities and improve and replace existing passenger stations to conform to the uniform design agreed upon;

3. MMDA grants HDSOI sole and exclusive right to install, operate and maintain advertising displays on all passenger stations and to charge fees therefor for HDSOI's sole benefit;

4. The parties recognize that the MOA is being entered into to settle the case between the parties and recompense HDSOI for its losses brought about by MMDA's pre-termination of its previous agreements and the dismantling of the passenger stations;

5. HDSOI shall pay MMDA a monthly rental fee of Two Thousand Five Hundred Pesos (PhP 2,500.00) per passenger station being used by HDSOI for advertising purposes subject to a yearly increase of five percent (5%);

6. MMDA commits that regardless of any changes on administration or Government, it shall respect the provisions of the MOA;

7. That the MOA shall take effect immediately upon its signing and to take effect for a period of ten (10) years. The MOA shall be automatically renewed for an additional five (5) years provided that the rental of the passenger stations shall automatically increase by twenty percent (20%). HDSOI shall refurbish all existing passenger stations at the end of the tenth year of the MOA prior to its renewal provided that the rental on the twelfth year until the fifteenth year of the MOA shall be subject to a yearly increase of five percent (5%). At the end of the fifteenth year of the MOA, MMDA shall be the sole and exclusive owner of all existing passenger stations;

8. At the end of the automatic five (5) year term renewal, the MOA shall be extended upon the consent of both parties. MMDA obligates to give HDSOI the right of first refusal to build, operate, and maintain the passenger stations to other participants;

9. The MMDA warrants and undertakes that it has been authorized by its governing body to enter into this MOA and comply with the terms thereof and deliver a certified copy of its Council Resolution to this effect.¹⁹

In a Joint Motion to Approve Attached Compromise Agreement (Memorandum of Agreement)²⁰ dated June 16, 2010, MMDA and HDSOI

¹⁹ Id. at 62-63.

²⁰ Id. at 248-257.

submitted the MOA to the trial court for approval. In its Order²¹ dated July 2, 2010, the trial court approved the compromise agreement and dismissed the complaint filed by HDSOI, including the counterclaims of MMDA. There being no motion for reconsideration or notice of appeal having been filed, the Judgment²² dated July 2, 2010 became final and executory on August 12, 2010.²³ However, on November 23, 2010, then MMDA Chairman Francis Tolentino wrote a letter addressed to the Office of the Solicitor General (OSG) and sought their opinion as to the enforceability of the compromise agreement. The OSG alleged that it was only upon receipt of the said letter that it learned of the compromise agreement between MMDA and HDSOI.

Thereafter, HDSOI moved for the execution of the Judgment dated July 2, 2010. MMDA, through the OSG, filed its Opposition dated February 25, 2011 arguing that (1) the compromise agreement was entered into without the prior notice, consultation, and approval of the OSG before it was submitted for the trial court's approval; and (2) the compromise agreement failed to specify the factors for setting ₱2,500.00 as a just and reasonable rental fee to prove that it was not disadvantageous to the government. Thus, it prayed that HDSOI's motion for the issuance of a writ of execution be denied.

Ruling of the Regional Trial Court:

In its Order²⁴ dated April 25, 2011, the trial court granted the issuance of a writ of execution. It held that a copy of the Judgment dated July 2, 2010 together with other Orders issued by the trial court were personally served to the OSG on November 10, 2010 as evidenced by the Return Card. Thus, the OSG was duly notified that a judgment based on a compromise agreement between MMDA and HDSOI was rendered by the trial court, yet it did not move for its reconsideration or file a notice of appeal. In effect, the trial court ruled that the assailed judgment is binding on the Government. Furthermore, the trial court noted that the MMC, through the MMDA Resolution No. 10-10 Series of 2010, authorized MMDA to enter into the MOA with HDSOI. Hence, the MOA was sanctioned by law.²⁵

The MMDA, through the OSG, asked for reconsideration²⁶ but was denied by the trial court in its Order²⁷ dated October 28, 2011 for failing to state new or compelling reasons that would warrant the reconsideration of the assailed Order.

²¹ Id. at 210.

²² Id. at 203-209.

²³ Id. at 211.

²⁴ Id. at 115-117.

²⁵ Id.

²⁶ Id. at 118.

²⁷ Id. at 118-119.

On June 22, 2012, the MMDA, through the OSG, filed a Petition for Annulment of Judgment²⁸ before the appellate court averring that (1) the trial court acted without jurisdiction in approving the MOA between MMDA and HDSOI that was null and void for having been entered into without the imprimatur or approval of the OSG; and (2) the terms and conditions of the MOA failed to protect the interests of the Republic.

Ruling of the Court of Appeals:

The CA, in its assailed July 31, 2013 Decision,²⁹ dismissed the petition for lack of merit and found that the allegations of the petitioner do not establish lack of jurisdiction on the part of the trial court to justify the annulment of the assailed Judgment. It held that, contrary to petitioner's assertions, the trial court has jurisdiction over the subject matter of the claim and over the person of the defending party.³⁰

The appellate court ruled that by arguing that the trial court acted without jurisdiction in approving the MOA entered into without its imprimatur or prior approval, the OSG did not attack the absence of jurisdiction. Such argument merely attacks the *exercise* of its jurisdiction. Thus, it is not a proper ground to annul the trial court's judgment approving the MOA.³¹ Nevertheless, the MMDA's failure to submit the MOA to the OSG for approval did not divest the trial court of its jurisdiction. The CA also noted that there is nothing in RA No. 7924,³² or the law creating the MMDA, that requires the approval of the OSG to validly enter into compromise agreements on matters over which it has authority to do so. Neither is there any indication in the Deputization Letter that the lack of OSG approval shall nullify compromise agreements.

Moreover, the appellate court held that even assuming the trial court lacks jurisdiction, MMDA is already estopped from assailing its jurisdiction for not raising the argument of lack of jurisdiction in their Answer or in a Motion to Dismiss, nor in their Opposition to HDSOI's Motion for the Issuance of a Writ of Execution filed through the OSG. Thus, a Petition for Annulment of Judgment cannot be a substitute for a lost appeal.³³

Petitioners filed a motion for reconsideration³⁴ but it was denied in the appellate court's Resolution dated June 6, 2014.

²⁸ CA rollo, pp. 3-24.

²⁹ Rollo, pp. 60-72.

³⁰ Id. at 67-68.

³¹ Id. at 68.

³² AN ACT CREATING THE METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDING THEREFOR AND FOR OTHER PURPOSES. Effective March 1, 1995

³³ Rollo, p.71.

³⁴ CA rollo, pp. 184-197.

Aggrieved, petitioners filed the instant Petition for Review on *Certiorari*³⁵ under Rule 45 of the Rules of Court raising the following issues:

- (A) WHETHER THE COMPROMISE AGREEMENT ENTERED INTO BY THE MMDA AND HDSOI WITHOUT THE PARTICIPATION OF THE OSG IS NULL AND VOID.
- (B) WHETHER A JUDGMENT BASED ON THE VOID COMPROMISE AGREEMENT IS NULL AND VOID *AB INITIO*.
- (C) WHETHER A JUDGMENT EMANATING FROM A VOID COMPROMISE AGREEMENT IS IMPUGNABLE *VIA* A PETITION FOR ANNULMENT OF JUDGMENT UNDER RULE 47 OF THE RULES OF COURT ON THE GROUND THAT THE TRIAL COURT HAS NO JURISDICTION TO RENDER THE SAME.

Thus, the main issue is whether the Compromise Agreement between MMDA and HDSOI is void for the lack of participation and approval of the OSG.

Our Ruling

The petition is unmeritorious.

Petitioner argues that the Compromise Agreement entered into by MMDA and HDSOI without the participation of the OSG is null and void. It claims that the Solicitor General represents the Government, its agencies, and instrumentalities in any litigation, investigation, or matter requiring the services of a lawyer.³⁶ It avers that by virtue of the Deputation Letter issued on July 2, 2010, deputized counsels Attys. Ruth B. Castelo and Gilbert G. Kintanar should submit to the Solicitor General for review, approval, and signature all important pleadings and motions pertaining to the case, as well as compromise agreements.³⁷ Since the Compromise Agreement was not reviewed, approved, and signed by the OSG, petitioner contends that it is *void ab initio*. Petitioner adds that notwithstanding the authority granted by MMC over former MMDA Chairman Inocentes to enter into a compromise agreement with HDSOI, the same shall be approved by MMC before its submission to the trial court for approval.³⁸ In view thereof, the trial court exceeded its jurisdiction in approving the said Compromise Agreement.³⁹

Petitioner also points out that the CA failed to address their argument that the Compromise Agreement should have been declared null and void for being grossly disadvantageous to the government.⁴⁰ Said argument averred

³⁵ *Rollo*, pp. 29-59.

³⁶ *Id.* at 39.

³⁷ *Id.* at 41.

³⁸ *Id.* at 46.

³⁹ *Id.* at 45.

⁴⁰ *Id.* at 46.

that the agreement failed to state with particularity the factors considered in determining the rental rate of the passenger stations built by HDSOI and that the amount of ₱2,500.00 rental fee per passenger station is insufficient.⁴¹ It adds that former MMDA Chairman Inocentes and HDSOI managed to extend the agreements which were about to expire at the time for another fifteen (15) years in the form of the Compromise Agreement without the approval of the OSG.

In view of the attendant circumstances, petitioner argues that the trial court had no jurisdiction to render a judgment approving a void compromise agreement.⁴²

*Republic v. Fetalvero*⁴³ discussed the role of a deputized counsel in relation to the OSG, and the effect of the lack of approval of the OSG in a compromise agreement:

The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to “deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases.” But it is likewise settled that the OSG’s deputized counsel is “no more than the ‘surrogate’ of the Solicitor General in any particular proceeding” and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions. . . . The appearance of the deputized counsel did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record.

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Nonetheless, despite the lack of the Solicitor General’s approval, this Court holds that the government is still bound by the Compromise Agreement due to laches.

The Solicitor General is assumed to have known of the Compromise Agreement since, as principal counsel, she was furnished a copy of the trial court’s June 27, 2008 Order, which referred the case to mediation. Even if she did not know that Atty. Lorea signed a Compromise Agreement, she was later informed of it through the copy of the trial court’s October 17, 2008 Order, which approved the Compromise Agreement. The Solicitor General received the October 17, 2008 Order on November 6, 2008; yet, she filed no appeal or motion to contest the Order or the Compromise Agreement’s validity.

⁴¹ Id.

⁴² Id. at 49.

⁴³ G.R. No. 198008, February 4, 2019.

Thus, based on the deputation letter, which stated that “only notices of orders, resolutions, and decisions served on [the Office of the Solicitor General] will bind the [g]overnment, the entity, agency[,] and/or official represented[,]” and the Notice of Appearance, which stated that “only notices of orders, resolutions, and decisions served on [the Office of the Solicitor General] will bind the party represented[,]” **the Solicitor General's receipt of the October 17, 2008 Order bound petitioner to the trial court's judgment.**⁴⁴ (Emphasis supplied, citations omitted)

In *Republic of the Philippines v. Intermediate Appellate Court*,⁴⁵ the government failed to oppose the petition for reconstitution. This is despite receiving copies of the petition and its annexes through the Registrar of Deeds, Director of Lands, Solicitor General, and the Provincial Fiscal, and even after judgment on the compromise agreement.⁴⁶ This Court held:

Thereafter, when judgment was rendered based on the compromise agreement without awaiting the report and recommendation of the Land Registration Administration and the verification of the Registrar of Deeds concerned, **its failure to file a motion to set aside the judgment of the court after due notice likewise proves that no interest of the government was prejudiced by such judgment.**⁴⁷ (Emphasis supplied)

In the case before Us, the Government is bound by the MOA due to estoppel. The OSG is assumed to have known about the existence of the MOA as petitioner's principal counsel. At the very least, even if the OSG had no prior knowledge of the MOA, it was duly notified on November 10, 2010 when it received a copy of the assailed Judgment dated July 2, 2010 together with other Orders issued by the trial court which approved the MOA. Notwithstanding such knowledge, the OSG failed to file an appeal or resort to other remedies to contest the validity of the MOA.

This Court also agrees with the appellate court's ruling that the action for annulment of judgment is not a substitute for the lost remedy of appeal.⁴⁸ An action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately by the court.⁴⁹ It shall be availed of when the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.⁵⁰

According to the appellate court, the petitioner must show absolute lack of jurisdiction, not merely an abuse of jurisdictional discretion since these are two entirely different concepts.⁵¹ Lack of jurisdiction means that the trial court

⁴⁴ Id.

⁴⁵ 273 Phil. 662 (1991).

⁴⁶ Id. at 669-670.

⁴⁷ Id. at 670.

⁴⁸ *Rollo*, p. 71.

⁴⁹ *Sigma Homebuilding Corporation v. Inter-Alia Management Corporation*, 584 Phil. 233, 239 (2008).

⁵⁰ RULES OF COURT, Rule 47, sec. 1.

⁵¹ *Rollo*, p. 67.

should not have taken cognizance of the complaint or petition because the law does not vest it with jurisdiction over the subject matter.

In the case at bar, the CA is correct when it ruled that what is being assailed is not the trial court's lack of jurisdiction but only the exercise thereof – which is not a ground for Annulment of Judgment under Rule 47 of the Rules of Court.⁵² Indubitably, as a court of general jurisdiction, the trial court has jurisdiction over the subject matter of the complaint for injunction and damages and over the person of MMDA.⁵³

While jurisprudence dictates that the lack of jurisdiction may be raised at any time during the proceedings, even for the first time in appeal, it is not an absolute rule. It admits of an exception as when the defendant actively participated in the proceedings and invoked the court's jurisdiction. Therefore, as correctly held by the appellate court, there is no basis for the argument of lack of jurisdiction considering MMDA's active participation in the proceedings because it even jointly moved for the trial court's approval of the MOA.⁵⁴

Lastly, this Court finds it unnecessary to belabor itself as to the propriety of the terms and conditions of the MOA for the same reason stated above that petitioner did not resort to available remedies at that time to contest the same. That being so, an action for annulment of judgment is an improper remedy to belatedly question the rental rate of the passenger stations built by HDSOI under the MOA. After a decision is declared final and executory, vested rights are acquired by the winning party.⁵⁵ Whether through inadvertence or negligence of its deputized counsel or the OSG itself, the decision has already become final and executory.⁵⁶ Besides, there would be no end to litigation if the parties who have failed to avail of any of the appropriate remedies or lost them through their fault or inadvertence could have unfavorable decisions annulled by simply bringing an action for annulment of judgment.⁵⁷

Considering the foregoing, the MOA entered into by MMDA and HDSOI without the OSG's prior approval is **valid**.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** for failure to establish any reversible error on the part of the Court of Appeals. The assailed July 31, 2013 Decision and June 6, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 125286 are hereby **AFFIRMED**.

⁵² Id. at 68.

⁵³ Id.

⁵⁴ Id. at 69.

⁵⁵ *Republic v. Technological Advocates for Agro-Forest Programs Association Inc. (TAFPA, Inc.)*, 625 Phil. 683, 697 (2010).

⁵⁶ Id.

⁵⁷ Id.

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

On official leave.
SAMUEL H. GAERLAN
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

On official leave.
JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

I attest 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's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify 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's Division.


ALEXANDER G. GESMUNDO
Chief Justice