Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PUBLIC ESTATES AUTHORITY, Petitioner,	**G.R. No. 210001**
	Present:
-versus-	LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and MARQUEZ*, *JJ.*
HENRY SY, JR., Respondent.	**Promulgated:** FEB 06 2023

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DECISION

LEONEN, *J.*:

The remedies of a special civil action for *certiorari* and appeal are mutually exclusive. *Certiorari* is not a replacement for an appeal especially when the lapse or loss is due to a party's negligence or mistake in the choice of remedy.[1]

This Court resolves the Petition for *Certiorari*[2] filed by the Public

* Designated additional Mmber per Raffle dated February 1, 2023.

[1] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation,* 479 Phil. 768, 782–783 (2004) [Per J. Panganiban, Third Division].

[2] *Rollo,* pp. 3–19.

Estates Authority,[3] assailing the Court of Appeals Decision[4] and Resolution[5] which affirmed the trial court's[6] favorable ruling on Henry Sy, Jr.'s (Sy) complaint for specific performance.

The Public Estates Authority and Shoemart, Inc. (Shoemart) entered into several agreements for the development of Central Business Park-1 Island A in the Manila-Cavite Coastal Road Reclamation Project.[7]

In a December 29, 1981 Memorandum of Agreement, the Public Estates Authority granted the Philippine National Construction Corporation the right of first refusal, preferred option to purchase, or develop the particular area in the Manila-Cavite Coastal Road Reclamation Project, also known as Central Business Park-1.[8]

On August 1, 1988, the Philippine National Construction Corporation conducted a public bidding for 70% equity interest in the joint venture to be established for the exercise of its right over Central Business Park-1 Island A, which consists of about 180 hectares.[9]

With a bid of ₱250 million, Shoemart won as the highest bidder. As part of the bidding requirement, it deposited ₱25 million to the Philippine National Construction Corporation, representing 10% of the bid price.[10]

Nonetheless, the Public Estates Authority scheduled its own public bidding for the joint venture development of Central Business Park-1 Island A.[11]

Shoemart then filed an action before the Pasig Regional Trial Court,[12] to enjoin the Public Estates Authority from performing any act affecting its claim over the area, which includes the conduct of public bidding.[13]

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[3] Id. at 3. Now known as the Philippine Reclamation Authority.

[4] Id. at 21–42. The February 27, 2013 Decision in CA-G.R. CV No. 91206 was penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela of the Thirteenth Division of the Court of Appeals, Manila.

[5] Id. at 44–45. The September 6, 2013 Resolution in CA-G.R. CV No. 91206 was penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela of the Thirteenth Division of the Court of Appeals, Manila.

[6] The Regional Trial Court's Decision was not attached in the *rollo*.

[7] *Rollo*, p. 22 The incidents which led to tbe execution of the agreements are narrated in the *Whereas* clauses of the May 12, 1994 Agreement between the Public Estates Authority, Shoemart, and Philippine National Construction Corporation.

[8] Id. at 22, 51. The Philippine National Construction Corporation is formerly the Construction and Development Corporation of the Philippines.

[9] Id. at 51.

[10] Id. at 52.

[11] d.

[12] Docketed as Civil Case No. 56609.

[13] *Rollo*, p. 52.

On April 5, 1989, the Pasig Regional Trial Court issued a Writ of Preliminary Injunction against the Public Estates Authority and the Philippine National Construction Corporation. Acting on the Orders of the same court, Titan Resources Corporation, the only other bidder in the August 1, 1988 public bidding conducted by the Philippine National Construction Corporation, was made an intervenor.[14]

Meanwhile, in May 1982, Pasay City acquired a portion of Central Business Park-1 Island A with an area of 518,534 square meters via tax sale.[15] Hence, the Public Estates Authority filed an action for reconveyance against Pasay City and the Philippine National Construction Corporation before the Pasay City Regional Trial Court, docketed as Civil Case No. 5458-P.[16]

Through compromise agreements duly approved by the Office of the President and the Pasay City Regional Trial Court, Pasay City was able to acquire 259,267 square meters of the land subject of Civil Case No. 5458-P. Eventually, through public bidding, it sold the portion to Pasay-Hongkong Realty Development Corporation. The latter, in turn, sold the same to World Trade Center Corporation and Harbour Land Realty and Development Corporation.[17]

On September 30, 1991, Shoemart then filed an action before the Court of Appeals[18] for the annulment of judgment in Civil Case No. 5458-P where Pasay City acquired ownership of the portion of the reclaimed land.[19]

Recognizing that the court cases significantly stalled the conversion of Central Business Park-1 Island A "into a modern city and its development into a governmental, commercial, residential[,] and recreational complex"[20] which is contrary to the fulfillment of policies under relevant laws, the Pasig City Regional Trial Court encouraged the parties to amicably settle as it was the "only practical and economical way of unlocking [the area] for development consistent with the vision of Philippines 2000[.]"[21]

Thus, on May 12, 1994, the Public Estates Authority, Philippine National Construction Corporation, and Shoemart entered into an Agreement,[22] the relevant terms of which read:

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[14] Id.
[15] Id.
[16] Id. at 53.
[17] Id.
[18] Docketed as CA G.R. SP No. 26148.
[19] *Rollo*, p. 53.
[20] Id.
[21] Id. at 54. On October 28, 1993, with the acquiescence of Pasay Hongkong Realty Development Corporation, World Trade Center Corporation and Harbour Land Realty and Development Corporation, Shoemart entered into an Agreement with Titan Resources Corporation to settle their ongoing court cases "for the sake of mutual enduring friendship, amity and goodwill[.]"
[22] Id. at 22, 51–60. The May 12, 1994 Agreement between Public Estates Authority, Shoemart and Philippine National Construction Corporation was signed by Public Estates Authority's General

1. PNCC affirms SM's acquisition of the right to jointly exercise PNCC's preferred option to develop CBP-1 Island A pursuant to Section 9 of the MOA dated December 29, 1981 between PEA and PNCC . . . in recognition of SM's highest bid of ₱250 million representing 70% equity interest in the joint venture with PNCC pursuant to the bidding conducted by PNCC on 1 August 1988;

2. SM shall buy out all of the interests of PNCC in CBP-1 Island A representing the ₱250 million bid and the 30% equity PNCC for a total consideration of THREE HUNDRED THREE MILLION PESOS (₱303,000,000.00), Philippine Currency, less the amount ₱25,000,000.00 deposited with PNCC, the full amount of the balance being payable to PNCC upon the effectivity of this Agreement;

. . . .

5. PEA, after considering SM's Joint Venture proposal, hereby determines the same to be in accordance with PEA's Master Development Plan for CBP-1 Island A as well as the Terms of Reference under its published invitation and thereby *agrees to form a joint venture with SM to fully develop CBP-1 Island A*;

6. *In accordance with the PEA-SM Joint Venture, SM shall undertake the land development of CBP-1 Island A,* consisting of approximately 141 hectares, which is net of the parcel of land ceded to Pasay City in Civil Case No. 5458-P (259,267 square meters), covered by Transfer Certificate of Title No. 131537 issued by the Register of Deeds of Pasay City in the name of PEA[.]

. . . .

The corresponding Joint Venture Agreement shall be executed relative to this Agreement to detail the parties' obligations, rights and interests;

7. SM shall undertake the aforesaid land development based on PEA's plans indicated in the [Manila-Cavite Coastal Road Reclamation Project] Master Development Plan within a period of Three (3) years from approval of the Joint Venture Agreement and the project by all government authorities having jurisdiction over the CBP-1 project, which period of time may be extended for a period not exceeding two (2) years upon written request of SM. The development period, however, shall automatically be suspended in case of fortuitous events, force majeure, or such other events or conditions beyond the control of SM that would compel it to stop or slow down development works such as the clearing of CBP-1 of squatters;

8. The Land Sharing scheme of the 141 hectare[s] project shall be based in a 65/35 ratio in favor of PEA which shall include roads and open spaces. The share of PEA shall be 91.65 hectares inclusive of all roads and open spaces, while SM shall have 49.35 hectares net. The respective lots of

Manager Amado S. Lagdameo, Jr. (Assisted by Solicitor General Raul I. Goco and Acting Assistant Solicitor General Alberto Pangcog), Shoemart's Corporate Secretary Atty. Epitacio Borcelis, Jr. (Assisted by Atty. Florentino M. Herrera III and Atty. Donato M. Faylona) and Philippine National Construction Corporation's President Ramoncito Z. Abad (Assisted by Government Corporate Counsel Oscar I. Garcia and State Corporate Attorney Jesus F. D. Clariza).

PEA and SM shall be pre-identified and predetermined in accordance with the Master/Parcellary Plan as submitted by SM and approved by PEA [.]

9. *PEA shall clear the CBP-1 Island A of squatters and SM shall assist PEA in locating suitable relocation sites. SM shall advance the funds as may be needed by PEA for the purpose. The advances shall be repaid by PEA with land at the CBP-1 Island A based on current appraisal value of the land at CBP-1 Island A at the time of drawdown. SM shall furthermore advance such fund as may be needed by PEA for the purpose, including but not limited to its operating and investment capital outlay requirement relative to the project. All said advances shall be repaid by PEA with land from its share at the aforesaid CBP-1 Island A as referred to in paragraph 8 hereof, based on current appraisal value at the time of drawdown[.]*[23] (Emphasis supplied)

On August 9, 1994, the Public Estates Authority and Shoemart entered into a Joint Venture Agreement for the development of Central Business Park-1 Island A. The salient conditions are summarized as follows:[24]

1. [The Public Estates Authority] is responsible for the relocation of squatters, if any, that may be found in the development site.

2. SM shall assist [the Public Estates Authority] in the relocation of squatters, including for SM to advance the funds for said relocation of squatters. The advance amount by SM for the relocation of squatters shall be paid by [the Public Estates Authority] with land located at CBP-1 Island A based on current appraisal value at the time of drawdown.[25]

On June 29, 1995, the Public Estates Authority and Shoemart forged a Deed of Undertaking to carry out the relocation of informal settlers in the site:[26]

1. SM undertakes to advance Php 85,000,000.00 within ninety (90) days from February 23, 1995 for the purpose of relocating the squatters at CBP-1 Island A.

2. *The advance and any additional amount shall be paid by [the Public Estates Authority] with land at CBP-1 Island A based on current appraisal value of the land at CBP-1 Island A at the time of drawdown.*

3. *The current appraisal value based on the latest appraisal of independent appraisers nominated by the parties is Php 4,410.00 per square meter.*

4. The repayment shall be secured by a Certificate of Pledge covering the area equivalent to the amount advance[d].[27] (Emphasis supplied)

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[23] Id. at 54-56.
[24] Id. at 23.
[25] Id. at 23-24.
[26] Id. at 24.
[27] Id.

On June 30, 1995, Shoemart issued Banco de Oro Check No. 111079 bearing ₱85 million as amount payable to the Public Estates Authority.[28]

On November 10, 1999, the Public Estates Authority advised Shoemart that the appraisal value of the property at the time of the drawdown was ₱4,410.00 per square meter. Hence, the ₱85 million advanced by Shoemart was equivalent to 19,274 square meters.[29]

In 2004, Shoemart identified Block D of Central Business Park-1 Island A as the portion it was interested in.[30]

In a February 2, 2004 letter, the Public Estates Authority informed Shoemart that the land it identified was approved by their board of directors under Public Estates Authority Board Resolution No. 3398.[31]

On August 18, 2004, Shoemart assigned all its rights, interests, and participation to Sy.[32]

On October 6, 2004, Sy requested for the conveyance of the property. In response, the Public Estates Authority sent a letter on November 12, 2004, stating that it would be prudent to refer the matter to the Commission on Audit.[33]

Through letters dated January 21, 2005 and July 19, 2005, the Public Estates Authority asked the Commission on Audit's opinion on whether the land value should be appraised on the date of the drawdown or at present. The Commission, however, refused to give an opinion and stated that the matter is *sub judice*.[34]

On June 29, 2005, Sy filed an action for specific performance against the Public Estates Authority, alleging that despite Shoemart's advance payment for the relocation of the informal settlers and the board of directors' approval of the identified area, it still failed to execute the necessary instrument for conveyance.[35]

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[28] Id.

[29] Id. at 24–25.

[30] Id. at 36 & 179. However, in the Public Estates Authority's Petition (p. 7), it mentioned that on December 4, 2003, Shoemart wrote Public Estates Authority a letter to stating that it was amenable to occupy an area within Block D. In that same letter, Shoemart allegedly asked Public Estates Authority to provide additional details as to that area.

[31] Id. at 25.

[32] Id.

[33] Id. at 139 & 174. This narration is uncontested by the parties based on the pleadings submitted before this Court.

[34] Id. at 8 & 39.

[35] Id. at 25.

For its part, the Public Estates Authority countered that it was more prudent to first seek for the Commission on Audit's advice on whether it is proper to use the appraisal value of the land at the time of the drawdown considering the length of time that has passed before the parties agreed on the site to be conveyed.[36]

On February 28, 2008, the trial court ruled in favor of Sy. The dispositive portion of its Decision reads:

> WHEREFORE, premises considered, this Court finds in favor of the plaintiff [Sy], hence it hereby ORDERED defendant [Public Estates Authority] to convey and transfer the title and ownership, including the delivery of possession to the plaintiff Henry T. Sy, Jr. the 19,274 square meter lot, located at Block D, CBP-1A, covered by TCT No. 142197, as repayment for the Php 85,000,000.00 advance made to the defendant by herein plaintiff, through the assignor SM, without pronouncement as to cost.
>
> SO ORDERED.[37]

On appeal, the Public Estates Authority prayed for the dismissal of the complaint. It alleged that the trial court erred in disregarding not only the importance of the Commission on Audit's advice but also the provision in the Deed of Undertaking that the valuation was valid only within three months from the date of appraisal:

> *Current Appraisal value for the second quarter of 1995*[ ]based on the latest appraisal of independent appraisers nominated by both parties is *₱4,410 per square meter. The appraisal shall be effective and binding between the parties for a period of three (3) months from the date of the appraisal report.*[38] (Emphasis supplied)

The Public Estates Authority insisted that the valuation of the property should be reckoned at the time Sy identified the land it was interested in, and not on the drawdown date. Besides, in resolving the case, the trial court should have allegedly considered that it took nine years for Shoemart to finally choose the portion it was particularly interested in.[39]

In its February 27, 2013 Decision,[40] the Court of Appeals affirmed the ruling of the trial court. Foremost, it explained that the Public Estates Authority did not deny its obligation to pay with land the ₱85 million advanced by Shoemart. This is apparent in several letters the Public Estates Authority sent to Sy:

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[36] Id. at 26.
[37] Id.
[38] Id. at 179.
[39] Id. at 27–28.
[40] Id. at 21–42.

Defendant-appellant PEA's letter dated November 10, 1999 stated:

"Dear Mr. Sy:

This has reference to the amount of P85 Million which was advanced by SM Inc. to PEA for the relocation of the squatters at CBP-1(A) the payment of which shall be in land at CBP-1(A)[.]"

Defendant-appellant PEA's letter dated November 12, 2003 stated:

"Dear Mr. Sy, Jr.:

This is with reference to your letter dated November 4, 2003 proposing that **the payment in land of the P85 Million cash advances which was used for squatter relocation of CBP-IA, with a total area of 1.9 hectares[.]**"

Defendant-appellant PEA's letter dated January 13, 2004 stated:

"**MR. HENRY SY, JR.**
Director
SM Investments Corporation
1000 Bay Boulevard
Bay City, Pasay City:

Subject: Payment in land of SM's cash advance of ₱85 Million[ ]

Dear Mr. Sy, Jr.:

This is to formalize our discussion in the meeting of December 16, 2003 in relation to your letter of December 4, 2003 regarding the above-captioned subject matter. Your identification of Block D in CBP-IA instead of the earlier choices of portions of Superblock A or Superblock C, **as payment for the P85 Million which your company advanced to PEA,** for the relocation of squatters in CBP-IA pursuant to our Deed of Undertaking No. 1 dated June 29, 1995[.]"

Defendant-appellant PEA's letter dated February 2, 2004 stated:

"Dear Mr. Sy, Jr.:

This is to further to (sic) our letter dated January 13, 2004 regarding **the payment in land of the ₱85 Million which your company advanced to PEA for** the relocation of squatters in CBPI-IA[.]"

Defendant-appellant PEA's letter dated November 12, 2004 stated:

"**SHOEMART, INC.**
SM Corporate Offices, 1000 Bay Boulevard
Central Business Park Island A, Bay City

> Pasay City, Metro Manila
>
> xxx
>
> Gentlemen:
>
> This is in connection with the letter dated October 6, 2004 from Atty. Epitacio B. Borcelis, Jr. your Legal Counsel, xxx requesting the conveyance, if possible, xxx **of the 19,274 square meters in CBP-IA which represent our payment in terms of land of the ₱85 Million advanced by SM to PEA[.]**"[41] (Emphasis in the original)

As to the reckoning period from which the appraisal value of the land must be based, the Court of Appeals stressed that it should be at the time Shoemart made the advance payment of ₱85 million, otherwise known as "drawdown" pursuant to the Agreement, Joint Venture Agreement, and Deed of Undertaking.[42]

The Court of Appeals also explained that the three-month limitation in the current appraisal value provided under the Deed of Undertaking only applies if Shoemart failed to pay within three months from its execution on June 29, 1995 Here, Shoemart paid the ₱85 million in advance on June 30, 1995 or only a day after the Deed of Undertaking was executed. Accordingly, the value of the land at ₱4,410.00 per square meter will be the basis for the amount of land to Shoemart is entitled.[43]

The Court of Appeals also pointed out that the Agreement, Joint Venture Agreement, and Deed of Undertaking were the best evidence of the parties' intent. If they wanted the valuation to be based at the time Sy made his choice and not at the time of the drawdown, then such term would have been specified so. Evidently, whether the value of the land increased after several years when Sy made his choice in 2004 does not matter.[44]

Besides, the Court of Appeals held that whatever objection the Public Estates Authority may have had on the valuation of the land and to other related matters were already waived. The Public Estates Authority is estopped from raising objections as it had already acknowledged in the following documentary evidence that the land to be given to Sy is 19,274 square meters which is based on the ₱4,410.00 per square meter value at the time of the drawdown:[45]

> Defendant-appellant PEA's Secretary's Certificate for instance, indicated:

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[41] Id. at 28-30.
[42] Id. at 32.
[43] Id. at 35.
[44] Id. at 36.
[45] Id.

"Resolution No. 3398
Series of 2004

Approval of a 1.9274-Hectare Lot[46] in Block D, CBP I-A as Payment in Land to SM for its [₱] 85 [m]illion Advances[.]"

PEA's Letter dated February 2, 2004, for its part, stated:

"Dear Mr. Sy, Jr.:

xxx

Please be informed that under the PEA Board Resolution No. 3398 Series of 2004, our Board approved your proposed site of the 1.9274-hectare lot which is in Block D, along the Libertad Channel in CBP-IA.

We can start the process of segregating the said 1.9274 hectares from Block D by designating your engineer or technical staff who will coordinate with our own engineer to undertake the survey and make the technical description for the 1.9274-hectare lot."

In fact, defendant-appellant PEA, through its then General Manager Carlos P. Doble, confirmed the value of the land at the time of the drawdown to be at Php 4,410.00 per square meter, which was equivalent to 19,274 square meters. This confirmation of the value was made in defendant-appellant PEA's letter to plaintiff-appellee Sy dated November 10, 1999, as follows:

"Dear Mr. Sy,

This has reference to the amount of P85 Million which was advanced by SM Inc. to PEA for the relocation of the squatters at CBP-1 (A) the payment of which shall be in land at CBP-1 (A). Pursuant to the provisions of our Joint Venture Agreement and Deed of Undertaking No. 1, signed on June 29, 1995, **the value of land at the time of the drawdown was P4,410.00 per sq. m.** based on the appraisal of independent appraisers for the second quarter of 1995. **Thus, the ₱85 Million is equivalent to 19,274 sq. m. lot."**[47] (Emphasis in the original)

Therefore, the Court of Appeals held that the Commission on Audit's advice, whether rendered or yet to be made, could not affect the parties. There was nothing in the Agreement, Joint Venture Agreement, and Deed of Undertaking that requires the Public Estates Authority to obtain the Commission's advice before conveying the land to Shoemart. Also, the Public Estates Authority never raised any issue when it accepted the valuation of the land.[48]

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[46] 1.9274 hectares is equivalent to 19,274 square meters.
[47] *Rollo*, pp. 36-38.
[48] Id. at 38.

Besides, as pointed out by the Court of Appeals, when the Public Estates Authority requested the Commission on Audit's guidance through its January 21, 2005 and July 19, 2005 letters, the Commission refused to give its opinion on the valuation and apparently "deferred to the lower court's jurisdiction and authority on the issue"[49] as reflected in its September 9, 2005 letter to the Public Estates Authority:

> "**[T]his Office is constrained from expressing an opinion relative to herein query, the matter being already sub-judice.**"[50] (Emphasis in the original)

Ultimately, the Court of Appeals held that the Public Estates Authority cannot invoke the Commission's guidance to stay or evade its obligations. To rule otherwise would cause unjust enrichment and unfairness.[51]

The dispositive portion of the Court of Appeals' Decision reads:

> GIVEN ALL THESE, the instant Appeal is DENIED. The Decision of the trial court is AFFIRMED.
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> SO ORDERED.[52]

The Public Estates Authority moved for reconsideration,[53] but the Court of Appeals denied it in its September 6, 2013 Resolution.[54]

Hence, the Public Estates Authority filed a Petition for *Certiorari*[55] before this Court, claiming that the Court of Appeals committed grave abuse of discretion.[56]

Petitioner primarily argues that it is legally bound to adhere with the law and must first seek the Commission on Audit's advice before it can deliver the necessary instrument for conveyance to respondent.[57]

Petitioner claims that respondent has no cause of action for specific performance. As early as November 12, 2004, it allegedly informed respondent, through Shoemart, that despite the Board's approval of the site to be conveyed, it ought to seek first for the Commission on Audit's advice on

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[49] Id. at 39.
[50] Id.
[51] Id.
[52] Id. at 41–42.
[53] Id. at 46–49.
[54] Id. at 44–45.
[55] Id. at 3–19.
[56] Id. at 9.
[57] Id. at 13.

the valuation of the property "considering the length of time that had already elapsed before the parties could agree on the site to be conveyed."[58] Petitioner insists on the Commission on Audit's supposed "primary authority in the valuation of government properties"[59] citing its general jurisdiction under Rule II, Section 1 of the Commission on Audit's Rules of Procedure as basis.

Petitioner claims that the opinion of the Commission on Audit is necessary and important in view of its previous Report on the Special Audit (Expanded) of President Diosdado Macapagal Boulevard, which touched upon the Deed of Undertaking between petitioner and Shoemart. In addition, petitioner claims that the Commission declared the Joint Venture between petitioner and Shoemart void.[60]

Ultimately, having jurisdiction on the matters being raised, petitioner alleges that the Commission on Audit must first resolve the relevant issues before any repayment for the advance shall be made. Petitioner then prays for the reversal of the Court of Appeals' rulings and for the dismissal of the complaint for specific performance. In addition, it prays the valuation be reckoned at the time respondent finally made his choice.[61]

In his Comment,[62] respondent prays for the outright dismissal of the Petition.[63] He assails petitioner's plain invocation of grave abuse of discretion while failing to show circumstances establishing errors of jurisdiction on the part of the Court of Appeals.[64] In assailing a supposed error of judgment when the Court of Appeals affirmed the trial court's ruling that it is not necessary to wait for the Commission on Audit's advice on the valuation, petitioner is allegedly raising a question of law which is beyond the ambit of a Rule 65 petition.[65]

Respondent claims that petitioner committed a serious procedural misstep in failing to appeal the assailed rulings via a petition for review. Since the issue involved here is not an error of jurisdiction but of law, a Rule 65 petition cannot substitute for a lost right to appeal.[66] Besides, respondent posits that even assuming that petitioner raised an issue of jurisdiction, the Petition remains dismissible as it does not have attached copies of all necessary pleadings and documents in violation of Rule 65, Section 1 and as it does not implead the Court of Appeals as public respondent.[67]

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[58] Id. at 10.
[59] Id.
[60] Id. at 12.
[61] Id. at 13–14.
[62] Id. at 71–82.
[63] Id. at 72.
[64] Id. at 73.
[65] Id. at 72–73.
[66] Id. at 76.
[67] Id. at 75.

Even if the Petition was correctly filed, respondent further argues that it should nonetheless be dismissed for raising an issue already addressed by the Court of Appeals.[68] Contrary to petitioner's argument, the advice of the Commission on Audit is unnecessary in the implementation of the Deed since petitioner even declared in its November 12, 2004 and January 27, 2004 letters that the decision to ask for its guidance is "solely out of prudence."[69] Citing the Public Estates Authority's "conferred autonomy to invest its funds and assets in such ventures as it may deem appropriate"[70] and its operation on a self-liquidating basis under Executive Order No. 654,[71] respondent insists that petitioner need not obtain any opinion from the Commission on Audit before it can convey the subject property to him.[72]

Respondent also counters that petitioner cannot avoid compliance with its obligations on account of a supposed expanded audit report declaring their Joint Venture Agreement void. To date, their agreements subsist and have not been questioned in an appropriate court proceeding. Moreover, their agreements enjoy the presumption of conformity with law based on Rule 131, Section 3(ff) of the Rules of Court.[73] Also, "[t]he internal [Commission on Audit] audit report submitted to petitioner neither binds this Honorable Court, nor any third party who may have relied on the provisions of the Agreement, the [Joint Venture Agreement] and the Deed of Undertaking; and faithfully complied with the obligations arising therefrom."[74] Respondent thus subscribes to the similar conclusion of both lower courts that such defense on the part of petitioner is a mere afterthought.[75]

Contrary to respondent's assertion, petitioner argues in its Reply[76] that it is assailing the lower courts' lack or excess of jurisdiction. Allegedly, considering that the controversy involves the interpretation and execution of provision in the Joint Venture Agreement insofar as the repayment of advances is concerned, respondent should have resorted to arbitration pursuant to Article X (Miscellaneous Provisions), Paragraph 5 of their Joint Venture Agreement.[77] Petitioner thus claims that the courts lack jurisdiction over the proceedings[78] and now asks that the parties be referred to arbitration in view of the provision in their Joint Venture Agreement.[79]

Petitioner claims that there is no particular provision under their Agreement, Joint Venture Agreement, or Deed of Undertaking which grants respondent the right to choose a specific area that petitioner will convey as

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68 Id. at 76-77.
69 Id. at 77.
70 Id. at 78.
71 Further Defining Certain Functions and Powers of the Public Estates Authority.
72 *Rollo*, p. 78.
73 Id.
74 Id. at 79.
75 Id.
76 Id. at 97–104.
77 Id.at 98–99.
78 Id.
79 Id. at 101.

repayment. In addition, no period was provided within which it should convey land in exchange for respondent's advance. The Board Resolution, petitioner asserts, "is not cast in stone, and is, by nature, tentative until actual conveyance is made."[80] Besides, in actuality, the present board could even choose to convey other portion of the land as it deems best.[81]

On February 9, 2015, this Court directed the parties to file their memoranda.[82]

In its Memorandum,[83] petitioner claims that all the requisites for a Rule 65 Petition have been met.

Petitioner asserts that the Regional Trial Court and Court of Appeals allegedly committed grave abuse of discretion when they defied relevant laws and jurisprudence.[84] The specific provision in the Deed of Undertaking is allegedly clear that the ₱4,410.00 land valuation is only effective for three months from the date of the appraisal report in 1995. Considering that 2004 is obviously beyond the period, respondent cannot allegedly force upon it the same valuation nine years later.[85] When the terms of the agreement are clear, its literal import must be complied with.[86]

In the same way, since the three-month effectivity period in the Deed of Undertaking has long expired, petitioner claims that the Commission on Audit needs to settle the appropriate valuation.[87] Noteworthy that respondent was promptly apprised about its inhibitions on the valuation less than a month from the time the request for conveyance was made.[88]

Moreover, respondent allegedly ignored the Arbitration Clause in the Joint Venture Agreement when it immediately filed a case in court. Also, the Commission on Audit's Report declaring the Joint Venture Agreement between petitioner and Shoemart void should have been considered in resolving the case since no right and obligation can emanate from a void contract.[89] The courts cannot also force upon the current board of directors an obligation they never agreed to.[90]

Finally, petitioner asserts that it was prompted to file a Petition before this Court since it has no other plain, speedy, and adequate remedy under the

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[80] Id. at 99.
[81] Id.
[82] Id. at 108–109.
[83] Id. at 171–186.
[84] Id. at 176–177.
[85] Id. at 179.
[86] Id. at 177.
[87] Id. at 182.
[88] Id. at 179.
[89] Id. at 180–182.
[90] Id. at 182–183.

law. As this involves a government property, an appeal is allegedly "inadequate and ineffectual[.]"[91]

In his Memorandum,[92] respondent restates his prior arguments on petitioner's supposed procedural missteps warranting the dismissal of the Petition.[93] As earlier argued, petitioner was not allegedly ascribing error of jurisdiction. It merely insinuates that in the exercise of its jurisdiction, the Court of Appeals was mistaken in upholding the complaint which goes into the wisdom of its Decision. A petition filed under Rule 65 does not correct errors of judgment since the appropriate remedy should be a Rule 45 appeal filed within the reglementary period.[94] This Rule 65 Petition, respondent asserts, cannot substitute for the lost appeal and thus, merits an outright dismissal being a wrong remedy.[95] Besides, even on the premise that petitioner correctly filed this action, the Petition remains dismissible for having been filed beyond the 60-day period allowed under the Rules.[96]

Even if this Court takes cognizance of the Petition, respondent insists on the jurisdiction of the courts to hear and decide the case. In an attempt to cure the defect of its Petition, respondent claims that petitioner belatedly attacked the jurisdiction of the courts in its Reply. While the jurisdiction of a court may be questioned even on first time on appeal, this is not without any exception. Here, it was only after actively participating in the proceedings and eventually receiving an adverse ruling from the Court of Appeals that petitioner raised this issue.[97]

Equally telling, as to respondent, is that the arbitration clause merely gave the parties an option to resort to arbitration. Even assuming that it is a condition precedent before filing a case in court, petitioner is deemed to have waived this provision not only for failing to raise it in a motion to dismiss or in its answer before the trial court but also for its noncompliance. Considering that it was petitioner who insists in the existence of a controversy in the interpretation and implementation of the Joint Venture Agreement, it should be the one to exercise the option to settle the dispute in accordance with the arbitration clause. Instead of forming an arbitration committee, petitioner decided to submit the issue of valuation to the Commission on Audit which, is not provided in any of their agreements.[98]

In so far as the Commission on Audit is concerned, respondent stresses that it had already deferred to the trial court's jurisdiction at the early stage of the proceedings as shown in its September 9, 2005 letter. Considering that

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91 Id. at 183.
92 Id. at 131–169.
93 Id. at 140.
94 Id. at 144 & 147.
95 Id. at 147.
96 Id. at 149.
97 Id. at 150–151.
98 Id. at 151–152.

the issue as to the Commission's guidance has already been fully discussed by the lower courts having jurisdiction on the subject matter, it would allegedly be illogical to return to arbitration and re-litigate the same issues especially when the Commission already deferred the issue of valuation to the courts.[99]

Respondent reinforces that the lower courts were correct that the reckoning of the land valuation is at the time of the drawdown pursuant to the parties' agreements.[100] This conclusion was even explicitly confirmed by petitioner, through its general manager, in a November 10, 1999 letter.[101] Hence, as the portion to be conveyed was already identified and accordingly approved by petitioner's board of directors, there is nothing left for petitioner but to fulfill its obligation under the contract.[102]

Respondent claims that although it allegedly took a while for Shoemart to choose a site to be conveyed, the ₱4,410.00 per square meter appraised value stands because it has made the advance payments within the three-month validity period under the Deed of Undertaking. Also, the money advanced was already used by petitioner for the relocation of informal settlers.[103]

Respondent asserts that even properties subject of sale are valued at the time of payment. It would allegedly be "unjust to the seller if [their] property will be sold at its value prior to the time of payment because the value of the property would be lower than its present value."[104] The same goes with the buyer if they "pay[ ] the price of the property at the time of the sale but would receive an equivalent value of the property valued after the time of payment, in which case, the buyer would receive lesser amount of property than the value of the money given at the time of sale."[105]

Respondent also argues that the Court of Appeals was not mistaken that the three-month period in the Deed of Undertaking was only a limitation within which Shoemart had to comply with the advance payment.[106] Petitioner's claim that it is no longer bound to transfer a portion of the area based on the ₱4,410.00 appraisal value due to the lapse of three months deviates from the principle of mutuality of contracts under Article 1308 of the Civil Code which provides that the "contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."[107] Upholding petitioner's contention would have the effect of unilaterally

[99] Id. at 152.
[100] Id. at 153.
[101] Id. at 157.
[102] Id. at 158.
[103] Id.
[104] Id. at 159.
[105] Id.
[106] Id. at 159–160.
[107] Id. at 162.

controlling the time and manner by which the latter will comply with its obligation by simply allowing the lapse of the stipulated period despite the other party's faithful compliance of its part.[108]

Finally, respondent echoes its earlier argument that the guidance of the Commission on Audit is not indispensable for petitioner's conveyance of the property.[109] The Commission was not even a part of the negotiation process. It was only after he formally demanded for compliance that petitioner invoked the necessity of its advice.[110] As to respondent, even assuming that its advice is necessary, the Commission cannot just decide against the agreement and intention of the parties as this would be prejudicial on their part.[111]

The issues for this Court's resolution are:

first, whether petitioner Public Estates Authority availed of the correct remedy in assailing the Court of Appeals' rulings; and,

second, whether the Court of Appeals gravely abused its discretion in denying petitioner Public Estates Authority's appeal and motion for reconsideration.

We dismiss the Petition.

I

We first resolve the procedural issues.

Respondent insists on the outright dismissal of the Petition due to the supposed procedural missteps by petitioner in ascribing error of judgment and not errors of jurisdiction on the part of the Court of Appeals. A petition for *certiorari* filed under Rule 65 cannot allegedly substitute for failure to appeal *via* petition for review under Rule 45.[112]

Respondent's arguments have merit.

A writ of *certiorari* is solely meant to rectify errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its purpose is "limited to keeping the inferior court within the bounds of its

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108 Id.
109 Id. at 163.
110 Id. at 164.
111 Id. at 165.
112 Id. at 139.

jurisdiction."[113] This remedy is governed by Rule 65 of the Rules of Court, the pertinent provisions of which read:

> Section 1. *Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction,* ***and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law,*** *a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.*
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.
>
> . . . .
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> Section 4. *When and where to file the petition.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. *In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.*
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> . . . .
>
> Section 5. *Respondents and costs in certain cases.* — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.
>
> Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (Emphasis supplied)

The requisites for a petition for certiorari under Rule 65 are the following:

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[113] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation,* 479 Phil. 768, 778 (2004) [Per J. Panganiban, Third Division].

> (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial function; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) *there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.* [114] (Citation omitted, emphasis supplied)

In filing a petition for certiorari, there should be "no appeal or any plain, speedy, and adequate remedy in the ordinary course of law."[115] As a general rule, a writ of *certiorari* will not issue if the remedy of appeal is available. Such remedies "are mutually exclusive and not alternative or cumulative."[116]

Petitioner fails in this respect.

It bears stressing that petitioner plainly invokes grave abuse of discretion amounting to lack of jurisdiction on the part of the Court of Appeals when it denied its appeal and motion for reconsideration.[117] There was no explanation in its Petition why an appeal cannot remedy the supposed errors by the Court of Appeals.[118] Under Rule 45 of the Rules of Court, an appeal by *certiorari* is the proper remedy[119] in seeking a reversal of judgments, final orders, and resolutions of the Court of Appeals:

> Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari.* The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.
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> Section 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

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[114] *Cathay Pacific Steel Corporation v. Court of Appeals,* 531 Phil. 620, 630 (2006) [Per J. Chico-Nazario, First Division].

[115] Id. at 631.

[116] Id.

[117] *Rollo,* p. 9.

[118] *Cathay Pacific Steel Corporation v. Court of Appeals,* 531 Phil. 620, 630 (2006) [Per J. Chico-Nazario, First Division].

[119] *See Idul v. Alster International Shipping Services, Inc.,* G.R. No. 209907, June 23, 2021 [Per J. Hernando, Third Division].

Notably, the assailed Court of Appeals Decision[120] and Resolution[121] are already dispositions of the case on the merits and there are no other issues left for this Court to decide upon. Therefore, the proper remedy that petitioner should have undertaken is to file a petition for review under Rule 45 and not a petition for *certiorari* under Rule 65.[122]

As an oft-repeated rule, "the special civil action of [c]ertiorari cannot be used as a substitute for a lost appeal where the latter remedy is available."[123] This neither alleviates a party's failure to file a petition for review under Rule 45 on time, nor replaces a "lost remedy of an ordinary appeal, especially if the loss or lapse was occasioned by one's own negligence or error in the choice of remedies."[124]

Here, respondent's insinuation that petitioner filed this Rule 65 petition to make up for its lost right to appeal[125] has basis. Petitioner received the Court of Appeals Resolution denying its motion for reconsideration on September 23, 2013.[126] Instead of filing a petition for review under Rule 45 within 15 days therefrom, it allowed the 15-day period to lapse and thereafter filed this Rule 65 petition for *certiorari* on November 25, 2013 which, as noted by this Court's processor, was not even timely filed.[127]

Besides, petitioner clearly raises errors of judgment and not errors of jurisdiction. Allegedly, it "is legally bound to follow the law and first seek [the Commission on Audit's] advice and guidance before it can implement the delivery of the deed of conveyance."[128] This, aside from the purported Commission on Audit report raising concerns on the validity of the executed Joint Venture Agreement between the parties, should have been purportedly considered by the Court of Appeals in resolving the controversy. Its failure to do so, as to petitioner, renders the assailed rulings reversible.[129]

Petitioner is assailing an error of judgment on the part of the Court of Appeals when it disregarded the supposed necessity of the Commission on Audit's opinion before it can undertake any conveyance in favor of respondent. Probing into the correctness of the Court of Appeals' rulings, instead of assailing errors of jurisdiction, is beyond the ambit of a petition for *certiorari*

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[120] *Rollo*, pp. 21–42.
[121] Id. at 44–45.
[122] *Cathay Pacific Steel Corporation v. Court of Appeals*, 531 Phil. 620, 631 (2006) [Per J. Chico-Nazario, First Division].
[123] Id. at 631. (Citation omitted)
[124] Id.
[125] *Rollo*, pp. 74–75.
[126] Id. at 5.
[127] Id. at 1, 3 & 149.
[128] Id. at 13.
[129] Id.

filed under Rule 65.[130]

There are occasions when a writ of *certiorari* may be resorted to notwithstanding the availability of an appeal: "(a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority."[131] Nonetheless, we found that none of the exceptions exist here. Aside from simply stating in their petition that "there is no appeal or any other plain, speedy and adequate remedy available to [it] in the ordinary course of law"[132] and later stating that an appeal would be "inadequate and ineffectual considering the order to transfer government property,"[133] no further corroborations were offered by petitioner to urge this Court to rule in its favor. Neither can this Court find adequate cause to justify the relaxation of the rules and treat its Petition for *Certiorari* as a Rule 45 petition for review.[134]

In a futile attempt to cure procedural defects, petitioner raised a new argument in its Reply attacking the jurisdiction of the courts on account of respondent's supposed failure to resort to arbitration as required under their Joint Venture Agreement:

ARTICLE X
MISCELLANEOUS PROVISIONS

x x x

5. *Disputes or controversies arising out of the interpretation or implementation of this Agreement and subsequent implementing agreement(s) which the OWNER and DEVELOPER 'fail' to settle amicably* ***may*** *be submitted for arbitration at the choice of either party upon written notice to that effect by the requesting party.* Such notice shall set forth the nature of the dispute, the amount involved, if any, other relevant factors and the relief sought. Thereupon, a Committee on Arbitration shall be formed in the following manner: OWNER and DEVELOPER shall each appoint one member and both members shall jointly appoint a third member as Chairman. If either of the contracting parties fails to appoint a member within thirty (30) calendar days after the date on which the other party has served notice to submit the dispute for arbitration, or if the two members of the Committee cannot agree on the third member within fifteen (15) calendar days from the date of their

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[130] *See Idul v. Alster International Shipping Services, Inc.*, G.R. No. 209907, June 23, 2021 [Per J. Hernando, Third Division].

[131] *Heirs of Cabrera v. Heirs of Jurado*, G.R. No. 235308, May 12, 2021 [Per J. Delos Santos, Third Division]. (Citations omitted)

[132] *Rollo*, p. 9.

[133] Id. at 183.

[134] *See Tagle v. Equitable PCI Bank*, 575 Phil. 384, 403 (2008) [Per J. Chico-Nazario, Third Division]. The occasions where this Court has treated a petition for certiorari as a petition for review on certiorari are the following: "(1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on certiorari; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules." (Citations omitted)

> respective appointments, then the appropriate Regional Trial Court of the Philippines, in accordance with the Arbitration Law, shall have the power, on the request of either party, to make the necessary appointment of the Chairman. The Committee may engage experts to act in an advisory capacity but without voting privileges. No one with a financial interest in the dispute will be eligible to serve on the Committee. Minutes of the meeting shall be kept and signed by all Committee members. A decision of a majority of the Arbitration Committee shall be binding upon the parties and shall immediately be complied with or executed by the party concerned. The cost of such arbitration shall be shouldered equally by both parties.[135] (Emphasis supplied)

Since the controversy allegedly involves the interpretation and execution of a provision under their Joint Venture Agreement concerning the repayment of advances, petitioner now invokes the above provision praying that this Court refer the parties to arbitration.[136]

Petitioner's arguments do not convince.

Here, the pertinent provision of the agreement is clear and thus, the literal import of the clause is controlling.[137] The use of the word "*may*" is permissive. Contrary to petitioner's insinuation,[138] referring the matter for arbitration is neither obligatory nor a requirement before filing a case in court.

Moreover, as correctly pointed out by respondent, it was petitioner that was insistent that there exists an issue in the interpretation and execution of the Joint Venture Agreement and thus, it should have been the one who brought up the arbitration clause to settle the disagreement. Nonetheless, instead of doing so, it directly sought the Commission on Audit's guidance on the valuation of the property.[139] Apparent from these circumstances that this argument, raised first time by petitioner in its Reply, is a mere afterthought to salvage the procedural flaws it committed. As such, we ought to disregard the contention and uphold the jurisdiction of the courts to resolve the controversy. Therefore, for availing the wrong remedy, we are constrained to dismiss the Petition.

II

Nevertheless, even if we were to assume that petitioner correctly filed this action, the Petition still fails. The Court of Appeals did not gravely abuse its discretion in dismissing petitioner's appeal and motion for reconsideration.

What constitutes grave abuse of discretion is already established:

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[135] *Rollo*, pp. 97–98 & 180. The contents and existence of this clause in their Joint Venture Agreement was not disputed by respondent.

[136] Id. at 99.

[137] *See Bilang v. Erlanger & Galinger, Inc.*, 66 Phil. 627, 629 (1938) [Per J. Diaz, En Banc].

[138] *See Rollo*, pp. 98–99 & 181.

[139] Id. at 152.

> "Grave abuse of discretion" implies such *capricious and whimsical exercise of judgment* as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[140] (Citation omitted, emphasis supplied)

In contrast with an appeal which is a continuation of the proceedings, a petition for *certiorari* is "an original and independent action that [is] not part of the trial that had resulted in the rendition of judgment or order complained of."[141] "Over a certiorari, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts."[142]

Notably, in relation to Rule 45, *Kondo v. Toyota Boshoku (Philippines) Corporation*[143] provides for the parameters in so far as arguments raised in a Rule 65 Petition for Certiorari is concerned:

> Jurisprudence instructs that where a Rule 65 petition alleges grave abuse of discretion, *the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.* An error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of *certiorari*. *The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court—on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision.* Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Errors of judgment and errors of jurisdiction as grounds in availing the appropriate remedy are mutually exclusive[.][144] (Citations omitted, emphasis supplied)

We refer to the Court of Appeals' citations of relevant provisions in the series of Agreements entered into between the parties.

Under the May 12, 1994 Agreement,[145] the parties stipulated on the following:

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[140] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 779 (2004) [Per J. Panganiban, Third Division].

[141] Id. at 781. (Citation omitted)

[142] Id. at 780. (Citation omitted)

[143] G.R. No. 201396, September 11, 2019 [Per J. Jardeleza, First Division].

[144] Id.

[145] *Rollo*, pp. 51–60.

8. The Land Sharing scheme of the 141 hectare project shall be based on a 65/35 ratio in favor of PEA which shall include roads and open spaces. The share of PEA shall be 91.65 hectares inclusive of all roads and open spaces, while SM shall have 49.35 hectares net. The respective lots of PEA and SM shall be pre-identified and predetermined in accordance with the Master/Parcellary Plan as submitted by SM and approved by PEA[;]

9. PEA shall clear the CBP-1 Island A of squatters and SM shall assist PEA in locating suitable relocation sites. *SM shall advance the funds as may be needed by PEA for the purpose. The advances shall be repaid by PEA with land at the CBP-1 Island A based on current appraisal value of the land at CBP-1 Island A at the time of drawdown.* SM shall furthermore advance such fund as may be needed by PEA for the purpose, including but not limited to its operating and investment capital outlay requirement relative to the project. *All said advances shall be repaid by PEA with land from its share at the aforesaid CBP-1 Island A as referred to in paragraph 8 hereof, based on current appraisal value at the time of drawdown*[.][146] (Emphasis supplied)

It was also agreed upon under Article IV, Section 4 of their August 9, 1994 Joint Venture Agreement that:

4. Subject to paragraph 3 of Article V hereof, the DEVELOPER shall assist the OWNER in identifying suitable relocation sites for the squatters currently occupying the Project/Subdivision. The DEVELOPER shall advance the funds as may be needed by the OWNER for purposes of the relocation. *The advances shall be repaid by the OWNER with land in the Project/Subdivision based on current appraisal value thereof at the time of the drawdown.*[147] (Emphasis supplied)

Complementing the foregoing agreements is the January 29, 1995 Deed of Undertaking which provides:

> "*WHEREAS, under the terms of the Agreement and the [Joint Venture Agreement], the DEVELOPER agreed to provide the OWNER with the funds needed for the relocation of squatters at CBP Island A to be repaid by PEA with lands within CBP-1 Island A based on the current appraisal value at the time of PEA's drawdown;*
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> xxx
>
> 1. The DEVELOPER (SM), in accordance with the provisions of the 'Agreement', the [Joint Venture Agreement] and other allied agreements undertakes to initially provide the OWNER (PEA) with EIGHTY FIVE MILLION PESOS (P85,000,000.00), Philippine Currency, within ninety days from February 23, 1995, to be used for the relocation of squatters at CBP-1 Island A, which amount may be increased as the need for the same purpose arises.

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146 Id. at 56.
147 Id. at 34.

2. *The said amount, including any additional amount that may be advanced by the DEVELOPER (SM) to the OWNER (PEA) for the purpose stated in the immediately preceding paragraph, shall in accordance with Section '8' and '9' of the Agreement and Section '4' of Article IV of the [Joint Venture Agreement], be repaid by the OWNER (PEA) to the DEVELOPER (SM) with land at the CBP-1 Island A at the time of the drawdown.*

   Current Appraisal value for the second quarter of 1995 based on the latest appraisal of independent appraisers nominated by both parties is P4,410 per square meter. The appraisal shall be effective and binding between the parties for a period of three (3) months from the date of the appraisal report.

3. The repayment by the OWNER (PEA) to the DEVELOPER (SM) shall be made upon the receipt of the entire amount of P85 Million Pesos. To secure repayment by the OWNER (PEA), a Certification of Pledge covering the area equivalent to the amount of P85 Million Pesos based on current appraisal value of the land at CBP-1 Island A shall be executed by the OWNER (PEA) in favor of the DEVELOPER (SM)."[148] (Emphasis supplied)

Following the literal import of the second paragraph of Section 2 of the Deed of Undertaking, petitioner asserts that the ₱4,410.00 per square meter valuation is only effective for three months from the date of appraisal report in 1995. Thus, when respondent made his choice in 2004, petitioner cannot allegedly be forced to accept the same valuation as basis for conveyance nine years later.[149] Thus, on the supposition that the valuation provided in the Deed was already expired, petitioner insists on the purported necessity to fix the suitable appraised value to ascertain the aggregate area to be conveyed to respondent at the present. This, allegedly, is under the Commission on Audit's responsibility having the "primary authority in the valuation of government properties."[150]

Respondent counters that the agreements entered into by the parties "could not have been more clear and consistent."[151] Allegedly, the ₱85 million advance released by Shoemart on June 30, 1995 must be recompensed with land valued at ₱4,410.00 per square meter.[152] This is the law between the parties. Petitioner cannot just break its obligation hinging on the length of time that lapsed from the time of drawdown until the identification of the portion of land to be conveyed.[153] Besides, as to respondent, the lot identified by Shoemart was even approved by petitioner's board of directors.[154]

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148 Id. at 32-33.
149 Id. at 179.
150 Id. at 182.
151 Id. at 156.
152 Id. at 157.
153 Id. at 158.
154 Id. at 157.

As to the Court of Appeals, the nature of the three-month limitation under the Deed of Undertaking "was that the appraisal value of the land for the second quarter of 1995 (which value was at [₱]4,410.[00] per square meter as was stated in the Deed of Undertaking) was valid for three months."[155] As such, Shoemart should release the ₱85 million advance to petitioner within the stated time frame for such appraisal to be effective and binding. Upon Shoemart's compliance, petitioner ought to pay it with land equivalent to the appraisal value of ₱4,410.00 per square meter which, in reference to ₱85 million, equates to 19,274 square meters. In case Shoemart released the advance payment beyond the three-month period, then petitioner would have to base its repayment on a new appraisal report to be made by independent appraiser nominated by the parties.

Hence, with Shoemart's conformity with the period provided under the Deed, the Court of Appeals sustained the ₱4,410.00 per square meter valuation as basis for the area of land petitioner ought to convey and explained that:

> The three-month limitation in the Deed of Undertaking was complied with by SM. This is because SM released to defendant-appellant PEA the Php 85 million on June 30,1995 as was shown by the Banco De Oro Check No. 111079. Such amount of Php 85 million in turn was received by defendant-appellant PEA on the same date of June 30, 1995. This was shown by the Official Receipt of the Republic of the Philippines No. 3845338 dated June 30, 1995 that was issued by defendant-appellant PEA to SM. Considering that the payment by SM and the receipt by defendant-appellant PEA of the Php 85 million were made on June 30, 1995 (or only a day after SM and defendant-appellant PEA executed the Deed of Undertaking dated June 29, 1995), then such payment and receipt were made within the three-month limitation. And since the value of the land was appraised at Php 4,410.[00] per square meter, then that value was to be the basis for the amount of land SM would be entitled to obtain. All of these were as provided for in the Deed of Undertaking.[156]

We affirm the findings of the Court of Appeals.

Petitioner does not refute its obligation to pay respondent with land located at Central Business Park-1 Island A in view of the ₱85 million released by respondent's assignor, Shoemart.[157] The controversy lies in the valuation from which its conveyance of land to respondent will be based.

In interpreting contracts,[158] Article 1370 of the Civil Code provides:

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[155] Id. at 35.

[156] Id.

[157] Id. at 28.

[158] *See Benguet Corporation v. Cabildo*, 585 Phil. 23, 34 (2008) [Per J. Nachura, Third Division].

> Article 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.
>
> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

In *Bautista v. Court of Appeals*:[159]

> The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from terms which he voluntarily consented to, or impose on him those which he did not.[160] (Citation omitted)

Here, the pertinent provisions and terms of the agreements are clear and need no further interpretation. The Agreement, Joint Venture Agreement, and Deed of Undertaking are consistent that the advance released by Shoemart shall be paid by petitioner in land based on the *current appraisal value at the time of drawdown,*[161] or at the time Shoemart makes its payment.[162] Hence, we find the Court of Appeals' interpretation as to the three-month limitation stated in the Deed of Undertaking well-taken. Since the Banco De Oro Check issued by Shoemart and the concomitant official receipt proving petitioner's receipt of the advance payment were both dated June 30, 1995,[163] the basis of the valuation is correctly pegged at the current appraisal value for the second quarter of 1995 which is ₱4,410.00 per square meter.[164] As pointed out by the Court of Appeals and reinforced in petitioner's own narration of facts,[165] this appraisal value was even confirmed by petitioner, through its then general manager, in its November 10, 1999 letter to respondent:

> "Dear Mr. Sy,
>
> This has reference to the amount of P85 Million which was advanced by SM Inc. to PEA for the relocation of the squatters at CBP-1(A)

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[159] 379 Phil. 386 (2000) [Per J. Puno, First Division].

[160] Id. at 399.

[161] *Rollo*, pp. 32–34. Section 9 of the May 12, 1994 Agreement; Section 4 of the August 9, 1994 Joint Venture Agreement; and Section 2 of the January 29, 1995 Deed of Undertaking.

[162] Id. at 32.

[163] Id. at 35.

[164] Id. at 33.

[165] Id. at 6.

> the payment of which shall be in land at CBP-1(A). *Pursuant to the provisions of our Joint Venture Agreement and Deed of Undertaking No. 1, signed on June 29, 1995, the value of land at the time of the drawdown was P4,410.00 per sq. m. based on the appraisal of independent appraisers for the second quarter of 1995. Thus, the P85 Million is equivalent to 19,274 sq. m. lot.*[166] (Emphasis supplied)

Besides, "[i]n order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered."[167] While petitioner makes much of the protracted period from the time of drawdown until respondent made his choice on the portion of land to be conveyed, it bears stressing that after respondent finally chose an area he was specifically interested in, petitioner sent a letter dated February 2, 2004[168] informing the latter about the Board's approval of the 1.9274-hectare lot in Block D, Central Business Park-1 Island A as payment in land in exchange for the advance made. The pertinent portions of the letter, as quoted by the Court of Appeals, read:

> "Dear Mr. Sy, Jr.:
>
> xxx
>
> Please be informed that under the PEA Board Resolution No. 3398 Series of 2004, our Board approved your proposed site of the 1.9274-hectare lot which is in Block D, along the Libertad Channel in CBP-IA.
>
> *We can start the process of segregating the said 1.9274 hectares from Block D by designating your engineer or technical staff who will coordinate with our own engineer to undertake the survey and make the technical description for the 1.9274[-]hectare lot.*[169] (Emphasis supplied)

The contracting parties are bound by the stipulations in their agreement as obligations resulting therefrom have the force of law between them and should be complied with in good faith.[170] Aside from the unambiguous provisions in their agreements stating that the basis for petitioner's conveyance of the property to respondent should be based on the current appraisal value at the time of the drawdown, petitioner's contemporaneous and subsequent acts reveal its acknowledgment of the same. Since respondent, through Shoemart, had already advanced the ₱85 million pursuant to the terms of their agreements and the identity of the land to be conveyed was already duly approved by petitioner's board of directors, there is nothing left to do but to execute the necessary instrument for conveyance in respondent's favor.

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[166] Id. at 37–38.

[167] Article 1371 of the Civil Code. *See* also *Benguet Corporation v. Cabildo*, 585 Phil. 23, 36 (2008) [Per J. Nachura, Third Division].

[168] *Rollo*, p. 25.

[169] Id. at 37.

[170] *Abad v. Goldloop Properties, Inc.*, 549 Phil. 641, 653 (2007) [Per J. Callejo, Sr., Third Division].

In addition, we cannot subscribe to petitioner's insistence on the Commission on Audit's guidance before implementing the delivery of the deed of conveyance.[171] Petitioner was explicit that it was only out of *prudence* that it referred the matter of valuation to the Commission.[172] Nonetheless, when it wrote a letter on January 21, 2005 and July 19, 2005 asking whether the land should be appraised at the time of the drawdown or at present, the latter refused to give its opinion because the matter was already *sub judice*.[173] On the same vein, we are inclined to disregard petitioner's claim on a supposed Commission on Audit report declaring the parties' Joint Venture Agreement null and void for being unsubstantiated and merely raised in passing.

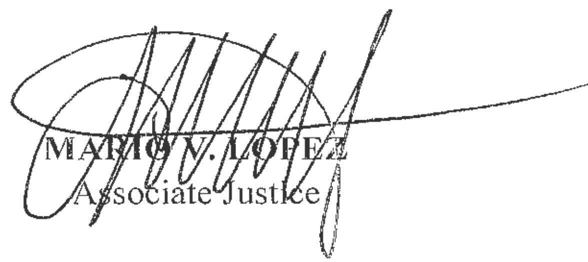
ACCORDINGLY, the Petition for Certiorari is **DISMISSED** for lack of merit.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

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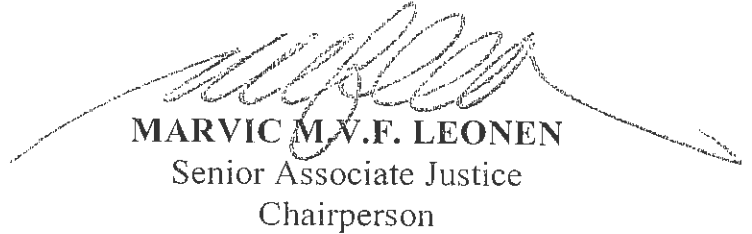
[171] *Rollo*, p. 13.
[172] Id. at 7.
[173] Id. at 8 & 39.

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.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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