



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 13, 2020 which reads as follows:

“G.R. No. 232278 – City Treasurer of Taguig, City Assessor of Taguig, and City Government of Taguig v. Bases Conversion and Development Authority

Assailed in this Petition for Review on *Certiorari*¹ are the Decision² dated March 16, 2017 and the Resolution³ dated June 13, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 148040 which affirmed the Decision⁴ dated February 11, 2016 and the Order dated August 15, 2016 of the Regional Trial Court (RTC), Branch 153, Taguig City. The RTC declared void the tax assessment made and/or issued by the City Assessor of Taguig against the Bases Conversion and Development Authority (BCDA) except with respect to the properties which are leased and/or conveyed to private entities and companies.⁵

The facts, as culled from the records, are as follows:

The BCDA is a body corporate created and existing by virtue of Republic Act (R.A.) No. 7227, otherwise known as the Bases Conversion and Development Act of 1992.⁶ It is the registered owner of several parcels of land in the City of Taguig classified as commercial, special and residential. Most of the commercial lands

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¹ *Rollo*, pp. 19-38.

² Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Amy C. Lazaro-Javier (now a Member of the Court) and Pedro B. Corales, concurring; *id.* at 39-64.

³ *Id.* at 67-68.

⁴ Penned by Presiding Judge Mariam G. Bien; *id.* at 131-148.

⁵ *Id.* at 148.

⁶ *Id.* at 21.

owned by the BCDA have been leased out to business entities located at Bonifacio Global City and McKinley Hill, Fort Bonifacio, Taguig City.⁷

Pursuant to R.A. No. 7160 or the Local Government Code of 1991, the City Assessor assessed and imposed taxes on BCDA's real properties but the BCDA refused and failed to pay the taxes due. The BCDA contended that as a government instrumentality vested with corporate powers, it is exempt from paying taxes on its real properties.⁸ Consequently, the City of Taguig, through its then City Treasurer Atty. Rosario V. Reyes, caused the publication of a "Notice of Sale of Delinquent Real Property" on August 2, 2009 in *The Philippine Star*. The Notice covered the sale at public auction of the properties of the BCDA in Taguig City on August 14, 2009, on account of its non-payment of real estate tax amounting to ₱58,708,939.65.⁹

On August 11, 2009, the BCDA filed a petition for prohibition and injunction with prayer for preliminary injunction and/or temporary restraining order (TRO) before the RTC of Taguig City. It sought the issuance of a TRO to enjoin the City Government of Taguig, its City Treasurer, and its Assessor (petitioners) from conducting the auction sale. It prayed that judgment be rendered ordering the City Assessor to drop the BCDA's properties from the assessment roll, and that a mandatory injunction be issued permanently restraining the petitioners and all other persons under their command and direction from selling its properties.¹⁰

In an Order¹¹ dated August 13, 2009, the RTC granted the prayer/application for TRO and enjoined the petitioners from proceeding and conducting the August 14, 2009 auction sale.

On February 11, 2016, the RTC rendered its Decision, the dispositive portion of which reads:

Wherefore, foregoing considered, the petition is **PARTIALLY GRANTED**. The tax assessment made and/or issued by respondent City Assessor is declared void EXCEPT with respect to the properties which are leased and/or conveyed to private entities and companies. Consequently, respondent City

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⁷ Id. at 139.

⁸ Id. at 21-22.

⁹ Id. at 41.

¹⁰ Id. at 133.

¹¹ Id. at 121-123.

Assessor is ordered to drop from its tax assessment roll BCDA's properties which are considered properties of public dominion.

Accordingly, the writ of preliminary injunction is dissolved insofar as the properties of petitioner which are considered patrimonial property (more specifically, the portions which are involved in the joint venture with Megaworld; the lot being leased to a private school, International School Manila; lots which were leased to the Ayala Land Corporation, and other properties which may have been leased to other private entities) is concerned only.

SO ORDERED.

The RTC held that the BCDA is not a government-owned and controlled corporation (GOCC) because it is neither a stock nor a non-stock corporation. It applied the parameters laid down in *Manila International Airport Authority v. Court of Appeals*¹² and enunciated that the BCDA is a government instrumentality vested with corporate powers. It pointed out that as a rule, BCDA, as an instrumentality of the national government, is exempt from the payment of real property tax but the exemption does not extend to the portions of its properties which are considered patrimonial property or those which are leased to taxable or private persons and entities for their beneficial use.¹³

The CA affirmed the RTC's ruling in its Decision dated March 16, 2017.

Hence, the instant petition anchored on the following arguments:

26. BCDA is not a government instrumentality considering that it was categorized as GOCC in the case of *Bases Conversion Authority versus Provincial Agrarian Reform Officer of Pampanga, et. al* and in R.A. 10149.

27. In line with the legal principle that tax exemption is construed in *strictissimi juris* against the taxpayer, BCDA is not exempt from the payment of real property tax due to the conflicting legal bases of its tax exemption. In case doubt arises as to the entitlement of tax exemption, doubt must be resolved in favor of the taxing authority.¹⁴

The Court's Ruling

We DENY the petition.

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¹² 528 Phil. 181 (2006).

¹³ *Rollo*, p. 83.

¹⁴ *Id.* at 25.

The legal status of the BCDA within the national government has been squarely settled in *Bases Conversion and Development Authority v. Commissioner of Internal Revenue*.¹⁵ The Court held therein that the BCDA is a government instrumentality vested with corporate powers, *viz.*:

Section 2 (10) and (13) of the Introductory Provisions of the Administrative Code of 1987 provides for the definition of a government —instrumentality and a “GOCC,” to wit:

SEC. 2. *General Terms Defined.* — x x x

(10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter. x x x. (Emphasis in the original)

x x x x

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x.

The grant of these corporate powers is likewise stated in Section 3 of Republic Act (R.A.) No. 7227, also known as The Bases Conversion and Development Act of 1992 which provides for BCDA’s manner of creation, to wit:

Sec. 3. *Creation of the Bases Conversion and Development Authority.* — There is hereby created a body corporate to be known as the Bases Conversion and Development Authority, which shall have the attribute of perpetual succession and **shall be vested with the powers of a corporation.** (Emphasis in the original)

From the foregoing, it is clear that **a government instrumentality may be endowed with corporate powers and at the same time retain its classification as a government “instrumentality” for all other purposes.** (Emphasis in the original)

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¹⁵ G.R. No. 205925, June 20, 2018.

In the 2006 case of *Manila International Airport Authority v. CA*, the Court, speaking through Associate Justice Antonio T. Carpio, explained in this wise:

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a [GOCC]. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and [Bangko Sentral ng Pilipinas.] All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2 (13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not [GOCCs] in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship or status of government entities.

Moreover, in the 2007 case of *Philippine Fisheries Development Authority v. CA*, the Court reiterated that a government instrumentality retains its classification as such albeit having been endowed with some if not all corporate powers. The relevant portion of said decision reads as follows:

Indeed, the Authority is not a GOCC but an instrumentality of the government. The Authority has a capital stock but it is not divided into shares of stocks. Also, it has no stockholders or voting shares. Hence, it is not a stock corporation. Neither is it a non-stock corporation because it has no members.

The Authority is actually a national government instrumentality which is define as an agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds and enjoying operational autonomy, usually through a charter. **When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.** (Emphasis supplied)

As previously mentioned, in order to qualify as a GOCC, one must be organized either as a stock or non-stock corporation. Section 3 of the Corporation Code defines a stock corporation as one whose “capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x.”

Section 6 of R.A. No. 7227 provides for BCDA's capitalization, to wit:

Sec. 6. Capitalization. — The Conversion Authority shall have an authorized capital of One hundred billion pesos (₱100,000,000,000.00) which may be fully subscribed by the Republic of the Philippines and shall either be paid up from the proceeds of the sales of its land assets as provided for in Section 8 of this Act or by transferring to the Conversion Authority properties valued in such amount.

An initial operating capital in the amount of seventy million pesos (₱70,000,000.00) is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated which shall be covered by preferred shares of the Conversion Authority retireable within two (2) years.

Based on the foregoing, it is clear that BCDA has an authorized capital of Php100 Billion, however, it is not divided into shares of stock. BCDA has no voting shares. There is likewise no provision which authorizes the distribution of dividends and allotments of surplus and profits to BCDA's stockholders. Hence, **BCDA is not a stock corporation.**

x x x x

BCDA also does not qualify as a non-stock corporation because it is not organized for any of the purposes mentioned under Section 88 of the Corporation Code, to wit:

Sec. 88. Purposes. — Non-stock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of non-stock corporations. (Emphasis supplied)

A cursory reading of Section 4 of R.A. No. 7227 shows that BCDA is organized for a specific purpose — to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses, to wit:

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Sec. 4. *Purposes of the Conversion Authority.* — The Conversion Authority shall have the following purposes: (Emphasis supplied)

- (a) To own, hold and/or administer the military reservations of John Hay Air Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station, Mt. Sta. Rita Station (Hermosa, Bataan) and those portions of Metro Manila military camps which may be transferred to it by the President;
- (b) To adopt, prepare and implement a comprehensive and detailed development plan embodying a list of projects including but not limited to those provided in the Legislative-Executive Bases Council (LEBC) framework plan for the sound and balanced conversion of the Clark and Subic military reservations and their extensions consistent with ecological and environmental standards into other productive uses to promote the economic and social development of Central Luzon in particular and the country in general;
- (c) To encourage the active participation of the private sector in transforming the Clark and Subic military reservations and their extensions into other productive uses;
- (d) To serve as the holding company of subsidiary companies created pursuant to Section 16 of this Act and to invest in Special Economic Zones declared under Sections 12 and 15 of this Act;
- (e) To manage and operate through private sector companies developmental projects outside the jurisdiction of subsidiary companies and Special Economic Zones declared by presidential proclamations and established under this Act;
- (f) To establish a mechanism in coordination with the appropriate local government units to effect meaningful consultation regarding the plans, programs and projects within the regions where such plans, programs and/or project development are part of the conversion of the Clark and Subic military reservations and their extensions and the surrounding communities as envisioned in this Act; and

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(g) To plan, program and undertake the readjustment, relocation, or resettlement of population within the Clark and Subic military reservations and their extensions as may be deemed necessary and beneficial by the Conversion Authority, in coordination with the appropriate government agencies and local government units.

From the foregoing, it is clear that **BCDA is neither a stock nor a non-stock corporation. BCDA is a government instrumentality vested with corporate powers.** (Emphases partly in the original and partly supplied; some emphases in the original omitted and citations omitted)

The City of Taguig assessed and imposed taxes on BCDA's properties pursuant to its power to levy taxes on real property under Section 232 of the Local Government Code. A province, city or a municipality within the Metropolitan Manila Area may levy an annual ad valorem tax on real property. It bears stressing that this is not without limitation. Section 133(o) of the Local Government Code provides that the taxing powers of local government units shall not extend to the levy of taxes or fees or charges of any kind on the national government, its agencies and instrumentalities, like the BCDA.

In this case, the RTC and the CA were one in declaring that the portions of the properties of the BCDA that are leased to private entities are subject to real estate tax. Citing Section 234(a), they held that the BCDA must be held liable to pay for the real property taxes due on the properties leased and/or conveyed for the use of private entities. But the courts *a quo* are mistaken in the interpretation of the applicable provision.

Section 234(a) of the Local Government Code provides:

SEC. 234. *Exemptions from Real Property Tax.* — The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions *except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person*[.]

x x x x

Clear from the above legal provision is that a government instrumentality like the BCDA is exempt from the payment of the real property tax. The real properties owned and actually used by the

BCDA are not subject to tax. However, when the BCDA vests or transfers the beneficial use of its real properties to a taxable person, the taxable person becomes liable for the payment of the real property tax. Beneficial use means that the person or entity has the **actual use and possession** of the property.¹⁶ This is but consistent with Section 205 of the Local Government Code which reads:

SEC. 205. *Listing of Real Property in the Assessment Rolls.* – (a) In every province and city, including the municipalities within the Metropolitan Manila Area, there shall be prepared and maintained by the provincial, city or municipal assessor an assessment roll wherein shall be listed all real property, whether taxable or exempt, located within the territorial jurisdiction of the local government unit concerned. **Real property shall be listed, valued and assessed in the name of the owner or administrator, or anyone having legal interest in the property.**

x x x x

(d) Real property owned by the Republic of the Philippines, its instrumentalities and political subdivisions, **the beneficial use of which has been granted, for consideration or otherwise, to a taxable person, shall be listed, valued and assessed in the name of the possessor, grantee** or of the public entity if such property has been acquired or held for resale or lease. (Emphasis supplied)

Assessment is the act or process of determining the value of the property for purposes of taxation.¹⁷ Thus, in mandating that the assessment be made in the name of the possessor of the property, the law clearly holds liable for real property taxes the taxable person or entity which exercises the beneficial use of the property and not the Republic of the Philippines, government instrumentality or political subdivisions, that owns the property. Stated differently, it is the actual and beneficial user of the subject property that shall be directly liable for the real property taxes on the property owned by the government.¹⁸

Our pronouncement in *National Power Corp. v. Province of Quezon*¹⁹ cannot be more explicit:

The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the

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¹⁶ *Herarc Corporation Realty v. The Provincial Treasurer of Batangas*, G.R. No. 210736, September 5, 2018.

¹⁷ LOCAL GOVERNMENT CODE OF 1991, Sec. 199(f), Chapter I, Title II.

¹⁸ *Privatization and Management Office v. Court of Tax Appeals*, G.R. No. 211839, March 18, 2019.

¹⁹ 610 Phil. 456, 467-468 (2009).

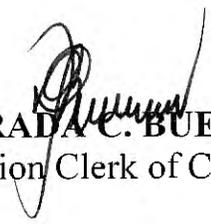
entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property. In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner. (Emphasis and citations omitted)

Given the above, all assessments issued in the name of BCDA should then be declared void. Petitioners, however, are not precluded from availing of the appropriate remedies under the law to assess and collect real property taxes from the private parties to whom BCDA may have leased and/or transferred the beneficial use of its properties.

WHEREFORE, the petition is **DENIED**. The Decision dated March 16, 2017 and the Resolution dated June 13, 2017 of the Court of Appeals in CA-G.R. SP. No. 148040 are **AFFIRMED with MODIFICATION**. All the real estate tax assessments issued by the Local Government of Taguig City in the name of Bases Conversion and Development Authority are hereby declared **VOID**.

SO ORDERED.” *Hernando, J., designated as Additional Member in lieu of Lazaro-Javier, J., per Raffle dated December 4, 2019.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *pk al 29*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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