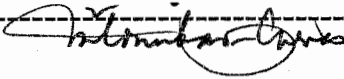


EN BANC

G.R. No. 211299 – LIGHT RAILWAY TRANSIT AUTHORITY,
Petitioner, v. CITY OF PASAY, represented by the CITY TREASURER
and the CITY ASSESSOR, *Respondent*.

Promulgated:

June 28, 2022

X-----X


CONCURRING OPINION

LEONEN, J.:

I concur in the *ponencia*. In line with the parameters set in *Manila International Airport Authority v. Court of Appeals*,¹ and as squarely held in *Light Rail Transit Authority v. Quezon City*,² petitioner Light Rail Transit Authority is a government instrumentality with corporate powers. Its properties are of public dominion, which are exempt from real property tax.

I

Before delving on the main issue, I must point out that the Court of Appeals' Decision and Resolution are void for lack of jurisdiction. Petitioner filed its appeal from the Regional Trial Court's Decision in 2013,³ after Section 7 of Republic Act No. 1125 had been amended by Republic Act No. 9282 in 2004. Section 7, as amended, enumerates the cases over which the Court of Tax Appeals exercises jurisdiction:

SECTION 7. *Jurisdiction*. — The Court of Tax Appeals shall exercise:

(a) *Exclusive appellate jurisdiction* to review by appeal, as herein provided:

- (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
- (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or

¹ 528 Phil. 181 (2006) [Per J. Carpio, En Banc].

² G.R. No. 221626, October 9, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66014>> [Per J. Lazaro-Javier, Second Division].

³ *Ponencia*, p. 3.

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other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

- (3) *Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;*
- (4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;
- (5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;
- (6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;
- (7) Decisions of the Secretary of Trade and Industry, in the case of non-agricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties. (Emphasis supplied)

Section 7 provides that the Court of Tax Appeals has exclusive appellate jurisdiction over local tax cases decided by a regional trial court. Local tax cases include cases involving real property tax,⁴ as in this case. Hence, petitioner should have filed the appeal before the Court of Tax Appeals, not the Court of Appeals.

Generally, the filing of appeal before the wrong court does not toll the period to appeal,⁵ and the trial court's decision consequently becomes final and executory. Nonetheless, considering the importance of the issues involved and in the interest of justice, this Court may proceed to resolve the issue in this case to correct a grave error committed by the Regional Trial Court in dismissing the case before it.

⁴ *City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 529 (2014) [Per J. Leonen, Second Division].

⁵ *Id.* at 533.

Petitioner does not question the reasonableness or excessiveness of the amount assessed. What it challenges is the assessor's authority and power to impose the assessment, and the treasurer's authority and power to collect the real property tax. Its main contention is that it is a government instrumentality, which is exempt from real property tax. Hence, pursuant to this Court's ruling in *Ty v. Trampe*,⁶ the Regional Trial Court should have given due course to petitioner's resort to judicial action.

II

Petitioner was created in 1980 under Executive Order No. 603,⁷ to be "primarily responsible for the construction, operation, maintenance, and/or lease of light rail transit systems"⁸ in the country. These light rail transit systems were envisioned to alleviate traffic in a congested metropolitan area within the context of rational land use planning.⁹

Although created as a corporate body,¹⁰ it does not qualify strictly as a government-owned or controlled corporation as defined under Section 2(13) of the Administrative Code, which states:

SECTION 2. General Terms Defined. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

.....

(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) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

By its definition, a government-owned or controlled corporation is a stock or non-stock corporation. Here, however, following the parameters of *Manila International Airport Authority v. Court of Appeals*,¹¹ petitioner cannot be considered a stock corporation because it has no capital stock

⁶ 321 Phil. 81 (1995) [Per J. Panganiban, En Banc].

⁷ As amended by Executive Order No. 830 (1982) and Executive Order No. 210 (1987).

⁸ Executive Order No. 603 (1980), sec. 2.

⁹ Executive Order No. 603 (1980), 3rd Whereas Clause.

¹⁰ Executive Order No. 603 (1980), sec. 2.

¹¹ 528 Phil. 181 (2006) [Per J. Carpio, En Banc].

divided into shares, no stockholders, and no voting shares. Section 15 of Executive Order No. 603 provides:

ARTICLE 6
Capitalization and Financing

SECTION 15. *Capitalization.* — The Authority shall have an authorized capital of FIVE HUNDRED MILLION PESOS (P500,000,000.00)¹² which shall be fully subscribed by the Republic of the Philippines and other government institutions, corporations, instrumentalities, and agencies, whether national or local, within the framework of their respective charters. The authorized capital shall be used for the purpose of financing the Authority's business transactions and shall be paid as follows:

- (1) The sum of TWO HUNDRED MILLION PESOS (P200,000,000.00) to be taken from the general fund in the National Treasury out of appropriations available for the purpose.
- (2) The balance of the authorized capital amounting to THREE HUNDRED MILLION PESOS (P300,000,000.00) shall be released from the National Treasury out of appropriations available for the purpose, or subscribed and paid by government institutions as may be authorized pursuant to this Section, with the approval of the President.

SECTION 16. *Initial Debt.* — The Authority shall be indebted to the Government, or any of its ministries, bureaus, agencies or offices, in a sum equal to all expenditures, directly or indirectly advanced or incurred by the Government or any of its ministries, bureaus, agencies or offices, in relation to the investigation, planning and/or construction of the light rail transit system. The Minister of Finance shall, upon prior notice, determine the accuracy and reasonableness of such advances or indebtedness.

Neither can petitioner be a non-stock corporation. It has no members, and it is not 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[.]"¹³ Petitioner was organized to build and operate a light rail transit system for public use.

More, to qualify as a government-owned or controlled corporation, an agency must satisfy the tests of common good and economic viability as prescribed in Article XII, Section 16 of the Constitution, which states:

SECTION 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created

¹² Increased to P3 billion by Executive Order No. 830 (1982), sec. 1.

¹³ REV. CORP. CODE, sec. 87.

or established by special charters in the interest of the common good and subject to the test of economic viability.

The creation of petitioner was undoubtedly for the common good—to construct and operate the light rail transport system in the country to address the public need for “safe, fast[,] and reliable mobility[.]”¹⁴ However, the requirement of economic viability is unnecessary because the light rail transport system was designed as a public utility, not as a profit center. Petitioner is merely mandated to prudently conduct its business and to ensure that its revenues are “at least sufficient to meet its expenditures.”¹⁵

Petitioner is more properly classified as a government instrumentality, defined under the Administrative Code as “any agency of the [n]ational [g]overnment, *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.”¹⁶

Petitioner is an attached agency of the Department of Transportation¹⁷ for the purpose of policy and program coordination. Book IV, Chapter 7, Section 38(3)(a) of the Administrative Code defines “attachment”:

SECTION 38. Definition of Administrative Relationship. — Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

....

- (3) Attachment. — (a) *This refers to the lateral relationship between the department or its equivalent and the attached agency or corporation for purposes of policy and program coordination.* The coordination may be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter; having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of the programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency[.] (Emphasis supplied)

¹⁴ Executive Order No. 603 (1980), 2nd Whereas Clause.

¹⁵ Executive Order No. 603 (1980), sec. 2.

¹⁶ ADM. CODE, sec. 2(10).

¹⁷ Executive Order No. 603 (1980), sec. 2.

An attached agency enjoys “a larger measure of independence” as distinguished from one under departmental supervision and control or administrative supervision. In *Beja, Sr. v. Court of Appeals*:¹⁸

An attached agency has a larger measure of independence from the Department to which it is attached than one which is under departmental supervision and control or administrative supervision. This is borne out by the “lateral relationship” between the Department and the attached agency. The attachment is merely for “policy and program coordination.” With respect to administrative matters, the independence of an attached agency from Departmental control and supervision is further reinforced by the fact that even an agency under a Department's administrative supervision is free from Departmental interference with respect to appointments and other personnel actions “in accordance with the decentralization of personnel functions” under the Administrative Code of 1987. Moreover, the Administrative Code explicitly provides that Chapter 8 of Book IV on supervision and control shall not apply to chartered institutions attached to a Department.¹⁹ (Citations omitted)

As an attached agency of the Department of Transportation, petitioner's nine-member board of directors is chaired by the Transportation Secretary.²⁰ The board provides policy guidance in developing and operating a light rail transit system;²¹ “cooperate[s], coordinate[s], and exchange[s] such information, studies, and reports” with other agencies and instrumentalities to achieve its purposes;²² reports annually to the president on the status of its operations and finances;²³ and recommends the establishment of other light rail transit systems in the country.²⁴

To accomplish its function of constructing, operating, and maintaining the country's light rail transit system, petitioner is endowed with the governmental power of eminent domain and corporate attributes, functions, and powers:

ARTICLE 2 Corporate Powers

SECTION 4. *General Powers.* — The Authority, through the Board of Directors, may undertake such action as are expedient for or conducive to the attainment of the purposes and objectives of the Authority, or of any purpose reasonably incidental to or consequential upon any of these purposes. As such, the Authority shall have the following general powers:

- (1) To have continuous succession under its corporate name, until otherwise provided by law;
- (2) To prescribe, amend, and/or repeal its by-laws;

¹⁸ G.R. No. 97149, March 31, 1992 [Per J. Romero, En Banc].

¹⁹ Id.

²⁰ Executive Order No. 210 (1987), sec. 1.

²¹ Executive Order No. 603 (1980), sec. 5(1).

²² Executive Order No. 603 (1980), sec. 5(6).

²³ Executive Order No. 603 (1980), sec. 5(11).

²⁴ Executive Order No. 603 (1980), sec. 5(10).

- (3) To adopt and use a seal and alter it at its pleasure;
- (4) To sue and be sued;
- (5) To contract any obligation or enter into, assign or accept the assignment of, and vary or rescind any agreement, contract of obligation necessary or incidental to the proper management of the Authority;
- (6) To borrow funds from any source, private or public, foreign or domestic, and to issue bonds and other evidence of indebtedness, the payment of which shall be guaranteed by the National Government, subject to pertinent borrowing law;
- (7) To acquire, receive, take, and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust for any of its purposes, from foreign and domestic sources, any assets, grant or property, real or personal, subject to such limitations as are provided in existing laws; to convey or dispose of such assets, grants, or properties, movable and immovable; and invest and/or reinvest such proceeds and deal with and expand its assets and income in such a manner as will best promote its objectives;
- (8) To improve, develop or alter any property held by it;
- (9) To carry on any business, either alone or in partnership with any other person or persons;
- (10) To employ an agent or contractor or perform such things as the Authority may perform;
- (11) To exercise the right of eminent domain, whenever the Authority deems it necessary for the attainment of its objectives;
- (12) To prescribe rules and regulations in the conduct of its general business as well as to fix and implement the terms and conditions of its related activities;
- (13) To determine the fares payable by persons travelling on the light rail system, in consultation with the Board of Transportation;
- (14) To establish, operate, and maintain branches or field offices when required by the exigencies of its business;
- (15) To determine its organizational structure and the number, positions and salaries of its personnel, subject to pertinent organization and compensation law; and
- (16) To exercise such powers and perform such duties as may be necessary to carry out the business and purposes for which the Authority was established or which, from time to time, may be declared by the Board of Directors to be necessary, useful, incidental or auxiliary to accomplish such purposes; and generally, to exercise all powers of an Authority under the Corporation Law that are not inconsistent with the provisions of this Order, or with orders pertaining to government corporate budgeting, organization, borrowing, or compensation.

Petitioner enjoys operational autonomy, but it remains part of the national government machinery, although not integrated within the departmental framework.

Manila International Airport Authority holds that “[w]hen 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.”²⁵

In sum, petitioner is not a government-owned or controlled corporation, but a government instrumentality with corporate powers. Being an instrumentality of the national government, it cannot be taxed by local government units.²⁶

The removal of real property tax exemption privileges for government-owned or controlled corporations under the last paragraph of Section 234 of the Local Government Code,²⁷ therefore, does not apply to petitioner.

III

Under Section 234(a) of the Local Government Code, real properties owned by the Republic or any of its political subdivisions are exempt from real property tax, except when their beneficial use has been granted, for consideration or otherwise, to a taxable person.

Properties owned by the State are either properties of public dominion or patrimonial properties. Article 420 of the Civil Code identifies properties of public dominion:

ARTICLE 420. The following things are property of public dominion:

- (1) Those intended for public use, such as roads, canals, rivers, torrents, *ports* and bridges *constructed by the State*, banks, shores, roadsteads, and others of similar character;
- (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. (Emphasis supplied)

²⁵ *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 212 (2006) [Per J. Carpio, En Banc].

²⁶ LOCAL GOVT. CODE, sec. 133(o) provides:
SECTION 133. Common Limitations on the Taxing Powers of Local Government Units. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

.....
(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

²⁷ LOCAL GOVT. CODE, sec. 234 provides:

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

.....
Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, *including all government-owned or -controlled corporations* are hereby withdrawn upon the effectivity of this Code. (Emphasis supplied)

All other properties of the State that are not of the character stated in Article 420 are classified as patrimonial properties.²⁸

In *Manila International Airport Authority*, this Court held that the Manila International Airport Authority's airport lands and buildings are intended for public use, and therefore, are properties of public dominion. Its collection of terminal fees and other charges from the public does not remove the character of the airport lands and buildings as properties for public use:

No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code, like "roads, canals, rivers, torrents, ports and bridges constructed by the State," are owned by the State. The term "ports" includes seaports and airports. The MIAA Airport Lands and Buildings constitute a "port" constructed by the State. Under Article 420 of the Civil Code, the MIAA Airport Lands and Buildings are properties of public dominion and thus owned by the State or the Republic of the Philippines.

The Airport Lands and Buildings are devoted to public use because they are used by the public for international and domestic travel and transportation. The fact that the MIAA collects terminal fees and other charges from the public does not remove the character of the Airport Lands and Buildings as properties for public use. The operation by the government of a tollway does not change the character of the road as one for public use. Someone must pay for the maintenance of the road, either the public indirectly through the taxes they pay the government, or only those among the public who actually use the road through the toll fees they pay upon using the road. The tollway system is even a more efficient and equitable manner of taxing the public for the maintenance of public roads.

The charging of fees to the public does not determine the character of the property whether it is of public dominion or not. Article 420 of the Civil Code defines property of public dominion as one "intended for public use." Even if the government collects toll fees, the road is still "intended for public use" if anyone can use the road under the same terms and conditions as the rest of the public. The charging of fees, the limitation on the kind of vehicles that can use the road, the speed restrictions and other conditions for the use of the road do not affect the public character of the road.²⁹

Likewise, in this case, petitioner's lands, buildings, machineries, carriageways, and passenger terminal stations are intended for public use, and thus, are properties of public dominion. The light rail transit system was constructed to provide an "efficient mass transportation system"³⁰ to the public. That petitioner imposes fares on persons traveling on the light rail transit system does not detract from its character as one for public use. Neither does petitioner entering into partnership agreements with private parties for

²⁸ CIVIL CODE, art. 421.

²⁹ *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 216-217 (2006) [Per J. Carpio, En Banc].

³⁰ Executive Order No. 603 (1980), 2nd Whereas Clause.

the system's management and operation change its properties' characterization as properties of public dominion, for public use or public service.³¹

As properties of public dominion, the lands, buildings, machineries, carriageways, and passenger terminal stations are held by petitioner in trust for the Republic, and are exempt from real property taxes. As explained in *Manila International Airport Authority*:


This exemption [under Section 234 (o) of the Local Government Code] should be read in relation with Section 133(o) of the same Code, which prohibits local governments from imposing “[t]axes, fees or charges of any kind on the National Government, its agencies and instrumentalities” The real properties owned by the Republic are titled either in the name of the Republic itself or in the name of agencies or instrumentalities of the National Government. The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.

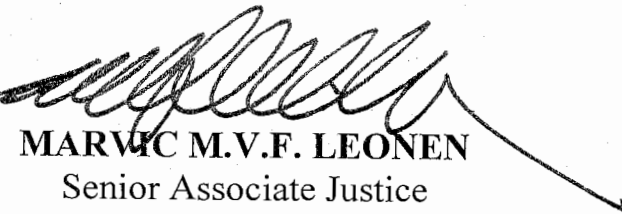
The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption. Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the “beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.” MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax.³²

However, portions of the lands and buildings that petitioner rented out to private parties for their beneficial use are subject to real property tax, per the exception clause in Section 234(a) of the Local Government Code.

ACCORDINGLY, I vote to GRANT the Petition.

CERTIFIED TRUE COPY


MARIA LUISA M. SANTILLA
 Deputy Clerk of Court and
 Executive Officer
 OCC-En Banc, Supreme Court


MARVIC M.V.F. LEONEN
 Senior Associate Justice

³¹ *Light Rail Transit Authority v. Quezon City*, G.R. No. 221626, October 9, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66014>> [Per J. Lazaro-Javier, Second Division].

³² *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 224–225 (2006) [Per J. Carpio, En Banc].