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SPECIAL THIRD DIVISION

[G.R. No. 203655, September 07, 2015]

SM LAND, INC., PETITIONER, VS. BASES CONVERSION AND DEVELOPMENT AUTHORITY AND ARNEL PACIANO D. CASANOVA, ESQ., IN HIS OFFICIAL CAPACITY AS PRESIDENT AND CEO OF BCDA, RESPONDENTS.

R E S O L U T I O N

VELASCO JR., J.:

Once again, respondent-movants Bases Conversion Development Authority (BCDA) and Arnel Paciano D. Casanova, Esq. (Casanova) urge this Court to reconsider its August 13, 2014 Decision[1] in the case at bar. In their Motion for Leave to file Second Motion for Reconsideration and to Admit the Attached Second Motion for Reconsideration (With Motion for the Court en banc to Take Cognizance of this Case and/to Set the Case for Oral Argument Before the Court en banc),[2] respondent-movants remain adamant in claiming that the assailed rulings of the Court would cause unwarranted and irremediable injury to the government, specifically to its major beneficiaries, the Department of National Defense (DND) and the Armed Forces of the Philippines (AFP).[3]

The motion fails to persuade.

The instant recourse partakes the nature of a second motion for reconsideration, a **prohibited pleading** under Section 2, Rule 56,[4] in relation to Sec. 2, Rule 52 of the Rules of Court. The rule categorically states: "no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." The rationale behind the rule is explained in *Manila Electric Company v. Barlis,* thusly:

> The propriety or acceptability of such a second motion for reconsideration is not contingent upon the averment of "*new" grounds* to assail the judgment, i.e.. grounds other than those theretofore presented and rejected. Otherwise, attainment of finality of a judgment might be staved off indefinitely, depending on the party's ingeniousness or cleverness in conceiving and formulating "additional flaws" or "newly discovered errors'" therein, or thinking up some injury or prejudice to the rights of the movant for reconsideration. "Piece-meal1" impugnation of a judgment by successive motions for reconsideration is anathema, being precluded by the salutary axiom that a party seeking the setting aside of a judgment, act or proceeding must set out in his motion all the grounds therefor, and those not so included are deemed waived and cease to be available for subsequent motions.

> For all litigation must come to an end at some point, in accordance with established rules of procedure and jurisprudence. As a matter of practice and policy, courts must dispose of every case as promptly as possible; and in fulfillment of their role in the administration of justice, they should brook no delay in the termination of cases by stratagems or maneuverings of parties or their lawyers...[5]

Indeed, all cases are to eventually reach a binding conclusion and must not remain indefinitely afloat in limbo. Otherwise, the exercise of judicial power would be for naught if court decisions can effectively be thwarted at every turn by dilatory tactics that prevent the said rulings from attaining finality. Hence, the Court has taken a conservative stance when entertaining second motions for reconsideration, allowing only those grounded on extraordinarily persuasive reasons and, even then, only upon express leave first obtained.[6] As proscribed under Sec. 3, Rule 15 of the Internal Rules of the Supreme Court:

> SEC. 3. *Second motion for reconsideration*. - **The Court shall not entertain a second motion for reconsideration**, and any exception to this rule **can only be granted in the higher interest of justice** by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be considered becomes final by operation of law or by the Court's declaration.
>
> **In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc***.[7]
> (emphasis added)

Succinctly put, the concurrence of the following elements are required for a second motion for reconsideration to be entertained:

1. The motion should satisfactorily explain why granting the same would be in the higher interest of justice;
2. The motion must be made before the ruling sought to be reconsidered attains finality;
3. If the ruling sought to be reconsidered was rendered by the Court through one of its Divisions, at least three (3) members of the said Division should vote to elevate the case to the Court En Banc; and
4. The favorable vote of at least two-thirds of the Court En Banc's actual membership must be mustered for the second motion for reconsideration to be granted.

Unfortunately for respondent-movants, the foregoing requirements do not obtain in the case at bench. To begin with, there are no extraordinarily persuasive reasons "in

the higher interest of justice" on which the instant second motion for reconsideration is anchored on. The enumerated grounds for the second motion for reconsideration say as much:

GROUNDS[8]

I

THE AGREEMENT BETWEEN SMLI AND BCDA WAS NEVER PERFECTED TO COMPEL BCDA TO COMPLETE THE COMPETITIVE CHALLENGE AS THERE WAS NO MEETING OF THE MINDS.

II

THE GOVERNMENT RESERVATION TO CANCEL THE COMPETITIVE CHALLENGE IS A POLICY DECISION AND REMAINS ELECTIVE IN THE ENTIRE PROCEEDINGS AND BINDING TO ALL PRIVATE SECTOR ENTITIES INCLUDING SMLI.

III

THE DECISION TO TERMINATE THE COMPETITIVE CHALLENGE IS A POLICY AND ECONOMIC DECISION. MANDAMUS WILL THEREFORE NOT LIE.

IV

ESTOPPEL CANNOT OPERATE TO PREJUDICE THE GOVERNMENT.

V

THE PERCEIVED GOVERNMENT LOSSES IS NOT IMAGINED BUT REAL.

Based on the records, the second motion for reconsideration is a mere rehash, if not a reiteration, of respondent-movants' previous arguments and submissions, which have amply been addressed by the Court in its August 13, 2014 Decision, and effectively affirmed at length in its March 18, 2015 Resolution.[9]

To recapitulate, there exists between SMLI and BCDA a perfected agreement, embodied in the Certification of Successful Negotiations, upon which certain rights and obligations spring forth, including the commencement of activities for the solicitation for comparative proposals.[10] As evinced in the Certification of Successful Negotiation:

NOW, THEREFORE, for and in consideration of the foregoing, **BCDA and SMLI have, after successful negotiations** pursuant to Stage II of Annex C x x x. reached an agreement on the purpose, terms and conditions on the JV development of the subject property, which shall become the terms for the Competitive Challenge pursuant to Annex C of

> the Guidelines, x x x.[11]
>
> x x x x
>
> **BCDA and SMLI have agreed to subject SMLI's Original Proposal to Competitive Challenge** pursuant to Annex C - Detailed Guidelines for Competitive Challenge Procedure for Public-Private Joint Ventures of the NEDA .TV guidelines, which competitive challenge process shall be immediately implemented following the Terms of Reference (TOR) Volumes 1 and 2.[12] (emphasis added)

Under the agreement and the National Economic Development Authority Joint Venture Guidelines (NEDA JV Guidelines), the BCDA is duty-bound to proceed with and complete the competitive challenge after the detailed negotiations proved successful. Thus, the Court found that BCDA gravely abused its discretion for having acted arbitrarily and contrary to its contractual commitment to SMLI, to the damage and prejudice of the latter, when it cancelled the competitive challenge prior to its completion.[13]

Respondent-movants' reliance on the Terms of Reference (TOR) provision on Qualifications and Waivers[14] to cancel the Swiss Challenge is misplaced for the provision, as couched, focuses only on the eligibility requirements for Private Sector Entities (PSEs) who wish to challenge SMLI's proposal, and not to the Swiss Challenge in its entirety.[15] To rule otherwise - that the TOR allows the BCDA to cancel the competitive challenge at any time - would contravene the NEDA JV Guidelines, which has the force and effect of law.[16]

Respondent-movants cannot also find solace in the dictum that the State is never be barred by estoppel by the perceived mistakes or errors of its officials or agents.[17] As jurisprudence elucidates, the doctrine is subject to exceptions, *viz*:

> Estoppels against the public are little favored. They should not be invoked except in a rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations x x x, the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.[18]

Here, despite BCDA's repeated assurances that it would respect SMLFs rights as an original proponent, and after putting the latter to considerable trouble and expense, BCDA went back on its word and instead ultimately cancelled its agreement with SMLI.[19] BCDA's capriciousness became all the more evident in its conflicting statements as regards whether or not SMLI's proposal would be advantageous to the government.[20] The alleged dubiousness of the proceeding that led to the

perfection of the agreement cannot also be invoked as a ground to cancel the contract for to rule that irregularities marred the actions of BCDA's former board and officers, as respondent-movant would have us to believe, would be tantamount to prematurely exposing them, who are non-parties to this case, to potential administrative liability without due process of law.[21]

Respondent-movants would then asseverate that to proceed with the competitive challenge starting at the floor price of P38,500.00 per square meter is patently unjust and grossly disadvantageous to the government since the property in issue is allegedly appraised at P78,000.00 per square meter.[22] However, this alleged adverse economic impact on the government, in finding for SMLI, remains speculative. To clarify, Our ruling did not award the project in petitioner's favor but merely ordered that SMLI's proposal be subjected to a competitive challenge. And lest it be misunderstood, the perceived low floor price for the project, based on SMLI's proposal, remains just that - a floor price. Without first subjecting SMLI's proposal to a competitive challenge, no bid can yet be obtained from private sector entities and, corollarily, no determination can be made at present as to whether or not the final bid price for the project is indeed below the property's fair market value.[23]

Overall, the foregoing goes to show that the BCDA failed to establish a justifiable reason for its refusal to proceed with the competitive challenge.[24] We are left to believe that the cancellation of the competitive challenge, in violation not only of the agreement between the parties but also of the NEDA JV Guidelines, was only due to BCDA's whims and caprices, and is correctible by the extraordinary writ of certiorari.

With the foregoing disquisitions, respondent-movants' second motion for reconsideration, as its first, is totally bereft of merit. There exists no argument "in the higher interest of justice" that would convincingly compel this Court to even admit the prohibited pleading. It also then goes without saying that this Division does not find cogent reason to elevate the matter to the Court *en banc*.

Furthermore, it is well to note that the Court's ruling in this case has already attained finality and an Entry of Judgment[25] has correspondingly been issued. The Court, therefore, no longer has jurisdiction to modify the Decision granting SMLI's petition for its finality and executoriness consequently rendered it immutable and unalterable.[26] As elucidated in *Mocorro, Jr. v. Ramirez*:

> This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of