659 Phil. 104

THIRD DIVISION

[G.R. No. 159402, February 23, 2011]

AIR TRANSPORTATION OFFICE, PETITIONER, VS. SPOUSES DAVID* AND ELISEA RAMOS, RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

The State's immunity from suit does not extend to the petitioner because it is an agency of the State engaged in an enterprise that is far from being the State's exclusive prerogative.

Under challenge is the decision promulgated on May 14, 2003,[1] by which the Court of Appeals (CA) affirmed with modification the decision rendered on February 21, 2001 by the Regional Trial Court, Branch 61 (RTC), in Baguio City in favor of the respondents.[2]

Antecedents

Spouses David and Elisea Ramos (respondents) discovered that a portion of their land registered under Transfer Certificate of Title No. T-58894 of the Baguio City land records with an area of 985 square meters, more or less, was being used as part of the runway and running shoulder of the Loakan Airport being operated by petitioner Air Transportation Office (ATO). On August 11, 1995, the respondents agreed after negotiations to convey the affected portion by deed of sale to the ATO in consideration of the amount of P778,150.00. However, the ATO failed to pay despite repeated verbal and written demands.

Thus, on April 29, 1998, the respondents filed an action for collection against the ATO and some of its officials in the RTC (docketed as Civil Case No. 4017-R and entitled *Spouses David and Elisea Ramos v. Air Transportation Office, Capt. Panfilo Villaruel, Gen. Carlos Tanega, and Mr. Cesar de Jesus*).

In their answer, the ATO and its co-defendants invoked as an affirmative defense the issuance of Proclamation No. 1358, whereby President Marcos had reserved certain parcels of land that included the respondents' affected portion for use of the Loakan Airport. They asserted that the RTC had no jurisdiction to entertain the action without the State's consent considering that the deed of sale had been entered into in the performance of governmental functions.

On November 10, 1998, the RTC denied the ATO's motion for a preliminary hearing of the affirmative defense.

After the RTC likewise denied the ATO's motion for reconsideration on December 10, 1998, the ATO commenced a special civil action for *certiorari* in the CA to assail the

RTC's orders. The CA dismissed the petition for *certiorari*, however, upon its finding that the assailed orders were not tainted with grave abuse of discretion.[3]

Subsequently, February 21, 2001, the RTC rendered its decision on the merits,[4] disposing:

> WHEREFORE, the judgment is rendered ORDERING the defendant Air Transportation Office to pay the plaintiffs DAVID and ELISEA RAMOS the following: (1) The amount of P778,150.00 being the value of the parcel of land appropriated by the defendant ATO as embodied in the Deed of Sale, plus an annual interest of 12% from August 11, 1995, the date of the Deed of Sale until fully paid; (2) The amount of P150,000.00 by way of moral damages and P150,000.00 as exemplary damages; (3) the amount of P50,000.00 by way of attorney's fees plus P15,000.00 representing the 10, more or less, court appearances of plaintiff's counsel; (4) The costs of this suit.
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> SO ORDERED.

In due course, the ATO appealed to the CA, which affirmed the RTC's decision on May 14, 2003,[5] *viz*:

> IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby AFFIRMED, with MODIFICATION that the awarded cost therein is deleted, while that of moral and exemplary damages is reduced to P30,000.00 each, and attorney's fees is lowered to P10,000.00.
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> No cost.
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> SO ORDERED**.**

Hence, this appeal by petition for review on *certiorari*.

Issue

The only issue presented for resolution is whether the ATO could be sued without the State's consent.

Ruling

The petition for review has no merit.

The immunity of the State from suit, known also as the doctrine of sovereign immunity or non-suability of the State, is expressly provided in Article XVI of the 1987 Constitution, *viz*:

> Section 3. The State may not be sued without its consent.

The immunity from suit is based on the political truism that the State, as a sovereign, can do no wrong. Moreover, as the eminent Justice Holmes said in *Kawananakoa v. Polyblank:*[6]

> The territory [of Hawaii], of course, could waive its exemption (Smith v. Reeves, 178 US 436, 44 L ed 1140, 20 Sup. Ct. Rep. 919), and it took no objection to the proceedings in the cases cited if it could have done so. xxx But in the case at bar it did object, and the question raised is whether the plaintiffs were bound to yield. Some doubts have been expressed as to the source of the immunity of a sovereign power from suit without its own permission, but the answer has been public property since before the days of Hobbes. *Leviathan*, chap. 26, 2. **A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.** "*Car on peut bien recevoir loy d'autruy, mais il est impossible par nature de se donner loy.*" Bodin, *Republique*, 1, chap. 8, ed. 1629, p. 132; Sir John Eliot, *De Jure Maiestatis*, chap. 3. *Nemo suo statuto ligatur necessitative.* Baldus, *De Leg. et Const. Digna Vox*, 2. ed. 1496, fol. 51b, ed. 1539, fol. 61.[7]

Practical considerations dictate the establishment of an immunity from suit in favor of the State. Otherwise, and the State is suable at the instance of every other individual, government service may be severely obstructed and public safety endangered because of the number of suits that the State has to defend against.[8] Several justifications have been offered to support the adoption of the doctrine in the Philippines, but that offered in *Providence Washington Insurance Co. v. Republic of the Philippines*[9] is "the most acceptable explanation," according to Father Bernas, a recognized commentator on Constitutional Law,[10] to wit:

> [A] continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused private parties, the loss of governmental efficiency and the obstacle to the performance of its multifarious functions are far greater if such a fundamental principle were abandoned and the availability of judicial remedy were not thus restricted. With the well-known propensity on the part of our people to go to court, at the least provocation, the loss of time and energy required to defend against law suits, in the absence of such a basic principle that constitutes such an effective obstacle, could very well be imagined.

An unincorporated government agency without any separate juridical personality of its own enjoys immunity from suit because it is invested with an inherent power of sovereignty. Accordingly, a claim for damages against the agency cannot prosper; otherwise, the doctrine of sovereign immunity is violated.[11] However, the need to distinguish between an unincorporated government agency performing governmental function and one performing proprietary functions has arisen. The

immunity has been upheld in favor of the former because its function is governmental or incidental to such function;[12] it has not been upheld in favor of the latter whose function was not in pursuit of a necessary function of government but was essentially a business.[13]

Should the doctrine of sovereignty immunity or non-suability of the State be extended to the ATO?

In its challenged decision,[14] the CA answered in the negative, holding:

> On the first assignment of error, appellants seek to impress upon Us that the subject contract of sale partook of a governmental character. *Apropos,* the lower court erred in applying the High Court's ruling in *National Airports Corporation vs. Teodoro* (*91 Phil. 203* [*1952*]), arguing that in *Teodoro*, the matter involved the collection of landing and parking fees which is a proprietary function, while the case at bar involves the maintenance and operation of aircraft and air navigational facilities and services which are governmental functions.
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> We are not persuaded.
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> Contrary to appellants' conclusions, it was not merely the collection of landing and parking fees which was declared as proprietary in nature by the High Court in *Teodoro*, but management and maintenance of airport operations as a whole, as well. Thus, in the much later case of *Civil Aeronautics Administration vs. Court of Appeals (167 SCRA 28 [1988]),* the Supreme Court, reiterating the pronouncements laid down in *Teodoro*, declared that the CAA (predecessor of *ATO*) is an agency not immune from suit, it being engaged in functions pertaining to a private entity. It went on to explain in this wise:
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> > The Civil Aeronautics Administration comes under the category of a private entity. Although not a body corporate it was created, like the National Airports Corporation, not to maintain a necessary function of government, but to run what is essentially a business, even if revenues be not its prime objective but rather the promotion of travel and the convenience of the travelling public. It is engaged in an enterprise which, far from being the exclusive prerogative of state, may, more than the construction of public roads, be undertaken by private concerns. [National Airports Corp. v. Teodoro, *supra,* p. 207.]
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> > x x x
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> > True, the law prevailing in 1952 when the *Teodoro* case was promulgated was Exec. Order 365 (Reorganizing the Civil Aeronautics Administration and Abolishing the National Airports Corporation). Republic Act No. 776 (Civil Aeronautics

Act of the Philippines), subsequently enacted on June 20, 1952, did not alter the character of the CAA's objectives under Exec. Order 365. The pertinent provisions cited in the *Teodoro* case, particularly Secs. 3 and 4 of Exec. Order 365, which led the Court to consider the CAA in the category of a private entity were retained substantially in Republic Act 776, Sec. 32(24) and (25). Said Act provides:

Sec. 32. *Powers and Duties of the Administrator.* - Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:

x x x

(24) *To administer, operate, manage, control, maintain and develop the Manila International Airport and all government-owned aerodromes* except those controlled or operated by the Armed Forces of the Philippines including such powers and duties as: (a) to plan, design, construct, equip, expand, improve, repair or alter aerodromes or such structures, improvement or air navigation facilities; (b) to enter into, make and execute contracts of any kind with any person, firm, or public or private corporation or entity; ...

(25) To determine, fix, impose, collect and receive landing fees, parking space fees, royalties on sales or deliveries, direct or indirect, to any aircraft for its use of aviation gasoline, oil and lubricants, spare parts, accessories and supplies, tools, other royalties, fees or rentals for the use of any of the property under its management and control.

x x x

From the foregoing, it can be seen that the CAA is tasked with private or non-governmental functions which operate to remove it from the purview of the rule on State immunity from suit. For the correct rule as set forth in the *Teodoro* case states:

x x x

Not all government entities, whether corporate or non-corporate, are immune from suits. *Immunity from suits is determined by the character of the objects for which the entity was organized.* The rule is thus stated in Corpus Juris:

> Suits against State agencies with relation to matters in which they have assumed to act in private or non-governmental capacity, and various suits against certain corporations created by the