

## EN BANC

**[ G.R. No. 155832, December 07, 2010 ]**

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS.  
SANDIGANBAYAN (FOURTH DIVISION) AND IMELDA R. MARCOS,  
RESPONDENTS.**

### **D E C I S I O N**

**ABAD, J.:**

This case involves the validity of a sequestration order signed, not by the Presidential Commission on Good Government (PCGG) Commissioners, but by designated agents and issued prior to the effectivity of the PCGG Rules and Regulations.

#### **The Facts and the Case**

On February 28, 1986, immediately after assuming power, President Corazon C. Aquino issued Executive Order 1, creating the PCGG. She empowered the PCGG to recover all ill-gotten wealth allegedly amassed by former President Ferdinand E. Marcos, his family, and close associates during his 20-year regime.

On March 13, 1986 PCGG Commissioner Raul Daza gave lawyers Jose Tan Ramirez (Ramirez) and Ben Abella (Abella), PCGG Region VIII Task Force Head and Co-Deputy, respectively, written authority to sequester any property, documents, money, and other assets in Leyte, belonging to former First Lady Imelda R. Marcos (Mrs. Marcos), Benjamin Romualdez, Alfredo Romualdez, and their agents.

On March 18, 1986, acting on the authority given them, Attys. Ramirez and Abella issued a sequestration order against the Marcoses' Olot, Tolosa, Leyte property (Olot Resthouse), a 17-room affair sitting on 42 hectares of beachfront land, with a golf course, swimming pool, cottages, a pelota court, and a pavilion.

On July 16, 1987 petitioner Republic of the Philippines, represented by the PCGG, filed a complaint for recovery of ill-gotten wealth against President Marcos and his wife, respondent Mrs. Marcos, before the Sandiganbayan, docketed as Civil Case 0002, which complaint was amended a number of times.<sup>[1]</sup> Mrs. Marcos then filed her answer to the third amended complaint.<sup>[2]</sup>

On August 10, 2001 Mrs. Marcos filed a motion to quash the March 18, 1986 sequestration order against the Olot Resthouse,<sup>[3]</sup> claiming that such order, issued only by Attys. Ramirez and Abella, was void for failing to observe Sec. 3 of the PCGG Rules and Regulations.<sup>[4]</sup> The rules required the signatures of at least two PCGG Commissioners. The Republic opposed<sup>[5]</sup> the motion, claiming that Mrs. Marcos was estopped from questioning the sequestration order since by her acts, like seeking

PCGG permission to repair the resthouse and entertain guests there, she had conceded the validity of the sequestration; that she failed to exhaust administrative remedies by first seeking its lifting as provided in the PCGG rules; that the rule requiring the signatures of at least two PCGG Commissioners did not yet exist when the Olot Resthouse was sequestered; and that she intended her motion to quash to delay the proceedings against her.

Mrs. Marcos filed a Supplement<sup>[6]</sup> to her earlier motion, claiming no *prima facie* evidence that the Olot Resthouse constituted ill-gotten wealth. She pointed out that the property is the ancestral home of her family.

On February 28, 2002 the Sandiganbayan issued the assailed Resolution,<sup>[7]</sup> granting the motion to quash and ordering the full restoration of the Olot Resthouse to Mrs. Marcos. The Sandiganbayan ruled that the sequestration order was void because it was signed, not by PCGG Commissioners, but by mere PCGG agents. Although the sequestration order preceded the passage of the PCGG Rules, it remained that the law empowered only the PCGG to issue sequestration orders.<sup>[8]</sup> Besides, under the law,<sup>[9]</sup> the PCGG is the sole entity charged with the responsibility of recovering ill-gotten wealth. Its representatives or agents do not have such power. The Republic moved for reconsideration of the resolution but the Sandiganbayan denied it on August 28, 2002.<sup>[10]</sup> Thus, the Republic filed the present petition for *certiorari*.

### **The Issue Presented**

The sole issue presented is whether or not the March 18, 1986 sequestration order against the Olot Resthouse, issued by PCGG agents before the enactment of the PCGG rules, was validly issued.

### **The Court's Ruling**

Under Section 26, Article XVIII of the Constitution, an order of sequestration may only issue upon a showing "of a *prima facie* case" that the properties are ill-gotten wealth under Executive Orders 1 and 2.<sup>[11]</sup> When a court nullifies an order of sequestration for having been issued without a *prima facie* case, the Court does not substitute its judgment for that of the PCGG but simply applies the law.<sup>[12]</sup>

In *Bataan Shipyard & Engineering Co, Inc. v. PCGG*,<sup>[13]</sup> the Court held that a *prima facie* factual foundation that the properties sequestered are "ill-gotten wealth" is required. The power to determine the existence of a *prima facie* case has been vested in the PCGG as an incident to its investigatory powers. The two-commissioner rule is obviously intended to assure a collegial determination of such fact.<sup>[14]</sup>

Here, it is clear that the PCGG did not make a prior determination of the existence of a *prima facie* case that would warrant the sequestration of the Olot Resthouse. The Republic presented no evidence before the Sandiganbayan that shows differently. Nor did the Republic demonstrate that the two PCGG representatives were given the quasi-judicial authority to receive and consider evidence that would warrant such a *prima facie* finding.

Parenthetically, the Republic's supposed evidence does not show how the Marcoses acquired the sequestered property, what makes it "ill-gotten wealth," and how former President Marcos intervened in its acquisition. Taking the foregoing view, the resolution of the issue surrounding the character of the property sequestered - whether or not it could *prima facie* be considered ill-gotten - should be necessary.

The issue in this case is not new. The facts are substantially identical to those in the case of *Republic v. Sandiganbayan (Dio Island Resort, Inc.)*.<sup>[15]</sup> There, the same Atty. Ramirez issued a sequestration order on April 14, 1986 against Dio Island Resort, Inc. and all its assets and properties which were thought to be part of the Marcoses' ill-gotten wealth. Alerted by a challenge to his action, the PCGG passed a resolution "to confirm, ratify and adopt as its own all the Writs of Sequestration" that Attys. Ramirez and Abella issued "to remove any doubt as to the validity and enforceability" of their writs. Still, the Court struck them down as void:

**x x x It is indubitable that under no circumstances can a sequestration or freeze order be validly issued by one not a Commissioner of the PCGG.**

**The invalidity of the sequestration order was made more apparent by the fact that Atty. Ramirez did not even have any specific authority to act on behalf of the Commission at the time he issued the said sequestration order. x x x**

**x x x x**

**Even assuming arguendo that Atty. Ramirez had been given prior authority by the PCGG to place Dio Island Resort under sequestration, nevertheless, the sequestration order he issued is still void since PCGG may not delegate its authority to sequester to its representatives and subordinates, and any such delegation is invalid and ineffective.**

**Under Executive Order Nos. 1 and 2, PCGG is the sole entity primarily charged with the responsibility of recovering ill-gotten wealth. x x x The power to sequester, therefore, carries with it the corollary duty to make a preliminary determination of whether there is a reasonable basis for sequestering a property alleged to be ill-gotten. After a careful evaluation of the evidence adduced, the PCGG clearly has to use its own judgment in determining the existence of a *prima facie* case.**

**x x x x**

**The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect which rendered the sequestration of respondent corporation and its properties void *ab initio*. Being void *ab initio*, it is deemed non-existent, as though it had never been issued, x x x.**<sup>[16]</sup>