

## EN BANC

[ G.R. No. 164527, August 15, 2007 ]

**FRANCISCO I. CHAVEZ, PETITIONER, VS. NATIONAL HOUSING AUTHORITY, R-II BUILDERS, INC., R-II HOLDINGS, INC., HARBOUR CENTRE PORT TERMINAL, INC., AND MR. REGHIS ROMERO II, RESPONDENTS.**

### DECISION

**VELASCO, JR., J.:**

In this Petition for Prohibition and Mandamus with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction under Rule 65, petitioner, in his capacity as taxpayer, seeks:

to declare NULL AND VOID the Joint Venture Agreement (JVA) dated March 9, 1993 between the National Housing Authority and R-II Builders, Inc. and the Smokey Mountain Development and Reclamation Project embodied therein; the subsequent amendments to the said JVA; and all other agreements signed and executed in relation thereto - *including*, but not limited to the Smokey Mountain Asset Pool Agreement dated 26 September 1994 and the separate agreements for Phase I and Phase II of the Project--as well as all other transactions which emanated therefrom, for being **UNCONSTITUTIONAL** and **INVALID**;

to enjoin respondents--particularly respondent NHA--from further implementing and/or enforcing the said project and other agreements related thereto, and from further deriving and/or enjoying any rights, privileges and interest therefrom x x x; and

to compel respondents to disclose all documents and information relating to the project--including, but not limited to, any subsequent agreements with respect to the different phases of the project, the revisions over the original plan, the additional works incurred thereon, the current financial condition of respondent R-II Builders, Inc., and the transactions made respecting the project.<sup>[1]</sup>

### The Facts

On March 1, 1988, then President Corazon C. Aquino issued Memorandum Order No. (MO) 161<sup>[2]</sup> approving and directing the implementation of the Comprehensive and Integrated Metropolitan Manila Waste Management Plan (the Plan). The Metro Manila Commission, in coordination with various government agencies, was tasked as the lead agency to implement the Plan as formulated by the Presidential Task Force on Waste Management created by Memorandum Circular No. 39. A day after, on March 2, 1988, MO 161-A<sup>[3]</sup> was issued, containing the guidelines which

prescribed the functions and responsibilities of fifteen (15) various government departments and offices tasked to implement the Plan, namely: Department of Public Works and Highway (DPWH), Department of Health (DOH), Department of Environment and Natural Resources (DENR), Department of Transportation and Communication, Department of Budget and Management, National Economic and Development Authority (NEDA), Philippine Constabulary Integrated National Police, Philippine Information Agency and the Local Government Unit (referring to the City of Manila), Department of Social Welfare and Development, Presidential Commission for Urban Poor, National Housing Authority (NHA), Department of Labor and Employment, Department of Education, Culture and Sports (now Department of Education), and Presidential Management Staff.

Specifically, respondent NHA was ordered to "conduct feasibility studies and develop low-cost housing projects at the dumpsite and absorb scavengers in NHA resettlement/low-cost housing projects."<sup>[4]</sup> On the other hand, the DENR was tasked to "review and evaluate proposed projects under the Plan with regard to their environmental impact, conduct regular monitoring of activities of the Plan to ensure compliance with environmental standards and assist DOH in the conduct of the study on hospital waste management."<sup>[5]</sup>

At the time MO 161-A was issued by President Aquino, Smokey Mountain was a wasteland in Balut, Tondo, Manila, where numerous Filipinos resided in subhuman conditions, collecting items that may have some monetary value from the garbage. The Smokey Mountain dumpsite is bounded on the north by the Estero Marala, on the south by the property of the National Government, on the east by the property of B and I Realty Co., and on the west by Radial Road 10 (R-10).

Pursuant to MO 161-A, NHA prepared the feasibility studies of the Smokey Mountain low-cost housing project which resulted in the formulation of the "Smokey Mountain Development Plan and Reclamation of the Area Across R-10" or the Smokey Mountain Development and Reclamation Project (SMDRP; the Project). The Project aimed to convert the Smokey Mountain dumpsite into a habitable housing project, inclusive of the reclamation of the area across R-10, adjacent to the Smokey Mountain as the enabling component of the project.<sup>[6]</sup> Once finalized, the Plan was submitted to President Aquino for her approval.

On July 9, 1990, the Build-Operate-and-Transfer (BOT) Law (Republic Act No. [RA] 6957) was enacted.<sup>[7]</sup> Its declared policy under Section 1 is "[t]o recognize the indispensable role of the private sector as the main engine for national growth and development and provide the most appropriate favorable incentives to mobilize private resources for the purpose." Sec. 3 authorized and empowered "[a]ll government infrastructure agencies, including government-owned and controlled corporations and local government units x x x to enter into contract with any duly pre-qualified private contractor for the financing, construction, operation and maintenance of any financially viable infrastructure facilities through the build-operate-transfer or build and transfer scheme."

RA 6957 defined "build-and-transfer" scheme as "[a] contractual arrangement whereby the contractor undertakes the construction, including financing, of a given infrastructure facility, and its turnover after the completion to the government agency or local government unit concerned which shall pay the contractor its total

investment expended on the project, plus reasonable rate of return thereon." The last paragraph of Sec. 6 of the BOT Law provides that the repayment scheme in the case of "land reclamation or the building of industrial estates" may consist of "[t]he grant of a portion or percentage of the reclaimed land or industrial estate built, subject to the constitutional requirements with respect to the ownership of lands."

On February 10, 1992, Joint Resolution No. 03<sup>[8]</sup> was passed by both houses of Congress. Sec. 1 of this resolution provided, among other things, that:

Section 1. There is hereby approved the following national infrastructure projects for implementation under the provisions of Republic Act No. 6957 and its implementing rules and regulations:

x x x x

(d) Port infrastructure like piers, wharves, quays, storage handling, ferry service and related facilities;

x x x x

(k) Land reclamation, dredging and other related development facilities;

(l) Industrial estates, regional industrial centers and export processing zones including steel mills, iron-making and petrochemical complexes and related infrastructure and utilities;

x x x x

(p) Environmental and solid waste management-related facilities such as collection equipment, composting plants, incinerators, landfill and tidal barriers, among others; and

(q) Development of new townsites and communities and related facilities.

This resolution complied with and conformed to Sec. 4 of the BOT Law requiring the approval of all national infrastructure projects by the Congress.

On January 17, 1992, President Aquino proclaimed MO 415<sup>[9]</sup> approving and directing the implementation of the SMDRP. Secs. 3 and 4 of the Memorandum Order stated:

Section 3. The National Housing Authority is hereby directed to implement the Smokey Mountain Development Plan and Reclamation of the Area Across R-10 **through a private sector joint venture scheme at the least cost to the government.**

Section 4. The land area covered by the Smokey Mountain dumpsite is hereby conveyed to the National Housing Authority as well as the area to be reclaimed across R-10. (Emphasis supplied.)

In addition, the Public Estates Authority (PEA) was directed to assist in the evaluation of proposals regarding the technical feasibility of reclamation, while the DENR was directed to (1) facilitate titling of Smokey Mountain and of the area to be

reclaimed and (2) assist in the technical evaluation of proposals regarding environmental impact statements.<sup>[10]</sup>

In the same MO 415, President Aquino created an Executive Committee (EXECOM) to oversee the implementation of the Plan, chaired by the National Capital Region-Cabinet Officer for Regional Development (NCR-CORD) with the heads of the NHA, City of Manila, DPWH, PEA, Philippine Ports Authority (PPA), DENR, and Development Bank of the Philippines (DBP) as members.<sup>[11]</sup> The NEDA subsequently became a member of the EXECOM. Notably, in a September 2, 1994 Letter,<sup>[12]</sup> PEA General Manager Amado Lagdameo approved the plans for the reclamation project prepared by the NHA.

In conformity with Sec. 5 of MO 415, an inter-agency technical committee (TECHCOM) was created composed of the technical representatives of the EXECOM " [t]o assist the NHA in the evaluation of the project proposals, assist in the resolution of all issues and problems in the project to ensure that all aspects of the development from squatter relocation, waste management, reclamation, environmental protection, land and house construction meet governing regulation of the region and to facilitate the completion of the project."<sup>[13]</sup>

Subsequently, the TECHCOM put out the Public Notice and Notice to Pre-Qualify and Bid for the right to become NHA's joint venture partner in the implementation of the SMDRP. The notices were published in newspapers of general circulation on January 23 and 26 and February 1, 14, 16, and 23, 1992, respectively. Out of the thirteen (13) contractors who responded, only five (5) contractors fully complied with the required pre-qualification documents. Based on the evaluation of the pre-qualification documents, the EXECOM declared the New San Jose Builders, Inc. and R-II Builders, Inc. (RBI) as the top two contractors.<sup>[14]</sup>

Thereafter, the TECHCOM evaluated the bids (which include the Pre-feasibility Study and Financing Plan) of the top two (2) contractors in this manner:

- (1) The DBP, as financial advisor to the Project, evaluated their Financial Proposals;
- (2) The DPWH, PPA, PEA and NHA evaluated the Technical Proposals for the Housing Construction and Reclamation;
- (3) The DENR evaluated Technical Proposals on Waste Management and Disposal by conducting the Environmental Impact Analysis; and
- (4) The NHA and the City of Manila evaluated the socio-economic benefits presented by the proposals.

On June 30, 1992, Fidel V. Ramos assumed the Office of the President (OP) of the Philippines.

On August 31, 1992, the TECHCOM submitted its recommendation to the EXECOM to approve the R-II Builders, Inc. (RBI) proposal which garnered the highest score of 88.475%.

Subsequently, the EXECOM made a Project briefing to President Ramos. As a result,

President Ramos issued Proclamation No. 39<sup>[15]</sup> on September 9, 1992, which reads:

WHEREAS, the National Housing Authority has presented a viable conceptual plan to convert the Smokey Mountain dumpsite into a habitable housing project, inclusive of the reclamation of the area across Road Radial 10 (R-10) adjacent to the Smokey Mountain as the enabling component of the project;

x x x x

**These parcels of land of public domain are hereby placed under the administration and disposition of the National Housing Authority to develop, subdivide and dispose to qualified beneficiaries, as well as its development for mix land use (commercial/industrial) to provide employment opportunities to on-site families and additional areas for port-related activities.**

In order to facilitate the early development of the area for disposition, the Department of Environment and Natural Resources, through the Lands and Management Bureau, is hereby directed to approve the boundary and subdivision survey and to issue a special patent and title in the name of the National Housing Authority, subject to final survey and private rights, if any there be. (Emphasis supplied.)

On October 7, 1992, President Ramos authorized NHA to enter into a Joint Venture Agreement with RBI "[s]ubject to final review and approval of the Joint Venture Agreement by the Office of the President."<sup>[16]</sup>

On March 19, 1993, the NHA and RBI entered into a Joint Venture Agreement<sup>[17]</sup> (JVA) for the development of the Smokey Mountain dumpsite and the reclamation of the area across R-10 based on Presidential Decree No. (PD) 757<sup>[18]</sup> which mandated NHA "[t]o undertake the physical and socio-economic upgrading and development of lands of the public domain identified for housing," MO 161-A which required NHA to conduct the feasibility studies and develop a low-cost housing project at the Smokey Mountain, and MO 415 as amended by MO 415-A which approved the Conceptual Plan for Smokey Mountain and creation of the EXECOM and TECHCOM. Under the JVA, the Project "involves the clearing of Smokey Mountain for eventual development into a low cost medium rise housing complex and industrial/commercial site with the reclamation of the area directly across [R-10] to act as the enabling component of the Project."<sup>[19]</sup> The JVA covered a lot in Tondo, Manila with an area of two hundred twelve thousand two hundred thirty-four (212,234) square meters and another lot to be reclaimed also in Tondo with an area of four hundred thousand (400,000) square meters.

The Scope of Work of RBI under Article II of the JVA is as follows:

- a) To fully finance all aspects of development of Smokey Mountain and reclamation of no more than 40 hectares of Manila Bay area across Radial Road 10.
- b) To immediately commence on the preparation of feasibility report and