

## EN BANC

[ G.R. NO. 166429, December 19, 2005 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY EXECUTIVE SECRETARY EDUARDO R. ERMITA, THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), AND THE MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), PETITIONERS, VS. HON. HENRICK F. GINGOYON, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 117, PASAY CITY AND PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

The Ninoy Aquino International Airport Passenger Terminal III (NAIA 3) was conceived, designed and constructed to serve as the country's show window to the world. Regrettably, it has spawned controversies. Regrettably too, despite the apparent completion of the terminal complex way back it has not yet been operated. This has caused immeasurable economic damage to the country, not to mention its deplorable discredit in the international community.

In the first case that reached this Court, *Agan v. PIATCO*,<sup>[1]</sup> the contracts which the Government had with the contractor were voided for being contrary to law and public policy. The second case now before the Court involves the matter of just compensation due the contractor for the terminal complex it built. We decide the case on the basis of fairness, the same norm that pervades both the Court's 2004 Resolution in the first case and the latest expropriation law.

The present controversy has its roots with the promulgation of the Court's decision in *Agan v. PIATCO*,<sup>[2]</sup> promulgated in 2003 (2003 Decision). This decision nullified the "Concession Agreement for the Build-Operate-and-Transfer Arrangement of the Ninoy Aquino International Airport Passenger Terminal III" entered into between the Philippine Government (Government) and the Philippine International Air Terminals Co., Inc. (PIATCO), as well as the amendments and supplements thereto. The agreement had authorized PIATCO to build a new international airport terminal (NAIA 3), as well as a franchise to operate and maintain the said terminal during the concession period of 25 years. The contracts were nullified, among others, that Paircargo Consortium, predecessor of PIATCO, did not possess the requisite financial capacity when it was awarded the NAIA 3 contract and that the agreement was contrary to public policy.<sup>[3]</sup>

At the time of the promulgation of the 2003 Decision, the NAIA 3 facilities had already been built by PIATCO and were nearing completion.<sup>[4]</sup> However, the *ponencia* was silent as to the legal status of the NAIA 3 facilities following the nullification of the contracts, as well as whatever rights of PIATCO for

reimbursement for its expenses in the construction of the facilities. Still, in his Separate Opinion, Justice Panganiban, joined by Justice Callejo, declared as follows:

**Should government pay at all for reasonable expenses incurred in the construction of the Terminal? Indeed it should, otherwise it will be unjustly enriching itself at the expense of Piatco and, in particular, its funders, contractors and investors – both local and foreign.** After all, there is no question that the State needs and will make use of Terminal III, it being part and parcel of the critical infrastructure and transportation-related programs of government.<sup>[5]</sup>

PIATCO and several respondents-intervenors filed their respective motions for the reconsideration of the 2003 Decision. These motions were denied by the Court in its *Resolution* dated 21 January 2004 (2004 Resolution).<sup>[6]</sup> However, the Court this time squarely addressed the issue of the rights of PIATCO to refund, compensation or reimbursement for its expenses in the construction of the NAIA 3 facilities. The holding of the Court on this crucial point follows:

**This Court, however, is not unmindful of the reality that the structures comprising the NAIA IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. For the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity for the government can not unjustly enrich itself at the expense of PIATCO and its investors.**<sup>[7]</sup>

After the promulgation of the rulings in *Agan*, the NAIA 3 facilities have remained in the possession of PIATCO, despite the avowed intent of the Government to put the airport terminal into immediate operation. The Government and PIATCO conducted several rounds of negotiation regarding the NAIA 3 facilities.<sup>[8]</sup> It also appears that arbitral proceedings were commenced before the International Chamber of Commerce International Court of Arbitration and the International Centre for the Settlement of Investment Disputes,<sup>[9]</sup> although the Government has raised jurisdictional questions before those two bodies.<sup>[10]</sup>

Then, on 21 December 2004, the Government<sup>[11]</sup> filed a *Complaint* for expropriation with the Pasay City Regional Trial Court (RTC), together with an *Application for Special Raffle* seeking the immediate holding of a special raffle. The Government sought upon the filing of the complaint the issuance of a writ of possession authorizing it to take immediate possession and control over the NAIA 3 facilities.

The Government also declared that it had deposited the amount of P3,002,125,000.00<sup>[12]</sup> (3 Billion)<sup>[13]</sup> in Cash with the Land Bank of the Philippines, representing the NAIA 3 terminal's assessed value for taxation purposes.<sup>[14]</sup>

The case<sup>[15]</sup> was raffled to Branch 117 of the Pasay City RTC, presided by respondent judge Hon. Henrick F. Gingoyon (Hon. Gingoyon). On the same day that the *Complaint* was filed, the RTC issued an *Order*<sup>[16]</sup> directing the issuance of a writ of possession to the Government, authorizing it to "take or enter upon the possession" of the NAIA 3 facilities. Citing the case of *City of Manila v. Serrano*,<sup>[17]</sup>

the RTC noted that it had the ministerial duty to issue the writ of possession upon the filing of a complaint for expropriation sufficient in form and substance, and upon deposit made by the government of the amount equivalent to the assessed value of the property subject to expropriation. The RTC found these requisites present, particularly noting that "[t]he case record shows that [the Government has] deposited the assessed value of the [NAIA 3 facilities] in the Land Bank of the Philippines, an authorized depository, as shown by the certification attached to their complaint." Also on the same day, the RTC issued a *Writ of Possession*. According to PIATCO, the Government was able to take possession over the NAIA 3 facilities immediately after the *Writ of Possession* was issued.<sup>[18]</sup>

However, on 4 January 2005, the RTC issued another *Order* designed to supplement its 21 December 2004 *Order* and the *Writ of Possession*. In the 4 January 2005 *Order*, now assailed in the present petition, the RTC noted that its earlier issuance of its writ of possession was pursuant to Section 2, Rule 67 of the 1997 Rules of Civil Procedure. However, it was observed that Republic Act No. 8974 (Rep. Act No. 8974), otherwise known as "An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and For Other Purposes" and its Implementing Rules and Regulations (Implementing Rules) had amended Rule 67 in many respects.

There are at least two crucial differences between the respective procedures under Rep. Act No. 8974 and Rule 67. Under the statute, the Government is required to make immediate payment to the property owner upon the filing of the complaint to be entitled to a writ of possession, whereas in Rule 67, the Government is required only to make an initial deposit with an authorized government depository. Moreover, Rule 67 prescribes that the initial deposit be equivalent to the assessed value of the property for purposes of taxation, unlike Rep. Act No. 8974 which provides, as the relevant standard for initial compensation, the market value of the property as stated in the tax declaration or the current relevant zonal valuation of the Bureau of Internal Revenue (BIR), whichever is higher, and the value of the improvements and/or structures using the replacement cost method.

Accordingly, on the basis of Sections 4 and 7 of Rep. Act No. 8974 and Section 10 of the Implementing Rules, the RTC made key qualifications to its earlier issuances. *First*, it directed the Land Bank of the Philippines, Baclaran Branch (LBP-Baclaran), to immediately release the amount of US\$62,343,175.77 to PIATCO, an amount which the RTC characterized as that which the Government "specifically made available for the purpose of this expropriation;" and such amount to be deducted from the amount of just compensation due PIATCO as eventually determined by the RTC. *Second*, the Government was directed to submit to the RTC a Certificate of Availability of Funds signed by authorized officials to cover the payment of just compensation. *Third*, the Government was directed "to maintain, preserve and safeguard" the NAIA 3 facilities or "perform such as acts or activities in preparation for their direct operation" of the airport terminal, pending expropriation proceedings and full payment of just compensation. However, the Government was prohibited "from performing acts of ownership like awarding concessions or leasing any part of [NAIA 3] to other parties."<sup>[19]</sup>

The very next day after the issuance of the assailed 4 January 2005 *Order*, the Government filed an *Urgent Motion for Reconsideration*, which was set for hearing

on 10 January 2005. On 7 January 2005, the RTC issued another *Order*, the second now assailed before this Court, which appointed three (3) Commissioners to ascertain the amount of just compensation for the NAIA 3 Complex. That same day, the Government filed a *Motion for Inhibition* of Hon. Gingoyon.

The RTC heard the *Urgent Motion for Reconsideration* and *Motion for Inhibition* on 10 January 2005. On the same day, it denied these motions in an *Omnibus Order* dated 10 January 2005. This is the third *Order* now assailed before this Court. Nonetheless, while the *Omnibus Order* affirmed the earlier dispositions in the 4 January 2005 *Order*, it excepted from affirmance "the superfluous part of the *Order* prohibiting the plaintiffs from awarding concessions or leasing any part of [NAIA 3] to other parties."<sup>[20]</sup>

Thus, the present *Petition for Certiorari and Prohibition* under Rule 65 was filed on 13 January 2005. The petition prayed for the nullification of the RTC orders dated 4 January 2005, 7 January 2005, and 10 January 2005, and for the inhibition of Hon. Gingoyon from taking further action on the expropriation case. A concurrent prayer for the issuance of a temporary restraining order and preliminary injunction was granted by this Court in a *Resolution* dated 14 January 2005.<sup>[21]</sup>

The Government, in imputing grave abuse of discretion to the acts of Hon. Gingoyon, raises five general arguments, to wit:

(i) that Rule 67, not Rep. Act No. 8974, governs the present expropriation proceedings;

(ii) that Hon. Gingoyon erred when he ordered the immediate release of the amount of US\$62.3 Million to PIATCO considering that the assessed value as alleged in the complaint was only P3 Billion;

(iii) that the RTC could not have prohibited the Government from enjoining the performance of acts of ownership;

(iv) that the appointment of the three commissioners was erroneous; and

(v) that Hon. Gingoyon should be compelled to inhibit himself from the expropriation case.<sup>[22]</sup>

Before we delve into the merits of the issues raised by the Government, it is essential to consider the crucial holding of the Court in its 2004 Resolution in *Agan*, which we repeat below:

This Court, however, is not unmindful of the reality that the structures comprising the NAIA IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. **For the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity for the government can not unjustly enrich itself at the expense of PIATCO and its investors.**<sup>[23]</sup>

This pronouncement contains the fundamental premises which permeate this decision of the Court. Indeed, *Agan*, final and executory as it is, stands as governing law in this case, and any disposition of the present petition must conform to the conditions laid down by the Court in its 2004 *Resolution*.

*The 2004 Resolution Which Is  
Law of This Case Generally  
Permits Expropriation*

**The pronouncement in the 2004 Resolution is especially significant to this case in two aspects, namely: (i) that PIATCO must receive payment of just compensation determined in accordance with law and equity; and (ii) that the government is barred from taking over NAIA 3 until such just compensation is paid.** The parties cannot be allowed to evade the directives laid down by this Court through any mode of judicial action, such as the complaint for eminent domain.

It cannot be denied though that the Court in the 2004 Resolution prescribed mandatory guidelines which the Government must observe before it could acquire the NAIA 3 facilities. Thus, the actions of respondent judge under review, as well as the arguments of the parties must, to merit affirmation, pass the threshold test of whether such propositions are in accord with the 2004 Resolution.

The Government does not contest the efficacy of this pronouncement in the 2004 *Resolution*,<sup>[24]</sup> thus its application to the case at bar is not a matter of controversy. Of course, questions such as what is the standard of "just compensation" and which particular laws and equitable principles are applicable, remain in dispute and shall be resolved forthwith.

The Government has chosen to resort to expropriation, a remedy available under the law, which has the added benefit of an integrated process for the determination of just compensation and the payment thereof to PIATCO. We appreciate that the case at bar is a highly unusual case, whereby the Government seeks to expropriate a building complex constructed on land which the State already owns.<sup>[25]</sup> There is an inherent illogic in the resort to eminent domain on property already owned by the State. At first blush, since the State already owns the property on which NAIA 3 stands, the proper remedy should be akin to an action for ejectment.

However, the reason for the resort by the Government to expropriation proceedings is understandable in this case. The 2004 Resolution, in requiring the payment of just compensation prior to the takeover by the Government of NAIA 3, effectively precluded it from acquiring possession or ownership of the NAIA 3 through the unilateral exercise of its rights as the owner of the ground on which the facilities stood. Thus, as things stood after the 2004 Resolution, the right of the Government to take over the NAIA 3 terminal was preconditioned by lawful order on the payment of just compensation to PIATCO as builder of the structures.

The determination of just compensation could very well be agreed upon by the parties without judicial intervention, and it appears that steps towards that direction had been engaged in. Still, ultimately, the Government resorted to its inherent power of eminent domain through expropriation proceedings. Is eminent domain